2011-2012

SENATE
JUDICIARY I

MINUTES

ATTENDANCE

Committee: Judiciary I

NAMES \ DATES	2/17	2/22	2/24	3/1	3/3	3/8	3/15	3/17	3/24	3/31	4/5	4/7	4/12	4/14	4/19	4/21
Chair: Senator Pete Brunstetter	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Vice Chair: Senator Thom Goolsby	✓	✓	✓	✓	✓	✓	✓	✓	+	✓	✓	✓	✓	✓	✓	
Senator Tom Apodaca	✓	✓	✓	✓	✓		✓	✓		✓		✓			✓	
Senator Andrew Brock				✓	✓	✓	✓	+ ✓	✓	✓	✓	✓	✓	+ ✓	✓	✓
Senator Harry Brown	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓		✓	✓
Senator Dan Clodfelter	✓	✓	✓	✓	✓	✓	✓	✓			✓			✓		✓
Senator Kathy Harrington	+ ✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
Senator Clark Jenkins		✓	✓	✓	✓	✓	+ ✓	+ ✓			✓		✓	✓	✓	✓
Senator Eric Mansfield	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓		+ ✓	✓	✓
Senator Martin Nesbitt	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	+ ✓		✓
Senator Louis Pate	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓		✓	✓	✓	✓
Senator David Rouzer		+ ✓	✓	✓							+ ✓	✓	✓	✓		
Senator Bob Rucho	✓	✓	✓		✓	✓	✓			✓	✓				✓	
Senator Dan Soucek	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓
Senator Josh Stein	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	+ ✓	✓	✓
Senator Richard Stevens		✓	✓	✓	✓			+ ✓		✓			✓	✓	✓	✓
Senator Jerry Tillman	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Senator Michael Walters	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	
Senator Neal Hunt	✓															
Dr Purcell	✓		✓													
Senator Ralph Hise	✓														✓	
Senator Phil Berger	✓															
Senator Don Vaughan					✓	✓		✓								
Senator Ellie Kinnaird						✓		✓								

ATTENDANCE

Committee: Judiciary I

NAMES \ DATES	4/28	5/3	5/10	5/17	5/19	6/2	6/7 m	6/7 a	6/9	6/13	6/14	6/21	11/28			
Chair: Senator Pete Brunstetter	✓						✓	✓	✓	✓	✓	✓	✓			
Vice Chair: Senator Thom Goolsby	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓			
Senator Tom Apodaca		✓			✓		✓		✓	✓	✓	✓				
Senator Andrew Brock	✓	✓		✓				✓	✓	✓	✓	✓	✓			
Senator Harry Brown	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓			
Senator Dan Clodfelter	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓			
Senator Kathy Harrington	✓	✓	✓	✓			✓	✓	✓	✓	✓	✓	✓			
Senator Clark Jenkins	✓	✓		✓	✓			✓	✓			✓				
Senator Eric Mansfield	✓	✓	✓		✓		✓	✓	✓	✓			✓			
Senator Martin Nesbitt		✓	✓	✓	✓		✓		✓	✓	✓	✓	✓			
Senator Louis Pate	✓	✓	✓	✓	✓		✓	✓	✓	✓		✓	✓			
Senator David Rouzer	✓			✓			✓	✓	✓	✓		✓	✓			
Senator Bob Rucho	✓	✓										✓	✓			
Senator Dan Soucek	✓	✓	✓		✓		✓	✓	✓	✓	✓	✓	✓			
Senator Josh Stein	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓			
Senator Richard Stevens	✓						✓		✓	✓	✓	✓	✓			
Senator Jerry Tillman	✓	✓	✓	✓	✓		✓	✓			✓	✓	✓			
Senator Michael Walters		✓		✓	✓		✓	✓		✓	✓		✓			

SENATE JUDICIARY I COMMITTEE
February 15, 2011 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on February 15, 2011, in Room 1027 of the Legislative Building. Eighteen members of the committee were present. Senator Pete Brunstetter presided.

Introduction of staff members and senators

Senate Bill 33
Senator Apodaca moves to adopt the PCS for Senate Bill 33 for discussion—motion carries
Senator Apodaca is recognized to explain the bill—will go over the high points and turn it over to staff
Looks at this bill as a business bill that will open the doors to more businesses and bring more doctors to this state
In Henderson Co they have a difficult time recruiting and retaining OB/GYNs and neurologists

1. Separates trials on liabilities and damages
2. Amendment to the standard of proof in emergency care cases—brings us more in line with federal statutes
3. Limiting amount of monetary damages in which a bond must be executed by a defendant
4. Periodic payment of damages
5. Cap on economic damages

Attempts to deal with high cost of practicing medicine, relieves the pressure on physicians to practice defensive medicine, and he believes it will reduce the cost of medical care. Making medical care more affordable will make it more accessible.
Hopefully this will attract more doctors and businesses

Bill Patterson will go over the bill in more detail
Will go over the bill section by section
Senators can raise questions after Bill has gone over the whole PCS
Section I
Currently, emergency physicians are subject to the ordinary standard of care, the PCS would amend that statute to add a new subsection that would change the standard to gross negligence, wanton conduct, or intentional wrongdoing.
Section II
Not affected by the PCS, provides for separate trials for actions in which the plaintiff is seeking damages of over $75,000. Same trial of fact will try both liability issues and damage issues, but in separate hearings.
Section III
Limit of noneconomic damages to $250,000. Under current law, there is no cap on noneconomic damages. Cap of $250,000 per plaintiff. Also defines noneconomic damages and prevents the court from informing the jury that there is a cap.
Section IV
Relates to medical malpractice in which there is an award for future economic damages. Currently, everything is paid in one lump sum (current and future economic damages). Future

economic damages are damages for future expenses following the date of the verdict or the award. These will be paid by periodic payments rather than lump sum, according to the PCS. They will be paid through trust fund or an annuity. This section would provide that upon the death of the plaintiff, liability for the payment of payments not yet due would go away. The court can modify judgment to say that the damages for wages can continue to be paid.

Section V

Not modified by the PCS in any substantial way, this section provides that the form of the verdict has to specify the separate elements of damages that are awarded: noneconomic damages, present economic damages, future economic damages. The court must instruct the jury on the definitions.

Section VI

This section relates to the bond that is required to be executed by the defendant. In the current law the defendant must post a bond equal to the amount of the judgment. The PCS would require that in medical malpractice cases, if the appellant's insurance is $1 million or more, the appellant would be able to stay execution of the bond. The PCS changed the original bill by adding the $1 million coverage requirement.

Section VII

This section was added by the PCS. If Section III is declared invalid, then sections IV and V are repealed, but the other sections of the bill are not affected. The section also includes effective dates.

Questions from the Senators about provisions of the bill

Sen. Goolsby—In section IV where we deal with the death of the plaintiff, line 19 on pg 3, does that deal with the value of services for example of a mother who is employed in the home, this doesn't provide for any compensation.

Bill Patterson—believes that the Senator is correct that the continued payment of periodic payments doesn't encompass the services.

Sen. Clodfelter—has general understanding of EMTALA but not completely. Is there no fuzziness about when stabilization of medical condition ends?

Bill Patterson—that is an issue that has been an issue of litigation and court proceedings. Does not know whether that status is changing or not

Sen. Clodfelter—wants to be sure of the state of the law and the boundary point

Sen. Stein—Current law says that when gauging negligence that the standards of practice…an ER doc when presented with something when having to make a split second decision is held to a different standard of care—arguably lesser standard of negligence under current law?

Bill Patterson—an emergency room physician would be held to a different standard of care than a general practitioner. They would be held to a different standard. A different level of training and experience applies to ER docs and family practitioners.

Sen. Stein—follow up. If someone presents to an emergency room in an acute situation, there is no liability at all even if there is negligence?

Bill Patterson—two parts to the revised standard of care. Higher than an ordinary negligence standard.

Sen. Stein—what I heard you to say is that if someone goes to an emergency room and negligence occurs, then that family is on the hook. Somebody is paying for the mistake, but the entity which was negligent has no liability? Seems to him that what we are doing is not creating an incentive for emergency rooms to do better healthcare when negligence occurs. Is there any other place in medicine when we give a free pass to negligence?

Bill Patterson—courts have concluded that the intent is to insulate the defendant from ordinary negligence/inadvertence. This requires an element of wrongdoing—wanton conduct, gross negligence. This language is used in other statutes.

Sen. Rucho (bill sponsor)—uses the metaphor of a lawyer doing due diligence to a doctor who has no idea what the history of a patient is. Let's give a break to someone who is trying to save a life in an acute situation. All we are trying to do is recognize that this is a challenging situation and cannot hold it to the same standard as primary care physicians.
Sen. Tillman—understands where Stein is coming from. We still have the medical board who will not let doctors get away with purely negligent acts.
Sen. Mansfield—agrees with Stein. Question on what acute is. Just by someone walking into an emergency room does not mean that they have an acute problem. What about people coming into the ER in a nonemergency situation? Thinks we should tighten up the language and define acute.
Patterson—in footnote 2 the text of EMTALA is set out, including definition of emergency medical situation and acute. Appears to require that the patient presents with acute symptoms
Clodfelter—feels a need for context. Would love to get some information about what has happened since 2003 in terms of med mal filings, settlements, what has gone to trial, verdicts, insurance. Would love to know what is happening in the insurance industry.

Public hearing will be on Thursday and some of these questions will be answered on Tuesday.

The meeting adjourned at 10:39 AM.

Senator Peter Brunstetter, Presiding

Sarah Hardin, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 33

Short Title:	Medical Liability Reforms.	(Public)
Sponsors:	Senators Apodaca, Brown, Rucho; Bingham, Blake; Brock, Clary, Davis, Goolsby, Gunn, Harrington, Hise, Hunt, Jackson, Jones, Mansfield, Meredith, Pate, Preston, Purcell, Rabon, Rouzer, Soucek, Stevens, Tillman, Tucker, and Walters.	
Referred to:	Judiciary I.	

February 3, 2011

A BILL TO BE ENTITLED

AN ACT TO REFORM THE LAWS RELATING TO MEDICAL LIABILITY BY PROVIDING LIMITED PROTECTION FROM LIABILITY TO THOSE PROVIDING EMERGENCY MEDICAL CARE, BY AUTHORIZING THE BIFURCATION OF TRIALS ON ISSUES OF LIABILITY AND DAMAGES IN CERTAIN ACTIONS, BY LIMITING THE AMOUNT OF NONECONOMIC DAMAGES THAT MAY BE AWARDED, BY AUTHORIZING THE PERIODIC PAYMENT OF FUTURE ECONOMIC DAMAGES IN LIEU OF A LUMP-SUM PAYMENT, AND BY MODIFYING APPEAL BONDS IN MEDICAL MALPRACTICE ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-21.12 reads as rewritten:

"**§ 90-21.12. Standard of health care.**

(a) Except as provided in subsection (b) of this section, in~~In~~ any medical malpractice action, ~~action for damages for personal injury or death arising out of the furnishing or the failure to furnish professional services in the performance of medical, dental, or other health care,~~ the defendant health care provider shall not be liable for the payment of damages unless the trier of ~~the facts~~fact ~~is satisfied~~finds by the greater weight of the evidence that the care of such health care provider was not in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time of the alleged act giving rise to the cause of action.

(b) In any medical malpractice action arising out of the provision of emergency services as defined in G.S. 58-3-190(g)(2), the defendant health care provider shall not be liable for the payment of damages unless the trier of fact finds by the greater weight of the evidence that the care of such health care provider was not in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time of the alleged act giving rise to the cause of action, and finds by the greater weight of the evidence that such failure to meet the applicable standards of practice constituted gross negligence, wanton conduct or intentional wrongdoing on the part of such health care provider. Nothing in this subsection shall be construed to change, alter, override, or otherwise affect the provisions of G.S. 90-21.14, 90-21.15, 90-21.16, or 20-166."

SECTION 2. G.S. 1A-1, Rule 42(b), reads as rewritten:

"(b) Separate trials. –

(1) The court may in furtherance of convenience or to avoid prejudice and shall for considerations of venue upon timely motion order a separate trial of any

claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

(2) Upon motion of any party in an action that includes a claim commenced under Article 1G of Chapter 90 of the General Statutes involving a managed care entity as defined in G.S. 90-21.50, the court shall order separate discovery and a separate trial of any claim, cross-claim, counterclaim, or third-party claim against a physician or other medical provider.

(3) Upon motion of any party in a medical malpractice action commenced under Article 1B of Chapter 90 of the General Statutes wherein the plaintiff seeks damages in an amount equal to or greater than seventy-five thousand dollars ($75,000), the court shall order separate trials for the issue of liability and the issue of damages. Evidence relating solely to compensatory damages shall not be admissible until the trier of fact has determined that the defendant is liable for medical malpractice. The same trier of fact that tried the issues relating to liability shall try the issues relating to damages."

SECTION 3. Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-21.19. Liability limit for noneconomic damages.**

(a) In any medical malpractice action against a health care provider in which the plaintiff is entitled to an award of noneconomic damages, the amount of noneconomic damages for which judgment is entered shall not exceed two hundred fifty thousand dollars ($250,000) per plaintiff. In the event that any verdict or award of noneconomic damages stated pursuant to G.S. 90-21.19B(1) exceeds two hundred fifty thousand dollars ($250,000) per plaintiff, the court shall modify the judgment as necessary to conform to the requirements of this subsection.

(b) As used in this section, 'noneconomic damages' means damages to compensate for pain, suffering, emotional distress, loss of consortium, inconvenience, physical impairment, disfigurement, and any other nonpecuniary, compensatory damage. 'Noneconomic damages' does not include punitive damages as defined in G.S. 1D-5.

(c) Any award of damages in a medical malpractice action shall be stated in accordance with G.S. 90-21.19B. If a jury is determining the facts, the court shall not instruct the jury with respect to the limit of noneconomic damages under subsection (a) of this section, and neither the attorney for any party nor a witness shall inform the jury or potential members of the jury panel of that limit."

SECTION 4. Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-21.19A. Periodic payment of future economic damages in medical malpractice actions.**

(a) The following definitions apply in this section:

(1) Future economic damages. – Damages for future expense for medical treatment, care or custody, loss of future earnings, and any other future pecuniary damages of the plaintiff following the date of the verdict or award.

(2) Periodic payments. – The payment of money or delivery of other property to the plaintiff at regular intervals.

(b) In any medical malpractice action, the form of the fact finder's verdict or award of damages, if supported by the evidence, shall indicate specifically what amount is awarded for future economic damages.

(c) Upon the award of future economic damages in any medical malpractice action, the presiding judge shall, at the request of either party, enter a judgment ordering that the future economic damages of the plaintiff be paid in whole or in part by periodic payments rather than by a lump-sum payment if the present value of the future economic damages award is greater

than or equal to seventy-five thousand dollars ($75,000). In entering a judgment ordering the payment of future economic damages by periodic payments, the court shall make a specific finding as to the dollar amount of the present value of that portion of the future economic damages for which the plaintiff is to be paid by periodic payments. In calculating the total damages upon which any attorney contingency fee for representing the plaintiff in connection with the medical malpractice action is calculated, the present value of any portion of the award representing future economic damages that are to be paid by periodic payments shall be used.

(d) A judgment authorizing periodic payments of future economic damages shall require that such payments be made through the establishment of a trust fund or the purchase of an annuity for the life of the plaintiff or during the continuance of the compensable injury or disability of the plaintiff, in such form and under such terms as shall be approved by the court. The establishment of a trust fund or the purchase of an annuity, as required and approved by the court, shall constitute the satisfaction of the defendant's judgment for future economic damages.

(e) The judgment ordering the payment of future economic damages by periodic payments shall specify the recipient of the payments, the schedule of the periodic payments, and the dollar amount of each periodic payment to be made pursuant to the schedule. The death of the plaintiff terminates liability for payment of future economic damages which by judgment pursuant to this section are required to be paid in periodic payments not yet due, except that the court that entered the original judgment may modify the judgment to provide that liability for payment of future periodic payments compensating the plaintiff for loss of future earnings shall not be terminated by reason of the death of the plaintiff, but shall continue to be paid to persons surviving the plaintiff to whom the plaintiff owed a duty of support pursuant to law immediately prior to the plaintiff's death."

SECTION 5. Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-21.19B. Verdicts and awards of damages in medical malpractice actions; form.**

In any malpractice action, any verdict or award of damages, if supported by the evidence, shall indicate specifically what amount is awarded for each of all of the following:

(1) Noneconomic damages.

(2) Present economic damages.

(3) Future economic damages.

If applicable, the court shall instruct the jury on the definition of noneconomic damages under G.S. 90-21.19(b) and the definition of future economic damages under G.S. 90-21.19A(a)(1). If applicable, the court shall instruct the jury that present economic damages are those damages for medical treatment, care or custody, loss of earnings, and any other pecuniary damages of the plaintiff up to the date of the verdict or award."

SECTION 6. G.S. 1-289 reads as rewritten:

"**§ 1-289. Undertaking to stay execution on money judgment.**

(a) If the appeal is from a judgment directing the payment of money, it does not stay the execution of the judgment unless a written undertaking is executed on the part of the appellant, by one or more sureties, to the effect that if the judgment appealed from, or any part thereof, is affirmed, or the appeal is dismissed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if affirmed only in part, and all damages which shall be awarded against the appellant upon the appeal, except as provided in ~~subsection (b)~~ subsections (b) and (b1) of this section. Whenever it is satisfactorily made to appear to the court that since the execution of the undertaking the sureties have become insolvent, the court may, by rule or order, require the appellant to execute, file and serve a new undertaking, as above. In case of neglect to execute such undertaking within twenty days after the service of a copy of the rule or order requiring it, the appeal may, on motion to the court, be dismissed with costs. Whenever it is necessary for a party to an action or proceeding to give a bond or an undertaking with surety or sureties, he

may, in lieu thereof, deposit with the officer into court money to the amount of the bond or undertaking to be given. The court in which the action or proceeding is pending may direct what disposition shall be made of such money pending the action or proceeding. In a case where, by this section, the money is to be deposited with an officer, a judge of the court, upon the application of either party, may, at any time before the deposit is made, order the money deposited in court instead of with the officer; and a deposit made pursuant to such order is of the same effect as if made with the officer. The perfecting of an appeal by giving the undertaking mentioned in this section stays proceedings in the court below upon the judgment appealed from; except when the sale of perishable property is directed, the court below may order the property to be sold and the proceeds thereof to be deposited or invested, to abide the judgment of the appellate court.

(b) If the appellee in a civil action brought under any legal theory obtains a judgment directing the payment or expenditure of money in the amount of twenty five million dollars ($25,000,000) or more, and the appellant seeks a stay of execution of the judgment within the period of time during which the appellant has the right to pursue appellate review,, including discretionary review and certiorari, the amount of the undertaking that the appellant is required to execute to stay execution of the judgment during the entire period of the appeal shall be ~~twenty-five~~twenty-five million dollars ($25,000,000).

(b1) If the appellee in any medical malpractice action, as defined in G.S. 90-21.11, obtains a judgment directing the payment or expenditure of money, and the appellant seeks a stay of execution of the judgment within the period of time during which the appellant has the right to pursue appellate review, including discretionary review and certiorari, the amount of the undertaking that the appellant is required to execute to stay execution of the judgment during the entire period of the appeal shall be the lesser of the amount of the judgment or the amount of the appellant's medical malpractice insurance coverage applicable to the action.

(c) If the appellee proves by a preponderance of the evidence that the appellant for whom the undertaking has been limited under subsection (b) or (b1) of this section is, for the purpose of evading the judgment, (i) dissipating its assets, (ii) secreting its assets, or (iii) diverting its assets outside the jurisdiction of the courts of North Carolina or the federal courts of the United States other than in the ordinary course of business, then the limitation in ~~subsection (b)~~subsections (b) and (b1) of this section shall not apply and the appellant shall be required to make an undertaking in the full amount otherwise required by this section."

SECTION 7. This act becomes effective October 1, 2011. Sections 1, 3, 4, and 5 apply to causes of action arising on or after the effective date. Section 2 applies to actions commenced on or after the effective date. Section 6 applies to judgments entered on or after the effective date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 33
PROPOSED COMMITTEE SUBSTITUTE S33-CSTG-1 [v.5]

2/14/2011 12:11:06 PM

Short Title: Medical Liability Reforms. (Public)

Sponsors:

Referred to:

February 3, 2011

A BILL TO BE ENTITLED

AN ACT TO REFORM THE LAWS RELATING TO MEDICAL LIABILITY BY PROVIDING LIMITED PROTECTION FROM LIABILITY TO THOSE REQUIRED BY FEDERAL LAW TO PROVIDE EMERGENCY MEDICAL CARE, BY AUTHORIZING THE BIFURCATION OF TRIALS ON ISSUES OF LIABILITY AND DAMAGES IN CERTAIN ACTIONS, BY LIMITING THE AMOUNT OF NONECONOMIC DAMAGES THAT MAY BE AWARDED, BY AUTHORIZING THE PERIODIC PAYMENT OF FUTURE ECONOMIC DAMAGES IN LIEU OF A LUMP-SUM PAYMENT, AND BY MODIFYING APPEAL BONDS IN MEDICAL MALPRACTICE ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-21.12 reads as rewritten:

"**§ 90-21.12. Standard of health care; limited liability for federally mandated emergency medical services.**

(a) Except as provided in subsection (b) of this section, in~~In~~ any medical malpractice action, ~~action for damages for personal injury or death arising out of the furnishing or the failure to furnish professional services in the performance of medical, dental, or other health care,~~ the defendant health care provider shall not be liable for the payment of damages unless the trier of ~~the facts~~fact ~~is satisfied~~finds by the greater weight of the evidence that the care of such health care provider was not in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time of the alleged act giving rise to the cause of action.

(b) In any medical malpractice claim arising out of the furnishing or the failure to furnish services pursuant to obligations imposed by 42 U.S.C. §1395dd for an emergency medical condition as defined in 42 U.S.C. §1395dd(e)(1), the defendant health care provider shall not be liable for the payment of damages unless the trier of fact finds by clear and convincing evidence that the health care provider's deviation from the standard of care required under subsection (a) of this section constituted gross negligence, wanton conduct or intentional wrongdoing. Nothing in this subsection shall be construed to change, alter, override, or otherwise affect the provisions of G.S. 90-21.14, 90-21.15, 90-21.16, or 20-166."

SECTION 2. G.S. 1A-1, Rule 42(b), reads as rewritten:

"(b) Separate trials. –

(1) The court may in furtherance of convenience or to avoid prejudice and shall for considerations of venue upon timely motion order a separate trial of any

claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

(2) Upon motion of any party in an action that includes a claim commenced under Article 1G of Chapter 90 of the General Statutes involving a managed care entity as defined in G.S. 90-21.50, the court shall order separate discovery and a separate trial of any claim, cross-claim, counterclaim, or third-party claim against a physician or other medical provider.

(3) Upon motion of any party in a medical malpractice action commenced under Article 1B of Chapter 90 of the General Statutes wherein the plaintiff seeks damages in an amount equal to or greater than seventy-five thousand dollars ($75,000), the court shall order separate trials for the issue of liability and the issue of damages. Evidence relating solely to compensatory damages shall not be admissible until the trier of fact has determined that the defendant is liable for medical malpractice. The same trier of fact that tried the issues relating to liability shall try the issues relating to damages."

SECTION 3. Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-21.19. Liability limit for noneconomic damages.**

(a) In any medical malpractice action against a health care provider in which the plaintiff is entitled to an award of noneconomic damages, the amount of noneconomic damages for which judgment is entered shall not exceed two hundred fifty thousand dollars ($250,000) per plaintiff. In the event that any verdict or award of noneconomic damages stated pursuant to G.S. 90-21.19B(1) exceeds two hundred fifty thousand dollars ($250,000) per plaintiff, the court shall modify the judgment as necessary to conform to the requirements of this subsection.

(b) As used in this section, 'noneconomic damages' means damages to compensate for pain, suffering, emotional distress, loss of consortium, inconvenience, physical impairment, disfigurement, and any other nonpecuniary, compensatory damage. 'Noneconomic damages' does not include punitive damages as defined in G.S. 1D-5.

(c) Any award of damages in a medical malpractice action shall be stated in accordance with G.S. 90-21.19B. If a jury is determining the facts, the court shall not instruct the jury with respect to the limit of noneconomic damages under subsection (a) of this section, and neither the attorney for any party nor a witness shall inform the jury or potential members of the jury panel of that limit."

SECTION 4. Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-21.19A. Periodic payment of future economic damages in medical malpractice actions.**

(a) The following definitions apply in this section:

(1) Future economic damages. – Damages for future expense for medical treatment, care or custody, loss of future earnings, and any other future pecuniary damages of the plaintiff following the date of the verdict or award.

(2) Periodic payments. – The payment of money or delivery of other property to the plaintiff at regular intervals.

(b) In any medical malpractice action, the form of the fact finder's verdict or award of damages, if supported by the evidence, shall indicate specifically what amount is awarded for future economic damages.

(c) Upon the award of future economic damages in any medical malpractice action, the presiding judge shall, at the request of either party, enter a judgment ordering that the future economic damages of the plaintiff be paid in whole or in part by periodic payments rather than by a lump-sum payment if the present value of the future economic damages award is greater

than or equal to seventy-five thousand dollars ($75,000). In entering a judgment ordering the payment of future economic damages by periodic payments, the court shall make a specific finding as to the dollar amount of the present value of that portion of the future economic damages for which the plaintiff is to be paid by periodic payments. In calculating the total damages upon which any attorney contingency fee for representing the plaintiff in connection with the medical malpractice action is calculated, the present value of any portion of the award representing future economic damages that are to be paid by periodic payments shall be used.

(d) A judgment authorizing periodic payments of future economic damages shall require that such payments be made through the establishment of a trust fund or the purchase of an annuity for the life of the plaintiff or during the continuance of the compensable injury or disability of the plaintiff, in such form and under such terms as shall be approved by the court. The establishment of a trust fund or the purchase of an annuity, as required and approved by the court, shall constitute the satisfaction of the defendant's judgment for future economic damages.

(e) The judgment ordering the payment of future economic damages by periodic payments shall specify the recipient of the payments, the schedule of the periodic payments, and the dollar amount of each periodic payment to be made pursuant to the schedule. The death of the plaintiff terminates liability for payment of future economic damages which by judgment pursuant to this section are required to be paid in periodic payments not yet due, except that the court that entered the original judgment may modify the judgment to provide that liability for payment of future periodic payments compensating the plaintiff for loss of future earnings shall not be terminated by reason of the death of the plaintiff, but shall continue to be paid to persons surviving the plaintiff to whom the plaintiff owed a duty of support pursuant to law immediately prior to the plaintiff's death."

SECTION 5. Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-21.19B. Verdicts and awards of damages in medical malpractice actions; form.**

In any malpractice action, any verdict or award of damages, if supported by the evidence, shall indicate specifically what amount is awarded for each of the following:

(1) Noneconomic damages.

(2) Present economic damages.

(3) Future economic damages.

If applicable, the court shall instruct the jury on the definition of noneconomic damages under G.S. 90-21.19(b) and the definition of future economic damages under G.S. 90-21.19A(a)(1). If applicable, the court shall instruct the jury that present economic damages are those damages for medical treatment, care or custody, loss of earnings, and any other pecuniary damages of the plaintiff up to the date of the verdict or award."

SECTION 6. G.S. 1-289 reads as rewritten:

"**§ 1-289. Undertaking to stay execution on money judgment.**

(a) If the appeal is from a judgment directing the payment of money, it does not stay the execution of the judgment unless a written undertaking is executed on the part of the appellant, by one or more sureties, to the effect that if the judgment appealed from, or any part thereof, is affirmed, or the appeal is dismissed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if affirmed only in part, and all damages which shall be awarded against the appellant upon the appeal, except as provided in ~~subsection (b)~~ subsections (b), b(1) and (b2) of this section. Whenever it is satisfactorily made to appear to the court that since the execution of the undertaking the sureties have become insolvent, the court may, by rule or order, require the appellant to execute, file and serve a new undertaking, as above. In case of neglect to execute such undertaking within twenty days after the service of a copy of the rule or order requiring it, the appeal may, on motion to the court, be dismissed with costs. Whenever it is necessary for a party to an action or proceeding to give a bond or an undertaking with surety or sureties, he

may, in lieu thereof, deposit with the officer into court money to the amount of the bond or undertaking to be given. The court in which the action or proceeding is pending may direct what disposition shall be made of such money pending the action or proceeding. In a case where, by this section, the money is to be deposited with an officer, a judge of the court, upon the application of either party, may, at any time before the deposit is made, order the money deposited in court instead of with the officer; and a deposit made pursuant to such order is of the same effect as if made with the officer. The perfecting of an appeal by giving the undertaking mentioned in this section stays proceedings in the court below upon the judgment appealed from; except when the sale of perishable property is directed, the court below may order the property to be sold and the proceeds thereof to be deposited or invested, to abide the judgment of the appellate court.

(b) If the appellee in a civil action brought under any legal theory obtains a judgment directing the payment or expenditure of money in the amount of twenty five million dollars ($25,000,000) or more, and the appellant seeks a stay of execution of the judgment within the period of time during which the appellant has the right to pursue appellate review, including discretionary review and certiorari, the amount of the undertaking that the appellant is required to execute to stay execution of the judgment during the entire period of the appeal shall be twenty five million dollars ($25,000,000).

(b1) In any medical malpractice action as defined in G.S. 90-21.11, in which an appellant is insured under a policy or policies of malpractice liability insurance having limits of coverage applicable to the action in the amount of at least one million dollars ($1,000,000), the amount of the undertaking that the appellant is required to execute to stay execution of the judgment during the entire period of the appeal shall be the amount of the judgment or the amount of the appellant's medical malpractice insurance coverage applicable to the action, whichever is less.

(b2) In any medical malpractice action as defined in G.S. 90-21.11, in which an appellant is not insured under a policy or policies of malpractice liability insurance, or has less than one million dollars ($1,000,000) of malpractice liability insurance coverage, the amount of the undertaking that the appellant is required to execute to stay execution of the judgment during the entire period of the appeal shall be the amount of the judgment or one million dollars ($1,000,000), whichever is less.

(c) If the appellee proves by a preponderance of the evidence that the appellant for whom the undertaking has been limited under ~~subsection (b)~~subsections (b), (b1) or (b2) of this section is, for the purpose of evading the judgment, (i) dissipating its assets, (ii) secreting its assets, or (iii) diverting its assets outside the jurisdiction of the courts of North Carolina or the federal courts of the United States other than in the ordinary course of business, then the limitation in ~~subsection (b)~~subsections (b), (b1) or (b2) of this section shall not apply and the appellant shall be required to make an undertaking in the full amount otherwise required by this section."

SECTION 7. If the provisions of Section 3 of this act are declared to be unconstitutional or otherwise invalid by final decision of a court of competent jurisdiction, following any appellate review, then Section 4 and Section 5 of this act are repealed, but the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application.

SECTION 8. This act becomes effective October 1, 2011. Sections 1, 3, 4, and 5 apply to causes of action arising on or after the effective date. Sections 2 and 6 apply to actions commenced on or after the effective date.

SENATE PCS 33:
Medical Liability Reforms

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	February 15, 2011
Introduced by:	Sens. Apodaca, Brown, Rucho	**Prepared by:**	Bill Patterson
Analysis of:	PCS to First Edition S33-CSTG-1		Committee Counsel

SUMMARY: In medical malpractice actions, the PCS to Senate Bill 33 will:

- require a finding of gross negligence, wanton conduct or intentional wrongdoing to recover damages in claims arising out of the furnishing of or failure to furnish emergency medical services required to be provided under federal law
- require separate trials on the issues of liability and damages on motion of any party in cases seeking damages of at least $75,000
- limit noneconomic damages to $250,000
- on motion of any party, require that future economic damages with a present value of at least $75,000 must be paid in periodic payments rather than in one lump sum
- require damage awards to specify the amount awarded as noneconomic, present economic, and future economic damages
- allow appellants having malpractice liability insurance coverage of at least $1 million to stay execution pending appeal by posting a bond equal to the amount of the judgment or the amount of their insurance coverage; for appellants having less than $1 million in coverage or no coverage, the appeal bond would be limited to the amount of the judgment or $1 million, whichever is less

CURRENT LAW AND BILL ANALYSIS:

Section 1: Emergency Services Required to be Provided by Federal Law

Current law: G.S. 90-21.12 provides that a "health care provider" is not liable for damages in a "medical malpractice action"[1] unless the trier of fact finds by the greater weight of the evidence that the care provided "was not in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time of the alleged act giving rise to the cause of action."

[1] The terms ""health care provider and "medical malpractice action" are defined in G.S. 90-21.11 as follows:

As used in this Article, the term "health care provider" means without limitation any person who pursuant to the provisions of Chapter 90 of the General Statutes is licensed, or is otherwise registered or certified to engage in the practice of or otherwise performs duties associated with any of the following: medicine, surgery, dentistry, pharmacy, optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing, physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis, rendering assistance to a physician, dental hygiene, psychiatry, psychology; or a hospital or a nursing home; or any other person who is legally responsible for the negligence of such person, hospital or nursing home; or any other person acting at the direction or under the supervision of any of the foregoing persons, hospital, or nursing home.

As used in this Article, the term "medical malpractice action" means a civil action for damages for personal injury or death arising out of the furnishing or failure to furnish professional services in the performance of medical, dental, or other health care by a health care provider.

G.S. 90-21.14 requires a showing of gross negligence, wanton conduct or intentional wrongdoing before liability can be imposed upon any person who receives no compensation for his or her services as an emergency medical care provider, and who renders first aid or emergency health care treatment to a person who is unconscious, ill, or injured under circumstances requiring prompt action in which any delay in treatment would seriously worsen the person's physical condition or endanger the person's life.

Consequently, under current law, providers of emergency medical care who are compensated for their services are subject to liability in malpractice actions under the general standard of care set forth in G.S. 90-21.12.

Bill Analysis: Section 1 amends G.S. 90-21.12 to add new subsection (b) providing that in a medical malpractice action arising out of the furnishing or the failure to furnish services pursuant to obligations imposed by the federal Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd ("EMTALA")[2], liability may not be imposed unless the trier of fact finds that the defendant's failure to meet the statutory standard of care constituted gross negligence, wanton conduct or intentional wrongdoing. Section 1 also designates the current statutory language as subsection (a) and makes technical and clarifying changes. **The PCS rewrote Section 1 by limiting its application to malpractice actions arising out of emergency services required to be provided under EMTALA, and by requiring a finding of gross negligence, wanton conduct or intentional wrongdoing "by clear and convincing evidence" rather than "by a preponderance of the evidence" before liability can be imposed.**

Section 2: Separate Trials of Liability and Damages

Current law: Courts are currently permitted, but not required, to grant a motion for separate trials of any issues "in furtherance of convenience or to avoid prejudice." G.S. 1A-1, Rule 42(b)(1).

Bill Analysis: Section 2 adds a new subdivision (3) to Rule 42(b), applicable in medical malpractice actions in which the plaintiff seeks damages of at least $75,000 that will:

- require the court, on motion of any party, to order separate trials on the issue of liability and damages
- prohibit the admission of evidence relating solely to compensatory damages until liability is established

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[2] 42 U.S.C. § 1395dd(a) requires that when a patient presents to a hospital emergency department, the hospital is obligated to determine whether the patient has an ""emergency medical condition," defined as:

> (A) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—
> (i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,
> (ii) serious impairment to bodily functions, or
> (iii) serious dysfunction of any bodily organ or part; or
> (B) with respect to a pregnant woman who is having contractions—
> (i) that there is inadequate time to effect a safe transfer to another hospital before delivery, or
> (ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

42 U.S.C. § 1395dd(e)(1). If the patient is determined to have an emergency medical condition, then the hospital is obligated to provide treatment necessary to stabilize the medical condition, regardless of the patient's ability to pay for those services, unless transferring the patient to another medical facility for treatment would be more beneficial to the patient. 42 U.S.C. § 1395dd(b), (c).

- require the same trier of fact to try the liability-related issues and the damages-related issues

Section 3 – Liability Limit for Noneconomic Damages

Current law: There currently is no limit on the amount of noneconomic damages for which a medical malpractice defendant may be found liable. However, trial courts are authorized under Rule 59 of the Rules of Civil Procedure to order a new trial if it appears that excessive or inadequate damages have been given under the influence of passion or prejudice or if the evidence is insufficient to justify the verdict. G.S. 1A-1, Rule 59(a)(6), (7).

Bill Analysis: Section 3 adds a new G.S. 90-21.19 to Article 1B of Chapter 90 of the General Statutes that will:

- impose a cap of $250,000 per plaintiff on noneconomic damages in medical malpractice actions
- define "noneconomic damages" as "damages to compensate for pain, suffering, emotional distress, loss of consortium, inconvenience, physical impairment, disfigurement, and any other non-pecuniary, compensatory damage"
- prohibit informing the jury of the cap on noneconomic damages

Section 4: Periodic Payment of Future Economic Damages

Current law: An award of future damages is reduced to its present value by the trier of fact, to be paid in one lump sum as part of the judgment. N.C. Pattern Jury Instruction – Civil – 810.16.

Bill Analysis: Section 4 enacts a new G.S. 90-21.19A that will:

- require the verdict form to indicate specifically the amount being awarded for future economic damages
- in cases where the present value of the future economic damages awarded by the trier of fact is at least $75,000, require the court to enter an order on motion of any party that the future economic damages be paid in whole or in part by periodic payments rather than by a lump-sum payment
- require that any judgment ordering future periodic payments also order that the payments be made through a trust fund or purchase of an annuity for the life of the plaintiff on terms approved by the court, including the amount and schedule of the periodic payments
- provide that upon the death of the plaintiff the liability for payment of future periodic payments not yet due will cease, except that the court entering the original judgment may modify the judgment to provide that future periodic payments to compensate the plaintiff for future lost earnings shall continue to be paid to persons surviving the plaintiff to whom the plaintiff owed a duty of support pursuant to law

Section 5: Form of Verdict in Medical Malpractice Actions

Current law: There is no current statutory requirement that separate elements of damages must be separately stated in a verdict or award of damages.

Bill Analysis: Section 5 enacts a new G.S. 90-91.19B requiring that the verdict or award of damages in a medical malpractice action indicate specifically the amount being awarded for noneconomic damages, present economic damages, and future economic damages, and requiring the court to instruct the jury on the statutory definitions of these damages.

Section 6: Modified Appeal Bond

Current law: In order to stay execution of a money judgment during the pendency of an appeal, an appellant is required to post a bond equal to the amount of the judgment. However, in cases in which the judgment exceeds $25 million, the bond is limited to $25 million, unless the appellee proves that the appellant is seeking to evade the judgment by dissipating, secreting, or diverting its assets. G.S. 1-289.

Bill Analysis: Section 6 amends G.S. 1-289 by adding a new subsection (b1) to provide that if an appellant's malpractice insurance coverage is at least $1 million, the bond required to stay execution in a medical malpractice action is the amount of the judgment or the amount of the appellant's insurance coverage, whichever is less. In addition, new subsection (b2) provides that if the appellant has no coverage or has coverage of less than $1 million, then the required bond is the amount of the judgment or $1 million, whichever is less. The appellee will be permitted to have this limitation set aside by showing that the appellant is dissipating, secreting or diverting assets to evade the judgment. **The PCS revised subsection (b1) to add the $1 million minimum coverage requirement and added subsection (b2) relating to appellants having no coverage or coverage of less than $1 million.**

Section 7: Severability

Bill Analysis: Section 7, **added by the PCS**, provides that if the provisions of Section 3 of the act are declared to be invalid, Sections 4 and 5 of the act are repealed, but the invalidity of Section 3 will not affect other provisions of the act that can be given effect without the invalid provision.

EFFECTIVE DATE: The effective date of the act is October 1, 2011. Sections 1, 3, 4, and 5 apply to causes of action arising on or after October 1, 2011. Sections 2 and 6 apply to actions commenced on or after October 1, 2011. **The PCS made Section 6 (appeal bond) applicable to actions commenced on or after the effective date; in the original bill Section 6 was made applicable to judgments entered on or after the effective date.**

S33-SMTG-4(CSTG-1) v2

VISITOR REGISTRATION SHEET

Judiciary I — **Name of Committee**

2/15/11 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susan Valenni	NWI
Kathy Hawkins	Duke Energy
Preston Howard	MCIC
Chip Baggett	NCNS
George Judd	NCBEV
Amy McConkey	NCBEV
Annie Ellison	Campbell School of Law
Tomala Flack	Campbell school of law
Andrew Meehan	CapStrat
Megan West	
Matthew Eisley	Smith Anderson

VISITOR REGISTRATION SHEET

Judiciary I — **Name of Committee**

2/15/11 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Russ Fawcett	NC Friends of Midwives
Andy Ellen	NC Retail Merchants Assoc.
Forrest Gillam	Governor's Office
Philip Mille	Blanchard, Mille, Lewis & Isley
Joanne Stevens	Stevens lobby & consulting
Robert Selfgson	North Carolina Medical Society
Todd Barlow	North Carolina Advocates for Justice
Colleen Kochanek	NC College of Emergency Physicians
Dan Sipe	Smith Anderson
Andrew Bell	NCGA
Ray Loflin	Freedom Works
Michael James	NCGA

VISITOR REGISTRATION SHEET

Judiciary I — 2/15/11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Larry Bradley	
Burton Craige	NCAJ
[signature]	
Andrew Henson	Civitas
Elizabeth Robinson	NCRLA
[signature]	Assoc. Assoc
Cady Thomas	NAR
K. Macon Aoff	Smith Anderson
[signature]	NMRS
[signature]	BCBSNC
Mark Gleniy	BCBSNC

VISITOR REGISTRATION SHEET

Judiciary I — 2/15/11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Wilson	AARP
Jan Carr	NC Pediatric Society
Amy Whited	NC Med Society
Paul Coleman	Infarm Inc.
Dick Taylor	NCAT
Paul Parks	NCAJ
Emily Grimm	MWC
Gale Adcock	Private citizen
Lew Ebert	NC Chamber
Anna Lockhart	NCBWA
Michelle Frazier	MFS

Mike Taylor	Michael W. Taylor, Attorney at Law, PLLC	
Molly Black	Freedom Works	Iredell County
Barbara Brown	Freedom Works	Alamance County
Gloria Brown	Freedom Works	Alamance County
Steve Carter	Freedom Works	Alamance County
Judy Carter	Freedom Works	Alamance County
Maya Ben		Dooley FA
Allison Waller	Charlotte Chamber	
Justin Hall	Freedom Works	Alamance Co.
Larry Cook	Freedom Works	Alamance Co
John Goodman	NC CHAMBER	
Jeff Mixon	AFP NC	
Alan Skipper	NCAJ	
Dale Simpson	CACC	
John McAlister	NC Chamber	
Sarah Sands	UNC	
Curtis Swen	NCACPS	
Dave Dow	S.A.	
Sammy Thompson	S.A.	
Dallas Woodhouse	AFP NC	
Will Polk	Gov Office	
Joel Maynard	NCAFP	
Reginald Taylor	Comp	
Matt Wolfe	PPAB	
Jerry Bagwell	Connecting Inc	

SENATE JUDICIARY I COMMITTEE
February 17, 2011 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on February 17, 2011, in Room 1027 of the Legislative Building. Fourteen members of the committee were present. Senator Pete Brunstetter presided.

This meeting was a public forum where those with thoughts on SB 33 can speak if they have signed up to do so.

Dr. Don Bradley, chief medical officer at BCBSNC
Healthcare reform did not do enough for healthcare
All options must be on the table in addressing affordability of healthcare
BCBS is eager to collaborate with providers to improve payment system
Want doctors to be able to practice without the fear of lawsuits
Shares concerns of physicians about increasing costs of malpractice insurance
Should all share goal that citizens have access to the right care at the right time
This goal will not be possible if there are not enough physicians
Certain specialties are especially hard hit by malpractice premiums

Dick Taylor, CEO NC Advocates for Justice
The problem is medical malpractice, not lawsuits
About 4,000 people die in NC hospitals each year from preventable medical mistakes
Less than 500 medical malpractice lawsuits are filed each year in NC
Less than 5% of people injured file lawsuits
Doctor population is soaring; see materials
Medical malpractice premiums are down
Two provisions in the bill are particularly problematic:
- Total immunity for negligence in emergency situations
- 250,000 cap for disfigurement, loss of limbs, death
- It is one thing to consider capping pain and suffering and emotional distress

Bill will not reduce insurance costs
Will not reduce medical costs
Will not increase doctors because the doctors are coming here anyway
Will make system less safe and will hurt those who have already been hurt

Russ Fawcett, VP of NC Friends of Midwives
Speaks for the hundreds of mothers who choose midwifery care
Org regulates professional midwives in NC
Rates of midwife attended home birth are accelerating
Support SB 33 because some of these births are transferred to the hospital
Rely on OBs in these situations
Support reform initiatives that hold promise of reducing defensive medicine and its consequences
- In OB, defensive medicine means C-Section

Joe Knott, Trial Lawyer
Conservative Republican who is fearful of government intervention
Opposes SB 33
Thinks the bill immunizes negligence and caps damage
Contrary to conservatism and the idea of America
    We don't have classes in America
Negligence is the violation of the duty of reasonable care
This bill says that unreasonable care is ok
This bill caps damages at 250,000
    Juries should make big decisions, not governments

Lew Ebert, President and CEO of NC Chamber
Speaking in favor of SB 33
State's legal climate can be inducement or deterrent for business
Companies are looking for fairness and reliability
System must be rational, fair, and predictable
Small businesses bear a disproportionate share of the costs of our legal system
SB 33 is an important first step in a larger need for comprehensive legal reform to make our system rational, fair and predictable
No impact on budget, but maximum impact on job creation

Laurie Sanders, Executive Director of NC Coalition for Patient Safety
Son died at age 6
Concerned about economic value vs. noneconomic value
Has seen medical care at its best and its worse
First learned about economic vs. noneconomic value during depositions
"Kindergarteners don't have economic value"
Her case cost 225,000 just to go to litigation
Needs to be legal safety when the medicine lets patients down

Samm Thompson, defends healthcare providers when they are sued for malpractice, NC Medical Society
Supports SB 33
Supports because it addresses problems in the civil justice system
Needs to be stable, predictable, produce results that are reasonable and fair
In emergency situations there are life and death decisions made by healthcare providers
There are no more high risk situations for doctors than emergencies
This is the stuff of lawsuits
The chance of a poor outcome goes way up
Fear of lawsuits leads to defensive medicine which drives up the cost of healthcare
Disagrees that this bill is about immunity
It moves the standard of care to give the provider the breathing room to deal with life and death situations in the best way that they can under the circumstances
Separating liability from damages has the potential to shorten the trial because if liability is decided for the defendant you don't need to go through the damages portion
26 states have put some form of cap in place on noneconomic damages
This is the area that is subjective and can be arbitrary
The appeal bond provision is important because doctors frequently get in a situation where they believe that there has been an error but their insurance does not cover the amount of the judgment

This bill helps decrease costs, increase access, is consistent with deficit panel decision that we need tort reform, helps with defensive medicine, promotes stability and predictability

Karen Rabeneau, lawyer practicing in Raleigh
Letter from Kim Brown addressed to Senator Apodaca on Feb. 19
Had a double mastectomy and then found out that she did not have cancer
Biopsy slides were switched
Finds it hard to believe that 250K would be adequate compensation for what she has lost

Greg Cannon, Secretary/Treasurer of NC College of Emergency Physicians
Practicing Emergency Physician at WakeMed
Supports the entire bill but will limit testimony to the first section
Emergency providers includes not only emergency physicians but on-call specialists
Emergency providers take care of everyone regardless of ability to pay
Operate in high risk environment and do not have previous relationships with patients
They are the health care safety net
Not protected like EMS
Over 1.5 million visits to ERs in NC every year
EMTALA
To the average person their access to care is more important than their ability to sue

Bill Wilson, AARP in NC
AARP has concerns about several parts of the bill but is most concerned about the cap on noneconomic damages
Retired persons are not entitled to economic damages other than medical costs
Because noneconomic damages are likely to constitute a larger part of the award for retired, disabled, elderly, this is unfair
Taxpayers will pick up the tab rather than the party that caused the malpractice

Martha Walden
Mother was in an assisted living facility and got pneumonia
Mother wandered outside the facility and could not get back inside and it was cold outside
She died from hypothermia
Negligence of the facility for not performing bed checks
Very difficult to watch someone you love go through something like that

Bill Lamb, board member and chair of policy committee of friends of residents in long term care
Urges committee to vote against SB 33
Bill will decimate protection for NCians in assisted living facilities and skilled nursing facilities
Dismantles industry standards for quality of care
Will provide incentive to provide poor care—no incentive to improve care which is expensive
Will provide immunity to long term care facilities
Quality care should be the standard

Heather and Chris Boone
Son Ethan
In summer of 2008 he was misdiagnosed in an ER
Lost both arms and both legs and has had major facial scarring and has had 3 reconstructions with many more surgeries to go through
If this bill is passed, other families will not have a chance to be heard

The meeting adjourned at 10:50 AM.

Senator Pete Brunstetter, Presiding

Sarah Hardin, Committee Clerk

AGENDA

SENATE JUDICIARY I COMMITTEE
Thursday, February 17, 2011 at 10:00 a.m.
Room 1027, Legislative Building

I. Welcome and Opening Remarks

II. Introduction of Pages

III. Bills to be Considered

SB 33 Medical Liability Reform
Public Testimony

IV. Other Business

V. Adjournment

Thompson
10:29:30
10:34:30

Swift
10:24:30
10:29:30

10:35 - 10:40

SUPPORT SB 33

A state's legal climate can be a major inducement or a major deterrent to business investment, growth and job creation. It is one factor among several key ones that businesses consider when making decisions about where to expand existing operations or locate new facilities. Specifically companies are looking for fairness and predictability.

Our legal climate and litigation costs also impact competitiveness--nationally and internationally. North Carolina businesses face growing competition against international competitors that have much lower litigation costs. This is a disadvantage for our businesses in a fiercely competitive global economy.

For North Carolina businesses to invest and create jobs North Carolina's civil justice system must be rational, fair and predictable. Employers must be free to innovate and pursue market opportunities without fear of unreasonable exposure to costly lawsuits, while truly injured parties must have full recourse to appropriate measures of justice.

Senate Bill 33 is an important first step toward an overall objective to make North Carolina's legal system rational, fair and predictable. Medical malpractice reform is one method that will help lower overall health care costs which are a top concern for both small and large businesses.

The reforms in Senate Bill 33 will:

- Reduce the threat of frivolous lawsuits and the pressure on physicians to practice defensive medicine.
- Help recruit and retain physicians to practice in North Carolina thus improving access to health care.
- Help lower overall health care costs which will strengthen our economy and help create jobs.

The following organizations urge you to support Senate Bill 33:

(Over)

The following companies and organizations support SB 33:

American Insurance Association
BlueCross BlueShield of North Carolina
Carolinas Associated General Contractors
Charlotte Chamber of Commerce
Gaston Regional Chamber
GlaxoSmithKline
Greater Raleigh Chamber of Commerce
Greater Wilmington Chamber of Commerce
Greater Winston-Salem Chamber of Commerce
MAG Mutual Insurance Company
Manufacturers and Chemical Industry Council
National Federation of Independent Business
Norfolk Southern Corp.
North Carolina Academy of Family Physicians
North Carolina Association of Electric Cooperatives
North Carolina Automobile Dealers Association
North Carolina Beverage Association
North Carolina Chamber
North Carolina Farm Bureau
North Carolina Health Care Facilities Association
North Carolina Home Builders Association
North Carolina Hospital Association
North Carolina Medical Society
North Carolina Retail Merchants Association
North Carolina Society of Anesthesiologists
Pharmaceutical Research and Manufacturers of America
Property and Casualty Insurance Association of America
Richmond County Chamber of Commerce
Rowan County Chamber of Commerce

2/17/11

Kym Brown
474 Lake Rugby Dr.
Hendersonville, NC 28791
February 9, 2011

Senator Tom Apodaca
16 W. Jones Street, Room 2010
Raleigh, NC 27601-2808

Dear Senator Apodaca:

I understand you are one of the sponsors of a bill to limit compensation to victims of medical malpractice. As a recent survivor, I ask you to consider the harm that will be done if this bill is passed.

Two years ago, at age 48, I was healthy and active. I biked 100 miles a week and worked out almost every day. In June 2009, I was diagnosed with breast cancer. After receiving that stunning news, I began the fight of my life. I had more diagnostic tests and was told that the cancer in my left breast was invasive and there were also concerns with my right breast. I did weeks of research, obtained second and third opinions, and asked hundreds of questions. Finally, my surgeon and I decided on bilateral total mastectomies.

Both of my breasts were removed. Several days after I returned home, I received a call from my physician's nurse saying that I needed to come in. This was an unexpected call, so of course I was scared. When I got there my doctor informed me that a "mistake" had been made and they were sorry. I was told that I never had cancer. "We're trying to figure out what happened, but there was a mistake".

At a second meeting with my doctor, I was told that the doctor who examined my biopsy slides was also handling those of another woman at the same time. Although they correctly interpreted both my slides and those of the other woman, they dictated my results into the other woman's chart, and hers into mine. The other woman, who actually did have cancer, did not find out until after my surgery nearly two months later.

This kind of "mistake" should never happen. Every day I have to look at the damage that was done to me because someone else didn't take the time to do their job properly.

I find it hard to believe that you or any other senator would consider $250,000 to be adequate compensation for what I have lost. Why are you rewarding those who are careless, and punishing those who are harmed?

Sincerely,

Kym Brown

Daily Bulletin

School of Government
The University of North Carolina at Chapel Hill
Legislative Reporting Service, State Legislative Building, Raleigh, NC 27601
Phone 919.733.2484 ~ Fax 919.715.3464 ~ www.dailybulletin.unc.edu

February 2, 2011

S 33. MEDICAL LIABILITY REFORMS. Filed 2/2/11. *TO REFORM THE LAWS RELATING TO MEDICAL LIABILITY BY PROVIDING LIMITED PROTECTION FROM LIABILITY TO THOSE PROVIDING EMERGENCY MEDICAL CARE, BY AUTHORIZING THE BIFURCATION OF TRIALS ON ISSUES OF LIABILITY AND DAMAGES IN CERTAIN ACTIONS, BY LIMITING THE AMOUNT OF NONECONOMIC DAMAGES THAT MAY BE AWARDED, BY AUTHORIZING THE PERIODIC PAYMENT OF FUTURE ECONOMIC DAMAGES IN LIEU OF A LUMP-SUM PAYMENT, AND BY MODIFYING APPEAL BONDS IN MEDICAL MALPRACTICE ACTIONS.*

This act is effective October 1, 2011.

Amends GS 90-21.12(a) to clarify that in any medical malpractice action, the defendant health care provider is not liable for the payment of damages unless the trier of fact finds (was, is satisfied) by the greater weight of the evidence that the care provided by the health care provider was not in accordance with the standard of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time of the alleged act giving rise to the cause of action. Adds new subsection (b) to provide an exception to any medical malpractice action that arises from providing emergency services as defined in GS 58-3-190(g)(2). Provides that in such an action regarding provision of emergency services, all of the criteria set out in subsection (a) for any medical malpractice action apply and in addition, the trier of fact must find by the greater weight of the evidence that the failure to meet the applicable standards of practice constituted gross negligence, wanton conduct, or intentional wrongdoing by the health care provider. Provides that nothing in subsection (b) is to be construed to change, alter, override, or otherwise affect the provisions of GS 90-21.14, 90-21.15, 90-21.16, or 20-166. Applies to causes of action arising on or after the effective date.

Amends GS 1A-1, Rule 42(b) to authorize the separation of trials on issues of liability and issues of damages when the medical malpractice action is begun under Article 1B of GS Chapter 90 and the plaintiff seeks $75,000 or more in damages. Requires the same trier of fact to try both the issues relating to liability and the issues relating to damages. Applies to actions commenced on or after the effective date.

Enacts new GS 90-21.19 to define and set liability limits for noneconomic damages. Enacts new GS 90-21.19A to allow the payment of *future economic damages*, defined as damages for future medical expenses, to be made periodically at regular intervals to the plaintiff. Provides additional governing criteria regarding a judgment authorizing periodic payments. Enacts GS 90-21.19B to require that any verdict or award of damages in any malpractice action is to specifically indicate the amount awarded for (1) noneconomic damages, (2) present economic damages, and (3) future economic damages. Applies to causes of action arising on or after the effective date.

Amends GS 1-289 to modify appeal bonds in a malpractice action, as defined in GS 90-21.11, to require that the appellant provide the lesser of the amount of the judgment or the amount of the appellant's medical malpractice insurance coverage that is applicable to the action in order to stay execution of the judgment. Makes additional conforming changes. Applies to judgments entered on or after the effective date.

Intro. by Apodaca, Brown, Rucho. GS 1, 1A, 90 — Civil Law and Procedure; Courts; Employment and Retirement; Health, Social Services, and Aging

March 1, 2011

S 33. MEDICAL LIABILITY REFORMS. Filed 2/2/11. Senate committee substitute makes the following changes to 1st edition.

Amends GS 90-21.12(a) to clarify that in any medical malpractice action, the defendant health care provider is not liable for the payment of damages unless the trier of fact finds by the greater weight of the evidence that the care provided by the health care provider was not in accordance with the standard of practice among members of the same health care profession with similar training and experience situated in the same or similar communities *under the same or similar circumstances* at the time of the alleged act *or omission* giving rise to the cause of action.

Clarifies that in any medical malpractice action arising from the furnishing or the failure to furnish services mandated under 42 USC Section 1395dd for an emergency medical condition as defined in 42 USC Section 1395dd(e)(1) (was, any medical malpractice action arising from providing emergency services as defined in GS 58-3-190(g)(2)), the defendant health care provider is not liable for damages unless the trier of fact finds by the greater weight of the evidence that the health care provider's deviation from the standard of care required under GS 90-21.12(a) (was, failed to meet the applicable standards of practice) constituted gross negligence, wanton conduct or intentional wrongdoing. Amends proposed GS 90-21.19 to limit the total liability for noneconomic damages for which judgment is entered against all defendants to no more than $500,000 (was, $250,000) per plaintiff. States that judgment will not be entered against any defendant for noneconomic damages in excess of $500,000 for all claims brought by all parties arising out of the same cause of action.

Amends the definition for *future economic damages* to include loss of future household services. Requires the finder of fact to specify what part of the amount awarded for future economic damages is awarded for loss of future earnings or loss of future household services. Permits the payment of *future economic damages*, to be made periodically at regular intervals to the plaintiff if the present value of the future economic damages is greater than or equal to $200,000 (was, $75,000). Permits the court that entered the original judgment to also modify the judgment to allow liability for future periodic payments compensating the plaintiff for loss of future household services (was, only for the loss of future earnings), to continue to be paid to the survivors to whom the plaintiff owed a duty of support under the law immediately prior to the plaintiff's death.

Amends proposed GS 90-21.19B to require that any verdict or award of damages in a medical malpractice action must also include the specific amount awarded for loss of future earnings and loss of future household services (was, only required specific amounts for noneconomic damages, present economic damages, and future economic damages).

Adds new section to amend GS 1A-1, Rule 9(j) to assert that any complaint alleging medical malpractice, as defined in GS 90-21.11, will be dismissed unless the pleading specifically asserts that the medical care and all medical records pertaining to the alleged injury have been reviewed by a person who is reasonably expected to qualify as an expert witness under Rule 702 of the Rules of Evidence and whom the plaintiff will seek to have qualified as an expert witness by motion under Rule 702(e) of the Rules of Evidence. Requires that the plaintiff provide an affidavit within 30 days from the expert witness certifying compliance with this subsection upon request from the defendant. Deletes language regarding proof of compliance with regard to interrogatories.

Adds new section to amend GS 1A-1, Rule 26(f1) to require that for each expert witness designated as such at the discovery conference, each witness must prepare and submit a written, signed report. Specifies material to be covered in the expert witness report and additional information to be submitted as to the expert witness qualifications.

All of the above provisions apply to causes of action arising on or after the effective date, October 1, 2011.

Amends GS 1-289 to provide that in an action where the judgment requires a monetary payment, the court is to specify the amount of the monetary payment required to stay the execution of the judgment while an appeal is pending as provided in subsections (a2) and (b) of GS 1-289. Deletes previous provision that the appellant in a medical malpractice action pay the lesser amount of the judgment or the appellant's medical malpractice coverage in order to stay the execution of the judgment while pursuing an appeal. Applies to actions commencing on or after the effective date, October 1, 2011.

Provides that if the provisions regarding setting liability limits for noneconomic damages (Section 3 of the act) are declared unconstitutional or otherwise invalid by a court of competent jurisdiction, following any appellate review, then proposed GS 90-21.19A, (periodic payment of future economic damages in medical malpractice actions), and proposed GS 90-21.19B, (verdicts and awards of damages in medical malpractice actions) are repealed but the invalidity does not affect the other provisions of the act.

Makes other technical changes. Makes additional conforming changes and amends the title to reflect changes to the bill content.

Health, Social Services, and Aging;
Civil Law and Procedure; Courts;
Employment and Retirement

March 2, 2011

S 33. MEDICAL LIABILITY REFORMS. Filed 2/2/11. Senate amendment makes the following changes to 2nd edition. Amends proposed GS 90-21.19 (liability limit for noneconomic damages) to require the Administrative Office of the Courts to reset the limitation on damages for noneconomic loss on January 1 of every third year, beginning with January 1, 2014, so that the limitation is equal to $500,000 times the ratio of the consumer price index for November of the prior year to the Consumer Price Index for November 2011. Defines *consumer price index*.

Health, Social Services, and Aging;
Civil Law and Procedure; Courts;
Employment and Retirement

April 19, 2011

S 33. MEDICAL LIABILITY REFORMS. Filed 2/2/11. House committee substitute makes the following changes to 3rd edition.

Amends GS 1A-1, Rule 42(b), clarifying that the court must order separate trials for the issue of liability and the issue of damages, upon motion by any party in an action in tort (rather than a medical malpractice action) where the plaintiff seeks damages exceeding $150,000 (rather than an amount equal to or exceeding $75,000). Amends GS 1A-1, Rule 9(j), deleting the requirement that the plaintiff provide an affidavit from the expert witness to the defendant, and restores language requiring the plaintiff to show compliance with up to ten written interrogatories. Makes clarifying changes. Adds a section amending GS 8C-702(h), prohibiting a person from giving expert testimony in a medical malpractice action on the appropriate standard of care as to administrative or other nonclinical issues unless the person has substantial knowledge, as specified (strengthens current language). Makes a clarifying change. Adds a section amending GS 90-21.11 to clarify definitions for *health care provider* and *medical malpractice action*; applies to causes of action arising on or after October 1, 2011.

Amends GS 90-21.12, adding that a claimant must prove a violation of the standard of health care by clear and convincing evidence in any medical malpractice action arising out of the provision or failure to provide professional services in a hospital emergency room. Clarifies that, in the case of a medical malpractice action, the defendant health care provider will not be liable for the payment of damages unless the trier of fact finds by the greater weight of the evidence that the provider's action or inaction did not comply with the standards of practice among similar health care providers situated in the same or similar communities under the same or similar circumstances at the time of the alleged act (was, unless the trier of fact finds that the provider's deviation from the standard of care constituted gross negligence, wanton conduct, or intentional wrongdoing). Makes clarifying changes. Applies to causes of action arising on or after October 1, 2011.

Amends proposed GS 90-21.19, clarifying that the total amount of noneconomic damages for which judgment is entered against all defendants will not exceed $500,000 (was, will not exceed $500,000 per plaintiff). Deletes language prohibiting a judgment against any defendant in excess of $500,000 for all claims brought by all parties arising from the same cause of action. Makes organizational changes.

Adds a new section to enact new subsection (c) to GS 1-17, providing that an action for a minor with injuries allegedly resulting from malpractice will commence as detailed in GS 1-15(c), except as specified. Makes a conforming change. Applies to causes of action arising on or after October 1, 2011.

Deletes amendments to GS 1A-1, Rule 26(f1), which pertained to expert witnesses in medical malpractice discovery conferences.

Changes the bill title to *AN ACT TO REFORM THE LAWS RELATING TO MONEY JUDGMENT APPEAL BONDS, BIFURCATION OF TRIALS IN CIVIL CASES, AND MEDICAL LIABILITY.* Makes organizational changes.

Effective October 1, 2011, unless otherwise indicated, and applicable to actions commenced on or after that date.

Health, Social Services, and Aging;
Civil Law and Procedure; Courts;
Employment and Retirement

April 20, 2011

S 33. MEDICAL LIABILITY REFORMS. Filed 2/2/11. House amendments make the following changes to 4th edition. Amendment #1 deletes GS 90-21.19A (allowing periodic payments rather than lump-sum payments of certain medical malpractice damages awards), and amends new GS 90-21.19B to require a verdict or award of damages in a medical malpractice case to specify what amount, if any, is awarded only for noneconomic damages (was, noneconomic damages, present economic damages, future economic damages, loss of future earnings, and loss of future household services). Amendment #2 changes the definition of noneconomic damages in GS 90-21.19(b)(2) by removing the reference in the 4th edition to damages for physical impairment and disfigurement, and by adding an exclusion for damages to compensate for scars or disfigurement, loss of use of a body part, permanent injury, or death. Amendment #3 changes amendment #2 by deleting its reference to "scars" in the definition of noneconomic damages. Amendment #5 amends GS 1A-1, Rule 42(b)(3), to add that the court may, for good cause shown, order a single trial for the issues of liability and damages in a tort action in which a plaintiff seeks in excess of $150,000.

Health, Social Services, and Aging;
Courts; Civil Law and Procedure;
Employment and Retirement

June 9, 2011

S 33. MEDICAL LIABILITY REFORMS. Filed 2/2/11. Conference report recommends the following changes to 5th edition to reconcile matters in controversy. Amends Rule 9(j), clarifying that the pleading must assert specified information pertaining to the alleged negligence (was, alleged negligence and resulting injuries). Rewrites proposed GS 90-21.12(b) to provide that a claimant must prove a violation of the standards of practice set forth in subsection (a) of the statute by clear and convincing evidence in any medical malpractice action arising out of the furnishing or failure to furnish professional services in the treatment of an emergency medical condition, as defined (previously, services specifically in a hospital emergency room).

Amends proposed GS 90-21.19 to add additional language providing that judgment against any defendant for noneconomic damages is capped at $500,000 for all claims brought by all parties arising out of the same professional services. Provides that there is no limit on the amount of noneconomic damage for which judgment may be entered if the trier of fact finds that: (1) the plaintiff suffered disfigurement, loss of use of part of the body, permanent injury or death; and (2) the defendant's acts or failures, which caused the plaintiff's injuries, were committed in reckless disregard of the rights of others, grossly negligent, fraudulent, intentional, or with malice. Adds additional language to direct the Administrative Office of the Courts to inform the Revisor of Statutes of the reset limitation and directs the Revisor of Statutes to publish this reset limitation as an editor's note to the statute. Adds *same professional services* as a defined term in the statute.

Provides that if the provision of the act concerning the limit for noneconomic damages is declared to be unconstitutional or otherwise invalid, then the provision of the act concerning verdicts or awards specifying what amount is awarded for noneconomic damages, is repealed (previously also provided for the repeal of provision concerning actions commenced by persons on behalf of minors).

Makes other clarifying changes.

Health, Social Services, and Aging;
Civil Law and Procedure;
Employment and Retirement;
Courts

Common Motions Before Committees

MOTIONS FOR ORIGINAL BILLS

1. Favorable report on original bill in committee (no PCS):

"Representative/Senator _____ moves that HB/SB ____ be given a favorable report. All in favor, say aye; all opposed, no. The motion is adopted."

2. Favorable report on original bill with amendment made in committee:

"Representative/Senator _____ moves that the amendment(s) be rolled into a committee substitute and that the committee substitute for HB/SB ____ be given a favorable report; unfavorable to the original bill. All in favor, say aye; all opposed, no. The motion is adopted."

MOTIONS FOR PCSs

1. Adopting a PCS for discussion purposes:

"Without objection, Representative/Senator _____ moves that we adopt the PCS for HB/SB ____ for discussion purposes."

OR, you can actually call for a vote:

"Representative/Senator _____ moves that we adopt the PCS for HB/SB ____ for discussion purposes. All in favor, say aye; all opposed, no. The motion is adopted.

2. Favorable report on a PCS/no amendments made in committee:

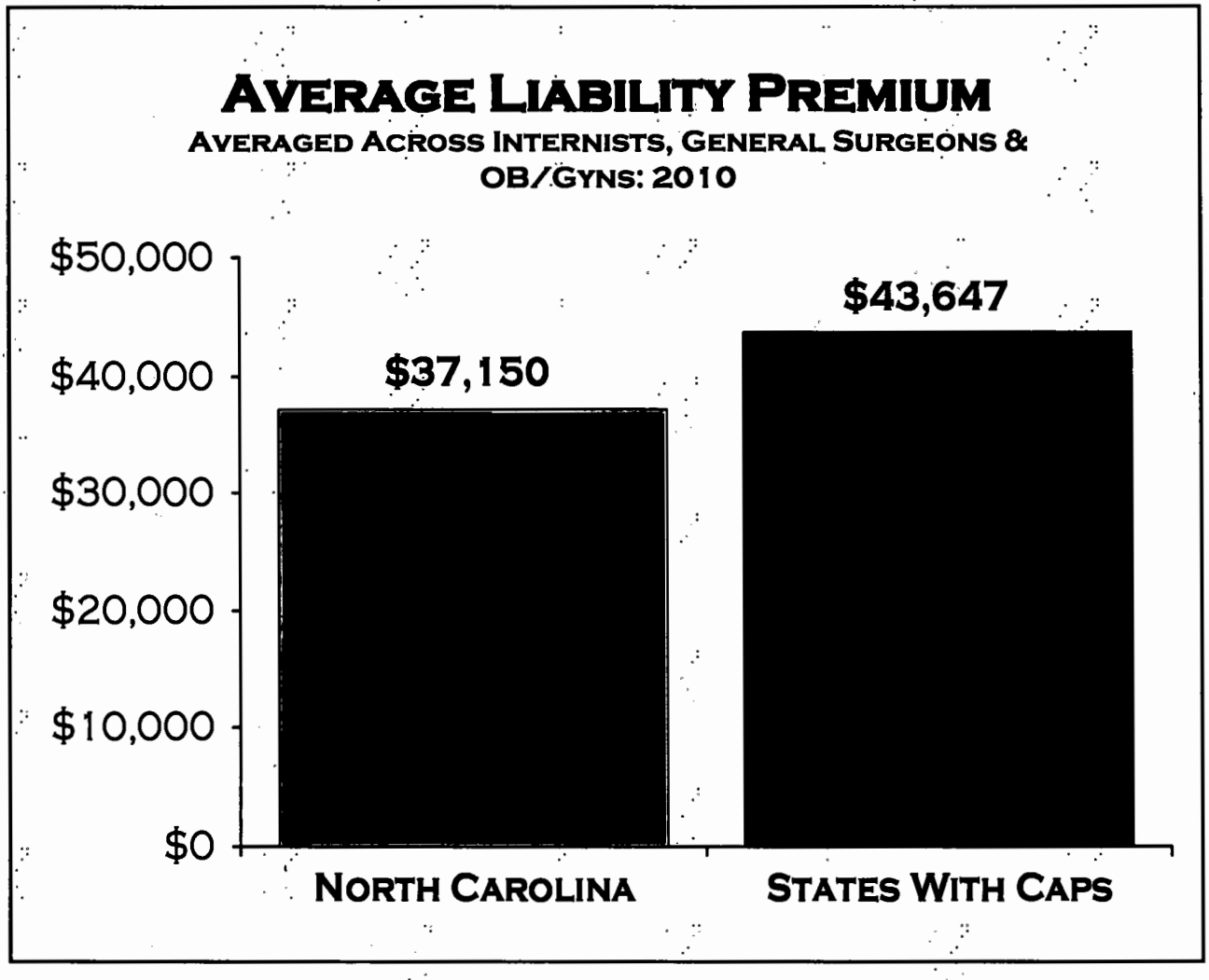
"Representative/Senator _____ moves that we give the PCS for HB/SB_____ a favorable report; unfavorable to the original bill. All in favor, say aye; all opposed, no. The motion is adopted."

If no amendment

3. Favorable report on a PCS/with amendments made in committee:

"Representative/Senator _____ moves that we roll the amendment(s) into a new PCS and give a favorable report to PCS, as amended; unfavorable to the original bill. All in favor, say aye; all opposed, no. The motion is adopted."

How Do Physician Premiums Compare In North Carolina?



IN 2010, THE AVERAGE MALPRACTICE PREMIUM IN NORTH CAROLINA WAS 15 PERCENT LOWER THAN THE AVERAGE MALPRACTICE PREMIUM IN STATES WITH CAPS.

Derived from data provided by Medical Liability Monitor (October 2010) A state's average premium is calculated as the unweighted mean value of premiums for all companies for which data is provided across all regions. A state is classified as having a cap when the state has enacted either a general non-economic damage cap that affects medical malpractice cases or a medical malpractice specific cap on non-economic and/or compensatory damages. Caps that affect one area of medical malpractice (e.g. just wrongful death cases) or punitive damage caps are not counted since these represent a small number of cases.

NORTH CAROLINA
ADVOCATES for JUSTICE
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NCAJ Contacts

Dick Taylor
919-274-4937
dick@ncaj.com

Philip Isley
919-264-6324
pisley@bmlilaw.com

Paul Pulley
919-880-5777
ppulley@gmail.com

Burton Craige
919-755-1812, x223
bcraige@pathlaw.com

NORTH CAROLINA
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SB 33: AN ATTACK ON VULNERABLE PATIENTS

North Carolina legislators have introduced Senate Bill 33, a "malpractice reform" bill – the insurance industry's term for denying injured patients access to the courts. Lawmakers need to focus on improving patient safety, not limiting the rights of injured patients.

What would Senate Bill 33 do?

- In medical malpractice cases, the bill sets an arbitrary cap of $250,000 on damages for disfigurement, mutilation, loss of limb, paralysis, pain, suffering and death.

- The arbitrary cap on damages would be devastating for children, homemakers, and the elderly, who have limited economic damages. In most of these cases the person injured by malpractice would be unable to pursue a claim, and those who carelessly caused the injury would escape all responsibility.

- According to former Chief Justice I. Beverly Lake, Jr., "the proposed cap on noneconomic damages is unconstitutional" because it violates the right to a jury trial, guaranteed by the North Carolina Constitution. The bill provides that in any case where a jury awards an injured patient more than $250,000 in "noneconomic damages," the judge will overrule the jury, void its judgment, and reduce the verdict to the amount decided by politicians in Raleigh.

- The bill would create total immunity for negligent care in hospital emergency rooms. Susan Pierce, R.N., Ph.D., who taught for decades at the UNC School of Nursing, commented: "I cannot understand why legislators would seek to nullify the duty of doctors and nurses to meet professionally established standards of care. That undermines medical and nursing ethics, and puts patients in danger." The bill provides complete immunity for malpractice in the ER.

Post Office Box 10918 · Raleigh, North Carolina 27605-0918
p 800-688-1413 · (919) 832-1413 fx (919) 832-6361 ncaj.com

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Consider the facts:

- A recent article in the New England Journal of Medicine indicates that 4,000 patients die and 5,700 patients are permanently injured in North Carolina hospitals every year because of preventable medical mistakes.

- The number of medical malpractice lawsuits filed in North Carolina has decreased. In 2007-2009, the annual average of malpractice filings was 465 – 22.5% lower than the annual average in the preceding nine years.

- The annual number of malpractice lawsuits (465) is less than 5% of the 9,700 patients killed or permanently injured every year because of medical malpractice. In other words, only 1 in 20 patients who are severely harmed by a preventable medical mistake files suit.

- While the number of malpractice lawsuits has been dropping, the number of doctors in North Carolina has increased. Between 1998 and 2008, the total population in North Carolina grew by 18%, while the physician population increased by 29%.

- North Carolina juries are reasonable in awarding damages. In the 54 malpractice cases in which the plaintiff won at trial and obtained a verdict on damages from 1998-2009, the median jury award was only $320,000.

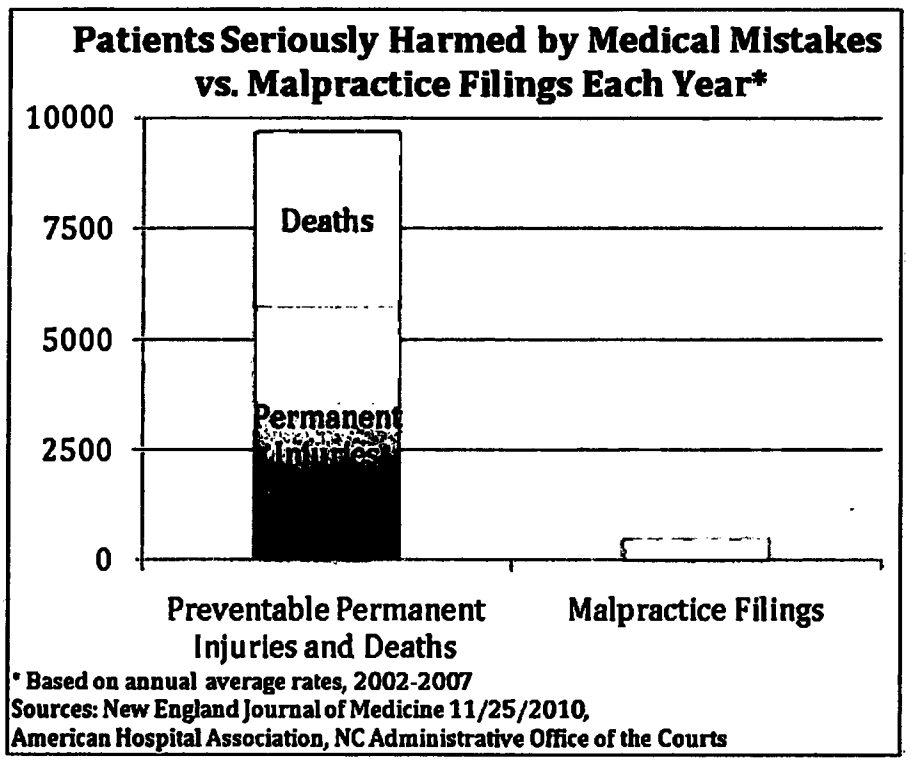
- Medical malpractice premiums for North Carolina doctors have decreased, while the malpractice insurance companies have made record profits.

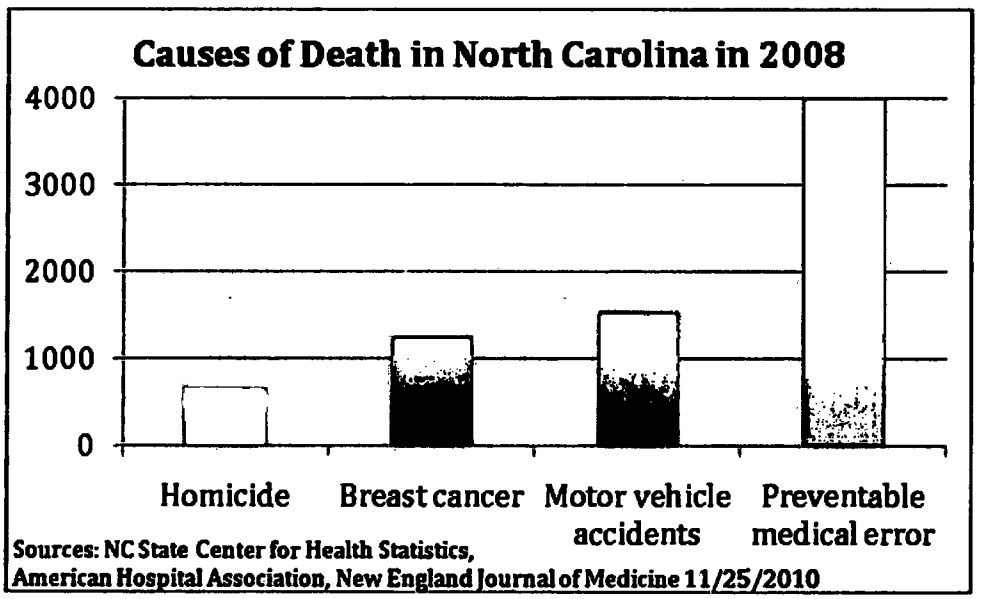
We need to focus on patient safety, not limiting the rights of injured patients.

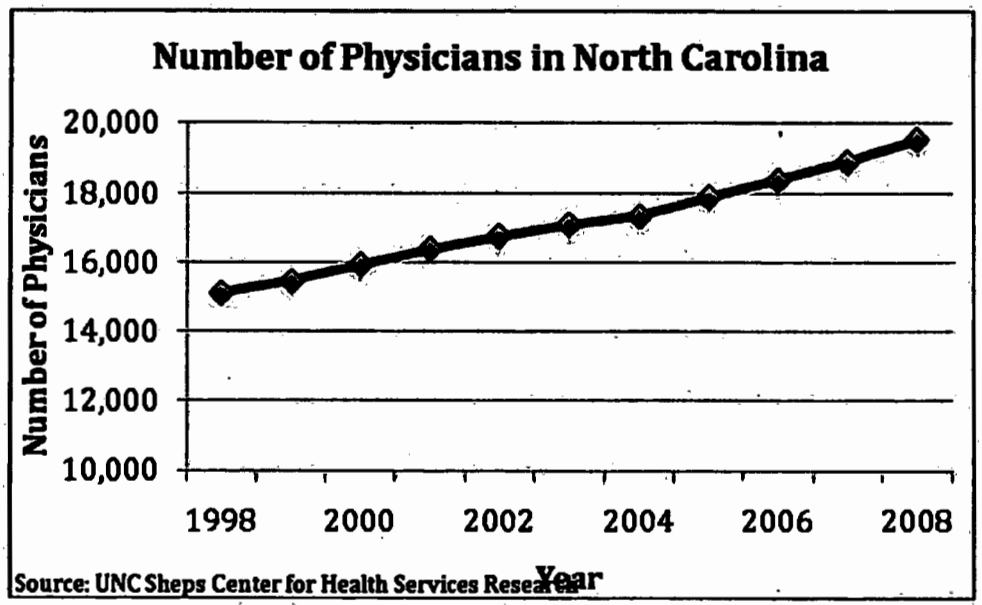
Dick Taylor, 919-274-4937
Paul Pulley, 919-880-5777
Philip Isley, 919-264-6324

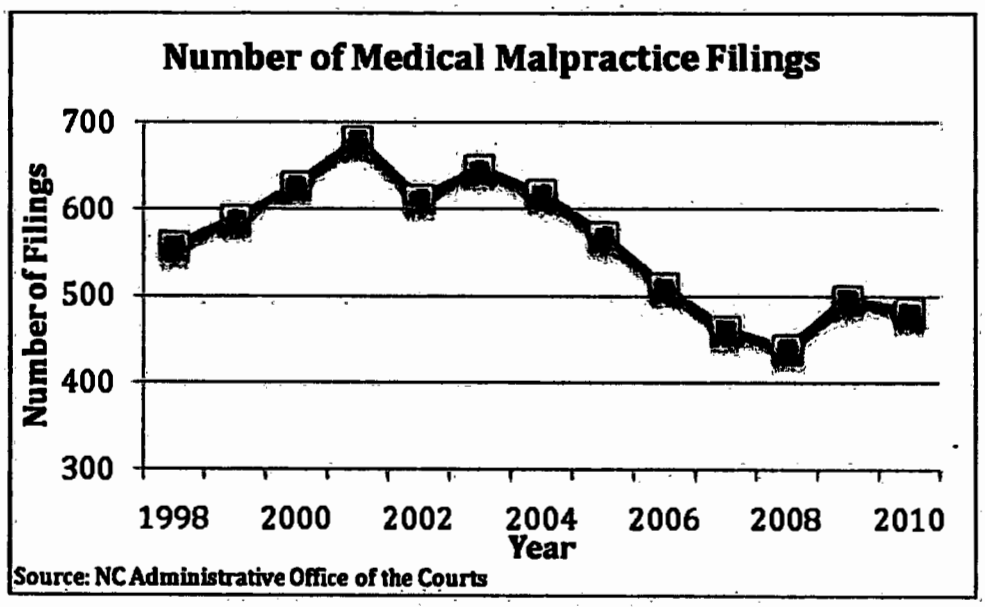
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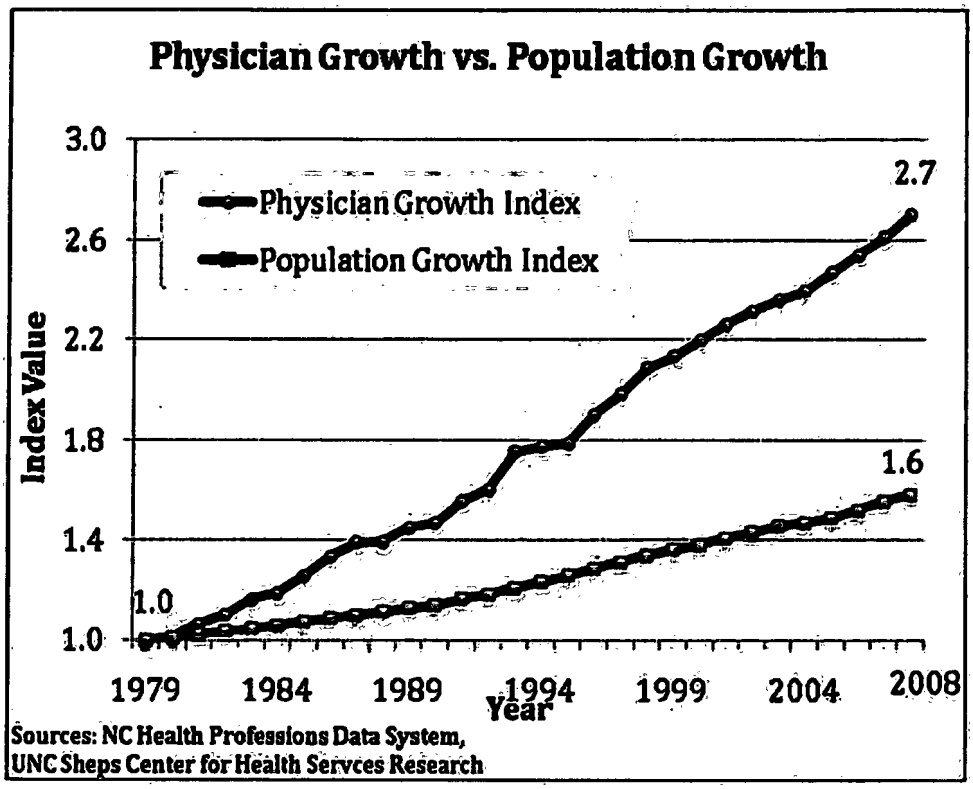
Graphs for NCAJ Position Paper






Number of Physicians in North Carolina
Number of Physicians
20,000
18,000
16,000
14,000
12,000
10,000
1998
2000
2002
2004
2006
2008
Year
Source: UNC Sheps Center for Health Services Research


Number of Medical Malpractice Filings
Number of Filings
700
600
500
400
300
1998
2000
2002
2004
2006
2008
2010
Year
Source: NC Administrative Office of the Courts


Physician Growth vs. Population Growth
3.0
2.6
2.2
1.8
1.4
1.0
Index Value
Physician Growth Index
Population Growth Index
2.7
1.6
1.0
1979
1984
1989
1994
1999
2004
2008
Year
Sources: NC Health Professions Data System,
UNC Sheps Center for Health Servces Research

PATIENT SAFETY COALITION CALLS PROPOSED IMMUNITY FOR SUBSTANDARD CARE "A GREEN LIGHT TO COMMIT MALPRACTICE"

GROUP CALLS ON SENATORS APODACA, BROWN AND RUCHO TO ABANDON BILL THAT "PUTS PATIENTS IN DANGER"

(RALEIGH) -- Feb. 14, 2011 -- Laurie Sanders, Executive Director of the North Carolina Coalition for Patient Safety (NC-CPS), today described Senate Bill 33 as "a direct assault on patient safety."

In 2006, Mrs. Sanders' 6-year old son Christopher died because of medical malpractice in an emergency department in a Charlotte hospital. If Senate Bill 33 -- sponsored by Senators Tom Apodaca, Harry Brown and Bob Rucho – passes it will give immunity to ER doctors and hospitals when they commit malpractice.

Mrs. Sanders explained the consequences: "When we bring our child to the emergency room, we have a right to expect that those who provide treatment comply with the standards of their profession. This bill destroys that right. Doctors and nurses in the ER will no longer have a legal duty to comply with their own professional standards. The bill gives every doctor and nurse a green light to commit malpractice in the ER."

Dr. John Faulkner, a family physician from Raleigh, chairs the board of NC-CPS. In 2002, his wife Joan was severely burned in an operating room fire. Dr. Faulkner said: "Every year, thousands of patients are severely injured or killed in North Carolina hospitals because of preventable medical mistakes. This bill will not encourage physicians to practice safer medicine, or reduce the number of medical errors. It will have precisely the opposite effect."

Susan Pierce, R.N., Ph.D., who taught for decades at the UNC School of Nursing, is also a member of the NC-CPS board of directors. Dr. Pierce stated: "I cannot understand why legislators would seek to nullify the duty of doctors and nurses to meet professionally established standards of care. That undermines medical and nursing ethics, and puts patients in danger."

Mrs. Sanders intends to speak against SB 33 at a meeting of the Senate J-1 Committee, chaired by Sen. Pete Brunstetter, on Thursday, February 17 at 10:00 a.m.

***

NC-CPS is dedicated to improving patient safety. Members of the board of directors include three physicians, two nurses, and two mothers of children severely injured by medical mistakes.

Contact: Laurie Sanders at laurieksanders@gmail.com; (704) 840-8823.

www.ncpatientsafety.org

Tragic insight into 'malpractice reform'

By Laurie Sanders
Special to The Observer
Posted: Thursday, Oct. 01, 2009

Medical negligence isn't a topic I gave much thought to until my 6-year-old son went to the hospital sick for the first time in his life and died of oxygen deprivation. A happy little boy, with no history of breathing problems, no allergies ... never sick. Christopher was my only son. His daddy, my husband, had died of cancer a few years earlier.

In experiencing the death of my husband and son, I have seen the best medical professionals and the worst. I have seen the most caring, and the least.

buried my husband knowing that medical professionals did everything they could. I buried my son knowing that medical professionals failed him at the most basic level.

Acting without due care

In my attempt to uncover the truth about what happened to Christopher, I took legal action.

I was represented by wonderful and caring attorneys. Throughout 18 months of litigation and over 40 depositions, I saw medical professionals who - resisting pressure from their colleagues - had the courage to testify that the care provided to Christopher fell far short of the minimum standard of care. I also saw medical professionals lie under oath, and doctors and lawyers who seemed to have no qualms about defending the indefensible.

Through my medical and legal experiences, I learned the meaning of negligence ... a failure to act with due care. I am now concerned with political negligence - legislators failing to act with due care.

How big is 'defensive medicine'?

Lobbyists for the medical and insurance industries tout "malpractice reform" as an essential part of a health care bill. When they talk about "malpractice reform," they do not mean taking steps to reduce medical malpractice. Instead the reforms they seek would prevent injured tients and their families from discovering the truth and seeking redress in the courts.

Our congressional representatives need to look behind the "malpractice reform" propaganda, and consider the facts.

We are told that doctors will stop ordering unnecessary tests and procedures if they are freed of the threat of malpractice lawsuits. Both the Government Accounting Office and the Congressional Budget Office have issued reports questioning the pervasiveness of "defensive medicine" and concluding that meddling with the legal system will have a minimal effect on health care costs. When doctors and hospitals have an economic incentive to order additional tests and procedures, we should be skeptical of their claims that they were motivated by the fear of being sued.

One of the lessons of Christopher's unnecessary death - and my necessary lawsuit - is not that health care providers need to engage in cost-inflating "defensive medicine." Instead, it is that doctors and nurses must pay attention, communicate with their colleagues and adhere to well-recognized standards of practice.

Barriers to suits already high

In North Carolina, patients have no incentive or opportunity to file a "frivolous" malpractice suit. Since 1997, N.C. law has provided that a patient cannot file a medical malpractice case unless a qualified expert has agreed to testify that the case has merit. Malpractice cases are costly to pursue, requiring the patient's lawyer to incur at least $50,000 in litigation expenses and often (as in my case) many times that amount. Juries in North Carolina are conservative, and overwhelmingly favor the health care provider.

With so many legal and economic barriers facing patients and their families, the number of malpractice suits filed in North Carolina has steadily declined, and last year dropped to the west level since the courts began gathering data in 1998. At the same time, the number of octors in North Carolina continues to increase, and the rate of growth in the physician population far outpaces the growth in our total population.

Every year, tens of thousands of patients die because of medical errors. To improve patient safety, doctors and hospitals must be accountable for their negligence. Enacting legislation that erodes patients' access to the courts will diminish the quality of care without reducing medical costs.

Laurie Sanders and her daughter live in Charlotte. She settled her case in 2007; the terms are confidential.

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Harmed in the hospital

By James Bryan and Burton Craige

In 1999, the Institute of Medicine reported that medical errors in American hospitals cause up to 98,000 deaths and more than 1 million injuries each year. In response to the institute's report, hospitals in North Carolina and around the country announced initiatives to improve patient safety.

POINT OF VIEW

A recent article in The New England Journal of Medicine assessed the efficacy of these initiatives. Looking exclusively at hospitals in North Carolina, the article reported a shockingly high rate of preventable injuries to patients, and little or no improvement over time.

Year in, year out, medical mistakes in hospitals kill more North Carolinians than the combined toll of automobile accidents, breast cancer, manslaughter and murder. While we enact laws and mount public education campaigns to reduce the risk of auto accidents, invest millions to find a cure for cancer and mobilize the power of the state to prevent and punish violent crimes, little has been done to reduce the deadly toll of preventable medical errors.

Researchers from Harvard Medical School and the Institute for Healthcare Improvement analyzed a random sample of admissions at 10 randomly selected North Carolina hospitals from 2002 through 2007. A trained team identified suspected medically induced harms, which were then evaluated by independent physician reviewers.

The results were sobering:

- Patients admitted to a North Carolina hospital had a 1 in 5 chance of being harmed by the medical care they received.
- 13.8 percent of the medically induced harms were extremely severe, causing a permanent or life-threatening injury, or death.
- Most (63.1 percent) of the injuries were preventable.

Over the six years of the study, the researchers found no reduction in the rate of severe injuries.

In the sample of 2,341 patient records, the reviewers identified 14 cases in which the medical care caused or contributed to the patient's death and classified nine of those deaths as preventable. In addition, the reviewers identified 13 cases in which the patient suffered a preventable permanent injury.

These data confirm the staggering toll of medical errors in North Carolina hospitals. The American Hospital Association reports 1,041,918 admissions to nonfederal community hospitals in North Carolina in 2008. Based on the preventable death rate and preventable permanent injury rate in the New England Journal article, approximately 4,000 patients die and 5,700 patients are permanently injured every year in North Carolina hospitals because of preventable medical errors.

Proven safety measures, as noted in the article, will save lives:

Many preventable injuries in hospitals are caused by a lack of communication among the patient's multiple health care providers, who continue to depend on hand-written notes and orders, placed in a bulky physical chart. Despite the proven efficacy of electronic record keeping in improving communication and reducing mistakes, less than 10 percent of hospitals have even basic electronic record keeping in place.

In a short-sighted effort to cut costs, hospitals have slashed their nursing staffs to the bone. As the Journal article notes, medical residents and nurses routinely work hours in excess of those proven to be safe. Hospitals must stop short-staffing and end the practice of relying on marathon shifts by exhausted doctors and nurses.

The rate of hospital-caused infections remains high for reasons that are unacceptable. Compliance with simple interventions such as hand washing is poor in many centers.

While thousands die because of medical errors, some hospitals – and their insurance carriers – want to change the law and limit the rights of injured patients to take legal action. That effort is profoundly misguided. Relieving hospitals of responsibility for their mistakes will only increase the risk of harm to patients.

Hospitals will not solve these problems on their own. Improving patient safety requires a concerted campaign. With so many lives at stake, it is high time for health care providers, accreditation agencies and patient advocates to join forces to reduce the number of medical errors.

BY THE NUMBERS

1,041,918 Number of admissions to nonfederal community hospitals in North Carolina in 2008

4,000 Projected number of patients who die each year in North Carolina hospitals because of preventable medical errors

5,700 Projected number permanently injured each year by preventable medical errors

James Bryan, M.D., has taught and practiced internal medicine at UNC Medical School since 1964. Burton Craige is an attorney in Raleigh.

Supreme Court
State of North Carolina
Raleigh

Chief Justice
I. Beverly Lake, Jr.
(Retired)

3703 Shadybrook Drive
Raleigh, North Carolina 27609
Tel. (919) 787-1530

February 8, 2011

Senator Peter S. Brunstetter
Chairman, Senate Judiciary I Committee
16 W. Jones Street, Room 2022
Raleigh, NC 27601-2808

Re: Senate Bill 33

Dear Senator Brunstetter:

I understand that the Senate Judiciary I Committee will soon be considering Senate Bill 33, which would implement several medical liability reforms. In my opinion, the proposed cap on noneconomic damages is unconstitutional.

I served on the North Carolina Supreme Court for 12 years, and was Chief Justice from 2000 to 2006. I previously served as a Superior Court Judge for six years, was a State Senator for two terms, and was Deputy Attorney General for seven years. Throughout my legal career, which has spanned over 50 years, I have sought to uphold the North Carolina Constitution, the foundation of our laws.

For over 200 years, the North Carolina Constitution has provided that, in "all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable." N.C. Const., art. I, § 25. The North Carolina Supreme Court has long recognized that compensatory damages, including damages for "mental and physical pain," is a form of "property" protected by the constitutional right to trial by jury.

In *Osborn v. Leach*, 135 N.C. 628, 47 S.E. 811 (1904), the Court determined that a libel law was constitutional, even though it abolished a plaintiff's right to recover punitive damages. *Id.* at 632-33, 47 S.E. at 813. The Court noted, however, that if the law had restricted the recovery of actual or compensatory damages, it would have been unconstitutional. In drawing this distinction, the Court stated: "The right to have punitive damages assessed is . . . not property. The right to recover actual or compensatory damages *is property*." *Id.* at 633, 47 S.E. at 813 (emphasis in original). The Court elaborated:

> The plaintiff is entitled to recover compensation for mental and physical pain and injury to reputation. These are *actual* damages, and these are *property*. 'The right to recover damages for an injury is a species of property and vests in the injured party immediately on the commission of the wrong. . . . Being property, it is protected by the ordinary constitutional guarantees.' . . . It cannot be *extinguished* except by act of the parties or by operation of the statute of limitation.

Id. (emphasis in original) (citation omitted).

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Supreme Court
State of North Carolina
Raleigh

Chief Justice
I. Beverly Lake, Jr.
(Retired)

3703 Shadybrook Drive
Raleigh, North Carolina 27609
Tel. (919) 787-1530

When I served as Chief Justice, a unanimous Court expressly reaffirmed this principle in *Rhyne v. K-Mart Corp.*, 358 N.C. 160, 594 S.E.2d 1 (2004). We stated that compensatory damages "represent a type of property interest vesting in plaintiffs," while punitive damages are not a vested property interest. *Id.* at 176, 594 S.E.2d at 12.

The clear import of *Osborn* and *Rhyne* is that Section 3 of SB 33 is unconstitutional. North Carolina citizens have a "sacred and inviolable" right to have a jury determine the amount of compensatory damages, including noneconomic damages, under our Constitution. The right to have a jury make that decision cannot be eliminated or restricted by the General Assembly.

The Georgia Supreme Court recently reached the same conclusion, striking down a similar law in *Atlanta Oculoplastic Surgery, P.C. v. Nestlehutt*, 691 S.E.2d 218 (Ga. 2010). In 2005, the Georgia legislature enacted a $350,000 cap on noneconomic damages in medical malpractice cases. Georgia's state constitution protects the right to a jury trial, as does ours, stating "[t]he right to trial by jury shall remain inviolate." Ga. Const. of 1983, Art. I, Sec. I, Par. XI (a). Because the determination of damages has always been the jury's province, and noneconomic damages have always been a component of compensatory damages, the damages cap unconstitutionally infringed on the right to a jury trial. *Id.* at 223. The Court concluded: "The very existence of the caps, in any amount, is violative of the right to trial by jury." *Id.*

Finally, the cap on noneconomic damages is unnecessary as well as unconstitutional. As a Superior Court Judge, I presided over many civil jury trials. If a verdict is excessive, the trial judge has the well-established power and duty to offer the plaintiff the choice between a remittitur (decreased damages award) and a new trial. The trial judge, unlike the legislature, has actually heard the evidence and can make a sound judgment about whether the verdict is excessive. In doing so, the judge operates within the Constitution; instead of imposing his own view of the proper amount of the verdict, he must instead give the plaintiff the choice of a reduced verdict or a new trial.

The legislature has the responsibility to enact laws that are constitutional. With that duty in mind, I hope that your committee will remove Section 3 from SB 33.

Thank you for your consideration.

With kindest personal regards, I am, cordially,

I. Beverly Lake

I. Beverly Lake, Jr.

Cc: Members of the Senate

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Supreme Court
State of North Carolina
Resident Chambers

Edward Thomas Brady
Associate Justice
(Retired)

325 Green Street
Fayetteville, NC 28301-5027
(910) 485-8000
Justice.Brady@gmail.com

February 17, 2011

Senator Peter S. Brunstetter
Chairman, Senate Judiciary I Committee
16 W. Jones Street, Room 2022
Raleigh, NC 27601-2808

RE: The Unconstitutionality of Senate Bill 33

Dear Senator Brunstetter:

After receiving a copy of Chief Justice I. Beverly Lake's well-written letter, I thought it proper and necessary for me to submit a letter to you as well indicating both my approval of Chief Justice Lake's analysis and my belief that Senate Bill 33 as currently written is unconstitutional as to the proposed cap on noneconomic damages.

I was the authoring justice for a unanimous Supreme Court in *Rhyne v. K-Mart Corp.*, 358 N.C. 160, 176, 594 S.E.2d, 1, 12 (2004). In *Rhyne*, the Court reaffirmed the principle from *Osborn v. Leach*, 135 N.C. 628, 47 S.E.2d 811 (1904), that compensatory damages, including noneconomic damages in tort claims, are a property right. Accordingly, those rights cannot be deprived without due process of law, U.S. Const. Amend. 14 and N.C. Const. Art. I, § 19, and additionally, they are the type of claims that the Constitution of North Carolina gives our citizens the right to have a jury decision as to amount. N.C. Const. Art. I, § 25.

It has always been the case in a civilization which is based upon ordered liberty that a person wronged by the actions of another would be able to recover damages so as to make that person whole. In the Old Testament book of Exodus (written in the 15th Century B.C.), Moses detailed how if a man opened a pit and another's animal fell into the pit and died, restitution was to be made. *See* Exodus 21:33-34. Even the famous Old Testament maxim, "an eye for an eye, and a tooth for a tooth," *see* Leviticus 24:19-20, was a statement concerning the damages one may receive from another because of a wrong done. These principles were imported into the formation of medical malpractice actions in England over 400 years before the birth of our country, when a court there articulated the availability of a claim in negligence against a physician. *See* C. Joseph Stetler, The History of Reported Medical Professional Liability Cases, 30 Temp. L. Q. 366, 367 (1957). The common law of England, which in many cases has its roots in the Biblical law, was the foundation of the law in this country. This was recognized by our Founding Fathers in the Seventh Amendment to the United States Constitution, which

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states: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." Moreover, the drafters of the Constitution of North Carolina understood the importance of a full remedy at law and thus provided "All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay." N.C. Const. Art. I, §18. In interpreting this section, it cannot be forgotten that the common law itself was incorporated specifically into the law of North Carolina. *See* N.C.G.S. § 4-1 (2009).

The right to a trial by a jury of one's peers was one of the explicitly mentioned reasons for declaring independence from England, as the King had made it a practice of "depriving us in many cases, of the benefits of trial by jury." Declaration of Independence, ¶ 20 (1776). The drafters of the Constitution of North Carolina provided that, "In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable." N.C. Const., Art. I, § 25. Senate Bill 33 threatens that very right called "one of the best securities of the rights of the people." There are many options open to the legislature to address any perceived issues in the field of medical malpractice law. Depriving the citizens of the Old North State their "sacred and inviolable" constitutional right to a civil jury trial is not one of them.

In conclusion, I ask you to remember the importance of the right to a civil jury and the right our citizens have to full compensation when they have been injured through the negligent acts of another. We all have a duty to uphold the Constitution, and it is on this basis that I ask you to oppose Senate Bill 33.

With warm regards, I remain

Sincerely,

Edward Thomas Brady

cc: Members of the Senate
Chief Justice I. Beverly Lake, Jr.

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JOSEPH THOMAS KNOTT, III

February 10, 2011

The Honorable Phil Berger
2008 Legislative Building
Raleigh, North Carolina 27601

Dear President Pro Tempore Berger,

I write as a friend. I am a long-time Republican. I am a conservative. No one is more in favor of limited government, regulation repeal, lower taxes and economic growth than I am. I was the Republican candidate for Attorney General in 2004. I am thankful that you and others now form a conservative majority in our legislature. I thank you for running and for your service to the people of our state.

As for a personal introduction, I have been active in my church and other Christian Bible teaching organizations for my entire adult life. The values and morals that have made western civilization in general-and the USA in particular -the light to the rest of the world are priceless to me and above politics, as they are to you too.

I am also a lawyer, which I consider to be a privilege and a high calling. I have practiced law in NC for over thirty years, including four years as an Assistant US Attorney in Raleigh during President Reagan's administration. I am a member of a small firm in Raleigh and view the law itself as a gift from God.

In that spirit, I am writing respectfully to ask you to oppose Senate Bill 33. That bill, as I understand it, does two things. It immunizes emergency room physicians from liability for negligence, and it places a two hundred and fifty thousand dollar limit on non-economic damages (pain, suffering, disfigurement, permanent injury, etc.). In my opinion, both those actions would be a terrible error and would further undermine the moral base that forms the foundation of our society.

We are talking about the tort law. The tort law says that if one citizen is negligent, meaning he violates his duty of reasonable care toward others, and if that unreasonable action injures someone, he is responsible for the injury his negligence causes. This is simple law, but it has deep roots. It comes from the English common law, which in turn came from the Bible. It has been the law in NC since we were a .colony of Great Britain.

Senate Bill 33 makes negligent medical care in the ER acceptable practice. Suppose a high school football player has a head injury and is rushed to the ER where he is treated negligently. Mere reasonable care would have him back in school the next morning with no injury; but unreasonable care renders him brain damaged and retarded for life. Senate Bill 33 says there is no remedy for him or his parents. The law should not take the side of the wrongdoer, the person who violates his duty of reasonable care. The law is to protect the innocent against the wrongdoer; not the other way around.

The bill also imposes a two hundred fifty thousand dollar cap on non-economic damages. This violates the right to a jury trial. A jury trial is reduced to a show trial when the outcome is determined before the trial starts.

The NC Constitution guarantees a citizen's right to have his case decided by a jury. The guarantee is in the Constitution for good reason-wrongdoers hate the jury system and have always fought 10 eliminate it. The nobles in England thought it was outrageous that they would have to appear before mere citizens to answer for their actions. Nothing has changed. Some doctors and their insurance companies don't like it now.

Suppose a homemaker is blinded by negligence. She has no economic loss because she is a homemaker. How can a legislature decide what is fair compensation for what has been taken from her without hearing any evidence? Or consider a retired man who loses both arms and legs due to malpractice. He has no lost income, but something of great value that God gave him has, been taken away.

When a specific negligent act can be identified as the cause of those injuries, why would a legislature want to protect and shield the negligent party at the expense of the innocent? How can a legislature presume one level of compensation fits all serious injuries without hearing any evidence?

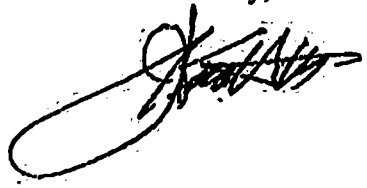
The NC Constitution, foreseeing challenges just like this, guarantees that juries, the lay citizens of the state, decide the value of a citizen's life or limb-not the government. Wrongdoers have always hated and feared the jury and they still do. This is an attempt by insurance companies to keep the form of the jury, but to empty it of its power and purpose.

Senate Bill 33 is not a conservative bill. It is an attempt to expand government control into an area reserved for the jury by the Constitution. It will deprive an injured citizen his right to have his peers hear, decide and value his case. When governments start deciding what a citizens' life is worth, we will have crossed a line that no conservative wants crossed.

And finally do not be misled. There is no medical malpractice crisis in NC. There have been only fifty-seven medical malpractice verdicts for plaintiffs in the last twelve years in the entire state.

Thank you again for your willingness to serve. I respectfully request you vote against Senate Bill 33.

Yours truly,



Joe Knott

MARTIN L BROOKS, MD
PO BOX 37
PEMBROKE, NC 28372

OFFICE 910-521-4221
FAX 910-521-9266

February 16, 2011

Senator Peter S. Brunstetter
Chairman, Senate Judiciary I Committee
16 W. Jones Street, Room 2022
Raleigh, North Carolina 27601-2808

Re: Senate Bill 33

Dear Senator Brunstetter:

I am a physician who has practiced medicine in North Carolina for the past 55 years. In 2006 I was awarded the Order of the Long Leaf Pine by the Governor of North Carolina for my service to the people in my community. I currently serve on the Board of Trustees of Southeastern Regional Medical Center in Lumberton along with Senator Michael Walters. I have dedicated the majority of my life to helping patients in my medical practice and trying to improve patient care through my work as a member of the Board of Trustees at Southeastern Medical Center.

I have carefully reviewed Senate Bill 33. I am writing to let you and the rest of the Senate know that I oppose this legislation. The bill will reduce the quality of medical care given to the people of North Carolina including your constituents in Forsyth County. Providing immunity to doctors, nurses, and physician assistants in emergency departments for negligent treatment of patients will reduce the quality of care provided in emergency departments and cause more injuries and deaths to patients who come there for treatment. These patients deserve the same quality of care as any other patients in a hospital or medical office. Those who provide care and treatment must be held accountable for the preventable injuries and deaths that are caused by their failure to meet well established standards of practice.

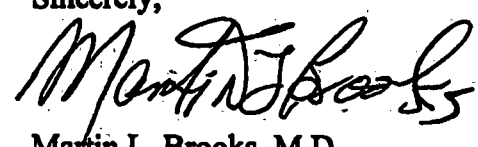
Likewise, arbitrarily limiting the amount that an injured patient can recover for non-economic damages to $250,000 without any consideration of the nature, extent and permanency of their injuries is just plain wrong. Every person's injuries are different. The amount of compensation they should receive as a result of medical mistakes should be based on the particular facts of each case and decided by a jury, not arbitrarily set by the legislature.

You and the other senators need to understand that medical malpractice is a serious problem in North Carolina. If you have not done so already, please read the November 2010 special article in the New England Journal of Medicine entitled *Temporal Trends in Rates of Patient Harm Resulting from Medical Care*. This study focuses on the preventable medical errors that occurred in ten North Carolina hospitals from January 2002 to December 2007. The number of preventable serious injuries and deaths documented in the article is staggering. Senate Bill 33 will increase these already alarming numbers of preventable injuries and deaths.

You and the other senators were elected to enact legislation to promote the health and welfare of the citizens of our state. If Senate Bill 33 becomes the law in this state, then you and others who voted for the passage of this bill will have reduced the quality of patient care in this state and have failed the people of this great state.

Best regards.

Sincerely,



Martin L. Brooks, M.D

cc North Carolina Senators

SHUMAKER
Shumaker, Loop & Kendrick, LLP

First Citizens Bank Plaza
128 South Tryon Street
Suite 1800
Charlotte, North Carolina 28202-5013

704.375.0057
704.332.1197 fax

www.slk-law.com

SCOTT M. STEVENSON
704.945.2180
sstevenson@slk-law.com

February 10, 2011

Senator Daniel G. Clodfelter
North Carolina State Senate
300 North Salisbury Street
Room 526
Raleigh, NC 27603-5925

Dear Senator Clodfelter:

As you can see from the letterhead, I am an attorney in Charlotte, North Carolina. I defend doctors and hospitals in medical malpractice cases, and have since 1979. I represent every major medical malpractice insurance carrier, with the exception of one, that writes business in North Carolina, plus the two major hospital systems in Charlotte, North Carolina. I) medical malpractice defense work, exclusively.

I have read the proposed Senate Bill 33, calling for caps on verdicts, and otherwise limiting recoveries to the Plaintiff in medical malpractice cases. While it may appear antithetic that a defense attorney would oppose this tort reform bill, I believe that a poll of medical malpractice defense lawyers would support my proposition to you, that tort reform is not necessary in North Carolina.

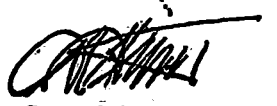
I believe that the fraternity of medical malpractice defense attorneys in North Carolina is an immensely talented group of attorneys. We are the State's own tort reform system. A study was commissioned by Plaintiff's attorneys, the insurance industry, and defense attorneys some several years ago. It was determined by all that there is no "medical malpractice crisis" in North Carolina. The number of Plaintiff's verdicts is minimal. The amount of recovery is minimal. I believe that the numbers reflect that some nine out of ten cases that go to trial are won by the Defendant.

I have tried cases in Virginia, as well as North Carolina. Virginia has "tort reform." There are caps imposed on verdicts there. Having worked in both states, I can tell you that North Carolina, unquestionably, has a better system; a system that affords every individual citizen unfettered access to the courts, but generally guarantees a just result. Having done this for thirty-one years, I can tell you that the system is not broken. And, as a good Southern boy, I do believe in the old axiom, "if it ain't broke, don't fix it." Quite simply, our system is not broken, and any attempts to meddle with the current system, I firmly believe will work to the detriment of all North Carolina citizens.

I am more than happy to discuss this issue with you, as one of your constituents.

Thank you for your attention to this.

Very truly yours,



Scott M. Stevenson

SMS/nte

NORTH CAROLINA
ADVOCATES
for JUSTICE
Protecting people's rights.

February 14, 2011

ANALYSIS OF SENATE BILL 33 – MEDICAL LIABILITY REFORMS

Senate Bill 33 radically limits the rights of patients injured by medical mistakes, and reduces incentives for patient safety. The bill 1) provides immunity for negligence in the emergency room, 2) limits the authority of trial judges to efficiently manage malpractice trials, 3) establishes an artificial cap of $250,000 for damages for pain, suffering, disfigurement and death, and 4) deprives injured patients of their vested property right to a jury award of damages for future medical expenses.

Section 1: Immunity for negligence in the emergency room

Section 1 provides that in any malpractice claim arising out of the provision of services in a hospital emergency department, the health care provider is not liable unless the trier of fact "finds by clear and convincing evidence that the health care provider's deviation from the standard of care required under G.S. 90-21.12 constituted gross negligence, wanton conduct or intentional wrongdoing."

This provision provides complete immunity for negligence in the ER. The only way for an injured patient to overcome the immunity is to prove "by clear and convincing evidence" – a higher standard than the "preponderance of the evidence" under current law – that the doctor or nurse committed "gross negligence." No injured patient will be able to satisfy that burden of proof. The ER immunity provision nullifies the fundamental legal and ethical requirement that doctors and nurses comply with their professional standards.

Section 2: Mandatory bifurcation of malpractice trials

Under current Rule 42(b) of the Rules of Civil Procedure, the trial judge has the authority to order separate trials on any issue "in furtherance of convenience or to avoid prejudice" to any party. Section 2 strips the judge of the power to make that discretionary decision in medical malpractice cases in which the plaintiff seeks $75,000 or more. Instead the judge will be required to order separate trials, before the same jury, for the issues of liability and damages. The judge will no longer be able to weigh the factors of efficiency and possible prejudice in determining whether a single or bifurcated trial would be appropriate.

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In many medical malpractice cases, the issues of causation and damages are inextricably entwined. Requiring bifurcation of liability (i.e., negligence and proximate cause) and damages in those cases will create major problems for the management of the trial. If, as often occurs, an expert witness has opinions on both causation and damages, the parties will have the added cost and inefficiency of bringing the expert to trial a second time.

Section 3: $250,000 cap for damages for pain, suffering, physical impairment, disfigurement and death

Section 3 establishes an arbitrary cap of $250,000 for "noneconomic" damages in medical malpractice cases. Noneconomic damages are defined as damages for "pain, suffering, emotional distress, loss of consortium, inconvenience, physical impairment, disfigurement, and any other nonpecuniary compensatory damages." The cap appears to cover all noneconomic damages listed in the Wrongful Death Act, G.S. 28A-18-2, including "pain and suffering of the decedent," and the intangible losses associated with the death of a family member.

Under the proposed statute, the judge shall not instruct the jury about the cap on noneconomic damages. If the jury awards more than $250,000 in noneconomic damages, the judge is required to reduce the award to the statutory maximum.

As former Chief Justice Lake explained in his letter dated February 9, 2011, "the proposed cap on noneconomic damages is unconstitutional." It violates Article I, Section 25 of the North Carolina Constitution: "In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable." For more than 100 years, the North Carolina Supreme Court has recognized that a jury's award of compensatory damages, including damages for "mental and physical pain," is a vested property right, protected by the constitutional right to trial by jury. Rhyne v. K-Mart, 358 N.C. 160, 176, 594 S.E.2d 1, 12 (2004); Osborn v. Leach, 135 N.C. 628, 632-33, 47 S.E. 811, 813 (1904).

Section 4: Periodic payments of future damages

Section 4 provides for the periodic payment of all future economic damages in medical malpractice actions. If the jury awards future economic damages of $75,000 or more, a party may demand entry of an order requiring that those damages be paid by future periodic payments instead of a lump sum, as under current law. The bill requires that those payments be made through the establishment of a trust fund or the purchase of an annuity for the life of the plaintiff.

Post Office Box 10918, Raleigh, NC 27605-0918
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The most offensive feature of this section is subsection (e) of proposed new G.S. 90-21.19A, which provides, with limited exceptions, that "the death of the plaintiff terminates liability for future economic payments." This is an extraordinary government handout to the insurance company of the party whose negligence caused the injury. Note that the alteration of the jury's award, based on a change in the plaintiff's circumstances, goes in only one direction,. There is no requirement that the insurance company add to the award if, years after the entry of judgment, the plaintiff's condition deteriorates, requiring more expensive care.

This one-way "adjustment" of the jury's award is not only unfair; it is also unconstitutional. Under Article I, Section 25 of the North Carolina Constitution, the plaintiff has a vested property right in the jury's award of compensatory damages. See discussion of Section 3, above. Once the jury makes its determination of the present value of the plaintiff's future economic damages, the plaintiff has a vested right in the award that, under our Constitution, "cannot be extinguished." Osborn, 135 N.C. at 633, 47 S.E. at 813.

Post Office Box 10918, Raleigh, NC 27605-0918
p 800-688-1413 fx (919) 832-6361 ncaj.com

Renee Hazelton
10104 Truitt Court
Huntersville, NC 28078

February 10, 2011

Senator Bob Rucho
300 N. Salisbury Street, Room 300-A
Raleigh, NC 27603-5925

Dear Senator Rucho:

I am the mother of Liam Patton. My son will be two years old next month. I work as a Physician's Assistant in a medical practice. One night last August, Liam fell at home, face first, with a toothbrush in his mouth. When I pulled the toothbrush out of his mouth it had bloody tissue on the end of it. Liam's pediatrician told me to take him to the emergency department, so I did. Despite my concerns, the ER doctor gave him only a very cursory exam, did not order a single test or study, and when I offered to show her the toothbrush she was dismissive and said it was not necessary. My son was then sent home with a diagnosis of an abrasion.

Less than 12 hours later, I noticed the left side of his face was drooping, he could not stand, and he would not use the left side of his body. I rushed Liam back to the same emergency department, where this time he was seen by a different doctor who ordered tests and studies. The CT scans showed that the toothbrush had damaged his carotid artery and that he had a stroke because the damage from the toothbrush eventually caused that artery to his brain to become blocked.

As a result of the emergency doctor's negligence, my 16 month old son suffered a severe stroke; one like the kind that people in their 70's sometimes have. He has had seizures, paralysis on his left side, speech and feeding problems. My baby, who had been completely normal and healthy, was recently diagnosed by his neurologist as having 'hemiplegic cerebral palsy' and 'oral motor dysfunction'.

Instead of days spent learning and playing like a normal baby, my son's life is dominated by intense rehabilitation and therapies of all kinds. I've had to take a leave of absence from my job, and we work hard with the hope that he will get better. This never should have happened to my baby boy, but now that it has, I believe he deserves to be treated fairly.

I know there is a bill in the Senate that would take away altogether my son's right to obtain justice for this terrible wrong. Please consider whether you think this bill would be fair to my son and others like him, before you chose to support and vote for it.

Sincerely,

Renee Hazelton

Renee Hazelton

Macy Messer: Caps on "Pain and Suffering" Make Little of Her Losses

Macy Messer is a bright, beautiful six-year-old girl who, because of preventable medical error, must spend her life in an electronic wheelchair, able to communicate only through a special computer screen. She will never be able to hold her head up, walk, talk, or eat solid food; she must be fed through a feeding tube that goes into her stomach. Her brother and sister adore her, but Macy will never be able to run through a field in the summer or slide through the snow with her siblings. Macy's parents tell her they love her, but Macy will never be able to repeat those words.

Macy was born healthy, but like more than 60 percent of infants, she had jaundice, a condition that occurs when a newborn baby's liver is not yet fully functional. Jaundice is easily treatable, but if it goes undetected, it causes severe brain damage, killing the part of the brain that handles motor control. Children develop a neurological syndrome called kernicterus, which causes cerebral palsy, hearing loss, mental retardation, and sometimes death.

Kernicterus was eradicated in the United States in the 1970's, but tragically, early discharge (48 hours for a pre-term baby), coupled with lack of caution about the dangers of severe jaundice, has given rise to unprecedented numbers of children with kernicterus. Macy is one of several children in North Carolina with kernicterus, but many more children nationwide suffer from this condition.

Legislative proposals to cap "non-economic damages" would keep children like Macy from receiving just compensation for losses that cannot be measured by lost wages or the cost of medical therapies. What is it worth to walk, to talk, to be able to eat birthday cake or ride bikes with friends, to be able to tell your mother when you're feeling sad and need a hug—or to be able to return that hug?



Due to preventable medical error, Macy will never be able to hold her head up, walk, talk, or eat solid food. Is $250,000 really just compensation for these losses?

According to Dr. Jeffrey Koplan, a past director of the Centers for Disease Control, "Kernicterus is a preventable problem, and it is tragic and absolutely should never take place." It is preventable provided doctors and caregivers follow a simple set of procedures. If they don't, children and their families have to live with the consequences.

How can the government restrict the right of juries to compensate children like Macy for the needless loss of their ability to do the simple things most people take for granted? Is $250,000 really what a child's dreams are worth? ■

Macy Messer is represented by Tr[redacted]enyon Lischer of Pulley Watson King [redacted]r in Durham. For more information a[redacted]is story, call 919.682.9691.

SB33

February 14, 2011

Heather & Chris Boone
2285 Cornwallis Road
Rose Hill, North Carolina 28458
910-289-2231

Senator Brent Jackson
300 N. Salisbury Street, Room 525
Raleigh, North Carolina 27603-5925

Dear Senator Jackson:

We need to tell you what happened to our little boy, Ethan. When he was seven months old, he woke up in the middle of the night and we found him to be burning up with a fever. We were very worried and left our home in Duplin County to take him to the emergency room. We decided his condition seemed serious enough that we should drive to the large hospital in another county.

We got there and he continued to be very sick. He threw up twice and screamed violently when they tried to take his temperature. After a few hours in the ER and only seeing a doctor briefly, we were assured Ethan had a virus and were sent home.

We left the ER reassured by the doctor and nurses there. No one told us about all the abnormal lab values Ethan had in the ER. By the time we returned to another ER later that day, it was too late. Our son had a meningococcal infection. Because he was not given antibiotics in the first ER, his infection advanced to sepsis and as a result, he eventually had to have his arms, legs and nose amputated.

We will spend the rest of our lives helping and loving Ethan. People all over Duplin County love and adore Ethan. But that won't pay the bills or take care of the many harms to the life of our precious child. Ethan desperately needs the hospital and its doctor to take responsibility for what happened in the ER which cost him so much.

We have been told you are considering a bill which would keep hospital ERs and their doctors from having to take responsibility for their mistakes. That just does not seem right. They have a job to do just like the rest of us. Please think about Ethan before you vote on this bill. Please do not take away the rights of people injured in hospital ERs.

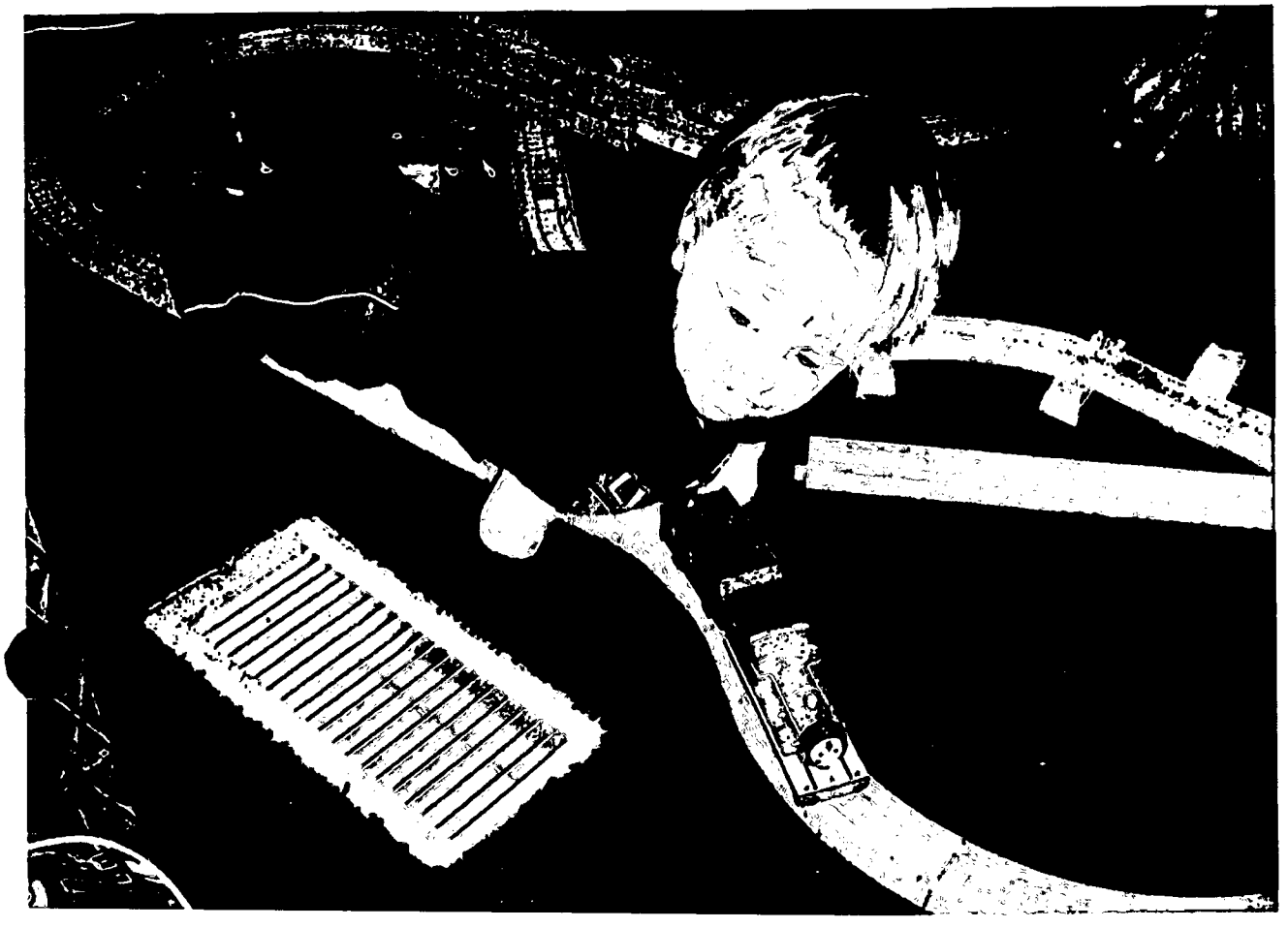
Enclosed are two pictures of Ethan, one before and one after his injuries.

Thank you.

Christopher L Boone
Heather D. Boone

Heather and Chris Boone


GRADY-WH



John Faulkner, M.D.
12315 Canolder Street
Raleigh, NC 27614

Senator Robert A. Rucho
300 N. Salisbury Street, Room 300-A
Raleigh, NC 27603-5925

Re: Senate Bill 33 – Medical Malpractice

Dear Senator Rucho:

I am a family physician. My wife Joan was terribly burned in an operating room fire. She went to the hospital for a simple outpatient procedure, expected to last thirty minutes. After removing a lymph node from her neck, the surgeon turned on a cauterizing tool inches away from an open source of oxygen. A fire exploded over Joan's face, neck and chest. It is elementary that the oxygen must be turned off before the ignition is turned on. The fire was caused by medical malpractice.

I have attached photographs of Joan taken five months before the fire, two days after the fire, and one year later.

I understand that you have introduced a bill that would impose an arbitrary cap of $250,000 on damages for pain, suffering, disfigurement, mutilation, loss of limbs, and even death.

Senator Rucho, No one put a "cap" on my wife's pain and suffering -- so how can you put a cap on what it's worth?

I understand fair compensation for disfigurement and pain is difficult to determine. That's why we count on juries to make that decision -- after they hear all the evidence. But if your bill passes, legislators – having heard no evidence -- will arbitrarily make that decision.

Senator, I have a simple question: Why do you think it's fairer for legislators to decide, rather than juries?

Thank you for your consideration.

Sincerely,



John Faulkner, M.D.

Cc: Members of the North Carolina Senate



Before - January 2002



After - June 26, 2002



One Year Later - July 5, 2003

February 10, 2011

ɜnator David Rouzer
)0 N. Salisbury Street, Room 523
ı\aleigh, NC 27603-5925

Dear Senator Rouzer:

I am a mother of three wonderful children. My ten-year-old daughter Breanna sustained a terrible and preventable brain injury from Rocky Mountain Spotted Fever (RMSF) when she was two years old. Her injury was the result of medical malpractice in an emergency room. Almost all of Breanna's subsequent treating physicians—the doctors who saved her life—told me that Breanna's injury would have been completely prevented if she had been treated correctly in the emergency room. These were not hired witnesses; these were my little girl's doctors right here in North Carolina.

Those doctors explained that Breanna's symptoms in the emergency room were the hallmark signs of RMSF. They said that every physician working in an emergency room should have known what antibiotic to give. The night I took Breanna to the emergency room was Thanksgiving. No physician examined my daughter during that entire ER visit. In fact, the doctor who was in the ER that night later admitted that he did not even review Breanna's chart until after we had been discharged from the ER. Instead, we were seen by a "physician's assistant" who gave us the wrong antibiotic.

Because she was not properly treated, Breanna will never recover. She now suffers from seizures and requires around-the-clock care. She takes medications for seizures and drooling. She needs the help of three different therapists multiple times every week. She cannot talk and is fed through a G-tube. She cannot bathe herself, dress herself or use the bathroom by herself. She will require attendant care for the rest of her life.

ɜ is a photo of our family.



I understand that you are sponsoring SB 33 that would not allow a lawsuit if a little girl is injured in an emergency room because of negligence. I don't understand why that is fair. The doctors who work in an ER have standards they are supposed to follow, just like everyone else. All we expect is that they provide reasonable care that meets their professional standards. Is that too much to ask?

I hope you will not support SB 33.

Sincerely,

Sarah Leonard

Sarah Leonard
121 Eddlestone Court
Clayton, North Carolina 27520

Jo Ann Pfirman
2226 Trellis Green
Cary, NC 27518

February 9, 2011

Senator Richard Stevens
300 N. Salisbury Street, Room 309
Raleigh, NC 27603-5925

Dear Senator Stevens:

It is my understanding that you are one of the sponsors of Senate Bill 33, which will put an arbitrary cap of $250,000 on damages in medical malpractice cases.

My husband, Tom, died in an assisted living facility. He strangled to death in a bedrail. He died a horrible, excruciating death, all due to the negligence of many of the health care providers who were responsible for ensuring his safety. I can't imagine the horror that Tom experienced as he was trapped in the bedrail, unable to save himself from certain death.

I found out that the assisted living facility where Tom resided should have been closed because of repeated violations of North Carolina laws. A loophole in the law allowed the owners to simply change the name and reopen.

Although there is no amount of money that could have brought Tom back, it makes no sense for the legislature to place an arbitrary limit on the value of Tom's suffering or the value of my loss.

I hope that you will reconsider this Bill.

Sincerely,



Jo Ann Pfirman

cc: North Carolina Senators

Martha Walden
1408 Quail Dr.
Greensboro, North Carolina 27408

February 15, 2011

Senator Peter S. Brunstetter
Chairman, Senate Judiciary I Committee
16 West Jones St., Suite 2022
Raleigh, NC 27601-2808

Dear Senator Brunstetter:

I understand that your committee is considering Senate Bill 33, which will place an arbitrary cap of $250,000 on damages for pain, suffering and death in medical malpractice cases.

Last year my mother, Edith Purvis, was living in an assisted living facility close to my home in Greensboro. She suffered from some confusion and forgetfulness. I visited her on Christmas Eve, as I did every night. After our prayers together, I left the facility to go home to my family. Some time after I left, she walked out of the building without the staff knowing. She was only wearing a hospital gown. She could not get back inside the building because the exterior doors were locked. The temperature got down to the low 20's that night.

Although the facility's employees were required to periodically check on residents, they did not realize my mother was missing for several hours. They finally found her lying on the ground outside the front door around 3:30 a.m. She was alive and was moaning and changing colors. She died of hypothermia at the hospital a few hours later.

Two weeks ago, the State of North Carolina issued the report of its investigation into her death. The State investigators found that the facility violated simple safety measures that would have prevented my mother's death. State law requires assisted living facilities to have door alarms to notify the staff when someone leaves the facility. I learned that this facility did not have the required alarms. The violations were so severe that the State has suspended all admissions to the facility until it fixes the problems.

I think often about the terror and helplessness that my mother must have suffered as she stood outside the front door while warmth and safety were just a couple feet away.

When my mother froze to death, she had no "economic" damages. Her damages for pain, suffering, terror and death are all "non-economic." I do not know the fair amount of those damages. My plan is to ask a jury that question. I trust that a jury of twelve people will make a fair decision after it has heard all of the facts. I cannot see how legislators sitting in Raleigh, having heard no facts, can make that decision.

Setting an arbitrary cap for "non-economic" damages hurts older people. With their damages capped at $250,000, assisted living facilities will have less incentive to follow safety standards. That will put more vulnerable people at risk.

I would appreciate the opportunity to talk with you about this bill. Please consider the effect it will have on people like my mother.

Sincerely,

Martha Walden

Martha Walden

cc: North Carolina Senators

February 14, 2011

Lois Dail
405 N. Ellis Avenue
Dunn, North Carolina 28334

Senator Harris Blake
300 N. Salisbury Street, Room 408
Raleigh, North Carolina 27603-5925

Dear Senator Blake:

I lost my husband, Wayne Dail, seven years ago due to negligent care in a hospital emergency room. Wayne was 58 years old when he died. His death shattered our family.

By way of background, my husband, Wayne, was a business leader in Harnett County. He was Plant Manager of Cannon Foods, now known as Dunbar Foods. He also was active in the Dunn Area Chamber of Commerce and served as president. When we lived in Mt. Olive, Wayne was the Director of the Chamber of Commerce there. I worked for 19 years at Betsy Johnson Memorial Hospital in Dunn, serving as Food & Nutrition Manager. My husband also was a longtime leader and volunteer with the American Red Cross. Enclosed is a picture of Wayne.

An ambulance took Wayne from our home to an ER for severe abdominal pain and other symptoms. X-rays were taken. A radiologist did not look at these x-ray films until the next day and saw an abdominal aortic aneurysm, a condition which requires immediate surgery. Tragically, my husband was dead by then, having been sent home. The aneurysm ruptured at home since surgery never was performed.

The doctors in the ER missed what was on the x-ray. And the hospital did not have a radiologist look at the films until it was too late.

I understand a bill has been introduced which would allow hospitals and their doctors to avoid responsibility for their mistakes. I don't understand why they would be singled out for this special treatment. My husband and I worked hard all our lives and we understood we were responsible for our actions. Why are ER professionals any different?

Please do not take away the rights of North Carolina families with regard to how their loved ones are treated in emergency rooms.

Thank you.

Lois Dail

Lois Dail

April Messer
2650 Zacks Mill Rd.
Angier, NC 27501

February 8, 2011

Senator David Rouzer
NC Senate
300 N. Salisbury Street, Room 523
Raleigh, NC 27603-5925

Dear Senator Rouzer:

I understand that you are one of the sponsors of Senate Bill 33, which would put an arbitrary cap of $250,000 on damages in medical malpractice cases for pain, suffering, disfigurement, brain damage, loss of use of the body, and death.

I am the mother of Macy Messer, whose story is told in the attached article. Shortly after she was born, Macy suffered severe brain damage because of a preventable medical error. She will never be able to hold her head up, talk, or eat solid food.

In 2003, when the General Assembly last considered a $250,000 cap on damages in alpractice cases, Macy was six years old. Macy and I came to the General Assembly, visited with legislators, and appeared at committee hearings.

Macy is now 14. She is a beautiful and sweet girl, well loved by her family. Although she is still unable to talk, she has learned how to sign, use a computer and, at age 10, made the transition from a wheelchair to a walker. I am proud that she was selected this year as the special child to accompany Miss North Carolina at events all over the state.

Macy and I look forward to coming to Raleigh to discuss with you and other senators the bill you have sponsored. After Macy spends some time with you, she will ask whether $250,000 is fair compensation for what she has lost.

Thank you for your consideration.

Sincerely,

April Messer

April Messer

North Carolina Senators

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alan Skipper	NC Med. Soc.
Tim Kent	NC Beer & Wine Wholesalers
Robert Seligson	NCMS
Rose Williams	NCDOI
Elkelson	NCCCP
Amy McConkey	NCBeu
Dave Horn	SHA
Stan Williams	NC Symphony
Jim Summ	

VISITOR REGISTRATION SHEET

Judiciary I — Feb. 15, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jerry Braswell	Connect Inc.
Sammy Thompson	Smith Anderson Law Firm Raleigh
Jesse H. Rigsby, IV	Twiggs Beskind Strickland & Rabenau, PA Raleigh
Annie Ellison	Campbell School of Law
Samuel Flack	Campbell School of Law
Elizabeth Beall	Beall Law Offices, Raleigh
Bill Lamb	Friends of Residents in LTC
John Sumadla	" (FORLTC)
Mark Holt	Kirby & Holt, LLP Raleigh
KEITH CAUGHRON	CCC
Dick Carlton	ally of law
Megan West	Martin & Jones

VISITOR REGISTRATION SHEET

Judiciary I — Feb 17, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ZEB ALLEY	NMRS
Michelle Allan	Campbell Law
Laurie Sanders	North Carolina Coalition for Patient Safety
Chris Heather & Ethan Boone	
L. FAWCETT	NC FRIENDS OF MIDWIVES
Bill Wilson	AARP
Larry Bordeaux	
Erica Baldwin	NC Chamber
Lew Ebert	NC Chamber
	BCBSNC
	BCBSNC

VISITOR REGISTRATION SHEET

Judiciary I — Feb. 17, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sara Fender	IFNC
Jennifer Cohen	IFNC
Tucker Knott	—
Sarah Knott	
Jami Fitzgerald	MLC
Paul Daniels	Ward Black, P.A. Greensboro, NC
Michael Hood	Greensboro, NC
Allison Waller	Charlotte Chamber
Tim Walden	—

VISITOR REGISTRATION SHEET

[redacted] [redacted]

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Maeu Goff	Smith Anderson
John Bowden	Astra Zeneca
Tony Rand	MLC
ROSE HOBAN	WUNC RADIO
Sheyna Altermatz	NCPSC
Fred Bone	Bone & Asso.
John Palinski	NCMA
Subhash Gumber	Raleigh Med Group
John McAlister	NC Chamber
Peter Daniel	NC Farm Bureau

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Ellen	NCRMA
Greg Carmon	NC College Emerg. Physicians
Colleen Kochanek	NCCEP
Michael Utecht	NCCEP
Jon Carr	NC Pediatric Society
Chip Baggett	NCMS
Jaime King	NCMS
Amy Whited	NC med Society
Matt Wolfe	PPAB
Sarah Smith	um
Matthew McConnell	Carolinas HealthCare

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mari Wildin	Novant Health
BJ Miller	Moses Cone Health System
Gary Salamido	GSK
Peyton Mayfield	GPR
Will Polk	Office of Gov.
Kevin FitzGerald	UNC
Andrew Lynch	PST
Julian Philpott	NC Farm Bureau

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dick Taylor	NCAJ
Joe Knott	~~NC~~
Paul Pulley	NCAJ
Sylvia Adcock	NC Lawyers Weekly
Burton Craige	NCAJ
Dip Zinn	NCAJ
W. Stacy Millgate II	
Philip Miller	Blanchard Miller Lewis & Isley
Jim Harrell	NCSA
Doug Heron	Williams Mullen
Billy Warren	GBN Strategies

Public Comments Sign-Up

Senate Judiciary I - February 17, 2011

*Comments will be limited to **3-5 minutes****

Name	Organization or Agency	Supporting/Opposing SB 33
Dick Taylor	NCAJ	opposing
Joe Knott		opposing
Lawrie Sanders		opposing
Karen Rabenau		opposing
Bill Wilson		opposing
Martha Walden		opposing
Bill Lamb		opposing
Heather Cummins Boone		opposing
Lew Ebert	NC Chamber	
(1) Dr. Don Bradley	BCBS NC	
Russ Fawcett	NC Friends of Midwives	PRO
Sam Thompson	NC Medical Society	PRO
Karen Rabenau	behalf Lynn Bradd	opposing
Dr. Greg Cannon	College of Emergency Physicians	Support

*To ensure that both sides are given equal time to speak

SENATE JUDICIARY I COMMITTEE
February 22, 2011 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on February 22, 2011, in Room 1027 of the Legislative Building. Seventeen members of the committee were present. Senator Pete Brunstetter presided.

Game plan: discussion of bill, amendments. We won't vote on the amendments today, we will let people reflect on them and vote the amendments and the bill on Thursday

Floor is open for discussion on the Senate Bill 33.

Senator Stein: The bill articulates for us what the current standard of healthcare is. Try to ensure that everyone is treated according to what is appropriate for their own situation. What the bill does by moving the standard is an unprecedented jump for a professional service. Gross negligence is an extremely high standard, as opposed to negligence which is what is expected of all professionals. Only 2 states have gross negligence for ER docs (FL and GA). This provision in Section I is highly uncommon because it ends up nullifying a duty of professional care. This sends the wrong signal and the wrong incentive—don't want to create incentives that reduce patient safety. Can only imagine how stressful it is to be an ER doc and wants to recognize the unique challenges that they face. Has an amendment. The amendment takes into account the context under which the care was provided. Takes care of exigent circumstances, because the majority of ER cases are not exigent. Raises the standard in exigent situations to "clear and convincing" rather than "preponderance".

Senator Brunstetter: We need to move a little quicker. Calls for discussion on amendment. No discussion. Calls for further amendments.

Senator Clodfelter: Has several amendments. First would adopt federal rule for setting appeal bonds. Takes the good work in the bill and goes beyond it.
Senator Rucho: does the case have any merit?
Clodfelter: that is up to the appellate court
Senator Rucho: a decision had already been made?
Senator Clodfelter: explains how that is determined
Senator Rucho: anyone would be able to appeal without risk?
Senator Clodfelter: no, the judge would set an appeal bond, but the bond would not be the amount of the judgment. This broadens that beyond just med mal cases and tobacco cases.
Senator Clodfelter: second amendment. Doesn't think that the way to solve a problem is by shifting the cost to another group of people. Wants to be sure that the only claims that proceed in the system have merit. This amendment would do that by establishing a process at the discovery conference. One of the greatest costs of these cases is the cost of discovery which drives up the cost of litigation which drives up the cost of settlements. If we put a traffic cop there the costs will go down. This is a technical amendment on rule 9J.

Senator Clodfelter: the next amendment. Along the same lines. Tightens up rule 9J. Have to put everything in front of an expert who then says that you can file a lawsuit. Will strengthen the system.
Senator Clodfelter: the next amendment. Puts a statute of limitations on birth related injuries. This will make it easier for an OB/GYN to get malpractice insurance. Enacts a 10 year period of repose from the date of birth. If the condition hasn't manifested itself within 10 years, a suit cannot be filed. This is done in a number of other states.

Senator Nesbitt: should we discuss or just get them all out?
Chairman Brunstetter: let's get them all out

Senator Clodfelter: the next amendment. Alternate version of periodic payments.
Senator Clodfelter: the next amendment. Different topic. We have issues both in tort system and in the insurance system. If you fix one, the other one might not necessarily respond. This amendment makes a whole series of changes in our insurance laws. Will let folks read it and we can debate it later. Quoted information about med mal insurance rates in NC. Strengthens insurance regulatory oversight. Does not allow companies to import data in other states and underwrite rates in NC.
Senator Clodfelter: the next amendment. Deals with nursing homes and long term care facilities. Would take normal situations out of med mal.

Chairman Brunstetter: other amendments?
Senator Nesbitt: Has an amendment that takes out cap on noneconomic damages. Agrees with Justice Lake.
Chairman Brunstetter: your change of registration form is in the mail.
Senator Nesbitt: when we start down the road of limiting damages you are starting to place different values on different people in different circumstances. We tend to give more compensation to people who make more money. The cap would take that and put it on steroids. What about children, elderly, others who have little to no economic damages?

Chairman Brunstetter: other amendments?
Senator Stein: I have one that is in the alternative to that one.
Chairman Brunstetter: Reader's Digest explanation? Let's get everything on the table.
Senator Stein: the amendment defines noneconomic damages to create two different pots. Things you can see and things that you cannot see. Cap applies to noneconomic damages that are indefinable but does not apply to pain, suffering, etc.
Senator Mansfield: question about noneconomic damages. You can't have it both ways. If you don't want noneconomic damages capped, you have to have something that says "this is an inordinate amount for this case".
Chairman Brunstetter: let's hold the discussion until we get the amendments out.

Senator Apodaca: Introduces amendment to raise cap from $250,000 to $500,000

Senator Goolsby: Introduces amendment to recognize future household services and take that into account when compensation is given. This amendment makes sure that we don't leave out situations in which the case that a spouse is missing and their family is not compensated.

Senator Brown: Introduces amendment to change from "clear and convincing" to "greater weight of evidence"

Chairman Brunstetter: Has an amendment to change from 75k to 250k for periodic payments.

Senator Clodfelter: Is there a way that we can have a way for the background information to the members?
Chairman Brunstetter: we can post it on the website

Chairman Brunstetter: floor is open for discussion. Let's discuss the damage cap issue.
Senator Stein, answering Senator Mansfield: Juries are the ones who decide what is an appropriate compensation for an injury that someone has suffered. What is the highest and what is the average judgment of noneconomic damages? I think that our current system works.
Senator Mansfield: the reason that we have such a small amount of cases that go to trial is because cases are settled if the physician feels that he was negligent. The reason that we don't have a preponderance of cases in the court system is because of that.
Senator Tillman: in some cases you can't award enough money, like in the case of the little boy from last week. But we need a cap in the cases where emotions can run wild. We are trying to make some sense of this.
Senator Clodfelter: I don't think this solves the problem. The problem is medical errors. Both patients and doctors are interested in this problem and want to solve it. No correlation in existence of limits on damage and medical errors, costs of insurance. This means that we are not addressing the issue. Caps do not help us get there.
Senator Jenkins: Hasn't seen commitment in parties involved. How do these caps benefit patient care? We have a two headed monster—tort reform and insurance systems. I don't know that we are getting to the end. This is only one part of the bigger picture. We are not fixing all the problems and getting to the patient.
Senator Apodaca: Apples and oranges. Talking about access to care. We had a crisis in Hendersonville—all the OBs left and we had no one to deliver babies in our counties. This becomes an access to care issue. We have not even brought up the issue of the cost of defensive medicine. We need care in rural areas.

Chairman Brunstetter: we are going to get a sheet out that has the various amendments.

The meeting adjourned at 10:56 AM.

Senator Pete Brunstetter, Presiding

Sarah Hardin, Committee Clerk



Tim Fisher
302 Torrence Avenue
Jacksonville, NC 28540

February 9, 2011

Senator Harry Brown
300 N. Salisbury Street, Room 300-B
Raleigh, NC 27603-5925

Dear Senator Brown:

You might not remember me, but I used to detail cars at Moore Buick when you were the Sales Manager there. Over the years, through hard work, I managed to advance through the ranks in the car business from washing cars to managerial positions.

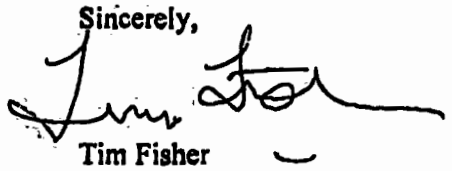
In 2005, I was diagnosed with leukemia, received treatment and was in remission. I had what should have been a minor setback. I had a reaction to some of the chemotherapy drugs and was admitted to a hospital for what was supposed to be a very short stay. Medications and treatment that should have been given to me were not administered. I became horribly septic and went into a coma. When I woke up weeks later, I was told I had to have both my arms amputated below the elbows and both my legs amputated below the knees. At first I thought I would rather die. But I consented. I needed to live and do the best I could for the sake of my children.

I have come to realize that I made the right decision to let the doctors cut off my arms and legs. But I can assure you that I have traveled a long and painful road.

I understand that you are one of the sponsors of a "tort reform" bill that will drastically affect the rights of people like me to recover compensation for injuries caused by medical mistakes. When you consider placing a cap of $250,000 on damages for pain, suffering, emotional distress, physical impairment, and disfigurement, please pause for a moment and think about me.

I have always respected you and thought of you as a fair-minded man. I have voted for you in every race you have run. I ask you to carefully consider these proposed "malpractice reforms," understand their impact on severely injured patients, and then do the fair thing.

Sincerely,



Tim Fisher

cc: All senators

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 33

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

S33-ATG-5 [v.3]

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

Date February 22 ,2011

Senator _____

moves to amend the bill on page 1, lines 13-14 by rewriting the lines to read:
"**§ 90-21.12. Standard of health care.**"

and on page 1, line 22 by rewriting the line to read:
"similar communities under the same or similar circumstances at the time of the alleged act or omission giving rise to the cause of action."

and on page 1, lines 23-30, by rewriting the lines to read:
"(b) In any medical malpractice action arising out of the furnishing or the failure to furnish services pursuant to obligations imposed by 42 USC §1395dd for an emergency medical condition as defined in 42 USC §1395dd, the defendant health care provider shall not be liable for the payment of damages unless the trier of fact finds by clear and convincing evidence that the health care provider failed to comply with the standard of care required under subsection (a) of this section. Nothing in this subsection shall be construed to change, alter, override, or otherwise affect the provisions of G.S. 90-21.14, 90-21.15, 90-21.16, or 20-166.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 33

AMENDMENT NO. 2
(to be filled in by Principal Clerk)

S33-AMH-15 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S33-CSTG-1

Date February 22 ,2011

Senator Clodfelter

moves to amend the bill on page 1, lines 8 and 9 by rewriting the lines to read:
"PAYMENT, BY MODIFYING APPEAL BONDS IN MEDICAL MALPRACTICE ACTIONS, AND BY IMPOSING A 10-YEAR LIMITATION ON CERTAIN MEDICAL MALPRACTICE ACTIONS RELATED TO BIRTH-RELATED INJURIES."

and on page 4, line 38 by inserting the following after that line:

"**SECTION 6.1.** G.S. 1-17(b) reads as rewritten:

"(b) Notwithstanding the provisions of subsection (a) of this section, an action on behalf of a minor for malpractice arising out of the performance of or failure to perform professional services shall be commenced within the limitations of time specified in G.S. 1-15(c), except that if those time limitations expire before the minor attains the full age of 19 years, the action may be brought before the minor attains the full age of 19 ~~years.~~years, but in no event may an action arising from birth-related injuries be commenced more than 10 years from the last act of the defendant giving rise to the cause of action."

and on page 4, lines 44 through 46 by rewriting the lines to read:

"**SECTION 8.** This act becomes effective October 1, 2011. Sections 1, 3, 4, and 5 apply to causes of action arising on or after the effective date. Sections 2, 6, and 6.1 apply to actions commenced on or after the effective date."

SIGNED Daniel W Clodfelter
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 33

AMENDMENT NO. 3
(to be filled in by Principal Clerk)

S33-AST-1 [v.2]

Comm. Sub. [YES]
Amends Title [YES]
First Edition

Date February 22 ,2011

Senator Clodfelter

moves to amend the bill on page 1, line 9 by deleting "AND" on that line;

and on page 1, line 10 by rewriting the line to read:
"ACTIONS, AND TO REQUIRE CERTAIN INFORMATION BE PROVIDED BY EXPERT WITNESSES.";

and on page 4, lines 38-39 by inserting the following between those lines:

"**SECTION 6.5.** G.S. 1A-1, Rule 26(f1) reads as rewritten:

"(f1) Medical malpractice discovery conference. – In a medical malpractice action as defined in G.S. 90-21.11, upon the case coming at issue or the filing of a responsive pleading or motion requiring a determination by the court, the judge shall, within 30 days, direct the attorneys for the parties to appear for a discovery conference. At the conference the court may consider the matters set out in Rule 16, and shall:

...

(2) Establish an appropriate schedule for designating expert witnesses, consistent with a discovery schedule pursuant to subdivision ~~(3), to be complied with by all parties to the action such that there is a deadline for designating all expert witnesses within an appropriate time for all parties to implement discovery mechanisms with regard to the designated expert witnesses;~~(3). As to each expert designated, the designation shall be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation the witness is to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years. The party shall supplement the expert's report if the party learns that in some material respect the report is incomplete or incorrect. The expert's direct testimony shall not be inconsistent with or go beyond the fair scope of the

expert report as supplemented. The parties shall not depose expert witnesses, unless the court otherwise orders for good cause shown.

...".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 33

AMENDMENT NO. 4
(to be filled in by Principal Clerk)

S33-ARN-2 [v.3]

Comm. Sub. [YES]
Amends Title [YES]
First Edition

Date February 22 ,2011

Senator Clodfelter

moves to amend the bill on page 1, lines 2-10, by rewriting those lines to read:

"AN ACT TO REFORM THE LAWS RELATING TO MEDICAL LIABILITY BY PROVIDING LIMITED PROTECTION FROM LIABILITY TO THOSE REQUIRED BY FEDERAL LAW TO PROVIDE EMERGENCY MEDICAL CARE, BY AUTHORIZING THE BIFURCATION OF TRIALS ON ISSUES OF LIABILITY AND DAMAGES IN CERTAIN ACTIONS, BY LIMITING THE AMOUNT OF NONECONOMIC DAMAGES THAT MAY BE AWARDED, BY AUTHORIZING THE PERIODIC PAYMENT OF FUTURE ECONOMIC DAMAGES IN LIEU OF A LUMP-SUM PAYMENT, BY MODIFYING APPEAL BONDS IN MEDICAL MALPRACTICE ACTIONS, AND BY CLARIFYING THE STANDARD FOR CIVIL ACTIONS ARISING FROM NONPROFESSIONAL NEGLIGENCE."

and on page 4, lines 38-39, by inserting the following between the lines:

"**SECTION 6.3.** Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-21.12B. Nonprofessional negligence actions.**

Civil actions for damages for personal injury or death arising out of the furnishing or failure to furnish patient care services other than professional services by a health care provider in conjunction with the performance of medical, dental, or other health care by a health care provider shall be brought in accordance with the provisions of G.S. 90-21.11, 90-21.12A, 90-21.12C, 90-21.12D, 90-21.18A, and 90-21.18B, but shall not be subject to the requirements of G.S. 1A-1, Rule 9(j).";

and on page 4, lines 44-46, by rewriting those lines to read:

"**SECTION 8.** This act becomes effective October 1, 2011. Sections 1, 3, 4, 5, and 6.3 apply to causes of action arising on or after the effective date. Sections 2 and 6 apply to actions commenced on or after the effective date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 33

AMENDMENT NO. 5
(to be filled in by Principal Clerk)

S33-ARN-3 [v.2]

Comm. Sub. [YES]
Amends Title [YES]
First Edition

Date February 22, ,2011

Senator Clodfelter

moves to amend the bill on page 1, line 2-10, by rewriting those lines to read:

"AN ACT TO REFORM THE LAWS RELATING TO MEDICAL LIABILITY BY PROVIDING LIMITED PROTECTION FROM LIABILITY TO THOSE REQUIRED BY FEDERAL LAW TO PROVIDE EMERGENCY MEDICAL CARE, BY AUTHORIZING THE BIFURCATION OF TRIALS ON ISSUES OF LIABILITY AND DAMAGES IN CERTAIN ACTIONS, BY LIMITING THE AMOUNT OF NONECONOMIC DAMAGES THAT MAY BE AWARDED, BY AUTHORIZING THE PERIODIC PAYMENT OF FUTURE ECONOMIC DAMAGES IN LIEU OF A LUMP-SUM PAYMENT, BY MODIFYING APPEAL BONDS IN MEDICAL MALPRACTICE ACTIONS, AND BY CLARIFYING THAT COMPLAINTS ALLEGING MEDICAL MALPRACTICE BY HEALTH CARE PROVIDES MUST ASSERT THAT ALL MEDICAL RECORDS AVAILABLE TO THE PLAINTIFF HAVE BEEN REVIEWED BY AN EXPERT WITNESS.";

And on page 4, lines 38-39, by inserting the following between those lines:

"**SECTION 6.4.** G.S. 1A-1, Rule 9(j) reads as rewritten:

"(j) Medical malpractice. – Any complaint alleging medical malpractice by a health care provider as defined in G.S. 90-21.11 in failing to comply with the applicable standard of care under G.S. 90-21.12 shall be dismissed unless:

(1) The pleading specifically asserts that the medical care ~~has~~ and all medical records pertaining to the alleged injury then available to the plaintiff after reasonable inquiry, have been reviewed by a person who is reasonably expected to qualify as an expert witness under Rule 702 of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care;

(2) The pleading specifically asserts that the medical care ~~has~~ and all medical records pertaining to the alleged injury then available to the plaintiff after reasonable inquiry, have been reviewed by a person that the complainant will seek to have qualified as an expert witness by motion under Rule 702(e) of the Rules of Evidence and who is willing to testify that the medical care

did not comply with the applicable standard of care, and the motion is filed with the complaint; or

(3) The pleading alleges facts establishing negligence under the existing common-law doctrine of res ipsa loquitur.

Upon motion by the complainant prior to the expiration of the applicable statute of limitations, a resident judge of the superior court for a judicial district in which venue for the cause of action is appropriate under G.S. 1-82 or, if no resident judge for that judicial district is physically present in that judicial district, otherwise available, or able or willing to consider the motion, then any presiding judge of the superior court for that judicial district may allow a motion to extend the statute of limitations for a period not to exceed 120 days to file a complaint in a medical malpractice action in order to comply with this Rule, upon a determination that good cause exists for the granting of the motion and that the ends of justice would be served by an extension. ~~The plaintiff shall provide, at the request of the defendant, proof of compliance with this subsection through up to ten written interrogatories, the answers to which shall be verified by the expert required under this subsection. These interrogatories do not count against the interrogatory limit under Rule 33.~~ At the request of the defendant, the plaintiff shall furnish to the defendant, within 30 days, an affidavit from the expert certifying compliance with this subsection." ;

and on page 4, lines 44-46, by rewriting those lines to read:

"**SECTION 8.** This act becomes effective October 1, 2011. Sections 1, 3, 4, 5, and 6.4 apply to causes of action arising on or after the effective date. Sections 2 and 6 apply to actions commenced on or after the effective date."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 33

AMENDMENT NO. 6
(to be filled in by Principal Clerk)

S33-AST-2 [v.1]

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

Date February 22 ,2011

Senator Clodfelter

moves to amend the bill on page 2, line 35 through page 3, line 23 by rewriting those lines to read:

"**SECTION 4.** Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-21.18B. Periodic payment of future economic damages in medical negligence actions.**

(a) As used in this section:

(1) 'Future economic damages' includes all economic damages for future medical treatment, care or custody, and loss of future earnings of the plaintiff following the date of the verdict or award.

(2) 'Periodic payments' means the payment of money to the plaintiff at regular intervals.

(b) Upon the award of damages in any action brought under Article 1B of Chapter 90 of the General Statutes, the court shall, at the request of either party, after hearing and a determination by the court of the amount of the judgment that should be attributed to future economic damages, enter a judgment ordering that the amount of future economic damages of the plaintiff in excess of the sum of:

(1) One hundred thousand dollars ($100,000),

(2) The amount of the future medical expenses expected to be incurred by the plaintiff within the next 12 months, including the cost of any special equipment or adaptations necessary for daily care and living arrangements, due to the negligence of the defendant, plus

(3) An amount equal to the costs and attorneys' fees incurred and payable by the plaintiff in litigating the case multiplied by a fraction, the numerator of which is the amount of future economic damages in excess of one hundred thousand dollars ($100,000) and the denominator of which is the amount of the total judgment in favor of the plaintiff,

be paid in whole or in part by periodic payments rather than by a lump-sum payment. If the court finds that the sum of subdivisions (1), (2), and (3) of this subsection are insufficient to provide for the plaintiff's immediate needs, the court may make such adjustments in the amount to be paid by periodic payments as the court finds are necessary to ensure that the amount of

the nondeferred compensation will be adequate for the plaintiff's immediate needs. In entering a judgment under this section ordering the payment of future economic damages by periodic payments, the court shall make a specific finding of the total dollar amount of periodic payments that will equal the present value of the jury's lump-sum award to compensate the plaintiff for future economic damages.

(c) As a condition to authorizing periodic payments of future economic damages, the court in its order of judgment, shall require the defendant to post a bond or security, or otherwise to assure full payment of future damages awarded by the judgment including that payments be made through the establishment of a trust fund or the purchase of an annuity for the life of the plaintiff or during the continuance of the plaintiff's compensable injury or disability. The purchase of an annuity found by the court to be through a duly licensed and adequately capitalized insurance company shall satisfy the requirements of this subsection. A trust fund found by the court to be adequately funded and insured shall satisfy the requirements of this subsection. For periodic payments to be made directly by the defendant, the court shall approve periodic payments of future damages only if it finds that all payments which are due to be made are secured by a bond issued by an insurance company authorized to write such bonds in this State and which is rated "A plus" (A+) or better by Best's Insurance Reports. If the defendant is unable to adequately assure full payment of future damages, the court shall order that all future damages be paid to the plaintiff in a lump sum pursuant to the verdict. No bond may be canceled or be subject to cancellation unless at least 60 days' advance written notice is filed with the court and the plaintiff. Upon termination of periodic payments, the court shall order the return of the security, or so much as remains, to the defendant.

(d) The judgment providing for payment of future economic damages by periodic payments shall specify the recipient of the payments, the dollar amounts of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made. Periodic payments shall be subject to modification by the court in the event of death of the plaintiff as provided in subsection (e) of this section.

(e) In any judgment that orders future economic damages payable in periodic payments, liability for payment of future medical damages not yet due shall terminate upon the death of the plaintiff; however, the court that rendered the original judgment may modify the judgment to provide that damages awarded for loss of future earnings shall not be reduced or payments terminated by reason of the death of the plaintiff, but shall be paid to persons to whom the plaintiff owed a duty of support, as provided by law, immediately prior to the plaintiff's death.

(f) In the event the court finds that the defendant has exhibited a pattern of failing to make the payment specified in subsection (b) of this section, the court may do one or more of the following:

(1) Order that all remaining amounts of the award be paid by lump sum within 30 days after entry of the order.

(2) Find the defendant in contempt of court and, in addition to the required periodic payments, order the defendant to pay the plaintiff all damages caused by the failure to timely make periodic payments, including court costs and attorneys' fees.

(3) Enter other orders or sanctions as appropriate to protect the defendant.

(g) Nothing in this section shall preclude any other method of payment of awards, if the method is consented to by the parties.";

and on page 3, line 34 by deleting " G.S. 90-21.19A(a)(1)." and substituting "G.S. 90-21.18B(a)(1).".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 33

AMENDMENT NO. 7
(to be filled in by Principal Clerk)

S33-AMH-14 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S33-CSTG-1

Date February 22 ,2011

Senator Clodfelter

moves to amend the bill on page 1, lines 9 and 10 by rewriting the lines to read:
"PAYMENT, BY MODIFYING APPEAL BONDS IN MEDICAL MALPRACTICE ACTIONS, BY REFORMING THE PROCESS FOR SETTING HEALTH CARE PROVIDER PROFESSIONAL MALPRACTICE INSURANCE RATES, AND BY REQUIRING ADDITIONAL DISCLOSURES IN MEDICAL MALPRACTICE CLAIM REPORTS AND THAT THE COMMISSIONER OF INSURANCE ANALYZE AND REPORT ON THE CLAIM REPORTS."

and on page 4, line line 38 by inserting the following after that line:

"**SECTION 6.1.** Article 40 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-40-32. Health care provider professional malpractice insurance rates.**

(a) As used in this section:

(1) "Health care provider" has the same meaning as defined in G.S. 90-21.11.

(2) "Insurer" means an insurer or State-chartered risk retention group that provides professional malpractice insurance to health care providers in this State.

(b) No insurer's rate shall be approved or remain in effect that is excessive, inadequate, unfairly discriminatory, as defined in G.S. 58-40-20, or otherwise in violation of this Chapter. In considering whether a rate is excessive, inadequate, or unfairly discriminatory, no consideration shall be given to the degree of competition, and the Commissioner shall consider whether the rate mathematically reflects the insurer's investment income.

(c) Every insurer that desires to change any rate shall file a complete rate application with the Commissioner. A complete rate application shall include all data required by G.S. 58-40-30(b) and G.S. 58-41-50, and a detailed description of any experience rating or schedule-rating plan used by the insurer. The application shall also include such other information that the Commissioner requires. The applicant has the burden of proving that the requested rate change is justified and meets the requirements of this Article.

(d) Within 10 days of receiving the rate change application, the Commissioner shall notify the public on the Department's Internet web site of any application by an insurer for a rate change and shall provide written notification of the rate change application to any trade association or organization that represents health care providers and that registers with the Department to receive notification.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 33

AMENDMENT NO. 8
(to be filled in by Principal Clerk)

S33-ATG-12 [v.1]

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

Date February 22, 2011

Senator Clodfelter

moves to amend the bill on page 3, line 37 through page 4, line 38, by rewriting those lines to read:

"**§ 1-289. Undertaking to stay execution on money judgment.**

(a) If the appeal is from a judgment directing the payment of money, it does not stay the execution of the judgment unless a written undertaking is executed on the part of the appellant, by one or more sureties, as set forth in this section.

(a1) In an action where the judgment directs the payment of money, the court shall specify the amount of the undertaking required to stay execution of the judgment pending appeal as provided in subsections (a2) and (b) of this section. The undertaking shall be to the effect that if the judgment appealed from, or any part thereof, is affirmed, or the appeal is dismissed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if affirmed only in part, and all damages which shall be awarded against the appellant upon the appeal, except as provided in subsection (b) of this section. Whenever it is satisfactorily made to appear to the court that since the execution of the undertaking the sureties have become insolvent, the court may, by rule or order, require the appellant to execute, file and serve a new undertaking, as above. In case of neglect to execute such undertaking within twenty days after the service of a copy of the rule or order requiring it, the appeal may, on motion to the court, be dismissed with costs. Whenever it is necessary for a party to an action or proceeding to give a bond or an undertaking with surety or sureties, he may, in lieu thereof, deposit with the officer into court money to the amount of the bond or undertaking to be given. The court in which the action or proceeding is pending may direct what disposition shall be made of such money pending the action or proceeding. In a case where, by this section, the money is to be deposited with an officer, a judge of the court, upon the application of either party, may, at any time before the deposit is made, order the money deposited in court instead of with the officer; and a deposit made pursuant to such order is of the same effect as if made with the officer. The perfecting of an appeal by giving the undertaking mentioned in this section stays proceedings in the court below upon the judgment appealed from; except when the sale of perishable property is directed, the court below may order the property to be sold and the proceeds thereof to be deposited or invested, to abide the judgment of the appellate court.

(a2) Except as provided in subsection (b) of this section, the amount of the undertaking that shall be required by the court shall be an amount determined by the court after notice and

hearing proper and reasonable for the security of the rights of the adverse party, considering relevant factors including the following:

(1) The amount of the judgment.

(2) The amount of the limits of all applicable liability policies of the appellant judgment debtor.

(3) The aggregate net worth of the appellant judgment debtor.

(b) If the appellee in a civil action brought under any legal theory obtains a judgment directing the payment or expenditure of money in the amount of twenty five million dollars ($25,000,000) or more, and the appellant seeks a stay of execution of the judgment within the period of time during which the appellant has the right to pursue appellate review, including discretionary review and certiorari, the amount of the undertaking that the appellant is required to execute to stay execution of the judgment during the entire period of the appeal shall be twenty five million dollars ($25,000,000).

(c) If the appellee proves by a preponderance of the evidence that the appellant for whom the undertaking has been limited under ~~subsection~~ subsections (a2) and (b) of this section is, for the purpose of evading the judgment, (i) dissipating its assets, (ii) secreting its assets, or (iii) diverting its assets outside the jurisdiction of the courts of North Carolina or the federal courts of the United States other than in the ordinary course of business, then the ~~limitation~~ limitations in ~~subsection~~ subsections (a2 and (b) of this section shall not apply and the appellant shall be required to make an undertaking in the full amount otherwise required by this section.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

(e) The application shall be deemed to be approved 60 days after public notice and written notification under subsection (d) of this section unless any of the following occur:

(1) An insured health care provider, the health care provider's representative, or an association of health care providers, requests a hearing within 30 days after public notice and the Commissioner grants the hearing, or determines not to grant the hearing and issues written findings in support of that decision.

(2) The Commissioner on the health care provider's own motion determines to hold a hearing.

(3) The proposed rate adjustment exceeds fifteen percent (15%) of the then-applicable rate, in which case the Commissioner must hold a hearing.

In any event, a rate change application shall be deemed to be approved 120 days after the Commissioner receives the rate application unless that application has been disapproved by a final order of the Commissioner after a hearing. For purposes of this section, "received" means the date delivered to the Department.

(f) The provisions of G.S. 58-40-45 governing the disapproval and interim use of rates shall apply to this section."

SECTION 6.2. G.S. 58-2-170 reads as rewritten:

"**§ 58-2-170. Annual statements by professional liability insurers; medical malpractice claim reports.**

(a) In addition to the financial statements required by G.S. 58-2-165, every insurer, self-insurer, and risk retention group that provides professional liability insurance in the State shall file with the Commissioner, on or before the first day of February in each year, in form and detail as the Commissioner prescribes, a statement showing the items set forth in subsection (b) of this section, as of the preceding 31st day of December. The annual statement shall not be reported or disclosed to the public in a manner or format which identifies or could reasonably be used to identify any individual health care provider or medical center. The statement shall be signed and sworn to by the chief managing agent or officer of the insurer, self-insurer, or risk retention group, before the Commissioner or some officer authorized by law to administer oaths. The Commissioner shall, in December of each year, furnish to each such person that provides professional liability insurance in the State forms for the annual statements. The Commissioner may, for good cause, authorize an extension of the report due date upon written application of any person required to file. An extension is not valid unless the Commissioner's authorization is in writing and signed by the Commissioner or one of his deputies.

(b) The statement required by subsection (a) of this section shall contain:

(1) Number of claims pending at beginning of year;

(2) Number of claims pending at end of year;

(3) Number of claims paid;

(4) Number of claims closed no payment;

(5) Number and amounts of claims in court in which judgment ~~paid:~~ was entered, the amount of the judgment, and the actual amount paid on the

judgment or in settlement of the judgment. For both the amount of the judgment and the actual amount paid, provide the:

a. Highest amount
b. Lowest amount
c. Average amount
d. Median amount;

(6) Number and amounts of claims out of court in which settlement paid:

a. Highest amount
b. Lowest amount
c. Average amount
d. Median amount;

(7) Average amount per claim set up in reserve;
(8) Total premium collection;
(9) Total expenses less reserve expenses; and
(10) Total reserve expenses.

(b1) The Commissioner shall analyze the reports described in subsections (a) and (b) of this section and shall file statistical and other summaries with the General Assembly no later than March 1 of each year. Summaries filed by the Commissioner pursuant to this subsection shall include all of the following:

(1) Any trends noted or observed from the data.
(2) All actions taken by the Commissioner in response to these trends.
(3) Any legislative or other recommendations from the Commissioner with respect to actions by the General Assembly in response to these trends.

(c) Every insurer, self-insurer, and risk retention group that provides professional liability insurance to health care providers in this State shall file, within 90 days following the request of the Commissioner, a report containing information for the purpose of allowing the Commissioner to analyze claims. The report shall be in the form prescribed by the Commissioner. The form prescribed by the Commissioner shall be a form that permits the public inspection, examination, or copying of any information contained in the report: Provided, however, that any data or other characteristics that identify or could be used to identify the names or addresses of the claimants or the names or addresses of the individual health care provider or medical center against whom the claims are or have been asserted or any data that could be used to identify the dollar amounts involved in such claims shall be treated as privileged information and shall not be made available to the public. The Commissioner shall analyze these reports and shall file statistical and other summaries based on these reports with the General Assembly as soon as practicable after receipt of the reports. The Commissioner shall assess a penalty against any person that willfully fails to file a report required by this subsection. Such penalty shall be one thousand dollars ($1,000) for each day after the due date of the report that the person willfully fails to file: Provided, however, the penalty for an individual who self insures shall be two hundred dollars ($200.00) for each day after the due date of the report that the person willfully fails to file: Provided, however, that upon the failure of a person to file the report as required by this subsection, the Commissioner shall send by certified mail, return receipt requested, a notice to that person informing him that

he has 10 business days after receipt of the notice to either request an extension of time or file the report. The Commissioner may, for good cause, authorize an extension of the report due date upon written application of any person required to file. An extension is not valid unless the Commissioner's authorization is in writing and signed by the Commissioner or one of his deputies.

(d) Every person that self-insures against professional liability in this State shall provide the Commissioner with written notice of such self-insurance, which notice shall include the name and address of the person self-insuring. This notice shall be filed with the Commissioner each year for the purpose of apprising the Commissioner of the number and locations of persons that self-insure against professional liability."

SECTION 6.3. G.S. 58-40-25 reads as rewritten:

"**§ 58-40-25. Rating methods.**

In determining whether rates comply with the standards under G.S. 58-40-20, the following criteria shall be applied:

(1) Due consideration shall be given to past and prospective loss and expense experience within this State, to catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to trends within this State, to dividends or savings to be allowed or returned by insurers to their policyholders, members, or subscribers, and to all other relevant factors, including judgment factors; however, regional or countrywide expense or loss experience and other regional or countrywide data may be considered only when credible North Carolina expense or loss experience or other data is not available.

(1a) Notwithstanding the provisions of subdivision (1) of this section, an insurer or State-chartered risk retention group that provides professional malpractice insurance to health care providers, as defined in G.S. 90-21.11, may use regional or countrywide expense or loss experience and other regional or countrywide data only upon written approval by the Commissioner. The Commissioner may approve the use of regional or countrywide data only upon a finding of good cause.

(2) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Those standards may measure any differences among risks that have probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations. Those classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions.

(3) The expense provisions included in the rates to be used by an insurer may reflect the operating methods of the insurer and, as far as it is credible, its own expense experience.

(4) In the case of property insurance rates under this Article, consideration shall be given to the insurance public protection classifications of fire districts established by the Commissioner. The Commissioner shall establish and modify from time to time insurance public protection districts for all rural areas of the State and for cities with populations of 100,000 or fewer, according to the most recent annual population estimates certified by the State Planning Officer. In establishing and modifying these districts, the Commissioner shall use standards at least equivalent to those used by the Insurance Services Office, Inc., or any successor organization. The standards developed by the Commissioner are subject to Article 2A of Chapter 150B of the General Statutes. The insurance public protection classifications established by the Commissioner issued pursuant to the provisions of this Article shall be subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated in G.S. 58-2-75(a) do not apply."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 33

AMENDMENT NO. 9
(to be filled in by Principal Clerk)

S33-ATG-11 [v.1]

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

Date February 22, ,2011

Senator Nesbitt

moves to amend the bill on page 2, lines 17 through 34, by deleting Section 3 of the bill;

and on page 4, lines 39-43, by deleting Section 7 of the bill;

and by renumbering the remaining sections accordingly;

and on page 4, lines 44-46, by rewriting the lines to read:
"**SECTION 6.** This act becomes effective October 1, 2011. Sections, 1, 3 and 4 apply to causes of action arising on or after the effective date. Sections 2 and 5 apply to actions commenced on or after the effective date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 33

AMENDMENT NO. 10
(to be filled in by
Principal Clerk)

S33-ATG-7 [v.2]

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

Date February 22 ,2011

Senator Stein

moves to amend the bill on page 2, lines 26-29 by rewriting those lines to read:
"(b) As used in this section, "noneconomic damages" means damages to compensate for pain, suffering, emotional distress, loss of consortium, inconvenience, and any other nonpecuniary, compensatory damage other than disfigurement, brain damage, paralysis, physical impairment or death. As used in this section, "noneconomic damages" does not include damages to compensate for disfigurement, brain damage, paralysis, physical impairment, or death, and does not include punitive damages as defined in G.S. 1D-5.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 33

AMENDMENT NO. 11
(to be filled in by Principal Clerk)

S33-ATG-3 [v.3]

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

Date February 22, ,2011

Senator Apodaca

moves to amend the bill on page 2, lines 22-24 by rewriting the lines to read:
"for which judgment is entered shall not exceed five hundred thousand dollars ($500,000) per defendant per occurrence. In the event that any verdict or award of noneconomic damages stated pursuant to G.S. 90-21.19B(1) exceeds five hundred thousand dollars ($500,000) per defendant per occurrence, the".

SIGNED Apodaca
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 33

AMENDMENT NO. 12
(to be filled in by Principal Clerk)

S33-ATG-1 [v.3]

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

Date February 22, 2011

Senator Goolsby

moves to amend the bill on page 2, line 41 by rewriting the line to read:
"treatment, care or custody, loss of future earnings, loss of future household services, and any other future"

and on page 2, line 47 by rewriting the line to read:
"future economic damages, and what amount, if any, of the total amount awarded for future economic damages represents damages awarded for loss of future earnings or loss of future household services."

and on page 3, line 20 by rewriting the line to read:
"payment of future periodic payments compensating the plaintiff for loss of future earnings or loss of future household services shall"

and on page 3, by inserting the following between lines 31 and 32:
"(4) Loss of future earnings.
(5) Loss of future household services."

and on page 3, line 35 by rewriting the line to read:
"damages are those damages for medical treatment, care or custody, loss of earnings, loss of household services, and any".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 33

AMENDMENT NO. 13
(to be filled in by
Principal Clerk)

S33-ATG-4 [v.2]

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

Date February 22 ,2011

Senator Brown

moves to amend the bill on page 1, lines 26-27, by replacing the words "by clear and convincing evidence " with the words "by the greater weight of the evidence".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

Brunstetter.

EDITION No. _____

H. B. No. _____ DATE 2-22-11

S. B. No. 33 Amendment No. 14
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S33-CST6-1[v.5]

Rep.)
(Sen.) Brunstetter

1 moves to amend the bill on page 3, line 1
2 ( ) WHICH CHANGES THE TITLE
3 by replacing the words "seventy-five thousand dollars
4 ($75,000)" with the words "two hundred
5 thousand dollars ($200,000)".
6
7
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027 LB

DATE: 2-22 **TIME:** 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Nick Hall	Raleigh	P. Berger
2		
3		
4		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

VISITOR REGISTRATION SHEET

Judiciary I
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michael Hood	Blindness Victim of Medical Malpractice
Gregg Thompson	WPTF
Andrew Lynch	DST
Jason Sheffield	DST
Paul Pally	NCAJ
Philip Esley	NCAJ
Daniel Ambrose	NCLM
Fred Bone	Bone & Asso.
Allison Walter	charlottechamber
Mark Fleming	WCBS NC
	BCBSNC

VISITOR REGISTRATION SHEET

Judiciary I
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

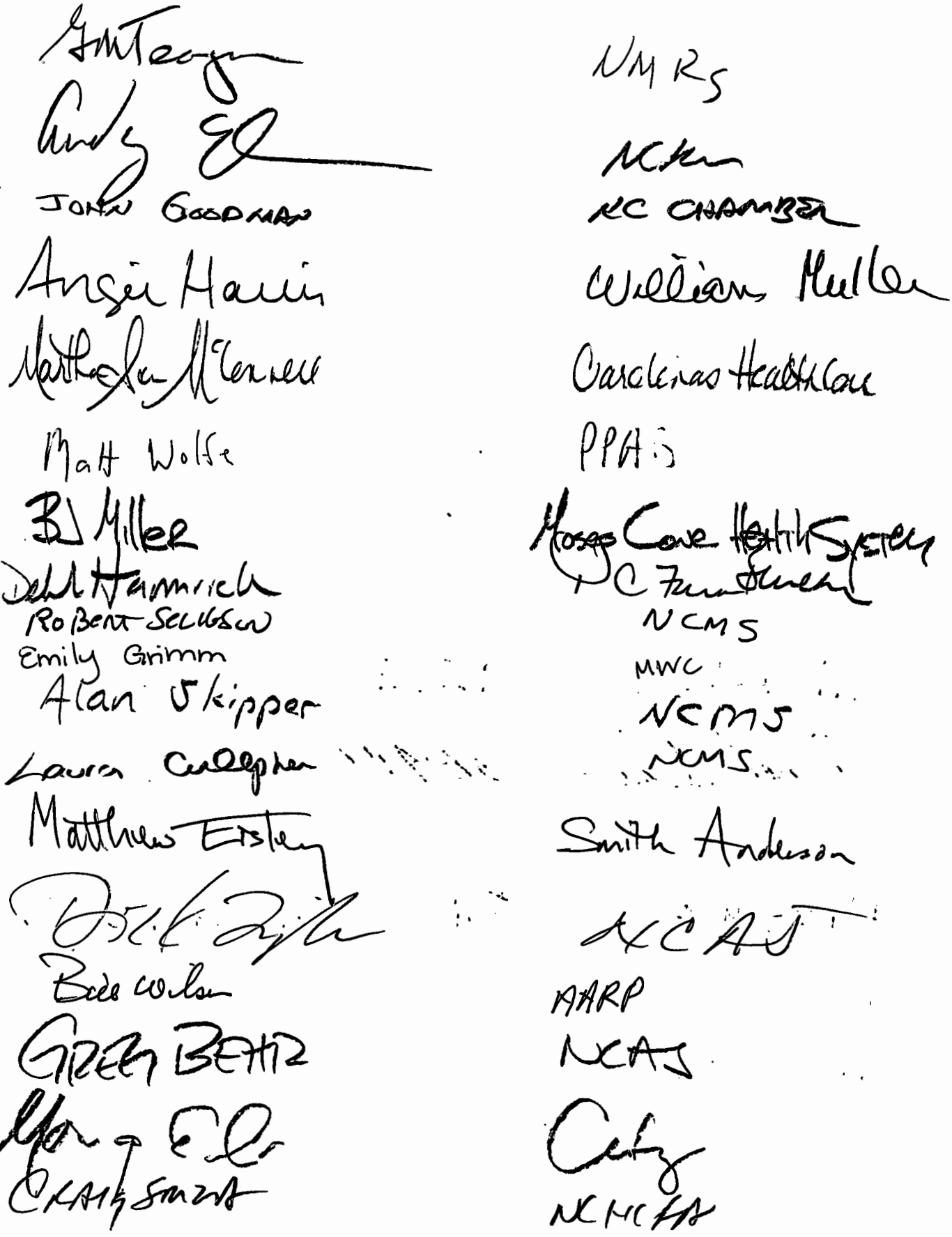
NAME	FIRM OR AGENCY AND ADDRESS
Laurie Sanders	North Carolina Coalition for Patient Safety P.O Box 78946 Charlotte, NC 28271
Joseph Neff	NCCLA.com 217 S. McDowell Raleigh 27601
Kelli Sigg	JLF
Kyle Haney	NC Democratic Senate Caucus
Dana Hamm	S.t.
Sammy Thompson	SA
Tamara Flack	Campbell School of Law
Annie Ellison	Campbell School of Law
Nelma Sewell	NC Med Soc
	NC Med Soc
Amy Whited	NC med soc
Bobby Lowery, FNP	NCNA – Nurse of The Day

VISITOR REGISTRATION SHEET

Judiciary I
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Maeve Goff	Smith Anderson
Amy McConkey	NC Bev Ass'n
Henry Hutaff	N. P. B. A.
Bob Crumley	
Erica Nelson	NCCCP
Chuck Stone	SEANC
Kathryn Westcott	ACEC/NC
Elizabeth Beall	Friends of Residents in Long Term Care
Peyton Maynard	
Morgan Beam	
Barbara Candler	
Dana Simpson	ICS Smith Anders



VISITOR REGISTRATION SHEET

Judiciary I
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michelle Frazier	MF+S
Jennifer Cohen	IFNC
Sara Fender	IFNC
Martha Brock	Examiner.com / Media
BERRY JENKINS	CAROLINAS AGC
SANDY SANDS	UNC
TRAVIS FAIR	Winston-Salem Journal
Sarah Leonard BreAnna	
Megan West	Martin & Jones
Burton Craige	NCAJ
Robert Lovard	MCIC
Colleen Cochrane	NCCEP
Michael Utecht	NCCEP

Chuy Bagneris

J. Fitzgerald

John McAlister

Lee Kaylor

Will Pugh

NCMS

MLC

NC Counsel

Kaylor Law Firm

6th Office

SENATE JUDICIARY I COMMITTEE
February 24, 2011 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on February 24, 2011, in Room 1027 of the Legislative Building. Seventeen members of the committee were present. Senator Pete Brunstetter presided.

Chairman Brunstetter: Game plan for today. Last time we received 14 proposed amendments to the bill. We have sat down with bill sponsors and created a PCS that reflects the current position of the bill sponsors.

Senator Apodaca moved to adopt the PCS for purposes of discussion. Motion carries unanimously.

Bill Patterson walked the members through the PCS and the changes.

Senator Clodfelter removed 3 amendments because he did not feel the need to keep them before the committee with the changes in the PCS. He removed the insurance reform amendment because it would work better as another bill. The nursing home amendment was also removed.

Senator Clodfelter has an amendment. A technical amendment on the appeal bond section. Passes unanimously.

Chairman Brunstetter asked for questions on the PCS. There were none.

Senator Stein has an amendment. This was the first amendment that he introduced on Tuesday.
Senator Clodfelter: question for staff. Does this apply only to treatments covered under EMTALA?
Bill Patterson: first, it has to be determined whether an emergency exists
Senator Nesbitt: hopes that we will wrestle with this issue a little bit as a committee. Seems that this bill will take away the negligence standard in the emergency rooms. Thinks that what Sen. Stein has put forth gets to the heart of the matter. We are trying to give people in emergency situations a little bit of slack, but not absolute immunity. Thinks that this is a good compromise.
Chairman Brunstetter: further discussion?
Senator Brown: We have made a compromise from clear and convincing to greater weight of the evidence. We all understand that protections are needed but the ER is a very special situation. Thinks that those guys deserve some special protections. Would hope that the members vote against the amendment.
Senator Clodfelter: asks the bill sponsors and Stein a question about the relationship between subsection A and subsection B. Thinks that this is defined in the amendment but not in the PCS. There is a need to link A and B like Sen Stein has done, regardless of what you do with Section B.
Chairman Brunstetter: asks Bill Patterson a question. Is A current law?
Bill Patterson: Yes.

Chairman Brunstetter: asks Clodfelter a question and Clodfelter answers. Makes a suggestion that we should vote on the amendment and then make the fix that Clodfelter suggests. Further discussion?
Senator Stein: thinks what Clodfelter says is fine. The core of the amendment is the fact that for the first time in NC we are saying that it is ok for a professional to be negligent. We don't have to do that.
Senator Mansfield: does not believe that this bill is telling physicians to be negligent and physicians don't want to be negligent. Does not believe that this bill gives physicians immunity at all.
Senator Stein: He in no way said that this gives doctors leave to be negligent. Said that is shields doctors who are negligent. We do not have to immunize negligence. Trusts that doctors want to do the right thing but negligence happens.
Senator Tillman: this bill does not stop anyone from filing a complaint against any doctor. There are other ways to handle negligent doctors; this is not the be all and end all.
Noes have it; amendment fails.

Sen. Stein has an amendment. He explained the amendment.
Chairman Brunstetter asked for discussion
Senator Nesbitt: this is instead of my amendment I brought forth on Tuesday. This is a compromise. This might be a solution to the problem.
Senator Mansfield: agrees with Sen. Stein
Senator Apodaca: we did raise the cap, so that was somewhat of a compromise
Senator Clodfelter: doesn't believe any of this is constitutional.
Chairman Brunstetter: Apodaca's chief justice is bigger than your chief justice
Senator Clodfelter: we need to take our time to get this thing right. Didn't just change the number on the limit, you changed it from per plaintiff to per defendant.
Noes have it
Division is called
Noes have it; amendment fails.
Senator Clodfelter makes editorial comment. Wants Stein's exception and per plaintiff.

Senator Clodfelter has an amendment.
Bill Patterson explained the Amendment.
Senator Clodfelter further explained the amendment. Pointed out findings of study commission. Has copies of study commission report available
Senator Apodaca: thanks Clodfelter and thinks that this is a good amendment that improves the bill
Senator Tillman asks Clodfelter a question and Clodfelter answers
Senator Nesbitt: disagrees with the amendment
Senator Rucho: it is the responsibility of parents and guardians to make sure children are protected and supports the amendment
Senator Stein: question for Bill Patterson because he doesn't quite understand the amendment
Chairman Brunstetter: we will not vote on the amendment because it is not even transcribed.

The meeting adjourned at 10:53 AM.

Pete Brunstetter, Presiding

Sarah Hardin, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 33
PROPOSED COMMITTEE SUBSTITUTE S33-CSTG-1 [v.8]

2/23/2011 4:23:46 PM

Short Title: Medical Liability Reforms. (Public)

Sponsors:

Referred to:

February 3, 2011

A BILL TO BE ENTITLED

AN ACT TO REFORM THE LAWS RELATING TO MEDICAL LIABILITY BY PROVIDING LIMITED PROTECTION FROM LIABILITY TO THOSE REQUIRED BY FEDERAL LAW TO PROVIDE EMERGENCY MEDICAL CARE, BY AUTHORIZING THE BIFURCATION OF TRIALS ON ISSUES OF LIABILITY AND DAMAGES IN CERTAIN ACTIONS, BY LIMITING THE AMOUNT OF NONECONOMIC DAMAGES THAT MAY BE AWARDED, BY AUTHORIZING THE PERIODIC PAYMENT OF FUTURE ECONOMIC DAMAGES IN LIEU OF A LUMP-SUM PAYMENT, BY MODIFYING APPEAL BONDS IN MEDICAL MALPRACTICE ACTIONS, BY CLARIFYING THAT COMPLAINTS ALLEGING MEDICAL MALPRACTICE BY HEALTH CARE PROVIDES MUST ASSERT THAT ALL MEDICAL RECORDS AVAILABLE TO THE PLAINTIFF HAVE BEEN REVIEWED BY AN EXPERT WITNESS, AND TO REQUIRE CERTAIN INFORMATION BE PROVIDED BY EXPERT WITNESSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-21.12 reads as rewritten:

"**§ 90-21.12. Standard of health care; limited liability for federally mandated emergency medical services.**

(a) Except as provided in subsection (b) of this section, in~~In~~ any medical malpractice action, ~~action for damages for personal injury or death arising out of the furnishing or the failure to furnish professional services in the performance of medical, dental, or other health care,~~ the defendant health care provider shall not be liable for the payment of damages unless the trier of ~~the facts~~fact ~~is satisfied~~finds by the greater weight of the evidence that the care of such health care provider was not in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time of the alleged act giving rise to the cause of action.

(b) In any medical malpractice action arising out of the furnishing or the failure to furnish services pursuant to obligations imposed by 42 U.S.C. §1395dd for an emergency medical condition as defined in 42 U.S.C. §1395dd(e)(1), the defendant health care provider shall not be liable for the payment of damages unless the trier of fact finds by the greater weight of the evidence that the health care provider's deviation from the standard of care required under subsection (a) of this section constituted gross negligence, wanton conduct or intentional wrongdoing. Nothing in this subsection shall be construed to change, alter, override, or otherwise affect the provisions of G.S. 90-21.14, 90-21.15, 90-21.16, or 20-166."

SECTION 2. G.S. 1A-1, Rule 42(b), reads as rewritten:

"(b) Separate trials. –

(1) The court may in furtherance of convenience or to avoid prejudice and shall for considerations of venue upon timely motion order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

(2) Upon motion of any party in an action that includes a claim commenced under Article 1G of Chapter 90 of the General Statutes involving a managed care entity as defined in G.S. 90-21.50, the court shall order separate discovery and a separate trial of any claim, cross-claim, counterclaim, or third-party claim against a physician or other medical provider.

(3) Upon motion of any party in a medical malpractice action commenced under Article 1B of Chapter 90 of the General Statutes wherein the plaintiff seeks damages in an amount equal to or greater than seventy-five thousand dollars ($75,000), the court shall order separate trials for the issue of liability and the issue of damages. Evidence relating solely to compensatory damages shall not be admissible until the trier of fact has determined that the defendant is liable for medical malpractice. The same trier of fact that tried the issues relating to liability shall try the issues relating to damages."

SECTION 3. Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-21.19. Liability limit for noneconomic damages.**

(a) In any medical malpractice action against a health care provider in which the plaintiff is entitled to an award of noneconomic damages, the amount of noneconomic damages for which judgment is entered shall not exceed five hundred thousand dollars ($500,000) per defendant per occurrence. In the event that any verdict or award of noneconomic damages stated pursuant to G.S. 90-21.19B(1) exceeds five hundred thousand dollars ($500,000) per defendant per occurrence, the court shall modify the judgment as necessary to conform to the requirements of this subsection.

(b) As used in this section, 'noneconomic damages' means damages to compensate for pain, suffering, emotional distress, loss of consortium, inconvenience, physical impairment, disfigurement, and any other nonpecuniary, compensatory damage. 'Noneconomic damages' does not include punitive damages as defined in G.S. 1D-5.

(c) Any award of damages in a medical malpractice action shall be stated in accordance with G.S. 90-21.19B. If a jury is determining the facts, the court shall not instruct the jury with respect to the limit of noneconomic damages under subsection (a) of this section, and neither the attorney for any party nor a witness shall inform the jury or potential members of the jury panel of that limit."

SECTION 4. Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-21.19A. Periodic payment of future economic damages in medical malpractice actions.**

(a) The following definitions apply in this section:

(1) Future economic damages. – Damages for future expense for medical treatment, care or custody, loss of future earnings, loss of future household services, and any other future pecuniary damages of the plaintiff following the date of the verdict or award.

(2) Periodic payments. – The payment of money or delivery of other property to the plaintiff at regular intervals.

(b) In any medical malpractice action, the form of the fact finder's verdict or award of damages, if supported by the evidence, shall indicate specifically what amount is awarded for future economic damages, and what amount, if any, of the total amount awarded for future economic damages represents damages awarded for loss of future earnings or loss of future household services.

(c) Upon the award of future economic damages in any medical malpractice action, the presiding judge shall, at the request of either party, enter a judgment ordering that the future economic damages of the plaintiff be paid in whole or in part by periodic payments rather than by a lump-sum payment if the present value of the future economic damages award is greater than or equal to two hundred thousand dollars ($200,000). In entering a judgment ordering the payment of future economic damages by periodic payments, the court shall make a specific finding as to the dollar amount of the present value of that portion of the future economic damages for which the plaintiff is to be paid by periodic payments. In calculating the total damages upon which any attorney contingency fee for representing the plaintiff in connection with the medical malpractice action is calculated, the present value of any portion of the award representing future economic damages that are to be paid by periodic payments shall be used.

(d) A judgment authorizing periodic payments of future economic damages shall require that such payments be made through the establishment of a trust fund or the purchase of an annuity for the life of the plaintiff or during the continuance of the compensable injury or disability of the plaintiff, in such form and under such terms as shall be approved by the court. The establishment of a trust fund or the purchase of an annuity, as required and approved by the court, shall constitute the satisfaction of the defendant's judgment for future economic damages.

(e) The judgment ordering the payment of future economic damages by periodic payments shall specify the recipient of the payments, the schedule of the periodic payments, and the dollar amount of each periodic payment to be made pursuant to the schedule. The death of the plaintiff terminates liability for payment of future economic damages which by judgment pursuant to this section are required to be paid in periodic payments not yet due, except that the court that entered the original judgment may modify the judgment to provide that liability for payment of future periodic payments compensating the plaintiff for loss of future earnings or loss of future household services shall not be terminated by reason of the death of the plaintiff, but shall continue to be paid to persons surviving the plaintiff to whom the plaintiff owed a duty of support pursuant to law immediately prior to the plaintiff's death."

SECTION 5. Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-21.19B. Verdicts and awards of damages in medical malpractice actions; form.**

In any malpractice action, any verdict or award of damages, if supported by the evidence, shall indicate specifically what amount is awarded for each of the following:

(1) Noneconomic damages.
(2) Present economic damages.
(3) Future economic damages.
(4) Loss of future earnings.
(5) Loss of future household services.

If applicable, the court shall instruct the jury on the definition of noneconomic damages under G.S. 90-21.19(b) and the definition of future economic damages under G.S. 90-21.19A(a)(1). If applicable, the court shall instruct the jury that present economic damages are those damages for medical treatment, care or custody, loss of earnings, loss of household services, and any other pecuniary damages of the plaintiff up to the date of the verdict or award."

SECTION 6. G.S. 1-289 reads as rewritten:

"**§ 1-289. Undertaking to stay execution on money judgment.**

(a) If the appeal is from a judgment directing the payment of money, it does not stay the execution of the judgment unless a written undertaking is executed on the part of the appellant, by one or more sureties, as set forth in this section.

(a1) In an action where the judgment directs the payment of money, the court shall specify the amount of the undertaking required to stay execution of the judgment pending appeal as provided in subsections (a2) and (b) of this section. The undertaking shall be to the effect that if the judgment appealed from, or any part thereof, is affirmed, or the appeal is dismissed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if affirmed only in part, and all damages which shall be awarded against the appellant upon the appeal, except as provided in subsection (b) of this section. Whenever it is satisfactorily made to appear to the court that since the execution of the undertaking the sureties have become insolvent, the court may, by rule or order, require the appellant to execute, file and serve a new undertaking, as above. In case of neglect to execute such undertaking within twenty days after the service of a copy of the rule or order requiring it, the appeal may, on motion to the court, be dismissed with costs. Whenever it is necessary for a party to an action or proceeding to give a bond or an undertaking with surety or sureties, he may, in lieu thereof, deposit with the officer into court money to the amount of the bond or undertaking to be given. The court in which the action or proceeding is pending may direct what disposition shall be made of such money pending the action or proceeding. In a case where, by this section, the money is to be deposited with an officer, a judge of the court, upon the application of either party, may, at any time before the deposit is made, order the money deposited in court instead of with the officer; and a deposit made pursuant to such order is of the same effect as if made with the officer. The perfecting of an appeal by giving the undertaking mentioned in this section stays proceedings in the court below upon the judgment appealed from; except when the sale of perishable property is directed, the court below may order the property to be sold and the proceeds thereof to be deposited or invested, to abide the judgment of the appellate court.

(a2) Except as provided in subsection (b) of this section, the amount of the undertaking that shall be required by the court shall be an amount determined by the court after notice and hearing proper and reasonable for the security of the rights of the adverse party, considering relevant factors including the following:

(1) The amount of the judgment.

(2) The amount of the limits of all applicable liability policies of the appellant judgment debtor.

(3) The aggregate net worth of the appellant judgment debtor.

(b) If the appellee in a civil action brought under any legal theory obtains a judgment directing the payment or expenditure of money in the amount of twenty five million dollars ($25,000,000) or more, and the appellant seeks a stay of execution of the judgment within the period of time during which the appellant has the right to pursue appellate review, including discretionary review and certiorari, the amount of the undertaking that the appellant is required to execute to stay execution of the judgment during the entire period of the appeal shall be twenty five million dollars ($25,000,000).

(c) If the appellee proves by a preponderance of the evidence that the appellant for whom the undertaking has been limited under ~~subsection~~ subsections (a2) and (b) of this section is, for the purpose of evading the judgment, (i) dissipating its assets, (ii) secreting its assets, or (iii) diverting its assets outside the jurisdiction of the courts of North Carolina or the federal courts of the United States other than in the ordinary course of business, then the ~~limitation~~ limitations in ~~subsection~~ subsections (a2) and (b) of this section shall not apply and the appellant shall be required to make an undertaking in the full amount otherwise required by this section."

SECTION 6.1. G.S. 1A-1, Rule 9(j) reads as rewritten:

"(j) Medical malpractice. – Any complaint alleging medical malpractice by a health care provider as defined in G.S. 90-21.11 in failing to comply with the applicable standard of care under G.S. 90-21.12 shall be dismissed unless:

(1) The pleading specifically asserts that the medical care ~~has~~ and all medical records pertaining to the alleged injury then available to the plaintiff after reasonable inquiry, have been reviewed by a person who is reasonably expected to qualify as an expert witness under Rule 702 of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care;

(2) The pleading specifically asserts that the medical care ~~has~~ and all medical records pertaining to the alleged injury then available to the plaintiff after reasonable inquiry, have been reviewed by a person that the complainant will seek to have qualified as an expert witness by motion under Rule 702(e) of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care, and the motion is filed with the complaint; or

(3) The pleading alleges facts establishing negligence under the existing common-law doctrine of res ipsa loquitur.

Upon motion by the complainant prior to the expiration of the applicable statute of limitations, a resident judge of the superior court for a judicial district in which venue for the cause of action is appropriate under G.S. 1-82 or, if no resident judge for that judicial district is physically present in that judicial district, otherwise available, or able or willing to consider the motion, then any presiding judge of the superior court for that judicial district may allow a motion to extend the statute of limitations for a period not to exceed 120 days to file a complaint in a medical malpractice action in order to comply with this Rule, upon a determination that good cause exists for the granting of the motion and that the ends of justice would be served by an extension. ~~The plaintiff shall provide, at the request of the defendant, proof of compliance with this subsection through up to ten written interrogatories, the answers to which shall be verified by the expert required under this subsection. These interrogatories do not count against the interrogatory limit under Rule 33.~~ At the request of the defendant, the plaintiff shall furnish to the defendant, within 30 days, an affidavit from the expert certifying compliance with this subsection."

SECTION 6.2. G.S. 1A-1, Rule 26(f1) reads as rewritten:

"(f1) Medical malpractice discovery conference. – In a medical malpractice action as defined in G.S. 90-21.11, upon the case coming at issue or the filing of a responsive pleading or motion requiring a determination by the court, the judge shall, within 30 days, direct the attorneys for the parties to appear for a discovery conference. At the conference the court may consider the matters set out in Rule 16, and shall:

...

(2) Establish an appropriate schedule for designating expert witnesses, consistent with a discovery schedule pursuant to subdivision ~~(3), to be complied with by all parties to the action such that there is a deadline for designating all expert witnesses within an appropriate time for all parties to implement discovery mechanisms with regard to the designated expert witnesses;~~(3). As to each expert designated, the designation shall be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation the witness is to be paid for the study

and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years. The party shall supplement the expert's report if the party learns that in some material respect the report is incomplete or incorrect. The expert's direct testimony shall not be inconsistent with or go beyond the fair scope of the expert report as supplemented. The parties shall not depose expert witnesses, unless the court otherwise orders for good cause shown.

..."

SECTION 7. If the provisions of Section 3 of this act are declared to be unconstitutional or otherwise invalid by final decision of a court of competent jurisdiction, following any appellate review, then Section 4 and Section 5 of this act are repealed, but the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application.

SECTION 8. This act becomes effective October 1, 2011. Sections 1, 3, 4, 5, 6.1 and 6.2 apply to causes of action arising on or after the effective date. Sections 2 and 6 apply to actions commenced on or after the effective date.

Bill Patterson (Research)

From: Bill Patterson (Research)
Sent: Wednesday, February 23, 2011 3:36 PM
To: Sen. Peter Brunstetter (Peter.Brunstetter@ncleg.net)
Cc: Sarah Stone (Fiscal Research); Lori Kroll; Brad Krehely (Research) (Brad.Krehely@ncleg.net)
Subject: RE: Confirming our discussions

Sen. Brunstetter,

Enclosed please find a revised PCS S33-CSTG-1 [v.7] incorporating the following amendments introduced during Tuesday's meeting:

Amendment 2 - S33-ATG-12 [v.1] (Clodfelter) - replaces Section 6
Amendment 3 - S33-AST-1 [v.2] (Clodfelter) - adds new Section 6.2 amending Rule 26 (discovery from expert witnesses)
Amendment 4 - S33-ARN-3[v.2] (Clodfelter) - adds new Section 6.1 amending Rule 9(j) (expert witness certification)
Amendment 11 - S33-ATG-3 [v.3] (Apodaca) - amends Section 3 to raise cap to $500,000
Amendment 12 - S33-ATG-1 [v.2] (Goosby) - amends Section 4 to add "loss of future household services"
Amendment 13 - S33-ATG-4 [v2] (Brown) – amends section 1 to change burden of proof from "clear and convincing evidence" to "greater weight of the evidence"
Amendment 14 - S33-ATG-13 [v1] (Apodaca) - amends Section 4 to raise threshold from $75,000 to $200,000




If it meets with your approval, this revised PCS should be distributed to all committee members today (I assume that Sarah will take care of this unless you instruct otherwise.) I will prepare a summary of the changes made by this revised PCS and will bring it to the meeting tomorrow.

As we discussed, I have revised the following amendments remaining for committee consideration (after Sen. Clodfelter's withdrawal of three of his amendments), in order to correctly reference the pages and lines of the revised PCS.

Amendment 1 - S33-ATG-5 (Stein)
Amendment 5 - S33-AMH-15 (Clodfelter)
Amendment 9 - S33-ATG-11] (Nesbitt)
Amendment 10 - S33-ATG-7 (Stein)

I will bring the original and copies to tomorrow morning's meeting.

Bill Patterson

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 33

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

S33-ATG-14 [v.2]

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

Date February 24 ,2011

Senator Clodfelter

moves to amend the bill on page 4, line 44, by rewriting the line to read:
"whom the undertaking has been limited under subsection (b) of this"

and on page 4, line 48, by rewriting the line to read:
"limitation in subsection (b) of this section shall not apply and".

SIGNED Daniel G. Clodfelter
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

Motion carries unanimously

#1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 33

AMENDMENT NO. 2
(to be filled in by Principal Clerk)

S33-ATG-5 [v.4]

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

Date February 2nd ,2011

Senator Stein

moves to amend the bill on page 1, lines 17-18 by rewriting the lines to read:
"**§ 90-21.12. Standard of health care.**"

and on page 1, line 26 by rewriting the line to read:
"similar communities under the same or similar circumstances at the time of the alleged act or omission giving rise to the cause of action."

and on page 1, lines 27-34, by rewriting the lines to read:
"(b) In any medical malpractice action arising out of the furnishing or the failure to furnish services pursuant to obligations imposed by 42 USC §1395dd for an emergency medical condition as defined in 42 USC §1395dd, the defendant health care provider shall not be liable for the payment of damages unless the trier of fact finds by clear and convincing evidence that the health care provider failed to comply with the standard of care required under subsection (a) of this section. Nothing in this subsection shall be construed to change, alter, override, or otherwise affect the provisions of G.S. 90-21.14, 90-21.15, 90-21.16, or 20-166.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 33

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S33-ATG-7 [v.3]

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

Date February 24 ,2011

Senator Stein

moves to amend the bill on page 2, lines 31-34, by rewriting those lines to read:
"(b) As used in this section, "noneconomic damages" means damages to compensate for pain, suffering, emotional distress, loss of consortium, inconvenience, and any other nonpecuniary, compensatory damage other than disfigurement, brain damage, paralysis, physical impairment or death. As used in this section, "noneconomic damages" does not include damages to compensate for disfigurement, brain damage, paralysis, physical impairment, or death, and does not include punitive damages as defined in G.S. 1D-5.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 33

AMENDMENT NO. 4
(to be filled in by Principal Clerk)

S33-AMH-15 [v.3]

Comm. Sub. [YES]
Amends Title [YES]
S33-CSTG-1

Date February 24 ,2011

Senator Clodfelter

moves to amend the bill on page 1, lines 13 and 14 by rewriting the lines to read:
"BY AN EXPERT WITNESS, BY REQUIRING CERTAIN INFORMATION BE PROVIDED BY EXPERT WITNESSES, AND BY IMPOSING A 10-YEAR LIMITATION ON CERTAIN MEDICAL MALPRACTICE ACTIONS BROUGHT ON BEHALF OF A MINOR."

and on page 6, line 8, by inserting the following after that line:
"**SECTION 6.3.** G.S. 1-17(b) reads as rewritten:
"(b) Notwithstanding the provisions of subsection (a) of this section, an action on behalf of a minor for malpractice arising out of the performance of or failure to perform professional services shall be commenced within the limitations of time specified in G.S. 1-15(c), except that if those time limitations expire before the minor attains the full age of ~~19~~ 10 years, the action may be brought before the minor attains the full age of ~~19~~ 10 years. This subsection shall not apply to a minor if at any time before the minor reaches the full age of 18 years a court has entered a judgment or consent order under the provisions of the North Carolina Juvenile Code finding that said minor is an abused or neglected juvenile as defined in G.S. 7B-101."

and on page 6, lines 14 through 16 by rewriting the lines to read:
"**SECTION 8.** This act becomes effective October 1, 2011. Sections 1, 3, 4, 5, 6.1 and 6.2 apply to causes of action arising on or after the effective date. Sections 2, 6, and 6.3 apply to actions commenced on or after the effective date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED not voted FAILED _____ TABLED _____

S33-AMH-15-V-3

#4
But there ase ong

PAGES ATTENDING

COMMITTEE: JI **ROOM:** 1027

DATE: 2-24 **TIME:** 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Nick Hall	Raleigh	~~[illegible]~~ P. Berger
2		
3		
5 – Senate Sgt. at Arms		
6 Ron Spann		
7 George Robinson		
8 Billy Fritscher		
9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

VISITOR REGISTRATION SHEET

Judiciary 1 — 02/24/2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Becki Gray	JLF
Barbara Conaker	B&C&C
[signature]	NCPA
Heather Barrett	Williams Mullen
Lea Tackett	NCAJ
martha Brock	Examiner.com / Media
[signature] Keene	NCMS
[signature]	SA
[signature]	SA

VISITOR REGISTRATION SHEET

Judiciary 1 — **Name of Committee**

02/24/2011 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Thomas Dixon	
Elizabeth Suttles	Campbell Law
Dana Simpson	Smith Anderson
Amy McConkey	NC Bev
Maeve [illegible]	Smith Anderson
Burton Craige	NCAJ
Sylvia Adcock	NC Lawyers Weekly
Mitch Leonard	SEANC
Suzanne Beasley	SEANC
Allison Fowler	NC State Grange
Kathryn Westcott	ALEC/NC
KEITH CROCKRAN	NC CPN

VISITOR REGISTRATION SHEET

Judiciary 1 — 02/24/2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Will Pu/N	Gov office
Matt Dukes	PPAB
Michelle Frazier	MFS
Sara Fender	IFNC
[illegible]	NCAJ
Emily Grimm	NWC
Jamie Ellison	Campbell School of Law
Jamelia Black	Campbell School of Law
N Sherrill	NC Med Soc
Craig Jarvis	NAJ
Jenni Fitzgerald	MLG

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jackson	CHH
Christine Cleary	Wakemed
John Hardin	Manning Fulton
Mary Willey	Novant
Matthew McDaniel	Carolinas HealthCare System
John Bourdeau	AstraZeneca
Joel Maynard	GPJ & A
Payton Maynard	GPJ & A
Daniel Baum	Troutman Sanders
Laura DeVine	WCSR

Zeb Alley	NMRS
Greg Bethea	NCAJ
Gene Ainsworth	A & A
Jason Deans	IGS
Billy Warren	GTSW Strategies
Matthew Eisley	Smith Anderson
Philip R. Isley	NCAJ
Paul Pulley	NCAJ
Bill Austin	AARP
Lauren Culliphe	NCMS

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Craig Sauer	NCPCCEP
C. Gray	DMA
Joane Stevens	nursing
Andrew Meehan	Capstrat
Mike Taylor	Michael W. Taylor, Attys at Law, PLLC
[illegible]	NCMS
[illegible]	[illegible]
Jim [illegible]	NC Pediatric Society
DAVID BARNES	PS
Colleen Kocharek	NCCEP
Charles Brejer MD	NCCEP

SENATE JUDICIARY I COMMITTEE
March 1, 2011 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on March 1, 2011, in Room 1027 of the Legislative Building. Sixteen members of the committee were present. Senator Pete Brunstetter presided.

Game plan for today: move forward with SB 33
Senator Apodaca moves to bring the PCS forward for purposes of discussion
Senator Brunstetter called upon Bill Patterson to explain the changes in the PCS to the committee.
Senator Brunstetter called for questions about the PCS
Senator Clodfelter withdraws his amendment
Senator Apodaca moves for a favorable report to the PCS, unfavorable to the original bill
Senator Nesbitt offers an amendment regarding the cap on noneconomic damages.
Senator Brunstetter calls for discussion on the amendment
Senator Stein asks a clarifying question about the PCS, which Bill Patterson answered
Senator Stein says that he supports the amendment
Senator Tillman asks a question
Senator Apodaca comments that he does not support the amendment
Senator Brown asks a question—does the amendment create a bigger problem?
Senator Nesbitt comments on the amendment
Senator Nesbitt moves to amend the bill, noes have it
The PCS is before the committee
Senator Stein makes a comment about a possible floor amendment.
The motion before the committee carries

The meeting adjourned at 10:15 AM.

Senator Pete Brunstetter, Presiding

Sarah Hardin, Committee Clerk

AGENDA

SENATE JUDICIARY I COMMITTEE
Tuesday, March 1, 2011 at 10:00 a.m.
Room 1027, Legislative Building

I. Welcome and Opening Remarks

II. Introduction of Pages

III. Bills to be Considered

SB 33 Medical Liability Reform

IV. Other Business

V. Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 33
PROPOSED COMMITTEE SUBSTITUTE S33-CSTG-1 [v.16]

3/1/2011 8:47:54 AM

Short Title: Medical Liability Reforms. (Public)

Sponsors:

Referred to:

February 3, 2011

A BILL TO BE ENTITLED

AN ACT TO REFORM THE LAWS RELATING TO MEDICAL LIABILITY BY PROVIDING LIMITED PROTECTION FROM LIABILITY TO THOSE REQUIRED BY FEDERAL LAW TO PROVIDE EMERGENCY MEDICAL CARE, BY AUTHORIZING THE BIFURCATION OF TRIALS ON ISSUES OF LIABILITY AND DAMAGES IN CERTAIN ACTIONS, BY LIMITING THE AMOUNT OF NONECONOMIC DAMAGES THAT MAY BE AWARDED, BY AUTHORIZING THE PERIODIC PAYMENT OF FUTURE ECONOMIC DAMAGES IN LIEU OF A LUMP-SUM PAYMENT, BY MODIFYING APPEAL BONDS IN MEDICAL MALPRACTICE ACTIONS, BY CLARIFYING THAT COMPLAINTS ALLEGING MEDICAL MALPRACTICE BY HEALTH CARE PROVIDERS MUST ASSERT THAT ALL MEDICAL RECORDS AVAILABLE TO THE PLAINTIFF HAVE BEEN REVIEWED BY AN EXPERT WITNESS, AND BY REQUIRING THAT CERTAIN INFORMATION BE PROVIDED BY EXPERT WITNESSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-21.12 reads as rewritten:

"**§ 90-21.12. Standard of health care; limited liability for federally mandated emergency medical services.**

(a) Except as provided in subsection (b) of this section, in~~In~~ any medical malpractice action, ~~action for damages for personal injury or death arising out of the furnishing or the failure to furnish professional services in the performance of medical, dental, or other health care,~~ the defendant health care provider shall not be liable for the payment of damages unless the trier of ~~the facts~~fact ~~is satisfied~~finds by the greater weight of the evidence that the care of such health care provider was not in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities under the same or similar circumstances at the time of the alleged act or omission giving rise to the cause of action.

(b) In any medical malpractice action arising out of the furnishing or the failure to furnish services pursuant to obligations imposed by 42 U.S.C. §1395dd for an emergency medical condition as defined in 42 U.S.C. §1395dd(e)(1), the defendant health care provider shall not be liable for the payment of damages unless the trier of fact finds by the greater weight of the evidence that the health care provider's deviation from the standard of care required under subsection (a) of this section constituted gross negligence, wanton conduct or

intentional wrongdoing. Nothing in this subsection shall be construed to change, alter, override, or otherwise affect the provisions of G.S. 90-21.14, 90-21.15, 90-21.16, or 20-166."

SECTION 2. G.S. 1A-1, Rule 42(b), reads as rewritten:

"(b) Separate trials. –

(1) The court may in furtherance of convenience or to avoid prejudice and shall for considerations of venue upon timely motion order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

(2) Upon motion of any party in an action that includes a claim commenced under Article 1G of Chapter 90 of the General Statutes involving a managed care entity as defined in G.S. 90-21.50, the court shall order separate discovery and a separate trial of any claim, cross-claim, counterclaim, or third-party claim against a physician or other medical provider.

(3) Upon motion of any party in a medical malpractice action commenced under Article 1B of Chapter 90 of the General Statutes wherein the plaintiff seeks damages in an amount equal to or greater than seventy-five thousand dollars ($75,000), the court shall order separate trials for the issue of liability and the issue of damages. Evidence relating solely to compensatory damages shall not be admissible until the trier of fact has determined that the defendant is liable for medical malpractice. The same trier of fact that tried the issues relating to liability shall try the issues relating to damages."

SECTION 3. Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-21.19. Liability limit for noneconomic damages.**

(a) In any medical malpractice action in which the plaintiff is entitled to an award of noneconomic damages, the total amount of noneconomic damages for which judgment is entered against all defendants shall not exceed five hundred thousand dollars ($500,000) per plaintiff. Judgment shall not be entered against any defendant for noneconomic damages in excess of five hundred thousand dollars ($500,000) for all claims brought by all parties arising out of the same cause of action. In the event that any verdict or award of noneconomic damages stated pursuant to G.S. 90-21.19B(1) exceeds these limits, the court shall modify the judgment as necessary to conform to the requirements of this subsection.

(b) As used in this section, 'noneconomic damages' means damages to compensate for pain, suffering, emotional distress, loss of consortium, inconvenience, physical impairment, disfigurement, and any other nonpecuniary, compensatory damage. 'Noneconomic damages' does not include punitive damages as defined in G.S. 1D-5.

(c) Any award of damages in a medical malpractice action shall be stated in accordance with G.S. 90-21.19B. If a jury is determining the facts, the court shall not instruct the jury with respect to the limit of noneconomic damages under subsection (a) of this section, and neither the attorney for any party nor a witness shall inform the jury or potential members of the jury panel of that limit."

SECTION 4. Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-21.19A. Periodic payment of future economic damages in medical malpractice actions.**

(a) The following definitions apply in this section:

(1) Future economic damages. – Damages for future expense for medical treatment, care or custody, loss of future earnings, loss of future household services, and any other future pecuniary damages of the plaintiff following the date of the verdict or award.

(2) Periodic payments. – The payment of money or delivery of other property to the plaintiff at regular intervals.

(b) In any medical malpractice action, the form of the fact finder's verdict or award of damages, if supported by the evidence, shall indicate specifically what amount is awarded for future economic damages, and what amount, if any, of the total amount awarded for future economic damages represents damages awarded for loss of future earnings or loss of future household services.

(c) Upon the award of future economic damages in any medical malpractice action, the presiding judge shall, at the request of either party, enter a judgment ordering that the future economic damages of the plaintiff be paid in whole or in part by periodic payments rather than by a lump-sum payment if the present value of the future economic damages award is greater than or equal to two hundred thousand dollars ($200,000). In entering a judgment ordering the payment of future economic damages by periodic payments, the court shall make a specific finding as to the dollar amount of the present value of that portion of the future economic damages for which the plaintiff is to be paid by periodic payments. In calculating the total damages upon which any attorney contingency fee for representing the plaintiff in connection with the medical malpractice action is calculated, the present value of any portion of the award representing future economic damages that are to be paid by periodic payments shall be used.

(d) A judgment authorizing periodic payments of future economic damages shall require that such payments be made through the establishment of a trust fund or the purchase of an annuity for the life of the plaintiff or during the continuance of the compensable injury or disability of the plaintiff, in such form and under such terms as shall be approved by the court. The establishment of a trust fund or the purchase of an annuity, as required and approved by the court, shall constitute the satisfaction of the defendant's judgment for future economic damages.

(e) The judgment ordering the payment of future economic damages by periodic payments shall specify the recipient of the payments, the schedule of the periodic payments, and the dollar amount of each periodic payment to be made pursuant to the schedule. The death of the plaintiff terminates liability for payment of future economic damages which by judgment pursuant to this section are required to be paid in periodic payments not yet due, except that the court that entered the original judgment may modify the judgment to provide that liability for payment of future periodic payments compensating the plaintiff for loss of future earnings or loss of future household services shall not be terminated by reason of the death of the plaintiff, but shall continue to be paid to persons surviving the plaintiff to whom the plaintiff owed a duty of support pursuant to law immediately prior to the plaintiff's death."

SECTION 5. Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-21.19B. Verdicts and awards of damages in medical malpractice actions; form.**

In any malpractice action, any verdict or award of damages, if supported by the evidence, shall indicate specifically what amount is awarded for each of the following:

(1) Noneconomic damages.
(2) Present economic damages.
(3) Future economic damages.
(4) Loss of future earnings.
(5) Loss of future household services.

If applicable, the court shall instruct the jury on the definition of noneconomic damages under G.S. 90-21.19(b) and the definition of future economic damages under G.S. 90-21.19A(a)(1). If applicable, the court shall instruct the jury that present economic damages are those damages for medical treatment, care or custody, loss of earnings, loss of household services, and any other pecuniary damages of the plaintiff up to the date of the verdict or award."

SECTION 6. G.S. 1-289 reads as rewritten:

"**§ 1-289. Undertaking to stay execution on money judgment.**

(a) If the appeal is from a judgment directing the payment of money, it does not stay the execution of the judgment unless a written undertaking is executed on the part of the appellant, by one or more sureties, as set forth in this section.

(a1) In an action where the judgment directs the payment of money, the court shall specify the amount of the undertaking required to stay execution of the judgment pending appeal as provided in subsections (a2) and (b) of this section. The undertaking shall be to the effect that if the judgment appealed from, or any part thereof, is affirmed, or the appeal is dismissed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if affirmed only in part, and all damages which shall be awarded against the appellant upon the appeal, except as provided in subsection (b) of this section. Whenever it is satisfactorily made to appear to the court that since the execution of the undertaking the sureties have become insolvent, the court may, by rule or order, require the appellant to execute, file and serve a new undertaking, as above. In case of neglect to execute such undertaking within twenty days after the service of a copy of the rule or order requiring it, the appeal may, on motion to the court, be dismissed with costs. Whenever it is necessary for a party to an action or proceeding to give a bond or an undertaking with surety or sureties, he may, in lieu thereof, deposit with the officer into court money to the amount of the bond or undertaking to be given. The court in which the action or proceeding is pending may direct what disposition shall be made of such money pending the action or proceeding. In a case where, by this section, the money is to be deposited with an officer, a judge of the court, upon the application of either party, may, at any time before the deposit is made, order the money deposited in court instead of with the officer; and a deposit made pursuant to such order is of the same effect as if made with the officer. The perfecting of an appeal by giving the undertaking mentioned in this section stays proceedings in the court below upon the judgment appealed from; except when the sale of perishable property is directed, the court below may order the property to be sold and the proceeds thereof to be deposited or invested, to abide the judgment of the appellate court.

(a2) Except as provided in subsection (b) of this section, the amount of the undertaking that shall be required by the court shall be an amount determined by the court after notice and hearing proper and reasonable for the security of the rights of the adverse party, considering relevant factors including the following:

(1) The amount of the judgment.

(2) The amount of the limits of all applicable liability policies of the appellant judgment debtor.

(3) The aggregate net worth of the appellant judgment debtor.

(b) If the appellee in a civil action brought under any legal theory obtains a judgment directing the payment or expenditure of money in the amount of twenty five million dollars ($25,000,000) or more, and the appellant seeks a stay of execution of the judgment within the period of time during which the appellant has the right to pursue appellate review, including discretionary review and certiorari, the amount of the undertaking that the appellant is required to execute to stay execution of the judgment during the entire period of the appeal shall be twenty five million dollars ($25,000,000).

(c) If the appellee proves by a preponderance of the evidence that the appellant for whom the undertaking has been limited under subsection (b) of this section is, for the purpose of evading the judgment, (i) dissipating its assets, (ii) secreting its assets, or (iii) diverting its assets outside the jurisdiction of the courts of North Carolina or the federal courts of the United States other than in the ordinary course of business, then the limitation in subsection (b) of this section shall not apply and the appellant shall be required to make an undertaking in the full amount otherwise required by this section."

SECTION 6.1. G.S. 1A-1, Rule 9(j) reads as rewritten:

"(j) Medical malpractice. – Any complaint alleging medical malpractice by a health care provider as defined in G.S. 90-21.11 in failing to comply with the applicable standard of care under G.S. 90-21.12 shall be dismissed unless:

(1) The pleading specifically asserts that the medical care ~~has~~ and all medical records pertaining to the alleged injury then available to the plaintiff after reasonable inquiry, have been reviewed by a person who is reasonably expected to qualify as an expert witness under Rule 702 of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care;

(2) The pleading specifically asserts that the medical care ~~has~~ and all medical records pertaining to the alleged injury then available to the plaintiff after reasonable inquiry, have been reviewed by a person that the complainant will seek to have qualified as an expert witness by motion under Rule 702(e) of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care, and the motion is filed with the complaint; or

(3) The pleading alleges facts establishing negligence under the existing common-law doctrine of res ipsa loquitur.

Upon motion by the complainant prior to the expiration of the applicable statute of limitations, a resident judge of the superior court for a judicial district in which venue for the cause of action is appropriate under G.S. 1-82 or, if no resident judge for that judicial district is physically present in that judicial district, otherwise available, or able or willing to consider the motion, then any presiding judge of the superior court for that judicial district may allow a motion to extend the statute of limitations for a period not to exceed 120 days to file a complaint in a medical malpractice action in order to comply with this Rule, upon a determination that good cause exists for the granting of the motion and that the ends of justice would be served by an extension. ~~The plaintiff shall provide, at the request of the defendant, proof of compliance with this subsection through up to ten written interrogatories, the answers to which shall be verified by the expert required under this subsection. These interrogatories do not count against the interrogatory limit under Rule 33.~~ At the request of the defendant, the plaintiff shall furnish to the defendant, within 30 days, an affidavit from the expert certifying compliance with this subsection."

SECTION 6.2. G.S. 1A-1, Rule 26(f1) reads as rewritten:

"(f1) Medical malpractice discovery conference. – In a medical malpractice action as defined in G.S. 90-21.11, upon the case coming at issue or the filing of a responsive pleading or motion requiring a determination by the court, the judge shall, within 30 days, direct the attorneys for the parties to appear for a discovery conference. At the conference the court may consider the matters set out in Rule 16, and shall:

...

(2) Establish an appropriate schedule for designating expert witnesses, consistent with a discovery schedule pursuant to subdivision ~~(3), to be complied with by all parties to the action such that there is a deadline for designating all expert witnesses within an appropriate time for all parties to implement discovery mechanisms with regard to the designated expert witnesses;~~(3). As to each expert designated, the designation shall be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation the witness is to be paid for the study

and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years. The party shall supplement the expert's report if the party learns that in some material respect the report is incomplete or incorrect. The expert's direct testimony shall not be inconsistent with or go beyond the fair scope of the expert report as supplemented. Depositions of expert witnesses shall be governed by Rule 26 (b)(4) and 26(f1).

..."

SECTION 7. If the provisions of Section 3 of this act are declared to be unconstitutional or otherwise invalid by final decision of a court of competent jurisdiction, following any appellate review, then Section 4 and Section 5 of this act are repealed, but the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application.

SECTION 8. This act becomes effective October 1, 2011. Sections 1, 3, 4, 5, 6.1 and 6.2 apply to causes of action arising on or after the effective date. Sections 2 and 6 apply to actions commenced on or after the effective date.

first amendment brought before the committee

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 33

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

S33-ATG-15 [v.1]

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

Date March 1 ,2011

Senator Nesbitt

moves to amend the bill on page 2, lines 26-33, by rewriting the lines to read:
"(a) In any medical malpractice action in which the plaintiff is entitled to an award of noneconomic damages, the total amount of noneconomic damages for which judgment is entered shall not exceed five hundred thousand dollars ($500,000) per defendant. In the event that any verdict or award of noneconomic damages stated pursuant to G.S. 90-21.19B(1) exceeds this limit, the court shall modify the judgment as necessary to conform to the requirements of this subsection.".

SIGNED Martin Nesbitt
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027B

DATE: 3-1 **TIME:** 10 Am

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Matt Averette	Lillington	P. Berger
2 Katie Sears	Fuquay-Varina	Blake
3		
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Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

VISITOR REGISTRATION SHEET

Senate Judiciary I — **Name of Committee**

3-1-11 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jack Betts	Alex Olsen
Jon Camp	WJVS
Craig Sarvis	N4O
Morgan Elliott	Arnold
Greg Bethea	GBW
David Steele	NCCN
Sara Fender	IFNC
Jennifer Cohen	IFNC
Dick Taylor	NCAE
Bea Nelson	AARP
Michelle Fraser	MF+S

VISITOR REGISTRATION SHEET

Senate Judiciary I — 3-1-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susan Valcarcel	NCAMPW/ED
	SA
	SA
	NCHBA
Dallas Woodhouse	AFPNC
John McArdle	NC Chamber
	NMRS
	ICS
	NCAGC
Tim KENT	NC Beer & Wine Wholesalers
	Capitol Intern

VISITOR REGISTRATION SHEET

Senate Judiciary I — 3-01-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kevin FitzGerald	VNC HCS
BJ Miller	Moses Cone Health Sys
Meredith Smith	The Policy Group
David Stallen	State Farm
[illegible]	[illegible]
Tina Gordon	NCNurses
Colleen Kochanek	NCCEP
Joanne Stevens	NCNA
David Miner	TRG
John [illegible]	Verizon
Daniel Baum	Troutman Sanders
Emily Grimm	MWC
Rose [illegible]	WUNC

VISITOR REGISTRATION SHEET

Senate Judiciary I — 3-1-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Merrill	Policy Group.
Joel Maynard	GPM; Moore
Connie Wilson	NC Orthopaedic Assoc.
Billy Warren	GBW Strategies
Andrew Lynch	DST

SENATE JUDICIARY I COMMITTEE
March 3, 2011 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on March 3, 2011, in Room 1027 of the Legislative Building. Sixteen members of the committee were present. Senator Pete Brunstetter presided.

Senate Bill 31
Senator Stevens moves to adopt the PCS for discussion purposes
Senator Brunstetter calls on Senator Mansfield to explain the bill
Senator Jenkins moves for a favorable report—unfavorable as to bill, favorable as to committee substitute
Motion carries unanimously

House Bill 3
Senator Brunstetter calls on Representative Stam to explain the bill
Senator Brunstetter calls on Brad Krehely to explain the bill summary
Senator Clodfelter asks a question, Representative Stam answers
Senator Stevens asks a question, Representative Stam answers
Senator Brunstetter calls for comments from the public
Dick Taylor of the Advocates for Justice is recognized to speak
Senator Pate moves for a favorable report
Motion carries unanimously
Senator Goolsby will handle the bill on the floor.

The meeting adjourned at 10:13 AM.

Senator Pete Brunstetter, Presiding

Sarah Hardin, Committee Clerk

AGENDA

SENATE JUDICIARY I COMMITTEE
March, 3, 2011 at 10:00 a.m.
Room 1027, Legislative Building

I. Welcome and Opening Remarks

II. Bills to be Considered

House Bill 3
Exclusionary Rule/Good Faith Exception

Senate Bill 31
Conform Penalty Unauth. Practice of Medicine

III. Other Business

IV. Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 31

Short Title:	Conform Penalty Unauth. Practice of Medicine.	(Public)
Sponsors:	Senator Mansfield.	
Referred to:	Judiciary I.	

February 3, 2011

A BILL TO BE ENTITLED

AN ACT TO CONFORM THE PENALTY FOR THE UNAUTHORIZED PRACTICE OF MEDICINE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-18(a) reads as rewritten:

"**§ 90-18. Practicing without license; penalties.**

(a) No person shall perform any act constituting the practice of medicine or surgery, as defined in this Article, or any of the branches thereof, unless the person shall have been first licensed and registered so to do in the manner provided in this Article, and if any person shall practice medicine or surgery without being duly licensed and registered, as provided in this Article, the person shall not be allowed to maintain any action to collect any fee for such services. The person so practicing without license shall be guilty ~~of a Class 1 misdemeanor, except that if the person so practicing without a license is an out-of-state practitioner who has not been licensed and registered to practice medicine or surgery in this State, the person shall be guilty~~ of a Class I felony."

SECTION 2. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 31
PROPOSED COMMITTEE SUBSTITUTE S31-CSRN-1 [v.5]

3/2/2011 6:16:44 PM

Short Title: Clarify Penalty Unauth. Practice of Medicine. (Public)

Sponsors:

Referred to:

February 3, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PENALTY FOR THE UNAUTHORIZED PRACTICE OF MEDICINE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-18(a) reads as rewritten:

"**§ 90-18. Practicing without license; penalties.**

(a) No person shall perform any act constituting the practice of medicine or surgery, as defined in this Article, or any of the branches thereof, unless the person shall have been first licensed and registered so to do in the manner provided in this Article. ~~Article, and if any~~ Any person ~~shall practice~~ who practices medicine or surgery without being duly licensed and registered, as provided in this Article, ~~the person~~ shall not be allowed to maintain any action to collect any fee for such services. The person so practicing without ~~license~~ being duly licensed and registered shall be guilty of a ~~Class 1 misdemeanor,~~Class I felony, except that ~~if the person so practicing without a license is an out-of-state practitioner who has not been licensed and registered to practice medicine or surgery in this State, the person shall be guilty of a Class I felony.~~ any person who has a license or approval under this Article that is inactive due solely to the failure to complete annual registration in a timely fashion as required by this Article or any person who is licensed, registered and practicing under any other Article of this Chapter shall be guilty of a Class 1 misdemeanor.

SECTION 2. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 31 (First Edition)

SHORT TITLE: Conform Penalty Unauth. Practice of Medicine.

SPONSOR(S): Senator Mansfield

FISCAL IMPACT

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

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
GENERAL FUND					
Correction		**Yes; no substantial impact anticipated***			
Probation		**Yes; no substantial impact anticipated***			
Judicial		**Yes; no substantial impact anticipated***			

See Assumptions and Methodology

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

EFFECTIVE DATE: This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

**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 amends G.S. 90-18(a) to increase the penalty for practicing medicine or surgery without a license from a Class 1 misdemeanor to a Class I felony (was, a Class I felony only if the person practicing without a license is an out-of-state practitioner who has not been licensed and registered to practice medicine or surgery in this state). Effective December 1, 2011, and applies to offenses committed on or after that date.

Source: Bill Digest S.B. 31 (02/02/2011).

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.

Department of Correction – Division of Prisons

Section 1:
G.S. 90-18(a), Unauthorized practice of medicine, punishment; currently classifies the unauthorized practice of medicine as a Class 1 misdemeanor, except that if the person practicing without a license is an out of state practitioner who has not been licensed and registered to practice medicine in North Carolina, that person is guilty of a Class I felony. This Section would amend the statute by deleting the language making the distinction between in state and out of state practitioners thereby making any person practicing medicine without a license guilty of a Class I felony.

Impact: In FY 2009-10, there were no Class 1 misdemeanor convictions and no Class I felony convictions under G.S. 90-18(a). Given the small number of convictions for these offenses, it is unlikely that the proposed reclassification of the Class 1 misdemeanor offense would result in substantial impact to the prison population.

In FY 2009-10, 17% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, ten Class 1 misdemeanor convictions per year were reclassified as Class I felonies, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

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.

In the last five years, AOC data show that 11 defendants have been charged with a total of 78 charges of misdemeanor unauthorized practice of medicine.

Charges Under Current G.S. 90-18(a)				
	Class 1 Misdemeanor		Class I Felony	
Calendar Year	Charges	Defendants Charged	Charges	Defendants Charged
2006	1	1	-	-
2007	1	1	1	1
2008	66	3	2	1
2009	1	1	-	-
2010	9	5	-	-
5-Year Total	78	11	3	2

Impact: The elevation of the offense from a Class 1 misdemeanor to a Class I felony would result in a more vigorous defense and prosecution and more in-court and preparation time for trials and pleas. While some judicial districts handle pleas for Class H and I felonies in district court, all trials and many pleas would be shifted from district court to superior court under this bill. Thus, even one new offense under this legislation will result in a cost to the court system. However, the small number of cases indicates that, unless charges for this offense increase dramatically, it is unlikely that the proposed reclassification would substantially impact the court system.

Overall, the monetary value of the average workload of a Class I felony case for those positions typically involved in felony cases – Superior Court Judge, Assistant District Attorney, Deputy Clerk, Court Reporter, and Victim Witness Legal Assistant – is $862. As the Class I felonies in this bill will represent new charges in superior court, and since district court backlogs and personnel shortages would prevent any offsetting reduction in district court resources, the average fiscal impact of each case would be the full $862. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a Class I felony case was $480 per indigent defendant, as compared to an average of $225 for indigent misdemeanants.

In FY 2009-10, a typical felony case took approximately 206 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

SOURCES OF DATA: Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Sarah Stone; John Poteat

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: February 15, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices

SENATE PCS 31:
Clarify Penalty Unauth. Practice of Medicine

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 3, 2011
Introduced by:	Sen. Mansfield	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition S31-CSRN-1		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 31 would amend the penalty for the unauthorized practice of medicine. The PCS differs from the first edition because the first edition made the unauthorized practice of medicine a Class I felony in all cases. The PCS provides that the penalty is a Class 1 misdemeanor if (1) the person is not registered due to failure to complete the annual registration in a timely manner or (2) the person is licensed and registered under any other Article in Chapter 90.***

CURRENT LAW: Under current law, an in-state practitioner who practices medicine or surgery without a license is guilty of a Class 1 misdemeanor. However, if the person practicing without a license is an out-of-state practitioner, then that person is guilty of a Class I felony. The practice of medicine or surgery includes any of the following acts (including acts done by electronic or other means):

> Advertising or representing that the individual is authorized to practice medicine.
>
> Offering or undertaking to prescribe, give, or administer any drug or medicine.
>
> Offering or undertaking to prevent or diagnose, correct, prescribe for, administer to, or treat in any manner or by any means, methods, or devices any disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition of any individual, including the management of pregnancy or parturition.
>
> Offering or undertaking to perform any surgical operation.
>
> Using the designation "Doctor," "Doctor of Medicine," "Doctor of Osteopathy," "Doctor of Osteopathic Medicine," "Physician," "Surgeon," "Physician and Surgeon," "Dr.," "M.D.," "D.O.," or any combination thereof in the conduct of any occupation or profession pertaining to the prevention, diagnosis, or treatment of human disease or condition, unless the designation additionally contains the description of or reference to another branch of the healing arts for which the individual holds a valid license in this State or the use of the designation "Doctor" or "Physician" is otherwise specifically permitted by law.

BILL ANALYSIS: The PCS for Senate Bill 31 would provide that any person who practices medicine or surgery without a license is guilty of a Class I felony except for the following which are punishable as Class 1 misdemeanor: (1) any person who has a license or approval under this Article that is inactive due solely to the failure to complete annual registration in a timely fashion and (2) any person who is licensed, registered, and practicing under any other Article of Chapter 90.

EFFECTIVE DATE: The act would become effective December 1, 2011, and would apply to offenses committed on or after that date.

S31-SMRN-7(CSRN-1) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 3

HOUSE BILL 3
Committee Substitute Favorable 2/9/11
Third Edition Engrossed 2/10/11

Short Title: Exclusionary Rule/Good Faith Exception. (Public)

Sponsors:

Referred to:

January 27, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ADOPTION OF THE GOOD FAITH EXCEPTION TO THE EXCLUSIONARY RULE INTO STATE LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-974 reads as rewritten:

"**§ 15A-974. Exclusion or suppression of unlawfully obtained evidence.**

(a) Upon timely motion, evidence must be suppressed if:

(1) Its exclusion is required by the Constitution of the United States or the Constitution of the State of North Carolina; or

(2) It is obtained as a result of a substantial violation of the provisions of this Chapter. In determining whether a violation is substantial, the court must consider all the circumstances, including:

a. The importance of the particular interest violated;

b. The extent of the deviation from lawful conduct;

c. The extent to which the violation was willful;

d. The extent to which exclusion will tend to deter future violations of this Chapter.

Evidence shall not be suppressed under this subdivision if the person committing the violation of the provision or provisions under this Chapter acted under the objectively reasonable, good faith belief that the actions were lawful.

(b) The court, in making a determination whether or not evidence shall be suppressed under this section, shall make findings of fact and conclusions of law which shall be included in the record, pursuant to G.S. 15A-977(f)."

SECTION 2. The General Assembly respectfully requests that the North Carolina Supreme Court reconsider, and overrule, its holding in State v. Carter that the good faith exception to the exclusionary rule which exists under federal law does not apply under North Carolina State law.

SECTION 3. This act is effective when it becomes law and applies to all hearings or trials commencing on or after July 1, 2011.

HOUSE BILL 3:
Exclusionary Rule/Good Faith Exception

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 3, 2011
Introduced by:	Reps. Stam, Ingle, Faircloth	**Prepared by:**	Brad Krehely
Analysis of:	Third Edition		Committee Counsel

SUMMARY: This act would codify the good faith exception to the exclusionary rule into State law.

CURRENT LAW: Evidence may be excluded if it was obtained in violation of the federal or State Constitutions, or as the result of a substantial violation of Chapter 15A of the General Statutes, the laws of criminal procedure.

BACKGROUND: The 4th Amendment to the United States Constitution prohibits unreasonable searches and seizures. Under the exclusionary rule, evidence obtained in violation of the 4th Amendment is generally not admissible. The rationale is that officers will be deterred from violating the 4th Amendment if they know the evidence cannot be used. Federal law and North Carolina law differs with respect to the good faith exception to the exclusionary rule.

I. Federal Law

The good faith exception to the exclusionary rule *applies* under federal law. In a 1984 case, *United States v. Leon*, the U.S. Supreme Court held that the Fourth Amendment of the U.S. Constitution did not require the suppression of evidence that had been obtained by law enforcement officers who had acted in good faith. The Court held that exclusion of evidence under circumstances where law enforcement had exhibited objectively reasonable conduct, and then relied upon the judgment of a neutral and detached magistrate, would not deter future police misconduct.

A more recent U.S. Supreme Court decision stated that evidence should only be excluded if an officer, in applying for a warrant, engaged in "deliberate, reckless, or grossly negligent conduct" or the conduct reflected "recurring or systemic negligence." The federal courts look to whether "the deterrent effect of suppression of evidence is substantial and outweighs any harm to the justice system."

II. State Law

North Carolina State law *does not recognize* the good faith exception to the exclusionary rule. In a 1988 case, *State v. Carter*, the N.C. Supreme Court did not apply a good faith exception and excluded evidence based upon the issuance of a non-testimonial identification order instead of a warrant.

The North Carolina Supreme Court held that the trial court had erred in allowing the evidence. The Court discussed the history of the exclusionary rule, and voiced its concerns that exceptions would overcome the rule itself. The Court stated that "[t]he framers of our constitution sought to check the tendency of government to overreach by placing a constitutional mantle around the right to privacy in one's person, home, and effects." The Court believed that the "exclusionary rule [was] indispensable to achieve the purposes for which prohibitions against unreasonable search and seizure were written into the constitutions of the revolutionary era." The N.C. Supreme Court pointed to the fact that, as a policy choice, North Carolina had adopted a statutory exclusionary rule [now G.S. 15A-974]. The Court stated: *"This policy has existed since 1937. If a good faith exception is to be applied to this public policy, let it be done by the legislature, the body politic responsible for the formation and expression of matters of public policy."*

BILL ANALYSIS:

Section 1: The act would retain the provision that exclusion is required if evidence was obtained in violation of the federal or State Constitutions. However, for suppression of evidence based on a substantial violation of Chapter 15A, the evidence must not be suppressed if the person who commits the violation acted under the objectively reasonable, good faith belief that the actions were lawful. The act also requires the court to making findings of fact and conclusions of law when determining whether or not to exclude evidence.

Section 2: The act respectfully requests that the N.C. Supreme Court reconsider its holding in *State v. Carter* that the good faith exception to the exclusionary rule which exists under federal law does not apply under North Carolina State law.

EFFECTIVE DATE: This act is effective when it becomes law and applies to all hearings or trials commencing on or after July 1, 2011.

H3-SMRN-8(e3) v3

Hal Pell, Counsel to House Judiciary I, contributed substantially to the drafting of this summary.

PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027

DATE: 3-3 **TIME:** 10 am

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Ashton Copeland	Tyner	White
2		
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Do not add names below the grid.

ges: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

VISITOR REGISTRATION SHEET

Senate Judiciary I — March 3, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Pat A. Yancey	NCANP
Thomas Dixon	Campbell Law School
Elizabeth Suttles	Campbell Law School
Janis Ramquist	NCIMS
Sheria Reid	SOG
M Shuler	NC MedSoc
Heather Barrett	Williams Mullen
Jami Fitzgerald	MLG
Amy Whited	NC Med Society
John Bowdish	AstraZeneca
Matt Wolfe	Parker Poe

VISITOR REGISTRATION SHEET

Senate Judiciary I — March 3, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alan Miller	KLG
Joel Maynard	GRM
Timothy Gundlach	NCSA
Will Pully	Gov Office
Daisy Payne	NC Board of Pharmacy
Evelyn Hawthorne	NCSP; NCSCA
Joanne Stevens	NCNA
Courtney Williams	Peace College
John McMillan	NFIB
	NCAJ

VISITOR REGISTRATION SHEET

Senate Judiciary I — March 3, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Clifton Dowell	The Insider.
Maura Cobb	Smith Anderson
Kim Crouch	NC Bar Assn

SENATE JUDICIARY I COMMITTEE
March 8, 2011 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on March 8, 2011, in Room 1027 of the Legislative Building. Fifteen members of the committee were present. Senator Pete Brunstetter presided.

Senate Bill 26
Senator Brock moved to adopt the PCS for discussion
Senator Vaughan was recognized to explain the bill
Senator Soucek sends forward a technical amendment
Senator Brunstetter called on Karen Cochrane-Brown to explain the technical amendment
Amendment passes unanimously
Senator Brunstetter called on Karen Cochrane-Brown to explain the PCS
Senator Brunstetter called for public comment
Robert Saunders, partner with Brooks Pierce, spoke on behalf of SB 26
Eric Henry, President of TS Designs, spoke on behalf of SB 26
Kevin Trepannek, President of a company in Morrisville, spoke on behalf of SB 26
Senator Tillman asked a question, and Senator Vaughan answered
Senator Tillman asked a follow-up, and Senator Vaughan answered
Senator Walters asked a question, and Senator Vaughan deferred to Eric Henry from B-lab
Senator Clodfelter asked a question, and Karen Cochrane-Brown answered
Senator Clodfelter asked a follow-up question, and Karen Cochrane-Brown answered
Eric – from B-labs also answered Senator Clodfelter's question
Senator Clodfelter asked his follow-up question again
Mr. Saunders answered Senator Clodfelter's question again
Senator Pate asked a question of Senator Vaughan, and Vaughan answered
Senator Pate asked a follow-up question, and Senator Vaughan answered
Senator Vaughan deferred to one of the experts from outside the committee
Senator Vaughan added to the comments and answered Senator Pate's question
Senator Brock asked a question, and one of the experts from outside the committee answered
Senator Clodfelter asked two questions, one of which asking for a review by fiscal staff
Mr Saunders answered Senator Brunstetter's second question
Senator Clodfelter followed up on Mr. Saunders' answer
Senator Stein asked a question for either staff or the outside experts
Senator Brown asked a question, and was answered by one of the outside experts
Senator Brown asked a follow-up question, and was answered by Mr. Saunders
Senator Clodfelter asked a question and was answered by one of the outside experts
Senator Clodfelter asked a follow-up question and was answered by Mr. Henry
Senator Nesbitt asked a question about tax consequences, and was answered by Mr. Saunders
Senator Brunstetter raised a question
Senator Nesbitt asked a question
Senator Brown asked a question, and was answered by Mr. Saunders

The meeting adjourned at 10:44 AM.

Senator Pete Brunstetter, Presiding

Sarah Hardin, Committee Clerk

AGENDA

SENATE JUDICIARY I COMMITTEE
March, 8, 2011 at 10:00 a.m.
Room 1027, Legislative Building

I. Welcome and Opening Remarks

II. Bills to be Considered

Senate Bill 26
North Carolina Benefit Corporation Act

III. Other Business

IV. Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 26

Short Title:	North Carolina Benefit Corporation Act.	(Public)
Sponsors:	Senators Vaughan, Stevens, Kinnaird; and Brunstetter.	
Referred to:	Judiciary I.	

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) Benefit corporations are business corporations that have elected to become subject to this Article. The other Articles of this Chapter apply to benefit corporations, including their organization. Benefit corporations shall enjoy the powers and privileges and shall be subject to the duties, restrictions, and liabilities of other corporations under this Chapter, except as may be limited or enlarged by this Article. If any provision of this Article conflicts with the law in the rest of this Chapter, the provision of this Article shall prevail.

(c) The existence of a provision of this Article shall not of itself create an implication that a contrary or different rule of law is applicable to a business corporation that is not a benefit corporation. This Article shall not affect a statute or rule of law that is applicable to a business corporation that is not a benefit corporation.

(d) A provision of the articles or bylaws of a benefit corporation may not be inconsistent with or supersede a provision of this Article, unless specifically stated otherwise in a particular provision of this Article.

(e) A document required or permitted by this Article to be delivered to the Secretary of State for filing shall be filed under Chapter 55D of the General Statutes.

"**§ 55-18-3. Definitions.**

(a) As used in this Article, the following words shall, unless the context requires otherwise, have the following meanings:

(1) "Benefit corporation" means a business corporation that has elected to become subject to this Article and that has not terminated its status as a benefit corporation under G.S. 55-18-23.

(2) "Benefit director" means the director designated under G.S. 55-18-31.

(3) "Benefit enforcement proceeding" means any claim or action brought under G.S. 55-18-44 against a director or officer for any of the following:

a. Failing to pursue the general public benefit purpose of the benefit corporation 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" means the individual designated under G.S. 55-18-43.

(5) "General public benefit" means 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" means having no material relationship with a 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, or a manager of an entity that has a material relationship with the benefit corporation or a subsidiary of the benefit corporation. The term does not include the relationship of serving as benefit director or benefit officer. A material relationship between a person and a 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 a 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 executive officer other than a benefit officer of the benefit corporation or its subsidiary.
c. There is a beneficial or record ownership of five percent (5%) or more of the outstanding shares of the benefit corporation by either of the following:
1. The person.
2. An entity in which the person (i) is a director, an officer, or a manager or (ii) the person owns beneficially or of record five percent (5%) or more of the outstanding equity interests.

This definition is subject to subsection (b) of this section.

(7) "Specific public benefit" means 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 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 means an entity in which the person owns beneficially or of record fifty percent (50%) or more of the outstanding equity interests. This definition is subject to subsection (b) of this section.

(9) "Third-party standard" means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that meets the following requirements:

a. The standard is developed by a person that is independent of the benefit corporation.

b. The standard is transparent because the following information about the standard is publicly available:

1. The factors considered when measuring the performance of a business.
2. The relative weightings of those factors.
3. The identity of the persons that develop and control changes to the standard and the process by which those changes are made.

(b) For purposes of the definitions of "independent" 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.

"Part 2. Formation and Change of Status.

"**§ 55-18-20. Formation of benefit corporation.**

A benefit corporation must be formed in accordance with the other Articles of this Chapter, but its articles of incorporation must also state it is a benefit corporation.

"**§ 55-18-21. Heightened voting requirements for some actions.**

Some actions and changes within benefit corporations are subject to heightened voting requirements that are in addition to any other approval or vote required by any other Articles in this Chapter, the articles of incorporation, or the bylaws. When a provision of this Article references a heightened voting requirement under this section, those votes are subject to the following conditions:

(1) The shareholders of every class or series must be entitled to vote on the corporate action regardless of a limitation stated in the articles of incorporation or bylaws on the voting rights of any class or series.

(2) The corporate action must be approved by vote of the shareholders of each class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or series are entitled to cast on the action.

"**§ 55-18-22. Election of benefit corporation status.**

(a) A business corporation may become a benefit corporation under this Article by amending its articles of incorporation so that they contain, in addition to the requirements of G.S. 55-2-02(a), a statement that the corporation is a benefit corporation. In order to be effective, the amendment must be adopted under the heightened voting requirements in G.S. 55-18-21.

(b) If a corporation that is not a benefit corporation is a party to a merger or share exchange, and the surviving or new corporation in the merger or share exchange is to be a benefit corporation, the plan of merger or share exchange shall not be effective unless it is adopted under the heightened voting requirements in G.S. 55-18-21.

"**§ 55-18-23. 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 required by G.S. 55-18-20 to be stated in the articles of a benefit corporation. In order to be effective, the amendment must be adopted by the heightened voting requirements in G.S. 55-18-21.

(b) If a plan of merger or share exchange would have the effect of terminating the status of a business corporation as a benefit corporation, the plan, in order to be effective, must be adopted under the heightened voting requirements in G.S. 55-18-21.

"Part 3. Corporate Purposes.

"**§ 55-18-30. Corporate purposes.**

(a) A benefit corporation shall have the purpose of creating general public benefit. This purpose is in addition to the purpose of engaging in any lawful business as described in G.S. 55-3-01(a).

(b) The articles of incorporation of a benefit corporation may also identify as its purpose one or more specific public benefits. The identification of a specific public benefit under this subsection does not limit the obligation of a benefit corporation under subsection (a) of this section.

(c) The creation of general or specific public benefit as provided under subsections (a) and (b) of this section is in the best interests of the benefit corporation.

(d) A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit that it is the purpose of the benefit corporation to create. In order to be effective, the amendment must be adopted under the heightened voting requirements in G.S. 55-18-21.

"Part 4. Accountability.

"**§ 55-18-40. Standard of conduct for directors.**

(a) In discharging the duties of their respective positions and in considering the best interests of the benefit corporation, the board of directors, committees of the board, and individual directors of a benefit corporation 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 as 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, the board of directors, committees of the board, and individual directors 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 directors deem appropriate.

(c) The board of directors, committees of the board, and individual directors 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 has stated its intention to give priority to interests related to a specific public benefit purpose identified in its articles of incorporation.

(d) The consideration of interests and factors in the manner required by this section does not constitute a violation of G.S. 55-8-30.

(e) A director is not liable for monetary damages for either of the following:

(1) Any action taken as a director, or any failure to take any action, if the director performed the duties of office in compliance with G.S. 55-8-30 and this section.

(2) Failure of the benefit corporation to create general or specific public benefit.

"**§ 55-18-41. Benefit director.**

(a) The board of directors of a benefit corporation shall include one director who shall be designated the benefit director. This 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 shall be elected, and may be removed, in the manner provided by Part 1 of Article 8 of this Chapter, and shall be an individual who is independent. 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 subsection.

(c) The benefit director shall prepare, and the benefit corporation shall 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 directors and officers complied with G.S. 55-18-40 and G.S. 55-18-42, respectively.

If the benefit director finds a failure under subdivision (1) or (2) of this subsection, the benefit director shall include in the annual benefit report a description of the ways in which the benefit corporation, its directors, or its officers failed to act or comply.

(d) The acts of an individual in the capacity of a benefit director shall constitute for all purposes acts of that individual in the capacity of a director of the benefit corporation.

(e) 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 include a person with the powers, duties, rights, and immunities of a benefit director.

(f) 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 an act or omission in the capacity of the benefit director 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. Standard of conduct for officers.**

(a) Each officer of a benefit corporation shall consider the interests and factors described in G.S. 55-18-40 in the manner provided in that section, provided that the following are true:

(1) The officer has discretion to act with respect to a matter.

(2) It reasonably appears to the officer that the matter may have a material effect on the creation of general or specific public benefit by the benefit corporation.

(b) The consideration of interests and factors in the manner described in subsection (a) of this section shall not constitute a violation of G.S. 55-8-42.

(c) An officer is not personally liable for monetary damages for any of the following:

(1) Any action taken, or any failure to take any action, as an officer, provided that the officer complied with the standards of conduct in G.S. 55-8-42 and in this section.

(2) The failure of the benefit corporation to create general or specific public benefit.

"**§ 55-18-43. Benefit officer.**

(a) A benefit corporation may have an officer designated the benefit officer.

(b) A benefit officer shall do the following:

(1) Perform duties relating to the purpose of the corporation to create general or specific public benefits, as required by either of the following:
a. Bylaws.
b. Resolutions or orders of the board of directors, absent controlling provisions in the bylaws.
(2) Prepare the annual benefit report required by G.S. 55-18-50.

"**§ 55-18-44. Right of action; benefit enforcement proceeding.**

(a) The duties of directors and officers 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 or officers with respect to the duties of directors and officers under this Article, except in a benefit enforcement proceeding.

(b) A benefit enforcement proceeding may be commenced or maintained by only the following:
(1) Directly, by the benefit corporation.
(2) Derivatively, by any of the following:
a. A shareholder.
b. A director.
c. A person or group of persons that owns beneficially or of record ten percent (10%) or more of the outstanding equity 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.

"Part 5. Transparency.

"**§ 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 ways in which the benefit corporation pursued general public benefit during the year and the extent to which general public benefit was created.
b. Both (i) the ways in which the benefit corporation pursued a specific public benefit stated in the articles of incorporation and (ii) the extent to which that specific public benefit was created.
c. Any circumstances that have hindered the creation by the benefit corporation of general or specific public benefit.
(2) An assessment of the social and environmental performance of the benefit corporation, prepared (i) 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 of 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) beneficially, 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).

(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 shall post all of its annual benefit reports on the public portion of its Internet Web site, if any. 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. This act becomes effective December 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 26
PROPOSED COMMITTEE SUBSTITUTE S26-PCS85049-ME-2

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 be controlling.

(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. 55-18-23.

(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. 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.

"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, 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 benefits 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 by only the following:

(1) Directly, by the benefit corporation.
(2) Derivatively, by any of the following:
a. A shareholder.
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, prepared (i) 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. This act becomes effective December 1, 2011.

SENATE PCS 26:
North Carolina Benefit Corporation Act

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 7, 2011
Introduced by:	Sens. Vaughan, Stevens, Kinnaird	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	PCS to First Edition S26-CSME-2		Committee Counsel

SUMMARY: ***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 who must 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:

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.

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 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.

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, director, 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 the 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, except that director compensation and any financial or proprietary information may be excluded.

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

S26-SMRO-4(CSME-2) v1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 26

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

S26-ARO-4 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
S26-PCS85049-ME-2

Date _____, 2011

Senator Soucek

moves to amend the bill on page 1, line 28, by rewriting the line to read:
"G.S. 55-18-22.";

and on page 3, line 22, by rewriting the line to read:
"d. The standard is transparent because the following information about the standard is".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027 LB

DATE: 3-8 **TIME:** 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Darius Evans	Wake Forest	Robinson
2 Douglas Piercy	Asheville	Jenkins
Will Klemme	High Point	Bingham
4		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

ges: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

3.8.11

VISITOR REGISTRATION SHEET

Senate Judiciary I — **Name of Committee**

~~February 17, 2011~~ — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Coley	CWA
Heather Barnett	Williams Mullen
David Heinen	NC Center for Nonprofits
Melanie Sou	DCR
C.P. Dowell	The Insider
Zeb Alley	NMRS
Brad Phillips	TWC

SENATE JUDICIARY I COMMITTEE
March 15, 2011 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on March 15, 2011, in Room 1027 of the Legislative Building. Sixteen members of the committee were present. Senator Pete Brunstetter. presided.

SB 133 Juror Privacy
Senator Clodfelter is recognized to explain the bill
Senator Brunstetter took public comments
John Bussian for NC Press Association spoke in opposition to the bill
Senator Nesbitt asked a question, making sure that there is another list containing the addresses of jurors. Senator Clodfelter answered that the lists do exist
Senator Pate moved for a favorable report
Motion carries

SB 47 Restore Partisan Judicial Elections
Senator Brunstetter recognized Senator Tillman to explain the bill
Senator Brunstetter called on Erika Churchill to explain the bill
Senator Brunstetter called for public comments
John Western from NC Bar Association (Robinson, Bradshaw, and Hinson) spoke in opposition to the bill
Patricia Shields, President-elect of NC Association of Defense Attorneys, spoke in opposition to the bill
Jim Exom, NC Bar Association, spoke in opposition to the bill
Damon Circosta, Center for Voter Education, echoed Tillman's concern but reminded the Senators that the voter guide does provide information to the public
Senator Brunstetter recognized Senator Tillman
Senator Brunstetter called for comments from the committee
Senator Goolsby asked if anyone on the committee was in the General Assembly when the elections were made nonpartisan
Senator Goolsby asked Senator Pate about why the judicial elections were changed to nonpartisan, and Senator Pate answered
Senator Goolsby was recognized for a follow-up comment, agreeing with Senator Tillman's bill
Senator Brock was recognized to make comments
Senator Rucho was recognized to make comments
Senator Clodfelter was recognized to make observations about the difficulty of recruiting qualified individuals for the district court
Senator Mansfield was recognized to ask a question of Senator Tillman, and Senator Tillman responded
Senator Nesbitt was recognized to comment that nonpartisan elections had been enacted when the Republicans were in control of the House, and make other comments in favor of the bill
Senator Stein was recognized to speak against the bill
Senator Tillman was recognized to make final comments

The meeting was adjourned at 10:44 am

Peter Brunstetter, Presiding

Sarah Hardin, Committee Clerk

AGENDA

SENATE JUDICIARY I COMMITTEE
March, 15, 2011 at 10:00 a.m.
Room 1027, Legislative Building

I. Welcome and Opening Remarks

II. Bills to be Considered

Senate Bill 133
Juror Privacy

House Bill 27
Forensic Sciences Act

Senate Bill 47
Restore Partisan Judicial Elections

III. Other Business

IV. Adjournment

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.

SENATE BILL 133:
Juror Privacy

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 15, 2011
Introduced by:	Sen. Clodfelter	**Prepared by:**	Brad Krehely
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: On July 1 of every odd-numbered year, the jury commission must prepare a list of prospective jurors qualified to serve in the biennium beginning on January 1 of the next year. Alternatively, the commission may prepare a list each year if the senior regular resident superior court judge makes that requests in writing. The jury commission must use the names of registered voters and person with drivers license records and may use other sources of names it deems reliable. The commission shall remove the names of deceased residents. The commission must merge the entire list of names and randomly select the number of names to form the jury list. It may use fewer than all the names from the list if it uses a random method of selection.

Counties that have electronic data processing equipment may use the equipment to carry out many of these functions. 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. The procedure must preserve the right of public access to the list of prospective jurors. Public access to the jury list required by G.S. 9-4 shall be 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 filed with the register of deeds of the county and must 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.

BILL ANALYSIS: 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.

EFFECTIVE DATE: This act is effective when it becomes law.

S133-SMRN-11(e1) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 47

Short Title:	Restore Partisan Judicial Elections.	(Public)
Sponsors:	Senators Tillman; Allran, Apodaca, Bingham, Blake, Brock, Brown, Clary, Daniel, Davis, East, Forrester, Gunn, Harrington, Hartsell, Hise, Hunt, Jackson, Meredith, Newton, Pate, Preston, Rabon, Rouzer, Rucho, Soucek, Stevens, and Tucker.	
Referred to:	Judiciary I.	

February 9, 2011

A BILL TO BE ENTITLED

AN ACT TO RESTORE JUDICIAL ELECTIONS TO A PARTISAN BASIS.

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter X (Article 25) of Chapter 163 of the General Statutes is repealed.

SECTION 2. G.S. 163-106(c) reads as rewritten:

"(c) Time for Filing Notice of Candidacy. – Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

Governor
Lieutenant Governor
All State executive officers
Justices of the Supreme Court, Judges of the Court of Appeals
Judges of the superior courts
Judges of the district courts
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

State Senators
Members of the State House of Representatives
All county offices."

SECTION 3. G.S. 163-106(d) reads as rewritten:

"(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any primary in which there are two or more vacancies for associate justices for the Supreme Court, two or more vacancies for the Court of Appeals, two or more vacancies for district court judge, or two vacancies for United States Senator from North Carolina, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for

his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection."

SECTION 4. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All Justices, Judges, and District Attorneys of the General Court of Justice	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)

The salary of any office that is the basis for calculating the filing fee is the starting salary for the office, rather than the salary received by the incumbent, if different. If no starting salary can be determined for the office, then the salary used for calculation is the salary of the incumbent, as of January 1 of the election year."

SECTION 5. G.S. 163-107.1(c) reads as rewritten:

"(c) County, Municipal and District Primaries. – If the candidate is seeking one of the offices set forth in G.S. 163-106(c) but which is not listed in subsection (b) of this section, or a municipal or any other office requiring a partisan primary which is not set forth in G.S. 163-106(c) or (d), he shall file a written petition with the appropriate board of elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for, who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 200 registered voters regardless of said voter's political party affiliation, whichever requirement is greater. The board of elections shall verify the names on the petition, and if the petition is found to be sufficient, the candidate's name shall be printed on the appropriate primary ballot. Petitions for candidates for member of the U.S. House of Representatives, District Attorney, judge of the superior court, judge of the district court, and members of the State House of Representatives from multi-county districts or members of the State Senate from multi-county districts must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections, and such petition must be filed with the State Board of Elections no later than 12:00 noon on Monday preceding the

filing deadline. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms."

SECTION 6. G.S. 163-111(c)(1) reads as rewritten:

"(c) Procedure for Requesting Second Primary. –

(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing with the Executive Director of the State Board of Elections no later than 12:00 noon on the ninth day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
Justices, Judges, or District Attorneys of the General Court of Justice,
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and
Members of the State House of Representatives in multi-county representative districts."

SECTION 7. G.S. 163-114 reads as rewritten:

"**§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.**

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	
President Vice President	Vacancy is to be filled by appointment of national executive committee of political party in which vacancy occurs
Presidential elector or alternate elector Any elective State office United States Senator	Vacancy is to be filled by appointment of State executive committee of political party in which vacancy occurs
A district office, including: Member of the United States House of Representatives Judge of district court District Attorney State Senator in a multi-county senatorial district	Appropriate district executive committee of political party in which vacancy occurs

Member of State House of Representatives in a multi-county representative district	
State Senator in a single-county senatorial district Member of State House of Representatives in a single-county representative district Any elective county office	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote
Judge of superior court in a single-county judicial district where the district is the whole county or part of the county	County executive committee of political party in which vacancy occurs; provided, in the case of a superior court judge in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote
Judge of superior court in a multi-county judicial district	Appropriate district executive committee of political party in which vacancy occurs.

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, that has jurisdiction over the ballot item under G.S. 163-182.4. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S.163-165.3(c) shall apply. If a vacancy occurs in a nomination of a political party and that vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county which is partly in a multi-county judicial district, in choosing that county's member or members of the judicial district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members

of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to be nominated to fill a vacancy in the nomination of another party for the same office in the same year."

SECTION 8. G.S. 138A-22(d) reads as rewritten:

"(d) A candidate for an office subject to this Article shall file the statement of economic interest at the same place and in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106 ~~or G.S. 163-323~~ within 10 days of the filing deadline for the office the candidate seeks. An individual who is nominated under G.S. 163-114 after the primary and before the general election, and an individual who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. An individual nominated under G.S. 163-114 shall file the statement within three days following the individual's nomination, or not later than the day preceding the general election, whichever occurs first. An individual seeking to qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. An individual seeking to have write-in votes counted for that individual in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98."

SECTION 9. G.S. 163-22.3 reads as rewritten:

"**§ 163-22.3. State Board of Elections littering notification.**

At the time an individual files with the State Board of Elections a notice of candidacy pursuant to G.S. 163-106, 163-112, 163-291, ~~163-294.2, or 163-323,~~ or 163-294.2, is certified to the State Board of Elections by a political party executive committee to fill a nomination vacancy pursuant to G.S. 163-114, is certified to the State Board of Elections by a new political party as that party's nominee pursuant to G.S. 163-98, qualifies with the State Board of Elections as an unaffiliated or write-in candidate pursuant to Article 11 of this Chapter, or formally initiates a candidacy with the State Board of Elections pursuant to any statute or local act, the State Board of Elections shall notify the candidate of the provisions concerning campaign signs in G.S. 136-32 and G.S. 14-156, and the rules adopted by the Department of Transportation pursuant to G.S. 136-18."

SECTION 10. G.S. 163-82.10B reads as rewritten:

"**§ 163-82.10B. Confidentiality of date of birth.**

Boards of elections shall keep confidential the date of birth of every voter-registration applicant and registered voter, except in the following situations:

(1) When a voter has filed notice of candidacy for elective office under G.S. 163-106, 163-122, 163-123, or 163-294.2, ~~or 163-323,~~ has been nominated as a candidate under G.S. 163-98 or G.S. 163-114, or has otherwise formally become a candidate for elective office. The exception of this subdivision does not extend to an individual who meets the definition of "candidate" only by beginning a tentative candidacy by receiving funds or making payments or giving consent to someone else to receive funds or transfer something of value for the purpose of exploring a candidacy.

(2) When a voter is serving in an elective office.

(3) When a voter has been challenged pursuant to Article 8 of this Chapter.

(4) When a voter-registration applicant or registered voter expressly authorizes in writing the disclosure of that individual's date of birth.

The disclosure of an individual's age does not constitute disclosure of date of birth in violation of this section.

The county board of elections shall give precinct officials access to a voter's date of birth where necessary for election administration, consistent with the duty to keep dates of birth confidential.

Disclosure of a date of birth in violation of this section shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of a date of birth in violation of this subsection as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable."

SECTION 11. G.S. 163-165.5(3) reads as rewritten:

"**§ 163-165.5. Contents of official ballots.**

Each official ballot shall contain all the following elements:

...

(3) The names of the candidates as they appear on their notice of candidacy filed pursuant to G.S. 163-106 ~~or G.S. 163-323,~~ or on petition forms filed in accordance with G.S. 163-122. No title, appendage, or appellation indicating rank, status, or position shall be printed on the official ballot in connection with the candidate's name. Candidates, however, may use the title Mr., Mrs., Miss, or Ms. Nicknames shall be permitted on an official ballot if used in the notice of candidacy or qualifying petition, but the nickname shall appear according to standards adopted by the State Board of Elections. Those standards shall allow the presentation of legitimate nicknames in ways that do not mislead the voter or unduly advertise the candidacy. In the case of candidates for presidential elector, the official ballot shall not contain the names of the candidates for elector but instead shall contain the nominees for President and Vice President which the candidates for elector represent. The State Board of Elections shall establish a review procedure that local boards of elections shall follow to ensure that candidates' names appear on the official ballot in accordance with this subdivision.

...."

SECTION 12. G.S. 163-278.100(1) reads as rewritten:

"**§ 163-278.100. Definitions.**

As used in this Article, the following terms have the following definitions:

(1) The term "candidate-specific communication" means any broadcast, cable, or satellite communication that has all the following characteristics:

a. Refers to a clearly identified candidate for a statewide office or the General Assembly.

b. Is aired in an even-numbered year after the final date on which a Notice of Candidacy can be filed for the office, pursuant to ~~G.S. 163-106(c) or G.S. 163-323,~~ G.S. 163-106(c), and through the day on which the general election is conducted, excluding the time period set in the definition for "electioneering communication" in G.S. 163-278.80(2)b.

c. Is targeted to the relevant electorate.

...."

SECTION 13. G.S. 163-278.110(1) reads as rewritten:

"**§ 163-278.110. Definitions.**

As used in this Article, the following terms have the following definitions:

(1) The term "candidate-specific communication" means any mass mailing or telephone bank that has all the following characteristics:
a. Refers to a clearly identified candidate for a statewide office or the General Assembly.
b. Is transmitted in an even-numbered year after the final date on which a Notice of Candidacy can be filed for the office, pursuant to ~~G.S. 163-106(c) or G.S. 163-323,~~ G.S. 163-106(c), and through the day on which the general election is conducted, excluding the time period set in the definition for "electioneering communication" in G.S. 163-278.90(2)b.
c. Is targeted to the relevant electorate.
...."

SECTION 14. G.S. 163-1(b) reads as rewritten:

"(b) On Tuesday next after the first Monday in May preceding each general election to be held in November for the officers referred to in subsection (a) of this section, there shall be held in all election precincts within the territory for which the officers are to be elected a primary election for the purpose of nominating candidates for each political party in the State for those ~~offices, and nonpartisan candidates as to offices elected under the provisions of Article 25 of this Chapter.~~offices."

SECTION 15. G.S. 163-122(c) is repealed.

SECTION 16. G.S. 163-123(g) reads as rewritten:

"(g) Municipal and Nonpartisan Elections Excluded. – This section does not apply to municipal elections conducted under Subchapter IX of Chapter 163 of the General Statutes, and does not apply to nonpartisan elections.~~elections except for elections under Article 25 of this Chapter.~~"

SECTION 17. G.S. 163-278.64(c) reads as rewritten:

"(c) Certification of Candidates. – Upon receipt of a submittal of the record of demonstrated support by a participating candidate, the Board shall determine whether or not the candidate has complied with all the following requirements:
(1) Signed and filed a declaration of intent to participate in this Article.
(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.
(3) Filed a valid notice of candidacy pursuant to Article ~~25~~ 10 of this ~~Chapter.~~ Chapter, a valid petition or declaration of intent under Article 11 of this Chapter, or is nominated under G.S. 163-98.
(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of demonstrated support."

SECTION 18. G.S. 163-278.64A is repealed.

SECTION 19. This act becomes effective with respect to primaries and elections held on or after January 1, 2012.

SENATE BILL 47:
Restore Partisan Judicial Elections

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 14, 2011
Introduced by:	Sen. Tillman	**Prepared by:**	R. Erika Churchill
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 47 would provide that elections of appellate court, superior court and district court judges be conducted in partisan manner.***

[As introduced, this bill was identical to H64, as introduced by Reps. Sager, Dixon, Cleveland, Jones, which is currently in House Elections.]

CURRENT LAW: Prior to 1996, elections of judges in North Carolina were conducted in partisan manner. In 1996, the law governing the elections of superior court judges was amended to make those elections nonpartisan. In 2001, the law governing the elections of district court judges was amended to make those elections nonpartisan. In 2002, the law governing the elections of appellate court judges was amendment to make those elections nonpartisan, beginning with the 2004 elections. As a result, currently, all elections of appellate court, superior court and district court judges in North Carolina are conducted in a nonpartisan manner.

Appellate Court justices are elected statewide, and serve eight year terms. The Superior and District Court Divisions of the General Court of Justice consist of various district courts organized in territorial districts, with at least one district judge in each district. The General Assembly determines the number of judges for each district. Each judge must be a resident of the district to which he or she is elected. Superior Court judges serve eight-year terms, district court judges serve four-year terms. Vacancies in the offices are filled for the unexpired term by appointment of the Governor. from nominations submitted by the district bar. If elected from a district, nominees must be residents of the district who are licensed to practice law in the district and who are members of the same political party as the vacating judge.

The provisions for nonpartisan judicial races are set out in Article 25 of Chapter 163 of the General Statutes. Candidates run in nonpartisan primaries, held on the same day in May as the party primaries. The primaries reduce the field to twice the number to be elected, eliminating additional candidates. Then, the reduced field runs in the November general election. The system is patterned after the nonpartisan primary and elections used by some cities to elect their mayors and city councils. The nonpartisan primaries and elections are by district for superior and district court judges.

BILL ANALYSIS: Section 1 would repeal Article 25 of Chapter 163 of the General Statutes, which sets out the process for conducting nonpartisan judicial races.

Sections 2-7 would amend various partisan election procedural statutes to include judicial candidates.

Sections 8-18 would make conforming changes necessary to implement the repeal of Article 25 of Chapter 163 of the General Statutes.

EFFECTIVE DATE: Effective January 1, 2012, but may not be implemented until the session law has received 'preclearance' approval under Section 5 of the Voting Rights of 1965 by the U.S. Department of Justice.

Statement of the North Carolina Association of Defense Attorneys

In Opposition to SB47

The members of the North Carolina Association of Defense Attorneys (NCADA) are civil trial attorneys who defend businesses, professionals, and individuals in North Carolina. The mission of the NCADA is to promote the fair and impartial administration of justice, the exchange of information, ideas, and litigation techniques, and to strengthen the practice, improve the skills, and enhance the knowledge of its members.

As lawyers engaged in defending the citizens of North Carolina, both individual and corporate, in our courtrooms every day, the members of the NCADA are deeply concerned about the quality, impartiality, and integrity of our judiciary. Because of that concern, we oppose the restoration of partisan judicial elections.

Unlike the other branches of our State government, our judicial branch is not, and should not be political. Unlike our other elected officials, judges are ethically required to be impartial and independent. As stated in the first line of the Preamble to the North Carolina Code of Judicial Conduct, an "independent and honorable judiciary is indispensable to justice in our society." In keeping with these principles, North Carolina determined years ago that judicial elections should not be partisan. Since that time, high quality judges of different political persuasions have been elected.

In order for our justice system to be independent, judges must be free to rule without concern about how a decision will impact partisan or special interests. Insertion of partisan politics into judicial election necessarily undermines the public's confidence in the independence of its judges.

North Carolina has avoided the spectacle of high profile, bitterly partisan judicial elections. In our view, this Bill will overturn a carefully considered positive change and make the State's judiciary vulnerable to the partisan show occurring in many other states. This will undermine confidence in a fair and reliable system of justice, which is essential to a positive business climate. The NCADA believes that our focus instead should be on what more can be done to improve the quality of the judiciary.

Unlike our legislators, the function of a judge is not to write or create the law, but to apply and uphold it, regardless of their own personal opinions. Intellect, integrity and judicial temperament are the qualities that members of the NCADA consider in supporting judicial candidates. We believe that our clients, and the citizens of North Carolina, are best served by judges who consider the facts fairly, and apply the law impartially. In our experience, these are qualities of the individual candidate and are in no way tied to party affiliation.

PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027

DATE: 3-15 **TIME:** 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Whitney Roberts	Wilmington	Goolsby
Ian Grace	"	"
3 Cole Nye Kathryn Bridgers	E-town	- Perrell - Meredith
4		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

VISITOR REGISTRATION SHEET

3-15-11

Senate Judiciary I
Name of Committee

February 17, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BRUCE THOMPSON	PARKER POE
Mike Stum	NCSHCAFC&A
CS Hollis	BSS
Thom Wm	Ethics Ed. Wm
Chip Killian	NCBA mmellon

VISITOR REGISTRATION SHEET 3-15-11

Senate Judiciary I — February 17, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John W Smith	AOC
Dennis Patterson	OSA
Patrick Buffkin	NCAEC
Michelle Frazier	MF+S
Melissa Price	NCUCE
Mildred Spearman	NCAOC
Mike Mitchell	Bar Assoc. / Smith Anderson lawfirm
Kim Crouch	NCBA
Jim Exum.	NCBA
Patricia Shields	NC Association of Defense Attorneys
John Webster	NCBA / Robinson Bradshaw

VISITOR REGISTRATION SHEET

3-15-11

Senate Judiciary I
Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Randy Overton	Ro Consulting
Will Polk	Gov Office
Kay Emanuel	Legislative Reporting Service
A. Blackman	SOE
Kim Rossi	NCSBE
Sarah Preston	ACLU-NC
Ogle Acola	Lawyers Weekly
Amy Bason	NCACC
Paula Wolf	Paulatics
Melissa Bellitti	Paulatics
Vince Rose	DOJ

VISITOR REGISTRATION SHEET

3-15-11

Senate Judiciary I
Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jennifer Epperson	NC DOJ
Joe John	SBI Crime Lab
Gary McLeod	SBI
Bruce Cotton	FAP
GREG BEHR	GBW
BILLY WARDEN	GBW
Bill Rowe,	NC Justice Center
Martin Brinkley	President-Elect, N.C. Bar Association
Leo Ruberto	CPC
Chris Telesca	SE PA
David Bass	Carolina Journal

SENATE JUDICIARY I COMMITTEE
March 17, 2011 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on March 17, 2011, in Room 1027 of the Legislative Building. Sixteen members of the committee were present. Senator Pete Brunstetter. presided.

Senator Brunstetter called the meeting to order at 10:03 a.m.

SB 191
Senator Walters moved to accept the PCS for purposes of discussion
Senator Mansfield was recognized to explain the bill
Brad Krehely was recognized to further explain the bill
Senator Clodfelter moves for a favorable report, unfavorable as to bill, favorable as to committee sub
Senator Pate was recognized for a question, and Senator Mansfield answered the question
Motion carries unanimously

SB 26
Senator Goolsby offered an amendment and was recognized to explain it
Senator Stein asked a question, and Senator Brunstetter answered
Motion passes unanimously
Senator Clodfelter offered an amendment and was recognized to explain it
Motion passes
Senator Clodfelter offered an amendment and was recognized to explain it
Motion carries
Senator Brunstetter asked for questions
Senator Stein moved for a favorable report, unfavorable as to bill, favorable as to PCS

HB 27
Senator Clodfelter moved to adopt the PCS for purposes of discussion
Representative Glazier was recognized to explain the bill
Senator Brunstetter asked for public comment
Senator Goolsby was recognized to ask a question
Joe John, acting Crime Lab director, was recognized to answer the question
Senator Goolsby was recognized for follow-up comments
John answered Sen. Goolsby's question
Senator Nesbitt was recognized to make comments and send forward an amendment
Susan Sitze was recognized to further explain the amendment and answer a question of Senator Nesbitt's
Representative Glazier was recognized to comment on the amendment
Amendment passes
Senator Goolsby was recognized to ask a question of John, and John answered
Senator Nesbitt made comments
Senator Stein moved for a favorable report of the PCS as amendment

Motion carries
Sen. Jones will run the bill on the floor

Peter Brunstetter, Presiding

Sarah Hardin, Committee Clerk

AGENDA

SENATE JUDICIARY I COMMITTEE
March 17, 2011 at 10:00 a.m.
Room 1027, Legislative Building

I. Welcome and Opening Remarks

II. Bills to be Considered

House Bill 27
Forensic Sciences Act

Senate Bill 190
Allow Electronic Signatures on Death Certs.

Senate Bill 191
Allow Nurse Practitioners to Sign Death Cert.

Senate Bill 26
North Carolina Benefit Corporation Act

III. Other Business

IV. Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 191

Short Title:	Allow Nurse Practitioners to Sign Death Cert.	(Public)
Sponsors:	Senator Mansfield.	
Referred to:	Judiciary I.	

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE NURSE PRACTITIONERS UNDER THE SUPERVISION OF A PHYSICIAN TO COMPLETE MEDICAL CERTIFICATIONS AS TO THE CAUSE OF DEATH FOR DEATH REGISTRATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-18.2 is amended by adding a new subsection to read:

"(e1) Any medical certification completed by a nurse practitioner for a death certificate shall be deemed to have been authorized by the physician approved by the boards as the supervisor of the nurse practitioner, and the supervising physician shall be responsible for authorizing the completion of the medical certification."

SECTION 2. G.S. 130A-115(c) and (d) read as rewritten:

"(c) The medical certification shall be completed and signed by the physician in charge of the patient's care for the illness or condition which resulted in death, except when the death falls within the circumstances described in G.S. 130A-383. In the absence of the physician or with the physician's approval, the certificate may be completed and signed by an associate physician, a nurse practitioner under the supervision of the physician, the chief medical officer of the hospital or facility in which the death occurred or a physician who performed an autopsy upon the decedent under the following circumstances: the individual has access to the medical history of the deceased; the individual has viewed the deceased at or after death; and the death is due to natural causes. When specifically approved by the State Registrar, an electronic signature or facsimile signature of the physician shall be acceptable. As used in this section, the term electronic signature has the same meaning as applies in G.S. 66-58.2. The physician or a nurse practitioner under the supervision of the physician shall state the cause of death on the certificate in definite and precise terms. A certificate containing any indefinite terms or denoting only symptoms of disease or conditions resulting from disease as defined by the State Registrar, shall be returned to the person making the medical certification for correction and more definite statement.

(d) The ~~physician~~ physician, nurse practitioner, or medical examiner making the medical certification as to the cause of death shall complete the medical certification no more than three days after death. The ~~physician~~ physician, nurse practitioner, or medical examiner may, in appropriate cases, designate the cause of death as unknown pending an autopsy or upon some other reasonable cause for delay, but shall send the supplementary information to the local registrar as soon as it is obtained."

SECTION 3. This act becomes effective October 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 191
PROPOSED COMMITTEE SUBSTITUTE S191-CSMG-1 [v.9]

3/16/2011 5:06:11 PM

Short Title: Death Certificate Signatures. (Public)

Sponsors:

Referred to:

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PHYSICIAN ASSISTANTS AND NURSE PRACTITIONERS TO COMPLETE MEDICAL CERTIFICATIONS AS TO THE CAUSE OF DEATH FOR DEATH REGISTRATION AND TO ALLOW ELECTRONIC OR FACSIMILE SIGNATURES ON DEATH CERTIFICATES WITHOUT SPECIFIC APPROVAL BY THE STATE REGISTRAR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-18.1 is amended by adding a new subsection to read:

"(e1) Any medical certification completed by a physician assistant for a death certificate shall be deemed to have been authorized by the physician approved by the Board as the supervisor of the physician assistant, and the supervising physician shall be responsible for authorizing the completion of the medical certification."

SECTION 2. G.S. 90-18.2 is amended by adding a new subsection to read:

"(e1) Any medical certification completed by a nurse practitioner for a death certificate shall be deemed to have been authorized by the physician approved by the boards as the supervisor of the nurse practitioner, and the supervising physician shall be responsible for authorizing the completion of the medical certification."

SECTION 3. G.S. 130A-115(c) and (d) read as rewritten:

"(c) The medical certification shall be completed and signed by the physician in charge of the patient's care for the illness or condition which resulted in death, except when the death falls within the circumstances described in G.S. 130A-383. In the absence of the physician or with the physician's approval, the certificate may be completed and signed by an associate physician, a physician assistant in a manner consistent with G.S. 90-18.1(e1), a nurse practitioner in a manner consistent with G.S. 90-18.2(e1), the chief medical officer of the hospital or facility in which the death occurred or a physician who performed an autopsy upon the decedent under the following circumstances: the individual has access to the medical history of the deceased; the individual has viewed the deceased at or after death; and the death is due to natural causes. ~~When specifically approved by the State Registrar, an~~An electronic signature or facsimile signature of the ~~physician~~ physician, physician assistant, or nurse practitioner shall be acceptable. As used in this section, the term electronic signature has the same meaning as applies in G.S. 66-58.2 or G.S. 66-312. The ~~physician~~ physician, physician assistant, or nurse practitioner shall state the cause of death on the certificate in definite and precise terms. A certificate containing any indefinite terms or denoting only symptoms of

disease or conditions resulting from disease as defined by the State Registrar, shall be returned to the person making the medical certification for correction and more definite statement.

(d) The ~~physician~~ physician, physician assistant, nurse practitioner, or medical examiner making the medical certification as to the cause of death shall complete the medical certification no more than three days after death. The ~~physician~~ physician, physician assistant, nurse practitioner, or medical examiner may, in appropriate cases, designate the cause of death as unknown pending an autopsy or upon some other reasonable cause for delay, but shall send the supplementary information to the local registrar as soon as it is obtained."

SECTION 4. This act becomes effective October 1, 2011, and applies to certifications signed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 191
PROPOSED COMMITTEE SUBSTITUTE S191-PCS85101-MG-1

Short Title: Death Certificate Signatures. (Public)

Sponsors:

Referred to:

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PHYSICIAN ASSISTANTS AND NURSE PRACTITIONERS TO COMPLETE MEDICAL CERTIFICATIONS AS TO THE CAUSE OF DEATH FOR DEATH REGISTRATION AND TO ALLOW ELECTRONIC OR FACSIMILE SIGNATURES ON DEATH CERTIFICATES WITHOUT SPECIFIC APPROVAL BY THE STATE REGISTRAR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-18.1 is amended by adding a new subsection to read:

"(e1) Any medical certification completed by a physician assistant for a death certificate shall be deemed to have been authorized by the physician approved by the Board as the supervisor of the physician assistant, and the supervising physician shall be responsible for authorizing the completion of the medical certification."

SECTION 2. G.S. 90-18.2 is amended by adding a new subsection to read:

"(e1) Any medical certification completed by a nurse practitioner for a death certificate shall be deemed to have been authorized by the physician approved by the boards as the supervisor of the nurse practitioner, and the supervising physician shall be responsible for authorizing the completion of the medical certification."

SECTION 3. G.S. 130A-115(c) and (d) read as rewritten:

"(c) The medical certification shall be completed and signed by the physician in charge of the patient's care for the illness or condition which resulted in death, except when the death falls within the circumstances described in G.S. 130A-383. In the absence of the physician or with the physician's approval, the certificate may be completed and signed by an associate physician, a physician assistant in a manner consistent with G.S. 90-18.1(e1), a nurse practitioner in a manner consistent with G.S. 90-18.2(e1), the chief medical officer of the hospital or facility in which the death occurred or a physician who performed an autopsy upon the decedent under the following circumstances: the individual has access to the medical history of the deceased; the individual has viewed the deceased at or after death; and the death is due to natural causes. ~~When specifically approved by the State Registrar, an~~An electronic signature or facsimile signature of the ~~physician~~ physician, physician assistant, or nurse practitioner shall be acceptable. As used in this section, the term electronic signature has the same meaning as applies in G.S. 66-58.2 or G.S. 66-312. The ~~physician~~ physician, physician assistant, or nurse practitioner shall state the cause of death on the certificate in definite and precise terms. A certificate containing any indefinite terms or denoting only symptoms of

disease or conditions resulting from disease as defined by the State Registrar, shall be returned to the person making the medical certification for correction and more definite statement.

(d) The ~~physician~~ physician, physician assistant, nurse practitioner, or medical examiner making the medical certification as to the cause of death shall complete the medical certification no more than three days after death. The ~~physician~~ physician, physician assistant, nurse practitioner, or medical examiner may, in appropriate cases, designate the cause of death as unknown pending an autopsy or upon some other reasonable cause for delay, but shall send the supplementary information to the local registrar as soon as it is obtained."

SECTION 4. This act becomes effective October 1, 2011, and applies to certifications signed on or after that date.

SENATE BILL 191:
Death Certificate Signatures

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 17, 2011
Introduced by:	Sen. Mansfield	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition S191-CSMG-1		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 191 would allow physician assistants and nurse practitioners to complete medical certifications as to the cause of death and allow electronic or facsimile signatures on death certificates without approval by the State Registrar.***

CURRENT LAW: A death certificate for each death which occurs in this State shall be filed with the local registrar of the county in which the death occurred within five days after the death. If the place of death is unknown, a death certificate shall be filed within five days in the county where the dead body is found. Generally, the medical certification shall be completed and signed by the physician in charge of the patient's care for the illness or condition which resulted in death. In the absence of the physician or with the physician's approval, the certificate may be completed and signed by an associate physician, the chief medical officer of the hospital or facility in which the death occurred or a physician who performed an autopsy upon the decedent under the following circumstances: the individual has access to the medical history of the deceased; the individual has viewed the deceased at or after death; and the death is due to natural causes. When specifically approved by the State Registrar, an electronic signature or facsimile signature of the physician shall be acceptable.

Under certain conditions, both physician assistants and nurse practitioners may write prescriptions, compound and dispense drugs, and order medications, tests, and treatments. However, physician assistants and nurse practitioners may not sign death certificates.

BILL ANALYSIS:

Section 1 provides that a physician assistant may complete a medical certification for a death certificate, and it will be deemed to have been authorized by the physician assistant's supervising physician.

Section 2 provides that a nurse practitioner may complete a medical certification for a death certificate, and it will be deemed to have been authorized by the nurse practitioner's supervising physician.

Section 3 allows electronic or facsimile signatures on death certificates without specific approval by the State Registrar. It updates the definition of "electronic signature" to include the definition set forth in the Uniform Electronic Transfers Act. This section also makes conforming changes.

EFFECTIVE DATE: The act becomes effective October 1, 2011, and applies to certifications signed on or after that date.

BACKGROUND: The PCS for Senate Bill 191 combines the provisions Senate Bill 190- Allow Electronic Signatures on Death Certificates and Senate Bill 191- Allow Nurse Practitioners to Sign Death Certificates. The PCS authorizes physician assistants to sign death certificates and updates the definition of electronic signature.

S191-SMRN-15(CSMG-1) v8

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 26
PROPOSED COMMITTEE SUBSTITUTE S26-PCS85049-ME-2

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 be controlling.

(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. 55-18-23.

(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. 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.

"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, 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 benefits 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 by only the following:

(1) Directly, by the benefit corporation.
(2) Derivatively, by any of the following:
a. A shareholder.
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, prepared (i) 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. This act becomes effective December 1, 2011.

SENATE PCS 26:
North Carolina Benefit Corporation Act

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 7, 2011
Introduced by:	Sens. Vaughan, Stevens, Kinnaird	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to First Edition S26-CSME-2		

SUMMARY: ***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 who must 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:

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.

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 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.

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, director, 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 the 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, except that director compensation and any financial or proprietary information may be excluded.

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

S26-SMRO-4(CSME-2) v1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 26

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

S26-AME-10 [v.3]

Comm. Sub. [YES]
Amends Title [NO]
S26-PCS85049-ME-2

Date March 17 ,2011

Senator Goolsby

moves to amend the bill on page 8, line 14, by inserting after that line the following language:

"**SECTION 2.** G.S. 55-13-02(a) reads as rewritten:

'(a) In addition to any rights granted under Article 9, a shareholder is entitled to dissent from, and obtain payment of the fair value of his shares in the event of, any of the following corporate actions:

...

(6) Consummation of a designation of the corporation as a benefit corporation pursuant to Part 2 of Article 18 of this Chapter.'"; and

by renumbering the remaining section accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

S26-AME-10-V-3

Dissenter rights on conversion to B-Corp

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 26

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

S26-AME-12 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
S26-PCS85049-ME-2

Date _____, 2011

Senator Clodfelter

moves to amend the bill on page 7, line 3, by rewriting that line to read:

"a. A shareholder that owns five percent (5%) or more of the shares in the benefit corporation.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

S26-AME-12-V-2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 26

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

S26-AME-11 [v.4]

Comm. Sub. [YES]
Amends Title [NO]
S26-PCS85049-ME-2

Date _____, 2011

Senator Clodfelter

moves to amend the bill on page 3, line 41, by inserting after that line the following language:

"**§ 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.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 26
PROPOSED COMMITTEE SUBSTITUTE S26-PCS55149-RO-5

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 be controlling.

(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 benefits 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 by only 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) reads as rewritten:

"(a) In addition to any rights granted under Article 9, a shareholder is entitled to dissent from, and obtain payment of the fair value of his shares in the event of, any of the following corporate actions:

...

(6) 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 December 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 3

HOUSE BILL 27*
Committee Substitute Favorable 2/9/11
Third Edition Engrossed 2/15/11

Short Title: Forensic Sciences Act. (Public)

Sponsors:

Referred to:

February 2, 2011

A BILL TO BE ENTITLED

AN ACT TO (1) CREATE THE NORTH CAROLINA FORENSIC SCIENCE ADVISORY BOARD, (2) ENCOURAGE EFFORTS TO ELIMINATE SOURCES OF HUMAN ERROR IN FORENSIC EXAMINATIONS, (3) REQUIRE CERTIFICATION OF FORENSIC SCIENCE PROFESSIONALS, (4) RENAME THE STATE BUREAU OF INVESTIGATION LABORATORY AS THE NORTH CAROLINA STATE CRIME LABORATORY, (5) CREATE THE POSITION OF OMBUDSMAN TO ENSURE THAT THE BEST FORENSIC PROCESSES AND PROCEDURES ARE UTILIZED IN THE STATE CRIME LABORATORY, (6) CLARIFY STATUTES THAT ALLOW FOR THE ADMISSIBILITY OF FORENSIC ANALYSES INTO EVIDENCE, (7) CLARIFY THE STATE'S OBLIGATION TO DISCLOSE TO THE DEFENDANT ALL INFORMATION RELATING TO THE TESTING OR EXAMINATION OF EVIDENCE AND TO PENALIZE OMISSION OR MISREPRESENTATION RELATING TO DISCLOSURE, AND (8) CLARIFY THAT STATE CRIME LABORATORY PERSONNEL SERVE THE PUBLIC AND THE CRIMINAL JUSTICE SYSTEM, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON THE PRESERVATION OF BIOLOGICAL EVIDENCE, AND TO PROVIDE THAT THE ACT SHALL BE ENTITLED "THE FORENSIC SCIENCES ACT OF 2011."

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known as "The Forensic Sciences Act of 2011."

SECTION 2. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-16.1. Forensic Science Advisory Board.**

(a) Creation and Membership. – The North Carolina Forensic Science Advisory Board (Board) is hereby established as an advisory board within the Department of Justice. The Board shall consist of 16 members, consisting of the State Crime Laboratory Director, and 15 members appointed by the Attorney General as follows:

(1) A forensic scientist or any other person with an advanced degree who has received substantial education, training, or experience in the subject of laboratory standards or quality assurance regulation and monitoring.

(2) The Chief Medical Examiner of the State.

(3) A forensic scientist with an advanced degree who has received substantial education, training, or experience in the discipline of molecular biology.

(4) A forensic scientist with an advanced degree who has experience in the discipline of population genetics.

(5) A scientist with an advanced degree who has experience in the discipline of forensic chemistry.
(6) A scientist with an advanced degree who has experience in the discipline of forensic biology.
(7) A forensic scientist or any other person with an advanced degree who has received substantial education, training, or experience in the discipline of trace evidence.
(8) A scientist with a doctoral degree who has experience in the discipline of forensic toxicology and is certified by the American Board of Forensic Toxicologists.
(9) A member of the International Association for Identification.
(10) A member of the Association of Firearms and Toolmark Examiners.
(11) A member of the International Association for Chemical Testing.
(12) A director of a private or federal forensic laboratory located in the State.
(13) A member of the American Society of Crime Laboratory Directors.
(14) A member of the Academy of Forensic Sciences.
(15) A member of the American Statistical Association.

A chairman shall be elected from among the members appointed, and staff shall be provided by the Department of Justice.

(b) Meetings. – The Board shall meet quarterly and at such other times and places as it determines. Members of the Board cannot designate a proxy to vote in their absence.

(c) Terms. – Members of the Board initially appointed shall serve the following terms: five members shall serve a term of one year; five members shall serve a term of two years; and five members shall serve a term of four years. Thereafter, all appointments shall be for a term of four years. A vacancy other than by expiration of term shall be filled by the Attorney General for the unexpired term. Members of the Board cannot designate a proxy to vote in their absence.

(d) Expenses. – Members of the Board shall be paid reasonable and necessary expenses incurred in the performance of their duties. Members of the Board who are State officers or employees shall receive no compensation for serving on the Board but may be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Board who are full-time salaried public officers or employees other than State officers or employees shall receive no compensation for serving on the Board but may be reimbursed for their expenses in accordance with G.S. 138-5(b). All other members of the Board may receive compensation and reimbursement for expenses in accordance with G.S. 138-5.

(e) Functions. – The Board may review State Crime Laboratory operations and make recommendations concerning the services furnished to user agencies. The Board shall review and make recommendations as necessary to the Laboratory Director concerning any of the following:

(1) New scientific programs, protocols, and methods of testing.
(2) Plans for the implementation of new programs; sustaining existing programs and improving upon them where possible; and the elimination of programs which are no longer needed.
(3) Protocols for testing and examination methods and guidelines for the presentation of results in court.
(4) Qualification standards for the various forensic scientists of the Laboratory.

(f) Review Process. – Upon request of the Laboratory Director, the Board shall review analytical work, reports, and conclusions of scientists employed by the Laboratory. Records reviewed by this Board retain their confidential status and continue to be considered records of a criminal investigation as defined in G.S. 132-1.4. These records shall be reviewed only in a closed session meeting pursuant to G.S. 143-318.11 of the Board, and each member of the

Board shall, prior to receiving any documents to review, sign a confidentiality agreement agreeing to maintain the confidentiality of and not to disclose the documents nor the contents of the documents reviewed. The Board shall recommend to the Laboratory a review process to use when there is a request that the Laboratory retest or reexamine evidence that has been previously examined by the Laboratory."

SECTION 3. The State Bureau of Investigation (SBI) shall encourage and seek collaborative opportunities and grant funds for research programs, in association whenever possible with the university system or independent nationally recognized forensic institutions, on human observer bias and sources of human error in forensic examinations. Such programs might include studies to determine the effects of contextual bias in forensic practice (e.g., studies to determine whether and to what extent the results of forensic analysis are influenced by knowledge regarding the background of the suspect and the investigator's theory of the case). In addition, research on sources of human error should be closely linked with research conducted to quantify and characterize the amount of error. Based on the results of these studies, and in consultation with the North Carolina Forensic Sciences Advisory Board, the North Carolina State Crime Laboratory should develop standard operating procedures (that will lay the foundation for model protocols) to minimize, to the extent possible, potential bias and sources of human error in forensic science. These standard operating procedures should apply to all forensic analyses that may be used in litigation.

SECTION 4. Individual certification of forensic science professionals at the State Crime Laboratory shall be mandatory as soon as practicable, but no later than June 1, 2012, unless not available consistent with international and ISO standards. All such forensic science professionals shall have access to the certification process.

SECTION 5. The Revisor of Statutes shall replace the name of the State Bureau of Investigation Laboratory, or any other name which is identified with the State Bureau of Investigation Laboratory, with the name "North Carolina State Crime Laboratory" wherever first used in a statute or session law and with "State Crime Laboratory" at each subsequent location in the statute or session law.

SECTION 6. The position of ombudsman is created in the North Carolina State Crime Laboratory within the North Carolina Department of Justice. The primary purpose of this position shall be to work with defense counsel, prosecutorial agencies, criminal justice system stakeholders, law enforcement officials, and the general public to ensure all processes, procedures, practices, and protocols at the Laboratory are consistent with State and federal law, best forensic law practices, and in the best interests of justice in this State. The ombudsman shall mediate complaints brought to the attention of the ombudsman between the SBI and defense counsel, prosecutorial agencies, law enforcement agencies, and the general public. The ombudsman shall ensure all criminal justice stakeholders and the general public are aware of the availability, responsibilities, and role of the ombudsman and shall regularly attend meetings of the Conferences of the District Attorneys, District and Superior Court Judges, Public Defenders, the Advocates for Justice, and Bar Criminal Law Sections. The ombudsman shall make recommendations on a regular basis to the Director of the State Crime Laboratory, Director of the SBI, and Attorney General of North Carolina as to policies, procedures, practices, and training of employees needed at the Laboratory to ensure compliance with State and federal law, best forensic law practices, and to resolve any meritorious systemic complaints received by the ombudsman.

SECTION 6.(a). The funds for the position of ombudsman created in Section 6 of this act shall be provided by the Department of Justice from other funds appropriated to the Department, and from other grants or funding that are available from other sources.

SECTION 7. G.S. 8-58.20 reads as rewritten:

"**§ 8-58.20. Forensic analysis admissible as evidence.**

(a) In any criminal prosecution, a laboratory report of a written forensic analysis, including an analysis of the defendant's DNA, or a forensic sample alleged to be the defendant's DNA, as that term is defined in G.S. 15A-266.2(2), that states the results of the analysis and that is signed and sworn to by the person performing the analysis may be admissible in evidence without the testimony of the analyst who prepared the report in accordance with the requirements of this section.

(b) A forensic analysis, to be admissible under this section, shall be performed ~~in accordance with rules or procedures adopted by the State Bureau of Investigation, or by another laboratory accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB)~~ by a laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement For Testing for the submission, identification, analysis, and storage of forensic analyses. The analyses of DNA samples and typing results of DNA samples shall be performed ~~in accordance with the rules or procedures of the State Bureau of Investigation or other ASCLD/LAB accredited laboratory.~~ by a laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the ILAC Mutual Recognition Arrangement For Testing.

(c) The analyst who analyzes the forensic sample and signs the report shall complete an affidavit on a form developed by the State Bureau of Investigation. In the affidavit, the analyst shall state (i) that the person is qualified by education, training, and experience to perform the analysis, (ii) the name and location of the laboratory where the analysis was performed, and (iii) that performing the analysis is part of that person's regular duties. The analyst shall also aver in the affidavit that the tests were performed pursuant to the ~~ASCLD/LAB~~ accrediting body's standards for that discipline and that the evidence was handled in accordance with established and accepted procedures while in the custody of the laboratory. The affidavit shall be sufficient to constitute prima facie evidence regarding the person's qualifications. The analyst shall attach the affidavit to the laboratory report and shall provide the affidavit to the investigating officer and the district attorney in the prosecutorial district in which the criminal charges are pending. An affidavit by a forensic analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any criminal proceeding with respect to the forensic analysis administered and the procedures followed.

...."

SECTION 8. G.S. 20-139.1(c2) reads as rewritten:

"(c2) A chemical analysis of blood or urine, to be admissible under this section, shall be performed ~~in accordance with rules or procedures adopted by the State Bureau of Investigation, or by another laboratory accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB)~~ by a laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement For Testing for the submission, identification, analysis, and storage of forensic analyses."

SECTION 9. 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 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) A willful omission or misrepresentation by any person in connection with this section constitutes an obstruction of justice and is punishable as provided by law."

SECTION 10. G.S. 114-16 reads as rewritten:

"**§ 114-16. Laboratory and clinical facilities; employment of criminologists; services of scientists, etc., employed by State; radio system.**

In the said Bureau there shall be provided laboratory facilities for the analysis of evidences of crime, including the determination of presence, quantity and character of poisons, the character of bloodstains, microscopic and other examination material associated with the commission of crime, examination and analysis of projectiles of ballistic imprints and records which might lead to the determination or identification of criminals, the examination and identification of fingerprints, and other evidence leading to the identification, apprehension, or conviction of criminals. A sufficient number of persons skilled in such matters shall be employed to render a reasonable service to the ~~prosecuting officers of the State~~ public and the criminal justice system in the discharge of their duties. In the personnel of the Bureau shall be included a sufficient number of persons of training and skill in the investigation of crime and in the preparation of evidence as to be of service to local enforcement officers, under the direction of the Governor, in criminal matters of major importance.

The laboratory and clinical facilities of the institutions of the State, both educational and departmental, shall be made available to the Bureau, and scientists and doctors now working for the State through its institutions and departments may be called upon by the Governor to aid the Bureau in the evaluation, preparation, and preservation of evidence in which scientific methods are employed, and a reasonable fee may be allowed by the Governor for such service.

The State radio system shall be made available to the Bureau for use in its work."

SECTION 11. Sections 1 through 5 and 7 through 11 are effective when this act becomes law, and Section 6 becomes effective July 1, 2011. Nothing in this act is intended to amend or modify either the statutory or common law applicable to discovery in criminal cases which was applicable prior to the effective date of this act. 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.

Daily Bulletin

School of Government
The University of North Carolina at Chapel Hill
Legislative Reporting Service, State Legislative Building, Raleigh, NC 27601
Phone 919.733.2484 ~ Fax 919.715.3464 ~ www.dailybulletin.unc.edu

February 1, 2011

H 27. FORENSIC SCIENCES ACT. Filed 2/1/11. *TO (1) CREATE THE NORTH CAROLINA FORENSIC SCIENCE ADVISORY BOARD, (2) ENCOURAGE EFFORTS TO ELIMINATE SOURCES OF HUMAN ERROR IN FORENSIC EXAMINATIONS, (3) REQUIRE CERTIFICATION OF FORENSIC SCIENCE PROFESSIONALS, (4) RENAME THE STATE BUREAU OF INVESTIGATION LABORATORY AS THE NORTH CAROLINA STATE CRIME LABORATORY, (5) CREATE THE POSITION OF OMBUDSMAN TO ENSURE THAT THE BEST FORENSIC PROCESSES AND PROCEDURES ARE UTILIZED IN THE STATE CRIME LABORATORY, (6) CLARIFY STATUTES THAT ALLOW FOR THE ADMISSIBILITY OF FORENSIC ANALYSES INTO EVIDENCE, (7) CLARIFY THE STATE'S OBLIGATION TO DISCLOSE TO THE DEFENDANT ALL INFORMATION RELATING TO THE TESTING OR EXAMINATION OF EVIDENCE AND TO PENALIZE OMISSION OR MISREPRESENTATION RELATING TO DISCLOSURE, AND (8) CLARIFY THAT STATE CRIME LABORATORY PERSONNEL SERVE THE PUBLIC AND THE CRIMINAL JUSTICE SYSTEM, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON THE PRESERVATION OF BIOLOGICAL EVIDENCE, AND TO PROVIDE THAT THE ACT SHALL BE ENTITLED "THE FORENSIC SCIENCES ACT OF 2011."*

Enacts new GS 114-16.1, establishing a 16-member North Carolina Forensic Science Advisory Board (Board) in the Department of Justice (DOJ). Indicates that the membership will include the State Crime Laboratory Director, and 15 specified members, appointed by the Attorney General. Details meeting, membership term, and expense requirements for the Board. Authorizes the Board to review State Crime Laboratory (Laboratory) operations and make recommendations as necessary and concerning any of the following: (1) new scientific programs, protocols, and methods of testing; (2) plans for new program implementation, and existing program maintenance, improvement, or elimination; (3) testing protocols, and examination methods and guidelines for court presentations; and (4) qualification standards for Laboratory forensic scientists. Directs the Board to, at the Laboratory Director's request, review the work of Laboratory scientists. Explains that the reviewed records retain their confidential status and are considered part of a criminal investigation. Details procedures for Board review of records, and directs the Board to recommend to the Laboratory a review process for retesting and reexamination requests.

Directs the State Bureau of Investigation (SBI) to encourage and seek collaborative opportunities and grant funds, in association with the university program or independent nationally-recognized forensic institutions, to research human observer bias and sources of human error in forensic examinations. Directs the Laboratory, in consultation with the Board, to develop standard operating procedures to minimize potential bias and sources of human error in forensic science, and to apply the procedures to all forensic analyses that may be used in litigation.

Mandates individual certification of Laboratory forensic science professionals as soon as practicable, and no later than June 1, 2012, unless inconsistent with international and ISO standards. Provides access to the certification process to all forensic science professionals.

Directs the Revisor of Statutes to replace the name of the State Bureau of Investigation or any other similar reference, with "North Carolina State Crime Laboratory."

Creates the position of ombudsman in the Laboratory within the DOJ. Directs the ombudsman to work with interested parties and the general public to ensure that Laboratory procedures and protocols are consistent with state and federal law, best forensic law practices, and in the best interests of justice. Lists additional responsibilities and reporting requirements. Makes the creation of the ombudsman position effective July 1, 2011.

Amends GS 8-58.20 (pertaining to the admissibility of forensic evidence) to require that a forensic analysis or a DNA analysis be performed by a laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements, and is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement for Testing (previously required accord with SBI or accreditation by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board). Makes a conforming change to GS 20-139.1(c2) (providing admissibility requirements for chemical analyses of blood and urine).

Amends GS 15A-903 to specify that any matter or evidence submitted for testing or examination, any results, and all other data, calculations, or writings, including, but not limited to, preliminary test or screening results and bench notes, be provided, upon motion, to the defendant. Requires that all public and private entities that obtain information related to an investigation, disclose the information to the appropriate prosecutorial agency for disclosure to the defendant. Provides that a knowing and voluntary omission or misrepresentation in connection with the statute constitutes an obstruction of justice and is punishable as provided by law. Makes technical and conforming changes.

Amends GS 114-16 to clarify that employees of the Laboratory provide services to the public and the criminal justice system (rather than the prosecuting officers of the state).

Provides that nothing in the act is intended to amend or modify the statutory or criminal law applicable to discovery in criminal cases, which was applicable before the act's effective date. Clarifies that prosecutions for offenses committed before the act's effective date are not abated or affected, and the statutes that would apply but for the act remain applicable to those prosecutions.

Intro. by Glazier, Stam, Michaux, Jackson. GS 8, 15A, 20, 114

State Government; Criminal Law, Procedure, and Sentencing; Courts

February 9, 2011

H 27. FORENSIC SCIENCES ACT. Filed 2/1/11. House committee substitute makes the following changes to 1st edition.

Requires the funds for the ombudsman created in Section 6 of the act be provided by the Department of Justice from other funds appropriated to the department and from other grants or funding available from other sources. Amends proposed GS 15A-903(d) to specify that a willful (was, knowing and voluntary) omission or misrepresentation by any person required to disclose information to a defendant constitutes an obstruction of justice and is punishable as provided by law. Makes technical changes.

Criminal Law, Procedure, and Sentencing; Courts; State Government

February 15, 2011

H 27. FORENSIC SCIENCES ACT. Filed 2/1/11. House amendment makes the following changes to 2nd edition.

Makes technical changes only.

State Government; Criminal Law, Procedure, and Sentencing; Courts

March 21, 2011

H 27. FORENSIC SCIENCES ACT. Filed 2/1/11. Senate committee substitute makes the following changes to 3rd edition.

Amends proposed GS 15A-903(d) to make it a Class H felony to willfully omit or misrepresent evidence or information required to be disclosed to the defendant under GS 15A-903(a)(1) or referred to the state under GS 15A-903(c). Makes it a Class 1 misdemeanor to willfully omit or misrepresent evidence or information required to be disclosed under any other provision of GS 15A-903. The previous edition did not designate punishment classes. Makes other clarifying and technical changes.

State Government; Criminal Law, Procedure, and Sentencing; Courts

April 4, 2011

SL 2011-19 (H 27). FORENSIC SCIENCES ACT. *AN ACT TO (1) CREATE THE NORTH CAROLINA FORENSIC SCIENCE ADVISORY BOARD, (2) ENCOURAGE EFFORTS TO ELIMINATE SOURCES OF HUMAN ERROR IN FORENSIC EXAMINATIONS, (3) REQUIRE CERTIFICATION OF FORENSIC SCIENCE PROFESSIONALS, (4) RENAME THE STATE BUREAU OF INVESTIGATION LABORATORY AS THE NORTH CAROLINA STATE CRIME LABORATORY, (5) CREATE THE POSITION OF OMBUDSMAN TO ENSURE THAT THE BEST FORENSIC PROCESSES AND PROCEDURES ARE UTILIZED IN THE STATE CRIME LABORATORY, (6) CLARIFY STATUTES THAT ALLOW FOR THE ADMISSIBILITY OF FORENSIC ANALYSES INTO EVIDENCE, (7) CLARIFY THE STATE'S OBLIGATION TO DISCLOSE TO THE DEFENDANT ALL INFORMATION RELATING TO THE TESTING OR EXAMINATION OF EVIDENCE AND TO PENALIZE OMISSION OR MISREPRESENTATION RELATING TO DISCLOSURE, AND (8) CLARIFY THAT STATE CRIME LABORATORY PERSONNEL SERVE THE PUBLIC AND THE CRIMINAL JUSTICE SYSTEM, AS*

RECOMMENDED BY THE JOINT SELECT COMMITTEE ON THE PRESERVATION OF BIOLOGICAL EVIDENCE, AND TO PROVIDE THAT THE ACT SHALL BE ENTITLED "THE FORENSIC SCIENCES ACT OF 2011." Summarized in *Daily Bulletin* 2/1/11, 2/9/11, 2/15/11, and 3/21/11. Enacted March 31, 2011. Section 6 is effective July 1, 2011. The remainder is effective March 31, 2011.

Criminal Law, Procedure, and Sentencing; Courts; State Government

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)
REVISED

BILL NUMBER: House Bill 27 (Second Edition)

SHORT TITLE: Forensic Sciences Act.

SPONSOR(S): Representatives Glazier, Stam, Michaux, and Jackson

FISCAL IMPACT					
	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
EXPENDITURES:					
Department of Justice (DOJ)	$72,995	$15,245	$15,245	$15,245	$15,245
Correction	*See Assumptions and Methodology*				
Probation	*See Assumptions and Methodology*				
Judicial Branch	*See Assumptions and Methodology*				
POSITIONS: (cumulative)	1	1	1	1	1
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Justice; Department of Correction; Judicial Branch					
EFFECTIVE DATE: Sections 1 through 5 and 7 through 11 are effective when this act becomes law, and Section 6 becomes effective July 1, 2011.					
**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:

This act would:

1) Create the North Carolina Forensic Science Advisory Board;
2) Encourage efforts to eliminate sources of human error in forensic examinations;
3) Require certification of forensic science professionals;
4) Rename the State Bureau of Investigation Laboratory as the North Carolina State Crime Laboratory;

5) Create the position of ombudsman in the North Carolina State Crime Laboratory within the North Carolina Department of Justice;
6) Clarify statutes that allow for the admissibility of forensic analyses into evidence;
7) Clarify the State's obligation to disclose to the defendant all information relating to the testing or examination of evidence and to penalize omission or misrepresentation relating to disclosure; and
8) Clarify that State Crime Laboratory personnel serve the public and the criminal justice system.

The provision creating an ombudsman is effective July 1, 2011. The remainder of the act is effective when it becomes law.
Source: Bill Summary of the First Edition prepared by the Research Division 02/04/2011.

The proposed legislation also clarifies in Section 6 that funds for the position of ombudsman shall be provided by the Department of Justice from other funds appropriated to the Department and from other grants or funding that are available. It also provides for an obstruction of justice offense where a person willfully omits or misrepresents information relating to the disclosure requirement.

ASSUMPTIONS AND METHODOLOGY:

Department of Justice

Section 2:
The proposed legislation creates the Forensic Science Advisory Board to review State Crime Laboratory operations and make recommendations concerning the services furnished to user agencies. The Board would serve as an advisory board within the Department of Justice (DOJ) and would consist of 16 members, including the State Crime Laboratory Director and 15 members appointed by the Attorney General.

Impact: The proposed legislation requires a minimum of four meetings throughout the year. Using the standard uniform expense methods for boards and commissions, the Fiscal Research Division estimates that $15,245 in subsistence and travel expenses would be necessary to support the advisory board. This figure represents $10,445 ($116.05 daily per diem x 15 members x half of non-legislative members using two days of subsistence x 4 meetings) for non-legislative member subsistence and $4,800 ($80 round trip reimbursement x 15 members x 4 meetings) in travel expenses. DOJ can use existing support staff to provide clerical assistance to the board. If the board meets more than four times a year, there may be additional expenses.

Section 4:
The act requires that forensic science professionals at the State Crime Laboratory be certified consistent with international and ISO standards as soon as practicable, but no later than June 1, 2012, unless certification is not available. It also requires that all forensic science professionals have access to the certification process.

Impact: There are currently 145 forensic scientist positions established in the Crime Lab operating budget that would be subject to these certification requirements. DOJ estimates that

initial study and proficiency testing would require a onetime expense of $52,400 for the 145 positions, an average expense of $361 per position. Crime lab managers received current estimates from national associations who provide the training and testing. Examples of these organizations include the Association of Firearm and Tool Mark Examiners, the American Board of Criminalistics (ABC), and related professional associations. Initial non-recurring certification expenses would be $5,350, or an average of $37.00 per position. The Fiscal Research Division has included estimates for initial funding because this is a new requirement for existing employees. No recurring costs are included as it is assumed that certification will be a requirement for new hires. Historically, certification expenses have not been paid with State funds. For instance, State nurses and teachers pay for licensure and certification themselves.

DOJ estimated that recurring training would cost $177,045 (145 forensic scientists x $1,221 per position per year). However, the Fiscal Research Division believes this figure is overstated and is not certain what an appropriate cost would be at this time. Therefore, the cost of recurring training was not included in the chart on the front page of the note. The Fiscal Research Division presumes recurring training for the scientists could be funded by existing funds appropriated to DOJ for training.

The chart below shows the estimated cost for the certification of forensic scientists:

		Non Recurring Expenses for Each Scientist			
Section	Number staff	Per Staff Cost Per Exam	NR Cost Certification Exams	Per Staff Annual Cert. Fee	Total NR Annual Cert. Fee
Digital Evidence	7.00	$200.00	$1,400.00	$25.00	$175.00
Audio / Video*	2.00	$9,000.00	$18,000.00	$0.00	$0.00
Firearms	11.00	$250.00	$2,750.00	$25.00	$275.00
Forensic Biology	45.00	$250.00	$11,250.00	$40.00	$1,800.00
Latent	10.00	$150.00	$1,500.00	$30.00	$300.00
Trace	12.00	$250.00	$3,000.00	$40.00	$480.00
Drugs	31.00	$250.00	$7,750.00	$40.00	$1,240.00
Triad Lab	13.00	$250.00	$3,250.00	$40.00	$520.00
Western Lab	14.00	$250.00	$3,500.00	$40.00	$560.00
Total	**145.00**		**$52,400.00**		**$5,350.00**

To the extent that any of these positions are currently vacant, this cost may be overstated.

Section 6:
The act formally creates the position of ombudsman in the North Carolina State Crime Laboratory within the Department of Justice. The primary purpose of the position would be to work with defense counsel, prosecutorial agencies, criminal justice system stakeholders, law enforcement officials, and the general public to ensure that all Laboratory practices are consistent with State and federal law, best forensic law practices, and are in the best interests of justice. Section 6A states that funds for the position of ombudsman shall be provided by DOJ from other funds appropriated to the Department and from other grants or funding that are available.

The salary and benefits for the position of ombudsman are included in the chart below:

Position Classification	FTE	Annual Salary	Social Security	Retirement	Health	Total Salary & Benefits for FY 11-12
Attorney III (ombudsman)	1	$102,772	$7,862	$10,801	$4,930	$126,365

Impact: The position of ombudsman was previously created by DOJ in response to a recommendation from independent auditors and the Joint Select Committee on the Preservation of Biological Evidence. The position was filled by execution of a contract between DOJ and a former judge, who has already begun work. Therefore, the cost for the position has not been included in the total expenditures for DOJ on the front page of the note.

Sections 7 and 8:
Section 7 and 8 clarifies the statutes regarding the admissibility of forensic analyses in criminal proceedings and the statutes regarding the admissibility of chemical analyses for certain vehicular offenses. It removes the requirement that admissible forensic analyses be performed by a laboratory accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) and instead provides that an admissible forensic analysis must be performed by a laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement for Testing.

Impact: Since 2007, DOJ certification costs paid to ASCLAD have averaged $35,731 a year and have been funded by grant sources. Lab accreditation expenses have not historically been paid with State funds and no State funding has been appropriated by the General Assembly to support accreditation expenses.

Total Costs for the Department of Justice:

The chart below shows the total cost estimate to implement the proposed legislation:

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
PURCHASED SERVICES					
Contractual Services:					
NR Cost Certification Exams	$ 52,400	$ -	$ -	$ -	$ -
Total NR Annual Certification Fee	$ 5,350	$ -	$ -	$ -	$ -
Operating Costs	***$ 57,750***	***$ -***	***$ -***	***$ -***	***$ -***
Staff Costs: Ombudsman Position	***$ 126,365***	***$ 135,481***	***$ 145,193***	***$ 153,267***	***$ 160,062***
Advisory Board Costs	***$ 15,245***	***$ 15,245***	***$ 15,245***	***$ 15,245***	***$ 15,245***
Total	***$ 199,360***	***$ 150,726***	***$ 160,438***	***$ 168,512***	***$ 175,307***

The recurring cost for the ombudsman position has been inflated each year based on the projected growth estimated for salaries and benefits in the Fiscal Research Division's *Fiscal Note Inflation Rate Estimates*. The advisory board calculations are based on the rates set for this fiscal year.

Department of Correction – Division of Prisons

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed bill.

In FY 2009-10, 36% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

In FY 2009-10, 24% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 27 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

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 overall impact of the proposed legislation cannot be determined. The legislation has the potential to impact the court system in the following ways:

- To the extent the bill as a whole will reduce the number of challenges to the work of the State Crime Lab by defendants, it may result in a reduction in time to process some cases investigated on or after the effective date of the bill.
- The ombudsman position may improve efficiency to the extent that any issues will be more quickly resolved. Conversely, it is possible that the new requirements may add additional steps, resulting in a longer turnaround time and prolonging the duration of the case.
- The amended discovery provisions may improve efficiency to the extent they result in fewer discovery challenges by defendants and fewer delays when a prosecutor learns of something later in the case and a continuance is necessary in order for the defendant to have time to analyze the newly-discovered information.
- New G.S. 15A-903(d) would expand the scope of the current common law Class 1 Misdemeanor Offense, Obstructing Justice, and the Class H Felony Offense, Obstructing

Justice if the act of obstructing justice was infamous, done in secrecy and malice, or with deceit and intent to defraud (G.S. 14-3). AOC cannot project the additional number of obstruction of justice charges that would occur due to the proposed legislation, but AOC does not anticipate a large number of charges. However, due to statewide shortages, AOC does not believe that any increase in workload could be absorbed by existing staff. During Calendar Year 2010, there were 127 defendants charged with 140 counts of the Class 1 Misdemeanor, Obstructing Justice, and 173 defendants were convicted of 184 charges. AOC does not have a separate offense code for the elevated charge of a Class H Felony. Thus, AOC is unable to provide an estimate of how many defendants were charged or convicted of the Class H felony offense.

In FY 2009-10, a typical felony case took approximately 206 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

SOURCES OF DATA: Department of Justice; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Sarah Stone; Kristine Leggett

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division



DATE: February 15, 2011

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 27*
Committee Substitute Favorable 2/9/11
Third Edition Engrossed 2/15/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H27-CSSA-9 [v.2]

3/16/2011 7:46:36 PM

Short Title: Forensic Sciences Act. (Public)

Sponsors:

Referred to:

February 2, 2011

A BILL TO BE ENTITLED

AN ACT TO (1) CREATE THE NORTH CAROLINA FORENSIC SCIENCE ADVISORY BOARD, (2) ENCOURAGE EFFORTS TO ELIMINATE SOURCES OF HUMAN ERROR IN FORENSIC EXAMINATIONS, (3) REQUIRE CERTIFICATION OF FORENSIC SCIENCE PROFESSIONALS, (4) RENAME THE STATE BUREAU OF INVESTIGATION LABORATORY AS THE NORTH CAROLINA STATE CRIME LABORATORY, (5) CREATE THE POSITION OF OMBUDSMAN TO ENSURE THAT THE BEST FORENSIC PROCESSES AND PROCEDURES ARE UTILIZED IN THE STATE CRIME LABORATORY, (6) CLARIFY STATUTES THAT ALLOW FOR THE ADMISSIBILITY OF FORENSIC ANALYSES INTO EVIDENCE, (7) CLARIFY THE STATE'S OBLIGATION TO DISCLOSE TO THE DEFENDANT ALL INFORMATION RELATING TO THE TESTING OR EXAMINATION OF EVIDENCE AND TO PENALIZE OMISSION OR MISREPRESENTATION RELATING TO DISCLOSURE, AND (8) CLARIFY THAT STATE CRIME LABORATORY PERSONNEL SERVE THE PUBLIC AND THE CRIMINAL JUSTICE SYSTEM, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON THE PRESERVATION OF BIOLOGICAL EVIDENCE, AND TO PROVIDE THAT THE ACT SHALL BE ENTITLED "THE FORENSIC SCIENCES ACT OF 2011."

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known as "The Forensic Sciences Act of 2011."

SECTION 2. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-16.1. Forensic Science Advisory Board.**

(a) Creation and Membership. – The North Carolina Forensic Science Advisory Board (Board) is hereby established as an advisory board within the Department of Justice. The Board shall consist of 16 members, consisting of the State Crime Laboratory Director, and 15 members appointed by the Attorney General as follows:

(1) A forensic scientist or any other person with an advanced degree who has received substantial education, training, or experience in the subject of laboratory standards or quality assurance regulation and monitoring.

(2) The Chief Medical Examiner of the State.

(3) A forensic scientist with an advanced degree who has received substantial education, training, or experience in the discipline of molecular biology.
(4) A forensic scientist with an advanced degree who has experience in the discipline of population genetics.
(5) A scientist with an advanced degree who has experience in the discipline of forensic chemistry.
(6) A scientist with an advanced degree who has experience in the discipline of forensic biology.
(7) A forensic scientist or any other person with an advanced degree who has received substantial education, training, or experience in the discipline of trace evidence.
(8) A scientist with a doctoral degree who has experience in the discipline of forensic toxicology and is certified by the American Board of Forensic Toxicologists.
(9) A member of the International Association for Identification.
(10) A member of the Association of Firearms and Toolmark Examiners.
(11) A member of the International Association for Chemical Testing.
(12) A director of a private or federal forensic laboratory located in the State.
(13) A member of the American Society of Crime Laboratory Directors.
(14) A member of the Academy of Forensic Sciences.
(15) A member of the American Statistical Association.

A chairman shall be elected from among the members appointed, and staff shall be provided by the Department of Justice.

(b) Meetings. – The Board shall meet quarterly and at such other times and places as it determines. Members of the Board cannot designate a proxy to vote in their absence.

(c) Terms. – Members of the Board initially appointed shall serve the following terms: five members shall serve a term of two years; five members shall serve a term of three years; and five members shall serve a term of four years. Thereafter, all appointments shall be for a term of four years. A vacancy other than by expiration of term shall be filled by the Attorney General for the unexpired term. Members of the Board cannot designate a proxy to vote in their absence.

(d) Expenses. – Members of the Board shall be paid reasonable and necessary expenses incurred in the performance of their duties. Members of the Board who are State officers or employees shall receive no compensation for serving on the Board but may be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Board who are full-time salaried public officers or employees other than State officers or employees shall receive no compensation for serving on the Board but may be reimbursed for their expenses in accordance with G.S. 138-5(b). All other members of the Board may receive compensation and reimbursement for expenses in accordance with G.S. 138-5.

(e) Functions. – The Board may review State Crime Laboratory operations and make recommendations concerning the services furnished to user agencies. The Board shall review and make recommendations as necessary to the Laboratory Director concerning any of the following:

(1) New scientific programs, protocols, and methods of testing.
(2) Plans for the implementation of new programs; sustaining existing programs and improving upon them where possible; and the elimination of programs which are no longer needed.
(3) Protocols for testing and examination methods and guidelines for the presentation of results in court.
(4) Qualification standards for the various forensic scientists of the Laboratory.

(f) Review Process. – Upon request of the Laboratory Director, the Board shall review analytical work, reports, and conclusions of scientists employed by the Laboratory. Records reviewed by this Board retain their confidential status and continue to be considered records of a criminal investigation as defined in G.S. 132-1.4. These records shall be reviewed only in a closed session meeting pursuant to G.S. 143-318.11 of the Board, and each member of the Board shall, prior to receiving any documents to review, sign a confidentiality agreement agreeing to maintain the confidentiality of and not to disclose the documents nor the contents of the documents reviewed. The Board shall recommend to the Laboratory a review process to use when there is a request that the Laboratory retest or reexamine evidence that has been previously examined by the Laboratory."

SECTION 3. The State Bureau of Investigation (SBI) shall encourage and seek collaborative opportunities and grant funds for research programs, in association whenever possible with the university system or independent nationally recognized forensic institutions, on human observer bias and sources of human error in forensic examinations. Such programs might include studies to determine the effects of contextual bias in forensic practice (e.g., studies to determine whether and to what extent the results of forensic analysis are influenced by knowledge regarding the background of the suspect and the investigator's theory of the case). In addition, research on sources of human error should be closely linked with research conducted to quantify and characterize the amount of error. Based on the results of these studies, and in consultation with the North Carolina Forensic Sciences Advisory Board, the North Carolina State Crime Laboratory should develop standard operating procedures (that will lay the foundation for model protocols) to minimize, to the extent possible, potential bias and sources of human error in forensic science. These standard operating procedures should apply to all forensic analyses that may be used in litigation.

SECTION 4. Forensic science professionals at the State Crime Laboratory shall be required to obtain individual certification consistent with international and ISO standards as soon as practicable, but no later than June 1, 2012, unless no is certification available. All such forensic science professionals shall have access to the certification process.

SECTION 5. The Revisor of Statutes shall replace the name of the State Bureau of Investigation Laboratory, or any other name which is identified with the State Bureau of Investigation Laboratory, with the name "North Carolina State Crime Laboratory" wherever first used in a statute or session law and with "State Crime Laboratory" at each subsequent location in the statute or session law.

SECTION 6. The position of ombudsman is created in the North Carolina State Crime Laboratory within the North Carolina Department of Justice. The primary purpose of this position shall be to work with defense counsel, prosecutorial agencies, criminal justice system stakeholders, law enforcement officials, and the general public to ensure all processes, procedures, practices, and protocols at the Laboratory are consistent with State and federal law, best forensic law practices, and in the best interests of justice in this State. The ombudsman shall mediate complaints brought to the attention of the ombudsman between the SBI and defense counsel, prosecutorial agencies, law enforcement agencies, and the general public. The ombudsman shall ensure all criminal justice stakeholders and the general public are aware of the availability, responsibilities, and role of the ombudsman and shall regularly attend meetings of the Conferences of the District Attorneys, District and Superior Court Judges, Public Defenders, the Advocates for Justice, and Bar Criminal Law Sections. The ombudsman shall make recommendations on a regular basis to the Director of the State Crime Laboratory, Director of the SBI, and Attorney General of North Carolina as to policies, procedures, practices, and training of employees needed at the Laboratory to ensure compliance with State and federal law, best forensic law practices, and to resolve any meritorious systemic complaints received by the ombudsman.

SECTION 6.(a). The funds for the position of ombudsman created in Section 6 of this act shall be provided by the Department of Justice from other funds appropriated to the Department, and from other grants or funding that are available from other sources.

SECTION 7. G.S. 8-58.20 reads as rewritten:

"**§ 8-58.20. Forensic analysis admissible as evidence.**

(a) In any criminal prosecution, a laboratory report of a written forensic analysis, including an analysis of the defendant's DNA, or a forensic sample alleged to be the defendant's DNA, as that term is defined in G.S. 15A-266.2(2), that states the results of the analysis and that is signed and sworn to by the person performing the analysis may be admissible in evidence without the testimony of the analyst who prepared the report in accordance with the requirements of this section.

(b) A forensic analysis, to be admissible under this section, shall be performed ~~in accordance with rules or procedures adopted by the State Bureau of Investigation, or by another laboratory accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB)~~ by a laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement For Testing for the submission, identification, analysis, and storage of forensic analyses. The analyses of DNA samples and typing results of DNA samples shall be performed ~~in accordance with the rules or procedures of the State Bureau of Investigation or other ASCLD/LAB accredited laboratory.~~ by a laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the ILAC Mutual Recognition Arrangement For Testing.

(c) The analyst who analyzes the forensic sample and signs the report shall complete an affidavit on a form developed by the State Bureau of Investigation. In the affidavit, the analyst shall state (i) that the person is qualified by education, training, and experience to perform the analysis, (ii) the name and location of the laboratory where the analysis was performed, and (iii) that performing the analysis is part of that person's regular duties. The analyst shall also aver in the affidavit that the tests were performed pursuant to the ~~ASCLD/LAB~~ accrediting body's standards for that discipline and that the evidence was handled in accordance with established and accepted procedures while in the custody of the laboratory. The affidavit shall be sufficient to constitute prima facie evidence regarding the person's qualifications. The analyst shall attach the affidavit to the laboratory report and shall provide the affidavit to the investigating officer and the district attorney in the prosecutorial district in which the criminal charges are pending. An affidavit by a forensic analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any criminal proceeding with respect to the forensic analysis administered and the procedures followed.

...."

SECTION 8. G.S. 20-139.1(c2) reads as rewritten:

"(c2) A chemical analysis of blood or urine, to be admissible under this section, shall be performed ~~in accordance with rules or procedures adopted by the State Bureau of Investigation, or by another laboratory accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB)~~ by a laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement For Testing for the submission, identification, analysis, and storage of forensic analyses."

SECTION 9. 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 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 this section shall be guilty of a Class H felony.

SECTION 10. G.S. 114-16 reads as rewritten:

"**§ 114-16. Laboratory and clinical facilities; employment of criminologists; services of scientists, etc., employed by State; radio system.**

In the said Bureau there shall be provided laboratory facilities for the analysis of evidences of crime, including the determination of presence, quantity and character of poisons, the character of bloodstains, microscopic and other examination material associated with the commission of crime, examination and analysis of projectiles of ballistic imprints and records which might lead to the determination or identification of criminals, the examination and identification of fingerprints, and other evidence leading to the identification, apprehension, or conviction of criminals. A sufficient number of persons skilled in such matters shall be employed to render a reasonable service to the ~~prosecuting officers of the State~~ public and the criminal justice system in the discharge of their duties. In the personnel of the Bureau shall be included a sufficient number of persons of training and skill in the investigation of crime and in the preparation of evidence as to be of service to local enforcement officers, under the direction of the Governor, in criminal matters of major importance.

The laboratory and clinical facilities of the institutions of the State, both educational and departmental, shall be made available to the Bureau, and scientists and doctors now working for the State through its institutions and departments may be called upon by the Governor to aid the Bureau in the evaluation, preparation, and preservation of evidence in which scientific methods are employed, and a reasonable fee may be allowed by the Governor for such service.

The State radio system shall be made available to the Bureau for use in its work."

SECTION 11. Sections 1 through 5 and 7 through 11 are effective when this act becomes law, and Section 6 becomes effective July 1, 2011. Nothing in this act is intended to amend or modify either the statutory or common law applicable to discovery in criminal cases which was applicable prior to the effective date of this act. 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 27:
Forensic Sciences Act

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 16, 2011
Introduced by:	Reps. Glazier, Stam, Michaux, Jackson	**Prepared by:**	Susan Sitze*
Analysis of:	PCS to Third Edition H27-CSSA-9		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 27 would 1) create the North Carolina Forensic Science Advisory Board; 2) encourage efforts to eliminate sources of human error in forensic examinations; 3) require certification of forensic science professionals; 4) rename the State Bureau of Investigation Laboratory as the North Carolina State Crime Laboratory; 5) create the position of ombudsman in the North Carolina State Crime Laboratory within the North Carolina Department of Justice; 6) clarify statutes that allow for the admissibility of forensic analyses into evidence; 7) clarify the State's obligation to disclose to the defendant all information relating to the testing or examination of evidence and to penalize omission or misrepresentation relating to disclosure; and 8) clarify that State Crime Laboratory personnel serve the public and the criminal justice system.***

BILL ANALYSIS: The PCS makes changes in Sections 2, 4, and 9 as noted in the explanation for each of those sections.

Section 1 entitles the act as "The Forensic Sciences Act of 2011."

Section 2 creates the Forensic Science Advisory Board to review State Crime Laboratory operations and make recommendations concerning the services furnished to user agencies. The Board would serve as an advisory board within the Department of Justice and would consist of 16 members, including the State Crime Laboratory Director, the Chief Medical Examiner, and other experts in the forensic science field. **The PCS changes the staggering of the initial terms to 2, 3, & 4 years (was 1, 2, & 4).**

Section 3 requires the State Bureau of Investigation to encourage and seek collaborative opportunities and grant funds for research programs on human observer bias and sources of human error in forensic examinations, partnering with the university system or independent nationally recognized forensic institutions whenever possible.

Section 4 requires that forensic science professionals at the State Crime Laboratory be certified consistent with international and ISO standards as soon as practicable, but no later than June 1, 2012, unless certification is not available. It also requires that all forensic science professionals have access to the certification process. **The PCS rewords this section to make the language clearer, but does not change the effect.**

Section 5 renames the State Bureau of Investigation Crime Laboratory as the North Carolina State Crime Laboratory and requires the Revisor of Statutes to reflect the name change in statute and session law.

Section 6 creates the position of ombudsman in the North Carolina State Crime Laboratory within the North Carolina Department of Justice. The primary purpose of the position would be to work with defense counsel, prosecutorial agencies, criminal justice system stakeholders, law enforcement officials, and the general public to ensure that all Laboratory practices are consistent with State and federal law, best forensic law practices, and are in the best interests of justice. The position would be funded by

funds appropriated to the Department of Justice and from other grants or funding available from oth sources.

Section 7 clarifies the statutes regarding the admissibility of forensic analyses in criminal proceedings. It removes the requirement that admissible forensic analyses be performed by a laboratory accredited by the American Society of Crime Laboratory Directors /Laboratory Accreditation Board (ASCLD/LAB) and instead provides that an admissible forensic analysis must be performed by a laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement for Testing.

Section 8 clarifies the statutes regarding the admissibility of chemical analyses for certain vehicular offenses. It removes the requirement that admissible forensic analyses be performed by a laboratory accredited by the American Society of Crime Laboratory Directors /Laboratory Accreditation Board (ASCLD/LAB) and instead provides that an admissible forensic analysis must be performed by a laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement for Testing.

Section 9 clarifies the current discovery requirement that when providing the complete investigative file, the State must produce any data, calculations, or writings of any kind, including, but not limited to, preliminary test or screening results and bench notes. The act's effective date provision (Section 11) includes a provision that nothing in this act is intended to amend or modify either the statutory or common law applicable to discovery in criminal cases which was applicable prior to the effective date of this act.

The section also clarifies that public and private entities have the obligation to disclose information to prosecutorial agencies. [This provision is already included in the statute as the definition of "prosecutorial agencies," which are required to disclose their complete investigative file, includes "any public or private entity." G.S. 15A-903(a)(1)b.]

The PCS amends subsection (d) in this section to provide a Class H felony for the willful omission or misrepresentation of evidence or information required to be disclosed. The previous version provided for an "obstruction of justice" offense with no specific penalty stated. The effective date section includes a provision that provides that the act does not affect statutes applicable to offenses occurring prior to the act or ongoing prosecutions.

Section 10 amends the language in G.S. 114-16 to clarify that State Crime Laboratory personnel serve the public and the criminal justice system.

EFFECTIVE DATE: Sections 1 through 5 and 7 through 11 are effective when this act becomes law, and Section 6 becomes effective July 1, 2011. Nothing in this act is intended to amend or modify either the statutory or common law applicable to discovery in criminal cases which was applicable prior to the effective date of this act. Prosecutions for offenses committed before the effective date of this act would not be abated or affected by this act, and the statutes that would be applicable but for this act would remain applicable to those prosecutions.

[As introduced, this bill was identical to S40, as introduced by Sens. Jones, Hartsell, McKissick, whic is currently in Senate Judiciary I.]

H27-SMSA-21(CSSA-9) v1

**H. Alan Pell substantially contributed to this summary.*
Research Division *O. Walker Reagan, Director* *(919) 733-2578*

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 27*

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

H27-ASA-3 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
H27-CSSA-9

Date March 17 ,2011

Senator Nesbitt

moves to amend the bill on page 6, line 4
by rewriting the line to read:
"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."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 27*
Committee Substitute Favorable 2/9/11
Third Edition Engrossed 2/15/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H27-PCS70098-SA-9

Short Title: Forensic Sciences Act. (Public)

Sponsors:

Referred to:

February 2, 2011

A BILL TO BE ENTITLED

AN ACT TO (1) CREATE THE NORTH CAROLINA FORENSIC SCIENCE ADVISORY BOARD, (2) ENCOURAGE EFFORTS TO ELIMINATE SOURCES OF HUMAN ERROR IN FORENSIC EXAMINATIONS, (3) REQUIRE CERTIFICATION OF FORENSIC SCIENCE PROFESSIONALS, (4) RENAME THE STATE BUREAU OF INVESTIGATION LABORATORY AS THE NORTH CAROLINA STATE CRIME LABORATORY, (5) CREATE THE POSITION OF OMBUDSMAN TO ENSURE THAT THE BEST FORENSIC PROCESSES AND PROCEDURES ARE UTILIZED IN THE STATE CRIME LABORATORY, (6) CLARIFY STATUTES THAT ALLOW FOR THE ADMISSIBILITY OF FORENSIC ANALYSES INTO EVIDENCE, (7) CLARIFY THE STATE'S OBLIGATION TO DISCLOSE TO THE DEFENDANT ALL INFORMATION RELATING TO THE TESTING OR EXAMINATION OF EVIDENCE AND TO PENALIZE OMISSION OR MISREPRESENTATION RELATING TO DISCLOSURE, AND (8) CLARIFY THAT STATE CRIME LABORATORY PERSONNEL SERVE THE PUBLIC AND THE CRIMINAL JUSTICE SYSTEM, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON THE PRESERVATION OF BIOLOGICAL EVIDENCE, AND TO PROVIDE THAT THE ACT SHALL BE ENTITLED "THE FORENSIC SCIENCES ACT OF 2011."

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known as "The Forensic Sciences Act of 2011."

SECTION 2. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-16.1. Forensic Science Advisory Board.**

(a) Creation and Membership. – The North Carolina Forensic Science Advisory Board (Board) is hereby established as an advisory board within the Department of Justice. The Board shall consist of 16 members, consisting of the State Crime Laboratory Director, and 15 members appointed by the Attorney General as follows:

(1) A forensic scientist or any other person with an advanced degree who has received substantial education, training, or experience in the subject of laboratory standards or quality assurance regulation and monitoring.

(2) The Chief Medical Examiner of the State.

(3) A forensic scientist with an advanced degree who has received substantial education, training, or experience in the discipline of molecular biology.
(4) A forensic scientist with an advanced degree who has experience in the discipline of population genetics.
(5) A scientist with an advanced degree who has experience in the discipline of forensic chemistry.
(6) A scientist with an advanced degree who has experience in the discipline of forensic biology.
(7) A forensic scientist or any other person with án advanced degree who has received substantial education, training, or experience in the discipline of trace evidence.
(8) A scientist with a doctoral degree who has experience in the discipline of forensic toxicology and is certified by the American Board of Forensic Toxicologists.
(9) A member of the International Association for Identification.
(10) A member of the Association of Firearms and Toolmark Examiners.
(11) A member of the International Association for Chemical Testing.
(12) A director of a private or federal forensic laboratory located in the State.
(13) A member of the American Society of Crime Laboratory Directors.
(14) A member of the Academy of Forensic Sciences.
(15) A member of the American Statistical Association.

A chairman shall be elected from among the members appointed, and staff shall be provided by the Department of Justice.

(b) Meetings. – The Board shall meet quarterly and at such other times and places as it determines. Members of the Board cannot designate a proxy to vote in their absence.

(c) Terms. – Members of the Board initially appointed shall serve the following terms: five members shall serve a term of two years; five members shall serve a term of three years; and five members shall serve a term of four years. Thereafter, all appointments shall be for a term of four years. A vacancy other than by expiration of term shall be filled by the Attorney General for the unexpired term. Members of the Board cannot designate a proxy to vote in their absence.

(d) Expenses. – Members of the Board shall be paid reasonable and necessary expenses incurred in the performance of their duties. Members of the Board who are State officers or employees shall receive no compensation for serving on the Board but may be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Board who are full-time salaried public officers or employees other than State officers or employees shall receive no compensation for serving on the Board but may be reimbursed for their expenses in accordance with G.S. 138-5(b). All other members of the Board may receive compensation and reimbursement for expenses in accordance with G.S. 138-5.

(e) Functions. – The Board may review State Crime Laboratory operations and make recommendations concerning the services furnished to user agencies. The Board shall review and make recommendations as necessary to the Laboratory Director concerning any of the following:

(1) New scientific programs, protocols, and methods of testing.
(2) Plans for the implementation of new programs; sustaining existing programs and improving upon them where possible; and the elimination of programs which are no longer needed.
(3) Protocols for testing and examination methods and guidelines for the presentation of results in court.
(4) Qualification standards for the various forensic scientists of the Laboratory.

(f) Review Process. – Upon request of the Laboratory Director, the Board shall review analytical work, reports, and conclusions of scientists employed by the Laboratory. Records reviewed by this Board retain their confidential status and continue to be considered records of a criminal investigation as defined in G.S. 132-1.4. These records shall be reviewed only in a closed session meeting pursuant to G.S. 143-318.11 of the Board, and each member of the Board shall, prior to receiving any documents to review, sign a confidentiality agreement agreeing to maintain the confidentiality of and not to disclose the documents nor the contents of the documents reviewed. The Board shall recommend to the Laboratory a review process to use when there is a request that the Laboratory retest or reexamine evidence that has been previously examined by the Laboratory."

SECTION 3. The State Bureau of Investigation (SBI) shall encourage and seek collaborative opportunities and grant funds for research programs, in association, whenever possible, with the university system or independent nationally recognized forensic institutions, on human observer bias and sources of human error in forensic examinations. Such programs might include studies to determine the effects of contextual bias in forensic practice (e.g., studies to determine whether and to what extent the results of forensic analysis are influenced by knowledge regarding the background of the suspect and the investigator's theory of the case). In addition, research on sources of human error should be closely linked with research conducted to quantify and characterize the amount of error. Based on the results of these studies, and in consultation with the North Carolina Forensic Sciences Advisory Board, the North Carolina State Crime Laboratory should develop standard operating procedures (that will lay the foundation for model protocols) to minimize, to the extent possible, potential bias and sources of human error in forensic science. These standard operating procedures should apply to all forensic analyses that may be used in litigation.

SECTION 4. Forensic science professionals at the State Crime Laboratory shall be required to obtain individual certification consistent with international and ISO standards as soon as practicable, but no later than June 1, 2012, unless no certification is available. All such forensic science professionals shall have access to the certification process.

SECTION 5. The Revisor of Statutes shall replace the name of the State Bureau of Investigation Laboratory, or any other name which is identified with the State Bureau of Investigation Laboratory, with the name "North Carolina State Crime Laboratory" wherever first used in a statute or session law and with "State Crime Laboratory" at each subsequent location in the statute or session law.

SECTION 6.(a) The position of ombudsman is created in the North Carolina State Crime Laboratory within the North Carolina Department of Justice. The primary purpose of this position shall be to work with defense counsel, prosecutorial agencies, criminal justice system stakeholders, law enforcement officials, and the general public to ensure all processes, procedures, practices, and protocols at the Laboratory are consistent with State and federal law, best forensic law practices, and in the best interests of justice in this State. The ombudsman shall mediate complaints brought to the attention of the ombudsman between the SBI and defense counsel, prosecutorial agencies, law enforcement agencies, and the general public. The ombudsman shall ensure all criminal justice stakeholders and the general public are aware of the availability, responsibilities, and role of the ombudsman and shall regularly attend meetings of the Conferences of the District Attorneys, District and Superior Court Judges, Public Defenders, the Advocates for Justice, and Bar Criminal Law Sections. The ombudsman shall make recommendations on a regular basis to the Director of the State Crime Laboratory, Director of the SBI, and Attorney General of North Carolina as to policies, procedures, practices, and training of employees needed at the Laboratory to ensure compliance with State and federal law, best forensic law practices, and to resolve any meritorious systemic complaints received by the ombudsman.

SECTION 6.(b) The funds for the position of ombudsman created in Section 6(a) of this act shall be provided by the Department of Justice from other funds appropriated to the Department, and from other grants or funding that are available from other sources.

SECTION 7. G.S. 8-58.20 reads as rewritten:

"**§ 8-58.20. Forensic analysis admissible as evidence.**

(a) In any criminal prosecution, a laboratory report of a written forensic analysis, including an analysis of the defendant's DNA, or a forensic sample alleged to be the defendant's DNA, as that term is defined in G.S. 15A-266.2(2), that states the results of the analysis and that is signed and sworn to by the person performing the analysis may be admissible in evidence without the testimony of the analyst who prepared the report in accordance with the requirements of this section.

(b) A forensic analysis, to be admissible under this section, shall be performed ~~in accordance with rules or procedures adopted by the State Bureau of Investigation, or by another laboratory accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB)~~ by a laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement For Testing for the submission, identification, analysis, and storage of forensic analyses. The analyses of DNA samples and typing results of DNA samples shall be performed ~~in accordance with the rules or procedures of the State Bureau of Investigation or other ASCLD/LAB accredited laboratory.~~ by a laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the ILAC Mutual Recognition Arrangement For Testing.

(c) The analyst who analyzes the forensic sample and signs the report shall complete an affidavit on a form developed by the State Bureau of Investigation. In the affidavit, the analyst shall state (i) that the person is qualified by education, training, and experience to perform the analysis, (ii) the name and location of the laboratory where the analysis was performed, and (iii) that performing the analysis is part of that person's regular duties. The analyst shall also aver in the affidavit that the tests were performed pursuant to the ~~ASCLD/LAB~~ accrediting body's standards for that discipline and that the evidence was handled in accordance with established and accepted procedures while in the custody of the laboratory. The affidavit shall be sufficient to constitute prima facie evidence regarding the person's qualifications. The analyst shall attach the affidavit to the laboratory report and shall provide the affidavit to the investigating officer and the district attorney in the prosecutorial district in which the criminal charges are pending. An affidavit by a forensic analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any criminal proceeding with respect to the forensic analysis administered and the procedures followed.

...."

SECTION 8. G.S. 20-139.1(c2) reads as rewritten:

"(c2) A chemical analysis of blood or urine, to be admissible under this section, shall be performed ~~in accordance with rules or procedures adopted by the State Bureau of Investigation, or by another laboratory accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB)~~ by a laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement For Testing for the submission, identification, analysis, and storage of forensic analyses."

SECTION 9. 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 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."

SECTION 10. G.S. 114-16 reads as rewritten:

"**§ 114-16. Laboratory and clinical facilities; employment of criminologists; services of scientists, etc., employed by State; radio system.**

In the said Bureau there shall be provided laboratory facilities for the analysis of evidences of crime, including the determination of presence, quantity and character of poisons, the character of bloodstains, microscopic and other examination material associated with the commission of crime, examination and analysis of projectiles of ballistic imprints and records which might lead to the determination or identification of criminals, the examination and identification of fingerprints, and other evidence leading to the identification, apprehension, or conviction of criminals. A sufficient number of persons skilled in such matters shall be employed to render a reasonable service to the ~~prosecuting officers of the State~~ public and the criminal justice system in the discharge of their duties. In the personnel of the Bureau shall be included a sufficient number of persons of training and skill in the investigation of crime and in the preparation of evidence as to be of service to local enforcement officers, under the direction of the Governor, in criminal matters of major importance.

The laboratory and clinical facilities of the institutions of the State, both educational and departmental, shall be made available to the Bureau, and scientists and doctors now working for the State through its institutions and departments may be called upon by the Governor to aid the Bureau in the evaluation, preparation, and preservation of evidence in which scientific methods are employed, and a reasonable fee may be allowed by the Governor for such service.

The State radio system shall be made available to the Bureau for use in its work."

SECTION 11. Sections 1 through 5 and 7 through 11 are effective when this act becomes law, and Section 6 becomes effective July 1, 2011. Nothing in this act is intended to amend or modify either the statutory or common law applicable to discovery in criminal cases which was applicable prior to the effective date of this act. 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.

PAGES ATTENDING

COMMITTEE: ~~[illegible]~~ Judiciary I **ROOM:** 1027

DATE: 3-17 **TIME:** 10Am

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Whitney Roberts	Wilmington	Goolsby
2 Kathryn Bridgers	Elizabethtown	Meredith
John Scott	Holly Springs	Stein
4		
5		
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Do not add names below the grid.

ges: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE JUDICIARY I COMMITTEE
March 24, 2011 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on March 24, 2011, in Room 1027 of the Legislative Building. Eight members of the committee were present. Senator Pete Brunstetter. presided.

Senator Brunstetter called the meeting to order at 10:09 a.m.

Senator Hartsell was called upon to explain SB 252
Bly Hall from the General Statutes Commission was called upon to explain the bill
Senator Stein asked a question, and Bly Hall answered
Senator Tillman asked a question of Senator Hartsell, and moved for a favorable report
Motion carries

Peter Brunstetter, Presiding

Sarah Hardin, Committee Clerk

AGENDA

SENATE JUDICIARY I COMMITTEE
March 24, 2011 at 10:00 a.m.
Room 1027, Legislative Building

I. Welcome and Opening Remarks

II. Bills to be Considered

Senate Bill 252
Devisee/Devise Statutory Construction

III. Other Business

IV. Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 252*

Short Title:	Devisee/Devise/Statutory Construction.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary I.	

March 9, 2011

A BILL TO BE ENTITLED

AN ACT TO APPLY THROUGHOUT THE GENERAL STATUTES THE DEFINITION OF "DEVISEE" FOUND IN CHAPTER 28A OF THE GENERAL STATUTES RELATING TO THE ADMINISTRATION OF DECEDENTS' ESTATES AND TO DEFINE "DEVISE" CONSISTENTLY WITH THAT DEFINITION, TO MAKE THE USAGE OF THESE TERMS MORE UNIFORM THROUGHOUT THE GENERAL STATUTES, AND TO MAKE TECHNICAL CHANGES TO SECTIONS OF THE GENERAL STATUTES OTHERWISE AMENDED BY THIS ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. DEFINE "DEVISE" AND "DEVISEE" IN CHAPTER 12.

SECTION 1. G.S. 12-3 reads as rewritten:

"**§ 12-3. Rules for construction of statutes.**

In the construction of all statutes the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the General Assembly, or repugnant to the context of the same statute, that is to say:

...

(14) "Devisee" and "Devise". – The word "devisee," wherever used in any of the statutes, shall be construed to mean "devisee" as defined in G.S. 28A-1-1. The word "devise," wherever used in any of the statutes as a noun, shall be construed to mean a testamentary disposition of real or personal property and, wherever used in any of the statutes as a verb, shall be construed to mean to dispose of real or personal property by will."

PART II. UNIFORM USAGE; CLARIFYING AND TECHNICAL AMENDMENTS.

SECTION 2. G.S. 1-255 reads as rewritten:

"**§ 1-255. Who may apply for a declaration.**

Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, ~~legatee,~~ heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or legal relations in respect thereto:

(1) To ascertain any class of creditors, devisees, ~~legatees,~~ heirs, next of kin or others; or

...."

SECTION 3. G.S. 1-313 reads as rewritten:

"**§ 1-313. Form of execution.**

The execution must be directed to the sheriff, or to the coroner when the sheriff is a party to or interested in the action. In those counties where the office of coroner is abolished, or is vacant, and in which process is required to be executed on the sheriff, the authority to execute

such process shall be vested in the clerk of court; however, the clerk of court is hereby empowered to designate and direct by appropriate order some person to act in ~~his~~ the clerk of court's stead to execute the same. The execution must also be subscribed by the clerk of the court, and must refer to the judgment, stating the county where the judgment roll or transcript is filed, the names of the parties, the amount of the judgment, if it is for money, the amount actually due thereon, and the time of docketing in the county to which the execution is issued, and shall require the officer substantially as follows:

...

(2) Against Property in Hands of Personal Representative. – If it is against real or personal property in the hands of personal representatives, heirs, devisees, ~~legatees,~~ tenants of real property or trustees it shall require the officer to satisfy the judgment out of such property.

...."

SECTION 4. G.S. 1-339.23(a) reads as rewritten:

"(a) When any person interested as a creditor, ~~legatee,~~ devisee, distributee, or otherwise, in the proceeds of a public sale of personal property, objects at the sale to the completion of the sale of any article of property on account of the insufficiency of the amount bid, title to such property shall not pass and possession of the property shall not be delivered until the sale of such property is reported and is confirmed by the judge or clerk of court having jurisdiction; but such objection to the completion of the sale of any article of property shall not prevent the completion of the sales of articles of property to which no objection is made where the same have been separately sold. When a judge or clerk having jurisdiction fails or refuses to confirm a sale of property which has thus been objected to, the procedure for a new sale of such property, including a new order of sale, shall be the same as if no such attempted sale has been held. This subsection shall not apply to perishable property sold pursuant to G.S. 1-339.19."

SECTION 5. G.S. 1A-1, Rule 27, reads as rewritten:

"**Rule 27. Depositions before action or pending appeal.**

(a) Before action. –

(1) Petition. – A person who desires to perpetuate ~~his~~ that person's own testimony or ~~that~~ the testimony of another person regarding any matter may file a verified petition in the appropriate court in a county where any expected adverse party resides. The petition shall be entitled in the name of the petitioner and shall show: (i) that the petitioner expects that ~~he,~~ the petitioner, or ~~his~~ the petitioner's personal representative, ~~heirs, legatees~~ heirs or devisees, will be a party to an action cognizable in any court, but that ~~he~~ the petitioner is presently unable to bring it or cause it to be brought, (ii) the subject matter of the expected action and ~~his~~ the petitioner's reasons for desiring to perpetuate it, (iii) the facts which ~~he~~ the petitioner desires to establish by the proposed testimony and ~~his~~ the petitioner's reasons for desiring to perpetuate it, (iv) the names or a description of the persons ~~he~~ the petitioner expects will be adverse parties and their addresses so far as known, and (v) the names and addresses of the persons to be examined and the substance of the testimony which ~~he~~ the petitioner expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and Service. – The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing (or within such time as the court may

direct) the notice shall be served in the manner provided in Rule 4(j)(1) or (2) for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4(j)(1) or (2), an attorney who shall represent them, in case they are not otherwise represented. If any expected adverse party is a minor or incompetent the provisions of Rule 17(c) apply.

(3) Order and Examination. – If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written questions. The depositions may then be taken in accordance with these rules; and the court may make orders of the character provided for by Rules 34 and 35. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) Use of Deposition. – If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the United States or the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in a court of this State in accordance with the provisions of Rule 32(a), or in any other court under whose rules it is admissible.

(b) Pending appeal. – If an appeal has been taken from the determination of any court or if petition for review or certiorari has been served and filed, or before the taking of an appeal or the filing of a petition for review or certiorari if the time therefor has not expired, the court in which the determination was made may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the trial court. In such case the party who desires to perpetuate the testimony may make a motion in the trial court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the trial court. The motion shall show (i) the names and addresses of the persons to be examined and the substance of the testimony which ~~he~~ the party expects to elicit from each; (ii) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the trial court.

(c) Perpetuation by action. – This rule does not limit the power of a court to entertain an action to perpetuate testimony."

SECTION 6. G.S. 1C-1604(b) reads as rewritten:

"(b) Exempt property which passes by ~~bequest,~~ devise, intestate succession or gift to a dependent spouse, child or person to whom the debtor stands in loco parentis, continues to be exempt while held by that person. The exemption is terminated if the spouse remarries, or, with regard to a dependent, when the court determinates that dependency no longer exists."

SECTION 7. G.S. 7A-498.6(b) reads as rewritten:

"(b) The Director shall:

...

(6) Apply for and accept on behalf of the Office of Indigent Defense Services any funds that may become available from government grants, private gifts, donations, or ~~bequests~~ devises from any source;

...."

SECTION 8. G.S. 11-11 reads as rewritten:

"**§ 11-11. Oaths of sundry persons; forms.**

The oaths of office to be taken by the several persons hereafter named shall be in the words following the names of said persons respectively, after taking the separate oath required by Article VI, Section 7 of the Constitution of North Carolina:

...

EXECUTOR

You swear (or affirm) that you believe this writing to be and contain the last will and testament of A. B., deceased; and that you will well and truly execute the same by first paying ~~his~~ debts and then ~~his legacies,~~ devises, as far as the ~~said~~ decedent's estate shall extend or the law shall charge you; and that you will well and faithfully execute the office of an executor, agreeably to the trust and confidence reposed in you, and according to law; so help you, God.

...."

SECTION 9. G.S. 14-315(a1) reads as rewritten:

"(a1) Sale of Handguns. – If a person sells, offers for sale, gives, or in any way transfers to a minor any handgun as defined in G.S. 14-269.7, the person is guilty of a Class H felony and, in addition, shall forfeit the proceeds of any sale made in violation of this section. This section does not apply in any of the following circumstances:

(1) The handgun is lent to a minor for temporary use if the minor's possession of the handgun is lawful under G.S. 14-269.7 and G.S. 14-316 and is not otherwise unlawful.

(2) The handgun is transferred to an adult custodian pursuant to Chapter 33A of the General Statutes, and the minor does not take possession of the handgun except that the adult custodian may allow the minor temporary possession of the handgun in circumstances in which the minor's possession of the handgun is lawful under G.S. 14-269.7 and G.S. 14-316 and is not otherwise unlawful.

(3) The handgun is a devise ~~or legacy~~ and is distributed to a parent or guardian under G.S. 28A-22-7, and the minor does not take possession of the handgun except that the parent or guardian may allow the minor temporary possession of the handgun in circumstances in which the minor's possession of the handgun is lawful under G.S. 14-269.7 and G.S. 14-316 and is not otherwise unlawful."

SECTION 10. G.S. 14-401.12(b) reads as rewritten:

"(b) Definitions. – Unless a different meaning is required by the context, the following terms as used in this section have the meanings hereinafter respectively ascribed to them:

...

(2) "Contribution" shall mean any promise, gift, ~~bequest,~~ devise or other grant for consideration or otherwise, of any money or property of any kind or value, including the promise to pay, which contribution is wholly or partly induced by a solicitation. The term "contribution" shall not include payments by members of an organization for membership fees, dues, fines or assessments, or for services rendered to individual members, if membership in such organization confers a bona fide right, privilege, professional standing, honor or other direct benefit, other than the right to vote, elect officers, or hold offices; nor any money, credit, financial assistance or

property received from any governmental authority; nor any donation of blood or any anatomical gift made pursuant to the Revised Uniform Anatomical Gift Act. Reference to dollar amounts of "contributions" or "solicitations" in this section means, in the case of payments or promises to pay for merchandise or rights of any description, the value of the total amount paid or promised to be paid for such merchandise or rights, and not merely that portion of the purchase price to be applied to a charitable purpose.

...."

SECTION 11. G.S. 15A-1465(a) reads as rewritten:

"(a) The Commission shall employ a Director. The Director shall be an attorney licensed to practice in North Carolina at the time of appointment and at all times during service as Director. The Director shall assist the Commission in developing rules and standards for cases accepted for review, coordinate investigation of cases accepted for review, maintain records for all case investigations, prepare reports outlining Commission investigations and recommendations to the trial court, and apply for and accept on behalf of the Commission any funds that may become available from government grants, private gifts, donations, or ~~bequests~~ devises from any source."

SECTION 12. G.S. 15A-1466 reads as rewritten:

"**§ 15A-1466. Duties.**

The Commission shall have the following duties and powers:

...

(6) To apply for and accept any funds that may become available for the Commission's work from government grants, private gifts, donations, or ~~bequests~~ devises from any source."

SECTION 13. G.S. 18B-701(a) reads as rewritten:

"(a) Powers. – A local board shall have authority to:

...

(10) Buy and lease real and personal property, and receive property ~~bequeathed~~ devised or given, as necessary for the operation of the ABC system;

...."

SECTION 14. G.S. 20-77(b) reads as rewritten:

"(b) In the event of transfer as upon ~~inheritance, devise or bequest,~~ inheritance or devise, the Division shall, upon a receipt of a certified copy of a will, letters of administration and/or a certificate from the clerk of the superior court showing that the motor vehicle registered in the name of the decedent owner has been assigned to ~~his widow~~ the owner's surviving spouse as part of ~~her year's support,~~ the spousal year's allowance, transfer both title and license as otherwise provided for transfers. If a decedent dies intestate and no administrator has qualified or the clerk of superior court has not issued a certificate of assignment as part of the ~~widow's~~ spousal year's allowance, or if a decedent dies testate with a small estate and leaving a purported will, which, in the opinion of the clerk of superior court, does not justify the expense of probate and administration and probate and administration is not demanded by any interested party entitled by law to demand same, and provided that the purported will is filed in the public records of the office of the clerk of the superior court, the Division may upon affidavit executed by all heirs effect such transfer. The affidavit shall state the name of the decedent, date of death, that the decedent died intestate or testate and no administration is pending or expected, that all debts have been paid or that the proceeds from the transfer will be used for that purpose, the names, ages and relationship of all heirs and devisees (if there be a purported will), and the name and address of the transferee of the title. A surviving spouse may execute the affidavit and transfer the interest of the decedent's minor or incompetent children where such minor or

incompetent does not have a guardian. A transfer under this subsection shall not affect the validity nor be in prejudice of any creditor's lien."

SECTION 15. G.S. 28A-13-4 reads as rewritten:

"**§ 28A-13-4. Continuance of farming operations of deceased persons.**

When any person dies while engaged in farming operations, ~~his~~ the personal representative is authorized to continue such farming operations until the end of the current calendar year, and until all crops grown during that year are harvested. The net income from such farming operations shall be personal assets of the estate. Any indebtedness incurred in connection with such farming operations after the date of death shall be preferred over the claims of any heir, ~~legatee,~~ devisee, distributee, general or unsecured creditor of said estate. Nothing herein contained shall limit the powers of a personal representative under the terms of a will."

SECTION 16. G.S. 28A-18-2(a) reads as rewritten:

"(a) When the death of a person is caused by a wrongful act, neglect or default of another, such as would, if the injured person had lived, have entitled ~~him~~ the injured person to an action for damages therefor, the person or corporation that would have been so liable, and his or her or their personal representatives or collectors, shall be liable to an action for damages, to be brought by the personal representative or collector of the decedent; and this notwithstanding the death, and although the wrongful act, neglect or default, causing the death, amounts in law to a felony. The personal representative or collector of the decedent who pursues an action under this section may pay from the assets of the estate the reasonable and necessary expenses, not including attorneys' fees, incurred in pursuing the action. At the termination of the action, any amount recovered shall be applied first to the reimbursement of the estate for the expenses incurred in pursuing the action, then to the payment of attorneys' fees, and shall then be distributed as provided in this section. The amount recovered in such action is not liable to be applied as assets, in the payment of debts or ~~legacies,~~ devises, except as to burial expenses of the deceased, and reasonable hospital and medical expenses not exceeding four thousand five hundred dollars ($4,500) incident to the injury resulting in death, except that the amount applied for hospital and medical expenses shall not exceed fifty percent (50%) of the amount of damages recovered after deducting attorneys' fees, but shall be disposed of as provided in the Intestate Succession Act. The limitations on recovery for hospital and medical expenses under this subsection do not apply to subrogation rights exercised pursuant to G.S. 135-40.13A. All claims filed for such services shall be approved by the clerk of the superior court and any party adversely affected by any decision of said clerk as to said claim may appeal to the superior court in term time."

SECTION 17. G.S. 28A-22-5 reads as rewritten:

"**§ 28A-22-5. Distribution of assets in kind in satisfaction of ~~bequests~~ devises and transfers in trust.**

(a) Subject to the provisions of subsection (b) of this section, whenever under any will or trust indenture the executor, trustee or other fiduciary is required to, or has an option to, satisfy a ~~bequest~~ devise or transfer in trust by a transfer of assets of the estate or trust in kind at the values as finally determined for federal estate tax purposes, the executor, trustee or other fiduciary shall, in the absence of contrary provisions in such will or trust indenture, be required to satisfy such ~~bequest~~ devise or transfer by the distribution of assets fairly representative of the appreciation or depreciation in the value of all property available for distribution in satisfaction of such ~~bequest~~ devise or transfer.

(b) The provisions of subsection (a) of this section shall not apply unless either:

(1) The decedent's surviving spouse is the beneficiary of the ~~bequest~~ devise or trust transfer described in subsection (a) of this section or of the residue of the estate or trust; or

(2) Any "skip person", as that term is defined in Chapter 13 of the Internal Revenue Code of 1986, as amended, is or may be a current or future

beneficiary of the ~~bequest~~ devise or trust transfer described in subsection (a) of this section or of the residue of the estate or trust, and the value of the decedent's gross estate for federal tax purposes exceeds the value of the decedent's unused generation-skipping tax exemption available under Chapter 13 of the Internal Revenue Code of 1986, as amended."

SECTION 18. G.S. 28A-22-6 reads as rewritten:

"**§ 28A-22-6. Agreements with taxing authorities to secure benefit of federal marital deduction.**

The executor, trustee, or other fiduciary having discretionary powers under a will or trust indenture with respect to the selection of assets to be distributed in satisfaction of a ~~bequest~~ devise or transfer in trust to or for the benefit of the surviving spouse of a decedent shall be authorized to enter into agreements with the Commissioner of Internal Revenue of the United States of America, and other taxing authorities, requiring the fiduciary to exercise the fiduciary's discretion so that cash and other properties distributed in satisfaction of such ~~bequest~~ devise or transfer in trust will be fairly representative of the net appreciation or depreciation in value on the date, or dates, of distribution of all property then available for distribution in satisfaction of such ~~bequest~~ devise or transfer in trust. Any such fiduciary shall be authorized to enter into any other agreement not in conflict with the express terms of the will or trust indenture that may be necessary or advisable in order to secure for federal estate tax purposes the appropriate marital deduction available under the Internal Revenue Laws of the United States of America and to do and perform all acts incident to such purpose."

SECTION 19. G.S. 28A-22-7 reads as rewritten:

"**§ 28A-22-7. Distribution to parent or guardian of a minor.**

(a) If a devise ~~or legacy~~ of personal property to a person under the age of 18 has a total value of less than one thousand five hundred dollars ($1,500), and the devisee ~~or legatee~~ is residing in the same household with a parent or a guardian appointed prior to the decedent's death, the personal representative may distribute to the parent or guardian the ~~devise or legacy.~~ devise. However, such distribution shall only be made with the prior approval of the clerk of court who issued the letters testamentary or of administration.

(b) If such distribution has been made the parent or guardian shall use the property solely for the education, maintenance and support of the ~~devisee or legatee.~~ devisee. However, the parent or guardian shall not be required to file an accounting with the clerk of court or to the personal representative, nor shall such distribution be cause for a delay in the filing of the personal representative's final account under the provisions of Article 21 of this Chapter.

(c) This section establishes a procedure that is separate from the provisions of G.S. 33-69.1 and it is not the intention of this section to repeal in whole or in part the provisions of G.S. 33-69.1.

(d) This section may also be applied to several devises ~~or legacies~~ of personal property to a single devisee ~~or legatee~~ having a combined total value of less than one thousand five hundred dollars ($1,500)."

SECTION 20. G.S. 28A-23-3(b) reads as rewritten:

"(b) In determining the amount of the commissions, both upon personal property received and upon expenditures made, the clerk of superior court shall consider the time, responsibility, trouble and skill involved in the management of the estate. Where real property is sold to pay debts or ~~legacies,~~ devises, the commission shall be computed only on the proceeds actually applied in the payment of debts or ~~legacies.~~ devises."

SECTION 21.(a) G.S. 28A-27-5(a) reads as rewritten:

"(a) Any interest for which a deduction or exemption is allowed under the federal revenue laws in determining the value of the decedent's net taxable estate, such as property passing to or in trust for a surviving spouse and gifts or ~~bequests~~ devises for charitable, public, or similar purposes, shall not be included in the computation provided for in G.S. 28A-27-2 to

the extent of the allowable deduction or exemption. When such an interest is subject to a prior present interest which is not allowable as a deduction or exemption, such present interest shall not be included in the computation provided for in this Article and no tax shall be apportioned to or paid from principal."

SECTION 21.(b) G.S. 28A-27-5(d) reads as rewritten:

"(d) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or ~~bequest~~ devise does not constitute an allowed deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in this Article, and to that extent no apportionment shall be made against the property. This section does not apply in any instance where the result will be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954 of the United States or corresponding provisions of any subsequent tax law, relating to deduction for State death taxes on transfers for public, charitable, or religious uses."

SECTION 22. G.S. 29-30(c1) reads as rewritten:

"(c1) The notice of election shall:

(1) Be directed to the clerk with whom filed;

(2) State that the surviving spouse making the same elects to take under this section rather than under the provisions of G.S. 29-14, 29-21, or 30-3.1, as applicable;

(3) Set forth the names of all heirs, devisees, ~~legatees,~~ personal representatives and all other persons in possession of or claiming an estate or an interest in the property described in subsection (a); and

(4) Request the allotment of the life estate provided for in subsection (a)."

SECTION 23. G.S. 30-23 reads as rewritten:

"**§ 30-23. Right of appeal.**

The personal representative, or the surviving spouse, or child by ~~his~~ a guardian or next friend, or any creditor, ~~legatee~~ devisee, or heir of the deceased, may appeal from the finding of the magistrate or clerk of court to the superior court of the county, and, within 10 days after the assignment, cite the adverse party to appear before such court on a certain day, not less than five nor exceeding 10 days after the service of the citation."

SECTION 24. G.S. 30-28 reads as rewritten:

"**§ 30-28. Nature of proceeding; parties.**

The application shall be by summons, as is prescribed for special proceedings, in which the personal representative of the deceased, if there be one other than the plaintiff, the largest known creditor, or ~~legatee,~~ devisee, or some distributee of the deceased, living in the county, shall be made defendant, and the proceedings shall be as prescribed for special proceedings between parties."

SECTION 25. G.S. 30-32 reads as rewritten:

"**§ 30-32. Exceptions to the report.**

The personal representative, or any creditor, ~~distributee or legatee~~ distributee, or devisee of the deceased, within 10 days after the return of the report, may file exceptions thereto. The plaintiff shall be notified thereof and cited to appear before the court on a certain day, within 20 and not less than 10 days after service of the notice, and answer the same; the case shall thereafter be proceeded in, heard and decided as provided in special proceedings between parties."

SECTION 26. G.S. 31-3.2 reads as rewritten:

"**§ 31-3.2. Kinds of wills.**

(a) Personal property ~~may be bequeathed~~ and real property may be devised by

(1) An attested written will which complies with the requirements of G.S. 31-3.3, or

(2) A holographic will which complies with the requirements of G.S. 31-3.4.

(b) Personal property may also be ~~bequeathed~~ devised by a nuncupative will which complies with the requirements of G.S. 31-3.5."

SECTION 27. G.S. 31-13 reads as rewritten:

"**§ 31-13. Executor failing, beneficiary may apply.**

If no executor apply to have the will proved within 60 days after the death of the testator, any devisee ~~or legatee~~ named in the will, or any other person interested in the estate, may make such application, upon 10 days' notice thereof to the executor."

SECTION 28. G.S. 31-14 reads as rewritten:

"**§ 31-14. Clerk to notify ~~legatees and~~ devisees of probate of wills.**

The clerks of the superior court of the State are hereby required and directed to notify by mail, all ~~legatees and~~ devisees whose addresses are known, designated in wills filed for probate in their respective counties. All expense incident to such notification shall be deemed a proper charge in the administration of the respective estates."

SECTION 29. G.S. 31-16 reads as rewritten:

"**§ 31-16. What shown on application for probate.**

On application to the clerk of the superior court, he must ascertain by affidavit of the applicant –

(1) That such applicant is the ~~executor, devisee or legatee~~ executor or devisee named in the will, or is some other person interested in the estate, and how so interested.

...."

SECTION 30. G.S. 31-18.4 reads as rewritten:

"**§ 31-18.4. Probate of wills of members of the armed forces.**

In addition to the methods already provided in existing statutes therefor, a will executed by a person while in the armed forces of the United States or the merchant marine, shall be admitted to probate (whether there were subscribing witnesses thereto or not, if they, or either of them, is out of the State at the time said will is offered for probate) upon the oath of at least three credible witnesses that the signature to said will is in the handwriting of the person whose will it purports to be. Such will so proven shall be effective to devise ~~real~~ property ~~as well as to bequeath personal estate~~ of all kinds. This section shall not apply to cases pending in courts and at issue on the date of its ratification."

SECTION 31. G.S. 31-30 reads as rewritten:

"**§ 31-30. Validation of wills recorded without probate by subscribing witnesses.**

In all cases where wills and testaments were executed prior to the first day of January, 1875, and which appear as recorded in the record of last wills and testaments to have had two or more witnesses thereto, and such last wills and testaments were admitted to probate and recorded in the record of wills in the proper county in this State prior to the first day of January, 1888, without having been duly proven as provided by law, and such wills were presented to the clerk of the superior court in any county in this State where the makers of said wills owned property, and where the makers of such wills lived and died, and were by such clerks recorded in the record of wills for ~~his~~ that county, said wills and testaments or exemplified copies or certified true copies thereof, so recorded, if otherwise sufficient, shall have the effect to pass the title to real or personal property, or both, therein ~~devised and bequeathed,~~ devised, to the same extent and as completely as if the execution thereof had been duly proven by the two subscribing witnesses thereto in the manner provided by law of this State. Nothing herein shall be construed to prevent such wills from being impeached for fraud."

SECTION 32. G.S. 31-33 reads as rewritten:

"**§ 31-33. Bond given and cause transferred to trial docket.**

When a caveator shall have given bond with surety approved by the clerk, in the sum of two hundred dollars ($200.00), payable to the propounder of the will, conditioned upon the payment

of all costs which shall be adjudged against such caveator in the superior court or when a caveator shall have deposited money or given a mortgage in lieu of such bond, or shall have filed affidavits and satisfied the clerk of ~~his~~ the caveator's inability to give such bond or otherwise secure such costs, the clerk shall transfer the cause to the superior court for trial. Such caveator shall cause notice of the caveat proceeding to be given to all ~~devisees, legatees,~~ devisees or other persons in interest in the manner provided for service of process by G.S. 1A-1, Rule 4(j) and (k). The notice shall advise such ~~devisees, legatees,~~ devisees or other persons in interest, of the session of superior court to which the proceeding has been transferred and shall call upon them to appear and make themselves proper parties to the proceeding if they so choose. At the session of court to which such proceeding is transferred, or as soon thereafter as motion to that effect shall be made by the propounder, and before trial, the judge shall require any of the ~~devisees, legatees~~ devisees or other persons in interest so cited, either those who make themselves parties with the caveators or whose interests appear to him antagonistic to that of the propounders of the will, to align themselves and to file bond within such time as he shall direct and before trial. Upon the failure of any party to file such bond, the judge shall dismiss that party from the proceeding but that party shall be bound by the proceeding."

SECTION 33. G.S. 31-40 reads as rewritten:

"**§ 31-40. What property passes by will.**

Any testator, by ~~his~~ a will duly executed, may ~~devise, bequeath,~~ devise or dispose of all real and personal ~~estate~~ property which ~~he~~ the testator shall be entitled to at the time of ~~his~~ the testator's death, and which, if not so ~~devised, bequeathed,~~ devised or disposed of, would descend or devolve upon ~~his~~ the testator's heirs at law, or upon ~~his executor or administrator;~~ the testator's personal representative; and the power hereby given shall extend to all contingent, executory, or other future interest in any real or personal ~~estate,~~ property, whether the testator may or may not be the person or one of the persons in whom the same may become vested, or whether ~~he~~ the testator may be entitled thereto under the instrument by which the same was created, or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken, whether any such condition has or has not been broken at the testator's death, all other rights of entry, and possibilities of reverter; and also to such of the same estates, interests, and rights respectively, and other real and personal ~~estate,~~ property, as the testator may be entitled to at the time of ~~his~~ death, notwithstanding that ~~he~~ the testator may become entitled to the same subsequently to the execution of ~~his~~ the testator's will."

SECTION 34. G.S. 31-43 reads as rewritten:

"**§ 31-43. ~~General~~ When a general gift by will ~~an execution~~ operates as an exercise of power of appointment.**

A general devise of the real ~~estate~~ property of the testator, or of ~~his real estate~~ the testator's real property in any place or in the occupation of any person mentioned in the will, or otherwise described in a general manner, shall be construed to include any real ~~estate,~~ property, or any real ~~estate~~ property to which such description shall extend, as the case may be, which ~~he~~ the testator may have power to appoint in any manner ~~he~~ the testator may think proper; and shall operate as an ~~execution~~ exercise of such power, unless a contrary intention shall appear by the will; and in like manner a ~~bequest~~ devise of the personal ~~estate~~ property of the testator, or any ~~bequest~~ devise of personal property, described in a general manner, shall be construed to include any personal ~~estate,~~ property, or any personal ~~estate~~ property to which such description shall extend, as the case may be, which ~~he~~ the testator may have power to appoint in any manner ~~he~~ the testator may think proper, and shall operate as an ~~execution~~ exercise of such power, unless a contrary intention shall appear by the will."

SECTION 35. G.S. 31B-1(a) reads as rewritten:

"(a) A person who succeeds to a property interest as:

(1) Heir;

(2) Next of kin;

(3) Devisee;
~~(4) Legatee;~~
...
may renounce at anytime, in whole or in part, the right of succession to any property or interest therein, including a future interest, by filing a written instrument under the provisions of this Chapter. A renunciation may be of a fractional share or any limited interest or estate. The renunciation shall be deemed to include the entire interest of the person whose property or interest is being renounced unless otherwise specifically limited. A person may renounce any interest in or power over property, including a power of appointment, even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to renounce. Notwithstanding the foregoing, there shall be no right of partial renunciation if the instrument creating the interest expressly so provides."

SECTION 36. G.S. 32A-2 reads as rewritten:

"**§ 32A-2. Powers conferred by the Statutory Short Form Power of Attorney set out in G.S. 32A-1.**

The Statutory Short Form Power of Attorney set out in G.S. 32A-1 confers the following powers on the attorney-in-fact named therein:

...

(8) Estate Transactions. – To request, ask, demand, sue for, recover, collect, receive, and hold and possess all ~~legacies, bequests,~~ devises, as are, owned by, or due, owing, payable, or belonging to, the principal at the time of execution or in which the principal may thereafter acquire interest, to have, use, and take all lawful means and equitable and legal remedies, procedures, and writs in the name of the principal for the collection and recovery thereof, and to adjust, sell, compromise, and agree for the same, and to make, execute, and deliver for the principal, all endorsements, acquittances, releases, receipts, or other sufficient discharges for the same.

...."

SECTION 37. G.S. 35A-1227(b) reads as rewritten:

"(b) A devise ~~or legacy~~ of personal property to a minor may be distributed to the minor's parent or guardian with the approval of the clerk as provided in G.S. 28A-22-7."

SECTION 38. G.S. 35A-1303 reads as rewritten:

"**§ 35A-1303. Fund from sale has character of estate sold and subject to same trusts.**

Whenever, in consequence of any sale under G.S. 35A-1301, the real or personal property of the ward is saved from demands to which in the first instance it may be liable, the final decree shall declare and set apart a portion of the personal or real estate thus saved, of value equal to the real and personal estate sold, as property exchanged for that sold; and in all sales by guardians whereby real is substituted by personal, or personal by real property, the beneficial interest in the property acquired shall be enjoyed, ~~alienated, devised or bequeathed,~~ alienated, or devised and shall descend and be distributed, as by law the property sold might and would have been had it not been sold, until it be reconverted from the character thus impressed upon it by some act of the owner and restored to its character proper."

SECTION 39. G.S. 35A-1336.1 reads as rewritten:

"**§ 35A-1336.1. Prerequisites to approval by judge of gifts to individuals.**

The judge shall not approve gifts from income to individuals unless it appears to the judge's satisfaction that both the following requirements are met:

...

(2) The judge determines that either:

a. The incompetent, prior to being declared incompetent, executed a paper-writing with the formalities required by the laws of North Carolina for the execution of a valid will, including a paper-writing

naming as beneficiary a revocable trust created by the incompetent, and each donee is entitled to one or more specific ~~legacies, bequests,~~ devises, or distributions of specific amounts of money, income, or property under the paper-writing or the revocable trust or both or is a residuary ~~legatee, devisee,~~ devisee or beneficiary designated in the paper-writing or revocable trust or both; or

...."

SECTION 40. G.S. 35A-1341 reads as rewritten:

"**§ 35A-1341. Prerequisites to approval by judge of gifts for governmental or charitable purposes.**

The judge shall not approve any gifts from principal for governmental or charitable purposes unless it appears to the judge's satisfaction all of the following requirements are met:

...

(6) Either a. or b. applies:

a. All of the following apply:

1. The incompetent, prior to being declared incompetent, executed a paper-writing with the formalities required by the laws of North Carolina for the execution of a valid will, including a paper-writing naming as beneficiary a revocable trust created by the incompetent.
2. Specific ~~legacies, bequests,~~ devises, or nondiscretionary distributions of specific amounts of money, income or property included in the paper-writing or revocable trust or both, will not be jeopardized by making the gifts.
3. All residuary ~~legatees,~~ devisees and beneficiaries designated in the paper-writing or revocable trust or both, who would take under the paper-writing or revocable trust or both, if the incompetent died contemporaneously with the signing of the order of approval of the gifts and the paper-writing was probated as the incompetent's will and the spouse, if any, of the incompetent have been given at least 10 days' written notice that approval for the gifts will be sought and that objection may be filed with the clerk of superior court of the county in which the guardian was appointed, within the 10-day period.

b. Both of the following apply:

1. That so far as is known the incompetent has not prior to being declared incompetent, executed a will which could be probated upon the death of the incompetent; and
2. All persons who would share in the incompetent's intestate estate, if the incompetent died contemporaneously with the signing of the order of approval, have been given at least 10 days' written notice that approval for the gifts will be sought and that objection may be filed with the clerk of the superior court, of the county in which the guardian was appointed, within the 10-day period.

...."

SECTION 41. G.S. 35A-1341.1 reads as rewritten:

"**§ 35A-1341.1. Prerequisites to approval by judge of gifts to individuals.**

The judge shall not approve gifts from principal to individuals unless it appears to the judge's satisfaction that all of the following requirements have been met:

...

(4) The judge determines that either a., b., c., or d. applies.

a. All of the following apply:

1. The incompetent, prior to being declared incompetent, executed a paper-writing with the formalities required by the laws of North Carolina for the execution of a valid will, including a paper-writing naming as beneficiary a revocable trust created by the incompetent.

2. Each donee is entitled to one or more specific ~~legacies, bequests,~~ devises, or distributions of specific amounts of money, income, or property under either the paper-writing or revocable trust or both or is a residuary ~~legatee, devisee,~~ devisee or beneficiary designated in the paper-writing or revocable trust or both.

3. The making of the gifts will not jeopardize any specific ~~legacy, bequest,~~ devise, or distribution of specific amounts of money, income, or property.

b. That so far as is known the incompetent has not, prior to being declared incompetent, executed a will which could be probated upon the death of the incompetent, and each donee is a person who would share in the incompetent's intestate estate, if the incompetent died contemporaneously with the signing of the order of approval of the gifts.

c. The donee is a person who would share in the incompetent's nonprobate estate, if the incompetent died contemporaneously with the signing of the order of approval.

d. The donee is the spouse, parent, descendant of the incompetent, or descendant of the incompetent's parent, and the amount of the gift does not exceed the federal annual gift tax exclusion.

(5) If the incompetent, prior to being declared incompetent, executed a paper-writing with the formalities required by the laws of North Carolina for the execution of a valid will, including a paper-writing naming as beneficiary a revocable trust created by the incompetent; then all residuary ~~legatees, devisees,~~ devisees and beneficiaries designated in the paper-writing or revocable trust or both, who would take under the paper-writing or revocable trust or both if the incompetent died contemporaneously with the signing of the order of approval of the gifts and the paper-writing was probated as the incompetent's will, the spouse, if any, of the incompetent and all persons identified in G.S. 35A-1341.1(7) have been given at least 10 days' written notice that approval for the gifts will be sought and that objection may be filed with the clerk of superior court of the county in which the guardian was appointed, within the 10-day period.

...."

SECTION 42. G.S. 35A-1342 reads as rewritten:

"**§ 35A-1342. Who deemed specific and residuary ~~legatees and~~ devisees of incompetent under § 35A-1341.**

For purposes of G.S. 35A-1341(6)a and G.S. 35A-1341.1(4) and (5), if the paper-writing provides for the residuary estate to be placed in trust for a term of years, or if the paper-writing names as beneficiary a revocable trust created by the incompetent, and the trust or trusts include dispositive provisions which provide that assets continue in trust for a term of years with stated amounts of income payable to designated beneficiaries during the term and stated

amounts payable to designated beneficiaries upon termination of the trust or trusts, the designated beneficiaries shall be deemed to be specific ~~legatees, devisees,~~ devisees and beneficiaries and those taking the remaining income of the trust or trusts and, at the end of the term, the remaining principal shall be deemed to be residuary ~~legatees, devisees,~~ devisees and beneficiaries who would take under the paper-writing or revocable trust or both if the incompetent died contemporaneously with the signing of the order of approval of the gifts. In no case shall any prospective executor or trustee be considered either a specific or residuary ~~legatee, devisee,~~ devisee or beneficiary on the sole basis of prospective service as executor or trustee."

SECTION 43. G.S. 35A-1351 reads as rewritten:

"**§ 35A-1351. Prerequisites to approval of gift.**

The judge shall not approve the gift unless it appears to ~~his~~ the judge's satisfaction that:

...

(5) Either:

a.1. The incompetent, prior to being declared incompetent, executed a paper-writing, with the formalities required by the laws of North Carolina for the execution of a valid will;

2. Specific ~~legacies, bequests or~~ devises of specific amounts of money, income or property included in such paper-writing, will not be jeopardized by making such gifts;

3. All residuary ~~legatees and~~ devisees designated in such paper-writing, who would take under the paper-writing if the incompetent died contemporaneously with the signing of the order of approval of such gifts, and such paper-writing was probated as the incompetent's will and the spouse, if any, of such incompetent have been given at least 10 days' written notice that approval for such gifts will be sought and that objection may be filed with the clerk of superior court, of the county in which the guardian or trustee was appointed, within the 10-day period; or

b.1. That so far as is known the incompetent has not prior to being declared incompetent, executed a will which could be probated upon the death of the incompetent; and

2. All persons who would share in the incompetent's estate, if the incompetent died contemporaneously with the signing of the order of approval, have been given at least 10 days' written notice that approval for such gifts will be sought and that objection may be filed with the clerk of the superior court, of the county in which the guardian or trustee was appointed, within the 10-day period."

SECTION 44. G.S. 35A-1352 reads as rewritten:

"**§ 35A-1352. Who deemed specific and residuary ~~legatees and~~ devisees of incompetent under § 35A-1351.**

For purposes of ~~G.S. 35A-1351(5)a~~ G.S. 35A-1351(5)a. of this Article, if such paper-writing provides for the residuary estate to be placed in trust for a term of years, with stated amounts of income payable to designated beneficiaries during the term and stated amounts payable to designated beneficiaries upon termination of the trust, such designated beneficiaries shall be deemed to be specific ~~legatees and~~ devisees and those taking the remaining income of the trust and, at the end of the term, the remaining principal shall be deemed to be residuary ~~legatees or~~ devisees who would take under the paper-writing if the incompetent died contemporaneously with the signing of the order of approval of such gifts. In

no case shall any prospective executor or trustee be considered either a specific or residuary ~~legatee or~~ devisee."

SECTION 45. G.S. 36C-4-401 reads as rewritten:

"**§ 36C-4-401. Methods of creating trust.**

A trust may be created by any of the following methods:

(1) Transfer of property by a settlor to a person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death including either of the following:

a. The devise ~~or bequest~~ to the trustee of the trust as provided in G.S. 31-47.

b. The designation of the trust as beneficiary of life insurance or other death benefits as provided in G.S. 36C-4-401.1.

...."

SECTION 46.(a) G.S. 36D-4(h) reads as rewritten:

"(h) The Community Third Party or Pooled Trust may accept contributions, ~~bequests,~~ devises, and designations under life insurance policies to the Community Third Party or Pooled Trust on behalf of individuals with severe chronic disabilities for the purpose of qualifying them as beneficiaries."

SECTION 46.(b) G.S. 36D-4(i) reads as rewritten:

"(i) At the time a contribution, ~~bequest,~~ devise, or assignment of insurance proceeds is made to a Community Third Party Trust, or to a beneficiary of a Pooled Trust, the trustor shall receive a written statement of the services to be provided to the beneficiary. The statement shall include a starting date for the delivery of services or the condition precedent, such as the death of the trustor, which shall determine the starting date. The statement shall describe the frequency with which services shall be provided and their duration, and the criteria or procedures for modifying the program of services from time to time in the best interests of the beneficiary. In addition, there shall be a properly executed trust agreement between the Community Third Party or Pooled Trust and the trustor."

SECTION 47. G.S. 37A-1-102 reads as rewritten:

"**§ 37A-1-102. Definitions.**

The following definitions apply in this Chapter:

...

(2) "Beneficiary" includes, in the case of a decedent's estate, an ~~heir, legatee,~~ heir and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

...."

SECTION 48. G.S. 37A-2-201 reads as rewritten:

"**§ 37A-2-201. Determination and distribution of net income.**

After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

...

(3) Unless the will or trust instrument otherwise provides, or the court otherwise directs, a fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright interest, computed as provided in G.S. 24-1 from the date that is one year following the date of death of the person whose death gives rise to the payment of the pecuniary ~~bequest~~ devise or the happening of the contingency that causes the income interest to end, from net income determined under subdivision (2) of this section or from principal to the extent that net income is insufficient. However, this subdivision shall not apply to a pecuniary ~~bequest:~~devise:

a. To or for the benefit of a decedent's surviving spouse that is or can be qualified for the federal estate tax marital deduction; or

b. To or for the benefit of charitable organizations that are qualified for the federal estate tax charitable deduction, including a charitable remainder trust.

...."

SECTION 49. G.S. 41-6.2(a) reads as rewritten:

"(a) The law of this State does not include: (i) the common-law rule of worthier title that a grantor or testator cannot convey or devise an interest to ~~his~~ the grantor's or testator's own heirs, or (ii) a presumption or rule of interpretation that a grantor or testator does not intend, by a ~~grant, devise or bequest~~ grant or devise to ~~his~~ the grantor's or testator's own heirs or next of kin, to transfer an interest to them. The meaning of a ~~grant, devise or bequest~~ grant or devise of a legal or equitable interest to a grantor's or testator's own heirs or next of kin, however designated, shall be determined by the general rules applicable to the interpretation of grants or wills."

SECTION 50.(a) G.S. 41-11.1(a) reads as rewritten:

"(a) Wherever there is a gift, devise, ~~bequest,~~ transfer or conveyance of a vested estate or interest in real or personal property, or both, to persons described as a class, and at the effective date thereof, one or more members of the class are in esse, and there is a possibility in law that the membership of the class may later be increased by one or more members not then in esse, a special proceeding may be instituted in the superior court for the sale, lease or mortgage of such real or personal property, or both, as provided in this section."

SECTION 50.(b) G.S. 41-11.1(n) reads as rewritten:

"(n) Provided, however, this section shall not be applicable where the instrument creating the gift, devise, ~~bequest,~~ transfer or conveyance specifically directs, by means of the creation of a trust or otherwise, the manner in which the property shall be used or disposed of, or contains specific limitations, conditions or restrictions as to the use, form, investment, leasing, mortgage, or other disposition of the property."

SECTION 50.(c) G.S. 41-11.1(o) reads as rewritten:

"(o) And provided further, this section shall not alter or affect in any way laws or legal principles heretofore, now, or hereafter existing relating to the determination of the nature, extent or vesting of estates or property interests, and of the persons entitled thereto. But where, under the laws and legal principles existing without regard to this section, a gift, devise, ~~bequest,~~ transfer or conveyance has the legal effect of being made to all members of a class, some of whom are in esse and some of whom are in posse, the procedures authorized hereby may be utilized for the purpose of promoting the best interests of all members of the class, and this section shall be liberally construed to effectuate this intent. The remedies and procedures herein specified shall not be exclusive, but shall be cumulative, in addition to, and without prejudice to, all other remedies and procedures, if any, which now exist or hereafter may exist either by virtue of statute, or by virtue of the inherent powers of any court of competent jurisdiction, or otherwise."

SECTION 50.(d) G.S. 41-11.1(p) reads as rewritten:

"(p) The provisions of this section shall apply to gifts, devises, ~~bequests,~~ transfers, and conveyances made both before and after April 5, 1949."

SECTION 51. G.S. 50-20(b) reads as rewritten:

"(b) For purposes of this section:

...

(2) "Separate property" means all real and personal property acquired by a spouse before marriage or acquired by a spouse by ~~bequest,~~ devise, descent, or gift during the course of the marriage. However, property acquired by gift from the other spouse during the course of the marriage shall be considered

separate property only if such an intention is stated in the conveyance. Property acquired in exchange for separate property shall remain separate property regardless of whether the title is in the name of the husband or wife or both and shall not be considered to be marital property unless a contrary intention is expressly stated in the conveyance. The increase in value of separate property and the income derived from separate property shall be considered separate property. All professional licenses and business licenses which would terminate on transfer shall be considered separate property.

...."

SECTION 52. G.S. 52-1 reads as rewritten:

"**§ 52-1. Property of married persons secured.**

The real and personal property of any married person in this State, acquired before marriage or to which he or she may after marriage become in any manner entitled, shall be and remain the sole and separate estate and property of such married person and may be ~~devised, bequeathed~~ devised and conveyed by such married person subject to G.S. 50-20 and such other regulations and limitations as the General Assembly may prescribe."

SECTION 53. G.S. 55A-11-07 reads as rewritten:

"**§ 55A-11-07. ~~Bequests, devises,~~ Devises and gifts.**

Any ~~bequest,~~ devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, that is made to a constituent corporation and that takes effect or remains payable after the merger, inures to the survivor in the merger unless the will or other instrument otherwise specifically provides."

SECTION 54. G.S. 55A-11-10(g) reads as rewritten:

"(g) All of the following shall occur upon an effective merger under this section:

...

(6) Any ~~bequest,~~ devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a city hospital authority that has merged into a charitable or religious corporation or into a county hospital authority and that takes effect or remains payable after the merger, inures to the surviving charitable or religious corporation or the surviving county hospital authority unless the will or other instrument otherwise specifically provides."

SECTION 55. G.S. 58-10-5 reads as rewritten:

"**§ 58-10-5. Stock acquired to be turned over to voting trust until all stock acquired; dividends repaid to corporation for beneficiaries.**

If a domestic stock life insurance corporation shall determine to become a mutual life insurance corporation it may, in carrying out any plan to that end under the provisions of G.S. 58-10-1, acquire any shares of its own stock by gift, ~~bequest~~ devise, or purchase. And until all such shares are acquired, any shares so acquired shall be acquired in trust for the policyholders of the corporation as hereinafter provided, and shall be assigned and transferred on the books of the corporation to not less than three nor more than five trustees, and be held by them in trust and be voted by such trustees at all corporate meetings at which stockholders have the right to vote until all of the capital stock of such corporation is acquired, when the entire capital stock shall be retired and canceled; and thereupon, unless sooner incorporated as such, the corporation shall be and become a mutual life insurance corporation without capital stock. Said trustees shall be appointed and vacancies shall be filled as provided in the plan adopted under G.S. 58-10-1. Said trustees shall file with the corporation and with the Commissioner a verified acceptance of their appointments and declaration that they will faithfully discharge their duties as such trustees. After the payment of such dividends to stockholders or former stockholders as may have been provided in the plan adopted under G.S. 58-10-1, all dividends and other sums received by said trustees on said shares of stock so acquired, after paying the

necessary expenses of executing said trust, shall be immediately repaid to said corporation for the benefit of all who are or may become policyholders of said corporation and entitled to participate in the profits thereof, and shall be added to and become a part of the surplus earned by said corporation, and be apportionable accordingly as a part of said surplus among said policyholders."

SECTION 56. G.S. 58-58-205 reads as rewritten:

"**§ 58-58-205. Definitions.**

As used in this Article:

...

(11) "Viatical settlement contract" means a written agreement establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the policy, in return for the viator's assignment, transfer, sale, ~~devise, or bequest~~ or devise of the death benefit or ownership of any portion of the policy. A viatical settlement contract also includes a contract for a loan or other financing transaction with a viator secured primarily by a policy, other than a loan by a life insurance company under the terms of the life insurance contract, or a loan secured by the cash value of a policy. A viatical settlement contract includes an agreement with a viator to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator.

...."

SECTION 57. G.S. 58-58-300 reads as rewritten:

"**§ 58-58-300. Authority to adopt rules.**

The Commissioner may:

...

(2) Establish standards for evaluating reasonableness of payments under contracts for persons who are terminally or chronically ill, including standards for the amount paid in exchange for assignment, transfer, sale, ~~devise, or bequest~~ or devise of a benefit under a policy.

...."

SECTION 58. G.S. 58-78-5(a) reads as rewritten:

"(a) The Commission shall have the following powers and duties:

...

(5) To accept gifts, ~~bequests,~~ devises, grants, matching funds, and other considerations from private or governmental sources for use in promoting its work;

...."

SECTION 59. G.S. 59B-5 reads as rewritten:

"**§ 59B-5. Real and personal property; nonprofit association as ~~legatee, devisee,~~ devisee or beneficiary.**

(a) A nonprofit association is a legal entity separate from its members for the purposes of acquiring, holding, encumbering, and transferring real and personal property.

(b) A nonprofit association, in its name, may acquire, hold, encumber, or transfer an estate or interest in real or personal property.

(c) A nonprofit association may be a beneficiary of a trust or ~~contract, a legatee,~~ contract or a devisee.

(d) Any judgments and executions against a nonprofit association bind its real and personal property in like manner as if it were incorporated."

SECTION 60. G.S. 64-4 reads as rewritten:

"**§ 64-4. Escheats.**

If a decedent owning personal property located within North Carolina shall leave no heirs, heirs at law or ~~legatees~~ devisees other than persons disqualified from inheritance under G.S. 64-3, then such personal property shall escheat."

SECTION 61. G.S. 78A-2 reads as rewritten:

"**§ 78A-2. Definitions.**

When used in this Chapter, unless the context otherwise requires:

...

(13) "Viatical settlement contract" means an agreement for the purchase, sale, assignment, transfer, ~~devise, or bequest~~ or devise of all or any portion of the death benefit or ownership of a life insurance policy or contract for consideration which is less than the expected death benefit of the life insurance policy or contract. "Viatical settlement contract" does not include:

a. The assignment, transfer, sale, ~~devise, or bequest~~ or devise of a death benefit of a life insurance policy or contract made by the viator to an insurance company or to a viatical settlement provider or broker licensed pursuant to the Viatical Settlements Act (Part 5 of Article 58 of Chapter 58 of the General Statutes);

b. The assignment of a life insurance policy or contract to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or

c. The exercise of accelerated benefits pursuant to the terms of a life insurance policy or contract and consistent with applicable law."

SECTION 62. G.S. 88A-8 reads as rewritten:

"**§ 88A-8. The Board may accept contributions, etc.**

The Board may accept grants, contributions, devises, ~~bequests,~~ and gifts that shall be kept in the same account as the funds deposited in accordance with G.S. 88A-7 and shall be used to carry out the provisions of this Chapter."

SECTION 63. G.S. 90-171.26 reads as rewritten:

"**§ 90-171.26. The Board may accept contributions, etc.**

The Board may accept grants, contributions, ~~devices, bequests,~~ devises, and gifts which shall be kept in a separate fund and shall be used by it to enhance the practice of nursing."

SECTION 64. G.S. 90-210.121 reads as rewritten:

"**§ 90-210.121. Definitions.**

As used in this Article, unless the context requires otherwise:

...

(13) "Crematory manager" means the person who is responsible for the management and operation of the crematory. A crematory manager must either be licensed to practice funeral directing or funeral service and be qualified as a crematory technician or must obtain a crematory manager permit issued by the Board. In order to receive a crematory manager permit, a person must:

a. Be at least 18 years of age.

b. Be of good moral character.

c. Be qualified as a crematory technician.

Notwithstanding any other provision of law, a crematory that is licensed by the Board prior to January 1, 2004, and as of that date is not managed by a crematory manager who is licensed to practice funeral directing or funeral service, or who has a crematory manager permit, may continue to be managed by a crematory manager who is not licensed to practice funeral directing or funeral service or who does not have a crematory manager

permit so long as there is no sale, transfer, devise, ~~bequest,~~ gift, or any other disposal of a controlling interest in the crematory.

...."

SECTION 65. G.S. 90-526(b) reads as rewritten:

"(b) The Board may accept grants, contributions, ~~bequests,~~ devises, and gifts that shall be kept in a separate fund and shall be used by it to enhance the practice of athletic trainers."

SECTION 66. G.S. 90A-75(b) reads as rewritten:

"(b) Contributions. – The Board may accept grants, contributions, ~~bequests,~~ devises, and gifts that shall be kept in the same account as the funds deposited in accordance with this Article and other provisions of the law."

SECTION 67. G.S. 90C-26 reads as rewritten:

"**§ 90C-26. The Board may accept contributions, etc.**

The Board may accept grants, contributions, devises, ~~bequests,~~ and gifts that shall be kept in a separate fund and shall be used by it to publicize the licensure program and its protective benefits to the public."

SECTION 68. G.S. 98-6 reads as rewritten:

"**§ 98-6. Establishing contents of will, where original and copy destroyed.**

Any person desirous of establishing the contents of a will destroyed as aforesaid, there being no copy thereof, may file ~~his~~ a petition in the office of the clerk of the superior court, setting forth the entire contents thereof, according to the best of ~~his~~ the person's knowledge, information and belief. All persons having an interest under the same shall be made parties, and if the truth of such petition is denied, the issues of fact shall be transferred to the superior court for trial by a jury, whether the will was recorded, and if so recorded, the contents thereof, and the declarations of the judge shall be recorded as the will of the testator. Any devisee ~~or legatee~~ is a competent witness as to the contents of every part of said will, except such as may concern his own interest in the same."

SECTION 69. G.S. 105-239.1(a) reads as rewritten:

"(a) Lien and Liability. – Property transferred for an inadequate consideration to a donee, heir, ~~legatee,~~ devisee, distributee, stockholder of a liquidated corporation, or any other person at a time when the transferor is insolvent or is rendered insolvent by reason of the transfer is subject to a lien for any taxes owing by the transferor to the State of North Carolina at the time of the transfer whether or not the amount of the taxes has been ascertained or assessed at the time of the transfer. G.S. 105-241 applies to this tax lien. In the event the transferee has disposed of the property so that it cannot be subjected to the State's tax lien, the transferee is personally liable for the difference between the fair market value of the property at the time of the transfer and the actual consideration, if any, paid to the transferor by the transferee."

SECTION 70. G.S. 105-278.6A(c) reads as rewritten:

"(c) Total Exclusion. – A retirement facility qualifies for total exclusion under this section if it meets all of the following conditions:

...

(5) It has an active program to generate funds through one or more sources, such as gifts, grants, trusts, ~~bequests,~~ devises, endowment, or an annual giving program, to assist the retirement facility in serving persons who might not be able to reside there without financial assistance or subsidy.

...."

SECTION 71. G.S. 105-306(c) reads as rewritten:

"(c) For purposes of this Subchapter:

...

(5) Personal property of which a decedent died possessed, if not under the control of ~~an executor or administrator,~~ a personal representative, shall be

listed in the names of the next of kin or ~~legatees~~ devisees if known, but such property may be listed as property of "the next of kin" or "the ~~legatees~~" devisees" of the decedent, without naming them, until they have given the assessor notice of their names and of the division of the estate. It shall be the duty of ~~an executor or administrator~~ a personal representative having control of personal property to list it in ~~his~~ the personal representative's fiduciary capacity, as required by subdivision (c)(6), below, until ~~he~~ the personal representative is divested of control of the property.

...."

SECTION 72. G.S. 106-6.2 reads as rewritten:

"**§ 106-6.2. Create special revenue funds for certain agricultural centers.**

(a) The Eastern North Carolina Agricultural Center Fund is created within the Department of Agriculture and Consumer Services as a special revenue fund. This Fund shall consist of receipts from the sale of naming rights to any facility located at the Eastern North Carolina Agricultural Center at Williamston, investments earnings on these ~~moneys,~~ monies, and any gifts, ~~bequests,~~ devises, or grants from any source for the benefit of the Eastern North Carolina Agricultural Center. All interest that accrues to this Fund shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to promote, improve, repair, maintain, or operate the Eastern North Carolina Agricultural Center.

(b) The Southeastern North Carolina Agricultural Center Fund is created within the Department of Agriculture and Consumer Services as a special revenue fund. This Fund shall consist of receipts from the sale of naming rights to any facility located at the Southeastern North Carolina Agricultural Center at Lumberton, investments earnings on these ~~moneys,~~ monies, and any gifts, ~~bequests,~~ devises, or grants from any source for the benefit of the Southeastern North Carolina Agricultural Center. All interest that accrues to this Fund shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to promote, improve, repair, maintain, or operate the Southeastern North Carolina Agricultural Center."

SECTION 73. G.S. 106-568.17 reads as rewritten:

"**§ 106-568.17. Acceptance of gifts, ~~bequests~~ devises, and awards; display thereof.**

The said board is hereby empowered to accept and receive gifts, ~~bequests,~~ devises, and awards which are to become the sole property of said North Carolina Agricultural Hall of Fame and are to be kept in a proper manner in a suitable room or hall in some state-owned building in Raleigh, provided that duplicates of such gifts, ~~bequests,~~ devises, and awards may be displayed in a suitable room or hall in the School of Agriculture of the North Carolina State College of Agriculture and Engineering at Raleigh, North Carolina."

SECTION 74.(a) G.S. 113-36(c) reads as rewritten:

"(c) Forest Seedling Nursery Program Fund. – The Forest Seedling Nursery Program Fund is created within the Department of Environment and Natural Resources, Division of Forest Resources, as a special revenue fund. Except as provided in subsection (b) of this section, this Fund shall consist of receipts from the sale of seed and seedlings as authorized in G.S. 113-35 and any gifts, ~~bequests,~~ devises, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to develop, improve, repair, maintain, operate, or otherwise invest in the Forest Seedling Nursery Program."

SECTION 74.(b) G.S. 113-36(d) reads as rewritten:

"(d) Bladen Lakes State Forest Fund. – The Bladen Lakes State Forest Fund is created within the Department of Environment and Natural Resources, Division of Forest Resources, as a special revenue fund. This Fund shall consist of receipts from the sale of forest products from

Bladen Lakes State Forest as authorized in G.S. 113-35 and any gifts, ~~bequests,~~ devises, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to develop, improve, repair, maintain, operate, or otherwise invest in the Bladen Lakes State Forest."

SECTION 75. G.S. 113A-153(e) reads as rewritten:

"(e) Acceptance and Administration of Federal or Private Funds. – The Department of Environment and Natural Resources shall have power and authority to accept, receive and administer, on behalf of the Council, any funds, gifts, ~~bequests,~~ devises, or other financial assistance given, granted or provided by legislative appropriation, or under any federal act or acts or from any federal agency, or from foundations or private sources, and to comply with all conditions and requirements necessary for the receipt, acceptance and use of said funds to the extent not inconsistent with the laws of this State and the rules thereunder pertaining to land-use planning and management. The Council shall have authority to formulate plans and projects for the approval of all funding agencies and institutions and to enter into such contracts and agreements as may be necessary for such purposes or to enter into joint agreements with any other agency or division of government for such purposes and to furnish such information as may be requested for any project or program related to or conducted pursuant to such plans and contracts. Such funds received by the Council pursuant to this provision shall be deposited in the State treasury to the account of the Council and shall remain in such account until used by the Council."

SECTION 76. G.S. 115C-410 reads as rewritten:

"**§ 115C-410. Power to accept gifts and grants.**

The Board is authorized to accept, receive, use, or reallocate to local school administrative units any gifts, donations, grants, ~~bequests,~~ devises, or other forms of voluntary contributions."

SECTION 77. G.S. 115C-490 reads as rewritten:

"**§ 115C-490. Creation of endowment funds; administration.**

Any local board of education is hereby authorized and empowered upon the passage of a resolution to create and establish a permanent endowment fund which shall be financed by gifts, donations, ~~bequests~~ devises, or other forms of voluntary contributions. Any endowment fund established under the provisions of this Article shall be administered by the members of such board of education who, ex officio, shall constitute and be known as "The Board of Trustees of the Endowment Fund of the Public Schools of _____County or_____City or Town" (in which shall be inserted the name of the county, city or town). The board of trustees so established shall determine its own organization and methods of procedure."

SECTION 78. G.S. 115C-491 reads as rewritten:

"**§ 115C-491. Boards of trustees public corporations; powers and authority generally; investments.**

Any board of trustees created and organized under this Article shall be a body politic, public corporation and instrumentality of government and as such may sue and be sued in matters relating to the endowment fund and shall have the power and authority to acquire, hold, purchase and invest in all forms of property, both real and personal, including, but not by way of limitation, all types of stocks, bonds, securities, mortgages and all types, kinds and subjects of investments of any nature and description. The board of trustees of said endowment fund may receive pledges, gifts, donations, ~~devises and bequests,~~ devises, and may in its discretion retain such in the form in which they are made, and may use the same as a permanent endowment fund. The board of trustees of any endowment fund created hereunder shall have the power to sell any property, real, personal or choses in action, of the endowment fund, at either public or private sale. The board of trustees shall be responsible for the prudent investment of any funds or ~~moneys~~ monies belonging to the endowment fund in the exercise of

its sound discretion without regard to any statute or rule of law relating to the investment of funds by fiduciaries."

SECTION 79. G.S. 115C-492 reads as rewritten:

"**§ 115C-492. Expenditure of funds; pledges.**

It is not the intent that such endowment fund created hereunder shall take the place of State appropriations or any regular appropriations, tax funds or other funds made available by counties, cities, towns or local school administrative units for the normal operation of the public schools. Any endowment fund created hereunder, or the income from same, shall be used for the benefit of the public schools of the county, city or town involved and to supplement regular and normal appropriations to the end that the public schools may improve and increase their functions, may enlarge their areas of service and may become more useful to a greater number of people. The board of trustees in its discretion shall determine the objects and purposes for which the endowment fund shall be spent. Nothing herein shall be construed to prevent the board of trustees of any such endowment fund established hereunder from receiving pledges, gifts, donations, ~~devises and bequests~~ and devises and from using the same for such lawful school purposes as the donor or donors designate: Provided, always, that the administration of any such pledges, gifts, donations, ~~devises and bequests,~~ and devises, or the expenditure of funds from same, will not impose any financial burden or obligation on the State of North Carolina or any subdivisions of government of the State. The board of trustees may, with the consent of the donor of any pledges, transfer and assign such pledges as security for loans. This consent by the donor may be made at the time of the pledge or at any time before said pledges are paid off in full. It is the purpose of this provision to enable the board of trustees to have the immediate use of funds which the donor may desire to pledge as payable over a period of years."

SECTION 80. G.S. 115C-493 reads as rewritten:

"**§ 115C-493. When only income from fund expended.**

Where the donor of said pledges, gifts, donations, ~~devises and bequests~~ and devises so provides, the board of trustees shall keep the principal of such gift or gifts intact and only the income therefrom may be expended."

SECTION 81. G.S. 115C-494 reads as rewritten:

"**§ 115C-494. Property and income of board of trustees exempt from State taxation.**

All property received, purchased, contributed or donated to the board of trustees for the benefit of any endowment fund created hereunder and all donations, gifts and ~~bequests~~ devises received or otherwise administered for the benefit of said endowment fund, as well as the principal and income from said endowment fund, shall at all times be free from taxation, of any nature whatsoever, within the State."

SECTION 82. G.S. 115D-20 reads as rewritten:

"**§ 115D-20. Powers and duties of trustees.**

The trustees of each institution shall constitute the local administrative board of such institution, with such powers and duties as are provided in this Chapter and as are delegated to it by the State Board of Community Colleges. The powers and duties of trustees shall include the following:

...

(5) To receive and accept donations, gifts, ~~bequests,~~ devises, and the like from private donors and to apply them or invest any of them and apply the proceeds for purposes and upon the terms which the donor may prescribe and which are consistent with the provisions of this Chapter and the regulations of the State Board of Community Colleges.

...."

SECTION 83.(a) G.S. 116-36(d) reads as rewritten:

"(d) The trustees of the endowment fund may receive and administer as part of the endowment fund gifts, ~~devises, and bequests~~ and devises and any other property of any kind that may come to them from the Board of Governors of the University of North Carolina or that may come to the trustees of the endowment fund from any other source, excepting always the ~~moneys~~ monies received from State appropriations and from tuition and fees collected from students and used for the general operation of the institution."

SECTION 83.(b) G.S. 116-36(f) reads as rewritten:

"(f) In the process of prudent investment of the fund or to realize the statutory intent of the endowment, the board of trustees of the endowment fund may expend or use interest and principal of gifts, ~~devises, and bequests;~~ and devises; provided that, the expense or use would not violate any condition or restriction imposed by the original donor of the property which is to be expended or used. To realize the statutory intent of the endowment fund, the board of trustees of the endowment fund may transfer interest or principal of the endowment fund to the useful possession of the constituent institution; provided that, the transfer would not violate any condition or restriction imposed by the original donor of the property which is the subject of the proposed transfer."

SECTION 83.(c) G.S. 116-36(j) reads as rewritten:

"(j) Any ~~gift, devise, or bequest~~ gift or devise of real or personal property to a constituent institution of the University of North Carolina or to the University of North Carolina or to the University of North Carolina Press or to the University of North Carolina Center for Public Television shall be presumed, nothing to the contrary appearing, a ~~gift, devise, or bequest,~~ gift or devise, as the case may be, to the endowment fund of the respective institution or agency."

SECTION 84. G.S. 116-36.1(g) reads as rewritten:

"(g) As used in this section, "trust funds" means:

(1) ~~Moneys,~~ Monies, or the proceeds of other forms of property, received by an institution as ~~gifts, devises, or bequests~~ gifts or devises that are neither presumed nor designated to be ~~gifts, devises, or bequests~~ gifts or devises to the endowment fund of the institution;

...

(8) The net proceeds from the disposition effected pursuant to Chapter 146, Article 7, of any interest in real property owned by or under the supervision and control of an institution if the interest in real property had first been acquired by ~~gift, devise, or bequest~~ gift or devise or through expenditure of ~~moneys~~ monies defined in this subsection (g) as "trust funds," except the net proceeds from the disposition of an interest in real property first acquired by the institution through expenditure of ~~moneys~~ monies received as a grant from a State agency;

...."

SECTION 85. G.S. 116-37.2(a) reads as rewritten:

"(a) As used in this section, "funds" means:

(1) ~~Moneys,~~ Monies, or the proceeds of other forms of property, received by the University of North Carolina Hospitals at Chapel Hill as ~~gifts, devises, or bequests.~~ gifts or devises.

...

(6) The net proceeds from the disposition effected pursuant to Article 7 of Chapter 146 of the General Statutes of any interest in real property owned by or under the supervision and control of the University of North Carolina Hospitals at Chapel Hill if the interest in real property had first been acquired by ~~gift, devise, or bequest~~ gift or devise or through expenditure of ~~moneys~~ monies defined in this subsection, except the net proceeds from the

disposition of an interest in real property first acquired by the University of North Hospitals at Chapel Hill through expenditure of ~~moneys~~ monies received as a grant from a State agency."

SECTION 86. G.S. 121-4 reads as rewritten:

"**§ 121-4. Powers and duties of the Department of Cultural Resources.**

The Department of Cultural Resources shall have the following powers and duties:

(1) To accept gifts, ~~bequests,~~ devises, and endowments for purposes which fall within the general legal powers and duties of the Department. Unless otherwise specified by the donor or ~~legator,~~ testator, the Department may either expend both the principal and interest of any gift or ~~bequests~~ devises or may invest such funds in whole or in part, by and with the consent of the State Treasurer.

...

(8) In accordance with G.S. 121-9 of this Chapter, to acquire real and personal properties that have statewide historical, architectural, archaeological, or other cultural significance, by gift, purchase, ~~devise, or bequest;~~ or devise; to preserve and administer such properties; and, when necessary, to charge reasonable admission fees to such properties. In the acquisition of such property, the Department shall also have the authority to acquire nearby or adjacent property adjacent to properties having statewide significance deemed necessary for the proper use, administration, and protection of historic, architectural, archaeological, or cultural properties, or for the protection of the environment thereof.

...."

SECTION 87. G.S. 121-9(b) reads as rewritten:

"(b) Acquisition of Historic Properties. – For the purpose of protecting or preserving any property of historical, architectural, archaeological, or other cultural importance to the people of North Carolina, and subject to the provisions of Subchapter II of Chapter 146 of the General Statutes, the Department may, with the approval of the North Carolina Historical Commission and after consultation with the Joint Legislative Commission on Governmental Operations, acquire, preserve, restore, hold, maintain, operate, and dispose of such properties, together with such adjacent lands as may be necessary for their protection, preservation, maintenance, and operation. Such property may be real or personal in nature, and in the case of real property, the acquisition may include the fee or any lesser interest therein. Property may be acquired by gift, grant, ~~bequest,~~ devise, lease, purchase, or condemnation pursuant to the provisions of Chapter 40A of the General Statutes, or otherwise. Property may be acquired by the Department, using such funds as may be appropriated for the purpose or ~~moneys~~ monies available to it from any other source."

SECTION 88. G.S. 125-2 reads as rewritten:

"**§ 125-2. Powers and duties of Department of Cultural Resources.**

The Department of Cultural Resources shall have the following powers and duties:

...

(3) To accept gifts, ~~bequests~~ devises, and endowments for the purposes which fall within the general legal powers and duties of the Department of Cultural Resources. Unless otherwise specified by the donor or ~~legator,~~ testator, the Department of Cultural Resources may either expend both the principal and interest of any gift or ~~bequest~~ devise or may invest such sums in whole or in part, by and with the consent of the State Treasurer, in securities in which sinking funds may be invested under the provisions of G.S. 142-34.

...."

SECTION 89. G.S. 130A-470(b) reads as rewritten:

"(b) The Secretary of State, on behalf of the State, may accept gifts, donations, ~~bequests,~~ devises, and other forms of voluntary contributions; may apply for grants from public and private sources; and may expend funds received under this subsection for the purpose of promoting public education and awareness of the registry."

SECTION 90. G.S. 131E-177 reads as rewritten:

"**§ 131E-177. Department of Health and Human Services is designated State Health Planning and Development Agency; powers and duties.**

The Department of Health and Human Services is designated as the State Health Planning and Development Agency for the State of North Carolina, and is empowered to exercise the following powers and duties:

...

(7) Solicit, accept, hold and administer on behalf of the State any grants or ~~bequests~~ devises of money, securities or property to the Department for use by the Department in the administration of this Article; and

...."

SECTION 91. G.S. 139-8(a) reads as rewritten:

"(a) A soil and water conservation district organized under the provisions of this Article shall constitute a governmental subdivision of this State, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers in addition to others granted in other sections of this Chapter:

...

(4) To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, ~~bequest,~~ devise, or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this Chapter; and to sell, lease, or otherwise dispose of its property or interests therein in furtherance of the purposes and the provisions of this Chapter.

...."

SECTION 92. G.S. 143-323(a) reads as rewritten:

"(a) Recreation. – The Department of Environment and Natural Resources shall have the following powers and duties with respect to recreation:

...

(6) To accept gifts, ~~bequests,~~ devises, and endowments. The funds, if given as an endowment, shall be invested in securities designated by the donor, or if there is no such designation, in securities in which the State sinking fund may be invested. All such ~~gifts, bequests,~~ gifts and devises and all proceeds from such invested endowments shall be used for carrying out the purposes for which they were made.

...."

SECTION 93. G.S. 143-407 reads as rewritten:

"**§ 143-407. Appropriations; funds.**

In addition to the appropriations out of the general fund of the State, the Department may accept gifts, ~~bequests,~~ devises, matching funds, or other considerations for use in promoting the arts."

SECTION 94. G.S. 143-437 reads as rewritten:

"**§ 143-437. Pesticide Board; functions.**

The Pesticide Board shall be the governing board for the programs of pesticide management and control set forth in this Article. The Pesticide Board shall have the following powers and duties under this Article:

...

(5) To accept ~~gifts, devises and bequests,~~ gifts and devises, and with the approval of the Governor to apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association or individual, and may comply with the terms, conditions and limitations of the grant, in order to accomplish any of the purposes of the Board, such grant funds to be expended pursuant to the Executive Budget Act.

...."

SECTION 95. G.S. 143-641(a) reads as rewritten:

"(a) Powers and Duties. – The Commission shall have the following powers and duties:

...

(5) To accept grants, contributions, devises, ~~bequests,~~ gifts, and services for the purpose of providing support to the Commission. The funds and property shall be retained by the Commission, and the Commission shall prescribe rules under which the Commission may accept donations of money, property, or personal services, and determine the value of donations of property or personal services.

...."

SECTION 96. G.S. 143-676(a) reads as rewritten:

"(a) Powers and Duties. – The Commission shall have the following powers and duties:

...

(3) To accept grants, contributions, devises, ~~bequests,~~ gifts, and services for the purpose of providing support to the Commission. The funds and property shall be retained by the Commission, and the Commission shall prescribe rules under which the Commission may accept donations of money, property, or personal services, and determine the value of donations of property or personal services."

SECTION 97. G.S. 143B-74.1 reads as rewritten:

"**§ 143B-74.1. U.S.S. North Carolina Battleship Commission – funds.**

The Commission shall establish and maintain a "Battleship Fund" composed of the ~~moneys~~ monies which may come into its hands from admission or inspection fees, gifts, donations, grants, or ~~bequests,~~ devises, which funds will be used by the Commission to pay all costs of maintaining and operating the ship for the purposes herein set forth. The Commission shall maintain books of accounting records concerning revenue derived and all expenses incurred in maintaining and operating the ship as a public memorial. The operations of the Commission shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. The Commission shall reimburse the State Auditor the cost of any audit. The Commission shall establish a reserve fund in an amount to be determined by the Secretary of Cultural Resources to be maintained and used for contingencies and emergencies beyond those occurring in the course of routine maintenance and operation, and may authorize the deposit of this reserve fund in a depository to be selected by the Treasurer of North Carolina."

SECTION 98. G.S. 143B-131.2(b) reads as rewritten:

"(b) The Commission shall have the following powers and duties:

...

(10) To establish and maintain a separate fund composed of ~~moneys~~ monies which may come into its hands from gifts, donations, grants, or ~~bequests,~~ devises, which funds will be used by the Commission for purposes of carrying out its duties and purposes herein set forth. The Commission may also establish a reserve fund to be maintained and used for contingencies and emergencies. Funds appropriated to the Commission may be transferred to the Friends of Elizabeth II, Inc., a private, nonprofit corporation. The Friends

of Elizabeth II, Inc., shall use the funds transferred to it to carry out the purposes of this Part.

...

(13) To acquire real and personal property by purchase, gift, ~~bequest,~~ devise, and exchange.

...."

SECTION 99. G.S. 143B-131.8(a) reads as rewritten:

"(a) The Roanoke Island Commission Fund is established as a nonreverting Fund and shall be administered by the Roanoke Island Commission. Seventy-five percent (75%) of the revenues collected from any property operated by the Roanoke Island Commission shall be credited to the Fund. In addition, gifts, donations, grants, or ~~bequests~~ devises received by the Commission for the purpose of carrying out its duties and purposes may also be deposited in the Fund.

The funds in the Roanoke Island Commission Fund shall be used for the expenses of the Roanoke Island Commission and the operation and maintenance of properties operated by the Commission."

SECTION 100. G.S. 143B-216.33(c) reads as rewritten:

"(c) The Department of Health and Human Services may receive ~~moneys~~ monies from any source, including federal funds, gifts, grants and ~~bequests~~ devises which shall be expended for the purposes designated in this Part. Gifts and ~~bequests~~ devises received shall be deposited in a trust fund with the State Treasurer who shall hold them in trust in a separate account in the name of the Division. The cash balance of this account may be pooled for investment purposes, but investment earnings shall be credited pro rata to this participating account. ~~Moneys~~ Monies deposited with the State Treasurer in the trust fund account pursuant to this subsection, and investment earnings thereon, are available for expenditure without further authorization from the General Assembly. Such funds shall be administered by the Division under the direction of the director and fiscal officer of the Division and will be subject to audits normally conducted with the agency."

SECTION 101. G.S. 143B-472.123(a) reads as rewritten:

"(a) The Office of Economic Opportunity of the Department shall administer the Weatherization Assistance Program for Low-Income Families established by 42 U.S.C. § 6861, et seq., and 42 U.S.C. § 7101, et seq.; the Heating/Air Repair and Replacement Program established by the Secretary under G.S. 108A-70.30; and any other energy-related assistance program for the benefit of low-income persons in existing housing. The Office of Economic Opportunity shall exercise the following powers and duties:

...

(7) Solicit, accept, hold, and administer on behalf of this State any grants or ~~bequests~~ devises of money, securities, or property for the benefit of low-income residents in existing housing for use by the Department or other agencies in the administration of this Part.

...."

SECTION 102. G.S. 143B-476(a) reads as rewritten:

"(a) The head of the Department of Crime Control and Public Safety is the Secretary of Crime Control and Public Safety, who shall be known as the Secretary. The Secretary shall have such powers and duties as are conferred ~~on him~~ by this Chapter, delegated ~~to him~~ by the Governor, and conferred ~~on him~~ by the Constitution and laws of this State. These powers and duties include:

(1) Accepting gifts, ~~bequests,~~ devises, grants, matching funds and other considerations from private or governmental sources for use in promoting the work of the Governor's Crime Commission.

...."

SECTION 103. G.S. 143B-499.7(f) reads as rewritten:

"(f) The Department of Crime Control and Public Safety, on behalf of the Center, may accept grants, contributions, devises, ~~bequests,~~ and gifts, which shall be kept in a separate fund, which shall be nonreverting, and shall be used to fund the operations of the Center and the AMBER Alert System."

SECTION 104. G.S. 147-54.6(b) reads as rewritten:

"(b) The Secretary of State, on behalf of the State, may accept gifts, donations, ~~bequests,~~ devises, or other forms of voluntary contributions, apply for grants from public and private sources, and may expend funds received under this subsection for the purpose of promoting international relations and hosting foreign dignitaries and leaders in North Carolina. All funds and gifts received pursuant to this subsection shall be subject to audit by the Office of the State Auditor and all funds shall be expended in conformity with the Executive Budget Act and shall become the property of the State."

SECTION 105. G.S. 153A-11 reads as rewritten:

"**§ 153A-11. Corporate powers.**

The inhabitants of each county are a body politic and corporate under the name specified in the act creating the county. Under that name they are vested with all the property and rights of property belonging to the corporation; have perpetual succession; may sue and be sued; may contract and be contracted with; may acquire and hold any property and rights of property, real and personal, that may be devised, ~~bequeathed,~~ sold, or in any manner conveyed, dedicated to, or otherwise acquired by the corporation, and from time to time may hold, invest, sell, or dispose of the property and rights of property; may have a common seal and alter and renew it at will; and have and may exercise in conformity with the laws of this State county powers, rights, duties, functions, privileges, and immunities of every name and nature."

SECTION 106. G.S. 153A-158 reads as rewritten:

"**§ 153A-158. Power to acquire property.**

A county may acquire, by gift, grant, devise, ~~bequest,~~ exchange, purchase, lease, or any other lawful method, the fee or any lesser interest in real or personal property for use by the county or any department, board, commission, or agency of the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A."

SECTION 107. G.S. 153A-263 reads as rewritten:

"**§ 153A-263. Public library systems authorized.**

A county or city may:

...

(5) Acquire library materials by purchase, exchange, ~~bequest,~~ devise, gift, or any other lawful method;

...

(7) Accept any gift, grant, lease, loan, exchange, ~~bequest,~~ or devise of real or personal property for a public library system. Devises, ~~bequests,~~ grants, and gifts may be accepted and held subject to any term or condition that may be imposed by the grantor or trustor, except that no county or city may accept or administer any term or condition that requires it to discriminate among its citizens on the basis of race, sex, or religion."

SECTION 108. G.S. 153A-269 reads as rewritten:

"**§ 153A-269. Title to library property.**

The title to all property acquired by a county or city for library purposes shall be in the name of the county or city. If property is given, granted, devised, ~~bequeathed,~~ or otherwise conveyed to the board of trustees of a county or city library system, it shall be deemed to have been conveyed to the county or city and shall be held in the name of the county or city."

SECTION 109. G.S. 157-9(a) reads as rewritten:

"**§ 157-9. Powers of authority.**

(a) An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Article, including the following powers in addition to others herein granted:

To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where unsafe, or insanitary dwelling or housing conditions exist; to study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, replanning and reconstruction of areas in which unsafe or insanitary dwelling or housing conditions exist, and the providing of dwelling accommodations for persons of low income, and to cooperate with any city municipal or regional planning agency; to prepare, carry out and operate housing projects; to approve, assist, and cooperate with, as its instrumentality, a nonprofit corporation in providing financing by the issuance by such nonprofit corporation's obligations (which obligations shall not be or be deemed to be indebtedness of a housing authority) for one or more housing projects, pursuant to the United States Housing Act of 1937, as amended, and applicable regulations thereunder, specifically including, but not limited to, programs to make construction and other loans to developers or owners of residential housing, and to acquire, operate or manage such a housing project, and to administer federal housing assistance subsidy payments for such projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to take over by purchase, lease or otherwise any housing project located within its boundaries undertaken by any government, or by any city or municipality located in whole or in part within its boundaries; to manage as agent of any city or municipality located in whole or in part within its boundaries any housing project constructed or owned by such city; to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project or any part thereof; to arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening or closing of streets, roads, roadways, alleys, sidewalks or other places or facilities or for the acquisition by such city, municipality, or government of property, options or property rights or for the furnishing of property or services in connection with a project; to arrange with the State, its subdivisions and agencies, and any county, city or municipality of the State, to the extent that it is within the scope of each of their respective functions, (i) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing projects and (ii) to provide and maintain parks and sewage, water and other facilities adjacent to or in connection with housing projects and (iii) to change the city or municipality map, to plan, replan, zone or rezone any part of the city or municipality; to lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any housing project and to establish and revise the rents or charges therefor; to enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by gift, grant, ~~bequest,~~ devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government; to acquire by eminent domain any real property, including improvements and fixtures thereon; to sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government; to own, hold, clear and improve property; to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to procure insurance or guarantees from a federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project; to borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues, and by mortgages upon property held or to be held by it, or in any other manner; in

connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects; in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this Article; to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this Article, to carry into effect the powers and purposes of the authority; to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the State or unable to attend before the authority, or excused from attendance; and to make available to such agencies, boards or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare. Any of the investigations or examinations provided for in this Article may be conducted by the authority or by a committee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits and issue subpoenas or commissions. An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this State, and for such purposes an authority may cause one or more corporations to be formed under the laws of this State or may acquire the capital stock of any corporation or corporations. Any corporate agent, (i) all of the stock of which shall be owned by the authority or its nominee or nominees or (ii) the board of directors of which shall be elected or appointed by the authority or is composed of the commissioners of the authority or (iii) which is otherwise subject to the control of the authority or the governmental entity which created the authority, may to the extent permitted by law exercise any of the powers conferred upon the authority herein. In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this Article. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state."

SECTION 110. G.S. 160A-11 reads as rewritten:

"**§ 160A-11. Corporate powers.**

The inhabitants of each city heretofore or hereafter incorporated by act of the General Assembly or by the Municipal Board of Control shall be and remain a municipal corporation by the name specified in the city charter. Under that name they shall be vested with all of the property and rights in property belonging to the corporation; shall have perpetual succession; may sue and be sued; may contract and be contracted with; may acquire and hold any property, real and personal, devised, ~~bequeathed,~~ sold, or in any manner conveyed, dedicated to, or otherwise acquired by them, and from time to time may hold, invest, sell, or dispose of the same; may have a common seal and alter and renew the same at will; and shall have and may exercise in conformity with the city charter and the general laws of this State all municipal powers, functions, rights, privileges, and immunities of every name and nature whatsoever.

All documents required or permitted by law to be executed by municipal corporations will be legally valid and binding in this respect when a legible corporate stamp, which is a facsimile of its seal, is used in lieu of an imprinted or embossed corporate or common seal."

SECTION 111. G.S. 160A-163(b) reads as rewritten:

"(b) The council may create and administer a special fund for the relief of members of the police and fire departments who have been retired for age, or for disability or injury incurred in the line of duty, but any such funds established on or after January 1, 1972, shall be subject to the provisions of subsection (c) of this section. The council may receive donations and ~~bequests~~ devises in aid of any such fund, shall provide for its permanence and increase, and shall prescribe and regulate the conditions under which benefits may be paid."

SECTION 112. G.S. 160A-240.1 reads as rewritten:

"**§ 160A-240.1. Power to acquire property.**

A city may acquire, by gift, grant, devise, ~~bequest,~~ exchange, purchase, lease, or any other lawful method, the fee or any lesser interest in real or personal property for use by the city or any department, board, commission or agency of the city. In exercising the power of eminent domain a city shall use the procedures of Chapter 40A."

SECTION 113. G.S. 160A-347(a) reads as rewritten:

"(a) A city is authorized to create a perpetual care trust fund for any cemeteries under its ownership or control, to accept gifts, grants, ~~bequests,~~ and devises on behalf of the perpetual care trust fund, to deposit any revenues realized from the sale of lots in or the operation of city cemeteries in the perpetual care trust fund, and to hold and administer the trust fund for the purpose of perpetually caring for and beautifying the city's cemeteries. The city may make contracts with the owners of plots in city cemeteries obligating the city to maintain the plots in perpetuity upon payment of such sums as the council may fix."

SECTION 114. G.S. 160A-349.12 reads as rewritten:

"**§ 160A-349.12. Power to accept gifts; exclusive use of gifts.**

The board of trustees of any cemetery shall have the power to accept gifts, either by ~~devise, bequeath~~ devise or otherwise, and hold the same for the purposes expressed in the gift, and any ~~moneys~~ monies coming into the hands of such board by devise or otherwise shall be by the board used exclusively for the purposes for which it is given."

SECTION 115. G.S. 160A-353 reads as rewritten:

"**§ 160A-353. Powers.**

In addition to any other powers it may possess to provide for the general welfare of its citizens, each county and city in this State shall have authority to:

...

(6) Accept any gift, grant, lease, loan, ~~bequest,~~ or devise of real or personal property for parks and recreation programs. ~~Devises, bequests,~~ Devises and gifts may be accepted and held subject to such terms and conditions as may be imposed by the grantor or trustor, except that no county or city may accept or administer any terms that require it to discriminate among its citizens on the basis of race, sex, or religion."

SECTION 116. G.S. 160A-401 reads as rewritten:

"**§ 160A-401. Legislative intent.**

It is the intent of the General Assembly in enacting this Part to provide a means whereby any county or city may acquire, by purchase, gift, grant, ~~bequest,~~ devise, lease, or otherwise, and through the expenditure of public funds, the fee or any lesser interest or right in real property in order to preserve, through limitation of their future use, open spaces and areas for public use and enjoyment."

SECTION 117. G.S. 160A-402 reads as rewritten:

"**§ 160A-402. Finding of necessity.**

The General Assembly finds that the rapid growth and spread of urban development in the State is encroaching upon, or eliminating, many open areas and spaces of varied size and character, including many having significant scenic or esthetic values, which areas and spaces if preserved and maintained in their present open state would constitute important physical, social, esthetic, or economic assets to existing and impending urban development. The General Assembly declares that it is necessary for sound and proper urban development and in the public interest of the people of this State for any county or city to expend or advance public funds for, or to accept by purchase, gift, grant, ~~bequest,~~ devise, lease, or otherwise, the fee or any lesser interest or right in real property so as to acquire, maintain, improve, protect, limit the future use of, or otherwise conserve open spaces and areas within their respective jurisdictions as defined by this Article.

The General Assembly declares that the acquisition of interests or rights in real property for the preservation of open spaces and areas constitutes a public purpose for which public funds may be expended or advanced."

SECTION 118. G.S. 160A-403 reads as rewritten:

"**§ 160A-403. Counties or cities authorized to acquire and reconvey real property.**

Any county or city in the State may acquire by purchase, gift, grant, ~~bequest,~~ devise, lease, or otherwise, the fee or any lesser interest, development right, easement, covenant, or other contractual right of or to real property within its respective jurisdiction, when it finds that the acquisition is necessary to achieve the purposes of this Part. Any county or city may also acquire the fee to any property for the purpose of conveying or leasing the property back to its original owner or other person under covenants or other contractual arrangements that will limit the future use of the property in accordance with the purposes of this Part, but when this is done, the property may be conveyed back to its original owner but to no other person by private sale."

SECTION 119. G.S. 160A-479.13 reads as rewritten:

"**§ 160A-479.13. Acquisition of property.**

In addition to the powers hereinbefore granted, an authority may, in its charter, be granted continuing power to acquire, by gift, grant, devise, ~~bequest,~~ exchange, purchase, lease with or without option to purchase, or any other lawful method, the fee or any lesser interest in real or personal property for use by an authority."

SECTION 120. G.S. 160A-512 reads as rewritten:

"**§ 160A-512. Powers of commission.**

A commission shall constitute a public body, corporate and politic, exercising public and essential governmental powers, which powers shall include all powers necessary or appropriate to carry out and effectuate the purposes and provisions of this Article, including the following powers in addition to those herein otherwise granted:

...

(6) Within its area of operation, to purchase, obtain options upon, acquire by gift, grant, ~~bequest,~~ devise, eminent domain or otherwise, any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project, except that eminent domain may only be used to take a blighted parcel; to hold, improve, clear or prepare for redevelopment any such property, and subject to the provisions of G.S. 160A-514, and with the approval of the local governing body sell, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge, hypothecate or otherwise encumber or dispose of any real or personal property or any interest therein, either as an entirety to a single "redeveloper" or in parts to several redevelopers; provided that the commission finds that the sale or other transfer of any such part will not be prejudicial to the sale of other parts of the redevelopment area, nor in any

other way prejudicial to the realization of the redevelopment plan approved by the governing body; to enter into contracts, either before or after the real property that is the subject of the contract is acquired by the Commission (although disposition of the property is still subject to G.S. 160A-514), with "redevelopers" of property containing covenants, restrictions, and conditions regarding the use of such property for residential, commercial, industrial, recreational purposes or for public purposes in accordance with the redevelopment plan and such other covenants, restrictions and conditions as the commission may deem necessary to prevent a recurrence of blighted areas or to effectuate the purposes of this Article; to make any of the covenants, restrictions or conditions of the foregoing contracts covenants running with the land, and to provide appropriate remedies for any breach of any such covenants or conditions, including the right to terminate such contracts and any interest in the property created pursuant thereto; to borrow money and issue bonds therefor and provide security for bonds; to insure or provide for the insurance of any real or personal property or operations of the commission against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this Article;

...."

SECTION 121. G.S. 160A-619(a) reads as rewritten:

"(a) The Authority shall have continuing power to acquire, by gift, grant, devise, ~~bequest,~~ exchange, purchase, lease with or without option to purchase, or any other lawful method, including but not limited to the power of eminent domain, the fee or any lesser interest in real or personal property for use by the Authority."

SECTION 122. G.S. 160A-649(a) reads as rewritten:

"(a) The Authority shall have continuing power to acquire, by gift, grant, devise, ~~bequest,~~ exchange, purchase, lease with or without option to purchase, or any other lawful method, including, but not limited to, the power of eminent domain, the fee or any lesser interest in real or personal property for use by the Authority."

SECTION 123. G.S. 160A-674(a) reads as rewritten:

"(a) The district shall have continuing power to acquire, by gift, grant, devise, ~~bequest,~~ exchange, purchase, lease with or without option to purchase, or any other lawful method including, but not limited to, the power of eminent domain, the fee or any lesser interest in real or personal property for use by the district."

SECTION 124. G.S. 162A-88 reads as rewritten:

"**§ 162A-88. District is a municipal corporation.**

The inhabitants of a county water and sewer district created pursuant to this Article are a body corporate and politic by the name specified by the board of commissioners. Under that name they are vested with all the property and rights of property belonging to the corporation; have perpetual succession; may sue and be sued; may contract and be contracted with; may acquire and hold any property, real and personal, devised, ~~bequeathed,~~ sold, or in any manner conveyed, dedicated to, or otherwise acquired by them, and from time to time may hold, invest, sell, or dispose of the same; may have a common seal and alter and renew it at will; may establish, revise and collect rates, fees or other charges and penalties for the use of or the services furnished or to be furnished by any sanitary sewer system, water system or sanitary sewer and water system of the district; and may exercise those powers conferred on them by this Article."

SECTION 125. G.S. 165-31 reads as rewritten:

"**§ 165-31. Powers of authority.**

An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Article, including the following powers in addition to others herein granted:

To sue and be sued in any court; to make, use and alter a common seal; to purchase, acquire by ~~devise or bequest,~~ devise, hold and convey real and personal property; to elect and appoint, in such manner as it determines to be proper, all necessary officers and agents, fix their compensation and define their duties and obligations; to make bylaws and regulations consistent with the laws of the State, for its own government and for the due and orderly conduct of its affairs and management of its property; without limiting the generality of the foregoing, to do any and everything that may be useful and necessary in order to provide recreation for veterans."

SECTION 126. G.S. 165-39 reads as rewritten:

"**§ 165-39. Validity of acts of agent performed after death of principal.**

No agency created by a power of attorney in writing given by a principal who is at the time of execution, or who, after executing such power of attorney, becomes, either (i) a member of the armed forces of the United States, or (ii) a person serving as a merchant seaman outside the limits of the United States, included within the several states and the District of Columbia; or (iii) a person outside said limits by permission, assignment or direction of any department or official of the United States government, in connection with any activity pertaining to or connected with the prosecution of any war in which the United States is then engaged, shall be revoked or terminated by the death of the principal, as to the agent or other person who, without actual knowledge or actual notice of the death of the principal, shall have acted or shall act, in good faith, under or in reliance upon such power of attorney or agency, and any action so taken, unless otherwise invalid or unenforceable, shall be binding on the heirs, devisees, ~~legatees,~~ or personal representatives of the principal."

SECTION 127. G.S. 165-48(b) reads as rewritten:

"(b) Composition. – The trust fund shall consist of all funds and monies received by the Veterans Affairs Commission or the Division of Veterans Affairs from the United States, any federal agency or institution, and any other source, whether as a grant, appropriation, gift, contribution, ~~bequest~~ devise, or individual reimbursement, for the care and support of veterans who have been admitted to a State veterans home."

SECTION 128. G.S. 165-49(b) reads as rewritten:

"(b) The Division of Veterans Affairs may receive from any source any gift, contribution, ~~bequest,~~ devise, or individual reimbursement, the receipt of which does not exclude any other source of revenue."

SECTION 129. The Revisor of Statutes is authorized to substitute, consistent with this act, the term "devisee" for the term "legatee" wherever this term appears in the General Statutes, except that where the term "legatee" appears in a list that already includes the term "devisee," the Revisor is authorized to delete the term "legatee" and make grammatically necessary adjustments in conjunctions and punctuation.

SECTION 130. The Revisor of Statutes is authorized to substitute, consistent with this act, the term "devise" for the term "legacy" wherever this term appears in the General Statutes, except that where the term "legacy" appears in a list that already includes the term "devise," the Revisor is authorized to delete the term "legacy" and make grammatically necessary adjustments in conjunctions and punctuation.

SECTION 131. The Revisor of Statutes is authorized to substitute, consistent with this act, the term "devise" for the terms "bequest" and "bequeath" wherever these terms appear in the General Statutes, except that where the term "bequest" or the term "bequeath" appears in a list that already includes the term "devise," the Revisor is authorized to delete "bequest" or "bequeath" and make grammatically necessary adjustments in conjunctions and punctuation.

PART III. EFFECTIVE DATE

SECTION 132. This act is effective when it becomes law.

State of North Carolina
General Statutes
Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM
March 23, 2011

TO: Senate Judiciary I Committee
FROM: General Statutes Commission
RE: **Senate Bill 252 (Devisee/Devise/Statutory Construction)**

General Comments

The terms "devise," "devisee," "bequeath," "bequest," "legacy," and "legatee" are used throughout the General Statutes. Traditionally, the terms "devise" and "devisee" were used in reference to dispositions of real property by will, while the terms "bequeath," "bequest," "legacy," and "legatee" were used in reference to dispositions of personal property by will. A disposition of real property is a "devise" and the recipient is a "devisee." A disposition of personal property is a "legacy" or "bequest" and the recipient is a "legatee."

When Chapter 28A of the General Statutes (Administration of Decedents' Estates) was enacted in the early 1970's, it used "devise" to include both real and personal property. G.S. 28A-1-1 expressly defines "devisee" to mean any person entitled to take real or personal property by will. The change reflected more modern legal drafting and also eliminated the need to use the traditional terms "bequeath," "bequest," "legacy," and "legatee" when referring to dispositions of personal property by will. This definition is, however, limited to Chapter 28A; it does not apply anywhere else in the General Statutes.

As a result, "devise" and "devisee" technically mean one thing in Chapter 28A and another in the rest of the General Statutes. The situation creates a potential drafting trap if a drafter, working in a chapter of the General Statutes other than Chapter 28A, uses the term "devise" or "devisee" as though the Chapter 28A usage applies, but a court uses the traditional meanings in interpreting the provision. At the same time, however, regardless of the traditional meanings, our courts have on occasion treated "devise" and "bequest" or "bequeath" as synonymous if the context indicated an intent to use the one as though it meant the other.

This bill applies the definition of "devisee" found in Chapter 28A throughout the General Statutes, adds a General-Statute-wide definition of "devise" consistent with that definition, makes conforming amendments to use "devise" and "devisee" as the standard terms in the statutes, and authorizes the Revisor of Statutes make the similar changes in codifying other laws enacted by the 2011 General Assembly.

The bill also makes other stylistic and technical changes to the sections of the General Statutes otherwise amended by the bill.

Specific Comments

Part I. Section 1 amends G.S. 12-3 (Rules for construction of statutes) to define the terms "devisee" and "devise" consistently with the usage in Chapter 28A of the General Statutes. The definitions in G.S. 12-3 apply throughout the General Statutes. The new definitions are

default definitions that apply only if the text of the statute being construed does not contain language that is inconsistent with them.

Part II. Sections 2 through 128 make conforming amendments. Consistent with the new definitions in G.S. 12-3, these sections amend various sections of the General Statutes to delete the terms "legatee," "legacy," "bequest," and "bequeath," when used in a list that already contains "devisee" or "devise," because those terms are no longer necessary. These sections also treat "devisee" and "devise" as the standard, default terms in the statutes and accordingly replace the terms "legatee," "legacy," "bequest," and "bequeath" with "devisee" or "devise" in various sections of the General Statutes for more uniform and consistent terminology.

Specifically, Sections 2, 3, 5, 15, 19, 22, 27, 28, 29, 32, 35, 39, 40, 41, 42, 43, 44, 47, 59, 68, 69, and 126 amend, respectively, G.S. 1-255, 1-313, 1A-1, Rule 27, 28A-13-4, 28A-22-7, 29-30, 31-13, 31-14, 31-16, 31-33, 31B-1, 35A-1336.1, 35A-1341, 35A-1341.1, 35A-1342, 35A-1351, 35A-1352, 37A-1-102, 59B-5, 98-6, 105-239.1, and 165-39 to remove a reference to "legatee" or "legatees," because the term appears in those sections in a list that already includes "devisee" or "devisees."

Sections 4, 23, 24, 25, 60, and 71 amend, respectively, G.S. 1-339.23, 30-23, 30-28, 30-32, 64-4, and 105-306 to substitute a reference to "devisee" or "devisees" in place of a reference to "legatee" or "legatees."

Sections 8, 16, and 20 amend, respectively, G.S. 11-11 (oath of executors), 28A-18-2, and 28A-23-3 to substitute a reference to "devises" in place of a reference to "legacies."

Sections 9, 19, 36, 37, 39, 40, 41, and 43 amend, respectively, G.S. 14-315, 28A-22-7, 32A-2, 35A-1227, 35A-1336.1, 35A-1341, 35A-1341.1, and 35A-1351 to remove a reference to "legacy" or "legacies," because the term appears in those sections in a list that already includes "devise" or "devises."

Sections 6, 10, 14, 36, 39, 40, 41, 43, 45, 49, 50, 51, 53, 54, 56, 57, 58, 61, 62, 63, 64, 67, 78, 79, 80, 83, 84, 85, 86, 87, 91, 92, 93, 94, 95, 96, 98, 102, 103, 106, 107, 109, 112, 113, 115, 116, 117, 118, 119, 120, 121, 122, 123, and 125 amend, respectively, G.S. 1C-1604, 14-401.12, 20-77, 32A-2, 35A-1336.1, 35A-1341, 35A-1341.1, 35A-1351, 36C-4-401, 41-6.2, 41-11.1, 50-20, 55A-11-07, 55A-11-10, 58-58-205, 58-58-300, 58-78-5, 78A-2, 88A-8, 90-171.26, 90-210.121, 90C-26, 115C-491, 115C-492, 115C-493, 116-36, 116-36.1, 116-37.2, 121-4, 121-9, 139-8, 143-323, 143-407, 143-437, 143-641, 143-676, 143B-131.2, 143B-476, 143B-499.7, 153A-158, 153A-263 (7), 157-9, 160A-240.1, 160A-347, 160A-353, 160A-401, 160A-402, 160A-403, 160A-479.13, 160A-512, 160A-619, 160A-649, 160A-674, and 165-31 to remove a reference to "bequest" or "bequests," because the term appears in those sections in a list that already includes "devise" or "devises."

Sections 7, 11, 12, 17, 18, 21, 34, 46, 48, 55, 65, 66, 70, 72, 73, 74, 75, 76, 77, 81, 82, 86, 88, 89, 90, 97, 98, 99, 100, 101, 104, 107, 111, 127, and 128 amend, respectively, G.S. 7A-498.6, 15A-1465, 15A-1466, 28A-22-5, 28A-22-6, 28A-27-5, 31-43, 36D-4, 37A-2-201, 58-10-5, 90-526, 90A-75, 105-278.6A, 106-6.2, 106-568.17, 113A-36, 113-153, 115C-410, 115C-490, 115C-494, 115D-20, 121-4, 125-2, 130A-470, 131E-177, 143B-74.1, 143B-131.2, 143B-131.8, 143B-216.33, 143B-472.123, 147-54.6, 153A-263(5), 160A-163, 165-48, and 165-49 to substitute a reference to "devise" or "devises" in place of a reference to "bequest" or "bequests."

Sections 13 and 26 amend, respectively, G.S. 18B-701 and G.S. 31-3.2 to substitute the word "devised" in place of the word "bequeathed."

Sections 26, 30, 31, 33, 38, 52, 105, 108, 110, and 124 amend, respectively, G.S. 31-3.2, 31-18.4, 31-30, 31-40, 35A-1303, 52-1, 153A-11, 153A-269, 160A-11, and 162A-88 to delete uses of the verb "bequeath," because the verb "devise" is also used and using both verbs is no longer necessary.

Section 114 amends G.S. 160A-349.12 to delete the word "bequeath," which is incorrectly used to mean "bequest," because "devise" already appears in the list in which "bequeath" is used.

In addition, Section 34 amends the catchline of G.S. 31-43 for greater clarity and updates the terminology in the section.

Sections 129 through 131 authorize the Revisor of Statutes make similar changes in codifying other general and permanent laws enacted by the 2011 General Assembly.

Part III. Section 132 provides that the bill is effective when it becomes law.

PAGES ATTENDING

COMMITTEE: ~~[illegible]~~ Judiciary I ROOM: 1027

DATE: 3-24 TIME: 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Kayla Bender	Aberdeen	Blake
2		
4		
5		
6.		
7		
8		
9		
10		

Do not add names below the grid.

ges: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

VISITOR REGISTRATION SHEET

Senate Judiciary I — 3/24/11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ann Brunch	NCBA
P. Bay Hall	General Statutes Commission
Jim McLaughlin	Trusts Drafting Committee of GSC
Floyd M. Lewis	General Statutes Commission
Colleen Kachanek	KLG

SENATE JUDICIARY I COMMITTEE
March 31, 2011 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on March 31, 2011, in Room 1027 of the Legislative Building. Fifteen members of the committee were present. Senator Pete Brunstetter. presided.

Senator Brunstetter called the meeting to order at 10:04 a.m.

House Bill 21
Senator Brunstetter called on Rep. Crawford to explain the bill
Senator Brock moved for a favorable report
Motion carries unanimously
Senator Brunstetter will handle on the floor

House Bill 234
Senator Brunstetter called on Representative Stevens to explain the bill
Senator Tillman moves for a favorable report
Senator Brock asked a question, and Rep Stevens answered
Motion carries unanimously
Senator Tillman will handle on the floor

Senate Bill 379
Senator Goolsby was recognized to explain the bill
Senator Pate was recognized to make a comment
Senator Pate moved for a favorable report
Senator Nesbitt was recognized to ask a question, and Senator Goolsby answered
Bill Patterson was recognized to answer the question
Susan Sitze was recognized to provide clarification
Senator Nesbitt was recognized for a follow-up question
Senator Brown was recognized to ask a question
Senator Goolsby was recognized to answer the question
Senator Stein asked a question
Senator Goolsby answered
Senator Nesbitt asked a question
Senator Brown asked a question, and Senator Nesbitt answered
We will carry this bill over until Tuesday

Peter Brunstetter, Presiding

Sarah Hardin, Committee Clerk

AGENDA

SENATE JUDICIARY I COMMITTEE
Thursday, March 31, 2011 at 10:00 a.m.
Room 1027, Legislative Building

I. Welcome and Opening Remarks

II. Bills to be Considered

House Bill 21
County Administration of Municipal Elections
Rep. Crawford

House Bill 234
Juror Qualifications/Disabilities
Reps. Parfitt, Glazier, Samuelson, Stevens

Senate Bill 379
Revise Restitution Damage Awards
Sen. Goolsby

III. Other Business

IV. Adjournment

HOUSE BILL 21
Committee Substitute Favorable 3/10/11

Short Title: County Administration of Municipal Elections. (Public)

Sponsors:

Referred to:

February 2, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE ADMINISTRATION OF NONPARTISAN MUNICIPAL ELECTIONS BY COUNTY BOARDS OF ELECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-280 is repealed.

SECTION 2. G.S. 163-280.1 is repealed.

SECTION 3. G.S. 163-281 is repealed.

SECTION 4. G.S. 163-284 reads as rewritten:

"**§ 163-284. Mandatory administration by county boards of elections.**

~~(a) No later than 30 days after January 1, 1973, every municipality which conducts its elections on a partisan basis, and every special district shall deliver its registration books to the county board of elections which shall, forthwith, assume the responsibility for administration of the registration and election process in such municipalities and special districts. The county boards of elections shall have authority to compare the registration books of such municipalities and special districts with the county registration books. Any person found to be registered for municipal or special district elections but not registered on the county registration records shall be required to register with the county board of elections in order to maintain his municipal or special district registration. The county board of elections shall forthwith notify any such person by mail to the address appearing on the municipal or special district registration records that he must reregister. The county board of elections shall have authority to require maps or definitive outlines of the boundaries constituting such municipality or special district and shall be immediately advised of any change or relocation of such boundaries.~~

(b) The registration of voters and the conduct of all elections in municipalities and special districts ~~covered under this section~~ shall be under the authority of the county board of elections. Any contested election or allegations of irregularities shall be made to the county board of elections and appeals from such rulings may be made to the State Board of Elections under existing statutory provisions and rules or regulations adopted by the State Board of Elections.

Each municipality and special district shall reimburse the county board of elections for the actual cost involved in the administration required under ~~(a) and (b) of~~ this section."

SECTION 5. G.S. 163-285 is repealed.

SECTION 6. G.S. 163-286(b) is repealed.

SECTION 7. G.S. 163-287 reads as rewritten:

"**§ 163-287. Special elections; procedure for calling.**

Any ~~city, whether its elections are conducted by the county board of elections or the municipal board of elections,~~municipality or any special district shall have authority to call

special elections as permitted by law. Prior to calling a special election, the city council or the governing body of the special district shall adopt a resolution specifying the details of the election, and forthwith deliver the resolution to the appropriate board of elections. The resolution shall call on the board of elections to conduct the election described in the resolution and shall state the date on which the special election is to be conducted. The special election may be held at the same time as any other State, county or municipal primary, election or special election or referendum, but may not otherwise be held within the period of time beginning 30 days before and ending 30 days after the date of any other primary, election, special election or referendum held for that city or special district.

Legal notice of the special election shall be published no less than 45 days prior to the special election. The ~~appropriate~~ board of elections shall be responsible for publishing the legal notice. The notice shall state the date and time of the special election, the issue to be submitted to the voters, and the precincts in which the election will be held. This paragraph shall not apply to bond elections."

SECTION 8. G.S. 163-288 reads as rewritten:

"**§ 163-288. Registration for city elections; county and municipal boards of elections.**

~~Regardless of whether the municipal election is conducted by the county board of elections or by a municipal board of elections, the~~The registration record of the county board of elections shall be the official registration record for voters to vote in all elections, city, district, county, State or national."

SECTION 9. G.S. 163-288.1(a) reads as rewritten:

"(a) Whenever any new city or special district is incorporated or whenever an existing city or district annexes any territory, the city or special district shall cause a map of the corporate or district limits to be prepared from the boundary descriptions in the act, charter or other document creating the city or district or authorizing or implementing the annexation. The map shall be delivered to the county ~~or municipal~~ board of elections conducting the elections for the city or special district. The board of elections shall then activate for city or district elections each voter eligible to vote in the city or district who is registered to vote in the county to the extent that residence addresses shown on the county registration certificates can be identified as within the limits of the city or special district. Each voter whose registration is thus activated for city or special district elections shall be so notified by mail. The cost of preparing the map of the newly incorporated city or special district or of the newly annexed area, and of activating voters eligible to vote therein, shall be paid by the city or special district. In lieu of the procedures set forth in this section, the county board of elections may use either of the methods of registration of voters set out in G.S. 163-288.2 when activating voters pursuant to the incorporation of a new city or election of city officials or both under authority of an act of the General Assembly or when activating voters after an annexation of new territory by a city or special district under Chapter 160A, Article 4A, or other general or local law."

SECTION 10. G.S. 163-289(c) is repealed.

SECTION 11. G.S. 115C-507 reads as rewritten:

"**§ 115C-507. Rules governing elections.**

All elections under this Chapter shall be held and conducted by the appropriate county ~~or municipal~~ board of elections.

If the purpose of the election is to enlarge a city administrative unit, the notice of election shall include the following: a statement of the purpose of the election; a legal description of the area within which the election is to be held; and a statement that if a majority of those who shall vote in the area proposed to be consolidated with the city administrative unit shall vote in favor of such enlargement such area shall be consolidated with the city administrative unit, effective July 1 next following such election, and there shall thereafter be levied in such area so consolidated with the city administrative unit the same school taxes as shall be levied in the

other portions of the city administrative unit, including any tax levy to provide for the payment of school bonds theretofore issued by or for such city administrative unit or for all or some part of the school area annexed to such city administrative unit, unless payment of such bonds has otherwise been provided for.

The notice of the election shall be given as provided in G.S. 163-33(8) and in addition include a legal description of the area within which the election is to be held, and, if any additional tax is proposed to be levied, the maximum rate of tax to be levied which shall not exceed the maximum prescribed by this Article, and the purpose of the tax.

No new registration of voters is required, but the board of elections, in its discretion, may use either Method A or Method B set forth in G.S. 163-288.2 in activating the voters in the territory.

The ballot in such election shall contain the words "FOR local tax and AGAINST local tax" except when the election is held under subsection (c) of G.S. 115C-501, in which case the ballots shall contain the words "FOR enlargement of the _____City Administrative Unit and school tax of the same rate," and "AGAINST enlargement of the _____City Administrative Unit and school tax of the same rate."

The elections shall be held in accordance with the applicable provisions of Chapter 163 and the expense of the election shall be paid by the board of education of the administrative unit in which the election is held, provided that when territory is proposed to be added to a city administrative unit, that unit shall bear the expense.

No election held under this Article shall be open to question except in an action or proceeding commenced within 30 days after the board of elections has certified the results."

SECTION 12. G.S. 120-30.9F reads as rewritten:

"**§ 120-30.9F. Municipalities; municipal attorney.**

The municipal attorney of any municipality covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 days:

(1) Of the time they become laws, any local acts of the General Assembly; and

(2) Of adoption actions of the municipal governing body or ~~municipal~~ board of elections or any other municipal agency which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 in that municipality; provided that, if required or allowed by regulations or practices of the United States Department of Justice, a municipal attorney may delay submission of any annexation ordinance or group of ordinances until all previously submitted annexation ordinances have been precleared or otherwise received final disposition."

SECTION 13. G.S. 128-1.1(d) reads as rewritten:

"(d) The term "elective office," as used herein, shall mean any office filled by election by the people when the election is conducted by a county ~~or municipal~~ board of elections under the supervision of the State Board of Elections."

SECTION 14. G.S. 162A-35 reads as rewritten:

"**§ 162A-35. Procedure for inclusion of additional political subdivision or unincorporated area; notice and hearing; elections; actions questioning validity of elections.**

If, at any time subsequent to the creation of a district, there shall be filed with the district board a resolution of the governing body of a political subdivision, or a petition, signed by not less than fifteen per centum (15%) of the voters resident within an unincorporated area, requesting inclusion in the district of such political subdivision or unincorporated area, and if the district board shall favor the inclusion in the district of such political subdivision or unincorporated area, the district board shall notify the board of commissioners and the board of commissioners, through its chairman, shall thereupon request that a representative of the Department of Environment and Natural Resources hold a joint public hearing with the board of commissioners concerning the inclusion of such political subdivision or unincorporated area

in the district. The Secretary of Environment and Natural Resources and the chairman of the board of commissioners shall name a time and place within the district at which the public hearing shall be held. The chairman of the board of commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county and also by publication in a newspaper circulating in the district and in any such political subdivision or unincorporated area at least once a week for four successive weeks, the first publication to be at least 30 days prior to such hearing. In the event all matters pertaining to the inclusion of such political subdivision or unincorporated area cannot be included at such hearing, such hearing may be continued to a time and place within the district determined by the board of commissioners with the concurrence of the representative of the Department of Environment and Natural Resources.

If, after such hearing, the Commission for Public Health and the board of commissioners shall determine that the preservation and promotion of the public health and welfare require that such political subdivision or unincorporated area be included in the district, the Commission for Public Health shall adopt a resolution to that effect, defining the boundaries of the district including such political subdivision or unincorporated area which has filed a resolution or petition as provided for in this section, and declaring such political subdivision or unincorporated area to be included in the district, subject to the approval, as to the inclusion of such political subdivision, of a majority of the qualified voters of such political subdivision, or as to the inclusion of such unincorporated area, of a majority of the qualified voters of such unincorporated area, voting at an election thereon to be called and held in such political subdivision or unincorporated area. When an election is required to be held within both a political subdivision and an unincorporated area, a separate election shall be called and held for the unincorporated area and a separate election shall be called and held for the political subdivision. Such separate elections, although independent one from the other, shall be called and held within each political subdivision and within the unincorporated area simultaneously on the same date.

If, at or prior to such public hearing, there shall be filed with the district board a petition signed by not less than fifteen percent (15%) of the registered voters of the district requesting an election to be held on the question of including the political subdivision or unincorporated area in the district, the district board shall certify the petition and if found adequate, shall request the county board of elections to hold the election in the district. The election in the district may be held at the same time as the election in the political subdivision or unincorporated area seeking to become a part of the district.

The county board of elections shall give notice of the elections as required in G.S. 163-33(8) and shall conduct the ~~election in the unincorporated area and within the political subdivision unless there is a municipal board of elections which conducts the elections for the municipality.~~election.

The cost of the election in the district shall be paid by the district board and the cost of the municipal election by the municipality. The county shall pay the cost of an election in the unincorporated area. The governing body of the political subdivision shall file an accurate description of its boundaries, and those persons signing the petition for an unincorporated area shall file an accurate description of its boundaries with the board of elections at the time the petition is filed with the district board.

The elections shall be held and conducted in accordance with the applicable provisions of Articles 23 and 24 of Chapter 163 of the General Statutes.

The ballot shall contain the words:

"FOR inclusion in the ____ Metropolitan Water District of ____ County that area known as ____."

"AGAINST inclusion in the ____ Metropolitan Water District of ____ County that area known as ____."

If a majority of the votes cast in a political subdivision or unincorporated areas proposed to be included are in favor of inclusion, and a majority of the votes cast in the district favor inclusion, then from and after the date of the certification of the results such area or areas shall be a part of the district and subject to the debts of the district.

The results of the elections shall be certified to the district board.

If no election is required to be held in the district, then a favorable vote for inclusion in the political subdivision or unincorporated area shall be deemed to include such area or political subdivision as a part of the district and they shall be subject to the debts of the district.

No right of action or defense founded upon the invalidity of any such election shall be asserted, or open to question in any court upon any grounds unless the action or proceeding is commenced within 30 days after the results have been certified by the board of elections."

SECTION 15. G.S. 163-22 reads as rewritten:

"**§ 163-22. Powers and duties of State Board of Elections.**

(a) The State Board of Elections shall have general supervision over the primaries and elections in the State, and it shall have authority to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of this Chapter.

(b) From time to time, the Board shall publish and furnish to the county ~~and municipal~~ boards of elections and other election officials a sufficient number of indexed copies of all election laws and Board rules and regulations then in force. It shall also publish, issue, and distribute to the electorate such materials explanatory of primary and election laws and procedures as the Board shall deem necessary.

(c) The State Board of Elections shall appoint, in the manner provided by law, all members of the county boards of elections and advise them ~~and municipal elections board members~~ as to the proper methods of conducting primaries and elections. The Board shall require such reports from the county ~~and municipal~~ boards and election officers as are provided by law, or as are deemed necessary by the Board, and shall compel observance of the requirements of the election laws by county ~~and municipal~~ boards of elections and other election officers. In performing these duties, the Board shall have the right to hear and act on complaints arising by petition or otherwise, on the failure or neglect of a county ~~or municipal~~ board of elections to comply with any part of the election laws imposing duties upon such a board. The State Board of Elections shall have power to remove from office any member of a county ~~or municipal~~ board of elections for incompetency, neglect or failure to perform duties, fraud, or for any other satisfactory cause. Before exercising this power, the State Board shall notify the county ~~or municipal~~ board member affected and give ~~him~~ that member an opportunity to be heard. When any county board member shall be removed by the State Board of Elections, the vacancy occurring shall be filled by the State Board of Elections. ~~When any municipal board member shall be removed by the State Board of Elections, the vacancy occurring shall be filled by the city council of the city appointing members of that board.~~

...

(f) The State Board of Elections shall prepare, print, distribute to the county ~~and municipal~~ boards of elections all ballots for use in any primary or election held in the State which the law provides shall be printed and furnished by the State to the counties. The Board shall instruct the county boards of elections as to the printing of county and local ballots.

...."

SECTION 16. G.S. 163-25 reads as rewritten:

"**§ 163-25. Authority of State Board to assist in litigation.**

The State Board of Elections shall possess authority to assist any county ~~or municipal~~ board of elections in any matter in which litigation is contemplated or has been initiated, provided, the county ~~or municipal~~ board of elections in such county petitions, by majority resolution, for such assistance from the State Board of Elections and, provided further, that the State Board of

Elections determines, in its sole discretion by majority vote, to assist in any such matter. It is further stipulated that the State Board of Elections shall not be authorized under this provision to enter into any litigation in assistance to counties, except in those instances where the uniform administration of Chapter 163 of the General Statutes of North Carolina has been, or would be threatened.

The Attorney General shall provide the State Board of Elections with legal assistance in execution of its authority under this section or, in ~~his~~ the Attorney General's discretion, recommend that private counsel be employed.

If the Attorney General recommends employment of private counsel, the State Board may employ counsel with the approval of the Governor."

SECTION 17. G.S. 163-38 reads as rewritten:

"**§ 163-38. Applicability of Article.**

This Article applies to members and employees of the State Board of Elections and of each county ~~and municipal~~ board of elections. With regard to prohibitions in this Article concerning candidates, referenda, and committees, the prohibitions do not apply if the candidate or referendum will not be on the ballot in an area within the jurisdiction of the board, or if the political committee or referendum committee is not involved with an election or referendum that will be on the ballot in an area within the jurisdiction of the board."

SECTION 18. G.S. 163-40 reads as rewritten:

"**§ 163-40. Violation may be ground for removal.**

A violation of this Article may be a ground to remove a State Board of Elections member under G.S. ~~143B-16,~~ 143B-16 or a county board of elections member under ~~G.S. 163-22(c), or a municipal board of elections member under G.S. 163-280(i).~~G.S. 163-22(c). A violation of this Article may be a ground for dismissal of an employee of the State Board of Elections or of a county board of elections. No criminal penalty shall be imposed for a violation of this Article."

SECTION 19. G.S. 163-42 reads as rewritten:

"**§ 163-42. Assistants at polls; appointment; term of office; qualifications; oath of office.**

(a) Each county ~~and municipal~~ board of elections is authorized, in its discretion, to appoint two or more assistants for each precinct to aid the chief judge and judges. Not more than two assistants shall be appointed in precincts having 500 or less registered voters. Assistants shall be qualified voters of the county in which the precinct is located. When the board of elections determines that assistants are needed in a precinct an equal number shall be appointed from different political parties, unless the requirement as to party affiliation cannot be met because of an insufficient number of voters of different political parties within the county.

In the discretion of the county board of elections, a precinct assistant may serve less than the full day prescribed for chief judges and judges in G.S. 163-47(a).

(b) The chairman of each political party in the county shall have the right to recommend from three to 10 registered voters in each precinct for appointment as precinct assistants in that precinct. If the recommendations are received by it no later than the thirtieth day prior to the primary or election, the board shall make appointments of the precinct assistants for each precinct from the names thus recommended. If the recommendations of the party chairs for precinct assistant in a precinct are insufficient, the county board of elections by unanimous vote of all of its members may name to serve as precinct assistant in that precinct registered voters in that precinct who were not recommended by the party chairs. If, after diligently seeking to fill the positions with registered voters of the precinct, the county board still has an insufficient number of precinct assistants for the precinct, the county board by unanimous vote of all of its members may appoint to the positions registered voters in other precincts in the same county who meet the qualifications other than residence to be precinct officials in the precinct. In making its appointments, the county board shall assure, wherever possible, that no precinct has

precinct officials all of whom are registered with the same party. In no instance shall the county board appoint nonresidents of the precinct to a majority of the positions as precinct assistant in a precinct.

(c) In addition, a county board of elections by unanimous vote of all of its members may appoint any registered voter in the county as emergency election-day assistant, as long as that voter is otherwise qualified to be a precinct official. The State Board of Elections shall determine for each election the number of emergency election-day assistants each county may have, based on population, expected turnout, and complexity of election duties. The county board by unanimous vote of all of its members may assign emergency election-day assistants on the day of the election to any precinct in the county where the number of precinct officials is insufficient because of an emergency occurring within 48 hours of the opening of the polls that prevents an appointed precinct official from serving. A person appointed to serve as emergency election-day assistant shall be trained and paid like other precinct assistants in accordance with G.S. 163-46. A county board of elections shall apportion the appointments as emergency election-day assistant among registrants of each political party so as to make possible the staffing of each precinct with officials of more than one party, and the county board shall make assignments so that no precinct has precinct officials all of whom are registered with the same party.

(d) Before entering upon the duties of the office, each assistant shall take the oath prescribed in G.S. 163-41(a) to be administered by the chief judge of the precinct for which the assistant is appointed. Assistants serve for the particular primary or election for which they are appointed, unless the county board of elections appoints them for a term to expire on the date appointments are to be made pursuant to G.S. 163-41."

SECTION 20. G.S. 163-278.6(1) reads as rewritten:

"(1) The term "board" means the State Board of Elections with respect to all candidates for State, legislative, and judicial offices and the county ~~or municipal~~ board of elections with respect to all candidates for county and municipal offices. The term means the State Board of Elections with respect to all statewide referenda and the county ~~or municipal~~ board of elections conducting all local referenda."

SECTION 21. G.S. 163-298 reads as rewritten:

"**§ 163-298. Municipal primaries and elections.**

The phrases "county board of elections," and "chairman of the board of elections" as used in this Article, with respect to all municipal primaries and elections, shall mean the ~~municipal board of elections and its chairman in those cities and towns which conduct their own elections, and the~~ county board of elections and its chairman in ~~those~~ all ~~cities and towns whose elections are conducted by the county board of elections.~~municipalities. The words "general election," as used in this Article, shall include regular municipal elections, runoff elections, and nonpartisan primaries, except where specific provision is made for municipal elections and nonpartisan primaries."

SECTION 22. G.S. 163-299(g) reads as rewritten:

"(g) The county ~~or municipal~~ board of elections shall, in addition to the requirements contained in G.S. 163-182.5 canvass the results in a nonpartisan municipal primary, election or runoff election, and in a special district election, the number of legal votes cast in each precinct for each candidate, the name of each person voted for, and the total number of votes cast in the municipality or special district for each person for each different office."

SECTION 23. G.S. 163-300 reads as rewritten:

"**§ 163-300. Disposition of duplicate abstracts in municipal elections.**

Within nine days after a primary or election is held in any municipality, the chairman of the county ~~or municipal~~ board of elections shall mail to the chairman of the State Board of Elections, the duplicate abstract prepared in accordance with G.S. 163-182.6. One copy shall be

retained by the county ~~or municipal~~ board of elections as a permanent record and one copy shall be filed with the city clerk."

SECTION 24. G.S. 163-301 reads as rewritten:

"**§ 163-301. Chairman of election board to furnish certificate of elections.**

Not earlier than five days nor later than 10 days after the results of any municipal election have been officially determined and published in accordance with G.S. 163-182.5, the chairman of the county ~~or municipal~~ board of elections shall issue certificates of election, under the hand and seal of the chairman, to all municipal and special district officers. In issuing such certificates of election the chairman shall be restricted by the provisions of G.S. 163-182.14."

SECTION 25. G.S. 163-304 reads as rewritten:

"**§ 163-304. State Board of Elections to have jurisdiction over municipal elections and election officials, and to advise; emergency and ongoing administration by county board.**

(a) Authority and Duty of State Board. – The State Board of Elections shall have the same authority over municipal elections and election officials as it has over county and State elections and election officials. The State Board of Elections shall advise and assist cities, towns, incorporated villages and special districts, ~~municipal boards of elections,~~ their members and legal officers on the conduct and administration of their elections and registration procedure.

~~The municipal council shall provide written notification to the State Board of Elections of the appointment of each member of its municipal board of elections within five days after the appointment. The municipal board of elections and the municipal council shall provide such other information about the municipal board of elections as the State Board may require. Members of the municipal board of elections and municipal elections officials shall participate in training provided by the State Board pursuant to G.S. 163-82.24. The State Board shall provide the same training, materials, and assistance to municipal boards of elections that it provides to county boards of elections.~~

The county ~~and municipal~~ boards of elections shall be governed by the same rules for settling controversies with respect to counting ballots or certification of the returns of the vote in any municipal or special district election as are in effect for settling such controversies in county and State elections.

~~(b) Emergency Administration if Municipal Board Is Not Appointed. – If a municipal council in a municipality that has elected pursuant to G.S. 163-285 to conduct its own elections has not appointed a municipal board of elections and reported the appointments to the Executive Director by June 1 in the year in which the municipal election is to occur, the Executive Director shall notify the municipal council that, unless a municipal board of elections is appointed and the Executive Director notified of its appointment by June 15 of that year, the county board of elections shall be ordered to conduct that municipality's elections that year on an emergency basis. If the municipal council does not so appoint and so notify by June 15, the Executive Director shall order the county board of elections to conduct the municipality's elections that year on an emergency basis.~~

~~(c) Emergency Administration Due to Serious Violations. – If a municipal council or municipal board of elections has committed violations of the applicable portions of this Chapter prior to a municipal election and those violations are of such magnitude as to give rise to reasonable doubt as to the ability of the municipal board of elections to conduct that election with competence and fairness, the Executive Director of the State Board, with the approval of at least four members of the State Board, may order the county board of elections to conduct the remainder of that election on an emergency basis. Before an order is made under this subsection, the municipal council and municipal board of elections shall be given an opportunity to be heard by the State Board.~~

~~(d) Permanent County Administration. The State Board of Elections may designate the county board of elections as the permanent agency to conduct a municipality's elections if all the following conditions are met:~~

~~(1) In more than one election conducted by that municipality either (i) the municipality's elections have been administered on an emergency basis pursuant to subsection (b) or (c) of this section or (ii) a new election has been ordered because of irregularities in the municipality's administration of the election.~~

~~(2) The State Board finds that the interest of the residents of the municipality in fair and competent administration of elections requires that the municipality not conduct its own elections.~~

~~(3) The municipal council and municipal board of elections are given an opportunity to be heard before the State Board.~~

~~(4) The State Board by a vote of at least four of its members designates the county board of elections as the permanent agency to conduct that municipality's elections.~~

~~The municipal council may not elect to conduct its own elections under G.S. 163-285 if the State Board has designated the county board of elections under this subsection as the permanent agency to conduct the municipality's elections.~~

~~(e) Reimbursement. If the county board of elections administers a municipality's elections pursuant to subsection (b), (c), or (d) of this section, the municipality shall reimburse the county board of elections in the manner set forth in G.S. 163-285.~~"

SECTION 26. This act is effective when it becomes law.

HOUSE BILL 21:
County Administration of Municipal Elections

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 30, 2011
Introduced by:	Rep. Crawford	**Prepared by:**	R. Erika Churchill
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 21 would require the county board of elections to register voters and conduct all elections in municipalities and special districts by repealing the statutes related to municipal boards of election.***

CURRENT LAW: Partisan municipal boards of elections were generally abolished in the 1970's, transferring the responsibility for conducting the election to the county board of elections. Municipalities with non-partisan elections could conduct their own elections, or request the county board of elections to conduct the election. The statutes reflect that the county board of elections was to assume responsibility for administration of registration of voters and conduct of elections from municipalities with partisan elections.

In 2001, the municipal boards authorized to conduct elections was further restricted to 4 specifically named municipalities: Morganton, Old Fort, Granite Falls, and Rhodhiss. The statutes are silent as to requiring a county board to assume responsibility for administration of registration of voters and conduct of elections from municipalities with non-partisan elections in one statute, G.S. 163-284, but require it in another, G.S. 163-285(a).

At this time, no municipalities appoint municipal boards of election to conduct municipal elections. All primaries and elections are conducted by county boards of election.

BILL ANALYSIS: The bill would repeal the statutes providing for the appointment and operation of municipal boards of election (Sections 1-10) and make conforming changes throughout the statutes to remove references to municipal boards of election (Sections 11-25).

EFFECTIVE DATE: Effective when it becomes law.

H21-SMST-15(e2) v2

HOUSE BILL 234
Committee Substitute Favorable 3/16/11
Third Edition Engrossed 3/22/11

Short Title: Juror Qualifications/Disabilities. (Public)

Sponsors:

Referred to:

March 7, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE QUALIFICATIONS FOR PROSPECTIVE JURORS IN ORDER TO ALLOW HEARING-IMPAIRED PERSONS TO SERVE AS JURORS AND TO PROVIDE FOR PERSONS WITH DISABILITIES TO APPLY FOR EXEMPTIONS FROM JURY DUTY.

The General Assembly of North Carolina enacts:

SECTION 1. 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 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 ~~hear and~~ 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 2. 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 five 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 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.

(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 3. This act becomes effective July 1, 2011.

HOUSE BILL 234:
Juror Qualifications/Disabilities

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 30, 2011
Introduced by:	Reps. Glazier, Stevens, Parfitt, Samuelson	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	Third Edition		Committee Co-Counsel

SUMMARY: House Bill 234 would do the following:

- ***Remove the qualification of hearing for potential jurors.***
- ***Allow a potential juror to be excused for a disability.***

SECTIONS 1. JUROR QUALIFICATION – ABILITY TO HEAR

CURRENT LAW & BILL ANALYSIS:

Current G.S. 9-2 provides that the jury commission in each county is responsible for preparing a list of prospective jurors.

Current G.S. 9-3 provides that the following persons be included on the list: persons who are citizens of the State and residents of that county, have not served as a juror in the past 2 years, who are 18 or older, who are physically and mentally competent, who can ***hear*** and understand English, who have not been convicted of a felony or pleaded guilty or nolo contender to a felony indictment, and who has not been adjudged non compos mentis (not of sound mind, memory, or understanding). Anyone failing to meet all of the above stated qualifications is subject to challenge for cause.

Section 1 of the bill eliminates the qualification of ***hearing*** for potential jurors.

SECTION 2. – REQUEST TO BE EXCUSED FOR A DISABILITY

CURRENT LAW & BILL ANALYSIS:

Current G.S. 9-6 authorizes excusal from jury duty "for reasons of compelling personal hardship or because requiring service would be contrary to the public welfare, health, or safety."

Current G.S. 9-6. 1 authorizes excusal, deferral, or exemption from jury duty of persons 72 years or older.

Section 2 of the bill adds **disability** as a basis for excusal, deferral, or exemption from jury duty. The bill provides that a person making a request for excusal, deferral or exemption due to disability may do so by filing with the chief district court judge, or his or her designee, a signed statement with explanation. The statement is to be filed at any time five days before the date of appearance. The bill also provides that the court may request medical documentation of the disability be submitted.

EFFECTIVE DATE: This act becomes effective July 1, 2011.

This summary was substantially contributed to by Giles Perry, Tim Hovis, Erika Churchill and Drupti Chauhan of the Research Division

SENATE BILL 379

Short Title:	Revise Restitution Damage Awards.	(Public)
Sponsors:	Senators Goolsby; Daniel, Davis, Gunn, Hise, Newton, Rabon, Soucek, and Tucker.	
Referred to:	Judiciary I.	

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO REVISE THE MANNER IN WHICH RESTITUTION DAMAGES ARE CALCULATED SO THAT VICTIMS IN PERSONAL INJURY CASES MAY RECEIVE FULL COMPENSATION FOR THEIR DAMAGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.34 reads as rewritten:

"**§ 15A-1340.34. Restitution generally.**

(a) When sentencing a defendant convicted of a criminal offense, the court shall determine whether the defendant shall be ordered to make restitution to any victim of the offense in question. For purposes of this Article, the term "victim" means a person directly and proximately harmed as a result of the defendant's commission of the criminal ~~offense.~~offense, or a third-party payor, including an insurer, which has made payment to the victim to compensate the victim for any costs or losses described in G.S. 15A-1340.35.

(b) If the defendant is being sentenced for an offense for which the victim is entitled to restitution under Article 46 of this Chapter, the court shall, in addition to any penalty authorized by law, require that the defendant make restitution ~~to the victim or the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant.~~ for any injuries or damages arising directly and proximately out of the offense committed by the defendant to the victim, the victim's estate, or a third-party payor, including an insurer, that has made payment to the victim or the victim's estate to compensate the victim for such injuries or damages. If the defendant is placed on probation or post-release supervision, any restitution ordered under this subsection shall be a condition of probation as provided in G.S. 15A-1343(d) or a condition of post-release supervision as provided in G.S. 148-57.1.

(c) When subsection (b) of this section does not apply, the court may, in addition to any other penalty authorized by law, require that the defendant make restitution to the victim or the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant."

SECTION 2. G.S. 15A-1340.35 reads as rewritten:

"**§ 15A-1340.35. Basis for restitution.**

(a) In determining the amount of restitution, the court shall consider the following:

(1) In the case of an offense resulting in bodily injury to a victim:

a. The cost of necessary medical and related professional services and devices or equipment relating to physical, psychiatric, and psychological care required by the ~~victim;~~ victim.

b. The cost of necessary physical and occupational therapy and rehabilitation required by the ~~victim; and~~ victim.
c. Income lost by the victim as a result of the offense.
d. Pain and suffering of the victim as a result of the offense.

(2) In the case of an offense resulting in the damage, loss, or destruction of property of a victim of the offense:
a. Return of the property to the owner of the property or someone designated by the owner; or
b. If return of the property under sub-subdivision (2)a. of this subsection is impossible, impracticable, or inadequate:
1. The value of the property on the date of the damage, loss, or destruction; or
2. The value of the property on the date of sentencing, less the value of any part of the property that is returned.

(3) Any measure of restitution specifically provided by law for the offense committed by the defendant.

(4) In the case of an offense resulting in bodily injury that results in the death of the victim, the cost of the victim's necessary funeral and related services, in addition to the items set out in subdivisions (1), (2), and (3) of this subsection.

(b) The court may require that the victim or the victim's estate provide admissible evidence that documents the costs claimed by the victim or the victim's estate under this section. Any such documentation shall be shared with the defendant before the sentencing hearing.

(c) Costs awarded under sub-subdivision (a)(1)d. of this section shall be limited to five hundred thousand dollars ($500,000) for each victim for all offenses occurring contemporaneously.

SECTION 3. This act becomes effective October 1, 2011, and applies to any order of restitution issued on or after that date.

SENATE BILL 379:
Revise Restitution Damage Awards

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 30, 2011
Introduced by:	Sen. Goolsby	**Prepared by:**	Bill Patterson
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***In sentencing defendants convicted of offenses for which the victim is entitled to restitution, Senate Bill 379 requires restitution to be made not only to the victim or the victim's estate, but also to any third-party payer, including an insurer, which has paid the victim or the victim's estate for any damages for which restitution may be paid. The bill also expands the list of factors that a court can consider in awarding restitution to include the victim's pain and suffering, and puts a limit of $500,000 on the amount of restitution that may be ordered based on pain and suffering.***

CURRENT LAW: Restitution to victims of crime is governed by Article 81C of Chapter 15A of the General Statutes. G.S. 15A-1340.34 requires that in sentencing a defendant for a crime for which the victim is entitled to restitution, the court shall, in addition to any penalty authorized by law, require the defendant to make restitution to the victim or the victim's estate for any injuries or damages directly resulting from the offense committed by the defendant. In determining the amount of restitution in the case of offenses resulting in bodily injury to a victim, G.S. 15A-1340.35(a)(1) requires the court to consider the following costs and losses resulting from the offense:

- The cost of medical treatment required by the victim
- The cost of physical and occupational therapy and rehabilitation required by the victim
- The victim's lost income[1]

In determining the amount of restitution, courts are not permitted to consider the victim's pain and suffering.[2]

BILL ANALYSIS: The bill amends G.S. 15A-1340.34 to require the defendant to make restitution not only to the victim or the victim's estate, but also to a third-party payer, including an insurer, who has paid the victim or the victim's estate compensation for injuries or damages arising out of the criminal offense. The bill also amends G.S. 15A-1340.35(a)(1) applicable to offenses involving bodily injury to require courts to consider the pain and suffering of the victim resulting from the offense when determining the amount of restitution. The bill also adds a new subsection (c) to G.S. 15A-1340.35 limiting any restitution based on the victim's pain and suffering to $500,000.

EFFECTIVE DATE: This act becomes effective October 1, 2011, and applies to any order of restitution issued on or after that date.

S379-SMTG-10(e1) v2

[1] These factors are also considered when restitution is ordered as a condition of probation or post-release supervision. G.S. 15A-1343(d), G.S. 148-57.1(c).

[2] "The trial court's basis for awarding restitution is limited to quantifiable costs, income, and values of the kind set out in N.C. Gen.Stat. § 15A-1340.35." State v. Wilson, 158 N.C.App. 235, 240, 580 S.E.2d 386, 390 (2003).

PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027

DATE: 3-31 **TIME:** 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 RC Bounstetter	Mocksville	Bounstetter
2		
Christine Sauer	Chapel Hill	Kinnaird
4		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

ges: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

VISITOR REGISTRATION SHEET

Judiciary I — 3/30/11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gary O. Bartlett	SBE
Chris Telesca	Wake Verified Voting
Annaliese Dolph	DPNC
Abby Emanuelson	NMSS-NC
David Heinen	NC Center for Nonprofits
[illegible]	NCCTA
Connie Wilson	NCCTA
Matt Wolfe	Parker Poe
Martha M Buck	Examiner.com / media rep.

SENATE JUDICIARY I COMMITTEE
April 5, 2011 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on April 5, 2011, in Room 1027 of the Legislative Building. Sixteen members of the committee were present. Senator Pete Brunstetter, presided.

Senator Brunstetter called the meeting to order at 10:03 a.m.

Senate Bill 394
Senator Brunstetter recognized Senator Newton to explain the bill
Senator Brunstetter called on Susan Sitze to further explain the bill
Senator Brunstetter asked for public comment
Katherine Joyce from the Association of School Administrators spoke in favor of the legislation
Senator Mansfield was recognized to ask a question, and Senator Newton answered
Senator Mansfield asked a follow-up question, and Senator Newton answered
Senator Mansfield asked another follow up question, and Susan Sitze answered
Senator Goolsby asked a question, and Senator Newton answered; Susan Sitze was recognized for further clarification
Senator Goolsby was recognized for a follow-up question, and Senator Newton answered
Senator Brunstetter noted that the bill will be carried over until Thursday
Senator Stein was recognized to ask a question, and Senator Newton answered
Senator Tillman was recognized to address Senator Stein's question
Senator Newton was recognized to make comments

Senate Bill 413
Senator Clodfelter was recognized to explain the bill
Senator Pate was recognized for a question, and Senator Clodfelter answered it
Senator Tillman moves for a favorable report
Motion carries

Senate Bill 414
Senator Clodfelter was recognized to send forward a technical amendment
Amendment passes
Senator Clodfelter was recognized to explain the bill
Steven Maynard from a law firm in Pinehurst was recognized to speak on behalf of the Bar Association
Senator Rucho was recognized to ask Senator Clodfelter a question, and Senator Clodfelter answered
Senator Rucho was recognized to ask a follow-up question, and Senator Clodfelter answered
Senator Rucho was recognized for another follow-up question, and Senator Clodfelter answered
Senator Stein was recognized to ask a question, and Senator Clodfelter answered
Senator Stein was recognized to ask a follow-up question, and Senator Clodfelter answered
Senator Nesbitt was recognized to make comments about the controversy over the bill
Senator Clodfelter was recognized to respond

Senate Bill 411—For discussion only
Senator Newton was recognized to explain the bill
Senator Brunstetter called for public comment
Hearing none, Senator Brunstetter asked f for public comment
Hearing none, Senator Brunstetter asked for comment from the members
Senator Nesbitt was recognized to make comments
Senator Tillman was recognized to ask a question about judicial races
Senator Newton was recognized to answer the question
Senator Mansfield was recognized to ask a question, and Senator Newton answered
Senator Mansfield asked a follow-up question, and Erika Churchill was recognized to answer
Senator Stein was recognized to ask a question, and Erika Churchill was recognized to answer
Senator Stein was recognized to make follow-up comments
Senator Pate was recognized to ask a question, and Senator Newton answered
Senator Brock was recognized to make comments
Senator Soucek was recognized to make comments
Senator Newton was recognized for last words

The meeting adjourned at 10:50 a.m.

Sen , Presiding
Peter Brunstetter

Sarah Hardin, Committee Clerk

AGENDA

SENATE JUDICIARY I COMMITTEE
Tuesday, April 5, 2011 at 10:00 a.m.
Room 1027, Legislative Building

I. Welcome and Opening Remarks

II. Bills to be Considered

Senate Bill 394
Clarify Process/Reportable Offenses in Sch.
Sens. Newton, Preston, Tillman

Senate Bill 413
Ordinance First Reading Vote
Sen. Clodfelter

Senate Bill 414
Allow Attorneys' Fees in Business Contracts
Sen. Clodfelter

Senate Bill 411
Vote for the Person, Not the Party Act
Sens. Newton, Brown, Meredith
FOR DISCUSSION ONLY

III. Other Business

IV. Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 394

Short Title:	Clarify Process/Reportable Offenses in Sch.	(Public)
Sponsors:	Senators Newton, Tillman, Preston; Allran, D. Berger, Bingham, Brown, Clary, Daniel, Davis, Forrester, Harrington, Hise, Rabon, Rouzer, Soucek, Stevens, and Tucker.	
Referred to:	Judiciary I.	

March 23, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE REQUIREMENT THAT SCHOOL PRINCIPALS REPORT CERTAIN ACTS TO LAW ENFORCEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-288(g) reads as rewritten:

"(g) To Report Certain Acts to Law Enforcement and the Superintendent. – When the principal has ~~personal knowledge or actual notice from school personnel~~ reasonable belief that an act has occurred on school property involving assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a weapon in violation of the law, or possession of a controlled substance in violation of the law, the principal shall immediately report the act to the appropriate local law enforcement agency. ~~Failure to report to law enforcement under this subsection is a Class 3 misdemeanor.~~

The principal has reasonable belief if the principal sees or witnesses the occurrence of the act on school property. If the principal did not see or witness the act, then upon hearing or receiving an allegation that the act occurred on school property, the principal shall within no more than two school days initiate, conduct, and conclude an investigation to determine whether evidence exists that the act occurred on school property. If the principal makes this determination, the principal has reasonable belief that the act occurred on school property and must immediately report the act to the appropriate law enforcement agency.

Notwithstanding G.S. 115C-12(21), the State Board of Education shall not require the principal to report to law enforcement acts in addition to those required to be reported by this subsection.

For purposes of this subsection, "school property" shall include any public school building, bus, public school campus, grounds, recreational area, or athletic field, in the charge of the principal.

The principal or the principal's designee shall notify the superintendent or the superintendent's designee in writing or by electronic mail regarding any report made to law enforcement under this subsection. This notification shall occur by the end of the workday in which the incident occurred when reasonably possible but not later than the end of the following workday. The superintendent shall provide the information to the local board of education.

Nothing in this subsection shall be interpreted to interfere with the due process rights of school employees or the privacy rights of students."

SECTION 2. This act is effective when it becomes law and applies beginning with the 2011-2012 school year.

SENATE BILL 394:
Clarify Process/Reportable Offenses in Sch

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 4, 2011
Introduced by:	Sens. Newton, Tillman, Preston	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 394 would clarify the requirement that school principals report certain acts to law enforcement.

CURRENT LAW: Current law requires a principal to report certain criminal acts to law enforcement when the principal has "personal knowledge or actual notice from school personnel" that the act occurred on school property.

BILL ANALYSIS: Senate Bill 394 would amend G.S. 115C-288(g) to require the principal of a school to report certain criminal acts to law enforcement when the principal has "reasonable belief" that the act occurred on school property. The bill would remove the current Class 3 misdemeanor for failure to report to law enforcement.

The bill would provide that the principal has "reasonable belief" if they see or witness the occurrence of the act on school property. If they do not see or witness the act, then upon hearing or receiving an allegation that the act occurred on school property, within 2 school days they must initiate, conduct, and conclude an investigation to determine whether evidence exists that the act occurred on school property. If so, the principal has "reasonable belief" and must immediately report the act to the appropriate law enforcement agency.

Additionally, the bill would prohibit the State Board of Education from requiring principals to report any criminal acts not required to be reported by this statute and would add additional language providing that the provisions of this subsection shall not be interpreted to interfere with the due process rights of school employees or the privacy rights of students.

EFFECTIVE DATE: This act is effective when it becomes law and applies beginning with the 2011-2012 school year.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SENATE BILL 413

Short Title:	Ordinance First Reading Vote.	(Public)
Sponsors:	Senators Clodfelter; and Hartsell.	
Referred to:	Judiciary I.	

March 24, 2011

A BILL TO BE ENTITLED

AN ACT TO CONFORM AND MODIFY THE STATUTES ON INITIAL VOTES BY CITY AND GOVERNING BOARDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-45 reads as rewritten:

"**§ 153A-45. Adoption of ordinances.**

To be adopted at the meeting at which it is first introduced, an ordinance or any action having the effect of an ordinance (except (i) the budget ordinance, (ii) any bond order, or (iii) any other ordinance on which a public hearing must be held before the ordinance may be ~~adopted~~adopted, but to qualify for any of these three exceptions the public hearing must have been held at least seven calendar days before the vote) must receive the approval of all the members of the board of commissioners. If the ordinance is approved by a majority of those voting but not by all the members of the board, or if the ordinance is not voted on at that meeting, it shall be considered at the next regular meeting of the board. If it then or at any time thereafter within 100 days of its introduction receives a majority of the votes cast, a quorum being present, the ordinance is adopted."

SECTION 2. G.S. 160A-75 reads as rewritten:

"**§ 160A-75. Voting.**

(a) No member shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, 160A-381(d), or 160A-388(e1). In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of members of the council is not a matter involving a member's own financial interest or official conduct.

(b) An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue, including the mayor's vote in case of an equal division, shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city.

(c) Notwithstanding subsection (b) of this section, to be adopted at the meeting at which it is first introduced, an ordinance or any action having the effect of an ordinance (except (i) the budget ordinance, (ii) any bond order, or (iii) any other ordinance on which a public hearing must be held before the ordinance may be adopted, but to qualify for any of these three exceptions the public hearing must have been held at least seven calendar days before the vote) must receive the approval of all the members of the governing board, not including the mayor

unless the mayor has the right to vote on all questions before the council. If the ordinance is approved by a majority of those voting but not by all the members of the board, or if the ordinance is not voted on at that meeting, it shall be considered at the next regular meeting of the board. If it then or at any time thereafter within 100 days of its introduction receives a majority of the votes cast, a quorum being present, the ordinance is adopted. ~~In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the council, excluding vacant seats and not including the mayor unless the mayor has the right to vote on all questions before the council.~~ For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council."

SECTION 3. This act becomes effective with respect to votes on or after January 1, 2012.

SENATE BILL 413:
Ordinance First Reading Vote

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 4, 2011
Introduced by:	Sen. Clodfelter	**Prepared by:**	Brad Krehely
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 413 conforms the processes by which cities and counties may adopt an ordinance at the first meeting at which the ordinance is introduced.

CURRENT LAW: The law regarding adopting an ordinance on the date in which it is first introduced is different for counties and cities as described below.

Counties

To adopt an ordinance (or any action having the effect of an ordinance) at the meeting at which it is first introduced, the ordinance must have the approval of all the members of the county board of commissioners. However, in three instances, a public hearing must be held before the ordinance may be adopted: (1) the budget ordinance, (2) any bond order, and (3) any other ordinance which requires a public hearing before the ordinance may be adopted. If the ordinance is approved by a majority of those voting, but not all the members of the board or if the ordinance is not voted on at the initial meeting, it shall be considered at the next regular meeting of the board. If the ordinance receives a majority of votes cast (with a quorum present) at the next meeting or any time thereafter within 100 days of introduction, then the ordinance is adopted.

Cities

No ordinance (or any action having the effect of any ordinance) may be adopted on the date on which it is introduced unless there is an affirmative vote equal to or greater than 2/3 of all the actual membership of the council (excluding vacant seats and not including the mayor unless the mayor has the right to vote on all questions before the council). For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council.

To adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make any contract on behalf of the city, there must be an affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue.

BILL ANALYSIS: Senate Bill 413 conforms the processes by which cities and counties may adopt an ordinance at the first meeting at which the ordinance is introduced.

The statute governing counties is amended to provide that for the (1) the budget ordinance, (2) any bond order, and (3) any other ordinance which requires a public hearing before adoption, the public hearing must have been held at least 7 calendar days before the vote.

The statute governing cities is amended so that it mirrors the process used for counties. With regard to adopting the ordinance at the first meeting at which the ordinance is introduced, the act:

- Deletes the 2/3 approval requirement and provides that there must be unanimous approval of all the members of the governing board (not including the mayor unless the mayor has the right to vote on all questions before the council).

- Notes that for (1) the budget ordinance, (2) any bond order, and (3) any other ordinance which requires a public hearing before adoption, the public hearing must have been held at least 7 calendar days before the vote.
- Provides that at the initial meeting, if (1) the ordinance is approved by a majority, but not all the members of the board or (2) the ordinance is noted voted on, then the ordinance must be considered at the next regular meeting of the board.
- Notes that if the ordinance receives a majority of votes cast (with a quorum being present) at the next meeting or any time thereafter within 100 days of its introduction, then the ordinance is adopted.

EFFECTIVE DATE: The act becomes effective with respect to votes on or after January 1, 2012.

S413-SMRN-19(e1) v3

SENATE BILL 414

Short Title:	Allow Attorneys' Fees in Business Contracts.	(Public)
Sponsors:	Senators Clodfelter; and Hartsell.	
Referred to:	Judiciary I.	

March 24, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT RECIPROCAL ATTORNEYS' FEES PROVISIONS IN BUSINESS CONTRACTS ARE VALID AND ENFORCEABLE UNDER THE LAWS OF THIS STATE.

The General Assembly of North Carolina enacts:

SECTION 1. The purpose of this act is to validate reciprocal attorneys' fees provisions in business contracts.

SECTION 2. Article 3 of Chapter 6 of the General Statutes is amended by adding a new section to read:

"**§ 6-21.6. Reciprocal attorneys' fees provisions in business contracts.**

(a) As used in this section, the following definitions apply:

(1) Business contract. – A contract entered into primarily for business or commercial purposes. The term does not include a consumer contract, an employment contract, or a contract to which a government or a governmental agency of this State is a party.

(2) Consumer contract. – A contract entered into by one or more individuals primarily for personal, family, or household purposes.

(3) Employment contract. – A contract between an individual and another party to provide personal services by that individual to the other party, whether the relationship is in the nature of employee-employer or principal-independent contractor.

(4) Reciprocal attorneys' fees provisions. – Provisions in any written business contract by which each signatory to the contract agrees, upon the terms and subject to the conditions set forth in the contract that are made applicable to all parties, to pay or reimburse the other parties for attorneys' fees and expenses incurred by reason of any suit, action, proceeding, or arbitration involving the business contract.

(b) Reciprocal attorneys' fees provisions in business contracts are valid and enforceable for the recovery of reasonable attorneys' fees and expenses.

(c) If a business contract governed by the laws of this State contains a reciprocal attorneys' fees provision, the court or arbitrator in any suit, action, proceeding, or arbitration involving the business contract may award reasonable attorneys' fees in accordance with the terms of the business contract. In determining reasonable attorneys' fees and expenses under this section, the court or arbitrator may consider all relevant facts and circumstances, including, but not limited to, the following:

(1) The amount in controversy and the results obtained.

(2) The reasonableness of the time and labor expended, and the billing rates charged, by the attorneys.
(3) The novelty and difficulty of the questions raised in the action.
(4) The skill required to perform properly the legal services rendered.
(5) The relative economic circumstances of the parties.
(6) Settlement offers made prior to the institution of the action.
(7) Offers of judgment pursuant to Rule 68 of the North Carolina Rules of Civil Procedure and whether judgment finally obtained was more favorable than such offers.
(8) Whether a party unjustly exercised superior economic bargaining power in the conduct of the action.
(9) The timing of settlement offers.
(10) The amounts of settlement offers as compared to the verdict.
(11) The extent to which the party seeking attorneys' fees prevailed in the action.
(12) The amount of attorneys' fees awarded in similar cases.
(13) The terms of the business contract.

(d) Reasonable attorneys' fees and expenses shall not be governed by (i) any statutory presumption or provision in the business contract providing for a stated percentage of the amount of such attorneys' fees or (ii) the amount recovered in other cases in which the business contract contains reciprocal attorneys' fees provisions.

(e) Nothing in this section shall in any way make valid or invalid attorneys' fees provisions in consumer contracts or in any note, conditional sale contract, or other evidence of indebtedness that is otherwise governed by G.S. 6-21.2. If the business contract is also a note, conditional sale contract, or other evidence of indebtedness that is otherwise governed by G.S. 6-21.2, then the parties that are entitled to recover attorneys' fees and expenses may elect to recover attorneys' fees and expenses either under this section or G.S. 6-21.2, but may recover only once for the same attorneys' fees and expenses."

SECTION 3. This act becomes effective October 1, 2011.

SENATE BILL 414:
Allow Attorneys' Fees in Business Contracts

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 4, 2011
Introduced by:	Sen. Clodfelter	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 414 would provide that reciprocal attorneys' fees provisions in business contracts are valid and enforceable under the laws of North Carolina.

CURRENT LAW:

Currently, pursuant to case law, a court may only award attorneys' fees as part of the costs in a civil action when there is a statute expressly authorizing the inclusion of attorneys' fees.

The law recognizes the obligation to pay attorneys' fees in connection with certain kinds of business transactions. G.S. 6-21.2 provides that "obligations to pay attorneys' fees upon any note, conditional sale contract or other evidence of indebtedness, in addition to the legal rate of interest or finance charges specified therein, shall be valid and enforceable,".

The enforceability of an attorneys' fees provision contained in a note, conditional sale contract or other evidence of indebtedness is limited to 15%of the outstanding balance owing on the note, conditional sale contract or other evidence of indebtedness.

BILL ANALYSIS: Senate Bill 414 would add a new section to the law to validate reciprocal attorneys' fees provisions in business contracts. A business contract is defined as a contract entered primarily for business or commercial purposes and excludes consumer contracts, employment contracts and contracts in which a government entity is a party. Reciprocal attorneys' fees provisions are defined as provisions in a written business contract by which each signatory to the contract agrees to pay or reimburse the other parties' attorneys' fees and expenses incurred in any suit, action, proceeding, or arbitration involving the business contract.

The bill would authorize the court or arbitrator in a dispute involving a business contract to award reasonable attorneys' fees in accordance with the terms of the contract. In determining the reasonableness of the fees, the court or arbitrator may consider a nonexclusive list of 13 factors, including:

- The amount in controversy and the results obtained.
- The reasonableness of the time and labor expended and the billing rate.
- The novelty and difficulty of the questions raised.
- The legal skill required.
- The relative economic circumstances of the parties.
- Settlement offers made before institution of action.
- Offers of judgment and whether the judgment obtained was more favorable than the offers.
- Whether a party unjustly exercised superior economic bargaining power.

- The timing of settlement offers.
- The amount of settlement offers as compared to the verdict.
- The extent to which the party seeking attorneys' fees prevailed in the action.
- The amount of attorneys' fees awarded in similar cases.
- The terms of the business contract.

Nothing in the new provision would affect the validity of attorneys' fees provisions in consumer contracts or in any note, conditional sale contract or other evidence of indebtedness that is otherwise governed by the current law. Parties to a business contract that is also governed by G.S. 6-21.2 could elect to recover attorneys' fees under that section or the new section, but could only recover once for the same fees and expenses.

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

S414-SMRO-12(e1) v2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 414

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

S414-ARO-7 [v.1]

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

Date 5 April ,2011

Senator Clodfelter

moves to amend the bill on page 2, line 28, by rewriting the line to read:

"**SECTION 3.** This act becomes effective October 1, 2011, and applies to business contracts entered into on or after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 411

Short Title:	Vote for the Person, Not the Party Act.	(Public)
Sponsors:	Senators Newton, Meredith, Brown; Bingham, Blake, Clary, Davis, Forrester, Goolsby, Gunn, Hise, Hunt, Jackson, Pate, Preston, Rabon, Rucho, Soucek, Stevens, and Tucker.	
Referred to:	Judiciary I.	

March 24, 2011

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE OPTION OF STRAIGHT-PARTY TICKET VOTING ON BALLOTS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-165.6(e) is repealed.

SECTION 2. G.S. 163-182.1(a)(7) is repealed.

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

SENATE BILL 411:
Vote for the Person, Not the Party Act

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 4, 2011
Introduced by:	Sens. Newton, Meredith, Brown	**Prepared by:**	R. Erika Churchill
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 411 would eliminate the option of straight party voting in North Carolina.

CURRENT LAW: As of October 2008, North Carolina is one of 16 states that offer straight ticket voting. Straight ticket voting, generally, is the ability to choose a party's entire slate of candidates by marking once on the ballot to vote for every candidate of that party on that ballot.

In North Carolina, this is true, with one exception. In a presidential election, the voter must mark his or her choice for president separate and apart from the straight ticket option.

BILL ANALYSIS: The bill would repeal the authority for allowing, and counting, straight party voting in North Carolina.

EFFECTIVE DATE: Effective when it becomes law, but but may not be implemented until the session law has received 'preclearance' approval under Section 5 of the Voting Rights of 1965 by the U.S. Department of Justice.

S411-SMST-16(e1) v2

PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027

DATE: 4-5 **TIME:** 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Emily Jones	Mocksville	Brock
2 ~~Harrison Pettiy~~	~~Franklington~~	~~R. Brock~~
3 Jon Mancini	Emerald Isle	Preston
~~4~~ Lydia Stonehouse	Clemmons	Brunstetter
5 Michael Horton	Fayetteville	W. Meredith
6		
7		
8		
9		

Do not add names below the grid.

VISITOR REGISTRATION SHEET

Senate Judiciary I — April 5, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Fred Boss	Boss Assoc.
Jim Roberson	TWC
Warren Wall	Self
Katherine Lee	PPAB
Gerd Anker	FW
Tracy Collins	FW
Mamie Parker	

VISITOR REGISTRATION SHEET

Senate Judiciary I — April 5, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Penny Burfi	School of Gov.
Katherine Joyce	NCASA
Tim Crouch	NCBA
Damon Circosta	nc vote Ed
Kelli Kukura	NCLM
Dick Barnes	OSA
Emily Grimm	MWC
Mildred Spearman	AOC
Martha Brock	Examiner.com
Rick Zechini	Progress Energy
[illegible]	NWC

VISITOR REGISTRATION SHEET

Senate Judiciary I
Name of Committee

April 5, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCC
Chris Telesca	Wake Verified Voting
Doug Heron	[illegible]
Courtney Williams	(peace college student) Shadowing senatorstein
Gary Bartlett	SBE
Andrew Cagle	NC Sheriffs' Assn
Jessi Hayes	NCHBA
Kerry Sutton	NCAJ
Stephen Later	NC Bar Ass'n
Bill Gwyn	NC Bar Association
Eddie Caldwell	NC Sheriffs' Assn.

SENATE JUDICIARY I COMMITTEE
April 7, 2011 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on April 7, 2011, in Room 1027 of the Legislative Building. Thirteen members of the committee were present. Senator Pete Brunstetter presided.

Senator Brunstetter called the meeting to order at 10:04 a.m.

SB 394
Senator Brunstetter recognized Senator Newton to explain the PCS
Senator Brunstetter called on Susan Sitze to explain the PCS
Senator Brunstetter called for questions and discussion
Senator Tillman moved for a favorable report
Motion carries, Unfav as to bill, fav as to PCS

SB 407
Senator Brunstetter called on Senator Hartsell to explain the bill
Senator Goolsby moved to adopt the PCS for purposes of discussion
Senator Brunstetter called on Brad Krehely to explain the bill
Senator Brunstetter asked for public comment
Senator Brunstetter asked for questions from committee members
Senator Goolsby was recognized to ask a question, and Senator Hartsell answered
McNeill Chestnut from the banking commission was recognized to provide an answer to the question
Senator Stein moves for a favorable report, Unfav as to bill, fav as to PCS, referral to Finance
Motion carries

SB 414
Sen Tillman moves to adopt the PCS for purposes of discussion
Senator Clodfelter was recognized to explain the PCS
Senator Brunstetter called for discussion
Senator Nesbitt was recognized for a question and comments
Senator Rouzer was recognized for comments and to move for a favorable report
Motion carries, Unfav as to bill, fav as to com sub

The meeting adjourned at 10:35 a.m.

Peter Brunstetter, Presiding

Sarah Hardin, Committee Clerk

Senate Judiciary I Committee
Thursday, April 7, 2011, 10:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 394	Clarify Process/Reportable Offenses in Sch.	Senator Newton Senator Preston Senator Tillman
SB 407	Trusts and Estate Planning Changes.	Senator Hartsell
SB 414	Allow Attorneys' Fees in Business Contracts.	Senator Clodfelter

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 394
PROPOSED COMMITTEE SUBSTITUTE S394-CSSA-17 [v.4]

4/6/2011 5:32:07 PM

Short Title: Clarify Process/Reportable Offenses in Sch. (Public)

Sponsors:

Referred to:

March 23, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE REQUIREMENT THAT SCHOOL PRINCIPALS REPORT CERTAIN ACTS TO LAW ENFORCEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-288(g) reads as rewritten:

"(g) To Report Certain Acts to Law Enforcement and the Superintendent. – When the principal has personal ~~knowledge~~ knowledge, a reasonable belief, or actual notice from school personnel that an act has occurred on school property involving assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a weapon in violation of the law, or possession of a controlled substance in violation of the law, the principal shall immediately report the act to the appropriate local law enforcement agency. ~~Failure to report to law enforcement under this subsection is a Class 3 misdemeanor.~~

A principal who willfully fails to make a report to law enforcement required by this subsection may be subject to demotion or dismissal pursuant to G.S. 115C-325.

Notwithstanding any other provision of law, the State Board of Education shall not require the principal to report to law enforcement acts in addition to those required to be reported by this subsection.

For purposes of this subsection, "school property" shall include any public school building, bus, public school campus, grounds, recreational area, or athletic field, in the charge of the principal.

The principal or the principal's designee shall notify the superintendent or the superintendent's designee in writing or by electronic mail regarding any report made to law enforcement under this subsection. This notification shall occur by the end of the workday in which the incident occurred when reasonably possible but not later than the end of the following workday. The superintendent shall provide the information to the local board of education.

Nothing in this subsection shall be interpreted to interfere with the due process rights of school employees or the privacy rights of students."

SECTION 2. This act is effective when it becomes law and applies beginning with the 2011-2012 school year.

SENATE BILL 394:
Clarify Process/Reportable Offenses in Sch

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 6, 2011
Introduced by:	Sens. Newton, Tillman, Preston	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition S394-CSSA-17		

SUMMARY: Senate Bill 394 would clarify the requirement that school principals report certain acts to law enforcement.

CURRENT LAW: Current law requires a principal to report certain criminal acts to law enforcement when the principal has "personal knowledge or actual notice from school personnel" that the act occurred on school property.

BILL ANALYSIS: Senate Bill 394 would amend G.S. 115C-288(g) to require the principal of a school to also report certain criminal acts to law enforcement when the principal has "a reasonable belief" that the act occurred on school property. The bill would remove the current Class 3 misdemeanor for failure to report to law enforcement.

The bill would authorize the demotion or dismissal of a principal who willfully fails to make a report to law enforcement. It would also prohibit the State Board of Education from requiring principals to report any criminal acts not required to be reported by this statute and would add additional language providing that the provisions of this subsection shall not be interpreted to interfere with the due process rights of school employees or the privacy rights of students.

EFFECTIVE DATE: This act is effective when it becomes law and applies beginning with the 2011-2012 school year.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 407

Short Title:	Trusts and Estate Planning Changes.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary I.	

March 24, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING TRUSTS, ESTATE PLANNING, AND TRUST COMPANIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 32-55 reads as rewritten:

"**§ 32-55. Notice.**

(a) If the terms of the trust do not specify the trustee's compensation, the trustee may, in the trustee's discretion, give written notice to all qualified beneficiaries of each proposed payment of compensation if the annual amount of compensation exceeds four-tenths of one percent (4/10 of 1%) of the principal value of the assets of the trust on the last day of the trust accounting year. ~~The notice shall contain a statement that the qualified beneficiaries have 20 days from when notice is given to file a proceeding for review of the reasonableness of the compensation with the clerk of superior court in accordance with Article 2 of Chapter 36C of the General Statutes.~~

(b) In lieu of giving written notice of each proposed payment of compensation under subsection (a) of this section, the trustee may give written notice to all qualified beneficiaries of the amount of compensation to be paid to the trustee on a periodic basis or of the method of computation of the compensation. The trustee shall not be required to give additional notice to the qualified beneficiaries unless the amount to be paid to the trustee on a periodic basis or the method of computation of the compensation changes.

(c) If a qualified beneficiary is under a legal disability, notice shall be given to the representative of the beneficiary. If a representative of a qualified beneficiary is not available without court order, notice shall be deemed given under this section if there is at least (i) one qualified beneficiary described in G.S. 36C-1-103(15) a. or b. who is not under a legal disability or a representative of a qualified beneficiary so described; and (ii) one qualified beneficiary described in G.S. 36C-1-103(15)c. who is not under a legal disability or a representative of a qualified beneficiary so described.

(c1) The notice provided for in this section shall contain a statement that the qualified beneficiaries or their representatives to whom the notice is given have 20 days from when notice is given to file a proceeding for review of the reasonableness of the compensation with the clerk of superior court in accordance with Article 2 of Chapter 36C of the General Statutes.

(d) The provisions of G.S. 36C-1-109 regarding notices to persons under Chapter 36C of the General Statutes shall apply for purposes of notices under this Article."

SECTION 2. G.S. 36C-5-505 is amended by adding a new subsection to read:

"(c) Subject to Article 3A of Chapter 39 of the General Statutes, for purposes of this section, if the settlor is a beneficiary of the following trusts after the death of the settlor's

spouse, the property of the trusts shall, after the death of the settlor's spouse, be deemed to have been contributed by the settlor's spouse and not by the settlor:

(1) An irrevocable intervivos marital trust that is treated as a general power of appointment trust described in section 2523(e) of the Internal Revenue Code.

(2) An irrevocable intervivos marital trust that is treated as qualified terminable interest property under section 2523(f) of the Internal Revenue Code.

(3) An irrevocable intervivos trust of which the settlor's spouse is the sole beneficiary during the lifetime of the settlor's spouse but which does not qualify for the federal gift tax marital deduction.

(4) Another trust, to the extent that the property of the other trust is attributable to property passing from a trust described in subdivision (1), (2), or (3) of this subsection.

For purposes of this subsection, the settlor is a beneficiary whether so named under the initial trust instrument or through the exercise of a limited or general power of appointment."

SECTION 3. G.S. 36C-7-704 reads as rewritten:

"**§ 36C-7-704. Vacancy in trusteeship; appointment of successor.**

(a) A vacancy in a trusteeship occurs if:

(1) A person designated as trustee rejects the trusteeship;

(2) A person designated as trustee cannot be identified or does not exist;

(3) A trustee resigns;

(4) A trustee is disqualified or removed;

(5) A trustee dies; or

(6) A general guardian, guardian of the estate, or guardian of the person is appointed for an individual serving as trustee.

(b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

(c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

(1) By a person designated in the terms of the trust or appointed under the terms of the trust to act as successor trustee;

(2) By a person appointed by unanimous agreement of the qualified beneficiaries; or

(3) By a person appointed by the court.

(d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

(1) By a person designated in the terms of the trust or appointed under the terms of the trust to act as successor trustee;

(2) By a person selected by majority agreement of the qualified beneficiaries, if the trust is a split-interest charitable trust;

(2a) By a person selected by majority agreement of the charitable organizations expressly designated to receive distributions under the terms of the trust; or

(3) By a person appointed by the court.

(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

(f) A successor trustee shall succeed to all the rights, powers, and privileges, and is subject to all the duties, liabilities, and responsibilities that were imposed upon the original trustee, unless a contrary intent appears from the governing instrument or unless the order appointing the successor trustee provides otherwise. A successor trustee shall be vested with the title to property of the former trustee."

SECTION 4. G.S. 36C-8-816 reads as rewritten:

"**§ 36C-8-816. Specific powers of trustee.**

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

...

(26) On termination of the trust, exercise ~~the~~ all of the powers otherwise exercisable by the trustee during the administration of the trust, including, without limitation, the trustee's investment powers, the power to sell assets, and the powers set forth in subdivision (22) of this section, and exercise the additional powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it;

...."

SECTION 5. G.S. 28A-8-1(b) reads as rewritten:

"(b) No bond shall be required of:

...

(5) A personal representative that is a ~~national banking association having its principal place of business in this State or a State bank acting pursuant to~~ trust institution licensed under G.S. 53-159;

...."

SECTION 6. G.S. 53-43 reads as rewritten:

"**§ 53-43. General powers.**

In addition to the powers conferred by law upon private corporations, banks shall have the power:

...

(6) ~~Maintain~~ To maintain separate departments and deposit in its commercial department to the credit of its trust department all uninvested fiduciary funds of cash and secure, under rules and regulations of the State Banking Commission, all such deposits in the name of the trust department whether in consolidated deposits or for separate fiduciary accounts, by segregating and delivering to the trust department such securities as ~~may be eligible for the investment of the sinking funds of the State of North Carolina, equal in market value to such deposited funds, or readily marketable commercial bonds having not less than a recognized "A" rating equal to one hundred and twenty-five per centum (125%) of such deposits.~~ are required by G.S. 53-163.1 for such deposits. Such securities shall be held by the trust department as security for the full payment or repayment of all such deposits, and shall be kept separate and apart from other assets of the trust department. Until all of such deposits shall have been accounted for to the trust department or to the individual fiduciary accounts, no creditor of the bank shall have any claim or right to such security. When fiduciary funds are deposited by the trust department in the commercial department of the bank, the deposit thereof shall not be deemed to constitute a use of such funds in the general business of the bank and the bank in such instance shall not be liable for interest on such funds. To the extent and in the amount such deposits may be insured by the Federal Deposit Insurance Corporation, the amount of security required for such deposits by this section may be reduced.

The Banking Commission shall have power to make such rules and regulations as it may deem necessary for the enforcement of the provisions of the preceding paragraph, and such authority shall exist and is hereby conferred under the general authority heretofore conferred upon said Commission as well as by this paragraph.

...."

SECTION 7. Article 14 of Chapter 53 of the General Statutes reads as rewritten:

"Article 14.

"~~Banks~~ Trust Institutions Acting in a Fiduciary Capacity.

"Part 1. General Provisions.

"**§ 53-158.10. Definitions.**

For purposes of this Article, the following definitions apply:

(1) "Depository institution" has the same meaning as set forth in the Federal Deposit Insurance Act, 12 U.S.C. §§ 1811, et seq.

(2) "Hazardous condition" has the same meaning as set forth in G.S. 53-301(a)(23).

(3) "Trust institution" has the same meaning as set forth in G.S. 53-301(a)(52).

"**§ 53-159. ~~Bank~~Trust institution may act as fiduciary.**

Any ~~bank~~ trust institution licensed by the Commissioner of Banks, where such powers or privileges are granted it in its charter, may be guardian, trustee, assignee, receiver, executor or administrator or act in another fiduciary capacity in this State without giving any bond; and the clerks of the superior courts, or other officers charged with the duty or clothed with the power of making such appointments, are authorized to appoint such ~~bank~~ trust institution to any such office.

"**§ 53-159.1. Power of fiduciary or custodian to deposit securities in a clearing corporation.**

Notwithstanding any other provision of law, any fiduciary holding securities in its fiduciary capacity, any ~~bank or trust company~~ trust institution holding securities in a fiduciary capacity or as a custodian or agent is authorized to deposit or arrange for the deposit of such securities ~~in a clearing corporation~~ with a securities intermediary as defined in G.S. 25-8-102. When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such ~~clearing corporation~~ securities intermediary with any other such securities deposited in such ~~clearing corporation~~ securities intermediary by any person regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such ~~bank or trust company~~ trust institution acting as a fiduciary or as a custodian or managing agent shall at all times show the name of the party for whose account the securities are so deposited. Title to such securities may be transferred by bookkeeping entry on the books of such ~~clearing corporation~~ securities intermediary without physical delivery of certificates representing such securities. A ~~bank or trust company~~ trust institution so depositing securities pursuant to this section shall be subject to such rules as, in the case of State-chartered institutions, the State Banking Commission and, in the case of ~~national banking associations, the Comptroller of the Currency~~ other institutions, their regulators may from time to time issue. A ~~bank or trust company~~ trust institution acting as custodian or agent for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such ~~bank or trust company~~ trust institution in such ~~clearing corporation~~ securities intermediary for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such ~~clearing corporation~~ securities intermediary for its account as such fiduciary. This section shall apply to any fiduciary holding securities in its fiduciary capacity, and to any ~~bank or trust company~~ trust institution holding securities as a fiduciary or as a custodian or managing agent acting on May 15, 1973, or who thereafter may act regardless of the date of the agreement, instrument or court order by which it is appointed and regardless of whether or not such fiduciary, custodian or agent owns capital stock of such ~~clearing corporation~~ securities intermediary. The fiduciary shall personally be liable for any loss to the trust resulting from an act of such nominee in connection with such securities so deposited.

"§ 53-160. License to do business.

Before any such ~~bank or trust company~~ trust institution is authorized to act in any fiduciary capacity without bond, it must be licensed by the Commissioner of Banks of the State. For such license the licensee, for the purpose of defraying necessary expenses of the Commissioner of Banks and the Commissioner's ~~agents in supervising and examining the licensee,~~ agents, shall pay to the Commissioner of Banks an annual license fee not to exceed five hundred dollars ($500.00) as required by rule of the State Banking Commission. ~~A national bank which has been granted trust powers by the Comptroller of the Currency or his duly authorized agent shall be annually licensed as required in this section and shall be granted a certificate of solvency which will meet the provisions of G.S. 53-162 without examination by the Commissioner of Banks as required in G.S. 53-161.~~

"§ 53-161. Examination in connection with license as to solvency.

The Commissioner of Banks ~~shall examine into the solvency of such bank, and shall, if he deem it necessary,~~ may, at the expense of the ~~bank,~~ trust institution, make or cause to be made an examination ~~at its home office of its assets and liabilities. Examinations of trust institutions other than banks shall be as provided in Article 24 of this Chapter.~~ of any trust institution that applies for or is licensed by the Commissioner of Banks. The Commissioner of Banks may refuse to issue a license to a trust institution that it finds to be in a hazardous condition.

~~"§ 53-162. Certificate of solvency.~~

~~After any bank has been licensed by the Commissioner of Banks, a certificate issued by the Commissioner of Banks, showing the bank to be solvent to an amount not less than one hundred thousand dollars ($100,000), shall authorize such bank to act in a fiduciary capacity without bond. There shall be no charge for the seal of this certificate.~~

"§ 53-163. Clerk of superior court notified of license and revocation.

The Commissioner of Banks, upon granting license to any ~~such bank or trust company,~~ trust institution, shall immediately notify the clerk of the superior court of each county in the State that the ~~bank or trust company~~ trust institution has been licensed under this Article, and, whenever the Commissioner of Banks is satisfied that any ~~bank or trust company~~trust institution licensed by the Commissioner ~~has become insolvent, or is in imminent danger of insolvency,~~ is in a hazardous condition, the Commissioner shall revoke the license granted to that ~~bank~~ trust institution and notify the clerk of the superior court of each county in the State of the revocation. ~~After such notification, the right of any such bank or trust company to act in a fiduciary capacity shall cease.~~

"§ 53-163.1. Funds held by a ~~corporation exercising fiduciary powers~~ trust institution awaiting investment or distribution.

(a) Funds held in a fiduciary capacity by a ~~bank, trust company, savings and loan association, or other corporation authorized to exercise the powers of a fiduciary,~~ trust institution awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account. A ~~corporation acting in a fiduciary capacity~~ trust institution has complied with this requirement if such funds awaiting investment or distribution in excess of one thousand dollars ($1,000) are invested or distributed within 30 days of receipt or accumulation thereof.

(b) Funds held in a fiduciary capacity by a ~~bank,~~ depository institution, awaiting investment or distribution may, unless prohibited by the instrument creating the fiduciary relationship, be deposited in the commercial or savings or other department of the ~~bank,~~ depository institution, provided that it shall first set aside under control of the trust department as collateral security, ~~such securities as may be found~~ the classes of securities listed in ~~G.S. 142-34~~ G.S. 159-30(c) as being eligible for the investment ~~of the sinking funds of the State of North Carolina~~ of funds by local governments and public authorities equal in market value of such deposited funds, or readily marketable commercial bonds having not less than a

recognized "A" rating equal to one hundred and twenty-five percent (125%) of the funds so deposited.

The securities so deposited or securities substituted therefor as collateral in the trust department by the commercial or savings or other department (as well as the deposit of cash in the commercial or savings or other department by the trust department) shall be held pursuant to the provisions of G.S. 53-43(6).

If such funds are deposited in a ~~bank~~ depository institution insured under the provisions of the Federal Deposit Insurance ~~Corporation,~~ Act, the above collateral security will be required only for that portion of uninvested balances of each trust which are not fully insured under the provisions of that ~~corporation.~~act.

(c) Funds held in a fiduciary capacity by a ~~corporate fiduciary~~ trust institution awaiting investment or distribution may, unless prohibited by the instrument creating the fiduciary relationship, be invested in short-term, trust-quality investment vehicles, through the medium of a collective investment fund or otherwise.

(d) In addition to any other compensation to which it may be entitled under ~~G.S. 28A-23-3, 34-12, 35A-1269,~~ statutes governing the compensation of personal representatives, guardians, or other fiduciaries, or under any other authority, a ~~corporation acting in a fiduciary capacity~~trust institution shall be allowed to charge a fee for the temporary investment of funds held awaiting investment or distribution, which fee may be calculated upon the amount of such funds actually invested and upon the income produced thereby. The fee authorized by this subsection shall not exceed twelve percent (12%) of the income produced by such investment. A ~~corporation acting in a fiduciary capacity~~ trust institution has complied with its duty to disclose fees and practices in connection with the investment of fiduciary funds awaiting investment or distribution if the ~~corporation's~~ trust institution's periodic account statements set forth the method of computing such fees.

"§ 53-163.2. Investments in securities by ~~banks or trust companies.~~ trust institutions.

Unless the governing instrument, court order, or a statute specifically directs otherwise, a ~~bank or trust company~~ trust institution serving as trustee, guardian, agent, or in any other fiduciary capacity may invest in any security authorized by this Chapter even if such fiduciary or an affiliate thereof participates or has participated as a member of a syndicate underwriting such security, if:

(1) The fiduciary does not purchase the security from itself or its affiliate; and

(2) The fiduciary does not purchase the security from another syndicate member or an affiliate, pursuant to an implied or express agreement between the fiduciary or its affiliate and a selling member or its affiliate, to purchase all or part of each other's underwriting commitments.

"Part 2. Uniform Common Trust Fund Act.

"§ 53-163.5. Establishment of common trust funds.

(a) Any ~~bank or trust company~~ trust institution duly authorized to act as a fiduciary in this State may establish and maintain one or more common trust funds for the collective investment of funds held in a fiduciary capacity by such ~~bank or trust company~~ trust institution hereafter referred to as the "maintaining ~~bank".~~ institution." The maintaining ~~bank~~ institution may include for the purposes of collective investment in such common trust fund or funds established and maintained by it, funds held in a fiduciary capacity by any other ~~bank or trust company~~ trust institution duly authorized to act as a ~~fiduciary,~~ fiduciary with which it is affiliated, wherever located, which other ~~bank or trust company~~ trust institution is hereinafter referred to as the "participating ~~bank".~~ institution."

~~Provided, however, that the relationship between the maintaining bank and the participating bank is (i) the maintaining bank owns, controls or is affiliated with the participating bank or (ii) a bank holding company owns, controls or is affiliated with both the maintaining bank and the participating bank.~~

(b) For the purposes of this section, a ~~bank or trust company~~ maintaining institution shall be considered to be ~~owned, controlled or~~ affiliated ~~if twenty-five percent (25%) or more of any class of its voting stock is owned by a bank or bank holding company or if twenty-five percent (25%) or more of any class of its voting stock is owned by one person or no more than 10 persons who are the same person or persons who own twenty-five percent (25%) or more of any class of the voting stock of the maintaining bank.~~ with a participating institution if it controls, is controlled by, or is under common control with the participating institution, as control is determined under the federal Bank Holding Company Act of 1956 or by rule, order, or declaratory ruling of the Commissioner of Banks.

(c) Such common trust funds may include a fund composed solely of funds held under an agency agreement in which the ~~bank or trust company~~ trust institution assumes investment discretion and assumes fiduciary responsibility.

(d) Such ~~bank or trust company~~ trust institution may invest the funds held by it in any fiduciary capacity in one or more common trust funds, provided that (i) such investment is not prohibited by the instrument, judgment, decree or order creating such fiduciary relationship or amendment thereof, and (ii) the ~~bank~~ trust institution has no interest in the assets of the common trust fund other than as a fiduciary.

"§ 53-163.6. Court accountings.

Unless ordered by a court of competent jurisdiction the ~~bank or trust company~~ trust institution operating such common trust fund or funds shall not be required to render a court accounting with regard to such fund or funds; but it may, by application to the superior court, secure approval of such an accounting on such conditions as the court may establish. This section shall not affect the duties of the trustees of the participating trusts under the common trust fund to render accounts of their several trusts.

"§ 53-163.7. Supervision by State Banking Commission.

All common trust funds established under the provisions of this Part shall be subject to the rules and regulations of the State Banking Commission.

"§ 53-163.8. Uniformity of interpretation.

This Part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

"§ 53-163.9. Short title.

This Part may be cited as the Uniform Common Trust Fund Act."

SECTION 8. G.S. 53-301(a) reads as rewritten:

"(a) Except as otherwise provided in this Article, or when the context clearly indicates that a different meaning is intended, the following definitions shall apply throughout this Article:

...

(6a) "Board of directors" means the governing body of a company.

...

(15a) "Director" means a member of the board of directors.

...

(45) "State trust company" means a ~~corporation~~ company organized under the provisions of this Article and a trust company previously organized under other provisions of Chapter 53 of the General Statutes to operate only as a trust company and not as a commercial bank."

SECTION 9. G.S. 53-315 reads as rewritten:

"§ 53-315. Establishing an interstate trust office.

An out-of-state trust institution that obtains approval from the Commissioner in accordance with the provisions of this Subpart may establish and maintain a trust office in this ~~State; provided that the Commissioner shall not grant that approval unless the home state of the out-of-state trust institution permits a State trust institution to establish and maintain a trust~~

~~office in that home state under restrictions not materially greater than those imposed by this Article.~~ State."

SECTION 10. G.S. 53-316 reads as rewritten:

"**§ 53-316. Acquiring an interstate trust office.**

An out-of-state trust institution that obtains approval from the Commissioner in accordance with the provisions of this Subpart may acquire and maintain a trust office in this ~~State; provided that the Commissioner shall not grant that approval unless the home state of the out-of-state trust institution permits a State trust institution to acquire and maintain a trust office in that home state under restrictions not materially greater than those imposed by this Article.~~ State."

SECTION 11. G.S. 53-331(a) reads as rewritten:

"(a) Subject to the other provisions of this Part, one or more persons may organize and charter a State trust company, which may be ~~incorporated~~ established in the manner described in this Part and in no other way."

SECTION 12. G.S. 53-332 reads as rewritten:

"**§ 53-332. Articles of incorporation of State trust company.**

(a) The articles of incorporation of a State trust company shall be signed and acknowledged by or on behalf of each organizer and shall contain:

(1) The information required to be set forth in G.S. 55-2-02(a) and, except for telephone information, G.S. 53-311(c); and

(2) Any provision consistent with G.S. 55-2-02(b) and other applicable law that the organizers elect to set forth in the articles of incorporation for the regulation of the internal affairs of the State trust company.

(b) The Commissioner may allow a State trust company to be organized as a company other than a corporation, and in such case, references in this Article to provisions of Chapter 55 of the General Statutes shall refer to analogous provisions of law governing the formation and operation of that State trust company."

SECTION 13. G.S. 53-335(b) reads as rewritten:

"(b) If the Commissioner orders that the proposed State trust company may be formed, the Commissioner shall issue a State trust company charter and a certification to the Secretary of State permitting the ~~incorporation~~ establishment of the State trust company. The Commissioner may make approval of any application conditional and shall include any conditions in the order granting the charter."

SECTION 14. G.S. 53-352(a) reads as rewritten:

"(a) All corporate powers of a State trust company shall be exercised under the authority of, and the business and affairs of a State trust company shall be managed under the direction of, ~~its~~ a board of directors. Without the approval of the Commissioner, the board shall consist of not less than five directors. ~~The shareholders of a State trust company, at any shareholders' meeting, may authorize not more than two additional directorships which may be left unfilled and to be filled in the discretion of the directors of the State trust company during the interval between shareholders' meetings.~~ Except as specifically provided otherwise in this section, the number, election, term, and classification of the directors of a State trust company shall be governed by the provisions of Chapter 55 of the General Statutes."

SECTION 15. G.S. 53-363(b) reads as rewritten:

"(b) A private trust company engaging in trust business in this State shall comply with all provisions of this Article applicable to a State trust company unless expressly exempted from a provision of this Article by the Commissioner pursuant to this section or prior to the enactment of this Article. However, notwithstanding G.S. 53-352(a), the holders of the equity securities of a private trust company may by unanimous agreement limit the authority of its board of directors; restrict, enlarge, or modify the rights or duties of particular directors; or allocate to an individual or group other than the board of directors some or all of the duties of a

board of directors. A private trust company shall notify the Commissioner of the adoption of any agreement affecting the authority of the board of directors within 48 hours and shall provide such information as the Commissioner requests about the agreement. To the extent that an individual or group other than the board of directors is vested with the authority of the board of directors under this section, that individual or group shall be deemed to be acting as the board of directors in the exercise of that authority for all purposes of this Chapter."

SECTION 16. G.S. 53-363(c) reads as rewritten:

"(c) A private trust company or proposed private trust company may request in writing that it be exempted from specified provisions of G.S. 53-333(b), 53-337(a), 53-339, 53-340, 53-341, 53-342, 53-345, 53-346, and 53-394(b). The Commissioner may grant the exemption request in whole or in part. The Commissioner also may issue rules, orders, or declaratory rulings granting exemptions to all private trust companies, or to private trust companies that meet specified conditions."

SECTION 17. This act becomes effective October 1, 2011, and applies to all trusts created before, on, or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 407
PROPOSED COMMITTEE SUBSTITUTE S407-CSRN-5 [v.2]

4/6/2011 6:04:49 PM

Short Title: Trusts and Estate Planning Changes. (Public)

Sponsors:

Referred to:

March 24, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING TRUSTS, ESTATE PLANNING, AND TRUST COMPANIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 32-55 reads as rewritten:

"**§ 32-55. Notice.**

(a) If the terms of the trust do not specify the trustee's compensation, the trustee may, in the trustee's discretion, give written notice to all qualified beneficiaries of each proposed payment of compensation if the annual amount of compensation exceeds four-tenths of one percent (4/10 of 1%) of the principal value of the assets of the trust on the last day of the trust accounting year. ~~The notice shall contain a statement that the qualified beneficiaries have 20 days from when notice is given to file a proceeding for review of the reasonableness of the compensation with the clerk of superior court in accordance with Article 2 of Chapter 36C of the General Statutes.~~

(b) In lieu of giving written notice of each proposed payment of compensation under subsection (a) of this section, the trustee may give written notice to all qualified beneficiaries of the amount of compensation to be paid to the trustee on a periodic basis or of the method of computation of the compensation. The trustee shall not be required to give additional notice to the qualified beneficiaries unless the amount to be paid to the trustee on a periodic basis or the method of computation of the compensation changes.

(c) If a qualified beneficiary is under a legal disability, notice shall be given to the representative of the beneficiary. If a representative of a qualified beneficiary is not available without court order, notice shall be deemed given under this section if there is at least (i) one qualified beneficiary described in G.S. 36C-1-103(15) a. or b. who is not under a legal disability or a representative of a qualified beneficiary so described; and (ii) one qualified beneficiary described in G.S. 36C-1-103(15)c. who is not under a legal disability or a representative of a qualified beneficiary so described.

(c1) The notice provided for in this section shall contain a statement that the qualified beneficiaries or their representatives to whom the notice is given have 20 days from when notice is given to file a proceeding for review of the reasonableness of the compensation with the clerk of superior court in accordance with Article 2 of Chapter 36C of the General Statutes.

(d) The provisions of G.S. 36C-1-109 regarding notices to persons under Chapter 36C of the General Statutes shall apply for purposes of notices under this Article."

SECTION 2. G.S. 36C-5-505 is amended by adding a new subsection to read:

"(c) Subject to Article 3A of Chapter 39 of the General Statutes, for purposes of this section, if the settlor is a beneficiary of the following trusts after the death of the settlor's spouse, the property of the trusts shall, after the death of the settlor's spouse, be deemed to have been contributed by the settlor's spouse and not by the settlor:

(1) An irrevocable intervivos marital trust that is treated as a general power of appointment trust described in section 2523(e) of the Internal Revenue Code.

(2) An irrevocable intervivos marital trust that is treated as qualified terminable interest property under section 2523(f) of the Internal Revenue Code.

(3) An irrevocable intervivos trust of which the settlor's spouse is the sole beneficiary during the lifetime of the settlor's spouse but which does not qualify for the federal gift tax marital deduction.

(4) Another trust, to the extent that the property of the other trust is attributable to property passing from a trust described in subdivision (1), (2), or (3) of this subsection.

For purposes of this subsection, the settlor is a beneficiary whether so named under the initial trust instrument or through the exercise of a limited or general power of appointment."

SECTION 3. G.S. 36C-7-704 reads as rewritten:

"**§ 36C-7-704. Vacancy in trusteeship; appointment of successor.**

(a) A vacancy in a trusteeship occurs if:

(1) A person designated as trustee rejects the trusteeship;

(2) A person designated as trustee cannot be identified or does not exist;

(3) A trustee resigns;

(4) A trustee is disqualified or removed;

(5) A trustee dies; or

(6) A general guardian, guardian of the estate, or guardian of the person is appointed for an individual serving as trustee.

(b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

(c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

(1) By a person designated in the terms of the trust or appointed under the terms of the trust to act as successor trustee;

(2) By a person appointed by unanimous agreement of the qualified beneficiaries; or

(3) By a person appointed by the court.

(d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

(1) By a person designated in the terms of the trust or appointed under the terms of the trust to act as successor trustee;

(2) By a person selected by majority agreement of the qualified beneficiaries, if the trust is a split-interest charitable trust;

(2a) By a person selected by majority agreement of the charitable organizations expressly designated to receive distributions under the terms of the trust; or

(3) By a person appointed by the court.

(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

(f) A successor trustee shall succeed to all the rights, powers, and privileges, and is subject to all the duties, liabilities, and responsibilities that were imposed upon the original trustee, unless a contrary intent appears from the governing instrument or unless the order

appointing the successor trustee provides otherwise. A successor trustee shall be vested with the title to property of the former trustee."

SECTION 4. G.S. 36C-8-816 reads as rewritten:

"**§ 36C-8-816. Specific powers of trustee.**

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

...

(26) On termination of the trust, exercise ~~the~~ all of the powers otherwise exercisable by the trustee during the administration of the trust, including, without limitation, the trustee's investment powers, the power to sell assets, and the powers set forth in subdivision (22) of this section, and exercise the additional powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it;

...."

SECTION 5. G.S. 28A-8-1(b) reads as rewritten:

"(b) No bond shall be required of:

...

(5) A personal representative that is a ~~national banking association having its principal place of business in this State or a State bank acting pursuant to~~ trust institution licensed under G.S. 53-159;

...."

SECTION 6. G.S. 53-43 reads as rewritten:

"**§ 53-43. General powers.**

In addition to the powers conferred by law upon private corporations, banks shall have the power:

...

(6) ~~Maintain~~ To maintain separate departments and deposit in its commercial department to the credit of its trust department all uninvested fiduciary funds of cash and secure, under rules and regulations of the State Banking Commission, all such deposits in the name of the trust department whether in consolidated deposits or for separate fiduciary accounts, by segregating and delivering to the trust department such securities as ~~may be eligible for the investment of the sinking funds of the State of North Carolina, equal in market value to such deposited funds, or readily marketable commercial bonds having not less than a recognized "A" rating equal to one hundred and twenty-five per centum (125%) of such deposits.~~ are required by G.S. 53-163.1 for such deposits. Such securities shall be held by the trust department as security for the full payment or repayment of all such deposits, and shall be kept separate and apart from other assets of the trust department. Until all of such deposits shall have been accounted for to the trust department or to the individual fiduciary accounts, no creditor of the bank shall have any claim or right to such security. When fiduciary funds are deposited by the trust department in the commercial department of the bank, the deposit thereof shall not be deemed to constitute a use of such funds in the general business of the bank and the bank in such instance shall not be liable for interest on such funds. To the extent and in the amount such deposits may be insured by the Federal Deposit Insurance Corporation, the amount of security required for such deposits by this section may be reduced.

The Banking Commission shall have power to make such rules and regulations as it may deem necessary for the enforcement of the provisions of the preceding paragraph, and such authority shall exist and is hereby

conferred under the general authority heretofore conferred upon said Commission as well as by this paragraph.

...."

SECTION 7. Article 14 of Chapter 53 of the General Statutes reads as rewritten:

"Article 14.

"~~Banks~~ Trust Institutions Acting in a Fiduciary Capacity.

"Part 1. General Provisions.

"**§ 53-158.10. Definitions.**

For purposes of this Article, the following definitions apply:

(1) "Depository institution" has the same meaning as set forth in the Federal Deposit Insurance Act, 12 U.S.C. §§ 1811, et seq.

(2) "Hazardous condition" has the same meaning as set forth in G.S. 53-301(a)(23).

(3) "Trust institution" has the same meaning as set forth in G.S. 53-301(a)(52).

"**§ 53-159. ~~Bank~~Trust institution may act as fiduciary.**

Any ~~bank~~ trust institution licensed by the Commissioner of Banks, where such powers or privileges are granted it in its charter, may be guardian, trustee, assignee, receiver, executor or administrator or act in another fiduciary capacity in this State without giving any bond; and the clerks of the superior courts, or other officers charged with the duty or clothed with the power of making such appointments, are authorized to appoint such ~~bank~~ trust institution to any such office.

"**§ 53-159.1. Power of fiduciary or custodian to deposit securities in a clearing corporation.**

Notwithstanding any other provision of law, any fiduciary holding securities in its fiduciary capacity, any ~~bank or trust company~~ trust institution holding securities in a fiduciary capacity or as a custodian or agent is authorized to deposit or arrange for the deposit of such securities ~~in a clearing corporation~~ with a securities intermediary as defined in G.S. 25-8-102. When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such ~~clearing corporation~~ securities intermediary with any other such securities deposited in such ~~clearing corporation~~ securities intermediary by any person regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such ~~bank or trust company~~ trust institution acting as a fiduciary or as a custodian or managing agent shall at all times show the name of the party for whose account the securities are so deposited. Title to such securities may be transferred by bookkeeping entry on the books of such ~~clearing corporation~~ securities intermediary without physical delivery of certificates representing such securities. A ~~bank or trust company~~ trust institution so depositing securities pursuant to this section shall be subject to such rules as, in the case of State-chartered institutions, the State Banking Commission and, in the case of ~~national banking associations, the Comptroller of the Currency~~ other institutions, their regulators may from time to time issue. A ~~bank or trust company~~ trust institution acting as custodian or agent for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such ~~bank or trust company~~ trust institution in such ~~clearing corporation~~ securities intermediary for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such ~~clearing corporation~~ securities intermediary for its account as such fiduciary. This section shall apply to any fiduciary holding securities in its fiduciary capacity, and to any ~~bank or trust company~~ trust institution holding securities as a fiduciary or as a custodian or managing agent acting on May 15, 1973, or who thereafter may act regardless of the date of the agreement, instrument or court order by which it is appointed and regardless

of whether or not such fiduciary, custodian or agent owns capital stock of such ~~clearing corporation~~ securities intermediary. The fiduciary shall personally be liable for any loss to the trust resulting from an act of such nominee in connection with such securities so deposited.

"§ 53-160. License to do business.

Before any such ~~bank or trust company~~ trust institution is authorized to act in any fiduciary capacity without bond, it must be licensed by the Commissioner of Banks of the State. For such license the licensee, for the purpose of defraying necessary expenses of the Commissioner of Banks and the Commissioner's ~~agents in supervising and examining the licensee.~~ agents, shall pay to the Commissioner of Banks an annual license fee ~~not to exceed~~ of five hundred dollars ($500.00). ~~($500.00) as required by rule of the State Banking Commission. A national bank which has been granted trust powers by the Comptroller of the Currency or his duly authorized agent shall be annually licensed as required in this section and shall be granted a certificate of solvency which will meet the provisions of G.S. 53-162 without examination by the Commissioner of Banks as required in G.S. 53-161.~~

"§ 53-161. Examination in connection with license as to solvency.

The Commissioner of Banks ~~shall examine into the solvency of such bank, and shall, if he deem it necessary,~~ may, at the expense of the ~~bank.~~ trust institution, make or cause to be made an examination ~~at its home office of its assets and liabilities. Examinations of trust institutions other than banks shall be as provided in Article 24 of this Chapter.~~ of any trust institution, other than a federally-chartered trust institution, that applies for or is licensed by the Commissioner of Banks. The Commissioner of Banks may refuse to issue a license to a trust institution that it finds to be in a hazardous condition.

~~**"§ 53-162. Certificate of solvency.**~~

~~After any bank has been licensed by the Commissioner of Banks, a certificate issued by the Commissioner of Banks, showing the bank to be solvent to an amount not less than one hundred thousand dollars ($100,000), shall authorize such bank to act in a fiduciary capacity without bond. There shall be no charge for the seal of this certificate.~~

"§ 53-163. Clerk of superior court notified of license and revocation.

The Commissioner of Banks, upon granting license to any ~~such bank or trust company.~~ trust institution, shall immediately notify the clerk of the superior court of each county in the State that the ~~bank or trust company~~ trust institution has been licensed under this Article, and, whenever the Commissioner of Banks is satisfied that any ~~bank or trust company~~ trust institution licensed by the Commissioner ~~has become insolvent, or is in imminent danger of insolvency,~~ is in a hazardous condition, the Commissioner shall revoke the license granted to that ~~bank~~ trust institution and notify the clerk of the superior court of each county in the State of the revocation. ~~After such notification, the right of any such bank or trust company to act in a fiduciary capacity shall cease.~~

"§ 53-163.1. Funds held by a ~~corporation exercising fiduciary powers~~ trust institution awaiting investment or distribution.

(a) Funds held in a fiduciary capacity by a ~~bank, trust company, savings and loan association, or other corporation authorized to exercise the powers of a fiduciary,~~ trust institution awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account. A ~~corporation acting in a fiduciary capacity~~ trust institution has complied with this requirement if such funds awaiting investment or distribution in excess of one thousand dollars ($1,000) are invested or distributed within 30 days of receipt or accumulation thereof.

(b) Funds held in a fiduciary capacity by a ~~bank,~~ depository institution, awaiting investment or distribution may, unless prohibited by the instrument creating the fiduciary relationship, be deposited in the commercial or savings or other department of the ~~bank,~~ depository institution, provided that it shall first set aside under control of the trust department as collateral security, ~~such securities as may be found~~ the classes of securities listed in

~~G.S. 142-34~~ G.S. 159-30(c) as being eligible for the investment ~~of the sinking funds of the State of North Carolina~~ of funds by local governments and public authorities equal in market value of such deposited funds, or readily marketable commercial bonds having not less than a recognized "A" rating equal to one hundred and twenty-five percent (125%) of the funds so deposited.

The securities so deposited or securities substituted therefor as collateral in the trust department by the commercial or savings or other department (as well as the deposit of cash in the commercial or savings or other department by the trust department) shall be held pursuant to the provisions of G.S. 53-43(6).

If such funds are deposited in a ~~bank~~ depository institution insured under the provisions of the Federal Deposit Insurance ~~Corporation,~~ Act, the above collateral security will be required only for that portion of uninvested balances of each trust which are not fully insured under the provisions of that ~~corporation.~~act.

(c) Funds held in a fiduciary capacity by a ~~corporate fiduciary~~ trust institution awaiting investment or distribution may, unless prohibited by the instrument creating the fiduciary relationship, be invested in short-term, trust-quality investment vehicles, through the medium of a collective investment fund or otherwise.

(d) In addition to any other compensation to which it may be entitled under ~~G.S. 28A-23-3, 34-12, 35A-1269,~~ statutes governing the compensation of personal representatives, guardians, or other fiduciaries, or under any other authority, a ~~corporation acting in a fiduciary capacity~~trust institution shall be allowed to charge a fee for the temporary investment of funds held awaiting investment or distribution, which fee may be calculated upon the amount of such funds actually invested and upon the income produced thereby. The fee authorized by this subsection shall not exceed twelve percent (12%) of the income produced by such investment. A ~~corporation acting in a fiduciary capacity~~ trust institution has complied with its duty to disclose fees and practices in connection with the investment of fiduciary funds awaiting investment or distribution if the ~~corporation's~~ trust institution's periodic account statements set forth the method of computing such fees.

"§ 53-163.2. Investments in securities by ~~banks or trust companies.~~ trust institutions.

Unless the governing instrument, court order, or a statute specifically directs otherwise, a ~~bank or trust company~~ trust institution serving as trustee, guardian, agent, or in any other fiduciary capacity may invest in any security authorized by this Chapter even if such fiduciary or an affiliate thereof participates or has participated as a member of a syndicate underwriting such security, if:

(1) The fiduciary does not purchase the security from itself or its affiliate; and

(2) The fiduciary does not purchase the security from another syndicate member or an affiliate, pursuant to an implied or express agreement between the fiduciary or its affiliate and a selling member or its affiliate, to purchase all or part of each other's underwriting commitments.

"Part 2. Uniform Common Trust Fund Act.

"§ 53-163.5. Establishment of common trust funds.

(a) Any ~~bank or trust company~~ trust institution duly authorized to act as a fiduciary in this State may establish and maintain one or more common trust funds for the collective investment of funds held in a fiduciary capacity by such ~~bank or trust company~~ trust institution hereafter referred to as the "maintaining ~~bank".~~ institution." The maintaining ~~bank~~ institution may include for the purposes of collective investment in such common trust fund or funds established and maintained by it, funds held in a fiduciary capacity by any other ~~bank or trust company~~ trust institution duly authorized to act as a ~~fiduciary,~~ fiduciary with which it is affiliated, wherever located, which other ~~bank or trust company~~ trust institution is hereinafter referred to as the "participating ~~bank".~~ institution."

~~Provided, however, that the relationship between the maintaining bank and the participating bank is (i) the maintaining bank owns, controls or is affiliated with the participating bank or (ii) a bank holding company owns, controls or is affiliated with both the maintaining bank and the participating bank.~~

(b) For the purposes of this section, a ~~bank or trust company~~ maintaining institution shall be considered to be ~~owned, controlled or~~ affiliated ~~if twenty five percent (25%) or more of any class of its voting stock is owned by a bank or bank holding company or if twenty five percent (25%) or more of any class of its voting stock is owned by one person or no more than 10 persons who are the same person or persons who own twenty five percent (25%) or more of any class of the voting stock of the maintaining bank.~~ with a participating institution if it controls, is controlled by, or is under common control with the participating institution, as control is determined under the federal Bank Holding Company Act of 1956 or by rule, order, or declaratory ruling of the Commissioner of Banks.

(c) Such common trust funds may include a fund composed solely of funds held under an agency agreement in which the ~~bank or trust company~~ trust institution assumes investment discretion and assumes fiduciary responsibility.

(d) Such ~~bank or trust company~~ trust institution may invest the funds held by it in any fiduciary capacity in one or more common trust funds, provided that (i) such investment is not prohibited by the instrument, judgment, decree or order creating such fiduciary relationship or amendment thereof, and (ii) the ~~bank~~ trust institution has no interest in the assets of the common trust fund other than as a fiduciary.

"§ 53-163.6. Court accountings.

Unless ordered by a court of competent jurisdiction the ~~bank or trust company~~ trust institution operating such common trust fund or funds shall not be required to render a court accounting with regard to such fund or funds; but it may, by application to the superior court, secure approval of such an accounting on such conditions as the court may establish. This section shall not affect the duties of the trustees of the participating trusts under the common trust fund to render accounts of their several trusts.

"§ 53-163.7. Supervision by State Banking Commission.

All common trust funds established under the provisions of this Part shall be subject to the rules and regulations of the State Banking Commission.

"§ 53-163.8. Uniformity of interpretation.

This Part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

"§ 53-163.9. Short title.

This Part may be cited as the Uniform Common Trust Fund Act."

SECTION 8. G.S. 53-301(a) reads as rewritten:

"(a) Except as otherwise provided in this Article, or when the context clearly indicates that a different meaning is intended, the following definitions shall apply throughout this Article:

...

(6a) "Board of directors" means the governing body of a company.

...

(15a) "Director" means a member of the board of directors.

...

(45) "State trust company" means a ~~corporation~~ company organized under the provisions of this Article and a trust company previously organized under other provisions of Chapter 53 of the General Statutes to operate only as a trust company and not as a commercial bank."

SECTION 9. G.S. 53-331(a) reads as rewritten:

"(a) Subject to the other provisions of this Part, one or more persons may organize and charter a State trust company, which may be ~~incorporated~~ established in the manner described in this Part and in no other way."

SECTION 10. G.S. 53-332 reads as rewritten:

"**§ 53-332. Articles of incorporation of State trust company.**

(a) The articles of incorporation of a State trust company shall be signed and acknowledged by or on behalf of each organizer and shall contain:

(1) The information required to be set forth in G.S. 55-2-02(a) and, except for telephone information, G.S. 53-311(c); and

(2) Any provision consistent with G.S. 55-2-02(b) and other applicable law that the organizers elect to set forth in the articles of incorporation for the regulation of the internal affairs of the State trust company.

(b) The Commissioner may allow a State trust company to be organized as a company other than a corporation, and in such case, references in this Article to provisions of Chapter 55 of the General Statutes shall refer to analogous provisions of law governing the formation and operation of that State trust company."

SECTION 11. G.S. 53-335(b) reads as rewritten:

"(b) If the Commissioner orders that the proposed State trust company may be formed, the Commissioner shall issue a State trust company charter and a certification to the Secretary of State permitting the ~~incorporation~~ establishment of the State trust company. The Commissioner may make approval of any application conditional and shall include any conditions in the order granting the charter."

SECTION 12. G.S. 53-352(a) reads as rewritten:

"(a) All corporate powers of a State trust company shall be exercised under the authority of, and the business and affairs of a State trust company shall be managed under the direction of, ~~its~~ a board of directors. Without the approval of the Commissioner, the board shall consist of not less than five directors. ~~The shareholders of a State trust company, at any shareholders' meeting, may authorize not more than two additional directorships which may be left unfilled and to be filled in the discretion of the directors of the State trust company during the interval between shareholders' meetings.~~ Except as specifically provided otherwise in this section, the number, election, term, and classification of the directors of a State trust company shall be governed by the provisions of Chapter 55 of the General Statutes."

SECTION 13. G.S. 53-363(b) reads as rewritten:

"(b) A private trust company engaging in trust business in this State shall comply with all provisions of this Article applicable to a State trust company unless expressly exempted from a provision of this Article by the Commissioner pursuant to this section or prior to the enactment of this Article. However, notwithstanding G.S. 53-352(a), the holders of the equity securities of a private trust company may by unanimous agreement limit the authority of its board of directors; restrict, enlarge, or modify the rights or duties of particular directors; or allocate to an individual or group other than the board of directors some or all of the duties of a board of directors. A private trust company shall notify the Commissioner of the adoption of any agreement affecting the authority of the board of directors within 48 hours and shall provide such information as the Commissioner requests about the agreement. To the extent that an individual or group other than the board of directors is vested with the authority of the board of directors under this section, that individual or group shall be deemed to be acting as the board of directors in the exercise of that authority for all purposes of this Chapter."

SECTION 14. G.S. 53-363(c) reads as rewritten:

"(c) A private trust company or proposed private trust company may request in writing that it be exempted from specified provisions of G.S. 53-333(b), 53-337(a), 53-339, 53-340, 53-341, 53-342, 53-345, 53-346, and 53-394(b). The Commissioner may grant the exemption request in whole or in part. The Commissioner also may issue rules, orders, or declaratory

rulings granting exemptions to all private trust companies, or to private trust companies that meet specified conditions."

SECTION 15. This act becomes effective October 1, 2011, and applies to all trusts created before, on, or after that date.

SENATE BILL 407:
Trusts and Estate Planning Changes

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 7, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition S407-CSRN-5		Committee Counsel

SUMMARY: ***Senate Bill 407 amends the laws governing trusts, estate planning, and trust companies. The Proposed Committee Substitute (1) provides that the annual license fee for trust licenses is set by statute and is $500.00 (was required by rule of the State Banking Commission in an amount not to exceed $500.00), (2) provides that the Commissioner of Banks' ability to examine the condition of a trust institution does not extend to federally-chartered trust institutions, and (3) removes provisions from the First Edition which would have deleted the requirement of reciprocity for out-of-state trust institutions seeking to establish or acquire offices in North Carolina.***

CURRENT LAW AND BACKGROUND: Article 36C of the North Carolina General Statutes is the North Carolina Uniform Trust Code, and Article 6 of Chapter 32 deals with compensation of trustees and other fiduciaries. Article 14 of Chapter 53 governs banks acting in fiduciary capacity. These statutes are part of a complex, highly specialized area of the law.

BILL ANALYSIS:

Sections 1-4 of the bill clarify North Carolina statutes governing trustees and other fiduciaries.

Section 1 amends G.S. 32-55 to clarify the application of the requirement that the notice to the qualified beneficiaries contain a statement that the qualified beneficiaries have 20 days from the date notice is given to file a proceeding for review of the reasonableness of the trustee's compensation with the clerk of superior court. The purpose of the changes is to clarify that the notice applies to any notice under G.S. 32-55 and not just the written notice in subsection (a). The change also clarifies that this requirement applies to notices given to representatives of qualified beneficiaries under a disability.

Section 2 provides that, after the death of the settlor's spouse, certain trust property will be deemed to have been contributed by the settlor's spouse and not the settlor if the settlor is the beneficiary of any of the following trusts:

- An irrevocable intervivos marital trust that is treated as a general power of appointment trust.
- An irrevocable intervivos marital trust that is treated as qualified terminable interest property.
- An irrevocable intervivos trust of which the settlor's spouse is the sole beneficiary during the lifetime of the settlor's spouse but which does not qualify for the federal gift tax marital deduction.
- Another trust, to the extent that the property of the other trust is attributable to property passing from a trust described above.

For purposes of these provisions, the settlor is a beneficiary whether named in the initial trust instrument or through the exercise of a limited or general power of appointment.

Section 3 clarifies that a successor trustee will be vested with the title to property of the former trustee.

Section 4 provides that one of the specific powers of the trustee is, upon termination of the trust, to exercise all of the powers otherwise exercisable by the trustee during the administration of the trust.

Sections 5 through 14 revise statutes governing corporate trustees.

Section 5 clarifies that a bond is not required for a personal representative that is a licensed trust institution.

Section 6 defines acceptable collateral for a bank to post when the trust department invests in deposits of its own bank.

Section 7 makes a number of changes to Article 14 of Chapter 53, the older statute dealing with trust departments, to conform with Article 24 of Chapter 53.

- Enacts a new section (G.S. 53-158.10) to include definitions for "Depository institution." "Hazardous condition," and "Trust institution".
- Replaces "bank" with "trust institution" throughout the Article.
- Deletes the term "clearing corporation" and substitutes the term "securities intermediary."
- Sets a statutory fee for trust licenses at $500.00. (G.S. 53-160).
- Deletes references to "solvency" and allows the Commissioner of Banks (Commissioner) to examine any trust institution, other than a federally chartered trust institution, that applies for or is licensed by the Commissioner; allows the Commissioner to refuse to issue a license to a trust institution in a "hazardous condition." (G.S. 53-160, 161).
- Deletes G.S. 53-162 which required that the Commissioner issue a "certificate of solvency" in connection with giving a trust institution a license to serve without bond.
- Amends G.S. 53-163.5 to clarify the description of affiliated institutions.

The remaining sections conform the statutes to current practice, allow the Commissioner of Banks to permit trust companies to be organized as LLCs, and allow the Commissioner to permit private trust companies to conform with IRS regulations.

Section 8 adds definitions for "Board of directors" and "Director."

Sections 9 and 10 delete the term "incorporated" and substitute the term "established" to facilitate organization as LLCs. Section 10 also authorizes the Commissioner to allow a State trust company to be organized as a company other than a corporation (such as an LLC).

Section 11 deletes the term "incorporation" and substitutes the term "establishment."

Section 12 deletes language which previously allowed shareholders of a State trust company to authorize not more than two additional directorships which could have been left unfilled and could have been filled in the discretion of the directors during the interval between shareholders' meetings.

Section 13 allows private trust companies, which operate for the benefit of one family, to comport with IRS private rulings requiring these companies to delegate governing authority to avoid unfavorable tax treatment. Section 13 provides that the holders of the equity securities of a private trust company may, by unanimous agreement, do all of the following:

- Limit the authority of the board of directors.
- Restrict, enlarge, or modify the rights or duties of particular directors.
- Allocate to an individual or group, other than the board of directors, some of all of the duties of a board of directors.

A private trust company must notify the Commissioner of the adoption of any agreement affecting the board of directors within 48 hours and must provide information that the Commissioner requests about the agreement. If an individual or group other than the board of directors is vested with authority of the board of directors, then that individual or group is deemed to be acting as the board when exercising that authority.

Section 14 allows the Commissioner to permit a private trust company to be exempted from general laws relating to business corporations.

EFFECTIVE DATE: This act becomes effective October 1, 2011, and applies to all trusts created before, on, or after that date.

S407-SMRN-21(CSRN-5) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 414
PROPOSED COMMITTEE SUBSTITUTE S414-CSRO-9 [v.1]

4/6/2011 11:16:16 AM

Short Title: Allow Attorneys' Fees in Business Contracts. (Public)

Sponsors:

Referred to:

March 24, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT RECIPROCAL ATTORNEYS' FEES PROVISIONS IN BUSINESS CONTRACTS ARE VALID AND ENFORCEABLE UNDER THE LAWS OF THIS STATE.

The General Assembly of North Carolina enacts:

SECTION 1. The purpose of this act is to validate reciprocal attorneys' fees provisions in business contracts.

SECTION 2. Article 3 of Chapter 6 of the General Statutes is amended by adding a new section to read:

"**§ 6-21.6. Reciprocal attorneys' fees provisions in business contracts.**

(a) As used in this section, the following definitions apply:

(1) Business contract. – A contract entered into primarily for business or commercial purposes. The term does not include a consumer contract, an employment contract, or a contract to which a government or a governmental agency of this State is a party.

(2) Consumer contract. – A contract entered into by one or more individuals primarily for personal, family, or household purposes.

(3) Employment contract. – A contract between an individual and another party to provide personal services by that individual to the other party, whether the relationship is in the nature of employee-employer or principal-independent contractor.

(4) Reciprocal attorneys' fees provisions. – Provisions in any written business contract by which each signatory to the contract agrees, upon the terms and subject to the conditions set forth in the contract that are made applicable to all parties, to pay or reimburse the other parties for attorneys' fees and expenses incurred by reason of any suit, action, proceeding, or arbitration involving the business contract.

(b) Reciprocal attorneys' fees provisions in business contracts are valid and enforceable for the recovery of reasonable attorneys' fees and expenses.

(c) If a business contract governed by the laws of this State contains a reciprocal attorneys' fees provision, the court or arbitrator in any suit, action, proceeding, or arbitration involving the business contract may award reasonable attorneys' fees in accordance with the terms of the business contract. In determining reasonable attorneys' fees and expenses under

this section, the court or arbitrator may consider all relevant facts and circumstances, including, but not limited to, the following:

(1) The amount in controversy and the results obtained.

(2) The reasonableness of the time and labor expended, and the billing rates charged, by the attorneys.

(3) The novelty and difficulty of the questions raised in the action.

(4) The skill required to perform properly the legal services rendered.

(5) The relative economic circumstances of the parties.

(6) Settlement offers made prior to the institution of the action.

(7) Offers of judgment pursuant to Rule 68 of the North Carolina Rules of Civil Procedure and whether judgment finally obtained was more favorable than such offers.

(8) Whether a party unjustly exercised superior economic bargaining power in the conduct of the action.

(9) The timing of settlement offers.

(10) The amounts of settlement offers as compared to the verdict.

(11) The extent to which the party seeking attorneys' fees prevailed in the action.

(12) The amount of attorneys' fees awarded in similar cases.

(13) The terms of the business contract.

(d) Reasonable attorneys' fees and expenses shall not be governed by (i) any statutory presumption or provision in the business contract providing for a stated percentage of the amount of such attorneys' fees or (ii) the amount recovered in other cases in which the business contract contains reciprocal attorneys' fees provisions.

(e) Nothing in this section shall in any way make valid or invalid attorneys' fees provisions in consumer contracts or in any note, conditional sale contract, or other evidence of indebtedness that is otherwise governed by G.S. 6-21.2. If the business contract is also a note, conditional sale contract, or other evidence of indebtedness that is otherwise governed by G.S. 6-21.2, then the parties that are entitled to recover attorneys' fees and expenses may elect to recover attorneys' fees and expenses either under this section or G.S. 6-21.2, but may recover only once for the same attorneys' fees and expenses."

SECTION 3. This act becomes effective October 1, 2011, and applies to business contracts entered into on or after that date.

PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027

DATE: 4-7 **TIME:** 10 Am

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Jon Mancini	Emerald Isle	Preston
2 Olivia Lanier	Jacksonville	Brown
3		
4		
5		
6		
7		
8		
9		

Do not add names below the grid.

VISITOR REGISTRATION SHEET

Judiciary I — April 7, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gene Causby	NCSCA
[signature]	NCNA TA
Katherine Joyce	NCASA
[signature]	ACC
Ken Crouch	NCBA
[signature]	Womble Carlyle
Stephen Potter	Robbins May & Rich LLP
[signature]	NCBA
Ha Nguyen	NCCOB
McNabb Chestnut	For the OCOB
Annaliese Dolph	DPNC
[signature]	Misc

VISITOR REGISTRATION SHEET

Judiciary I — April 7, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mildred Spearman	AOC

SENATE JUDICIARY I COMMITTEE
Tuesday, April 12, 2011 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on April 12, 2011, in Room 1027 of the Legislative Building. Thirteen members of the committee were present. Senator Peter Brunstetter and Senator Thom Goolsby presided.

Senator Brunstetter called the meeting to order at 10:01 a.m.

House Bill 49
Senator Brunstetter recognized Representative Moore to explain the bill
Senator Brunstetter recognized Susan Sitze to explain the bill
Senator Brunstetter asked for public comment
Senator Brunstetter asked the committee for comments
Senator Goolsby was recognized to ask a question, and Representative Moore answered
Senator Goolsby was recognized for a follow-up question, and Susan Sitze answered
Senator Nesbitt was recognized to ask a question, and Representative Moore answered
Senator Nesbitt asked a follow-up question, and Representative Moore and staff answered
Senator Nesbitt asked a second follow-up question, and Representative Moore answered, and Representative Hastings answered
Senator Nesbitt made follow-up comments
Susan Sitze was recognized to provide follow-up information
Senator Harrington was recognized to move for a favorable report
Senator Brunstetter added a referral to finance
Motion carries unanimously

Senate Bill 272
Senator Goolsby chaired the meeting during this discussion
Senator Tillman moved to adopt the PCS for discussion
Senator Brunstetter was recognized to introduce the bill
Bill Patterson was recognized to explain the bill
Senator Goolsby asked for public comment on the bill
Thomas Caves from Crime Control and Public Safety was recognized
Senator Goolsby asked for comments from the committee
Senator Brown moved for a favorable report at the appropriate time
Senator Stein asked a question, Jess McKeel from the Attorney General's office was recognized to answer
Senator Tillman was recognized to make a comment
Motion that is on the floor carries

The meeting adjourned at 10:31 a.m.

Peter Brunstetter, Presiding

Sarah Hardin, Committee Clerk

Senate Judiciary I Committee
Tuesday, April 12, 2011, 10:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 49	Laura's Law.	Representative Warren Representative Torbett Representative Hastings Representative Moore
SB 272	Victims' Compensation Law Changes.-AB	Senator Brunstetter

Presentations

Other Business

Adjournment

HOUSE BILL 49
Committee Substitute Favorable 2/24/11
Committee Substitute #2 Favorable 3/9/11

Short Title: Laura's Law. (Public)

Sponsors:

Referred to:

February 9, 2011

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PUNISHMENT FOR DWI OFFENDERS WITH THREE OR MORE GROSSLY AGGRAVATING FACTORS, TO AUTHORIZE THE COURT TO REQUIRE CONTINUOUS ALCOHOL MONITORING FOR CERTAIN OFFENDERS, AND TO INCREASE THE COURT COSTS FOR DWI OFFENDERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-179 reads as rewritten:

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

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

...

(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge, or the jury in superior court, must first determine whether there are any grossly aggravating factors in the case. Whether a prior conviction exists under subdivision (1) of this subsection, or whether a conviction exists under subdivision (d)(5) of this section, shall be matters to be determined by the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case remanded back to district court from superior court, the judge shall determine whether the defendant has been convicted of any offense that was not considered at the initial sentencing hearing and impose the appropriate sentence under this section. The judge must impose the Aggravated Level One punishment under subsection (f3) of this section if it is determined that three or more grossly aggravating factors apply. The judge must impose the Level One punishment under subsection (g) of this section if it is determined that two ~~or more~~ grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if it is determined that only one of the grossly aggravating factors applies. The grossly aggravating factors are:

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

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

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

c. The conviction occurred in district court; the case was appealed to superior court; the appeal has been withdrawn, or the case has been remanded back to district court; and a new sentencing hearing has not been held pursuant to G.S. 20-38.7.

Each prior conviction is a separate grossly aggravating factor.

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

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

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

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

...

(f3) Aggravated Level One Punishment. – A defendant subject to Aggravated Level One punishment may be fined up to ten thousand dollars ($10,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 12 months and a maximum term of not more than 36 months. Notwithstanding G.S. 15A-1371, a defendant sentenced to a term of imprisonment pursuant to this subsection shall not be eligible for parole. However, the defendant shall be released from the Department of Correction on the date equivalent to the defendant's maximum imposed term of imprisonment less four months and shall be supervised by the Division of Community Corrections under and subject to the provisions of Article 84A of Chapter 15A of the General Statutes and shall also be required to abstain from alcohol consumption for the four-month period of supervision as verified by a continuous alcohol monitoring system. For purposes of revocation, violation of the requirement to abstain from alcohol or comply with the use of a continuous alcohol monitoring system shall be deemed a controlling condition under G.S. 15A-1368.4.

The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 120 days. Subsection (k1) of this section shall not apply to a defendant sentenced pursuant to this subsection. If the defendant is placed on probation, the judge shall impose as requirements that the defendant (i) abstain from alcohol consumption for a minimum of 120 days to a maximum of the term of probation, as verified by a continuous alcohol monitoring system pursuant to subsections (h1) and (h3) of this section and (ii) obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

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

G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

...

(h1) The judge may impose, as a condition of probation for defendants subject to Level One or Level Two punishments, that the defendant abstain from alcohol consumption for a minimum of 30 days, to a maximum of ~~60 days,~~ the term of probation, as verified by a continuous alcohol monitoring system. ~~The total cost to the defendant for the continuous alcohol monitoring system may not exceed one thousand dollars ($1,000).~~ The defendant's abstinence from alcohol shall be verified by a continuous alcohol monitoring system of a type approved by the Department of Correction.

~~(h2) Notwithstanding the provisions of subsection (h1), if the court finds, upon good cause shown, that the defendant should not be required to pay the costs of the continuous alcohol monitoring system, the court shall not impose the use of a continuous alcohol monitoring system unless the local governmental entity responsible for the incarceration of the defendant in the local confinement facility agrees to pay the costs of the system.~~

(h3) Any fees or costs paid pursuant to ~~subsections (h1) or (h2)~~ subsection (h1) of this section shall be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees or costs collected under this subsection shall be transmitted to the entity providing the continuous alcohol monitoring system.

...

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

...."

SECTION 2. G.S. 20-19(e) reads as rewritten:

"(e) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person has two or more previous offenses involving impaired driving for which the person has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which the person's license is being ~~revoked, or (ii)~~revoked, (ii) G.S. 20-17(a)(2) and the person was sentenced pursuant to G.S. 20-179(f3) for the offense resulting in the revocation, or (iii) G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a4), the revocation is permanent."

SECTION 3. G.S. 20-17.8 reads as rewritten:

"**§ 20-17.8. Restoration of a license after certain driving while impaired convictions; ignition interlock.**

(a) Scope. – This section applies to a person whose license was revoked as a result of a conviction of driving while impaired, G.S. 20-138.1, and:

(1) The person had an alcohol concentration of 0.15 or ~~more; or~~more;

(2) The person has been convicted of another offense involving impaired driving, which offense occurred within seven years immediately preceding

the date of the offense for which the person's license has been ~~revoked.~~revoked; or

(3) The person was sentenced pursuant to G.S. 20-179(f3).

For purposes of subdivision (1) of this subsection, the results of a chemical analysis, as shown by an affidavit or affidavits executed pursuant to G.S. 20-16.2(c1), shall be used by the Division to determine that person's alcohol concentration.

...

(b) **(Effective until December 1, 2014)** Ignition Interlock Required. – Except as provided in subsection (l) of this section, when the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subdivision (a)(2) or (a)(3) of this section, or subsection (a1) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) a violation of G.S. 20-141.4, or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00.

(b) **(Effective December 1, 2014)** Ignition Interlock Required. – Except as provided in subsection (l) of this section, when the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subdivision (a)(2) or (a)(3) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) a violation of G.S. 20-141.4, or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00.

...."

SECTION 4. G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(10) For support of the General Court of Justice, the sum of one hundred dollars ($100.00) is payable by a defendant convicted under G.S. 20-138.1 or G.S. 20-138.2, for a second or subsequent conviction under G.S. 20-138.2A, or for a second or subsequent conviction under G.S. 20-138.2B, to be remitted to the State Treasurer. This fee shall be in addition to the fee required by subdivision (4a) of this subsection."

SECTION 5. G.S. 15A-534 is amended by adding a new subsection to read:

"(i) In addition to any other condition of pretrial release, the judicial official authorizing pretrial release may order any defendant (i) charged with an offense involving impaired driving, as defined by G.S. 20-4.01(24a), and (ii) having a prior conviction for an offense involving impaired driving that occurred within seven years before the date of the offense for which the defendant is being placed on pretrial release to abstain from alcohol consumption as verified by an approved continuous alcohol monitoring system for the period of pretrial release or until this condition is removed by entry of order of a court of competent jurisdiction."

SECTION 6. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

HOUSE BILL 49:
Laura's Law

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 11, 2011
Introduced by:	Reps. T. Moore, Hastings, Torbett, H. Warren	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	Third Edition		

SUMMARY: House Bill 49 would increase the punishment for DWI offenders with three or more grossly aggravating factors, would authorize the court to require continuous alcohol monitoring for certain offenders, and would impose an additional $100 in court costs for DWI offenders.

[As introduced, this bill was identical to S86, as introduced by Sens. Harrington, Clary, Forrester, which is currently in Senate Judiciary I.]

BILL ANALYSIS:

Section 1 would amend subsections (c), (g), and (k1) of G.S. 20-179, and create a new subsection (f3), to create a new, higher, Aggravated Level One punishment for DWI offenders with 3 or more grossly aggravating factors. The punishment would allow a fine up to $10,000 and a term of imprisonment of 12 months to 36 months. A defendant would not be eligible for parole on any term of imprisonment under this level of sentencing. However, the defendant would be released 4 months prior to the maximum imposed prison term for a period of supervision including continuous alcohol monitoring.

The term of imprisonment could be suspended if a special condition of probation is imposed to require the defendant to serve a term of imprisonment of at least 120 days. The defendant would not be able to receive credit for inpatient treatment towards the term of imprisonment. The defendant would also be required to comply with continuous alcohol monitoring for a minimum of 120 days to a maximum of the term of probation.

This section would also amend subsections (h1), (h2), and (h3) of G.S. 20-179 to make the following changes to the current provisions relating to the use of continuous alcohol monitoring:

- Would remove the current limitation of 60 days on the use of continuous alcohol monitoring, and allow the court to require the use for the full term of probation
- Would remove the current restriction that the total cost to the defendant for continuous alcohol monitoring not be more than $1,000
- Would remove the provision in current law that allows the court to find that the defendant should not be required to pay the costs of continuous alcohol monitoring, and in that case to not impose the requirement unless the local government entity responsible for the incarceration of the defendant in the local confinement facility agrees to pay the cost of the system

Section 2 would provide for a permanent revocation for persons sentenced as an Aggravated Level One offender. This particular "permanent" revocation authorizes a person to apply for conditional license restoration after 3 years.

Section 3 would require a person sentenced as an Aggravated Level One offender to have an ignition interlock system installed on their vehicle for a period of 7 years after license restoration, and that they not drive with an alcohol concentration (BAC) of greater than 0.00.

Section 4 would impose an additional court cost of $100 on all persons convicted of a driving while impaired offense. This fee would be in addition to the current fees, which total approximately $141, plus any fines, restitution, attorneys' fees, or other fees, such as probation supervision or lab fees, that may be imposed.

Section 5 would authorize, but not require, that a person charged with an offense involving impaired driving be required to comply with continuous alcohol monitoring as a condition of pre-trial release if they have a prior conviction of an offense involving impaired driving that occurred within 7 years.

EFFECTIVE DATE: This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

BACKGROUND:

There are currently 5 levels of DWI sentencing described briefly as follows:

Level One – 2 or more grossly aggravating factors, fine up to $4,000, imprisonment of 30 days to 24 months, with mandatory 30 days active

Level Two – 1 grossly aggravating factor, fine up to $2,000, imprisonment of 7 days to 12 months, with mandatory 7 days active

Level Three – no grossly aggravating factors, but the aggravating factors outweigh the mitigating factors, fine up to $1,000, imprisonment of 72 hours to 6 months, with mandatory 72 hours active or 72 hours community service or both

Level Four – no aggravating and mitigating factors, or aggravating factors are substantially counterbalanced by mitigating factors, fine up to $500, imprisonment of 48 hours to 120 days, with mandatory 48 hours active or 48 hours community service or both

Level Five – mitigating factors substantially outweigh any aggravating factors, fine up to $200, imprisonment of 24 hours to 60 days, with mandatory 24 hours active or 24 hours community service or both

Grossly aggravating factors are:

- Prior DWI conviction within 7 years
- Driving while license revoked for an impaired driving conviction
- Serious injury to another person caused by the impaired driving
- Driving while impaired with a child under 16 in the vehicle

Aggravating factors include factors such as: a BAC level of 0.15 or more, reckless driving, driving while license revoked, an accident resulting from the impaired driving, and some previous motor vehicle convictions.

Mitigating factors include factors such as: a BAC level of less than 0.09, safe driving except for the impairment, a safe driving record, impairment caused by lawfully prescribed drug for an existing medical condition, and voluntary submission to substance abuse assessment.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)
REVISED

BILL NUMBER: House Bill 49 (Third Edition)

SHORT TITLE: Laura's Law.

SPONSOR(S): Representatives T. Moore, Hastings, Torbett, and H. Warren

FISCAL IMPACT

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

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUE:		**See Assumptions and Methodology**			
EXPENDITURES:					
Correction		**See Assumptions and Methodology**			
Probation		**See Assumptions and Methodology**			
Judicial		**See Assumptions and Methodology**			

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

EFFECTIVE DATE: This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

**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.*

FISCAL SUMMARY:

The Administrative Office of the Courts (AOC) estimated that 23,200 defendants convicted in FY 2008-09 of the applicable offenses paid the full General Court of Justice fees owed. If all 23,200 paid the additional $100 fee, total revenue from defendants sentenced in the first 12 months of implementation would be $2.32 million, collected over 24 months.

The Department of Correction Office of Research and Planning (DOC) examined 519 entries to prison with DWI Level One as their most serious offense in FY 2009-2010. DOC estimated 275

of the 519 offenders (53 percent) would be re-assigned to Aggravated Level One punishment and serve an additional 62 days in prison. The estimated total cost of 62 additional days is $238,700 per year (62 days x $14 per day x 275 offenders). There is no resource impact on the Division of Community Corrections. The 275 offenders would be absorbed into existing caseloads across the State. In addition, DOC does not anticipate any additional capital costs based on the estimated number of offenders who would be sentenced under the new Aggravated Level One DWI offense.

BILL SUMMARY:

The proposed legislation would:

1. Increase the punishment for DWI offenders with three or more grossly aggravating factors;
2. Authorize the court to require continuous alcohol monitoring for certain offenders; and
3. Impose an additional $100 in court costs for DWI offenders.

The proposed legislation is effective December 1, 2011, and applies to offenses committed on or after that date.

Source: Adopted from Committee Counsel's bill summary dated March 11, 2011.

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.

However, the Sentencing and Policy Advisory Commission was unable to prepare prison population projections for the proposed legislation. DWI's are not punished under Structured Sentencing, so the Sentencing Commission does not have any DWI offender data. As a result, the Department of Correction Office of Research and Planning (DOC) was asked to estimate the fiscal impact of the proposed legislation.

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.

Section 1:
This section amends G.S. 20-179 to create a new, higher, Aggravated Level One punishment for DWI offenders with three or more grossly aggravating factors. The punishment would allow a fine up to $10,000 and a term of imprisonment of 12 to 36 months. A defendant would not be eligible

for parole. However, the defendant would be released four months (120 days) prior to the maximum prison term for a period of supervision including continuous alcohol monitoring (CAM).

This section also amends subsections (h1), (h2), and (h3) of G.S. 20-179 to make the following changes to the current provisions relating to the use of CAM:

- Remove the current limitation of 60 days on the use of CAM, and allow the court to require the use for the full term of probation;
- Remove the current restriction that the total cost to the defendant for CAM not be more than $1,000; and
- Remove the provision in current law that allows the court to find that the defendant should not be required to pay the costs of CAM, and in that case to not impose the requirement unless the local government entity responsible for the incarceration of the defendant in the local confinement facility agrees to pay the cost of the system.

DOC Impact: To estimate eligibility for Aggravated Level One punishment, the Department of Correction Office of Research and Planning (DOC) examined 519 entries to prison with DWI Level One as their most serious offense in FY 2009-10. DOC reviewed the offender's commitments and arrest record to determine the following:

1. Whether the offender had any prior DWI offenses and instances of concurrent driving while license revoked charges;
2. Whether, at the time of the offense, the defendant's impaired driving caused serious injury to another person; and
3. Whether, at the time of the offense, the defendant was driving while a child under the age of 16 was in the vehicle.

Inmates were assigned one factor for each prior offense, and one factor for each aggravating condition, then the factors were summed for each inmate. Inmates with a total of three or more factors were placed in Aggravated Level One for the purposes of this analysis. Inmates with only two factors remained in Level One. In total, DOC estimated that 275 offenders would be re-assigned to Aggravated Level One punishment.

In FY 2009-10, the average sentence for DWI Level One offenders was 501 days. DOC estimated the expected new sentence for Aggravated Level One offenders to be 926 days. Under current law, Level One inmates served approximately 33 percent of the average sentence, or 165 days (501 days x 33 percent); non-paroled Level One inmates served approximately 41 percent of the average sentence, or 205 days (501 x 41 percent). For purposes of this analysis, DOC assumed that Aggravated Level One offenders would serve approximately the same percentage as current non-paroled DWI Level One inmates (41 percent). Therefore, the expected number of prison days served by new Aggravated Level One offenders would be 380 days (926 x 41 percent). After subtracting 120 days for post-release supervision, the adjusted time would be approximately 260 days in prison. Without the proposed legislation, Aggravated Level One offenders would be expected to serve 198 days. The difference between the adjusted days (260 days) and the time

expected to serve without the proposed legislation (198 days) would be 62 days. Overall, offenders sentenced as Aggravated Level One are estimated to spend 62 more days in prison than those convicted for a Level One offense.

The cost of the additional days for offenders in the Aggravated Level One punishment was estimated by multiplying the number of potential days served by $14 per day per inmate. The following table illustrates the methodology used by DOC:

Entry Level	Expected New Sentence	Percent Expected to Serve	Expected Prison Days	Minus Post-Release	Adjusted Days	Expected DART-Cherry Time	Expected to Serve without New Legislation	Impact
Level One	501	0.33	165	0	165	33	198	0
Aggravated Level One	926	0.41	380	120	260	0	198	62

Using the methodology above, 275 of the 519 offenders (53 percent) would be re-assigned to Aggravated Level One punishment. The estimated total cost of 62 additional days is $238,700 per year (62 days x $14 per day x 275 offenders). There is no resource impact on the Division of Community Corrections. The 275 offenders would be absorbed into existing caseloads across the State. In addition, DOC does not anticipate any additional capital costs based on the estimated number of offenders who would be sentenced under the new Aggravated Level One DWI offense.

DOC also noted that inmates convicted of DWI Level One may enter prison with some other crime as the most serious offense. During FY 2009-2010, there were 118 inmates who entered prison with a Level One conviction to be served concurrently or consecutively to a more serious crime. Of these inmates, DOC estimates that 61 (51.7 percent) would be eligible for Aggravated Level One. The changes in sentence range for inmates convicted of Aggravated Level One may extend these inmates stay in prison, depending upon the sentence received for other crimes. DOC was unable to estimate the impact for these inmates at this time.

AOC Impact: The Administrative Office of the Courts (AOC) also provided a case estimate for the new Aggravated Level One punishment for DWI offenders. Under current law, a judge must impose the Level One punishment under subsection (g) of this section, if it is determined that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if it is determined that only one of the grossly aggravating factors applies.

For Calendar Year 2010, AOC data shows the following:

DWI Level	Grossly Aggravating Factors*	Defendants Convicted**	Percent of Total
Level 1	2 or more	3,939	9.5%
Level 2	1	6,215	14.9%
Levels 3 - 5	none	31,528	75.6%
Total		**41,682**	**100.0%**

*AOC data does not contain details on the number of grossly aggravating factors found or alleged. However, G.S. 20-179 requires a Level One conviction if two or more grossly aggravating factors are found and a Level Two conviction if one grossly aggravating factor is found.

**Note: Typically, Judicial cost estimates are based on charges, rather than convictions. However, since a Level One or Level Two DWI conviction is determined at sentencing based on findings of grossly aggravating factors, in this instance convictions are a more appropriate measure of workload.

For their analysis, AOC accounted for all DWI convictions, including offenders who received active, intermediate, and community punishment. Overall in 2010, DWI convictions with any grossly aggravating factors accounted for 28 percent of all DWI convictions, and DWI convictions with more than one grossly aggravating factor accounted for 39 percent of all DWI convictions with grossly aggravating factors (or 10 percent of all DWI convictions). AOC cannot determine the number of Level One convictions that had at least three grossly aggravating factors.

Elevation from Level One to Aggravated Level One carries the potential for a substantial increase in punishment. In general, AOC expects that an increase in punishment will lead to a more vigorous defense, thus requiring more time on the part of court personnel. However, the district attorney is already obligated to introduce all aggravating and grossly aggravating factors of which they are aware, and anecdotal evidence suggests that DWI charges are already defended vigorously. Therefore, AOC does not anticipate that this portion of the bill will significantly impact court workload at the time of conviction.

However, because this legislation increases the maximum fine amount and increases court costs, it is likely that the violation rate for some DWI probationers would increase, resulting in more court hearings on those violations. The number or impact of such hearings cannot be projected. There will be some one-time programming and form changes to include the new offense in the necessary reports to DMV. These costs are not anticipated to be substantial.

In terms of the elimination of duration and cost caps for continuous alcohol monitoring (CAM), G.S. 20-179(h1)–(h3) currently provide that, when imposing a Level One or Level Two punishment for conviction of DWI, the court may impose a condition of probation that the defendant abstain from the consumption of alcohol for up to 60 days. The defendant's compliance with this condition is to be monitored by the use of a CAM system approved by the Department of Correction. The costs (up to $1,000) are borne by the defendant or, if the court finds for good cause that the defendant should not bear the costs of CAM, by the local government entity responsible for his incarceration. If neither the defendant nor the local government can bear the costs, the judge may not require CAM. The costs of CAM are paid to the Clerk of Court for distribution to the vendor providing the monitoring system.

Section 1 amends the current CAM provisions in G.S. 20-179 to eliminate:

- The cap of 60 days (proposed: CAM could be imposed for the duration of probation);
- The $1,000 cap on CAM costs (proposed: no limitation); and,
- The provision that CAM may not be imposed if there is no party available to pay for it (proposed: unknown; there is no clear authority to assess costs or their allocation).

By repealing G.S. 20-179(h2) and the assessment of costs in subsection (h1), it is unclear how costs for CAM would be assessed or allocated to a responsible party. Subsection (h3) would continue to provide that "any fees or costs paid under subsection[s] (h1)" would be collected by the clerk and paid to the CAM vendor. If the intention of the bill is that the costs of CAM would be assessed against the defendant, it is possible that judges would be less likely to impose as a condition of probation that offenders abstain from alcohol consumption under 20-179(h1). AOC cannot project the impact of this potential change in terms of other conditions that might be imposed instead, or on any resulting impact on probationer compliance and behavior. Any increase in probation revocation hearings would impact court workload.

Approximately, 1,200 people in North Carolina have been placed on CAM since December of 2004. The name of the company providing CAM in North Carolina is Rehabilitation Support Services, LLC. CAM cost $75 to install and $12 per day for daily monitoring fees. The CAM System is delivered on an offender-pay model, so the offender absorbs either all or a significant portion of the cost for the equipment and daily monitoring fees. Currently, approximately 90% of offenders on CAM are paying for all or a significant portion of CAM fees. Approximately 10% receive some sort of government funding to subsidize the daily cost. Pay is collected by the Clerks of Court for a Level 1 or Level 2 DWI offense and sent to Rehabilitation Support Services, LLC. Any other alcohol-related offender on CAM pays directly to Rehabilitation Support Services, LLC. If a defendant is late on their payments (typically up to one month late), Rehabilitation Support Services, LLC will remove CAM and the defendant would be in violation of the terms of their probation. The Division of Community Corrections reviewed their records to determine how many offenders were revoked to prison as a result of a CAM sanction. Since January 1, 2010, no one has been revoked to prison or jail for not paying CAM fees.

Section 2:
This section provides for a permanent revocation for persons sentenced as an Aggravated Level One offender. This particular "permanent" revocation authorizes a person to apply for conditional license restoration after 3 years.

Impact: Costs associated with this section are offender based. Therefore, Section 2 does not impose a fiscal impact to the State.

Section 3:
This section requires a person sentenced as an Aggravated Level One offender to have an ignition interlock system installed on their vehicle for a period of seven years after license restoration, preventing them from driving with an alcohol concentration (BAC) of greater than 0.00.

Impact: Costs associated with this section are offender based. Therefore, Section 3 does not impose a fiscal impact to the State.

Section 4:
This section imposes an additional court cost of $100 on all persons convicted of a driving while impaired offense.

Impact: According to AOC, there was a total of 41,682 defendants convicted of a DWI in calendar year 2010. For the purpose of determining the amount of revenue the new fee would provide the General Fund, the AOC analyzed the number of DWI offenders who paid in full by 2009-10. Due to data limitations, AOC is unable to determine the exact number of DWI offenders convicted in FY 2008-09 who paid in full by FY 2009-10. This is due to the court's focus on offender compliance with all terms of probation, rather than solely on money collected. Offenders may have received some reduction or waiver of fees and complied in full with the judgments rendered, and some defendants may still be on probation and making payments. In addition, it is important to note that costs due the State are toward the end of the priority order, and DWI probation terms are more than one year. Therefore, AOC would expect to see a gradual increase in revenue over the first three fiscal years.

At this time, AOC estimates that 23,200 defendants convicted in FY 2008-09 of the applicable offenses paid the full General Court of Justice fees owed. If all 23,200 paid the additional $100 fee, total revenue from defendants sentenced in the first 12 months of implementation would be $2.32 million, collected over 24 months. (Note: effective date is December 1, 2011, so collections would be spread over three fiscal years.)

However, it is likely that some of the offenders would pay only part of the new fee, or collections would be diminished in other accounts with lower priorities. If the equivalent of 50 percent paid the full fee, collections from that group would be $1.16 million, collected over 24 months. If the equivalent of ten percent paid the full fee, collections from that group would be $232,000, collected over 24 months.

Additionally, there will be a one-time impact on workload for information technology and legal staff, and ongoing impact on clerk workload, for any new fee that is imposed only on conviction of specific cases.

Section 5:

This section authorizes that a person charged with an offense involving impaired driving be required to comply with CAM as a condition of pre-trial release if they have a prior conviction of an offense involving impaired driving that occurred within seven years.

Impact: Judges have the discretion to order CAM for pretrial release for any offender charged with an offense involving impaired driving if they have a previous conviction within the past seven years. Costs associated with this section would be offender based. Therefore, Section 5 does not impose a fiscal impact to the State.

SOURCES OF DATA: Department of Correction Office of Research and Planning; Judicial Branch

TECHNICAL CONSIDERATIONS: none

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Sarah Stone; Kristine Leggett

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: March 21, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 272

Short Title:	Victims' Compensation Law Changes.-AB	(Public)
Sponsors:	Senator Brunstetter.	
Referred to:	Judiciary I.	

March 9, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF DEPENDENT FOR THE PURPOSES OF CRIME VICTIMS' COMPENSATION, TO CLARIFY CONFIDENTIALITY OF CRIME VICTIMS COMPENSATION COMMISSION RECORDS, TO REQUIRE SUSPENSION OF THE PAYMENT OF BENEFITS UPON REQUEST OF THE ATTORNEY GENERAL, AND TO CLARIFY THE HANDLING OF WRITE-OFFS FOR CLAIMS HANDLED BY THE CRIME VICTIMS COMPENSATION COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15B-2 reads as rewritten:

"**§ 15B-2. Definitions.**

As used in this Article, the following definitions apply, unless the context requires otherwise:

...

(6) Dependent. – An individual wholly ~~or substantially~~ dependent upon the victim for care and support and includes a child of the victim born after his death.

~~(7) Dependent's economic loss. – Loss after a victim's death of contributions of things of economic value to his dependents, not including services they would have received from the victim if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death.~~

...."

SECTION 2. G.S. 15B-8.1(b) reads as rewritten:

"(b) ~~All medical information relating to the mental, physical, or emotional condition of a victim or claimant and all law enforcement records and information and any juvenile records shall be held confidential by the Commission and Director. Except for information held confidential under this subsection, the records of the Division shall be open to public inspection.~~All records of the Division shall be open to public inspection. Information that is not public record shall be kept confidential by the Commission and the Director and disclosed only to victims and claimants and includes the following:

(1) All medical information relating to the mental, physical, or emotional condition of a victim or claimant.

(2) All law enforcement records.

(3) All juvenile records.

(4) All personal information, as that term is defined in 18 U.S.C. § 2725(3), of victims and claimants.

(5) All information concerning the disposition of claims for compensation, except for the total amount awarded a victim or claimant."

SECTION 3. G.S. 15B-14(b) reads as rewritten:

"(b) Upon a request of the Attorney General, the proceedings in a claim for an award of compensation ~~may~~ shall be suspended pending disposition of a criminal prosecution that has been commenced or is imminent."

SECTION 4. G.S. 15B-16 reads as rewritten:

"**§ 15B-16. Manner of payment; non-assignability and ~~exemptions.~~exemptions; refunds; negotiations; write-offs.**

(a) The Director shall pay award payments directly to the service provider on behalf of the claimant. Eligible out-of-pocket costs borne by the claimant shall be paid directly to the victim only if such costs can be documented and verified.

(b) Upon request of the claimant, future economic loss, other than allowable expense, may be commuted to a lump sum only on a finding that:

(1) The award in a lump sum will promote the interests of the claimant; or

(2) The present value of all future economic loss other than allowable expense does not exceed one thousand dollars ($1,000).

(c) An award for future economic loss payable in installments may be made only for a period as to which future economic loss can reasonably be determined. An award for future economic loss payable in installments may be reconsidered and modified upon a finding that a material and substantial change of circumstances has occurred.

(d) An order on reconsideration of an award may not require refund of amounts previously paid unless the award was obtained by fraud.

(e) The Director, even after an award made by the Commission, may negotiate with any service provider in order to obtain a reduction of the amount claimed by the provider in exchange for a full release of any claim against a claimant.

(f) Providers who write off bills to a victim or a claimant may not at any time after the write-off seek reimbursement from the Commission, the Director, the victim, or the claimant for the amount written off."

SECTION 5. This act becomes effective July 1, 2011, and applies to claims submitted on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 272
PROPOSED COMMITTEE SUBSTITUTE S272-CSTG-5 [v.6]

4/11/2011 3:40:07 PM

Short Title: Victims' Compensation Law Changes.-AB (Public)

Sponsors:

Referred to:

March 9, 2011

AN ACT TO CLARIFY THE ROLE OF CHARITABLE DONATIONS AND WRITE-OFFS AS COLLATERAL SOURCES FOR CRIME VICTIMS COMPENSATION, TO MODIFY THE SCOPE OF DEPENDENT'S ECONOMIC LOSS FOR CRIME VICTIMS COMPENSATION, TO CLARIFY THE CONFIDENTIALITY OF CRIME VICTIMS COMPENSATION COMMISSION RECORDS, AND TO REQUIRE SUSPENSION OF CRIME VICTIMS COMPENSATION PROCEEDINGS UPON REQUEST OF THE ATTORNEY GENERAL..

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15B-2 reads as rewritten:

"**§ 15B-2. Definitions.**

As used in this Article, the following definitions apply, unless the context requires otherwise:

...

(3) Collateral source. – A source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received or that is readily available to the victim or the claimant from any of the following sources:

a. The offender.
b. The government of the United States or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states.
c. Social Security, Medicare, or Medicaid.
d. State-required, temporary, nonoccupational disability insurance.
e. Worker's compensation.
f. Wage continuation programs of any employer.
g. Proceeds of a contract of insurance payable to the victim for loss that the victim sustained because of the criminally injurious conduct.
h. A contract providing prepaid hospital and other health care services, or benefits for disability.
i. A contract of insurance that will pay for expenses directly related to a funeral, cremation, and burial, including transportation of a body.

j. A charitable gift or donation by a third-party, including a charity care write-off of expenses by a medical provider, regardless of whether the gift or donation is subsequently rescinded.

...

(7) Dependent's economic loss. – Loss after a victim's death of contributions of things of economic value to his dependents, not including services they would have received from the victim if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death. Dependent's economic loss will be limited to a 26-week period commencing from the date of the injury and compensation shall not exceed three hundred dollars ($300.00) per week.

..."

SECTION 2. G.S. 15B-8.1(b) reads as rewritten:

"(b) All medical information relating to the mental, physical, or emotional condition of a victim or claimant and all law enforcement records and information and any juvenile records shall be held confidential by the Commission and Director. All personal information, as that term is defined in 18 U.S.C. § 2725(3), of victims and claimants and all information concerning the disposition of claims for compensation, except for the total amount awarded a victim or claimant, shall be held confidential by the Commission and Director. Except for information held confidential under this subsection, the records of the Division shall be open to public inspection."

SECTION 3. G.S. 15B-11(f) is repealed.

SECTION 4. G.S. 15B-14(b) reads as rewritten:

"(b) Upon a request of the Attorney General, the proceedings in a claim for an award of compensation ~~may~~ shall be suspended pending disposition of a criminal prosecution that has been commenced or is imminent."

SECTION 5. This act becomes effective July 1, 2011, and applies to claims submitted on or after that date.

SENATE BILL 272:
Victims' Compensation Law Changes.-AB

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 21, 2011
Introduced by:	Sen. Brunstetter	**Prepared by:**	Bill Patterson
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***The PCS to Senate Bill 272 increases the weekly benefit payable under the Crime Victims Compensation Act to a victim's dependent from $200 to $300 per week, for up to 26 weeks, and makes technical and clarifying changes to the Act. The PCS rewrote the bill's original Sections 1 and 2, added a new Section 3, renumbered original Section 3 as Section 4, deleted the original Section 4, and revised the bill's long title.***

CURRENT LAW: Under the North Carolina Crime Victims Compensation Act[1], a claimant may be reimbursed for economic loss[2] suffered as a result of certain crimes[3] committed in this State. Victims as well as their dependents are eligible claimants under the Act. Except for benefits for which a shorter duration is prescribed in the Act, economic loss generally must occur within one year of the date of the criminally injurious conduct to be compensable.[4] A "dependent" is an individual "wholly or substantially dependent upon the victim for care and support".[5] Compensation for a dependent's economic loss is limited to $200 per week, with no maximum duration specified in the Act.[6]

The following claims-related information is confidential and not subject to public disclosure by the Commission and its Director[7]:

- medical information relating to the mental, physical or emotional condition of a victim or claimant
- law enforcement records and information
- juvenile records

Proceedings in a claim for an award of compensation may be suspended upon a request by the Attorney General pending the disposition of a current or impending criminal prosecution.[8] If a provider of services to a victim accepts compensation from the Commission, the provider agrees not to seek further compensation from the claimant.[9] A "collateral source[10]" is prohibited from enforcing any right of subrogation by recovery from a claimant of any portion of an award under the Crime Victims Compensation Act.[11]

BILL ANALYSIS: Section 1 of the PCS expands the current definition of "collateral source" to include a "charitable gift or donation by a third-party, including a charity care write-off of expenses by a medical provider, regardless of whether the gift or donation is subsequently rescinded." Such a collateral source will not be entitled to pursue subrogation out of a claimant's recovery under the Act.

Section 1 also increases the limit on compensation for a dependent's economic loss to $300 per week, and limits the duration of such compensation to a maximum of 26 weeks after the date of the injury.

Section 2 requires the Commission and its Director to keep the following information confidential:

- personal information[12] of victims and claimants
- information concerning the disposition of claims for compensation other than the total amount awarded to a victim or claimant

Section 3 repeals G.S. 15B-11(f), which contained limits on the amount and duration of benefits; these limits are now provided in G.S. 15B-2, as amended by the PCS.

Section 4 of the PCS amends G.S. 15B-14(b) to require, rather than merely permit, suspension of compensation proceedings upon request of the Attorney General during the pendency of an ongoing or impending prosecution.

EFFECTIVE DATE: This act becomes effective July 1, 2011, and applies to claims submitted on or after that date.

S272-SMTG-9(e1) v3

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[1] Article 1 of Chapter 15B of the General Statutes.

[2] Economic loss includes:

- Medical care, rehabilitation, medically-related property, and other remedial treatment and care
- Loss of income from work
- Expenses reasonably incurred by the victim in obtaining ordinary and necessary services in lieu of those the injured person would have performed for himself or his family
- In the case of an unemployed victim whose spouse is the offender, the loss of support that a victim would have received from the victim's spouse for the purpose of maintaining a home or residence for the victim and the victim's dependents
- In the case of a victim's death, up to $5,000 for funeral expenses, a dependent's economic loss, and a dependent's replacement service loss.

G.S. 15B-2(10).

[3] Compensation is available for "criminally injurious conduct," defined as "[c]onduct that by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death," or would be so punishable but for the perpetrator's diminished capacity. G.S. 15B-2(5), G.S. 15B-4.

[4] G.S. 15B-11(a)(2). Victims who were 10 years old or younger at the time the injury occurred may be compensated for economic loss incurred within two years from the criminally injurious conduct. Id.

[5] G.S. 15B-2(6).

[6] G.S. 15B-11(f). By omission of any specific durational limitation, the effective limit is the one year limit imposed under G.S. 15B-11(a)(2).

[7] G.S. 15B-8.1(b).

[8] G.S. 15B-14(b).

[9] G.S. 15B-2(1).

[10] "Collateral source is defined as:

> "A source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received or that is readily available to the victim or the claimant from any of the following sources:
>
> a. The offender.
> b. The government of the United States or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states.
> c. Social Security, Medicare, or Medicaid.
> d. State-required, temporary, nonoccupational disability insurance.
> e. Worker's compensation.
> f. Wage continuation programs of any employer.
> g. Proceeds of a contract of insurance payable to the victim for loss that the victim sustained because of the criminally injurious conduct.
> h. A contract providing prepaid hospital and other health care services, or benefits for disability.
> i. A contract of insurance that will pay for expenses directly related to a funeral, cremation, and burial, including transportation of a body."

G.S. 15B-2(3).

[11] G.S. 15B-19.

[12] The bill adopts the definition of "personal information" found in 18 U.S.C. § 2725(3): "information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status."

PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027B

DATE: 4-12 **TIME:** 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Nick Spraker	Munteo	White
2 Mary Shell	Bryson City	Davis
3		
4		
5		
6		
7		
8		
9		

Do not add names below the grid.

VISITOR REGISTRATION SHEET

Senate Judiciary I — April 12, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nicole Sullivan	Dept of Correction
Penny Griffin	School of Gov.
N Dhuill	NC medSec
[illegible]	[illegible]
[illegible]	Victims Comp / CCPS
[illegible]	DOJ
[illegible]	ACOAT
[illegible]	NCAJ
[illegible]	[illegible]
Nash Roberts	[illegible]
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety

VISITOR REGISTRATION SHEET

Senate Judiciary I — April 12, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tim Kent	NC Beer & Wine Wholesalers
David Teddy	Atty at Law
Bill Powers	Atty at Law
John Fanney	Atty at Law
Tom Bennett	NCVAN
Colleen Kochanek	ICLG
Katherine Ross	PPAB
Tom V[illegible]	CFTF
Philip Isley	NCAE
Cathy Hawkins	Duke Energy
Ken Crank	NCBA

VISITOR REGISTRATION SHEET

Senate Judiciary I — April 12, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Volanti	Volanti Group, LLC
JGoodman	KC Chamber
John Rolfes	NCBA

SENATE JUDICIARY I COMMITTEE
Thursday, April 14, 2011 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on April 14, 2011, in Room 1027 of the Legislative Building. Thirteen members of the committee were present. Senator Thom Goolsby presided.

Senator Goolsby called the meeting to order at 10:02 a.m.

SB 379 was moved to Tuesday

Senate Bill 364
Senator Goolsby called on Senator Clodfelter to explain the bill
Senator Tillman moves for a favorable report
Motion carries

Senate Bill 457
Senator Goolsby called upon Senator Clodfelter to explain the bill
Senator Goolsby called upon Stephen Later of the Bar Association to make comments on the bill
Senator Goolsby asked for further public comment
Senator Goolsby recognized Senator Stevens to ask a question, and Senator Clodfelter answered
Senator Goolsby recognized Senator Jenkins to ask a question, and Senator Clodfelter answered
Senator Goolsby made comments
Senator Goolsby recognized Senator Tillman to make an observation, and a motion for a favorable report
Senator Clodfelter spoke on the motion
Motion carries

Senate Bill 419—for discussion only
Senator Goolsby called upon Senator Davis to introduce the bill
Senator Goolsby called upon Erika Churchill to explain the bill
Senator Goolsby asked for public comment
Senator Goolsby recognized Bob Hall from Democracy NC to comment on the bill and ask a question, and Erika Churchill answered
Bob Hall made further comments on the bill
Senator Goolsby recognized Bob Phillips from Common Cause NC to make comments on the bill
Senator Goolsby called upon Senator Tillman to ask a question
Senator Goolsby called upon Chris Tolesca, voter and activist, to make comments on the bill and answer Senator Tillman's question
Senator Stein was recognized to make comments and answer Senator Tillman's question
Carrie Sutton from the Advocates for Justice was recognized to speak on the bill and answer Senator Tillman's question
Senator Nesbitt was recognized to ask a question, and Erika Churchill answered
Senator Nesbitt was recognized for a follow up question, and Erika Churchill answered
Senator Nesbitt was recognized for a second follow up question, and Erika Churchill answered
Senator Nesbitt was recognized for a third follow up question, and Senator Davis answered

Senator Mansfield was recognized to ask a question, and Erika Churchill answered
Senator Mansfield was recognized to ask a follow up question and Senator Davis answered
Senator Soucek was recognized to ask a question and Erika Churchill answered
Senator Soucek was recognized for a follow up comment
Senator Stevens was recognized to ask a question, and Erika Churchill said she would get the answer for the Senator
Senator Stein was recognized to make comments
Erika Churchill was recognized for clarification
Senator Brock was recognized to ask a question, and Erika Churchill answered
Senator Stein was recognized to respond to Senator Brock
Senator Brock was recognized to make comments
Senator Stevens was recognized to ask a question, and Erika Churchill answered
Senator Stevens was recognized for a follow-up question, and Erika Churchill answered
Senator Nesbitt was recognized to make comments
Senator Goolsby made comments

Meeting adjourned at 10:44 a.m.

Thom Goolsby, Presiding

Sarah Hardin, Committee Clerk

Senate Judiciary I Committee
Thursday, April 14, 2011, 10:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 379	Revise Restitution Damage Awards.	Senator Goolsby
SB 364	Cancel Aircraft Lien W/ Surety Bond Deposit.	Senator Clodfelter
SB 457	Amend Article 13 of Business Corporation Act.	Senator Clodfelter
SB 419	Campaign Finance and Regulatory Reforms. *For discussion only*	Senator Davis

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 379

Short Title:	Revise Restitution Damage Awards.	(Public)
Sponsors:	Senators Goolsby; Daniel, Davis, Gunn, Hise, Newton, Rabon, Soucek, and Tucker.	
Referred to:	Judiciary I.	

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO REVISE THE MANNER IN WHICH RESTITUTION DAMAGES ARE CALCULATED SO THAT VICTIMS IN PERSONAL INJURY CASES MAY RECEIVE FULL COMPENSATION FOR THEIR DAMAGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.34 reads as rewritten:

"**§ 15A-1340.34. Restitution generally.**

(a) When sentencing a defendant convicted of a criminal offense, the court shall determine whether the defendant shall be ordered to make restitution to any victim of the offense in question. For purposes of this Article, the term "victim" means a person directly and proximately harmed as a result of the defendant's commission of the criminal ~~offense.~~offense, or a third-party payor, including an insurer, which has made payment to the victim to compensate the victim for any costs or losses described in G.S. 15A-1340.35.

(b) If the defendant is being sentenced for an offense for which the victim is entitled to restitution under Article 46 of this Chapter, the court shall, in addition to any penalty authorized by law, require that the defendant make restitution ~~to the victim or the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant.~~ for any injuries or damages arising directly and proximately out of the offense committed by the defendant to the victim, the victim's estate, or a third-party payor, including an insurer, that has made payment to the victim or the victim's estate to compensate the victim for such injuries or damages. If the defendant is placed on probation or post-release supervision, any restitution ordered under this subsection shall be a condition of probation as provided in G.S. 15A-1343(d) or a condition of post-release supervision as provided in G.S. 148-57.1.

(c) When subsection (b) of this section does not apply, the court may, in addition to any other penalty authorized by law, require that the defendant make restitution to the victim or the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant."

SECTION 2. G.S. 15A-1340.35 reads as rewritten:

"**§ 15A-1340.35. Basis for restitution.**

(a) In determining the amount of restitution, the court shall consider the following:

(1) In the case of an offense resulting in bodily injury to a victim:

a. The cost of necessary medical and related professional services and devices or equipment relating to physical, psychiatric, and psychological care required by the ~~victim;~~ victim.

b. The cost of necessary physical and occupational therapy and rehabilitation required by the ~~victim; and~~ victim.
c. Income lost by the victim as a result of the offense.
d. Pain and suffering of the victim as a result of the offense.

(2) In the case of an offense resulting in the damage, loss, or destruction of property of a victim of the offense:
a. Return of the property to the owner of the property or someone designated by the owner; or
b. If return of the property under sub-subdivision (2)a. of this subsection is impossible, impracticable, or inadequate:
1. The value of the property on the date of the damage, loss, or destruction; or
2. The value of the property on the date of sentencing, less the value of any part of the property that is returned.

(3) Any measure of restitution specifically provided by law for the offense committed by the defendant.

(4) In the case of an offense resulting in bodily injury that results in the death of the victim, the cost of the victim's necessary funeral and related services, in addition to the items set out in subdivisions (1), (2), and (3) of this subsection.

(b) The court may require that the victim or the victim's estate provide admissible evidence that documents the costs claimed by the victim or the victim's estate under this section. Any such documentation shall be shared with the defendant before the sentencing hearing.

(c) Costs awarded under sub-subdivision (a)(1)d. of this section shall be limited to five hundred thousand dollars ($500,000) for each victim for all offenses occurring contemporaneously.

SECTION 3. This act becomes effective October 1, 2011, and applies to any order of restitution issued on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 379
PROPOSED COMMITTEE SUBSTITUTE S379-CSTG-7 [v.2]

4/4/2011 2:46:17 PM

Short Title: Revise Restitution Damage Awards. (Public)

Sponsors:

Referred to:

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO REVISE THE MANNER IN WHICH RESTITUTION DAMAGES ARE CALCULATED SO THAT VICTIMS IN PERSONAL INJURY CASES MAY RECEIVE FULL COMPENSATION FOR THEIR DAMAGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.34 reads as rewritten:

"**§ 15A-1340.34. Restitution generally.**

(a) When sentencing a defendant convicted of a criminal offense, the court shall determine whether the defendant shall be ordered to make restitution to any victim of the offense in question. For purposes of this Article, the term "victim" means a person directly and proximately harmed as a result of the defendant's commission of the criminal ~~offense.~~offense, or a third-party payor that has made payment to the victim to compensate the victim for any costs or losses described in G.S. 15A-1340.35. For purposes of this article, the term "third-party payer" shall include an insurer other than an insurer making payment to the victim pursuant to coverage provided to the defendant.

(b) If the defendant is being sentenced for an offense for which the victim is entitled to restitution under Article 46 of this Chapter, the court shall, in addition to any penalty authorized by law, require that the defendant make restitution ~~to the victim or the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant.~~ for any injuries or damages arising directly and proximately out of the offense committed by the defendant to the victim, the victim's estate, or a third-party payor that has made payment to the victim or the victim's estate to compensate the victim for such injuries or damages. The order for restitution shall require that all restitution payable to the victim or the victim's estate be paid in full before any restitution is paid to any third-party payor. If the defendant is placed on probation or post-release supervision, any restitution ordered under this subsection shall be a condition of probation as provided in G.S. 15A-1343(d) or a condition of post-release supervision as provided in G.S. 148-57.1.

(c) When subsection (b) of this section does not apply, the court may, in addition to any other penalty authorized by law, require that the defendant make restitution to the victim or the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant."

SECTION 2. G.S. 15A-1340.35 reads as rewritten:

"**§ 15A-1340.35. Basis for restitution.**

(a) In determining the amount of restitution, the court shall consider the following:

(1) In the case of an offense resulting in bodily injury to a victim:
a. The cost of necessary medical and related professional services and devices or equipment relating to physical, psychiatric, and psychological care required by the ~~victim;~~ victim.
b. The cost of necessary physical and occupational therapy and rehabilitation required by the ~~victim; and~~ victim.
c. Income lost by the victim as a result of the offense.
d. Pain, suffering, disfigurement, brain damage, paralysis, physical impairment, or death of the victim as a result of the offense.

(2) In the case of an offense resulting in the damage, loss, or destruction of property of a victim of the offense:
a. Return of the property to the owner of the property or someone designated by the owner; or
b. If return of the property under sub-subdivision (2)a. of this subsection is impossible, impracticable, or inadequate:
1. The value of the property on the date of the damage, loss, or destruction; or
2. The value of the property on the date of sentencing, less the value of any part of the property that is returned.

(3) Any measure of restitution specifically provided by law for the offense committed by the defendant.

(4) In the case of an offense resulting in bodily injury that results in the death of the victim, the cost of the victim's necessary funeral and related services, in addition to the items set out in subdivisions (1), (2), and (3) of this subsection.

(b) The court may require that the victim or the victim's estate provide admissible evidence that documents the costs claimed by the victim or the victim's estate under this section. Any such documentation shall be shared with the defendant before the sentencing hearing.

(c) Restitution awarded based upon consideration of the factors listed in sub-subdivision (a)(1)d. of this section shall be limited to five hundred thousand dollars ($500,000) for each victim for all offenses occurring contemporaneously.

SECTION 3. This act becomes effective October 1, 2011, and applies to any order of restitution issued on or after that date.

SENATE BILL 379:
Revise Restitution Damage Awards

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 4, 2011
Introduced by:	Sen. Goolsby	**Prepared by:**	Bill Patterson
Analysis of:	PCS to First Edition S379-CSTG-7		Committee Counsel

SUMMARY: ***In sentencing defendants convicted of offenses for which the victim is entitled to restitution, Senate Bill 379 requires restitution to be made not only to the victim or the victim's estate, but also to any third-party payer, including an insurer other than the defendant's insurer, which has paid the victim or the victim's estate for any damages for which restitution may be paid. The bill also expands the list of factors that a court can consider in awarding restitution to include the victim's pain, suffering, disfigurement, brain damage, paralysis, permanent impairment, or death of the victim, and puts a limit of $500,000 on the amount of restitution that may be ordered based on a consideration of these non-economic damages. The PCS excludes the defendant's insurer from the definition of "third-party payer" entitled to restitution, requires that the victim or victim's estate be paid in full before a third-party payer can receive payment, expands the class of non-economic damages that may be considered by a court in setting the amount of restitution, and makes a technical change to the language in subsection (c).***

CURRENT LAW: Restitution to victims of crime is governed by Article 81C of Chapter 15A of the General Statutes. G.S. 15A-1340.34 requires that in sentencing a defendant for a crime for which the victim is entitled to restitution, the court shall, in addition to any penalty authorized by law, require the defendant to make restitution to the victim or the victim's estate for any injuries or damages directly resulting from the offense committed by the defendant. In determining the amount of restitution in the case of offenses resulting in bodily injury to a victim, G.S. 15A-1340.35(a)(1) requires the court to consider the following costs and losses resulting from the offense:

- The cost of medical treatment required by the victim
- The cost of physical and occupational therapy and rehabilitation required by the victim
- The victim's lost income[1]

In determining the amount of restitution, courts are not permitted to consider the victim's pain and suffering.[2]

BILL ANALYSIS: The PCS amends G.S. 15A-1340.34 to require the defendant to make restitution not only to the victim or the victim's estate, but also to a third-party payer who has paid the victim or the victim's estate compensation for injuries or damages arising out of the criminal offense. Third-party payers include insurers, other than insurers paying the victim pursuant to coverage provided to the defendant.

[1] These factors are also considered when restitution is ordered as a condition of probation or post-release supervision. G.S. 15A-1343(d), G.S. 148-57.1(c).

[2] "The trial court's basis for awarding restitution is limited to quantifiable costs, income, and values of the kind set out in N.C. Gen.Stat. § 15A-1340.35." State v. Wilson, 158 N.C.App. 235, 240, 580 S.E.2d 386, 390 (2003).

The PCS also amends G.S. 15A-1340.35(a)(1) applicable to offenses involving bodily injury to require courts to consider pain, suffering, disfigurement, brain damage, paralysis, permanent impairment, or death of the victim resulting from the offense when determining the amount of restitution. The PCS also adds a new subsection (c) to G.S. 15A-1340.35 limiting any restitution awarded based on a consideration of the victim's non-economic damages to $500,000.

EFFECTIVE DATE: This act becomes effective October 1, 2011, and applies to any order of restitution issued on or after that date.

S379-SMTG-12(CSTG-7) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 364

Short Title:	Cancel Aircraft Lien W/ Surety Bond Deposit.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Insurance.	

March 17, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE CANCELLATION OF AN AIRCRAFT LABOR AND STORAGE LIEN WHEN A SURETY BOND IN AN AMOUNT EQUAL TO ONE AND ONE-FOURTH TIMES THE AMOUNT OF THE LIEN CLAIMED IS DEPOSITED WITH THE CLERK OF COURT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44A-75 reads as rewritten:

"**§ 44A-75. Termination of a lien on an aircraft.**

(a) Termination by Payment of Amount Owed. – Any lien under this Article shall be terminated upon receipt by the lienor of the full amount owed for the labor, skill, or materials on the aircraft, and for storage of the aircraft, which amount shall not be limited to any amount shown on the notice of lien filed under G.S. 44A-60, if a notice of lien has been filed by the lienor. Upon receipt of the amount owed, the lienor or the lienor's agent shall release the aircraft to the owner, if the aircraft is in the possession of the lienor, and shall, within 20 days following a request in writing by the aircraft owner, file with the clerk of court a notice of satisfaction of lien, if a notice of lien has been filed by the lienor. A notice of satisfaction of lien shall state that the amount owed for the lienor's expenditure of labor, skill, or materials on the aircraft, and for the storage of the aircraft, has been paid and the lien against the aircraft has been terminated. The notice of satisfaction of lien shall be sworn to or affirmed, and subscribed by the lienor or by someone on the lienor's behalf having personal knowledge of the facts. Upon the filing of a notice of satisfaction of lien, the clerk of court shall make an entry of acknowledgment of satisfaction in the index.

(b) Termination by Deposit of Surety Bond. – Any lien under this Article shall be terminated by the clerk of court whenever a surety bond in a sum equal to one and one-fourth times the amount of the lien claimed against the aircraft and conditioned upon the payment of the amount finally determined to be due in satisfaction of the lien is deposited with the clerk of court. When a deposit that satisfies this subsection is made, the lienor or the lienor's agent shall release the aircraft to the owner, if the aircraft is in the possession of the lienor."

SECTION 2. This act is effective when it becomes law and applies to liens perfected under this Article on or after that date.

SENATE BILL 364:
Cancel Aircraft Lien W/ Surety Bond Deposit

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 14, 2011
Introduced by:	Sen. Clodfelter	**Prepared by:**	Brad Krehely
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 364 would require the cancellation of an aircraft labor and storage lien when a surety bond in an amount of 1 and ¼ times the amount of the lien claimed is deposited with the clerk of court.

CURRENT LAW: Any person who has expended labor, skill, or materials on an aircraft or has furnished storage for an aircraft at the request of its owner has a perfected lien on the aircraft. The lien begins on the date the expenditure of labor, skill, or materials or the storage commenced. The amount of the lien is the contract price for the expenditure of labor, skill, or materials or for the storage. If there is no contract, the amount of the lien is "the reasonable worth of the expenditure of labor, skill, or materials, or of the storage." The lien survives even if the possession of the aircraft is surrendered by the lienor.

The lien expires 120 days after the date the lienor voluntarily surrenders possession of the aircraft, unless the lienor, prior to the expiration of the 120 day period, files a notice of lien in the office of the clerk of court of the county in which the labor, skill, or materials were expended on the aircraft, or the storage was furnished for the aircraft.

A lien under this Article must be terminated if the lienor receives the full amount owed for the labor, skill, or materials on the aircraft and for storage of the aircraft. Upon receiving the amount owed, the lienor or the lienor's agent must release the aircraft to the owner if the aircraft is in possession of the lienor. Within 20 days after receiving a request in writing by the aircraft owner, the lienor or lienor's agent, must file a notice of satisfaction of the lien with the clerk of superior court (if the lienor has filed a notice of lien).

BILL ANALYSIS: Senate Bill 364 would require the clerk of court to terminate an aircraft labor and storage lien whenever a surety bond (1) in an amount equal to 1 and ¼ times the amount of the lien claimed and (2) conditioned upon the payment of the amount due to satisfy the lien is deposited with the clerk of court. If these requirements are satisfied, the lienor or the lienor's agent must release the aircraft to the owner if the lienor has possession of the aircraft. The act also retains the provisions of current law which allow termination if the lienor receives payment of the amount owed.

EFFECTIVE DATE: The act is effective when it becomes law and applies to liens perfected under this Article on or after that date.

S364-SMRN-23(e1) v6

SENATE BILL 457

Short Title:	Amend Article 13 of Business Corporation Act.	(Public)
Sponsors:	Senators Clodfelter; and Hartsell.	
Referred to:	Judiciary I.	

March 30, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND ARTICLE 13 OF THE NORTH CAROLINA BUSINESS CORPORATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 55 of the General Statutes reads as rewritten:

"Article 13.

"~~Dissenters'~~ Appraisal Rights.

"Part 1. Right to ~~Dissent~~ Appraisal and ~~Obtain~~ Payment for Shares.

"**§ 55-13-01. Definitions.**

In this ~~Article:~~Article, the following definitions apply:

(1) Affiliate. – A person that directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person or is a senior executive thereof. For purposes of G.S. 55-13-01(7), a person is deemed to be an affiliate of its senior executives.

(2) Beneficial shareholder. – A person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.

~~(1)~~(3) ~~"Corporation" means the~~ Corporation. – The issuer of the shares held by a ~~dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.~~ shareholder demanding appraisal and, for matters covered in G.S. 55-13-22 through G.S. 55-13-31, the term includes the surviving entity in a merger.

~~(2) "Dissenter" means a shareholder who is entitled to dissent from corporate action under G.S. 55-13-02 and who exercises that right when and in the manner required by G.S. 55-13-20 through 55-13-28.~~

(4) Expenses. – Reasonable expenses of every kind that are incurred in connection with a matter, including counsel fees.

~~(3)~~(5) ~~"Fair value", with respect to a dissenter's shares, means the value of the shares~~ Fair value. – The value of the corporation's shares (i) immediately before the effectuation of the corporate action as to which the ~~dissenter objects,~~ shareholder asserts appraisal rights, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be ~~inequitable.~~inequitable, (ii) using customary and current valuation concepts and techniques generally employed for similar business in the context of the transaction requiring appraisal, and (iii) without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles pursuant to G.S. 55-13-02(a)(5).

~~(4)~~(6) ~~"Interest" means interest~~ Interest. – Interest from the effective date of the corporate action until the date of payment, at ~~a rate that is fair and equitable under all the circumstances, giving due consideration to the rate currently paid by the corporation on its principal bank loans, if any, but not less than the rate provided in G.S. 24-1.~~ the rate of interest on judgments in this State on the effective date of the corporate action.

(7) Interested transaction. – A corporate action described in G.S. 55-13-02(a), other than a merger pursuant to G.S. 55-11-04, involving an interested person and in which any of the shares or assets of the corporation are being acquired or converted. As used in this definition, the following definitions apply:

a. Interested person. – A person, or an affiliate of a person, who at any time during the one-year period immediately preceding approval by the board of directors of the corporate action met any of the following conditions:

1. Was the beneficial owner of twenty percent (20%) or more of the voting power of the corporation, other than as owner of excluded shares.

2. Had the power, contractually or otherwise, other than as owner of excluded shares, to cause the appointment or election of twenty-five percent (25%) or more of the directors to the board of directors of the corporation.

3. Was a senior executive or director of the corporation or a senior executive of any affiliate thereof, and that senior executive or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than any of the following:

I. Employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action.

II. Employment, consulting, retirement, or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in G.S. 55-8-31(a)(1) and (c).

III. In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity, or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of the acquiring entity or such affiliate of the acquiring entity.

b. Beneficial owner. – Any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares. If a member of a national securities exchange is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted, then that

member of a national securities exchange shall not be deemed a "beneficial owner" of any securities held directly or indirectly by the member on behalf of another person solely because the member is the record holder of the securities. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby is deemed to have acquired beneficial ownership, as of the date of the agreement, of all voting shares of the corporation beneficially owned by any member of the group.

c. Excluded shares. – Shares acquired pursuant to an offer for all shares having voting power if the offer was made within one year prior to the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action.

(8) Preferred shares. – A class or series of shares the holders of which have preference over any other class or series with respect to distributions.

~~(5)~~(9) ~~"Record shareholder" means the~~ Record shareholder. – The person in whose name shares are registered in the records of ~~a~~ the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with ~~a~~ the corporation.

~~(6) "Beneficial shareholder" means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.~~

(10) Senior executive. – The chief executive officer, chief operating officer, chief financial officer, or anyone in charge of a principal business unit or function.

~~(7)~~(11) ~~"Shareholder" means the~~ Shareholder. – Both a record shareholder ~~or the~~ and a beneficial shareholder.

"**§ 55-13-02. Right to ~~dissent.~~ appraisal.**

(a) In addition to any rights granted under Article 9, a shareholder is entitled to ~~dissent from,~~ appraisal rights and to obtain payment of the fair value of ~~his shares~~ that shareholder's shares, in the event ~~of,~~ of any of the following corporate actions:

(1) Consummation of a ~~plan of~~ merger to which the corporation ~~(other than a parent corporation in a merger whose shares are not affected under G.S. 55-11-04)~~ is a party ~~unless (i) approval by the shareholders of that corporation is not required under G.S. 55-11-03(g) or (ii) such shares are then redeemable by the corporation at a price not greater than the cash to be received in exchange for such shares;~~ if either (i) shareholder approval is required for the merger by G.S. 55-11-03 and the shareholder is entitled to vote on the merger, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger or (ii) the corporation is a subsidiary and the merger is governed by G.S. 55-11-04.

(2) Consummation of a ~~plan of~~ share exchange to which the corporation is a party as the corporation whose shares will be ~~acquired, unless such shares are then redeemable by the corporation at a price not greater than the cash to be received in exchange for such shares;~~ acquired if the shareholder is entitled to vote on the exchange, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged.

~~(2a) Consummation of a plan of conversion pursuant to Part 2 of Article 11A of this Chapter;~~

(3) ~~Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than as permitted by G.S. 55-12-01,~~

~~including a sale in dissolution, but not including a sale pursuant to court order or a sale pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed in cash to the shareholders within one year after the date of sale;~~ Consummation of a disposition of assets pursuant to G.S. 55-12-02 if the shareholder is entitled to vote on the disposition.

(4) An amendment of the articles of incorporation ~~that materially and adversely affects rights in respect of a dissenter's shares because it (i) alters or abolishes a preferential right of the shares; (ii) creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares; (iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities; (iv) excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than an amendment of the articles of incorporation permitting action without meeting to be taken by less than all shareholders entitled to vote, without advance notice, or both, as provided in G.S. 55-7-04; (v)~~ (i) with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has an obligation or right to repurchase the fractional share so ~~created is to be acquired for cash under G.S. 55-6-04;~~ created or ~~(vi)~~ (ii) changes the corporation into a nonprofit corporation or cooperative ~~organization; or~~ organization.

(5) Any ~~corporate action taken pursuant to a shareholder vote to the extent~~ other amendment to the articles of incorporation, merger, share exchange, or disposition of assets to the extent provided by the articles of incorporation, bylaws, or a resolution of the board of ~~directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.~~ directors.

(6) Consummation of a conversion to a foreign corporation pursuant to Part 2 of Article 11A of this Chapter if the shareholder does not receive shares in the foreign corporation resulting from the conversion that (i) have terms as favorable to the shareholder in all material respects and (ii) represent at least the same percentage interest of the total voting rights of the outstanding shares of the corporation as the shares held by the shareholder before the conversion.

(7) Consummation of a conversion of the corporation to nonprofit status pursuant to Part 2 of Article 11A of this Chapter.

(8) Consummation of a conversion of the corporation to an unincorporated entity pursuant to Part 2 of Article 11A of this Chapter.

(b) ~~A shareholder entitled to dissent and obtain payment for his shares under this Article may not challenge the corporate action creating his entitlement, including without limitation a merger solely or partly in exchange for cash or other property, unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.~~ Notwithstanding subsection (a) of this section, the availability of appraisal rights under subdivisions (1), (2), (3), (4), (6), and (8) of subsection (a) of this section shall be limited in accordance with the following provisions:

(1) Appraisal rights shall not be available for the holders of shares of any class or series of shares that are any of the following:

a. A covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933, as amended.

b. Traded in an organized market and has at least 2,000 shareholders and a market value of at least twenty million dollars ($20,000,000)

(exclusive of the value of shares held by the corporation's subsidiaries, senior executives, directors, and beneficial shareholders owning more than ten percent (10%) of such shares).

c. Issued by an open-end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as amended, and may be redeemed at the option of the holder at net asset value.

(2) The applicability of subdivision (1) of this subsection shall be determined as of (i) the record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action requiring appraisal rights or (ii) the day before the effective date of such corporate action if there is no meeting of shareholders.

(3) Subdivision (1) of this subsection shall not be applicable and appraisal rights shall be available pursuant to subsection (a) of this section for the holders of any class or series of shares who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subdivision (1) of this subsection at the time the corporate action becomes effective.

(4) Subdivision (1) of this subsection shall not be applicable and appraisal rights shall be available pursuant to subsection (a) of this section for the holders of any class or series of shares where the corporate action is an interested transaction.

(c) ~~Notwithstanding any other provision of this Article, there shall be no right of shareholders to dissent from, or obtain payment of the fair value of the shares in the event of, the corporate actions set forth in subdivisions (1), (2), or (3) of subsection (a) of this section if the affected shares are any class or series which, at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting at which the plan of merger or share exchange or the sale or exchange of property is to be acted on, were (i) listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or (ii) held by at least 2,000 record shareholders. This subsection does not apply in cases in which either:~~

~~(1) The articles of incorporation, bylaws, or a resolution of the board of directors of the corporation issuing the shares provide otherwise; or~~

~~(2) In the case of a plan of merger or share exchange, the holders of the class or series are required under the plan of merger or share exchange to accept for the shares anything except:~~

~~a. Cash;~~

~~b. Shares, or shares and cash in lieu of fractional shares of the surviving or acquiring corporation, or of any other corporation which, at the record date fixed to determine the shareholders entitled to receive notice of and vote at the meeting at which the plan of merger or share exchange is to be acted on, were either listed subject to notice of issuance on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or held by at least 2,000 record shareholders; or~~

~~c. A combination of cash and shares as set forth in sub-subdivisions a. and b. of this subdivision.~~

Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment to the articles may limit or eliminate appraisal rights for any class or series of preferred shares. Any amendment to the articles that limits or eliminates appraisal rights for any shares that are outstanding immediately prior to the effective date of the amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange, or other right existing immediately before the effective date of the amendment, however, shall not apply to any corporate action that becomes effective within one year of that date if the corporate action would otherwise afford appraisal rights.

(d) A shareholder holding shares of a class or series that were issued and outstanding as of the effective date of this act but that did not as of that date entitle the shareholder to vote on a corporate action described in subdivision (a)(1), (2), or (3) of this section shall be entitled to appraisal rights, and to obtain payment of the fair value of the shareholder's shares of such class or series, to the same extent as if such shares did entitle the shareholder to vote on such corporate action.

"§ 55-13-03. ~~Dissent by nominees and beneficial owners.~~ Assertion of rights by nominees and beneficial owners.

(a) A record shareholder may assert ~~dissenters'~~ appraisal rights as to fewer than all the shares registered in ~~his name only if he dissents~~ the record shareholder's name but owned by a beneficial shareholder only if the record shareholder (i) objects with respect to all shares ~~beneficially~~ of the class or series owned by ~~any one person~~ the beneficial shareholder and (ii) notifies the corporation in writing of the name and address of each ~~person~~ beneficial shareholder on whose behalf ~~he asserts dissenters' rights.~~ appraisal rights are being asserted. The rights of a ~~partial dissenter~~ record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection ~~are~~ shall be determined as if the shares as to which ~~he dissents and his~~ the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(b) A beneficial shareholder may assert ~~dissenters'~~ appraisal rights as to shares of any class or series held on ~~his~~ behalf of the shareholder only ~~if:~~ if the shareholder does both of the following:

(1) ~~He submits~~ Submits to the corporation the record shareholder's written consent to the ~~dissent not~~ assertion of rights no later than the ~~time the beneficial shareholder asserts dissenters' rights; and~~ date referred to in G.S. 55-13-22(b)(2)b.

(2) ~~He does so~~ Submits written consent under subdivision (1) of this subsection with respect to all shares of ~~which he is~~ the class or series that are beneficially owned by the beneficial shareholder.

"§§ 55-13-04 through 55-13-19. Reserved for future codification purposes.

"Part 2. Procedure for Exercise of ~~Dissenters'~~ Appraisal Rights.

"§ 55-13-20. Notice of ~~dissenters' rights.~~appraisal rights.

(a) If ~~proposed~~ any corporate action ~~creating dissenters' rights under G.S. 55-13-02~~ specified in G.S. 55-13-02(a) is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that shareholders ~~are~~ are, are not, or may be entitled to assert ~~dissenters'~~ appraisal rights under this ~~Article and be accompanied by~~ Article. If the corporation concludes that appraisal rights are or may be available, a copy of this ~~Article.~~ Article must accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(b) ~~If corporate action creating dissenters' rights under G.S. 55-13-02 is taken without a vote of shareholders or is taken by shareholder action without meeting under G.S. 55-7-04, the corporation shall no later than 10 days thereafter~~In a merger pursuant to G.S. 55-11-04, the parent corporation must notify in writing all record shareholders of the subsidiary who are

entitled to assert ~~dissenters' rights that the action was taken and send them the dissenters' notice~~ appraisal rights that the corporate action became effective. In the case of any other corporate action specified in G.S. 55-13-02(a) with respect to which shareholders of a class or series do not have the right to vote, but with respect to which those shareholders are entitled to assert appraisal rights, the corporation must notify in writing all record shareholders of such class or series that the corporate action became effective. Notice required under this subsection must be sent within 10 days after the corporate action became effective and include the materials described in G.S. 55-13-22. ~~A shareholder who consents to shareholder action taken without meeting under G.S. 55-7-04 approving a corporate action is not entitled to payment for the shareholder's shares under this Article with respect to that corporate action.~~

(c) If ~~a corporation fails to comply with the requirements of this section, such failure shall not invalidate any corporate action taken; but any shareholder may recover from the corporation any damage which he suffered from such failure in a civil action brought in his own name within three years after the taking of the corporate action creating dissenters' rights under G.S. 55-13-02 unless he voted for such corporate action.~~ any corporate action specified in G.S. 55-13-02(a) is to be approved by written consent of the shareholders pursuant to G.S. 55-7-04, then the following must occur:

(1) Written notice that appraisal rights are, are not, or may be available must be given to each record shareholder from whom a consent is solicited at the time consent of each shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this Article.

(2) Written notice that appraisal rights are, are not, or may be available must be delivered together with the notice to the applicable shareholders required by subsections (d) and (e) of G.S. 55-7-04, may include the materials described in G.S. 55-13-22, and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this Article.

(d) If any corporate action described in G.S. 55-13-02(a) is proposed, or a merger pursuant to G.S. 55-11-04 is effected, then the notice referred to in subsection (a) or (c) of this section, if the corporation concludes that appraisal rights are or may be available, and in subsection (b) of this section shall be accompanied by the following:

(1) The annual financial statements specified in G.S. 55-16-20(a) of the corporation that issued the shares to be appraised. The date of the financial statements shall not be more than 16 months before the date of the notice and shall comply with G.S. 55-16-20(b). If annual financial statements that meet the requirements of this subdivision are not reasonably available, then the corporation shall provide reasonably equivalent financial information.

(2) The latest available quarterly financial statements of the corporation, if any.

The right to receive the information described in this subsection may be waived in writing by a shareholder before or after the corporate action.

"§ 55-13-21. Notice of intent to demand ~~payment.~~payment and consequences of voting or consenting.

(a) If ~~proposed~~ a corporate action ~~creating dissenters' rights under G.S. 55-13-02~~ specified in G.S. 55-13-02(a) is submitted to a vote at a shareholders' meeting, a shareholder who is entitled to vote on the corporate action and who wishes to assert ~~dissenters' rights:~~ appraisal rights with respect to any class or series of shares must do the following:

(1) ~~Must give~~ Deliver to the corporation, ~~and the corporation must actually receive,~~ before the vote is ~~taken~~ taken, written notice of ~~his~~ the shareholder's intent to demand payment ~~for his shares~~ if the proposed action is ~~effectuated; and~~ effectuated.

(2) ~~Must not vote his~~ Not vote, or cause or permit to be voted, any shares of any class or series in favor of the proposed action.

(b) If a corporate action specified in G.S. 55-13-02(a) is to be approved by less than unanimous written consent, a shareholder who is entitled to vote on the corporate action and who wishes to assert appraisal rights with respect to any class or series of shares must not execute a consent in favor of the proposed action with respect to that class or series of shares.

(c) A shareholder who ~~does not~~ fails to satisfy the requirements of subsection (a) or (b) of this section is not entitled to payment ~~for his shares~~ under this Article.

"**§ 55-13-22. ~~Dissenters' notice.~~ Appraisal notice and form.**

(a) If ~~proposed~~ a corporate action ~~creating dissenters'~~ requiring appraisal rights under ~~G.S. 55-13-02~~ G.S. 55-13-02(a) ~~is approved at a shareholders' meeting,~~ becomes effective, the corporation ~~shall mail by registered or certified mail, return receipt requested,~~ must deliver a written ~~dissenters'~~ appraisal notice and form required by subdivision (b)(1) of this section to all shareholders who satisfied the requirements of G.S. 55-13-21. In the case of a merger under G.S. 55-11-04, the parent corporation must deliver a written appraisal notice and form to all record shareholders of the subsidiary who may be entitled to assert appraisal rights. In the case of any other corporate action specified in G.S. 55-13-02(a) that becomes effective and with respect to which shareholders of a class or series do not have the right to vote but with respect to which such shareholders are entitled to assert appraisal rights, the corporation must deliver a written appraisal notice and form to all record shareholders of such class or series who may be entitled to assert appraisal rights.

(b) The ~~dissenters'~~ appraisal notice must be sent no earlier than the date the corporate action specified in G.S. 55-13-02(a) became effective and no later than 10 days after ~~shareholder approval, or if no shareholder approval is required, after the approval of the board of directors, of the corporate action creating dissenters' rights under G.S. 55-13-02, and must:~~ that date. The appraisal notice must include the following:

(1) A form that specifies the first date of any announcement to shareholders, made prior to the date the corporate action became effective, of the principal terms of the proposed corporate action. If such an announcement was made, the form shall require a shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date. The form shall require a shareholder asserting appraisal rights to certify that the shareholder did not vote for or consent to the transaction.

(2) ~~State~~ Disclosure of the following:

a. ~~where the payment demand~~ Where the form must be sent and where ~~and when~~ certificates for certificated shares must be ~~deposited;~~ deposited, as well as the date by which those certificates must be deposited. The certificate deposit date must not be earlier than the date for receiving the required form under sub-subdivision b. of this subdivision.

~~(2) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;~~

~~(3) Supply a form for demanding payment;~~

~~(4)~~ b. ~~Set a~~ A date by which the corporation must receive the payment demand, which date may not be fewer than ~~30~~ 40 nor more than 60 days after the date the appraisal notice required under subsection (a) of this section ~~notice is mailed;~~ and form are sent. The form shall also state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by the specified date.

c. The corporation's estimate of the fair value of the shares.

d. That, if requested in writing, the corporation will provide, to the shareholder so requesting, within 10 days after the date specified in sub-subdivision b. of this subdivision, the number of shareholders who return the forms by the specified date and the total number of shares owned by them.

e. The date by which the notice to withdraw under G.S. 55-13-23 must be received, which date must be within 20 days after the date specified in sub-subdivision b. of this subdivision.

~~(5)~~(3) Be accompanied by a copy of this Article.

"**§ 55-13-23. ~~Duty to demand payment.~~ Perfection of rights; right to withdraw.**

(a) ~~A shareholder sent a dissenters' notice described in G.S. 55-13-22 must demand payment and deposit his share certificates in accordance with the terms of the notice.~~ A shareholder who receives notice pursuant to G.S. 55-13-22 and who wishes to exercise appraisal rights must sign and return the form sent by the corporation and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to G.S. 55-13-22(b)(2). In addition, if applicable, the shareholder must certify on the form whether the beneficial owner of such shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to G.S. 55-13-22(b)(1). If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under G.S. 55-13-27. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection (b) of this section.

(b) ~~The shareholder who demands payment and deposits his share certificates under subsection (a) retains all other rights of a shareholder until these rights are cancelled or modified by the taking of the proposed corporate action.~~ A shareholder who has complied with subsection (a) of this section may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to G.S. 55-13-22(b)(2)e. A shareholder who fails to so withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(c) A shareholder who does not ~~demand payment or deposit his~~ sign and return the form and, in the case of certificated shares, deposit that shareholder's share certificates where required, each by the date set forth in the ~~dissenters' notice, is~~ notice described in G.S. 55-13-22(b) shall not be entitled to payment ~~for his shares~~ under this Article.

"**§ 55-13-24. ~~Share restrictions.~~ Reserved for future codification purposes.**

~~(a) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions released under G.S. 55-13-26.~~

~~(b) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until these rights are cancelled or modified by the taking of the proposed corporate action.~~

"**§ 55-13-25. Payment.**

(a) ~~As soon as the proposed corporate action is taken, or~~ Except as provided in G.S. 55-13-27, within 30 days after ~~receipt of a payment demand,~~ the form required by G.S. 55-13-22(b) is due, the corporation shall pay ~~each dissenter~~ in cash to the shareholders who complied with ~~G.S. 55-13-23~~ G.S. 55-13-23(a) the amount the corporation estimates to be the fair value of ~~his~~ their shares, plus ~~interest accrued to the date of payment.~~ interest.

(b) The payment ~~shall be accompanied by:~~ to each shareholder pursuant to subsection (a) of this section must be accompanied by the following:

(1) ~~The corporation's most recent available balance sheet as of the end of a fiscal year ending~~ The following financial information:

a. The annual financial statements specified in G.S. 55-16-20(a) of the corporation that issued the shares to be appraised. The date of the financial statements shall not be more than 16 months before the date of ~~payment, an income statement for that year, a statement of cash flows for that year, and the~~ payment and shall comply with G.S. 55-16-20(b). If annual financial statements that meet the requirements of this sub-subdivision are not reasonably available, the corporation shall provide reasonably equivalent financial information.

b. The latest available ~~interim~~ quarterly financial statements, if ~~any;~~ any.

(2) ~~An explanation of how~~ A statement of the ~~corporation estimated~~ corporation's estimate of the fair value of the ~~shares;~~ shares. The estimate must equal or exceed the corporation's estimate given pursuant to G.S. 55-13-22(b)(2)c.

(3) ~~An explanation of how the interest was calculated;~~

~~(4)~~ A statement ~~of the dissenter's~~ that the shareholders described in subsection (a) of this section have the right to demand further payment under ~~G.S. 55-13-28;~~ G.S. 55-13-28 and that if a shareholder does not do so within the time period specified therein, then the shareholder shall be deemed to have accepted such payment in full satisfaction of the corporation's obligations under

~~(5)~~ ~~A copy of~~ this Article.

"§ 55-13-26. ~~Failure to take action.~~ Reserved for future codification purposes.

~~(a) If the corporation does not take the proposed action within 60 days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.~~

~~(b) If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it must send a new dissenters' notice under G.S. 55-13-22 and repeat the payment demand procedure.~~

"§ 55-13-27. ~~Reserved for future codification purposes.~~ After-acquired shares.

(a) A corporation may elect to withhold payment required by G.S. 55-13-25 from any shareholder who was required to but did not certify that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to G.S. 55-13-22(b)(1).

(b) If the corporation elected to withhold payment under subsection (a) of this section, it must, within 30 days after the form required by G.S. 55-13-22(b) is due, notify all shareholders who are described in subsection (a) of this section of the following:

(1) The information required by G.S. 55-13-25(b)(1).

(2) The corporation's estimate of fair value pursuant to G.S. 55-13-25(b)(2).

(3) That they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under G.S. 55-13-28.

(4) That those shareholders who wish to accept such offer must so notify the corporation of their acceptance of the corporation's offer within 30 days after receiving the offer.

(5) That those shareholders who do not satisfy the requirements for demanding appraisal under G.S. 55-13-28 shall be deemed to have accepted the corporation's offer.

(c) Within 10 days after receiving the shareholder's acceptance pursuant to subsection (b) of this section, the corporation must pay in cash the amount it offered under subdivision (b)(2) of this section to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

(d) Within 40 days after sending the notice described in subsection (b) of this section, the corporation must pay in cash the amount it offered to pay under subdivision (b)(2) of this section to each shareholder described in subdivision (b)(5) of this section.

"§ 55-13-28. Procedure if shareholder dissatisfied with ~~corporation's~~ payment or ~~failure to perform.~~ offer.

(a) ~~A dissenter may~~ A shareholder paid pursuant to G.S. 55-13-25 who is dissatisfied with the amount of the payment must notify the corporation in writing of ~~his own~~ that shareholder's estimate of the fair value of ~~his~~ the shares ~~and amount of interest due,~~ and demand payment of ~~the amount in excess of the payment by the corporation under G.S. 55-13-25 for the fair value of his shares and interest due, if:~~

~~(1) The dissenter believes that the amount paid under G.S. 55-13-25 is less than the fair value of his shares or that the interest due is incorrectly calculated;~~

~~(2) The corporation fails to make payment under G.S. 55-13-25; or~~

~~(3) The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within 60 days after the date set for demanding payment.~~ that estimate plus interest (less any payment under G.S. 55-13-25). A shareholder offered payment under G.S. 55-13-27 who is dissatisfied with that offer must reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares, plus interest.

(b) ~~A dissenter waives his~~ A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value, plus interest, under subsection (a) of this section within 30 days after receiving the corporation's payment or offer of payment under G.S. 55-13-25 or G.S. 55-13-27, respectively, waives the right to demand payment under this section ~~unless he notifies the corporation of his demand in writing (i) under subdivision (a)(1) within 30 days after the corporation made payment for his shares or (ii) under subdivisions (a)(2) and (a)(3) within 30 days after the corporation has failed to perform timely. A dissenter who fails to notify the corporation of his demand under subsection (a) within such 30-day period shall be deemed to have withdrawn his dissent and demand for payment.~~ and shall be entitled only to the payment made or offered pursuant to those respective sections.

"§ 55-13-29. Reserved for future codification purposes.

"Part 3. Judicial Appraisal of Shares.

"§ 55-13-30. Court action.

(a) If a shareholder makes a demand for payment under G.S. 55-13-28 which remains unsettled, the ~~dissenter may~~ corporation shall commence a proceeding within 60 days after ~~the earlier of (i) the date payment is made under G.S. 55-13-25, or (ii) the date of the dissenter's payment demand under G.S. 55-13-28~~ receiving the payment demand by filing a complaint with the Superior Court Division of the General Court of Justice to determine the fair value of the shares and accrued interest. ~~A dissenter who takes no action~~ If the corporation does not commence the proceeding within the 60-day ~~period shall be deemed to have withdrawn his dissent and demand for payment.~~ period, the corporation shall pay in cash to each shareholder the amount the shareholder demanded pursuant to G.S. 55-13-28, plus interest.

(a1) Repealed by Session Laws 1997-202, s. 4.

(b) ~~Reserved for future codification purposes.~~ The corporation shall commence the proceeding in the appropriate court of the county where the corporation's principal office (or, if none, its registered office) in this State is located. If the corporation is a foreign corporation

without a registered office in this State, it shall commence the proceeding in the county in this State where the principal office or registered office of the domestic corporation merged with the foreign corporation was located at the time of the transaction.

(c) The ~~court~~ corporation shall ~~have the discretion to~~ make all ~~dissenters~~ shareholders (whether or not residents of this State) whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the complaint. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the superior court in which the proceeding is commenced under subsection ~~(a)~~ (b) of this section is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them, or in any amendment to it. The ~~parties~~ shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. ~~The proceeding shall be tried as in other civil actions. However, in a proceeding by a dissenter in a corporation that was a public corporation immediately prior to consummation of the corporate action giving rise to the right of dissent under G.S. 55-13-02, there is~~ There shall be no right to a trial by jury.

(e) Each ~~dissenter~~ shareholder made a party to the proceeding is entitled to judgment either (i) for the amount, if any, by which the court finds the fair value of ~~his~~ the shareholder's shares, plus interest, exceeds the amount paid by the ~~corporation.~~ corporation to the shareholder for the shareholder's shares or (ii) for the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under G.S. 55-13-27.

"§ 55-13-31. Court costs and ~~counsel fees.~~ expenses.

(a) The court in an appraisal proceeding commenced under G.S. 55-13-30 shall determine all court costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the ~~court, and shall assess the costs as it finds equitable.~~ court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this Article.

(b) The court in an appraisal proceeding may also assess the ~~fees and~~ expenses ~~of counsel and experts~~ for the respective parties, in amounts the court finds equitable:

(1) Against the corporation and in favor of any or all ~~dissenters~~ shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of ~~G.S. 55-13-20 through 55-13-28; or~~ G.S. 55-13-20, 55-13-22, 55-13-25, or 55-13-27.

(2) Against either the corporation or a ~~dissenter,~~ shareholder demanding appraisal, in favor of ~~either or~~ any other party, if the court finds that the party against whom ~~the fees and~~ expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this Article.

(c) If the court in an appraisal proceeding finds that the ~~services of counsel for any dissenter~~ expenses incurred by any shareholder were of substantial benefit to other ~~dissenters~~ shareholders similarly ~~situated,~~ situated and that ~~the fees for those services~~ these expenses should not be assessed against the corporation, the court may ~~award to these counsel reasonable fees to~~ direct that the expenses be paid out of the amounts awarded the ~~dissenters~~ shareholders who were benefited.

(d) To the extent the corporation fails to make a required payment pursuant to G.S. 55-13-25, 55-13-27, or 55-13-28, the shareholder may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the corporation all expenses of the suit.

"Part 4. Other Remedies.

"**§ 55-13-40. Other remedies limited.**

(a) The legality of a proposed or completed corporate action described in G.S. 55-13-02(a) may not be contested, nor may the corporate action be enjoined, set aside, or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

(b) Subsection (a) of this section does not apply to a corporate action that:

(1) Was not authorized and approved in accordance with the applicable provisions of any of the following:

a. Article 9, 9A, 10, 11, 11A, or 12 of this Chapter.

b. The articles of incorporation or bylaws.

c. The resolution of the board of directors authorizing the corporate action.

(2) Was procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading.

(3) Constitutes an interested transaction, unless it has been authorized, approved, or ratified by either (i) the board of directors or a committee of the board or (ii) the shareholders, in the same manner as is provided in G.S. 55-8-31(a)(1) and (c) or in G.S. 55-8-31(a)(2) and (d), as if the interested transaction were a director's conflict of interest transaction.

(4) Was approved by less than unanimous consent of the voting shareholders pursuant to G.S. 55-7-04, provided that both of the following are true:

a. The challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the approval of the corporate action was not effective at least 10 days before the corporate action was effected.

b. The proceeding challenging the corporate action is commenced within 10 days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding."

SECTION 2. G.S. 53-362 reads as rewritten:

"**§ 53-362. ~~Rights~~ Appraisal rights of ~~dissenters to~~ shareholders in mergers, share exchanges, or asset transfers.**

A shareholder of a State trust company may ~~dissent from~~ exercise appraisal rights in connection with the proposed merger, share exchange, or asset transfer to the extent allowed under, and by following the procedures prescribed by, Article 13 of Chapter 55 of the General Statutes."

SECTION 3. G.S. 54B-261(a1) reads as rewritten:

"(a1) Notwithstanding any other provision of law, any stock association may reorganize its ownership, to provide for ownership by a savings and loan holding company, upon adoption of a plan of reorganization by a favorable vote of not less than two-thirds of the members of the board of directors of the association and approval of such plan of reorganization by the holders of not less than a majority of the issued and outstanding shares of stock of the association. The plan of reorganization shall provide that (i) the resulting ownership shall be vested in a North Carolina corporation, (ii) all stockholders of the stock association shall have the right to exchange shares, (iii) the exchange of stock shall not be subject to State or federal income taxation, (iv) stockholders not wishing to exchange shares shall be entitled to ~~dissenters'~~ appraisal rights as provided under Article 13 of Chapter 55 of the General Statutes and (v) the plan of reorganization is fair and equitable to all stockholders."

SECTION 4. G.S. 54C-195(b) reads as rewritten:

"(b) Notwithstanding any other law, a stock savings bank may reorganize its ownership, to provide for ownership by a holding company, upon adoption of a plan of reorganization by a favorable vote of not less than two-thirds of the members of the board of directors of the savings bank and approval of the plan of reorganization by the holders of not less than a majority of the issued and outstanding shares of stock of the savings bank. The plan of reorganization shall provide that (i) the resulting ownership is vested in a North Carolina corporation, (ii) all stockholders of the stock savings bank have the right to exchange shares, (iii) the exchange of stock is not subject to State or federal income taxation, (iv) stockholders not wishing to exchange shares are entitled to ~~dissenters'~~ appraisal rights as provided under ~~G.S. 55-113,~~ Article 13 of Chapter 55 of the General Statutes, and (v) the plan of reorganization is fair and equitable to all stockholders."

SECTION 5. G.S. 55-10-03(e) reads as rewritten:

"(e) Unless this Chapter, the articles of incorporation, a bylaw adopted by the shareholders, or the board of directors (acting pursuant to subsection (c)) require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:

(1) A majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create ~~dissenters'~~ appraisal rights; and

(2) The votes required by G.S. 55-7-25 and G.S. 55-7-26 by every other voting group entitled to vote on the amendment."

SECTION 6. G.S. 55-11-06(a)(7) reads as rewritten:

"(7) If a foreign corporation or foreign nonprofit corporation survives the merger, it is deemed:

a. To agree that it will promptly pay to ~~dissenting~~ shareholders of any merging domestic corporation exercising appraisal rights the amount, if any, to which they are entitled under Article 13 of this Chapter and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

b. To agree that it may be served with process in this State in any proceeding for enforcement (i) of any obligation of any merging domestic corporation, (ii) of the appraisal rights of ~~dissenting~~ shareholders of any merging domestic corporation under Article 13 of this Chapter, and (iii) of any obligation of the surviving foreign corporation or foreign nonprofit corporation arising from the merger.

c. To have appointed the Secretary of State as its agent for service of process in any proceeding for enforcement as specified in sub-subdivision b. of this subdivision. Service of process on the Secretary of State shall be made by delivering to, and leaving with, the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process on behalf of a surviving foreign corporation or foreign nonprofit corporation in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving foreign corporation or foreign nonprofit corporation. If the surviving foreign corporation or foreign nonprofit corporation is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office, or, if there is no principal office on file, its

registered office. If the surviving foreign corporation or foreign nonprofit corporation is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 55-11-05(a)."

SECTION 7. G.S. 55-11-06(b) reads as rewritten:

"(b) When a share exchange for the acquisition of shares of a domestic corporation pursuant to G.S. 55-11-02 or G.S. 55-11-07 takes effect:

(1) The shares of the acquired corporation are exchanged as provided in the plan of share exchange, and the former holders of the shares are entitled only to the exchange rights provided in the plan of share exchange or any right they may have under Article 13 of this Chapter.

(2) If the acquiring corporation is not a domestic corporation, it is deemed to agree that it will promptly pay to ~~dissenting~~ shareholders of the acquired corporation exercising appraisal rights the amount, if any, to which they are entitled under Article 13 of this Chapter and otherwise to comply with the requirements of Article 13 as if it were an acquiring domestic corporation in the share exchange.

(3) If the acquiring corporation is not a domestic corporation, the acquiring corporation is deemed:

a. To agree that it may be served with process in this State in any proceeding for enforcement (i) of the appraisal rights of ~~dissenting~~ shareholders of the acquired corporation under Article 13 of this Chapter and (ii) of any obligation of the acquiring corporation arising from the share exchange; and

b. To have appointed the Secretary of State as its agent for service of process in any proceeding for enforcement as specified in sub-subdivision a. of this subdivision. Service of process on the Secretary of State shall be made by delivering to, and leaving with, the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process on behalf of an acquiring corporation in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the acquiring corporation. If the acquiring corporation is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the acquiring corporation is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 55-11-05(a)."

SECTION 8. G.S. 55-11-10(e)(7) reads as rewritten:

"(7) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the ~~dissenting~~ shareholders of any merging domestic corporation exercising appraisal rights the amount, if any, to which they are entitled under Article 13 of this Chapter and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger."

SECTION 9. G.S. 55-11-10(e1)(1) reads as rewritten:

"(1) To agree that it may be served with process in this State in any proceeding for enforcement (i) of any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the appraisal rights of ~~dissenting~~ shareholders of any merging domestic corporation under Article 13 of this Chapter, and (iii) any obligation of the surviving business entity arising from the merger; and".

SECTION 10. G.S. 55-11A-13(a)(6) reads as rewritten:

"(6) The resulting business entity is deemed to agree that it will promptly pay to the ~~dissenting~~ former shareholders of the converting domestic corporation exercising appraisal rights the amount, if any, to which they are entitled under Article 13 of this Chapter and otherwise to comply with the requirements of Article 13 as if it were a domestic corporation."

SECTION 11. G.S. 55-11A-13(b)(1) reads as rewritten:

"(1) To agree that it may be served with process in this State for enforcement of (i) any obligation of the converting domestic corporation, (ii) the appraisal rights of ~~dissenting~~ shareholders of the converting domestic corporation under Article 13 of this Chapter, and (iii) any obligation of the resulting business entity arising from the conversion; and".

SECTION 12. G.S. 55-14A-01(c) reads as rewritten:

"(c) No action taken under this section shall give rise to any ~~dissenters'~~ appraisal rights, except as provided in the plan of reorganization."

SECTION 13. G.S. 55A-11-09(e)(7) reads as rewritten:

"(7) If the surviving business entity is not a domestic business corporation, the surviving business entity is deemed to agree that it will promptly pay to the ~~dissenting~~ shareholders of any merging domestic business corporation exercising appraisal rights the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic business corporation in the merger."

SECTION 14. G.S. 55A-11-09(e1)(1) reads as rewritten:

"(1) To agree that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic business corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the appraisal rights of ~~dissenting~~ shareholders of any merging domestic business corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger; and".

SECTION 15. G.S. 57C-9A-23(a)(7) reads as rewritten:

"(7) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the ~~dissenting~~ shareholders of any merging domestic corporation exercising appraisal rights the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger."

SECTION 16. G.S. 57C-9A-23(b)(1) reads as rewritten:

"(1) To agree that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation,

domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the appraisal rights of ~~dissenting~~ shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger; and".

SECTION 17. G.S. 59-73.33(a)(6) reads as rewritten:

"(6) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the ~~dissenting~~ shareholders of any merging domestic corporation exercising appraisal rights the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger."

SECTION 18. G.S. 59-73.33(b)(1) reads as rewritten:

"(1) To agree that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the appraisal rights of ~~dissenting~~ shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger; and".

SECTION 19. G.S. 59-1073(a)(7) reads as rewritten:

"(7) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the ~~dissenting~~ shareholders of any merging domestic corporation exercising appraisal rights the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger."

SECTION 20. G.S. 59-1073(b)(1) reads as rewritten:

"(1) To agree that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the appraisal rights of ~~dissenting~~ shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger; and".

SECTION 21. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the Official Comments to the 2002 Model Business Corporation Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

SECTION 22.(a) This section is effective only if Senate Bill 26 of the 2011 Regular Session of the General Assembly becomes law.

SECTION 22.(b) Section 2 of Senate Bill 26 of the 2011 Regular Session of the General Assembly is repealed.

SECTION 22.(c) G.S. 55-13-02(a), as amended by this act, is further amended by adding a new subdivision to read:

"(9) Consummation of a designation of the corporation as a benefit corporation pursuant to Part 2 of Article 18 of this Chapter."

SECTION 22.(d) G.S. 55-13-02(b), as amended by this act, reads as rewritten:

"(b) Notwithstanding subsection (a), the availability of appraisal rights under subdivisions (1), (2), (3), (4), (6), ~~and (8)~~ (8), and (9) of subsection (a) of this section shall be limited in accordance with the following provisions:

...."

SECTION 23. This act becomes effective October 1, 2011.

SENATE BILL 457:
Amend Article 13 of Business Corporation Act

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 13, 2011
Introduced by:	Sen. Clodfelter	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 457 would amend Article 13 of the Business Corporation Act with regard to appraisal rights to more closely conform to the Model Business Corporation Act.

CURRENT LAW:

Article 13 of Chapter 55 (Dissenter's Rights) currently prescribes the right of a shareholder to dissent from certain corporate action and obtain payment for the shares. Much of the law has remained unchanged since 1989, when North Carolina adopted the Model Business Corporation Act as the basis for its law. The Model Act, which was drafted by a committee of the American Bar Association, has been amended numerous times since 1989.

Under current law, the right to dissent exists for all shares, whether voting or nonvoting, in the case of a merger, share exchange, or disposition of assets.

BILL ANALYSIS:

Section 1 of Senate Bill 457 rewrites much of Article 13 to conform to some of the changes in the Model Act. The bill deletes all reference to the terms "dissent" or "dissenter" and substitutes the more accurate term, "appraisal rights". A shareholder's right to an appraisal and to obtain the fair value of the shares is triggered by any of the following corporate actions:

- A merger.
- A share exchange.
- A disposition of assets.
- Certain amendments of the articles of incorporation.
- Any of the above actions that is provided by the articles of incorporation, bylaws, or a resolution of the board.
- A conversion to a foreign corporation.
- A conversion to a nonprofit status.
- A conversion to an unincorporated entity.

The bill would limit appraisal rights to voting shares. However, shares held on the effective date of this act that did not entitle the shareholder to vote on a merger, share exchange, or disposition of assets shall be entitled to appraisal rights to the same extent as if the shares did entitle the shareholder to vote.

A meeting notice for a meeting at which a specified corporate action will be voted on, must include a statement that shareholders are, are not, or may be entitled to appraisal rights. The notice must also include a copy of the Article.

A shareholder who is entitled to vote on a specified corporate action and who wishes to assert appraisal rights must deliver a written notice of intent to demand payment before the vote is taken, and must not vote in favor of the proposed action.

The written appraisal notice must be sent by the corporation to affected shareholders no earlier than the effective date of the corporate action giving rise to the appraisal rights and no later than 10 days after that date. In order to exercise appraisal rights, the shareholder must sign and return the form sent by the corporation and deposit the shareholder's certificates in accordance with the terms of the notice.

Payment of the corporation's estimate of fair value is due within 30 days after the shareholder submits the form. The payment must be accompanied by specified financial information. A shareholder who is dissatisfied with the payment must notify the corporation of the shareholder's estimate of the fair value and demand payment of that estimate plus interest within 30 days after receiving payment.

If a shareholder makes a demand for payment which remains unsettled, the corporation must commence a proceeding in Superior Court within 60 days after receiving the payment demand. The court must assess all costs and expenses, including attorney's fees, against the corporation, unless the court finds that the shareholder acted arbitrarily, vexatiously, or not in good faith.

The legality of a corporate action may not be contested by a shareholder after it has been approved, unless the action was:

- Authorized by law, the articles of incorporation or bylaws, or by resolution of the board.
- A result of fraud.
- An interested transaction.
- Approved by less than unanimous consent under certain circumstances.

Sections 2 through 22 of the bill are conforming changes to other laws.

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

S457-SMRO-14(e1) v2

SENATE BILL 419

Short Title:	Campaign Finance and Regulatory Reforms.	(Public)
Sponsors:	Senators Davis; and Rabon.	
Referred to:	Judiciary I.	

March 28, 2011

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE AUTHORITY TO PROVIDE FOR PUBLIC FUNDING OF CAMPAIGNS IN NORTH CAROLINA AND TO MAKE OTHER CAMPAIGN FINANCE REFORMS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 22D of Chapter 163 of the General Statutes is repealed.

SECTION 1.(b) Article 22J of Chapter 163 of the General Statutes is repealed.

SECTION 1.(c) G.S. 105-159.2 is repealed.

SECTION 1.(d) G.S. 163-278.5 reads as rewritten:

"**§ 163-278.5. Scope of Article; severability.**

The provisions of this Article apply to primaries and elections for North Carolina offices and to North Carolina referenda and do not apply to primaries and elections for federal offices or offices in other States or to non-North Carolina referenda. Any provision in this Article that regulates a non-North Carolina entity does so only to the extent that the entity's actions affect elections for North Carolina offices or North Carolina referenda.

The provisions of this Article are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the Article that can be given effect without the invalid provision.

This section applies to Articles 22B, ~~22D, 22E, 22F,~~ 22G, 22H, ~~22J,~~ and 22M of the General Statutes to the same extent that it applies to this Article."

SECTION 1.(e) The monies in the North Carolina Public Campaign Fund are reverted to the General Fund. The monies in the North Carolina Voter-Owned Elections Fund are reverted to the General Fund.

SECTION 2. G.S. 163-278.13 reads as rewritten:

"**§ 163-278.13. Limitation on contributions.**

(a) No individual, political committee, or other entity shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any individual, other political committee, or other entity of any money or any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's spouse, parents, brothers and sisters to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(d) For the purposes of this section, the term "an election" means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the election, except that where a candidate is not on the ballot in a second primary, that second primary is not "an election" with respect to that candidate.

(d1) Notwithstanding subsections (a) and (b) of this section, a candidate or political committee may accept a contribution knowing that the contribution is to be reimbursed to the entity making the contribution and knowing the candidate or political committee has funds sufficient to reimburse the entity making the contribution if all of the following conditions are met:

(1) The entity submits sufficient information of the contribution to the candidate or political committee for reimbursement within 45 days of the contribution.

(2) The candidate or political committee makes a reimbursement to the entity making the contribution within seven days of submission of sufficient information.

(3) The candidate or political committee indicates on its report under G.S. 163-278.11 that the good, service, or other item resulting in the reimbursement is an expenditure of the candidate or political committee, and notes if the contribution was by credit card.

(4) The contribution does not exceed one thousand dollars ($1,000.00).

(d2) Any contribution, or portion thereof, made under subsection (d1) of this section that is not submitted for reimbursement in accordance with subsection (d1) of this section shall be treated as a contribution for purposes of this section. Any contribution, or portion thereof, made under subsection (d1) of this section that is not reimbursed in accordance with subsection (d1) of this section shall be treated as a contribution for purposes of this section.

(e) Except as provided in this subsection and ~~subsections (e2), (e3), and (e4)~~ subsection (e3) of this section, this section shall not apply to any national, State, district or county executive committee of any political party. For the purposes of this section only, the term "political party" means only those political parties officially recognized under G.S. 163-96. No individual shall contribute to any political party any money or make any other contribution in any election in excess of two hundred fifty thousand dollars ($250,000) for that election. No political party shall accept or solicit any contribution from any individual any money or any other contribution in any election in excess of two hundred fifty thousand dollars ($250,000) for that election.

(e1) No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee.

~~(e2) In order to make meaningful the provisions of Article 22D of this Chapter, the following provisions shall apply with respect to candidates for justice of the Supreme Court and judge of the Court of Appeals:~~

~~(1) No candidate shall accept, and no contributor shall make to that candidate, a contribution in any election exceeding one thousand dollars ($1,000) except as provided for elsewhere in this subsection.~~

~~(2) A candidate may accept, and a family contributor may make to that candidate, a contribution not exceeding two thousand dollars ($2,000) in an election if the contributor is that candidate's parent, child, brother, or sister.~~

~~(3) Repealed by Session Laws 2008-150, s. 7(a), effective August 2, 2008.~~

~~As used in this subsection, "candidate" is also a political committee authorized by the candidate for that candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse of that candidate from making a contribution or loan secured entirely by that individual's assets to that candidate's own campaign.~~

(e3) Notwithstanding the provisions of subsections (a) and (b) of this section, no candidate for superior court judge or district court judge shall accept, and no contributor shall make to that candidate, a contribution in any election exceeding one thousand dollars ($1,000), except as provided in subsection (c) of this section. As used in this subsection, "candidate" is also a political committee authorized by the candidate for that candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse of that candidate from making a contribution or loan secured entirely by that individual's assets to that candidate's own campaign.

~~(e4) In order to make meaningful the provisions of the North Carolina Voter-Owned Elections Act, as set forth in Article 22J of this Chapter, no candidate for an office subject to that Article shall accept, and no contributor shall make to that candidate, a contribution during the period beginning 21 days before the day of the general election and ending the day after the general election if that contribution causes the candidate to exceed the "trigger for matching funds" defined in G.S. 163-278.96(17). As used in this subsection, the term "candidate" also includes "candidate campaign committee" as defined in G.S. 163-278.38Z(3). Nothing in this subsection shall prohibit a candidate from making a contribution or loan secured entirely by that candidate's assets to that candidate's own campaign or to a political committee, the principal purpose of which is to support that candidate's campaign. This subsection applies with respect to a candidate only if both of the following statements are true regarding that candidate:~~

~~(1) That candidate is opposed in the general election by a certified candidate as defined in Article 22J of this Chapter.~~

~~(2) That certified candidate has not received the maximum matching funds available under G.S. 163-278.99B(c).~~

~~The recipient of a contribution that apparently violates this subsection has three days to return the contribution or file a detailed statement with the State Board of Elections explaining why the contribution does not violate this subsection.~~

(e5) The contribution limits of subsections (a) and (b) of this section do not apply to contributions made to an independent expenditure political committee. For purposes of this section, an "independent expenditure political committee" is a political committee whose treasurer makes and abides by a certification to the State Board of Elections that the political committee does not and will not make contributions, directly or indirectly, to candidates or to political committees that make contributions to candidates. The State Board of Elections shall provide forms for implementation of this subsection. This subsection shall not apply to a candidate or a political committee controlled by a candidate. The exception of this subsection is in addition to any other exception provided by law.

(f) Any individual, candidate, political committee, referendum committee, or other entity that violates the provisions of this section is guilty of a Class 2 misdemeanor."

SECTION 3. This act becomes effective July 1, 2011.

SENATE BILL 419:
Campaign Finance and Regulatory Reforms

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 13, 2011
Introduced by:	Sen. Davis	**Prepared by:**	R. Erika Churchill
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 419 would repeal the authority for public financing of judicial and certain Council of State races, and limit an individual's contribution to a political party to $250,000 per election.

Public Financing of Certain Elections.

CURRENT LAW: North Carolina currently provides two separate programs for public financing of elections – one for appellate judicial races and one for 3 of the 10 Council of State races (Auditor, Superintendent of Public Instruction and Commissioner of Insurance).

To participate, the candidate must file a declaration of intent with the State Board of Elections BEFORE collecting any qualifying contributions. The declaration of intent has to be filed before or during the "qualifying period," which is September 1 of the year before the election until the day of the primary. After filing the declaration of intent, the candidate must collect qualifying contributions from a certain number of registered voters during the qualifying period. The State Board of Elections "certifies" that the candidate has filed a declaration of intent, collected the appropriate contributions, filed a notice of candidacy. Once certified, the candidate is entitled to receive distributions from the public financing fund. Distributions are as follows: none for an uncontested primary or general election; an initial distribution within 5 business days of certification by the State Board for a candidate in a contested general election; and matching funds upon trigger.

The programs also require the publication of a Voter Guide as to the functions of the office, the laws concerning the election of that office, the public financing fund, voter registration, and information about all candidates running for that office. The money for the distributions to the candidates and the publication and mailing of the voter guide is taken from the public financing fund. The programs are funded by voluntary check-off donations on personal income tax. The judicial program is also funded by a mandatory surcharge on attorney's annual bar dues.

BILL ANALYSIS: The bill would repeal the statutory authority for two public financing programs, and revert any money in the funds to the General Fund.

Limitation on contributions to political parties.

CURRENT LAW: North Carolina does not currently limit or prohibit contributions by individuals to political parties. North Carolina does prohibit contributions by corporations, business entities, labor unions, professional associations and insurance companies are prohibited from making contributions to all political committees, including political parties. A specific exception to that prohibition is made to allow for contributions to political parties by corporations, business entities, labor unions, professional associations and insurance companies for political party headquarters building funds, provided any contributions so made are kept segregated and used in accordance with G.S. 163-278.19B.

BILL ANALYSIS: The bill would limit an individual's contribution to a political party to $250,000 for that election.

EFFECTIVE DATE: July 1, 2011

S419-SMST-22(e1) v1

PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027

DATE: 4-14 **TIME:** 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Mary Shell	Bryson City	Davis
2 Nick Spraker	manteo	white
3		
4		
5		
6		
7		
8		
9		

Do not add names below the grid.

VISITOR REGISTRATION SHEET

Senate Judiciary I — 4/14/2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
MARIJANA MILOSAVLJEVIĆ	INTERNATIONAL HOUSE
TATJANA BABIĆ	INTERNATIONAL HOUSE
RADMILA CMILJANIĆ	INTERNATIONAL HOUSE
Bill Scobbie	TS
Kim Angel	Macon County Transit 5W. Main st. Franklin NC 28734
Becky Smith	Clay County Transportation 391 Courthouse Dr. Hayesville, NC
Barry Smith	M2M Lobbying.com
Todd Bar	NC Advocates for Jus
Mildred Spearman	NCAOC
Andrew Meehan	Capitol

VISITOR REGISTRATION SHEET

Senate Judiciary I — 4/14/2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Richard L. O'Brien	PFFPNC
Kay Emanuel	Legislative Reporting Services
Barbara Mace	Conf of Clerks of SpCt
Gin Strach	SBE
Johnnie McLean	SBE
Chuck Stone	SEANC
Melissa Price	NCVCE
Damon Circosta	NC Voter ED
Emily Grimm	MWC
Stephen Laten	Robbins May & Rich LLP
Courtney Denning	NC Bar Association

VISITOR REGISTRATION SHEET

Senate Judiciary I — 4/14/2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kerry Sutton	NCAJ
Michelle Frazier	MFTS
Jennifer Cohen	JFNC
John McMillan	MFTS
Tori Degraffenreid	Student
Veronica Degraffenreid	SBOE
Bob Hall	Democracy NC
Bill Phillips	Common Cause NC
Tim KENT	NC Beer & Wine Wholesalers
Chris Telesca	Wake Verified Voting
Ilus Daniel	International House

2011-2012

SENATE
JUDICIARY I

MINUTES

SENATE JUDICIARY I COMMITTEE
April 19, 2011 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on April 19, 2011, in Room 1027 of the Legislative Building. Fifteen members of the committee were present. Senator Pete Brunstetter presided.

Senator Brunstetter called the meeting to order at 10:01 a.m.

Senate Bill 474
Senator Apodaca moves to accept the PCS for purposes of discussion
Motion carries
Senator Apodaca is recognized to introduce the bill
Karen Cochrane-Brown was recognized to explain the bill
Greg McLeod from the SBI was recognized to comment on the bill
Eddie Caldwell from the NC Sheriffs' Association was recognized to comment on the bill
Andy Ellen from the NC Retail Merchants' Association was recognized to comment on the bill
Detective Dale Patton from the Henderson Police Department was recognized to comment on the bill
Senator Ralph Hise was recognized to comment on the bill
Senator Apodaca moves to amend the bill on page 1 line 9; technical amendment
Susan Sitze was recognized to explain the amendment
Motion carries
Senator Stein moves for a favorable report
Senator Pate was recognized to make a comment, and Senator Apodaca answered
Senator Mansfield was recognized to ask a question, and Greg McLeod was recognized to answer
Senator Mansfield was recognized to ask a follow-up, and Judy Billings from the SBI was recognized to answer
Motion for a favorable report carries

Senate Bill 432
Senator Brown moves to adopt the PCS for purposes of discussion
Senator Hartsell was recognized to introduce the bill
Paul Cohut from the NC Bar Association was recognized to explain the bill
Senator Jenkins moves for a favorable report, unfavorable to original bill, favorable as to PCS
Motion carries

Senate Bill 434
Senator Brown moves to adopt the PCS for purposes of discussion
Senator Hartsell was recognized to explain the bill
Senator Brown moves to amend the bill on page 8 line 42
Motion carries
Senator Brown moves to amend the bill on page 103 line 37
Motion carries
Senator Jenkins was recognized to ask a question, and Senator Hartsell answered
Senator Jenkins moved for a favorable report

Senator Stevens was recognized to ask a question, and Paul Cohut from the NC Bar Association was recognized to answer
Senator Jenkins' motion will be carried over until Thursday
Senator Harrington asked a question, and Cohut answered
Todd Tilley, Clerk of Court, was recognized to comment
Pete Powell from the AOC was recognized to comment

Senate Bill 379
Senator Goolsby moves to adopt the PCS for purposes of discussion
Senator Goolsby was recognized to introduce the bill
Bill Patterson was recognized to explain the PCS
Carrie Sutton from the NC Advocates for Justice was recognized to comment on the bill
Senator Goolsby was recognized to respond
The bill will be carried over until Thursday
Senator Stein was recognized to ask a question

Meeting adjourned at 10:46 a.m.

Peter Brunstetter, Presiding

Sarah Hardin, Committee Clerk

Senate Judiciary I Committee
Tuesday, April 19, 2011, 10:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 379	Revise Restitution Damage Awards.	Senator Goolsby
SB 432	Revise Probate Code.	Senator Hartsell
SB 434	Directed Trustee and Trust Protector.	Senator Hartsell
SB 474	Photo ID for Certain Controlled Substances.	Senator Hise Senator Apodaca

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 474

Short Title:	Photo ID for Certain Controlled Substances.	(Public)
Sponsors:	Senators Apodaca, Hise; Jackson and Rouzer.	
Referred to:	Judiciary I.	

March 31, 2011

A BILL TO BE ENTITLED

AN ACT TO DIRECT PHARMACIES TO REQUIRE PHOTO IDENTIFICATION PRIOR TO DISPENSING SCHEDULE II CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-106.1. Photo ID requirement for Schedule II controlled substances.**

Immediately prior to dispensing a Schedule II controlled substance, each pharmacy holding a valid permit pursuant to G.S. 90-85.21 shall require the person seeking the dispensation to present one of the following valid, unexpired forms of government-issued photographic identification: (i) a drivers license, (ii) a special identification card issued under G.S. 20-37.7, (iii) a military identification card, or (iv) a passport. Upon presentation of the required photographic identification, the pharmacy shall document the name of the person seeking the dispensation, the type of photographic identification presented by the person seeking the dispensation, and the photographic identification number. The pharmacy shall retain this identifying information on the premises or at a central location apart from the premises as part of its business records for a period of three years following dispensation. The pharmacy shall make the identifying information available to any person authorized under G.S. 90-113.74 to receive prescription information data in the controlled substances reporting system within 72 hours after a request for the identifying information. A pharmacy that submits the identifying information required under this section to the controlled substances reporting system established and maintained pursuant to G.S. 90-113.73 is deemed in compliance with this section."

SECTION 2. This act becomes effective January 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 474
PROPOSED COMMITTEE SUBSTITUTE S474-CSRO-11 [v.2]

4/18/2011 10:06:26 AM

Short Title: Photo ID for Certain Controlled Substances. (Public)

Sponsors:

Referred to:

March 31, 2011

A BILL TO BE ENTITLED

AN ACT TO DIRECT PHARMACIES TO REQUIRE PHOTO IDENTIFICATION PRIOR TO DISPENSING CERTAIN CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-106.1. Photo ID requirement for Schedule II controlled substances.**

(a) Immediately prior to dispensing a Schedule II controlled substance, or any of the Schedule III controlled substances listed in G.S. 90-91(d)(1) through (8), each pharmacy holding a valid permit pursuant to G.S. 90-85.21 shall require the person seeking the dispensation to present one of the following valid, unexpired forms of government-issued photographic identification: (i) a drivers license, (ii) a special identification card issued under G.S. 20-37.7, (iii) a military identification card, or (iv) a passport. Upon presentation of the required photographic identification, the pharmacy shall document the name of the person seeking the dispensation, the type of photographic identification presented by the person seeking the dispensation, and the photographic identification number. The pharmacy shall retain this identifying information on the premises or at a central location apart from the premises as part of its business records for a period of three years following dispensation.

(b) The pharmacy shall make the identifying information available to any person authorized under G.S. 90-113.74 to receive prescription information data in the controlled substances reporting system within 72 hours after a request for the identifying information. A pharmacy that submits the identifying information required under this section to the controlled substances reporting system established and maintained pursuant to G.S. 90-113.73 is deemed in compliance with this subsection.

(c) Nothing in this section shall be deemed to require that the person seeking the dispensation and the person to whom the prescription is issued be the same person."

SECTION 2. This act becomes effective January 1, 2012.

SENATE BILL 474:
Photo ID for Certain Controlled Substances

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 18, 2011
Introduced by:	Sens. Apodaca, Hise	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to First Edition S474-CSRO-11		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 474 would direct pharmacies to require photo identification prior to dispensing certain controlled substances.***

[As introduced, this bill was identical to H656, as introduced by Reps. Guice, Ingle, Faircloth, which is currently in House Judiciary Subcommittee B.]

CURRENT LAW: Under current law, the Department of Health and Human Services is required to maintain a reporting system of prescriptions for all Schedule II through V controlled substances. Dispensers are required to report the following information:

- The dispenser's DEA number.
- The patient's name, address, telephone number, and date of birth.
- The date the prescription was written.
- The date the prescription was filled.
- The prescription number.
- Whether the prescription is new or a refill.
- Metric quantity of the drug.
- Estimated days of supply of the drug.
- National Drug Code of the drug.
- Prescriber's DEA number.

BILL ANALYSIS:

The PCS for SB 474 would add a provision to the Controlled Substances Act directing that, prior to dispensing a Schedule II or certain Schedule III controlled substances, a pharmacy must require that the person seeking the dispensation present one of the following forms of identification:

- A drivers license.
- A special identification card issued by DMV.
- A military identification card.
- A passport.

The pharmacy must document the name, type of identification, and the identification number and retain this information as part of its business records for three years following dispensation.

The pharmacy must also make the identifying information available to anyone authorized to receive prescription information under the controlled substances reporting system within 72 hours after receiving a request for the information. Prescription information is generally confidential, but may be released to doctors and pharmacists for the care of their patients, an individual requesting his or her own information, SBI agents in the course of an investigation, primary monitoring authorities for other states, a court in a criminal action, the Division of Medical Assistance, licensing boards in connection with a disciplinary investigation, or a county medical examiner. If a pharmacy submits the identifying information required by this section along with the information that is required to be submitted to the controlled substance reporting system within 7 days after the prescription is dispensed, the pharmacy will be deemed in compliance with this requirement.

Nothing in this provision requires that the person seeking the dispensation and the person to whom the prescription is issued be the same person.

EFFECTIVE DATE: This act becomes effective January 1, 2012.

S474-SMRO-15(CSRO-11) v1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE April 19 2011

S. B. No. 474 Amendment No. 1 (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S474-CSRO-11

Rep.) Apodaca
Sen.)

1 moves to amend the bill on page 1, line 9

2 ( ) WHICH CHANGES THE TITLE

3 by deleting "G.S. 90-91(d)(1) through (8),"

4

5 ~~and inserting "G.S. 90-91(d)(1) through~~

6

7 and inserting "subdivisions 1. through 8. of G.S. 90-91(d),"

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 432
PROPOSED COMMITTEE SUBSTITUTE S432-CSRN-7 [v.2]

4/18/2011 7:30:01 PM

Short Title: Revise Probate Code. (Public)

Sponsors:

Referred to:

March 29, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE JURISDICTIONAL AND PROCEDURAL PROVISIONS OF THE PROBATE CODE AND RELATED STATUTES TO PROVIDE UNIFORMITY IN ESTATE MATTERS, TO DEFINE THE JURISDICTION OF THE CLERK OF SUPERIOR COURT CONSISTENT WITH THE PROVISIONS OF THE UNIFORM TRUST CODE, TO RECODIFY CERTAIN PROVISIONS RELATING TO THE PROBATE OF WILLS, AND TO UPDATE AND AMEND THE PROCEDURE FOR CLAIMING SPOUSAL AND CHILDREN'S ALLOWANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-301.3 reads as rewritten:

"**§ 1-301.3. Appeal of trust and estate matters determined by clerk.**

(a) Applicability. – This section applies to matters arising in the administration of ~~testamentary~~ trusts and of estates of decedents, incompetents, and minors. G.S. 1-301.2 applies in the conduct of a special proceeding when a special proceeding is required in a matter relating to the administration of an estate.

(b) Clerk to Decide Estate Matters. – In matters covered by this section, the clerk shall determine all issues of fact and law. The clerk shall enter an order or judgment, as appropriate, containing findings of fact and conclusions of law supporting the order or judgment.

(c) Appeal to Superior Court. – A party aggrieved by an order or judgment of the clerk may appeal to the superior court by filing a written notice of the appeal with the clerk within 10 days of entry of the order or ~~judgment.~~ judgment after service of the order on that party. The notice of appeal shall ~~specify~~ contain a short and plain statement of the basis for the appeal. Unless otherwise provided by law, a judge of the superior court or the clerk may issue a stay of the order or judgment upon the appellant's posting an appropriate bond set by the judge or clerk issuing the stay. While the appeal is pending, the clerk retains authority to enter orders affecting the administration of the estate, subject to any order entered by a judge of the superior court limiting that authority.

(d) Duty of Judge on Appeal. – Upon appeal, the judge of the superior court shall review the order or judgment of the clerk for the purpose of determining only the following:

(1) Whether the findings of fact are supported by the evidence.
(2) Whether the conclusions of law are supported by the findings of facts.
(3) Whether the order or judgment is consistent with the conclusions of law and applicable law.

It is not necessary for a party to object to the admission or exclusion of evidence before the clerk in order to preserve the right to assign error on appeal to its admission or exclusion. If the judge finds prejudicial error in the admission or exclusion of evidence, the judge, in the judge's discretion, shall either remand the matter to the clerk for a subsequent hearing or resolve the matter on the basis of the record. If the record is insufficient, the judge may receive additional evidence on the ~~evidentiary~~ factual issue in question. The judge may continue the case if necessary to allow the parties time to prepare for a hearing to receive additional evidence.

(e) Remand After Disposition of Issue on Appeal. – The judge, upon determining the matter appealed from the clerk, shall remand the case to the clerk for such further action as is necessary to administer the estate.

(f) Recording of Estate Matters. – In the discretion of the clerk or upon request by a party, all hearings and other matters covered by this section shall be recorded by an electronic recording device. A transcript of the proceedings may be ordered by a party, by the clerk, or by the presiding judge. If a recordation is not made, the clerk shall submit to the superior court a summary of the evidence presented to the clerk."

SECTION 2. G.S. 7A-307(a) reads as rewritten:

"**§ 7A-307. Costs in administration of estates.**

(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, in trust proceedings under G.S. 36C-2-203, in estate proceedings under G.S. 28A-2-4, and in collections of personal property by affidavit, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ten dollars ($10.00), to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of four dollars ($4.00), to be credited to the Court Information Technology Fund.

(2) For support of the General Court of Justice, the sum of seventy-five dollars ($75.00), plus an additional forty cents (40/Ao) per one hundred dollars ($100.00), or major fraction thereof, of the gross estate, not to exceed six thousand dollars ($6,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be fifteen dollars ($15.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of two dollars and five cents ($2.05) of each seventy-five-dollar ($75.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4.

(2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate, not to exceed six thousand dollars ($6,000), shall not be assessed on

personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of twenty dollars ($20.00) shall be assessed on the filing of each annual and final account. However, the fee shall be assessed only on newly contributed or acquired assets, all interest or other income that accrues or is earned on or with respect to any existing or newly contributed or acquired assets, and realized gains on the sale of any and all trust assets. Newly contributed or acquired assets do not include assets acquired by the sale, transfer, exchange, or otherwise of the amount of trust property on which fees were previously assessed.

(2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.

(2c) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate shall not be assessed on the gross estate of a trust that is the subject of a proceeding under G.S. 36C-2-203 if there is no requirement in the trust that accountings be filed with the clerk.

(2d) Notwithstanding subdivisions (1) and (2) of this subsection, the only cost assessed in connection with the qualification of a limited personal representative under G.S. 28A-29-1 shall be a fee of twenty dollars ($20.00) to be assessed upon the filing of the petition.

(3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of twenty dollars ($20.00).

(4) For the filing of a caveat to a will, the clerk shall assess for support of the General Court of Justice, the sum of two hundred dollars ($200.00).

(5) Notwithstanding subdivisions (1) and (2) of this subsection, the only cost assessed in connection with the reopening of an estate administration under G.S. 28A-23-5 shall be forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of any additional gross estate, including income, coming into the hands of the fiduciary after the estate is reopened; provided that the total cost assessed when added to the total cost assessed in all prior administrations of the estate shall not exceed six thousand dollars ($6,000).

(b) In collections of personal property by affidavit, the facilities fee and thirty dollars ($30.00) of the General Court of Justice fee shall be paid at the time of filing the qualifying affidavit pursuant to G.S. 28A-25-1. In all other cases, these fees shall be paid at the time of filing of the first inventory. If the sole asset of the estate is a cause of action, these fees shall be paid at the time of the qualification of the fiduciary.

(b1) The clerk shall assess the following miscellaneous fees:

(1) Filing and indexing a will with no probate
– first page ..... $ 1.00
– each additional page or fraction thereof ..... .25

(2) Issuing letters to fiduciaries, per letter over five letters issued 1.00

(3) Inventory of safe deposits of a decedent, per box, per day 15.00

(4) Taking a deposition 10.00

(5) Docketing and indexing a will probated in another county in the State
- first page 6.00
- each additional page or fraction thereof ..... .25

(6) Hearing petition for year's allowance to surviving spouse or child, in cases not assigned to a magistrate, and allotting the same..... 8.00

(c) The following additional expenses, when incurred, are also assessable or recoverable, as the case may be:

(1) Witness fees, as provided by law.

(2) Counsel fees, as provided by law.

(3) Costs on appeal, of the original transcript of testimony, if any, insofar as essential to the appeal.

(4) Fees for personal service of civil process, and other sheriff's fees, as provided by law.

(5) Fees of guardians ad litem, referees, receivers, commissioners, surveyors, arbitrators, appraisers, and other similar court appointees, as provided by law.

(d) Costs assessed before the clerk shall be added to costs assessable on appeal to the judge or upon transfer to the civil issue docket.

(e) Nothing in this section shall affect the liability of the respective parties for costs, as provided by law."

SECTION 3. Article 5 of Chapter 31 of the General Statutes, G.S. 31-12 through G.S. 31-31.2, is recodified as Article 2A of Chapter 28A of the General Statutes, G.S. 28A-2A-1 through G.S. 28A-2A-23.

SECTION 4. Chapter 28A of the General Statutes, as amended by Section 3 of this act, reads as rewritten:

"**Chapter 28A.**

"**Administration of Decedents' Estates.**

"Article 1.

"Definitions and Other General Provisions.

"**§ 28A-1-1. Definitions.**

As used in this Chapter, unless the context otherwise requires, the term:

(1) "Collector" means any person authorized to take possession, custody, or control of the personal property of the decedent for the purpose of executing the duties outlined in G.S. 28A-11-3.

(1a) "Devisee" means any person entitled to take real or personal property under the provisions of a valid, probated will.

(1b) "Estate proceeding" means a matter initiated by petition related to the administration, distribution, or settlement of an estate, other than a special proceeding. There may be more than one estate proceeding within the administration of a decedent's estate.

(2) "Foreign personal representative" means a personal representative appointed in another jurisdiction, including a personal representative appointed in another country.

(3) "Heir" means any person entitled to take real or personal property upon intestacy under the provisions of Chapter 29 of the General Statutes.

(4) "Mortgage" includes a deed of trust.

(4a) "Party," in the context of a contested or uncontested estate proceeding pursuant to G.S. 28A-2-6, means a party joined as a petitioner or respondent.

(4b) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(5) "Personal representative" includes both an executor and an administrator, but does not include a collector.

~~(6) "Service" means delivery of the citation, summons, notice or other civil process to the person to be served by an officer authorized to serve process and, if such service cannot be obtained, then by the mailing of the citation, summons, notice or other civil process by certified mail, return receipt requested, to the last known address of the person to be served.~~

"Article 2.

"Jurisdiction for Probate of Wills and Administration of Estates of Decedents.

"§ 28A-2-1. Clerk of superior court.

The clerk of superior court of each county, ex officio judge of probate, shall have jurisdiction of the administration, settlement, and distribution of estates of decedents including, but not limited ~~to, the following:~~ to

~~(1) Probate of wills;~~

~~(2) Granting of letters testamentary and of administration, or other proper letters of authority for the administration of estates.~~ estate proceedings as provided in G.S. 28A-2-4.

"§ 28A-2-2. Assistant clerk of superior court.

An assistant clerk of superior court shall have jurisdiction as provided by G.S. 7A-102.

"§ 28A-2-3. Jurisdiction where clerk interested.

Whenever the clerk of superior court is a subscribing witness to a will offered for probate in ~~his~~ the clerk's county or has an interest, direct or indirect, in an estate or trust within ~~his~~ the clerk's jurisdiction, jurisdiction with respect thereto shall be vested in the senior resident superior court judge of ~~his~~ the clerk's district, and shall extend to all things which the clerk of superior court might have done in the administration of such estate.

"§ 28A-2-4. Subject matter jurisdiction of the clerk of superior court in estate proceedings.

(a) The clerks of superior court of this State, as ex officio judges of probate, shall have original jurisdiction of estate proceedings. Except as provided in subdivision (4) of this subsection, the jurisdiction of the clerk of superior court is exclusive. Estate proceedings include, but are not limited to, the following:

(1) Probate of wills.

(2) Granting and revoking of letters testamentary and letters of administration, or other proper letters of authority for the administration of estates.

(3) Determination of the elective share for a surviving spouse as provided in G.S. 30-3.

(4) Proceedings to ascertain heirs or devisees, to approve family settlement agreements pursuant to G.S. 28A-2-10, to determine questions of construction of wills, to determine priority among creditors, to determine whether a person is in possession of property belonging to an estate, to order the recovery of property of the estate in possession of third parties, and to determine the existence or nonexistence of any immunity, power, privilege, duty, or right. Any party or the clerk of superior court may file a notice of transfer of a proceeding pursuant to this subdivision to the Superior Court Division of the General Court of Justice as provided in G.S. 28A-2-6(h). In the absence of a transfer to superior court, Article 26 of Chapter 1 of the General Statutes shall apply to a trust proceeding pending before the clerk of superior court to the extent consistent with this Article.

(b) Nothing in this section shall affect the right of a person to file an action in the Superior Court Division of the General Court of Justice for declaratory relief under Article 26 of Chapter 1 of the General Statutes. In the event that either the petitioner or the respondent in an estate proceeding requests declaratory relief under Article 26 of Chapter 1 of the General

Statutes, either party may move for a transfer of the proceeding to the Superior Court Division of the General Court of Justice as provided in Article 21 of Chapter 7A of the General Statutes. In the absence of a removal to superior court, Article 26 of Chapter 1 of the General Statutes shall apply to an estate proceeding to the extent consistent with this Article.

(c) Without otherwise limiting the jurisdiction of the Superior Court Division of the General Court of Justice, the clerk of superior court shall not have jurisdiction under subsection (a) or (c) of this section of the following:

(1) Actions by or against creditors or debtors of an estate, except as provided in Article 19 of this Chapter.

(2) Actions involving claims for monetary damages, including claims for breach of fiduciary duty, fraud, and negligence.

(3) Caveats, except as provided under G.S. 31-36.

(4) Proceeding to determine proper county of venue as provided in G.S. 28A-3-2.

(5) Recovery of property transferred or conveyed by a decedent with intent to hinder, delay, or defraud creditors, pursuant to G.S. 28A-15-10(b).

"**§ 28A-2-5. Subject matter jurisdiction of the clerk of superior court in special proceedings.**

The clerk of superior court also shall have jurisdiction over special proceedings, including, but not limited to, the following:

(1) Special proceedings to obtain possession, custody, or control of assets as provided in G.S. 28A-13-3.

(2) Special proceedings relating to the sale, lease, or mortgage of real estate as provided in G.S. 28A-15-1 and in G.S. 28A-17-1.

(3) Special proceedings against unknown heirs before distribution of estate as provided in G.S. 28A-22-3.

Nothing in this section shall be deemed to limit the jurisdiction of the clerk of superior court in special proceedings.

"**§ 28A-2-6. Commencement of estate proceedings, pleadings, consolidation, and joinder.**

(a) Contested Estate Proceedings. – Contested estate proceedings brought against adverse parties shall be commenced by petition in the existing estate administration file. All parties not joined as petitioners shall be joined as respondents. The clerk of superior court shall issue the estate proceeding summons to the respondents. The clerk of superior court may order that additional persons be joined as respondents and shall issue the estate proceeding summons to the additional persons. The estate proceeding summons shall notify a respondent to appear and answer the petition within 20 days after its service upon the respondents. The estate proceeding summons shall comply with the requirements set forth in G.S. 1-394 for a special proceeding summons except that the summons shall be titled "ESTATE PROCEEDING SUMMONS" and shall be served upon a respondent in accordance with G.S. 1A-1, Rule 4. After the time for responding to the petition or complaint has expired, any party or the clerk of superior court may give notice to all parties of a hearing.

(b) Uncontested Estate Proceedings. – Estate proceedings before the clerk of superior court that are uncontested may be decided without hearing according to practice and procedure provided by law and shall be commenced by the filing of a petition, setting forth the facts entitling the petitioners to relief and the nature of the relief demanded. In these proceedings, the clerk of superior court may hear and decide the petition summarily.

(c) Pleadings. – Any petition, response, or request for hearing in a contested estate proceeding before the clerk of superior court shall contain a short and plain statement of the claim that is sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions intended to be proved showing that the pleaders are entitled to relief, and a demand for judgment for the relief to which the pleader is entitled. Each

averment should be simple, concise, and direct. No technical forms of motions or responses are required. A party may set forth two or more statements of a claim or defense alternatively or hypothetically. The signature of an attorney or party constitutes a certificate by that attorney or party that (i) the attorney or party has read the pleading, motion, or other paper; (ii) to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. All motions, responses, and requests for hearing shall be so construed as to do substantial justice.

(d) Extensions of Time. – The clerk of superior court, for cause shown at any time in the clerk's discretion, with or without motion or notice, may enter an order enlarging the period of time within which an act is required or permitted in an estate proceeding, by any applicable rule of G.S. 1A-1, the Rules of Civil Procedure,

or by order of the court, if the request is made before the expiration of the period originally prescribed, but not to exceed 10 days, provided that the court can enlarge the time for a period of more than 10 days for good cause shown, but only to the extent that the court in its discretion determines that justice requires. Upon motion made after the expiration of the specified period, the clerk of superior court may permit the act where the failure to act was the result of excusable neglect. Notwithstanding any other provision of this subsection, the parties to a proceeding may enter into binding stipulations, without approval of the clerk of superior court, enlarging the time within which an act is required or permitted by this Article, by any applicable Rules of Civil Procedure or by order of the court, not to exceed 30 days.

(e) Rules of Civil Procedure. – Unless the clerk of superior court otherwise directs, Rules 4.5, 6(a), 6(d), 6(e), 18, 19, 20, 21, 24, 45, 56, and 65 of G.S. 1A-1, the Rules of Civil Procedure, shall apply to estate proceedings. Upon motion of a party or the clerk of superior court, the clerk may further direct that any or all of the remaining Rules of Civil Procedure shall apply, including, without limitation, discovery rules; however, nothing in Rule 17 requires the appointment of a guardian ad litem for a party represented except as provided in G.S. 28A-2-7. In applying these Rules to an estate proceeding pending before the clerk of superior court, the term "judge" shall mean "clerk of superior court."

(f) Consolidation. – When an estate proceeding pending before the clerk of superior court and a civil action pending before the Superior Court Division of the General Court of Justice involve a common question of law or fact, upon the court's motion or motion of a party to either the estate proceeding or the civil action, a superior court judge may order a consolidation of the estate proceeding and civil action, and the judge may make orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. Upon the entry of an order consolidating an estate proceeding and civil action, the jurisdiction for all matters pending in both the estate proceeding and the civil action shall be vested in the superior court.

(g) Joinder. – In any civil action pending before the Superior Court Division of the General Court of Justice, the party asserting a claim for relief as an original claim, counter claim, cross claim, or third-party claim may join, either as independent or alternative claims, as many claims, legal or equitable, as the party may have against the opposing party, notwithstanding the fact that such claims may otherwise be within the exclusive jurisdiction of the clerk of superior court.

(h) Notice of Transfer. – A notice to transfer an estate proceeding brought pursuant to G.S. 28A-2-4(a)(4) must be served within 30 days after the moving party is served with a copy of the pleading requesting relief pursuant to G.S. 28A-2-4(a)(4), or in the case of the clerk of superior court, prior to or at the first hearing duly noticed in such estate proceeding and prior to the presentation of evidence by the parties, including a hearing at which an order of

continuance is entered. Failure to timely serve a notice of transfer of a trust proceeding is a waiver of any objection to the clerk of superior court's exercise of jurisdiction over the trust proceeding then pending before the clerk. When a notice of transfer is duly served and filed, the clerk shall transfer the proceeding to the appropriate court. The proceeding after the transfer is subject to the provisions of the General Statutes and to the rules that apply to actions initially filed in the court to which the proceeding was transferred.

(i) Orders Upon Consolidation/Joinder/Transfer. – Upon the consolidation of an estate proceeding in a civil action, joinder of claims under subsection (f) or (g) of this section, or transfer to the Superior Court Division of the General Court of Justice pursuant to subsection (h) of this section, the clerk of superior court or judge may make appropriate orders to protect the interest of the parties and avoid unnecessary cost or delay. Notwithstanding the consolidation or joinder of claims under subsection (f) or (g) of this section, where the estate proceeding is transferred to the Superior Court Division of the General Court of Justice under subsection (h) of this section, the clerk of superior court's exclusive jurisdiction as set forth in G. S. 28A-2-4(a)(1) through (3) shall not be stayed unless so ordered by the court.

"**§ 28A-2-7. Representation of parties.**

(a) Notwithstanding any other applicable rule of the Rules of Civil Procedure or provision of Chapter 1 of the General Statutes, in any contested or uncontested estate proceeding or special proceeding, whether brought before the clerk of superior court or in the Superior Court Division of the General Court of Justice, the parties shall be represented as provided in Article 3 of Chapter 36C of the General Statutes.

(b) In the case of any party represented by another as provided in subsection (a) of this section, service of process shall be made by serving such representative.

"**§ 28A-2-8. Waiver of notice.**

A party, or a representative of a party as provided in G.S. 28A-2-7, may waive notice by a writing signed by the party, the representative, or the attorney of the party or the representative and filed in the proceeding.

"**§ 28A-2-9. Appeals of estate proceedings and special proceedings.**

(a) With the exception of appeals of special proceedings heard by the clerk of superior court, appeals in estate matters shall be as provided in G.S. 1-301.3.

(b) Appeals in special proceedings shall be as provided in G.S. 1-301.2.

(c) Any party may appeal from a decision of the clerk of superior court in an estate proceeding or special proceeding to a superior court judge as provided for in G.S. 1-301.3; provided that the appeals from orders of the clerk of superior court in special proceedings shall be as provided in G.S. 1-301.2.

"**§ 28A-2-10. Approval of settlement agreements by the clerk.**

The clerk shall have the authority, in the clerk's discretion, to consider and approve settlement agreements where the following apply:

(1) The controversy arises with respect to a matter over which the clerk has jurisdiction.

(2) The controversy arose in good faith.

Nothing herein shall be construed as giving a clerk the authority to approve a family settlement agreement modifying the terms of a last will and testament or resolving a caveat of a last will and testament."

"Article 2A.

"Probate of Will.

"**§ 28A-2A-1. Executor may apply for probate.**

Any executor named in a will may, at any time after the death of the testator, apply to the clerk of the superior court, having jurisdiction, to have the same admitted to probate. Such will shall not be valid or effective to pass real estate or personal property as against innocent purchasers for value and without notice, unless it is probated or offered for probate within two

years after the death of the testator or devisor or prior to the time of approval of the final account of a duly appointed administrator of the estate of the deceased, whichever time is earlier. If such will is fraudulently suppressed, stolen or destroyed, or has been lost, and an action or proceeding shall be commenced within two years from the death of the testator or devisor to obtain said will or establish the same as provided by law, then the limitation herein set out shall only begin to run from the termination of said action or proceeding, but not otherwise.

"§ 28A-2A-2. Executor failing, beneficiary may apply.

If no executor ~~apply~~ applies to have the will proved within 60 days after the death of the testator, any devisee or legatee named in the will, or any other person interested in the estate, may make such application, upon 10 days' notice thereof to the executor. For good cause shown, the clerk of superior court may shorten the initial 60-day period during which the executor may apply to have the will proved.

"§ 28A-2A-3. Clerk to notify legatees and devisees of probate of wills.

The clerks of the superior court of the State are hereby required and directed to notify by mail, all legatees and devisees whose addresses are known, designated in wills filed for probate in their respective counties. All expense incident to such notification shall be deemed a proper charge in the administration of the respective estates.

"§ 28A-2A-4. Clerk ~~may~~ shall compel production of will.

Every clerk of the superior court having jurisdiction, on application by affidavit setting forth the facts, shall, by summons, compel any person in the State, having in possession the last will of any decedent, to exhibit the same in his court for probate; and whoever being duly summoned refuses, in contempt of the court, to produce such will, or (the same having been parted with by him) refuses to inform the court on oath where such will is, or in what manner he has disposed of it, shall, by order of the clerk of the superior court, be committed to the jail of the county, there to remain without bail till such will be produced or accounted for, and due submission made for the contempt.

"§ 28A-2A-5. What shown on application for probate.

On application to the clerk of the superior court, he must ascertain by affidavit of the applicant –

(1) That such applicant is the executor, devisee or legatee named in the will, or is some other person interested in the estate, and how so interested.

(2) The value and nature of the testator's property, as near as can be ascertained.

(3) The names and residences of all parties entitled to the testator's property, if known, or that the same on diligent inquiry cannot be discovered; which of the parties in interest are minors, and whether with or without guardians, and the names and residences of such guardians, if known.

Such affidavit shall be recorded with the will and the certificate of probate thereof, if the same is admitted to probate.

"§ 28A-2A-6. Proof and examination in writing.

Every clerk of the superior court shall take in writing the proofs and examinations of the witnesses touching the execution of a will, and he shall embody the substance of such proofs and examinations, in case the will is admitted to probate, in his certificate of the probate thereof, which certificate must be recorded with the will. The proofs and examinations as taken must be filed in the office.

"§ 28A-2A-7. Probate in solemn form.

(a) A person entitled to apply for probate of a will pursuant to G.S. 28A-2A-1 or G.S. 28A-2A-2 may file a petition for probate of the will in solemn form, and the matter shall proceed as an estate proceeding governed by Article 2 of Chapter 28A of the General Statutes. The clerk of superior court shall issue a summons to all interested parties in the estate. The

clerk shall schedule a hearing at which the petitioner shall produce the evidence necessary to probate the will.

(b) If an interested party contests the validity of the will, that person must file a caveat before the hearing or raise an issue of devisavit vel non at the hearing. Upon the filing of a caveat or raising of an issue of devisavit vel non, the clerk shall transfer the cause to the superior court, and the matter shall be heard as a caveat proceeding.

(c) If no interested party contests the validity of the will, the probate shall be binding, and no interested party who was properly served may file a caveat of the probated will. Initiation of a probate in common form shall not preclude a person from applying for probate in solemn form.

"§ 28A-2A-8. Manner of probate of attested written will.

(a) An attested written will, executed as provided by G.S. 31-3.3, may be probated in the following manner:

(1) Upon the testimony of at least two of the attesting witnesses; or

(2) If the testimony of only one attesting witness is available, then

a. Upon the testimony of such witness, and

b. Upon proof of the handwriting of at least one of the attesting witnesses who is dead or whose testimony is otherwise unavailable, and

c. Upon proof of the handwriting of the testator, unless he signed by his mark, and

d. Upon proof of such other circumstances as will satisfy the clerk of the superior court as to the genuineness and due execution of the will; or

(3) If the testimony of none of the attesting witnesses is available, then

a. Upon proof of the handwriting of at least two of the attesting witnesses whose testimony is unavailable, and

b. Upon compliance with paragraphs ~~c and d~~ c. and d. of subsection (a)(2) of this section; or

(4) Upon a showing that the will has been made self-proved in accordance with the provisions of G.S. 31-11.6.

(b) Due execution of a will may be established, where the evidence required by subsection (a) of this section is unavoidably lacking or inadequate, by testimony of other competent witnesses as to the requisite facts.

(c) The testimony of a witness is unavailable within the meaning of this section when the witness is dead, out of the State, not to be found within the State, ~~insane or otherwise~~ incompetent, physically unable to testify or refuses to testify.

"§ 28A-2A-9. Manner of probate of holographic will.

A holographic will may be probated only in the following manner:

(1) Upon the testimony of at least three competent witnesses that they believe that the will is written entirely in the handwriting of the person whose will it purports to be, and that the name of the testator as written in or on, or subscribed to, the will is in the handwriting of the person whose will it purports to be; and

(2) Upon the testimony of one witness who may, but need not be, one of the witnesses referred to in subdivision (1) of this section to a statement of facts showing that the will was found after the testator's death as required by G.S. 31-3.4.

"§ 28A-2A-10. Manner of probate of nuncupative will.

(a) No nuncupative will may be probated later than six months from the time it was made unless it was reduced to writing within 10 days after it was made.

(b) Before a nuncupative will may be probated

(1) Written notice must be given to the surviving spouse, if any, and to the next of kin, by the clerk of the court in which it is to be probated, notifying them that the will has been offered for probate and that they may, if they desire, oppose the probate thereof, or

(2) When the surviving spouse or next of kin are not known or when for any other reason such notice cannot be given, a notice to the same effect must be published not less than once a week for four consecutive weeks in some newspaper published in the county where the will is offered for probate, or if no newspaper is published in the county, then in some newspaper having general circulation therein.

(c) A nuncupative will may be probated only in the following manner:

(1) Upon the testimony of at least two competent witnesses who establish the terms of such will and who state that they were simultaneously present at the making thereof, that the testator declared he was then making his will, and that they were then and there specially requested by him to bear witness thereto; and

(2) Upon the testimony of one competent witness, who may but need not be one of the witnesses referred to in subdivision (1) of this subsection, that the will was made in the testator's last illness or while he was in imminent peril of death, and that he did not survive such sickness or imminent peril, but it is not necessary that all such facts be proved by the testimony of the same witness.

"§ 28A-2A-11. Probate of wills of members of the armed forces.

In addition to the methods already provided in existing statutes therefor, a will executed by a person while in the armed forces of the United States or the merchant marine, shall be admitted to probate (whether there were subscribing witnesses thereto or not, if they, or either of them, is out of the State at the time said will is offered for probate) upon the oath of at least three credible witnesses that the signature to said will is in the handwriting of the person whose will it purports to be. Such will so proven shall be effective to devise real property as well as to bequeath personal estate of all kinds. This section shall not apply to cases pending in courts and at issue on the date of its ratification.

"§ 28A-2A-12. Probate conclusive until vacated; substitution of consolidated bank as executor or trustee under will.

Such record and probate is conclusive in evidence of the validity of the will, until it is vacated on appeal or declared void by a competent tribunal. Provided, that whenever in a will so probated or recorded a bank or trust company shall be named executor and/or trustee and shall have at the time of such probate and recording become absorbed by or consolidated with another bank or trust company or shall have sold and transferred all its assets and liabilities to another bank or trust company doing business in North Carolina, such latter bank or trust company shall be deemed substituted for and shall have all the rights and powers of the former bank or trust company.

"§ 28A-2A-13. Wills filed in clerk's office.

All original wills shall remain in the clerk's office, among the records of the court where the same shall be proved, and to such wills any person may have access, as to the other records. If said will contains a devise of real estate, outside said county where said will is probated, then a copy of the said will, together with the probate of the same, certified under the hand and seal of the clerk of the superior court of said county may be recorded in the book of wills and filed in the office of the clerk of the superior court of any county in the State in which said land is situated with the same effect as to passing the title to said real estate as if said will had

originally been probated and filed in said county and the clerk of the superior court of said last-mentioned county had had jurisdiction to probate the same.

"§ 28A-2A-14. Validation of wills heretofore certified and recorded.

All wills which have prior to March 9, 1921, been certified and recorded in the office of the clerk of the superior court of any county, substantially following the provisions of ~~G.S. 31-20~~ G.S. 28A-2A-13, are hereby validated and approved as to the conveyance and transfer of any title to real estate as contained therein, to the same extent as if said wills had originally been probated and filed in said county, and the clerk of the superior court of said county had had jurisdiction to probate the same, provided the probates and witnesses to the said wills are sufficient and according to law.

"§ 28A-2A-15. Certified copy of will proved in another state or country.

When a will, made by a citizen of this State, is proved and allowed in some other state or country, and the original will cannot be removed from its place of legal deposit in such other state or country, for probate in this State, the clerk of the superior court of the county where the testator had his last usual residence or has any property, upon a duly certified copy or exemplification of such will being exhibited to him for probate, shall take every order and proceeding for proving, allowing and recording such copy as by law might be taken upon the production of the original.

"§ 28A-2A-16. Examination of witnesses by affidavit.

(a) The examination of witnesses to a will may be taken and subscribed in the form of an affidavit before a notary public or other person who is authorized to administer oaths in the jurisdiction where the examination is held.

(b) A photographic copy of the original will certified to be a true and exact copy thereof by the clerk of superior court of the county in which the will is to be probated may be used in the examination of the witnesses in the procedures set out in ~~subsection (a);~~ subsection (a) of this section; provided, the said clerk has in his possession the original will at the time of examination of the witnesses.

(c) Affidavits taken in accordance with subsection (a) of this section shall be transmitted by the person taking the affidavit to the clerk of superior court of the county in which the will is to be probated.

(d) Testimony submitted in accordance with subsection (a) of this section is competent in regard to all requirements of G.S. 31-3.3 and to establish that a will was executed in compliance with the requirements of G.S. 31-3.3.

(e) Nothing in this section is to limit or otherwise affect the authority of a clerk of superior court in the exercise of his authority as judge of probate under G.S. 28A-2-1 to:

(1) ~~issue~~ Issue subpoenas under G.S. 7A-103; or

(2) ~~order~~ Order the taking of depositions of witnesses.

"§ 28A-2A-17. Certified copy of will of nonresident recorded.

(a) Subject to the provisions of ~~subsection (b),~~ subsection (b) of this section, if the will of a citizen or subject of another state or country is probated in accordance with the laws of that jurisdiction and a duly certified copy of the will and the probate proceedings are produced before a clerk of superior court of any county wherein the testator had property, the copy of the will shall be probated as if it were the original. If the jurisdiction is within the United States, the copy of the will and the probate proceedings shall be certified by the clerk of the court wherein the will was probated. If the jurisdiction is outside the United States, the copy of the will and probate proceedings shall be certified by any ambassador, minister, consul or commercial agent of the United States under his official seal.

(b) For a copy of a will probated under the provisions of subsection (a) of this section to be valid to pass title to or otherwise dispose of real estate in this State, the execution of said will according to the laws of this State must appear affirmatively, to the satisfaction of the clerk of the superior court of the county in which such will is offered for probate, from the testimony

of a witness or witnesses to such will, or from findings of fact or recitals in the order of probate, or otherwise in such certified copy of the will and probate proceedings.

(c) If the execution of the will in accordance with the laws of this State does not appear as required by ~~subsection (b),~~ subsection (b) of this section, the clerk before whom the copy is exhibited shall have power to take proof as prescribed in ~~G.S. 31-24,~~ G.S. 28A-2A-16, and the will may be adjudged duly proved, and if so proved, the will shall be recorded as herein provided.

(d) Any copy of a will of a nonresident heretofore allowed, filed and recorded in this State in compliance with the foregoing shall be valid to pass title to or otherwise dispose of real estate in this State.

"§ 28A-2A-18. Probates validated where proof taken by commissioner or another clerk.

In all cases of the probate of any will made prior to March 8, 1899, in common form before any clerk of the superior courts of this State, where the testimony of the subscribing witnesses has been taken in the State or out of it by any commissioner appointed by said clerk or taken by any other clerk of the superior court in any other county of this State, and the will admitted to probate upon such testimony, the proceedings are validated.

"§ 28A-2A-19. Probates in another state before 1860 validated.

In all cases where any will devises land in this State, and the original will was duly admitted to probate in some other state prior to the year 1860, and a certified copy of such will and the probate thereof has been admitted to probate and record in any county in this State, and it in any way appears from such recorded copy that there were two subscribing witnesses to such will, and its execution was proved by the examination of such witnesses when the original was admitted to probate, such will shall be held and considered, and is hereby declared to be, good and valid for the purpose of passing title to the lands devised thereby, situated in this State, as fully and completely as if the original will had been duly executed and admitted to probate and recorded in this State in accordance with the laws of this State.

"§ 28A-2A-20. Validation of wills recorded without probate by subscribing witnesses.

In all cases where wills and testaments were executed prior to the first day of January, 1875, and which appear as recorded in the record of last wills and testaments to have had two or more witnesses thereto, and such last wills and testaments were admitted to probate and recorded in the record of wills in the proper county in this State prior to the first day of January, 1888, without having been duly proven as provided by law, and such wills were presented to the clerk of the superior court in any county in this State where the makers of said wills owned property, and where the makers of such wills lived and died, and were by such clerks recorded in the record of wills for his county, said wills and testaments or exemplified copies or certified true copies thereof, so recorded, if otherwise sufficient, shall have the effect to pass the title to real or personal property, or both, therein devised and bequeathed, to the same extent and as completely as if the execution thereof had been duly proven by the two subscribing witnesses thereto in the manner provided by law of this State. Nothing herein shall be construed to prevent such wills from being impeached for fraud.

"§ 28A-2A-21. Validation of wills admitted on oath of one subscribing witness.

In all cases where last wills and testaments which appear as recorded in the record of last wills and testaments to have had two witnesses thereto and such last wills and testaments were admitted to probate and recorded in the record of wills in the proper county in this State prior to the first day of January, 1890, upon the oath and examination of one of the witnesses, such proof being taken in writing and recorded, and the certificate of probate of the clerk of the court states that such a will is proven by one of the subscribing witnesses thereto and the handwriting of the other subscribing witness being a nonresident is proven under oath, and such a will and certificate has been recorded in the record of wills of the proper county, such probate is hereby validated as fully as if the proof of the handwriting of the nonresident witness had been taken in regular form in writing and recorded.

"§ 28A-2A-22. Validation of probates of wills when witnesses examined before notary public; acts of deputy clerks validated.

Whenever any last will and testament has been probated, based upon the examination of the subscribing witness or the subscribing witnesses, taken before a notary public in the county in which the will is probated, or taken before a notary public of any other county, it is hereby in all respects validated and shall be sufficient to pass the title to all real and personal property purported to be transferred thereby.

All acts heretofore performed by deputy clerks of the superior court in taking acknowledgments, examining witnesses and probate of any wills, deeds and other instruments required or permitted by law to be recorded, are hereby validated. Nothing herein contained shall affect pending litigation.

§ 28A-2A-23. Validation of wills when recorded without order of probate or registration upon oath and examination of subscribing witness or witnesses.

Whenever any last will and testament has been duly presented to the clerk of the superior court, and the said will together with the oath and examination of the subscribing witness or witnesses thereto taken before a notary public in the county in which the will is probated, or taken before a notary public of any other county, or before the clerk of the superior court of said county, or any other county, is duly recorded in the office of the clerk of the superior court of the said county, without a formal order of probate or registration, such will, if executed in accordance with the laws of this State, is hereby validated with respect to the probate and registration thereof and shall be sufficient to pass title to all real and personal property purported to be transferred thereby to the same extent that the said will would have done so if there had been a formal order of probate and registration. This section shall apply only to wills presented to the clerk of the superior court and recorded prior to the first day of January, 1943.

"Article 3.

"Venue for Probate of Wills and Administration of Estates of Decedents.

"§ 28A-3-1. Proper county.

The venue for the probate of a will and for all proceedings relating to the administration of the estate of a decedent shall be:

(1) In the county in this State where the decedent ~~had his domicile~~ was domiciled at the time of ~~his~~ the decedent's death; or

(2) If the decedent had no domicile in this State at the time of death, then in any county wherein the decedent left any property or assets or into which any property or assets belonging to this estate may have come. If there be more than one such county, that county in which proceedings are first commenced shall have priority of venue; or

(3) If the decedent was a nonresident motorist who died in the State, then in any county in the State.

"§ 28A-3-2. Proceedings to determine venue.

(a) If proceedings are commenced in more than one county or if upon commencement of a proceeding a question arises as to the proper county of venue, or if for any other reason a delay arises in determining venue, ~~then~~ the matter shall be referred by the clerk of superior court ~~before whom the question arises~~ for a hearing ~~before~~ and determination by the senior resident superior court judge or any judge assigned to hold the superior courts of the district which includes the county where the proceedings were first commenced. ~~The~~ Upon the filing of a motion or petition to determine venue, the judge shall determine which is the proper county for administration of the estate and stay proceedings in all other counties. ~~He~~ The judge shall make such orders as are necessary to transfer the entire proceedings to the proper county. The clerk of superior court of each county in which proceedings are stayed shall retain a true copy of the entire file and transmit the original to the clerk of superior court of such county as the judge directs.

(a1) Any interested person may file a petition to determine proper venue within the time prescribed by G.S. 28A-3-5. The matter shall be referred by the clerk of superior court by or before whom the petition is filed for a hearing and determination by the senior resident superior court judge or any judge assigned to hold the superior courts of the district that includes the county where the proceedings were first commenced.

(b) A proceeding shall be deemed commenced by the offering of a will for probate or by applying for letters of administration as provided by G.S. 28A-6-1 through 28A-6-5 or by applying for letters of collection as provided by G.S. 28A-11-1 through 28A-11-4 and the proceeding first legally commenced shall extend to all of the property or assets of the decedent in this State.

"§ 28A-3-3. Procedure after determination of improper appointment.

Where a person has been improperly appointed, and a different person in another county is determined under G.S. 28A-3-2(a) to be the properly appointed personal representative, such improperly appointed personal representative shall surrender to the properly appointed personal representative all assets of the estate under ~~his control.~~ control of the improperly appointed personal representative. In addition such improperly appointed personal representative shall file an accounting with the clerk of superior court in the proper county according to the form prescribed for collectors by G.S. 28A-11-4.

"§ 28A-3-4. Liability of personal representative appointed in improper county.

When a personal representative has been appointed in an improper county, and a different person in another county is determined under G.S. 28A-3-2(a) to be the properly appointed personal representative, such improperly appointed personal representative shall not thereby incur personal liability for administrative acts performed prior to the transfer except as provided in G.S. 28A-13-10.

"§ 28A-3-5. Waiver of venue.

If questions as to priority of venue are not raised within three months after the issuance of letters testamentary or letters of administration to the personal representative, the validity of the proceeding shall not be affected by any error in venue.

"Article 4.

"Qualification and Disqualification for Letters Testamentary and Letters of Administration.

"§ 28A-4-1. Order of persons qualified to serve.

(a) Letters Testamentary. – Letters testamentary shall be granted to the executor or executors named or designated in the will, or if no such person qualifies, to any substitute or successor executor named or designated in the will. If no person so named or designated qualifies, letters testamentary shall be granted to some other person nominated by a person upon whom the will expressly confers the authority to make such nomination. If none of the foregoing persons ~~qualifies or if the clerk of superior court upon hearing finds that none of the foregoing persons is qualified in accordance with G.S. 28A-4-2,~~ qualifies, the clerk shall grant letters of administration in accordance with subsection ~~(b).~~(b) of this section.

(b) Letters of Administration. Letters of administration shall be granted to persons who are qualified to serve, in the following order, unless the clerk of superior court in ~~his~~ the discretion of the clerk of superior court determines that the best interests of the estate otherwise require:

(1) The surviving spouse of the decedent;
(2) Any devisee of the testator;
(3) Any heir of the decedent;
(3a) Any next of kin, with a person who is of a closer kinship as computed pursuant to G.S. 104A-1 having priority;
(4) Any creditor to whom the decedent became obligated prior to ~~his~~ the decedent's death;

(5) Any person of good character residing in the county who applies therefor; and

(6) Any other person of good character not disqualified under G.S. 28A-4-2.

When applicants are equally entitled, letters shall be granted to the applicant who, in the judgment of the clerk of superior court, is most likely to administer the estate advantageously, or they may be granted to any two or more of such applicants.

(c) Any interested person may file a petition pursuant to Article 2 of this Chapter alleging that all or any of the persons described in subsection (b) of this section is disqualified in accordance with G.S. 28A-4-2.

"§ 28A-4-2. Persons disqualified to serve as personal representative.

No person is qualified to serve as a personal representative who:

(1) Is under 18 years of age;

(2) Has been adjudged incompetent in a formal proceeding and remains under such disability;

(3) Is a convicted felon, under the laws either of the United States or of any state or territory of the United States, or of the District of Columbia and whose citizenship has not been restored;

(4) Is a nonresident of this State who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate, and caused such appointment to be filed with the court; or who is a resident of this State who has, subsequent to appointment as a personal representative, moved from this State without appointing such process agent;

(5) Is a corporation not authorized to act as a personal representative in this State;

(6) Repealed by Session Laws 1999-133, s. 1.

(7) Has lost ~~his~~ that person's rights as provided by Chapter 31A;

(8) Is illiterate;

(9) Is a person whom the clerk of superior court finds otherwise unsuitable; or

(10) Is a person who has renounced either expressly or by implication as provided in G.S. 28A-5-1 and 28A-5-2.

"Article 5.

"Renunciation by Personal Representative.

"§ 28A-5-1. Renunciation by executor.

(a) Express Renunciation by Executor. – Any person named or designated as executor in a duly probated will may renounce the office by filing with the clerk of superior court a writing signed by such person, and acknowledged or proved to the satisfaction of the clerk.

(b) Implied Renunciation by Executor. – If any person named or designated as executor fails to qualify or to renounce within 30 days after the will had been admitted to probate, (i) the clerk of superior ~~court, on application of~~ court may issue a notice to that person to qualify or move for an extension of time to qualify within 15 days, or (ii) any other person named or designated as executor in the will or ~~of~~ any interested ~~person, shall, or on his own motion may, issue a citation to the person who has failed to qualify or renounce to show cause why he should not~~ person may file a petition in accordance with Article 2 of this Chapter for an order finding that person named or designated as executor to be deemed to have renounced. ~~If, upon service of the citation, he does not qualify or renounce or show cause within the time fixed in the citation, such period to be not less than 10 nor more than 30 days, an order must be entered by~~ If that person does not file a response to the motion or petition within 15 days from the date of service of the motion or petition, the clerk of superior court shall enter an order adjudging that ~~he has renounced. If cause be shown,~~ the person has renounced. If the person files a response within 15 days from the date of service of the motion or petition requesting an extension of time within which to qualify or renounce, upon hearing, the clerk of superior court

may grant to ~~such~~ that person a reasonable extension of time within which to qualify or ~~renounce.~~ renounce for cause shown. If that person qualifies within 15 days of the date of service of the motion or petition, the clerk of superior court shall dismiss that motion or petition, without prejudice, summarily and without hearing.

(c) Procedure upon Renunciation. – Upon renunciation by a person named or designated as executor, letters shall be issued to some other person as provided in G.S. 28A-4-1.

"§ 28A-5-2. Renunciation of right to administer.

(a) Express Renunciation. – Any person entitled to apply for letters of administration may renounce the office by filing with the clerk of superior court a writing signed by such person, and acknowledged or proved to the satisfaction of the clerk.

(b) Implied Renunciation. –

(1) If any person entitled to apply for letters of administration fails to apply therefor within 30 days from the date of death of the intestate, (i) the clerk of superior ~~court, on application of~~ court may issue a notice to the person to qualify or move for an extension of time to qualify within 15 days, or (ii) any interested ~~person, shall, or on his own motion may, issue a citation to the person entitled to apply for letters of administration requiring him to show cause why he should not~~ person may file a petition in accordance with Article 2 of this Chapter for an order finding that person to be deemed to have renounced. ~~If, upon service of the citation, he does not apply for letters of administration and tender the required bond or show cause within the time shown in the citation, such period to be not less than 10 nor more than 30 days, an order must be entered by the clerk of the~~ If the person does not file a response to the notice or petition within 15 days from the date of service of the motion, the clerk of superior court shall enter an order adjudging that ~~he has renounced;~~ the person has renounced. If the person files a response within 15 days from the date of service of the motion requesting an extension of time within which to qualify or renounce, upon hearing, the clerk of superior court may grant to that person a reasonable extension of time within which to qualify or renounce for cause shown. If the person qualifies within 15 days of the date of service of the motion, the clerk of superior court shall dismiss the motion, without prejudice, summarily and without hearing and the clerk of superior court shall issue letters to some other person as provided in G.S. 28A-4-1. ~~If cause be shown the clerk of superior court may grant to such person a reasonable extension of time within which to apply and qualify, or renounce.~~ No notice shall be required to be given to any interested person, but the clerk may give notice as the clerk in the clerk's discretion may determine.

(2) If no person entitled to administer applies for letters of administration within 90 days after the date of death of an intestate, then the clerk of superior court may, in ~~his discretion,~~ the clerk's discretion, enter an order declaring all prior rights to apply for letters of administration to be renounced, and issue letters to some suitable person as provided in G.S. 28A-4-1.

(c) Nomination by Person Renouncing. – Any person who expressly renounces ~~his~~ the person's prior right to apply for letters of administration may at the same time nominate in writing some other person not disqualified under G.S. 28A-4-2 to be named as personal representative, and such designated person shall be entitled to the same priority of right to apply for letters of administration as the person making the nomination.

"Article 6.

"Appointment of Personal Representative.

"§ 28A-6-1. Application for letters; grant of letters.

(a) The application for letters of administration or letters testamentary shall be in the form of an affidavit sworn to before an officer authorized to administer oaths, signed by the applicant or ~~his~~ the applicant's attorney, which may be supported by other proof under oath in writing, all of which shall be recorded and filed by the clerk of superior court, and shall allege the following facts:

(1) The name, and to the extent known, the domicile and the date and place of death of the decedent;

(2) The legal residence and mailing address of the applicant;

(3) The names, ages and mailing addresses of the decedent's heirs and devisees, including the names and mailing addresses of the guardians of those having court-appointed guardians, so far as all of these facts are known or can with reasonable diligence be ascertained;

(4) That the applicant is the person entitled to apply for letters, or that ~~he~~ the applicant applies after persons having prior right to apply are shown to have renounced under Article 5 of this Chapter, or that ~~he~~ the applicant applies subject to the provisions of G.S. 28A-6-2(1), and that ~~he~~ the applicant is not disqualified under G.S. 28A-4-2.

(5) The nature and probable value of the decedent's property, both real and personal, and the location of such property, so far as all of these facts are known or can with reasonable diligence be ascertained; and

(6) If the decedent was not domiciled in this State at the time of ~~his~~ the decedent's death, a schedule of ~~his~~ the decedent's property located in this State, and the name and mailing address of ~~his~~ the decedent's domiciliary personal representative, or if there is none, whether a proceeding to appoint one is pending.

(b) If it appears to the clerk of superior court that the application and supporting evidence comply with the requirements of subsection (a) of this section and on the basis thereof ~~he~~ the clerk finds that the applicant is entitled to appointment, ~~he~~ the clerk shall issue letters of administration or letters testamentary to the applicant unless in ~~his~~ the clerk's discretion ~~he~~ the clerk determines that the best interests of the estate would be served by delaying the appointment of a personal representative, in which case ~~he~~ the clerk may appoint a collector as provided in Article 11.

(c) The clerk of superior court may rely upon the following as evidence of death:

(1) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred.

(2) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, evidencing the date of death.

(3) A certificate or authenticated copy of medical records, including a record of death, evidencing the date of death.

(4) Any other evidence that the clerk of superior court deems sufficient to confirm the date of death.

"§ 28A-6-2. Letters issued without notice; exceptions.

Letters of administration or letters testamentary may be issued without notice, including upon a finding of implied renunciation under G.S. 28A-5-1(b) or G.S. 28A-5-2(b), except:

(1) When the applicant is not entitled to priority of appointment under G.S. 28A-4-1, all persons entitled to an equal or higher preference shall be given ~~notice by citation as provided in G.S. 28A-5-2(b)(1),~~ 15 days prior to written notice of that application, unless they have renounced in accordance with the provisions of Article 5 of this Chapter.

(2) The clerk of superior court may in any case require that prior written notice be given to such interested persons as ~~he~~ the clerk, in ~~his discretion~~ the clerk's discretion, may designate prior to the granting of letters.

"§ 28A-6-3. Appointment of successor to personal representative.

When the appointment of a sole or last surviving personal representative is terminated by death, resignation pursuant to Article 10 of this Chapter, or revocation pursuant to Article 9 of this Chapter, the clerk of superior court shall appoint another personal representative as provided by G.S. 28A-4-1 to act as ~~his successor.~~ successor to the sole or last surviving personal representative. When two or more personal representatives have qualified, and the appointment of one or more of them is terminated by death, resignation or revocation, leaving in office one or more personal representatives, the appointment of successors shall not be required unless:

(1) The clerk of superior court determines, in ~~his~~ the clerk's discretion, that it is in the best interest of the estate to appoint a successor or successors to such personal representative or personal representatives, or

(2) In the case of executors, the will so provides.

"§ 28A-6-4. Right to contest appointment; procedure.

Prior to the issuance of letters, any interested person may, by written ~~objection~~ petition filed with the clerk of superior court, ~~with notice to the applicant,~~ and served upon such interested persons as the clerk of superior court may direct, contest the issuance of letters of administration or letters testamentary to ~~such applicant. After an objection~~ a person otherwise entitled to apply for letters of administration or letters testamentary. After a petition has been duly filed, the clerk of superior court shall conduct a hearing and determine ~~whether~~ to whom letters shall ~~issue to the applicant.~~ be issued. Appeal may be taken from the order of the clerk as in ~~a special proceeding.~~ an estate proceeding pursuant to G.S. 1-301.3.

"§ 28A-6-5. Letters not subject to collateral attack.

The validity of letters issued shall not be subject to collateral attack.

"Article 7.

"Oath.

"§ 28A-7-1. Oath required before letters issue.

Before letters testamentary, letters of administration or letters of collection are issued to any person, ~~he~~ the person shall take and subscribe an oath or affirmation before the clerk of superior court, or before any other officer of any state or country authorized by the laws of North Carolina to administer oaths, that ~~he~~ the person will faithfully and honestly discharge the duties of ~~his~~ the person's office. Such oath or affirmation shall be in the form prescribed in G.S. 11-11, and shall be filed in the office of the clerk of superior court.

"Article 8.

"Bond.

"§ 28A-8-1. Bond required before letters issue; when bond not required.

(a) Except as otherwise provided in subsection ~~(b),~~(b) of this section, every personal representative, before letters are issued, shall give bond, conditioned as provided in G.S. 28A-8-2.

(b) No bond shall be required of:

(1) A resident executor, unless the express terms of the will require ~~him~~ a resident executor to give bond;

(2) A nonresident executor (or a resident executor who moves from this State subsequent to ~~his~~ that executor's appointment) who has appointed a resident agent to accept service of process as provided in G.S. 28A-4-2(a) [28A-4-2(4)], when the express terms of the will excuse ~~him~~ a nonresident executor from giving bond;

(3) A nonresident executor, when there is a resident executor named who has qualified as coexecutor unless the express terms of the will require them to give bond, or the clerk of superior court finds that such bond is necessary for the protection of the estate; or

(4) A personal representative appointed solely for the purpose of bringing an action for the wrongful death of the deceased until such time as the personal representative shall receive property into the estate of the deceased; or

(5) A personal representative that is a ~~national banking association having its principal place of business in this State or a State bank acting pursuant to~~ trust institution licensed under G.S. 53-159;

(6) A personal representative of an intestate who resides in the State of North Carolina when all of the heirs of the decedent are over 18 years of age and file with the clerk of superior court a written waiver instrument agreeing to relieve the personal representative from the necessity of giving bond; or

(7) A personal representative where ~~he~~ the personal representative receives all the property of the decedent;

(8) An administrator with the will annexed who resides in the State of North Carolina when all of the devisees of the decedent are over 18 years of age and file with the clerk of superior court a written waiver instrument agreeing to relieve ~~him~~ the administrator with the will annexed of the necessity of giving bond.

"§ 28A-8-1.1. Deposited money; exclusion in computing amount of bond.

Notwithstanding the provisions of G.S. 28A-8-1, in any proceeding for the determination of the amount of bond to be required of the personal representative or testamentary trustee, whether at the time of appointment or subsequently, when it appears that the estate of the decedent or the testamentary trust includes money which has been or will be deposited in a bank or banks in this State, or money which has been or will be invested in an account or accounts in an insured savings and loan association or associations upon condition that such money will not be withdrawn except on authorization of the court, the court may, in its discretion, order such money so deposited or so invested and shall exclude such deposited money from the computation of the amount of such bond or reduce the amount of bond to be required in respect of such money to such an amount as it may deem reasonable.

The petitioner for letters testamentary, of administration, or of trusteeship may deliver to any such bank or association any such money in ~~his~~ the petitioner's possession, or may allow such bank to retain any such money already in its possession, or may allow such association to retain any such money already invested with it; and, in either event, the petitioner shall secure and file with the court a written receipt including the agreement of the bank or association that such money shall not be allowed to be withdrawn except on authorization of the court. In so receiving and retaining such money, the bank or association shall be protected to the same extent as though it had received the same from a person to whom letters testamentary, of administration, or of trusteeship had been issued.

The term "account in an insured savings and loan association" as used in this section means an account insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or by a mutual deposit guaranty association authorized by Article 7A of Chapter 54 of the General Statutes of North Carolina.

The term "money" as used in this section means the principal of the decedent's estate and does not include the income earned by the principal of the decedent's estate which may be withdrawn without any authorization of the court.

"§ 28A-8-2. Provisions of bond.

A bond given pursuant to this Article shall be:

(1) Payable to the State to the use of all persons interested in the estate; and

(2) Conditioned that the personal representative giving the bond shall faithfully execute the trust reposed in ~~him~~ the personal representative and obey all lawful orders of the clerk of superior court or other court touching the administration of the estate committed to ~~him;~~ the personal representative; and

(3) In an amount not less than:

a. One and one-fourth times the value of all personal property of the decedent when the bond is secured by a suretyship bond executed by a corporate surety company authorized by the Commissioner of Insurance to do business in this State, provided that the clerk of superior court, when the value of the personal property to be administered by the personal representative exceeds one hundred thousand dollars ($100,000), may accept bond in an amount equal to the value of the personal property plus ten percent (10%) thereof; or

b. Double the value of all personal property of the decedent when the bond is secured by one of the methods provided in subdivision (4)b, (4)c or (4)d; such value of said personal property to be ascertained by the clerk of superior court by examination, on oath, of the applicant or of some other person determined by the clerk to be qualified to testify as to its value; and

(4) Secured by one or more of the following:

a. Suretyship bond executed, at the expense of the estate, by a corporate surety company authorized by the Commissioner of Insurance to do business in this State;

b. Suretyship bond executed and justified upon oath before the clerk of superior court by two or more sufficient personal sureties each of whom shall reside in and own real estate in North Carolina and shall have assets with an aggregate value above encumbrances of not less than the amount of the penalty of the required bond;

c. A first mortgage or first deed of trust in form approved by the administrative officer of the courts on real estate located in North Carolina:

1. Executed by the owner, and conditioned on the performance of the obligations of the bond, and

2. Containing a power of sale which, in the case of a mortgage, is exercisable by the clerk of superior court upon a breach of any condition thereof, or, in the case of a deed of trust, is exercisable by the trustee after notice by the clerk of superior court that a breach of condition has occurred.

The clerk of superior court shall not accept such mortgage or deed of trust until it shall have been properly registered in the county or counties in which the real estate is located, and the clerk of superior court is satisfied that the real estate subject to the mortgage or deed of trust is worth the amount to be secured thereby, and that the mortgage or deed of trust is a first charge on said real estate. No such mortgage or deed of trust shall be cancelled or surrendered until the approval of the final account, unless substitution is permitted as provided in G.S. 28A-8-3(d).

d. A deposit by the owner with the clerk of superior court of negotiable securities, of a kind permitted by law to be proper investments for fiduciaries exercising due care, having a fair market value

determined by the clerk to be equal to the amount of the penalty of the bond. Such securities shall be properly endorsed, delivered to the clerk of superior court, and accompanied by a security agreement containing a power of sale authorizing the clerk of superior court to sell them in the event the person to whom letters are being issued commits a breach of any duty imposed upon ~~him~~ that person by law in respect of ~~his~~ that person's office. Such securities shall not be surrendered by the clerk of superior court to the owner until the approval of the final account, unless substitution is permitted as provided in G.S. 28A-8-3(d). For the purposes of determining the value of the assets of the personal sureties in subdivision (4)b, or the value of the real estate in subdivision (4)c, or the value of the negotiable securities in subdivision (4)d, the clerk of superior court may require a certificate of the value of such property by one or more persons not interested in the estate determined by the clerk to be qualified to certify such value.

"§ 28A-8-3. Modification of bond requirements.

(a) Increase of Bond or Security in Case of Inadequacy or Insufficiency. –

(1) The clerk of superior ~~court may, on his own motion or upon verified application of any person interested in the estate,~~ court, on the clerk's own motion, may require the personal representative to give a new bond or to furnish additional security if ~~he~~ the clerk of superior court finds that the bond filed pursuant to this Article, or its security, is insufficient, inadequate in amount, or that any of the individual sureties has become or is about to become a nonresident or, in the case of a corporate surety, has withdrawn or is about to withdraw from doing business in this State. ~~Before ordering the personal representative to give a new bond or furnish additional security,~~

(2) Any interested person may file a verified petition in accordance with Article 2 of this Chapter requesting modification of bond requirements. Upon the filing of a verified petition, the clerk of superior court shall ~~issue a citation requiring the personal representative, within 10 days after service thereof, to show cause why such action should not be taken.~~ conduct a hearing in accordance with Article 2 of this Chapter. If the clerk of superior court finds that the bond filed or its security is insufficient or inadequate, ~~he~~ the clerk shall make an order requiring the personal representative to give a new bond or to furnish additional security within a reasonable time to be fixed in the order.

(b) Increase of Bond upon Sale of Real Estate. – When a personal representative makes application for an order to sell real estate, the provisions of G.S. 1-339.10 shall govern.

(c) Reduction of Bond. – On application of the personal representative the penalty of the bond may be reduced from time to time when the clerk of superior court finds that such reduction is clearly justified, but in no event shall the penalty of the bond be reduced below the amount required by G.S. 28A-8-2(3).

(d) Substitution of Security. – When a bond is secured by a mortgage or deed of trust on real estate as provided in G.S. 28A-8-2(4)c or a deposit of negotiable securities as provided in G.S. 28A-8-2(4)d, the clerk of superior court may, on application of the personal representative, order that such real estate or negotiable securities, or a part thereof, be released upon the substitution therefor of other security in compliance with G.S. 28A-8-2(4)a, (4)c, or (4)d. Such substitution may be allowed in conjunction with any other modification of bond requirements permitted by this section.

"§ 28A-8-4. Failure to give additional bond; letters revoked.

If any personal representative fails to give an additional bond or new bond or to furnish additional security as ordered by the clerk of superior court pursuant to the provisions of this Article, within the time specified in any such ~~order,~~ order (not less than five days or more than 15 days), the clerk of superior court shall proceed as provided in G.S. 28A-9-2.

"§ 28A-8-5. Rights of surety in danger of loss.

Any surety on the bond of a personal representative who is in danger of loss under ~~his~~ the surety's suretyship may file ~~his~~ a verified petition ~~on oath~~ with the clerk of superior court setting forth the facts, and asking that such personal representative be removed from office, or that ~~he~~ the personal representative be required to give security to indemnify the petitioner against apprehended loss, or that the petitioner be discharged as surety and be released from liability for any future breach of the bond. The clerk of superior court shall ~~thereupon issue a citation to the personal representative, requiring him to answer the petition within 10 days after service thereof.~~ conduct a hearing in accordance with Article 2 of this Chapter. If, upon the hearing, the clerk of superior court determines that the surety is entitled to relief, ~~he~~ the clerk may grant the same in such manner as to serve the best interest of the estate. In any event, however, the previous surety shall not be released from liability for any breach of duty by the personal representative occurring prior to the filing of bond with a new surety unless the new surety assumes liability for the earlier breaches.

"§ 28A-8-6. Action against obligors on bond of personal representative.

Any person injured by the breach of any bond given by a personal representative or collector may institute a civil action against one or more of the obligors of the bond and recover such damages as ~~he~~ the person may have sustained. Any successor personal representative, or any other personal representative of the same decedent, may institute such action on behalf of the persons interested in the estate. Any such action against one or more of the obligors of the bond shall be brought in the name of the State of North Carolina and shall be instituted in the county in which letters were issued to the personal representative or collector, and the clerk of superior court shall give notice of the institution of the action in such manner as ~~he~~ the clerk may determine to all other persons shown by ~~his~~ the clerk's records to be interested in the estate. The bond of the personal representative is not void after the first or any subsequent recovery thereon until the entire penalty is recovered. If the plaintiff fails to prevail, costs may be taxed against the person or persons for whose benefit the action on a personal representative's bond is prosecuted.

"Article 9.

"Revocation of Letters.

"§ 28A-9-1. Revocation after hearing.

(a) Grounds. – Letters testamentary, letters of administration, or letters of collection may be revoked after hearing on any of the following grounds:

(1) The person to whom they were issued was originally disqualified under the provisions of G.S. 28A-4-2 or has become disqualified since the issuance of letters.

(2) The issuance of letters was obtained by false representation or mistake.

(3) The person to whom they were issued has violated a fiduciary duty through default or misconduct in the execution of ~~his~~ the person's office, other than acts specified in G.S. 28A-9-2.

(4) The person to whom they were issued has a private interest, whether direct or indirect, that might tend to hinder or be adverse to a fair and proper administration. The relationship upon which the appointment was predicated shall not, in and of itself, constitute such an interest.

(b) Procedure. ~~When it appears to the~~

(1) The clerk of superior ~~court, on his own motion or upon verified complaint made to him by~~ court may, on the clerk's own motion, conduct a hearing in

accordance with Article 2 of this Chapter to determine whether any of the grounds set forth in subsection (a) of this section exist with regard to any personal representative or collector within the jurisdiction of the clerk of superior court.

(2) Upon the verified petition of any person interested in the ~~estate,~~ estate for an order finding that any of the grounds set forth in subsection (a) ~~may exist~~ of this section exist with regard to any personal representative or collector within ~~his jurisdiction, he shall issue citation requiring such personal representative or collector, within 10 days after service thereof, to show cause why his letters should not be revoked. On the return of such citation duly executed, the clerk of superior court shall set the date for a hearing.~~ the jurisdiction of the clerk of superior court, the clerk shall conduct a hearing in accordance with Article 2 of this Chapter.

(3) Notice of the time and date of the hearing shall be given in accordance with Article 2 of this Chapter and to such persons ~~and in such manner~~ as the clerk of superior court shall determine. If at the hearing the clerk of superior court finds any one of the grounds set forth in subsection (a) of this section to exist, ~~he~~ the clerk of superior court shall revoke the letters issued to such personal representative or collector.

"§ 28A-9-2. Summary revocation.

(a) Grounds. – Letters testamentary, letters of administration, or letters of collection, shall be revoked by the clerk of superior court without hearing when:

(1) After letters of administration or collection have been issued, a will is subsequently admitted to probate.

(2) After letters testamentary have been issued:

a. The will is set aside, or

b. A subsequent testamentary paper revoking the appointment of the executor is admitted to probate.

(3) Any personal representative or collector required to give a new bond or furnish additional security pursuant to G.S. 28A-8-3 fails to do so within the time ordered.

(4) A nonresident personal representative refuses or fails to obey any citation, notice, or process served on ~~him or his process agent.~~ that nonresident personal representative or the process agent of the nonresident personal representative.

(5) A trustee in bankruptcy, liquidating agent, or receiver has been appointed for any personal representative or collector, or any personal representative or collector has executed an assignment for the benefit of creditors.

(6) A personal representative has failed to file an inventory or an annual account with the clerk of superior court, as required by Article 20 and Article 21 of this Chapter, and proceedings to compel such filing pursuant to G.S. 28A-20-2 or 28A-21-4 cannot be had because service cannot be completed because the personal representative cannot be found.

(b) Procedure. – Upon the occurrence of any of the acts set forth in subsection ~~(a),~~(a) of this section, the clerk of superior court shall enter an order revoking the letters issued to such personal representative or collector and shall cause a copy of the order to be served on ~~him or his process agent.~~ the personal representative or collector or the personal representative's or collector's process agent.

"§ 28A-9-3. Effect of revocation.

Upon entry of the order revoking ~~his~~ a personal representative's or collector's letters, the authority of the personal representative or collector shall cease. ~~He~~ The personal representative

or collector shall surrender all assets of the estate under ~~his control to his~~ the control of the personal representative or collector to the personal representative's or collector's successor, or the remaining personal representative or collector or to the clerk of superior court; and shall file an accounting in the form prescribed by Article 21 of this Chapter. A personal representative or collector whose letters are revoked pursuant to G.S. 28A-9-2(a)(1) or 28A-9-2(a)(2) shall not thereby incur personal liability for administrative acts performed prior to revocation except as provided in G.S. 28A-13-10.

"§ 28A-9-4. Appeal; stay effected.

Any interested person may appeal from the order of the clerk of superior court granting or denying ~~revocation. The procedure shall be the same as in a special proceeding. If the~~ revocation as a special proceeding pursuant to G.S. 28A-2-9(b). The clerk of superior court ~~has revoked the letters, such appeal shall stay the judgment and order of~~ may issue a stay of an order revoking the letters upon the appellant posting an appropriate bond set by the clerk until the cause is heard and determined upon appeal.

"§ 28A-9-5. Interlocutory orders.

Pending any proceeding or appeal with respect to revocation of letters, the clerk of superior court may enter such interlocutory orders as are necessary to preserve the assets of the estate.

"§ 28A-9-6. Appointment of successor to personal representative or collector whose letters have been revoked; when not required.

Upon the revocation of letters issued to a sole or last surviving personal representative or collector, the clerk of superior court shall appoint another personal representative or collector as provided by G.S. 28A-4-1 to act as ~~his successor.~~ successor to the sole or last surviving personal representative or collector. When two or more personal representatives or collectors have qualified, and the letters of one or more personal representatives or collectors are revoked, leaving in office one or more personal representatives or collectors, the appointment of successors shall not be required unless:

(1) The clerk of superior court determines, in ~~his discretion,~~ the discretion of the clerk of superior court, that it is in the best interest of the estate to appoint a successor or successors to the personal representatives or collectors whose letters have been revoked, or

(2) In the case of executors, the will so provides.

"§ 28A-9-7. Rights and duties devolve on successor.

After the revocation of letters pursuant to this Article and upon the qualification and appointment of a successor, the substituted personal representative or collector shall succeed to all the powers stated in G.S. 28A-13-7. ~~He~~ The substituted personal representative or collector shall be subject to all the duties, responsibilities and liabilities of the original personal representative or collector, other than liabilities arising out of the grounds for revocation.

"Article 10.

"Resignation.

"§ 28A-10-1. Clerk's power to accept resignation.

The clerk of superior court in the county where a person has been appointed personal representative shall have the power to accept ~~his~~ that person's resignation.

"§ 28A-10-2. Contents of petition; notice.

(a) When a personal representative desires to resign ~~his~~ the personal representative's office, ~~he~~ the personal representative shall file a verified petition in the office of the clerk of the superior court, setting forth:

(1) The facts relating to ~~his~~ the personal representative's appointment and qualifications;

(2) The names and residences of all interested persons known to ~~him;~~ the personal representative;

(3) A full statement of the reasons why the petitioner should be permitted to resign ~~his~~ the petitioner's office; and

(4) A statement that ~~he~~ the personal representative has filed with the clerk of superior court ~~his~~ the personal representative's accounts and a record of ~~his~~ the personal representative's conduct of the office.

(b) Notice of the petition for resignation, together with the date and time of the hearing thereon, shall be served upon all interested persons named in the petition in such manner as the clerk of superior court shall determine.

"§ 28A-10-3. Statement of account; record of conduct.

When the personal representative files ~~his~~ the personal representative's petition requesting permission to resign ~~his~~ the personal representative's office, ~~he~~ the personal representative shall also file a verified statement of:

(1) ~~His~~—The personal representative's accounts since ~~his~~ that personal representative's qualification, or if ~~he~~ the personal representative has previously filed an account, a statement of ~~his~~ the personal representative's accounts since the date thereof;

(2) The assets of the estate and their location;

(3) The debts and liabilities of the estate;

(4) All facts and circumstances known to ~~him~~ the personal representative the disclosure of which is necessary for a full and fair assessment of ~~his~~ the personal representative's conduct of the office; and

(5) All additional facts and circumstances known to ~~him~~ the personal representative the disclosure of which is necessary for a full and fair understanding of all matters concerning the estate.

"§ 28A-10-4. Hearing; order.

The clerk of superior court shall conduct a hearing in accordance with Article 2 of this Chapter on the petition not sooner than 10 days nor later than 20 days after notice to interested persons pursuant to G.S. 28A-10-2(b). If the clerk of superior court finds all the accounts proper, including accounts subsequent to the filing of the petition, and determines that the resignation of the personal representative is in the best interest of the estate and can be allowed, the resignation may be approved subject to the provisions of G.S. 28A-10-5. Except in cases governed by G.S. 28A-10-8, ~~he~~ the clerk of superior court shall appoint a successor pursuant to G.S. 28A-4-1.

"§ 28A-10-5. When resignation becomes effective.

The resignation shall not become effective until:

(1) A successor has been duly qualified, unless G.S. 28A-10-8 is applicable; and

(2) The clerk of superior court is satisfied that the accounts of the personal representative are true and correct; and

(3) The personal representative has accounted to ~~his~~ the personal representative's successor in full for all assets of the estate, or if pursuant to G.S. 28A-10-8 no successor is appointed, to the remaining personal representative or representatives, and ~~his~~ the personal representative's final account has been filed with and approved by the clerk of superior court.

"§ 28A-10-6. Appeal; stay effected.

Any interested person who has appeared at the hearing and objected to the order of the clerk of superior court granting or denying resignation may appeal ~~therefrom. The procedure shall be the same as in a special proceeding. If the~~ an order denying or allowing the resignation as a special proceeding pursuant to G.S. 28A-2-9(b). The clerk of superior court ~~has allowed the resignation, such appeal shall stay the order of~~ may issue a stay of an order allowing the resignation upon the appellant posting an appropriate bond set by the clerk until the cause is heard and determined upon appeal.

"§ 28A-10-7. Rights and duties devolve on successor.

Upon the qualification and appointment of a successor to a personal representative whose resignation has been allowed as provided in G.S. 28A-10-4, the substituted personal representative shall succeed to all the powers ~~stated~~ as provided in G.S. 28A-13-7 and shall also be subject to all the duties, responsibilities, and liabilities ~~stated~~ as provided in Article 13.

"§ 28A-10-8. When appointment of successor to personal representative who has resigned is not required.

When two or more personal representatives have qualified, and one or more personal representatives resign pursuant to this Article, leaving in office one or more personal representatives, the appointment of successors shall not be required unless:

(1) The clerk of superior court determines, in ~~his~~ the clerk's discretion, that it is in the best interest of the estate to appoint a successor or successors to the personal representative or representatives who have resigned, or

(2) In the case of executors, the will so provides.

"Article 11.

"Collectors.

"§ 28A-11-1. Appointment and qualifications of collectors.

When for any reason other than a situation provided for in Chapter 28B or Chapter 28C entitled "Estates of Absentees in Military Service" and "Estates of Missing Persons" a delay is encountered in the issuance of letters to a personal representative or when, in any case, the clerk of superior court finds that the best interest of the estate would be served by the appointment of a collector, ~~he~~ the clerk of superior court may issue letters of collection to any person or persons not disqualified to act as a personal representative under G.S. 28A-4-2.

"§ 28A-11-2. Oath and bond.

Every collector shall take an oath as prescribed in G.S. 28A-7-1 and give bond as required in Article 8 of this Chapter for personal representatives.

"§ 28A-11-3. Duties and powers of collectors.

(a) Every collector shall:

(1) Take such possession, custody, or control of the personal property of the decedent as in the exercise of reasonable judgment ~~he~~ the collector deems necessary to its preservation;

(2) Publish notices to creditors as provided by Article 14 of this Chapter;

(3) Collect claims payable to the estate;

(4) Maintain and defend actions in behalf of the estate;

(5) File inventories, accounts, and other reports in the same manner as is required of personal representatives;

(6) Renew obligations of the decedent in the same manner as the personal representative is allowed to do under the provisions of Article 13 of this Chapter; and

(7) Under the express direction and supervision of the clerk of superior court, possess, exercise and perform all other powers, duties and liabilities given to personal representatives by Article 13 of this Chapter.

"§ 28A-11-4. When collectors' powers cease; settlement of accounts.

(a) When letters testamentary or letters of administration are issued, or when in any case the clerk of superior court terminates the appointment of the collector, the powers of the collector cease.

(b) Upon the termination of ~~his~~ the collector's appointment, the collector shall surrender to the personal representative or to the person otherwise entitled thereto or to the clerk all assets of the estate under this control and shall file with the clerk a verified statement of:

(1) ~~His~~ The collector's accounts since ~~his~~ the collector's qualification, or if ~~he~~ the collector has previously filed an account, a statement of ~~his~~ the collector's accounts since the date thereof;
(2) The assets of the estate and their location;
(3) The debts and liabilities of the estate;
(4) All facts and circumstances known to ~~him~~ the collector the disclosure of which is necessary for a full and fair assessment of ~~his~~ the collector's conduct of the office; and
(5) All additional facts and circumstances known to ~~him~~ the collector the disclosure of which is necessary for a full and fair understanding of all matters concerning the estate.

(c) The clerk of superior court shall examine the account of the collector and if ~~he~~ the clerk finds all of the accounts proper, ~~he~~ the clerk shall by order approve the account.

"§ 28A-11-5. Compensation.

A collector shall be compensated in accordance with Article 23 of this Chapter.

"Article 12.

"Public Administrator.

"§ 28A-12-1. Appointment and term.

There shall be a public administrator in every county, appointed by the clerk of superior court, with the written approval of the senior resident superior court judge of the district in which the appointment is made, for a term of four years.

"§ 28A-12-2. Oath of office.

The public administrator shall take and subscribe an oath or affirmation in the form provided in G.S. 11-11 for administrators and in the manner provided in G.S. 28A-7-1; and the oath or affirmation so taken and subscribed shall be filed in the office of the clerk of superior court.

"§ 28A-12-3. Qualification and bond.

(a) The public administrator shall qualify and give bond with regard to each estate administered by ~~him~~ the public administrator as provided in Article 8 of this Chapter, at the expense of such estate.

(b) As an alternative to and in lieu of the bonding requirement provided in subsection (a), the administrator may, in the discretion of the clerk of superior court, enter into a single permanent bond, secured by any of the methods provided in G.S. 28A-8-2(4), payable to the State of North Carolina, conditioned upon the faithful performance of the duties of ~~his~~ the administrator's office and obedience to all lawful orders of the clerk of superior court or other court touching the administration of any estate committed to ~~him.~~ the administrator. The amount of the permanent bond shall be determined by the clerk, based on the total value of all the estates administered by the public administrator, and may be increased or decreased from time to time as the clerk determines is necessary. The expense of the bond shall be borne by the estates administered by the administrator, as determined by the clerk.

"§ 28A-12-4. When public administrator shall apply for letters.

The public administrator shall apply for and may, with the approval of the clerk of superior court, obtain letters on the estates of decedents when:

(1) It is brought to ~~his~~ the public administrator's attention that a period of six months has elapsed from the death of any decedent who has died owning property, and no letters testamentary, or letters of administration or collection, have been applied for or issued to any person; or
(2) Any person without known heirs shall die intestate owning property; or
(3) Any person entitled to apply for letters of administration shall, in writing, request the clerk to issue letters to the public administrator as provided in G.S. 28A-5-2(c).

"**§ 28A-12-5. Powers and duties.**

(a) The public administrator shall have, in respect to the several estates in ~~his~~ the public administrator's hands, all the rights and powers and shall be subject to all the duties and liabilities of other personal representatives.

(b) After the expiration of the term of office of a public administrator or ~~his~~ the public administrator's resignation as public administrator, ~~he~~ the public administrator shall continue, subject to the provisions of Articles 9 and 10 of this Chapter, to administer the several estates previously committed to ~~him~~ the public administrator until ~~he~~ the public administrator has fully administered the same, and ~~his~~ the public administrator's bonds shall continue in effect as to all such estates.

"**§ 28A-12-6. Removal from office.**

If letters of administration issued to the public administrator with respect to any estate are subsequently revoked on the grounds that they were obtained by false representation as provided in G.S. 28A-9-1(a)(2), or on the grounds as specified in G.S. 28A-9-1(a)(1), 28A-9-1(a)(3), 28A-9-2(a)(3), 28A-9-2(a)(5), or 28A-9-2(a)(6) or if ~~he~~ the public administrator becomes a nonresident of the State, the clerk of superior court shall order the removal of the public administrator from ~~office.~~ office upon notice and hearing in accordance with Article 2 of this Chapter.

"**§ 28A-12-7. Procedure after removal from office.**

The clerk of superior court shall require of any public administrator who is removed from office pursuant to G.S. 28A-12-6 a complete accounting of all ~~his~~ of the public administrator's activities as public administrator and for the property remaining under ~~his~~ the public administrator's control by reason of ~~his~~ the public administrator's appointment under this Article as administrator of any estate that has not been fully administered at the time of ~~his~~ the public administrator's removal. If it appears to the clerk of superior court that grounds exist for revocation of letters of administration issued with respect to any such estate, ~~he~~ the clerk shall proceed in accordance with the provisions of Article 9 of this Chapter. If letters of administration are revoked pursuant to such proceedings, the clerk of superior court shall issue letters of administration to the successor public administrator or to some other person not disqualified under G.S. 28A-4-2.

"**§ 28A-12-8. Compensation.**

A public administrator shall be compensated in accordance with Article 23 of this Chapter.

"Article 13.

"Representative's Powers, Duties and Liabilities.

"**§ 28A-13-1. Time of accrual of duties and powers.**

The duties and powers of a personal representative commence upon ~~his or her~~ the personal representative's appointment. The powers of a personal representative relate back to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. However, a person named executor in a will may, prior to appointment, carry out written instructions of the decedent relating to the decedent's body, funeral and burial arrangements; provided that a health care agent authorized in a valid health care power of attorney to make body, funeral, and burial arrangements shall have precedence in making these arrangements, both before and after qualification of the decedent's personal representative, to the extent provided in G.S. 32A-19(b). A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

"**§ 28A-13-2. General duties; relation to persons interested in estate.**

A personal representative is a fiduciary who, in addition to the specific duties stated in this Chapter, is under a general duty to settle the estate of ~~his~~ the personal representative's decedent as expeditiously and with as little sacrifice of value as is reasonable under all of the circumstances. ~~He~~ A personal representative shall use the authority and powers conferred upon

~~him~~ the personal representative by this Chapter, by the terms of the will under which ~~he~~ the personal representative is acting, by any order of court in proceedings to which ~~he~~ the personal representative is party, and by the rules generally applicable to fiduciaries, for the best interests of all persons interested in the estate, and with due regard for their respective rights.

"§ 28A-13-3. Powers of a personal representative or fiduciary.

(a) Except as qualified by express limitations imposed in a will of the decedent or a court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to perform in a reasonable and prudent manner every act which a reasonable and prudent person would perform incident to the collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and expeditious manner as provided by law, including the powers specified in the following subdivisions:

(1) To take possession, custody or control of the personal property of the decedent. If in the opinion of the personal representative ~~his~~ the personal representative's possession, custody or control of such property is not necessary for purposes of administration, such property may be left with or surrendered to the heir or devisee presumptively entitled thereto. ~~He~~ The personal representative has the power to take possession, custody or control of the real property of the decedent if ~~he~~ the personal representative determines such possession, custody or control is in the best interest of the administration of the ~~estate.~~ estate, including the power to eject occupants of real property. Prior to exercising such power over real property the procedure as set out in subsection G.S. 28A-13-3(c) shall be ~~followed.~~ followed, except with respect to real property that is devised to the personal representative in the decedent's will or title to which is acquired by the personal representative during the estate administration, in which case the personal representative shall be immediately entitled to custody, possession, and control, and may institute an estate proceeding under subsection (d) of this section to enforce those rights. If the personal representative determines that such possession, custody or control is not in the best interest of the administration of the estate such property may be left with or surrendered to the heir or devisee presumptively entitled thereto.

(2) To retain assets owned by the decedent pending distribution or liquidation even though such assets may include items which are otherwise improper for investment of trust funds.

(3) To receive assets from other fiduciaries or other sources.

(4) To complete performance of contracts entered into by the decedent that continue as obligations of ~~his~~ the decedent's estate, or to refuse to complete such contracts, as the personal representative may determine to be in the best interests of the estate, but such refusal shall not limit any cause of action which might have been maintained against decedent if ~~he~~ the decedent had refused to complete such contract. In respect to enforceable contracts by the decedent to convey an interest in land, the provisions of G.S. 28A-17-9 are controlling.

(5) To deposit, as a fiduciary, funds of the estate in a bank, including a bank operated by the personal representative pursuant to G.S. 53-163.1.

(6) To make, as a fiduciary, any form of investment allowed by law to the State Treasurer under G.S. 147-69.1, with funds of the estate, when such are not needed to meet debts and expenses immediately payable and are not immediately distributable, including money received from the sale of other

assets; or to enter into other short-term loan arrangements that may be appropriate for use by trustees or beneficiaries generally. Provided, that in addition to the types of investments hereby authorized, deposits in interest-bearing accounts of any credit union authorized to do business in this State, when such deposits are insured in the same manner as required by G.S. 147-69.1 for deposits in a savings and loan association, are hereby authorized.

(7) To abandon or relinquish all rights in any property when, in the opinion of the personal representative acting reasonably and in good faith, it is valueless, or is so encumbered or is otherwise in such condition that it is of no benefit to the estate.

(8) To vote shares of stock or other securities in person or by general or limited proxy, and to execute waivers, consents or objections with respect to such stock or securities.

(9) To pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.

(10) To hold shares of stock or other securities in the name of a nominee, without mention of the estate in the instrument representing stock or other securities or in registration records of the issuer thereof; provided, that

a. The estate records and all reports or accounts rendered by the personal representative clearly show the ownership of the stock or other securities by the personal representative and the facts regarding its holdings, and

b. The nominee shall not have possession of the stock or other securities or access thereto except under the immediate supervision of the personal representative or when such securities are deposited by the personal representative in a clearing corporation as defined in G.S. 25-8-102.

Such personal representative shall be personally liable for any acts or omissions of such nominee in connection with such stock or other securities so held, as if such personal representative had done such acts or been guilty of such omissions.

(11) To insure, at the expense of the estate, the assets of the estate in ~~his~~ the personal representative's possession, custody or control against damage or loss.

(12) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the personal representative shall deem advisable, including the power of a corporate personal representative to borrow from its own banking department, for the purpose of paying debts, taxes, and other claims against the estate, and to mortgage, pledge or otherwise encumber such portion of the estate as may be required to secure such loan or loans. In respect to the borrowing of money on the security of the real property of the decedent, G.S. 28A-17-11 is controlling.

(13) To renew obligations of the decedent for the payment of money.

(14) To advance ~~his~~ the personal representative's own money for the protection of the estate, and for all expenses, losses and liabilities sustained in the administration of the estate or because of the holding or ownership of any estate assets. For such advances, with any interest, the personal representative shall have a lien on the assets of the estate as against a devisee or heir.

(15) To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the estate.

(16) To pay taxes, assessments, ~~his~~ the personal representative's own compensation, and other expenses incident to the collection, care, administration and protection of the assets of the estate in ~~his~~ the personal representative's possession, custody or control.

(17) To sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

(18) To allocate items of income or expense to either estate income or principal, as permitted or provided by law.

(19) To employ persons, including attorneys, auditors, investment advisors, appraisers or agents to advise or assist ~~him~~ the personal representative in the performance of ~~his~~ the personal representative's administrative duties.

(20) To continue any business or venture in which the decedent was engaged at the date of ~~his~~ the decedent's death, where such continuation is reasonably necessary or desirable to preserve the value, including goodwill, of the decedent's interest in such business. With respect to the use of the decedent's interest in a continuing partnership, the provisions of G.S. 59-71 and 59-72 qualify this power; and with respect to farming operations engaged in by the decedent at the time of ~~his~~ the decedent's death, the provisions of G.S. 28A-13-4 qualify this power.

(21) To incorporate or participate in the incorporation of any business or venture in which the decedent was engaged at the time of ~~his~~ the decedent's death.

(22) To provide for the exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate.

(23) To maintain actions for the wrongful death of the decedent according to the provisions of Article 18 of this Chapter and to compromise or settle any such claims, whether in litigation or not. Unless all persons who would be entitled to receive any damages recovered under G.S. 28A-18-2(b)(4) are competent adults and have consented in writing, any such settlement shall be subject to the approval of a judge of the court or tribunal exercising jurisdiction over the action or a judge of the district or superior court in cases where no action has previously been filed. If the claim is brought under Article 31 of Chapter 143 of the General Statutes, the settlement is subject to the approval of the Industrial Commission in accordance with that Article. It shall be the duty of the personal representative in distributing the proceeds of such settlement in any instance to take into consideration and to make a fair allocation to those claimants for funeral, burial, hospital and medical expenses which would have been payable from damages which might have been recovered had a wrongful death action gone to judgment in favor of the plaintiff.

(24) To maintain any appropriate action or proceeding to recover possession of any property of the decedent, or to determine the title thereto; to recover damages for any injury done prior to the death of the decedent to any of ~~his~~ the decedent's property; and to recover damages for any injury done subsequent to the death of the decedent to such property.

(25) To purchase at any public or private sale of any real or personal property belonging to the decedent's estate or securing an obligation of the estate as a fiduciary for the benefit of the estate when, in ~~his~~ the personal representative's opinion, it is necessary to prevent a loss to the estate.

(26) To sell or lease personal property of the estate in the manner prescribed by the provisions of Article 16 of this Chapter.

(27) To sell or lease real property of the estate in the manner prescribed by the provisions of Article 17 of this Chapter.

(28) To enter into agreements with taxing authorities to secure the benefit of the federal marital deduction pursuant to G.S. 28A-22-6.

(29) To pay or satisfy the debts and claims against the decedent's estate in the order and manner prescribed by Article 19 of this Chapter.

(30) To distribute any sum recovered for the wrongful death of the decedent according to the provisions of G.S. 28A-18-2; and to distribute all other assets available for distribution according to the provisions of this Chapter or as otherwise lawfully authorized.

(31) To exercise such additional lawful powers as are conferred upon ~~him~~ the personal representative by the will.

(32) To execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the personal representative.

(33) Repealed by Session Laws 2009-48, s. 10, effective October 1, 2009, and applicable to renunciations and powers of attorney executed on or after that date.

(a1) Except as qualified by express limitations imposed in a will of the decedent, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative shall have absolute discretion to make the election as to which items of the decedent's personal and household effects shall be excluded from the carry over basis provision of the federal income tax law and such election shall be conclusive and binding on all concerned.

(a2) Subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to renounce in accordance with the provisions of Chapter 31B of the General Statutes.

(b) Any question arising out of the powers conferred by subsections (a), (a1), and (a2) of this section shall be determined in accordance with the provisions of Article 18 of this Chapter.

(c) ~~Prior~~ Except with respect to real property that is devised to the personal representative in the decedent's will, or title to which is acquired by the personal representative during the estate administration, in which case the personal representative shall be immediately entitled to custody, possession, and control and may institute an estate proceeding under subsection (d) to enforce those rights, prior to the personal representative exercising possession, custody or control over real property of the ~~estate he~~ estate, the personal representative shall petition the clerk of court to obtain an order authorizing such possession, custody or control. The petition shall include:

(1) A description of the real property which is the subject of the petition;

(2) The names, ages, and addresses, if known, of the devisees and heirs of the decedent;

(3) A statement by the personal representative that ~~he~~ the personal representative has determined that such possession, custody or control is in the best interest of the administration of the estate.

The devisees and heirs will be made parties to the proceeding by service of summons in the manner prescribed by law. If the clerk of court determines that it is in the best interest of the administration of the estate to authorize the personal representative to take possession, custody or ~~control he~~ control, the clerk of court shall grant an order authorizing that power. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-15-1(c), the

personal representative may petition for possession, custody, or control of any real property as a part of that proceeding and is not required to institute a separate special proceeding.

(d) The personal representative shall have the power to institute an estate proceeding pursuant to Article 2 of this Chapter to enforce the rights set forth in this subsection. The clerk of superior court may enter orders necessary to enforce the rights set forth in this subsection. If the person occupying the real property is a tenant or lessee of the property, the personal representative may seek ejectment of the tenant or lessee only pursuant to the provisions of Article 3 of Chapter 42 of the General Statutes.

"§ 28A-13-4. Continuance of farming operations of deceased persons.

When any person dies while engaged in farming operations, ~~his~~ the decedent's personal representative is authorized to continue such farming operations until the end of the current calendar year, and until all crops grown during that year are harvested. The net income from such farming operations shall be personal assets of the estate. Any indebtedness incurred in connection with such farming operations after the date of death shall be preferred over the claims of any heir, legatee, devisee, distributee, general or unsecured creditor of said estate. Nothing herein contained shall limit the powers of a personal representative under the terms of a will.

"§ 28A-13-5. Personal representatives hold in joint tenancy.

Any estate or interest in property which becomes vested in two or more personal representatives shall be held by them in joint tenancy with the incident of survivorship.

"§ 28A-13-6. Exercise of powers of joint personal representatives by one or more than one.

(a) Repealed by Session Laws 2005-192, s. 5, effective January 1, 2006.

(b) If a will expressly makes provision for the execution of any of the powers of personal representatives by all of them or by any one or more of them, the provisions of the will govern.

(c) Repealed by Session Laws 2005-192, s. 5, effective January 1, 2006.

(c1) If there is no governing provision in the will, personal representatives may, by written agreement signed by all of them and filed with and approved by the clerk of superior court of the county in which the personal representatives qualified, provide that any designated one or more of the personal representatives may exercise one or more of the following powers:

(1) Establish and maintain bank accounts for the ~~trust~~ estate and issue checks for the estate.

(2) Maintain inventories, accountings, and income and expense records of the estate.

(3) Enter any safety deposit box rented by the estate.

(4) Employ persons as advisors or assistants in the performance of administrative duties, including agents, attorneys, accountants, brokers, appraisers, and custodians.

(5) List estate property for taxes and prepare and file tax returns for the ~~trust.~~ estate.

(6) Collect and give receipts for claims and debts of the estate.

(7) Pay debts, claims, costs of administration, and taxes of the estate.

(8) Compromise, adjust, or otherwise settle any claim by or against the ~~trust~~ estate and release, in whole or in part, a claim belonging to the estate.

(9) Have custody of the estate property.

(10) Perform any function relating to investment of estate assets.

(d) Subject to subsection (b) of this section, if two or more personal representatives own shares of corporate stock or other securities, their acts with respect to voting shall have the following effect:

(1) If only one votes, in person or by proxy, that personal representative's act binds all;
(2) If more than one vote, in person or by proxy, the act of the majority so voting binds all;
(3) If more that one vote, in person or by proxy, but the vote is evenly split on any particular matter, each faction is entitled to vote the stock or other securities in question proportionately.

(e) Subject to subsections (b), (c1), and (d) of this section, all other acts and duties must be performed by both of the personal representatives if there are two, and by a majority of them if there are more than two. No personal representative who has not joined in exercising a power shall be liable for the consequences of such exercise, nor shall a dissenting personal representative be liable for the consequences of an act in which the personal representative joins at the direction of the majority of the personal representatives, if that personal representative expressed his or her dissent in writing to any other personal representative at or before the time of such joinder.

(f) No personal representative shall be relieved of liability on his or her bond or otherwise by entering into any agreement under this section.

"§ 28A-13-7. Powers and duties of successor personal representative.

A successor personal representative is one appointed to succeed a personal representative whose appointment has terminated by death, resignation or revocation. Unless a contrary intent clearly appears from the will, a successor personal representative has all the powers and duties, discretionary or otherwise, of the original personal representative.

"§ 28A-13-8. Powers and duties of administrator with will annexed.

When an administrator with the will annexed has been appointed, whether or not ~~he~~ the administrator is succeeding a previously appointed personal representative, ~~he~~ that administrator has the same powers and duties, discretionary or otherwise, as if ~~he~~ the administrator had been named executor in the will, unless a contrary intent clearly appears from the will.

"§ 28A-13-9. Powers of surviving personal representative.

When one or more of those nominated as coexecutors in a will is not appointed, or when the appointment of one or more joint personal representatives is terminated, every power granted to such joint personal representatives may be exercised by the surviving representative or representatives; provided that nothing to the contrary appears in the will of a testate decedent.

"§ 28A-13-10. Liability of personal representative.

(a) Property of Estate. – A personal representative shall be liable for and chargeable in ~~his~~ the personal representative's accounts with all of the estate of the decedent which comes into ~~his~~ the personal representative's possession at any time, including all the income therefrom; but ~~he~~ the personal representative shall not be liable for any debts due to the decedent or other assets of the estate which remain uncollected without ~~his~~ the personal representative's fault. Except for commissions allowable by law, ~~he~~ the personal representative shall not be entitled to any profits caused by an increase in values, nor be chargeable with loss by a decrease in value or destruction without ~~his~~ the personal representative's fault, of any part of the estate.

(b) Property Not a Part of Estate. – A personal representative shall be chargeable in ~~his~~ the personal representative's accounts with property not a part of the estate which comes into ~~his~~ the personal representative's possession at any time and shall be liable to the persons entitled thereto if:

(1) The property was received under a duty imposed on ~~him~~ the personal representative by law in the capacity of personal representative; or
(2) ~~He~~ The personal representative has commingled such property with the assets of the estate.

(c) Breach of Duty. – A personal representative shall be liable and chargeable in ~~his~~ the personal representative's accounts for any loss to the estate arising from ~~his~~ the personal representative's embezzlement or commingling of the estate with other property; for loss to the estate through self-dealing; for any loss to the estate from wrongful acts or omissions of ~~his~~ the personal representative's joint personal representatives which ~~he~~ the personal representative could have prevented by the exercise of ordinary care; and for any loss to the estate arising from ~~his~~ the personal representative's failure to act in good faith and with such care, foresight and diligence as an ordinarily reasonable and prudent ~~man~~ person would act with ~~his~~ the ordinarily reasonable and prudent person's own property under like circumstances. If the exercise of power concerning the estate is improper, the personal representative is liable for breach of fiduciary duty to interested persons for resulting damage or loss to the same extent as a trustee of an express trust.

"Article 14.

"Notice to Creditors.

"§ 28A-14-1. Notice for claims.

(a) Every personal representative and collector after the granting of letters shall notify all persons, firms and corporations having claims against the decedent to present the same to such personal representative or collector, on or before a day to be named in such notice, which day must be at least three months from the day of the first publication or posting of such notice. The notice shall set out a mailing address for the personal representative or collector. The notice shall be published once a week for four consecutive weeks in a newspaper qualified to publish legal advertisements, if any such newspaper is published in the county. If there is no newspaper published in the county, but there is a newspaper having general circulation in the county, then at the option of the personal representative, or collector, the notice shall be published once a week for four consecutive weeks in the newspaper having general circulation in the county and posted at the courthouse or the notice shall be posted at the courthouse and four other public places in the county. Personal representatives are not required to publish or mail notice to creditors if the only asset of the estate consists of a claim for damages arising from death by wrongful act. When any collector or personal representative of an estate has published or mailed the notice provided for by this section, no further publication or mailing shall be required by any other collector or personal representative.

(b) Prior to filing the proof of notice required by G.S. 28A-14-2, every personal representative and collector shall personally deliver or send by first class mail to the last known address a copy of the notice required by subsection (a) of this section to all persons, firms, and corporations having unsatisfied claims against the decedent who are actually known or can be reasonably ascertained by the personal representative or collector within 75 days after the granting of letters. Provided, however, no notice shall be required to be delivered or mailed with respect to any claim that is recognized as a valid claim by the personal representative or collector.

(c) The personal representative or collector may personally deliver or mail by first class mail a copy of the notice required by subsection (a) of this section to all creditors of the estate whose names and addresses can be ascertained with reasonable diligence. If the personal representative or collector in good faith believes that the notice required by subsection (b) of this section to a particular creditor is or may be required and gives notice based on that belief, the personal representative or collector is not liable to any person for giving the notice, whether or not the notice is actually required by subsection (b) of this section. If the personal representative or collector in good faith fails to give notice required by subsection (b) of this section, the personal representative or collector is not liable to any person for such failure.

"§ 28A-14-1.1. Validation of certain notices.

(a) Any notice to creditors published or posted under G.S. 28A-14-1 which did not, in the advertisement, name the day after which claims could not be presented is validated.

(b) This section applies to all notices published and posted between October 1, 1975, and January 1, 1991, except that it does not affect any pending litigation or any litigation instituted within 90 days of January 1, 1991.

"§ 28A-14-2. Proof of notice.

A copy of the notice directed by G.S. 28A-14-1(a) to be posted or published, together with an affidavit or affidavits of one of the persons authorized by G.S. 1-600(a) to make affidavits to the effect that such notice was posted or published in accordance with G.S. 28A-14-1(a), and an affidavit of the personal representative or collector, or the attorney for the personal representative or collector, to the effect that a copy of the notice was personally delivered or mailed to each creditor entitled to notice in accordance with G.S. 28A-14-1(b) shall be filed in the office of the clerk of superior court by the personal representative or collector at the time the inventory required by G.S. 28A-20-1 is filed. The copy of the notice, together with the affidavit or affidavits, shall be deemed a record of the court and a copy thereof, duly certified by the clerk of superior court, shall be received as prima facie evidence of the fact of publication or mailing in all the courts of this State.

"§ 28A-14-3. Personal notice to creditor.

The personal representative or collector may cause the notice to be personally served on any creditor.

"Article 15.

"Assets; Discovery of Assets.

"§ 28A-15-1. Assets of the estate generally.

(a) All of the real and personal property, both legal and equitable, of a decedent shall be assets available for the discharge of debts and other claims against ~~his~~ the decedent's estate in the absence of a statute expressly excluding any such property. Provided that before real property is selected the personal representative must determine that such selection is in the best interest of the administration of the estate.

(b) In determining what property of the estate shall be sold, leased, pledged, mortgaged or exchanged for the payment of the debts of the decedent and other claims against ~~his~~ the decedent's estate, the personal representative shall select the assets which in ~~his~~ the personal representative's judgment are calculated to promote the best interests of the estate. In the selection of assets for this purpose, there shall be no necessary distinction between real and personal property, absent any contrary provision in the will.

(c) If it shall be determined by the personal representative that it is in the best interest of the administration of the estate to sell, lease, or mortgage any real estate or interest therein to obtain money for the payment of debts and other claims against the decedent's estate, the personal representative shall institute a special proceeding before the clerk of superior court for such purpose pursuant to Article 17 of this Chapter, except that no such proceeding shall be required for a sale made pursuant to authority given by will. A general provision granting authority to the personal representative to sell the testator's real property, or incorporation by reference of the provisions of G.S. 32-27(2) shall be sufficient to eliminate the necessity for a proceeding under Article 17. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-13-3(c), the personal representative may petition for sale, lease, or mortgage of any real property as a part of that proceeding and is not required to institute a separate special proceeding.

(d) The crops of every deceased person, remaining ungathered at ~~his~~ the person's death, shall, in all cases, belong to the personal representative or collector, as part of the personal assets of the decedent's estate; and shall not pass to the devisee by virtue of any devise of the land, unless such intent be manifest and specified in the will.

"§ 28A-15-2. Title and possession of property.

(a) Personal Property. – Subsequent to the death of the decedent and prior to the appointment and qualification of the personal representative or collector, the title and the right

of possession of personal property of the decedent is vested in ~~his~~ the decedent's heirs; but upon the appointment and qualification of the personal representative or collector, the heirs shall be divested of such title and right of possession which shall be vested in the personal representative or collector relating back to the time of the decedent's death for purposes of administering the estate of the decedent. But, if in the opinion of the personal representative, ~~his~~ the personal representative's possession, custody and control of any item of personal property is not necessary for purposes of administration, such possession, custody and control may be left with or surrendered to the heir or devisee presumptively entitled thereto.

(b) Real Property. – The title to real property of a decedent is vested in ~~his~~ the decedent's heirs as of the time of ~~his~~ the decedent's death; but the title to real property of a decedent devised under a valid probated will becomes vested in the devisees and shall relate back to the decedent's death, subject to the provisions of G.S. 31-39.

"§ 28A-15-3. Nonexoneration of encumbered property.

When real or personal property subject to any lien or security interest, except judgment liens, is specifically devised, the devisee takes the property subject to the encumbrance and without a right to have other assets of the decedent applied to discharge the secured obligation, unless an express provision of the will confers such right of exoneration. A general testamentary direction to pay the debts of the decedent is not sufficient to confer such right.

"§ 28A-15-4. Encumbered assets.

When any assets of the estate are encumbered by mortgage, pledge, lien or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance, or convey or transfer the encumbered assets to the creditor in satisfaction of ~~his~~ the creditor's lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, if it appears to be for the best interest of the estate; provided that payment of an encumbrance shall not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration by express provisions of the will.

"§ 28A-15-5. Order in which assets appropriated; abatement.

(a) General Rules. – In the absence of testamentary indication as to the order of abatement, or some other controlling statute, shares of devisees and of heirs abate, without any preference or priority as between real and personal property, in the following order:

(1) Property not disposed of by the will;
(2) Residuary devises;
(3) General devises;
(4) Specific devises.

For purposes of abatement, a demonstrative devise of money or property payable out of or charged on a particular fund or other property is treated as a specific devise; but if the particular fund or property out of which the demonstrative devise is to be paid is nonexistent or insufficient at the death of the testator, the deficiency is to be payable out of the general estate of the decedent and is to be regarded as a general devise and must abate pro rata with other general devises. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received, had full distribution of the property been made in accordance with the terms of the will.

(b) Abatement; Sales; Contribution. – When property which has been specifically devised is sold, leased, or mortgaged, or a security therein is created, by the personal representative, abatement shall be achieved by ratable adjustments in, or contributions from other interest in the remaining assets. The clerk of superior court shall, at the time of the hearing on the petition for final distribution, determine the amounts of the respective contributions and whether the same shall be made before distribution or shall constitute a lien on specific property which is distributed.

"§ 28A-15-6. Federal income tax refunds – joint returns.

Upon the determination by the United States Treasury Department of an overpayment of income tax by a married couple filing a joint federal income tax return, one of whom has died since the filing of such return or where a joint federal income tax return is filed on behalf of a husband and wife, one of whom has died prior to the filing of the return, any refund of the tax by reason of such overpayment, if not in excess of five hundred dollars ($500.00), shall be the sole and separate property of the surviving spouse. In the event that both spouses are dead at the time such overpayment is determined, such refund, if not in excess of five hundred dollars ($500.00), shall be the sole and separate property of the estate of the spouse who died last and may be paid directly by the Treasury Department to the executor or administrator of such estate, or to the person entitled to the possession of the assets of a small estate pursuant to the provisions of Article 25 of this Chapter.

"§ 28A-15-7. Federal income tax refunds – separate returns.

Upon the determination by the United States Treasury Department of an overpayment of income tax by any married person filing a separate return, any refund of the tax by reason of such overpayment, if not in excess of two hundred fifty dollars ($250.00), exclusive of interest, shall be the sole and separate property of the surviving spouse, and the United States Treasury Department may pay said sum directly to such surviving spouse, and such payment to the extent thereof shall operate as a complete acquittal and discharge of the United States Treasury Department.

"§ 28A-15-8. State income tax returns.

Upon the determination by the Secretary of Revenue of North Carolina of an overpayment of income tax by any married person, any refund of the tax by reason of such overpayment, if not in excess of two hundred dollars ($200.00) exclusive of interest, shall be the sole and separate property of the surviving spouse, and said Secretary of Revenue may pay said sum directly to such surviving spouse, and such payment to the extent thereof shall operate as a complete acquittal and discharge of the Secretary of Revenue.

"§ 28A-15-9. Excess funds.

If the amount of any refund exceeds the sums specified in G.S. 28A-15-6, 28A-15-7 or 28A-15-8, the sums specified therein and one half of any additional sums shall be the sole and separate property of the surviving spouse. The remaining one half of such additional sums shall be the property of the estate of the decedent spouse.

"§ 28A-15-9.1. Phase II payments.

A Phase II payment as defined in G.S. 28A-21-3.1 shall be the property of the distributees paid in accordance with that section.

"§ 28A-15-10. Assets of decedent's estate for limited purposes.

(a) When needed to satisfy claims against a decedent's estate, assets may be acquired by a personal representative or collector from the following sources:

(1) Tentative trusts created by the decedent in savings accounts for other persons.

(2) Gifts causa mortis made by the decedent.

(3) Joint deposit accounts with right of survivorship created by decedent pursuant to the provisions of G.S. 41-2.1 or otherwise; and joint tenancies with right of survivorship created by decedent in corporate stocks or other investment securities.

(4) An interest in a security passing to a beneficiary pursuant to the provisions of Article 4 of Chapter 41 of the General Statutes.

Such assets shall be acquired solely for the purpose of satisfying such claims, however, and shall not be available for distribution to heirs or devisees.

(b) Where there are not sufficient personal and real assets of the decedent to satisfy all the debts and other claims against ~~his~~ the decedent's estate, the personal representative shall have the right to sue for and recover any and all personal property or real property, or interest

therein, which the decedent may in any manner have transferred or conveyed with intent to hinder, delay, or defraud ~~his~~ the decedent's creditors, and any personal property or real property, or interest therein, so recovered shall constitute assets of the estate in the hands of the personal representative for the payment of debts and other claims against the estate of the decedent. But if the alienee has sold the personal property or real property, or interest therein, so fraudulently acquired by ~~him~~ the alienee from the decedent to a bona fide purchaser for value without notice of the fraud, then such personal property or real property, or interest therein, may not be recovered from such bona fide purchaser but the fraudulent alienee shall be liable to the personal representative for the value of the personal property or real property, or interest therein, so acquired and disposed of to a bona fide purchaser. If the whole recovery from the fraudulent alienee shall not be necessary for the payment of the debts and other claims against the estate of the decedent, the surplus shall be returned to such fraudulent alienee or ~~his~~ the fraudulent alienee's assigns.

(c) Where there has been a recovery in an action for wrongful death, the same shall not be applied to the payment of debts and other claims against the estate of decedent or devises, except as to the payment of reasonable burial and funeral expenses and reasonable hospital and medical expenses incident to the injury resulting in death and as limited and provided in G.S. 28-18-2 [G.S. 28A-18-2].

"§ 28A-15-11. Debt due from personal representative not discharged by appointment.

The appointment of any person as personal representative does not discharge any debt or demand due from such person to the decedent.

"§ 28A-15-12. ~~Examination of persons or corporations believed to have possession of~~ Actions to recover property of decedent.

(a) ~~Whenever a personal representative or collector makes oath or affirmation before the clerk of superior court of the county where the party to be examined resides or does business that he has reasonable ground to believe, setting forth the grounds of his belief, that any person, firm or corporation has in his or its possession any property of any kind belonging to the estate of his decedent, the clerk shall issue a notice to be served upon the person or any member of the firm or officer, agent or employee of the firm or corporation designated in the affidavit, to appear before the clerk at his office at a time fixed in the notice, not less than three days after the issuance of the notice, and be examined under oath by the personal representative or collector or his attorney concerning the possession of such property. If upon examination the clerk of superior court finds that the person examined or the firm or corporation for which he works has in his or its possession any property belonging solely to the decedent, and fails to show any satisfactory reason for retaining possession of the property, the clerk shall issue an order requiring the person, firm or corporation forthwith to deliver the property to said personal representative or collector and may enforce compliance with the order by proceedings as for contempt of court: Provided, that in the case of a firm or corporation, whenever any person other than a partner or executive officer of such firm or corporation is examined, no such order shall be made until at least three days after service of notice upon a partner or executive officer of such firm or corporation to show cause why such order should not be made.~~

(a1) A personal representative or collector shall have the right to bring an action to sue for and recover any property of any kind belonging to the estate of the personal representative's decedent, by action filed in the Superior Court Division of the General Court of Justice and shall be entitled to such other provisional remedies as provided for under Subchapter 13 of Chapter 1 of the General Statutes.

(b) ~~Any person aggrieved by the order of the clerk of superior court may, within five days, appeal to the judge holding the next session of superior court of the county after the order is made or to the resident judge of the district, but as a condition precedent to his appeal he shall give a justified bond in a sum at least double the value of the property in question, conditioned upon the safe delivery of the property and the payment of damages for its~~

~~detention, to the personal representative or collector in the event that the order of the clerk should be finally sustained. When the bond is executed and delivered to the court, no attachment as for contempt shall be served upon the appealing party and any contempt order theretofore issued shall be stayed; but if the appellant fails to have his appeal heard at the next session of superior court held in his county, or by the resident judge of the district within 30 days after giving notice, the appeal shall be deemed abandoned, and the stay of any contempt order theretofore issued shall terminate.~~

(b1) A personal representative, collector, or any interested person shall have the right to bring an estates proceeding seeking the examination of any persons reasonably believed to be in possession of property of any kind belonging to the estate of the decedent including a demand for the recovery of such property. An estates proceeding brought under the provisions of this subsection shall be instituted by the filing of a verified petition and shall be conducted in accordance with the provisions of Article 2 of this Chapter. The court may enter orders requiring the examination of persons consistent with this subsection and, if the court determines that a person is in possession of property of the estate of the decedent, shall have the authority to order recovery of that property. Orders issued by the clerk of superior court shall be enforceable by proceedings as for contempt of court.

(c) The party against whom the final judgment is rendered shall be adjudged to pay the costs of the proceedings hereunder.

(d) The remedies provided in this section shall not be exclusive, but shall be in addition to any remedies which are now or may hereafter be provided.

"§ 28A-15-13. Opening and inventory of decedent's safe-deposit box.

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

(1) Institution. – Any entity or person having supervision or possession of a safe-deposit box to which a decedent had access.

(1a) Deputy. – A person appointed in writing by a lessee or cotenant of a safe-deposit box as having right of access to the safe-deposit box without further authority or permission of the lessee or cotenant, in a manner and form designated by the institution.

(2) Letter of authority. – Letters of administration, letters testamentary, an affidavit of collection of personal property, an order of summary administration, or a letter directed to the institution designating a person entitled to receive the contents of a safe-deposit box to which the decedent had access. The letter of authority must be signed by the clerk of superior court or by the clerk's representative.

(3) Qualified person. – A person possessing a letter of authority or a person named as a deputy, lessee or cotenant of the safe-deposit box to which the decedent had access.

(b) Presence of Clerk Required. – Any safe-deposit box to which a decedent had access shall be sealed by the institution having supervision or possession of the box. Except as provided in subsection (c) of this section, the presence of the clerk of superior court of the county where the safe-deposit box is located or the presence of the clerk's representative is required before the box may be opened. The clerk or the clerk's representative shall open the safe-deposit box in the presence of the person possessing a key to the box and a representative of the institution having supervision or possession of the box. The clerk shall make an inventory of the contents of the box and furnish a copy to the institution and to the person possessing a key to the box.

(c) Presence of Clerk Not Required. – The presence of the clerk of superior court or the clerk's representative is not required when the person requesting the opening of the decedent's safe-deposit box is a qualified person. In that event, the qualified person shall make an

inventory of the contents of the box and furnish a copy to the institution and to the person possessing a key to the box if that person is someone other than the qualified person.

(d) Testamentary Instrument in Box. – If the safe-deposit box contains any writing that appears to be a will, codicil, or any other instrument of a testamentary nature, then the clerk of superior court or the qualified person shall file the instrument in the office of the clerk of superior court.

(e) Release of Contents. – Except as provided in subsection (d) for testamentary instruments, the institution shall not release any contents of the safe-deposit box to anyone other than a qualified person.

(f) No Tax Waiver Required. – No tax waiver is required for the release of the contents of the decedent's safe-deposit box.

"Article 16.

"Sales or Leases of Personal Property.

"§ 28A-16-1. Sales or leases without court order.

(a) A personal representative has the power to sell, at either a public or private sale, or to lease, personal property of the decedent without a court order.

(b) A personal representative who sells or leases personal property of the decedent without a court order is not required to file a special report or have the transaction confirmed by the clerk of superior court, or to follow any of the procedure set forth in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales," but shall include in ~~his~~ the personal representative's next account, either annual or final, a record of the receipts and disbursements incident to the transaction.

"§ 28A-16-2. Sales or leases by court order.

(a) All sales or leases of personal property of the decedent by a collector shall be made only upon order obtained, by motion, from the clerk of superior court.

(b) A personal representative may, if ~~he~~ the personal representative so desires, request the clerk of superior court to issue to ~~him~~ the personal representative an order to sell or lease personal property of the decedent.

(c) Sales or leases of personal property of the decedent held pursuant to court order shall be conducted as provided in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales."

(d) A personal representative may, for ~~his~~ the personal representative's own benefit, purchase or lease personal property belonging to the decedent at a public sale conducted under an order of the clerk of superior court, if the transaction is reported to the clerk of superior court and confirmed by ~~him.~~ the clerk of superior court.

"§ 28A-16-3. Sales of household furnishings.

If the decedent is survived by a spouse, no sale or lease shall be made of the household furnishings in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse, if such dwelling house was owned by the deceased spouse at the time of his or her death, until the expiration of the time limits set forth in G.S. 29-30(c) for the filing by the surviving spouse of an election in regard to the property of the decedent.

"Article 17.

"Sales, Leases or Mortgages of Real Property.

"§ 28A-17-1. Sales of real property.

Pursuant to authority contained in G.S. 28A-15-1 the personal representative may, at any time, apply to the clerk of superior court of the county where the decedent's real property or some part thereof is situated, by petition, to sell such real property for the payment of debts and other claims against the decedent's estate.

"§ 28A-17-2. Contents of petition for sale.

The petition to sell real property shall include:

(1) A description of the real property and interest therein sought to be sold;

(2) The names, ages and addresses, if known, of the devisees and heirs of the decedent;

(3) A statement that the personal representative has determined that it is in the best interest of the administration of the estate to sell the real property sought to be sold.

"§ 28A-17-3. Petition for partition.

When it is alleged that the real property of the decedent sought to be sold consists in whole or in part of an undivided interest in real property, the personal representative of the decedent may include, in the petition to sell the real property for the payment of debts and other claims against the decedent's estate, a request for partition of the lands sought to be sold.

"§ 28A-17-4. Heirs and devisees necessary parties.

No order to sell real property shall be granted until the heirs and devisees of the decedent have been made parties to the special proceeding by service of summons in the manner required by ~~law.~~ law, in accordance with G.S. 1A-1, Rule 4. Upon such service, the court shall appoint a guardian ad litem for heirs and devisees who are unknown or whose addresses are unknown, and summons shall issue to ~~him~~ the guardian ad litem as such. The guardian ad litem shall file answer for such heirs and devisees and defend for them, and ~~he~~ the guardian ad litem shall be paid such sum as the court may fix, to be paid as costs of the proceeding.

"§ 28A-17-5. Property subject to sale; conveyance by deceased in fraud of creditors.

The real property subject to sale under this Article shall include real property recovered from a fraudulent alienee pursuant to G.S. 28A-15-10(b).

"§ 28A-17-6. Adverse claimant to be heard; procedure.

When the real property sought to be sold, or any interest therein, is claimed by another person, such claimant may be made a party to the proceeding, and in any event may become a party upon ~~his~~ the claimant's own motion. When an issue of law or fact is joined between the parties, the procedure shall be as prescribed for other special proceedings.

"§ 28A-17-7. Order granted if petition not denied; public or private sale; procedure for sale.

If, by default or admission, the allegations in the petition are not controverted, the clerk of superior court may summarily order a sale. The procedure for the sale shall be as is provided in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales." If it is made to appear to the clerk by petition and by satisfactory proof that it will be for the best interest of the estate to sell by private sale, the clerk may authorize a private sale in accordance with the provisions of G.S. 1-339.33 through 1-339.40.

"§ 28A-17-8. Under power in will, sales public or private.

Sales of real property made pursuant to authority given by will may be either public or private, unless the will otherwise directs, and may be on such terms as in the opinion of the personal representative are most advantageous to those interested in the decedent's estate.

"§ 28A-17-9. Death of vendor under contract; representative to convey.

When any decedent has contracted to sell any real property and has given bond or other enforceable written contract to the purchaser to convey the same, ~~his~~ the decedent's personal representative may execute and deliver a deed to such real property and such deed shall convey the title as fully as if it had been executed and delivered by the decedent. No deed shall be made unless the purchaser complies with the terms of the bond or other written contract. If the contract for conveyance requires the giving of a warranty deed, the deed given by the personal representative shall contain such warranties as required by the contract and the warranties shall be binding on the estate and not on the personal representative personally.

"§ 28A-17-10. Title in personal representative for estate; he or successor to convey.

When real property is conveyed to a personal representative for the benefit of the estate ~~he~~ the personal representative represents, ~~he~~ the personal representative or any successor personal representative may sell and convey it upon such terms as ~~he~~ the personal representative may

deem just and for the advantage of the estate. The procedure shall be as is provided in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales." If it is made to appear to the clerk of superior court by petition and by satisfactory proof that it will be for the best interest of the estate to sell by private sale, the clerk may authorize a private sale in accordance with the provisions of G.S. 1-339.33 through 1-339.40.

"§ 28A-17-11. Personal representative may lease or mortgage.

In lieu of asking for an order of sale of real property, the personal representative may request the clerk of superior court to issue to ~~him~~ the personal representative an order to lease or to mortgage real property of the decedent. The clerk of superior court is authorized to issue an order to lease or mortgage on such terms as ~~he~~ the clerk deems to be in the best interest of the estate.

"§ 28A-17-12. Sale, lease or mortgage of real property by heirs or devisees.

(a) If the first publication or posting of the general notice to creditors as provided for in G.S. 28A-14-1 occurs within two years after the death of the decedent:

(1) All sales, leases or mortgages of real property by heirs or devisees of any resident or nonresident decedent made after the death of the decedent and before the first publication or posting of the general notice to creditors are void as to creditors and personal representatives; and

(2) All sales, leases or mortgages of real property by heirs or devisees of any resident or nonresident decedent made after such first publication or posting and before approval of the final account shall be void as to creditors and personal representatives unless the personal representative joins in the sale, lease or mortgage.

(b) If the first publication or posting of the general notice to creditors as provided for in G.S. 28A-14-1 does not occur within two years after the death of the decedent, all sales, leases or mortgages of real property by heirs or devisees of any resident or nonresident decedent shall be valid as to creditors and personal representatives of the decedent.

"§ 28A-17-13. Prior validating acts.

Chapter 70 of the Public Laws of 1923, Chapter 48 of the Public Laws of 1925, Chapter 146 of the Public Laws of 1931, and Chapters 31 and 381 of the Public Laws of 1935, all validating certain prior sales of real property by executors or administrators and heretofore codified as G.S. 28-100 through 28-104, shall remain in full force and effect, though no longer carried forward as part of the General Statutes.

"Article 18.

"Actions and Proceedings.

"§ 28A-18-1. Survival of actions to and against personal representative.

(a) Upon the death of any person, all demands whatsoever, and rights to prosecute or defend any action or special proceeding, existing in favor of or against such person, except as provided in subsection (b) hereof, shall survive to and against the personal representative or collector of ~~his~~ the person's estate.

(b) The following rights of action in favor of a decedent do not survive:

(1) Causes of action for libel and for slander, except slander of title;

(2) Causes of action for false imprisonment;

(3) Causes of action where the relief sought could not be enjoyed, or granting it would be nugatory after death.

"§ 28A-18-2. Death by wrongful act of another; recovery not assets.

(a) When the death of a person is caused by a wrongful act, neglect or default of another, such as would, if the injured person had lived, have entitled ~~him~~ the injured person to an action for damages therefor, the person or corporation that would have been so liable, and ~~his or their~~ the personal representatives or ~~collectors,~~ collectors of the person or corporation that would have been so liable, shall be liable to an action for damages, to be brought by the

personal representative or collector of the decedent; and this notwithstanding the death, and although the wrongful act, neglect or default, causing the death, amounts in law to a felony. The personal representative or collector of the decedent who pursues an action under this section may pay from the assets of the estate the reasonable and necessary expenses, not including attorneys' fees, incurred in pursuing the action. At the termination of the action, any amount recovered shall be applied first to the reimbursement of the estate for the expenses incurred in pursuing the action, then to the payment of attorneys' fees, and shall then be distributed as provided in this section. The amount recovered in such action is not liable to be applied as assets, in the payment of debts or legacies, except as to burial expenses of the deceased, and reasonable hospital and medical expenses not exceeding four thousand five hundred dollars ($4,500) incident to the injury resulting in death, except that the amount applied for hospital and medical expenses shall not exceed fifty percent (50%) of the amount of damages recovered after deducting attorneys' fees, but shall be disposed of as provided in the Intestate Succession Act. The limitations on recovery for hospital and medical expenses under this subsection do not apply to subrogation rights exercised pursuant to G.S. 135-40.13A. All claims filed for such services shall be approved by the clerk of the superior court and any party adversely affected by any decision of said clerk as to said claim may appeal to the superior court in term time.

(b) Damages recoverable for death by wrongful act include:

(1) Expenses for care, treatment and hospitalization incident to the injury resulting in death;

(2) Compensation for pain and suffering of the decedent;

(3) The reasonable funeral expenses of the decedent;

(4) The present monetary value of the decedent to the persons entitled to receive the damages recovered, including but not limited to compensation for the loss of the reasonably expected;

a. Net income of the decedent,

b. Services, protection, care and assistance of the decedent, whether voluntary or obligatory, to the persons entitled to the damages recovered,

c. Society, companionship, comfort, guidance, kindly offices and advice of the decedent to the persons entitled to the damages recovered;

(5) Such punitive damages as the decedent could have recovered pursuant to Chapter 1D of the General Statutes had ~~he~~ the decedent survived, and punitive damages for wrongfully causing the death of the decedent through malice or willful or wanton conduct, as defined in G.S. 1D-5;

(6) Nominal damages when the jury so finds.

(c) All evidence which reasonably tends to establish any of the elements of damages included in subsection (b), or otherwise reasonably tends to establish the present monetary value of the decedent to the persons entitled to receive the damages recovered, is admissible in an action for damages for death by wrongful act.

(d) In all actions brought under this section the dying declarations of the deceased shall be admissible as provided for in G.S. 8-51.1.

"§ 28A-18-3. To sue or defend in representative capacity.

All actions and proceedings brought by or against personal representatives or collectors upon any cause of action or right to which the estate of the decedent is the real party in interest, must be brought by or against them in their representative capacity.

"§ 28A-18-4. Service on or appearance of one binds all.

In actions against personal representatives or collectors, they are all to be considered as one person, representing the decedent; and if the summons is served on one or more, but not all, the

plaintiff may proceed against those served, and if ~~he~~ the plaintiff recovers, judgment may be entered against all.

"§ 28A-18-5. When creditors may sue on claim; execution in such action.

An action may be brought by a creditor against the personal representative or collector on a demand at any time after it is due, but no execution shall issue against the personal representative or collector on a judgment therein against ~~him~~ the personal representative or collector without leave of the court, upon notice of 20 days and upon proof that the defendant has refused to pay such judgment or its ratable part, and such judgment shall be a lien on the property of the estate of the decedent only from the time of such leave granted.

"§ 28A-18-6. Service by publication on executor without bond.

Whenever process may issue against an executor who has not given bond, and the same cannot be served upon ~~him~~ the executor by reason of ~~his~~ the executor's absence or concealment, service of such process may be made by publication in the manner prescribed in other civil actions.

"§ 28A-18-7. Execution by successor in office.

Any personal representative or collector may have execution issued on any judgment recovered by any person who preceded ~~him~~ the personal representative or collector in the administration of the estate, or by the decedent, in the same cases and the same manner as the original plaintiff might have done.

"§ 28A-18-8. Action to continue, though letters revoked.

In case the letters of a personal representative or collector are revoked, pending an action to which ~~he~~ the personal representative or collector is a party, the adverse party may, notwithstanding, continue the action against ~~him~~ the personal representative or collector in order to charge ~~him~~ the personal representative or collector personally. If such party does not elect so to do, within six months after notice of such revocation, the action may be continued against the successor of the personal representative or collector in the administration of the estate, in the same manner as in case of death.

"Article 19.

"Claims against the Estate.

"§ 28A-19-1. Manner of presentation of claims.

(a) A claim against a decedent's estate must be in writing and state the amount or item claimed, or other relief sought, the basis for the claim, and the name and address of the claimant; and must be presented by one of the following methods:

(1) By delivery in person or by mail to the personal representative, collector or the clerk of superior court. Such claim will be deemed to have been presented from the time of such delivery.

(2) By mailing, registered or certified mail, return receipt requested, to the personal representative or collector at the address set out in the general notice to creditors. Such claim will be deemed to have been presented from the time when the return receipt is signed by the personal representative, collector, or ~~his agent,~~ agent of the personal representative or collector, or is refused by the personal representative, collector, or ~~his agent.~~ agent of the personal representative or collector.

(3) By delivery to the clerk of court of the county in which the estate is pending, which notice shall be filed in the appropriate estate file and copy mailed first class by the clerk of superior court at the expense of the claimant to the personal representative, collector, or ~~his agent.~~ agent of the personal representative or collector. The claim will be deemed to have been presented from the time of delivery to the clerk of court.

(b) In an action commenced after the death of the decedent against ~~his~~ the decedent's personal representative or collector as such, the commencement of the action in the court in

which such personal representative or collector qualified will constitute the presentation of a claim and no further presentation is necessary. In an action filed in any other court such claim will be deemed to have been presented at the time of the completion of service of process on such personal representative or collector.

(c) In an action pending against the decedent at the time of ~~his~~ the decedent's death, which action survives at law, the court may order the substitution of the personal representative or collector for the decedent ~~or~~ on motion therefor and that motion will constitute the presentation of a ~~claim~~ claim, provided that substitution occurs within the time specified for the presentation of claims under G.S. 28A-19-3 and no further presentation is necessary. Such claim will be deemed to have been presented from the time of the substitution, or motion therefor.

"§ 28A-19-2. Further information or affidavit of claim may be required.

(a) If the personal representative or collector so elects, ~~he~~ the personal representative or collector may demand any or all of the following prior to taking action on the claim:

(1) If the claim is not yet due, that the date when it will become due be stated;

(2) If the claim is contingent or unliquidated, that the nature of the uncertainty be stated;

(3) If the claim is secured, that the security be described.

(b) Upon any claim being presented against the estate in the manner prescribed in G.S. 28A-19-1, the personal representative or collector may require the affidavit of the claimant or other satisfactory evidence that such claim is justly due, that no payments have been made thereon, and that there are no offsets against the same, to the knowledge of the claimant; or if any payments have been made, or any offsets exist that their nature and amount be shown by the evidence or stated in the affidavit.

"§ 28A-19-3. Limitations on presentation of claims.

(a) All claims against a decedent's estate which arose before the death of the decedent, except contingent claims based on any warranty made in connection with the conveyance of real estate and claims of the United States and tax claims of the State of North Carolina and subdivisions thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, secured or unsecured, founded on contract, tort, or other legal basis, which are not presented to the personal representative or collector pursuant to G.S. 28A-19-1 by the date specified in the general notice to creditors as provided for in G.S. 28A-14-1(a) or in those cases requiring the delivery or mailing of notice as provided for in G.S. 28A-14-1(b), within 90 days after the date of the delivery or mailing of the notice if the expiration of said 90-day period is later than the date specified in the general notice to creditors, are forever barred against the estate, the personal representative, the collector, the heirs, and the devisees of the decedent. Provided further, if the expiration of said 90-day period is later than the date specified in the general notice to creditors, the notice delivered or mailed to each creditor, if any, shall be accompanied by a statement which specifies the deadline for filing the claim of the affected creditor.

(b) All claims against a decedent's estate which arise at or after the death of the decedent, except claims of the United States and tax claims of the State of North Carolina and subdivisions thereof whether due or to become due, absolute or contingent, liquidated or unliquidated, secured or unsecured, founded on contract, tort, or other legal basis are forever barred against the estate, the personal representative, the collector, the heirs, and the devisees of the decedent unless presented to the personal representative or collector as follows:

(1) With respect to any claim based on a contract with the personal representative or collector, within six months after the date on which performance by the personal representative or collector is due;

(2) With respect to any claim other than a claim based on a contract with the personal representative or collector, within six months after the date on which the claim arises.

(c) Except as otherwise provided by subsection (f) of this section, no claim shall be barred by the statute of limitations which was not barred thereby at the time of the decedent's death, if the claim is presented within the period provided by subsection (a) hereof.

(d) All claims of creditors upon whom there has been personal service of notice as provided in G.S. 28A-14-3 are forever barred unless presented to the personal representative or collector within the time and manner set out in this Article.

(e) Except as otherwise provided by subsection (f) of this section, unless a claim has been presented pursuant to G.S. 28A-19-1 giving notice of an action or special proceeding pending against a decedent at the time of ~~his~~ the decedent's death and surviving under G.S. 28A-18-1 within the time provided by subsection (a) of this section, no recovery may be had upon any judgment obtained in any such action or proceeding against the estate, the personal representative, the collector, the heirs, and the devisees of the decedent.

(f) All claims barrable under the provisions of subsections (a) and (b) hereof shall, in any event, be barred if the first publication or posting of the general notice to creditors as provided for in G.S. 28A-14-1 does not occur within three years after the death of the decedent.

(g) Nothing in this section affects or prevents any action or proceeding to enforce any mortgage, deed of trust, pledge, lien (including judgment lien), or other security interest upon any property of the decedent's estate, but no deficiency judgment will be allowed if the provisions of this section are not complied with.

(h) The word "claim" as used in this section does not apply to claims of heirs or devisees to their respective shares or interests in the decedent's estate in their capacity as such heirs or devisees.

(i) Nothing in this section shall bar:

(1) Any claim alleging the liability of the decedent or personal representative; or

(2) Any proceeding or action to establish the liability of the decedent or personal representative; or

(3) The recovery on any judgment against the decedent or personal representative

to the extent that the decedent or personal representative is protected by insurance coverage with respect to such claim, proceeding or judgment or where there is underinsured or uninsured motorist coverage that might extend to such claim, proceeding, or judgment.

(j) Except as otherwise specifically provided in this section, the limitations on presentation of claims set forth in this section apply to claims by the State of North Carolina, its subdivisions, and its agencies.

"§ 28A-19-4. Payment of claims and charges.

As soon as the personal representative or collector is possessed of sufficient means over and above the other costs of administration, ~~he~~ the personal representative or collector shall pay the year's allowances in the amounts and in the manner prescribed in G.S. 30-15 to 30-33. Prior to the date specified in the general notice to creditors as provided for in G.S. 28A-14-1, the personal representative or collector may pay such other claims and charges as ~~he~~ the personal representative or collector deems in the best interest of the estate if the total assets are sufficient to pay all claims and charges against the estate.

"§ 28A-19-5. Contingent or unliquidated claims.

(a) If a contingent or unliquidated claim becomes absolute before the distribution of the estate of the decedent, it shall be paid in the same manner as absolute claims of the same class. In other cases the clerk of superior court may provide for the payment of contingent or unliquidated claims in any one of the following ways:

(1) The creditor and the personal representative or collector may determine, by agreement, arbitration, or compromise, the value of the contingent or unliquidated claim, according to its probable present worth, and with the approval of the clerk of superior court, it may be allowed and paid in the same manner as an absolute claim.

(2) The clerk of superior court may order the personal representative or collector to retain sufficient funds to pay the claim if and when the same becomes absolute, and order distribution of the balance of the estate.

(3) The clerk of superior court may order distribution of the estate as though the contingent or unliquidated claim did not exist, but the heirs and devisees of the estate of the decedent are liable to the creditor to the extent of the estate received by them, if the contingent or unliquidated claim thereafter becomes absolute; and the court may require such heirs and devisees to give bond for the performance of their liability to the contingent or unliquidated creditor.

(4) Such other method as the clerk of superior court may order.

(b) With respect to a contingent or unliquidated claim rejected by a personal representative pursuant to G.S. 28A-19-16, the claimant may, within the three-month period prescribed by G.S. 28A-19-16, file a petition for an order of the clerk of superior court in accordance with subsection (a) of this section, provided that nothing in this section shall require the clerk of superior court to hear and determine the validity of, priority of, or amount of a contingent or unliquidated claim that has yet become absolute.

"§ 28A-19-6. Order of payment of claims.

(a) After payment of costs and expenses of administration, the claims against the estate of a decedent must be paid in the following order:

First class. Claims which by law have a specific lien on property to an amount not exceeding the value of such property.

Second class. Funeral expenses to the extent of three thousand five hundred dollars ($3,500). This limitation shall not include burial place or gravestone. The preferential limitation herein granted shall be construed to be only a limit with respect to preference of payment and shall not be construed to be a limitation on reasonable funeral expenses which may be incurred; nor shall the preferential limitation of payment in the amount of three thousand five hundred dollars ($3,500) be diminished by any Veterans Administration, social security or other federal governmental benefits awarded to the estate of the decedent or to ~~his or her~~ the decedent's beneficiaries.

Third class. Costs associated with gravestones and reasonable costs for the purchase of a suitable burial place as provided in G.S. 28A-19-9 to the extent of one thousand five hundred dollars ($1,500). The preferential limitation herein granted shall be construed to be only a limit with respect to preference of payment and shall not be construed to be a limitation on reasonable gravestone or burial place expenses which may be incurred; nor shall the preferential limitation of payment in the amount of one thousand five hundred dollars ($1,500) be diminished by any Veterans Administration, social security or other federal governmental benefits awarded to the estate of the decedent or to ~~his or her~~ the decedent's beneficiaries.

Fourth class. All dues, taxes, and other claims with preference under the laws of the United States.

Fifth class. All dues, taxes, and other claims with preference under the laws of the State of North Carolina and its subdivisions.

Sixth class. Judgments of any court of competent jurisdiction within the State, docketed and in force, to the extent to which they are a lien on the property of the decedent at ~~his~~ the decedent's death.

Seventh class. Wages due to any employee employed by the decedent, which claim for wages shall not extend to a period of more than 12 months next preceding the death; or if such

employee was employed for the year current at the decease, then from the time of such employment; for medical services within the 12 months preceding the decease; for drugs and all other medical supplies necessary for the treatment of such decedent during the last illness of such decedent, said period of last illness not to exceed 12 months.

Eighth class. A claim for equitable distribution.

Ninth class. All other claims.

(b) Notwithstanding subsection (a) of this section, if payment of the commissions of the personal representative under G.S. 28A-23-3(g) would cause the estate to be unable to pay all claims against the estate of a decedent, then the commissions shall be limited to the amount allowed under G.S. 28A-23-3(a).

"**§ 28A-19-7. Satisfaction of claims other than by payment.**

Notwithstanding any provision of law to the contrary,

(1) If a decedent was liable in person at the time of ~~his~~ the decedent's death for the payment or satisfaction of any claim or the performance, satisfaction, or discharge of any liability or obligation, whether joint or several, primary or secondary, direct or contingent, or enforceable in any other manner or form whatsoever, or

(2) If only the property of a decedent or some part thereof was liable at the time of ~~his~~ the decedent's death for the payment or satisfaction of any claim or the performance, satisfaction, or discharge or any liability or obligation, whether joint or several, primary or secondary, direct or contingent, or enforceable in any other manner or form against the property of the decedent but not against ~~him~~ the decedent or ~~his~~ the decedent's estate as a personal liability, and

(3) If any person other than the personal representative of the decedent is willing to assume the liability of the decedent and of ~~his~~ the decedent's estate or to receive or accept property of the decedent subject to such liability in cases where the decedent was not personally liable and the creditor, obligee, or other person for whose benefit such liability exists is willing to accept an agreement with that effect and to discharge the personal representative of the decedent and the estate of the decedent from the payment, satisfaction, or discharge of such liability, and

(4) If such creditor, obligee, or other person for whose benefit such liability exists and the person assuming the liability or the person receiving or accepting property of the decedent subject to such liability shall execute, acknowledge, and deliver in the form and manner required for deeds conveying real property in North Carolina, an agreement between themselves as to such assumption of liability or the receipt or acceptance of property of the decedent subject to such liability which shall contain a release, as hereinafter defined, discharging the personal representative of the decedent and ~~his~~ the decedent's estate from the payment, satisfaction, or discharge of the liability, and thereafter the said creditor, obligee, or other person for whose benefit such liability exists shall have no remedy for the enforcement thereof except against the person assuming it or against the property subject to it as provided in the said agreement; then upon the filing with the clerk of superior court having jurisdiction over the estate and the personal representative of one duplicate original of the said agreement, or of a certified copy thereof if it is a duly recorded instrument, the same shall be accepted in the same manner as a voucher showing payment or discharge of the said liability in the accounts of the personal representative of the decedent.

The word "person" as used in this section shall include one or more natural persons, corporations, partnerships, or entities having the power to own property or to make contracts in regard thereto. The word "release" as used in this section shall include a covenant not to sue in any case in which an unqualified release or discharge of one obligee would discharge another, and if the liability involved is a negotiable instrument or other instrument transferable to a holder in due course, such release shall not be effective unless notice thereof is endorsed on the instrument involved, dated, and signed by the creditor or the holder of the indebtedness or person for whose benefit the property is encumbered.

"§ 28A-19-8. Funeral expenses of decedent.

(a) Any person authorized under G.S. 130A-420 to dispose of a decedent's body may bind a decedent's estate for funeral expenses and related charges, including interest and finance charges, in accordance with this section, including the execution and delivery on behalf of the estate of any agreements, promissory notes, and other instruments relating to the estate. Whether or not a personal representative of the estate has been appointed at the time the expenses are incurred, funeral expenses of a decedent, together with interest or finance charges if financed by the funeral establishment or a third-party creditor, or advanced by a health care agent exercising authority described in G.S. 32A-19(b), shall be considered as an obligation of the estate of the decedent and the decedent's estate shall be primarily liable for those expenses to the funeral establishment that provided the funeral service, to any third-party creditor that finances the payment of those expenses, or to any other person described in this section who has paid such expenses.

(b) The provisions of this section shall not affect the application of G.S. 28A-19-6 or G.S. 130A-420.

"§ 28A-19-9. Gravestone and burial place authorized.

(a) ~~It~~ If the decedent has duly appointed a health care agent pursuant to Article 3 of Chapter 32A of the General Statutes to provide for these expenses, the health care agent may make arrangements to provide a suitable gravestone to mark the grave of the testator or intestate, and the personal representative shall reimburse the health care agent subject to the monetary limitations and procedures contained in this section. If the decedent did not have a health care agent, or if the health care agent does not act, it is lawful for a personal representative or the decedent's duly appointed health care agent to provide a suitable gravestone to mark the graves of the testator or intestate and to pay for the cost of erecting the same. The cost thereof shall be treated as a third class claim under G.S. 28A-19-6 and credited as such in final accounts. The costs thereof shall be in the sound discretion of the personal ~~representative,~~ representative or health care agent, having due regard to the value of the estate and to the interests of creditors and needs of the surviving spouse and the heirs and devisees of the estate. Where the personal representative or health care agent desires to spend more than one thousand five hundred dollars ($1,500) for the purpose of a gravestone, and the will does not grant specific authority to the personal representative for such expenditures in excess of one thousand five hundred dollars ($1,500), the personal representative shall file a petition before the clerk of the court, and such order as will be made by the court shall specify the amount to be expended for such purpose. In specifying the amount, the clerk may consider the value of the estate. To the extent that the personal representative or health care agent advances the costs for providing a suitable gravestone to mark the graves of the testator or intestate and for erecting the same, the advancement shall be considered as an obligation of the decedent's estate, and the decedent's estate shall be primarily liable for the costs for providing a suitable gravestone to mark the graves of the testator or intestate and for erecting the same.

(b) It is lawful for ~~a personal representative~~ the decedent's duly appointed health care agent to provide a suitable burial place for the testator or intestate. If the decedent did not have a health care agent, or if the health care agent does not act, then the personal representative may provide a suitable burial place for the testator or intestate. The cost of a suitable burial place

shall be in the sound discretion of the personal ~~representative,~~ representative or the decedent's health care agent, having due regard to the value of the estate and to the interests of creditors and needs of the surviving spouse and the heirs and devisees of the estate, and shall be treated as a third class claim under G.S. 28A-19-6.

"§ 28A-19-10. Perpetual care of cemetery lot.

It shall be lawful for a personal representative to provide for perpetual care for the lot upon which is located the grave of the testator or intestate, and the cost thereof shall be paid and credited as such in final accounts: Provided, that the provisions of this section shall be applicable to an interment made in a cemetery authorized by law to operate as a perpetual-care cemetery or association, and the cost thereof shall be in the sound discretion of the personal representative having due regard to the value of the estate and to the interest of the surviving spouse and the heirs and devisees of the estate. Provided, where the personal representative desires to spend more than two hundred fifty dollars ($250.00) for such purpose, and the will does not grant specific authority to the personal representative for such expenditure in excess of two hundred fifty dollars ($250.00), ~~he~~ the personal representative shall file ~~his~~ the personal representative's petition before the clerk of the superior court and such order as will be made by the court shall specify the amount to be expended for such purpose.

"§ 28A-19-11. Pleading statute of limitations.

When claims are not barred pursuant to G.S. 28A-19-3, it shall be within the discretion of the personal representative or collector acting in good faith to determine whether or not any applicable statute of limitations shall be pleaded to bar a claim which ~~he~~ the personal representative or collector believes to be just. ~~His~~ The personal representative's or collector's admission of such claim or ~~his~~ the personal representative's or collector's decision not to plead the statute in an action brought on the claim shall, in the absence of any showing of collusion or bad faith, be binding on all persons interested in the estate.

"§ 28A-19-12. Claims due representative not preferred.

No property or assets of the decedent shall be retained by the personal representative or collector in satisfaction of ~~his~~ the personal representative's or collector's own claim, in preference to others of the same class. Prior to payment of ~~his~~ the personal representative's or collector's own claim the personal representative or collector shall receive written approval of the clerk of superior court. If the clerk does not approve the claim the personal representative or collector may refer the claim as a disputed claim under the provisions of G.S. 28A-19-15. The provisions of G.S. 28A-19-1 and G.S. 28A-19-3 shall not apply to such claims and the personal representative or collector may present ~~his~~ the personal representative's or collector's own claim at any time prior to the filing of ~~his~~ the personal representative's or collector's final account.

"§ 28A-19-13. No preference within class.

No personal representative or collector shall give to any claim any preference whatever, either by paying it out of its class or by paying thereon more than a pro rata proportion in its class.

"§ 28A-19-14. Claims not due rebated.

Claims owed by the estate but not yet due may be paid by the personal representative on a rebate of interest thereon for the time unexpired.

"§ 28A-19-15. Disputed claim may be referred.

If the personal representative doubts the justness of any claim so presented, ~~he~~ the personal representative may enter into an agreement, in writing, with the claimant, to refer the matter in controversy, whether the same be of a legal or equitable nature, to one or more disinterested persons, not exceeding three, whose proceedings shall be the same in all respects as if such reference had been ordered in an action. Such agreement to refer, and the award thereupon, shall be filed in the clerk's office where the letters were granted, and shall be a lawful voucher for the personal representative. The same may be impeached in any proceeding against the

personal representative for fraud therein: Provided, that the right to refer claims under this section shall extend to claims in favor of the estate as well as those against the estate.

"§ 28A-19-16. Disputed claim not referred barred in three months.

If a claim is presented to and rejected by the personal representative or collector, and not referred as provided in G.S. 28A-19-15, the claimant must, within three months, after due notice in writing of such rejection, ~~or after some part of the claim becomes due,~~ commence an action for the recovery thereof, or in the case of a contingent or unliquidated claim, file a petition for an order from the clerk of superior court pursuant to G.S. 28A-19-5(b), or be forever barred from maintaining an action thereon.

"§ 28A-19-17. No lien by suit against representative.

No lien shall be created by the commencement of a suit against a personal representative or collector.

"§ 28A-19-18. When costs against representative allowed.

No costs shall be recovered in any action against a personal representative or collector unless it appears that payment was unreasonably delayed or neglected, or that the defendant refused to refer the matter in controversy, in which case the court may award such costs against the defendant personally, or against the estate, as may be just.

"§ 28A-19-19. Claims for equitable distribution.

(a) The provisions of G.S. 28A-19-5 and G.S. 28A-19-7 shall not apply to claims for equitable distribution.

(b) The personal representative may enter into an agreement, in writing, with a claimant providing for distribution of marital or divisible property, or both, in a manner deemed by the personal representative and the claimant to be equitable. The agreement shall be filed in the clerk's office where the letters were granted and shall be a lawful voucher for the personal representative. The same may be impeached in any proceeding against the personal representative for fraud therein.

(c) Unless the claim for equitable distribution has been referred as provided in G.S. 28A-19-15, the claimant may at anytime, subject to the provisions of G.S. 28A-19-16, file an action with the district court for distribution of marital or divisible property in accordance with the provisions of G.S. 50-20.

"Article 20.

"Inventory.

"§ 28A-20-1. Inventory within three months.

Every personal representative and collector, within three months after ~~his qualification,~~ the qualification of that personal representative or collector, shall return to the clerk, on oath, a just, true and perfect inventory of all the real and personal property of the deceased, which have come to ~~his hands,~~ the hands of the personal representative or collector, or to the hands of any person for ~~him,~~ the personal representative or collector, which inventory shall be signed by ~~him~~ the personal representative or collector and be recorded by the clerk.

"§ 28A-20-2. Compelling the inventory.

(a) If the inventory specified in G.S. 28A-20-1 is not filed as prescribed, the clerk of superior court must issue an order requiring the personal representative or collector to file it within the time specified in the order, not less than 20 days, or to show cause why ~~he~~ the personal representative or collector should not be removed from office. If, after due service of the order, the personal representative or collector does not on or before the return day of the order file such inventory or obtain further time in which to file it, the clerk may remove ~~him~~ the personal representative or collector from office or may issue an attachment against ~~him~~ the personal representative or collector for a contempt and commit ~~him until he~~ the personal representative or collector until the personal representative or collector files said inventory report.

(b) The personal representative or collector shall be personally liable for the costs of any proceeding incident to ~~his~~ the personal representative's or collector's failure to file the inventory required by G.S. 28A-20-1. Such costs shall be taxed against ~~him~~ the personal representative or collector by the clerk of superior court and may be collected by deduction from any commissions which may be found due the personal representative or collector upon final settlement of the estate.

"§ 28A-20-3. Supplemental inventory.

(a) Whenever any property not included in the original inventory report becomes known to any personal representative or collector or whenever the personal representative or collector learns that the valuation or description of any property or interest therein indicated in the original inventory is erroneous or misleading, ~~he~~ the personal representative or collector shall prepare and file with the clerk of superior court a supplementary inventory in the same manner as prescribed for the original inventory. The clerk shall record the supplemental report with the original inventory.

(b) The making of the supplemental inventory shall be enforced in a manner specified in G.S. 28A-20-2.

"§ 28A-20-4. Employment of appraisers.

A personal representative or collector may, but shall not be required to, employ qualified and disinterested appraisers to assist in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets. The name and address of any appraiser shall be indicated in the inventory with the asset or assets ~~he~~ the appraiser appraised.

"Article 21.

"Accounting.

"§ 28A-21-1. Annual accounts.

Until the final account has been filed pursuant to G.S. 28A-21-2, the personal representative or collector shall, for so long as any of the property of the estate remains in ~~his~~ the control, custody or ~~possession,~~ possession of the personal representative or collector, file annually in the office of the clerk of superior court an inventory and account, under oath, of the amount of property received by ~~him,~~ the personal representative or collector, or invested by ~~him,~~ the personal representative or collector, and the manner and nature of such investment, and ~~his~~ the receipts and disbursements of the personal representative or collector for the past year. Such accounts shall be due by the fifteenth day of the fourth month after the close of the fiscal year selected by the personal representative or collector, and annually thereafter. The election of a fiscal year shall be made by the personal representative or collector upon filing of the first annual account. In no event may a personal representative or collector select a fiscal year-end which is more than twelve months from the date of death of the decedent or, in the case of trust administration, the date of the opening of the trust. Any fiscal year selected may not be changed without the permission of the clerk of superior court.

The personal representative or collector shall produce vouchers for all payments or verified proof for payments in lieu of vouchers. The clerk of superior court may examine, under oath, such accounting party, or any other person, concerning the receipts, disbursements or any other matter relating to the estate. ~~He~~ The clerk of superior court must carefully review and audit such account and, if ~~he~~ the clerk approves the account, ~~he~~ the clerk must endorse ~~his~~ the approval of the clerk thereon, which shall be **prima facie** evidence of correctness, and cause the same to be recorded.

"§ 28A-21-2. Final accounts.

(a) Unless the time for filing the final account has been extended by the clerk of superior court, the personal representative or collector must file the final account for settlement within one year after qualifying or within six months after receiving a State estate or inheritance tax release, or in the time period for filing an annual account pursuant to

G.S. 28A-21-1, whichever is later. If no estate or inheritance tax return was required to be filed for the estate, the personal representative or collector shall so certify in the final account filed with the clerk of superior court. Such certification shall list the amount and value of all of the decedent's property, and with respect to real estate, its particular location within or outside the State, including any property transferred by the decedent over which the decedent had retained any interest, or any property transferred within three years prior to the date of the decedent's death, and after being filed and accepted by the clerk of ~~the~~ superior court shall be prima facie evidence that such property is free of any State inheritance or State estate tax liability. The personal representative or collector shall produce vouchers for all payments or verified proof for all payments in lieu of vouchers. With the approval of the clerk of superior court, such account may be filed voluntarily at any time. In all cases, the accounting shall be reviewed, audited and recorded by the clerk of superior court in the manner prescribed in G.S. 28A-21-1.

(b) Except as provided in subsection (a), after the date specified in the general notice to creditors as provided for in G.S. 28A-14-1, if all of the debts and other claims against the estate of the decedent duly presented and legally owing have been paid in the case of a solvent estate or satisfied pro rata according to applicable statutes in the case of an insolvent estate, the personal representative or collector may file ~~his~~ the personal representative's or collector's final account to be reviewed, audited and recorded by the clerk of superior court. Nothing in this subsection shall be construed as limiting the right of the surviving spouse or minor children to file for allowances under G.S. 30-15 through 30-18 and the right of a surviving spouse to file for property rights under G.S. 29-30.

"§ 28A-21-2.2. Final accounting by limited personal representative.

(a) Filing Requirement. – A limited personal representative appointed pursuant to Article 29 of this Chapter shall file a sworn affidavit or report listing all debts and other claims duly presented to the limited personal representative and providing proof that the debts and other claims were satisfied, compromised, or denied, and that the time for filing suit thereon has expired. The sworn affidavit or report shall be filed within 30 days of the later of the following:

(1) The date by which a claim must be presented as set forth in the general notice to creditors provided for in G.S. 28A-14-1.

(2) The date by which an action for recovery of a rejected claim must be commenced under G.S. 28A-19-6.

(b) Action by Clerk. – The affidavit or report shall be reviewed and recorded by the clerk of superior court. Following the review, the clerk of superior court shall take one of the following actions:

(1) Discharge the limited personal representative from office.

(2) Require the filing of any additional information or documents determined by the clerk to be necessary to the understanding of the affidavit or report.

(3) Order the full administration of the decedent's estate and appoint a personal representative.

"§ 28A-21-3. What accounts must contain.

Accounts filed with the clerk of superior court pursuant to G.S. 28A-21-1, signed and under oath, shall contain:

(1) The period which the account covers and whether it is an annual accounting or a final accounting;

(2) The amount and value of the property of the estate according to the inventory and appraisal or according to the next previous accounting, the amount of income and additional property received during the period being accounted for, and all gains from the sale of any property or otherwise;

(3) All payments, charges, losses, and distributions;

(4) The property on hand constituting the balance of the account, if any; and

(5) Such other facts and information determined by the clerk to be necessary to an understanding of the account.

"**§ 28A-21-3.1. Phase II tobacco grower and quota owner payments; list of Phase II distributees.**

(a) The following definitions apply in this section:

(1) "National Tobacco Grower Settlement Trust" means the trust established by tobacco companies to provide payments to tobacco growers and tobacco quota owners in 14 states for the purposes of ameliorating potential adverse economic consequences of likely reduction in demand, sales, and prices for tobacco as an agricultural product as a result of the Master Settlement Agreement incorporated in the consent decree entered in the action of State of North Carolina vs. Philip Morris, Incorporated, et al., 98 CVS 14377, in the General Court of Justice, Superior Court Division, Wake County, North Carolina.

(2) "Phase II payment" means an amount certified by the North Carolina Phase II Tobacco Certification Entity, Inc., to be paid pursuant to the trust agreement establishing the National Tobacco Grower Settlement Trust.

(b) A personal representative or collector of the estate of a decedent who, during 1993 or any subsequent year, was a tobacco grower or a tobacco quota owner as defined in Section 4.01 of the trust agreement establishing the National Tobacco Grower Settlement Trust may file, along with a final account, a list of Phase II distributees for Phase II payments if all of the following conditions are met:

(1) There are no unsatisfied creditors.

(2) There are no unsatisfied general monetary bequests.

(3) All assets other than any potential Phase II payments have been distributed.

(c) A list of Phase II distributees, signed under oath, must contain the following information:

(1) The name and address of the personal representative or collector.

(2) The name and social security number of the decedent.

(3) The name and address, if known, of each devisee or heir entitled to receive Phase II payments and the percentage of Phase II payments to be received by each.

(d) The clerk of superior court must review the list of Phase II distributees to determine if the list of distributees and their shares of potential Phase II payments are in accordance with the will or, if there is no will, in accordance with the Intestate Succession Act. If the clerk accepts the list of Phase II distributees for filing, the clerk must endorse the clerk's approval thereon, which shall be prima facie evidence of correctness.

(e) Upon determination by the North Carolina Phase II Tobacco Certification Entity, Inc., that the estate of a decedent entitled to any Phase II payment covering a time period when the decedent was alive has been closed, the payment may be paid directly to those distributees and in those shares set forth on a list of Phase II distributees filed under this section without the estate's having to be reopened under G.S. 28A-23-5.

(f) The estate of a decedent who is entitled to any Phase II payment may be reopened, if necessary, in accordance with G.S. 28A-23-5 in order to file a list of Phase II distributees under this section.

(g) For purposes of this section, Phase II payments covering a time period when decedent was alive are deemed cash and shall not pass by virtue of any devise or inheritance of the decedent's real property.

"**§ 28A-21-4. Clerk may compel account.**

If any personal representative or collector fails to account as directed in G.S. 28A-9-3, 28A-21-1 or 28A-21-2 or renders an unsatisfactory account, the clerk of superior court shall,

upon ~~his own~~ motion of the clerk of superior court or upon the request of one or more creditors of the decedent or other interested party, promptly order such personal representative or collector to render a full satisfactory account within 20 days after service of the order. If, after due service of the order, the personal representative or collector does not on or before the return day of the order file such account, or obtain further time in which to file it, the clerk may remove ~~him~~ the personal representative or collector from office or may issue an attachment against ~~him~~ the personal representative or collector for a contempt and commit ~~him until he~~ the personal representative or collector until the personal representative or collector files said account.

"§ 28A-21-5. Vouchers presumptive evidence.

Vouchers, without other proof, are presumptive evidence of disbursement, unless impeached. If lost, the accounting party must, if required, make oath to that fact setting forth the manner of loss, and state the contents and purport of the voucher.

"§ 28A-21-6. Permissive Notice of Final Accounts.

The personal representative or collector may, but is not required to, give written notice of a proposed final account pursuant to G.S. 1A-1, Rule 4, to all devisees of the estate in the case of testacy, and to all heirs of the estate in the case of intestacy, of the date and place of filing of such account. In giving written notice, the personal representative shall attach a copy of the proposed final accounting with exhibits made a part thereof, but is not required to include copies of vouchers, account statements, or other supporting evidence submitted to the clerk. If the personal representative or collector elects to provide this notice, the personal representative or collector shall file with the clerk of superior court a certificate indicating that this notice has been given to all devisees and heirs. Notwithstanding any right to appeal an order or judgment under G.S. 1-301.3, any payment, distribution, action, or other matter disclosed on such account or any annual account for the estate filed by the personal representative or collector must be objected to by a devisee or heir within 30 days after the receipt of the written notice or will be deemed to be accepted by the devisee or heir.

"Article 22.

"Distribution.

"§ 28A-22-1. Scheme of distribution; testate and intestate estates.

After the payment of costs of administration, taxes and other valid claims against the decedent's estate, the personal representative shall distribute the remaining assets of the estate in accordance with the terms of decedent's valid probated will or the provisions of Chapter 29 of the General Statutes or as otherwise lawfully authorized.

"§ 28A-22-2. Shares of after-born and after-adopted children.

The share of an after-born or after-adopted child, as provided by G.S. 29-9 and 31-5.5, shall be allotted to ~~him~~ the after-born or after-adopted child out of any undevised real or personal property, or out of both, if there is enough such undevised property for that purpose. If there is no undevised real or personal property, or if there is not enough, then the whole of the child's share, or the deficiency, shall be made up from the devised real or personal property, or from both. The portion contributed by a devisee shall bear the same ratio to ~~his~~ the devisee's devise as the after-born or after-adopted child's share bears to the net estate.

"§ 28A-22-3. Special proceeding against unknown heirs of decedent before distribution of estate.

If there may be heirs, born or unborn, of the decedent, other than those known to the personal representative and whose names and residences are unknown, before distributing such estate the personal representative is authorized to institute a special proceeding before the clerk of superior court for the purpose of determining who are the heirs of the decedent. All unknown heirs of the decedent shall be made parties thereto and shall be served with summons by publication as provided by G.S. 1A-1, Rule 4. Upon such service being had, the court shall appoint some discreet person to act as guardian ad litem for said unknown heirs and summons

shall issue as to such guardian ad litem. Said guardian ad litem shall file answer on behalf of said unknown heirs and ~~he~~ the guardian ad litem may be paid for ~~his~~ services of the guardian ad litem such sum as the court may fix, to be paid as other costs out of the estate. Upon the filing of the answer by said guardian ad litem all such unknown heirs shall be before the court for the purposes of the proceeding to the same extent as if each had been personally served with summons. Any judgment entered by the court in such proceeding shall be as binding upon said unknown heirs as if they were personally before the court and any payment or distribution made by the personal representative under orders of the court shall have the effect of fully discharging such personal representative and any sureties on ~~his~~ the personal representative's official bond to the full extent of such payment or distribution as ordered.

"§ 28A-22-4. Distribution to nonresident trustee only upon appointment of process agent.

(a) No assets of the estate of a decedent subject to administration in this State shall be delivered or transferred to a trustee of a testamentary trust or an inter vivos trust who is a nonresident of this State who has not appointed a resident agent for the service of civil process for actions or proceedings arising out of the administration of the trust with regard to such property.

(b) If property is delivered or transferred to a trustee in violation of this section, process may be served outside this State or by publication, as provided by G.S. 1A-1, Rule 4, and the courts of this State shall have the same jurisdiction over the trustee as might have been obtained by service upon a properly appointed process agent. The provisions of this section with regard to jurisdiction shall be in addition to other means of obtaining jurisdiction permissible under the laws of this State.

"§ 28A-22-5. Distribution of assets in kind in satisfaction of bequests and transfers in trust.

(a) Subject to the provisions of subsection (b) of this section, whenever under any will or trust indenture the executor, trustee or other fiduciary is required to, or has an option to, satisfy a bequest or transfer in trust by a transfer of assets of the estate or trust in kind at the values as finally determined for federal estate tax purposes, the executor, trustee or other fiduciary shall, in the absence of contrary provisions in such will or trust indenture, be required to satisfy such bequest or transfer by the distribution of assets fairly representative of the appreciation or depreciation in the value of all property available for distribution in satisfaction of such bequest or transfer.

(b) The provisions of subsection (a) of this section shall not apply unless either:

(1) The decedent's surviving spouse is the beneficiary of the bequest or trust transfer described in subsection (a) of this section or of the residue of the estate or trust; or

(2) Any "skip person", as that term is defined in Chapter 13 of the Internal Revenue Code of 1986, as amended, is or may be a current or future beneficiary of the bequest or trust transfer described in subsection (a) of this section or of the residue of the estate or trust, and the value of the decedent's gross estate for federal tax purposes exceeds the value of the decedent's unused generation-skipping tax exemption available under Chapter 13 of the Internal Revenue Code of 1986, as amended.

"§ 28A-22-6. Agreements with taxing authorities to secure benefit of federal marital deduction.

The executor, trustee, or other fiduciary having discretionary powers under a will or trust indenture with respect to the selection of assets to be distributed in satisfaction of a bequest or transfer in trust to or for the benefit of the surviving spouse of a decedent shall be authorized to enter into agreements with the Commissioner of Internal Revenue of the United States of America, and other taxing authorities, requiring the fiduciary to exercise the fiduciary's discretion so that cash and other properties distributed in satisfaction of such bequest or transfer

in trust will be fairly representative of the net appreciation or depreciation in value on the date, or dates, of distribution of all property then available for distribution in satisfaction of such bequest or transfer in trust. Any such fiduciary shall be authorized to enter into any other agreement not in conflict with the express terms of the will or trust indenture that may be necessary or advisable in order to secure for federal estate tax purposes the appropriate marital deduction available under the Internal Revenue Laws of the United States of America and to do and perform all acts incident to such purpose.

"§ 28A-22-7. Distribution to parent or guardian of a minor.

(a) If a devise or legacy of personal property to a person under the age of 18 has a total value of less than one thousand five hundred dollars ($1,500), and the devisee or legatee is residing in the same household with a parent or a guardian appointed prior to the decedent's death, the personal representative may distribute to the parent or guardian the devise or legacy. However, such distribution shall only be made with the prior approval of the clerk of court who issued the letters testamentary or of administration.

(b) If such distribution has been made the parent or guardian shall use the property solely for the education, maintenance and support of the devisee or legatee. However, the parent or guardian shall not be required to file an accounting with the clerk of court or to the personal representative, nor shall such distribution be cause for a delay in the filing of the personal representative's final account under the provisions of Article 21 of this Chapter.

(c) This section establishes a procedure that is separate from the provisions of G.S. 33-69.1 and it is not the intention of this section to repeal in whole or in part the provisions of G.S. 33-69.1.

(d) This section may also be applied to several devises or legacies of personal property to a single devisee or legatee having a combined total value of less than one thousand five hundred dollars ($1,500).

"§ 28A-22-8. Executor or trustee; discretion over distributions.

Unless otherwise restricted by the terms of the will or trust, an executor or trustee shall have absolute discretion to make distributions in cash or in specific property, real or personal, or an undivided interest therein or partly in cash or partly in such property, and to do so without regard to the income tax basis for federal tax purposes of specific property allocated to any beneficiary.

"§ 28A-22-9. Distribution to known but unlocated devisees or heirs.

(a) If there are known but unlocated devisees or heirs of property held by the personal representative, the personal representative may deliver the share of such devisee or heir to the clerk of superior court immediately prior to filing of the final account. If the devisee or heir is located after the final account has been filed, ~~he~~ the devisee or heir may present a claim for the share to the clerk. If the clerk determines that the claimant is entitled to the share, ~~he~~ the clerk shall deliver the share to the devisee or claimant. If the clerk denies the claim, the claimant may take an appeal as in a special proceeding.

(b) The clerk shall hold the share without liability for profit or interest. If no claim has been presented within a period of one year after the filing of the final account, the clerk shall deliver the share to the State Treasurer as abandoned property.

(c) The clerk shall not be required to publish any notice to such devisee or heir and shall not be required to report such share to the State Treasurer. If the devisee or heir is located, the clerk shall inform the devisee or heir that ~~he~~ the devisee or heir is entitled to file a claim with the State Treasurer for the share under the provisions of G.S. 116B-67.

"§ 28A-22-10. Distribution of assets of inoperative trust.

When the facts at the time of distribution of property to a trust are such that the trust would be inoperative under the terms of the instrument creating the trust for any reason, including the death of a beneficiary, renunciation by a beneficiary, the exercise of a right to withdraw the property by a beneficiary, or the attainment of a stipulated age by a beneficiary, the personal

representative or the trustee authorized or required to make the distribution of that property to the trust may distribute the property directly to the person or persons entitled to it under the terms of the instrument creating the trust without the interposition of the establishment of the trust. If only a portion of the trust would be inoperative, the property distributable to that portion of the trust may be distributed directly to the person or persons entitled to the property under the terms of the instrument creating the trust.

"§ 28A-22-11. Agreements with heirs.

Any agreement by an heir, unknown or known but unlocated, the primary purpose of which is to locate or recover, or assist in the recovery of, a share in a decedent's estate shall be subject to the provisions of G.S. 116B-78.

"Article 23.

"Settlement.

"§ 28A-23-1. Settlement after final account filed.

When the personal representative or collector has paid or otherwise satisfied or provided for all claims against the estate, has distributed the remainder of the estate pursuant to G.S. 28A-22-1 and has filed ~~his~~ the personal representative's or collector's final account for settlement pursuant to G.S. 28A-21-2, if the clerk of superior court, after review of the personal representative's or collector's final account, approves the same, ~~he~~ the clerk of superior court shall enter an order discharging the personal representative or collector from further ~~liability.~~ duties and liabilities as personal representative or collector, including those set forth in Article 13 of this Chapter. However, that such an order shall not include a release or discharge of liability for any breach of duty set forth in G.S. 28A-13-10(c).

"§ 28A-23-2. Payment into court of fund due minor.

When any personal representative or collector holds property due a minor without a guardian and desires to file ~~his~~ the personal representative's or collector's petition for settlement, ~~he~~ the personal representative or collector may deliver the property to the clerk of superior court who shall invest upon interest or otherwise manage said property for the use of the minor or the clerk may proceed to appoint a guardian for the minor pursuant to the provisions of Chapter 35A of the General Statutes and then may deliver the property of the minor to the guardian.

"§ 28A-23-3. Commissions allowed personal representatives; representatives guilty of misconduct or default.

(a) Personal representatives, collectors or public administrators shall be entitled to commissions to be fixed in the discretion of the clerk of superior court not to exceed five percent (5%) upon the amounts of receipts, including the value of all personal property when received, and upon the expenditures made in accordance with law. In determining the maximum commissions allowable under this subsection, the clerk of superior court may take into consideration fees paid by the estate for professional services performed in the ordinary course of administering the estate, including services performed by attorneys and accountants. However, the clerk is not required to reduce the maximum commissions allowed by the aggregate fees paid to professionals on a dollar-for-dollar basis.

The commissions shall be charged as a part of the costs of administration and, upon allowance, may be retained out of the assets of the estate against creditors and all other persons claiming an interest in the estate. If the gross value of an estate is two thousand dollars ($2,000) or less, the clerk of superior court may fix the commission to be received by the personal representative, collector or public administrator in an amount the clerk of superior court, in the clerk's discretion, deems just and adequate.

(b) In determining the amount of the commissions, both upon personal property received and upon expenditures made, the clerk of superior court shall consider the time, responsibility, trouble and skill involved in the management of the estate. Where real property

is sold to pay debts or legacies, the commission shall be computed only on the proceeds actually applied in the payment of debts or legacies.

(c) The clerk of superior court may allow commissions from time to time during the course of the administration, but the total commissions allowed shall be determined on final settlement of the estate and shall not exceed the limit fixed in this section.

(d) Nothing in this section shall be construed to:

(1) Prevent the clerk of ~~the~~ superior court from allowing reasonable sums for necessary charges and disbursements incurred in the management of the estate.

(2) Allow commissions on distribution of the shares of heirs or on distribution of shares of devisees.

(3) Abridge the right of any party interested in the administration of a decedent's estate to appeal an order of the clerk of superior court to a judge of superior court.

(e) No personal representative, collector or public administrator, who has been guilty of default or misconduct in the due execution of ~~his or her~~ the personal representative's, collector's, or public administrator's office resulting in the revocation of ~~his or her~~ the appointment of the personal representative, collector, or public administrator under the provisions of G.S. 28A-9-1, shall be entitled to any commission under the provisions of this section.

(f) For the purpose of computing commissions whenever any portion of the dividends, interest, rents or other amounts payable to a personal representative, collector or public administrator is required by any law of the United States or other governmental unit to be withheld for income tax purposes by the person, corporation, organization or governmental unit paying the same, the amount withheld shall be deemed to have been received and expended.

(g) Subsection (a) of this section does not apply if the testator's will specifies a stipulated amount or method or standard for determining the compensation for the services rendered by the personal representative, including a provision in the will that the compensation of the personal representative is to be determined by applying the personal representative's regularly adopted schedule of compensation in effect at the time of performance of those services. Subsection (a) of this section also shall not apply if the testator's will provides that the personal representative is to receive "reasonable compensation" for those services or similar language to that effect if the personal representative and the beneficiaries whose shares would be charged with the payment of the personal representative's compensation consent in writing to the specific amount that constitutes reasonable compensation.

(h) Subsection (a) of this section shall apply if the testator's will provides that compensation of the personal representative shall be the amount "as provided by law," the "maximum amount provided by law," or other similar language.

"§ 28A-23-4. Counsel fees allowable to attorneys serving as representatives.

The clerk of superior court, in ~~his discretion,~~ the discretion of the clerk of superior court, is authorized and empowered to allow counsel fees to an attorney serving as a personal representative, collector or public administrator (in addition to the commissions allowed ~~him~~ the attorney as such representative, collector or public administrator) where such attorney in behalf of the estate ~~he~~ the attorney represents renders professional services, as an attorney, which are beyond the ordinary routine of administration and of a type which would reasonably justify the retention of legal counsel by any such representative, collector or public administrator not ~~himself~~ licensed to practice law.

"§ 28A-23-5. Reopening administration.

If, after an estate has been settled and the personal representative discharged, other property of the estate shall be discovered, or if it shall appear that any necessary act remains unperformed on the part of the personal representative, or for any other proper cause, the clerk

of superior court, upon the petition of any person interested in the estate and without notice or upon such notice as ~~he~~ the clerk of superior court may direct, may order that said estate be reopened. ~~He~~ The clerk of superior court may reappoint the personal representative or appoint another personal representative to administer such property or perform such acts as may be deemed necessary. Unless the clerk of superior court shall otherwise order, the provisions of this Chapter as to an original administration shall apply to the proceedings had in the reopened administration; but no claim which is already barred can be asserted in the reopened administration.

"Article 24.

"120-Hour Survivorship Requirement; Revised Simultaneous Death Act.

"§ 28A-24-1. Definitions.

In this Article:

(1) "Co-owners with right of survivorship" includes joint tenants in a joint tenancy with right of survivorship, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

(2) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with a POD designation, pension, profit sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

(3) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

"§ 28A-24-2. Requirement of survival by 120 hours.

(a) Except as otherwise provided in this Article, where the title to property, the devolution of property, the right to elect an interest in property, or any other right or benefit depends upon an individual's survivorship of the death of another individual, an individual who is not established by clear and convincing evidence to have survived the other individual by at least 120 hours is deemed to have predeceased the other individual.

(b) If the language of the governing instrument disposes of property in such a way that two or more beneficiaries are designated to take alternatively by reason of surviving each other and it is not established by clear and convincing evidence that any such beneficiary has survived any other such beneficiary by at least 120 hours, the property shall be divided into as many equal shares as there are alternative beneficiaries, and these shares shall be distributed respectively to each such beneficiary's estate.

(c) If the language of the governing instrument disposes of property in such a way that it is to be distributed to the member or members of a class who survived an individual, each member of the class will be deemed to have survived that individual by at least 120 hours unless it is established by clear and convincing evidence that the individual survived the class member or members by at least 120 hours.

"§ 28A-24-3. Co-owners with right of survivorship; requirement of survival by 120 hours.

Except as otherwise provided in this Article, (i) if it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by at least 120 hours, one-half of the property passes as if one had survived by at least 120 hours and one-half as if the other had survived by at least 120 hours and (ii) if there are more than two co-owners with right of survivorship and it is not established by clear and convincing evidence that at least one of them survived the others by at least 120 hours, the property passes to the estates of each of the co-owners in the proportion that one bears to the whole number of co-owners.

"§ 28A-24-4. Survival of an event; 120-hour period not applicable.

For purposes of a governing instrument that requires survival of an event, other than the death of another individual, the 120-hour survivorship requirement of this Article does not apply.

"§ 28A-24-5. Victim deemed to survive slayer.

Notwithstanding any other provisions of this Article, solely for the purpose of determining whether the victim is entitled to any right or benefit that depends on surviving the death of a slayer under G.S. 31A-3, the slayer is deemed to have predeceased the victim and the victim is deemed to have survived the slayer by at least 120 hours (or any greater survival period required of the victim under the slayer's will or other governing instrument) unless it is established by clear and convincing evidence that the slayer survived the victim by at least 120 hours.

"§ 28A-24-6. Exceptions to the 120-hour survival requirement.

Survival by 120 hours is not required if any of the following apply:

(1) The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and the language is operable under the facts of the case.

(2) The governing instrument expressly indicates that an individual is not required to survive the death of another individual by any specified period or expressly requires the individual to survive another individual for a specified period; but survival must be established by clear and convincing evidence.

(3) The imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under G.S. 41-15; but survival must be established by clear and convincing evidence.

(4) The application of a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition; but survival must be established by clear and convincing evidence.

(5) The application of a 120-hour requirement of survival would deprive an individual or the estate of an individual of an otherwise available tax exemption, deduction or credit, expressly including the marital deduction, resulting in the imposition of a tax upon a donor or testator or other person (or their estate) as the transferor of any property. "Tax" includes any federal or State gift, estate or inheritance tax.

(6) The application of a 120-hour requirement of survival would result in an escheat.

"§ 28A-24-7. Evidence of death or status.

For purposes of this Article, the following rules of evidence apply relating to the determination of death and status of a beneficiary subject to a requirement of survivorship and of the person the beneficiary must survive:

(1) Death occurs when an individual is determined to be dead pursuant to G.S. 90-323 or Chapter 28C of the General Statutes.

(2) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency in the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent. In the absence of evidence disputing the death certificate, that certificate shall be conclusive evidence of the fact, place, date, and time of death and the identity of the decedent.

(3) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or

alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report. The record or report is conclusive evidence of the status and of the dates, circumstances, and places disclosed by the record or report unless there is evidence to the contrary.

(4) In the absence of prima facie evidence of death under subdivision (2) or (3) of this section, the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

"**§ 28A-24-8. Protection of payors, bona fide purchasers, and other third parties; personal liability of recipient.**

(a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a person designated in a governing instrument who, under this Article, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the person's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this Article. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this Article.

Written notice of a claimed lack of entitlement under this Article must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this Article, a payor or other third party may pay any amount owed or transfer or deposit any item of property other than tangible personal property held by it to or with the clerk of the superior court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the clerk of the superior court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The clerk shall hold the funds or item of property and, upon the clerk's determination under this Article, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the clerk discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the clerk.

(b) A person who purchases property for value and without notice, or who received a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this Article to return the payment, item of property, or benefit, nor liable under this Article for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this Article is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this Article.

"Article 25.

"Small Estates.

"**§ 28A-25-1. Collection of property by affidavit when decedent dies intestate.**

(a) When a decedent dies intestate leaving personal property, less liens and encumbrances thereon, not exceeding twenty thousand dollars ($20,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, or an heir or creditor of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir or creditor or the public administrator stating:

(1) The name and address of the affiant and the fact that ~~he or she~~ the affiant is the public administrator or an heir or creditor of the decedent;
(2) The name of the decedent and ~~his~~ the decedent's residence at time of death;
(3) The date and place of death of the decedent;
(4) That 30 days have elapsed since the death of the decedent;
(5) That the value of all the personal property owned by the estate of the decedent, less liens and encumbrances thereon, does not exceed twenty thousand dollars ($20,000);
(6) That no application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction;
(7) The names and addresses of those persons who are entitled, under the provisions of the Intestate Succession Act, to the personal property of the decedent and their relationship, if any, to the decedent; and
(8) A description sufficient to identify each tract of real property owned by the decedent at the time of ~~his~~ the decedent's death.

In those cases in which the affiant is the surviving spouse and sole heir of the decedent, not disqualified under G.S. 28A-4-2, the property described in this subsection that may be collected pursuant to this section may exceed twenty thousand dollars ($20,000) in value but shall not exceed thirty thousand dollars ($30,000) in ~~value.~~ value, after reduction for any spousal allowance paid to the surviving spouse pursuant to G.S. 30-15. In such cases, the affidavit shall state: (i) the name and address of the affiant and the fact that ~~he or she~~ the affiant is the surviving spouse and is entitled, under the provisions of the Intestate Succession Act, to all of the property of the decedent; (ii) that the value of all of the personal property owned by the estate of the decedent, less liens and encumbrances thereon, does not exceed thirty thousand dollars ($30,000); and (iii) the information required under subdivisions (2), (3), (4), (6), and (8) of this subsection.

(b) Prior to the recovery of any assets of the decedent, a copy of the affidavit described in subsection (a) shall be filed in the office of the clerk of superior court of the county where the decedent ~~had his domicile at the time of his~~ was domiciled at the time of death. The affidavit shall be filed by the clerk upon payment of the fee provided in G.S. 7A-307, shall be indexed in the index to estates, and a copy thereof shall be mailed by the clerk to the persons shown in the affidavit as entitled to the personal property.

(c) The presentation of an affidavit as provided in subsection (a) shall be sufficient to require the transfer to the affiant or ~~his~~ the affiant's designee of the title and license to a motor vehicle registered in the name of the decedent owner; the ownership rights of a savings account or checking account in a bank in the name of the decedent owner; the ownership rights of a savings account or share certificate in a credit union, building and loan association, or savings and loan association in the name of the decedent owner; the ownership rights in any stock or security registered on the books of a corporation in the name of a decedent owner; or any other property or contract right owned by decedent at the time of ~~his~~ the decedent's death.

"§ 28A-25-1.1. Collection of property by affidavit when decedent dies testate.

(a) When a decedent dies testate leaving personal property, less liens and encumbrances thereon, not exceeding twenty thousand dollars ($20,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, a person named or designated as executor in the will, devisee, heir or creditor, of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir, the person named or

designated as executor in the will of the decedent, the creditor, the public administrator, or the devisee, stating:

(1) The name and address of the affiant and the fact that ~~he~~ the affiant is the public administrator, a person named or designated as executor in the will, devisee, heir or creditor, of the decedent;
(2) The name of the decedent and ~~his~~ the decedent's residence at time of death;
(3) The date and place of death of the decedent;
(4) That 30 days have elapsed since the death of the decedent;
(5) That the decedent died testate leaving personal property, less liens and encumbrances thereon, not exceeding twenty thousand dollars ($20,000) in value;
(6) That the decedent's will has been admitted to probate in the court of the proper county and a duly certified copy of the will has been recorded in each county in which is located any real property owned by the decedent at the time of ~~his~~ the decedent's death;
(7) That a certified copy of the decedent's will is attached to the affidavit;
(8) That no application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction;
(9) The names and addresses of those persons who are entitled, under the provisions of the will, or if applicable, of the Intestate Succession Act, to the property of the decedent; and their relationship, if any, to the decedent; and
(10) A description sufficient to identify each tract of real property owned by the decedent at the time of ~~his~~ the decedent's death.

In those cases in which the affiant is the surviving spouse, is entitled to all of the property of the decedent, and is not disqualified under G.S. 28A-4-2, the property described in this subsection that may be collected pursuant to this section may exceed twenty thousand dollars ($20,000) in value but shall not exceed thirty thousand dollars ($30,000) in value. In such cases, the affidavit shall state: (i) the name and address of the affiant and the fact that ~~he or she~~ the affiant is the surviving spouse and is entitled, under the provisions of the decedent's will, or if applicable, of the Intestate Succession Act, to all of the property of the decedent; (ii) that the decedent died testate leaving personal property, less liens and encumbrances thereon, not exceeding thirty thousand dollars ($30,000); and (iii) the information required under subdivisions (2), (3), (4), (6), (7), (8), and (10) of this subsection.

(b) Prior to the recovery of any assets of the decedent, a copy of the affidavit described in subsection (a) shall be filed in the office of the clerk of superior court of the county where the decedent ~~had his domicile at the time of his~~ was domiciled at the time of death. The affidavit shall be filed by the clerk upon payment of the fee provided in G.S. 7A-307, shall be indexed in the index to estates, and a copy shall be mailed by the clerk to the persons shown in the affidavit as entitled to the property.

(c) The presentation of an affidavit as provided in subsection (a) shall be sufficient to require the transfer to the affiant or ~~his~~ the affiant's designee of the title and license to a motor vehicle registered in the name of the decedent owner; the ownership rights of a savings account or checking account in a bank in the name of the decedent owner; the ownership rights of a savings account or share certificate in a credit union, building and loan association, or savings and loan association in the name of the decedent owner; the ownership rights in any stock or security registered on the books of a corporation in the name of a decedent owner; or any other property or contract right owned by decedent at the time of ~~his~~ the decedent's death.

"§ 28A-25-2. Effect of affidavit.

The person paying, delivering, transferring or issuing personal property or the evidence thereof pursuant to an affidavit meeting the requirements of G.S. 28A-25-1(a) or G.S. 28A-25-1.1(a) is discharged and released to the same extent as if ~~he~~ the person dealt with

a duly qualified personal representative of the decedent. ~~He~~ The person is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in an action brought for that purpose by or on behalf of the persons entitled thereto. The court costs and attorney's fee incident to the action shall be taxed against the person whose refusal to comply with the provisions of G.S. 28A-25-1(a) or G.S. 28A-25-1.1(a) made the action necessary. The heir or creditor to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any duly qualified personal representative or collector of the decedent's estate or to any other person having an interest in the estate.

"§ 28A-25-3. Disbursement and distribution of property collected by affidavit.

(a) If there has been no personal representative or collector appointed by the clerk of superior court, the affiant who has collected personal property of the decedent by affidavit pursuant to G.S. 28A-25-1 or G.S. 28A-25-1.1 shall:

(1) Disburse and distribute the same in the following order:

a. To the payment of the surviving spouse's year's allowance and the children's year's allowance assigned in accordance with G.S. 30-15 through G.S. 30-33;

b. To the payment of the debts and claims against the estate of the decedent in the order of priority set forth in G.S. 28A-19-6, or to the reimbursement of any person who has already made payment thereof;

c. To the distribution of the remainder of the personal property to the persons entitled thereto under the provisions of the will or of the Intestate Succession Act; and

(2) File an affidavit with the clerk of superior court that ~~he~~ the affiant has collected the personal property of the decedent and the manner in which ~~he~~ the affiant has disbursed and distributed the same. This final affidavit shall be filed within 90 days of the date of filing of the qualifying affidavit provided for in G.S. 28A-25-1 or G.S. 28A-25-1.1. If the affiant cannot file the final affidavit within 90 days, ~~he~~ the affiant shall file a report with the clerk within that time period stating ~~his~~ the affiant's reasons. Upon determining that the affiant has good reason not to file the final affidavit within 90 days, the clerk may extend the time for filing up to one year from the date of filing the qualifying affidavit.

(b) Nothing in this section shall be construed as changing the rule of G.S. 28A-15-1 and G.S. 28A-15-5 rendering both real and personal property, without preference or priority, available for the discharge of debts and other claims against the estate of the decedent. If it appears that it may be in the best interest of the estate to sell, lease, or mortgage any real property to obtain money for the payment of debts or other claims against the decedent's estate, the affiant shall petition the clerk of superior court for the appointment of a personal representative to conclude the administration of the decedent's estate pursuant to G.S. 28A-25-5.

"§ 28A-25-4. Clerk may compel compliance.

If any affiant who has collected personal property of the decedent by affidavit pursuant to G.S. 28A-25-1 or G.S. 28A-25-1.1 shall fail to make distribution or file affidavit as required by G.S. 28A-25-3, the clerk of superior court may, upon ~~his own~~ motion of the clerk of superior court or at the request of any interested person, issue an attachment against ~~him~~ the affiant for a contempt and commit ~~him~~ the affiant until ~~he~~ the affiant makes proper distribution and files the

affidavit. In addition to or in lieu of filing this attachment, the clerk may require the affiant to post a bond conditioned as provided in G.S. 28A-8-2.

"§ 28A-25-5. Subsequently appointed personal representative or collector.

Nothing in this Article shall preclude any interested person, including the affiant, from petitioning the clerk of superior court for the appointment of a personal representative or collector to conclude the administration of the decedent's estate. If such is done, the affiant who has been collecting personal property by affidavit shall cease to do so, shall deliver all assets in ~~his~~ the affiant's possession to the personal representative, and shall render a proper accounting to the personal representative or collector. A copy of the accounting shall also be filed with the clerk having jurisdiction over the personal representative or collector.

"§ 28A-25-6. Payment to clerk of money owed decedent.

(a) As an alternative to the small estate settlement procedures of this Article, any person indebted to a decedent may satisfy such indebtedness by paying the amount of the debt to the clerk of the superior court of the county of the domicile of the decedent:

(1) If no administrator has been appointed, and

(2) If the amount owed by such person does not exceed five thousand dollars ($5,000), and

(3) If the sum tendered to the clerk would not make the aggregate sum which has come into the clerk's hands belonging to the decedent exceed five thousand dollars ($5,000).

(b) Such payments may not be made to the clerk if the total amount paid or tendered with respect to any one decedent would exceed five thousand dollars ($5,000), even though disbursements have been made so that the aggregate amount in the clerk's hands at any one time would not exceed five thousand dollars ($5,000).

(c) If the sum tendered pursuant to this section would make the aggregate sum coming into the clerk's hands with respect to any one decedent exceed five thousand dollars ($5,000) the clerk shall appoint an administrator, or the sum may be administered under the preceding sections of this Article.

(d) If it appears to the clerk after making a preliminary survey that disbursements pursuant to this section would not exhaust funds received pursuant to this section, ~~he~~ the clerk may, in ~~his~~ the clerk's discretion, appoint an administrator, or the funds may be administered under the preceding sections of this Article.

(e) The receipt from the clerk of the superior court of a payment purporting to be made pursuant to this section is a full release to the debtor for the payment so made.

(f) If no administrator has been appointed, the clerk of superior court shall disburse the money received under this section for the following purposes and in the following order:

(1) To pay the surviving spouse's year's allowance and children's year's allowance assigned in accordance with law;

(2), (3) Repealed by Session Laws 1981, c. 383, s. 3.

(4) All other claims shall be disbursed according to the order set out in G.S. 28A-19-6.

Notwithstanding the foregoing provisions of this subsection, the clerk shall pay, out of funds provided the deceased pursuant to G.S. 111-18 and Part 3 of Article 2 of Chapter 108A of the General Statutes of North Carolina, any lawful claims for care provided by an adult care home to the deceased, incurred not more than 90 days prior to ~~his~~ the deceased's death. After the death of a spouse who died intestate and after the disbursements have been made in accordance with this subsection, the balance in the clerk's hands belonging to the estate of the decedent shall be paid to the surviving spouse, and if there is no surviving spouse, the clerk shall pay it to the heirs in proportion to their respective interests.

(g) The clerk shall not be required to publish notice to creditors.

(h) Whenever an administrator is appointed after a clerk of superior court has received any money pursuant to this section, the clerk shall pay to the administrator all funds which have not been disbursed. The clerk shall receive no commissions for payments made to the administrator, and the administrator shall receive no commissions for receiving such payments.

"Article 26.

"Foreign Personal Representatives and Ancillary Administration.

"§ 28A-26-1. Domiciliary and ancillary probate and administration.

The domiciliary, or original, administration of the estates of all decedents domiciled in North Carolina at the time of death shall be under the jurisdiction of this State and of a proper clerk of superior court in this State, and the original probate of all wills of such persons shall be in this State. Any administration of the estate and any probate of a will of such decedents outside North Carolina shall be ancillary only. All assets, except real estate (but including proceeds from the sale of real estate), subject to ancillary administration in a jurisdiction outside North Carolina shall, to the extent such assets are not necessary for the requirements of such ancillary administration, be transferred and delivered by the ancillary personal representative to the duly qualified personal representative in this State for administration and distribution by the domiciliary personal representative, and the domiciliary personal representative in this State shall have the duty of collecting all such assets from the ancillary personal representative. The receipt of the domiciliary personal representative shall fully acquit the ancillary personal representative with respect to the assets covered thereby. The domiciliary personal representative in North Carolina shall have the exclusive right and duty to pay all federal and North Carolina taxes owed by the estate of such decedent and to make proper distribution of all assets including those collected from the ancillary personal representative.

"§ 28A-26-2. Payment of debt and delivery of property to domiciliary personal representative of a nonresident decedent without ancillary administration in this State.

(a) At any time after the expiration of 60 days from the death of a nonresident decedent, any resident of this State indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the nonresident decedent may pay the debt or deliver the personal property, or the instrument evidencing the debt, obligation, stock or chose in action, to the domiciliary personal representative of the nonresident decedent upon being presented with a certified or exemplified copy of ~~his~~ the domiciliary personal representative's letters of appointment and an affidavit made by or on behalf of the domiciliary personal representative stating:

(1) The date of the death of the nonresident decedent;

(2) That to the best of ~~his~~ the domiciliary personal representative's knowledge no administration, or application or petition therefor, is pending in this State;

(3) That the domiciliary personal representative is entitled to payment or delivery.

(b) Payment or delivery made in good faith on the basis of the proof of appointment as domiciliary personal representative of a nonresident decedent and an affidavit meeting the requirements of subsection (a) constitutes a release to the same extent as if payment or delivery had been made to an ancillary personal representative.

(c) Payment or delivery under this section shall not be made if a resident creditor of the nonresident decedent has, by registered or certified mail, notified the resident debtor of the nonresident decedent or the resident having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary personal representative of the nonresident decedent. If no ancillary administrator qualifies within 90 days from the date of the notice, however, the resident debtor may pay the

debt or deliver the property directly to the nonresident domiciliary personal representative as set forth in subsection (a) of this section.

"§ 28A-26-3. Ancillary administration.

(a) Any domiciliary personal representative of a nonresident decedent upon the filing of a certified or exemplified copy of letters of appointment with the clerk of superior court who has venue under G.S. 28A-3-1 may be granted ancillary letters in this State notwithstanding that the domiciliary personal representative is a nonresident of this State or is a foreign corporation. If the domiciliary personal representative is a foreign corporation, it need not qualify under any other law of this State to authorize it to act as ancillary personal representative in the particular estate. If application is made for the issuance of ancillary letters to the domiciliary personal representative, the clerk of superior court shall give preference in appointment to the domiciliary personal representative unless the decedent shall have otherwise directed in a will.

(b) If, within 90 days after the death of the nonresident, or within 60 days after issue of domiciliary letters, should that be a shorter period, no application for ancillary letters has been made by a domiciliary personal representative, any person who could apply for issue of letters had the decedent been a resident may apply for issue of ancillary letters.

If it is known that there is a duly qualified domiciliary personal representative, the clerk of superior court shall send notice of such application, by registered mail, to that personal representative and to the appointing court. Such notice shall include a statement that, within 14 days after its mailing, the domiciliary personal representative may apply for the issue of ancillary letters with the preference specified in subsection (a) of this section; and that ~~his~~ failure of the domiciliary personal representative to do so will be deemed a waiver, with the result that letters will be issued to another. Upon such failure, the clerk of superior court may issue ancillary letters in accordance with the provisions of Article 4 of this Chapter.

If the applicant and the clerk of superior court have no knowledge of the existence of a domiciliary personal representative, the clerk of superior court may proceed to issue ancillary letters. Subsequently, upon it becoming known that a domiciliary personal representative has been appointed, whether such appointment occurred before or after the issue of ancillary letters, the clerk of superior court shall notify the domiciliary personal representative, by registered mail, of the action taken by the clerk of superior court and the state of the ancillary administration. Such notice shall include a statement that at any time prior to approval of the ancillary personal representative's final account the domiciliary personal representative may appear in the proceedings for any purpose ~~he~~ the domiciliary personal representative may deem advisable; and that ~~he~~ the domiciliary personal representative may apply to be substituted as ancillary personal representative, but that such request will not be granted unless the clerk of superior court finds that such action will be for the best interests of North Carolina administration of the estate.

"§ 28A-26-4. Bonds.

(a) Subject to the exception in subsection (b), any personal representative, including a domiciliary personal representative, who is granted ancillary letters of administration in this State must satisfy the bond requirements prescribed in Article 8 of this Chapter.

(b) Where a citizen or subject of a foreign country, or of any other state or territory of the United States, by will sufficient according to the laws of this State, and duly probated and recorded in the proper county, devises to ~~his~~ that person's executor, with power to sell and convey, real property situated in this State in trust for a person named in the will, the power being vested in the executor as such trustee, the executor may execute the power without giving bond in this State.

"§ 28A-26-5. Authority of domiciliary personal representative of a nonresident decedent.

The domiciliary personal representative of the nonresident decedent after qualifying as ancillary personal representative in this State is authorized to administer the North Carolina estate of the nonresident decedent in accordance with the provisions of this Chapter.

"§ 28A-26-6. Jurisdiction.

(a) A domiciliary personal representative of a nonresident decedent may invoke the jurisdiction of the courts of this State after qualifying as ancillary personal representative in this State except that ~~he~~ the domiciliary personal representative may invoke such jurisdiction prior to qualification for the purpose of appealing from a decision of the clerk of superior court regarding a question of qualification.

(b) A domiciliary personal representative of a nonresident decedent submits to the jurisdiction of the courts of this State:

(1) As provided in G.S. 1-75.4, or

(2) By receiving payment of money or taking delivery of personal property under G.S. 28A-26-2; or

(3) By acceptance of ancillary letters of administration in this State under G.S. 28A-26-3; or

(4) By doing any act as personal representative in this State which if done as an individual would have given the State jurisdiction over ~~him~~ the personal representative as an individual.

"§ 28A-26-7. Service on personal representative of a nonresident decedent.

A court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 28A-26-6 may exercise personal jurisdiction over a defendant by service of process in accordance with the provisions of G.S. 1A-1, Rule 4(j).

"§ 28A-26-8. Duties of personal representative in an ancillary administration.

(a) All assets of estates of nonresident decedents being administered in this State are subject to all claims, allowances and charges existing or established against the estate of the decedent wherever existing or established.

(b) An adjudication of a claim rendered in any jurisdiction in favor of or against any personal representative of the estate of a nonresident decedent is binding on the ancillary personal representative in this State and on all parties to the litigation.

(c) Limitations on presentation of claims shall be governed by the provisions of this Chapter except that creditors residing in the domiciliary state barred by the statutes of that state may not file claims in an ancillary administration in this State.

(d) In the payment of claims by the ancillary administrator, the following rules shall apply:

(1) If the value of the entire estate, wherever administered, equals or exceeds family exemptions and allowances, prior charges and claims against the entire estate, the claims allowed in this State shall be paid in full from assets in this State, if such assets are sufficient for the purpose.

(2) If such total exemptions, allowances, charges and claims exceed the value of the entire estate, the claims allowed in this State shall be paid their proper percentage pro rata by class, if assets in this State are sufficient for the purpose.

(3) If assets in this State are inadequate for either of the purposes stated in subdivisions (1) or (2) above, the claims allowed in this State shall be paid, pro rata by class, to the extent the local assets will permit.

(4) If the value of the entire estate, wherever administered, is insufficient to pay all exemptions and allowances, prior charges and claims against the entire estate, the priority for order of payment established by the law of the domicile will prevail.

"§ 28A-26-9. Remission of surplus assets by ancillary personal representative to domiciliary personal representative.

Unless a testator in a will otherwise directs, any assets (including proceeds from the sale of real estate) remaining after payment of claims against the estate of a nonresident decedent being administered by an ancillary personal representative other than the domiciliary personal representative shall be transferred and delivered to the domiciliary personal representative or, if none, to the court in the domicile of the decedent which has jurisdiction to administer the estate.

"Article 27.

"Apportionment of Federal Estate Tax.

"§ 28A-27-1. Definitions.

For the purposes of this Article:

(1) "Estate" means the gross estate of a decedent as determined for the purpose of the federal estate tax.

(2) "Fiduciary" includes a personal representative and a trustee.

(3) "Person" means any individual, partnership, association, joint stock company, corporation, governmental agency, including any multiples or combinations of the foregoing as, for example, individuals as joint tenants.

(4) "Person interested in the estate" means any person, including a personal representative, guardian, or trustee, entitled to receive, or who has received, from a decedent while alive or by reason of the death of a decedent any property or interest therein included in the decedent's taxable estate.

(5) "State" means any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(6) "Tax" means the net Federal Estate Tax due, after application of any available unified transfer tax credit, and interest and penalties imposed in addition to the tax.

"§ 28A-27-2. Apportionment.

(a) Except as otherwise provided in subsection (b) of this section, or in G.S. 28A-27-5, G.S. 28A-27-6, or G.S. 28A-27-8, the tax shall be apportioned among all persons interested in the estate in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values as finally determined for federal estate tax purposes shall be used for the purposes of this computation.

(b) In the event the decedent's will provides a method of apportionment of the tax different from the method provided in subsection (a) above, the method described in the will shall control. However, in the case of any will executed on or after October 1, 1986, a general direction in the will that taxes shall not be apportioned, whether or not referring to this Article, but shall be paid from the residuary portion of the estate shall not, unless specifically stated otherwise, apply to taxes imposed on assets which are includible in the valuation of the decedent's gross estate for federal estate tax purposes only by reason of Sections 2041, 2042 or 2044 of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent tax law. In the case of an estate administered under any will executed on or after October 1, 1986, in the event that the estate tax computation involves assets described in the preceding sentence, unless specifically stated otherwise, apportionment shall be made against such assets and the tax so apportioned shall be recovered from the persons receiving such assets as provided in Sections 2206, 2207 or 2207A of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent tax law.

"§ 28A-27-3. Procedure for determining apportionment.

(a) The personal representative of a decedent shall determine the apportionment of the tax.

(b) If the personal representative finds that it is inequitable to apportion interest and penalties in the manner provided in this Article because such interest or penalties were imposed due to the fault of one or more persons interested in the ~~estate he~~ estate, the personal representative may direct apportionment thereon in the manner ~~he~~ the personal representative finds equitable.

(c) The expenses reasonably incurred by the personal representative in connection with the apportionment of the tax shall be apportioned as provided for taxes under this Article. If the personal representative finds that it is inequitable to apportion the expenses because such expenses were incurred because of the fault of one or more persons interested in the ~~estate he~~ estate, the personal representative may direct other more equitable apportionment.

"§ 28A-27-4. Uncollected tax.

The personal representative shall not be under any duty to institute any suit or proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the six months next following final determination of the tax. A personal representative who institutes the suit or proceeding within a reasonable time after the six months' period shall not be subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectable at a time following the death of the decedent but thereafter became uncollectable. If the personal representative cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be apportioned among the other persons interested in the estate who are subject to apportionment. The apportionment shall be made in the proportion that the value of the interest of each remaining person interested in the estate bears to the total value of the interests of all remaining persons interested in the estate.

"§ 28A-27-5. Exemptions, deductions, and credits.

(a) Any interest for which a deduction or exemption is allowed under the federal revenue laws in determining the value of the decedent's net taxable estate, such as property passing to or in trust for a surviving spouse and gifts or bequests for charitable, public, or similar purposes, shall not be included in the computation provided for in G.S. 28A-27-2 to the extent of the allowable deduction or exemption. When such an interest is subject to a prior present interest which is not allowable as a deduction or exemption, such present interest shall not be included in the computation provided for in this Article and no tax shall be apportioned to or paid from principal.

(b) Any credit for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or ~~his~~ the decedent's estate shall inure to the proportionate benefit of all persons liable to apportionment; provided, however, that if the tax which gives rise to such a credit has in fact been paid by a person interested in the estate, the benefit of such credit shall inure to that person paying the tax.

(c) Any credit for inheritance, succession, or estate taxes or taxes in the nature thereof in respect to property or interests includible in the estate shall inure to the benefit of the persons or interests chargeable with the payment thereof to the extent that, or in the proportion that, the credit reduces the tax.

(d) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or bequest does not constitute an allowed deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in this Article, and to that extent no apportionment shall be made against the property. This section does not apply in any instance where the result will be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954 of the United States or corresponding provisions of any subsequent tax law, relating to deduction for State death taxes on transfers for public, charitable, or religious uses.

"§ 28A-27-6. No apportionment between temporary and remainder interests.

No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

"§ 28A-27-7. Fiduciary's rights and duties.

(a) The personal representative may withhold from any property of the decedent in ~~his~~ the personal representative's possession, distributable to any person interested in the estate, the amount of the tax apportioned to ~~his~~ the person's interest. If the property in possession of the personal representative and distributable to any person interested in the estate tax is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal ~~representative he~~ representative, the personal representative may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Article.

(b) If property held by the fiduciary or other person is distributed prior to final apportionment of the tax, the personal representative may require the distributee to provide a bond or other security for the apportionment liability in the form and amount prescribed by the fiduciary, with the approval of the clerk of superior court having jurisdiction of the administration of the estate.

"§ 28A-27-8. Difference with Federal Estate Tax Law.

If the liabilities of persons interested in the estate as prescribed by this Article differ from those which result under the Federal Estate Tax Law, the liabilities imposed by the federal law will control and the balance of this Article shall apply as if the resulting liabilities had been prescribed herein.

"§ 28A-27-9. Effective date.

The provisions of this Article shall not apply to taxes due on account of the death of decedents dying prior to October 1, 1986.

"Article 28.

"Summary Administration.

"§ 28A-28-1. Summary administration where spouse is sole beneficiary.

When a decedent dies testate or intestate leaving a surviving spouse as the sole devisee or heir, the surviving spouse may file a petition for summary administration with the clerk of superior court of the county where the decedent was domiciled at the time of death. This procedure is available if the decedent died partially testate, provided that the surviving spouse is the sole devisee under the will and the sole heir of the decedent's intestate property. This procedure is not available if the decedent's will provides that it is not available or if the devise to the surviving spouse is in trust rather than outright.

"§ 28A-28-2. Petition.

(a) The petition shall be signed by the surviving spouse and verified to be accurate and complete to the best of the spouse's knowledge and belief and shall state as follows:

(1) The name and address of the spouse and the fact that ~~he or she~~ the spouse is the surviving spouse of the decedent;

(2) The name and domicile of the decedent at the time of death;

(3) The date and place of death of the decedent;

(4) The date and place of marriage of the spouse and the decedent;

(5) A description sufficient to identify each tract of real property owned in whole or in part by the decedent at the time of death;

(6) A description of the nature of the decedent's personal property and the location of such property, as far as these facts are known or can with reasonable diligence be ascertained;

(7) The probable value of the decedent's personal property, so far as the value is known or can with reasonable diligence be ascertained;

(8) That no application or petition for appointment of a personal representative is pending or has been granted in this State;

(9) That the spouse is the sole devisee or sole heir, or both, of the decedent, and that there is no other devisee or heir; that the decedent's will, if any, does not prohibit summary administration; and that any property passing to the spouse under the will is not in trust;

(10) The name and address of any executor or coexecutor named by the will and that, if the decedent died testate, a copy of the petition has been personally delivered or sent by first-class mail by the spouse to the last-known address of any executor or coexecutor named by the will, if different from the spouse;

(11) That, to the extent of the value of the property received by the spouse under the will of the decedent or by intestate succession, the spouse assumes all liabilities of the decedent that were not discharged by reason of death and assumes liability for all taxes and valid claims against the decedent or the estate, as provided in G.S. 28A-28-6; and

(12) If the decedent died testate, that the decedent's will has been admitted to probate in the court of the proper county; that a duly certified copy of the will has been recorded in each county in which is located any real property owned by the decedent at the time of death; and that a certified copy of the decedent's will is attached to the petition.

(b) The petition shall be filed by the clerk upon payment of the fee provided in G.S. 7A-307 and shall be indexed in the index to estates.

"§ 28A-28-3. Clerk's order.

If it appears to the clerk that the petition and supporting evidence, if any, comply with the requirements of G.S. 28A-28-2 and on the basis thereof the spouse is entitled to summary administration, the clerk shall enter an order to that effect and no further administration of the estate is necessary. Nothing in this section shall preclude a petition under the provisions of G.S. 28A-28-7(a) or the appointment of a personal representative or a collector under the provisions of Article 6 or Article 11 of this Chapter.

"§ 28A-28-4. Effect of order.

(a) The presentation of a certified copy of the order described in G.S. 28A-28-3 shall be sufficient to require the transfer to the spouse of any property or contract right owned by the decedent at the time of death, including but not limited to: (i) wages and salary; (ii) the title and license to a motor vehicle registered in the name of the decedent owner; (iii) the ownership rights of a savings account, checking account, or certificate of deposit in a bank in the name of the decedent owner; (iv) the ownership rights of a savings account, share certificate, or certificate of deposit in a credit union, building and loan association, or savings and loan association in the name of the decedent owner; and (v) the ownership rights in any stock or security registered on the books of a corporation in the name of the decedent owner.

(b) After the entry of the order described in G.S. 28A-28-3, the spouse may convey, lease, sell, or mortgage any real property devised to or inherited by the spouse from the decedent, at public or private sale, upon such terms as the spouse may determine. This section shall not limit any other powers the spouse may have over property devised to or inherited by the spouse from the decedent. The provisions of G.S. 28A-17-12 are not applicable to a conveyance, sale, lease, or mortgage under this subsection.

"§ 28A-28-5. Effect of payment.

The person paying, delivering, transferring, or issuing property or the evidence thereof pursuant to the order described in G.S. 28A-28-3 is discharged and released to the same extent

as if the person dealt with a duly qualified personal representative of the decedent. The person is not required to see to the application of the property or evidence thereof or to inquire into the truth of any statement in the petition or order.

If any person to whom the order is presented refuses to pay, deliver, transfer, or issue any property or evidence thereof, the property may be recovered or its payment, delivery, transfer, or issuance may be compelled in an action brought for that purpose by the surviving spouse. The court costs and attorney's fee incident to the action shall be taxed against the person whose refusal to comply with the provisions of G.S. 28A-28-4 made the action necessary.

"§ 28A-28-6. Spouse's assumption of liabilities.

If the clerk grants the order for summary administration, the spouse shall be deemed to have assumed, to the extent of the value of the property received by the spouse under the will of the decedent or by intestate succession, all liabilities of the decedent that were not discharged by reason of death and liability for all taxes and valid claims against the decedent or the estate. The value of the property is the fair market value of the property on the date of death of the decedent less any liens or encumbrances on the property so received. The spouse may assert any defense, counterclaim, cross-claim, or setoff which would have been available to the decedent if the decedent had not died except for actions listed in G.S. 28A-18-1(b). A spouse shall not be deemed to have assumed any liabilities of the decedent that were discharged by reason of death.

"§ 28A-28-7. Right to petition for appointment of personal representative; discharge of spouse's liability.

(a) Nothing in this Article shall preclude any person qualified to serve as personal representative pursuant to G.S. 28A-4-1, including the surviving spouse, from petitioning the clerk of superior court for the appointment of a personal representative or collector to administer the decedent's estate. If a personal representative or collector is appointed, the spouse shall render a proper accounting to the personal representative or collector and file a copy of the accounting with the clerk. The spouse shall deliver assets of the decedent's estate, cash, or other property and shall be discharged of liability in accordance with the provisions of subsection (b) of this section.

(b) In the event that a personal representative or collector is appointed, the spouse shall be discharged of liability for the debts of the decedent as follows:

(1) If the spouse delivers to the personal representative or collector all of the property received by the spouse in the identical form that it was received by the spouse, then the spouse will be discharged of all liability.

(2) If the spouse does not deliver to the personal representative or collector all of the property in the identical form that it was received by the spouse, then the spouse shall be discharged of liability as follows:

a. For property delivered to the personal representative or collector that is in the identical form that it was received by the spouse, the spouse is discharged to the extent of the fair market value of the property at the time of the decedent's death or the fair market value at the time the property was received by the personal representative or collector, whichever is greater.

b. For property delivered to the personal representative or collector that is not in the identical form that it was received by the spouse, the spouse is discharged to the extent of the fair market value of such property at the time it was delivered to the personal representative or collector.

"Article 29.

"Notice to Creditors Without Estate Administration.

"§ 28A-29-1. Notice to creditors without estate administration.

When a decedent dies testate or intestate leaving no property subject to probate, any person otherwise qualified to serve as personal representative of the estate pursuant to Article 4 of this Chapter or the trustee then serving under the terms of a revocable trust created by the decedent may file a petition to be appointed as a limited personal representative to provide notice to creditors without administration of an estate before the clerk of superior court of the county where the decedent was domiciled at the time of death. This procedure is not available if the decedent's will provides that it is not available. A limited personal representative shall have the rights and obligations provided for in this Article."

SECTION 5. Chapter 29 of the General Statutes reads as rewritten:

"Chapter 29.

"Intestate Succession.

"Article 1.

"General Provisions.

"§ 29-1. Short title.

This Chapter shall be known and may be cited as the Intestate Succession Act.

"§ 29-2. Definitions.

As used in this Chapter, unless the context otherwise requires, the term:

(1) "Advancement" means an irrevocable inter vivos gift of property, made by an intestate donor to any person who would be ~~his~~ the donor's heir or one of ~~his~~ the donor's heirs upon ~~his~~ the donor's death, and intended by the intestate donor to enable the donee to anticipate ~~his~~ the donee's inheritance to the extent of the gift; except that no gift to a spouse shall be considered an advancement unless so designated by the intestate donor in a writing signed by the donor at the time of the gift.

(2) "Estate" means all the property of a decedent, including but not limited to:

a. An estate for the life of another; and

b. All future interests in property not terminable by the death of the owner thereof, including all reversions, remainders, executory interests, rights of entry and possibilities of reverter, subject, however, to all limitations and conditions imposed upon such future interests.

(3) "Heir" means any person entitled to take real or personal property upon intestacy under the provisions of this Chapter.

(4) "Lineal descendants" of a person means all children of such person and successive generations of children of such children.

(5) "Net estate" means the estate of a decedent, exclusive of family allowances, costs of administration, and all lawful claims against the estate.

(6) "Share," when used to describe the share of a net estate or property which any person is entitled to take, includes both the fractional share of the personal property and the undivided fractional interest in the real property, which the person is entitled to take.

"§ 29-3. Certain distinctions as to intestate succession abolished.

In the determination of those persons who take upon intestate succession there is no distinction:

(1) Between real and personal property, or

(2) Between ancestral and nonancestral property, or

(3) Between relations of the whole blood and those of the half blood.

"§ 29-4. Curtesy and dower abolished.

The estates of curtesy and dower are hereby abolished.

"§ 29-5. Computation of next of kin.

Degrees of kinship shall be computed as provided in G.S. 104A-1.

"§ 29-6. Lineal succession unlimited.

There shall be no limitation on the right of succession by lineal descendants of an intestate.

"§ 29-7. Collateral succession limited.

There shall be no right of succession by collateral kin who are more than five degrees of kinship removed from an intestate; provided that if there is no collateral relative within the five degrees of kinship referred to herein, then collateral succession shall be unlimited to prevent any property from escheating.

"§ 29-8. Partial intestacy.

If part but not all of the estate of a decedent is validly disposed of by ~~his~~ the decedent's will, the part not disposed of by such will shall descend and be distributed as intestate property.

"§ 29-9. Inheritance by unborn infant.

Lineal descendants and other relatives of an intestate born within 10 lunar months after the death of the intestate, shall inherit as if they had been born in the lifetime of the intestate and had survived him.

"§ 29-10. Renunciation.

Renunciation of an intestate share shall be as provided for in Chapter 31B of the General Statutes.

"§ 29-11. Aliens.

Unless otherwise provided by law, it shall be no bar to intestate succession by any person, that ~~he,~~ the person, or any other person through whom ~~he~~ the person traces ~~his~~ the person's inheritance, is or has been an alien.

"§ 29-12. Escheats.

If there is no person entitled to take under G.S. 29-14 or G.S. 29-15, or if in case of an illegitimate intestate, there is no one entitled to take under G.S. 29-21 or G.S. 29-22 the net estate shall escheat as provided in G.S. 116B-2.

"§ 29-12.1. Controversies under this Chapter.

Any controversy arising under this Chapter shall be determined as an estate proceeding under Article 2 of Chapter 28A of the General Statutes, except that controversies arising under Article 8 of this Chapter shall be determined as set forth in that Chapter.

"Article 2.

"Shares of Persons Who Take upon Intestacy.

"§ 29-13. Descent and distribution upon intestacy; 120-hour survivorship requirement, revised simultaneous death act, Article 24, Chapter 28A.

(a) All the estate of a person dying intestate shall descend and be distributed, subject to the payment of costs of administration and other lawful claims against the estate, and subject to the payment of State inheritance or estate taxes, as provided in this Chapter.

(b) The determination of whether an heir has predeceased a person dying intestate shall be made as provided by Article 24 of Chapter 28A of the General Statutes.

"§ 29-14. Share of surviving spouse.

(a) Real Property. – The share of the surviving spouse in the real property is:

(1) If the intestate is survived by only one child or by any lineal descendant of only one deceased child, a one-half undivided interest in the real property;

(2) If the intestate is survived by two or more children, or by one child and any lineal descendant of one or more deceased children or by lineal descendants of two or more deceased children, a one-third undivided interest in the real property;

(3) If the intestate is not survived by a child, children or any lineal descendant of a deceased child or children, but is survived by one or more parents, a one-half undivided interest in the real property;

(4) If the intestate is not survived by a child, children or any lineal descendant of a deceased child or children, or by a parent, all the real property.

(b) Personal Property. – The share of the surviving spouse in the personal property is:

(1) If the intestate is survived by only one child or by any lineal descendant of only one deceased child, and the net personal property does not exceed thirty thousand dollars ($30,000) in value, all of the personal property; if the net personal property exceeds thirty thousand dollars ($30,000) in value, the sum of thirty thousand dollars ($30,000) plus one half of the balance of the personal property;

(2) If the intestate is survived by two or more children, or by one child and any lineal descendant of one or more deceased children, or by lineal descendants of two or more deceased children, and the net personal property does not exceed thirty thousand dollars ($30,000) in value, all of the personal property; if the net personal property exceeds thirty thousand dollars ($30,000) in value, the sum of thirty thousand dollars ($30,000) plus one third of the balance of the personal property;

(3) If the intestate is not survived by a child, children, or any lineal descendant of a deceased child or children, but is survived by one or more parents, and the net personal property does not exceed fifty thousand dollars ($50,000) in value, all of the personal property; if the net personal property exceeds fifty thousand dollars ($50,000) in value, the sum of fifty thousand dollars ($50,000) plus one half of the balance of the personal property;

(4) If the intestate is not survived by a child, children, or any lineal descendant of a deceased child or children, or by a parent, all of the personal property.

(c) When an equitable distribution of property is awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent, the share of the surviving spouse determined under subsections (a) and (b) of this section shall be first determined as though no property had been awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent, and then reduced by the net value of the marital estate awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent.

"§ 29-15. Shares of others than surviving spouse.

Those persons surviving the intestate, other than the surviving spouse, shall take that share of the net estate not distributable to the surviving spouse, or the entire net estate if there is no surviving spouse, as follows:

(1) If the intestate is survived by only one child or by only one lineal descendant of only one deceased child, that person shall take the entire net estate or share, but if the intestate is survived by two or more lineal descendants of only one deceased child, they shall take as provided in G.S. 29-16; or

(2) If the intestate is survived by two or more children or by one child and any lineal descendant of one or more deceased children, or by lineal descendants of two or more deceased children, they shall take as provided in G.S. 29-16; or

(3) If the intestate is not survived by a child, children or any lineal descendant of a deceased child or children, but is survived by both parents, they shall take in equal shares, or if either parent is dead, the surviving parent shall take the entire share; or

(4) If the intestate is not survived by such children or lineal descendants or by a parent, the brothers and sisters of the intestate, and the lineal descendants of any deceased brothers or sisters, shall take as provided in G.S. 29-16; or

(5) If there is no one entitled to take under the preceding subdivisions of this section or under G.S. 29-14,

a. The paternal grandparents shall take one half of the net estate in equal shares, or, if either is dead, the survivor shall take the entire one half of the net estate, and if neither paternal grandparent survives, then the paternal uncles and aunts of the intestate and the lineal descendants of deceased paternal uncles and aunts shall take said one half as provided in G.S. 29-16; and

b. The maternal grandparents shall take the other one half in equal shares, or if either is dead, the survivor shall take the entire one half of the net estate, and if neither maternal grandparent survives, then the maternal uncles and aunts of the intestate and the lineal descendants of deceased maternal uncles and aunts shall take one half as provided in G.S. 29-16; but

c. If there is no grandparent and no uncle or aunt, or lineal descendant of a deceased uncle or aunt, on the paternal side, then those of the maternal side who otherwise would be entitled to take one half as hereinbefore provided in this subdivision shall take the whole; or

d. If there is no grandparent and no uncle or aunt, or lineal descendant of a deceased uncle or aunt, on the maternal side, then those on the paternal side who otherwise would be entitled to take one half as hereinbefore provided in this subdivision shall take the whole.

"Article 3.

"Distribution among Classes.

"§ 29-16. Distribution among classes.

(a) Children and Their Lineal Descendants. – If the intestate is survived by lineal descendants, their respective shares in the property which they are entitled to take under G.S. 29-15 of this Chapter shall be determined in the following manner:

(1) Children. – To determine the share of each surviving child, divide the property by the number of surviving children plus the number of deceased children who have left lineal descendants surviving the intestate.

(2) Grandchildren. – To determine the share of each surviving grandchild by a deceased child of the intestate in the property not taken under the preceding subdivision of this subsection, divide that property by the number of such surviving grandchildren plus the number of deceased grandchildren who have left lineal descendants surviving the intestate.

(3) Great-Grandchildren. – To determine the share of each surviving great-grandchild by a deceased grandchild of the intestate in the property not taken under the preceding subdivisions of this subsection, divide that property by the number of such surviving great-grandchildren plus the number of deceased great-grandchildren who have left lineal descendants surviving the intestate.

(4) Great-Great-Grandchildren. – To determine the share of each surviving great-great-grandchild by a deceased great-grandchild of the intestate in the property not taken under the preceding subdivisions of this subsection, divide that property by the number of such surviving great-great-grandchildren plus the number of deceased great-great-grandchildren who have left lineal descendants surviving the intestate.

(5) Other Lineal Descendants of Children. – Divide, according to the formula established in the preceding subdivisions of this subsection, any property not taken under such preceding subdivisions, among the lineal descendants of the children of the intestate not already participating.

(b) Brothers and Sisters and Their Lineal Descendants. – If the intestate is survived by brothers and sisters or the lineal descendants of deceased brothers and sisters, their respective shares in the property which they are entitled to take under G.S. 29-15 of this Chapter shall be determined in the following manner:

(1) Brothers and Sisters. – To determine the share of each surviving brother and sister, divide the property by the number of surviving brothers and sisters plus the number of deceased brothers and sisters who have left lineal descendants surviving the intestate within the fifth degree of kinship to the intestate.

(2) Nephews and Nieces. – To determine the share of each surviving nephew or niece by a deceased brother or sister of the intestate in the property not taken under the preceding subdivision of this subsection, divide that property by the number of such surviving nephews or nieces plus the number of deceased nephews and nieces who have left lineal descendants surviving the intestate within the fifth degree of kinship to the intestate.

(3) Grandnephews and Grandnieces. – To determine the share of each surviving grandnephew or grandniece by a deceased nephew or niece of the intestate in the property not taken under the preceding subdivisions of this subsection, divide that property by the number of such surviving grandnephews and grandnieces plus the number of deceased grandnephews and grandnieces who have left children surviving the intestate.

(4) Great-Grandnephews and Great-Grandnieces. – To determine the share of each surviving child of a deceased grandnephew or grandniece of the intestate, divide equally among the great-grandnephews and great-grandnieces of the intestate any property not taken under the preceding subdivisions of this subsection.

(5) Grandparents and Others. – If there is no one within the fifth degree of kinship to the intestate entitled to take the property under the preceding subdivisions of this subsection, then the intestate's property shall go to those entitled to take under G.S. 29-15(5).

(c) Uncles and Aunts and Their Lineal Descendants. – If the intestate is survived by uncles and aunts or the lineal descendants of deceased uncles and aunts, their respective shares in the property which they are entitled to take under G.S. 29-15 shall be determined in the following manner:

(1) Uncles and Aunts. – To determine the share of each surviving uncle and aunt, divide the property by the number of surviving uncles and aunts plus the number of deceased uncles and aunts who have left children or grandchildren surviving the intestate.

(2) Children of Uncles and Aunts. – To determine the share of each surviving child of a deceased uncle or aunt of the intestate in the property not taken under the preceding subdivision of this subsection, divide that property by the number of surviving children of deceased uncles and aunts plus the number of deceased children of deceased uncles and aunts who have left children surviving the intestate.

(3) Grandchildren of Uncles and Aunts. – To determine the share of each surviving child of a deceased child of a deceased uncle or aunt of the intestate, divide equally among the grandchildren of uncles or aunts of the intestate any property not taken under the preceding subdivisions of this subsection.

"Article 4.

"Adopted Children.

"**§ 29-17. Succession by, through and from adopted children.**

(a) A child, adopted in accordance with Chapter 48 of the General Statutes or in accordance with the applicable law of any other jurisdiction, and the heirs of such child, are entitled by succession to any property by, through and from ~~his~~ the child's adoptive parents and their heirs the same as if ~~he~~the child were the natural legitimate child of the adoptive parents.

(b) An adopted child is not entitled by succession to any property, by, through, or from ~~his~~ the child's natural parents or their heirs, except as provided in subsection (e) of this section.

(c) The adoptive parents and the heirs of the adoptive parents are entitled by succession to any property, by, through and from an adopted child the same as if the adopted child were the natural legitimate child of the adoptive parents.

(d) The natural parents and the heirs of the natural parents are not entitled by succession to any property, by, through or from an adopted child, except as provided in subsection (e) of this section.

(e) If a natural parent has previously married, is married to, or shall marry an adoptive parent, the adopted child is considered the child of such natural parent for all purposes of intestate succession.

"Article 5.

"Legitimated Children.

"**§ 29-18. Succession by, through and from legitimated children.**

A child born an illegitimate who shall have been legitimated in accordance with G.S. 49-10 or 49-12 or in accordance with the applicable law of any other jurisdiction, and the heirs of such child, are entitled by succession to property by, through and from ~~his~~ the child's father and mother and their heirs the same as if born in lawful wedlock; and if ~~he~~ the child dies intestate, ~~his~~ the child's property shall descend and be distributed as if ~~he~~ the child had been born in lawful wedlock.

"Article 6.

"Illegitimate Children.

"**§ 29-19. Succession by, through and from illegitimate children.**

(a) For purposes of intestate succession, an illegitimate child shall be treated as if ~~he~~ that child were the legitimate child of ~~his~~ the child's mother, so that ~~he~~ the child and ~~his~~ the child's lineal descendants are entitled to take by, through and from ~~his~~ the child's mother and ~~his~~ the child's other maternal kindred, both descendants and collaterals, and they are entitled to take from ~~him.~~ the child.

(b) For purposes of intestate succession, an illegitimate child shall be entitled to take by, through and from:

(1) Any person who has been finally adjudged to be the father of such child pursuant to the provisions of G.S. 49-1 through 49-9 or the provisions of G.S. 49-14 through 49-16;

(2) Any person who has acknowledged himself during his own lifetime and the child's lifetime to be the father of such child in a written instrument executed or acknowledged before a certifying officer named in G.S. 52-10(b) and filed during his own lifetime and the child's lifetime in the office of the clerk of superior court of the county where either he or the child resides.

Notwithstanding the above provisions, no person shall be entitled to take hereunder unless ~~he~~ the person has given written notice of the basis of ~~his~~ the person's claim to the personal representative of the putative father within six months after the date of the first publication or posting of the general notice to creditors.

(c) Any person described under subdivision (b)(1) or (2) above and ~~his~~ the person's lineal and collateral kin shall be entitled to inherit by, through and from the illegitimate child.

(d) Any person who acknowledges ~~himself to be~~ that he is the father of an illegitimate child in his duly probated last will shall be deemed to have intended that such child be treated

as expressly provided for in said will or, in the absence of any express provision, the same as a legitimate child.

"§ 29-20. Descent and distribution upon intestacy of illegitimate children.

All the estate of a person dying illegitimate and intestate shall descend and be distributed, subject to the payment of costs of administration and other lawful claims against the estate, and subject to the payment of State inheritance or estate taxes, as provided in this Article.

"§ 29-21. Share of surviving spouse.

The share of the surviving spouse of an illegitimate intestate shall be the same as provided in G.S. 29-14 for the surviving spouse of a legitimate person. In determining whether the illegitimate intestate is survived by one or more parents as provided in G.S. 29-14(3), any person identified as the father under G.S. 29-19(b)(1) or (b)(2) shall be regarded as a parent.

"§ 29-22. Shares of others than the surviving spouse.

Those persons surviving the illegitimate intestate, other than the surviving spouse, shall take that share of the net estate provided in G.S. 29-15. In determining whether the illegitimate intestate is survived by one or more parents or their collateral kindred as provided in G.S. 29-15, any person identified as the father under G.S. 29-19(b)(1) or (b)(2) shall be regarded as a parent.

"Article 7.

"Advancements.

"§ 29-23. In general.

If a person dies intestate as to all ~~his~~ the person's estate, property which ~~he~~ the person gave in his lifetime as an advancement shall be counted toward the advancee's intestate share, and to the extent that it does not exceed such intestate share, shall be taken into account in computing the estate to be distributed.

"§ 29-24. Presumption of gift.

A gratuitous inter vivos transfer is presumed to be an absolute gift and not an advancement unless shown to be an advancement.

"§ 29-25. Effect of advancement.

If the amount of the advancement equals or exceeds the intestate share of the ~~advance, he~~ advancee, the advancee he shall be excluded from any further portion in the distribution of the estate, but ~~he~~ the advancee shall not be required to refund any part of such advancement; and if the amount of the advancement is less than ~~his~~ the advancee's share, ~~he~~ the advancee shall be entitled to such additional amount as will give ~~him his~~ the advancee the advancee's full share of the intestate donor's estate.

"§ 29-26. Valuation.

The value of the property given as an advancement shall be determined as of the time when the advancee came into possession or enjoyment, or at the time of the death of the intestate, whichever first occurs. However, if the value of the property, so advanced, is stated by the intestate donor in a writing signed by ~~him~~ the intestate donor and designating the gift as an advancement, such value shall be deemed the value of the advancement.

"§ 29-27. Death of advancee before intestate donor.

If the advancee dies before the intestate donor leaving a lineal heir or heirs who take by intestate succession from the intestate donor, the advancement shall be taken into account in the same manner as if it had been made directly to such heir or heirs, but the value shall be determined as of the time the original advancee came into possession or enjoyment, or when the heir or heirs came into possession or enjoyment or at the time of the death of the intestate donor, whichever first occurs.

"§ 29-28. Inventory.

If any person who has, in the lifetime of an intestate donor, received a part of the donor's property, refuses, upon order of the clerk of superior court of the county in which the administrator or collector qualifies, to give an inventory on oath, setting forth therein to the best

of ~~his~~ the person's knowledge and belief the particulars of the transfer of such property, ~~he~~ the person shall be considered to have received ~~his~~ the person's full share of the donor's estate, and shall not be entitled to receive any further part or share.

"§ 29-29. Release by advancee.

If the advancee acknowledges to the intestate donor by a signed writing that ~~he~~ the advancee has been advanced ~~his~~ the advancee's full share of the intestate donor's estate, both ~~he~~ the advancee and those claiming through ~~him~~ the advancee shall be excluded from any further participation in the intestate donor's estate.

"Article 8.

"Election to Take Life Interest in Lieu of Intestate Share.

"§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share provided.

(a) In lieu of the intestate share provided in G.S. 29-14 or G.S. 29-21, or of the elective share provided in G.S. 30-3.1, the surviving spouse of an intestate or the surviving spouse who has petitioned for an elective share shall be entitled to take as ~~his or her~~ the surviving spouse's intestate share or elective share a life estate in one third in value of all the real estate of which the deceased spouse was seised and possessed of an estate of inheritance at any time during coverture, except that real estate as to which the surviving spouse:

(1) Has waived ~~his or her~~ the surviving spouse's rights by joining with the other spouse in a conveyance thereof, or

(2) Has ~~release~~ released or quitclaimed ~~his or her~~ the surviving spouse's interest therein in accordance with G.S. 52-10, or

(3) Was not required by law to join in conveyance thereof in order to bar the elective life estate, or

(4) Is otherwise not legally entitled to the election provided in this section.

(b) ~~Regardless of the value thereof and despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a), the life estate provided for in subsection (a) shall at the election of the surviving spouse include~~ The surviving spouse may elect to take a life estate in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse if such dwelling house were owned by the deceased spouse at the time of ~~his or her~~ the deceased spouse's death, together with the outbuildings, improvements and easements thereunto belonging or appertaining, and lands upon which situated and reasonably necessary to the use and enjoyment thereof, as well as a fee simple ownership in the household furnishings ~~therein.~~ therein, despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a) of this section. If the value of a life estate in the dwelling house is less than the value of a life estate in one-third in value of all the real estate, the surviving spouse may elect to take a life estate in the dwelling and a life estate in such other real estate as to make the aggregate life estate of the surviving spouse equal to a life estate in one-third in value of all the real estate.

(c) The election provided for in subsection (a) shall be made by the filing of a ~~notice thereof~~ petition in accordance with Article 2 of Chapter 28A of the General Statutes with the clerk of the superior court of the county in which the administration of the estate is pending, or, if no administration is pending, then with the clerk of the superior court of any county in which the administration of the estate could be commenced. ~~Such~~ The election shall be ~~made:~~made prior to the shorter of the following applicable periods:

(1) ~~At any time within~~ In case of testacy, (i) within 12 months of the date of death of the deceased spouse if letters testamentary are not issued within that period, or (ii) within one month after the expiration of the time ~~fixed~~ limit for ~~the~~ filing ~~of the petition~~ a claim for elective share ~~under Article 1A of Chapter 30, or~~ if letters have been issued.

(2) In case of intestacy, ~~then~~ (i) within 12 months after the date of death of the deceased spouse if letters of administration are not issued within that period, or

~~(3) If letters of administration are issued within 12 months after the date of the death of the deceased spouse, then~~ (ii) within one month after the expiration of the time ~~limited~~ limit for filing claims against the estate, ~~or~~ if letters have been issued.

(4) If litigation that affects the share of the surviving spouse in the estate is ~~pending,~~ pending, including a pending petition for determination of an elective share, then within such reasonable time as may be allowed by written order of the clerk of the superior court.

(5) Nothing in this subsection shall extend the period of time for a surviving spouse to petition for an elective share under Article 1A of Chapter 30 of the General Statutes.

(c1) The ~~notice of election~~ petition shall:

(1) Be directed to the clerk with whom filed;

(2) State that the surviving spouse making the same elects to take under this section rather than under the provisions of G.S. 29-14, 29-21, or 30-3.1, as applicable;

(3) Set forth the names of all heirs, devisees, legatees, personal representatives and all other persons in possession of or claiming an estate or an interest in the property described in subsection (a); and

(4) Request the allotment of the life estate provided for in subsection (a).

(c2) The ~~notice of election~~ petition may be filed in person, or by attorney authorized in a writing executed and duly acknowledged by the surviving spouse and attested by at least one witness. If the surviving spouse is a minor or an incompetent, the ~~notice of election~~ petition may be executed and filed by a general guardian or by the guardian of the person or estate of the minor or incompetent spouse. If the minor or incompetent spouse has no guardian, the ~~notice of election~~ petition may be executed and filed by a ~~next friend~~ guardian ad litem appointed by the clerk. The ~~notice of election,~~ petition, whether in person or by attorney, shall be filed as a record of the court, and a summons together with a copy of the ~~notice~~ petition shall be served upon each of the interested persons named in the ~~notice of election.~~petition, in accordance with G.S. 1A-1, Rule 4.

(d) In case of election to take a life estate in lieu of an intestate share or elective share, as provided in either G.S. 29-14, 29-21, or 30-3.3(a), the clerk of superior court, with whom the ~~notice of election~~ petition has been filed, shall summon and appoint a jury of three disinterested persons who being first duly sworn shall promptly allot and set apart to the surviving spouse the life estate provided for in subsection (a) and make a final report of such action to the clerk.

(e) The final report shall be filed by the jury not more than 60 days after the summoning and appointment thereof, shall be signed by all jurors, and shall describe by metes and bounds the real estate in which the surviving spouse shall have been allotted and set aside a life estate. It shall be filed as a record of court and a certified copy thereof shall be filed and recorded in the office of the register of deeds of each county in which any part of the real property of the deceased spouse, affected by the allotment, is located.

(f) In the election and procedure to have the life estate allotted and set apart provided for in this section, the rules of procedure relating to partition proceedings under Chapter 46 of the General Statutes shall apply except insofar as the same would be inconsistent with the provisions of this section. A determination of the life estate under this section may be appealed in accordance with G.S. 1-301.3.

(g) Neither the household furnishings in the dwelling house nor the life estates taken by election under this section shall be subject to the payment of debts due from the estate of the deceased spouse, except those debts secured by such property as follows:

(1) By a mortgage or deed of trust in which the surviving spouse has waived ~~his or her~~ the surviving spouse's rights by joining with the other spouse in the making thereof; or

(2) By a purchase money mortgage or deed of trust, or by a conditional sales contract of personal property in which title is retained by the vendor, made prior to or during the marriage; or

(3) By a mortgage or deed of trust made prior to the marriage; or

(4) By a mortgage or deed of trust constituting a lien on the property at the time of its acquisition by the deceased spouse either before or during the marriage.

(h) If no election is made in the manner and within the time provided for in subsection (c) the surviving spouse shall be conclusively deemed to have waived ~~his or her~~ the surviving spouse's right to elect to take under the provisions of this section, and any interest which the surviving spouse may have had in the real estate of the deceased spouse by virtue of this section shall terminate."

SECTION 6. G.S. 30-3.4 reads as rewritten:

"**§ 30-3.4. Procedure for determining the elective share.**

(a) Exercisable Only During Lifetime. – The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, by the surviving spouse's attorney-in-fact if the surviving spouse's power of attorney expressly authorizes the attorney-in-fact to do so or to generally engage in estate transactions, or, with approval of court, by the guardian of the surviving spouse's estate or general guardian. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. – A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration in connection with the will or intestate proceeding with respect to which the surviving spouse claims the elective share by (i) filing a petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

~~(c) Time for Hearing. Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The surviving spouse shall give notice of the hearing to the personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.~~

(d) Repealed by Session Laws 2009, c. 368, s. 1, effective July 27, 2009, and applicable to decedents dying on or after October 1 , 2009.

(d1) Mediation. – The clerk may order mediation as described in G.S. 7A-38.3B of any disputes in connection with an elective share proceeding.

(e) Repealed by Session Laws 2009, c. 368, s. 1, effective July 27, 2009, and applicable to decedents dying on or after October 1 , 2009.

(e1) Procedure. – An elective share proceeding shall be an estate ~~matter and may be appealed pursuant to G.S. 1-301.3.~~ proceeding and shall be conducted in accordance with the procedures of Article 2 of Chapter 28A of the General Statutes.

(e2) Information About Total Net Assets. – In order to assist the clerk in determining whether a surviving spouse is entitled to an elective share, and, if so, the amount thereof, the following provisions apply:

(1) Submission within two months. – In every case in which a petition to determine an elective share has been filed, within two months of the filing of the petition, the personal representative shall submit sufficient information about the total assets for the clerk to determine the elective share. To fulfill its obligation to provide information, the personal representative may prepare and submit to the clerk a proposed Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 or other information as the clerk sees fit.

(2) Examination regarding assets. – If the personal representative, the surviving spouse, or a responsible person has reasonable grounds to believe that any person has a claim or has in its possession assets included in Total Net Assets, then the personal representative, surviving spouse, or responsible person may use the procedures set out in G.S. 28A-15-12 to cause the clerk to examine the person believed to have a claim or to possess assets included in Total Net Assets.

(f) Findings and Conclusions. – After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

(g) Repealed by Session Laws 2009, c. 368, s. 1, effective July 27, 2009, and applicable to decedents dying on or after October 1, 2009.

(h) Expenses. – The expenses (including attorneys' fees) reasonably incurred by the personal representative, other responsible persons, and the surviving spouse in connection with elective share proceedings shall be equitably apportioned by the clerk of court in the clerk's discretion among the personal representative, other responsible persons, and the surviving spouse."

SECTION 7. Article 4 of Chapter 30 of the General Statutes reads as rewritten:

"Article 4.

"Year's Allowance.

"Part 1. Nature of Allowance.

"§ 30-15. When spouse entitled to allowance.

Every surviving spouse of an intestate or of a testator, whether or not ~~he or she~~ the surviving spouse has petitioned for an elective share, shall, unless the surviving spouse has forfeited ~~his or her~~ the surviving spouse's right thereto, as provided by law, be entitled, out of the personal property of the deceased spouse, to an allowance of the value of twenty thousand dollars ($20,000) for the surviving spouse's support for one year after the death of the deceased spouse. Such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of the deceased spouse, and shall, in cases of testacy, be charged against the share of the surviving spouse.

"§ 30-16. Duty of personal representative, magistrate, or clerk to assign allowance.

It shall be the duty of every administrator, collector, or executor of a will, on application in writing, signed by the surviving spouse, at any time within one year after the death of the deceased spouse, to assign to the surviving spouse the year's allowance as provided in this Article.

If there shall be no administration, or if the personal representative shall fail or refuse to apply to a magistrate or clerk of court, as provided in G.S. 30-20, for 10 days after the surviving spouse has filed the aforesaid application, or if the surviving spouse is the personal representative, the surviving spouse may make application to the magistrate or clerk, and it shall be the duty of the magistrate or clerk to proceed in the same manner as though the application had been made by the personal representative.

Where any personal property of the deceased spouse shall be located outside the township or county where the deceased spouse resided at the time of ~~his~~ the deceased spouse's death, the personal representative or the surviving spouse may apply to any magistrate or to any clerk of court of any township or county where such personal property is located, and it shall be the duty of such magistrate or clerk to assign the year's allowance as if the deceased spouse had resided and died in that township.

"§ 30-17. When children entitled to an allowance.

Whenever any parent dies survived by any child under the age of 18 years, including an adopted child or a child with whom the widow may be pregnant at the death of her husband, or a child who is less than 22 years of age and is a full-time student in any educational institution, or a child under 21 years of age who has been declared mentally incompetent, or a child under 21 years of age who is totally disabled, or any other person under the age of 18 years residing with the deceased parent at the time of death to whom the deceased parent or the surviving parent stood in loco parentis, every such child shall be entitled to receive an allowance of two thousand dollars ($2,000) for the child's support for the year next ensuing the death of such parent. Such allowance shall be in addition to the child's share of the deceased parent's estate and shall be exempt from any lien by judgment or execution against the property of such parent. The personal representative of the deceased parent shall, within one year after the parent's death, assign to every such child the allowance herein provided for; but if there is no personal representative or if ~~he~~ the personal representative fails or refuses to act within 10 days after written request by a guardian ~~or next friend~~ on behalf of such child, the allowance may be assigned by a magistrate or clerk of court upon application of said ~~guardian or next friend.~~ guardian.

If the child resides with the widow of the deceased parent at the time such allowance is paid, the allowance shall be paid to said widow for the benefit of said child. If the child resides with its surviving parent who is other than the widow of the deceased parent, such allowance shall be paid to said surviving parent for the use and benefit of such child, regardless of whether the deceased died testate or intestate or whether the widow dissented from the will. Provided, however, the allowance shall not be available to an illegitimate child of a deceased father, unless such deceased father shall have recognized the paternity of such illegitimate child by deed, will or other paper-writing. If the child does not reside with a parent when the allowance is paid, the allowance shall be paid to the child's general guardian, if any, and if none, to the clerk of the superior court who shall receive and disburse same for the benefit of such child.

"§ 30-18. From what property allowance assigned.

Such allowance shall be made in money or other personal property of the estate of the deceased spouse.

"Part 2. Assigned by Magistrate or Clerk.

"§ 30-19. Value of property ascertained.

The value of the personal property assigned to the surviving spouse and children shall be ascertained by a magistrate or the clerk of court of the county in which administration was granted or the will probated.

"§ 30-20. Procedure for assignment.

Upon the application of the surviving spouse, a child by ~~his guardian or next friend,~~ the child's guardian, or the personal representative of the deceased, the clerk of superior court of

the county in which the deceased resided may assign the inquiry to a magistrate of the county. The clerk of court, or magistrate upon assignment, shall ascertain the person or persons entitled to an allowance according to the provisions of this Article, and determine the money or other personal property of the estate, and pay over to or assign to the surviving spouse and to the children, if any, so much thereof as they shall be entitled to as provided in this Article. Any deficiencies shall be made up from any of the personal property of the deceased, and if the personal property of the estate shall be insufficient to satisfy such allowance, the clerk of the superior court shall enter judgment against the personal representative for the amount of such deficiency, to be paid when a sufficiency of such assets shall come into ~~his hands.~~ the personal representative's hands.

"§ 30-21. Report of clerk or magistrate.

The clerk of court, or magistrate upon assignment, shall make and sign three lists of the money or other personal property assigned to each person, stating their quantity and value, and the deficiency to be paid by the personal representative. Where the allowance is to the surviving spouse, one of these lists shall be delivered to ~~him.~~ the surviving spouse. Where the allowance is to a child, one of these lists shall be delivered to the surviving parent with whom the child is living; or to the child's guardian ~~or next friend~~ if the child is not living with said surviving parent; or to the child if said child is not living with the surviving parent and has no ~~guardian or next friend.~~ guardian. One list shall be delivered to the personal representative. One list shall be returned by the magistrate or clerk, within 20 days after the assignment, to the superior court of the county in which administration was granted or the will probated, and the clerk shall file and record the same, together with any judgment entered pursuant to G.S. 30-20.

"§ 30-22. Repealed by Session Laws 1971, c. 528, s. 25.

"§ 30-23. Right of appeal.

The personal representative, or the surviving spouse, or child by ~~his guardian or next friend,~~ the child's guardian, or any creditor, legatee or heir of the deceased, may appeal from the finding of the magistrate or clerk of court to the superior court of the county, ~~and,~~ by filing a copy of the assignment and a notice of appeal within 10 days after the assignment, ~~cite the adverse party to appear before such court on a certain day, not less than five nor exceeding 10 days after the service of the citation.~~ and the appeal shall be heard as provided in G.S. 1-301.2, provided that the hearing on the appeal shall be at the next available session of superior court.

~~"§ 30-24. Hearing on appeal.~~

~~At or before the day named, the appellant shall file with the clerk a copy of the assignment and a statement of his exceptions thereto, and the issues thereby raised shall be decided de novo.~~

"§ 30-25. Personal representative entitled to credit.

Upon the settlement of the accounts of the personal representative, ~~he~~ the personal representative shall be credited with the articles assigned, and the value of the deficiency assessed as aforesaid, if the same shall have been paid, unless the allowance be impeached for fraud or gross negligence in him.

~~"§ 30-26. When above allowance is in full.~~

~~If the estate of a deceased be insolvent, or if his or her personal estate does not exceed twenty thousand dollars ($20,000), the allowances for the year's support of the surviving spouse and the children shall not, in any case, exceed the value prescribed in G.S. 30-15 and G.S. 30-17; and the allowances made to them as above prescribed shall preclude them from any further allowances.~~

"Part 3. Assigned in Superior Court.

"§ 30-27. Surviving spouse or child may apply to superior court.

~~It shall not, however, be obligatory on a~~ In addition to any support assigned to the surviving spouse or child ~~to have the support assigned~~ as above ~~prescribed. Without~~ prescribed, without application to the personal representative, the surviving spouse, or the child through ~~his~~ the

child's guardian ~~or next friend, may at any time~~ may, after the date specified in the general notice to creditors as provided for in G.S. 28A-14-1(a), and within one year after the decedent's death, apply to the superior court of the county in which administration was granted or the will probated to have a year's support ~~assigned.~~ assigned at an amount other than prescribed in G.S. 30-15 and G.S. 30-17.

"§ 30-28. Nature of proceeding; parties.

The application shall be by ~~summons, as is prescribed for special proceedings, in which the~~ petition in a special proceeding before the clerk of superior court. The personal representative of the deceased, if there ~~be~~ is one other than the ~~plaintiff, the largest known creditor, or legatee, or some distributee of the deceased, living in the county, shall be made defendant, and the proceedings shall be as prescribed for special proceedings between parties.~~ petitioner, all known creditors, and all known heirs of the deceased, if the deceased is intestate, and devisees of the deceased, if the deceased is testate, shall be made parties to the special proceeding. If the personal representative of the deceased is aware of a creditor, heir, or devisee who should have been made a respondent but was not, then the personal representative shall file a motion to add the creditor, heir, or devisee as a necessary party, and the court shall order such other party to appear in the proceeding.

"§ 30-29. What ~~complaint~~ petition must show.

In the ~~complaint~~ petition the ~~plaintiff~~ petitioner shall set forth, besides the facts entitling ~~plaintiff~~ petitioner to a year's support and the value of the support claimed, the further facts that the ~~estate of the decedent is not insolvent, and that the~~ personal estate of which ~~he or she~~ the decedent died possessed exceeded twenty thousand dollars ($20,000), and also whether or not an allowance has been made to ~~plaintiff~~ petitioner and the nature and value thereof.

"§ 30-30. Judgment and order for commissioners.

~~If the material allegations of the complaint be found true, the judgment shall be that plaintiff is entitled to the relief sought; and the court shall thereupon issue an order to the sheriff or other proper officer of the county, commanding him to summon a magistrate and two persons qualified to act as jurors, who~~ The clerk of superior court shall hear the matter and determine whether the petitioner is entitled to some or all of the relief sought and, if the clerk determines that the petitioner is so entitled, the clerk shall determine the money or other personal property of the estate and assign to the ~~plaintiff~~ petitioner a sufficiency thereof for ~~plaintiff's~~ petitioner's support for one year from the decedent's death. Any deficiency shall be made up from any of the personal property of the deceased, and if the personal property of the estate shall be insufficient for such support, the clerk of ~~the~~ superior court shall enter judgment against the personal representative for the amount of such deficiency, to be paid when a sufficiency of such assets shall come into ~~his~~ the personal representative's hands. Any judgment so rendered shall have the same priority over other debts and claims against the estate as an allowance assigned pursuant to G.S. 30-15 or G.S. 30-17.

"§ 30-31. ~~Duty of commissioners; amount~~ Amount of allowance.

~~The said commissioners shall be sworn by the magistrate and shall proceed as prescribed in this Chapter, except that they~~ The clerk of superior court may assign to the ~~plaintiff~~ petitioner a value sufficient for the support of ~~plaintiff~~ petitioner according to the estate and condition of the decedent and without regard to the limitations set forth in this Chapter; but the value allowed shall be fixed with due consideration for other persons entitled to allowances for year's support from the decedent's estate; and the total value of all allowances shall not in any case exceed the one half of the average annual net income of the deceased for three years next preceding ~~his~~ the deceased's death. This report shall be returned by the magistrate to the court.

"§ 30-31.1. Service of judgment and appeal.

The petitioner shall serve the clerk's judgment on all other parties. The judgment also shall be filed in the estate file of the deceased. Any aggrieved party may appeal the judgment in accordance with G.S. 1-301.2.

"§ 30-31.2. Execution.

If the clerk's judgment is not appealed as provided in G.S. 1-301.2, execution shall issue to enforce the judgment as in like cases under Article 28 of Chapter 1 of the General Statutes.

~~"§ 30-32. Exceptions to the report.~~

~~The personal representative, or any creditor, distributee or legatee of the deceased, within 10 days after the return of the report, may file exceptions thereto. The plaintiff shall be notified thereof and cited to appear before the court on a certain day, within 20 and not less than 10 days after service of the notice, and answer the same; the case shall thereafter be proceeded in, heard and decided as provided in special proceedings between parties.~~

~~"§ 30-33. Confirmation of report; execution.~~

~~If the report shall be confirmed, the court shall so declare, and execution shall issue to enforce the judgment as in like cases.~~"

SECTION 8. Chapter 31 of the General Statutes, as amended by Section 3 of this act, reads as rewritten:

"**Chapter 31.**

"**Wills.**

"Article 1.

"Execution of Will.

"**§ 31-1. Who may make will.**

Any person of sound mind, and 18 years of age or over, may make a will.

"**§ 31-2: Repealed by Session Laws 1953, c. 1098, s. 1.**

"**§ 31-3:** Rewritten and renumbered as G.S. 31-3.1 to 31-3.6 by Session Laws 1953, c. 1098, s. 2.

"**§ 31-3.1. Will invalid unless statutory requirements complied with.**

No will is valid unless it complies with the requirements prescribed therefor by this Article.

"**§ 31-3.2. Kinds of wills.**

(a) Personal property may be bequeathed and real property may be devised by

(1) An attested written will which complies with the requirements of G.S. 31-3.3, or

(2) A holographic will which complies with the requirements of G.S. 31-3.4.

(b) Personal property may also be bequeathed by a nuncupative will which complies with the requirements of G.S. 31-3.5.

"**§ 31-3.3. Attested written will.**

(a) An attested written will is a written will signed by the testator and attested by at least two competent witnesses as provided by this section.

(b) The testator must, with intent to sign the will, do so by actually signing the will ~~himself~~ or by having someone else in the testator's presence and at ~~his~~ the testator's direction sign the testator's name thereon.

(c) The testator must signify to the attesting witnesses that the instrument is ~~his~~ the testator's instrument by signing it in their presence or by acknowledging to them ~~his~~ the testator's signature previously affixed thereto, either of which may be done before the attesting witnesses separately.

(d) The attesting witnesses must sign the will in the presence of the testator but need not sign in the presence of each other.

"**§ 31-3.4. Holographic will.**

(a) A holographic will is a will

(1) Written entirely in the handwriting of the testator but when all the words appearing on a paper in the handwriting of the testator are sufficient to constitute a valid holographic will, the fact that other words or printed matter appear thereon not in the handwriting of the testator, and not affecting the

meaning of the words in such handwriting, shall not affect the validity of the will, and

(2) Subscribed by the testator, or with ~~his~~ the testator's name written in or on the will in ~~his~~ the testator's own handwriting, and

(3) Found after the testator's death among ~~his~~ the testator's valuable papers or effects, or in a safe-deposit box or other safe place where it was deposited by ~~him~~ the testator or under ~~his~~ the testator's authority, or in the possession or custody of some person with whom, or some firm or corporation with which, it was deposited by ~~him~~the testator or under ~~his~~ the testator's authority for safekeeping.

(b) No attesting witness to a holographic will is required.

"§ 31-3.5. Nuncupative will.

A nuncupative will is a will

(1) Made orally by a person who is in ~~his~~ that person's last sickness or in imminent peril of death and who does not survive such sickness or imminent peril, and

(2) Declared to be ~~his~~ that person's will before two competent witnesses simultaneously present at the making thereof and specially requested by ~~him~~ the person to bear witness thereto.

"§ 31-3.6. Seal not required.

A seal is not necessary to the validity of a will.

"§ 31-4. Execution of power of appointment by will.

No appointment, made by will in the exercise of any power, shall be valid unless the same be executed in the manner by law required for the execution of wills; and every will, executed in such manner, shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

"§ 31-4.1: Repealed by Session Laws 2010-181, s. 1, effective July 1, 2010.

"§ 31-4.2: Repealed by Session Laws 2010-181, s. 2, effective July 1, 2010.

"Article 2.

"Revocation of Will.

"§ 31-5: Rewritten and renumbered as G.S. 31-5.1 by Session Laws 1953, c. 1098, s. 3.

"§ 31-5.1. Revocation of written will.

A written will, or any part thereof, may be revoked only

(1) By a subsequent written will or codicil or other revocatory writing executed in the manner provided herein for the execution of written wills, or

(2) By being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it, by the testator himself or by another person in ~~his~~ the testator's presence and by ~~his~~ the testator's direction.

"§ 31-5.2. Revocation of nuncupative will.

A nuncupative will or any part thereof may be revoked

(1) By a subsequent nuncupative will, or

(2) By a subsequent written will or codicil or other revocatory writing executed in the manner provided herein for the execution of written wills.

"§ 31-5.3. Will not revoked by marriage; dissent from will made prior to marriage.

A will is not revoked by a subsequent marriage of the maker; and the surviving spouse may petition for an elective share when there is a will made prior to the marriage in the same manner, upon the same conditions, and to the same extent, as a surviving spouse may petition for an elective share when there is a will made subsequent to marriage.

"§ 31-5.4. Revocation by divorce or annulment; revival.

Dissolution of marriage by absolute divorce or annulment after making a will does not revoke the will of any testator but, unless otherwise specifically provided in the will, it revokes all provisions in the will in favor of the testator's former spouse or purported former spouse, including, but not by way of limitation, any provision conferring a general or special power of appointment on the former spouse or purported former spouse and any appointment of the former spouse or purported former spouse as executor, trustee, conservator, or guardian. If provisions are revoked solely by this section, they are revived by the testator's remarriage to the former spouse or purported former spouse.

"§ 31-5.5. After-born or after-adopted child; illegitimate child; effect on will.

(a) A will shall not be revoked by the subsequent birth of a child to the testator, or by the subsequent adoption of a child by the testator, or by the subsequent entitlement of an after-born illegitimate child to take as an heir of the testator pursuant to the provisions of G.S. 29-19(b), but any after-born, after-adopted or entitled after-born illegitimate child shall have the right to share in the testator's estate to the same extent ~~he~~ the after-born, after-adopted, or entitled after-born illegitimate child would have shared if the testator had died intestate unless:

(1) The testator made some provision in the will for the child, whether adequate or not;

(2) It is apparent from the will itself that the testator intentionally did not make specific provision therein for the child;

(3) The testator had children living when the will was executed, and none of the testator's children actually take under the will;

(4) The surviving spouse receives all of the estate under the will; or

(5) The testator made provision for the child that takes effect upon the death of the testator, whether adequate or not.

(b) The provisions of G.S. 28A-22-2 shall be construed as being applicable to after-adopted children and to after-born children, whether legitimate or entitled illegitimate.

(c) The terms "after-born," "after-adopted" and "entitled after-born" as used in this section refer to children born, adopted or entitled subsequent to the execution of the will.

"§ 31-5.6. No revocation by subsequent conveyance.

No conveyance or other act made or done subsequently to the execution of a will of, or relating to, any real or personal estate therein comprised, except an act by which such will shall be duly revoked, shall prevent the operation of the will with respect to any estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of ~~his~~ the testator's death.

"§ 31-5.7. Specific provisions for revocation exclusive; effect of changes in circumstances.

No will can be revoked in whole or in part by any act of the testator or by a change in ~~his~~ the testator's circumstances or condition except as provided by G.S. 31-5.1 through 31-5.6 inclusive.

"§ 31-5.8. Revival of revoked will.

No will or any part thereof that has been in any manner revoked can, except as provided in G.S. 31-5.4, be revived otherwise than by a reexecution thereof, or by the execution of another will in which the revoked will or part thereof is incorporated by reference.

"§ 31-6: Renumbered as G.S. 31-5.3 by Session Laws 1953, c. 1098, s. 5.

"§ 31-7: Repealed by Session Laws 1953, c. 1098, s. 9.

"§ 31-8: Renumbered as G.S. 31-5.6 by Session Laws 1953, c. 1098, s. 8.

"Article 3.

"Witnesses to Will.

"§ 31-8.1. Who may witness.

Any person competent to be a witness generally in this State may act as a witness to a will.

"§ 31-9. Executor competent witness.

No person, on account of being an executor of a will, shall be incompetent to be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

"§ 31-10. Beneficiary competent witness; when interest rendered void.

(a) A witness to an attested written or a nuncupative will, to whom or to whose spouse a beneficial interest in property, or a power of appointment with respect thereto, is given by the will, is nevertheless a competent witness to the will and is competent to prove the execution or validity thereof. However, if there are not at least two other witnesses to the will who are disinterested, the interested witness and ~~his~~ the interested witness' spouse and anyone claiming under ~~him~~ the interested witness shall take nothing under the will, and so far only as their interests are concerned the will is void.

(b) A beneficiary under a holographic will may testify to such competent, relevant and material facts as tend to establish such holographic will as a valid will without rendering void the benefits to be received by ~~him~~ the beneficiary thereunder.

"§ 31-10.1. Corporate trustee not disqualified by witnessing of will by stockholder.

A corporation named as a trustee in a will is not disqualified to act as trustee by reason of the fact that a person owning stock in the corporation signed the will as a witness.

"Article 4.

"Depository for Wills.

"§ 31-11. Depositories in offices of clerks of superior court where living persons may file wills.

The clerk of the superior court in each county of North Carolina shall be required to keep a receptacle or depository in which any person who desires to do so may file ~~his or her~~ that person's will for safekeeping; and the clerk shall, upon written request of the testator, or the duly authorized agent or attorney for the testator, permit said will or testament to be withdrawn from said depository or receptacle at any time prior to the death of the testator: Provided, that the contents of said will shall not be made public or open to the inspection of anyone other than the testator or ~~his~~ the testator's duly authorized agent until such time as the said will shall be offered for probate.

"§§ 31-11.1 through 31-11.5. Reserved for future codification purposes.

"Article 4A.

"Self-Proved Wills.

"§ 31-11.6. How attested wills may be made self-proved.

(a) Any will may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

"I, _____, the testator, sign my name to this instrument this ____ day of _____, ____ and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

_____

Testator

We _____, _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

_____

Witness

_____

Witness

THE STATE OF _____.

COUNTY OF _____.

Subscribed, sworn to and acknowledged before me by _____. the testator and subscribed and sworn to before me by _____ and _____, witnesses, this ____ day of _____

(SEAL)

(SIGNED) _____

(OFFICIAL CAPACITY OF OFFICER)"

(b) An attested written will executed as provided by G.S. 31-3.3 may at any time subsequent to its execution be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the attesting witnesses, each made before an officer authorized to administer oaths under the laws of this State, and evidenced by the officer's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

"STATE OF NORTH CAROLINA

"COUNTY/CITY OF _____

"Before me, the undersigned authority, on this day personally appeared _____, and _____, known to me to be the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn. The testator, declared to me and to the witnesses in my presence: That said instrument is his last will; that he had willingly signed or directed another to sign the same for him, and executed it in the presence of said witnesses as his free and voluntary act for the purposes therein expressed; or, that the testator signified that the instrument was his instrument by acknowledging to them his signature previously affixed thereto.

The said witnesses stated before me that the foregoing will was executed and acknowledged by the testator as his last will in the presence of said witnesses who, in his presence and at his request, subscribed their names thereto as attesting witnesses and that the testator, at the time of the execution of said will, was over the age of 18 years and of sound and disposing mind and memory.

_____

Testator

_____

Witness

_____

Witness

_____

Witness

Subscribed, sworn and acknowledged before me by _____, the testator, subscribed and sworn before me by _____, _____ and _____ witnesses, this ____ day of _____, A.D. ____

(SEAL)

(SIGNED) _____

(OFFICIAL CAPACITY OF OFFICER)"

(c) The sworn statement of any such witnesses taken as herein provided shall be accepted by the court as if it had been taken before such court.

"Article 5.
"Probate of Will.
"**§§ 31-12 through 31-31.2:** Recodified as Article 2A of Chapter 28A of the General Statutes by Section 3 of this act.
"Article 6.
"Caveat to Will.
"**§ 31-32.** ~~**When and by whom caveat filed.**~~ **Filing of caveat.**

(a) At the time of application for probate of any will, and the probate thereof in common form, or at any time within three years thereafter, any ~~person entitled under such will, or~~ party interested in the estate, may appear in person or by attorney before the clerk of the superior court and enter a caveat to the probate of such ~~will: Provided,~~ will; provided, that if any person entitled to file a caveat be within the age of 18 years, or ~~insane, or imprisoned,~~ incompetent as defined in G.S. 35A-1101(7) or (8), then such person may file a caveat within three years after the removal of such disability.

~~Notwithstanding the provisions of the first paragraph of this section, as to persons not under disability, a caveat to the probate of a will probated in common form prior to May 1, 1951, must be filed within seven years of the date of probate or within three years from May 1, 1951, whichever period of time is shorter.~~

(b) The caveat shall be filed in the decedent's estate file. The clerk of superior court shall give notice of the filing by making an entry upon the page of the will book where the will is recorded, evidencing that the caveat has been filed and giving the date of such filing.

(c) If a will has been probated in solemn form pursuant to G.S. 28A-2A-7, any party who was properly served in that probate in solemn form shall be barred from filing a caveat.

"**§ 31-33.** ~~**Bond given and cause**~~ **Cause transferred to trial docket.**

~~When a caveator shall have given bond with surety approved by the clerk, in the sum of two hundred dollars ($200.00), payable to the propounder of the will, conditioned upon the payment of all costs which shall be adjudged against such caveator in the superior court or when a caveator shall have deposited money or given a mortgage in lieu of such bond, or shall have filed affidavits and satisfied the clerk of his inability to give such bond or otherwise secure such costs,~~

(a) Upon the filing of a caveat, the clerk shall transfer the cause to the superior court for ~~trial. Such~~ trial by jury. The caveat shall be served upon all interested parties in accordance with G.S. 1A-1, Rule 4 of the Rules of Civil Procedure.

(b) After service under subsection (a) of this section, the caveator shall cause notice of ~~the caveat proceeding to be given to all devisees, legatees, or other persons in interest in the manner provided for service of process by G.S. 1A-1, Rule 4(j) and (k). The notice shall advise such devisees, legatees, or other persons in interest, of the session of superior court to which the proceeding has been transferred and shall call upon them to appear and make themselves proper parties to the proceeding if they so choose. At the session of court to which such proceeding is transferred, or as soon thereafter as motion to that effect shall be made by the propounder, and before trial, the judge shall require any of the devisees, legatees or other persons in interest so cited, either those who make themselves~~ a hearing to align the parties to be served upon all parties in accordance with G.S. 1A-1, Rule 5 of the Rules of Civil Procedure. At the alignment hearing, all of the interested parties who wish to be aligned as parties shall appear and be aligned by the court as parties with the caveators or ~~whose interests appear to him antagonistic to that of~~ parties with the propounders of the ~~will, to align themselves and to file bond within such time as he shall direct and before trial. Upon the failure of any party to file such bond,~~ will. If an interested party does not appear to be aligned or chooses not to be aligned, the judge shall dismiss that interested party from the ~~proceeding~~ proceeding, but that party shall be bound by the proceeding.

(c) Within 30 days following the entry of an order aligning the parties, any interested party who was aligned may file a responsive pleading to the caveat, provided, however, that failure to respond to any averment or claim of the caveat shall not be deemed an admission of that averment or claim. An extension of time to file a responsive pleading to the caveat may be granted as provided by G.S. 1A-1, Rule 6 of the Rules of Civil Procedure.

(d) Upon motion of an aligned party, the court may require a caveator to provide security in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by the estate if the estate is found to have been wrongfully enjoined or restrained. The court may consider relevant facts related to whether a bond should be required and the amount of any such bond, including, but not limited to, (i) whether the estate may suffer irreparable injury, loss, or damage as a result of the caveat and (ii) whether the caveat has substantial merit. Provisions for bringing suit in forma pauperis apply to the provisions of this subsection.

~~"§ 31-34. Prosecution bond required in actions to contest wills.~~

~~When any action is instituted to contest a will the clerk of the superior court will require the prosecution bond required in other civil actions: Provided, however, that provisions for bringing suit in forma pauperis shall also apply to the provisions of this section.~~

"§ 31-35. Affidavit of witness as evidence.

Whenever the subscribing witness to any will shall die, or be ~~insane or~~ mentally incompetent, or be absent beyond the State, it shall be competent upon any issue of devisavit vel non to give in evidence the affidavits and proofs taken by the clerk upon admitting the will to probate in common form, and such affidavit and proceedings before the clerk shall be prima facie evidence of the due and legal execution of said will.

"§ 31-36. Effect of caveat on estate administration.

(a) Order of Clerk. – Where a caveat is ~~entered and bond given,~~ filed, the clerk of the superior court shall forthwith issue an order that shall apply during the pendency of the caveat to any personal representative, having the estate in charge, as follows:

(1) Distributions to beneficiaries. – That there shall be no distributions of assets of the estate to any beneficiary;

(2) Commissions. – That no commissions shall be advanced or awarded to any personal representative;

(3) Accountings. – That the personal representative shall file all accountings required by the clerk of superior court and that the personal representative may pay any applicable filing fees associated with those accountings from the assets of the estate;

(4) Preservation of estate assets. – That the personal representative shall preserve the property of the estate and that the personal representative is authorized to pursue and prosecute claims that the estate may have against others; and

(5) Taxes, claims and debts of estate. – That the personal representative may file all appropriate tax returns and that the personal representative may pay, in accordance with the procedures of subsection (b) of this section: taxes; funeral expenses of the decedent; debts that are a lien upon the property of the decedent; bills of the decedent accrued before death; claims against the estate that are timely filed; professional fees related to administration of the estate, including fees for tax return preparation, appraisal fees, and attorneys' fees for estate administration.

(b) Procedures. – In regard to payment of any of the items listed in subdivision (5) of subsection (a) of this section, the personal representative shall file with the clerk a notice of the personal representative's intent to pay those items and shall serve the notice upon all parties to the caveat, pursuant to G.S. 1A-1, Rule 4 of the Rules of Civil Procedure. If within 10 days of

service any party files with the clerk a written objection to that payment, the clerk shall schedule a hearing and determine whether the proposed payment shall be made. If no such objection is filed with the clerk, the clerk may approve the payment without hearing, and upon that approval, the personal representative may make the payment. The parties to the caveat may consent to any such payment, and upon such consent, the clerk may approve the payment without hearing. The clerk may defer ruling on the payment pending the resolution of the caveat.

(c) Preservation of Estate Assets. – Questions regarding the use, location, and disposition of assets that cannot be resolved by the parties and consented to by the clerk shall be decided by the clerk. When a question has not been resolved by agreement, either party may request a hearing before the clerk upon 10 days notice and shall serve the notice upon all parties to the caveat, pursuant to G.S. 1A-1, Rule 4 of the Rules of Civil Procedure. Decisions of the clerk may be appealed to the superior ~~court.~~ court pursuant to G.S. 1-301.3.

~~"§ 31-37. Superior court clerks to enter notice of caveat on will book; final judgment also to be entered.~~

~~Wherever a caveat is filed with the clerk of the superior court of any county in the State to any last will and testament which has been admitted to probate in said office, it shall be the duty of such clerk, and he is hereby directed to give notice of the filing of such caveat by making an entry upon the page of the will book where such last will and testament is recorded, evidencing that such caveat has been filed and giving the date of such filing. When such caveat and proceedings resulting therefrom shall have resulted in final judgment with respect to such will, the clerk of the court shall make a further entry upon the page of the will book where such last will and testament is recorded to the effect that final judgment has been entered, either sustaining or setting aside such will.~~

"**§ 31-37.1. ~~Parties may enter into a settlement agreement.~~Settlement agreement; filing of judgment.**

(a) Prior to an entry of judgment by the superior court in a caveat proceeding, the parties may enter into a settlement agreement, ~~whereupon judgment may be entered by the court,~~ which must be approved by the superior court. Upon approval of a settlement agreement, the court shall enter judgment, without a verdict by a jury, in accordance with the terms of the settlement ~~agreement,~~ agreement. The consent of interested parties who are not aligned as parties pursuant to G.S. 31-33 is not necessary for a settlement agreement under this section.

(b) When judgment is entered by the superior court in a caveat proceeding, the clerk of superior court shall file a copy of the judgment in the estate file and shall make entry upon the page of the will book where such will is recorded to the effect that final judgment has been entered, either sustaining or setting aside the ~~contested~~ will.

"Article 7.

"Construction of Will.

"**§ 31-38. Devise presumed to be in fee.**

When real estate shall be devised to any person, the same shall be held and construed to be a devise in fee simple, unless such devise shall, in plain and express words, show, or it shall be plainly intended by the will, or some part thereof, that the testator intended to convey an estate of less dignity.

"**§ 31-39. Probate necessary to pass title; recordation in county where land lies; rights of innocent purchasers.**

No will shall be effectual to pass real or personal estate unless it shall have been duly proved and allowed in the probate court of the proper county, and a duly certified copy thereof shall be recorded in the office of the superior court clerk of the county wherein the land is situate, and the probate of a will devising real estate shall be conclusive as to the execution thereof against the heirs and devisees of the testator, whenever the probate thereof under the like cirumstances, would be conclusive against the next of kin and legatees of the testator:

Provided, that the probate and registration of any will shall not affect the rights of innocent purchasers for value from the heirs at law of the testator when such purchase is made more than two years after the death of such testator or when such purchase is made after the filing of the final account by the duly authorized administrator of the decedent and the approval thereof by the clerk of the superior court having jurisdiction of the estate. Such conveyances, if made before the expiration of the time required by this section to have elapsed in order for same to be valid against the heirs and devisees of the testator, shall, upon the expiration of such time, become good and valid to the same effect as if made after the expiration of such time, unless in the meantime a proceeding shall have been instituted in the proper court to probate the will of the testator.

"§ 31-40. What property passes by will.

Any testator, by ~~his~~ the testator's will duly executed, may devise, bequeath, or dispose of all real and personal estate which ~~he~~ the testator shall be entitled to at the time of ~~his~~ the testator's death, and which, if not so devised, bequeathed, or disposed of, would descend or devolve upon ~~his~~ the testator's heirs at law, or upon ~~his~~ the testator's executor or administrator; and the power hereby given shall extend to all contingent, executory, or other future interest in any real or personal estate, whether the testator may or may not be the person or one of the persons in whom the same may become vested, or whether ~~he~~ the testator may be entitled thereto under the instrument by which the same was created, or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken, whether any such condition has or has not been broken at the testator's death, all other rights of entry, and possibilities of reverter; and also to such of the same estates, interests, and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of ~~his~~ the testator's death, notwithstanding that ~~he~~ the testator may become entitled to the same subsequently to the execution of ~~his~~ the testator's will.

"§ 31-41. Will relates to death of testator.

Every will shall be construed, with reference to the real and personal estate comprised therein, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

"§ 31-42. Failure of devises by lapse or otherwise; renunciation; 120-hour survivorship requirement, revised simultaneous death act, Article 24, Chapter 28A.

(a) Unless the will indicates a contrary intent, if a devisee predeceases the testator, whether before or after the execution of the will, and if the devisee is a grandparent of or a descendant of a grandparent of the testator, then the issue of the predeceased devisee shall take in place of the deceased devisee. The devisee's issue shall take the deceased devisee's share in the same manner that the issue would take as heirs of the deceased devisee under the intestacy provisions in effect at the time of the testator's death. The provisions of this section apply whether the devise is to an individual, to a class, or is a residuary devise. In the case of the class devise, the issue shall take whatever share the deceased devisee would have taken had the devisee survived the testator; in the event the deceased class member leaves no issue, the devisee's share shall devolve upon the members of the class who survived the testator and the issue of any deceased members taking by substitution.

(b) Unless the will indicates a contrary intent, if the provisions of subsection (a) of this section do not apply to a devise to a devisee who predeceases the testator, or if a devise otherwise fails, the property shall pass to the residuary devisee or devisees in proportion to their share of the residue. If the devise is a residuary devise, it shall augment the shares of the other residuary devisees, including the shares of any substitute takers under subsection (a) of this section. If there are no residuary devisees, then the property shall pass by intestacy.

(c) Renunciation of a devise is as provided for in Chapter 31B of the General Statutes.

(c1) The determination of whether a devisee has predeceased the testator shall be made as provided by Article 24 of Chapter 28A of the General Statutes.

(d) As used in this section, "devisee" means any person entitled to take real or personal property under the provisions of a will.

"§§ 31-42.1 through 31-42.2. Repealed by Session Laws 1965, c. 938, s. 2.

"§ 31-43. General gift by will an execution of power of appointment.

A general devise of the real estate of the testator, or of ~~his~~ the testator's real estate in any place or in the occupation of any person mentioned in the will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend, as the case may be, which ~~he~~ the testator may have power to appoint in any manner ~~he~~ the testator may think proper; and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property, described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend, as the case may be, which ~~he~~ testator may have power to appoint in any manner ~~he~~ the testator may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

"§ 31-44. Repealed by Session Laws 1951, c. 762, s. 2.

"§ 31-45: Rewritten and renumbered as G.S. 31-5.5 by Session Laws 1953, c. 1098, s. 7.

"§ 31-46. Validity of will; which laws govern.

A will is valid if it meets the requirements of the applicable provisions of law in effect in this State either at the time of its execution or at the time of the death of the testator.

"§ 31-46.1. Construction of certain formula clauses applicable to estates of decedents dying in calendar year 2010.

(a) Purpose. – The federal estate tax and generation-skipping transfer tax expired January 1, 2010, for one year. To carry out the intent of decedents in the construction of wills and trusts and to promote judicial economy in the administration of trusts and estates, this section construes certain formula clauses that reference federal estate and generation-skipping transfer tax laws and that are used in wills or codicils of decedents who die in or before calendar year 2010.

(b) Applicability. – This section applies to the following:

(1) To a will or codicil executed by a decedent before December 31, 2009, that contains a formula provision described in subsection (c) of this section if the decedent dies after December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax, unless the will or codicil clearly manifests an intent that a rule contrary to the rule of construction described in subsection (c) of this section applies.

(2) To the terms of a will or codicil executed by a decedent who dies before December 31, 2009, providing for a disposition of property that contains a formula provision described in subsection (c) of this section and occurs as a result of the death of another individual who dies after December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax, unless the terms of the will or codicil clearly manifests an intent that a rule contrary to the rule of construction described in subsection (c) of this section applies.

(c) Construction. – A will or codicil subject to this section is considered to refer to the federal estate and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009, if the will or codicil contains a formula that meets one or more of the following conditions:

(1) The formula refers to any of the following: "applicable credit amount," "applicable exclusion amount," "applicable exemption amount," "applicable

fraction," "estate tax exemption," "generation-skipping transfer tax exemption," "GST exemption," "inclusion ratio," "marital deduction," "maximum marital deduction," "unified credit," or "unlimited marital deduction."

(2) The formula measures a share of an estate or trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer taxes.

(3) The formula is otherwise based on a provision of federal estate tax or federal generation-skipping transfer tax law similar to the provisions in subdivision (1) or (2) of this subsection.

(d) Judicial Determination. – The personal representative or an affected beneficiary under a will or testamentary trust may bring an action in the superior court division of the General Court of Justice under Article 26 of Chapter 1 of the General Statutes, and the trustee of a trust created under the will or an affected beneficiary under the trust may bring a proceeding as permitted under Article 2 of Chapter 36C of the General Statutes to determine whether the decedent intended that the references under subsection (c) of this section be construed with respect to the federal law as it existed after December 31, 2009. The action must be commenced within 12 months following the death of the decedent.

"Article 8.

"Testamentary Additions to Trusts.

"§ 31-47. Testamentary additions to trusts.

(a) A will may validly devise property to:

(1) The trustee of a trust established before the testator's death by the testator, by the testator and some other person, or by some other person, including a trust authorized by G.S. 36C-4-401.1; or

(2) The trustee of a trust to be established at the testator's death, if the trust is identified in the testator's will and its terms are set forth in a written instrument executed before or concurrently with the execution of the testator's will, regardless of the existence, size, or character of the corpus of the trust during the testator's lifetime.

The devise is not invalid because the trust is amendable or revocable, or because the trust instrument or any amendment thereto was not executed in the manner required for wills, or because the trust was amended after the execution of the testator's will or after the testator's death. A revocable trust to which property is first transferred under subdivision (2) of this subsection is an inter vivos trust and not a testamentary trust and, as of the date of the execution of the trust instrument, is subject to Article 6 of Chapter 36C of the General Statutes.

(b) Unless the testator's will provides otherwise, property devised to the trustee of a trust described in subsection (a) of this section is not held under a testamentary trust of the testator, but it becomes a part of the trust to which it is devised, and shall be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

(c) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

(d) A devise to a trust shall be construed as a devise to the trustee of that trust.

(e) For purposes of this section, "devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

(f) Nothing in this section alters, amends, or in any manner affects the application of the doctrine of acts of independent significance.

"Article 9.

"Incorporation by Reference; Acts of Independent Significance.

"**§ 31-51. Incorporation by reference.**

A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

"**§ 31-52. Acts and events of independent significance.**

A will may dispose of property by reference to acts and events that have significance apart from their effect upon the disposition made by the will, whether they occur before or after the execution of the will or before or after the testator's death. These acts and events may include the execution or revocation of another individual's will and the safekeeping of items in a secured depository.

SECTION 9. G.S. 31B-1.2 reads as rewritten:

"**§ 31B-1.2. Right of fiduciary to institute a proceeding for review of renunciation.**

(a) Prior to renouncing, if a fiduciary so elects, the fiduciary may institute a proceeding by petition before the clerk of court for a determination as to whether a renunciation would be compatible with the fiduciary's duties. ~~Commencement~~ In the case of a trustee, commencement of the proceeding, jurisdiction, venue, parties, representation, and notice shall be governed by Chapter 36C of the General Statutes. In the case of a personal representative, commencement of the proceeding, jurisdiction, venue, parties, representation, and notice shall be governed by Chapter 28A of the General Statutes. In addition to any other notice requirements, notice of the proceeding shall be given to all persons entitled to delivery of a copy of an instrument of renunciation under G.S. 31B-2.1.

(b) After renouncing, if a fiduciary so elects, the fiduciary has a right to institute a declaratory judgment action pursuant to Article 26 of Chapter 1 of the General Statutes for a determination as to whether the renunciation is compatible with the fiduciary's duties. In addition to any other notice requirements, notice of the action shall be given to all persons entitled to delivery of a copy of an instrument of renunciation under G.S. 31B-2.1.

(c) A proceeding or action instituted under this section shall comply with all of the following:

(1) The petition or complaint shall state the basis for the fiduciary's allegation that the renunciation is compatible with the fiduciary's duties, considering among other things the intended purposes of the trust or other instrument and the impact of the renunciation on beneficiaries and potential beneficiaries. A petition or complaint filed by a trustee of a charitable trust shall contain a statement that a copy of the petition or complaint is being provided to the Attorney General.

(2) After considering among other things the intended purposes of the trust or other instrument and the impact of the renunciation on beneficiaries and potential beneficiaries, the court shall enter an order stating the court's determination as to whether the renunciation is compatible with the fiduciary's duties.

(d) The effectiveness of a renunciation is not affected by a determination under this section that the renunciation is not compatible with a fiduciary's duties."

SECTION 10. G.S. 32A-20(b) reads as rewritten:

"(b) Except for purposes of exercising authority granted by a health care power of attorney with respect to anatomical gifts, autopsy, or disposition of remains as provided in G.S. 32A-19(b), a health care power of attorney is revoked by the death of the principal. A health care power of attorney may be revoked by the principal at any time, so long as the principal is capable of making and communicating health care decisions. The principal may exercise this right of revocation by executing and acknowledging an instrument of revocation, by executing and acknowledging a subsequent health care power of attorney, or in any other manner by which the principal is able to communicate an intent to revoke. This revocation

becomes effective only upon communication by the principal to each health care agent named in the revoked health care power of attorney and to the principal's attending physician or eligible psychologist. For purposes of exercising authority described in G.S. 32A-19(b), however, a health care power of attorney shall be effective following the death of the principal without regard to the principal's understanding or capacity when the principal was living."

SECTION 11. G.S. 36C-2-205(d) reads as rewritten:

"(d) Extensions of Time. – The clerk of superior court, for cause shown at any time in the clerk's discretion, with or without motion or notice, may enter an order enlarging the period of time within which an act is required or permitted by this Article, by any applicable Rules of Civil Procedure or by order of the court, if the request is made before the expiration of the period originally prescribed, but not to exceed 10 days, ~~nor more than once.~~ except to the extent that the court finds the justice requires that the time be enlarged for a period of greater than 10 days. Upon motion made after the expiration of the specified period, the clerk of superior court may permit the act where the failure to act was the result of excusable neglect. Notwithstanding any other provision of this subsection, the parties to a proceeding may enter into binding stipulations, without approval of the clerk of superior court, enlarging the time within which an act is required or permitted by this Article, by any applicable Rules of Civil Procedure or by order of the court, not to exceed 30 days."

SECTION 12. G.S. 36C-2-205(e) reads as rewritten:

"(e) Rules of Civil Procedure. – Unless the clerk of superior court otherwise directs, G.S. 1A-1, Rules 4, 5, 6(a), 6(d), 6(e), 18, 19, 20, 21, 24, ~~and 45~~ 45, 56, and 65 of the Rules of Civil Procedure shall apply to trust proceedings. Upon motion of a party or the clerk of superior court, the clerk may further direct that any or all of the ~~following~~ remaining Rules of Civil ~~Procedure~~ Procedure, shall ~~apply: Rules 15, 16, 17, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37;~~ apply, including, without limitation, discovery rules; however, nothing in Rule 17 requires the appointment of a guardian ad litem for a party represented except as provided under ~~G.S. 36C-3-305.~~ G.S. 36C-2-206. In applying these Rules to a trust proceeding pending before the clerk of superior court, the term "judge" shall be construed as "clerk of superior court."

SECTION 13. G.S. 36C-6-604 reads as rewritten:

"**§ 36C-6-604. Limitation on action contesting validity of revocable trust; distribution of trust property.**

(a) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

(1) Three years after the settlor's death; or

(2) 120 days after the trustee sent the person a copy of the trust instrument and ~~a notice~~ written notice pursuant to G.S. 1A-1, Rule 14 of the Rules of Civil Procedure, informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

(b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

(1) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(2) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust, and a judicial proceeding is commenced within 60 days after the contestant sent the notification.

(c) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received."

SECTION 14. This act becomes effective January 1, 2012, and applies to estates of decedents dying on or after that date.

SENATE BILL 432: Revise Probate Code

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 19, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition S432-CSRN-7		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 432 would amend the provisions of the probate code, would define the jurisdiction of the clerk of superior court consistent with the provisions of the Uniform Trust Code, would recodify provisions relating to the probate of wills, and would update the procedure for claiming spousal and children's allowances. The Proposed Committee Substitute (1) clarifies that a clerk can transfer an estate proceeding to the superior court trial division up to the first hearing date, (2) clarifies that clerks are not required rule on the validity of contingent and unliquidated claims, and (3) deletes Section 9 of the First Edition which would have provided that controversies arising under Chapter 31A are to be determined as estate proceedings under G.S. 28A-2-4, but that persons could file actions for declaratory relief.***

BILL ANALYSIS: The PCS for Senate Bill 432 does all of the following:

- Provides that G.S. 1-301.3 applies to the administration of trusts (was, testamentary trusts) and of estates of decedents, incompetents and minors. Provides that a party wishing to appeal an order or judgment by the clerk may file a written notice of appeal containing a short and plain statement of the basis for the appeal (was, required written notice to specify the basis for the appeal) within ten days of the entry of the order or judgment after service of the order on that party. Provides that in an appeal to superior court, if the record is insufficient, the judge of superior court may receive additional evidence on the factual (was evidentiary) issue in question.
- Amends G.S. 7A-307 to add estate proceedings to the list of those whose costs are assessed under this section. Adds that the cost assessed for the filing of a caveat to a will is $200. Provides that the only cost assessed with reopening an estate administration is forty cents per $100, or major fraction, of any additional gross estate, including income, coming into the hands of the fiduciary after the estate is reopened; caps the total cost assessed, including the total cost assessed in all previous administrations of the estate, at $6,000.
- Recodifies portions of the General Statutes.
- Expands the definitions under G.S. 28A-1-1.
- Enacts new G.S. 28A-2-4 providing that the clerks of superior court of North Carolina, as ex-officio judges of probate, have original jurisdiction of estate proceedings. Provides types of estate proceedings under the subject matter jurisdiction of the clerk of superior court. Also provides criteria regarding the transfer of an estate proceeding to superior court. Provides that nothing in this section affects a person's right to file an action in the Superior Court for declaratory relief under Article 26, G.S. Chapter 1. Provides additional specifications regarding requests for declaratory relief and motions for a transfer of proceedings to superior court. Declares that the clerk of superior court does not have jurisdiction of (1) actions by or against creditors or debtors of an estate except as provided in Article 19 of G.S. Chapter 28A; (2) actions involving claims for monetary damages; (3) caveats, except as provide under GS 31-36; (4) proceedings to determine venue; and (5) recovery of property transferred or conveyed by a

decedent with the intent to hinder, delay, or defraud creditors, pursuant to G.S. 28A-15-10(b). Enacts new G.S. 28-2-5 to provide that the clerk of superior court has jurisdiction over special proceedings and that nothing in the statute is to be construed as limiting the jurisdiction of the clerk of superior court in special proceedings.

- Enacts new G.S. 28A-2-6. Provides directives for the commencement of contested and uncontested estate proceedings. Additionally, provides directives regarding pleadings, extensions of time, consolidation of an estate proceeding and a civil action involving a common question of law or fact, joinder of claims, and providing notice of transfer. Provides that unless otherwise directed by the clerk of superior court, the listed Rules of Civil Procedure apply to estate proceedings. Also provides that the clerk may further direct that any or all of the remaining rules apply.
- Enacts additional new statutory provisions regarding representation of parties (G.S. 28A-2-7), waiver of notice (G.S. 28A-2-8), appeals of estate proceedings and special proceedings (G.S. 28A-2-9), and approval of family settlement agreements by the clerk (G.S. 28A-2-10).

The act makes the following changes to new Article 2A of G.S. Chapter 28A.

- Authorizes the clerk of superior court to shorten the initial 60-day period during which the executor may apply to have the will proved, if good cause is shown. Enacts new GS 28A-2A-7 to provide that a person entitled to apply for probate of a will may file a petition for probate of the will in solemn form, and the matter will proceed as an estate proceeding governed by Article 2 of G.S. Chapter 28A. Provides directives regarding probate of a will in solemn form and regarding contesting the validity of a will by an interested party.
- Administration of Decedents' Estates. Amends G.S. 28A-3-2 to provide that any interested person may file a petition to determine the proper venue for the administration of the estate.
- Amends G.S. 28A-5-1 regarding the implied renunciation by a named or designated executor, providing the procedures to be followed should a person named or designated as an executor fail to qualify or renounce the office of executor within 30 days after the will has been admitted to probate. Amends G.S. 28A-5-2 regarding the implied renunciation of the right to administer an estate by a person entitled to apply for letters of administration, providing the procedures to be followed should a person so entitled fail to apply for letters of administration within 30 days from the date of death of the intestate decedent. Amends both G.S. 28A-5-1 and G.S. 28A-5-2 to delete provision authorizing the clerk of superior court to issue a citation against a person who has failed to qualify or renounce to show cause that the person should not be determined to have renounced the office of executor; instead provides for the clerk of superior court to issue a notice to that person to qualify or move for an extension of time to qualify within 15 days. Also provides that any interested person may file a petition in accordance with Article 2 of G.S. Chapter 28A seeking an order finding that the person be deemed to have renounced the office of executor.
- Amends G.S. 28A-6-1 to provide that the clerk of superior court may rely on the following as evidence of death: (1) a certified or authenticated copy of a death certificate purported to be issued by an official or agency of the place where the death purportedly occurred, (2) a certified or authenticated copy of any record or report of a domestic or foreign governmental agency evidencing the date of death, (3) a certificate or authenticated copy of medical records evidencing the date of death, or (4) any other evidence that clerk of superior court deems sufficient to confirm the date of death.

- Amends G.S. 28A-6-2 to provide that letters of administration or testamentary letters may be issued without notice including upon a finding of implied renunciation. Provides that all persons entitled to an equal or higher preference for appointment than an applicant who is not entitled to a priority of appointment under G.S. 28A-4-1 are to be given 15 days prior written notice of the application of the person who is not entitled to a priority of appointment, unless the persons with an equal or higher preference have renounced.
- Amends G.S. 28A-6-4 to clarify that before letters of administration or letters testamentary are issued, any interested person may by written petition (was, objection), filed with the clerk of superior court and served on interested persons as directed by the clerk of superior court, contest the issuing of letters of administration or letters testamentary to a person who is otherwise entitled to apply for the letters. Directs the clerk to conduct a hearing to determine to whom the letters are to be issued and provides that an appeal from the order may be taken as in an estate proceeding under G.S. 1-301.3.
- Amends G.S. 28A-8-1 to provide that no bond is required for a personal representative who is a trust institution licensed under G.S. 53-159 (was, a national banking association having its principal place of business in this state or a state bank acting under G.S. 53-159).
- Amends G.S. 28A-8-3 to provide that upon receipt of a verified petition filed by an interested party requesting modification of bond requirements, the clerk of superior court is to conduct a hearing in accordance with Article 2 of G.S. Chapter 28A (was, required the clerk to issue a citation requiring the personal representative to show cause why the bond should not be modified). Amends G.S. 28A-8-4 to provide that if any personal representative fails to comply with an order by the clerk regarding additional bond or new bond within the time specified in the order (not less than five days or more than 15 days), the clerk is to proceed as provided in G.S. 28A-9-2.
- Amends G.S. 28A-8-5 to direct the clerk conduct a hearing under Article 2 of G.S. Chapter 28A upon verified petition from any surety, on the bond of a personal representative, who is in danger of loss of the surety's suretyship. Amends subsection (b) of G.S. 28A-9-1 to allow the clerk to conduct a hearing, on the clerk's own motion or upon the verified petition of any person interested in the estate, to determine if any of the grounds for revocation of letters of administration, letters testamentary, or letters of collection as indicated in subsection (a) of this section exist. Amends G.S. 28A-9-4 and G.S. 28A-10-6 to clarify that (1) an appeal from the order of the clerk granting or denying revocation and (2) an appeal from an order of the clerk denying or allowing the resignation of a personal representative are special proceedings pursuant to G.S. 28A-2-9(b). Authorizes the clerk to issue a stay of an order of revocation or of an order allowing resignation upon the appellant posting an appropriate bond set by the clerk until such time as the cause is heard and determined upon appeal.
- Amends G.S. 28A-13-3. Current law requires a personal representative to petition the clerk to obtain an order authorizing the personal representative's custody, control, or possession over real property of the estate. Makes an exception for real property that is given to the personal representative in the deceased person's will, or real property to which the personal representative acquires title during the administration of the estate, providing that the personal representative is immediately entitled to custody, possession, and control of real property meeting this exception and may institute an estate proceeding under subsection (d) of this section to enforce those rights. Subsection (d) provides that the personal representative may institute an estate proceeding under Article 2 of G.S. Chapter 28A. Also provides that if the real property is occupied by a tenant or

lessee, the personal representative may seek ejectment of the tenant or lessee only through the summary ejectment provisions of Article 3 of G.S. Chapter 42.

- Amends G.S. 28A-13-6(c1), deletes "trust" and substitutes "estate." Deletes subsection (a) and replaces it with subsection (a1) providing that a personal representative or collector has the right to sue in superior court to recover any property of any kind that belongs to the estate of the decedent and is entitled to provisional remedies as provided for under Subchapter 13 of Chapter 1. Also deletes subsection (b) and replaces it with subsection (b1) providing a personal representative, collector, or any interested person has the right to file a verified petition to institute an estates proceeding for examination of any persons reasonably believed to be in possession of property of any kind belonging to the decedent's estate and to make a demand for the recovery of that property.
- Amends G.S. 28A-19-1 to provide that in a pending legal action against the decedent at the time of the decedent's death, which survives the decedent's death, the court may order, on motion, the substitution of the personal representative or collector for the decedent and that motion will constitute the presentation of a claim providing that the substitution occurs within the time specified for the presentation of claims under G.S. 28A-19-3.
- Amends G.S. 28A-19-3 to clarify that except as otherwise specifically provided in this section, the limitations on presentation of claims set out in this section apply to claims by the State of North Carolina, its subdivisions, and its agencies.
- Amends G.S. 28A-19-5 providing that the clerk may provide for the payment of contingent and unliquidated claims via transfer of a petition filed under subsection (b) of G.S. 28A-19-5 to the superior court trial division for a determination of the validity or priority of the claim. Clarifies that clerks are not required to rule on the validity of contingent and unliquidated claims.
- Amends G.S. 28A-19-8 to provide that funeral expenses of a decedent advanced by a health care agent exercising authority are considered as an obligation of the estate regardless as to whether or not a personal representative of the estate has been appointed at the time the expenses are incurred. Amends GS 28A-19-9 to authorize a decedent's health care agent duly appointed under Article 3 of G.S. Chapter 32A to purchase a gravestone and provide a suitable burial place and receive reimbursement for the expenses incurred subject to the monetary limitations and procedures contained in this section. Amends GS 28A-19-16 to provide that a claimant must begin an action for recovery with regards to a claim that is presented and rejected within three months of receiving written notice of the rejection (was, after due notice in writing or after some part of claim becomes due). Provides that in the cares of a contingent or unliquidated claim, the claimant must file a petition for an order from the clerk pursuant to GS 23A-19-5(b).
- Amends G.S. 28A-21-2 to provide that absent an extension by the clerk of the time for filing the final account the personal representative or collector must file the final account for settlement within one year after qualifying or within six months after receiving a state estate or inheritance tax release, or in the time period for filing an annual account under G.S. 28A-21-1, whichever is later.
- Enacts new G.S. 28A-21-6 to provide that the personal representative or collector may give written notice of a proposed final account to all devises of the estate in the case of a will, and to all heirs of the state when the decedent was without a will, indicating the date and place of the filing of the final account. Provides guidelines regarding the permissive notice of final accounts.

- Amends G.S. 28A-23-1 to direct the clerk, upon reviewing and approving the personal representative's or collector's final account, to enter an order discharging the personal representative or collector from further duties and liabilities (was, liabilities), including those set out in Article 13 of G.S. Chapter 28A. Prohibits the discharge order from including a release or discharge of liability for any breach of duty by a personal representative or collector as set forth in G.S. 28A-13-10(c).
- Amends G.S. 28A-25-1 regarding the collection of property through use of an affidavit when the decedent dies intestate. Provides that when the person collecting the property by affidavit is the surviving spouse and only heir of the decedent, and not disqualified under GS 28A-4-2, the property that may be collected under this section may be more than $20,000 in value but may not exceed $30,000 in value, after reduction for any spousal allowance paid to the surviving spouse under G.S. 30-15.
- Makes conforming and clarifying changes to Chapter 28A.
- Intestate Succession. Enacts new G.S. 29-12.1 to provide that controversies arising under Chapter 29 are to be determined as an estate proceeding under Article 2 of G.S. Chapter 28A except for controversies arising under Article 8 of G.S. Chapter 29 (Election to Take Life Interest in Lieu of Intestate Share), which are to be determined as set out in G.S. Chapter 29. Amends G.S. 29-30 to provide that when a surviving spouse of an intestate decedent elects to take a life estate in the dwelling house and the value of that life estate is less than one-third in value of all the real estate, the surviving spouse may elect to take a life estate in other real estate of the intestate decedent so as to make the aggregate life estate of the surviving spouse equal to a life estate that is one-third in value of all the real estate. Provides that the election of the surviving spouse to tale a life estate in one-third value of all the real estate of the decedent is to be made by the filing of a petition (was filing of a notice) in accordance with Article 2 of G.S. Chapter 28A with the clerk of superior court in the appropriate county. Also lists applicable time periods for making the election and requires that the election be made before the shorter of the applicable time periods. Directs that no provisions in subsection (c) of GS 29-30 extends the time period for a surviving spouse to petition for an elective share under Article 1A of G.S. Chapter 30. Provides for service of the petition in accordance with GS 1A-1, Rule 4.
- Provides that the rules of procedure relating to partition proceedings under Chapter 46 apply to the election and procedure to allot and set apart the life estate, except to the extent they would be inconsistent with the provisions of this section. Provides that a determination of the life estate under this section may be appealed in accordance with GS 1-301.3.
- Amends G.S. 30-3.4 to provide that an elective share proceeding is an estate proceeding and is to be conducted under the procedures of Article 2 of GS Chapter 28A (was, an estate matter to be conducted under GS 1-301.3).
- Year's Allowance. Amends G.S. 30-17 regarding surviving children who are entitled to an allowance to delete reference to the authority of the guardian or next friend acting on behalf of the child and replacing it with simply, guardian. Current law provides that the clerk or on assignment by the clerk, the magistrate of the county in which administration was granted or the will was probated is to ascertain the value of the personal property from which the allowance is assigned. Provides for a right of appeal from the assignment by filing a copy of the assignment and a notice of appeal within 10 days after the assignment, and directs that the appeal is to be heard as provided in G.S. 1-301.2 at the next available session of superior court. Deletes

provision requiring the appellant to file a copy of the assignment with the clerk and a statement of the appellant's exceptions and declaring that the issues will be decided de novo.

- Amends G.S. 30-27 to provide that a surviving spouse or child may apply to superior court after specified conditions are met and within one year after the decedent's death to have a year's support assigned at an amount other than prescribed in G.S. 30-15 (when spouse entitled to allowance) and G.S. 30-17 (when children entitled to an allowance). Provides for the nature of the proceedings (G.S. 30-28) requiring that application be by petition in a special proceeding before the clerk of superior court and specifies persons to be made parties to the special proceeding, including all known creditors, heirs, and devisees. Makes conforming changes to G.S. 30-29 replacing complaint with petition and plaintiff with petitioner. Provides that the clerk is to hear the matter and determine if the petitioner is entitled to the relief sought (G.S. 30-30). Provides that any judgment rendered in favor of the petitioner is subject to the same priority over other debts and claims against the estate as an allowance assigned under G.S. 30-15 or G.S. 30-17. Amends GS 30-31 to provide that the clerk may assign a value sufficient for the support of the petitioner to the petitioner. Amends GS 30-31.1 to require the petitioner to serve the clerk's judgment on all other parties and requires the judgment to be filed in the estate file of the deceased. Provides that any aggrieved party may appeal the judgment under GS 1-301.2. Provides that if the judgment is not appealed that the judgment is to be executed. Makes additional conforming changes.

- Wills. Provides that GS 31-12 through GS 31-31.2 are recodified as Article 2A of GS Chapter 28A by Section 3 of this act. Amends GS 31-32 as follows. Declares that if any person who is entitled to file a caveat is within the age of 18 years, or incompetent then that person may file a caveat within three years after the removal of the disability. Requires the caveat to be placed in the decedent's estate file and directs the clerk to give notice of the filing by making an entry on the page of the will book where the will is recorded that includes the date of the filing. Provides that if a will has been probated in solemn form under GS 28A-2A-7, any party that was properly served in that probate in solemn form is prohibited from filing a caveat.

- Amends GS 31-33 as follows. Directs the clerk to transfer the cause to superior court upon the filing of a caveat. Requires service of the caveat on all interested parties in accordance with GS 1A-1, Rule 4 of the Rules of Civil Procedure (Rules), after which the caveator is responsible for causing notice of hearing to be served on all parties in accordance with Rule 5. Provides that at the alignment hearing, all of the interested parties who wish to be aligned are to appear in court and be aligned by the court as parties with the caveator or parties with the propounders of the will. Directs the judge to dismiss from the proceeding an interested party who does not appear to be aligned or chooses not to be aligned. Deletes provisions requiring that the caveator and all interested parties who wish to be aligned by the court as parties in the action to file bond as directed by the court. Provides that the court, upon motion of an aligned party, may require a caveator to provide security in an amount determined by the court. Provides that the court is to consider relevant facts related to the need for a bond and the amount of any bond. Permits any interested party who was aligned to file a responsive pleading to caveat within 30 days following the entry of an order aligning the parties. Provides that failure to respond to any claim or averment of the caveat is not deemed to be an admission. Provides that an extension of time to file a responsive pleading may be granted as provided by Rule 6 of the Rules.

- Current law provides that questions regarding the use, location, and disposition of assets that cannot be resolved by the parties are to be decided by the clerk. Amends G.S. 31-36 to provide that decisions of the clerk may be appealed to superior court.

- Amends G.S. 31-37.1 to clarify that a settlement agreement entered into by the parties must be approved by the superior court and the judgment entered by the court. Provides that the consent of parties that are not aligned as prescribed in G.S. 31-33 is not necessary for a settlement agreement under this section. Requires the clerk to file a copy of the judgment entered by the superior court in a caveat proceeding in the estate file and to make an entry on the page of the will book where the will is recorded declaring that the final judgment has been entered either sustaining or setting aside the will (was, contested will) (this provision was previously codified in GS 31-37).
- Makes conforming changes deleting GS 31-34 and GS 31-37.
- Current law provides a fiduciary may institute a proceeding for review of renunciation. Amends GS 31B-1.2 to provide that if the fiduciary is a trustee, the proceeding is governed by GS Chapter 36C; however, if the fiduciary is a personal representative, then the proceeding is governed by GS Chapter 28A.
- Amends GS 32A-20(b) to provide that a health care power of attorney is effective following the death of the person granting the authority (principal) without regard to the principal's understanding or capacity when the principal was living for the purpose of exercising the authority described in GS 32A-19(b), which provides that a health care power of attorney may authorize the health care agent to exercise any and all rights the principal may have with respect to anatomical gifts, the authorization of any autopsy, and the disposition of remains.
- Amends GS 36C-2-205(d) to delete restriction that extensions of time not be granted more than once under Article 2 (Judicial Proceedings) of GS Chapter 36C and to provide that the court may enlarge an extension of time beyond 10 days if the court finds that justice requires that the time be extended beyond that time.
- Amends GS 36C-2-205(e) to add Rules 4, 56, and 65 to the list of Rules of Civil Procedure that apply to trust proceedings unless the clerk directs otherwise. Provides that the clerk may direct that any or all of the remaining Rules of Civil Procedure apply, including discovery rules.
- Amends GS 36C-6-604 to provide that the notice informing a person of the existence of a trust must be written notice pursuant to GS 1A-1, Rule 14 of the Rules of Civil Procedure.

EFFECTIVE DATE: The act is effective January 1, 2012, and applies to estates of decedents dying on or after that date.

S432-SMRN-26(CSRN-7) v6

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 432

(CSRN-7)

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

S432-ARN-6 [v.1]

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

Date April 19 ,2011

Senator Bam Brown

moves to amend the bill on page 8, line 42, by deleting the word "family".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. S-432-CSRN-7(v.2)

H. B. No. _____ DATE April 19, 2011

S. B. No. 432 Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X

Rep.)
(Sen.) Brown

1 moves to amend the bill on page 103, line 37
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the phrase "Rule 14" and
4 substituting the phrase "Rule 4".
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SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 434

Short Title:	Directed Trustee and Trust Protector.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary I.	

March 29, 2011

A BILL TO BE ENTITLED

AN ACT GOVERNING THE LIABILITY OF DIRECTED TRUSTEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 36C-8-808 reads as rewritten:

"**§ 36C-8-808. Powers ~~to direct.~~ of a person who is not a trustee to take certain actions with respect to the trust.**

(a) While a trust is revocable, the settlor of a revocable trust has, at all times, the power to direct or consent to the actions of the trustee whether or not the power is conferred upon the settlor by the terms of the trust. The trustee may follow a direction of the settlor that is not authorized by or is contrary to the terms of the trust, even if by doing so (i) the trustee exceeds the authority granted to the trustee under the terms of the trust, or (ii) the trustee would otherwise violate a duty the trustee owes under the trust. The trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with the direction. If the settlor requires the settlor's consent to certain actions of the trustee, and the settlor does not provide consent within a reasonable time after the trustee has made a timely request for the settlor's consent, the trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the trustee's failure to take any action that required the settlor's consent.

(b) ~~If the~~ The terms of a trust may confer upon a person other than the settlor of a revocable trust the power to ~~direct~~ take certain actions ~~of the trustee, the trustee must act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust, or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.~~ with respect to the trust, including, but not limited to, the power to do the following:

(1) Direct or consent to actions regarding the following:
   a. Investments, including retention, purchase, sale, exchange, or other transaction affecting the ownership of investments with respect to all or any one or more of the trust assets.
   b. Discretionary distributions of trust assets, including distributions to one or more beneficiaries, distribution of one or more trust assets, and termination of the trust by distribution of all of the trust assets.
   c. Any other matter regarding trust administration, including the transfer of the principal place of administration of the trust.

(2) Modify or amend the trust to do the following:
   a. Achieve favorable tax status under applicable law.

b. Take advantage of laws governing restraints on alienation or other State laws restricting the terms of the trust, distribution of trust property, or the administration of the trust.

(3) Remove and appoint trustees, advisors, trust committee members, and trust protectors.

(4) Increase or decrease the interests of any beneficiary.

(5) Grant a power of appointment to one or more beneficiaries of the trust or modify the terms of or terminate a power of appointment granted to a beneficiary by the governing instrument, except that a grant or modification of a power of appointment may not grant a beneficial interest to any of the following:

a. Any individual or class of individuals not specifically provided for in the trust instrument.

b. The person having the power to grant, modify, or terminate the power of appointment.

c. That person's estate or that person's creditors.

(6) Change the governing law of the trust.

(c) ~~The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.~~ When the terms of a trust confer upon a person described in subsection (b) of this section a power authorized in subsection (b) of this section, the duty and liability of the trustee is as follows:

(1) If the terms of a trust confer upon the person the power to direct certain actions of the trustee, the trustee must act in accordance with the direction and is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with the direction unless compliance with the direction constitutes intentional wrongdoing, not mere negligence or gross negligence on the part of the trustee.

(2) If the terms of the trust confer upon the person the power to consent to certain actions of the trustee, and the power holder does not provide consent within a reasonable time after the trustee has made a timely request for the power holder's consent, the trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the trustee's failure to take any action that required the power holder's consent.

(3) If the terms of the trust confer upon the person a power other than the power to direct or consent to actions of the trustee, the trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the exercise or nonexercise of the power.

(4) The trustee shall have no duty to monitor the conduct of the power holder, provide advice to the power holder; or consult with the power holder. The trustee is not required to give notice to any beneficiary of any action taken or not taken by the power holder whether or not the trustee agrees with the result. Administrative actions taken by the trustee for the purpose of implementing directions of the power holder, including confirming that the directions of the power holder have been carried out, do not constitute monitoring of the power holder nor do they constitute participation in decisions within the scope of the power holder's authority.

(d) A ~~person, other than a beneficiary,~~ person described in subsection (b) of this section, who holds a power to ~~direct~~ authorize under subsection (b) of this section is ~~presumptively~~ a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the ~~beneficiaries.~~ beneficiaries, except that if a beneficiary is a person with

a power authorized under subsection (b) of this section, the beneficiary is not a fiduciary with respect to the following:

(1) A power to remove and appoint a trustee.

(2) The power that constitutes a power of appointment.

(3) A power the exercise or nonexercise of which may affect only the interests of the beneficiary holding the power and no other beneficiary.

The holder of a power to direct authorized under subsection (b) of this section is liable for any loss that results from breach of a fiduciary ~~duty.~~ duty occurring as a result of the exercise or nonexercise of the power."

SECTION 2. G.S. 36C-7-703 is amended by adding a new subsection to read:

"(e1) If the terms of a trust confer upon a cotrustee, to the exclusion of another cotrustee, the power to take certain actions with respect to the trust, including the power to direct or prevent certain actions of the trustees, the following apply:

(1) The duty and liability of the excluded trustee is as follows:

a. If the terms of a trust confer upon the cotrustee the power to direct certain actions of the excluded trustee, the excluded trustee must act in accordance with the direction and is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with the direction unless compliance with the direction constitutes intentional wrongdoing, not mere negligence or gross negligence on the part of the directed cotrustee.

b. If the terms of the trust confer upon the cotrustee any other power, the excluded trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the action taken by the cotrustee.

c. The excluded trustee shall have no duty to monitor the conduct of the cotrustee, provide advice to the cotrustee, or consult with or request directions from the cotrustee. The excluded trustee is not required to give notice to any beneficiary of any action taken or not taken by the cotrustee whether or not the excluded trustee agrees with the result. Administrative actions taken by the excluded trustee for the purpose of implementing directions of the cotrustee, including confirming that the directions of the cotrustee have been carried out, do not constitute monitoring of the cotrustee nor do they constitute participation in decisions within the scope of the cotrustee's authority.

(2) Subject to the provisions of sub-subdivision a. of subdivision (1) of this subsection, the cotrustee holding the power to take certain actions with respect to the trust shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustee was not in office and shall have the exclusive obligation to account to and defend any action brought by the beneficiaries with respect to the exercise of the power."

SECTION 3. G.S. 32-72(d) reads as rewritten:

"(d) ~~Whenever an instrument reserves to the settlor or vests in any person, including an advisory or investment committee or one or more co-fiduciaries, the authority to direct the making or retention of any investment to the exclusion of the fiduciary or to the exclusion of one or more of several co-fiduciaries, the excluded fiduciary or co-fiduciary who has no discretion in selecting the person authorized to make or retain investments is not liable to the beneficiaries or to the trust for the decisions or actions of the settlor or other person authorized to direct the making or retention of investments. As used in this subsection, the term "person" includes an individual, a corporation, or any legal or commercial entity authorized to hold~~

~~property or do business in the State.~~ The following provisions apply to an instrument creating a fiduciary relationship other than a trust instrument to which Chapter 36C of the General Statutes applies and to a fiduciary other than a trustee:

(1) The terms of the instrument may confer upon a person the power to direct or consent to certain actions of the fiduciary with respect to the following:
  a. Investments, including retention, purchase, sale, exchange, or other transaction affecting the ownership of investments with respect to all or any one or more assets.
  b. Any other administrative matter.

(2) When the terms of the instrument confer upon a person the power to direct or consent to certain actions of the fiduciary, the duty and liability of the fiduciary are as follows:
  a. If the terms of the instrument confer upon the person the power to direct certain actions of the fiduciary, the fiduciary must act in accordance with the direction and is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with the direction unless compliance with the direction constitutes intentional wrongdoing, not mere negligence or gross negligence on the part of the fiduciary.
  b. If the terms of the instrument confer upon a person the power to consent to certain actions of the fiduciary, and the power holder does not provide consent within a reasonable time after the fiduciary has made a timely request for the power holder's consent, the fiduciary is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the fiduciary's failure to take any action that required the power holder's consent.
  c. The fiduciary shall have no duty to monitor the conduct of the power holder, provide advice to the power holder, or consult with the power holder. The fiduciary is not required to give notice to any beneficiary of any action taken or not taken by the power holder whether or not the fiduciary agrees with the result. Administrative actions taken by the fiduciary for the purpose of implementing directions of the power holder, including confirming that the directions of the power holder have been carried out, do not constitute monitoring of the power holder or other participation in decisions within the scope of the power holder's authority.

(3) A person who holds a power to direct or consent is a fiduciary who, as such, is required to act in good faith with regard to the purposes of the estate, or other relationship between the fiduciary and beneficiaries, and the interests of the beneficiaries, except that if a beneficiary is a person with a power to direct or consent, the beneficiary is not a fiduciary with respect to the following:
  a. A power that constitutes a power of appointment.
  b. A power the exercise or nonexercise of which affects only the interests of the beneficiary holding the power and no other beneficiary.

The holder of the power to direct or consent is liable for any loss that results from breach of a fiduciary duty occurring as a result of the exercise or nonexercise of the power."

SECTION 4. This act becomes effective October 1, 2011, and applies to trusts and other instruments created before, on, or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 434
PROPOSED COMMITTEE SUBSTITUTE S434-CSTG-11 [v.2]

4/18/2011 4:06:08 PM

Short Title: Directed Trustee and Trust Protector. (Public)

Sponsors:

Referred to:

March 29, 2011

A BILL TO BE ENTITLED

AN ACT GOVERNING THE LIABILITY OF DIRECTED TRUSTEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 36C-8-808 reads as rewritten:

"**§ 36C-8-808. Powers ~~to direct.~~ of a person who is not a trustee to take certain actions with respect to the trust.**

(a) While a trust is revocable, the settlor of a revocable trust has, at all times, the power to direct or consent to the actions of the trustee whether or not the power is conferred upon the settlor by the terms of the trust. The duty and liability of the trustee subject to the direction and consent of the settlor is as follows:

(1) The trustee may follow a direction of the settlor that is not authorized by or is contrary to the terms of the trust, even if by doing so (i) the trustee exceeds the authority granted to the trustee under the terms of the trust, or (ii) the trustee would otherwise violate a duty the trustee owes under the trust.

(2) The trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with the direction. If the settlor requires the settlor's consent to certain actions of the trustee, and the settlor does not provide consent within a reasonable time after the trustee has made a timely request for the settlor's consent, the trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the trustee's failure to take any action that required the settlor's consent.

(b) ~~If the~~ The terms of a trust may confer upon a person ~~other than the~~ who is not a trustee or a settlor of a revocable trust the power to ~~direct~~ take certain actions ~~of the trustee, the trustee must act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust, or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.~~ with respect to the trust, including, but not limited to, the power to do the following:

(1) Direct or consent to actions regarding the following:

a. Investments, including retention, purchase, sale, exchange, or other transaction affecting the ownership of investments with respect to all or any one or more of the trust assets.

b. Discretionary distributions of trust assets, including distributions to one or more beneficiaries, distribution of one or more trust assets, and termination of the trust by distribution of all of the trust assets.

c. Any other matter regarding trust administration, including the transfer of the principal place of administration of the trust.

(2) Modify or amend the trust to do the following:

a. Achieve favorable tax status under applicable law.

b. Take advantage of laws governing restraints on alienation or other State laws restricting the terms of the trust, distribution of trust property, or the administration of the trust.

(3) Remove and appoint trustees, advisors, trust committee members, and trust protectors.

(4) Increase or decrease the interests of any beneficiary.

(5) Grant a power of appointment to one or more beneficiaries of the trust or modify the terms of or terminate a power of appointment granted to a beneficiary by the governing instrument, except that a grant or modification of a power of appointment may not grant a beneficial interest to any of the following:

a. Any individual or class of individuals not specifically provided for in the trust instrument.

b. The person having the power to grant, modify, or terminate the power of appointment.

c. That person's estate or that person's creditors.

(6) Change the governing law of the trust.

(c) ~~The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.~~ When the terms of a trust confer upon a person described in subsection (b) of this section a power authorized under subsection (b) of this section, the duty and liability of the trustee is as follows:

(1) If the terms of a trust confer upon the person the power to direct certain actions of the trustee, the trustee must act in accordance with the direction and is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with the direction unless compliance with the direction constitutes intentional wrongdoing, not mere negligence or gross negligence on the part of the trustee.

(2) If the terms of the trust confer upon the person the power to consent to certain actions of the trustee, and the power holder does not provide consent within a reasonable time after the trustee has made a timely request for the power holder's consent, the trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the trustee's failure to take any action that required the power holder's consent.

(3) If the terms of the trust confer upon the person a power other than the power to direct or consent to actions of the trustee, the trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the exercise or nonexercise of the power.

(4) The trustee shall have no duty to monitor the conduct of the power holder, provide advice to the power holder, or consult with the power holder. The trustee is not required to give notice to any beneficiary of any action taken or not taken by the power holder whether or not the trustee agrees with the result. Administrative actions taken by the trustee for the purpose of implementing directions of the power holder, including confirming that the directions of the power holder have been carried out, do not constitute monitoring of the power holder nor do they constitute participation in decisions within the scope of the power holder's authority.

(d) A ~~person, other than a beneficiary,~~ person described in subsection (b) of this section, who holds a power ~~to direct~~ authorized under subsection (b) of this section is ~~presumptively~~ a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the ~~beneficiaries.~~ beneficiaries, except that if a beneficiary is a person with a power authorized under subsection (b) of this section, the beneficiary is not a fiduciary with respect to the following:

(1) A power to remove and appoint a trustee.

(2) The power that constitutes a power of appointment.

(3) A power the exercise or nonexercise of which may affect only the interests of the beneficiary holding the power and no other beneficiary.

The holder of a power to direct authorized under subsection (b) of this section is liable for any loss that results from breach of a fiduciary ~~duty.~~ duty occurring as a result of the exercise or nonexercise of the power."

SECTION 2. G.S. 36C-7-703 is amended by adding a new subsection to read:

"(e1) If the terms of a trust confer upon a cotrustee, to the exclusion of another cotrustee, the power to take certain actions with respect to the trust, including the power to direct or prevent certain actions of the trustees, the following apply:

(1) The duty and liability of the excluded trustee is as follows:

a. If the terms of a trust confer upon the cotrustee the power to direct certain actions of the excluded trustee, the excluded trustee must act in accordance with the direction and is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with the direction unless compliance with the direction constitutes intentional wrongdoing, not mere negligence or gross negligence on the part of the directed cotrustee.

b. If the terms of the trust confer upon the cotrustee any other power, the excluded trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the action taken by the cotrustee.

c. The excluded trustee shall have no duty to monitor the conduct of the cotrustee, provide advice to the cotrustee, or consult with or request directions from the cotrustee. The excluded trustee is not required to give notice to any beneficiary of any action taken or not taken by the cotrustee whether or not the excluded trustee agrees with the result. Administrative actions taken by the excluded trustee for the purpose of implementing directions of the cotrustee, including confirming that the directions of the cotrustee have been carried out, do not constitute monitoring of the cotrustee nor do they constitute participation in decisions within the scope of the cotrustee's authority.

(2) Except as otherwise provided in sub-subdivision a. of subdivision (1) of this subsection, the cotrustee holding the power to take certain actions with respect to the trust shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustee was not in office and shall have the exclusive obligation to account to and defend any action brought by the beneficiaries with respect to the exercise of the power."

SECTION 3. G.S. 32-72(d) reads as rewritten:

"(d) ~~Whenever an instrument reserves to the settlor or vests in any person, including an advisory or investment committee or one or more co-fiduciaries, the authority to direct the making or retention of any investment to the exclusion of the fiduciary or to the exclusion of one or more of several co-fiduciaries, the excluded fiduciary or co-fiduciary who has no~~

~~discretion in selecting the person authorized to make or retain investments is not liable to the beneficiaries or to the trust for the decisions or actions of the settlor or other person authorized to direct the making or retention of investments. As used in this subsection, the term "person" includes an individual, a corporation, or any legal or commercial entity authorized to hold property or do business in the State.~~ The following provisions apply to an instrument creating a fiduciary relationship other than a trust instrument to which Chapter 36C of the General Statutes applies and to a fiduciary other than a trustee:

(1) The terms of the instrument may confer upon a person the power to direct or consent to certain actions of the fiduciary with respect to the following:
   a. Investments, including retention, purchase, sale, exchange, or other transaction affecting the ownership of investments with respect to all or any one or more assets.
   b. Any other administrative matter.

(2) When the terms of the instrument confer upon a person the power to direct or consent to certain actions of the fiduciary, the duty and liability of the fiduciary are as follows:
   a. If the terms of the instrument confer upon the person the power to direct certain actions of the fiduciary, the fiduciary must act in accordance with the direction and is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with the direction unless compliance with the direction constitutes intentional wrongdoing, not mere negligence or gross negligence on the part of the fiduciary.
   b. If the terms of the instrument confer upon a person the power to consent to certain actions of the fiduciary, and the power holder does not provide consent within a reasonable time after the fiduciary has made a timely request for the power holder's consent, the fiduciary is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the fiduciary's failure to take any action that required the power holder's consent.
   c. The fiduciary shall have no duty to monitor the conduct of the power holder, provide advice to the power holder, or consult with the power holder. The fiduciary is not required to give notice to any beneficiary of any action taken or not taken by the power holder whether or not the fiduciary agrees with the result. Administrative actions taken by the fiduciary for the purpose of implementing directions of the power holder, including confirming that the directions of the power holder have been carried out, do not constitute monitoring of the power holder or other participation in decisions within the scope of the power holder's authority.

(3) A person who holds a power to direct or consent is a fiduciary who, as such, is required to act in good faith with regard to the purposes of the estate, or other relationship between the fiduciary and beneficiaries, and the interests of the beneficiaries, except that if a beneficiary is a person with a power to direct or consent, the beneficiary is not a fiduciary with respect to the following:
   a. A power that constitutes a power of appointment.
   b. A power the exercise or nonexercise of which affects only the interests of the beneficiary holding the power and no other beneficiary.

The holder of the power to direct or consent is liable for any loss that results from breach of a fiduciary duty occurring as a result of the exercise or nonexercise of the power."

SECTION 4. This act becomes effective October 1, 2011, and applies to trusts and other instruments created before, on, or after that date.

SENATE BILL 434:
Directed Trustee and Trust Protector

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 18, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Bill Patterson
Analysis of:	PCS to First Edition S434-CSTG-11		Committee Counsel

SUMMARY: ***The PCS to Senate Bill 434 clarifies and limits the liability of trustees and other fiduciaries required by the governing instruments to take directions from others.*** ***The PCS made technical and clarifying changes to the original bill.***

CURRENT LAW: The duties and powers of trustees are set forth in Article 8 of Chapter 36C of the General Statutes. G.S. 36C-8-808(b) provides that a trustee must follow the direction of a person other than the settlor of a revocable trust who is empowered to direct the actions of the trustee under the terms of the trust, unless the exercise of that power would be contrary to the terms of the trust or would breach a fiduciary duty owed by the power holder to the trust beneficiaries. G.S. 36C-8-808(d) provides that a person other than a beneficiary who holds a power to direct is presumptively a fiduciary of the beneficiaries of the trust who is liable for losses caused by breach of a fiduciary duty.

G.S. 32-72 provides that when a fiduciary responsible for making investments is required by the terms of an instrument to follow the investment directions of the settlor or some other person in whose election the fiduciary had no discretion, the fiduciary is not liable to the beneficiaries or to the trust for the decisions of the settlor or other person whose direction the fiduciary follows.

BILL ANALYSIS: Section 1 of the PCS:

- amends G.S. 36C-8-808(a) to provide that a settlor of a revocable trust has the power to direct or consent to the actions of the trustee regardless of whether the power is conveyed by the terms of the trust, and that the trustee is not liable for any loss resulting from compliance with the settlor's direction, or from the settlor not responding to a trustee's request for consent to the trustee's actions within a reasonable time after receiving the request
- amends G.S. 36C-808(b) and (c) to set forth the duties and liabilities of a trustee when the trustee follows the direction of a person who is not a trustee or a settlor, and who is empowered by the terms of a trust to take certain specified actions with respect to the trust
- amends G.S. 36C-8-808(d) to provide that a person other than a trustee or a settlor who is empowered to take certain actions with respect to a trust is a fiduciary (i.e., is not merely presumptively so), with certain exceptions for a beneficiary who is so empowered

Section 2 adds a new subdivision (e1) to G.S. 36C-7-703 setting forth the duties and liabilities that arise when one or more cotrustees are given, to the exclusion of another cotrustee, the power to take certain actions with respect to the trust, including the power to direct or prevent certain actions of the trustees.

Section 3 amends G.S. 32-72(d) to set forth the duties and liabilities of fiduciaries responsible for investments who are directed by others, in the same way that the duties and liabilities of trustees are set forth by the amendments to G.S. 36C-8-808 made in Section 1 of the PCS.

EFFECTIVE DATE: This act becomes effective October 1, 2011, and applies to trusts and other instruments regardless of when they were created.

PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027

DATE: 4-19 **TIME:** 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

	Page Name	Hometown	Sponsoring Senator
	Robert Musselwhite	New Bern	Preston
2	Ben Rice	Raleigh	Stevens
3	David Fleming	Eden	P. Berger
4	Nathan Fisher	Charlotte	Rucho
5	Lydia Simpson	Hope Mills	Meredith
6			
7			
8			
9			

Do not add names below the grid.

VISITOR REGISTRATION SHEET

Judiciary I — April 19, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John McMillan	McGuireWoods
Mildred Spearman	NCAOC
Brad Phillips	DHL
Tom Fetzer	FSP
Elizabeth Bisa	Brooks Pierce

VISITOR REGISTRATION SHEET

Judiciary I — April 19, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Penny Burtt	School of Gov.
N Sherrill	NC med Soc
Bill Rustin	ACP
Annette Neal Smith	Moses Cone Health System
Sharon Cooney	RN of the Day
Jewel Jones	NCHA
BJ Miller	Moses Cone
Fred Baggett	NC Chiefs of Police
Jennifer Epperson	NC DOJ
S. Cameron	—
Brian O'Hara	NC Offshore Wind Coalition
Will Morgan	Sierra
Ben Howard	MWL EGT

VISITOR REGISTRATION SHEET

Judiciary I — April 19, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dale Poston	Hendersonville P.D.
Kerry Sutton	NCAJ
Todd Barlow	NC Advocates for Justice
Andrew Cagle	NC Sheriffs' Assn
Tom Bennett	NCVAN
Paul Kohut	NCBA - Estate Planning Section
Rebecca Smitherman	NCBA - Estate Planning Section
Nan Crouch	NCBA
[illegible]	ACC
Todd Tilley	Clerk Superior Court - Perquimans
Barbara Moore	Conf of Clerks of Sup Ct

VISITOR REGISTRATION SHEET

Judiciary I — April 19, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Robinson	NCRMA
Andy Ellen	NCRMA
Ken Melton	K.M.A.
Dean Plunkett	P.S.
William Brawson	DHHS DMH/DD/SAS Drug Control Unit
Lauren Whaley	NCCUL
[illegible]	NCAPA
Julia Adams	The Arc of NC
Amy SEED	Buncombe County Sheriff's Office
Judy Billings	NCSBI
Tamara Styles	Buncombe County Sheriffs Office

SENATE JUDICIARY I COMMITTEE
April 21, 2011 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on April 21, 2011, in Room 1027 of the Legislative Building. Thirteen members of the committee were present. Senator Pete Brunstetter presided.

Senator Brunstetter called the meeting to order at 10:02 a.m.

Senate Bill 349
Senator Tillman moves to adopt the PCS for purposes of discussion
Senator Brunstetter recognized Senator Purcell to introduce the bill
Brad Krehely was recognized to explain the bill
John Bussian from NC Press Association was recognized to speak against the bill
Johnny Loper from NC State Board of Examiners in Optometry was recognized to speak in favor of the bill
Theresa Kosztreva from the Ophthalmologists'' Society was recognized to speak on the bill
Senator Purcell was recognized to speak on the bill
Senator Tillman was recognized to ask a question, and Johnny Loper was recognized to answer
Senator Stevens was recognized to ask a question, and Brad Krehely was recognized to answer
Senator Stevens was recognized for a follow-up comment
Senator Clodfelter was recognized to ask a question, and Brad Krehely answered
Senator Clodfelter was recognized for a follow-up question, Lori Kroll was recognized to answer
Senator Clodfelter was recognized for a follow-up, and Lori Kroll answered
Senator Stein was recognized to answer the question
Senator Nesbitt was recognized to ask a question
Senator Stevens was recognized to ask a question
Senator Jenkins was recognized to ask a question
The bill will be carried over to Tuesday

Senate Bill 486
Senator Stein moves to amend the bill on page 1, line 13
Motion carries
Senator Stein was recognized to introduce the bill
Joseph Caloh from the Real Property Section of the NC Bar Association was recognized to comment on the bill
Senator Tillman moves for a favorable report, unfavorable as to original bill, rolling the amendment into a new PCS, with a referral to Finance

Senate Bill 487
Senator Stein was recognized to introduce the bill
Joseph Caloh from the NC Bar Association was recognized to speak on the bill
Senator Clodfelter was recognized to ask a question and Senator Stein answered, with Caloh providing additional insight
Senator Brown was recognized to ask a question and Caloh answered
Senator Soucek was recognized to ask a question, and Senator Stein answered, with Caloh providing additional insight

Senator Stein made a motion for a favorable report
Motion Carries

Senate Bill 432
Senator Tillman moves to adopt the PCS for purposes of discussion
Brad Krehely was recognized to explain changes in the PCS
Senator Hartsell was recognized to explain the PCS
Senator Stein was recognized to ask a question, and Paul Cohut from the Bar Association was recognized to answer
Senator Stein was recognized for a follow-up question, and Cohut answered
The bill will be carried over until Tuesday

Meeting adjourned at 10:48 a.m.

Peter Brunstetter, Presiding

Sarah Hardin, Committee Clerk

Senate Judiciary I Committee
Tuesday, April 26, 2011, 10:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 432	Revise Probate Code.	Senator Hartsell
SB 349	Confidentiality/Investigative Info/Optometry.	Senator Pate Senator Purcell
SB 486	Release Subdivided Lots From Tax Liens.	Senator Vaughan Senator Newton Senator Stein
SB 487	Disputed Earnest Money/Attorneys Deposit.	Senator Vaughan Senator Newton Senator Stein

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 349

Short Title:	Confidentiality/Investigative Info/Optometry.	(Public)
Sponsors:	Senators Purcell and Pate.	
Referred to:	Judiciary I.	

March 16, 2011

A BILL TO BE ENTITLED

AN ACT ALLOWING THE NORTH CAROLINA STATE BOARD OF EXAMINERS IN OPTOMETRY TO CONSIDER CERTAIN INVESTIGATIVE INFORMATION AS CONFIDENTIAL.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-121.5. Confidentiality of investigative information.**

(a) The Board may, in a closed session, receive information or evidence involving or concerning the treatment of a patient who has not expressly or impliedly consented to the public disclosure of the treatment when necessary for the protection of the rights of the patient or the accused licensee and the full presentation of relevant evidence.

(b) All records, papers, investigative files, investigative notes, reports, other investigative information, and other documents containing information in the possession of or received, gathered, or completed by the Board, its members, staff, employees, attorneys, or consultants as a result of investigations, inquiries, assessments, or interviews conducted in connection with a license, complaint, assessment, potential impairment, or disciplinary matter, or report of professional liability insurance awards or settlements, shall not be considered public records within the meaning of Chapter 132 of the General Statutes. Such documents are privileged, confidential, and not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the Board or its employees or consultants involved in the application for licensure, impairment assessment, or discipline of a licensee, except as provided in subsection (c) of this section. However, any notice or statement of charges against any licensee or applicant, any notice to any licensee or applicant of a hearing in any proceeding, or any decision rendered in connection with a hearing in any proceeding shall be a public record within the meaning of Chapter 132 of the General Statutes, notwithstanding that the documentation may contain information collected and compiled as a result of the investigation, inquiry, or hearing. Identifying information concerning the treatment of or delivery of services to a patient or client who has not consented to the public disclosure of the treatment or services may be deleted. If any record, paper, or other document containing information collected and compiled by or on behalf of the Board is received and admitted in evidence in any hearing before the Board, the documents shall be a public record within the meaning of Chapter 132 of the General Statutes, subject to any deletions of identifying information concerning the treatment of or delivery of professional services to a patient who has not consented to the public disclosure of the treatment or services.

For purposes of this subsection, 'investigative information' includes (i) formal or informal complaints received or information relating to the identity of, or a report made by, another

licensee or other person performing an expert review or similar analysis for the Board or (ii) transcripts of any deposition taken or affidavit or statement obtained by Board counsel in preparation for or anticipation of a hearing held pursuant to this Article but not admitted into evidence at the hearing.

(c) The Board, its members, attorneys, and staff may release confidential or nonpublic information to any health care licensure board in this State or another state or authorized Department of Health and Human Services personnel with enforcement or investigative responsibilities about (i) the issuance, denial, annulment, suspension, revocation, or other public disciplinary action taken concerning a license, (ii) the voluntary surrender to the Board of a license by a licensee, including the reasons for the action, or (iii) any disciplinary action taken by the Board. The Board shall notify the licensee in writing within 60 days after the information is transmitted. A summary of the information that is being transmitted shall be furnished to the licensee. If the licensee requests in writing within 30 days after being notified that the information has been transmitted, the licensee shall be furnished a copy of all information transmitted but shall be liable for the reasonable expense of the copies. The notice or copies of the information shall not be provided if the information relates to an ongoing criminal investigation by any law enforcement agency or authorized Department of Health and Human Services personnel with enforcement or investigative responsibilities."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 349
PROPOSED COMMITTEE SUBSTITUTE S349-CSRN-6 [v.7]

4/19/2011 2:24:18 PM

Short Title: Confidentiality/Investigative Info/Optometry. (Public)

Sponsors:

Referred to:

March 16, 2011

A BILL TO BE ENTITLED

AN ACT WHICH ALLOWS THE NORTH CAROLINA STATE BOARD OF EXAMINERS IN OPTOMETRY TO CONSIDER CERTAIN INVESTIGATIVE INFORMATION AS CONFIDENTIAL, REQUIRES LICENSEES TO COOPERATE WITH LAW ENFORCEMENT AGENCIES, AND REQUIRES LICENSEES TO SELF-REPORT CERTAIN INDICTMENTS, ARRESTS, MEDICAL JUDGMENTS, AWARDS, PAYMENTS, AND SETTLEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-121.5. Confidentiality of investigative information; cooperation with law enforcement; self-reporting requirements.**

(a) The Board may, in a closed session, receive information or evidence involving or concerning the treatment of a patient who has not expressly or impliedly consented to the public disclosure of the treatment when necessary for the protection of the rights of the patient or the accused licensee and the full presentation of relevant evidence.

(b) All records, papers, investigative files, investigative notes, reports, other investigative information, and other documents containing information in the possession of or received, gathered, or completed by the Board, its members, staff, employees, attorneys, or consultants as a result of investigations, inquiries, assessments, or interviews conducted in connection with a license, complaint, assessment, potential impairment, disciplinary matter, or report of professional liability insurance awards or settlements shall not be considered public records within the meaning of Chapter 132 of the General Statutes. Such documents are privileged, confidential, and not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the Board or its employees or consultants involved in the application for licensure, impairment assessment, or discipline of a licensee, except as provided in this section. However, any notice or statement of charges against any licensee or applicant, any notice to any licensee or applicant of a hearing in any proceeding, or any decision rendered in connection with a hearing in any proceeding shall be a public record within the meaning of Chapter 132 of the General Statutes, notwithstanding that the documentation may contain information collected and compiled as a result of the investigation, inquiry, or hearing. Identifying information concerning the treatment of or delivery of services to a patient or client who has not consented to the public disclosure of the treatment or services may be deleted. If any record, paper, or other document containing information collected and

compiled by or on behalf of the Board is received and admitted in evidence in any hearing before the Board, the documents shall be a public record within the meaning of Chapter 132 of the General Statutes, subject to any deletions of identifying information concerning the treatment of or delivery of professional services to a patient who has not consented to the public disclosure of the treatment or services.

For purposes of this subsection, 'investigative information' includes (i) formal or informal complaints received or information relating to the identity of, or a report made by, another licensee or other person performing an expert review or similar analysis for the Board or (ii) transcripts of any deposition taken or affidavit or statement obtained by Board counsel in preparation for or anticipation of a hearing held pursuant to this Article but not admitted into evidence at the hearing.

(b1) When the Board receives a complaint regarding a licensee's care of a patient, the Board shall determine whether there is reasonable cause to believe that a licensee has violated a statute or rule governing the practice of optometry. In making such determination, the Board shall provide the licensee with a copy of the complaint and ask for a response. If providing a copy of the complaint identifies an anonymous complainant or compromises the integrity of an investigation, the Board shall provide the licensee with a summary of all substantial elements of the complaint. Upon written request of a patient, the Board may provide the patient a licensee's written response to a complaint filed by the patient with the Board regarding the patient's care. Upon written request of a complainant, who is not the patient but is authorized by State and federal law to receive protected health information about the patient, the Board may provide the complainant a licensee's written response to a complaint filed with the Board regarding the patient's care.

(b2) If information in the possession of the Board, its employees, or agents indicates that a crime may have been committed, the Board may report the information to the appropriate law enforcement agency or district attorney of the district in which the offense was committed.

(b3) The Board shall cooperate with and assist a law enforcement agency or district attorney conducting a criminal investigation or prosecution of a licensee by providing information that is relevant to the criminal investigation or prosecution to the investigating agency or district attorney. Information disclosed by the Board to an investigative agency or district attorney remains confidential and may not be disclosed by the investigating agency except as necessary to further the investigation.

(b4) All persons licensed under this Article shall self-report to the Board within 30 days of arrest or indictment any of the following:

(1) Any felony arrest or indictment.

(2) Any arrest for driving while impaired or driving under the influence.

(3) Any arrest or indictment for the possession, use, or sale of any controlled substance.

(c) The Board, its members, attorneys, and staff may release confidential or nonpublic information to any health care licensure board in this State or another state or authorized Department of Health and Human Services personnel with enforcement or investigative responsibilities about (i) the issuance, denial, annulment, suspension, revocation, or other public disciplinary action taken concerning a license, (ii) the voluntary surrender to the Board of a license by a licensee, including the reasons for the action, or (iii) any disciplinary action taken by the Board. The Board shall notify the licensee in writing within 60 days after the information is transmitted. A summary of the information that is being transmitted shall be furnished to the licensee. If the licensee requests in writing within 30 days after being notified that the information has been transmitted, the licensee shall be furnished a copy of all information transmitted but shall be liable for the reasonable expense of the copies. The notice or copies of the information shall not be provided if the information relates to an ongoing

criminal investigation by any law enforcement agency or authorized Department of Health and Human Services personnel with enforcement or investigative responsibilities."

SECTION 2. Article 6 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-121.6 Reporting and publication of judgments, awards, payments, and settlements.**

(a) All optometrists licensed or applying for licensure by the Board shall report to the Board:

(1) All medical malpractice judgments or awards affecting or involving the optometrist.

(2) All settlements in the amount of seventy-five thousand dollars ($75,000) or more related to an incident of alleged medical malpractice affecting or involving the optometrist where the settlement occurred on or after May 1, 2008.

(3) All settlements in the aggregate amount of seventy-five thousand dollars ($75,000) or more related to any one incident of alleged medical malpractice affecting or involving the optometrist not already reported pursuant to subdivision (2) of this subsection where, instead of a single payment of seventy-five thousand dollars ($75,000) or more occurring on or after May 1, 2008, there is a series of payments made to the same claimant which, in the aggregate, equal or exceed seventy-five thousand dollars ($75,000).

(b) The report required under subsection (a) of this section shall contain the following information:

(1) The date of the judgment, award, payment, or settlement.

(2) The city, state, and country in which the incident occurred that resulted in the judgment, award, payment, or settlement.

(3) The date the incident occurred that resulted in the judgment, award, payment, or settlement.

(c) The Board shall publish on the Board's Web site or other publication information collected under this section. The Board shall publish this information for seven years from the date of the judgment, award, payment, or settlement. The Board shall not release or publish individually identifiable numeric values of the reported judgment, award, payment, or settlement. The Board shall not release or publish the identity of the patient associated with the judgment, award, payment, or settlement. The Board shall allow the optometrist to publish a statement explaining the circumstances that led to the judgment, award, payment, or settlement, and whether the case is under appeal. The Board shall ensure these statements:

(1) Conform to the ethics of optometry.

(2) Not contain individually identifiable numeric values of the judgment, award, payment, or settlement.

(3) Not contain information that would disclose the patient's identity.

(d) The term "settlement" for the purpose of this section includes a payment made from personal funds, a payment by a third party on behalf of the optometrist, or a payment from any other source of funds.

(e) Nothing in this section shall limit the Board from collecting information needed to administer this Article."

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

SENATE BILL 349:
Confidentiality/Investigative Info/Optometry

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 21, 2011
Introduced by:	Sens. Purcell, Pate	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition S349-CSRN-6		Committee Counsel

SUMMARY: ***Senate Bill 349 would allow the North Carolina State Board of Examiners in Optometry to consider certain investigative information as confidential. The Proposed Committee Substitute (PCS) (1) would provide additional complaint procedures, (2) would permit the Board to report information indicating that a crime may have been committed, (3) would require the Board to cooperate with law enforcement or the district attorney conducting an investigation of a licensee, (4) would require licensees to self-report to the Board certain arrests and indictments, and (5) would require the reporting and publication of judgments and settlements against optometrists and applicants for licensure.***

CURRENT LAW: The North Carolina State Board of Examiners in Optometry (Board) regulates the practice of optometry. It consists of 5 optometrists that have been in the practice for at least 5 years and two members of the public. The President of the Board and/or secretary-treasurer may issue subpoenas. The Board may also make necessary regulations to carry out its duties. The Board may hear and determine all complaints, allegations, and charges of malpractice made against any licensed optometrist. The Board may refuse to issue or renew a license, revoke or suspend a license, and invoke other disciplinary measures. Before taking action that would affect a licensee, the Board shall grant a hearing.

BILL ANALYSIS:

Section 1 does all of the following:

- Allows the Board to receive, in closed session, information or evidence on the treatment of a patient who has not expressly or impliedly consented to public disclosure of the treatment when necessary for the protection of the rights of the patient or the accused licensee and to allow full presentation of relevant evidence.
- Specifies that records, papers, "investigative information," and documents gathered as a result of an investigation in connection with a license, complaint, or disciplinary matter are not public records. Provides that these documents are privileged, confidential, and not subject to discovery, subpoena, or other release to any person other than the Board, its employees, or consultants (except as provided in this section).
- Provides that the following are public records:
    - Any notice or statement of charges against any licensee or applicant.
    - Any notice of a hearing to a licensee or applicant.
    - Any decision rendered in connection with a hearing.
    - Records admitted into evidence in a hearing (subject to deletions of identifying information where a patient has not consented to public disclosure of treatment).
- Defines "investigative information" to include:

- Formal or informal complaints received or information relating to the identity of or a report made by another licensee for the Board.
- Transcripts of depositions, affidavits, or statements obtained by Board counsel in preparation for a hearing, but not admitted into evidence.

- Provides that when the Board receives a complaint regarding a licensee's care of a patient, the Board must determine whether there is reasonable cause to believe that a licensee has violated a statute or rule governing optometry. The Board must provide the licensee with a copy of the complaint and ask for a response; a summary can be provided if sending a copy would identify an anonymous complainant or compromise an investigation. If the patient makes a written request, the Board may to provide a patient with the licensee's response to a complaint filed by the patient.
- Allows the Board to report information that a crime may have been committed.
- Requires the Board to assist a law enforcement agency or district attorney conducting a criminal investigation or prosecution of a licensee. The information is confidential except as necessary to further the investigation.
- Requires licensees to self-report any of the following to the Board within 30 days:
  - Any felony arrest or indictment.
  - Any arrest for driving while impaired or driving under the influence.
  - Any arrest or indictment for the possession, use, or sale of any controlled substance.
- Allows the Board, members, attorneys, and staff to release confidential information to any health care licensure board in North Carolina or another state or to authorized Department of Health and Human Services (DHHS) personnel with enforcement responsibilities about:
  - Issuance, suspension, or public disciplinary action concerning a license.
  - Voluntary surrender to the Board of a license (by a licensee).
  - Any disciplinary action taken by the Board.
- If confidential information is released to a licensure board or DHHS, the Board must notify the licensee within 60 days after the information is transmitted. A summary of the information must be furnished to the licensee. The licensee must be furnished a copy of all the information transmitted if a licensee makes a request in writing within 30 days after notification (but not if the information is related to an ongoing criminal investigation).

Section 2 requires optometrists licensed or applying for licensure to report the following to the Board:

- All medical malpractice judgments or awards affecting or involving the optometrist.
- Settlements of $75,000 or more related to an incident of alleged medical malpractice affecting or involving the optometrist on or after May 1, 2008.
- Settlements in the aggregate amount of $75,000 or more related to any one incident of alleged medical malpractice affecting or involving the optometrist not already reported where, instead of a single payment of $75,000, there is a series of payments made to the same claimant which, in the aggregate, equal or exceed $75,000. Applies to settlements on or after May 1, 2008.

The report provided to the Board must also include the date of the judgment or settlement, the location where the incident occurred, and the date the incident occurred.

Section 2 also imposes the following requirements on the Board:

- To publish information collected under this section on the Board's Web site or other publication for seven years from the date of the judgment or settlement.
- To not release or publish numeric values of the reported judgment or settlement.
- To not release or publish the identity of the patient associated with the judgment or settlement.
- To allow the optometrist to publish a statement explaining the circumstances that led to the judgment or settlement (with certain restrictions on these statements).

Section 2 does not limit the Board from collecting information needed to administer these provisions.

EFFECTIVE DATE: The act is effective when it becomes law.

S349-SMRN-32(CSRN-6) v5

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 486

Short Title:	Release Subdivided Lots From Tax Liens.	(Public)
Sponsors:	Senators Stein, Vaughan, and Newton.	
Referred to:	Judiciary I.	

April 4, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE RELEASE OF A SUBDIVIDED TRACT OF LAND FROM A TAX LIEN UPON PAYMENT OF TAXES DUE ON THAT TRACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-362(b) reads as rewritten:

"(b) Release of Separate Parcels from Tax Lien. –

...

(2) When real property listed as one parcel is divided, a part thereof ~~may~~ shall be released as provided in subdivision (b)(1), above, after the assessed valuation of the part to be released has been determined and certified to the tax collector by the tax ~~supervisor.~~supervisor and payment of the taxes on that part, plus any penalties, interest, and costs allowed by law, have been fully paid.

...."

SECTION 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2011.

SENATE BILL 486:
Release Subdivided Lots From Tax Liens

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 20, 2011
Introduced by:	Sens. Stein, Vaughan, Newton	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 486 would require the release of a subdivided tract of land from a tax lien upon payment of the taxes due on that tract.

CURRENT LAW:

Under current law, when a parcel of land subject to a tax lien is divided, a part of the parcel ***may*** be released from the lien prior to advertisement of tax foreclosure sale and upon the payment of the taxes plus all personal property taxes owed by the taxpayer for the same year once the assessed valuation of the part to be released has been determined and certified by the tax supervisor.

BILL ANALYSIS:

Senate Bill would amend the law to require that a subdivided parcel be released from a tax lien after the assessed valuation of the part to be released has been determined and certified to the tax collector by the tax supervisor and payment of the taxes on the subdivided part, plus any penalties, interest, and costs allowed by law have been fully paid.

EFFECTIVE DATE: This act is effective for taxes imposed for taxable years beginning on or after July 1, 2011.

S486-SMRO-19(e1) v2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 486

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

S486-ARO-12 [v.1]

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

Date April 21 ,2011

Senator Stein

moves to amend the bill on page 1, line 13, by rewriting the line to read:

"fully paid. The tax supervisor shall have five business days from receipt of a written request for valuation under this subdivision to provide the valuation.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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 487:
Disputed Earnest Money/Attorneys Deposit

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 20, 2011
Introduced by:	Sens. Stein, Vaughan, Newton	**Prepared by:**	Bill Patterson
Analysis of:	First Edition		Committee Counsel

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 licensed 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.

S487-SMTG-17(e1) v2

[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.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 432
PROPOSED COMMITTEE SUBSTITUTE S432-CSRN-10 [v.2]

4/20/2011 8:23:36 PM

Short Title: Revise Probate Code. (Public)

Sponsors:

Referred to:

March 29, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE JURISDICTIONAL AND PROCEDURAL PROVISIONS OF THE PROBATE CODE AND RELATED STATUTES TO PROVIDE UNIFORMITY IN ESTATE MATTERS, TO DEFINE THE JURISDICTION OF THE CLERK OF SUPERIOR COURT CONSISTENT WITH THE PROVISIONS OF THE UNIFORM TRUST CODE, TO RECODIFY CERTAIN PROVISIONS RELATING TO THE PROBATE OF WILLS, AND TO UPDATE AND AMEND THE PROCEDURE FOR CLAIMING SPOUSAL AND CHILDREN'S ALLOWANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-301.3 reads as rewritten:

"**§ 1-301.3. Appeal of trust and estate matters determined by clerk.**

(a) Applicability. – This section applies to matters arising in the administration of ~~testamentary~~ trusts and of estates of decedents, incompetents, and minors. G.S. 1-301.2 applies in the conduct of a special proceeding when a special proceeding is required in a matter relating to the administration of an estate.

(b) Clerk to Decide Estate Matters. – In matters covered by this section, the clerk shall determine all issues of fact and law. The clerk shall enter an order or judgment, as appropriate, containing findings of fact and conclusions of law supporting the order or judgment.

(c) Appeal to Superior Court. – A party aggrieved by an order or judgment of the clerk may appeal to the superior court by filing a written notice of the appeal with the clerk within 10 days of entry of the order or ~~judgment.~~ judgment after service of the order on that party. The notice of appeal shall ~~specify~~ contain a short and plain statement of the basis for the appeal. Unless otherwise provided by law, a judge of the superior court or the clerk may issue a stay of the order or judgment upon the appellant's posting an appropriate bond set by the judge or clerk issuing the stay. While the appeal is pending, the clerk retains authority to enter orders affecting the administration of the estate, subject to any order entered by a judge of the superior court limiting that authority.

(d) Duty of Judge on Appeal. – Upon appeal, the judge of the superior court shall review the order or judgment of the clerk for the purpose of determining only the following:

(1) Whether the findings of fact are supported by the evidence.
(2) Whether the conclusions of law are supported by the findings of facts.
(3) Whether the order or judgment is consistent with the conclusions of law and applicable law.

It is not necessary for a party to object to the admission or exclusion of evidence before the clerk in order to preserve the right to assign error on appeal to its admission or exclusion. If the judge finds prejudicial error in the admission or exclusion of evidence, the judge, in the judge's discretion, shall either remand the matter to the clerk for a subsequent hearing or resolve the matter on the basis of the record. If the record is insufficient, the judge may receive additional evidence on the ~~evidentiary~~ factual issue in question. The judge may continue the case if necessary to allow the parties time to prepare for a hearing to receive additional evidence.

(e) Remand After Disposition of Issue on Appeal. – The judge, upon determining the matter appealed from the clerk, shall remand the case to the clerk for such further action as is necessary to administer the estate.

(f) Recording of Estate Matters. – In the discretion of the clerk or upon request by a party, all hearings and other matters covered by this section shall be recorded by an electronic recording device. A transcript of the proceedings may be ordered by a party, by the clerk, or by the presiding judge. If a recordation is not made, the clerk shall submit to the superior court a summary of the evidence presented to the clerk."

SECTION 2. G.S. 7A-307(a) reads as rewritten:

"**§ 7A-307. Costs in administration of estates.**

(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, in trust proceedings under G.S. 36C-2-203, in estate proceedings under G.S. 28A-2-4, and in collections of personal property by affidavit, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ten dollars ($10.00), to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of four dollars ($4.00), to be credited to the Court Information Technology Fund.

(2) For support of the General Court of Justice, the sum of seventy-five dollars ($75.00), plus an additional forty cents (40/Ao) per one hundred dollars ($100.00), or major fraction thereof, of the gross estate, not to exceed six thousand dollars ($6,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be fifteen dollars ($15.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of two dollars and five cents ($2.05) of each seventy-five-dollar ($75.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4.

(2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate, not to exceed six thousand dollars ($6,000), shall not be assessed on

personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of twenty dollars ($20.00) shall be assessed on the filing of each annual and final account. However, the fee shall be assessed only on newly contributed or acquired assets, all interest or other income that accrues or is earned on or with respect to any existing or newly contributed or acquired assets, and realized gains on the sale of any and all trust assets. Newly contributed or acquired assets do not include assets acquired by the sale, transfer, exchange, or otherwise of the amount of trust property on which fees were previously assessed.

(2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.

(2c) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate shall not be assessed on the gross estate of a trust that is the subject of a proceeding under G.S. 36C-2-203 if there is no requirement in the trust that accountings be filed with the clerk.

(2d) Notwithstanding subdivisions (1) and (2) of this subsection, the only cost assessed in connection with the qualification of a limited personal representative under G.S. 28A-29-1 shall be a fee of twenty dollars ($20.00) to be assessed upon the filing of the petition.

(3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of twenty dollars ($20.00).

(4) For the filing of a caveat to a will, the clerk shall assess for support of the General Court of Justice, the sum of two hundred dollars ($200.00).

(5) Notwithstanding subdivisions (1) and (2) of this subsection, the only cost assessed in connection with the reopening of an estate administration under G.S. 28A-23-5 shall be forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of any additional gross estate, including income, coming into the hands of the fiduciary after the estate is reopened; provided that the total cost assessed when added to the total cost assessed in all prior administrations of the estate shall not exceed six thousand dollars ($6,000).

(b) In collections of personal property by affidavit, the facilities fee and thirty dollars ($30.00) of the General Court of Justice fee shall be paid at the time of filing the qualifying affidavit pursuant to G.S. 28A-25-1. In all other cases, these fees shall be paid at the time of filing of the first inventory. If the sole asset of the estate is a cause of action, these fees shall be paid at the time of the qualification of the fiduciary.

(b1) The clerk shall assess the following miscellaneous fees:

(1) Filing and indexing a will with no probate
– first page ..... $ 1.00
– each additional page or fraction thereof ..... .25

(2) Issuing letters to fiduciaries, per letter over five letters issued 1.00

(3) Inventory of safe deposits of a decedent, per box, per day 15.00

(4) Taking a deposition 10.00

(5) Docketing and indexing a will probated in another county in the State
- first page 6.00
- each additional page or fraction thereof ..... .25

(6) Hearing petition for year's allowance to surviving spouse or child, in cases not assigned to a magistrate, and allotting the same..... 8.00

(c) The following additional expenses, when incurred, are also assessable or recoverable, as the case may be:

(1) Witness fees, as provided by law.

(2) Counsel fees, as provided by law.

(3) Costs on appeal, of the original transcript of testimony, if any, insofar as essential to the appeal.

(4) Fees for personal service of civil process, and other sheriff's fees, as provided by law.

(5) Fees of guardians ad litem, referees, receivers, commissioners, surveyors, arbitrators, appraisers, and other similar court appointees, as provided by law.

(d) Costs assessed before the clerk shall be added to costs assessable on appeal to the judge or upon transfer to the civil issue docket.

(e) Nothing in this section shall affect the liability of the respective parties for costs, as provided by law."

SECTION 3. Article 5 of Chapter 31 of the General Statutes, G.S. 31-12 through G.S. 31-31.2, is recodified as Article 2A of Chapter 28A of the General Statutes, G.S. 28A-2A-1 through G.S. 28A-2A-23.

SECTION 4. Chapter 28A of the General Statutes, as amended by Section 3 of this act, reads as rewritten:

"Chapter 28A.

"Administration of Decedents' Estates.

"Article 1.

"Definitions and Other General Provisions.

"§ 28A-1-1. Definitions.

As used in this Chapter, unless the context otherwise requires, the term:

(1) "Collector" means any person authorized to take possession, custody, or control of the personal property of the decedent for the purpose of executing the duties outlined in G.S. 28A-11-3.

(1a) "Devisee" means any person entitled to take real or personal property under the provisions of a valid, probated will.

(1b) "Estate proceeding" means a matter initiated by petition related to the administration, distribution, or settlement of an estate, other than a special proceeding. There may be more than one estate proceeding within the administration of a decedent's estate.

(2) "Foreign personal representative" means a personal representative appointed in another jurisdiction, including a personal representative appointed in another country.

(3) "Heir" means any person entitled to take real or personal property upon intestacy under the provisions of Chapter 29 of the General Statutes.

(4) "Mortgage" includes a deed of trust.

(4a) "Party," in the context of a contested or uncontested estate proceeding pursuant to G.S. 28A-2-6, means a party joined as a petitioner or respondent.

(4b) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(5) "Personal representative" includes both an executor and an administrator, but does not include a collector.

~~(6) "Service" means delivery of the citation, summons, notice or other civil process to the person to be served by an officer authorized to serve process and, if such service cannot be obtained, then by the mailing of the citation, summons, notice or other civil process by certified mail, return receipt requested, to the last known address of the person to be served.~~

"Article 2.

"Jurisdiction for Probate of Wills and Administration of Estates of Decedents.

"§ 28A-2-1. Clerk of superior court.

The clerk of superior court of each county, ex officio judge of probate, shall have jurisdiction of the administration, settlement, and distribution of estates of decedents including, but not limited ~~to, the following:~~ to

~~(1) Probate of wills;~~

~~(2) Granting of letters testamentary and of administration, or other proper letters of authority for the administration of estates.~~ estate proceedings as provided in G.S. 28A-2-4.

"§ 28A-2-2. Assistant clerk of superior court.

An assistant clerk of superior court shall have jurisdiction as provided by G.S. 7A-102.

"§ 28A-2-3. Jurisdiction where clerk interested.

Whenever the clerk of superior court is a subscribing witness to a will offered for probate in ~~his~~ the clerk's county or has an interest, direct or indirect, in an estate or trust within ~~his~~ the clerk's jurisdiction, jurisdiction with respect thereto shall be vested in the senior resident superior court judge of ~~his~~ the clerk's district, and shall extend to all things which the clerk of superior court might have done in the administration of such estate.

"§ 28A-2-4. Subject matter jurisdiction of the clerk of superior court in estate proceedings.

(a) The clerks of superior court of this State, as ex officio judges of probate, shall have original jurisdiction of estate proceedings. Except as provided in subdivision (4) of this subsection, the jurisdiction of the clerk of superior court is exclusive. Estate proceedings include, but are not limited to, the following:

(1) Probate of wills.

(2) Granting and revoking of letters testamentary and letters of administration, or other proper letters of authority for the administration of estates.

(3) Determination of the elective share for a surviving spouse as provided in G.S. 30-3.

(4) Proceedings to ascertain heirs or devisees, to approve family settlement agreements pursuant to G.S. 28A-2-10, to determine questions of construction of wills, to determine priority among creditors, to determine whether a person is in possession of property belonging to an estate, to order the recovery of property of the estate in possession of third parties, and to determine the existence or nonexistence of any immunity, power, privilege, duty, or right. Any party or the clerk of superior court may file a notice of transfer of a proceeding pursuant to this subdivision to the Superior Court Division of the General Court of Justice as provided in G.S. 28A-2-6(h). In the absence of a transfer to superior court, Article 26 of Chapter 1 of the General Statutes shall apply to a trust proceeding pending before the clerk of superior court to the extent consistent with this Article.

(b) Nothing in this section shall affect the right of a person to file an action in the Superior Court Division of the General Court of Justice for declaratory relief under Article 26 of Chapter 1 of the General Statutes. In the event that either the petitioner or the respondent in an estate proceeding requests declaratory relief under Article 26 of Chapter 1 of the General

Statutes, either party may move for a transfer of the proceeding to the Superior Court Division of the General Court of Justice as provided in Article 21 of Chapter 7A of the General Statutes. In the absence of a removal to superior court, Article 26 of Chapter 1 of the General Statutes shall apply to an estate proceeding to the extent consistent with this Article.

(c) Without otherwise limiting the jurisdiction of the Superior Court Division of the General Court of Justice, the clerk of superior court shall not have jurisdiction under subsection (a) or (c) of this section of the following:

(1) Actions by or against creditors or debtors of an estate, except as provided in Article 19 of this Chapter.

(2) Actions involving claims for monetary damages, including claims for breach of fiduciary duty, fraud, and negligence.

(3) Caveats, except as provided under G.S. 31-36.

(4) Proceeding to determine proper county of venue as provided in G.S. 28A-3-2.

(5) Recovery of property transferred or conveyed by a decedent with intent to hinder, delay, or defraud creditors, pursuant to G.S. 28A-15-10(b).

"**§ 28A-2-5. Subject matter jurisdiction of the clerk of superior court in special proceedings.**

The clerk of superior court also shall have jurisdiction over special proceedings, including, but not limited to, the following:

(1) Special proceedings to obtain possession, custody, or control of assets as provided in G.S. 28A-13-3.

(2) Special proceedings relating to the sale, lease, or mortgage of real estate as provided in G.S. 28A-15-1 and in G.S. 28A-17-1.

(3) Special proceedings against unknown heirs before distribution of estate as provided in G.S. 28A-22-3.

Nothing in this section shall be deemed to limit the jurisdiction of the clerk of superior court in special proceedings.

"**§ 28A-2-6. Commencement of estate proceedings, pleadings, consolidation, and joinder.**

(a) Contested Estate Proceedings. – Contested estate proceedings brought against adverse parties shall be commenced by petition in the existing estate administration file. All parties not joined as petitioners shall be joined as respondents. The clerk of superior court shall issue the estate proceeding summons to the respondents. The clerk of superior court may order that additional persons be joined as respondents and shall issue the estate proceeding summons to the additional persons. The estate proceeding summons shall notify a respondent to appear and answer the petition within 20 days after its service upon the respondents. The estate proceeding summons shall comply with the requirements set forth in G.S. 1-394 for a special proceeding summons except that the summons shall be titled "ESTATE PROCEEDING SUMMONS" and shall be served upon a respondent in accordance with G.S. 1A-1, Rule 4. After the time for responding to the petition or complaint has expired, any party or the clerk of superior court may give notice to all parties of a hearing.

(b) Uncontested Estate Proceedings. – Estate proceedings before the clerk of superior court that are uncontested may be decided without hearing according to practice and procedure provided by law and shall be commenced by the filing of a petition, setting forth the facts entitling the petitioners to relief and the nature of the relief demanded. In these proceedings, the clerk of superior court may hear and decide the petition summarily.

(c) Pleadings. – Any petition, response, or request for hearing in a contested estate proceeding before the clerk of superior court shall contain a short and plain statement of the claim that is sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions intended to be proved showing that the pleaders are entitled to relief, and a demand for judgment for the relief to which the pleader is entitled. Each

averment should be simple, concise, and direct. No technical forms of motions or responses are required. A party may set forth two or more statements of a claim or defense alternatively or hypothetically. The signature of an attorney or party constitutes a certificate by that attorney or party that (i) the attorney or party has read the pleading, motion, or other paper; (ii) to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. All motions, responses, and requests for hearing shall be so construed as to do substantial justice.

(d) Extensions of Time. – The clerk of superior court, for cause shown at any time in the clerk's discretion, with or without motion or notice, may enter an order enlarging the period of time within which an act is required or permitted in an estate proceeding, by any applicable rule of G.S. 1A-1, the Rules of Civil Procedure, or by order of the court, if the request is made before the expiration of the period originally prescribed, but not to exceed 10 days, provided that the court can enlarge the time for a period of more than 10 days for good cause shown, but only to the extent that the court in its discretion determines that justice requires. Upon motion made after the expiration of the specified period, the clerk of superior court may permit the act where the failure to act was the result of excusable neglect. Notwithstanding any other provision of this subsection, the parties to a proceeding may enter into binding stipulations, without approval of the clerk of superior court, enlarging the time within which an act is required or permitted by this Article, by any applicable Rules of Civil Procedure or by order of the court, not to exceed 30 days.

(e) Rules of Civil Procedure. – Unless the clerk of superior court otherwise directs, Rules 4.5, 6(a), 6(d), 6(e), 18, 19, 20, 21, 24, 45, 56, and 65 of G.S. 1A-1, the Rules of Civil Procedure, shall apply to estate proceedings. Upon motion of a party or the clerk of superior court, the clerk may further direct that any or all of the remaining Rules of Civil Procedure shall apply, including, without limitation, discovery rules; however, nothing in Rule 17 requires the appointment of a guardian ad litem for a party represented except as provided in G.S. 28A-2-7. In applying these Rules to an estate proceeding pending before the clerk of superior court, the term "judge" shall mean "clerk of superior court."

(f) Consolidation. – When an estate proceeding pending before the clerk of superior court and a civil action pending before the Superior Court Division of the General Court of Justice involve a common question of law or fact, upon the court's motion or motion of a party to either the estate proceeding or the civil action, a superior court judge may order a consolidation of the estate proceeding and civil action, and the judge may make orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. Upon the entry of an order consolidating an estate proceeding and civil action, the jurisdiction for all matters pending in both the estate proceeding and the civil action shall be vested in the superior court.

(g) Joinder. – In any civil action pending before the Superior Court Division of the General Court of Justice, the party asserting a claim for relief as an original claim, counter claim, cross claim, or third-party claim may join, either as independent or alternative claims, as many claims, legal or equitable, as the party may have against the opposing party, notwithstanding the fact that such claims may otherwise be within the exclusive jurisdiction of the clerk of superior court.

(h) Notice of Transfer. – A notice to transfer an estate proceeding brought pursuant to G.S. 28A-2-4(a)(4) must be served within 30 days after the moving party is served with a copy of the pleading requesting relief pursuant to G.S. 28A-2-4(a)(4), or in the case of the clerk of superior court, prior to or at the first hearing duly noticed in such estate proceeding and prior to the presentation of evidence by the parties, including a hearing at which an order of

continuance is entered. Failure to timely serve a notice of transfer of a trust proceeding is a waiver of any objection to the clerk of superior court's exercise of jurisdiction over the trust proceeding then pending before the clerk. When a notice of transfer is duly served and filed, the clerk shall transfer the proceeding to the appropriate court. The proceeding after the transfer is subject to the provisions of the General Statutes and to the rules that apply to actions initially filed in the court to which the proceeding was transferred.

(i) Orders Upon Consolidation/Joinder/Transfer. – Upon the consolidation of an estate proceeding in a civil action, joinder of claims under subsection (f) or (g) of this section, or transfer to the Superior Court Division of the General Court of Justice pursuant to subsection (h) of this section, the clerk of superior court or judge may make appropriate orders to protect the interest of the parties and avoid unnecessary cost or delay. Notwithstanding the consolidation or joinder of claims under subsection (f) or (g) of this section, where the estate proceeding is transferred to the Superior Court Division of the General Court of Justice under subsection (h) of this section, the clerk of superior court's exclusive jurisdiction as set forth in G. S. 28A-2-4(a)(1) through (3) shall not be stayed unless so ordered by the court.

"**§ 28A-2-7. Representation of parties.**

(a) Notwithstanding any other applicable rule of the Rules of Civil Procedure or provision of Chapter 1 of the General Statutes, in any contested or uncontested estate proceeding or special proceeding, whether brought before the clerk of superior court or in the Superior Court Division of the General Court of Justice, the parties shall be represented as provided in Article 3 of Chapter 36C of the General Statutes.

(b) In the case of any party represented by another as provided in subsection (a) of this section, service of process shall be made by serving such representative.

"**§ 28A-2-8. Waiver of notice.**

A party, or a representative of a party as provided in G.S. 28A-2-7, may waive notice by a writing signed by the party, the representative, or the attorney of the party or the representative and filed in the proceeding.

"**§ 28A-2-9. Appeals of estate proceedings and special proceedings.**

(a) With the exception of appeals of special proceedings heard by the clerk of superior court, appeals in estate matters shall be as provided in G.S. 1-301.3.

(b) Appeals in special proceedings shall be as provided in G.S. 1-301.2.

(c) Any party may appeal from a decision of the clerk of superior court in an estate proceeding or special proceeding to a superior court judge as provided for in G.S. 1-301.3; provided that the appeals from orders of the clerk of superior court in special proceedings shall be as provided in G.S. 1-301.2.

"**§ 28A-2-10. Approval of settlement agreements by the clerk.**

The clerk shall have the authority, in the clerk's discretion, to consider and approve settlement agreements where the following apply:

(1) The controversy arises with respect to a matter over which the clerk has jurisdiction.

(2) The controversy arose in good faith.

Nothing herein shall be construed as giving a clerk the authority to approve a settlement agreement modifying the terms of a last will and testament or resolving a caveat of a last will and testament."

"Article 2A.

"Probate of Will.

"**§ 28A-2A-1. Executor may apply for probate.**

Any executor named in a will may, at any time after the death of the testator, apply to the clerk of the superior court, having jurisdiction, to have the same admitted to probate. Such will shall not be valid or effective to pass real estate or personal property as against innocent purchasers for value and without notice, unless it is probated or offered for probate within two

years after the death of the testator or devisor or prior to the time of approval of the final account of a duly appointed administrator of the estate of the deceased, whichever time is earlier. If such will is fraudulently suppressed, stolen or destroyed, or has been lost, and an action or proceeding shall be commenced within two years from the death of the testator or devisor to obtain said will or establish the same as provided by law, then the limitation herein set out shall only begin to run from the termination of said action or proceeding, but not otherwise.

"§ 28A-2A-2. Executor failing, beneficiary may apply.

If no executor ~~apply~~ applies to have the will proved within 60 days after the death of the testator, any devisee or legatee named in the will, or any other person interested in the estate, may make such application, upon 10 days' notice thereof to the executor. For good cause shown, the clerk of superior court may shorten the initial 60-day period during which the executor may apply to have the will proved.

"§ 28A-2A-3. Clerk to notify legatees and devisees of probate of wills.

The clerks of the superior court of the State are hereby required and directed to notify by mail, all legatees and devisees whose addresses are known, designated in wills filed for probate in their respective counties. All expense incident to such notification shall be deemed a proper charge in the administration of the respective estates.

"§ 28A-2A-4. Clerk ~~may~~ shall compel production of will.

Every clerk of the superior court having jurisdiction, on application by affidavit setting forth the facts, shall, by summons, compel any person in the State, having in possession the last will of any decedent, to exhibit the same in his court for probate; and whoever being duly summoned refuses, in contempt of the court, to produce such will, or (the same having been parted with by him) refuses to inform the court on oath where such will is, or in what manner he has disposed of it, shall, by order of the clerk of the superior court, be committed to the jail of the county, there to remain without bail till such will be produced or accounted for, and due submission made for the contempt.

"§ 28A-2A-5. What shown on application for probate.

On application to the clerk of the superior court, he must ascertain by affidavit of the applicant –

(1) That such applicant is the executor, devisee or legatee named in the will, or is some other person interested in the estate, and how so interested.

(2) The value and nature of the testator's property, as near as can be ascertained.

(3) The names and residences of all parties entitled to the testator's property, if known, or that the same on diligent inquiry cannot be discovered; which of the parties in interest are minors, and whether with or without guardians, and the names and residences of such guardians, if known.

Such affidavit shall be recorded with the will and the certificate of probate thereof, if the same is admitted to probate.

"§ 28A-2A-6. Proof and examination in writing.

Every clerk of the superior court shall take in writing the proofs and examinations of the witnesses touching the execution of a will, and he shall embody the substance of such proofs and examinations, in case the will is admitted to probate, in his certificate of the probate thereof, which certificate must be recorded with the will. The proofs and examinations as taken must be filed in the office.

"§ 28A-2A-7. Probate in solemn form.

(a) A person entitled to apply for probate of a will pursuant to G.S. 28A-2A-1 or G.S. 28A-2A-2 may file a petition for probate of the will in solemn form, and the matter shall proceed as an estate proceeding governed by Article 2 of Chapter 28A of the General Statutes. The clerk of superior court shall issue a summons to all interested parties in the estate. The

clerk shall schedule a hearing at which the petitioner shall produce the evidence necessary to probate the will.

(b) If an interested party contests the validity of the will, that person must file a caveat before the hearing or raise an issue of devisavit vel non at the hearing. Upon the filing of a caveat or raising of an issue of devisavit vel non, the clerk shall transfer the cause to the superior court, and the matter shall be heard as a caveat proceeding.

(c) If no interested party contests the validity of the will, the probate shall be binding, and no interested party who was properly served may file a caveat of the probated will. Initiation of a probate in common form shall not preclude a person from applying for probate in solemn form.

"§ 28A-2A-8. Manner of probate of attested written will.

(a) An attested written will, executed as provided by G.S. 31-3.3, may be probated in the following manner:

(1) Upon the testimony of at least two of the attesting witnesses; or

(2) If the testimony of only one attesting witness is available, then

a. Upon the testimony of such witness, and

b. Upon proof of the handwriting of at least one of the attesting witnesses who is dead or whose testimony is otherwise unavailable, and

c. Upon proof of the handwriting of the testator, unless he signed by his mark, and

d. Upon proof of such other circumstances as will satisfy the clerk of the superior court as to the genuineness and due execution of the will; or

(3) If the testimony of none of the attesting witnesses is available, then

a. Upon proof of the handwriting of at least two of the attesting witnesses whose testimony is unavailable, and

b. Upon compliance with paragraphs ~~c and d~~ c. and d. of subsection (a)(2) of this section; or

(4) Upon a showing that the will has been made self-proved in accordance with the provisions of G.S. 31-11.6.

(b) Due execution of a will may be established, where the evidence required by subsection (a) of this section is unavoidably lacking or inadequate, by testimony of other competent witnesses as to the requisite facts.

(c) The testimony of a witness is unavailable within the meaning of this section when the witness is dead, out of the State, not to be found within the State, ~~insane or otherwise~~ incompetent, physically unable to testify or refuses to testify.

"§ 28A-2A-9. Manner of probate of holographic will.

A holographic will may be probated only in the following manner:

(1) Upon the testimony of at least three competent witnesses that they believe that the will is written entirely in the handwriting of the person whose will it purports to be, and that the name of the testator as written in or on, or subscribed to, the will is in the handwriting of the person whose will it purports to be; and

(2) Upon the testimony of one witness who may, but need not be, one of the witnesses referred to in subdivision (1) of this section to a statement of facts showing that the will was found after the testator's death as required by G.S. 31-3.4.

"§ 28A-2A-10. Manner of probate of nuncupative will.

(a) No nuncupative will may be probated later than six months from the time it was made unless it was reduced to writing within 10 days after it was made.

(b) Before a nuncupative will may be probated

(1) Written notice must be given to the surviving spouse, if any, and to the next of kin, by the clerk of the court in which it is to be probated, notifying them that the will has been offered for probate and that they may, if they desire, oppose the probate thereof, or

(2) When the surviving spouse or next of kin are not known or when for any other reason such notice cannot be given, a notice to the same effect must be published not less than once a week for four consecutive weeks in some newspaper published in the county where the will is offered for probate, or if no newspaper is published in the county, then in some newspaper having general circulation therein.

(c) A nuncupative will may be probated only in the following manner:

(1) Upon the testimony of at least two competent witnesses who establish the terms of such will and who state that they were simultaneously present at the making thereof, that the testator declared he was then making his will, and that they were then and there specially requested by him to bear witness thereto; and

(2) Upon the testimony of one competent witness, who may but need not be one of the witnesses referred to in subdivision (1) of this subsection, that the will was made in the testator's last illness or while he was in imminent peril of death, and that he did not survive such sickness or imminent peril, but it is not necessary that all such facts be proved by the testimony of the same witness.

"§ 28A-2A-11. Probate of wills of members of the armed forces.

In addition to the methods already provided in existing statutes therefor, a will executed by a person while in the armed forces of the United States or the merchant marine, shall be admitted to probate (whether there were subscribing witnesses thereto or not, if they, or either of them, is out of the State at the time said will is offered for probate) upon the oath of at least three credible witnesses that the signature to said will is in the handwriting of the person whose will it purports to be. Such will so proven shall be effective to devise real property as well as to bequeath personal estate of all kinds. This section shall not apply to cases pending in courts and at issue on the date of its ratification.

"§ 28A-2A-12. Probate conclusive until vacated; substitution of consolidated bank as executor or trustee under will.

Such record and probate is conclusive in evidence of the validity of the will, until it is vacated on appeal or declared void by a competent tribunal. Provided, that whenever in a will so probated or recorded a bank or trust company shall be named executor and/or trustee and shall have at the time of such probate and recording become absorbed by or consolidated with another bank or trust company or shall have sold and transferred all its assets and liabilities to another bank or trust company doing business in North Carolina, such latter bank or trust company shall be deemed substituted for and shall have all the rights and powers of the former bank or trust company.

"§ 28A-2A-13. Wills filed in clerk's office.

All original wills shall remain in the clerk's office, among the records of the court where the same shall be proved, and to such wills any person may have access, as to the other records. If said will contains a devise of real estate, outside said county where said will is probated, then a copy of the said will, together with the probate of the same, certified under the hand and seal of the clerk of the superior court of said county may be recorded in the book of wills and filed in the office of the clerk of the superior court of any county in the State in which said land is situated with the same effect as to passing the title to said real estate as if said will had

originally been probated and filed in said county and the clerk of the superior court of said last-mentioned county had had jurisdiction to probate the same.

"§ 28A-2A-14. Validation of wills heretofore certified and recorded.

All wills which have prior to March 9, 1921, been certified and recorded in the office of the clerk of the superior court of any county, substantially following the provisions of ~~G.S. 31-20~~ G.S. 28A-2A-13, are hereby validated and approved as to the conveyance and transfer of any title to real estate as contained therein, to the same extent as if said wills had originally been probated and filed in said county, and the clerk of the superior court of said county had had jurisdiction to probate the same, provided the probates and witnesses to the said wills are sufficient and according to law.

"§ 28A-2A-15. Certified copy of will proved in another state or country.

When a will, made by a citizen of this State, is proved and allowed in some other state or country, and the original will cannot be removed from its place of legal deposit in such other state or country, for probate in this State, the clerk of the superior court of the county where the testator had his last usual residence or has any property, upon a duly certified copy or exemplification of such will being exhibited to him for probate, shall take every order and proceeding for proving, allowing and recording such copy as by law might be taken upon the production of the original.

"§ 28A-2A-16. Examination of witnesses by affidavit.

(a) The examination of witnesses to a will may be taken and subscribed in the form of an affidavit before a notary public or other person who is authorized to administer oaths in the jurisdiction where the examination is held.

(b) A photographic copy of the original will certified to be a true and exact copy thereof by the clerk of superior court of the county in which the will is to be probated may be used in the examination of the witnesses in the procedures set out in ~~subsection (a);~~ subsection (a) of this section; provided, the said clerk has in his possession the original will at the time of examination of the witnesses.

(c) Affidavits taken in accordance with subsection (a) of this section shall be transmitted by the person taking the affidavit to the clerk of superior court of the county in which the will is to be probated.

(d) Testimony submitted in accordance with subsection (a) of this section is competent in regard to all requirements of G.S. 31-3.3 and to establish that a will was executed in compliance with the requirements of G.S. 31-3.3.

(e) Nothing in this section is to limit or otherwise affect the authority of a clerk of superior court in the exercise of his authority as judge of probate under G.S. 28A-2-1 to:

(1) ~~issue~~ Issue subpoenas under G.S. 7A-103; or

(2) ~~order~~ Order the taking of depositions of witnesses.

"§ 28A-2A-17. Certified copy of will of nonresident recorded.

(a) Subject to the provisions of ~~subsection (b),~~ subsection (b) of this section, if the will of a citizen or subject of another state or country is probated in accordance with the laws of that jurisdiction and a duly certified copy of the will and the probate proceedings are produced before a clerk of superior court of any county wherein the testator had property, the copy of the will shall be probated as if it were the original. If the jurisdiction is within the United States, the copy of the will and the probate proceedings shall be certified by the clerk of the court wherein the will was probated. If the jurisdiction is outside the United States, the copy of the will and probate proceedings shall be certified by any ambassador, minister, consul or commercial agent of the United States under his official seal.

(b) For a copy of a will probated under the provisions of subsection (a) of this section to be valid to pass title to or otherwise dispose of real estate in this State, the execution of said will according to the laws of this State must appear affirmatively, to the satisfaction of the clerk of the superior court of the county in which such will is offered for probate, from the testimony

of a witness or witnesses to such will, or from findings of fact or recitals in the order of probate, or otherwise in such certified copy of the will and probate proceedings.

(c) If the execution of the will in accordance with the laws of this State does not appear as required by ~~subsection (b),~~ subsection (b) of this section, the clerk before whom the copy is exhibited shall have power to take proof as prescribed in ~~G.S. 31-24,~~ G.S. 28A-2A-16, and the will may be adjudged duly proved, and if so proved, the will shall be recorded as herein provided.

(d) Any copy of a will of a nonresident heretofore allowed, filed and recorded in this State in compliance with the foregoing shall be valid to pass title to or otherwise dispose of real estate in this State.

"§ 28A-2A-18. Probates validated where proof taken by commissioner or another clerk.

In all cases of the probate of any will made prior to March 8, 1899, in common form before any clerk of the superior courts of this State, where the testimony of the subscribing witnesses has been taken in the State or out of it by any commissioner appointed by said clerk or taken by any other clerk of the superior court in any other county of this State, and the will admitted to probate upon such testimony, the proceedings are validated.

"§ 28A-2A-19. Probates in another state before 1860 validated.

In all cases where any will devises land in this State, and the original will was duly admitted to probate in some other state prior to the year 1860, and a certified copy of such will and the probate thereof has been admitted to probate and record in any county in this State, and it in any way appears from such recorded copy that there were two subscribing witnesses to such will, and its execution was proved by the examination of such witnesses when the original was admitted to probate, such will shall be held and considered, and is hereby declared to be, good and valid for the purpose of passing title to the lands devised thereby, situated in this State, as fully and completely as if the original will had been duly executed and admitted to probate and recorded in this State in accordance with the laws of this State.

"§ 28A-2A-20. Validation of wills recorded without probate by subscribing witnesses.

In all cases where wills and testaments were executed prior to the first day of January, 1875, and which appear as recorded in the record of last wills and testaments to have had two or more witnesses thereto, and such last wills and testaments were admitted to probate and recorded in the record of wills in the proper county in this State prior to the first day of January, 1888, without having been duly proven as provided by law, and such wills were presented to the clerk of the superior court in any county in this State where the makers of said wills owned property, and where the makers of such wills lived and died, and were by such clerks recorded in the record of wills for his county, said wills and testaments or exemplified copies or certified true copies thereof, so recorded, if otherwise sufficient, shall have the effect to pass the title to real or personal property, or both, therein devised and bequeathed, to the same extent and as completely as if the execution thereof had been duly proven by the two subscribing witnesses thereto in the manner provided by law of this State. Nothing herein shall be construed to prevent such wills from being impeached for fraud.

"§ 28A-2A-21. Validation of wills admitted on oath of one subscribing witness.

In all cases where last wills and testaments which appear as recorded in the record of last wills and testaments to have had two witnesses thereto and such last wills and testaments were admitted to probate and recorded in the record of wills in the proper county in this State prior to the first day of January, 1890, upon the oath and examination of one of the witnesses, such proof being taken in writing and recorded, and the certificate of probate of the clerk of the court states that such a will is proven by one of the subscribing witnesses thereto and the handwriting of the other subscribing witness being a nonresident is proven under oath, and such a will and certificate has been recorded in the record of wills of the proper county, such probate is hereby validated as fully as if the proof of the handwriting of the nonresident witness had been taken in regular form in writing and recorded.

"**§ 28A-2A-22. Validation of probates of wills when witnesses examined before notary public; acts of deputy clerks validated.**

Whenever any last will and testament has been probated, based upon the examination of the subscribing witness or the subscribing witnesses, taken before a notary public in the county in which the will is probated, or taken before a notary public of any other county, it is hereby in all respects validated and shall be sufficient to pass the title to all real and personal property purported to be transferred thereby.

All acts heretofore performed by deputy clerks of the superior court in taking acknowledgments, examining witnesses and probate of any wills, deeds and other instruments required or permitted by law to be recorded, are hereby validated. Nothing herein contained shall affect pending litigation.

§ 28A-2A-23. Validation of wills when recorded without order of probate or registration upon oath and examination of subscribing witness or witnesses.

Whenever any last will and testament has been duly presented to the clerk of the superior court, and the said will together with the oath and examination of the subscribing witness or witnesses thereto taken before a notary public in the county in which the will is probated, or taken before a notary public of any other county, or before the clerk of the superior court of said county, or any other county, is duly recorded in the office of the clerk of the superior court of the said county, without a formal order of probate or registration, such will, if executed in accordance with the laws of this State, is hereby validated with respect to the probate and registration thereof and shall be sufficient to pass title to all real and personal property purported to be transferred thereby to the same extent that the said will would have done so if there had been a formal order of probate and registration. This section shall apply only to wills presented to the clerk of the superior court and recorded prior to the first day of January, 1943.

"Article 3.

"Venue for Probate of Wills and Administration of Estates of Decedents.

"**§ 28A-3-1. Proper county.**

The venue for the probate of a will and for all proceedings relating to the administration of the estate of a decedent shall be:

(1) In the county in this State where the decedent ~~had his domicile~~ was domiciled at the time of ~~his~~ the decedent's death; or

(2) If the decedent had no domicile in this State at the time of death, then in any county wherein the decedent left any property or assets or into which any property or assets belonging to this estate may have come. If there be more than one such county, that county in which proceedings are first commenced shall have priority of venue; or

(3) If the decedent was a nonresident motorist who died in the State, then in any county in the State.

"**§ 28A-3-2. Proceedings to determine venue.**

(a) If proceedings are commenced in more than one county or if upon commencement of a proceeding a question arises as to the proper county of venue, or if for any other reason a delay arises in determining venue, ~~then~~ the matter shall be referred by the clerk of superior court ~~before whom the question arises~~ for a hearing ~~before~~ and determination by the senior resident superior court judge or any judge assigned to hold the superior courts of the district which includes the county where the proceedings were first commenced. ~~The~~ Upon the filing of a motion or petition to determine venue, the judge shall determine which is the proper county for administration of the estate and stay proceedings in all other counties. ~~He~~ The judge shall make such orders as are necessary to transfer the entire proceedings to the proper county. The clerk of superior court of each county in which proceedings are stayed shall retain a true copy of the entire file and transmit the original to the clerk of superior court of such county as the judge directs.

(a1) Any interested person may file a petition to determine proper venue within the time prescribed by G.S. 28A-3-5. The matter shall be referred by the clerk of superior court by or before whom the petition is filed for a hearing and determination by the senior resident superior court judge or any judge assigned to hold the superior courts of the district that includes the county where the proceedings were first commenced.

(b) A proceeding shall be deemed commenced by the offering of a will for probate or by applying for letters of administration as provided by G.S. 28A-6-1 through 28A-6-5 or by applying for letters of collection as provided by G.S. 28A-11-1 through 28A-11-4 and the proceeding first legally commenced shall extend to all of the property or assets of the decedent in this State.

"§ 28A-3-3. Procedure after determination of improper appointment.

Where a person has been improperly appointed, and a different person in another county is determined under G.S. 28A-3-2(a) to be the properly appointed personal representative, such improperly appointed personal representative shall surrender to the properly appointed personal representative all assets of the estate under ~~his control.~~ control of the improperly appointed personal representative. In addition such improperly appointed personal representative shall file an accounting with the clerk of superior court in the proper county according to the form prescribed for collectors by G.S. 28A-11-4.

"§ 28A-3-4. Liability of personal representative appointed in improper county.

When a personal representative has been appointed in an improper county, and a different person in another county is determined under G.S. 28A-3-2(a) to be the properly appointed personal representative, such improperly appointed personal representative shall not thereby incur personal liability for administrative acts performed prior to the transfer except as provided in G.S. 28A-13-10.

"§ 28A-3-5. Waiver of venue.

If questions as to priority of venue are not raised within three months after the issuance of letters testamentary or letters of administration to the personal representative, the validity of the proceeding shall not be affected by any error in venue.

"Article 4.

"Qualification and Disqualification for Letters Testamentary and Letters of Administration.

"§ 28A-4-1. Order of persons qualified to serve.

(a) Letters Testamentary. – Letters testamentary shall be granted to the executor or executors named or designated in the will, or if no such person qualifies, to any substitute or successor executor named or designated in the will. If no person so named or designated qualifies, letters testamentary shall be granted to some other person nominated by a person upon whom the will expressly confers the authority to make such nomination. If none of the foregoing persons ~~qualifies or if the clerk of superior court upon hearing finds that none of the foregoing persons is qualified in accordance with G.S. 28A-4-2,~~ qualifies, the clerk shall grant letters of administration in accordance with subsection ~~(b).~~(b) of this section.

(b) Letters of Administration. Letters of administration shall be granted to persons who are qualified to serve, in the following order, unless the clerk of superior court in ~~his~~ the discretion of the clerk of superior court determines that the best interests of the estate otherwise require:

(1) The surviving spouse of the decedent;
(2) Any devisee of the testator;
(3) Any heir of the decedent;
(3a) Any next of kin, with a person who is of a closer kinship as computed pursuant to G.S. 104A-1 having priority;
(4) Any creditor to whom the decedent became obligated prior to ~~his~~ the decedent's death;

(5) Any person of good character residing in the county who applies therefor; and

(6) Any other person of good character not disqualified under G.S. 28A-4-2.

When applicants are equally entitled, letters shall be granted to the applicant who, in the judgment of the clerk of superior court, is most likely to administer the estate advantageously, or they may be granted to any two or more of such applicants.

(c) Any interested person may file a petition pursuant to Article 2 of this Chapter alleging that all or any of the persons described in subsection (b) of this section is disqualified in accordance with G.S. 28A-4-2.

"§ 28A-4-2. Persons disqualified to serve as personal representative.

No person is qualified to serve as a personal representative who:

(1) Is under 18 years of age;

(2) Has been adjudged incompetent in a formal proceeding and remains under such disability;

(3) Is a convicted felon, under the laws either of the United States or of any state or territory of the United States, or of the District of Columbia and whose citizenship has not been restored;

(4) Is a nonresident of this State who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate, and caused such appointment to be filed with the court; or who is a resident of this State who has, subsequent to appointment as a personal representative, moved from this State without appointing such process agent;

(5) Is a corporation not authorized to act as a personal representative in this State;

(6) Repealed by Session Laws 1999-133, s. 1.

(7) Has lost ~~his~~ that person's rights as provided by Chapter 31A;

(8) Is illiterate;

(9) Is a person whom the clerk of superior court finds otherwise unsuitable; or

(10) Is a person who has renounced either expressly or by implication as provided in G.S. 28A-5-1 and 28A-5-2.

"Article 5.

"Renunciation by Personal Representative.

"§ 28A-5-1. Renunciation by executor.

(a) Express Renunciation by Executor. – Any person named or designated as executor in a duly probated will may renounce the office by filing with the clerk of superior court a writing signed by such person, and acknowledged or proved to the satisfaction of the clerk.

(b) Implied Renunciation by Executor. – If any person named or designated as executor fails to qualify or to renounce within 30 days after the will had been admitted to probate, (i) the clerk of superior ~~court, on application of~~ court may issue a notice to that person to qualify or move for an extension of time to qualify within 15 days, or (ii) any other person named or designated as executor in the will or ~~of~~ any interested ~~person, shall, or on his own motion may, issue a citation to the person who has failed to qualify or renounce to show cause why he should not~~ person may file a petition in accordance with Article 2 of this Chapter for an order finding that person named or designated as executor to be deemed to have renounced. ~~If, upon service of the citation, he does not qualify or renounce or show cause within the time fixed in the citation, such period to be not less than 10 nor more than 30 days, an order must be entered by~~ If that person does not file a response to the motion or petition within 15 days from the date of service of the motion or petition, the clerk of superior court shall enter an order adjudging that ~~he has renounced. If cause be shown,~~ the person has renounced. If the person files a response within 15 days from the date of service of the motion or petition requesting an extension of time within which to qualify or renounce, upon hearing, the clerk of superior court

may grant to ~~such~~ that person a reasonable extension of time within which to qualify or ~~renounce.~~ renounce for cause shown. If that person qualifies within 15 days of the date of service of the motion or petition, the clerk of superior court shall dismiss that motion or petition, without prejudice, summarily and without hearing.

(c) Procedure upon Renunciation. – Upon renunciation by a person named or designated as executor, letters shall be issued to some other person as provided in G.S. 28A-4-1.

"§ 28A-5-2. Renunciation of right to administer.

(a) Express Renunciation. – Any person entitled to apply for letters of administration may renounce the office by filing with the clerk of superior court a writing signed by such person, and acknowledged or proved to the satisfaction of the clerk.

(b) Implied Renunciation. –

(1) If any person entitled to apply for letters of administration fails to apply therefor within 30 days from the date of death of the intestate, (i) the clerk of superior ~~court, on application of~~ court may issue a notice to the person to qualify or move for an extension of time to qualify within 15 days, or (ii) any interested ~~person, shall, or on his own motion may, issue a citation to the person entitled to apply for letters of administration requiring him to show cause why he should not~~ person may file a petition in accordance with Article 2 of this Chapter for an order finding that person to be deemed to have renounced. ~~If, upon service of the citation, he does not apply for letters of administration and tender the required bond or show cause within the time shown in the citation, such period to be not less than 10 nor more than 30 days, an order must be entered by the clerk of the~~ If the person does not file a response to the notice or petition within 15 days from the date of service of the motion, the clerk of superior court shall enter an order adjudging that ~~he has renounced;~~ the person has renounced. If the person files a response within 15 days from the date of service of the motion requesting an extension of time within which to qualify or renounce, upon hearing, the clerk of superior court may grant to that person a reasonable extension of time within which to qualify or renounce for cause shown. If the person qualifies within 15 days of the date of service of the motion, the clerk of superior court shall dismiss the motion, without prejudice, summarily and without hearing and the clerk of superior court shall issue letters to some other person as provided in G.S. 28A-4-1. ~~If cause be shown the clerk of superior court may grant to such person a reasonable extension of time within which to apply and qualify, or renounce.~~ No notice shall be required to be given to any interested person, but the clerk may give notice as the clerk in the clerk's discretion may determine.

(2) If no person entitled to administer applies for letters of administration within 90 days after the date of death of an intestate, then the clerk of superior court may, in ~~his discretion,~~ the clerk's discretion, enter an order declaring all prior rights to apply for letters of administration to be renounced, and issue letters to some suitable person as provided in G.S. 28A-4-1.

(c) Nomination by Person Renouncing. – Any person who expressly renounces ~~his~~ the person's prior right to apply for letters of administration may at the same time nominate in writing some other person not disqualified under G.S. 28A-4-2 to be named as personal representative, and such designated person shall be entitled to the same priority of right to apply for letters of administration as the person making the nomination.

"Article 6.

"Appointment of Personal Representative.

"**§ 28A-6-1. Application for letters; grant of letters.**

(a) The application for letters of administration or letters testamentary shall be in the form of an affidavit sworn to before an officer authorized to administer oaths, signed by the applicant or ~~his~~ the applicant's attorney, which may be supported by other proof under oath in writing, all of which shall be recorded and filed by the clerk of superior court, and shall allege the following facts:

(1) The name, and to the extent known, the domicile and the date and place of death of the decedent;

(2) The legal residence and mailing address of the applicant;

(3) The names, ages and mailing addresses of the decedent's heirs and devisees, including the names and mailing addresses of the guardians of those having court-appointed guardians, so far as all of these facts are known or can with reasonable diligence be ascertained;

(4) That the applicant is the person entitled to apply for letters, or that ~~he~~ the applicant applies after persons having prior right to apply are shown to have renounced under Article 5 of this Chapter, or that ~~he~~ the applicant applies subject to the provisions of G.S. 28A-6-2(1), and that ~~he~~ the applicant is not disqualified under G.S. 28A-4-2.

(5) The nature and probable value of the decedent's property, both real and personal, and the location of such property, so far as all of these facts are known or can with reasonable diligence be ascertained; and

(6) If the decedent was not domiciled in this State at the time of ~~his~~ the decedent's death, a schedule of ~~his~~ the decedent's property located in this State, and the name and mailing address of ~~his~~ the decedent's domiciliary personal representative, or if there is none, whether a proceeding to appoint one is pending.

(b) If it appears to the clerk of superior court that the application and supporting evidence comply with the requirements of subsection (a) of this section and on the basis thereof ~~he~~ the clerk finds that the applicant is entitled to appointment, ~~he~~ the clerk shall issue letters of administration or letters testamentary to the applicant unless in ~~his~~ the clerk's discretion ~~he~~ the clerk determines that the best interests of the estate would be served by delaying the appointment of a personal representative, in which case ~~he~~ the clerk may appoint a collector as provided in Article 11.

(c) The clerk of superior court may rely upon the following as evidence of death:

(1) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred.

(2) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, evidencing the date of death.

(3) A certificate or authenticated copy of medical records, including a record of death, evidencing the date of death.

(4) Any other evidence that the clerk of superior court deems sufficient to confirm the date of death.

"**§ 28A-6-2. Letters issued without notice; exceptions.**

Letters of administration or letters testamentary may be issued without notice, including upon a finding of implied renunciation under G.S. 28A-5-1(b) or G.S. 28A-5-2(b), except:

(1) When the applicant is not entitled to priority of appointment under G.S. 28A-4-1, all persons entitled to an equal or higher preference shall be given ~~notice by citation as provided in G.S. 28A-5-2(b)(1),~~ 15 days prior to written notice of that application, unless they have renounced in accordance with the provisions of Article 5 of this Chapter.

(2) The clerk of superior court may in any case require that prior written notice be given to such interested persons as ~~he~~ the clerk, in ~~his discretion~~ the clerk's discretion, may designate prior to the granting of letters.

"§ 28A-6-3. Appointment of successor to personal representative.

When the appointment of a sole or last surviving personal representative is terminated by death, resignation pursuant to Article 10 of this Chapter, or revocation pursuant to Article 9 of this Chapter, the clerk of superior court shall appoint another personal representative as provided by G.S. 28A-4-1 to act as ~~his successor.~~ successor to the sole or last surviving personal representative. When two or more personal representatives have qualified, and the appointment of one or more of them is terminated by death, resignation or revocation, leaving in office one or more personal representatives, the appointment of successors shall not be required unless:

(1) The clerk of superior court determines, in ~~his~~ the clerk's discretion, that it is in the best interest of the estate to appoint a successor or successors to such personal representative or personal representatives, or

(2) In the case of executors, the will so provides.

"§ 28A-6-4. Right to contest appointment; procedure.

Prior to the issuance of letters, any interested person may, by written ~~objection~~ petition filed with the clerk of superior court, ~~with notice to the applicant,~~ and served upon such interested persons as the clerk of superior court may direct, contest the issuance of letters of administration or letters testamentary to ~~such applicant. After an objection~~ a person otherwise entitled to apply for letters of administration or letters testamentary. After a petition has been duly filed, the clerk of superior court shall conduct a hearing and determine ~~whether~~ to whom letters shall ~~issue to the applicant.~~ be issued. Appeal may be taken from the order of the clerk as in ~~a special proceeding.~~ an estate proceeding pursuant to G.S. 1-301.3.

"§ 28A-6-5. Letters not subject to collateral attack.

The validity of letters issued shall not be subject to collateral attack.

"Article 7.

"Oath.

"§ 28A-7-1. Oath required before letters issue.

Before letters testamentary, letters of administration or letters of collection are issued to any person, ~~he~~ the person shall take and subscribe an oath or affirmation before the clerk of superior court, or before any other officer of any state or country authorized by the laws of North Carolina to administer oaths, that ~~he~~ the person will faithfully and honestly discharge the duties of ~~his~~ the person's office. Such oath or affirmation shall be in the form prescribed in G.S. 11-11, and shall be filed in the office of the clerk of superior court.

"Article 8.

"Bond.

"§ 28A-8-1. Bond required before letters issue; when bond not required.

(a) Except as otherwise provided in subsection ~~(b),~~(b) of this section, every personal representative, before letters are issued, shall give bond, conditioned as provided in G.S. 28A-8-2.

(b) No bond shall be required of:

(1) A resident executor, unless the express terms of the will require ~~him~~ a resident executor to give bond;

(2) A nonresident executor (or a resident executor who moves from this State subsequent to ~~his~~ that executor's appointment) who has appointed a resident agent to accept service of process as provided in G.S. 28A-4-2(a) [28A-4-2(4)], when the express terms of the will excuse ~~him~~ a nonresident executor from giving bond;

(3) A nonresident executor, when there is a resident executor named who has qualified as coexecutor unless the express terms of the will require them to give bond, or the clerk of superior court finds that such bond is necessary for the protection of the estate; or

(4) A personal representative appointed solely for the purpose of bringing an action for the wrongful death of the deceased until such time as the personal representative shall receive property into the estate of the deceased; or

(5) A personal representative that is a ~~national banking association having its principal place of business in this State or a State bank acting pursuant to~~ trust institution licensed under G.S. 53-159;

(6) A personal representative of an intestate who resides in the State of North Carolina when all of the heirs of the decedent are over 18 years of age and file with the clerk of superior court a written waiver instrument agreeing to relieve the personal representative from the necessity of giving bond; or

(7) A personal representative where ~~he~~ the personal representative receives all the property of the decedent;

(8) An administrator with the will annexed who resides in the State of North Carolina when all of the devisees of the decedent are over 18 years of age and file with the clerk of superior court a written waiver instrument agreeing to relieve ~~him~~ the administrator with the will annexed of the necessity of giving bond.

"§ 28A-8-1.1. Deposited money; exclusion in computing amount of bond.

Notwithstanding the provisions of G.S. 28A-8-1, in any proceeding for the determination of the amount of bond to be required of the personal representative or testamentary trustee, whether at the time of appointment or subsequently, when it appears that the estate of the decedent or the testamentary trust includes money which has been or will be deposited in a bank or banks in this State, or money which has been or will be invested in an account or accounts in an insured savings and loan association or associations upon condition that such money will not be withdrawn except on authorization of the court, the court may, in its discretion, order such money so deposited or so invested and shall exclude such deposited money from the computation of the amount of such bond or reduce the amount of bond to be required in respect of such money to such an amount as it may deem reasonable.

The petitioner for letters testamentary, of administration, or of trusteeship may deliver to any such bank or association any such money in ~~his~~ the petitioner's possession, or may allow such bank to retain any such money already in its possession, or may allow such association to retain any such money already invested with it; and, in either event, the petitioner shall secure and file with the court a written receipt including the agreement of the bank or association that such money shall not be allowed to be withdrawn except on authorization of the court. In so receiving and retaining such money, the bank or association shall be protected to the same extent as though it had received the same from a person to whom letters testamentary, of administration, or of trusteeship had been issued.

The term "account in an insured savings and loan association" as used in this section means an account insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or by a mutual deposit guaranty association authorized by Article 7A of Chapter 54 of the General Statutes of North Carolina.

The term "money" as used in this section means the principal of the decedent's estate and does not include the income earned by the principal of the decedent's estate which may be withdrawn without any authorization of the court.

"§ 28A-8-2. Provisions of bond.

A bond given pursuant to this Article shall be:

(1) Payable to the State to the use of all persons interested in the estate; and

(2) Conditioned that the personal representative giving the bond shall faithfully execute the trust reposed in ~~him~~ the personal representative and obey all lawful orders of the clerk of superior court or other court touching the administration of the estate committed to ~~him;~~ the personal representative; and

(3) In an amount not less than:

a. One and one-fourth times the value of all personal property of the decedent when the bond is secured by a suretyship bond executed by a corporate surety company authorized by the Commissioner of Insurance to do business in this State, provided that the clerk of superior court, when the value of the personal property to be administered by the personal representative exceeds one hundred thousand dollars ($100,000), may accept bond in an amount equal to the value of the personal property plus ten percent (10%) thereof; or

b. Double the value of all personal property of the decedent when the bond is secured by one of the methods provided in subdivision (4)b, (4)c or (4)d; such value of said personal property to be ascertained by the clerk of superior court by examination, on oath, of the applicant or of some other person determined by the clerk to be qualified to testify as to its value; and

(4) Secured by one or more of the following:

a. Suretyship bond executed, at the expense of the estate, by a corporate surety company authorized by the Commissioner of Insurance to do business in this State;

b. Suretyship bond executed and justified upon oath before the clerk of superior court by two or more sufficient personal sureties each of whom shall reside in and own real estate in North Carolina and shall have assets with an aggregate value above encumbrances of not less than the amount of the penalty of the required bond;

c. A first mortgage or first deed of trust in form approved by the administrative officer of the courts on real estate located in North Carolina:

1. Executed by the owner, and conditioned on the performance of the obligations of the bond, and

2. Containing a power of sale which, in the case of a mortgage, is exercisable by the clerk of superior court upon a breach of any condition thereof, or, in the case of a deed of trust, is exercisable by the trustee after notice by the clerk of superior court that a breach of condition has occurred.

The clerk of superior court shall not accept such mortgage or deed of trust until it shall have been properly registered in the county or counties in which the real estate is located, and the clerk of superior court is satisfied that the real estate subject to the mortgage or deed of trust is worth the amount to be secured thereby, and that the mortgage or deed of trust is a first charge on said real estate. No such mortgage or deed of trust shall be cancelled or surrendered until the approval of the final account, unless substitution is permitted as provided in G.S. 28A-8-3(d).

d. A deposit by the owner with the clerk of superior court of negotiable securities, of a kind permitted by law to be proper investments for fiduciaries exercising due care, having a fair market value

determined by the clerk to be equal to the amount of the penalty of the bond. Such securities shall be properly endorsed, delivered to the clerk of superior court, and accompanied by a security agreement containing a power of sale authorizing the clerk of superior court to sell them in the event the person to whom letters are being issued commits a breach of any duty imposed upon ~~him~~ that person by law in respect of ~~his~~ that person's office. Such securities shall not be surrendered by the clerk of superior court to the owner until the approval of the final account, unless substitution is permitted as provided in G.S. 28A-8-3(d). For the purposes of determining the value of the assets of the personal sureties in subdivision (4)b, or the value of the real estate in subdivision (4)c, or the value of the negotiable securities in subdivision (4)d, the clerk of superior court may require a certificate of the value of such property by one or more persons not interested in the estate determined by the clerk to be qualified to certify such value.

"§ 28A-8-3. Modification of bond requirements.

(a) Increase of Bond or Security in Case of Inadequacy or Insufficiency. –

(1) The clerk of superior ~~court may, on his own motion or upon verified application of any person interested in the estate,~~ court, on the clerk's own motion, may require the personal representative to give a new bond or to furnish additional security if ~~he~~ the clerk of superior court finds that the bond filed pursuant to this Article, or its security, is insufficient, inadequate in amount, or that any of the individual sureties has become or is about to become a nonresident or, in the case of a corporate surety, has withdrawn or is about to withdraw from doing business in this State. ~~Before ordering the personal representative to give a new bond or furnish additional security,~~

(2) Any interested person may file a verified petition in accordance with Article 2 of this Chapter requesting modification of bond requirements. Upon the filing of a verified petition, the clerk of superior court shall ~~issue a citation requiring the personal representative, within 10 days after service thereof, to show cause why such action should not be taken.~~ conduct a hearing in accordance with Article 2 of this Chapter. If the clerk of superior court finds that the bond filed or its security is insufficient or inadequate, ~~he~~ the clerk shall make an order requiring the personal representative to give a new bond or to furnish additional security within a reasonable time to be fixed in the order.

(b) Increase of Bond upon Sale of Real Estate. – When a personal representative makes application for an order to sell real estate, the provisions of G.S. 1-339.10 shall govern.

(c) Reduction of Bond. – On application of the personal representative the penalty of the bond may be reduced from time to time when the clerk of superior court finds that such reduction is clearly justified, but in no event shall the penalty of the bond be reduced below the amount required by G.S. 28A-8-2(3).

(d) Substitution of Security. – When a bond is secured by a mortgage or deed of trust on real estate as provided in G.S. 28A-8-2(4)c or a deposit of negotiable securities as provided in G.S. 28A-8-2(4)d, the clerk of superior court may, on application of the personal representative, order that such real estate or negotiable securities, or a part thereof, be released upon the substitution therefor of other security in compliance with G.S. 28A-8-2(4)a, (4)c, or (4)d. Such substitution may be allowed in conjunction with any other modification of bond requirements permitted by this section.

"§ 28A-8-4. Failure to give additional bond; letters revoked.

If any personal representative fails to give an additional bond or new bond or to furnish additional security as ordered by the clerk of superior court pursuant to the provisions of this Article, within the time specified in any such ~~order,~~ order (not less than five days or more than 15 days), the clerk of superior court shall proceed as provided in G.S. 28A-9-2.

"§ 28A-8-5. Rights of surety in danger of loss.

Any surety on the bond of a personal representative who is in danger of loss under ~~his~~ the surety's suretyship may file ~~his~~ a verified petition ~~on oath~~ with the clerk of superior court setting forth the facts, and asking that such personal representative be removed from office, or that ~~he~~ the personal representative be required to give security to indemnify the petitioner against apprehended loss, or that the petitioner be discharged as surety and be released from liability for any future breach of the bond. The clerk of superior court shall ~~thereupon issue a citation to the personal representative, requiring him to answer the petition within 10 days after service thereof.~~ conduct a hearing in accordance with Article 2 of this Chapter. If, upon the hearing, the clerk of superior court determines that the surety is entitled to relief, ~~he~~ the clerk may grant the same in such manner as to serve the best interest of the estate. In any event, however, the previous surety shall not be released from liability for any breach of duty by the personal representative occurring prior to the filing of bond with a new surety unless the new surety assumes liability for the earlier breaches.

"§ 28A-8-6. Action against obligors on bond of personal representative.

Any person injured by the breach of any bond given by a personal representative or collector may institute a civil action against one or more of the obligors of the bond and recover such damages as ~~he~~ the person may have sustained. Any successor personal representative, or any other personal representative of the same decedent, may institute such action on behalf of the persons interested in the estate. Any such action against one or more of the obligors of the bond shall be brought in the name of the State of North Carolina and shall be instituted in the county in which letters were issued to the personal representative or collector, and the clerk of superior court shall give notice of the institution of the action in such manner as ~~he~~ the clerk may determine to all other persons shown by ~~his~~ the clerk's records to be interested in the estate. The bond of the personal representative is not void after the first or any subsequent recovery thereon until the entire penalty is recovered. If the plaintiff fails to prevail, costs may be taxed against the person or persons for whose benefit the action on a personal representative's bond is prosecuted.

"Article 9.

"Revocation of Letters.

"§ 28A-9-1. Revocation after hearing.

(a) Grounds. – Letters testamentary, letters of administration, or letters of collection may be revoked after hearing on any of the following grounds:

(1) The person to whom they were issued was originally disqualified under the provisions of G.S. 28A-4-2 or has become disqualified since the issuance of letters.

(2) The issuance of letters was obtained by false representation or mistake.

(3) The person to whom they were issued has violated a fiduciary duty through default or misconduct in the execution of ~~his~~ the person's office, other than acts specified in G.S. 28A-9-2.

(4) The person to whom they were issued has a private interest, whether direct or indirect, that might tend to hinder or be adverse to a fair and proper administration. The relationship upon which the appointment was predicated shall not, in and of itself, constitute such an interest.

(b) Procedure. ~~When it appears to the~~

(1) The clerk of superior ~~court, on his own motion or upon verified complaint made to him by~~ court may, on the clerk's own motion, conduct a hearing in

accordance with Article 2 of this Chapter to determine whether any of the grounds set forth in subsection (a) of this section exist with regard to any personal representative or collector within the jurisdiction of the clerk of superior court.

(2) Upon the verified petition of any person interested in the ~~estate,~~ estate for an order finding that any of the grounds set forth in subsection (a) ~~may exist~~ of this section exist with regard to any personal representative or collector within ~~his jurisdiction, he shall issue citation requiring such personal representative or collector, within 10 days after service thereof, to show cause why his letters should not be revoked. On the return of such citation duly executed, the clerk of superior court shall set the date for a hearing.~~ the jurisdiction of the clerk of superior court, the clerk shall conduct a hearing in accordance with Article 2 of this Chapter.

(3) Notice of the time and date of the hearing shall be given in accordance with Article 2 of this Chapter and to such persons ~~and in such manner~~ as the clerk of superior court shall determine. If at the hearing the clerk of superior court finds any one of the grounds set forth in subsection (a) of this section to exist, ~~he~~ the clerk of superior court shall revoke the letters issued to such personal representative or collector.

"§ 28A-9-2. Summary revocation.

(a) Grounds. – Letters testamentary, letters of administration, or letters of collection, shall be revoked by the clerk of superior court without hearing when:

(1) After letters of administration or collection have been issued, a will is subsequently admitted to probate.

(2) After letters testamentary have been issued:

a. The will is set aside, or

b. A subsequent testamentary paper revoking the appointment of the executor is admitted to probate.

(3) Any personal representative or collector required to give a new bond or furnish additional security pursuant to G.S. 28A-8-3 fails to do so within the time ordered.

(4) A nonresident personal representative refuses or fails to obey any citation, notice, or process served on ~~him or his process agent.~~ that nonresident personal representative or the process agent of the nonresident personal representative.

(5) A trustee in bankruptcy, liquidating agent, or receiver has been appointed for any personal representative or collector, or any personal representative or collector has executed an assignment for the benefit of creditors.

(6) A personal representative has failed to file an inventory or an annual account with the clerk of superior court, as required by Article 20 and Article 21 of this Chapter, and proceedings to compel such filing pursuant to G.S. 28A-20-2 or 28A-21-4 cannot be had because service cannot be completed because the personal representative cannot be found.

(b) Procedure. – Upon the occurrence of any of the acts set forth in subsection ~~(a),~~(a) of this section, the clerk of superior court shall enter an order revoking the letters issued to such personal representative or collector and shall cause a copy of the order to be served on ~~him or his process agent.~~ the personal representative or collector or the personal representative's or collector's process agent.

"§ 28A-9-3. Effect of revocation.

Upon entry of the order revoking ~~his~~ a personal representative's or collector's letters, the authority of the personal representative or collector shall cease. ~~He~~ The personal representative

or collector shall surrender all assets of the estate under ~~his control to his~~ the control of the personal representative or collector to the personal representative's or collector's successor, or the remaining personal representative or collector or to the clerk of superior court; and shall file an accounting in the form prescribed by Article 21 of this Chapter. A personal representative or collector whose letters are revoked pursuant to G.S. 28A-9-2(a)(1) or 28A-9-2(a)(2) shall not thereby incur personal liability for administrative acts performed prior to revocation except as provided in G.S. 28A-13-10.

"§ 28A-9-4. Appeal; stay effected.

Any interested person may appeal from the order of the clerk of superior court granting or denying ~~revocation. The procedure shall be the same as in a special proceeding. If the~~ revocation as a special proceeding pursuant to G.S. 28A-2-9(b). The clerk of superior court ~~has revoked the letters, such appeal shall stay the judgment and order of~~ may issue a stay of an order revoking the letters upon the appellant posting an appropriate bond set by the clerk until the cause is heard and determined upon appeal.

"§ 28A-9-5. Interlocutory orders.

Pending any proceeding or appeal with respect to revocation of letters, the clerk of superior court may enter such interlocutory orders as are necessary to preserve the assets of the estate.

"§ 28A-9-6. Appointment of successor to personal representative or collector whose letters have been revoked; when not required.

Upon the revocation of letters issued to a sole or last surviving personal representative or collector, the clerk of superior court shall appoint another personal representative or collector as provided by G.S. 28A-4-1 to act as ~~his successor.~~ successor to the sole or last surviving personal representative or collector. When two or more personal representatives or collectors have qualified, and the letters of one or more personal representatives or collectors are revoked, leaving in office one or more personal representatives or collectors, the appointment of successors shall not be required unless:

(1) The clerk of superior court determines, in ~~his discretion,~~ the discretion of the clerk of superior court, that it is in the best interest of the estate to appoint a successor or successors to the personal representatives or collectors whose letters have been revoked, or

(2) In the case of executors, the will so provides.

"§ 28A-9-7. Rights and duties devolve on successor.

After the revocation of letters pursuant to this Article and upon the qualification and appointment of a successor, the substituted personal representative or collector shall succeed to all the powers stated in G.S. 28A-13-7. ~~He~~ The substituted personal representative or collector shall be subject to all the duties, responsibilities and liabilities of the original personal representative or collector, other than liabilities arising out of the grounds for revocation.

"Article 10.

"Resignation.

"§ 28A-10-1. Clerk's power to accept resignation.

The clerk of superior court in the county where a person has been appointed personal representative shall have the power to accept ~~his~~ that person's resignation.

"§ 28A-10-2. Contents of petition; notice.

(a) When a personal representative desires to resign ~~his~~ the personal representative's office, ~~he~~ the personal representative shall file a verified petition in the office of the clerk of the superior court, setting forth:

(1) The facts relating to ~~his~~ the personal representative's appointment and qualifications;

(2) The names and residences of all interested persons known to ~~him;~~ the personal representative;

(3) A full statement of the reasons why the petitioner should be permitted to resign ~~his~~ the petitioner's office; and

(4) A statement that ~~he~~ the personal representative has filed with the clerk of superior court ~~his~~ the personal representative's accounts and a record of ~~his~~ the personal representative's conduct of the office.

(b) Notice of the petition for resignation, together with the date and time of the hearing thereon, shall be served upon all interested persons named in the petition in such manner as the clerk of superior court shall determine.

"§ 28A-10-3. Statement of account; record of conduct.

When the personal representative files ~~his~~ the personal representative's petition requesting permission to resign ~~his~~ the personal representative's office, ~~he~~ the personal representative shall also file a verified statement of:

(1) ~~His~~ The personal representative's accounts since ~~his~~ that personal representative's qualification, or if ~~he~~ the personal representative has previously filed an account, a statement of ~~his~~ the personal representative's accounts since the date thereof;

(2) The assets of the estate and their location;

(3) The debts and liabilities of the estate;

(4) All facts and circumstances known to ~~him~~ the personal representative the disclosure of which is necessary for a full and fair assessment of ~~his~~ the personal representative's conduct of the office; and

(5) All additional facts and circumstances known to ~~him~~ the personal representative the disclosure of which is necessary for a full and fair understanding of all matters concerning the estate.

"§ 28A-10-4. Hearing; order.

The clerk of superior court shall conduct a hearing in accordance with Article 2 of this Chapter on the petition not sooner than 10 days nor later than 20 days after notice to interested persons pursuant to G.S. 28A-10-2(b). If the clerk of superior court finds all the accounts proper, including accounts subsequent to the filing of the petition, and determines that the resignation of the personal representative is in the best interest of the estate and can be allowed, the resignation may be approved subject to the provisions of G.S. 28A-10-5. Except in cases governed by G.S. 28A-10-8, ~~he~~ the clerk of superior court shall appoint a successor pursuant to G.S. 28A-4-1.

"§ 28A-10-5. When resignation becomes effective.

The resignation shall not become effective until:

(1) A successor has been duly qualified, unless G.S. 28A-10-8 is applicable; and

(2) The clerk of superior court is satisfied that the accounts of the personal representative are true and correct; and

(3) The personal representative has accounted to ~~his~~ the personal representative's successor in full for all assets of the estate, or if pursuant to G.S. 28A-10-8 no successor is appointed, to the remaining personal representative or representatives, and ~~his~~ the personal representative's final account has been filed with and approved by the clerk of superior court.

"§ 28A-10-6. Appeal; stay effected.

Any interested person who has appeared at the hearing and objected to the order of the clerk of superior court granting or denying resignation may appeal ~~therefrom. The procedure shall be the same as in a special proceeding. If the~~ an order denying or allowing the resignation as a special proceeding pursuant to G.S. 28A-2-9(b). The clerk of superior court ~~has allowed the resignation, such appeal shall stay the order of~~ may issue a stay of an order allowing the resignation upon the appellant posting an appropriate bond set by the clerk until the cause is heard and determined upon appeal.

"§ 28A-10-7. Rights and duties devolve on successor.

Upon the qualification and appointment of a successor to a personal representative whose resignation has been allowed as provided in G.S. 28A-10-4, the substituted personal representative shall succeed to all the powers ~~stated~~ as provided in G.S. 28A-13-7 and shall also be subject to all the duties, responsibilities, and liabilities ~~stated~~ as provided in Article 13.

"§ 28A-10-8. When appointment of successor to personal representative who has resigned is not required.

When two or more personal representatives have qualified, and one or more personal representatives resign pursuant to this Article, leaving in office one or more personal representatives, the appointment of successors shall not be required unless:

(1) The clerk of superior court determines, in ~~his~~ the clerk's discretion, that it is in the best interest of the estate to appoint a successor or successors to the personal representative or representatives who have resigned, or

(2) In the case of executors, the will so provides.

"Article 11.

"Collectors.

"§ 28A-11-1. Appointment and qualifications of collectors.

When for any reason other than a situation provided for in Chapter 28B or Chapter 28C entitled "Estates of Absentees in Military Service" and "Estates of Missing Persons" a delay is encountered in the issuance of letters to a personal representative or when, in any case, the clerk of superior court finds that the best interest of the estate would be served by the appointment of a collector, ~~he~~ the clerk of superior court may issue letters of collection to any person or persons not disqualified to act as a personal representative under G.S. 28A-4-2.

"§ 28A-11-2. Oath and bond.

Every collector shall take an oath as prescribed in G.S. 28A-7-1 and give bond as required in Article 8 of this Chapter for personal representatives.

"§ 28A-11-3. Duties and powers of collectors.

(a) Every collector shall:

(1) Take such possession, custody, or control of the personal property of the decedent as in the exercise of reasonable judgment ~~he~~ the collector deems necessary to its preservation;

(2) Publish notices to creditors as provided by Article 14 of this Chapter;

(3) Collect claims payable to the estate;

(4) Maintain and defend actions in behalf of the estate;

(5) File inventories, accounts, and other reports in the same manner as is required of personal representatives;

(6) Renew obligations of the decedent in the same manner as the personal representative is allowed to do under the provisions of Article 13 of this Chapter; and

(7) Under the express direction and supervision of the clerk of superior court, possess, exercise and perform all other powers, duties and liabilities given to personal representatives by Article 13 of this Chapter.

"§ 28A-11-4. When collectors' powers cease; settlement of accounts.

(a) When letters testamentary or letters of administration are issued, or when in any case the clerk of superior court terminates the appointment of the collector, the powers of the collector cease.

(b) Upon the termination of ~~his~~ the collector's appointment, the collector shall surrender to the personal representative or to the person otherwise entitled thereto or to the clerk all assets of the estate under this control and shall file with the clerk a verified statement of:

(1) ~~His~~ The collector's accounts since ~~his~~ the collector's qualification, or if ~~he~~ the collector has previously filed an account, a statement of ~~his~~ the collector's accounts since the date thereof;
(2) The assets of the estate and their location;
(3) The debts and liabilities of the estate;
(4) All facts and circumstances known to ~~him~~ the collector the disclosure of which is necessary for a full and fair assessment of ~~his~~ the collector's conduct of the office; and
(5) All additional facts and circumstances known to ~~him~~ the collector the disclosure of which is necessary for a full and fair understanding of all matters concerning the estate.

(c) The clerk of superior court shall examine the account of the collector and if ~~he~~ the clerk finds all of the accounts proper, ~~he~~ the clerk shall by order approve the account.

"§ 28A-11-5. Compensation.

A collector shall be compensated in accordance with Article 23 of this Chapter.

"Article 12.

"Public Administrator.

"§ 28A-12-1. Appointment and term.

There shall be a public administrator in every county, appointed by the clerk of superior court, with the written approval of the senior resident superior court judge of the district in which the appointment is made, for a term of four years.

"§ 28A-12-2. Oath of office.

The public administrator shall take and subscribe an oath or affirmation in the form provided in G.S. 11-11 for administrators and in the manner provided in G.S. 28A-7-1; and the oath or affirmation so taken and subscribed shall be filed in the office of the clerk of superior court.

"§ 28A-12-3. Qualification and bond.

(a) The public administrator shall qualify and give bond with regard to each estate administered by ~~him~~ the public administrator as provided in Article 8 of this Chapter, at the expense of such estate.

(b) As an alternative to and in lieu of the bonding requirement provided in subsection (a), the administrator may, in the discretion of the clerk of superior court, enter into a single permanent bond, secured by any of the methods provided in G.S. 28A-8-2(4), payable to the State of North Carolina, conditioned upon the faithful performance of the duties of ~~his~~ the administrator's office and obedience to all lawful orders of the clerk of superior court or other court touching the administration of any estate committed to ~~him.~~ the administrator. The amount of the permanent bond shall be determined by the clerk, based on the total value of all the estates administered by the public administrator, and may be increased or decreased from time to time as the clerk determines is necessary. The expense of the bond shall be borne by the estates administered by the administrator, as determined by the clerk.

"§ 28A-12-4. When public administrator shall apply for letters.

The public administrator shall apply for and may, with the approval of the clerk of superior court, obtain letters on the estates of decedents when:

(1) It is brought to ~~his~~ the public administrator's attention that a period of six months has elapsed from the death of any decedent who has died owning property, and no letters testamentary, or letters of administration or collection, have been applied for or issued to any person; or
(2) Any person without known heirs shall die intestate owning property; or
(3) Any person entitled to apply for letters of administration shall, in writing, request the clerk to issue letters to the public administrator as provided in G.S. 28A-5-2(c).

"**§ 28A-12-5. Powers and duties.**

(a) The public administrator shall have, in respect to the several estates in ~~his~~ the public administrator's hands, all the rights and powers and shall be subject to all the duties and liabilities of other personal representatives.

(b) After the expiration of the term of office of a public administrator or ~~his~~ the public administrator's resignation as public administrator, ~~he~~ the public administrator shall continue, subject to the provisions of Articles 9 and 10 of this Chapter, to administer the several estates previously committed to ~~him~~ the public administrator until ~~he~~ the public administrator has fully administered the same, and ~~his~~ the public administrator's bonds shall continue in effect as to all such estates.

"**§ 28A-12-6. Removal from office.**

If letters of administration issued to the public administrator with respect to any estate are subsequently revoked on the grounds that they were obtained by false representation as provided in G.S. 28A-9-1(a)(2), or on the grounds as specified in G.S. 28A-9-1(a)(1), 28A-9-1(a)(3), 28A-9-2(a)(3), 28A-9-2(a)(5), or 28A-9-2(a)(6) or if ~~he~~ the public administrator becomes a nonresident of the State, the clerk of superior court shall order the removal of the public administrator from ~~office.~~ office upon notice and hearing in accordance with Article 2 of this Chapter.

"**§ 28A-12-7. Procedure after removal from office.**

The clerk of superior court shall require of any public administrator who is removed from office pursuant to G.S. 28A-12-6 a complete accounting of all ~~his~~ of the public administrator's activities as public administrator and for the property remaining under ~~his~~ the public administrator's control by reason of ~~his~~ the public administrator's appointment under this Article as administrator of any estate that has not been fully administered at the time of ~~his~~ the public administrator's removal. If it appears to the clerk of superior court that grounds exist for revocation of letters of administration issued with respect to any such estate, ~~he~~ the clerk shall proceed in accordance with the provisions of Article 9 of this Chapter. If letters of administration are revoked pursuant to such proceedings, the clerk of superior court shall issue letters of administration to the successor public administrator or to some other person not disqualified under G.S. 28A-4-2.

"**§ 28A-12-8. Compensation.**

A public administrator shall be compensated in accordance with Article 23 of this Chapter.

"Article 13.

"Representative's Powers, Duties and Liabilities.

"**§ 28A-13-1. Time of accrual of duties and powers.**

The duties and powers of a personal representative commence upon ~~his or her~~ the personal representative's appointment. The powers of a personal representative relate back to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. However, a person named executor in a will may, prior to appointment, carry out written instructions of the decedent relating to the decedent's body, funeral and burial arrangements; provided that a health care agent authorized in a valid health care power of attorney to make body, funeral, and burial arrangements shall have precedence in making these arrangements, both before and after qualification of the decedent's personal representative, to the extent provided in G.S. 32A-19(b). A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

"**§ 28A-13-2. General duties; relation to persons interested in estate.**

A personal representative is a fiduciary who, in addition to the specific duties stated in this Chapter, is under a general duty to settle the estate of ~~his~~ the personal representative's decedent as expeditiously and with as little sacrifice of value as is reasonable under all of the circumstances. ~~He~~ A personal representative shall use the authority and powers conferred upon

~~him~~ the personal representative by this Chapter, by the terms of the will under which ~~he~~ the personal representative is acting, by any order of court in proceedings to which ~~he~~ the personal representative is party, and by the rules generally applicable to fiduciaries, for the best interests of all persons interested in the estate, and with due regard for their respective rights.

"§ 28A-13-3. Powers of a personal representative or fiduciary.

(a) Except as qualified by express limitations imposed in a will of the decedent or a court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to perform in a reasonable and prudent manner every act which a reasonable and prudent person would perform incident to the collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and expeditious manner as provided by law, including the powers specified in the following subdivisions:

(1) To take possession, custody or control of the personal property of the decedent. If in the opinion of the personal representative ~~his~~ the personal representative's possession, custody or control of such property is not necessary for purposes of administration, such property may be left with or surrendered to the heir or devisee presumptively entitled thereto. ~~He~~ The personal representative has the power to take possession, custody or control of the real property of the decedent if ~~he~~ the personal representative determines such possession, custody or control is in the best interest of the administration of the ~~estate.~~ estate, including the power to eject occupants of real property. Prior to exercising such power over real property the procedure as set out in subsection G.S. 28A-13-3(c) shall be ~~followed.~~ followed, except with respect to real property that is devised to the personal representative in the decedent's will or title to which is acquired by the personal representative during the estate administration, in which case the personal representative shall be immediately entitled to custody, possession, and control, and may institute an estate proceeding under subsection (d) of this section to enforce those rights. If the personal representative determines that such possession, custody or control is not in the best interest of the administration of the estate such property may be left with or surrendered to the heir or devisee presumptively entitled thereto.

(2) To retain assets owned by the decedent pending distribution or liquidation even though such assets may include items which are otherwise improper for investment of trust funds.

(3) To receive assets from other fiduciaries or other sources.

(4) To complete performance of contracts entered into by the decedent that continue as obligations of ~~his~~ the decedent's estate, or to refuse to complete such contracts, as the personal representative may determine to be in the best interests of the estate, but such refusal shall not limit any cause of action which might have been maintained against decedent if ~~he~~ the decedent had refused to complete such contract. In respect to enforceable contracts by the decedent to convey an interest in land, the provisions of G.S. 28A-17-9 are controlling.

(5) To deposit, as a fiduciary, funds of the estate in a bank, including a bank operated by the personal representative pursuant to G.S. 53-163.1.

(6) To make, as a fiduciary, any form of investment allowed by law to the State Treasurer under G.S. 147-69.1, with funds of the estate, when such are not needed to meet debts and expenses immediately payable and are not immediately distributable, including money received from the sale of other

assets; or to enter into other short-term loan arrangements that may be appropriate for use by trustees or beneficiaries generally. Provided, that in addition to the types of investments hereby authorized, deposits in interest-bearing accounts of any credit union authorized to do business in this State, when such deposits are insured in the same manner as required by G.S. 147-69.1 for deposits in a savings and loan association, are hereby authorized.

(7) To abandon or relinquish all rights in any property when, in the opinion of the personal representative acting reasonably and in good faith, it is valueless, or is so encumbered or is otherwise in such condition that it is of no benefit to the estate.

(8) To vote shares of stock or other securities in person or by general or limited proxy, and to execute waivers, consents or objections with respect to such stock or securities.

(9) To pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.

(10) To hold shares of stock or other securities in the name of a nominee, without mention of the estate in the instrument representing stock or other securities or in registration records of the issuer thereof; provided, that

a. The estate records and all reports or accounts rendered by the personal representative clearly show the ownership of the stock or other securities by the personal representative and the facts regarding its holdings, and

b. The nominee shall not have possession of the stock or other securities or access thereto except under the immediate supervision of the personal representative or when such securities are deposited by the personal representative in a clearing corporation as defined in G.S. 25-8-102.

Such personal representative shall be personally liable for any acts or omissions of such nominee in connection with such stock or other securities so held, as if such personal representative had done such acts or been guilty of such omissions.

(11) To insure, at the expense of the estate, the assets of the estate in ~~his~~ the personal representative's possession, custody or control against damage or loss.

(12) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the personal representative shall deem advisable, including the power of a corporate personal representative to borrow from its own banking department, for the purpose of paying debts, taxes, and other claims against the estate, and to mortgage, pledge or otherwise encumber such portion of the estate as may be required to secure such loan or loans. In respect to the borrowing of money on the security of the real property of the decedent, G.S. 28A-17-11 is controlling.

(13) To renew obligations of the decedent for the payment of money.

(14) To advance ~~his~~ the personal representative's own money for the protection of the estate, and for all expenses, losses and liabilities sustained in the administration of the estate or because of the holding or ownership of any estate assets. For such advances, with any interest, the personal representative shall have a lien on the assets of the estate as against a devisee or heir.

(15) To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the estate.

(16) To pay taxes, assessments, ~~his~~ the personal representative's own compensation, and other expenses incident to the collection, care, administration and protection of the assets of the estate in ~~his~~ the personal representative's possession, custody or control.

(17) To sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

(18) To allocate items of income or expense to either estate income or principal, as permitted or provided by law.

(19) To employ persons, including attorneys, auditors, investment advisors, appraisers or agents to advise or assist ~~him~~ the personal representative in the performance of ~~his~~ the personal representative's administrative duties.

(20) To continue any business or venture in which the decedent was engaged at the date of ~~his~~ the decedent's death, where such continuation is reasonably necessary or desirable to preserve the value, including goodwill, of the decedent's interest in such business. With respect to the use of the decedent's interest in a continuing partnership, the provisions of G.S. 59-71 and 59-72 qualify this power; and with respect to farming operations engaged in by the decedent at the time of ~~his~~ the decedent's death, the provisions of G.S. 28A-13-4 qualify this power.

(21) To incorporate or participate in the incorporation of any business or venture in which the decedent was engaged at the time of ~~his~~ the decedent's death.

(22) To provide for the exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate.

(23) To maintain actions for the wrongful death of the decedent according to the provisions of Article 18 of this Chapter and to compromise or settle any such claims, whether in litigation or not. Unless all persons who would be entitled to receive any damages recovered under G.S. 28A-18-2(b)(4) are competent adults and have consented in writing, any such settlement shall be subject to the approval of a judge of the court or tribunal exercising jurisdiction over the action or a judge of the district or superior court in cases where no action has previously been filed. If the claim is brought under Article 31 of Chapter 143 of the General Statutes, the settlement is subject to the approval of the Industrial Commission in accordance with that Article. It shall be the duty of the personal representative in distributing the proceeds of such settlement in any instance to take into consideration and to make a fair allocation to those claimants for funeral, burial, hospital and medical expenses which would have been payable from damages which might have been recovered had a wrongful death action gone to judgment in favor of the plaintiff.

(24) To maintain any appropriate action or proceeding to recover possession of any property of the decedent, or to determine the title thereto; to recover damages for any injury done prior to the death of the decedent to any of ~~his~~ the decedent's property; and to recover damages for any injury done subsequent to the death of the decedent to such property.

(25) To purchase at any public or private sale of any real or personal property belonging to the decedent's estate or securing an obligation of the estate as a fiduciary for the benefit of the estate when, in ~~his~~ the personal representative's opinion, it is necessary to prevent a loss to the estate.

(26) To sell or lease personal property of the estate in the manner prescribed by the provisions of Article 16 of this Chapter.

(27) To sell or lease real property of the estate in the manner prescribed by the provisions of Article 17 of this Chapter.

(28) To enter into agreements with taxing authorities to secure the benefit of the federal marital deduction pursuant to G.S. 28A-22-6.

(29) To pay or satisfy the debts and claims against the decedent's estate in the order and manner prescribed by Article 19 of this Chapter.

(30) To distribute any sum recovered for the wrongful death of the decedent according to the provisions of G.S. 28A-18-2; and to distribute all other assets available for distribution according to the provisions of this Chapter or as otherwise lawfully authorized.

(31) To exercise such additional lawful powers as are conferred upon ~~him~~ the personal representative by the will.

(32) To execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the personal representative.

(33) Repealed by Session Laws 2009-48, s. 10, effective October 1, 2009, and applicable to renunciations and powers of attorney executed on or after that date.

(a1) Except as qualified by express limitations imposed in a will of the decedent, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative shall have absolute discretion to make the election as to which items of the decedent's personal and household effects shall be excluded from the carry over basis provision of the federal income tax law and such election shall be conclusive and binding on all concerned.

(a2) Subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to renounce in accordance with the provisions of Chapter 31B of the General Statutes.

(b) Any question arising out of the powers conferred by subsections (a), (a1), and (a2) of this section shall be determined in accordance with the provisions of Article 18 of this Chapter.

(c) ~~Prior~~ Except with respect to real property that is devised to the personal representative in the decedent's will, or title to which is acquired by the personal representative during the estate administration, in which case the personal representative shall be immediately entitled to custody, possession, and control and may institute an estate proceeding under subsection (d) to enforce those rights, prior to the personal representative exercising possession, custody or control over real property of the ~~estate he~~ estate, the personal representative shall petition the clerk of court to obtain an order authorizing such possession, custody or control. The petition shall include:

(1) A description of the real property which is the subject of the petition;

(2) The names, ages, and addresses, if known, of the devisees and heirs of the decedent;

(3) A statement by the personal representative that ~~he~~ the personal representative has determined that such possession, custody or control is in the best interest of the administration of the estate.

The devisees and heirs will be made parties to the proceeding by service of summons in the manner prescribed by law. If the clerk of court determines that it is in the best interest of the administration of the estate to authorize the personal representative to take possession, custody or ~~control he~~ control, the clerk of court shall grant an order authorizing that power. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-15-1(c), the

personal representative may petition for possession, custody, or control of any real property as a part of that proceeding and is not required to institute a separate special proceeding.

(d) The personal representative shall have the power to institute an estate proceeding pursuant to Article 2 of this Chapter to enforce the rights set forth in this subsection. The clerk of superior court may enter orders necessary to enforce the rights set forth in this subsection. If the person occupying the real property is a tenant or lessee of the property, the personal representative may seek ejectment of the tenant or lessee only pursuant to the provisions of Article 3 of Chapter 42 of the General Statutes.

"§ 28A-13-4. Continuance of farming operations of deceased persons.

When any person dies while engaged in farming operations, ~~his~~ the decedent's personal representative is authorized to continue such farming operations until the end of the current calendar year, and until all crops grown during that year are harvested. The net income from such farming operations shall be personal assets of the estate. Any indebtedness incurred in connection with such farming operations after the date of death shall be preferred over the claims of any heir, legatee, devisee, distributee, general or unsecured creditor of said estate. Nothing herein contained shall limit the powers of a personal representative under the terms of a will.

"§ 28A-13-5. Personal representatives hold in joint tenancy.

Any estate or interest in property which becomes vested in two or more personal representatives shall be held by them in joint tenancy with the incident of survivorship.

"§ 28A-13-6. Exercise of powers of joint personal representatives by one or more than one.

(a) Repealed by Session Laws 2005-192, s. 5, effective January 1, 2006.

(b) If a will expressly makes provision for the execution of any of the powers of personal representatives by all of them or by any one or more of them, the provisions of the will govern.

(c) Repealed by Session Laws 2005-192, s. 5, effective January 1, 2006.

(c1) If there is no governing provision in the will, personal representatives may, by written agreement signed by all of them and filed with and approved by the clerk of superior court of the county in which the personal representatives qualified, provide that any designated one or more of the personal representatives may exercise one or more of the following powers:

(1) Establish and maintain bank accounts for the ~~trust~~ estate and issue checks for the estate.

(2) Maintain inventories, accountings, and income and expense records of the estate.

(3) Enter any safety deposit box rented by the estate.

(4) Employ persons as advisors or assistants in the performance of administrative duties, including agents, attorneys, accountants, brokers, appraisers, and custodians.

(5) List estate property for taxes and prepare and file tax returns for the ~~trust.~~ estate.

(6) Collect and give receipts for claims and debts of the estate.

(7) Pay debts, claims, costs of administration, and taxes of the estate.

(8) Compromise, adjust, or otherwise settle any claim by or against the ~~trust~~ estate and release, in whole or in part, a claim belonging to the estate.

(9) Have custody of the estate property.

(10) Perform any function relating to investment of estate assets.

(d) Subject to subsection (b) of this section, if two or more personal representatives own shares of corporate stock or other securities, their acts with respect to voting shall have the following effect:

(1) If only one votes, in person or by proxy, that personal representative's act binds all;

(2) If more than one vote, in person or by proxy, the act of the majority so voting binds all;

(3) If more that one vote, in person or by proxy, but the vote is evenly split on any particular matter, each faction is entitled to vote the stock or other securities in question proportionately.

(e) Subject to subsections (b), (c1), and (d) of this section, all other acts and duties must be performed by both of the personal representatives if there are two, and by a majority of them if there are more than two. No personal representative who has not joined in exercising a power shall be liable for the consequences of such exercise, nor shall a dissenting personal representative be liable for the consequences of an act in which the personal representative joins at the direction of the majority of the personal representatives, if that personal representative expressed his or her dissent in writing to any other personal representative at or before the time of such joinder.

(f) No personal representative shall be relieved of liability on his or her bond or otherwise by entering into any agreement under this section.

"§ 28A-13-7. Powers and duties of successor personal representative.

A successor personal representative is one appointed to succeed a personal representative whose appointment has terminated by death, resignation or revocation. Unless a contrary intent clearly appears from the will, a successor personal representative has all the powers and duties, discretionary or otherwise, of the original personal representative.

"§ 28A-13-8. Powers and duties of administrator with will annexed.

When an administrator with the will annexed has been appointed, whether or not ~~he~~ the administrator is succeeding a previously appointed personal representative, ~~he~~ that administrator has the same powers and duties, discretionary or otherwise, as if ~~he~~ the administrator had been named executor in the will, unless a contrary intent clearly appears from the will.

"§ 28A-13-9. Powers of surviving personal representative.

When one or more of those nominated as coexecutors in a will is not appointed, or when the appointment of one or more joint personal representatives is terminated, every power granted to such joint personal representatives may be exercised by the surviving representative or representatives; provided that nothing to the contrary appears in the will of a testate decedent.

"§ 28A-13-10. Liability of personal representative.

(a) Property of Estate. – A personal representative shall be liable for and chargeable in ~~his~~ the personal representative's accounts with all of the estate of the decedent which comes into ~~his~~ the personal representative's possession at any time, including all the income therefrom; but ~~he~~ the personal representative shall not be liable for any debts due to the decedent or other assets of the estate which remain uncollected without ~~his~~ the personal representative's fault. Except for commissions allowable by law, ~~he~~ the personal representative shall not be entitled to any profits caused by an increase in values, nor be chargeable with loss by a decrease in value or destruction without ~~his~~ the personal representative's fault, of any part of the estate.

(b) Property Not a Part of Estate. – A personal representative shall be chargeable in ~~his~~ the personal representative's accounts with property not a part of the estate which comes into ~~his~~ the personal representative's possession at any time and shall be liable to the persons entitled thereto if:

(1) The property was received under a duty imposed on ~~him~~ the personal representative by law in the capacity of personal representative; or

(2) ~~He~~ The personal representative has commingled such property with the assets of the estate.

(c) Breach of Duty. – A personal representative shall be liable and chargeable in ~~his~~ the personal representative's accounts for any loss to the estate arising from ~~his~~ the personal representative's embezzlement or commingling of the estate with other property; for loss to the estate through self-dealing; for any loss to the estate from wrongful acts or omissions of ~~his~~ the personal representative's joint personal representatives which ~~he~~ the personal representative could have prevented by the exercise of ordinary care; and for any loss to the estate arising from ~~his~~ the personal representative's failure to act in good faith and with such care, foresight and diligence as an ordinarily reasonable and prudent ~~man~~ person would act with ~~his~~ the ordinarily reasonable and prudent person's own property under like circumstances. If the exercise of power concerning the estate is improper, the personal representative is liable for breach of fiduciary duty to interested persons for resulting damage or loss to the same extent as a trustee of an express trust.

"Article 14.

"Notice to Creditors.

"§ 28A-14-1. Notice for claims.

(a) Every personal representative and collector after the granting of letters shall notify all persons, firms and corporations having claims against the decedent to present the same to such personal representative or collector, on or before a day to be named in such notice, which day must be at least three months from the day of the first publication or posting of such notice. The notice shall set out a mailing address for the personal representative or collector. The notice shall be published once a week for four consecutive weeks in a newspaper qualified to publish legal advertisements, if any such newspaper is published in the county. If there is no newspaper published in the county, but there is a newspaper having general circulation in the county, then at the option of the personal representative, or collector, the notice shall be published once a week for four consecutive weeks in the newspaper having general circulation in the county and posted at the courthouse or the notice shall be posted at the courthouse and four other public places in the county. Personal representatives are not required to publish or mail notice to creditors if the only asset of the estate consists of a claim for damages arising from death by wrongful act. When any collector or personal representative of an estate has published or mailed the notice provided for by this section, no further publication or mailing shall be required by any other collector or personal representative.

(b) Prior to filing the proof of notice required by G.S. 28A-14-2, every personal representative and collector shall personally deliver or send by first class mail to the last known address a copy of the notice required by subsection (a) of this section to all persons, firms, and corporations having unsatisfied claims against the decedent who are actually known or can be reasonably ascertained by the personal representative or collector within 75 days after the granting of letters. Provided, however, no notice shall be required to be delivered or mailed with respect to any claim that is recognized as a valid claim by the personal representative or collector.

(c) The personal representative or collector may personally deliver or mail by first class mail a copy of the notice required by subsection (a) of this section to all creditors of the estate whose names and addresses can be ascertained with reasonable diligence. If the personal representative or collector in good faith believes that the notice required by subsection (b) of this section to a particular creditor is or may be required and gives notice based on that belief, the personal representative or collector is not liable to any person for giving the notice, whether or not the notice is actually required by subsection (b) of this section. If the personal representative or collector in good faith fails to give notice required by subsection (b) of this section, the personal representative or collector is not liable to any person for such failure.

"§ 28A-14-1.1. Validation of certain notices.

(a) Any notice to creditors published or posted under G.S. 28A-14-1 which did not, in the advertisement, name the day after which claims could not be presented is validated.

(b) This section applies to all notices published and posted between October 1, 1975, and January 1, 1991, except that it does not affect any pending litigation or any litigation instituted within 90 days of January 1, 1991.

"§ 28A-14-2. Proof of notice.

A copy of the notice directed by G.S. 28A-14-1(a) to be posted or published, together with an affidavit or affidavits of one of the persons authorized by G.S. 1-600(a) to make affidavits to the effect that such notice was posted or published in accordance with G.S. 28A-14-1(a), and an affidavit of the personal representative or collector, or the attorney for the personal representative or collector, to the effect that a copy of the notice was personally delivered or mailed to each creditor entitled to notice in accordance with G.S. 28A-14-1(b) shall be filed in the office of the clerk of superior court by the personal representative or collector at the time the inventory required by G.S. 28A-20-1 is filed. The copy of the notice, together with the affidavit or affidavits, shall be deemed a record of the court and a copy thereof, duly certified by the clerk of superior court, shall be received as prima facie evidence of the fact of publication or mailing in all the courts of this State.

"§ 28A-14-3. Personal notice to creditor.

The personal representative or collector may cause the notice to be personally served on any creditor.

"Article 15.

"Assets; Discovery of Assets.

"§ 28A-15-1. Assets of the estate generally.

(a) All of the real and personal property, both legal and equitable, of a decedent shall be assets available for the discharge of debts and other claims against ~~his~~ the decedent's estate in the absence of a statute expressly excluding any such property. Provided that before real property is selected the personal representative must determine that such selection is in the best interest of the administration of the estate.

(b) In determining what property of the estate shall be sold, leased, pledged, mortgaged or exchanged for the payment of the debts of the decedent and other claims against ~~his~~ the decedent's estate, the personal representative shall select the assets which in ~~his~~ the personal representative's judgment are calculated to promote the best interests of the estate. In the selection of assets for this purpose, there shall be no necessary distinction between real and personal property, absent any contrary provision in the will.

(c) If it shall be determined by the personal representative that it is in the best interest of the administration of the estate to sell, lease, or mortgage any real estate or interest therein to obtain money for the payment of debts and other claims against the decedent's estate, the personal representative shall institute a special proceeding before the clerk of superior court for such purpose pursuant to Article 17 of this Chapter, except that no such proceeding shall be required for a sale made pursuant to authority given by will. A general provision granting authority to the personal representative to sell the testator's real property, or incorporation by reference of the provisions of G.S. 32-27(2) shall be sufficient to eliminate the necessity for a proceeding under Article 17. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-13-3(c), the personal representative may petition for sale, lease, or mortgage of any real property as a part of that proceeding and is not required to institute a separate special proceeding.

(d) The crops of every deceased person, remaining ungathered at ~~his~~ the person's death, shall, in all cases, belong to the personal representative or collector, as part of the personal assets of the decedent's estate; and shall not pass to the devisee by virtue of any devise of the land, unless such intent be manifest and specified in the will.

"§ 28A-15-2. Title and possession of property.

(a) Personal Property. – Subsequent to the death of the decedent and prior to the appointment and qualification of the personal representative or collector, the title and the right

of possession of personal property of the decedent is vested in ~~his~~ the decedent's heirs; but upon the appointment and qualification of the personal representative or collector, the heirs shall be divested of such title and right of possession which shall be vested in the personal representative or collector relating back to the time of the decedent's death for purposes of administering the estate of the decedent. But, if in the opinion of the personal representative, ~~his~~ the personal representative's possession, custody and control of any item of personal property is not necessary for purposes of administration, such possession, custody and control may be left with or surrendered to the heir or devisee presumptively entitled thereto.

(b) Real Property. – The title to real property of a decedent is vested in ~~his~~ the decedent's heirs as of the time of ~~his~~ the decedent's death; but the title to real property of a decedent devised under a valid probated will becomes vested in the devisees and shall relate back to the decedent's death, subject to the provisions of G.S. 31-39.

"§ 28A-15-3. Nonexoneration of encumbered property.

When real or personal property subject to any lien or security interest, except judgment liens, is specifically devised, the devisee takes the property subject to the encumbrance and without a right to have other assets of the decedent applied to discharge the secured obligation, unless an express provision of the will confers such right of exoneration. A general testamentary direction to pay the debts of the decedent is not sufficient to confer such right.

"§ 28A-15-4. Encumbered assets.

When any assets of the estate are encumbered by mortgage, pledge, lien or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance, or convey or transfer the encumbered assets to the creditor in satisfaction of ~~his~~ the creditor's lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, if it appears to be for the best interest of the estate; provided that payment of an encumbrance shall not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration by express provisions of the will.

"§ 28A-15-5. Order in which assets appropriated; abatement.

(a) General Rules. – In the absence of testamentary indication as to the order of abatement, or some other controlling statute, shares of devisees and of heirs abate, without any preference or priority as between real and personal property, in the following order:

(1) Property not disposed of by the will;
(2) Residuary devises;
(3) General devises;
(4) Specific devises.

For purposes of abatement, a demonstrative devise of money or property payable out of or charged on a particular fund or other property is treated as a specific devise; but if the particular fund or property out of which the demonstrative devise is to be paid is nonexistent or insufficient at the death of the testator, the deficiency is to be payable out of the general estate of the decedent and is to be regarded as a general devise and must abate pro rata with other general devises. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received, had full distribution of the property been made in accordance with the terms of the will.

(b) Abatement; Sales; Contribution. – When property which has been specifically devised is sold, leased, or mortgaged, or a security therein is created, by the personal representative, abatement shall be achieved by ratable adjustments in, or contributions from other interest in the remaining assets. The clerk of superior court shall, at the time of the hearing on the petition for final distribution, determine the amounts of the respective contributions and whether the same shall be made before distribution or shall constitute a lien on specific property which is distributed.

"§ 28A-15-6. Federal income tax refunds – joint returns.

Upon the determination by the United States Treasury Department of an overpayment of income tax by a married couple filing a joint federal income tax return, one of whom has died since the filing of such return or where a joint federal income tax return is filed on behalf of a husband and wife, one of whom has died prior to the filing of the return, any refund of the tax by reason of such overpayment, if not in excess of five hundred dollars ($500.00), shall be the sole and separate property of the surviving spouse. In the event that both spouses are dead at the time such overpayment is determined, such refund, if not in excess of five hundred dollars ($500.00), shall be the sole and separate property of the estate of the spouse who died last and may be paid directly by the Treasury Department to the executor or administrator of such estate, or to the person entitled to the possession of the assets of a small estate pursuant to the provisions of Article 25 of this Chapter.

"§ 28A-15-7. Federal income tax refunds – separate returns.

Upon the determination by the United States Treasury Department of an overpayment of income tax by any married person filing a separate return, any refund of the tax by reason of such overpayment, if not in excess of two hundred fifty dollars ($250.00), exclusive of interest, shall be the sole and separate property of the surviving spouse, and the United States Treasury Department may pay said sum directly to such surviving spouse, and such payment to the extent thereof shall operate as a complete acquittal and discharge of the United States Treasury Department.

"§ 28A-15-8. State income tax returns.

Upon the determination by the Secretary of Revenue of North Carolina of an overpayment of income tax by any married person, any refund of the tax by reason of such overpayment, if not in excess of two hundred dollars ($200.00) exclusive of interest, shall be the sole and separate property of the surviving spouse, and said Secretary of Revenue may pay said sum directly to such surviving spouse, and such payment to the extent thereof shall operate as a complete acquittal and discharge of the Secretary of Revenue.

"§ 28A-15-9. Excess funds.

If the amount of any refund exceeds the sums specified in G.S. 28A-15-6, 28A-15-7 or 28A-15-8, the sums specified therein and one half of any additional sums shall be the sole and separate property of the surviving spouse. The remaining one half of such additional sums shall be the property of the estate of the decedent spouse.

"§ 28A-15-9.1. Phase II payments.

A Phase II payment as defined in G.S. 28A-21-3.1 shall be the property of the distributees paid in accordance with that section.

"§ 28A-15-10. Assets of decedent's estate for limited purposes.

(a) When needed to satisfy claims against a decedent's estate, assets may be acquired by a personal representative or collector from the following sources:

(1) Tentative trusts created by the decedent in savings accounts for other persons.

(2) Gifts causa mortis made by the decedent.

(3) Joint deposit accounts with right of survivorship created by decedent pursuant to the provisions of G.S. 41-2.1 or otherwise; and joint tenancies with right of survivorship created by decedent in corporate stocks or other investment securities.

(4) An interest in a security passing to a beneficiary pursuant to the provisions of Article 4 of Chapter 41 of the General Statutes.

Such assets shall be acquired solely for the purpose of satisfying such claims, however, and shall not be available for distribution to heirs or devisees.

(b) Where there are not sufficient personal and real assets of the decedent to satisfy all the debts and other claims against ~~his~~ the decedent's estate, the personal representative shall have the right to sue for and recover any and all personal property or real property, or interest

therein, which the decedent may in any manner have transferred or conveyed with intent to hinder, delay, or defraud ~~his~~ the decedent's creditors, and any personal property or real property, or interest therein, so recovered shall constitute assets of the estate in the hands of the personal representative for the payment of debts and other claims against the estate of the decedent. But if the alienee has sold the personal property or real property, or interest therein, so fraudulently acquired by ~~him~~ the alienee from the decedent to a bona fide purchaser for value without notice of the fraud, then such personal property or real property, or interest therein, may not be recovered from such bona fide purchaser but the fraudulent alienee shall be liable to the personal representative for the value of the personal property or real property, or interest therein, so acquired and disposed of to a bona fide purchaser. If the whole recovery from the fraudulent alienee shall not be necessary for the payment of the debts and other claims against the estate of the decedent, the surplus shall be returned to such fraudulent alienee or ~~his~~ the fraudulent alienee's assigns.

(c) Where there has been a recovery in an action for wrongful death, the same shall not be applied to the payment of debts and other claims against the estate of decedent or devises, except as to the payment of reasonable burial and funeral expenses and reasonable hospital and medical expenses incident to the injury resulting in death and as limited and provided in G.S. 28-18-2 [G.S. 28A-18-2].

"§ 28A-15-11. Debt due from personal representative not discharged by appointment.

The appointment of any person as personal representative does not discharge any debt or demand due from such person to the decedent.

"§ 28A-15-12. ~~Examination of persons or corporations believed to have possession of~~ Actions to recover property of decedent.

(a) ~~Whenever a personal representative or collector makes oath or affirmation before the clerk of superior court of the county where the party to be examined resides or does business that he has reasonable ground to believe, setting forth the grounds of his belief, that any person, firm or corporation has in his or its possession any property of any kind belonging to the estate of his decedent, the clerk shall issue a notice to be served upon the person or any member of the firm or officer, agent or employee of the firm or corporation designated in the affidavit, to appear before the clerk at his office at a time fixed in the notice, not less than three days after the issuance of the notice, and be examined under oath by the personal representative or collector or his attorney concerning the possession of such property. If upon examination the clerk of superior court finds that the person examined or the firm or corporation for which he works has in his or its possession any property belonging solely to the decedent, and fails to show any satisfactory reason for retaining possession of the property, the clerk shall issue an order requiring the person, firm or corporation forthwith to deliver the property to said personal representative or collector and may enforce compliance with the order by proceedings as for contempt of court: Provided, that in the case of a firm or corporation, whenever any person other than a partner or executive officer of such firm or corporation is examined, no such order shall be made until at least three days after service of notice upon a partner or executive officer of such firm or corporation to show cause why such order should not be made.~~

(a1) A personal representative or collector shall have the right to bring an action to sue for and recover any property of any kind belonging to the estate of the personal representative's decedent, by action filed in the Superior Court Division of the General Court of Justice and shall be entitled to such other provisional remedies as provided for under Subchapter 13 of Chapter 1 of the General Statutes.

(b) ~~Any person aggrieved by the order of the clerk of superior court may, within five days, appeal to the judge holding the next session of superior court of the county after the order is made or to the resident judge of the district, but as a condition precedent to his appeal he shall give a justified bond in a sum at least double the value of the property in question, conditioned upon the safe delivery of the property and the payment of damages for its~~

~~detention, to the personal representative or collector in the event that the order of the clerk should be finally sustained. When the bond is executed and delivered to the court, no attachment as for contempt shall be served upon the appealing party and any contempt order theretofore issued shall be stayed; but if the appellant fails to have his appeal heard at the next session of superior court held in his county, or by the resident judge of the district within 30 days after giving notice, the appeal shall be deemed abandoned, and the stay of any contempt order theretofore issued shall terminate.~~

(b1) A personal representative, collector, or any interested person shall have the right to bring an estates proceeding seeking the examination of any persons reasonably believed to be in possession of property of any kind belonging to the estate of the decedent including a demand for the recovery of such property. An estates proceeding brought under the provisions of this subsection shall be instituted by the filing of a verified petition and shall be conducted in accordance with the provisions of Article 2 of this Chapter. The court may enter orders requiring the examination of persons consistent with this subsection and, if the court determines that a person is in possession of property of the estate of the decedent, shall have the authority to order recovery of that property. Orders issued by the clerk of superior court shall be enforceable by proceedings as for contempt of court.

(c) The party against whom the final judgment is rendered shall be adjudged to pay the costs of the proceedings hereunder.

(d) The remedies provided in this section shall not be exclusive, but shall be in addition to any remedies which are now or may hereafter be provided.

"§ 28A-15-13. Opening and inventory of decedent's safe-deposit box.

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

(1) Institution. – Any entity or person having supervision or possession of a safe-deposit box to which a decedent had access.

(1a) Deputy. – A person appointed in writing by a lessee or cotenant of a safe-deposit box as having right of access to the safe-deposit box without further authority or permission of the lessee or cotenant, in a manner and form designated by the institution.

(2) Letter of authority. – Letters of administration, letters testamentary, an affidavit of collection of personal property, an order of summary administration, or a letter directed to the institution designating a person entitled to receive the contents of a safe-deposit box to which the decedent had access. The letter of authority must be signed by the clerk of superior court or by the clerk's representative.

(3) Qualified person. – A person possessing a letter of authority or a person named as a deputy, lessee or cotenant of the safe-deposit box to which the decedent had access.

(b) Presence of Clerk Required. – Any safe-deposit box to which a decedent had access shall be sealed by the institution having supervision or possession of the box. Except as provided in subsection (c) of this section, the presence of the clerk of superior court of the county where the safe-deposit box is located or the presence of the clerk's representative is required before the box may be opened. The clerk or the clerk's representative shall open the safe-deposit box in the presence of the person possessing a key to the box and a representative of the institution having supervision or possession of the box. The clerk shall make an inventory of the contents of the box and furnish a copy to the institution and to the person possessing a key to the box.

(c) Presence of Clerk Not Required. – The presence of the clerk of superior court or the clerk's representative is not required when the person requesting the opening of the decedent's safe-deposit box is a qualified person. In that event, the qualified person shall make an

inventory of the contents of the box and furnish a copy to the institution and to the person possessing a key to the box if that person is someone other than the qualified person.

(d) Testamentary Instrument in Box. – If the safe-deposit box contains any writing that appears to be a will, codicil, or any other instrument of a testamentary nature, then the clerk of superior court or the qualified person shall file the instrument in the office of the clerk of superior court.

(e) Release of Contents. – Except as provided in subsection (d) for testamentary instruments, the institution shall not release any contents of the safe-deposit box to anyone other than a qualified person.

(f) No Tax Waiver Required. – No tax waiver is required for the release of the contents of the decedent's safe-deposit box.

"Article 16.

"Sales or Leases of Personal Property.

"§ 28A-16-1. Sales or leases without court order.

(a) A personal representative has the power to sell, at either a public or private sale, or to lease, personal property of the decedent without a court order.

(b) A personal representative who sells or leases personal property of the decedent without a court order is not required to file a special report or have the transaction confirmed by the clerk of superior court, or to follow any of the procedure set forth in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales," but shall include in ~~his~~ the personal representative's next account, either annual or final, a record of the receipts and disbursements incident to the transaction.

"§ 28A-16-2. Sales or leases by court order.

(a) All sales or leases of personal property of the decedent by a collector shall be made only upon order obtained, by motion, from the clerk of superior court.

(b) A personal representative may, if ~~he~~ the personal representative so desires, request the clerk of superior court to issue to ~~him~~ the personal representative an order to sell or lease personal property of the decedent.

(c) Sales or leases of personal property of the decedent held pursuant to court order shall be conducted as provided in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales."

(d) A personal representative may, for ~~his~~ the personal representative's own benefit, purchase or lease personal property belonging to the decedent at a public sale conducted under an order of the clerk of superior court, if the transaction is reported to the clerk of superior court and confirmed by ~~him.~~ the clerk of superior court.

"§ 28A-16-3. Sales of household furnishings.

If the decedent is survived by a spouse, no sale or lease shall be made of the household furnishings in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse, if such dwelling house was owned by the deceased spouse at the time of his or her death, until the expiration of the time limits set forth in G.S. 29-30(c) for the filing by the surviving spouse of an election in regard to the property of the decedent.

"Article 17.

"Sales, Leases or Mortgages of Real Property.

"§ 28A-17-1. Sales of real property.

Pursuant to authority contained in G.S. 28A-15-1 the personal representative may, at any time, apply to the clerk of superior court of the county where the decedent's real property or some part thereof is situated, by petition, to sell such real property for the payment of debts and other claims against the decedent's estate.

"§ 28A-17-2. Contents of petition for sale.

The petition to sell real property shall include:

(1) A description of the real property and interest therein sought to be sold;

(2) The names, ages and addresses, if known, of the devisees and heirs of the decedent;

(3) A statement that the personal representative has determined that it is in the best interest of the administration of the estate to sell the real property sought to be sold.

"§ 28A-17-3. Petition for partition.

When it is alleged that the real property of the decedent sought to be sold consists in whole or in part of an undivided interest in real property, the personal representative of the decedent may include, in the petition to sell the real property for the payment of debts and other claims against the decedent's estate, a request for partition of the lands sought to be sold.

"§ 28A-17-4. Heirs and devisees necessary parties.

No order to sell real property shall be granted until the heirs and devisees of the decedent have been made parties to the special proceeding by service of summons in the manner required by ~~law.~~ law, in accordance with G.S. 1A-1, Rule 4. Upon such service, the court shall appoint a guardian ad litem for heirs and devisees who are unknown or whose addresses are unknown, and summons shall issue to ~~him~~ the guardian ad litem as such. The guardian ad litem shall file answer for such heirs and devisees and defend for them, and ~~he~~ the guardian ad litem shall be paid such sum as the court may fix, to be paid as costs of the proceeding.

"§ 28A-17-5. Property subject to sale; conveyance by deceased in fraud of creditors.

The real property subject to sale under this Article shall include real property recovered from a fraudulent alienee pursuant to G.S. 28A-15-10(b).

"§ 28A-17-6. Adverse claimant to be heard; procedure.

When the real property sought to be sold, or any interest therein, is claimed by another person, such claimant may be made a party to the proceeding, and in any event may become a party upon ~~his~~ the claimant's own motion. When an issue of law or fact is joined between the parties, the procedure shall be as prescribed for other special proceedings.

"§ 28A-17-7. Order granted if petition not denied; public or private sale; procedure for sale.

If, by default or admission, the allegations in the petition are not controverted, the clerk of superior court may summarily order a sale. The procedure for the sale shall be as is provided in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales." If it is made to appear to the clerk by petition and by satisfactory proof that it will be for the best interest of the estate to sell by private sale, the clerk may authorize a private sale in accordance with the provisions of G.S. 1-339.33 through 1-339.40.

"§ 28A-17-8. Under power in will, sales public or private.

Sales of real property made pursuant to authority given by will may be either public or private, unless the will otherwise directs, and may be on such terms as in the opinion of the personal representative are most advantageous to those interested in the decedent's estate.

"§ 28A-17-9. Death of vendor under contract; representative to convey.

When any decedent has contracted to sell any real property and has given bond or other enforceable written contract to the purchaser to convey the same, ~~his~~ the decedent's personal representative may execute and deliver a deed to such real property and such deed shall convey the title as fully as if it had been executed and delivered by the decedent. No deed shall be made unless the purchaser complies with the terms of the bond or other written contract. If the contract for conveyance requires the giving of a warranty deed, the deed given by the personal representative shall contain such warranties as required by the contract and the warranties shall be binding on the estate and not on the personal representative personally.

"§ 28A-17-10. Title in personal representative for estate; he or successor to convey.

When real property is conveyed to a personal representative for the benefit of the estate ~~he~~ the personal representative represents, ~~he~~ the personal representative or any successor personal representative may sell and convey it upon such terms as ~~he~~ the personal representative may

deem just and for the advantage of the estate. The procedure shall be as is provided in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales." If it is made to appear to the clerk of superior court by petition and by satisfactory proof that it will be for the best interest of the estate to sell by private sale, the clerk may authorize a private sale in accordance with the provisions of G.S. 1-339.33 through 1-339.40.

"§ 28A-17-11. Personal representative may lease or mortgage.

In lieu of asking for an order of sale of real property, the personal representative may request the clerk of superior court to issue to ~~him~~ the personal representative an order to lease or to mortgage real property of the decedent. The clerk of superior court is authorized to issue an order to lease or mortgage on such terms as ~~he~~ the clerk deems to be in the best interest of the estate.

"§ 28A-17-12. Sale, lease or mortgage of real property by heirs or devisees.

(a) If the first publication or posting of the general notice to creditors as provided for in G.S. 28A-14-1 occurs within two years after the death of the decedent:

(1) All sales, leases or mortgages of real property by heirs or devisees of any resident or nonresident decedent made after the death of the decedent and before the first publication or posting of the general notice to creditors are void as to creditors and personal representatives; and

(2) All sales, leases or mortgages of real property by heirs or devisees of any resident or nonresident decedent made after such first publication or posting and before approval of the final account shall be void as to creditors and personal representatives unless the personal representative joins in the sale, lease or mortgage.

(b) If the first publication or posting of the general notice to creditors as provided for in G.S. 28A-14-1 does not occur within two years after the death of the decedent, all sales, leases or mortgages of real property by heirs or devisees of any resident or nonresident decedent shall be valid as to creditors and personal representatives of the decedent.

"§ 28A-17-13. Prior validating acts.

Chapter 70 of the Public Laws of 1923, Chapter 48 of the Public Laws of 1925, Chapter 146 of the Public Laws of 1931, and Chapters 31 and 381 of the Public Laws of 1935, all validating certain prior sales of real property by executors or administrators and heretofore codified as G.S. 28-100 through 28-104, shall remain in full force and effect, though no longer carried forward as part of the General Statutes.

"Article 18.

"Actions and Proceedings.

"§ 28A-18-1. Survival of actions to and against personal representative.

(a) Upon the death of any person, all demands whatsoever, and rights to prosecute or defend any action or special proceeding, existing in favor of or against such person, except as provided in subsection (b) hereof, shall survive to and against the personal representative or collector of ~~his~~ the person's estate.

(b) The following rights of action in favor of a decedent do not survive:

(1) Causes of action for libel and for slander, except slander of title;

(2) Causes of action for false imprisonment;

(3) Causes of action where the relief sought could not be enjoyed, or granting it would be nugatory after death.

"§ 28A-18-2. Death by wrongful act of another; recovery not assets.

(a) When the death of a person is caused by a wrongful act, neglect or default of another, such as would, if the injured person had lived, have entitled ~~him~~ the injured person to an action for damages therefor, the person or corporation that would have been so liable, and ~~his or their~~ the personal representatives or ~~collectors,~~ collectors of the person or corporation that would have been so liable, shall be liable to an action for damages, to be brought by the

personal representative or collector of the decedent; and this notwithstanding the death, and although the wrongful act, neglect or default, causing the death, amounts in law to a felony. The personal representative or collector of the decedent who pursues an action under this section may pay from the assets of the estate the reasonable and necessary expenses, not including attorneys' fees, incurred in pursuing the action. At the termination of the action, any amount recovered shall be applied first to the reimbursement of the estate for the expenses incurred in pursuing the action, then to the payment of attorneys' fees, and shall then be distributed as provided in this section. The amount recovered in such action is not liable to be applied as assets, in the payment of debts or legacies, except as to burial expenses of the deceased, and reasonable hospital and medical expenses not exceeding four thousand five hundred dollars ($4,500) incident to the injury resulting in death, except that the amount applied for hospital and medical expenses shall not exceed fifty percent (50%) of the amount of damages recovered after deducting attorneys' fees, but shall be disposed of as provided in the Intestate Succession Act. The limitations on recovery for hospital and medical expenses under this subsection do not apply to subrogation rights exercised pursuant to G.S. 135-40.13A. All claims filed for such services shall be approved by the clerk of the superior court and any party adversely affected by any decision of said clerk as to said claim may appeal to the superior court in term time.

(b) Damages recoverable for death by wrongful act include:

(1) Expenses for care, treatment and hospitalization incident to the injury resulting in death;

(2) Compensation for pain and suffering of the decedent;

(3) The reasonable funeral expenses of the decedent;

(4) The present monetary value of the decedent to the persons entitled to receive the damages recovered, including but not limited to compensation for the loss of the reasonably expected;

a. Net income of the decedent,

b. Services, protection, care and assistance of the decedent, whether voluntary or obligatory, to the persons entitled to the damages recovered,

c. Society, companionship, comfort, guidance, kindly offices and advice of the decedent to the persons entitled to the damages recovered;

(5) Such punitive damages as the decedent could have recovered pursuant to Chapter 1D of the General Statutes had ~~he~~ the decedent survived, and punitive damages for wrongfully causing the death of the decedent through malice or willful or wanton conduct, as defined in G.S. 1D-5;

(6) Nominal damages when the jury so finds.

(c) All evidence which reasonably tends to establish any of the elements of damages included in subsection (b), or otherwise reasonably tends to establish the present monetary value of the decedent to the persons entitled to receive the damages recovered, is admissible in an action for damages for death by wrongful act.

(d) In all actions brought under this section the dying declarations of the deceased shall be admissible as provided for in G.S. 8-51.1.

"§ 28A-18-3. To sue or defend in representative capacity.

All actions and proceedings brought by or against personal representatives or collectors upon any cause of action or right to which the estate of the decedent is the real party in interest, must be brought by or against them in their representative capacity.

"§ 28A-18-4. Service on or appearance of one binds all.

In actions against personal representatives or collectors, they are all to be considered as one person, representing the decedent; and if the summons is served on one or more, but not all, the

plaintiff may proceed against those served, and if ~~he~~ the plaintiff recovers, judgment may be entered against all.

"§ 28A-18-5. When creditors may sue on claim; execution in such action.

An action may be brought by a creditor against the personal representative or collector on a demand at any time after it is due, but no execution shall issue against the personal representative or collector on a judgment therein against ~~him~~ the personal representative or collector without leave of the court, upon notice of 20 days and upon proof that the defendant has refused to pay such judgment or its ratable part, and such judgment shall be a lien on the property of the estate of the decedent only from the time of such leave granted.

"§ 28A-18-6. Service by publication on executor without bond.

Whenever process may issue against an executor who has not given bond, and the same cannot be served upon ~~him~~ the executor by reason of ~~his~~ the executor's absence or concealment, service of such process may be made by publication in the manner prescribed in other civil actions.

"§ 28A-18-7. Execution by successor in office.

Any personal representative or collector may have execution issued on any judgment recovered by any person who preceded ~~him~~ the personal representative or collector in the administration of the estate, or by the decedent, in the same cases and the same manner as the original plaintiff might have done.

"§ 28A-18-8. Action to continue, though letters revoked.

In case the letters of a personal representative or collector are revoked, pending an action to which ~~he~~ the personal representative or collector is a party, the adverse party may, notwithstanding, continue the action against ~~him~~ the personal representative or collector in order to charge ~~him~~ the personal representative or collector personally. If such party does not elect so to do, within six months after notice of such revocation, the action may be continued against the successor of the personal representative or collector in the administration of the estate, in the same manner as in case of death.

"Article 19.

"Claims against the Estate.

"§ 28A-19-1. Manner of presentation of claims.

(a) A claim against a decedent's estate must be in writing and state the amount or item claimed, or other relief sought, the basis for the claim, and the name and address of the claimant; and must be presented by one of the following methods:

(1) By delivery in person or by mail to the personal representative, collector or the clerk of superior court. Such claim will be deemed to have been presented from the time of such delivery.

(2) By mailing, registered or certified mail, return receipt requested, to the personal representative or collector at the address set out in the general notice to creditors. Such claim will be deemed to have been presented from the time when the return receipt is signed by the personal representative, collector, or ~~his agent,~~ agent of the personal representative or collector, or is refused by the personal representative, collector, or ~~his agent.~~ agent of the personal representative or collector.

(3) By delivery to the clerk of court of the county in which the estate is pending, which notice shall be filed in the appropriate estate file and copy mailed first class by the clerk of superior court at the expense of the claimant to the personal representative, collector, or ~~his agent.~~ agent of the personal representative or collector. The claim will be deemed to have been presented from the time of delivery to the clerk of court.

(b) In an action commenced after the death of the decedent against ~~his~~ the decedent's personal representative or collector as such, the commencement of the action in the court in

which such personal representative or collector qualified will constitute the presentation of a claim and no further presentation is necessary. In an action filed in any other court such claim will be deemed to have been presented at the time of the completion of service of process on such personal representative or collector.

(c) In an action pending against the decedent at the time of ~~his~~ the decedent's death, which action survives at law, the court may order the substitution of the personal representative or collector for the decedent ~~or~~ on motion therefor and that motion will constitute the presentation of a ~~claim~~ claim, provided that substitution occurs within the time specified for the presentation of claims under G.S. 28A-19-3 and no further presentation is necessary. Such claim will be deemed to have been presented from the time of the substitution, or motion therefor.

"§ 28A-19-2. Further information or affidavit of claim may be required.

(a) If the personal representative or collector so elects, ~~he~~ the personal representative or collector may demand any or all of the following prior to taking action on the claim:

(1) If the claim is not yet due, that the date when it will become due be stated;

(2) If the claim is contingent or unliquidated, that the nature of the uncertainty be stated;

(3) If the claim is secured, that the security be described.

(b) Upon any claim being presented against the estate in the manner prescribed in G.S. 28A-19-1, the personal representative or collector may require the affidavit of the claimant or other satisfactory evidence that such claim is justly due, that no payments have been made thereon, and that there are no offsets against the same, to the knowledge of the claimant; or if any payments have been made, or any offsets exist that their nature and amount be shown by the evidence or stated in the affidavit.

"§ 28A-19-3. Limitations on presentation of claims.

(a) All claims against a decedent's estate which arose before the death of the decedent, except contingent claims based on any warranty made in connection with the conveyance of real estate and claims of the United States and tax claims of the State of North Carolina and subdivisions thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, secured or unsecured, founded on contract, tort, or other legal basis, which are not presented to the personal representative or collector pursuant to G.S. 28A-19-1 by the date specified in the general notice to creditors as provided for in G.S. 28A-14-1(a) or in those cases requiring the delivery or mailing of notice as provided for in G.S. 28A-14-1(b), within 90 days after the date of the delivery or mailing of the notice if the expiration of said 90-day period is later than the date specified in the general notice to creditors, are forever barred against the estate, the personal representative, the collector, the heirs, and the devisees of the decedent. Provided further, if the expiration of said 90-day period is later than the date specified in the general notice to creditors, the notice delivered or mailed to each creditor, if any, shall be accompanied by a statement which specifies the deadline for filing the claim of the affected creditor.

(b) All claims against a decedent's estate which arise at or after the death of the decedent, except claims of the United States and tax claims of the State of North Carolina and subdivisions thereof whether due or to become due, absolute or contingent, liquidated or unliquidated, secured or unsecured, founded on contract, tort, or other legal basis are forever barred against the estate, the personal representative, the collector, the heirs, and the devisees of the decedent unless presented to the personal representative or collector as follows:

(1) With respect to any claim based on a contract with the personal representative or collector, within six months after the date on which performance by the personal representative or collector is due;

(2) With respect to any claim other than a claim based on a contract with the personal representative or collector, within six months after the date on which the claim arises.

(c) Except as otherwise provided by subsection (f) of this section, no claim shall be barred by the statute of limitations which was not barred thereby at the time of the decedent's death, if the claim is presented within the period provided by subsection (a) hereof.

(d) All claims of creditors upon whom there has been personal service of notice as provided in G.S. 28A-14-3 are forever barred unless presented to the personal representative or collector within the time and manner set out in this Article.

(e) Except as otherwise provided by subsection (f) of this section, unless a claim has been presented pursuant to G.S. 28A-19-1 giving notice of an action or special proceeding pending against a decedent at the time of ~~his~~ the decedent's death and surviving under G.S. 28A-18-1 within the time provided by subsection (a) of this section, no recovery may be had upon any judgment obtained in any such action or proceeding against the estate, the personal representative, the collector, the heirs, and the devisees of the decedent.

(f) All claims barrable under the provisions of subsections (a) and (b) hereof shall, in any event, be barred if the first publication or posting of the general notice to creditors as provided for in G.S. 28A-14-1 does not occur within three years after the death of the decedent.

(g) Nothing in this section affects or prevents any action or proceeding to enforce any mortgage, deed of trust, pledge, lien (including judgment lien), or other security interest upon any property of the decedent's estate, but no deficiency judgment will be allowed if the provisions of this section are not complied with.

(h) The word "claim" as used in this section does not apply to claims of heirs or devisees to their respective shares or interests in the decedent's estate in their capacity as such heirs or devisees.

(i) Nothing in this section shall bar:

(1) Any claim alleging the liability of the decedent or personal representative; or

(2) Any proceeding or action to establish the liability of the decedent or personal representative; or

(3) The recovery on any judgment against the decedent or personal representative

to the extent that the decedent or personal representative is protected by insurance coverage with respect to such claim, proceeding or judgment or where there is underinsured or uninsured motorist coverage that might extend to such claim, proceeding, or judgment.

(j) Except as otherwise specifically provided in this section, the limitations on presentation of claims set forth in this section apply to claims by the State of North Carolina, its subdivisions, and its agencies.

"§ 28A-19-4. Payment of claims and charges.

As soon as the personal representative or collector is possessed of sufficient means over and above the other costs of administration, ~~he~~ the personal representative or collector shall pay the year's allowances in the amounts and in the manner prescribed in G.S. 30-15 to 30-33. Prior to the date specified in the general notice to creditors as provided for in G.S. 28A-14-1, the personal representative or collector may pay such other claims and charges as ~~he~~ the personal representative or collector deems in the best interest of the estate if the total assets are sufficient to pay all claims and charges against the estate.

"§ 28A-19-5. Contingent or unliquidated claims.

(a) If a contingent or unliquidated claim becomes absolute before the distribution of the estate of the decedent, it shall be paid in the same manner as absolute claims of the same class. In other cases the clerk of superior court may provide for the payment of contingent or unliquidated claims in any one of the following ways:

(1) The creditor and the personal representative or collector may determine, by agreement, arbitration, or compromise, the value of the contingent or unliquidated claim, according to its probable present worth, and with the approval of the clerk of superior court, it may be allowed and paid in the same manner as an absolute claim.

(2) The clerk of superior court may order the personal representative or collector to retain sufficient funds to pay the claim if and when the same becomes absolute, and order distribution of the balance of the estate.

(3) The clerk of superior court may order distribution of the estate as though the contingent or unliquidated claim did not exist, but the heirs and devisees of the estate of the decedent are liable to the creditor to the extent of the estate received by them, if the contingent or unliquidated claim thereafter becomes absolute; and the court may require such heirs and devisees to give bond for the performance of their liability to the contingent or unliquidated creditor.

(4) Such other method as the clerk of superior court may order.

(b) With respect to a contingent or unliquidated claim rejected by a personal representative pursuant to G.S. 28A-19-16, the claimant may, within the three-month period prescribed by G.S. 28A-19-16, file a petition for an order of the clerk of superior court in accordance with subsection (a) of this section, provided that nothing in this section shall require the clerk of superior court to hear and determine the validity of, priority of, or amount of a contingent or unliquidated claim that has yet become absolute.

"§ 28A-19-6. Order of payment of claims.

(a) After payment of costs and expenses of administration, the claims against the estate of a decedent must be paid in the following order:

First class. Claims which by law have a specific lien on property to an amount not exceeding the value of such property.

Second class. Funeral expenses to the extent of three thousand five hundred dollars ($3,500). This limitation shall not include burial place or gravestone. The preferential limitation herein granted shall be construed to be only a limit with respect to preference of payment and shall not be construed to be a limitation on reasonable funeral expenses which may be incurred; nor shall the preferential limitation of payment in the amount of three thousand five hundred dollars ($3,500) be diminished by any Veterans Administration, social security or other federal governmental benefits awarded to the estate of the decedent or to ~~his or her~~ the decedent's beneficiaries.

Third class. Costs associated with gravestones and reasonable costs for the purchase of a suitable burial place as provided in G.S. 28A-19-9 to the extent of one thousand five hundred dollars ($1,500). The preferential limitation herein granted shall be construed to be only a limit with respect to preference of payment and shall not be construed to be a limitation on reasonable gravestone or burial place expenses which may be incurred; nor shall the preferential limitation of payment in the amount of one thousand five hundred dollars ($1,500) be diminished by any Veterans Administration, social security or other federal governmental benefits awarded to the estate of the decedent or to ~~his or her~~ the decedent's beneficiaries.

Fourth class. All dues, taxes, and other claims with preference under the laws of the United States.

Fifth class. All dues, taxes, and other claims with preference under the laws of the State of North Carolina and its subdivisions.

Sixth class. Judgments of any court of competent jurisdiction within the State, docketed and in force, to the extent to which they are a lien on the property of the decedent at ~~his~~ the decedent's death.

Seventh class. Wages due to any employee employed by the decedent, which claim for wages shall not extend to a period of more than 12 months next preceding the death; or if such

employee was employed for the year current at the decease, then from the time of such employment; for medical services within the 12 months preceding the decease; for drugs and all other medical supplies necessary for the treatment of such decedent during the last illness of such decedent, said period of last illness not to exceed 12 months.

Eighth class. A claim for equitable distribution.

Ninth class. All other claims.

(b) Notwithstanding subsection (a) of this section, if payment of the commissions of the personal representative under G.S. 28A-23-3(g) would cause the estate to be unable to pay all claims against the estate of a decedent, then the commissions shall be limited to the amount allowed under G.S. 28A-23-3(a).

"§ 28A-19-7. Satisfaction of claims other than by payment.

Notwithstanding any provision of law to the contrary,

(1) If a decedent was liable in person at the time of ~~his~~ the decedent's death for the payment or satisfaction of any claim or the performance, satisfaction, or discharge of any liability or obligation, whether joint or several, primary or secondary, direct or contingent, or enforceable in any other manner or form whatsoever, or

(2) If only the property of a decedent or some part thereof was liable at the time of ~~his~~ the decedent's death for the payment or satisfaction of any claim or the performance, satisfaction, or discharge or any liability or obligation, whether joint or several, primary or secondary, direct or contingent, or enforceable in any other manner or form against the property of the decedent but not against ~~him~~ the decedent or ~~his~~ the decedent's estate as a personal liability, and

(3) If any person other than the personal representative of the decedent is willing to assume the liability of the decedent and of ~~his~~ the decedent's estate or to receive or accept property of the decedent subject to such liability in cases where the decedent was not personally liable and the creditor, obligee, or other person for whose benefit such liability exists is willing to accept an agreement with that effect and to discharge the personal representative of the decedent and the estate of the decedent from the payment, satisfaction, or discharge of such liability, and

(4) If such creditor, obligee, or other person for whose benefit such liability exists and the person assuming the liability or the person receiving or accepting property of the decedent subject to such liability shall execute, acknowledge, and deliver in the form and manner required for deeds conveying real property in North Carolina, an agreement between themselves as to such assumption of liability or the receipt or acceptance of property of the decedent subject to such liability which shall contain a release, as hereinafter defined, discharging the personal representative of the decedent and ~~his~~ the decedent's estate from the payment, satisfaction, or discharge of the liability, and thereafter the said creditor, obligee, or other person for whose benefit such liability exists shall have no remedy for the enforcement thereof except against the person assuming it or against the property subject to it as provided in the said agreement; then upon the filing with the clerk of superior court having jurisdiction over the estate and the personal representative of one duplicate original of the said agreement, or of a certified copy thereof if it is a duly recorded instrument, the same shall be accepted in the same manner as a voucher showing payment or discharge of the said liability in the accounts of the personal representative of the decedent.

The word "person" as used in this section shall include one or more natural persons, corporations, partnerships, or entities having the power to own property or to make contracts in regard thereto. The word "release" as used in this section shall include a covenant not to sue in any case in which an unqualified release or discharge of one obligee would discharge another, and if the liability involved is a negotiable instrument or other instrument transferable to a holder in due course, such release shall not be effective unless notice thereof is endorsed on the instrument involved, dated, and signed by the creditor or the holder of the indebtedness or person for whose benefit the property is encumbered.

"§ 28A-19-8. Funeral expenses of decedent.

(a) Any person authorized under G.S. 130A-420 to dispose of a decedent's body may bind a decedent's estate for funeral expenses and related charges, including interest and finance charges, in accordance with this section, including the execution and delivery on behalf of the estate of any agreements, promissory notes, and other instruments relating to the estate. Whether or not a personal representative of the estate has been appointed at the time the expenses are incurred, funeral expenses of a decedent, together with interest or finance charges if financed by the funeral establishment or a third-party creditor, or advanced by a health care agent exercising authority described in G.S. 32A-19(b), shall be considered as an obligation of the estate of the decedent and the decedent's estate shall be primarily liable for those expenses to the funeral establishment that provided the funeral service, to any third-party creditor that finances the payment of those expenses, or to any other person described in this section who has paid such expenses.

(b) The provisions of this section shall not affect the application of G.S. 28A-19-6 or G.S. 130A-420.

"§ 28A-19-9. Gravestone and burial place authorized.

(a) ~~It~~ If the decedent has duly appointed a health care agent pursuant to Article 3 of Chapter 32A of the General Statutes to provide for these expenses, the health care agent may make arrangements to provide a suitable gravestone to mark the grave of the testator or intestate, and the personal representative shall reimburse the health care agent subject to the monetary limitations and procedures contained in this section. If the decedent did not have a health care agent, or if the health care agent does not act, it is lawful for a personal representative or the decedent's duly appointed health care agent to provide a suitable gravestone to mark the graves of the testator or intestate and to pay for the cost of erecting the same. The cost thereof shall be treated as a third class claim under G.S. 28A-19-6 and credited as such in final accounts. The costs thereof shall be in the sound discretion of the personal ~~representative,~~ representative or health care agent, having due regard to the value of the estate and to the interests of creditors and needs of the surviving spouse and the heirs and devisees of the estate. Where the personal representative or health care agent desires to spend more than one thousand five hundred dollars ($1,500) for the purpose of a gravestone, and the will does not grant specific authority to the personal representative for such expenditures in excess of one thousand five hundred dollars ($1,500), the personal representative shall file a petition before the clerk of the court, and such order as will be made by the court shall specify the amount to be expended for such purpose. In specifying the amount, the clerk may consider the value of the estate. To the extent that the personal representative or health care agent advances the costs for providing a suitable gravestone to mark the graves of the testator or intestate and for erecting the same, the advancement shall be considered as an obligation of the decedent's estate, and the decedent's estate shall be primarily liable for the costs for providing a suitable gravestone to mark the graves of the testator or intestate and for erecting the same.

(b) It is lawful for ~~a personal representative~~ the decedent's duly appointed health care agent to provide a suitable burial place for the testator or intestate. If the decedent did not have a health care agent, or if the health care agent does not act, then the personal representative may provide a suitable burial place for the testator or intestate. The cost of a suitable burial place

shall be in the sound discretion of the personal ~~representative,~~ representative or the decedent's health care agent, having due regard to the value of the estate and to the interests of creditors and needs of the surviving spouse and the heirs and devisees of the estate, and shall be treated as a third class claim under G.S. 28A-19-6.

"§ 28A-19-10. Perpetual care of cemetery lot.

It shall be lawful for a personal representative to provide for perpetual care for the lot upon which is located the grave of the testator or intestate, and the cost thereof shall be paid and credited as such in final accounts: Provided, that the provisions of this section shall be applicable to an interment made in a cemetery authorized by law to operate as a perpetual-care cemetery or association, and the cost thereof shall be in the sound discretion of the personal representative having due regard to the value of the estate and to the interest of the surviving spouse and the heirs and devisees of the estate. Provided, where the personal representative desires to spend more than two hundred fifty dollars ($250.00) for such purpose, and the will does not grant specific authority to the personal representative for such expenditure in excess of two hundred fifty dollars ($250.00), ~~he~~ the personal representative shall file ~~his~~ the personal representative's petition before the clerk of the superior court and such order as will be made by the court shall specify the amount to be expended for such purpose.

"§ 28A-19-11. Pleading statute of limitations.

When claims are not barred pursuant to G.S. 28A-19-3, it shall be within the discretion of the personal representative or collector acting in good faith to determine whether or not any applicable statute of limitations shall be pleaded to bar a claim which ~~he~~ the personal representative or collector believes to be just. ~~His~~ The personal representative's or collector's admission of such claim or ~~his~~ the personal representative's or collector's decision not to plead the statute in an action brought on the claim shall, in the absence of any showing of collusion or bad faith, be binding on all persons interested in the estate.

"§ 28A-19-12. Claims due representative not preferred.

No property or assets of the decedent shall be retained by the personal representative or collector in satisfaction of ~~his~~ the personal representative's or collector's own claim, in preference to others of the same class. Prior to payment of ~~his~~ the personal representative's or collector's own claim the personal representative or collector shall receive written approval of the clerk of superior court. If the clerk does not approve the claim the personal representative or collector may refer the claim as a disputed claim under the provisions of G.S. 28A-19-15. The provisions of G.S. 28A-19-1 and G.S. 28A-19-3 shall not apply to such claims and the personal representative or collector may present ~~his~~ the personal representative's or collector's own claim at any time prior to the filing of ~~his~~ the personal representative's or collector's final account.

"§ 28A-19-13. No preference within class.

No personal representative or collector shall give to any claim any preference whatever, either by paying it out of its class or by paying thereon more than a pro rata proportion in its class.

"§ 28A-19-14. Claims not due rebated.

Claims owed by the estate but not yet due may be paid by the personal representative on a rebate of interest thereon for the time unexpired.

"§ 28A-19-15. Disputed claim may be referred.

If the personal representative doubts the justness of any claim so presented, ~~he~~ the personal representative may enter into an agreement, in writing, with the claimant, to refer the matter in controversy, whether the same be of a legal or equitable nature, to one or more disinterested persons, not exceeding three, whose proceedings shall be the same in all respects as if such reference had been ordered in an action. Such agreement to refer, and the award thereupon, shall be filed in the clerk's office where the letters were granted, and shall be a lawful voucher for the personal representative. The same may be impeached in any proceeding against the

personal representative for fraud therein: Provided, that the right to refer claims under this section shall extend to claims in favor of the estate as well as those against the estate.

"§ 28A-19-16. Disputed claim not referred barred in three months.

If a claim is presented to and rejected by the personal representative or collector, and not referred as provided in G.S. 28A-19-15, the claimant must, within three months, after due notice in writing of such rejection, ~~or after some part of the claim becomes due,~~ commence an action for the recovery thereof, or in the case of a contingent or unliquidated claim, file a petition for an order from the clerk of superior court pursuant to G.S. 28A-19-5(b), or be forever barred from maintaining an action thereon.

"§ 28A-19-17. No lien by suit against representative.

No lien shall be created by the commencement of a suit against a personal representative or collector.

"§ 28A-19-18. When costs against representative allowed.

No costs shall be recovered in any action against a personal representative or collector unless it appears that payment was unreasonably delayed or neglected, or that the defendant refused to refer the matter in controversy, in which case the court may award such costs against the defendant personally, or against the estate, as may be just.

"§ 28A-19-19. Claims for equitable distribution.

(a) The provisions of G.S. 28A-19-5 and G.S. 28A-19-7 shall not apply to claims for equitable distribution.

(b) The personal representative may enter into an agreement, in writing, with a claimant providing for distribution of marital or divisible property, or both, in a manner deemed by the personal representative and the claimant to be equitable. The agreement shall be filed in the clerk's office where the letters were granted and shall be a lawful voucher for the personal representative. The same may be impeached in any proceeding against the personal representative for fraud therein.

(c) Unless the claim for equitable distribution has been referred as provided in G.S. 28A-19-15, the claimant may at anytime, subject to the provisions of G.S. 28A-19-16, file an action with the district court for distribution of marital or divisible property in accordance with the provisions of G.S. 50-20.

"Article 20.

"Inventory.

"§ 28A-20-1. Inventory within three months.

Every personal representative and collector, within three months after ~~his qualification,~~ the qualification of that personal representative or collector, shall return to the clerk, on oath, a just, true and perfect inventory of all the real and personal property of the deceased, which have come to ~~his hands,~~ the hands of the personal representative or collector, or to the hands of any person for ~~him,~~ the personal representative or collector, which inventory shall be signed by ~~him~~ the personal representative or collector and be recorded by the clerk.

"§ 28A-20-2. Compelling the inventory.

(a) If the inventory specified in G.S. 28A-20-1 is not filed as prescribed, the clerk of superior court must issue an order requiring the personal representative or collector to file it within the time specified in the order, not less than 20 days, or to show cause why ~~he~~ the personal representative or collector should not be removed from office. If, after due service of the order, the personal representative or collector does not on or before the return day of the order file such inventory or obtain further time in which to file it, the clerk may remove ~~him~~ the personal representative or collector from office or may issue an attachment against ~~him~~ the personal representative or collector for a contempt and commit ~~him until he~~ the personal representative or collector until the personal representative or collector files said inventory report.

(b) The personal representative or collector shall be personally liable for the costs of any proceeding incident to ~~his~~ the personal representative's or collector's failure to file the inventory required by G.S. 28A-20-1. Such costs shall be taxed against ~~him~~ the personal representative or collector by the clerk of superior court and may be collected by deduction from any commissions which may be found due the personal representative or collector upon final settlement of the estate.

"§ 28A-20-3. Supplemental inventory.

(a) Whenever any property not included in the original inventory report becomes known to any personal representative or collector or whenever the personal representative or collector learns that the valuation or description of any property or interest therein indicated in the original inventory is erroneous or misleading, ~~he~~ the personal representative or collector shall prepare and file with the clerk of superior court a supplementary inventory in the same manner as prescribed for the original inventory. The clerk shall record the supplemental report with the original inventory.

(b) The making of the supplemental inventory shall be enforced in a manner specified in G.S. 28A-20-2.

"§ 28A-20-4. Employment of appraisers.

A personal representative or collector may, but shall not be required to, employ qualified and disinterested appraisers to assist in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets. The name and address of any appraiser shall be indicated in the inventory with the asset or assets ~~he~~ the appraiser appraised.

"Article 21.

"Accounting.

"§ 28A-21-1. Annual accounts.

Until the final account has been filed pursuant to G.S. 28A-21-2, the personal representative or collector shall, for so long as any of the property of the estate remains in ~~his~~ the control, custody or ~~possession,~~ possession of the personal representative or collector, file annually in the office of the clerk of superior court an inventory and account, under oath, of the amount of property received by ~~him,~~ the personal representative or collector, or invested by ~~him,~~ the personal representative or collector, and the manner and nature of such investment, and ~~his~~ the receipts and disbursements of the personal representative or collector for the past year. Such accounts shall be due by the fifteenth day of the fourth month after the close of the fiscal year selected by the personal representative or collector, and annually thereafter. The election of a fiscal year shall be made by the personal representative or collector upon filing of the first annual account. In no event may a personal representative or collector select a fiscal year-end which is more than twelve months from the date of death of the decedent or, in the case of trust administration, the date of the opening of the trust. Any fiscal year selected may not be changed without the permission of the clerk of superior court.

The personal representative or collector shall produce vouchers for all payments or verified proof for payments in lieu of vouchers. The clerk of superior court may examine, under oath, such accounting party, or any other person, concerning the receipts, disbursements or any other matter relating to the estate. ~~He~~ The clerk of superior court must carefully review and audit such account and, if ~~he~~ the clerk approves the account, ~~he~~ the clerk must endorse ~~his~~ the approval of the clerk thereon, which shall be **prima facie** evidence of correctness, and cause the same to be recorded.

"§ 28A-21-2. Final accounts.

(a) Unless the time for filing the final account has been extended by the clerk of superior court, the personal representative or collector must file the final account for settlement within one year after qualifying or within six months after receiving a State estate or inheritance tax release, or in the time period for filing an annual account pursuant to

G.S. 28A-21-1, whichever is later. If no estate or inheritance tax return was required to be filed for the estate, the personal representative or collector shall so certify in the final account filed with the clerk of superior court. Such certification shall list the amount and value of all of the decedent's property, and with respect to real estate, its particular location within or outside the State, including any property transferred by the decedent over which the decedent had retained any interest, or any property transferred within three years prior to the date of the decedent's death, and after being filed and accepted by the clerk of ~~the~~ superior court shall be prima facie evidence that such property is free of any State inheritance or State estate tax liability. The personal representative or collector shall produce vouchers for all payments or verified proof for all payments in lieu of vouchers. With the approval of the clerk of superior court, such account may be filed voluntarily at any time. In all cases, the accounting shall be reviewed, audited and recorded by the clerk of superior court in the manner prescribed in G.S. 28A-21-1.

(b) Except as provided in subsection (a), after the date specified in the general notice to creditors as provided for in G.S. 28A-14-1, if all of the debts and other claims against the estate of the decedent duly presented and legally owing have been paid in the case of a solvent estate or satisfied pro rata according to applicable statutes in the case of an insolvent estate, the personal representative or collector may file ~~his~~ the personal representative's or collector's final account to be reviewed, audited and recorded by the clerk of superior court. Nothing in this subsection shall be construed as limiting the right of the surviving spouse or minor children to file for allowances under G.S. 30-15 through 30-18 and the right of a surviving spouse to file for property rights under G.S. 29-30.

"§ 28A-21-2.2. Final accounting by limited personal representative.

(a) Filing Requirement. – A limited personal representative appointed pursuant to Article 29 of this Chapter shall file a sworn affidavit or report listing all debts and other claims duly presented to the limited personal representative and providing proof that the debts and other claims were satisfied, compromised, or denied, and that the time for filing suit thereon has expired. The sworn affidavit or report shall be filed within 30 days of the later of the following:

(1) The date by which a claim must be presented as set forth in the general notice to creditors provided for in G.S. 28A-14-1.

(2) The date by which an action for recovery of a rejected claim must be commenced under G.S. 28A-19-6.

(b) Action by Clerk. – The affidavit or report shall be reviewed and recorded by the clerk of superior court. Following the review, the clerk of superior court shall take one of the following actions:

(1) Discharge the limited personal representative from office.

(2) Require the filing of any additional information or documents determined by the clerk to be necessary to the understanding of the affidavit or report.

(3) Order the full administration of the decedent's estate and appoint a personal representative.

"§ 28A-21-3. What accounts must contain.

Accounts filed with the clerk of superior court pursuant to G.S. 28A-21-1, signed and under oath, shall contain:

(1) The period which the account covers and whether it is an annual accounting or a final accounting;

(2) The amount and value of the property of the estate according to the inventory and appraisal or according to the next previous accounting, the amount of income and additional property received during the period being accounted for, and all gains from the sale of any property or otherwise;

(3) All payments, charges, losses, and distributions;

(4) The property on hand constituting the balance of the account, if any; and

(5) Such other facts and information determined by the clerk to be necessary to an understanding of the account.

"§ 28A-21-3.1. Phase II tobacco grower and quota owner payments; list of Phase II distributees.

(a) The following definitions apply in this section:

(1) "National Tobacco Grower Settlement Trust" means the trust established by tobacco companies to provide payments to tobacco growers and tobacco quota owners in 14 states for the purposes of ameliorating potential adverse economic consequences of likely reduction in demand, sales, and prices for tobacco as an agricultural product as a result of the Master Settlement Agreement incorporated in the consent decree entered in the action of State of North Carolina vs. Philip Morris, Incorporated, et al., 98 CVS 14377, in the General Court of Justice, Superior Court Division, Wake County, North Carolina.

(2) "Phase II payment" means an amount certified by the North Carolina Phase II Tobacco Certification Entity, Inc., to be paid pursuant to the trust agreement establishing the National Tobacco Grower Settlement Trust.

(b) A personal representative or collector of the estate of a decedent who, during 1993 or any subsequent year, was a tobacco grower or a tobacco quota owner as defined in Section 4.01 of the trust agreement establishing the National Tobacco Grower Settlement Trust may file, along with a final account, a list of Phase II distributees for Phase II payments if all of the following conditions are met:

(1) There are no unsatisfied creditors.

(2) There are no unsatisfied general monetary bequests.

(3) All assets other than any potential Phase II payments have been distributed.

(c) A list of Phase II distributees, signed under oath, must contain the following information:

(1) The name and address of the personal representative or collector.

(2) The name and social security number of the decedent.

(3) The name and address, if known, of each devisee or heir entitled to receive Phase II payments and the percentage of Phase II payments to be received by each.

(d) The clerk of superior court must review the list of Phase II distributees to determine if the list of distributees and their shares of potential Phase II payments are in accordance with the will or, if there is no will, in accordance with the Intestate Succession Act. If the clerk accepts the list of Phase II distributees for filing, the clerk must endorse the clerk's approval thereon, which shall be prima facie evidence of correctness.

(e) Upon determination by the North Carolina Phase II Tobacco Certification Entity, Inc., that the estate of a decedent entitled to any Phase II payment covering a time period when the decedent was alive has been closed, the payment may be paid directly to those distributees and in those shares set forth on a list of Phase II distributees filed under this section without the estate's having to be reopened under G.S. 28A-23-5.

(f) The estate of a decedent who is entitled to any Phase II payment may be reopened, if necessary, in accordance with G.S. 28A-23-5 in order to file a list of Phase II distributees under this section.

(g) For purposes of this section, Phase II payments covering a time period when decedent was alive are deemed cash and shall not pass by virtue of any devise or inheritance of the decedent's real property.

"§ 28A-21-4. Clerk may compel account.

If any personal representative or collector fails to account as directed in G.S. 28A-9-3, 28A-21-1 or 28A-21-2 or renders an unsatisfactory account, the clerk of superior court shall,

upon ~~his own~~ motion of the clerk of superior court or upon the request of one or more creditors of the decedent or other interested party, promptly order such personal representative or collector to render a full satisfactory account within 20 days after service of the order. If, after due service of the order, the personal representative or collector does not on or before the return day of the order file such account, or obtain further time in which to file it, the clerk may remove ~~him~~ the personal representative or collector from office or may issue an attachment against ~~him~~ the personal representative or collector for a contempt and commit ~~him until he~~ the personal representative or collector until the personal representative or collector files said account.

"§ 28A-21-5. Vouchers presumptive evidence.

Vouchers, without other proof, are presumptive evidence of disbursement, unless impeached. If lost, the accounting party must, if required, make oath to that fact setting forth the manner of loss, and state the contents and purport of the voucher.

"§ 28A-21-6. Permissive Notice of Final Accounts.

The personal representative or collector may, but is not required to, give written notice of a proposed final account pursuant to G.S. 1A-1, Rule 4, to all devisees of the estate in the case of testacy, and to all heirs of the estate in the case of intestacy, of the date and place of filing of such account. In giving written notice, the personal representative shall attach a copy of the proposed final accounting with exhibits made a part thereof, but is not required to include copies of vouchers, account statements, or other supporting evidence submitted to the clerk. If the personal representative or collector elects to provide this notice, the personal representative or collector shall file with the clerk of superior court a certificate indicating that this notice has been given to all devisees and heirs. Notwithstanding any right to appeal an order or judgment under G.S. 1-301.3, any payment, distribution, action, or other matter disclosed on such account or any annual account for the estate filed by the personal representative or collector must be objected to by a devisee or heir within 30 days after the receipt of the written notice or will be deemed to be accepted by the devisee or heir.

"Article 22.

"Distribution.

"§ 28A-22-1. Scheme of distribution; testate and intestate estates.

After the payment of costs of administration, taxes and other valid claims against the decedent's estate, the personal representative shall distribute the remaining assets of the estate in accordance with the terms of decedent's valid probated will or the provisions of Chapter 29 of the General Statutes or as otherwise lawfully authorized.

"§ 28A-22-2. Shares of after-born and after-adopted children.

The share of an after-born or after-adopted child, as provided by G.S. 29-9 and 31-5.5, shall be allotted to ~~him~~ the after-born or after-adopted child out of any undevised real or personal property, or out of both, if there is enough such undevised property for that purpose. If there is no undevised real or personal property, or if there is not enough, then the whole of the child's share, or the deficiency, shall be made up from the devised real or personal property, or from both. The portion contributed by a devisee shall bear the same ratio to ~~his~~ the devisee's devise as the after-born or after-adopted child's share bears to the net estate.

"§ 28A-22-3. Special proceeding against unknown heirs of decedent before distribution of estate.

If there may be heirs, born or unborn, of the decedent, other than those known to the personal representative and whose names and residences are unknown, before distributing such estate the personal representative is authorized to institute a special proceeding before the clerk of superior court for the purpose of determining who are the heirs of the decedent. All unknown heirs of the decedent shall be made parties thereto and shall be served with summons by publication as provided by G.S. 1A-1, Rule 4. Upon such service being had, the court shall appoint some discreet person to act as guardian ad litem for said unknown heirs and summons

shall issue as to such guardian ad litem. Said guardian ad litem shall file answer on behalf of said unknown heirs and ~~he~~ the guardian ad litem may be paid for ~~his~~ services of the guardian ad litem such sum as the court may fix, to be paid as other costs out of the estate. Upon the filing of the answer by said guardian ad litem all such unknown heirs shall be before the court for the purposes of the proceeding to the same extent as if each had been personally served with summons. Any judgment entered by the court in such proceeding shall be as binding upon said unknown heirs as if they were personally before the court and any payment or distribution made by the personal representative under orders of the court shall have the effect of fully discharging such personal representative and any sureties on ~~his~~ the personal representative's official bond to the full extent of such payment or distribution as ordered.

"§ 28A-22-4. Distribution to nonresident trustee only upon appointment of process agent.

(a) No assets of the estate of a decedent subject to administration in this State shall be delivered or transferred to a trustee of a testamentary trust or an inter vivos trust who is a nonresident of this State who has not appointed a resident agent for the service of civil process for actions or proceedings arising out of the administration of the trust with regard to such property.

(b) If property is delivered or transferred to a trustee in violation of this section, process may be served outside this State or by publication, as provided by G.S. 1A-1, Rule 4, and the courts of this State shall have the same jurisdiction over the trustee as might have been obtained by service upon a properly appointed process agent. The provisions of this section with regard to jurisdiction shall be in addition to other means of obtaining jurisdiction permissible under the laws of this State.

"§ 28A-22-5. Distribution of assets in kind in satisfaction of bequests and transfers in trust.

(a) Subject to the provisions of subsection (b) of this section, whenever under any will or trust indenture the executor, trustee or other fiduciary is required to, or has an option to, satisfy a bequest or transfer in trust by a transfer of assets of the estate or trust in kind at the values as finally determined for federal estate tax purposes, the executor, trustee or other fiduciary shall, in the absence of contrary provisions in such will or trust indenture, be required to satisfy such bequest or transfer by the distribution of assets fairly representative of the appreciation or depreciation in the value of all property available for distribution in satisfaction of such bequest or transfer.

(b) The provisions of subsection (a) of this section shall not apply unless either:

(1) The decedent's surviving spouse is the beneficiary of the bequest or trust transfer described in subsection (a) of this section or of the residue of the estate or trust; or

(2) Any "skip person", as that term is defined in Chapter 13 of the Internal Revenue Code of 1986, as amended, is or may be a current or future beneficiary of the bequest or trust transfer described in subsection (a) of this section or of the residue of the estate or trust, and the value of the decedent's gross estate for federal tax purposes exceeds the value of the decedent's unused generation-skipping tax exemption available under Chapter 13 of the Internal Revenue Code of 1986, as amended.

"§ 28A-22-6. Agreements with taxing authorities to secure benefit of federal marital deduction.

The executor, trustee, or other fiduciary having discretionary powers under a will or trust indenture with respect to the selection of assets to be distributed in satisfaction of a bequest or transfer in trust to or for the benefit of the surviving spouse of a decedent shall be authorized to enter into agreements with the Commissioner of Internal Revenue of the United States of America, and other taxing authorities, requiring the fiduciary to exercise the fiduciary's discretion so that cash and other properties distributed in satisfaction of such bequest or transfer

in trust will be fairly representative of the net appreciation or depreciation in value on the date, or dates, of distribution of all property then available for distribution in satisfaction of such bequest or transfer in trust. Any such fiduciary shall be authorized to enter into any other agreement not in conflict with the express terms of the will or trust indenture that may be necessary or advisable in order to secure for federal estate tax purposes the appropriate marital deduction available under the Internal Revenue Laws of the United States of America and to do and perform all acts incident to such purpose.

"§ 28A-22-7. Distribution to parent or guardian of a minor.

(a) If a devise or legacy of personal property to a person under the age of 18 has a total value of less than one thousand five hundred dollars ($1,500), and the devisee or legatee is residing in the same household with a parent or a guardian appointed prior to the decedent's death, the personal representative may distribute to the parent or guardian the devise or legacy. However, such distribution shall only be made with the prior approval of the clerk of court who issued the letters testamentary or of administration.

(b) If such distribution has been made the parent or guardian shall use the property solely for the education, maintenance and support of the devisee or legatee. However, the parent or guardian shall not be required to file an accounting with the clerk of court or to the personal representative, nor shall such distribution be cause for a delay in the filing of the personal representative's final account under the provisions of Article 21 of this Chapter.

(c) This section establishes a procedure that is separate from the provisions of G.S. 33-69.1 and it is not the intention of this section to repeal in whole or in part the provisions of G.S. 33-69.1.

(d) This section may also be applied to several devises or legacies of personal property to a single devisee or legatee having a combined total value of less than one thousand five hundred dollars ($1,500).

"§ 28A-22-8. Executor or trustee; discretion over distributions.

Unless otherwise restricted by the terms of the will or trust, an executor or trustee shall have absolute discretion to make distributions in cash or in specific property, real or personal, or an undivided interest therein or partly in cash or partly in such property, and to do so without regard to the income tax basis for federal tax purposes of specific property allocated to any beneficiary.

"§ 28A-22-9. Distribution to known but unlocated devisees or heirs.

(a) If there are known but unlocated devisees or heirs of property held by the personal representative, the personal representative may deliver the share of such devisee or heir to the clerk of superior court immediately prior to filing of the final account. If the devisee or heir is located after the final account has been filed, ~~he~~ the devisee or heir may present a claim for the share to the clerk. If the clerk determines that the claimant is entitled to the share, ~~he~~ the clerk shall deliver the share to the devisee or claimant. If the clerk denies the claim, the claimant may take an appeal as in a special proceeding.

(b) The clerk shall hold the share without liability for profit or interest. If no claim has been presented within a period of one year after the filing of the final account, the clerk shall deliver the share to the State Treasurer as abandoned property.

(c) The clerk shall not be required to publish any notice to such devisee or heir and shall not be required to report such share to the State Treasurer. If the devisee or heir is located, the clerk shall inform the devisee or heir that ~~he~~ the devisee or heir is entitled to file a claim with the State Treasurer for the share under the provisions of G.S. 116B-67.

"§ 28A-22-10. Distribution of assets of inoperative trust.

When the facts at the time of distribution of property to a trust are such that the trust would be inoperative under the terms of the instrument creating the trust for any reason, including the death of a beneficiary, renunciation by a beneficiary, the exercise of a right to withdraw the property by a beneficiary, or the attainment of a stipulated age by a beneficiary, the personal

representative or the trustee authorized or required to make the distribution of that property to the trust may distribute the property directly to the person or persons entitled to it under the terms of the instrument creating the trust without the interposition of the establishment of the trust. If only a portion of the trust would be inoperative, the property distributable to that portion of the trust may be distributed directly to the person or persons entitled to the property under the terms of the instrument creating the trust.

"§ 28A-22-11. Agreements with heirs.

Any agreement by an heir, unknown or known but unlocated, the primary purpose of which is to locate or recover, or assist in the recovery of, a share in a decedent's estate shall be subject to the provisions of G.S. 116B-78.

"Article 23.

"Settlement.

"§ 28A-23-1. Settlement after final account filed.

When the personal representative or collector has paid or otherwise satisfied or provided for all claims against the estate, has distributed the remainder of the estate pursuant to G.S. 28A-22-1 and has filed ~~his~~ the personal representative's or collector's final account for settlement pursuant to G.S. 28A-21-2, if the clerk of superior court, after review of the personal representative's or collector's final account, approves the same, ~~he~~ the clerk of superior court shall enter an order discharging the personal representative or collector from further ~~liability.~~ duties and liabilities as personal representative or collector, including those set forth in Article 13 of this Chapter. However, that such an order shall not include a release or discharge of liability for any breach of duty set forth in G.S. 28A-13-10(c).

"§ 28A-23-2. Payment into court of fund due minor.

When any personal representative or collector holds property due a minor without a guardian and desires to file ~~his~~ the personal representative's or collector's petition for settlement, ~~he~~ the personal representative or collector may deliver the property to the clerk of superior court who shall invest upon interest or otherwise manage said property for the use of the minor or the clerk may proceed to appoint a guardian for the minor pursuant to the provisions of Chapter 35A of the General Statutes and then may deliver the property of the minor to the guardian.

"§ 28A-23-3. Commissions allowed personal representatives; representatives guilty of misconduct or default.

(a) Personal representatives, collectors or public administrators shall be entitled to commissions to be fixed in the discretion of the clerk of superior court not to exceed five percent (5%) upon the amounts of receipts, including the value of all personal property when received, and upon the expenditures made in accordance with law. In determining the maximum commissions allowable under this subsection, the clerk of superior court may take into consideration fees paid by the estate for professional services performed in the ordinary course of administering the estate, including services performed by attorneys and accountants. However, the clerk is not required to reduce the maximum commissions allowed by the aggregate fees paid to professionals on a dollar-for-dollar basis.

The commissions shall be charged as a part of the costs of administration and, upon allowance, may be retained out of the assets of the estate against creditors and all other persons claiming an interest in the estate. If the gross value of an estate is two thousand dollars ($2,000) or less, the clerk of superior court may fix the commission to be received by the personal representative, collector or public administrator in an amount the clerk of superior court, in the clerk's discretion, deems just and adequate.

(b) In determining the amount of the commissions, both upon personal property received and upon expenditures made, the clerk of superior court shall consider the time, responsibility, trouble and skill involved in the management of the estate. Where real property

is sold to pay debts or legacies, the commission shall be computed only on the proceeds actually applied in the payment of debts or legacies.

(c) The clerk of superior court may allow commissions from time to time during the course of the administration, but the total commissions allowed shall be determined on final settlement of the estate and shall not exceed the limit fixed in this section.

(d) Nothing in this section shall be construed to:

(1) Prevent the clerk of ~~the~~ superior court from allowing reasonable sums for necessary charges and disbursements incurred in the management of the estate.

(2) Allow commissions on distribution of the shares of heirs or on distribution of shares of devisees.

(3) Abridge the right of any party interested in the administration of a decedent's estate to appeal an order of the clerk of superior court to a judge of superior court.

(e) No personal representative, collector or public administrator, who has been guilty of default or misconduct in the due execution of ~~his or her~~ the personal representative's, collector's, or public administrator's office resulting in the revocation of ~~his or her~~ the appointment of the personal representative, collector, or public administrator under the provisions of G.S. 28A-9-1, shall be entitled to any commission under the provisions of this section.

(f) For the purpose of computing commissions whenever any portion of the dividends, interest, rents or other amounts payable to a personal representative, collector or public administrator is required by any law of the United States or other governmental unit to be withheld for income tax purposes by the person, corporation, organization or governmental unit paying the same, the amount withheld shall be deemed to have been received and expended.

(g) Subsection (a) of this section does not apply if the testator's will specifies a stipulated amount or method or standard for determining the compensation for the services rendered by the personal representative, including a provision in the will that the compensation of the personal representative is to be determined by applying the personal representative's regularly adopted schedule of compensation in effect at the time of performance of those services. Subsection (a) of this section also shall not apply if the testator's will provides that the personal representative is to receive "reasonable compensation" for those services or similar language to that effect if the personal representative and the beneficiaries whose shares would be charged with the payment of the personal representative's compensation consent in writing to the specific amount that constitutes reasonable compensation.

(h) Subsection (a) of this section shall apply if the testator's will provides that compensation of the personal representative shall be the amount "as provided by law," the "maximum amount provided by law," or other similar language.

"§ 28A-23-4. Counsel fees allowable to attorneys serving as representatives.

The clerk of superior court, in ~~his discretion,~~ the discretion of the clerk of superior court, is authorized and empowered to allow counsel fees to an attorney serving as a personal representative, collector or public administrator (in addition to the commissions allowed ~~him~~ the attorney as such representative, collector or public administrator) where such attorney in behalf of the estate ~~he~~ the attorney represents renders professional services, as an attorney, which are beyond the ordinary routine of administration and of a type which would reasonably justify the retention of legal counsel by any such representative, collector or public administrator not ~~himself~~ licensed to practice law.

"§ 28A-23-5. Reopening administration.

If, after an estate has been settled and the personal representative discharged, other property of the estate shall be discovered, or if it shall appear that any necessary act remains unperformed on the part of the personal representative, or for any other proper cause, the clerk

of superior court, upon the petition of any person interested in the estate and without notice or upon such notice as ~~he~~ the clerk of superior court may direct, may order that said estate be reopened. ~~He~~ The clerk of superior court may reappoint the personal representative or appoint another personal representative to administer such property or perform such acts as may be deemed necessary. Unless the clerk of superior court shall otherwise order, the provisions of this Chapter as to an original administration shall apply to the proceedings had in the reopened administration; but no claim which is already barred can be asserted in the reopened administration.

"Article 24.

"120-Hour Survivorship Requirement; Revised Simultaneous Death Act.

"§ 28A-24-1. Definitions.

In this Article:

(1) "Co-owners with right of survivorship" includes joint tenants in a joint tenancy with right of survivorship, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

(2) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with a POD designation, pension, profit sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

(3) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

"§ 28A-24-2. Requirement of survival by 120 hours.

(a) Except as otherwise provided in this Article, where the title to property, the devolution of property, the right to elect an interest in property, or any other right or benefit depends upon an individual's survivorship of the death of another individual, an individual who is not established by clear and convincing evidence to have survived the other individual by at least 120 hours is deemed to have predeceased the other individual.

(b) If the language of the governing instrument disposes of property in such a way that two or more beneficiaries are designated to take alternatively by reason of surviving each other and it is not established by clear and convincing evidence that any such beneficiary has survived any other such beneficiary by at least 120 hours, the property shall be divided into as many equal shares as there are alternative beneficiaries, and these shares shall be distributed respectively to each such beneficiary's estate.

(c) If the language of the governing instrument disposes of property in such a way that it is to be distributed to the member or members of a class who survived an individual, each member of the class will be deemed to have survived that individual by at least 120 hours unless it is established by clear and convincing evidence that the individual survived the class member or members by at least 120 hours.

"§ 28A-24-3. Co-owners with right of survivorship; requirement of survival by 120 hours.

Except as otherwise provided in this Article, (i) if it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by at least 120 hours, one-half of the property passes as if one had survived by at least 120 hours and one-half as if the other had survived by at least 120 hours and (ii) if there are more than two co-owners with right of survivorship and it is not established by clear and convincing evidence that at least one of them survived the others by at least 120 hours, the property passes to the estates of each of the co-owners in the proportion that one bears to the whole number of co-owners.

"§ 28A-24-4. Survival of an event; 120-hour period not applicable.

For purposes of a governing instrument that requires survival of an event, other than the death of another individual, the 120-hour survivorship requirement of this Article does not apply.

"§ 28A-24-5. Victim deemed to survive slayer.

Notwithstanding any other provisions of this Article, solely for the purpose of determining whether the victim is entitled to any right or benefit that depends on surviving the death of a slayer under G.S. 31A-3, the slayer is deemed to have predeceased the victim and the victim is deemed to have survived the slayer by at least 120 hours (or any greater survival period required of the victim under the slayer's will or other governing instrument) unless it is established by clear and convincing evidence that the slayer survived the victim by at least 120 hours.

"§ 28A-24-6. Exceptions to the 120-hour survival requirement.

Survival by 120 hours is not required if any of the following apply:

(1) The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and the language is operable under the facts of the case.

(2) The governing instrument expressly indicates that an individual is not required to survive the death of another individual by any specified period or expressly requires the individual to survive another individual for a specified period; but survival must be established by clear and convincing evidence.

(3) The imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under G.S. 41-15; but survival must be established by clear and convincing evidence.

(4) The application of a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition; but survival must be established by clear and convincing evidence.

(5) The application of a 120-hour requirement of survival would deprive an individual or the estate of an individual of an otherwise available tax exemption, deduction or credit, expressly including the marital deduction, resulting in the imposition of a tax upon a donor or testator or other person (or their estate) as the transferor of any property. "Tax" includes any federal or State gift, estate or inheritance tax.

(6) The application of a 120-hour requirement of survival would result in an escheat.

"§ 28A-24-7. Evidence of death or status.

For purposes of this Article, the following rules of evidence apply relating to the determination of death and status of a beneficiary subject to a requirement of survivorship and of the person the beneficiary must survive:

(1) Death occurs when an individual is determined to be dead pursuant to G.S. 90-323 or Chapter 28C of the General Statutes.

(2) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency in the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent. In the absence of evidence disputing the death certificate, that certificate shall be conclusive evidence of the fact, place, date, and time of death and the identity of the decedent.

(3) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or

alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report. The record or report is conclusive evidence of the status and of the dates, circumstances, and places disclosed by the record or report unless there is evidence to the contrary.

(4) In the absence of prima facie evidence of death under subdivision (2) or (3) of this section, the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

"**§ 28A-24-8. Protection of payors, bona fide purchasers, and other third parties; personal liability of recipient.**

(a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a person designated in a governing instrument who, under this Article, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the person's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this Article. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this Article.

Written notice of a claimed lack of entitlement under this Article must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this Article, a payor or other third party may pay any amount owed or transfer or deposit any item of property other than tangible personal property held by it to or with the clerk of the superior court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the clerk of the superior court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The clerk shall hold the funds or item of property and, upon the clerk's determination under this Article, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the clerk discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the clerk.

(b) A person who purchases property for value and without notice, or who received a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this Article to return the payment, item of property, or benefit, nor liable under this Article for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this Article is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this Article.

"Article 25.

"Small Estates.

"**§ 28A-25-1. Collection of property by affidavit when decedent dies intestate.**

(a) When a decedent dies intestate leaving personal property, less liens and encumbrances thereon, not exceeding twenty thousand dollars ($20,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, or an heir or creditor of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir or creditor or the public administrator stating:

(1) The name and address of the affiant and the fact that ~~he or she~~ the affiant is the public administrator or an heir or creditor of the decedent;
(2) The name of the decedent and ~~his~~ the decedent's residence at time of death;
(3) The date and place of death of the decedent;
(4) That 30 days have elapsed since the death of the decedent;
(5) That the value of all the personal property owned by the estate of the decedent, less liens and encumbrances thereon, does not exceed twenty thousand dollars ($20,000);
(6) That no application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction;
(7) The names and addresses of those persons who are entitled, under the provisions of the Intestate Succession Act, to the personal property of the decedent and their relationship, if any, to the decedent; and
(8) A description sufficient to identify each tract of real property owned by the decedent at the time of ~~his~~ the decedent's death.

In those cases in which the affiant is the surviving spouse and sole heir of the decedent, not disqualified under G.S. 28A-4-2, the property described in this subsection that may be collected pursuant to this section may exceed twenty thousand dollars ($20,000) in value but shall not exceed thirty thousand dollars ($30,000) in ~~value.~~ value, after reduction for any spousal allowance paid to the surviving spouse pursuant to G.S. 30-15. In such cases, the affidavit shall state: (i) the name and address of the affiant and the fact that ~~he or she~~ the affiant is the surviving spouse and is entitled, under the provisions of the Intestate Succession Act, to all of the property of the decedent; (ii) that the value of all of the personal property owned by the estate of the decedent, less liens and encumbrances thereon, does not exceed thirty thousand dollars ($30,000); and (iii) the information required under subdivisions (2), (3), (4), (6), and (8) of this subsection.

(b) Prior to the recovery of any assets of the decedent, a copy of the affidavit described in subsection (a) shall be filed in the office of the clerk of superior court of the county where the decedent ~~had his domicile at the time of his~~ was domiciled at the time of death. The affidavit shall be filed by the clerk upon payment of the fee provided in G.S. 7A-307, shall be indexed in the index to estates, and a copy thereof shall be mailed by the clerk to the persons shown in the affidavit as entitled to the personal property.

(c) The presentation of an affidavit as provided in subsection (a) shall be sufficient to require the transfer to the affiant or ~~his~~ the affiant's designee of the title and license to a motor vehicle registered in the name of the decedent owner; the ownership rights of a savings account or checking account in a bank in the name of the decedent owner; the ownership rights of a savings account or share certificate in a credit union, building and loan association, or savings and loan association in the name of the decedent owner; the ownership rights in any stock or security registered on the books of a corporation in the name of a decedent owner; or any other property or contract right owned by decedent at the time of ~~his~~ the decedent's death.

"§ 28A-25-1.1. Collection of property by affidavit when decedent dies testate.

(a) When a decedent dies testate leaving personal property, less liens and encumbrances thereon, not exceeding twenty thousand dollars ($20,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, a person named or designated as executor in the will, devisee, heir or creditor, of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir, the person named or

designated as executor in the will of the decedent, the creditor, the public administrator, or the devisee, stating:

(1) The name and address of the affiant and the fact that ~~he~~ the affiant is the public administrator, a person named or designated as executor in the will, devisee, heir or creditor, of the decedent;
(2) The name of the decedent and ~~his~~ the decedent's residence at time of death;
(3) The date and place of death of the decedent;
(4) That 30 days have elapsed since the death of the decedent;
(5) That the decedent died testate leaving personal property, less liens and encumbrances thereon, not exceeding twenty thousand dollars ($20,000) in value;
(6) That the decedent's will has been admitted to probate in the court of the proper county and a duly certified copy of the will has been recorded in each county in which is located any real property owned by the decedent at the time of ~~his~~ the decedent's death;
(7) That a certified copy of the decedent's will is attached to the affidavit;
(8) That no application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction;
(9) The names and addresses of those persons who are entitled, under the provisions of the will, or if applicable, of the Intestate Succession Act, to the property of the decedent; and their relationship, if any, to the decedent; and
(10) A description sufficient to identify each tract of real property owned by the decedent at the time of ~~his~~ the decedent's death.

In those cases in which the affiant is the surviving spouse, is entitled to all of the property of the decedent, and is not disqualified under G.S. 28A-4-2, the property described in this subsection that may be collected pursuant to this section may exceed twenty thousand dollars ($20,000) in value but shall not exceed thirty thousand dollars ($30,000) in value. In such cases, the affidavit shall state: (i) the name and address of the affiant and the fact that ~~he or she~~ the affiant is the surviving spouse and is entitled, under the provisions of the decedent's will, or if applicable, of the Intestate Succession Act, to all of the property of the decedent; (ii) that the decedent died testate leaving personal property, less liens and encumbrances thereon, not exceeding thirty thousand dollars ($30,000); and (iii) the information required under subdivisions (2), (3), (4), (6), (7), (8), and (10) of this subsection.

(b) Prior to the recovery of any assets of the decedent, a copy of the affidavit described in subsection (a) shall be filed in the office of the clerk of superior court of the county where the decedent ~~had his domicile at the time of his~~ was domiciled at the time of death. The affidavit shall be filed by the clerk upon payment of the fee provided in G.S. 7A-307, shall be indexed in the index to estates, and a copy shall be mailed by the clerk to the persons shown in the affidavit as entitled to the property.

(c) The presentation of an affidavit as provided in subsection (a) shall be sufficient to require the transfer to the affiant or ~~his~~ the affiant's designee of the title and license to a motor vehicle registered in the name of the decedent owner; the ownership rights of a savings account or checking account in a bank in the name of the decedent owner; the ownership rights of a savings account or share certificate in a credit union, building and loan association, or savings and loan association in the name of the decedent owner; the ownership rights in any stock or security registered on the books of a corporation in the name of a decedent owner; or any other property or contract right owned by decedent at the time of ~~his~~ the decedent's death.

"§ 28A-25-2. Effect of affidavit.

The person paying, delivering, transferring or issuing personal property or the evidence thereof pursuant to an affidavit meeting the requirements of G.S. 28A-25-1(a) or G.S. 28A-25-1.1(a) is discharged and released to the same extent as if ~~he~~ the person dealt with

a duly qualified personal representative of the decedent. ~~He~~ The person is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in an action brought for that purpose by or on behalf of the persons entitled thereto. The court costs and attorney's fee incident to the action shall be taxed against the person whose refusal to comply with the provisions of G.S. 28A-25-1(a) or G.S. 28A-25-1.1(a) made the action necessary. The heir or creditor to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any duly qualified personal representative or collector of the decedent's estate or to any other person having an interest in the estate.

"§ 28A-25-3. Disbursement and distribution of property collected by affidavit.

(a) If there has been no personal representative or collector appointed by the clerk of superior court, the affiant who has collected personal property of the decedent by affidavit pursuant to G.S. 28A-25-1 or G.S. 28A-25-1.1 shall:

(1) Disburse and distribute the same in the following order:

a. To the payment of the surviving spouse's year's allowance and the children's year's allowance assigned in accordance with G.S. 30-15 through G.S. 30-33;

b. To the payment of the debts and claims against the estate of the decedent in the order of priority set forth in G.S. 28A-19-6, or to the reimbursement of any person who has already made payment thereof;

c. To the distribution of the remainder of the personal property to the persons entitled thereto under the provisions of the will or of the Intestate Succession Act; and

(2) File an affidavit with the clerk of superior court that ~~he~~ the affiant has collected the personal property of the decedent and the manner in which ~~he~~ the affiant has disbursed and distributed the same. This final affidavit shall be filed within 90 days of the date of filing of the qualifying affidavit provided for in G.S. 28A-25-1 or G.S. 28A-25-1.1. If the affiant cannot file the final affidavit within 90 days, ~~he~~ the affiant shall file a report with the clerk within that time period stating ~~his~~ the affiant's reasons. Upon determining that the affiant has good reason not to file the final affidavit within 90 days, the clerk may extend the time for filing up to one year from the date of filing the qualifying affidavit.

(b) Nothing in this section shall be construed as changing the rule of G.S. 28A-15-1 and G.S. 28A-15-5 rendering both real and personal property, without preference or priority, available for the discharge of debts and other claims against the estate of the decedent. If it appears that it may be in the best interest of the estate to sell, lease, or mortgage any real property to obtain money for the payment of debts or other claims against the decedent's estate, the affiant shall petition the clerk of superior court for the appointment of a personal representative to conclude the administration of the decedent's estate pursuant to G.S. 28A-25-5.

"§ 28A-25-4. Clerk may compel compliance.

If any affiant who has collected personal property of the decedent by affidavit pursuant to G.S. 28A-25-1 or G.S. 28A-25-1.1 shall fail to make distribution or file affidavit as required by G.S. 28A-25-3, the clerk of superior court may, upon ~~his own~~ motion of the clerk of superior court or at the request of any interested person, issue an attachment against ~~him~~ the affiant for a contempt and commit ~~him~~ the affiant until ~~he~~ the affiant makes proper distribution and files the

affidavit. In addition to or in lieu of filing this attachment, the clerk may require the affiant to post a bond conditioned as provided in G.S. 28A-8-2.

"**§ 28A-25-5. Subsequently appointed personal representative or collector.**

Nothing in this Article shall preclude any interested person, including the affiant, from petitioning the clerk of superior court for the appointment of a personal representative or collector to conclude the administration of the decedent's estate. If such is done, the affiant who has been collecting personal property by affidavit shall cease to do so, shall deliver all assets in ~~his~~ the affiant's possession to the personal representative, and shall render a proper accounting to the personal representative or collector. A copy of the accounting shall also be filed with the clerk having jurisdiction over the personal representative or collector.

"**§ 28A-25-6. Payment to clerk of money owed decedent.**

(a) As an alternative to the small estate settlement procedures of this Article, any person indebted to a decedent may satisfy such indebtedness by paying the amount of the debt to the clerk of the superior court of the county of the domicile of the decedent:

(1) If no administrator has been appointed, and

(2) If the amount owed by such person does not exceed five thousand dollars ($5,000), and

(3) If the sum tendered to the clerk would not make the aggregate sum which has come into the clerk's hands belonging to the decedent exceed five thousand dollars ($5,000).

(b) Such payments may not be made to the clerk if the total amount paid or tendered with respect to any one decedent would exceed five thousand dollars ($5,000), even though disbursements have been made so that the aggregate amount in the clerk's hands at any one time would not exceed five thousand dollars ($5,000).

(c) If the sum tendered pursuant to this section would make the aggregate sum coming into the clerk's hands with respect to any one decedent exceed five thousand dollars ($5,000) the clerk shall appoint an administrator, or the sum may be administered under the preceding sections of this Article.

(d) If it appears to the clerk after making a preliminary survey that disbursements pursuant to this section would not exhaust funds received pursuant to this section, ~~he~~ the clerk may, in ~~his~~ the clerk's discretion, appoint an administrator, or the funds may be administered under the preceding sections of this Article.

(e) The receipt from the clerk of the superior court of a payment purporting to be made pursuant to this section is a full release to the debtor for the payment so made.

(f) If no administrator has been appointed, the clerk of superior court shall disburse the money received under this section for the following purposes and in the following order:

(1) To pay the surviving spouse's year's allowance and children's year's allowance assigned in accordance with law;

(2), (3) Repealed by Session Laws 1981, c. 383, s. 3.

(4) All other claims shall be disbursed according to the order set out in G.S. 28A-19-6.

Notwithstanding the foregoing provisions of this subsection, the clerk shall pay, out of funds provided the deceased pursuant to G.S. 111-18 and Part 3 of Article 2 of Chapter 108A of the General Statutes of North Carolina, any lawful claims for care provided by an adult care home to the deceased, incurred not more than 90 days prior to ~~his~~ the deceased's death. After the death of a spouse who died intestate and after the disbursements have been made in accordance with this subsection, the balance in the clerk's hands belonging to the estate of the decedent shall be paid to the surviving spouse, and if there is no surviving spouse, the clerk shall pay it to the heirs in proportion to their respective interests.

(g) The clerk shall not be required to publish notice to creditors.

(h) Whenever an administrator is appointed after a clerk of superior court has received any money pursuant to this section, the clerk shall pay to the administrator all funds which have not been disbursed. The clerk shall receive no commissions for payments made to the administrator, and the administrator shall receive no commissions for receiving such payments.

"Article 26.

"Foreign Personal Representatives and Ancillary Administration.

"§ 28A-26-1. Domiciliary and ancillary probate and administration.

The domiciliary, or original, administration of the estates of all decedents domiciled in North Carolina at the time of death shall be under the jurisdiction of this State and of a proper clerk of superior court in this State, and the original probate of all wills of such persons shall be in this State. Any administration of the estate and any probate of a will of such decedents outside North Carolina shall be ancillary only. All assets, except real estate (but including proceeds from the sale of real estate), subject to ancillary administration in a jurisdiction outside North Carolina shall, to the extent such assets are not necessary for the requirements of such ancillary administration, be transferred and delivered by the ancillary personal representative to the duly qualified personal representative in this State for administration and distribution by the domiciliary personal representative, and the domiciliary personal representative in this State shall have the duty of collecting all such assets from the ancillary personal representative. The receipt of the domiciliary personal representative shall fully acquit the ancillary personal representative with respect to the assets covered thereby. The domiciliary personal representative in North Carolina shall have the exclusive right and duty to pay all federal and North Carolina taxes owed by the estate of such decedent and to make proper distribution of all assets including those collected from the ancillary personal representative.

"§ 28A-26-2. Payment of debt and delivery of property to domiciliary personal representative of a nonresident decedent without ancillary administration in this State.

(a) At any time after the expiration of 60 days from the death of a nonresident decedent, any resident of this State indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the nonresident decedent may pay the debt or deliver the personal property, or the instrument evidencing the debt, obligation, stock or chose in action, to the domiciliary personal representative of the nonresident decedent upon being presented with a certified or exemplified copy of ~~his~~ the domiciliary personal representative's letters of appointment and an affidavit made by or on behalf of the domiciliary personal representative stating:

(1) The date of the death of the nonresident decedent;

(2) That to the best of ~~his~~ the domiciliary personal representative's knowledge no administration, or application or petition therefor, is pending in this State;

(3) That the domiciliary personal representative is entitled to payment or delivery.

(b) Payment or delivery made in good faith on the basis of the proof of appointment as domiciliary personal representative of a nonresident decedent and an affidavit meeting the requirements of subsection (a) constitutes a release to the same extent as if payment or delivery had been made to an ancillary personal representative.

(c) Payment or delivery under this section shall not be made if a resident creditor of the nonresident decedent has, by registered or certified mail, notified the resident debtor of the nonresident decedent or the resident having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary personal representative of the nonresident decedent. If no ancillary administrator qualifies within 90 days from the date of the notice, however, the resident debtor may pay the

debt or deliver the property directly to the nonresident domiciliary personal representative as set forth in subsection (a) of this section.

"§ 28A-26-3. Ancillary administration.

(a) Any domiciliary personal representative of a nonresident decedent upon the filing of a certified or exemplified copy of letters of appointment with the clerk of superior court who has venue under G.S. 28A-3-1 may be granted ancillary letters in this State notwithstanding that the domiciliary personal representative is a nonresident of this State or is a foreign corporation. If the domiciliary personal representative is a foreign corporation, it need not qualify under any other law of this State to authorize it to act as ancillary personal representative in the particular estate. If application is made for the issuance of ancillary letters to the domiciliary personal representative, the clerk of superior court shall give preference in appointment to the domiciliary personal representative unless the decedent shall have otherwise directed in a will.

(b) If, within 90 days after the death of the nonresident, or within 60 days after issue of domiciliary letters, should that be a shorter period, no application for ancillary letters has been made by a domiciliary personal representative, any person who could apply for issue of letters had the decedent been a resident may apply for issue of ancillary letters.

If it is known that there is a duly qualified domiciliary personal representative, the clerk of superior court shall send notice of such application, by registered mail, to that personal representative and to the appointing court. Such notice shall include a statement that, within 14 days after its mailing, the domiciliary personal representative may apply for the issue of ancillary letters with the preference specified in subsection (a) of this section; and that ~~his~~ failure of the domiciliary personal representative to do so will be deemed a waiver, with the result that letters will be issued to another. Upon such failure, the clerk of superior court may issue ancillary letters in accordance with the provisions of Article 4 of this Chapter.

If the applicant and the clerk of superior court have no knowledge of the existence of a domiciliary personal representative, the clerk of superior court may proceed to issue ancillary letters. Subsequently, upon it becoming known that a domiciliary personal representative has been appointed, whether such appointment occurred before or after the issue of ancillary letters, the clerk of superior court shall notify the domiciliary personal representative, by registered mail, of the action taken by the clerk of superior court and the state of the ancillary administration. Such notice shall include a statement that at any time prior to approval of the ancillary personal representative's final account the domiciliary personal representative may appear in the proceedings for any purpose ~~he~~ the domiciliary personal representative may deem advisable; and that ~~he~~ the domiciliary personal representative may apply to be substituted as ancillary personal representative, but that such request will not be granted unless the clerk of superior court finds that such action will be for the best interests of North Carolina administration of the estate.

"§ 28A-26-4. Bonds.

(a) Subject to the exception in subsection (b), any personal representative, including a domiciliary personal representative, who is granted ancillary letters of administration in this State must satisfy the bond requirements prescribed in Article 8 of this Chapter.

(b) Where a citizen or subject of a foreign country, or of any other state or territory of the United States, by will sufficient according to the laws of this State, and duly probated and recorded in the proper county, devises to ~~his~~ that person's executor, with power to sell and convey, real property situated in this State in trust for a person named in the will, the power being vested in the executor as such trustee, the executor may execute the power without giving bond in this State.

"§ 28A-26-5. Authority of domiciliary personal representative of a nonresident decedent.

The domiciliary personal representative of the nonresident decedent after qualifying as ancillary personal representative in this State is authorized to administer the North Carolina estate of the nonresident decedent in accordance with the provisions of this Chapter.

"§ 28A-26-6. Jurisdiction.

(a) A domiciliary personal representative of a nonresident decedent may invoke the jurisdiction of the courts of this State after qualifying as ancillary personal representative in this State except that ~~he~~ the domiciliary personal representative may invoke such jurisdiction prior to qualification for the purpose of appealing from a decision of the clerk of superior court regarding a question of qualification.

(b) A domiciliary personal representative of a nonresident decedent submits to the jurisdiction of the courts of this State:

(1) As provided in G.S. 1-75.4, or

(2) By receiving payment of money or taking delivery of personal property under G.S. 28A-26-2; or

(3) By acceptance of ancillary letters of administration in this State under G.S. 28A-26-3; or

(4) By doing any act as personal representative in this State which if done as an individual would have given the State jurisdiction over ~~him~~ the personal representative as an individual.

"§ 28A-26-7. Service on personal representative of a nonresident decedent.

A court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 28A-26-6 may exercise personal jurisdiction over a defendant by service of process in accordance with the provisions of G.S. 1A-1, Rule 4(j).

"§ 28A-26-8. Duties of personal representative in an ancillary administration.

(a) All assets of estates of nonresident decedents being administered in this State are subject to all claims, allowances and charges existing or established against the estate of the decedent wherever existing or established.

(b) An adjudication of a claim rendered in any jurisdiction in favor of or against any personal representative of the estate of a nonresident decedent is binding on the ancillary personal representative in this State and on all parties to the litigation.

(c) Limitations on presentation of claims shall be governed by the provisions of this Chapter except that creditors residing in the domiciliary state barred by the statutes of that state may not file claims in an ancillary administration in this State.

(d) In the payment of claims by the ancillary administrator, the following rules shall apply:

(1) If the value of the entire estate, wherever administered, equals or exceeds family exemptions and allowances, prior charges and claims against the entire estate, the claims allowed in this State shall be paid in full from assets in this State, if such assets are sufficient for the purpose.

(2) If such total exemptions, allowances, charges and claims exceed the value of the entire estate, the claims allowed in this State shall be paid their proper percentage pro rata by class, if assets in this State are sufficient for the purpose.

(3) If assets in this State are inadequate for either of the purposes stated in subdivisions (1) or (2) above, the claims allowed in this State shall be paid, pro rata by class, to the extent the local assets will permit.

(4) If the value of the entire estate, wherever administered, is insufficient to pay all exemptions and allowances, prior charges and claims against the entire estate, the priority for order of payment established by the law of the domicile will prevail.

"**§ 28A-26-9. Remission of surplus assets by ancillary personal representative to domiciliary personal representative.**

Unless a testator in a will otherwise directs, any assets (including proceeds from the sale of real estate) remaining after payment of claims against the estate of a nonresident decedent being administered by an ancillary personal representative other than the domiciliary personal representative shall be transferred and delivered to the domiciliary personal representative or, if none, to the court in the domicile of the decedent which has jurisdiction to administer the estate.

"Article 27.

"Apportionment of Federal Estate Tax.

"**§ 28A-27-1. Definitions.**

For the purposes of this Article:

(1) "Estate" means the gross estate of a decedent as determined for the purpose of the federal estate tax.

(2) "Fiduciary" includes a personal representative and a trustee.

(3) "Person" means any individual, partnership, association, joint stock company, corporation, governmental agency, including any multiples or combinations of the foregoing as, for example, individuals as joint tenants.

(4) "Person interested in the estate" means any person, including a personal representative, guardian, or trustee, entitled to receive, or who has received, from a decedent while alive or by reason of the death of a decedent any property or interest therein included in the decedent's taxable estate.

(5) "State" means any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(6) "Tax" means the net Federal Estate Tax due, after application of any available unified transfer tax credit, and interest and penalties imposed in addition to the tax.

"**§ 28A-27-2. Apportionment.**

(a) Except as otherwise provided in subsection (b) of this section, or in G.S. 28A-27-5, G.S. 28A-27-6, or G.S. 28A-27-8, the tax shall be apportioned among all persons interested in the estate in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values as finally determined for federal estate tax purposes shall be used for the purposes of this computation.

(b) In the event the decedent's will provides a method of apportionment of the tax different from the method provided in subsection (a) above, the method described in the will shall control. However, in the case of any will executed on or after October 1, 1986, a general direction in the will that taxes shall not be apportioned, whether or not referring to this Article, but shall be paid from the residuary portion of the estate shall not, unless specifically stated otherwise, apply to taxes imposed on assets which are includible in the valuation of the decedent's gross estate for federal estate tax purposes only by reason of Sections 2041, 2042 or 2044 of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent tax law. In the case of an estate administered under any will executed on or after October 1, 1986, in the event that the estate tax computation involves assets described in the preceding sentence, unless specifically stated otherwise, apportionment shall be made against such assets and the tax so apportioned shall be recovered from the persons receiving such assets as provided in Sections 2206, 2207 or 2207A of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent tax law.

"**§ 28A-27-3. Procedure for determining apportionment.**

(a) The personal representative of a decedent shall determine the apportionment of the tax.

(b) If the personal representative finds that it is inequitable to apportion interest and penalties in the manner provided in this Article because such interest or penalties were imposed due to the fault of one or more persons interested in the ~~estate he~~ estate, the personal representative may direct apportionment thereon in the manner ~~he~~ the personal representative finds equitable.

(c) The expenses reasonably incurred by the personal representative in connection with the apportionment of the tax shall be apportioned as provided for taxes under this Article. If the personal representative finds that it is inequitable to apportion the expenses because such expenses were incurred because of the fault of one or more persons interested in the ~~estate he~~ estate, the personal representative may direct other more equitable apportionment.

"§ 28A-27-4. Uncollected tax.

The personal representative shall not be under any duty to institute any suit or proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the six months next following final determination of the tax. A personal representative who institutes the suit or proceeding within a reasonable time after the six months' period shall not be subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectable at a time following the death of the decedent but thereafter became uncollectable. If the personal representative cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be apportioned among the other persons interested in the estate who are subject to apportionment. The apportionment shall be made in the proportion that the value of the interest of each remaining person interested in the estate bears to the total value of the interests of all remaining persons interested in the estate.

"§ 28A-27-5. Exemptions, deductions, and credits.

(a) Any interest for which a deduction or exemption is allowed under the federal revenue laws in determining the value of the decedent's net taxable estate, such as property passing to or in trust for a surviving spouse and gifts or bequests for charitable, public, or similar purposes, shall not be included in the computation provided for in G.S. 28A-27-2 to the extent of the allowable deduction or exemption. When such an interest is subject to a prior present interest which is not allowable as a deduction or exemption, such present interest shall not be included in the computation provided for in this Article and no tax shall be apportioned to or paid from principal.

(b) Any credit for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or ~~his~~ the decedent's estate shall inure to the proportionate benefit of all persons liable to apportionment; provided, however, that if the tax which gives rise to such a credit has in fact been paid by a person interested in the estate, the benefit of such credit shall inure to that person paying the tax.

(c) Any credit for inheritance, succession, or estate taxes or taxes in the nature thereof in respect to property or interests includible in the estate shall inure to the benefit of the persons or interests chargeable with the payment thereof to the extent that, or in the proportion that, the credit reduces the tax.

(d) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or bequest does not constitute an allowed deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in this Article, and to that extent no apportionment shall be made against the property. This section does not apply in any instance where the result will be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954 of the United States or corresponding provisions of any subsequent tax law, relating to deduction for State death taxes on transfers for public, charitable, or religious uses.

"§ 28A-27-6. No apportionment between temporary and remainder interests.

No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

"§ 28A-27-7. Fiduciary's rights and duties.

(a) The personal representative may withhold from any property of the decedent in ~~his~~ the personal representative's possession, distributable to any person interested in the estate, the amount of the tax apportioned to ~~his~~ the person's interest. If the property in possession of the personal representative and distributable to any person interested in the estate tax is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal ~~representative he~~ representative, the personal representative may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Article.

(b) If property held by the fiduciary or other person is distributed prior to final apportionment of the tax, the personal representative may require the distributee to provide a bond or other security for the apportionment liability in the form and amount prescribed by the fiduciary, with the approval of the clerk of superior court having jurisdiction of the administration of the estate.

"§ 28A-27-8. Difference with Federal Estate Tax Law.

If the liabilities of persons interested in the estate as prescribed by this Article differ from those which result under the Federal Estate Tax Law, the liabilities imposed by the federal law will control and the balance of this Article shall apply as if the resulting liabilities had been prescribed herein.

"§ 28A-27-9. Effective date.

The provisions of this Article shall not apply to taxes due on account of the death of decedents dying prior to October 1, 1986.

"Article 28.

"Summary Administration.

"§ 28A-28-1. Summary administration where spouse is sole beneficiary.

When a decedent dies testate or intestate leaving a surviving spouse as the sole devisee or heir, the surviving spouse may file a petition for summary administration with the clerk of superior court of the county where the decedent was domiciled at the time of death. This procedure is available if the decedent died partially testate, provided that the surviving spouse is the sole devisee under the will and the sole heir of the decedent's intestate property. This procedure is not available if the decedent's will provides that it is not available or if the devise to the surviving spouse is in trust rather than outright.

"§ 28A-28-2. Petition.

(a) The petition shall be signed by the surviving spouse and verified to be accurate and complete to the best of the spouse's knowledge and belief and shall state as follows:

(1) The name and address of the spouse and the fact that ~~he or she~~ the spouse is the surviving spouse of the decedent;

(2) The name and domicile of the decedent at the time of death;

(3) The date and place of death of the decedent;

(4) The date and place of marriage of the spouse and the decedent;

(5) A description sufficient to identify each tract of real property owned in whole or in part by the decedent at the time of death;

(6) A description of the nature of the decedent's personal property and the location of such property, as far as these facts are known or can with reasonable diligence be ascertained;

(7) The probable value of the decedent's personal property, so far as the value is known or can with reasonable diligence be ascertained;

(8) That no application or petition for appointment of a personal representative is pending or has been granted in this State;

(9) That the spouse is the sole devisee or sole heir, or both, of the decedent, and that there is no other devisee or heir; that the decedent's will, if any, does not prohibit summary administration; and that any property passing to the spouse under the will is not in trust;

(10) The name and address of any executor or coexecutor named by the will and that, if the decedent died testate, a copy of the petition has been personally delivered or sent by first-class mail by the spouse to the last-known address of any executor or coexecutor named by the will, if different from the spouse;

(11) That, to the extent of the value of the property received by the spouse under the will of the decedent or by intestate succession, the spouse assumes all liabilities of the decedent that were not discharged by reason of death and assumes liability for all taxes and valid claims against the decedent or the estate, as provided in G.S. 28A-28-6; and

(12) If the decedent died testate, that the decedent's will has been admitted to probate in the court of the proper county; that a duly certified copy of the will has been recorded in each county in which is located any real property owned by the decedent at the time of death; and that a certified copy of the decedent's will is attached to the petition.

(b) The petition shall be filed by the clerk upon payment of the fee provided in G.S. 7A-307 and shall be indexed in the index to estates.

"§ 28A-28-3. Clerk's order.

If it appears to the clerk that the petition and supporting evidence, if any, comply with the requirements of G.S. 28A-28-2 and on the basis thereof the spouse is entitled to summary administration, the clerk shall enter an order to that effect and no further administration of the estate is necessary. Nothing in this section shall preclude a petition under the provisions of G.S. 28A-28-7(a) or the appointment of a personal representative or a collector under the provisions of Article 6 or Article 11 of this Chapter.

"§ 28A-28-4. Effect of order.

(a) The presentation of a certified copy of the order described in G.S. 28A-28-3 shall be sufficient to require the transfer to the spouse of any property or contract right owned by the decedent at the time of death, including but not limited to: (i) wages and salary; (ii) the title and license to a motor vehicle registered in the name of the decedent owner; (iii) the ownership rights of a savings account, checking account, or certificate of deposit in a bank in the name of the decedent owner; (iv) the ownership rights of a savings account, share certificate, or certificate of deposit in a credit union, building and loan association, or savings and loan association in the name of the decedent owner; and (v) the ownership rights in any stock or security registered on the books of a corporation in the name of the decedent owner.

(b) After the entry of the order described in G.S. 28A-28-3, the spouse may convey, lease, sell, or mortgage any real property devised to or inherited by the spouse from the decedent, at public or private sale, upon such terms as the spouse may determine. This section shall not limit any other powers the spouse may have over property devised to or inherited by the spouse from the decedent. The provisions of G.S. 28A-17-12 are not applicable to a conveyance, sale, lease, or mortgage under this subsection.

"§ 28A-28-5. Effect of payment.

The person paying, delivering, transferring, or issuing property or the evidence thereof pursuant to the order described in G.S. 28A-28-3 is discharged and released to the same extent

as if the person dealt with a duly qualified personal representative of the decedent. The person is not required to see to the application of the property or evidence thereof or to inquire into the truth of any statement in the petition or order.

If any person to whom the order is presented refuses to pay, deliver, transfer, or issue any property or evidence thereof, the property may be recovered or its payment, delivery, transfer, or issuance may be compelled in an action brought for that purpose by the surviving spouse. The court costs and attorney's fee incident to the action shall be taxed against the person whose refusal to comply with the provisions of G.S. 28A-28-4 made the action necessary.

"§ 28A-28-6. Spouse's assumption of liabilities.

If the clerk grants the order for summary administration, the spouse shall be deemed to have assumed, to the extent of the value of the property received by the spouse under the will of the decedent or by intestate succession, all liabilities of the decedent that were not discharged by reason of death and liability for all taxes and valid claims against the decedent or the estate. The value of the property is the fair market value of the property on the date of death of the decedent less any liens or encumbrances on the property so received. The spouse may assert any defense, counterclaim, cross-claim, or setoff which would have been available to the decedent if the decedent had not died except for actions listed in G.S. 28A-18-1(b). A spouse shall not be deemed to have assumed any liabilities of the decedent that were discharged by reason of death.

"§ 28A-28-7. Right to petition for appointment of personal representative; discharge of spouse's liability.

(a) Nothing in this Article shall preclude any person qualified to serve as personal representative pursuant to G.S. 28A-4-1, including the surviving spouse, from petitioning the clerk of superior court for the appointment of a personal representative or collector to administer the decedent's estate. If a personal representative or collector is appointed, the spouse shall render a proper accounting to the personal representative or collector and file a copy of the accounting with the clerk. The spouse shall deliver assets of the decedent's estate, cash, or other property and shall be discharged of liability in accordance with the provisions of subsection (b) of this section.

(b) In the event that a personal representative or collector is appointed, the spouse shall be discharged of liability for the debts of the decedent as follows:

(1) If the spouse delivers to the personal representative or collector all of the property received by the spouse in the identical form that it was received by the spouse, then the spouse will be discharged of all liability.

(2) If the spouse does not deliver to the personal representative or collector all of the property in the identical form that it was received by the spouse, then the spouse shall be discharged of liability as follows:

a. For property delivered to the personal representative or collector that is in the identical form that it was received by the spouse, the spouse is discharged to the extent of the fair market value of the property at the time of the decedent's death or the fair market value at the time the property was received by the personal representative or collector, whichever is greater.

b. For property delivered to the personal representative or collector that is not in the identical form that it was received by the spouse, the spouse is discharged to the extent of the fair market value of such property at the time it was delivered to the personal representative or collector.

"Article 29.

"Notice to Creditors Without Estate Administration.

"§ 28A-29-1. Notice to creditors without estate administration.

When a decedent dies testate or intestate leaving no property subject to probate, any person otherwise qualified to serve as personal representative of the estate pursuant to Article 4 of this Chapter or the trustee then serving under the terms of a revocable trust created by the decedent may file a petition to be appointed as a limited personal representative to provide notice to creditors without administration of an estate before the clerk of superior court of the county where the decedent was domiciled at the time of death. This procedure is not available if the decedent's will provides that it is not available. A limited personal representative shall have the rights and obligations provided for in this Article."

SECTION 5. Chapter 29 of the General Statutes reads as rewritten:

"Chapter 29.

"Intestate Succession.

"Article 1.

"General Provisions.

"§ 29-1. Short title.

This Chapter shall be known and may be cited as the Intestate Succession Act.

"§ 29-2. Definitions.

As used in this Chapter, unless the context otherwise requires, the term:

(1) "Advancement" means an irrevocable inter vivos gift of property, made by an intestate donor to any person who would be ~~his~~ the donor's heir or one of ~~his~~ the donor's heirs upon ~~his~~ the donor's death, and intended by the intestate donor to enable the donee to anticipate ~~his~~ the donee's inheritance to the extent of the gift; except that no gift to a spouse shall be considered an advancement unless so designated by the intestate donor in a writing signed by the donor at the time of the gift.

(2) "Estate" means all the property of a decedent, including but not limited to:

a. An estate for the life of another; and

b. All future interests in property not terminable by the death of the owner thereof, including all reversions, remainders, executory interests, rights of entry and possibilities of reverter, subject, however, to all limitations and conditions imposed upon such future interests.

(3) "Heir" means any person entitled to take real or personal property upon intestacy under the provisions of this Chapter.

(4) "Lineal descendants" of a person means all children of such person and successive generations of children of such children.

(5) "Net estate" means the estate of a decedent, exclusive of family allowances, costs of administration, and all lawful claims against the estate.

(6) "Share," when used to describe the share of a net estate or property which any person is entitled to take, includes both the fractional share of the personal property and the undivided fractional interest in the real property, which the person is entitled to take.

"§ 29-3. Certain distinctions as to intestate succession abolished.

In the determination of those persons who take upon intestate succession there is no distinction:

(1) Between real and personal property, or

(2) Between ancestral and nonancestral property, or

(3) Between relations of the whole blood and those of the half blood.

"§ 29-4. Curtesy and dower abolished.

The estates of curtesy and dower are hereby abolished.

"§ 29-5. Computation of next of kin.

Degrees of kinship shall be computed as provided in G.S. 104A-1.

"**§ 29-6. Lineal succession unlimited.**

There shall be no limitation on the right of succession by lineal descendants of an intestate.

"**§ 29-7. Collateral succession limited.**

There shall be no right of succession by collateral kin who are more than five degrees of kinship removed from an intestate; provided that if there is no collateral relative within the five degrees of kinship referred to herein, then collateral succession shall be unlimited to prevent any property from escheating.

"**§ 29-8. Partial intestacy.**

If part but not all of the estate of a decedent is validly disposed of by ~~his~~ the decedent's will, the part not disposed of by such will shall descend and be distributed as intestate property.

"**§ 29-9. Inheritance by unborn infant.**

Lineal descendants and other relatives of an intestate born within 10 lunar months after the death of the intestate, shall inherit as if they had been born in the lifetime of the intestate and had survived him.

"**§ 29-10. Renunciation.**

Renunciation of an intestate share shall be as provided for in Chapter 31B of the General Statutes.

"**§ 29-11. Aliens.**

Unless otherwise provided by law, it shall be no bar to intestate succession by any person, that ~~he,~~ the person, or any other person through whom ~~he~~ the person traces ~~his~~ the person's inheritance, is or has been an alien.

"**§ 29-12. Escheats.**

If there is no person entitled to take under G.S. 29-14 or G.S. 29-15, or if in case of an illegitimate intestate, there is no one entitled to take under G.S. 29-21 or G.S. 29-22 the net estate shall escheat as provided in G.S. 116B-2.

"**§ 29-12.1. Controversies under this Chapter.**

Any controversy arising under this Chapter shall be determined as an estate proceeding under Article 2 of Chapter 28A of the General Statutes, except that controversies arising under Article 8 of this Chapter shall be determined as set forth in that Chapter.

"Article 2.

"Shares of Persons Who Take upon Intestacy.

"**§ 29-13. Descent and distribution upon intestacy; 120-hour survivorship requirement, revised simultaneous death act, Article 24, Chapter 28A.**

(a) All the estate of a person dying intestate shall descend and be distributed, subject to the payment of costs of administration and other lawful claims against the estate, and subject to the payment of State inheritance or estate taxes, as provided in this Chapter.

(b) The determination of whether an heir has predeceased a person dying intestate shall be made as provided by Article 24 of Chapter 28A of the General Statutes.

"**§ 29-14. Share of surviving spouse.**

(a) Real Property. – The share of the surviving spouse in the real property is:

(1) If the intestate is survived by only one child or by any lineal descendant of only one deceased child, a one-half undivided interest in the real property;

(2) If the intestate is survived by two or more children, or by one child and any lineal descendant of one or more deceased children or by lineal descendants of two or more deceased children, a one-third undivided interest in the real property;

(3) If the intestate is not survived by a child, children or any lineal descendant of a deceased child or children, but is survived by one or more parents, a one-half undivided interest in the real property;

(4) If the intestate is not survived by a child, children or any lineal descendant of a deceased child or children, or by a parent, all the real property.

(b) Personal Property. – The share of the surviving spouse in the personal property is:

(1) If the intestate is survived by only one child or by any lineal descendant of only one deceased child, and the net personal property does not exceed thirty thousand dollars ($30,000) in value, all of the personal property; if the net personal property exceeds thirty thousand dollars ($30,000) in value, the sum of thirty thousand dollars ($30,000) plus one half of the balance of the personal property;

(2) If the intestate is survived by two or more children, or by one child and any lineal descendant of one or more deceased children, or by lineal descendants of two or more deceased children, and the net personal property does not exceed thirty thousand dollars ($30,000) in value, all of the personal property; if the net personal property exceeds thirty thousand dollars ($30,000) in value, the sum of thirty thousand dollars ($30,000) plus one third of the balance of the personal property;

(3) If the intestate is not survived by a child, children, or any lineal descendant of a deceased child or children, but is survived by one or more parents, and the net personal property does not exceed fifty thousand dollars ($50,000) in value, all of the personal property; if the net personal property exceeds fifty thousand dollars ($50,000) in value, the sum of fifty thousand dollars ($50,000) plus one half of the balance of the personal property;

(4) If the intestate is not survived by a child, children, or any lineal descendant of a deceased child or children, or by a parent, all of the personal property.

(c) When an equitable distribution of property is awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent, the share of the surviving spouse determined under subsections (a) and (b) of this section shall be first determined as though no property had been awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent, and then reduced by the net value of the marital estate awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent.

"§ 29-15. Shares of others than surviving spouse.

Those persons surviving the intestate, other than the surviving spouse, shall take that share of the net estate not distributable to the surviving spouse, or the entire net estate if there is no surviving spouse, as follows:

(1) If the intestate is survived by only one child or by only one lineal descendant of only one deceased child, that person shall take the entire net estate or share, but if the intestate is survived by two or more lineal descendants of only one deceased child, they shall take as provided in G.S. 29-16; or

(2) If the intestate is survived by two or more children or by one child and any lineal descendant of one or more deceased children, or by lineal descendants of two or more deceased children, they shall take as provided in G.S. 29-16; or

(3) If the intestate is not survived by a child, children or any lineal descendant of a deceased child or children, but is survived by both parents, they shall take in equal shares, or if either parent is dead, the surviving parent shall take the entire share; or

(4) If the intestate is not survived by such children or lineal descendants or by a parent, the brothers and sisters of the intestate, and the lineal descendants of any deceased brothers or sisters, shall take as provided in G.S. 29-16; or

(5) If there is no one entitled to take under the preceding subdivisions of this section or under G.S. 29-14,

a. The paternal grandparents shall take one half of the net estate in equal shares, or, if either is dead, the survivor shall take the entire one half of the net estate, and if neither paternal grandparent survives, then the paternal uncles and aunts of the intestate and the lineal descendants of deceased paternal uncles and aunts shall take said one half as provided in G.S. 29-16; and

b. The maternal grandparents shall take the other one half in equal shares, or if either is dead, the survivor shall take the entire one half of the net estate, and if neither maternal grandparent survives, then the maternal uncles and aunts of the intestate and the lineal descendants of deceased maternal uncles and aunts shall take one half as provided in G.S. 29-16; but

c. If there is no grandparent and no uncle or aunt, or lineal descendant of a deceased uncle or aunt, on the paternal side, then those of the maternal side who otherwise would be entitled to take one half as hereinbefore provided in this subdivision shall take the whole; or

d. If there is no grandparent and no uncle or aunt, or lineal descendant of a deceased uncle or aunt, on the maternal side, then those on the paternal side who otherwise would be entitled to take one half as hereinbefore provided in this subdivision shall take the whole.

"Article 3.

"Distribution among Classes.

"§ 29-16. Distribution among classes.

(a) Children and Their Lineal Descendants. – If the intestate is survived by lineal descendants, their respective shares in the property which they are entitled to take under G.S. 29-15 of this Chapter shall be determined in the following manner:

(1) Children. – To determine the share of each surviving child, divide the property by the number of surviving children plus the number of deceased children who have left lineal descendants surviving the intestate.

(2) Grandchildren. – To determine the share of each surviving grandchild by a deceased child of the intestate in the property not taken under the preceding subdivision of this subsection, divide that property by the number of such surviving grandchildren plus the number of deceased grandchildren who have left lineal descendants surviving the intestate.

(3) Great-Grandchildren. – To determine the share of each surviving great-grandchild by a deceased grandchild of the intestate in the property not taken under the preceding subdivisions of this subsection, divide that property by the number of such surviving great-grandchildren plus the number of deceased great-grandchildren who have left lineal descendants surviving the intestate.

(4) Great-Great-Grandchildren. – To determine the share of each surviving great-great-grandchild by a deceased great-grandchild of the intestate in the property not taken under the preceding subdivisions of this subsection, divide that property by the number of such surviving great-great-grandchildren plus the number of deceased great-great-grandchildren who have left lineal descendants surviving the intestate.

(5) Other Lineal Descendants of Children. – Divide, according to the formula established in the preceding subdivisions of this subsection, any property not taken under such preceding subdivisions, among the lineal descendants of the children of the intestate not already participating.

(b) Brothers and Sisters and Their Lineal Descendants. – If the intestate is survived by brothers and sisters or the lineal descendants of deceased brothers and sisters, their respective shares in the property which they are entitled to take under G.S. 29-15 of this Chapter shall be determined in the following manner:

(1) Brothers and Sisters. – To determine the share of each surviving brother and sister, divide the property by the number of surviving brothers and sisters plus the number of deceased brothers and sisters who have left lineal descendants surviving the intestate within the fifth degree of kinship to the intestate.

(2) Nephews and Nieces. – To determine the share of each surviving nephew or niece by a deceased brother or sister of the intestate in the property not taken under the preceding subdivision of this subsection, divide that property by the number of such surviving nephews or nieces plus the number of deceased nephews and nieces who have left lineal descendants surviving the intestate within the fifth degree of kinship to the intestate.

(3) Grandnephews and Grandnieces. – To determine the share of each surviving grandnephew or grandniece by a deceased nephew or niece of the intestate in the property not taken under the preceding subdivisions of this subsection, divide that property by the number of such surviving grandnephews and grandnieces plus the number of deceased grandnephews and grandnieces who have left children surviving the intestate.

(4) Great-Grandnephews and Great-Grandnieces. – To determine the share of each surviving child of a deceased grandnephew or grandniece of the intestate, divide equally among the great-grandnephews and great-grandnieces of the intestate any property not taken under the preceding subdivisions of this subsection.

(5) Grandparents and Others. – If there is no one within the fifth degree of kinship to the intestate entitled to take the property under the preceding subdivisions of this subsection, then the intestate's property shall go to those entitled to take under G.S. 29-15(5).

(c) Uncles and Aunts and Their Lineal Descendants. – If the intestate is survived by uncles and aunts or the lineal descendants of deceased uncles and aunts, their respective shares in the property which they are entitled to take under G.S. 29-15 shall be determined in the following manner:

(1) Uncles and Aunts. – To determine the share of each surviving uncle and aunt, divide the property by the number of surviving uncles and aunts plus the number of deceased uncles and aunts who have left children or grandchildren surviving the intestate.

(2) Children of Uncles and Aunts. – To determine the share of each surviving child of a deceased uncle or aunt of the intestate in the property not taken under the preceding subdivision of this subsection, divide that property by the number of surviving children of deceased uncles and aunts plus the number of deceased children of deceased uncles and aunts who have left children surviving the intestate.

(3) Grandchildren of Uncles and Aunts. – To determine the share of each surviving child of a deceased child of a deceased uncle or aunt of the intestate, divide equally among the grandchildren of uncles or aunts of the intestate any property not taken under the preceding subdivisions of this subsection.

"Article 4.

"Adopted Children.

"**§ 29-17. Succession by, through and from adopted children.**

(a) A child, adopted in accordance with Chapter 48 of the General Statutes or in accordance with the applicable law of any other jurisdiction, and the heirs of such child, are entitled by succession to any property by, through and from ~~his~~ the child's adoptive parents and their heirs the same as if ~~he~~the child were the natural legitimate child of the adoptive parents.

(b) An adopted child is not entitled by succession to any property, by, through, or from ~~his~~ the child's natural parents or their heirs, except as provided in subsection (e) of this section.

(c) The adoptive parents and the heirs of the adoptive parents are entitled by succession to any property, by, through and from an adopted child the same as if the adopted child were the natural legitimate child of the adoptive parents.

(d) The natural parents and the heirs of the natural parents are not entitled by succession to any property, by, through or from an adopted child, except as provided in subsection (e) of this section.

(e) If a natural parent has previously married, is married to, or shall marry an adoptive parent, the adopted child is considered the child of such natural parent for all purposes of intestate succession.

"Article 5.

"Legitimated Children.

"**§ 29-18. Succession by, through and from legitimated children.**

A child born an illegitimate who shall have been legitimated in accordance with G.S. 49-10 or 49-12 or in accordance with the applicable law of any other jurisdiction, and the heirs of such child, are entitled by succession to property by, through and from ~~his~~ the child's father and mother and their heirs the same as if born in lawful wedlock; and if ~~he~~ the child dies intestate, ~~his~~ the child's property shall descend and be distributed as if ~~he~~ the child had been born in lawful wedlock.

"Article 6.

"Illegitimate Children.

"**§ 29-19. Succession by, through and from illegitimate children.**

(a) For purposes of intestate succession, an illegitimate child shall be treated as if ~~he~~ that child were the legitimate child of ~~his~~ the child's mother, so that ~~he~~ the child and ~~his~~ the child's lineal descendants are entitled to take by, through and from ~~his~~ the child's mother and ~~his~~ the child's other maternal kindred, both descendants and collaterals, and they are entitled to take from ~~him.~~ the child.

(b) For purposes of intestate succession, an illegitimate child shall be entitled to take by, through and from:

(1) Any person who has been finally adjudged to be the father of such child pursuant to the provisions of G.S. 49-1 through 49-9 or the provisions of G.S. 49-14 through 49-16;

(2) Any person who has acknowledged himself during his own lifetime and the child's lifetime to be the father of such child in a written instrument executed or acknowledged before a certifying officer named in G.S. 52-10(b) and filed during his own lifetime and the child's lifetime in the office of the clerk of superior court of the county where either he or the child resides.

Notwithstanding the above provisions, no person shall be entitled to take hereunder unless ~~he~~ the person has given written notice of the basis of ~~his~~ the person's claim to the personal representative of the putative father within six months after the date of the first publication or posting of the general notice to creditors.

(c) Any person described under subdivision (b)(1) or (2) above and ~~his~~ the person's lineal and collateral kin shall be entitled to inherit by, through and from the illegitimate child.

(d) Any person who acknowledges ~~himself to be~~ that he is the father of an illegitimate child in his duly probated last will shall be deemed to have intended that such child be treated

as expressly provided for in said will or, in the absence of any express provision, the same as a legitimate child.

"§ 29-20. Descent and distribution upon intestacy of illegitimate children.

All the estate of a person dying illegitimate and intestate shall descend and be distributed, subject to the payment of costs of administration and other lawful claims against the estate, and subject to the payment of State inheritance or estate taxes, as provided in this Article.

"§ 29-21. Share of surviving spouse.

The share of the surviving spouse of an illegitimate intestate shall be the same as provided in G.S. 29-14 for the surviving spouse of a legitimate person. In determining whether the illegitimate intestate is survived by one or more parents as provided in G.S. 29-14(3), any person identified as the father under G.S. 29-19(b)(1) or (b)(2) shall be regarded as a parent.

"§ 29-22. Shares of others than the surviving spouse.

Those persons surviving the illegitimate intestate, other than the surviving spouse, shall take that share of the net estate provided in G.S. 29-15. In determining whether the illegitimate intestate is survived by one or more parents or their collateral kindred as provided in G.S. 29-15, any person identified as the father under G.S. 29-19(b)(1) or (b)(2) shall be regarded as a parent.

"Article 7.

"Advancements.

"§ 29-23. In general.

If a person dies intestate as to all ~~his~~ the person's estate, property which ~~he~~ the person gave in his lifetime as an advancement shall be counted toward the advancee's intestate share, and to the extent that it does not exceed such intestate share, shall be taken into account in computing the estate to be distributed.

"§ 29-24. Presumption of gift.

A gratuitous inter vivos transfer is presumed to be an absolute gift and not an advancement unless shown to be an advancement.

"§ 29-25. Effect of advancement.

If the amount of the advancement equals or exceeds the intestate share of the ~~advance, he~~ advancee, the advancee he shall be excluded from any further portion in the distribution of the estate, but ~~he~~ the advancee shall not be required to refund any part of such advancement; and if the amount of the advancement is less than ~~his~~ the advancee's share, ~~he~~ the advancee shall be entitled to such additional amount as will give ~~him his~~ the advancee the advancee's full share of the intestate donor's estate.

"§ 29-26. Valuation.

The value of the property given as an advancement shall be determined as of the time when the advancee came into possession or enjoyment, or at the time of the death of the intestate, whichever first occurs. However, if the value of the property, so advanced, is stated by the intestate donor in a writing signed by ~~him~~ the intestate donor and designating the gift as an advancement, such value shall be deemed the value of the advancement.

"§ 29-27. Death of advancee before intestate donor.

If the advancee dies before the intestate donor leaving a lineal heir or heirs who take by intestate succession from the intestate donor, the advancement shall be taken into account in the same manner as if it had been made directly to such heir or heirs, but the value shall be determined as of the time the original advancee came into possession or enjoyment, or when the heir or heirs came into possession or enjoyment or at the time of the death of the intestate donor, whichever first occurs.

"§ 29-28. Inventory.

If any person who has, in the lifetime of an intestate donor, received a part of the donor's property, refuses, upon order of the clerk of superior court of the county in which the administrator or collector qualifies, to give an inventory on oath, setting forth therein to the best

of ~~his~~ the person's knowledge and belief the particulars of the transfer of such property, ~~he~~ the person shall be considered to have received ~~his~~ the person's full share of the donor's estate, and shall not be entitled to receive any further part or share.

"§ 29-29. Release by advancee.

If the advancee acknowledges to the intestate donor by a signed writing that ~~he~~ the advancee has been advanced ~~his~~ the advancee's full share of the intestate donor's estate, both ~~he~~ the advancee and those claiming through ~~him~~ the advancee shall be excluded from any further participation in the intestate donor's estate.

"Article 8.

"Election to Take Life Interest in Lieu of Intestate Share.

"§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share provided.

(a) In lieu of the intestate share provided in G.S. 29-14 or G.S. 29-21, or of the elective share provided in G.S. 30-3.1, the surviving spouse of an intestate or the surviving spouse who has petitioned for an elective share shall be entitled to take as ~~his or her~~ the surviving spouse's intestate share or elective share a life estate in one third in value of all the real estate of which the deceased spouse was seised and possessed of an estate of inheritance at any time during coverture, except that real estate as to which the surviving spouse:

(1) Has waived ~~his or her~~ the surviving spouse's rights by joining with the other spouse in a conveyance thereof, or

(2) Has ~~release~~ released or quitclaimed ~~his or her~~ the surviving spouse's interest therein in accordance with G.S. 52-10, or

(3) Was not required by law to join in conveyance thereof in order to bar the elective life estate, or

(4) Is otherwise not legally entitled to the election provided in this section.

(b) ~~Regardless of the value thereof and despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a), the life estate provided for in subsection (a) shall at the election of the surviving spouse include~~ The surviving spouse may elect to take a life estate in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse if such dwelling house were owned by the deceased spouse at the time of ~~his or her~~ the deceased spouse's death, together with the outbuildings, improvements and easements thereunto belonging or appertaining, and lands upon which situated and reasonably necessary to the use and enjoyment thereof, as well as a fee simple ownership in the household furnishings ~~therein.~~ therein, despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a) of this section. If the value of a life estate in the dwelling house is less than the value of a life estate in one-third in value of all the real estate, the surviving spouse may elect to take a life estate in the dwelling and a life estate in such other real estate as to make the aggregate life estate of the surviving spouse equal to a life estate in one-third in value of all the real estate.

(c) The election provided for in subsection (a) shall be made by the filing of a ~~notice thereof~~ petition in accordance with Article 2 of Chapter 28A of the General Statutes with the clerk of the superior court of the county in which the administration of the estate is pending, or, if no administration is pending, then with the clerk of the superior court of any county in which the administration of the estate could be commenced. ~~Such~~ The election shall be ~~made:~~made prior to the shorter of the following applicable periods:

(1) ~~At any time within~~ In case of testacy, (i) within 12 months of the date of death of the deceased spouse if letters testamentary are not issued within that period, or (ii) within one month after the expiration of the time ~~fixed~~ limit for ~~the~~ filing ~~of the petition~~ a claim for elective share ~~under Article 1A of Chapter 30, or~~ if letters have been issued.

(2) In case of intestacy, ~~then~~ (i) within 12 months after the date of death of the deceased spouse if letters of administration are not issued within that period, or

~~(3) If letters of administration are issued within 12 months after the date of the death of the deceased spouse, then~~ (ii) within one month after the expiration of the time ~~limited~~ limit for filing claims against the estate, ~~or~~ if letters have been issued.

(4) If litigation that affects the share of the surviving spouse in the estate is ~~pending,~~ pending, including a pending petition for determination of an elective share, then within such reasonable time as may be allowed by written order of the clerk of the superior court.

(5) Nothing in this subsection shall extend the period of time for a surviving spouse to petition for an elective share under Article 1A of Chapter 30 of the General Statutes.

(c1) The ~~notice of election~~ petition shall:

(1) Be directed to the clerk with whom filed;

(2) State that the surviving spouse making the same elects to take under this section rather than under the provisions of G.S. 29-14, 29-21, or 30-3.1, as applicable;

(3) Set forth the names of all heirs, devisees, legatees, personal representatives and all other persons in possession of or claiming an estate or an interest in the property described in subsection (a); and

(4) Request the allotment of the life estate provided for in subsection (a).

(c2) The ~~notice of election~~ petition may be filed in person, or by attorney authorized in a writing executed and duly acknowledged by the surviving spouse and attested by at least one witness. If the surviving spouse is a minor or an incompetent, the ~~notice of election~~ petition may be executed and filed by a general guardian or by the guardian of the person or estate of the minor or incompetent spouse. If the minor or incompetent spouse has no guardian, the ~~notice of election~~ petition may be executed and filed by a ~~next friend~~ guardian ad litem appointed by the clerk. The ~~notice of election,~~ petition, whether in person or by attorney, shall be filed as a record of the court, and a summons together with a copy of the ~~notice~~ petition shall be served upon each of the interested persons named in the ~~notice of election.~~petition, in accordance with G.S. 1A-1, Rule 4.

(d) In case of election to take a life estate in lieu of an intestate share or elective share, as provided in either G.S. 29-14, 29-21, or 30-3.3(a), the clerk of superior court, with whom the ~~notice of election~~ petition has been filed, shall summon and appoint a jury of three disinterested persons who being first duly sworn shall promptly allot and set apart to the surviving spouse the life estate provided for in subsection (a) and make a final report of such action to the clerk.

(e) The final report shall be filed by the jury not more than 60 days after the summoning and appointment thereof, shall be signed by all jurors, and shall describe by metes and bounds the real estate in which the surviving spouse shall have been allotted and set aside a life estate. It shall be filed as a record of court and a certified copy thereof shall be filed and recorded in the office of the register of deeds of each county in which any part of the real property of the deceased spouse, affected by the allotment, is located.

(f) In the election and procedure to have the life estate allotted and set apart provided for in this section, the rules of procedure relating to partition proceedings under Chapter 46 of the General Statutes shall apply except insofar as the same would be inconsistent with the provisions of this section. A determination of the life estate under this section may be appealed in accordance with G.S. 1-301.3.

(g) Neither the household furnishings in the dwelling house nor the life estates taken by election under this section shall be subject to the payment of debts due from the estate of the deceased spouse, except those debts secured by such property as follows:

(1) By a mortgage or deed of trust in which the surviving spouse has waived ~~his or her~~ the surviving spouse's rights by joining with the other spouse in the making thereof; or

(2) By a purchase money mortgage or deed of trust, or by a conditional sales contract of personal property in which title is retained by the vendor, made prior to or during the marriage; or

(3) By a mortgage or deed of trust made prior to the marriage; or

(4) By a mortgage or deed of trust constituting a lien on the property at the time of its acquisition by the deceased spouse either before or during the marriage.

(h) If no election is made in the manner and within the time provided for in subsection (c) the surviving spouse shall be conclusively deemed to have waived ~~his or her~~ the surviving spouse's right to elect to take under the provisions of this section, and any interest which the surviving spouse may have had in the real estate of the deceased spouse by virtue of this section shall terminate."

SECTION 6. G.S. 30-3.4 reads as rewritten:

"**§ 30-3.4. Procedure for determining the elective share.**

(a) Exercisable Only During Lifetime. – The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, by the surviving spouse's attorney-in-fact if the surviving spouse's power of attorney expressly authorizes the attorney-in-fact to do so or to generally engage in estate transactions, or, with approval of court, by the guardian of the surviving spouse's estate or general guardian. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. – A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration in connection with the will or intestate proceeding with respect to which the surviving spouse claims the elective share by (i) filing a petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

~~(c) Time for Hearing. – Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The surviving spouse shall give notice of the hearing to the personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.~~

(d) Repealed by Session Laws 2009, c. 368, s. 1, effective July 27, 2009, and applicable to decedents dying on or after October 1 , 2009.

(d1) Mediation. – The clerk may order mediation as described in G.S. 7A-38.3B of any disputes in connection with an elective share proceeding.

(e) Repealed by Session Laws 2009, c. 368, s. 1, effective July 27, 2009, and applicable to decedents dying on or after October 1 , 2009.

(e1) Procedure. – An elective share proceeding shall be an estate ~~matter and may be appealed pursuant to G.S. 1-301.3.~~ proceeding and shall be conducted in accordance with the procedures of Article 2 of Chapter 28A of the General Statutes.

(e2) Information About Total Net Assets. – In order to assist the clerk in determining whether a surviving spouse is entitled to an elective share, and, if so, the amount thereof, the following provisions apply:

(1) Submission within two months. – In every case in which a petition to determine an elective share has been filed, within two months of the filing of the petition, the personal representative shall submit sufficient information about the total assets for the clerk to determine the elective share. To fulfill its obligation to provide information, the personal representative may prepare and submit to the clerk a proposed Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 or other information as the clerk sees fit.

(2) Examination regarding assets. – If the personal representative, the surviving spouse, or a responsible person has reasonable grounds to believe that any person has a claim or has in its possession assets included in Total Net Assets, then the personal representative, surviving spouse, or responsible person may use the procedures set out in G.S. 28A-15-12 to cause the clerk to examine the person believed to have a claim or to possess assets included in Total Net Assets.

(f) Findings and Conclusions. – After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

(g) Repealed by Session Laws 2009, c. 368, s. 1, effective July 27, 2009, and applicable to decedents dying on or after October 1, 2009.

(h) Expenses. – The expenses (including attorneys' fees) reasonably incurred by the personal representative, other responsible persons, and the surviving spouse in connection with elective share proceedings shall be equitably apportioned by the clerk of court in the clerk's discretion among the personal representative, other responsible persons, and the surviving spouse."

SECTION 7. Article 4 of Chapter 30 of the General Statutes reads as rewritten:

"Article 4.

"Year's Allowance.

"Part 1. Nature of Allowance.

"§ 30-15. When spouse entitled to allowance.

Every surviving spouse of an intestate or of a testator, whether or not ~~he or she~~ the surviving spouse has petitioned for an elective share, shall, unless the surviving spouse has forfeited ~~his or her~~ the surviving spouse's right thereto, as provided by law, be entitled, out of the personal property of the deceased spouse, to an allowance of the value of twenty thousand dollars ($20,000) for the surviving spouse's support for one year after the death of the deceased spouse. Such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of the deceased spouse, and shall, in cases of testacy, be charged against the share of the surviving spouse.

"§ 30-16. Duty of personal representative, magistrate, or clerk to assign allowance.

It shall be the duty of every administrator, collector, or executor of a will, on application in writing, signed by the surviving spouse, at any time within one year after the death of the deceased spouse, to assign to the surviving spouse the year's allowance as provided in this Article.

If there shall be no administration, or if the personal representative shall fail or refuse to apply to a magistrate or clerk of court, as provided in G.S. 30-20, for 10 days after the surviving spouse has filed the aforesaid application, or if the surviving spouse is the personal representative, the surviving spouse may make application to the magistrate or clerk, and it shall be the duty of the magistrate or clerk to proceed in the same manner as though the application had been made by the personal representative.

Where any personal property of the deceased spouse shall be located outside the township or county where the deceased spouse resided at the time of ~~his~~ the deceased spouse's death, the personal representative or the surviving spouse may apply to any magistrate or to any clerk of court of any township or county where such personal property is located, and it shall be the duty of such magistrate or clerk to assign the year's allowance as if the deceased spouse had resided and died in that township.

"§ 30-17. When children entitled to an allowance.

Whenever any parent dies survived by any child under the age of 18 years, including an adopted child or a child with whom the widow may be pregnant at the death of her husband, or a child who is less than 22 years of age and is a full-time student in any educational institution, or a child under 21 years of age who has been declared mentally incompetent, or a child under 21 years of age who is totally disabled, or any other person under the age of 18 years residing with the deceased parent at the time of death to whom the deceased parent or the surviving parent stood in loco parentis, every such child shall be entitled to receive an allowance of two thousand dollars ($2,000) for the child's support for the year next ensuing the death of such parent. Such allowance shall be in addition to the child's share of the deceased parent's estate and shall be exempt from any lien by judgment or execution against the property of such parent. The personal representative of the deceased parent shall, within one year after the parent's death, assign to every such child the allowance herein provided for; but if there is no personal representative or if ~~he~~ the personal representative fails or refuses to act within 10 days after written request by a guardian ~~or next friend~~ on behalf of such child, the allowance may be assigned by a magistrate or clerk of court upon application of said ~~guardian or next friend.~~ guardian.

If the child resides with the widow of the deceased parent at the time such allowance is paid, the allowance shall be paid to said widow for the benefit of said child. If the child resides with its surviving parent who is other than the widow of the deceased parent, such allowance shall be paid to said surviving parent for the use and benefit of such child, regardless of whether the deceased died testate or intestate or whether the widow dissented from the will. Provided, however, the allowance shall not be available to an illegitimate child of a deceased father, unless such deceased father shall have recognized the paternity of such illegitimate child by deed, will or other paper-writing. If the child does not reside with a parent when the allowance is paid, the allowance shall be paid to the child's general guardian, if any, and if none, to the clerk of the superior court who shall receive and disburse same for the benefit of such child.

"§ 30-18. From what property allowance assigned.

Such allowance shall be made in money or other personal property of the estate of the deceased spouse.

"Part 2. Assigned by Magistrate or Clerk.

"§ 30-19. Value of property ascertained.

The value of the personal property assigned to the surviving spouse and children shall be ascertained by a magistrate or the clerk of court of the county in which administration was granted or the will probated.

"§ 30-20. Procedure for assignment.

Upon the application of the surviving spouse, a child by ~~his guardian or next friend,~~ the child's guardian, or the personal representative of the deceased, the clerk of superior court of

the county in which the deceased resided may assign the inquiry to a magistrate of the county. The clerk of court, or magistrate upon assignment, shall ascertain the person or persons entitled to an allowance according to the provisions of this Article, and determine the money or other personal property of the estate, and pay over to or assign to the surviving spouse and to the children, if any, so much thereof as they shall be entitled to as provided in this Article. Any deficiencies shall be made up from any of the personal property of the deceased, and if the personal property of the estate shall be insufficient to satisfy such allowance, the clerk of the superior court shall enter judgment against the personal representative for the amount of such deficiency, to be paid when a sufficiency of such assets shall come into ~~his hands.~~ the personal representative's hands.

"§ 30-21. Report of clerk or magistrate.

The clerk of court, or magistrate upon assignment, shall make and sign three lists of the money or other personal property assigned to each person, stating their quantity and value, and the deficiency to be paid by the personal representative. Where the allowance is to the surviving spouse, one of these lists shall be delivered to ~~him.~~ the surviving spouse. Where the allowance is to a child, one of these lists shall be delivered to the surviving parent with whom the child is living; or to the child's guardian ~~or next friend~~ if the child is not living with said surviving parent; or to the child if said child is not living with the surviving parent and has no ~~guardian or next friend.~~ guardian. One list shall be delivered to the personal representative. One list shall be returned by the magistrate or clerk, within 20 days after the assignment, to the superior court of the county in which administration was granted or the will probated, and the clerk shall file and record the same, together with any judgment entered pursuant to G.S. 30-20.

"§ 30-22. Repealed by Session Laws 1971, c. 528, s. 25.

"§ 30-23. Right of appeal.

The personal representative, or the surviving spouse, or child by ~~his guardian or next friend,~~ the child's guardian, or any creditor, legatee or heir of the deceased, may appeal from the finding of the magistrate or clerk of court to the superior court of the county, ~~and,~~ by filing a copy of the assignment and a notice of appeal within 10 days after the assignment, ~~cite the adverse party to appear before such court on a certain day, not less than five nor exceeding 10 days after the service of the citation.~~ and the appeal shall be heard as provided in G.S. 1-301.2, provided that the hearing on the appeal shall be at the next available session of superior court.

~~"§ 30-24. Hearing on appeal.~~

~~At or before the day named, the appellant shall file with the clerk a copy of the assignment and a statement of his exceptions thereto, and the issues thereby raised shall be decided de novo.~~

"§ 30-25. Personal representative entitled to credit.

Upon the settlement of the accounts of the personal representative, ~~he~~ the personal representative shall be credited with the articles assigned, and the value of the deficiency assessed as aforesaid, if the same shall have been paid, unless the allowance be impeached for fraud or gross negligence in him.

~~"§ 30-26. When above allowance is in full.~~

~~If the estate of a deceased be insolvent, or if his or her personal estate does not exceed twenty thousand dollars ($20,000), the allowances for the year's support of the surviving spouse and the children shall not, in any case, exceed the value prescribed in G.S. 30-15 and G.S. 30-17; and the allowances made to them as above prescribed shall preclude them from any further allowances.~~

"Part 3. Assigned in Superior Court.

"§ 30-27. Surviving spouse or child may apply to superior court.

~~It shall not, however, be obligatory on a~~ In addition to any support assigned to the surviving spouse or child ~~to have the support assigned~~ as above ~~prescribed. Without~~ prescribed, without application to the personal representative, the surviving spouse, or the child through ~~his~~ the

child's guardian ~~or next friend, may at any time~~ may, after the date specified in the general notice to creditors as provided for in G.S. 28A-14-1(a), and within one year after the decedent's death, apply to the superior court of the county in which administration was granted or the will probated to have a year's support ~~assigned.~~ assigned at an amount other than prescribed in G.S. 30-15 and G.S. 30-17.

"§ 30-28. Nature of proceeding; parties.

The application shall be by ~~summons, as is prescribed for special proceedings, in which the~~ petition in a special proceeding before the clerk of superior court. The personal representative of the deceased, if there ~~be~~ is one other than the ~~plaintiff, the largest known creditor, or legatee, or some distributee of the deceased, living in the county, shall be made defendant, and the proceedings shall be as prescribed for special proceedings between parties.~~ petitioner, all known creditors, and all known heirs of the deceased, if the deceased is intestate, and devisees of the deceased, if the deceased is testate, shall be made parties to the special proceeding. If the personal representative of the deceased is aware of a creditor, heir, or devisee who should have been made a respondent but was not, then the personal representative shall file a motion to add the creditor, heir, or devisee as a necessary party, and the court shall order such other party to appear in the proceeding.

"§ 30-29. What ~~complaint~~ petition must show.

In the ~~complaint~~ petition the ~~plaintiff~~ petitioner shall set forth, besides the facts entitling ~~plaintiff~~ petitioner to a year's support and the value of the support claimed, the further facts that the ~~estate of the decedent is not insolvent, and that the~~ personal estate of which ~~he or she~~ the decedent died possessed exceeded twenty thousand dollars ($20,000), and also whether or not an allowance has been made to ~~plaintiff~~ petitioner and the nature and value thereof.

"§ 30-30. Judgment and order for commissioners.

~~If the material allegations of the complaint be found true, the judgment shall be that plaintiff is entitled to the relief sought; and the court shall thereupon issue an order to the sheriff or other proper officer of the county, commanding him to summon a magistrate and two persons qualified to act as jurors, who~~ The clerk of superior court shall hear the matter and determine whether the petitioner is entitled to some or all of the relief sought and, if the clerk determines that the petitioner is so entitled, the clerk shall determine the money or other personal property of the estate and assign to the ~~plaintiff~~ petitioner a sufficiency thereof for ~~plaintiff's~~ petitioner's support for one year from the decedent's death. Any deficiency shall be made up from any of the personal property of the deceased, and if the personal property of the estate shall be insufficient for such support, the clerk of ~~the~~ superior court shall enter judgment against the personal representative for the amount of such deficiency, to be paid when a sufficiency of such assets shall come into ~~his~~ the personal representative's hands. Any judgment so rendered shall have the same priority over other debts and claims against the estate as an allowance assigned pursuant to G.S. 30-15 or G.S. 30-17.

"§ 30-31. ~~Duty of commissioners; amount~~ Amount of allowance.

~~The said commissioners shall be sworn by the magistrate and shall proceed as prescribed in this Chapter, except that they~~ The clerk of superior court may assign to the ~~plaintiff~~ petitioner a value sufficient for the support of ~~plaintiff~~ petitioner according to the estate and condition of the decedent and without regard to the limitations set forth in this Chapter; but the value allowed shall be fixed with due consideration for other persons entitled to allowances for year's support from the decedent's estate; and the total value of all allowances shall not in any case exceed the one half of the average annual net income of the deceased for three years next preceding ~~his~~ the deceased's death. This report shall be returned by the magistrate to the court.

"§ 30-31.1. Service of judgment and appeal.

The petitioner shall serve the clerk's judgment on all other parties. The judgment also shall be filed in the estate file of the deceased. Any aggrieved party may appeal the judgment in accordance with G.S. 1-301.2.

"§ 30-31.2. Execution.

If the clerk's judgment is not appealed as provided in G.S. 1-301.2, execution shall issue to enforce the judgment as in like cases under Article 28 of Chapter 1 of the General Statutes.

~~"§ 30-32. Exceptions to the report.~~

~~The personal representative, or any creditor, distributee or legatee of the deceased, within 10 days after the return of the report, may file exceptions thereto. The plaintiff shall be notified thereof and cited to appear before the court on a certain day, within 20 and not less than 10 days after service of the notice, and answer the same; the case shall thereafter be proceeded in, heard and decided as provided in special proceedings between parties.~~

~~"§ 30-33. Confirmation of report; execution.~~

~~If the report shall be confirmed, the court shall so declare, and execution shall issue to enforce the judgment as in like cases.~~"

SECTION 8. Chapter 31 of the General Statutes, as amended by Section 3 of this act, reads as rewritten:

"**Chapter 31.**

"**Wills.**

"Article 1.

"Execution of Will.

"**§ 31-1. Who may make will.**

Any person of sound mind, and 18 years of age or over, may make a will.

"**§ 31-2: Repealed by Session Laws 1953, c. 1098, s. 1.**

"**§ 31-3:** Rewritten and renumbered as G.S. 31-3.1 to 31-3.6 by Session Laws 1953, c. 1098, s. 2.

"**§ 31-3.1. Will invalid unless statutory requirements complied with.**

No will is valid unless it complies with the requirements prescribed therefor by this Article.

"**§ 31-3.2. Kinds of wills.**

(a) Personal property may be bequeathed and real property may be devised by

(1) An attested written will which complies with the requirements of G.S. 31-3.3, or

(2) A holographic will which complies with the requirements of G.S. 31-3.4.

(b) Personal property may also be bequeathed by a nuncupative will which complies with the requirements of G.S. 31-3.5.

"**§ 31-3.3. Attested written will.**

(a) An attested written will is a written will signed by the testator and attested by at least two competent witnesses as provided by this section.

(b) The testator must, with intent to sign the will, do so by actually signing the will ~~himself~~ or by having someone else in the testator's presence and at ~~his~~ the testator's direction sign the testator's name thereon.

(c) The testator must signify to the attesting witnesses that the instrument is ~~his~~ the testator's instrument by signing it in their presence or by acknowledging to them ~~his~~ the testator's signature previously affixed thereto, either of which may be done before the attesting witnesses separately.

(d) The attesting witnesses must sign the will in the presence of the testator but need not sign in the presence of each other.

"**§ 31-3.4. Holographic will.**

(a) A holographic will is a will

(1) Written entirely in the handwriting of the testator but when all the words appearing on a paper in the handwriting of the testator are sufficient to constitute a valid holographic will, the fact that other words or printed matter appear thereon not in the handwriting of the testator, and not affecting the

meaning of the words in such handwriting, shall not affect the validity of the will, and

(2) Subscribed by the testator, or with ~~his~~ the testator's name written in or on the will in ~~his~~ the testator's own handwriting, and

(3) Found after the testator's death among ~~his~~ the testator's valuable papers or effects, or in a safe-deposit box or other safe place where it was deposited by ~~him~~ the testator or under ~~his~~ the testator's authority, or in the possession or custody of some person with whom, or some firm or corporation with which, it was deposited by ~~him~~the testator or under ~~his~~ the testator's authority for safekeeping.

(b) No attesting witness to a holographic will is required.

"§ 31-3.5. Nuncupative will.

A nuncupative will is a will

(1) Made orally by a person who is in ~~his~~ that person's last sickness or in imminent peril of death and who does not survive such sickness or imminent peril, and

(2) Declared to be ~~his~~ that person's will before two competent witnesses simultaneously present at the making thereof and specially requested by ~~him~~ the person to bear witness thereto.

"§ 31-3.6. Seal not required.

A seal is not necessary to the validity of a will.

"§ 31-4. Execution of power of appointment by will.

No appointment, made by will in the exercise of any power, shall be valid unless the same be executed in the manner by law required for the execution of wills; and every will, executed in such manner, shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

"§ 31-4.1: Repealed by Session Laws 2010-181, s. 1, effective July 1, 2010.

"§ 31-4.2: Repealed by Session Laws 2010-181, s. 2, effective July 1, 2010.

"Article 2.

"Revocation of Will.

"§ 31-5: Rewritten and renumbered as G.S. 31-5.1 by Session Laws 1953, c. 1098, s. 3.

"§ 31-5.1. Revocation of written will.

A written will, or any part thereof, may be revoked only

(1) By a subsequent written will or codicil or other revocatory writing executed in the manner provided herein for the execution of written wills, or

(2) By being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it, by the testator himself or by another person in ~~his~~ the testator's presence and by ~~his~~ the testator's direction.

"§ 31-5.2. Revocation of nuncupative will.

A nuncupative will or any part thereof may be revoked

(1) By a subsequent nuncupative will, or

(2) By a subsequent written will or codicil or other revocatory writing executed in the manner provided herein for the execution of written wills.

"§ 31-5.3. Will not revoked by marriage; dissent from will made prior to marriage.

A will is not revoked by a subsequent marriage of the maker; and the surviving spouse may petition for an elective share when there is a will made prior to the marriage in the same manner, upon the same conditions, and to the same extent, as a surviving spouse may petition for an elective share when there is a will made subsequent to marriage.

"§ 31-5.4. Revocation by divorce or annulment; revival.

Dissolution of marriage by absolute divorce or annulment after making a will does not revoke the will of any testator but, unless otherwise specifically provided in the will, it revokes all provisions in the will in favor of the testator's former spouse or purported former spouse, including, but not by way of limitation, any provision conferring a general or special power of appointment on the former spouse or purported former spouse and any appointment of the former spouse or purported former spouse as executor, trustee, conservator, or guardian. If provisions are revoked solely by this section, they are revived by the testator's remarriage to the former spouse or purported former spouse.

"§ 31-5.5. After-born or after-adopted child; illegitimate child; effect on will.

(a) A will shall not be revoked by the subsequent birth of a child to the testator, or by the subsequent adoption of a child by the testator, or by the subsequent entitlement of an after-born illegitimate child to take as an heir of the testator pursuant to the provisions of G.S. 29-19(b), but any after-born, after-adopted or entitled after-born illegitimate child shall have the right to share in the testator's estate to the same extent ~~he~~ the after-born, after-adopted, or entitled after-born illegitimate child would have shared if the testator had died intestate unless:

(1) The testator made some provision in the will for the child, whether adequate or not;

(2) It is apparent from the will itself that the testator intentionally did not make specific provision therein for the child;

(3) The testator had children living when the will was executed, and none of the testator's children actually take under the will;

(4) The surviving spouse receives all of the estate under the will; or

(5) The testator made provision for the child that takes effect upon the death of the testator, whether adequate or not.

(b) The provisions of G.S. 28A-22-2 shall be construed as being applicable to after-adopted children and to after-born children, whether legitimate or entitled illegitimate.

(c) The terms "after-born," "after-adopted" and "entitled after-born" as used in this section refer to children born, adopted or entitled subsequent to the execution of the will.

"§ 31-5.6. No revocation by subsequent conveyance.

No conveyance or other act made or done subsequently to the execution of a will of, or relating to, any real or personal estate therein comprised, except an act by which such will shall be duly revoked, shall prevent the operation of the will with respect to any estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of ~~his~~ the testator's death.

"§ 31-5.7. Specific provisions for revocation exclusive; effect of changes in circumstances.

No will can be revoked in whole or in part by any act of the testator or by a change in ~~his~~ the testator's circumstances or condition except as provided by G.S. 31-5.1 through 31-5.6 inclusive.

"§ 31-5.8. Revival of revoked will.

No will or any part thereof that has been in any manner revoked can, except as provided in G.S. 31-5.4, be revived otherwise than by a reexecution thereof, or by the execution of another will in which the revoked will or part thereof is incorporated by reference.

"§ 31-6: Renumbered as G.S. 31-5.3 by Session Laws 1953, c. 1098, s. 5.

"§ 31-7: Repealed by Session Laws 1953, c. 1098, s. 9.

"§ 31-8: Renumbered as G.S. 31-5.6 by Session Laws 1953, c. 1098, s. 8.

"Article 3.

"Witnesses to Will.

"§ 31-8.1. Who may witness.

Any person competent to be a witness generally in this State may act as a witness to a will.

"§ 31-9. Executor competent witness.

No person, on account of being an executor of a will, shall be incompetent to be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

"§ 31-10. Beneficiary competent witness; when interest rendered void.

(a) A witness to an attested written or a nuncupative will, to whom or to whose spouse a beneficial interest in property, or a power of appointment with respect thereto, is given by the will, is nevertheless a competent witness to the will and is competent to prove the execution or validity thereof. However, if there are not at least two other witnesses to the will who are disinterested, the interested witness and ~~his~~ the interested witness' spouse and anyone claiming under ~~him~~ the interested witness shall take nothing under the will, and so far only as their interests are concerned the will is void.

(b) A beneficiary under a holographic will may testify to such competent, relevant and material facts as tend to establish such holographic will as a valid will without rendering void the benefits to be received by ~~him~~ the beneficiary thereunder.

"§ 31-10.1. Corporate trustee not disqualified by witnessing of will by stockholder.

A corporation named as a trustee in a will is not disqualified to act as trustee by reason of the fact that a person owning stock in the corporation signed the will as a witness.

"Article 4.

"Depository for Wills.

"§ 31-11. Depositories in offices of clerks of superior court where living persons may file wills.

The clerk of the superior court in each county of North Carolina shall be required to keep a receptacle or depository in which any person who desires to do so may file ~~his or her~~ that person's will for safekeeping; and the clerk shall, upon written request of the testator, or the duly authorized agent or attorney for the testator, permit said will or testament to be withdrawn from said depository or receptacle at any time prior to the death of the testator: Provided, that the contents of said will shall not be made public or open to the inspection of anyone other than the testator or ~~his~~ the testator's duly authorized agent until such time as the said will shall be offered for probate.

"§§ 31-11.1 through 31-11.5. Reserved for future codification purposes.

"Article 4A.

"Self-Proved Wills.

"§ 31-11.6. How attested wills may be made self-proved.

(a) Any will may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

"I, _____, the testator, sign my name to this instrument this ____ day of _____, ____ and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

_____

Testator

We _____, _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

_____

Witness

_____

Witness

THE STATE OF _____.

COUNTY OF _____.

Subscribed, sworn to and acknowledged before me by _____. the testator and subscribed and sworn to before me by _____ and _____, witnesses, this ____ day of _____

(SEAL)

(SIGNED) _____

(OFFICIAL CAPACITY OF OFFICER)"

(b) An attested written will executed as provided by G.S. 31-3.3 may at any time subsequent to its execution be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the attesting witnesses, each made before an officer authorized to administer oaths under the laws of this State, and evidenced by the officer's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

"STATE OF NORTH CAROLINA

"COUNTY/CITY OF _____

"Before me, the undersigned authority, on this day personally appeared _____, and _____, known to me to be the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn. The testator, declared to me and to the witnesses in my presence: That said instrument is his last will; that he had willingly signed or directed another to sign the same for him, and executed it in the presence of said witnesses as his free and voluntary act for the purposes therein expressed; or, that the testator signified that the instrument was his instrument by acknowledging to them his signature previously affixed thereto.

The said witnesses stated before me that the foregoing will was executed and acknowledged by the testator as his last will in the presence of said witnesses who, in his presence and at his request, subscribed their names thereto as attesting witnesses and that the testator, at the time of the execution of said will, was over the age of 18 years and of sound and disposing mind and memory.

_____

Testator

_____

Witness

_____

Witness

_____

Witness

Subscribed, sworn and acknowledged before me by _____, the testator, subscribed and sworn before me by _____, _____ and _____ witnesses, this ____ day of _____, A.D. ____

(SEAL)

(SIGNED) _____

(OFFICIAL CAPACITY OF OFFICER)"

(c) The sworn statement of any such witnesses taken as herein provided shall be accepted by the court as if it had been taken before such court.

"Article 5.
"Probate of Will.
"**§§ 31-12 through 31-31.2:** Recodified as Article 2A of Chapter 28A of the General Statutes by Section 3 of this act.
"Article 6.
"Caveat to Will.
"**§ 31-32. ~~When and by whom caveat filed.~~ Filing of caveat.**

(a) At the time of application for probate of any will, and the probate thereof in common form, or at any time within three years thereafter, any ~~person entitled under such will, or~~ party interested in the estate, may appear in person or by attorney before the clerk of the superior court and enter a caveat to the probate of such ~~will: Provided,~~ will; provided, that if any person entitled to file a caveat be within the age of 18 years, or ~~insane, or imprisoned,~~ incompetent as defined in G.S. 35A-1101(7) or (8), then such person may file a caveat within three years after the removal of such disability.

~~Notwithstanding the provisions of the first paragraph of this section, as to persons not under disability, a caveat to the probate of a will probated in common form prior to May 1, 1951, must be filed within seven years of the date of probate or within three years from May 1, 1951, whichever period of time is shorter.~~

(b) The caveat shall be filed in the decedent's estate file. The clerk of superior court shall give notice of the filing by making an entry upon the page of the will book where the will is recorded, evidencing that the caveat has been filed and giving the date of such filing.

(c) If a will has been probated in solemn form pursuant to G.S. 28A-2A-7, any party who was properly served in that probate in solemn form shall be barred from filing a caveat.

"**§ 31-33. ~~Bond given and cause~~ Cause transferred to trial docket.**

~~When a caveator shall have given bond with surety approved by the clerk, in the sum of two hundred dollars ($200.00), payable to the propounder of the will, conditioned upon the payment of all costs which shall be adjudged against such caveator in the superior court or when a caveator shall have deposited money or given a mortgage in lieu of such bond, or shall have filed affidavits and satisfied the clerk of his inability to give such bond or otherwise secure such costs,~~

(a) Upon the filing of a caveat, the clerk shall transfer the cause to the superior court for ~~trial. Such~~ trial by jury. The caveat shall be served upon all interested parties in accordance with G.S. 1A-1, Rule 4 of the Rules of Civil Procedure.

(b) After service under subsection (a) of this section, the caveator shall cause notice of ~~the caveat proceeding to be given to all devisees, legatees, or other persons in interest in the manner provided for service of process by G.S. 1A-1, Rule 4(j) and (k). The notice shall advise such devisees, legatees, or other persons in interest, of the session of superior court to which the proceeding has been transferred and shall call upon them to appear and make themselves proper parties to the proceeding if they so choose. At the session of court to which such proceeding is transferred, or as soon thereafter as motion to that effect shall be made by the propounder, and before trial, the judge shall require any of the devisees, legatees or other persons in interest so cited, either those who make themselves~~ a hearing to align the parties to be served upon all parties in accordance with G.S. 1A-1, Rule 5 of the Rules of Civil Procedure. At the alignment hearing, all of the interested parties who wish to be aligned as parties shall appear and be aligned by the court as parties with the caveators or ~~whose interests appear to him antagonistic to that of~~ parties with the propounders of the ~~will, to align themselves and to file bond within such time as he shall direct and before trial. Upon the failure of any party to file such bond,~~ will. If an interested party does not appear to be aligned or chooses not to be aligned, the judge shall dismiss that interested party from the ~~proceeding~~ proceeding, but that party shall be bound by the proceeding.

(c) Within 30 days following the entry of an order aligning the parties, any interested party who was aligned may file a responsive pleading to the caveat, provided, however, that failure to respond to any averment or claim of the caveat shall not be deemed an admission of that averment or claim. An extension of time to file a responsive pleading to the caveat may be granted as provided by G.S. 1A-1, Rule 6 of the Rules of Civil Procedure.

(d) Upon motion of an aligned party, the court may require a caveator to provide security in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by the estate if the estate is found to have been wrongfully enjoined or restrained. The court may consider relevant facts related to whether a bond should be required and the amount of any such bond, including, but not limited to, (i) whether the estate may suffer irreparable injury, loss, or damage as a result of the caveat and (ii) whether the caveat has substantial merit. Provisions for bringing suit in forma pauperis apply to the provisions of this subsection.

~~"§ 31-34. Prosecution bond required in actions to contest wills.~~

~~When any action is instituted to contest a will the clerk of the superior court will require the prosecution bond required in other civil actions: Provided, however, that provisions for bringing suit in forma pauperis shall also apply to the provisions of this section.~~

"§ 31-35. Affidavit of witness as evidence.

Whenever the subscribing witness to any will shall die, or be ~~insane or~~ mentally incompetent, or be absent beyond the State, it shall be competent upon any issue of devisavit vel non to give in evidence the affidavits and proofs taken by the clerk upon admitting the will to probate in common form, and such affidavit and proceedings before the clerk shall be prima facie evidence of the due and legal execution of said will.

"§ 31-36. Effect of caveat on estate administration.

(a) Order of Clerk. – Where a caveat is ~~entered and bond given,~~ filed, the clerk of the superior court shall forthwith issue an order that shall apply during the pendency of the caveat to any personal representative, having the estate in charge, as follows:

(1) Distributions to beneficiaries. – That there shall be no distributions of assets of the estate to any beneficiary;

(2) Commissions. – That no commissions shall be advanced or awarded to any personal representative;

(3) Accountings. – That the personal representative shall file all accountings required by the clerk of superior court and that the personal representative may pay any applicable filing fees associated with those accountings from the assets of the estate;

(4) Preservation of estate assets. – That the personal representative shall preserve the property of the estate and that the personal representative is authorized to pursue and prosecute claims that the estate may have against others; and

(5) Taxes, claims and debts of estate. – That the personal representative may file all appropriate tax returns and that the personal representative may pay, in accordance with the procedures of subsection (b) of this section: taxes; funeral expenses of the decedent; debts that are a lien upon the property of the decedent; bills of the decedent accrued before death; claims against the estate that are timely filed; professional fees related to administration of the estate, including fees for tax return preparation, appraisal fees, and attorneys' fees for estate administration.

(b) Procedures. – In regard to payment of any of the items listed in subdivision (5) of subsection (a) of this section, the personal representative shall file with the clerk a notice of the personal representative's intent to pay those items and shall serve the notice upon all parties to the caveat, pursuant to G.S. 1A-1, Rule 4 of the Rules of Civil Procedure. If within 10 days of

service any party files with the clerk a written objection to that payment, the clerk shall schedule a hearing and determine whether the proposed payment shall be made. If no such objection is filed with the clerk, the clerk may approve the payment without hearing, and upon that approval, the personal representative may make the payment. The parties to the caveat may consent to any such payment, and upon such consent, the clerk may approve the payment without hearing. The clerk may defer ruling on the payment pending the resolution of the caveat.

(c) Preservation of Estate Assets. – Questions regarding the use, location, and disposition of assets that cannot be resolved by the parties and consented to by the clerk shall be decided by the clerk. When a question has not been resolved by agreement, either party may request a hearing before the clerk upon 10 days notice and shall serve the notice upon all parties to the caveat, pursuant to G.S. 1A-1, Rule 4 of the Rules of Civil Procedure. Decisions of the clerk may be appealed to the superior ~~court.~~ court pursuant to G.S. 1-301.3.

"~~§ 31-37. Superior court clerks to enter notice of caveat on will book; final judgment also to be entered.~~

~~Wherever a caveat is filed with the clerk of the superior court of any county in the State to any last will and testament which has been admitted to probate in said office, it shall be the duty of such clerk, and he is hereby directed to give notice of the filing of such caveat by making an entry upon the page of the will book where such last will and testament is recorded, evidencing that such caveat has been filed and giving the date of such filing. When such caveat and proceedings resulting therefrom shall have resulted in final judgment with respect to such will, the clerk of the court shall make a further entry upon the page of the will book where such last will and testament is recorded to the effect that final judgment has been entered, either sustaining or setting aside such will.~~

"§ 31-37.1. ~~Parties may enter into a settlement agreement.~~Settlement agreement; filing of judgment.

(a) Prior to an entry of judgment by the superior court in a caveat proceeding, the parties may enter into a settlement agreement, ~~whereupon judgment may be entered by the court,~~ which must be approved by the superior court. Upon approval of a settlement agreement, the court shall enter judgment, without a verdict by a jury, in accordance with the terms of the settlement ~~agreement,~~ agreement. The consent of interested parties who are not aligned as parties pursuant to G.S. 31-33 is not necessary for a settlement agreement under this section.

(b) When judgment is entered by the superior court in a caveat proceeding, the clerk of superior court shall file a copy of the judgment in the estate file and shall make entry upon the page of the will book where such will is recorded to the effect that final judgment has been entered, either sustaining or setting aside the ~~contested~~ will.

"Article 7.

"Construction of Will.

"**§ 31-38. Devise presumed to be in fee.**

When real estate shall be devised to any person, the same shall be held and construed to be a devise in fee simple, unless such devise shall, in plain and express words, show, or it shall be plainly intended by the will, or some part thereof, that the testator intended to convey an estate of less dignity.

"**§ 31-39. Probate necessary to pass title; recordation in county where land lies; rights of innocent purchasers.**

No will shall be effectual to pass real or personal estate unless it shall have been duly proved and allowed in the probate court of the proper county, and a duly certified copy thereof shall be recorded in the office of the superior court clerk of the county wherein the land is situate, and the probate of a will devising real estate shall be conclusive as to the execution thereof against the heirs and devisees of the testator, whenever the probate thereof under the like cirumstances, would be conclusive against the next of kin and legatees of the testator:

Provided, that the probate and registration of any will shall not affect the rights of innocent purchasers for value from the heirs at law of the testator when such purchase is made more than two years after the death of such testator or when such purchase is made after the filing of the final account by the duly authorized administrator of the decedent and the approval thereof by the clerk of the superior court having jurisdiction of the estate. Such conveyances, if made before the expiration of the time required by this section to have elapsed in order for same to be valid against the heirs and devisees of the testator, shall, upon the expiration of such time, become good and valid to the same effect as if made after the expiration of such time, unless in the meantime a proceeding shall have been instituted in the proper court to probate the will of the testator.

"§ 31-40. What property passes by will.

Any testator, by ~~his~~ the testator's will duly executed, may devise, bequeath, or dispose of all real and personal estate which ~~he~~ the testator shall be entitled to at the time of ~~his~~ the testator's death, and which, if not so devised, bequeathed, or disposed of, would descend or devolve upon ~~his~~ the testator's heirs at law, or upon ~~his~~ the testator's executor or administrator; and the power hereby given shall extend to all contingent, executory, or other future interest in any real or personal estate, whether the testator may or may not be the person or one of the persons in whom the same may become vested, or whether ~~he~~ the testator may be entitled thereto under the instrument by which the same was created, or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken, whether any such condition has or has not been broken at the testator's death, all other rights of entry, and possibilities of reverter; and also to such of the same estates, interests, and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of ~~his~~ the testator's death, notwithstanding that ~~he~~ the testator may become entitled to the same subsequently to the execution of ~~his~~ the testator's will.

"§ 31-41. Will relates to death of testator.

Every will shall be construed, with reference to the real and personal estate comprised therein, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

"§ 31-42. Failure of devises by lapse or otherwise; renunciation; 120-hour survivorship requirement, revised simultaneous death act, Article 24, Chapter 28A.

(a) Unless the will indicates a contrary intent, if a devisee predeceases the testator, whether before or after the execution of the will, and if the devisee is a grandparent of or a descendant of a grandparent of the testator, then the issue of the predeceased devisee shall take in place of the deceased devisee. The devisee's issue shall take the deceased devisee's share in the same manner that the issue would take as heirs of the deceased devisee under the intestacy provisions in effect at the time of the testator's death. The provisions of this section apply whether the devise is to an individual, to a class, or is a residuary devise. In the case of the class devise, the issue shall take whatever share the deceased devisee would have taken had the devisee survived the testator; in the event the deceased class member leaves no issue, the devisee's share shall devolve upon the members of the class who survived the testator and the issue of any deceased members taking by substitution.

(b) Unless the will indicates a contrary intent, if the provisions of subsection (a) of this section do not apply to a devise to a devisee who predeceases the testator, or if a devise otherwise fails, the property shall pass to the residuary devisee or devisees in proportion to their share of the residue. If the devise is a residuary devise, it shall augment the shares of the other residuary devisees, including the shares of any substitute takers under subsection (a) of this section. If there are no residuary devisees, then the property shall pass by intestacy.

(c) Renunciation of a devise is as provided for in Chapter 31B of the General Statutes.

(c1) The determination of whether a devisee has predeceased the testator shall be made as provided by Article 24 of Chapter 28A of the General Statutes.

(d) As used in this section, "devisee" means any person entitled to take real or personal property under the provisions of a will.

"§§ 31-42.1 through 31-42.2. Repealed by Session Laws 1965, c. 938, s. 2.

"§ 31-43. General gift by will an execution of power of appointment.

A general devise of the real estate of the testator, or of ~~his~~ the testator's real estate in any place or in the occupation of any person mentioned in the will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend, as the case may be, which ~~he~~ the testator may have power to appoint in any manner ~~he~~ the testator may think proper; and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property, described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend, as the case may be, which ~~he~~ testator may have power to appoint in any manner ~~he~~ the testator may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

"§ 31-44. Repealed by Session Laws 1951, c. 762, s. 2.

"§ 31-45: Rewritten and renumbered as G.S. 31-5.5 by Session Laws 1953, c. 1098, s. 7.

"§ 31-46. Validity of will; which laws govern.

A will is valid if it meets the requirements of the applicable provisions of law in effect in this State either at the time of its execution or at the time of the death of the testator.

"§ 31-46.1. Construction of certain formula clauses applicable to estates of decedents dying in calendar year 2010.

(a) Purpose. – The federal estate tax and generation-skipping transfer tax expired January 1, 2010, for one year. To carry out the intent of decedents in the construction of wills and trusts and to promote judicial economy in the administration of trusts and estates, this section construes certain formula clauses that reference federal estate and generation-skipping transfer tax laws and that are used in wills or codicils of decedents who die in or before calendar year 2010.

(b) Applicability. – This section applies to the following:

(1) To a will or codicil executed by a decedent before December 31, 2009, that contains a formula provision described in subsection (c) of this section if the decedent dies after December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax, unless the will or codicil clearly manifests an intent that a rule contrary to the rule of construction described in subsection (c) of this section applies.

(2) To the terms of a will or codicil executed by a decedent who dies before December 31, 2009, providing for a disposition of property that contains a formula provision described in subsection (c) of this section and occurs as a result of the death of another individual who dies after December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax, unless the terms of the will or codicil clearly manifests an intent that a rule contrary to the rule of construction described in subsection (c) of this section applies.

(c) Construction. – A will or codicil subject to this section is considered to refer to the federal estate and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009, if the will or codicil contains a formula that meets one or more of the following conditions:

(1) The formula refers to any of the following: "applicable credit amount," "applicable exclusion amount," "applicable exemption amount," "applicable

fraction," "estate tax exemption," "generation-skipping transfer tax exemption," "GST exemption," "inclusion ratio," "marital deduction," "maximum marital deduction," "unified credit," or "unlimited marital deduction."

(2) The formula measures a share of an estate or trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer taxes.

(3) The formula is otherwise based on a provision of federal estate tax or federal generation-skipping transfer tax law similar to the provisions in subdivision (1) or (2) of this subsection.

(d) Judicial Determination. – The personal representative or an affected beneficiary under a will or testamentary trust may bring an action in the superior court division of the General Court of Justice under Article 26 of Chapter 1 of the General Statutes, and the trustee of a trust created under the will or an affected beneficiary under the trust may bring a proceeding as permitted under Article 2 of Chapter 36C of the General Statutes to determine whether the decedent intended that the references under subsection (c) of this section be construed with respect to the federal law as it existed after December 31, 2009. The action must be commenced within 12 months following the death of the decedent.

"Article 8.

"Testamentary Additions to Trusts.

"§ 31-47. Testamentary additions to trusts.

(a) A will may validly devise property to:

(1) The trustee of a trust established before the testator's death by the testator, by the testator and some other person, or by some other person, including a trust authorized by G.S. 36C-4-401.1; or

(2) The trustee of a trust to be established at the testator's death, if the trust is identified in the testator's will and its terms are set forth in a written instrument executed before or concurrently with the execution of the testator's will, regardless of the existence, size, or character of the corpus of the trust during the testator's lifetime.

The devise is not invalid because the trust is amendable or revocable, or because the trust instrument or any amendment thereto was not executed in the manner required for wills, or because the trust was amended after the execution of the testator's will or after the testator's death. A revocable trust to which property is first transferred under subdivision (2) of this subsection is an inter vivos trust and not a testamentary trust and, as of the date of the execution of the trust instrument, is subject to Article 6 of Chapter 36C of the General Statutes.

(b) Unless the testator's will provides otherwise, property devised to the trustee of a trust described in subsection (a) of this section is not held under a testamentary trust of the testator, but it becomes a part of the trust to which it is devised, and shall be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

(c) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

(d) A devise to a trust shall be construed as a devise to the trustee of that trust.

(e) For purposes of this section, "devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

(f) Nothing in this section alters, amends, or in any manner affects the application of the doctrine of acts of independent significance.

"Article 9.

"Incorporation by Reference; Acts of Independent Significance.

"**§ 31-51. Incorporation by reference.**

A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

"**§ 31-52. Acts and events of independent significance.**

A will may dispose of property by reference to acts and events that have significance apart from their effect upon the disposition made by the will, whether they occur before or after the execution of the will or before or after the testator's death. These acts and events may include the execution or revocation of another individual's will and the safekeeping of items in a secured depository.

SECTION 9. G.S. 31B-1.2 reads as rewritten:

"**§ 31B-1.2. Right of fiduciary to institute a proceeding for review of renunciation.**

(a) Prior to renouncing, if a fiduciary so elects, the fiduciary may institute a proceeding by petition before the clerk of court for a determination as to whether a renunciation would be compatible with the fiduciary's duties. ~~Commencement~~ In the case of a trustee, commencement of the proceeding, jurisdiction, venue, parties, representation, and notice shall be governed by Chapter 36C of the General Statutes. In the case of a personal representative, commencement of the proceeding, jurisdiction, venue, parties, representation, and notice shall be governed by Chapter 28A of the General Statutes. In addition to any other notice requirements, notice of the proceeding shall be given to all persons entitled to delivery of a copy of an instrument of renunciation under G.S. 31B-2.1.

(b) After renouncing, if a fiduciary so elects, the fiduciary has a right to institute a declaratory judgment action pursuant to Article 26 of Chapter 1 of the General Statutes for a determination as to whether the renunciation is compatible with the fiduciary's duties. In addition to any other notice requirements, notice of the action shall be given to all persons entitled to delivery of a copy of an instrument of renunciation under G.S. 31B-2.1.

(c) A proceeding or action instituted under this section shall comply with all of the following:

(1) The petition or complaint shall state the basis for the fiduciary's allegation that the renunciation is compatible with the fiduciary's duties, considering among other things the intended purposes of the trust or other instrument and the impact of the renunciation on beneficiaries and potential beneficiaries. A petition or complaint filed by a trustee of a charitable trust shall contain a statement that a copy of the petition or complaint is being provided to the Attorney General.

(2) After considering among other things the intended purposes of the trust or other instrument and the impact of the renunciation on beneficiaries and potential beneficiaries, the court shall enter an order stating the court's determination as to whether the renunciation is compatible with the fiduciary's duties.

(d) The effectiveness of a renunciation is not affected by a determination under this section that the renunciation is not compatible with a fiduciary's duties."

SECTION 10. G.S. 32A-20(a) reads as rewritten:

"(a) A health care power of attorney shall become effective when and if the physician or physicians or, in the case of mental health treatment, physician or eligible psychologist as defined in G.S. 122C-3(13d), designated by the principal determine in writing that the principal lacks sufficient understanding or capacity to make or communicate decisions relating to the health care of the principal, and shall continue in effect during the incapacity of the principal. The determination shall be made by the principal's attending physician or eligible psychologist if the physician or physicians or eligible psychologist designated by the principal is unavailable or is otherwise unable or unwilling to make this determination or if the principal failed to

designate a physician or physicians or eligible psychologist to make this determination. A health care power of attorney may include a provision that, if the principal does not designate a physician for reasons based on his religious or moral beliefs as specified in the health care power of attorney, a person designated by the principal in the health care power of attorney may certify in writing, acknowledged before a notary public, that the principal lacks sufficient understanding or capacity to make or communicate decisions relating to his health care. The person so designated must be a competent person 18 years of age or older, not engaged in providing health care to the principal for remuneration, and must be a person other than the health care agent. For purposes of exercising authority described in G.S. 32A-19(b), however, a health care power of attorney shall be effective following the death of the principal without regard to the principal's understanding or capacity when the principal was living. Nothing in this section shall be construed to prevent a principal from revoking a health care power of attorney."

SECTION 11. G.S. 36C-2-205(d) reads as rewritten:

"(d) Extensions of Time. – The clerk of superior court, for cause shown at any time in the clerk's discretion, with or without motion or notice, may enter an order enlarging the period of time within which an act is required or permitted by this Article, by any applicable Rules of Civil Procedure or by order of the court, if the request is made before the expiration of the period originally prescribed, but not to exceed 10 days, ~~nor more than once.~~ except to the extent that the court finds the justice requires that the time be enlarged for a period of greater than 10 days. Upon motion made after the expiration of the specified period, the clerk of superior court may permit the act where the failure to act was the result of excusable neglect. Notwithstanding any other provision of this subsection, the parties to a proceeding may enter into binding stipulations, without approval of the clerk of superior court, enlarging the time within which an act is required or permitted by this Article, by any applicable Rules of Civil Procedure or by order of the court, not to exceed 30 days."

SECTION 12. G.S. 36C-2-205(e) reads as rewritten:

"(e) Rules of Civil Procedure. – Unless the clerk of superior court otherwise directs, G.S. 1A-1, Rules 4, 5, 6(a), 6(d), 6(e), 18, 19, 20, 21, 24, ~~and 45~~ 45, 56, and 65 of the Rules of Civil Procedure shall apply to trust proceedings. Upon motion of a party or the clerk of superior court, the clerk may further direct that any or all of the ~~following~~ remaining Rules of Civil ~~Procedure~~ Procedure, shall ~~apply: Rules 15, 16, 17, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37;~~ apply, including, without limitation, discovery rules; however, nothing in Rule 17 requires the appointment of a guardian ad litem for a party represented except as provided under ~~G.S. 36C-3-305.~~ G.S. 36C-2-206. In applying these Rules to a trust proceeding pending before the clerk of superior court, the term "judge" shall be construed as "clerk of superior court."

SECTION 13. G.S. 36C-6-604 reads as rewritten:

"**§ 36C-6-604. Limitation on action contesting validity of revocable trust; distribution of trust property.**

(a) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

(1) Three years after the settlor's death; or

(2) 120 days after the trustee sent the person a copy of the trust instrument and ~~a notice~~ written notice pursuant to G.S. 1A-1, Rule 4 of the Rules of Civil Procedure, informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

(b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

(1) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(2) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust, and a judicial proceeding is commenced within 60 days after the contestant sent the notification.

(c) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received."

SECTION 14. This act becomes effective January 1, 2012, and applies to estates of decedents dying on or after that date.

SENATE BILL 432:
Revise Probate Code

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 21, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition S432-CSRN-10		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 432 would amend the provisions of the probate code, would define the jurisdiction of the clerk of superior court consistent with the provisions of the Uniform Trust Code, would recodify provisions relating to the probate of wills, and would update the procedure for claiming spousal and children's allowances. The Proposed Committee Substitute (1) contains all of the provisions from the PCS handed out on April 19 (S-432-CSRN-7), (2) incorporates the two amendments adopted in committee on April 19, and (3) modifies Section 10, which deals with health care powers of attorney, by moving the language to G.S. 32A-20(a) (was in G.S. 32A-20(b)) and by clarifying that nothing in the section prevents a principal from revoking a health care power of attorney.***

BILL ANALYSIS: The PCS for Senate Bill 432 does all of the following:

- Provides that G.S. 1-301.3 applies to the administration of trusts (was, testamentary trusts) and of estates of decedents, incompetents and minors. Provides that a party wishing to appeal an order or judgment by the clerk may file a written notice of appeal containing a short and plain statement of the basis for the appeal (was, required written notice to specify the basis for the appeal) within ten days of the entry of the order or judgment after service of the order on that party. Provides that in an appeal to superior court, if the record is insufficient, the judge of superior court may receive additional evidence on the factual (was evidentiary) issue in question.
- Amends G.S. 7A-307 to add estate proceedings to the list of those whose costs are assessed under this section. Adds that the cost assessed for the filing of a caveat to a will is $200. Provides that the only cost assessed with reopening an estate administration is forty cents per $100, or major fraction, of any additional gross estate, including income, coming into the hands of the fiduciary after the estate is reopened; caps the total cost assessed, including the total cost assessed in all previous administrations of the estate, at $6,000.
- Recodifies portions of the General Statutes.
- Expands the definitions under G.S. 28A-1-1.
- Enacts new G.S. 28A-2-4 providing that the clerks of superior court of North Carolina, as ex-officio judges of probate, have original jurisdiction of estate proceedings. Provides types of estate proceedings under the subject matter jurisdiction of the clerk of superior court. Also provides criteria regarding the transfer of an estate proceeding to superior court. Provides that nothing in this section affects a person's right to file an action in the Superior Court for declaratory relief under Article 26, G.S. Chapter 1. Provides additional specifications regarding requests for declaratory relief and motions for a transfer of proceedings to superior court. Declares that the clerk of superior court does not have jurisdiction of (1) actions by or against creditors or debtors of an estate except as provided in Article 19 of G.S. Chapter 28A; (2) actions involving claims for monetary damages; (3) caveats, except as provide under GS 31-36; (4) proceedings to determine venue; and (5) recovery of property transferred or conveyed by a

decedent with the intent to hinder, delay, or defraud creditors, pursuant to G.S. 28A-15-10(b). Enacts new G.S. 28-2-5 to provide that the clerk of superior court has jurisdiction over special proceedings and that nothing in the statute is to be construed as limiting the jurisdiction of the clerk of superior court in special proceedings.

- Enacts new G.S. 28A-2-6. Provides directives for the commencement of contested and uncontested estate proceedings. Additionally, provides directives regarding pleadings, extensions of time, consolidation of an estate proceeding and a civil action involving a common question of law or fact, joinder of claims, and providing notice of transfer. Provides that unless otherwise directed by the clerk of superior court, the listed Rules of Civil Procedure apply to estate proceedings. Also provides that the clerk may further direct that any or all of the remaining rules apply.
- Enacts additional new statutory provisions regarding representation of parties (G.S. 28A-2-7), waiver of notice (G.S. 28A-2-8), appeals of estate proceedings and special proceedings (G.S. 28A-2-9), and approval of settlement agreements by the clerk (G.S. 28A-2-10).

The act makes the following changes to new Article 2A of G.S. Chapter 28A.

- Authorizes the clerk of superior court to shorten the initial 60-day period during which the executor may apply to have the will proved, if good cause is shown. Enacts new GS 28A-2A-7 to provide that a person entitled to apply for probate of a will may file a petition for probate of the will in solemn form, and the matter will proceed as an estate proceeding governed by Article 2 of G.S. Chapter 28A. Provides directives regarding probate of a will in solemn form and regarding contesting the validity of a will by an interested party.
- Administration of Decedents' Estates. Amends G.S. 28A-3-2 to provide that any interested person may file a petition to determine the proper venue for the administration of the estate.
- Amends G.S. 28A-5-1 regarding the implied renunciation by a named or designated executor, providing the procedures to be followed should a person named or designated as an executor fail to qualify or renounce the office of executor within 30 days after the will has been admitted to probate. Amends G.S. 28A-5-2 regarding the implied renunciation of the right to administer an estate by a person entitled to apply for letters of administration, providing the procedures to be followed should a person so entitled fail to apply for letters of administration within 30 days from the date of death of the intestate decedent. Amends both G.S. 28A-5-1 and G.S. 28A-5-2 to delete provision authorizing the clerk of superior court to issue a citation against a person who has failed to qualify or renounce to show cause that the person should not be determined to have renounced the office of executor; instead provides for the clerk of superior court to issue a notice to that person to qualify or move for an extension of time to qualify within 15 days. Also provides that any interested person may file a petition in accordance with Article 2 of G.S. Chapter 28A seeking an order finding that the person be deemed to have renounced the office of executor.
- Amends G.S. 28A-6-1 to provide that the clerk of superior court may rely on the following as evidence of death: (1) a certified or authenticated copy of a death certificate purported to be issued by an official or agency of the place where the death purportedly occurred, (2) a certified or authenticated copy of any record or report of a domestic or foreign governmental agency evidencing the date of death, (3) a certificate or authenticated copy of medical records evidencing the date of death, or (4) any other evidence that clerk of superior court deems sufficient to confirm the date of death.

- Amends G.S. 28A-6-2 to provide that letters of administration or testamentary letters may be issued without notice including upon a finding of implied renunciation. Provides that all persons entitled to an equal or higher preference for appointment than an applicant who is not entitled to a priority of appointment under G.S. 28A-4-1 are to be given 15 days prior written notice of the application of the person who is not entitled to a priority of appointment, unless the persons with an equal or higher preference have renounced.
- Amends G.S. 28A-6-4 to clarify that before letters of administration or letters testamentary are issued, any interested person may by written petition (was, objection), filed with the clerk of superior court and served on interested persons as directed by the clerk of superior court, contest the issuing of letters of administration or letters testamentary to a person who is otherwise entitled to apply for the letters. Directs the clerk to conduct a hearing to determine to whom the letters are to be issued and provides that an appeal from the order may be taken as in an estate proceeding under G.S. 1-301.3.
- Amends G.S. 28A-8-1 to provide that no bond is required for a personal representative who is a trust institution licensed under G.S. 53-159 (was, a national banking association having its principal place of business in this state or a state bank acting under G.S. 53-159).
- Amends G.S. 28A-8-3 to provide that upon receipt of a verified petition filed by an interested party requesting modification of bond requirements, the clerk of superior court is to conduct a hearing in accordance with Article 2 of G.S. Chapter 28A (was, required the clerk to issue a citation requiring the personal representative to show cause why the bond should not be modified). Amends G.S. 28A-8-4 to provide that if any personal representative fails to comply with an order by the clerk regarding additional bond or new bond within the time specified in the order (not less than five days or more than 15 days), the clerk is to proceed as provided in G.S. 28A-9-2.
- Amends G.S. 28A-8-5 to direct the clerk conduct a hearing under Article 2 of G.S. Chapter 28A upon verified petition from any surety, on the bond of a personal representative, who is in danger of loss of the surety's suretyship. Amends subsection (b) of G.S. 28A-9-1 to allow the clerk to conduct a hearing, on the clerk's own motion or upon the verified petition of any person interested in the estate, to determine if any of the grounds for revocation of letters of administration, letters testamentary, or letters of collection as indicated in subsection (a) of this section exist. Amends G.S. 28A-9-4 and G.S. 28A-10-6 to clarify that (1) an appeal from the order of the clerk granting or denying revocation and (2) an appeal from an order of the clerk denying or allowing the resignation of a personal representative are special proceedings pursuant to G.S. 28A-2-9(b). Authorizes the clerk to issue a stay of an order of revocation or of an order allowing resignation upon the appellant posting an appropriate bond set by the clerk until such time as the cause is heard and determined upon appeal.
- Amends G.S. 28A-13-3. Current law requires a personal representative to petition the clerk to obtain an order authorizing the personal representative's custody, control, or possession over real property of the estate. Makes an exception for real property that is given to the personal representative in the deceased person's will, or real property to which the personal representative acquires title during the administration of the estate, providing that the personal representative is immediately entitled to custody, possession, and control of real property meeting this exception and may institute an estate proceeding under subsection (d) of this section to enforce those rights. Subsection (d) provides that the personal representative may institute an estate proceeding under Article 2 of G.S. Chapter 28A. Also provides that if the real property is occupied by a tenant or

lessee, the personal representative may seek ejectment of the tenant or lessee only through the summary ejectment provisions of Article 3 of G.S. Chapter 42.

- Amends G.S. 28A-13-6(c1), deletes "trust" and substitutes "estate." Deletes subsection (a) and replaces it with subsection (a1) providing that a personal representative or collector has the right to sue in superior court to recover any property of any kind that belongs to the estate of the decedent and is entitled to provisional remedies as provided for under Subchapter 13 of Chapter 1. Also deletes subsection (b) and replaces it with subsection (b1) providing a personal representative, collector, or any interested person has the right to file a verified petition to institute an estates proceeding for examination of any persons reasonably believed to be in possession of property of any kind belonging to the decedent's estate and to make a demand for the recovery of that property.
- Amends G.S. 28A-19-1 to provide that in a pending legal action against the decedent at the time of the decedent's death, which survives the decedent's death, the court may order, on motion, the substitution of the personal representative or collector for the decedent and that motion will constitute the presentation of a claim providing that the substitution occurs within the time specified for the presentation of claims under G.S. 28A-19-3.
- Amends G.S. 28A-19-3 to clarify that except as otherwise specifically provided in this section, the limitations on presentation of claims set out in this section apply to claims by the State of North Carolina, its subdivisions, and its agencies.
- Amends G.S. 28A-19-5 providing that the clerk may provide for the payment of contingent and unliquidated claims via transfer of a petition filed under subsection (b) of G.S. 28A-19-5 to the superior court trial division for a determination of the validity or priority of the claim. Clarifies that clerks are not required to rule on the validity of contingent and unliquidated claims.
- Amends G.S. 28A-19-8 to provide that funeral expenses of a decedent advanced by a health care agent exercising authority are considered as an obligation of the estate regardless as to whether or not a personal representative of the estate has been appointed at the time the expenses are incurred. Amends GS 28A-19-9 to authorize a decedent's health care agent duly appointed under Article 3 of G.S. Chapter 32A to purchase a gravestone and provide a suitable burial place and receive reimbursement for the expenses incurred subject to the monetary limitations and procedures contained in this section. Amends GS 28A-19-16 to provide that a claimant must begin an action for recovery with regards to a claim that is presented and rejected within three months of receiving written notice of the rejection (was, after due notice in writing or after some part of claim becomes due). Provides that in the cares of a contingent or unliquidated claim, the claimant must file a petition for an order from the clerk pursuant to GS 23A-19-5(b).
- Amends G.S. 28A-21-2 to provide that absent an extension by the clerk of the time for filing the final account the personal representative or collector must file the final account for settlement within one year after qualifying or within six months after receiving a state estate or inheritance tax release, or in the time period for filing an annual account under G.S. 28A-21-1, whichever is later.
- Enacts new G.S. 28A-21-6 to provide that the personal representative or collector may give written notice of a proposed final account to all devises of the estate in the case of a will, and to all heirs of the state when the decedent was without a will, indicating the date and place of the filing of the final account. Provides guidelines regarding the permissive notice of final accounts.

- Amends G.S. 28A-23-1 to direct the clerk, upon reviewing and approving the personal representative's or collector's final account, to enter an order discharging the personal representative or collector from further duties and liabilities (was, liabilities), including those set out in Article 13 of G.S. Chapter 28A. Prohibits the discharge order from including a release or discharge of liability for any breach of duty by a personal representative or collector as set forth in G.S. 28A-13-10(c).
- Amends G.S. 28A-25-1 regarding the collection of property through use of an affidavit when the decedent dies intestate. Provides that when the person collecting the property by affidavit is the surviving spouse and only heir of the decedent, and not disqualified under GS 28A-4-2, the property that may be collected under this section may be more than $20,000 in value but may not exceed $30,000 in value, after reduction for any spousal allowance paid to the surviving spouse under G.S. 30-15.
- Makes conforming and clarifying changes to Chapter 28A.
- Intestate Succession. Enacts new G.S. 29-12.1 to provide that controversies arising under Chapter 29 are to be determined as an estate proceeding under Article 2 of G.S. Chapter 28A except for controversies arising under Article 8 of G.S. Chapter 29 (Election to Take Life Interest in Lieu of Intestate Share), which are to be determined as set out in G.S. Chapter 29. Amends G.S. 29-30 to provide that when a surviving spouse of an intestate decedent elects to take a life estate in the dwelling house and the value of that life estate is less than one-third in value of all the real estate, the surviving spouse may elect to take a life estate in other real estate of the intestate decedent so as to make the aggregate life estate of the surviving spouse equal to a life estate that is one-third in value of all the real estate. Provides that the election of the surviving spouse to tale a life estate in one-third value of all the real estate of the decedent is to be made by the filing of a petition (was filing of a notice) in accordance with Article 2 of G.S. Chapter 28A with the clerk of superior court in the appropriate county. Also lists applicable time periods for making the election and requires that the election be made before the shorter of the applicable time periods. Directs that no provisions in subsection (c) of GS 29-30 extends the time period for a surviving spouse to petition for an elective share under Article 1A of G.S. Chapter 30. Provides for service of the petition in accordance with GS 1A-1, Rule 4.
- Provides that the rules of procedure relating to partition proceedings under Chapter 46 apply to the election and procedure to allot and set apart the life estate, except to the extent they would be inconsistent with the provisions of this section. Provides that a determination of the life estate under this section may be appealed in accordance with GS 1-301.3.
- Amends G.S. 30-3.4 to provide that an elective share proceeding is an estate proceeding and is to be conducted under the procedures of Article 2 of GS Chapter 28A (was, an estate matter to be conducted under GS 1-301.3).
- Year's Allowance. Amends G.S. 30-17 regarding surviving children who are entitled to an allowance to delete reference to the authority of the guardian or next friend acting on behalf of the child and replacing it with simply, guardian. Current law provides that the clerk or on assignment by the clerk, the magistrate of the county in which administration was granted or the will was probated is to ascertain the value of the personal property from which the allowance is assigned. Provides for a right of appeal from the assignment by filing a copy of the assignment and a notice of appeal within 10 days after the assignment, and directs that the appeal is to be heard as provided in G.S. 1-301.2 at the next available session of superior court. Deletes

provision requiring the appellant to file a copy of the assignment with the clerk and a statement of the appellant's exceptions and declaring that the issues will be decided de novo.

- Amends G.S. 30-27 to provide that a surviving spouse or child may apply to superior court after specified conditions are met and within one year after the decedent's death to have a year's support assigned at an amount other than prescribed in G.S. 30-15 (when spouse entitled to allowance) and G.S. 30-17 (when children entitled to an allowance). Provides for the nature of the proceedings (G.S. 30-28) requiring that application be by petition in a special proceeding before the clerk of superior court and specifies persons to be made parties to the special proceeding, including all known creditors, heirs, and devisees. Makes conforming changes to G.S. 30-29 replacing complaint with petition and plaintiff with petitioner. Provides that the clerk is to hear the matter and determine if the petitioner is entitled to the relief sought (G.S. 30-30). Provides that any judgment rendered in favor of the petitioner is subject to the same priority over other debts and claims against the estate as an allowance assigned under G.S. 30-15 or G.S. 30-17. Amends GS 30-31 to provide that the clerk may assign a value sufficient for the support of the petitioner to the petitioner. Amends GS 30-31.1 to require the petitioner to serve the clerk's judgment on all other parties and requires the judgment to be filed in the estate file of the deceased. Provides that any aggrieved party may appeal the judgment under GS 1-301.2. Provides that if the judgment is not appealed that the judgment is to be executed. Makes additional conforming changes.

- Wills. Provides that GS 31-12 through GS 31-31.2 are recodified as Article 2A of GS Chapter 28A by Section 3 of this act. Amends GS 31-32 as follows. Declares that if any person who is entitled to file a caveat is within the age of 18 years, or incompetent then that person may file a caveat within three years after the removal of the disability. Requires the caveat to be placed in the decedent's estate file and directs the clerk to give notice of the filing by making an entry on the page of the will book where the will is recorded that includes the date of the filing. Provides that if a will has been probated in solemn form under GS 28A-2A-7, any party that was properly served in that probate in solemn form is prohibited from filing a caveat.

- Amends GS 31-33 as follows. Directs the clerk to transfer the cause to superior court upon the filing of a caveat. Requires service of the caveat on all interested parties in accordance with GS 1A-1, Rule 4 of the Rules of Civil Procedure (Rules), after which the caveator is responsible for causing notice of hearing to be served on all parties in accordance with Rule 5. Provides that at the alignment hearing, all of the interested parties who wish to be aligned are to appear in court and be aligned by the court as parties with the caveator or parties with the propounders of the will. Directs the judge to dismiss from the proceeding an interested party who does not appear to be aligned or chooses not to be aligned. Deletes provisions requiring that the caveator and all interested parties who wish to be aligned by the court as parties in the action to file bond as directed by the court. Provides that the court, upon motion of an aligned party, may require a caveator to provide security in an amount determined by the court. Provides that the court is to consider relevant facts related to the need for a bond and the amount of any bond. Permits any interested party who was aligned to file a responsive pleading to caveat within 30 days following the entry of an order aligning the parties. Provides that failure to respond to any claim or averment of the caveat is not deemed to be an admission. Provides that an extension of time to file a responsive pleading may be granted as provided by Rule 6 of the Rules.

- Current law provides that questions regarding the use, location, and disposition of assets that cannot be resolved by the parties are to be decided by the clerk. Amends G.S. 31-36 to provide that decisions of the clerk may be appealed to superior court.

- Amends G.S. 31-37.1 to clarify that a settlement agreement entered into by the parties must be approved by the superior court and the judgment entered by the court. Provides that the consent of parties that are not aligned as prescribed in G.S. 31-33 is not necessary for a settlement agreement under this section. Requires the clerk to file a copy of the judgment entered by the superior court in a caveat proceeding in the estate file and to make an entry on the page of the will book where the will is recorded declaring that the final judgment has been entered either sustaining or setting aside the will (was, contested will) (this provision was previously codified in GS 31-37).
- Makes conforming changes deleting GS 31-34 and GS 31-37.
- Current law provides a fiduciary may institute a proceeding for review of renunciation. Amends GS 31B-1.2 to provide that if the fiduciary is a trustee, the proceeding is governed by GS Chapter 36C; however, if the fiduciary is a personal representative, then the proceeding is governed by GS Chapter 28A.
- Amends GS 32A-20(a) to provide that a health care power of attorney is effective following the death of the person granting the authority (principal) without regard to the principal's understanding or capacity when the principal was living for the purpose of exercising the authority described in GS 32A-19(b) (This allows a health care power of attorney to authorize the health care agent to exercise any and all rights the principal may have with respect to anatomical gifts, the authorization of any autopsy, and the disposition of remains). This section also clarifies that nothing shall be construed to prevent a principal from revoking a health care power of attorney.
- Amends GS 36C-2-205(d) to delete restriction that extensions of time not be granted more than once under Article 2 (Judicial Proceedings) of GS Chapter 36C and to provide that the court may enlarge an extension of time beyond 10 days if the court finds that justice requires that the time be extended beyond that time.
- Amends GS 36C-2-205(e) to add Rules 4, 56, and 65 to the list of Rules of Civil Procedure that apply to trust proceedings unless the clerk directs otherwise. Provides that the clerk may direct that any or all of the remaining Rules of Civil Procedure apply, including discovery rules.
- Amends GS 36C-6-604 to provide that the notice informing a person of the existence of a trust must be written notice pursuant to GS 1A-1, Rule 4 of the Rules of Civil Procedure.

EFFECTIVE DATE: The act is effective January 1, 2012, and applies to estates of decedents dying on or after that date.

S432-SMRN-31(CSRN-10) v2

SENATE BILL 432

POLICY ISSUES NOTED BY CONFERENCE OF CLERKS OF SUPERIOR COURT

The Legislative Committee of the NCBA'S Estate Planning Section and the Legislative Committee of the Conference of Clerks of Superior Court ("Clerks Conference") have met beginning in October 2010 through the present and negotiated various changes to Senate Bill 432 – Revised Probate Code. Both the NCBA's Estate Planning Section and the Clerks Conference support Senate Bill 432.

There are, however, four policy issues which the Clerks Conference noted for the benefit of the Committee on Judiciary I. The Committee could keep current law or adopt the changes proposed in Senate Bill 432. The Clerks Conference takes no position on these policy issues.

1. Elective Life Estate Under Chapter 30 (G.S. 30-29): Currently, G.S. 30-29 provides for a surviving spouse can in lieu of an intestate share or an elective share (G.S. 30-3.1) petition for and receive a life estate in one-third of the value of all real estate which the deceased spouse owned on his or her date of death. Current law provides "regardless of the value of a life estate and despite the fact that a life estate may exceed the fractional limitation provided for in [29-30(a)], the life estate may at the election of the surviving spouse include a life estate in the usual dwelling house occupied by the surviving spouse." The current statute reads in pertinent part as follows:

EXISTING LAW:

> **§ 29-30(b). Election of surviving spouse to take life interest in lieu of intestate share provided.**
>
> b) Regardless of the value thereof and despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a), the life estate provided for in subsection (a) shall at the election of the surviving spouse include a life estate in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse if such dwelling house were owned by the deceased spouse at the time of his or her death, together with the outbuildings, improvements and easements thereunto belonging or appertaining, and lands upon which situated and reasonably necessary to the use and enjoyment thereof, as well as a fee simple ownership in the household furnishings therein.

CHANGE PROVIDED IN SENATE BILL 432:

Change §29-30(b) (Page84, Lines 26-39 of Bill S432v1) to read like this:

> **§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share provided.**

(b) ~~Regardless of the value thereof and despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a), the life estate provided for in subsection (a) shall at the election of the surviving spouse include~~ The surviving spouse may elect to take a life estate in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse if such dwelling house were owned by the deceased spouse at the time of ~~his or her~~ the deceased spouse's death, together with the outbuildings, improvements and easements thereunto belonging or appertaining, and lands upon which situated and reasonably necessary to the use and enjoyment thereof, as well as a fee simple ownership in the household furnishings ~~therein.~~ therein, despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a) of this section. If the value of a life estate in the dwelling house is less than the value of a life estate in one third in value of all the real estate, the surviving spouse may elect to take a life estate in the dwelling and a life estate in such other real estate as to make the aggregate life estate of the surviving spouse equal to a life estate in one third in value of all the real estate.

The NCBA's Estate Planning Section has revised the statute for clarity and made clear that: (a) if the value of the dwelling house is more than the value of one-third of the value of all real estate, the surviving spouse may elect a life estate in the dwelling house regardless of its value, and (b) if the dwelling house is worth less than one third of the value of the real estate owned by the decedent, the surviving spouse may elect to include the dwelling house in the one third of real property allocated pursuant to the surviving spouse's petition for an elective life estate. The NCBA's Estate Planning Section believes the change provides clarity for the benefit of the public, clerks of court and lawyers practicing before the clerks of court and promotes the financial security of the surviving spouse by assuring continuity of the marital residence after death.

2. Spousal Allowance: The second policy issue relates to the proposed increase of the spousal allowance in an insolvent estate from a cap of $20,000 for a surviving spouse and $2,000 per child to a cap equal to one-half of the last three years average net income by the proposed deletion of G.S. 30-26. The current law allows for an additional cumulative allowance (both spouse and children) only in the event an estate is solvent. The NCBA's Estate Planning Section has proposed that the additional allowance for surviving spouses and children allowed under current law (up to 50% of the decedent's earnings over the three years next preceding the decedent's date of death) should be available in both solvent and insolvent estates. The current economic downturn has made clear that a surviving spouse is often placed in financial jeopardy due the death of the wage earner in a family. This change will protect surviving spouses and children from undue financial hardship after death of a wage earner in a family.

EXISTING LAW:

§ 30-26. When above allowance is in full.
If the estate of a deceased be insolvent, or if his or her personal estate does not exceed twenty thousand dollars ($20,000), the allowances for the year's support

of the surviving spouse and the children shall not, in any case, exceed the value prescribed in G.S. 30-15 and G.S. 30-17; and the allowances made to them as above prescribed shall preclude them from any further allowances.

CHANGE PROVIDED IN SENATE BILL 432:

Change §30-26 (Page89, Lines 41-46 of Bill S432v1) to read like this:

"~~**§ 30-26. When above allowance is in full.**~~
~~If the estate of a deceased be insolvent, or if his or her personal estate does not exceed twenty thousand dollars ($20,000), the allowances for the year's support of the surviving spouse and the children shall not, in any case, exceed the value prescribed in G.S. 30-15 and G.S. 30-17; and the allowances made to them as above prescribed shall preclude them from any further allowances.~~

3. Collection by Affidavit: Current law provides that if the total assets in an estate do not exceed $30,000 in estates in which the surviving spouse is the sole heir of a decedent and the decedent's sole assets are personal property with a value of less than $30,000, the surviving spouse can transfer the assets using an affidavit of collection without a complete estate administration. The surviving spouse is still required to distribute any estate assets in excess of a spousal or children's allowance to payment of debts and any balance thereafter in accordance with the intestate succession act. The NCBA's Estate Planning Section has proposed to change 28A-25-1 to provide that the $30,000 limitation for a surviving spouse to utilize the small estate procedures (collection by affidavit) is the amount of personal property left after a reduction for the spousal allowance provided for in G.S. 30-15- $20,000. In other words, the surviving spouse can administer the estate of a deceased spouse consisting of $50,000 or less as personal property as opposed to $30,000 of personal property if the surviving spouse is the sole beneficiary of the estate, utilizing both a $20,000 spousal allowance under G.S. 30-15 and the $30,000 limitation for administering an estate by affidavit of collection (G.S. 28A-25-1). The Administrative Office of Courts has interpreted current law only to permit collection by affidavit if the amount of personal property is $30,000 or less before a deduction for the spousal allowance. The Clerks Conference takes no position on this policy issue.

EXISTING LAW:

§ 28A-25-1. Collection of property by affidavit when decedent dies intestate.
(a) When a decedent dies intestate leaving personal property, less liens and encumbrances thereon, not exceeding twenty thousand dollars ($20,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, or an heir or creditor of the decedent, not disqualified under G.S.

28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir or creditor or the public administrator stating:

...

In those cases in which the affiant is the surviving spouse and sole heir of the decedent, not disqualified under G.S. 28A-4-2, the property described in this subsection that may be collected pursuant to this section may exceed twenty thousand dollars ($20,000) in value but shall not exceed thirty thousand dollars ($30,000) in value. In such cases, the affidavit shall state: (i) the name and address of the affiant and the fact that he or she is the surviving spouse and is entitled, under the provisions of the Intestate Succession Act, to all of the property of the decedent; (ii) that the value of all of the personal property owned by the estate of the decedent, less liens and encumbrances thereon, does not exceed thirty thousand dollars ($30,000); and (iii) the information required under subdivisions (2), (3), (4), (6), and (8) of this subsection.

CHANGE PROVIDED IN SENATE BILL 432:

Change §28A-25-1 (Page64-65, Lines 41-51(Page64)Lines 16-26 (Page 65) of Bill S432v1) to read like this:

"**§ 28A-25-1.1. Collection of property by affidavit when decedent dies testate.**

(a) When a decedent dies testate leaving personal property, less liens and encumbrances thereon, not exceeding twenty thousand dollars ($20,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, a person named or designated as executor in the will, devisee, heir or creditor, of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir, the person named or designated as executor in the will of the decedent, the creditor, the public administrator, or the devisee, stating:

...

In those cases in which the affiant is the surviving spouse and sole heir of the decedent, not disqualified under G.S. 28A-4-2, the property described in this subsection that may be collected pursuant to this section may exceed twenty thousand dollars ($20,000) in value but shall not exceed thirty thousand dollars ($30,000) in ~~value.~~ value, after reduction for any spousal allowance paid to the surviving spouse pursuant to G.S. 30-15. In such cases, the affidavit shall state: (i) the name and address of the affiant and the fact that ~~he or she~~ the affiant is the surviving spouse and is entitled, under the provisions of the Intestate Succession

Act, to all of the property of the decedent; (ii) that the value of all of the personal property owned by the estate of the decedent, less liens and encumbrances thereon, does not exceed thirty thousand dollars ($30,000); and (iii) the information required under subdivisions (2), (3), (4), (6), and (8) of this subsection.

4. Standing to pursue examination of persons reasonably believed to be in possession of property belonging to the estate of a decedent and make demand for recovery of such property: Under current law, a personal representative or collector of an estate may petition the clerk of superior court before whom an estate is administered to examine persons reasonably believed to be in possession of property of any kind belonging to the estate of a decedent and to include in such request a demand for recovery of such property. The NCBA's Estate Planning Section has proposed to add "any interested person" to the class of individuals who can file such a petition before the clerk of court. It is the position of the NCBA's Estate Planning Section's that adding "any interested person" to the class of individuals who may seek such an examination before the clerk of court to discover property belonging to the estate of a decedent and demand recovery of such property eliminates the ability of a personal representative to either refuse to pursue such an examination (for example if the personal representative has a familial or business relationship with the person alleged to have possession of the estate's property) or where the personal representative prior to or after the decedent's death has refused to account for property.

EXISTING LAW:

Only a personal representative or collector appointed in an estate has standing to bring a petition to examine a person, firm or corporation believed to have possession of property of the estate of a decedent.

CHANGE PROVIDED IN SENATE BILL 432:

Change §28A-15-12(b1) (Page41, Lines 8-10 of Bill S432v1) to read like this:

(b1) A personal representative, collector, or any interested person shall have the right to bring an estates proceeding seeking the examination of any persons reasonably believed to be in possession of property of any kind belonging to the estate of the decedent ...

Note: Subsection (b1) is new, the above underlining only identifies the change discussed above.

[Pete Powell's version]

SENATE BILL 432

POLICY ISSUES

Discussions between the Estate Section of the Bar Association, the Administrative Office of the Courts and the Conference of Clerks of Superior Court have removed virtually all issues from the bill, and thus the parties are almost unanimously in support of the bill. Only a few items remain on which the General Assembly may need to make policy decision with respect to certain provisions of the proposed bill, which change current law, or on which there are differing opinions on the interpretation of current law.

1. **Elective Life Estate** (GS 30-29 – Page 84, lines 26-39). Currently, a surviving spouse, faced with an insolvent estate, can elect a life estate in real property owned by the decedent at death, free and clear of the claims of creditors. The life estate can be in one-third in value of all such real estate, but the life estate may include the dwelling house, even if it is worth more than one-third. Clearly, if the dwelling is worth more than one-third, the spouse can take the dwelling as the election. The issue is when the dwelling is worth less than one-third.

   It is possible to read the current statute to say that the spouse can claim one third in value of the real property of the decedent even if the dwelling is worth less than one-third, thus maxing up the election. In practice, many people interpret the language to mean an either-or election. Under that interpretation the spouse can take one-third or the dwelling, if the dwelling is worth more than one-third. However, if the dwelling is worth less than one-third, the election is limited to that dwelling, free of the claims of creditors.

   The proposed bill specifies that the spouse may max-up the election to one-third when the dwelling is worth less than on-third. The issue is whether the General Assembly should retain the current policy or adopt the proposed amendment.

2. **Spousal Allowance** (GS 30-26 – Page 89, Lines 41-46). Currently, a surviving spouse can immediately claim a year's allowance of $20,000 (and $2,000 per child) from the estate of the deceased spouse, free and clear of the claims of creditors of that estate. In addition, in a solvent estate, the spouse can petition the court to allow an excess allowance. However, GS 30-26 currently prohibits the awarding of an excess allowance in an insolvent estate. The proposed bill would repeal GS 30-26, thus providing additional benefits for the surviving spouse and children while altering current law with regard to the rights of creditors. The issue is whether the General Assembly should retain the current policy or adopt the proposed amendment.

3. **Collection By Affidavit** (GS 28A-25-1 – Page 64, Line 41 – Page 65, Line 26). Under current law, an alternative to full administration of a small estate is a process called collection by affidavit. Under that process a collector applies and is appointed

by the court to handle a decedent's estate of up to $20,000 ($30,000 if the sole heir is the surviving spouse). That process is an abbreviated process which does not involve notice to creditors or potential heirs of the decedent. The proposed bill would amend GS 28A-25-1 to provide that the valuation of the estate for the purpose of determining whether a collection by affidavit can occur is not as of the date of death(current law), but after deduction of any spousal allowance pursuant to GS 30-15. In that instance, a collection by affidavit could be used to administer an estate of up to $40,000 ($50,000 if the spouse is the sole heir), thus doubling the amount that could be quickly passed without notice. The issue is whether the General Assembly should retain the current policy or adopt the proposed amendment.

4. **Standing To Examine Persons Believed To Be Holding Property Of The Estate.** (GS 28A-15-12(b1) – Page 41, Lines 8-10). Currently, only a duly appointed personal representative or collector can petition the court to force the examination of a person believed to be holding property of the estate, and to seek recovery of that property. The proposed bill would amend the current law to also allow any interested person to file such a petition. On one side of the issue is that a personal representative may unreasonably refuse to pursue such a petition. Of course, that may subject the personal representative to removal. On the other hand, the examination process may be used as a harassment tool by someone who has no right, title or responsibility to or for the property in question. The issue is whether the General Assembly should retain the current policy or adopt the proposed amendment.

PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027

DATE: 4-21 **TIME:** 10 am

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Zachary Dale	Cary	Bingham
2 Kristen Johnson	Cary	Blue
3 Sam Holmes	Raleigh	~~Hunt~~ Hunt
4 Ben Rice	Raleigh	Stevens
5 Lydia Simpson	Hope Mills	Meredith
6 Robert Musselwhite	New Bern	Preston
7 Brittanie Kelly	Raleigh	Blue
8		
9		
10		

Do not add names below the grid.

VISITOR REGISTRATION SHEET

Senate Judiciary I — April 21, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Kohut	NCBA
Joe Kelo	NCBA
Kim Ormond	NCBA
[illegible]	AOC
Barbara Moore	Conf. of Clerks of Sup. Ct.
David Ferrell	NC Land Title Assoc.
Curtis Aldendifer	NC Real Estate Comm'n
JOHN BUSSIAN	NC Press Assn
Kay Emanuel	Legislative Reporting Services
Angel Sams	NSS
Theresa Kostrzewa	NSS

VISITOR REGISTRATION SHEET

Senate Judiciary I — April 21, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Johnny Loper	NC Optometry Board
Brian Cheuvront	NCAJ
Chuck Stone	SEANC
Amy Whited	NCMS
Chip Bassett	NCMS
Mildred Spearman	NCAOC
Amy Bason	NCACC

SENATE JUDICIARY I COMMITTEE
April 28, 2011 at 9:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 9:00 AM on April 28, 2011, in Room 1027 of the Legislative Building. Fifteen members of the committee were present. Senator Pete Brunstetter presided.

Senator Brunstetter called the meeting to order at 9:03 a.m.

Senate Bill 131
Senator Brunstetter recognized Senator Clodfelter to explain the bill
Senator Brunstetter recognized Susan Sitze for further explanation
Senator Tillman was recognized for a comment and a motion for a favorable report
Senator Stevens was recognized to ask a question, and Senator Clodfelter answered
Senator Pate was recognized to ask a question, and Senator Clodfelter answered
Senator Goolsby was recognized to ask a question, and Senator Clodfelter answered
Senator Goolsby was recognized to ask a follow-up question, and Senator Clodfelter answered
Motion for a favorable report carries

Senate Bill 432
Senator Hartsell was recognized to introduce the bill
Senator Brunstetter called for questions from the committee
Senator Tillman was recognized to move for a favorable report, unfavorable to original bill but favorable as to PCS
Motion carries

Senate Bill 435
Senator Hartsell was recognized to introduce the bill
Susan Sitze was recognized to explain the bill
Senator Goolsby was recognized to ask a question, and Senator Hartsell was recognized to answer
Senator Goolsby was recognized to ask a follow-up question, and Senator Hartsell was recognized to answer
Senator Stein was recognized to ask a question, and Senator Hartsell answered
Senator Tillman was recognized to ask a question, and Susan Sitze was recognized to answer
Senator Tillman was recognized to make comments, and Senator Hartsell was recognized to answer
Senator Tillman was recognized to make a follow-up comment
Senator Stein was recognized to ask a question, and Senator Hartsell was recognized to answer
Senator Clodfelter was recognized to ask a question, and Senator Hartsell was recognized to answer
Senator Goolsby was recognized to make comments
The bill will be held until Tuesday

Senate Bill 135
Senator Clodfelter was recognized to explain the bill
Susan Sitze was recognized for clarifications

Senator Tillman moves for a favorable report
Senator Mansfield was recognized to ask a question, and Susan Sitze answered
Senator Clodfelter was recognized for clarification
Senator Rucho was recognized to ask a question, and Senator Clodfelter answered
Senator Rucho was recognized for a follow-up question, and Senator Clodfelter answered
Senator Tillman's motion carries

Senate Bill 488
Senator Rucho moves to accept the PCS for purposes of discussion
Motion carries
Senator Stein was recognized to introduce the bill
Senator Pate was recognized to ask a question, and Senator Stein answered
Senator Mansfield was recognized to ask a question, and Senator Stein answered
Senator Goolsby was recognized to ask a question, and Senator Stein answered
Senator Mansfield was recognized for a follow-up question, and Senator Stein answered
Senator Tillman was recognized to ask a question, and Senator Stein answered
Senator Tillman was recognized for a follow-up question, and Senator Stein answered
John McMillan from the State Bar was recognized to speak on the bill
Senator Rucho was recognized to ask a question, and Senator Stein answered
Senator Rucho was recognized for a follow-up question, and John McMillan answered
Senator Stein was recognized to answer Senator Rucho's question
Senator Brown was recognized to make a comment and move for a favorable report, unfavorable as to original bill, but favorable as to proposed committee substitute
Senator Mansfield was recognized to make a comment
Senator Stein was recognized to make a comment
Senator Brown's motion carries

Senate Bill 521
Senator Clodfelter moves to accept the PCS for purposes of discussion
Senator Clodfelter was recognized to explain the bill
Senator Stevens moves to "dump Dumpor's Rule", unfavorable as to bill, favorable to PCS
Motion carries

Senate Bill 620
Senator Clodfelter moves to accept the PCS for purposes of discussion
Motion carries
Senator Clodfelter is recognized to explain the bill
Senator Pate moves for a favorable report to the PCS, unfavorable to original bill
Motion carries

Senate Bill 458
Senator Clodfelter was recognized to introduce the bill
Erika Churchill was recognized to explain the bill
Senator Brown was recognized to ask a question, and Erika Churchill answered
Senator Pate was recognized to ask a question, and Erika Churchill answered
Martin Brinkley from the NC Bar Association was recognized to comment on the bill
Senator Stein asked a question, and Brinkley answered
Senator Mansfield asked a question, and Brinkley answered
Senator Mansfield was recognized to ask a follow-up question, and Brinkley answered
Senator Tillman was recognized to ask a question, and Brinkley answered
Senator Goolsby was recognized to ask a question, and Brinkley answered

Senator Rucho was recognized to ask a question, and Brinkley answered
Senator Rucho was recognized for a follow-up question, and Brinkley answered
Senator Clodfelter was recognized to comment to Senator Tillman
John Wester from the Committee for Judicial Independence was recognized to comment
Chief Justice Jim Exom was recognized to speak on the proposed legislation
Senator Brock was recognized to ask a question, and Exom answered
Senator Soucek was recognized to ask a question, and Wester answered
Exom was answered to provide further answer to Soucek's question
Senator Pate was recognized to ask a question, and Exom answered
Senator Tillman was recognized to ask a question, and Wester answered
Senator Stevens was recognized to ask a question, and Wester answered
Senator Mansfield was recognized to ask a question, and Exom answered
Senator Rucho was recognized to ask a question, and Wester answered
Senator Rouzer was recognized to ask a question, and Wester answered

The meeting adjourned at 10:56 a.m.

Peter Brunstetter, Presiding

Sarah Hardin, Committee Clerk

Senate Judiciary I Committee
Thursday, April 28, 2011, 09:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 432	Revise Probate Code.	Senator Hartsell huge PCS
SB 131	AOC Collection Assistance Fee.	Senator Clodfelter no PCS
SB 135	Allow Juvenile Record/Risk Determination/Bond.	Senator Clodfelter no PCS
SB 435	Civil Pro./Require Certificate of Merit. hold till Tues	Senator Hartsell ~~no PCS~~
SB 488	Landlord/State Bar Notice of Lease Default.	Senator Vaughan PCS Senator Newton Senator Stein
SB 521	Repeal Rule in Dumpor's Case.	Senator Clodfelter PCS
SB 620	Clarify Use of Position.	Senator Clodfelter PCS
SB 458	Judicial Appointment/Voter Retention.	Senator Clodfelter Senator Hartsell

For Discussion Only

Presentations

Other Business

Adjournment

SENATE BILL 131

Short Title:	AOC Collection Assistance Fee.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary II.	

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE EXPANDED METHODS OF COLLECTING FINES, FEES, COSTS, AND RESTITUTION FROM OFFENDERS NOT SENTENCED TO SUPERVISED PROBATION OR ACTIVE TIME AND TO PERMIT THE COUNTY IN WHICH THE COLLECTION ASSISTANCE FEE IS COLLECTED TO RETAIN THE FEE, PROVIDING THE FEE IS COLLECTED BY A COLLECTIONS PROGRAM FUNDED BY THE COUNTY GOVERNMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-321 reads as rewritten:

"**§ 7A-321. Collection of offender fines and fees assessed by the court; collection assistance fee.**

(a) The Judicial Department may, in lieu of payment by cash or check, accept payment by credit card, charge card, or debit card for the fines, fees, and costs owed to the courts by offenders.

(b) In attempting to collect the fines, fees, ~~and costs~~ costs, and restitution owed by offenders not sentenced to supervised ~~probation,~~ probation or active time, the Department ~~may:~~may do the following:

(1) Assess a collection assistance fee if an amount due remains unpaid for 30 days after the time period allotted by the court. The collection assistance fee may be retained by the county in which the fee is collected, provided that the fee is collected by a collections program funded by the county government. The amount of the collection assistance fee shall not exceed the average cost of collecting the debt or twenty percent (20%) of the amount past due, whichever is less.

(2) Enter into contracts with a collection agency or agencies to collect unpaid fines, fees, ~~and costs~~ costs, and restitution owed by offenders not sentenced to supervised ~~probation.~~probation or to active time.

(3) Intercept tax refund checks under Chapter 105A of the General Statutes, the Setoff Debt Collection Act.

(4) Make referrals to credit counseling agencies and debt restructuring services.

~~(c) Should the Judicial Department use any method listed in subdivision (b)(1) or (2) of this section to collect fines owed by offenders not sentenced to supervised probation, the Department may not charge any additional cost of collection pursuant to G.S. 115C-437 or G.S. 7A-304(f).~~

(d) The court shall retain a collection assistance fee in the amount of ten percent (10%) of any cost or fee collected by the Department pursuant to this Article or Chapter 20 of the General Statutes and remitted to an agency of the State or any of its political subdivisions, other

than a cost or fee listed in this subsection. The court shall remit the collection assistance fee to the State Treasurer for the support of the General Court of Justice.

The collection assistance fee shall not be retained from the following:

(1) Costs and fees designated by law for remission to or use by an agency or program of the Judicial Department or for support of the General Court of Justice.

(2) Costs and fees designated by law for remission to the General Fund."

SECTION 2. This act becomes effective July 1, 2011, and applies to cases adjudicated on or after that date.

SENATE BILL 131:
AOC Collection Assistance Fee

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 27, 2011
Introduced by:	Sen. Clodfelter	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 131 would authorize expanded methods of collecting fines, fees, costs, and restitution from offenders not sentenced to supervised probation or active time and would permit the county in which the collection assistance fee is collected to retain the fee, providing the fee is collected by a collections program funded by the county government.***

BILL ANALYSIS: Senate Bill 131 would amend G.S. 7A-131 to provide that the Judicial Department's authority to collect fines, fees, and costs, also includes restitution and applies to offenders not sentenced to supervised probation or active time. It would also allow the Department to make referrals to credit counseling agencies and debt restructuring services. The bill would also authorize a county to retain the collection assistance fee if the fee is collected by a collections program funded by the county government and removes the prohibition against the Department charging additional costs of collection.

EFFECTIVE DATE: This act becomes effective July 1, 2011, and applies to cases adjudicated on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 432
PROPOSED COMMITTEE SUBSTITUTE S432-CSRN-10 [v.2]

4/20/2011 8:23:36 PM

Short Title: Revise Probate Code. (Public)

Sponsors:

Referred to:

March 29, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE JURISDICTIONAL AND PROCEDURAL PROVISIONS OF THE PROBATE CODE AND RELATED STATUTES TO PROVIDE UNIFORMITY IN ESTATE MATTERS, TO DEFINE THE JURISDICTION OF THE CLERK OF SUPERIOR COURT CONSISTENT WITH THE PROVISIONS OF THE UNIFORM TRUST CODE, TO RECODIFY CERTAIN PROVISIONS RELATING TO THE PROBATE OF WILLS, AND TO UPDATE AND AMEND THE PROCEDURE FOR CLAIMING SPOUSAL AND CHILDREN'S ALLOWANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-301.3 reads as rewritten:

"**§ 1-301.3. Appeal of trust and estate matters determined by clerk.**

(a) Applicability. – This section applies to matters arising in the administration of ~~testamentary~~ trusts and of estates of decedents, incompetents, and minors. G.S. 1-301.2 applies in the conduct of a special proceeding when a special proceeding is required in a matter relating to the administration of an estate.

(b) Clerk to Decide Estate Matters. – In matters covered by this section, the clerk shall determine all issues of fact and law. The clerk shall enter an order or judgment, as appropriate, containing findings of fact and conclusions of law supporting the order or judgment.

(c) Appeal to Superior Court. – A party aggrieved by an order or judgment of the clerk may appeal to the superior court by filing a written notice of the appeal with the clerk within 10 days of entry of the order or ~~judgment.~~ judgment after service of the order on that party. The notice of appeal shall ~~specify~~ contain a short and plain statement of the basis for the appeal. Unless otherwise provided by law, a judge of the superior court or the clerk may issue a stay of the order or judgment upon the appellant's posting an appropriate bond set by the judge or clerk issuing the stay. While the appeal is pending, the clerk retains authority to enter orders affecting the administration of the estate, subject to any order entered by a judge of the superior court limiting that authority.

(d) Duty of Judge on Appeal. – Upon appeal, the judge of the superior court shall review the order or judgment of the clerk for the purpose of determining only the following:

(1) Whether the findings of fact are supported by the evidence.

(2) Whether the conclusions of law are supported by the findings of facts.

(3) Whether the order or judgment is consistent with the conclusions of law and applicable law.

It is not necessary for a party to object to the admission or exclusion of evidence before the clerk in order to preserve the right to assign error on appeal to its admission or exclusion. If the judge finds prejudicial error in the admission or exclusion of evidence, the judge, in the judge's discretion, shall either remand the matter to the clerk for a subsequent hearing or resolve the matter on the basis of the record. If the record is insufficient, the judge may receive additional evidence on the ~~evidentiary~~ factual issue in question. The judge may continue the case if necessary to allow the parties time to prepare for a hearing to receive additional evidence.

(e) Remand After Disposition of Issue on Appeal. – The judge, upon determining the matter appealed from the clerk, shall remand the case to the clerk for such further action as is necessary to administer the estate.

(f) Recording of Estate Matters. – In the discretion of the clerk or upon request by a party, all hearings and other matters covered by this section shall be recorded by an electronic recording device. A transcript of the proceedings may be ordered by a party, by the clerk, or by the presiding judge. If a recordation is not made, the clerk shall submit to the superior court a summary of the evidence presented to the clerk."

SECTION 2. G.S. 7A-307(a) reads as rewritten:

"**§ 7A-307. Costs in administration of estates.**

(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, in trust proceedings under G.S. 36C-2-203, in estate proceedings under G.S. 28A-2-4, and in collections of personal property by affidavit, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ten dollars ($10.00), to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of four dollars ($4.00), to be credited to the Court Information Technology Fund.

(2) For support of the General Court of Justice, the sum of seventy-five dollars ($75.00), plus an additional forty cents (40/Ao) per one hundred dollars ($100.00), or major fraction thereof, of the gross estate, not to exceed six thousand dollars ($6,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be fifteen dollars ($15.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of two dollars and five cents ($2.05) of each seventy-five-dollar ($75.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4.

(2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate, not to exceed six thousand dollars ($6,000), shall not be assessed on

personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of twenty dollars ($20.00) shall be assessed on the filing of each annual and final account. However, the fee shall be assessed only on newly contributed or acquired assets, all interest or other income that accrues or is earned on or with respect to any existing or newly contributed or acquired assets, and realized gains on the sale of any and all trust assets. Newly contributed or acquired assets do not include assets acquired by the sale, transfer, exchange, or otherwise of the amount of trust property on which fees were previously assessed.

(2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.

(2c) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate shall not be assessed on the gross estate of a trust that is the subject of a proceeding under G.S. 36C-2-203 if there is no requirement in the trust that accountings be filed with the clerk.

(2d) Notwithstanding subdivisions (1) and (2) of this subsection, the only cost assessed in connection with the qualification of a limited personal representative under G.S. 28A-29-1 shall be a fee of twenty dollars ($20.00) to be assessed upon the filing of the petition.

(3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of twenty dollars ($20.00).

(4) For the filing of a caveat to a will, the clerk shall assess for support of the General Court of Justice, the sum of two hundred dollars ($200.00).

(5) Notwithstanding subdivisions (1) and (2) of this subsection, the only cost assessed in connection with the reopening of an estate administration under G.S. 28A-23-5 shall be forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of any additional gross estate, including income, coming into the hands of the fiduciary after the estate is reopened; provided that the total cost assessed when added to the total cost assessed in all prior administrations of the estate shall not exceed six thousand dollars ($6,000).

(b) In collections of personal property by affidavit, the facilities fee and thirty dollars ($30.00) of the General Court of Justice fee shall be paid at the time of filing the qualifying affidavit pursuant to G.S. 28A-25-1. In all other cases, these fees shall be paid at the time of filing of the first inventory. If the sole asset of the estate is a cause of action, these fees shall be paid at the time of the qualification of the fiduciary.

(b1) The clerk shall assess the following miscellaneous fees:

(1) Filing and indexing a will with no probate
– first page ..... $ 1.00
– each additional page or fraction thereof ..... .25

(2) Issuing letters to fiduciaries, per letter over five letters issued 1.00

(3) Inventory of safe deposits of a decedent, per box, per day 15.00

(4) Taking a deposition 10.00

(5) Docketing and indexing a will probated in another county in the State
- first page 6.00
- each additional page or fraction thereof ..... .25

(6) Hearing petition for year's allowance to surviving spouse or child, in cases not assigned to a magistrate, and allotting the same..... 8.00

(c) The following additional expenses, when incurred, are also assessable or recoverable, as the case may be:

(1) Witness fees, as provided by law.

(2) Counsel fees, as provided by law.

(3) Costs on appeal, of the original transcript of testimony, if any, insofar as essential to the appeal.

(4) Fees for personal service of civil process, and other sheriff's fees, as provided by law.

(5) Fees of guardians ad litem, referees, receivers, commissioners, surveyors, arbitrators, appraisers, and other similar court appointees, as provided by law.

(d) Costs assessed before the clerk shall be added to costs assessable on appeal to the judge or upon transfer to the civil issue docket.

(e) Nothing in this section shall affect the liability of the respective parties for costs, as provided by law."

SECTION 3. Article 5 of Chapter 31 of the General Statutes, G.S. 31-12 through G.S. 31-31.2, is recodified as Article 2A of Chapter 28A of the General Statutes, G.S. 28A-2A-1 through G.S. 28A-2A-23.

SECTION 4. Chapter 28A of the General Statutes, as amended by Section 3 of this act, reads as rewritten:

"**Chapter 28A.**

"**Administration of Decedents' Estates.**

"Article 1.

"Definitions and Other General Provisions.

"**§ 28A-1-1. Definitions.**

As used in this Chapter, unless the context otherwise requires, the term:

(1) "Collector" means any person authorized to take possession, custody, or control of the personal property of the decedent for the purpose of executing the duties outlined in G.S. 28A-11-3.

(1a) "Devisee" means any person entitled to take real or personal property under the provisions of a valid, probated will.

(1b) "Estate proceeding" means a matter initiated by petition related to the administration, distribution, or settlement of an estate, other than a special proceeding. There may be more than one estate proceeding within the administration of a decedent's estate.

(2) "Foreign personal representative" means a personal representative appointed in another jurisdiction, including a personal representative appointed in another country.

(3) "Heir" means any person entitled to take real or personal property upon intestacy under the provisions of Chapter 29 of the General Statutes.

(4) "Mortgage" includes a deed of trust.

(4a) "Party," in the context of a contested or uncontested estate proceeding pursuant to G.S. 28A-2-6, means a party joined as a petitioner or respondent.

(4b) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(5) "Personal representative" includes both an executor and an administrator, but does not include a collector.

~~(6) "Service" means delivery of the citation, summons, notice or other civil process to the person to be served by an officer authorized to serve process and, if such service cannot be obtained, then by the mailing of the citation, summons, notice or other civil process by certified mail, return receipt requested, to the last known address of the person to be served.~~

"Article 2.

"Jurisdiction for Probate of Wills and Administration of Estates of Decedents.

"§ 28A-2-1. Clerk of superior court.

The clerk of superior court of each county, ex officio judge of probate, shall have jurisdiction of the administration, settlement, and distribution of estates of decedents including, but not limited ~~to, the following:~~ to

~~(1) Probate of wills;~~

~~(2) Granting of letters testamentary and of administration, or other proper letters of authority for the administration of estates.~~ estate proceedings as provided in G.S. 28A-2-4.

"§ 28A-2-2. Assistant clerk of superior court.

An assistant clerk of superior court shall have jurisdiction as provided by G.S. 7A-102.

"§ 28A-2-3. Jurisdiction where clerk interested.

Whenever the clerk of superior court is a subscribing witness to a will offered for probate in ~~his~~ the clerk's county or has an interest, direct or indirect, in an estate or trust within ~~his~~ the clerk's jurisdiction, jurisdiction with respect thereto shall be vested in the senior resident superior court judge of ~~his~~ the clerk's district, and shall extend to all things which the clerk of superior court might have done in the administration of such estate.

"§ 28A-2-4. Subject matter jurisdiction of the clerk of superior court in estate proceedings.

(a) The clerks of superior court of this State, as ex officio judges of probate, shall have original jurisdiction of estate proceedings. Except as provided in subdivision (4) of this subsection, the jurisdiction of the clerk of superior court is exclusive. Estate proceedings include, but are not limited to, the following:

(1) Probate of wills.

(2) Granting and revoking of letters testamentary and letters of administration, or other proper letters of authority for the administration of estates.

(3) Determination of the elective share for a surviving spouse as provided in G.S. 30-3.

(4) Proceedings to ascertain heirs or devisees, to approve family settlement agreements pursuant to G.S. 28A-2-10, to determine questions of construction of wills, to determine priority among creditors, to determine whether a person is in possession of property belonging to an estate, to order the recovery of property of the estate in possession of third parties, and to determine the existence or nonexistence of any immunity, power, privilege, duty, or right. Any party or the clerk of superior court may file a notice of transfer of a proceeding pursuant to this subdivision to the Superior Court Division of the General Court of Justice as provided in G.S. 28A-2-6(h). In the absence of a transfer to superior court, Article 26 of Chapter 1 of the General Statutes shall apply to a trust proceeding pending before the clerk of superior court to the extent consistent with this Article.

(b) Nothing in this section shall affect the right of a person to file an action in the Superior Court Division of the General Court of Justice for declaratory relief under Article 26 of Chapter 1 of the General Statutes. In the event that either the petitioner or the respondent in an estate proceeding requests declaratory relief under Article 26 of Chapter 1 of the General

Statutes, either party may move for a transfer of the proceeding to the Superior Court Division of the General Court of Justice as provided in Article 21 of Chapter 7A of the General Statutes. In the absence of a removal to superior court, Article 26 of Chapter 1 of the General Statutes shall apply to an estate proceeding to the extent consistent with this Article.

(c) Without otherwise limiting the jurisdiction of the Superior Court Division of the General Court of Justice, the clerk of superior court shall not have jurisdiction under subsection (a) or (c) of this section of the following:

(1) Actions by or against creditors or debtors of an estate, except as provided in Article 19 of this Chapter.

(2) Actions involving claims for monetary damages, including claims for breach of fiduciary duty, fraud, and negligence.

(3) Caveats, except as provided under G.S. 31-36.

(4) Proceeding to determine proper county of venue as provided in G.S. 28A-3-2.

(5) Recovery of property transferred or conveyed by a decedent with intent to hinder, delay, or defraud creditors, pursuant to G.S. 28A-15-10(b).

"**§ 28A-2-5. Subject matter jurisdiction of the clerk of superior court in special proceedings.**

The clerk of superior court also shall have jurisdiction over special proceedings, including, but not limited to, the following:

(1) Special proceedings to obtain possession, custody, or control of assets as provided in G.S. 28A-13-3.

(2) Special proceedings relating to the sale, lease, or mortgage of real estate as provided in G.S. 28A-15-1 and in G.S. 28A-17-1.

(3) Special proceedings against unknown heirs before distribution of estate as provided in G.S. 28A-22-3.

Nothing in this section shall be deemed to limit the jurisdiction of the clerk of superior court in special proceedings.

"**§ 28A-2-6. Commencement of estate proceedings, pleadings, consolidation, and joinder.**

(a) Contested Estate Proceedings. – Contested estate proceedings brought against adverse parties shall be commenced by petition in the existing estate administration file. All parties not joined as petitioners shall be joined as respondents. The clerk of superior court shall issue the estate proceeding summons to the respondents. The clerk of superior court may order that additional persons be joined as respondents and shall issue the estate proceeding summons to the additional persons. The estate proceeding summons shall notify a respondent to appear and answer the petition within 20 days after its service upon the respondents. The estate proceeding summons shall comply with the requirements set forth in G.S. 1-394 for a special proceeding summons except that the summons shall be titled "ESTATE PROCEEDING SUMMONS" and shall be served upon a respondent in accordance with G.S. 1A-1, Rule 4. After the time for responding to the petition or complaint has expired, any party or the clerk of superior court may give notice to all parties of a hearing.

(b) Uncontested Estate Proceedings. – Estate proceedings before the clerk of superior court that are uncontested may be decided without hearing according to practice and procedure provided by law and shall be commenced by the filing of a petition, setting forth the facts entitling the petitioners to relief and the nature of the relief demanded. In these proceedings, the clerk of superior court may hear and decide the petition summarily.

(c) Pleadings. – Any petition, response, or request for hearing in a contested estate proceeding before the clerk of superior court shall contain a short and plain statement of the claim that is sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions intended to be proved showing that the pleaders are entitled to relief, and a demand for judgment for the relief to which the pleader is entitled. Each

averment should be simple, concise, and direct. No technical forms of motions or responses are required. A party may set forth two or more statements of a claim or defense alternatively or hypothetically. The signature of an attorney or party constitutes a certificate by that attorney or party that (i) the attorney or party has read the pleading, motion, or other paper; (ii) to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. All motions, responses, and requests for hearing shall be so construed as to do substantial justice.

(d) Extensions of Time. – The clerk of superior court, for cause shown at any time in the clerk's discretion, with or without motion or notice, may enter an order enlarging the period of time within which an act is required or permitted in an estate proceeding, by any applicable rule of G.S. 1A-1, the Rules of Civil Procedure, or by order of the court, if the request is made before the expiration of the period originally prescribed, but not to exceed 10 days, provided that the court can enlarge the time for a period of more than 10 days for good cause shown, but only to the extent that the court in its discretion determines that justice requires. Upon motion made after the expiration of the specified period, the clerk of superior court may permit the act where the failure to act was the result of excusable neglect. Notwithstanding any other provision of this subsection, the parties to a proceeding may enter into binding stipulations, without approval of the clerk of superior court, enlarging the time within which an act is required or permitted by this Article, by any applicable Rules of Civil Procedure or by order of the court, not to exceed 30 days.

(e) Rules of Civil Procedure. – Unless the clerk of superior court otherwise directs, Rules 4.5, 6(a), 6(d), 6(e), 18, 19, 20, 21, 24, 45, 56, and 65 of G.S. 1A-1, the Rules of Civil Procedure, shall apply to estate proceedings. Upon motion of a party or the clerk of superior court, the clerk may further direct that any or all of the remaining Rules of Civil Procedure shall apply, including, without limitation, discovery rules; however, nothing in Rule 17 requires the appointment of a guardian ad litem for a party represented except as provided in G.S. 28A-2-7. In applying these Rules to an estate proceeding pending before the clerk of superior court, the term "judge" shall mean "clerk of superior court."

(f) Consolidation. – When an estate proceeding pending before the clerk of superior court and a civil action pending before the Superior Court Division of the General Court of Justice involve a common question of law or fact, upon the court's motion or motion of a party to either the estate proceeding or the civil action, a superior court judge may order a consolidation of the estate proceeding and civil action, and the judge may make orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. Upon the entry of an order consolidating an estate proceeding and civil action, the jurisdiction for all matters pending in both the estate proceeding and the civil action shall be vested in the superior court.

(g) Joinder. – In any civil action pending before the Superior Court Division of the General Court of Justice, the party asserting a claim for relief as an original claim, counter claim, cross claim, or third-party claim may join, either as independent or alternative claims, as many claims, legal or equitable, as the party may have against the opposing party, notwithstanding the fact that such claims may otherwise be within the exclusive jurisdiction of the clerk of superior court.

(h) Notice of Transfer. – A notice to transfer an estate proceeding brought pursuant to G.S. 28A-2-4(a)(4) must be served within 30 days after the moving party is served with a copy of the pleading requesting relief pursuant to G.S. 28A-2-4(a)(4), or in the case of the clerk of superior court, prior to or at the first hearing duly noticed in such estate proceeding and prior to the presentation of evidence by the parties, including a hearing at which an order of

continuance is entered. Failure to timely serve a notice of transfer of a trust proceeding is a waiver of any objection to the clerk of superior court's exercise of jurisdiction over the trust proceeding then pending before the clerk. When a notice of transfer is duly served and filed, the clerk shall transfer the proceeding to the appropriate court. The proceeding after the transfer is subject to the provisions of the General Statutes and to the rules that apply to actions initially filed in the court to which the proceeding was transferred.

(i) Orders Upon Consolidation/Joinder/Transfer. – Upon the consolidation of an estate proceeding in a civil action, joinder of claims under subsection (f) or (g) of this section, or transfer to the Superior Court Division of the General Court of Justice pursuant to subsection (h) of this section, the clerk of superior court or judge may make appropriate orders to protect the interest of the parties and avoid unnecessary cost or delay. Notwithstanding the consolidation or joinder of claims under subsection (f) or (g) of this section, where the estate proceeding is transferred to the Superior Court Division of the General Court of Justice under subsection (h) of this section, the clerk of superior court's exclusive jurisdiction as set forth in G. S. 28A-2-4(a)(1) through (3) shall not be stayed unless so ordered by the court.

"**§ 28A-2-7. Representation of parties.**

(a) Notwithstanding any other applicable rule of the Rules of Civil Procedure or provision of Chapter 1 of the General Statutes, in any contested or uncontested estate proceeding or special proceeding, whether brought before the clerk of superior court or in the Superior Court Division of the General Court of Justice, the parties shall be represented as provided in Article 3 of Chapter 36C of the General Statutes.

(b) In the case of any party represented by another as provided in subsection (a) of this section, service of process shall be made by serving such representative.

"**§ 28A-2-8. Waiver of notice.**

A party, or a representative of a party as provided in G.S. 28A-2-7, may waive notice by a writing signed by the party, the representative, or the attorney of the party or the representative and filed in the proceeding.

"**§ 28A-2-9. Appeals of estate proceedings and special proceedings.**

(a) With the exception of appeals of special proceedings heard by the clerk of superior court, appeals in estate matters shall be as provided in G.S. 1-301.3.

(b) Appeals in special proceedings shall be as provided in G.S. 1-301.2.

(c) Any party may appeal from a decision of the clerk of superior court in an estate proceeding or special proceeding to a superior court judge as provided for in G.S. 1-301.3; provided that the appeals from orders of the clerk of superior court in special proceedings shall be as provided in G.S. 1-301.2.

"**§ 28A-2-10. Approval of settlement agreements by the clerk.**

The clerk shall have the authority, in the clerk's discretion, to consider and approve settlement agreements where the following apply:

(1) The controversy arises with respect to a matter over which the clerk has jurisdiction.

(2) The controversy arose in good faith.

Nothing herein shall be construed as giving a clerk the authority to approve a settlement agreement modifying the terms of a last will and testament or resolving a caveat of a last will and testament."

"Article 2A.

"Probate of Will.

"**§ 28A-2A-1. Executor may apply for probate.**

Any executor named in a will may, at any time after the death of the testator, apply to the clerk of the superior court, having jurisdiction, to have the same admitted to probate. Such will shall not be valid or effective to pass real estate or personal property as against innocent purchasers for value and without notice, unless it is probated or offered for probate within two

years after the death of the testator or devisor or prior to the time of approval of the final account of a duly appointed administrator of the estate of the deceased, whichever time is earlier. If such will is fraudulently suppressed, stolen or destroyed, or has been lost, and an action or proceeding shall be commenced within two years from the death of the testator or devisor to obtain said will or establish the same as provided by law, then the limitation herein set out shall only begin to run from the termination of said action or proceeding, but not otherwise.

"§ 28A-2A-2. Executor failing, beneficiary may apply.

If no executor ~~apply~~ applies to have the will proved within 60 days after the death of the testator, any devisee or legatee named in the will, or any other person interested in the estate, may make such application, upon 10 days' notice thereof to the executor. For good cause shown, the clerk of superior court may shorten the initial 60-day period during which the executor may apply to have the will proved.

"§ 28A-2A-3. Clerk to notify legatees and devisees of probate of wills.

The clerks of the superior court of the State are hereby required and directed to notify by mail, all legatees and devisees whose addresses are known, designated in wills filed for probate in their respective counties. All expense incident to such notification shall be deemed a proper charge in the administration of the respective estates.

"§ 28A-2A-4. Clerk ~~may~~ shall compel production of will.

Every clerk of the superior court having jurisdiction, on application by affidavit setting forth the facts, shall, by summons, compel any person in the State, having in possession the last will of any decedent, to exhibit the same in his court for probate; and whoever being duly summoned refuses, in contempt of the court, to produce such will, or (the same having been parted with by him) refuses to inform the court on oath where such will is, or in what manner he has disposed of it, shall, by order of the clerk of the superior court, be committed to the jail of the county, there to remain without bail till such will be produced or accounted for, and due submission made for the contempt.

"§ 28A-2A-5. What shown on application for probate.

On application to the clerk of the superior court, he must ascertain by affidavit of the applicant –

(1) That such applicant is the executor, devisee or legatee named in the will, or is some other person interested in the estate, and how so interested.

(2) The value and nature of the testator's property, as near as can be ascertained.

(3) The names and residences of all parties entitled to the testator's property, if known, or that the same on diligent inquiry cannot be discovered; which of the parties in interest are minors, and whether with or without guardians, and the names and residences of such guardians, if known.

Such affidavit shall be recorded with the will and the certificate of probate thereof, if the same is admitted to probate.

"§ 28A-2A-6. Proof and examination in writing.

Every clerk of the superior court shall take in writing the proofs and examinations of the witnesses touching the execution of a will, and he shall embody the substance of such proofs and examinations, in case the will is admitted to probate, in his certificate of the probate thereof, which certificate must be recorded with the will. The proofs and examinations as taken must be filed in the office.

"§ 28A-2A-7. Probate in solemn form.

(a) A person entitled to apply for probate of a will pursuant to G.S. 28A-2A-1 or G.S. 28A-2A-2 may file a petition for probate of the will in solemn form, and the matter shall proceed as an estate proceeding governed by Article 2 of Chapter 28A of the General Statutes. The clerk of superior court shall issue a summons to all interested parties in the estate. The

clerk shall schedule a hearing at which the petitioner shall produce the evidence necessary to probate the will.

(b) If an interested party contests the validity of the will, that person must file a caveat before the hearing or raise an issue of devisavit vel non at the hearing. Upon the filing of a caveat or raising of an issue of devisavit vel non, the clerk shall transfer the cause to the superior court, and the matter shall be heard as a caveat proceeding.

(c) If no interested party contests the validity of the will, the probate shall be binding, and no interested party who was properly served may file a caveat of the probated will. Initiation of a probate in common form shall not preclude a person from applying for probate in solemn form.

"§ 28A-2A-8. Manner of probate of attested written will.

(a) An attested written will, executed as provided by G.S. 31-3.3, may be probated in the following manner:

(1) Upon the testimony of at least two of the attesting witnesses; or

(2) If the testimony of only one attesting witness is available, then

a. Upon the testimony of such witness, and

b. Upon proof of the handwriting of at least one of the attesting witnesses who is dead or whose testimony is otherwise unavailable, and

c. Upon proof of the handwriting of the testator, unless he signed by his mark, and

d. Upon proof of such other circumstances as will satisfy the clerk of the superior court as to the genuineness and due execution of the will; or

(3) If the testimony of none of the attesting witnesses is available, then

a. Upon proof of the handwriting of at least two of the attesting witnesses whose testimony is unavailable, and

b. Upon compliance with paragraphs ~~c and d~~ c. and d. of subsection (a)(2) of this section; or

(4) Upon a showing that the will has been made self-proved in accordance with the provisions of G.S. 31-11.6.

(b) Due execution of a will may be established, where the evidence required by subsection (a) of this section is unavoidably lacking or inadequate, by testimony of other competent witnesses as to the requisite facts.

(c) The testimony of a witness is unavailable within the meaning of this section when the witness is dead, out of the State, not to be found within the State, ~~insane or otherwise~~ incompetent, physically unable to testify or refuses to testify.

"§ 28A-2A-9. Manner of probate of holographic will.

A holographic will may be probated only in the following manner:

(1) Upon the testimony of at least three competent witnesses that they believe that the will is written entirely in the handwriting of the person whose will it purports to be, and that the name of the testator as written in or on, or subscribed to, the will is in the handwriting of the person whose will it purports to be; and

(2) Upon the testimony of one witness who may, but need not be, one of the witnesses referred to in subdivision (1) of this section to a statement of facts showing that the will was found after the testator's death as required by G.S. 31-3.4.

"§ 28A-2A-10. Manner of probate of nuncupative will.

(a) No nuncupative will may be probated later than six months from the time it was made unless it was reduced to writing within 10 days after it was made.

(b) Before a nuncupative will may be probated
(1) Written notice must be given to the surviving spouse, if any, and to the next of kin, by the clerk of the court in which it is to be probated, notifying them that the will has been offered for probate and that they may, if they desire, oppose the probate thereof, or
(2) When the surviving spouse or next of kin are not known or when for any other reason such notice cannot be given, a notice to the same effect must be published not less than once a week for four consecutive weeks in some newspaper published in the county where the will is offered for probate, or if no newspaper is published in the county, then in some newspaper having general circulation therein.

(c) A nuncupative will may be probated only in the following manner:
(1) Upon the testimony of at least two competent witnesses who establish the terms of such will and who state that they were simultaneously present at the making thereof, that the testator declared he was then making his will, and that they were then and there specially requested by him to bear witness thereto; and
(2) Upon the testimony of one competent witness, who may but need not be one of the witnesses referred to in subdivision (1) of this subsection, that the will was made in the testator's last illness or while he was in imminent peril of death, and that he did not survive such sickness or imminent peril, but it is not necessary that all such facts be proved by the testimony of the same witness.

"§ 28A-2A-11. Probate of wills of members of the armed forces.

In addition to the methods already provided in existing statutes therefor, a will executed by a person while in the armed forces of the United States or the merchant marine, shall be admitted to probate (whether there were subscribing witnesses thereto or not, if they, or either of them, is out of the State at the time said will is offered for probate) upon the oath of at least three credible witnesses that the signature to said will is in the handwriting of the person whose will it purports to be. Such will so proven shall be effective to devise real property as well as to bequeath personal estate of all kinds. This section shall not apply to cases pending in courts and at issue on the date of its ratification.

"§ 28A-2A-12. Probate conclusive until vacated; substitution of consolidated bank as executor or trustee under will.

Such record and probate is conclusive in evidence of the validity of the will, until it is vacated on appeal or declared void by a competent tribunal. Provided, that whenever in a will so probated or recorded a bank or trust company shall be named executor and/or trustee and shall have at the time of such probate and recording become absorbed by or consolidated with another bank or trust company or shall have sold and transferred all its assets and liabilities to another bank or trust company doing business in North Carolina, such latter bank or trust company shall be deemed substituted for and shall have all the rights and powers of the former bank or trust company.

"§ 28A-2A-13. Wills filed in clerk's office.

All original wills shall remain in the clerk's office, among the records of the court where the same shall be proved, and to such wills any person may have access, as to the other records. If said will contains a devise of real estate, outside said county where said will is probated, then a copy of the said will, together with the probate of the same, certified under the hand and seal of the clerk of the superior court of said county may be recorded in the book of wills and filed in the office of the clerk of the superior court of any county in the State in which said land is situated with the same effect as to passing the title to said real estate as if said will had

originally been probated and filed in said county and the clerk of the superior court of said last-mentioned county had had jurisdiction to probate the same.

"§ 28A-2A-14. Validation of wills heretofore certified and recorded.

All wills which have prior to March 9, 1921, been certified and recorded in the office of the clerk of the superior court of any county, substantially following the provisions of ~~G.S. 31-20~~ G.S. 28A-2A-13, are hereby validated and approved as to the conveyance and transfer of any title to real estate as contained therein, to the same extent as if said wills had originally been probated and filed in said county, and the clerk of the superior court of said county had had jurisdiction to probate the same, provided the probates and witnesses to the said wills are sufficient and according to law.

"§ 28A-2A-15. Certified copy of will proved in another state or country.

When a will, made by a citizen of this State, is proved and allowed in some other state or country, and the original will cannot be removed from its place of legal deposit in such other state or country, for probate in this State, the clerk of the superior court of the county where the testator had his last usual residence or has any property, upon a duly certified copy or exemplification of such will being exhibited to him for probate, shall take every order and proceeding for proving, allowing and recording such copy as by law might be taken upon the production of the original.

"§ 28A-2A-16. Examination of witnesses by affidavit.

(a) The examination of witnesses to a will may be taken and subscribed in the form of an affidavit before a notary public or other person who is authorized to administer oaths in the jurisdiction where the examination is held.

(b) A photographic copy of the original will certified to be a true and exact copy thereof by the clerk of superior court of the county in which the will is to be probated may be used in the examination of the witnesses in the procedures set out in ~~subsection (a);~~ subsection (a) of this section; provided, the said clerk has in his possession the original will at the time of examination of the witnesses.

(c) Affidavits taken in accordance with subsection (a) of this section shall be transmitted by the person taking the affidavit to the clerk of superior court of the county in which the will is to be probated.

(d) Testimony submitted in accordance with subsection (a) of this section is competent in regard to all requirements of G.S. 31-3.3 and to establish that a will was executed in compliance with the requirements of G.S. 31-3.3.

(e) Nothing in this section is to limit or otherwise affect the authority of a clerk of superior court in the exercise of his authority as judge of probate under G.S. 28A-2-1 to:

(1) ~~issue~~ Issue subpoenas under G.S. 7A-103; or

(2) ~~order~~ Order the taking of depositions of witnesses.

"§ 28A-2A-17. Certified copy of will of nonresident recorded.

(a) Subject to the provisions of ~~subsection (b),~~ subsection (b) of this section, if the will of a citizen or subject of another state or country is probated in accordance with the laws of that jurisdiction and a duly certified copy of the will and the probate proceedings are produced before a clerk of superior court of any county wherein the testator had property, the copy of the will shall be probated as if it were the original. If the jurisdiction is within the United States, the copy of the will and the probate proceedings shall be certified by the clerk of the court wherein the will was probated. If the jurisdiction is outside the United States, the copy of the will and probate proceedings shall be certified by any ambassador, minister, consul or commercial agent of the United States under his official seal.

(b) For a copy of a will probated under the provisions of subsection (a) of this section to be valid to pass title to or otherwise dispose of real estate in this State, the execution of said will according to the laws of this State must appear affirmatively, to the satisfaction of the clerk of the superior court of the county in which such will is offered for probate, from the testimony

of a witness or witnesses to such will, or from findings of fact or recitals in the order of probate, or otherwise in such certified copy of the will and probate proceedings.

(c) If the execution of the will in accordance with the laws of this State does not appear as required by ~~subsection (b),~~ subsection (b) of this section, the clerk before whom the copy is exhibited shall have power to take proof as prescribed in ~~G.S. 31-24,~~ G.S. 28A-2A-16, and the will may be adjudged duly proved, and if so proved, the will shall be recorded as herein provided.

(d) Any copy of a will of a nonresident heretofore allowed, filed and recorded in this State in compliance with the foregoing shall be valid to pass title to or otherwise dispose of real estate in this State.

"§ 28A-2A-18. Probates validated where proof taken by commissioner or another clerk.

In all cases of the probate of any will made prior to March 8, 1899, in common form before any clerk of the superior courts of this State, where the testimony of the subscribing witnesses has been taken in the State or out of it by any commissioner appointed by said clerk or taken by any other clerk of the superior court in any other county of this State, and the will admitted to probate upon such testimony, the proceedings are validated.

"§ 28A-2A-19. Probates in another state before 1860 validated.

In all cases where any will devises land in this State, and the original will was duly admitted to probate in some other state prior to the year 1860, and a certified copy of such will and the probate thereof has been admitted to probate and record in any county in this State, and it in any way appears from such recorded copy that there were two subscribing witnesses to such will, and its execution was proved by the examination of such witnesses when the original was admitted to probate, such will shall be held and considered, and is hereby declared to be, good and valid for the purpose of passing title to the lands devised thereby, situated in this State, as fully and completely as if the original will had been duly executed and admitted to probate and recorded in this State in accordance with the laws of this State.

"§ 28A-2A-20. Validation of wills recorded without probate by subscribing witnesses.

In all cases where wills and testaments were executed prior to the first day of January, 1875, and which appear as recorded in the record of last wills and testaments to have had two or more witnesses thereto, and such last wills and testaments were admitted to probate and recorded in the record of wills in the proper county in this State prior to the first day of January, 1888, without having been duly proven as provided by law, and such wills were presented to the clerk of the superior court in any county in this State where the makers of said wills owned property, and where the makers of such wills lived and died, and were by such clerks recorded in the record of wills for his county, said wills and testaments or exemplified copies or certified true copies thereof, so recorded, if otherwise sufficient, shall have the effect to pass the title to real or personal property, or both, therein devised and bequeathed, to the same extent and as completely as if the execution thereof had been duly proven by the two subscribing witnesses thereto in the manner provided by law of this State. Nothing herein shall be construed to prevent such wills from being impeached for fraud.

"§ 28A-2A-21. Validation of wills admitted on oath of one subscribing witness.

In all cases where last wills and testaments which appear as recorded in the record of last wills and testaments to have had two witnesses thereto and such last wills and testaments were admitted to probate and recorded in the record of wills in the proper county in this State prior to the first day of January, 1890, upon the oath and examination of one of the witnesses, such proof being taken in writing and recorded, and the certificate of probate of the clerk of the court states that such a will is proven by one of the subscribing witnesses thereto and the handwriting of the other subscribing witness being a nonresident is proven under oath, and such a will and certificate has been recorded in the record of wills of the proper county, such probate is hereby validated as fully as if the proof of the handwriting of the nonresident witness had been taken in regular form in writing and recorded.

"§ 28A-2A-22. Validation of probates of wills when witnesses examined before notary public; acts of deputy clerks validated.

Whenever any last will and testament has been probated, based upon the examination of the subscribing witness or the subscribing witnesses, taken before a notary public in the county in which the will is probated, or taken before a notary public of any other county, it is hereby in all respects validated and shall be sufficient to pass the title to all real and personal property purported to be transferred thereby.

All acts heretofore performed by deputy clerks of the superior court in taking acknowledgments, examining witnesses and probate of any wills, deeds and other instruments required or permitted by law to be recorded, are hereby validated. Nothing herein contained shall affect pending litigation.

§ 28A-2A-23. Validation of wills when recorded without order of probate or registration upon oath and examination of subscribing witness or witnesses.

Whenever any last will and testament has been duly presented to the clerk of the superior court, and the said will together with the oath and examination of the subscribing witness or witnesses thereto taken before a notary public in the county in which the will is probated, or taken before a notary public of any other county, or before the clerk of the superior court of said county, or any other county, is duly recorded in the office of the clerk of the superior court of the said county, without a formal order of probate or registration, such will, if executed in accordance with the laws of this State, is hereby validated with respect to the probate and registration thereof and shall be sufficient to pass title to all real and personal property purported to be transferred thereby to the same extent that the said will would have done so if there had been a formal order of probate and registration. This section shall apply only to wills presented to the clerk of the superior court and recorded prior to the first day of January, 1943.

"Article 3.

"Venue for Probate of Wills and Administration of Estates of Decedents.

"§ 28A-3-1. Proper county.

The venue for the probate of a will and for all proceedings relating to the administration of the estate of a decedent shall be:

(1) In the county in this State where the decedent ~~had his domicile~~ was domiciled at the time of ~~his~~ the decedent's death; or

(2) If the decedent had no domicile in this State at the time of death, then in any county wherein the decedent left any property or assets or into which any property or assets belonging to this estate may have come. If there be more than one such county, that county in which proceedings are first commenced shall have priority of venue; or

(3) If the decedent was a nonresident motorist who died in the State, then in any county in the State.

"§ 28A-3-2. Proceedings to determine venue.

(a) If proceedings are commenced in more than one county or if upon commencement of a proceeding a question arises as to the proper county of venue, or if for any other reason a delay arises in determining venue, ~~then~~ the matter shall be referred by the clerk of superior court ~~before whom the question arises~~ for a hearing ~~before~~ and determination by the senior resident superior court judge or any judge assigned to hold the superior courts of the district which includes the county where the proceedings were first commenced. ~~The~~ Upon the filing of a motion or petition to determine venue, the judge shall determine which is the proper county for administration of the estate and stay proceedings in all other counties. ~~He~~ The judge shall make such orders as are necessary to transfer the entire proceedings to the proper county. The clerk of superior court of each county in which proceedings are stayed shall retain a true copy of the entire file and transmit the original to the clerk of superior court of such county as the judge directs.

(a1) Any interested person may file a petition to determine proper venue within the time prescribed by G.S. 28A-3-5. The matter shall be referred by the clerk of superior court by or before whom the petition is filed for a hearing and determination by the senior resident superior court judge or any judge assigned to hold the superior courts of the district that includes the county where the proceedings were first commenced.

(b) A proceeding shall be deemed commenced by the offering of a will for probate or by applying for letters of administration as provided by G.S. 28A-6-1 through 28A-6-5 or by applying for letters of collection as provided by G.S. 28A-11-1 through 28A-11-4 and the proceeding first legally commenced shall extend to all of the property or assets of the decedent in this State.

"§ 28A-3-3. Procedure after determination of improper appointment.

Where a person has been improperly appointed, and a different person in another county is determined under G.S. 28A-3-2(a) to be the properly appointed personal representative, such improperly appointed personal representative shall surrender to the properly appointed personal representative all assets of the estate under ~~his control.~~ control of the improperly appointed personal representative. In addition such improperly appointed personal representative shall file an accounting with the clerk of superior court in the proper county according to the form prescribed for collectors by G.S. 28A-11-4.

"§ 28A-3-4. Liability of personal representative appointed in improper county.

When a personal representative has been appointed in an improper county, and a different person in another county is determined under G.S. 28A-3-2(a) to be the properly appointed personal representative, such improperly appointed personal representative shall not thereby incur personal liability for administrative acts performed prior to the transfer except as provided in G.S. 28A-13-10.

"§ 28A-3-5. Waiver of venue.

If questions as to priority of venue are not raised within three months after the issuance of letters testamentary or letters of administration to the personal representative, the validity of the proceeding shall not be affected by any error in venue.

"Article 4.

"Qualification and Disqualification for Letters Testamentary and Letters of Administration.

"§ 28A-4-1. Order of persons qualified to serve.

(a) Letters Testamentary. – Letters testamentary shall be granted to the executor or executors named or designated in the will, or if no such person qualifies, to any substitute or successor executor named or designated in the will. If no person so named or designated qualifies, letters testamentary shall be granted to some other person nominated by a person upon whom the will expressly confers the authority to make such nomination. If none of the foregoing persons ~~qualifies or if the clerk of superior court upon hearing finds that none of the foregoing persons is qualified in accordance with G.S. 28A-4-2,~~ qualifies, the clerk shall grant letters of administration in accordance with subsection ~~(b).~~(b) of this section.

(b) Letters of Administration. Letters of administration shall be granted to persons who are qualified to serve, in the following order, unless the clerk of superior court in ~~his~~ the discretion of the clerk of superior court determines that the best interests of the estate otherwise require:

(1) The surviving spouse of the decedent;
(2) Any devisee of the testator;
(3) Any heir of the decedent;
(3a) Any next of kin, with a person who is of a closer kinship as computed pursuant to G.S. 104A-1 having priority;
(4) Any creditor to whom the decedent became obligated prior to ~~his~~ the decedent's death;

(5) Any person of good character residing in the county who applies therefor; and

(6) Any other person of good character not disqualified under G.S. 28A-4-2.

When applicants are equally entitled, letters shall be granted to the applicant who, in the judgment of the clerk of superior court, is most likely to administer the estate advantageously, or they may be granted to any two or more of such applicants.

(c) Any interested person may file a petition pursuant to Article 2 of this Chapter alleging that all or any of the persons described in subsection (b) of this section is disqualified in accordance with G.S. 28A-4-2.

"§ 28A-4-2. Persons disqualified to serve as personal representative.

No person is qualified to serve as a personal representative who:

(1) Is under 18 years of age;

(2) Has been adjudged incompetent in a formal proceeding and remains under such disability;

(3) Is a convicted felon, under the laws either of the United States or of any state or territory of the United States, or of the District of Columbia and whose citizenship has not been restored;

(4) Is a nonresident of this State who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate, and caused such appointment to be filed with the court; or who is a resident of this State who has, subsequent to appointment as a personal representative, moved from this State without appointing such process agent;

(5) Is a corporation not authorized to act as a personal representative in this State;

(6) Repealed by Session Laws 1999-133, s. 1.

(7) Has lost ~~his~~ that person's rights as provided by Chapter 31A;

(8) Is illiterate;

(9) Is a person whom the clerk of superior court finds otherwise unsuitable; or

(10) Is a person who has renounced either expressly or by implication as provided in G.S. 28A-5-1 and 28A-5-2.

"Article 5.

"Renunciation by Personal Representative.

"§ 28A-5-1. Renunciation by executor.

(a) Express Renunciation by Executor. – Any person named or designated as executor in a duly probated will may renounce the office by filing with the clerk of superior court a writing signed by such person, and acknowledged or proved to the satisfaction of the clerk.

(b) Implied Renunciation by Executor. – If any person named or designated as executor fails to qualify or to renounce within 30 days after the will had been admitted to probate, (i) the clerk of superior ~~court, on application of~~ court may issue a notice to that person to qualify or move for an extension of time to qualify within 15 days, or (ii) any other person named or designated as executor in the will or ~~of~~ any interested ~~person, shall, or on his own motion may, issue a citation to the person who has failed to qualify or renounce to show cause why he should not~~ person may file a petition in accordance with Article 2 of this Chapter for an order finding that person named or designated as executor to be deemed to have renounced. ~~If, upon service of the citation, he does not qualify or renounce or show cause within the time fixed in the citation, such period to be not less than 10 nor more than 30 days, an order must be entered by~~ If that person does not file a response to the motion or petition within 15 days from the date of service of the motion or petition, the clerk of superior court shall enter an order adjudging that ~~he has renounced. If cause be shown,~~ the person has renounced. If the person files a response within 15 days from the date of service of the motion or petition requesting an extension of time within which to qualify or renounce, upon hearing, the clerk of superior court

may grant to ~~such~~ that person a reasonable extension of time within which to qualify or ~~renounce.~~ renounce for cause shown. If that person qualifies within 15 days of the date of service of the motion or petition, the clerk of superior court shall dismiss that motion or petition, without prejudice, summarily and without hearing.

(c) Procedure upon Renunciation. – Upon renunciation by a person named or designated as executor, letters shall be issued to some other person as provided in G.S. 28A-4-1.

"§ 28A-5-2. Renunciation of right to administer.

(a) Express Renunciation. – Any person entitled to apply for letters of administration may renounce the office by filing with the clerk of superior court a writing signed by such person, and acknowledged or proved to the satisfaction of the clerk.

(b) Implied Renunciation. –

(1) If any person entitled to apply for letters of administration fails to apply therefor within 30 days from the date of death of the intestate, (i) the clerk of superior ~~court, on application of~~ court may issue a notice to the person to qualify or move for an extension of time to qualify within 15 days, or (ii) any interested ~~person, shall, or on his own motion may, issue a citation to the person entitled to apply for letters of administration requiring him to show cause why he should not~~ person may file a petition in accordance with Article 2 of this Chapter for an order finding that person to be deemed to have renounced. ~~If, upon service of the citation, he does not apply for letters of administration and tender the required bond or show cause within the time shown in the citation, such period to be not less than 10 nor more than 30 days, an order must be entered by the clerk of the~~ If the person does not file a response to the notice or petition within 15 days from the date of service of the motion, the clerk of superior court shall enter an order adjudging that ~~he has renounced;~~ the person has renounced. If the person files a response within 15 days from the date of service of the motion requesting an extension of time within which to qualify or renounce, upon hearing, the clerk of superior court may grant to that person a reasonable extension of time within which to qualify or renounce for cause shown. If the person qualifies within 15 days of the date of service of the motion, the clerk of superior court shall dismiss the motion, without prejudice, summarily and without hearing and the clerk of superior court shall issue letters to some other person as provided in G.S. 28A-4-1. ~~If cause be shown the clerk of superior court may grant to such person a reasonable extension of time within which to apply and qualify, or renounce.~~ No notice shall be required to be given to any interested person, but the clerk may give notice as the clerk in the clerk's discretion may determine.

(2) If no person entitled to administer applies for letters of administration within 90 days after the date of death of an intestate, then the clerk of superior court may, in ~~his discretion,~~ the clerk's discretion, enter an order declaring all prior rights to apply for letters of administration to be renounced, and issue letters to some suitable person as provided in G.S. 28A-4-1.

(c) Nomination by Person Renouncing. – Any person who expressly renounces ~~his~~ the person's prior right to apply for letters of administration may at the same time nominate in writing some other person not disqualified under G.S. 28A-4-2 to be named as personal representative, and such designated person shall be entitled to the same priority of right to apply for letters of administration as the person making the nomination.

"Article 6.

"Appointment of Personal Representative.

"**§ 28A-6-1. Application for letters; grant of letters.**

(a) The application for letters of administration or letters testamentary shall be in the form of an affidavit sworn to before an officer authorized to administer oaths, signed by the applicant or ~~his~~ the applicant's attorney, which may be supported by other proof under oath in writing, all of which shall be recorded and filed by the clerk of superior court, and shall allege the following facts:

(1) The name, and to the extent known, the domicile and the date and place of death of the decedent;

(2) The legal residence and mailing address of the applicant;

(3) The names, ages and mailing addresses of the decedent's heirs and devisees, including the names and mailing addresses of the guardians of those having court-appointed guardians, so far as all of these facts are known or can with reasonable diligence be ascertained;

(4) That the applicant is the person entitled to apply for letters, or that ~~he~~ the applicant applies after persons having prior right to apply are shown to have renounced under Article 5 of this Chapter, or that ~~he~~ the applicant applies subject to the provisions of G.S. 28A-6-2(1), and that ~~he~~ the applicant is not disqualified under G.S. 28A-4-2.

(5) The nature and probable value of the decedent's property, both real and personal, and the location of such property, so far as all of these facts are known or can with reasonable diligence be ascertained; and

(6) If the decedent was not domiciled in this State at the time of ~~his~~ the decedent's death, a schedule of ~~his~~ the decedent's property located in this State, and the name and mailing address of ~~his~~ the decedent's domiciliary personal representative, or if there is none, whether a proceeding to appoint one is pending.

(b) If it appears to the clerk of superior court that the application and supporting evidence comply with the requirements of subsection (a) of this section and on the basis thereof ~~he~~ the clerk finds that the applicant is entitled to appointment, ~~he~~ the clerk shall issue letters of administration or letters testamentary to the applicant unless in ~~his~~ the clerk's discretion ~~he~~ the clerk determines that the best interests of the estate would be served by delaying the appointment of a personal representative, in which case ~~he~~ the clerk may appoint a collector as provided in Article 11.

(c) The clerk of superior court may rely upon the following as evidence of death:

(1) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred.

(2) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, evidencing the date of death.

(3) A certificate or authenticated copy of medical records, including a record of death, evidencing the date of death.

(4) Any other evidence that the clerk of superior court deems sufficient to confirm the date of death.

"**§ 28A-6-2. Letters issued without notice; exceptions.**

Letters of administration or letters testamentary may be issued without notice, including upon a finding of implied renunciation under G.S. 28A-5-1(b) or G.S. 28A-5-2(b), except:

(1) When the applicant is not entitled to priority of appointment under G.S. 28A-4-1, all persons entitled to an equal or higher preference shall be given ~~notice by citation as provided in G.S. 28A-5-2(b)(1),~~ 15 days prior to written notice of that application, unless they have renounced in accordance with the provisions of Article 5 of this Chapter.

(2) The clerk of superior court may in any case require that prior written notice be given to such interested persons as ~~he~~ the clerk, in ~~his discretion~~ the clerk's discretion, may designate prior to the granting of letters.

"§ 28A-6-3. Appointment of successor to personal representative.

When the appointment of a sole or last surviving personal representative is terminated by death, resignation pursuant to Article 10 of this Chapter, or revocation pursuant to Article 9 of this Chapter, the clerk of superior court shall appoint another personal representative as provided by G.S. 28A-4-1 to act as ~~his successor.~~ successor to the sole or last surviving personal representative. When two or more personal representatives have qualified, and the appointment of one or more of them is terminated by death, resignation or revocation, leaving in office one or more personal representatives, the appointment of successors shall not be required unless:

(1) The clerk of superior court determines, in ~~his~~ the clerk's discretion, that it is in the best interest of the estate to appoint a successor or successors to such personal representative or personal representatives, or

(2) In the case of executors, the will so provides.

"§ 28A-6-4. Right to contest appointment; procedure.

Prior to the issuance of letters, any interested person may, by written ~~objection~~ petition filed with the clerk of superior court, ~~with notice to the applicant,~~ and served upon such interested persons as the clerk of superior court may direct, contest the issuance of letters of administration or letters testamentary to ~~such applicant. After an objection~~ a person otherwise entitled to apply for letters of administration or letters testamentary. After a petition has been duly filed, the clerk of superior court shall conduct a hearing and determine ~~whether~~ to whom letters shall ~~issue to the applicant.~~ be issued. Appeal may be taken from the order of the clerk as in ~~a special proceeding.~~ an estate proceeding pursuant to G.S. 1-301.3.

"§ 28A-6-5. Letters not subject to collateral attack.

The validity of letters issued shall not be subject to collateral attack.

"Article 7.

"Oath.

"§ 28A-7-1. Oath required before letters issue.

Before letters testamentary, letters of administration or letters of collection are issued to any person, ~~he~~ the person shall take and subscribe an oath or affirmation before the clerk of superior court, or before any other officer of any state or country authorized by the laws of North Carolina to administer oaths, that ~~he~~ the person will faithfully and honestly discharge the duties of ~~his~~ the person's office. Such oath or affirmation shall be in the form prescribed in G.S. 11-11, and shall be filed in the office of the clerk of superior court.

"Article 8.

"Bond.

"§ 28A-8-1. Bond required before letters issue; when bond not required.

(a) Except as otherwise provided in subsection ~~(b),~~(b) of this section, every personal representative, before letters are issued, shall give bond, conditioned as provided in G.S. 28A-8-2.

(b) No bond shall be required of:

(1) A resident executor, unless the express terms of the will require ~~him~~ a resident executor to give bond;

(2) A nonresident executor (or a resident executor who moves from this State subsequent to ~~his~~ that executor's appointment) who has appointed a resident agent to accept service of process as provided in G.S. 28A-4-2(a) [28A-4-2(4)], when the express terms of the will excuse ~~him~~ a nonresident executor from giving bond;

(3) A nonresident executor, when there is a resident executor named who has qualified as coexecutor unless the express terms of the will require them to give bond, or the clerk of superior court finds that such bond is necessary for the protection of the estate; or

(4) A personal representative appointed solely for the purpose of bringing an action for the wrongful death of the deceased until such time as the personal representative shall receive property into the estate of the deceased; or

(5) A personal representative that is a ~~national banking association having its principal place of business in this State or a State bank acting pursuant to~~ trust institution licensed under G.S. 53-159;

(6) A personal representative of an intestate who resides in the State of North Carolina when all of the heirs of the decedent are over 18 years of age and file with the clerk of superior court a written waiver instrument agreeing to relieve the personal representative from the necessity of giving bond; or

(7) A personal representative where ~~he~~ the personal representative receives all the property of the decedent;

(8) An administrator with the will annexed who resides in the State of North Carolina when all of the devisees of the decedent are over 18 years of age and file with the clerk of superior court a written waiver instrument agreeing to relieve ~~him~~ the administrator with the will annexed of the necessity of giving bond.

"§ 28A-8-1.1. Deposited money; exclusion in computing amount of bond.

Notwithstanding the provisions of G.S. 28A-8-1, in any proceeding for the determination of the amount of bond to be required of the personal representative or testamentary trustee, whether at the time of appointment or subsequently, when it appears that the estate of the decedent or the testamentary trust includes money which has been or will be deposited in a bank or banks in this State, or money which has been or will be invested in an account or accounts in an insured savings and loan association or associations upon condition that such money will not be withdrawn except on authorization of the court, the court may, in its discretion, order such money so deposited or so invested and shall exclude such deposited money from the computation of the amount of such bond or reduce the amount of bond to be required in respect of such money to such an amount as it may deem reasonable.

The petitioner for letters testamentary, of administration, or of trusteeship may deliver to any such bank or association any such money in ~~his~~ the petitioner's possession, or may allow such bank to retain any such money already in its possession, or may allow such association to retain any such money already invested with it; and, in either event, the petitioner shall secure and file with the court a written receipt including the agreement of the bank or association that such money shall not be allowed to be withdrawn except on authorization of the court. In so receiving and retaining such money, the bank or association shall be protected to the same extent as though it had received the same from a person to whom letters testamentary, of administration, or of trusteeship had been issued.

The term "account in an insured savings and loan association" as used in this section means an account insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or by a mutual deposit guaranty association authorized by Article 7A of Chapter 54 of the General Statutes of North Carolina.

The term "money" as used in this section means the principal of the decedent's estate and does not include the income earned by the principal of the decedent's estate which may be withdrawn without any authorization of the court.

"§ 28A-8-2. Provisions of bond.

A bond given pursuant to this Article shall be:

(1) Payable to the State to the use of all persons interested in the estate; and

(2) Conditioned that the personal representative giving the bond shall faithfully execute the trust reposed in ~~him~~ the personal representative and obey all lawful orders of the clerk of superior court or other court touching the administration of the estate committed to ~~him;~~ the personal representative; and

(3) In an amount not less than:

a. One and one-fourth times the value of all personal property of the decedent when the bond is secured by a suretyship bond executed by a corporate surety company authorized by the Commissioner of Insurance to do business in this State, provided that the clerk of superior court, when the value of the personal property to be administered by the personal representative exceeds one hundred thousand dollars ($100,000), may accept bond in an amount equal to the value of the personal property plus ten percent (10%) thereof; or

b. Double the value of all personal property of the decedent when the bond is secured by one of the methods provided in subdivision (4)b, (4)c or (4)d; such value of said personal property to be ascertained by the clerk of superior court by examination, on oath, of the applicant or of some other person determined by the clerk to be qualified to testify as to its value; and

(4) Secured by one or more of the following:

a. Suretyship bond executed, at the expense of the estate, by a corporate surety company authorized by the Commissioner of Insurance to do business in this State;

b. Suretyship bond executed and justified upon oath before the clerk of superior court by two or more sufficient personal sureties each of whom shall reside in and own real estate in North Carolina and shall have assets with an aggregate value above encumbrances of not less than the amount of the penalty of the required bond;

c. A first mortgage or first deed of trust in form approved by the administrative officer of the courts on real estate located in North Carolina:

1. Executed by the owner, and conditioned on the performance of the obligations of the bond, and

2. Containing a power of sale which, in the case of a mortgage, is exercisable by the clerk of superior court upon a breach of any condition thereof, or, in the case of a deed of trust, is exercisable by the trustee after notice by the clerk of superior court that a breach of condition has occurred.

The clerk of superior court shall not accept such mortgage or deed of trust until it shall have been properly registered in the county or counties in which the real estate is located, and the clerk of superior court is satisfied that the real estate subject to the mortgage or deed of trust is worth the amount to be secured thereby, and that the mortgage or deed of trust is a first charge on said real estate. No such mortgage or deed of trust shall be cancelled or surrendered until the approval of the final account, unless substitution is permitted as provided in G.S. 28A-8-3(d).

d. A deposit by the owner with the clerk of superior court of negotiable securities, of a kind permitted by law to be proper investments for fiduciaries exercising due care, having a fair market value

determined by the clerk to be equal to the amount of the penalty of the bond. Such securities shall be properly endorsed, delivered to the clerk of superior court, and accompanied by a security agreement containing a power of sale authorizing the clerk of superior court to sell them in the event the person to whom letters are being issued commits a breach of any duty imposed upon ~~him~~ that person by law in respect of ~~his~~ that person's office. Such securities shall not be surrendered by the clerk of superior court to the owner until the approval of the final account, unless substitution is permitted as provided in G.S. 28A-8-3(d). For the purposes of determining the value of the assets of the personal sureties in subdivision (4)b, or the value of the real estate in subdivision (4)c, or the value of the negotiable securities in subdivision (4)d, the clerk of superior court may require a certificate of the value of such property by one or more persons not interested in the estate determined by the clerk to be qualified to certify such value.

"§ 28A-8-3. Modification of bond requirements.

(a) Increase of Bond or Security in Case of Inadequacy or Insufficiency. –

(1) The clerk of superior ~~court may, on his own motion or upon verified application of any person interested in the estate,~~ court, on the clerk's own motion, may require the personal representative to give a new bond or to furnish additional security if ~~he~~ the clerk of superior court finds that the bond filed pursuant to this Article, or its security, is insufficient, inadequate in amount, or that any of the individual sureties has become or is about to become a nonresident or, in the case of a corporate surety, has withdrawn or is about to withdraw from doing business in this State. ~~Before ordering the personal representative to give a new bond or furnish additional security,~~

(2) Any interested person may file a verified petition in accordance with Article 2 of this Chapter requesting modification of bond requirements. Upon the filing of a verified petition, the clerk of superior court shall ~~issue a citation requiring the personal representative, within 10 days after service thereof, to show cause why such action should not be taken.~~ conduct a hearing in accordance with Article 2 of this Chapter. If the clerk of superior court finds that the bond filed or its security is insufficient or inadequate, ~~he~~ the clerk shall make an order requiring the personal representative to give a new bond or to furnish additional security within a reasonable time to be fixed in the order.

(b) Increase of Bond upon Sale of Real Estate. – When a personal representative makes application for an order to sell real estate, the provisions of G.S. 1-339.10 shall govern.

(c) Reduction of Bond. – On application of the personal representative the penalty of the bond may be reduced from time to time when the clerk of superior court finds that such reduction is clearly justified, but in no event shall the penalty of the bond be reduced below the amount required by G.S. 28A-8-2(3).

(d) Substitution of Security. – When a bond is secured by a mortgage or deed of trust on real estate as provided in G.S. 28A-8-2(4)c or a deposit of negotiable securities as provided in G.S. 28A-8-2(4)d, the clerk of superior court may, on application of the personal representative, order that such real estate or negotiable securities, or a part thereof, be released upon the substitution therefor of other security in compliance with G.S. 28A-8-2(4)a, (4)c, or (4)d. Such substitution may be allowed in conjunction with any other modification of bond requirements permitted by this section.

"§ 28A-8-4. Failure to give additional bond; letters revoked.

If any personal representative fails to give an additional bond or new bond or to furnish additional security as ordered by the clerk of superior court pursuant to the provisions of this Article, within the time specified in any such ~~order,~~ order (not less than five days or more than 15 days), the clerk of superior court shall proceed as provided in G.S. 28A-9-2.

"§ 28A-8-5. Rights of surety in danger of loss.

Any surety on the bond of a personal representative who is in danger of loss under ~~his~~ the surety's suretyship may file ~~his~~ a verified petition ~~on oath~~ with the clerk of superior court setting forth the facts, and asking that such personal representative be removed from office, or that ~~he~~ the personal representative be required to give security to indemnify the petitioner against apprehended loss, or that the petitioner be discharged as surety and be released from liability for any future breach of the bond. The clerk of superior court shall ~~thereupon issue a citation to the personal representative, requiring him to answer the petition within 10 days after service thereof.~~ conduct a hearing in accordance with Article 2 of this Chapter. If, upon the hearing, the clerk of superior court determines that the surety is entitled to relief, ~~he~~ the clerk may grant the same in such manner as to serve the best interest of the estate. In any event, however, the previous surety shall not be released from liability for any breach of duty by the personal representative occurring prior to the filing of bond with a new surety unless the new surety assumes liability for the earlier breaches.

"§ 28A-8-6. Action against obligors on bond of personal representative.

Any person injured by the breach of any bond given by a personal representative or collector may institute a civil action against one or more of the obligors of the bond and recover such damages as ~~he~~ the person may have sustained. Any successor personal representative, or any other personal representative of the same decedent, may institute such action on behalf of the persons interested in the estate. Any such action against one or more of the obligors of the bond shall be brought in the name of the State of North Carolina and shall be instituted in the county in which letters were issued to the personal representative or collector, and the clerk of superior court shall give notice of the institution of the action in such manner as ~~he~~ the clerk may determine to all other persons shown by ~~his~~ the clerk's records to be interested in the estate. The bond of the personal representative is not void after the first or any subsequent recovery thereon until the entire penalty is recovered. If the plaintiff fails to prevail, costs may be taxed against the person or persons for whose benefit the action on a personal representative's bond is prosecuted.

"Article 9.

"Revocation of Letters.

"§ 28A-9-1. Revocation after hearing.

(a) Grounds. – Letters testamentary, letters of administration, or letters of collection may be revoked after hearing on any of the following grounds:

(1) The person to whom they were issued was originally disqualified under the provisions of G.S. 28A-4-2 or has become disqualified since the issuance of letters.

(2) The issuance of letters was obtained by false representation or mistake.

(3) The person to whom they were issued has violated a fiduciary duty through default or misconduct in the execution of ~~his~~ the person's office, other than acts specified in G.S. 28A-9-2.

(4) The person to whom they were issued has a private interest, whether direct or indirect, that might tend to hinder or be adverse to a fair and proper administration. The relationship upon which the appointment was predicated shall not, in and of itself, constitute such an interest.

(b) Procedure. ~~When it appears to the~~

(1) The clerk of superior ~~court, on his own motion or upon verified complaint made to him by~~ court may, on the clerk's own motion, conduct a hearing in

accordance with Article 2 of this Chapter to determine whether any of the grounds set forth in subsection (a) of this section exist with regard to any personal representative or collector within the jurisdiction of the clerk of superior court.

(2) Upon the verified petition of any person interested in the ~~estate,~~ estate for an order finding that any of the grounds set forth in subsection (a) ~~may exist~~ of this section exist with regard to any personal representative or collector within ~~his jurisdiction, he shall issue citation requiring such personal representative or collector, within 10 days after service thereof, to show cause why his letters should not be revoked. On the return of such citation duly executed, the clerk of superior court shall set the date for a hearing.~~ the jurisdiction of the clerk of superior court, the clerk shall conduct a hearing in accordance with Article 2 of this Chapter.

(3) Notice of the time and date of the hearing shall be given in accordance with Article 2 of this Chapter and to such persons ~~and in such manner~~ as the clerk of superior court shall determine. If at the hearing the clerk of superior court finds any one of the grounds set forth in subsection (a) of this section to exist, ~~he~~ the clerk of superior court shall revoke the letters issued to such personal representative or collector.

"§ 28A-9-2. Summary revocation.

(a) Grounds. – Letters testamentary, letters of administration, or letters of collection, shall be revoked by the clerk of superior court without hearing when:

(1) After letters of administration or collection have been issued, a will is subsequently admitted to probate.

(2) After letters testamentary have been issued:

a. The will is set aside, or

b. A subsequent testamentary paper revoking the appointment of the executor is admitted to probate.

(3) Any personal representative or collector required to give a new bond or furnish additional security pursuant to G.S. 28A-8-3 fails to do so within the time ordered.

(4) A nonresident personal representative refuses or fails to obey any citation, notice, or process served on ~~him or his process agent.~~ that nonresident personal representative or the process agent of the nonresident personal representative.

(5) A trustee in bankruptcy, liquidating agent, or receiver has been appointed for any personal representative or collector, or any personal representative or collector has executed an assignment for the benefit of creditors.

(6) A personal representative has failed to file an inventory or an annual account with the clerk of superior court, as required by Article 20 and Article 21 of this Chapter, and proceedings to compel such filing pursuant to G.S. 28A-20-2 or 28A-21-4 cannot be had because service cannot be completed because the personal representative cannot be found.

(b) Procedure. – Upon the occurrence of any of the acts set forth in subsection ~~(a),~~(a) of this section, the clerk of superior court shall enter an order revoking the letters issued to such personal representative or collector and shall cause a copy of the order to be served on ~~him or his process agent.~~ the personal representative or collector or the personal representative's or collector's process agent.

"§ 28A-9-3. Effect of revocation.

Upon entry of the order revoking ~~his~~ a personal representative's or collector's letters, the authority of the personal representative or collector shall cease. ~~He~~ The personal representative

or collector shall surrender all assets of the estate under ~~his control to his~~ the control of the personal representative or collector to the personal representative's or collector's successor; or the remaining personal representative or collector or to the clerk of superior court; and shall file an accounting in the form prescribed by Article 21 of this Chapter. A personal representative or collector whose letters are revoked pursuant to G.S. 28A-9-2(a)(1) or 28A-9-2(a)(2) shall not thereby incur personal liability for administrative acts performed prior to revocation except as provided in G.S. 28A-13-10.

"§ 28A-9-4. Appeal; stay effected.

Any interested person may appeal from the order of the clerk of superior court granting or denying ~~revocation. The procedure shall be the same as in a special proceeding. If the~~ revocation as a special proceeding pursuant to G.S. 28A-2-9(b). The clerk of superior court ~~has revoked the letters, such appeal shall stay the judgment and order of~~ may issue a stay of an order revoking the letters upon the appellant posting an appropriate bond set by the clerk until the cause is heard and determined upon appeal.

"§ 28A-9-5. Interlocutory orders.

Pending any proceeding or appeal with respect to revocation of letters, the clerk of superior court may enter such interlocutory orders as are necessary to preserve the assets of the estate.

"§ 28A-9-6. Appointment of successor to personal representative or collector whose letters have been revoked; when not required.

Upon the revocation of letters issued to a sole or last surviving personal representative or collector, the clerk of superior court shall appoint another personal representative or collector as provided by G.S. 28A-4-1 to act as ~~his successor.~~ successor to the sole or last surviving personal representative or collector. When two or more personal representatives or collectors have qualified, and the letters of one or more personal representatives or collectors are revoked, leaving in office one or more personal representatives or collectors, the appointment of successors shall not be required unless:

(1) The clerk of superior court determines, in ~~his discretion,~~ the discretion of the clerk of superior court, that it is in the best interest of the estate to appoint a successor or successors to the personal representatives or collectors whose letters have been revoked, or

(2) In the case of executors, the will so provides.

"§ 28A-9-7. Rights and duties devolve on successor.

After the revocation of letters pursuant to this Article and upon the qualification and appointment of a successor, the substituted personal representative or collector shall succeed to all the powers stated in G.S. 28A-13-7. ~~He~~ The substituted personal representative or collector shall be subject to all the duties, responsibilities and liabilities of the original personal representative or collector, other than liabilities arising out of the grounds for revocation.

"Article 10.

"Resignation.

"§ 28A-10-1. Clerk's power to accept resignation.

The clerk of superior court in the county where a person has been appointed personal representative shall have the power to accept ~~his~~ that person's resignation.

"§ 28A-10-2. Contents of petition; notice.

(a) When a personal representative desires to resign ~~his~~ the personal representative's office, ~~he~~ the personal representative shall file a verified petition in the office of the clerk of the superior court, setting forth:

(1) The facts relating to ~~his~~ the personal representative's appointment and qualifications;

(2) The names and residences of all interested persons known to ~~him;~~ the personal representative;

(3) A full statement of the reasons why the petitioner should be permitted to resign ~~his~~ the petitioner's office; and

(4) A statement that ~~he~~ the personal representative has filed with the clerk of superior court ~~his~~ the personal representative's accounts and a record of ~~his~~ the personal representative's conduct of the office.

(b) Notice of the petition for resignation, together with the date and time of the hearing thereon, shall be served upon all interested persons named in the petition in such manner as the clerk of superior court shall determine.

"§ 28A-10-3. Statement of account; record of conduct.

When the personal representative files ~~his~~ the personal representative's petition requesting permission to resign ~~his~~ the personal representative's office, ~~he~~ the personal representative shall also file a verified statement of:

(1) ~~His~~ The personal representative's accounts since ~~his~~ that personal representative's qualification, or if ~~he~~ the personal representative has previously filed an account, a statement of ~~his~~ the personal representative's accounts since the date thereof;

(2) The assets of the estate and their location;

(3) The debts and liabilities of the estate;

(4) All facts and circumstances known to ~~him~~ the personal representative the disclosure of which is necessary for a full and fair assessment of ~~his~~ the personal representative's conduct of the office; and

(5) All additional facts and circumstances known to ~~him~~ the personal representative the disclosure of which is necessary for a full and fair understanding of all matters concerning the estate.

"§ 28A-10-4. Hearing; order.

The clerk of superior court shall conduct a hearing in accordance with Article 2 of this Chapter on the petition not sooner than 10 days nor later than 20 days after notice to interested persons pursuant to G.S. 28A-10-2(b). If the clerk of superior court finds all the accounts proper, including accounts subsequent to the filing of the petition, and determines that the resignation of the personal representative is in the best interest of the estate and can be allowed, the resignation may be approved subject to the provisions of G.S. 28A-10-5. Except in cases governed by G.S. 28A-10-8, ~~he~~ the clerk of superior court shall appoint a successor pursuant to G.S. 28A-4-1.

"§ 28A-10-5. When resignation becomes effective.

The resignation shall not become effective until:

(1) A successor has been duly qualified, unless G.S. 28A-10-8 is applicable; and

(2) The clerk of superior court is satisfied that the accounts of the personal representative are true and correct; and

(3) The personal representative has accounted to ~~his~~ the personal representative's successor in full for all assets of the estate, or if pursuant to G.S. 28A-10-8 no successor is appointed, to the remaining personal representative or representatives, and ~~his~~ the personal representative's final account has been filed with and approved by the clerk of superior court.

"§ 28A-10-6. Appeal; stay effected.

Any interested person who has appeared at the hearing and objected to the order of the clerk of superior court granting or denying resignation may appeal ~~therefrom. The procedure shall be the same as in a special proceeding. If the~~ an order denying or allowing the resignation as a special proceeding pursuant to G.S. 28A-2-9(b). The clerk of superior court ~~has allowed the resignation, such appeal shall stay the order of~~ may issue a stay of an order allowing the resignation upon the appellant posting an appropriate bond set by the clerk until the cause is heard and determined upon appeal.

"§ 28A-10-7. Rights and duties devolve on successor.

Upon the qualification and appointment of a successor to a personal representative whose resignation has been allowed as provided in G.S. 28A-10-4, the substituted personal representative shall succeed to all the powers ~~stated~~ as provided in G.S. 28A-13-7 and shall also be subject to all the duties, responsibilities, and liabilities ~~stated~~ as provided in Article 13.

"§ 28A-10-8. When appointment of successor to personal representative who has resigned is not required.

When two or more personal representatives have qualified, and one or more personal representatives resign pursuant to this Article, leaving in office one or more personal representatives, the appointment of successors shall not be required unless:

(1) The clerk of superior court determines, in ~~his~~ the clerk's discretion, that it is in the best interest of the estate to appoint a successor or successors to the personal representative or representatives who have resigned, or

(2) In the case of executors, the will so provides.

"Article 11.

"Collectors.

"§ 28A-11-1. Appointment and qualifications of collectors.

When for any reason other than a situation provided for in Chapter 28B or Chapter 28C entitled "Estates of Absentees in Military Service" and "Estates of Missing Persons" a delay is encountered in the issuance of letters to a personal representative or when, in any case, the clerk of superior court finds that the best interest of the estate would be served by the appointment of a collector, ~~he~~ the clerk of superior court may issue letters of collection to any person or persons not disqualified to act as a personal representative under G.S. 28A-4-2.

"§ 28A-11-2. Oath and bond.

Every collector shall take an oath as prescribed in G.S. 28A-7-1 and give bond as required in Article 8 of this Chapter for personal representatives.

"§ 28A-11-3. Duties and powers of collectors.

(a) Every collector shall:

(1) Take such possession, custody, or control of the personal property of the decedent as in the exercise of reasonable judgment ~~he~~ the collector deems necessary to its preservation;

(2) Publish notices to creditors as provided by Article 14 of this Chapter;

(3) Collect claims payable to the estate;

(4) Maintain and defend actions in behalf of the estate;

(5) File inventories, accounts, and other reports in the same manner as is required of personal representatives;

(6) Renew obligations of the decedent in the same manner as the personal representative is allowed to do under the provisions of Article 13 of this Chapter; and

(7) Under the express direction and supervision of the clerk of superior court, possess, exercise and perform all other powers, duties and liabilities given to personal representatives by Article 13 of this Chapter.

"§ 28A-11-4. When collectors' powers cease; settlement of accounts.

(a) When letters testamentary or letters of administration are issued, or when in any case the clerk of superior court terminates the appointment of the collector, the powers of the collector cease.

(b) Upon the termination of ~~his~~ the collector's appointment, the collector shall surrender to the personal representative or to the person otherwise entitled thereto or to the clerk all assets of the estate under this control and shall file with the clerk a verified statement of:

(1) ~~His~~ The collector's accounts since ~~his~~ the collector's qualification, or if ~~he~~ the collector has previously filed an account, a statement of ~~his~~ the collector's accounts since the date thereof;
(2) The assets of the estate and their location;
(3) The debts and liabilities of the estate;
(4) All facts and circumstances known to ~~him~~ the collector the disclosure of which is necessary for a full and fair assessment of ~~his~~ the collector's conduct of the office; and
(5) All additional facts and circumstances known to ~~him~~ the collector the disclosure of which is necessary for a full and fair understanding of all matters concerning the estate.

(c) The clerk of superior court shall examine the account of the collector and if ~~he~~ the clerk finds all of the accounts proper, ~~he~~ the clerk shall by order approve the account.

"§ 28A-11-5. Compensation.

A collector shall be compensated in accordance with Article 23 of this Chapter.

"Article 12.

"Public Administrator.

"§ 28A-12-1. Appointment and term.

There shall be a public administrator in every county, appointed by the clerk of superior court, with the written approval of the senior resident superior court judge of the district in which the appointment is made, for a term of four years.

"§ 28A-12-2. Oath of office.

The public administrator shall take and subscribe an oath or affirmation in the form provided in G.S. 11-11 for administrators and in the manner provided in G.S. 28A-7-1; and the oath or affirmation so taken and subscribed shall be filed in the office of the clerk of superior court.

"§ 28A-12-3. Qualification and bond.

(a) The public administrator shall qualify and give bond with regard to each estate administered by ~~him~~ the public administrator as provided in Article 8 of this Chapter, at the expense of such estate.

(b) As an alternative to and in lieu of the bonding requirement provided in subsection (a), the administrator may, in the discretion of the clerk of superior court, enter into a single permanent bond, secured by any of the methods provided in G.S. 28A-8-2(4), payable to the State of North Carolina, conditioned upon the faithful performance of the duties of ~~his~~ the administrator's office and obedience to all lawful orders of the clerk of superior court or other court touching the administration of any estate committed to ~~him.~~ the administrator. The amount of the permanent bond shall be determined by the clerk, based on the total value of all the estates administered by the public administrator, and may be increased or decreased from time to time as the clerk determines is necessary. The expense of the bond shall be borne by the estates administered by the administrator, as determined by the clerk.

"§ 28A-12-4. When public administrator shall apply for letters.

The public administrator shall apply for and may, with the approval of the clerk of superior court, obtain letters on the estates of decedents when:

(1) It is brought to ~~his~~ the public administrator's attention that a period of six months has elapsed from the death of any decedent who has died owning property, and no letters testamentary, or letters of administration or collection, have been applied for or issued to any person; or
(2) Any person without known heirs shall die intestate owning property; or
(3) Any person entitled to apply for letters of administration shall, in writing, request the clerk to issue letters to the public administrator as provided in G.S. 28A-5-2(c).

"**§ 28A-12-5. Powers and duties.**

(a) The public administrator shall have, in respect to the several estates in ~~his~~ the public administrator's hands, all the rights and powers and shall be subject to all the duties and liabilities of other personal representatives.

(b) After the expiration of the term of office of a public administrator or ~~his~~ the public administrator's resignation as public administrator, ~~he~~ the public administrator shall continue, subject to the provisions of Articles 9 and 10 of this Chapter, to administer the several estates previously committed to ~~him~~ the public administrator until ~~he~~ the public administrator has fully administered the same, and ~~his~~ the public administrator's bonds shall continue in effect as to all such estates.

"**§ 28A-12-6. Removal from office.**

If letters of administration issued to the public administrator with respect to any estate are subsequently revoked on the grounds that they were obtained by false representation as provided in G.S. 28A-9-1(a)(2), or on the grounds as specified in G.S. 28A-9-1(a)(1), 28A-9-1(a)(3), 28A-9-2(a)(3), 28A-9-2(a)(5), or 28A-9-2(a)(6) or if ~~he~~ the public administrator becomes a nonresident of the State, the clerk of superior court shall order the removal of the public administrator from ~~office.~~ office upon notice and hearing in accordance with Article 2 of this Chapter.

"**§ 28A-12-7. Procedure after removal from office.**

The clerk of superior court shall require of any public administrator who is removed from office pursuant to G.S. 28A-12-6 a complete accounting of all ~~his~~ of the public administrator's activities as public administrator and for the property remaining under ~~his~~ the public administrator's control by reason of ~~his~~ the public administrator's appointment under this Article as administrator of any estate that has not been fully administered at the time of ~~his~~ the public administrator's removal. If it appears to the clerk of superior court that grounds exist for revocation of letters of administration issued with respect to any such estate, ~~he~~ the clerk shall proceed in accordance with the provisions of Article 9 of this Chapter. If letters of administration are revoked pursuant to such proceedings, the clerk of superior court shall issue letters of administration to the successor public administrator or to some other person not disqualified under G.S. 28A-4-2.

"**§ 28A-12-8. Compensation.**

A public administrator shall be compensated in accordance with Article 23 of this Chapter.

"Article 13.

"Representative's Powers, Duties and Liabilities.

"**§ 28A-13-1. Time of accrual of duties and powers.**

The duties and powers of a personal representative commence upon ~~his or her~~ the personal representative's appointment. The powers of a personal representative relate back to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. However, a person named executor in a will may, prior to appointment, carry out written instructions of the decedent relating to the decedent's body, funeral and burial arrangements; provided that a health care agent authorized in a valid health care power of attorney to make body, funeral, and burial arrangements shall have precedence in making these arrangements, both before and after qualification of the decedent's personal representative, to the extent provided in G.S. 32A-19(b). A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

"**§ 28A-13-2. General duties; relation to persons interested in estate.**

A personal representative is a fiduciary who, in addition to the specific duties stated in this Chapter, is under a general duty to settle the estate of ~~his~~ the personal representative's decedent as expeditiously and with as little sacrifice of value as is reasonable under all of the circumstances. ~~He~~ A personal representative shall use the authority and powers conferred upon

~~him~~ the personal representative by this Chapter, by the terms of the will under which ~~he~~ the personal representative is acting, by any order of court in proceedings to which ~~he~~ the personal representative is party, and by the rules generally applicable to fiduciaries, for the best interests of all persons interested in the estate, and with due regard for their respective rights.

"§ 28A-13-3. Powers of a personal representative or fiduciary.

(a) Except as qualified by express limitations imposed in a will of the decedent or a court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to perform in a reasonable and prudent manner every act which a reasonable and prudent person would perform incident to the collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and expeditious manner as provided by law, including the powers specified in the following subdivisions:

(1) To take possession, custody or control of the personal property of the decedent. If in the opinion of the personal representative ~~his~~ the personal representative's possession, custody or control of such property is not necessary for purposes of administration, such property may be left with or surrendered to the heir or devisee presumptively entitled thereto. ~~He~~ The personal representative has the power to take possession, custody or control of the real property of the decedent if ~~he~~ the personal representative determines such possession, custody or control is in the best interest of the administration of the ~~estate.~~ estate, including the power to eject occupants of real property. Prior to exercising such power over real property the procedure as set out in subsection G.S. 28A-13-3(c) shall be ~~followed.~~ followed, except with respect to real property that is devised to the personal representative in the decedent's will or title to which is acquired by the personal representative during the estate administration, in which case the personal representative shall be immediately entitled to custody, possession, and control, and may institute an estate proceeding under subsection (d) of this section to enforce those rights. If the personal representative determines that such possession, custody or control is not in the best interest of the administration of the estate such property may be left with or surrendered to the heir or devisee presumptively entitled thereto.

(2) To retain assets owned by the decedent pending distribution or liquidation even though such assets may include items which are otherwise improper for investment of trust funds.

(3) To receive assets from other fiduciaries or other sources.

(4) To complete performance of contracts entered into by the decedent that continue as obligations of ~~his~~ the decedent's estate, or to refuse to complete such contracts, as the personal representative may determine to be in the best interests of the estate, but such refusal shall not limit any cause of action which might have been maintained against decedent if ~~he~~ the decedent had refused to complete such contract. In respect to enforceable contracts by the decedent to convey an interest in land, the provisions of G.S. 28A-17-9 are controlling.

(5) To deposit, as a fiduciary, funds of the estate in a bank, including a bank operated by the personal representative pursuant to G.S. 53-163.1.

(6) To make, as a fiduciary, any form of investment allowed by law to the State Treasurer under G.S. 147-69.1, with funds of the estate, when such are not needed to meet debts and expenses immediately payable and are not immediately distributable, including money received from the sale of other

assets; or to enter into other short-term loan arrangements that may be appropriate for use by trustees or beneficiaries generally. Provided, that in addition to the types of investments hereby authorized, deposits in interest-bearing accounts of any credit union authorized to do business in this State, when such deposits are insured in the same manner as required by G.S. 147-69.1 for deposits in a savings and loan association, are hereby authorized.

(7) To abandon or relinquish all rights in any property when, in the opinion of the personal representative acting reasonably and in good faith, it is valueless, or is so encumbered or is otherwise in such condition that it is of no benefit to the estate.

(8) To vote shares of stock or other securities in person or by general or limited proxy, and to execute waivers, consents or objections with respect to such stock or securities.

(9) To pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.

(10) To hold shares of stock or other securities in the name of a nominee, without mention of the estate in the instrument representing stock or other securities or in registration records of the issuer thereof; provided, that

a. The estate records and all reports or accounts rendered by the personal representative clearly show the ownership of the stock or other securities by the personal representative and the facts regarding its holdings, and

b. The nominee shall not have possession of the stock or other securities or access thereto except under the immediate supervision of the personal representative or when such securities are deposited by the personal representative in a clearing corporation as defined in G.S. 25-8-102.

Such personal representative shall be personally liable for any acts or omissions of such nominee in connection with such stock or other securities so held, as if such personal representative had done such acts or been guilty of such omissions.

(11) To insure, at the expense of the estate, the assets of the estate in ~~his~~ the personal representative's possession, custody or control against damage or loss.

(12) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the personal representative shall deem advisable, including the power of a corporate personal representative to borrow from its own banking department, for the purpose of paying debts, taxes, and other claims against the estate, and to mortgage, pledge or otherwise encumber such portion of the estate as may be required to secure such loan or loans. In respect to the borrowing of money on the security of the real property of the decedent, G.S. 28A-17-11 is controlling.

(13) To renew obligations of the decedent for the payment of money.

(14) To advance ~~his~~ the personal representative's own money for the protection of the estate, and for all expenses, losses and liabilities sustained in the administration of the estate or because of the holding or ownership of any estate assets. For such advances, with any interest, the personal representative shall have a lien on the assets of the estate as against a devisee or heir.

(15) To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the estate.

(16) To pay taxes, assessments, ~~his~~ the personal representative's own compensation, and other expenses incident to the collection, care, administration and protection of the assets of the estate in ~~his~~ the personal representative's possession, custody or control.

(17) To sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

(18) To allocate items of income or expense to either estate income or principal, as permitted or provided by law.

(19) To employ persons, including attorneys, auditors, investment advisors, appraisers or agents to advise or assist ~~him~~ the personal representative in the performance of ~~his~~ the personal representative's administrative duties.

(20) To continue any business or venture in which the decedent was engaged at the date of ~~his~~ the decedent's death, where such continuation is reasonably necessary or desirable to preserve the value, including goodwill, of the decedent's interest in such business. With respect to the use of the decedent's interest in a continuing partnership, the provisions of G.S. 59-71 and 59-72 qualify this power; and with respect to farming operations engaged in by the decedent at the time of ~~his~~ the decedent's death, the provisions of G.S. 28A-13-4 qualify this power.

(21) To incorporate or participate in the incorporation of any business or venture in which the decedent was engaged at the time of ~~his~~ the decedent's death.

(22) To provide for the exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate.

(23) To maintain actions for the wrongful death of the decedent according to the provisions of Article 18 of this Chapter and to compromise or settle any such claims, whether in litigation or not. Unless all persons who would be entitled to receive any damages recovered under G.S. 28A-18-2(b)(4) are competent adults and have consented in writing, any such settlement shall be subject to the approval of a judge of the court or tribunal exercising jurisdiction over the action or a judge of the district or superior court in cases where no action has previously been filed. If the claim is brought under Article 31 of Chapter 143 of the General Statutes, the settlement is subject to the approval of the Industrial Commission in accordance with that Article. It shall be the duty of the personal representative in distributing the proceeds of such settlement in any instance to take into consideration and to make a fair allocation to those claimants for funeral, burial, hospital and medical expenses which would have been payable from damages which might have been recovered had a wrongful death action gone to judgment in favor of the plaintiff.

(24) To maintain any appropriate action or proceeding to recover possession of any property of the decedent, or to determine the title thereto; to recover damages for any injury done prior to the death of the decedent to any of ~~his~~ the decedent's property; and to recover damages for any injury done subsequent to the death of the decedent to such property.

(25) To purchase at any public or private sale of any real or personal property belonging to the decedent's estate or securing an obligation of the estate as a fiduciary for the benefit of the estate when, in ~~his~~ the personal representative's opinion, it is necessary to prevent a loss to the estate.

(26) To sell or lease personal property of the estate in the manner prescribed by the provisions of Article 16 of this Chapter.

(27) To sell or lease real property of the estate in the manner prescribed by the provisions of Article 17 of this Chapter.

(28) To enter into agreements with taxing authorities to secure the benefit of the federal marital deduction pursuant to G.S. 28A-22-6.

(29) To pay or satisfy the debts and claims against the decedent's estate in the order and manner prescribed by Article 19 of this Chapter.

(30) To distribute any sum recovered for the wrongful death of the decedent according to the provisions of G.S. 28A-18-2; and to distribute all other assets available for distribution according to the provisions of this Chapter or as otherwise lawfully authorized.

(31) To exercise such additional lawful powers as are conferred upon ~~him~~ the personal representative by the will.

(32) To execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the personal representative.

(33) Repealed by Session Laws 2009-48, s. 10, effective October 1, 2009, and applicable to renunciations and powers of attorney executed on or after that date.

(a1) Except as qualified by express limitations imposed in a will of the decedent, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative shall have absolute discretion to make the election as to which items of the decedent's personal and household effects shall be excluded from the carry over basis provision of the federal income tax law and such election shall be conclusive and binding on all concerned.

(a2) Subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to renounce in accordance with the provisions of Chapter 31B of the General Statutes.

(b) Any question arising out of the powers conferred by subsections (a), (a1), and (a2) of this section shall be determined in accordance with the provisions of Article 18 of this Chapter.

(c) ~~Prior~~ Except with respect to real property that is devised to the personal representative in the decedent's will, or title to which is acquired by the personal representative during the estate administration, in which case the personal representative shall be immediately entitled to custody, possession, and control and may institute an estate proceeding under subsection (d) to enforce those rights, prior to the personal representative exercising possession, custody or control over real property of the ~~estate he~~ estate, the personal representative shall petition the clerk of court to obtain an order authorizing such possession, custody or control. The petition shall include:

(1) A description of the real property which is the subject of the petition;

(2) The names, ages, and addresses, if known, of the devisees and heirs of the decedent;

(3) A statement by the personal representative that ~~he~~ the personal representative has determined that such possession, custody or control is in the best interest of the administration of the estate.

The devisees and heirs will be made parties to the proceeding by service of summons in the manner prescribed by law. If the clerk of court determines that it is in the best interest of the administration of the estate to authorize the personal representative to take possession, custody or ~~control he~~ control, the clerk of court shall grant an order authorizing that power. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-15-1(c), the

personal representative may petition for possession, custody, or control of any real property as a part of that proceeding and is not required to institute a separate special proceeding.

(d) The personal representative shall have the power to institute an estate proceeding pursuant to Article 2 of this Chapter to enforce the rights set forth in this subsection. The clerk of superior court may enter orders necessary to enforce the rights set forth in this subsection. If the person occupying the real property is a tenant or lessee of the property, the personal representative may seek ejectment of the tenant or lessee only pursuant to the provisions of Article 3 of Chapter 42 of the General Statutes.

"§ 28A-13-4. Continuance of farming operations of deceased persons.

When any person dies while engaged in farming operations, ~~his~~ the decedent's personal representative is authorized to continue such farming operations until the end of the current calendar year, and until all crops grown during that year are harvested. The net income from such farming operations shall be personal assets of the estate. Any indebtedness incurred in connection with such farming operations after the date of death shall be preferred over the claims of any heir, legatee, devisee, distributee, general or unsecured creditor of said estate. Nothing herein contained shall limit the powers of a personal representative under the terms of a will.

"§ 28A-13-5. Personal representatives hold in joint tenancy.

Any estate or interest in property which becomes vested in two or more personal representatives shall be held by them in joint tenancy with the incident of survivorship.

"§ 28A-13-6. Exercise of powers of joint personal representatives by one or more than one.

(a) Repealed by Session Laws 2005-192, s. 5, effective January 1, 2006.

(b) If a will expressly makes provision for the execution of any of the powers of personal representatives by all of them or by any one or more of them, the provisions of the will govern.

(c) Repealed by Session Laws 2005-192, s. 5, effective January 1, 2006.

(c1) If there is no governing provision in the will, personal representatives may, by written agreement signed by all of them and filed with and approved by the clerk of superior court of the county in which the personal representatives qualified, provide that any designated one or more of the personal representatives may exercise one or more of the following powers:

(1) Establish and maintain bank accounts for the ~~trust~~ estate and issue checks for the estate.

(2) Maintain inventories, accountings, and income and expense records of the estate.

(3) Enter any safety deposit box rented by the estate.

(4) Employ persons as advisors or assistants in the performance of administrative duties, including agents, attorneys, accountants, brokers, appraisers, and custodians.

(5) List estate property for taxes and prepare and file tax returns for the ~~trust.~~ estate.

(6) Collect and give receipts for claims and debts of the estate.

(7) Pay debts, claims, costs of administration, and taxes of the estate.

(8) Compromise, adjust, or otherwise settle any claim by or against the ~~trust~~ estate and release, in whole or in part, a claim belonging to the estate.

(9) Have custody of the estate property.

(10) Perform any function relating to investment of estate assets.

(d) Subject to subsection (b) of this section, if two or more personal representatives own shares of corporate stock or other securities, their acts with respect to voting shall have the following effect:

(1) If only one votes, in person or by proxy, that personal representative's act binds all;

(2) If more than one vote, in person or by proxy, the act of the majority so voting binds all;

(3) If more that one vote, in person or by proxy, but the vote is evenly split on any particular matter, each faction is entitled to vote the stock or other securities in question proportionately.

(e) Subject to subsections (b), (c1), and (d) of this section, all other acts and duties must be performed by both of the personal representatives if there are two, and by a majority of them if there are more than two. No personal representative who has not joined in exercising a power shall be liable for the consequences of such exercise, nor shall a dissenting personal representative be liable for the consequences of an act in which the personal representative joins at the direction of the majority of the personal representatives, if that personal representative expressed his or her dissent in writing to any other personal representative at or before the time of such joinder.

(f) No personal representative shall be relieved of liability on his or her bond or otherwise by entering into any agreement under this section.

"§ 28A-13-7. Powers and duties of successor personal representative.

A successor personal representative is one appointed to succeed a personal representative whose appointment has terminated by death, resignation or revocation. Unless a contrary intent clearly appears from the will, a successor personal representative has all the powers and duties, discretionary or otherwise, of the original personal representative.

"§ 28A-13-8. Powers and duties of administrator with will annexed.

When an administrator with the will annexed has been appointed, whether or not ~~he~~ the administrator is succeeding a previously appointed personal representative, ~~he~~ that administrator has the same powers and duties, discretionary or otherwise, as if ~~he~~ the administrator had been named executor in the will, unless a contrary intent clearly appears from the will.

"§ 28A-13-9. Powers of surviving personal representative.

When one or more of those nominated as coexecutors in a will is not appointed, or when the appointment of one or more joint personal representatives is terminated, every power granted to such joint personal representatives may be exercised by the surviving representative or representatives; provided that nothing to the contrary appears in the will of a testate decedent.

"§ 28A-13-10. Liability of personal representative.

(a) Property of Estate. – A personal representative shall be liable for and chargeable in ~~his~~ the personal representative's accounts with all of the estate of the decedent which comes into ~~his~~ the personal representative's possession at any time, including all the income therefrom; but ~~he~~ the personal representative shall not be liable for any debts due to the decedent or other assets of the estate which remain uncollected without ~~his~~ the personal representative's fault. Except for commissions allowable by law, ~~he~~ the personal representative shall not be entitled to any profits caused by an increase in values, nor be chargeable with loss by a decrease in value or destruction without ~~his~~ the personal representative's fault, of any part of the estate.

(b) Property Not a Part of Estate. – A personal representative shall be chargeable in ~~his~~ the personal representative's accounts with property not a part of the estate which comes into ~~his~~ the personal representative's possession at any time and shall be liable to the persons entitled thereto if:

(1) The property was received under a duty imposed on ~~him~~ the personal representative by law in the capacity of personal representative; or

(2) ~~He~~ The personal representative has commingled such property with the assets of the estate.

(c) Breach of Duty. – A personal representative shall be liable and chargeable in ~~his~~ the personal representative's accounts for any loss to the estate arising from ~~his~~ the personal representative's embezzlement or commingling of the estate with other property; for loss to the estate through self-dealing; for any loss to the estate from wrongful acts or omissions of ~~his~~ the personal representative's joint personal representatives which ~~he~~ the personal representative could have prevented by the exercise of ordinary care; and for any loss to the estate arising from ~~his~~ the personal representative's failure to act in good faith and with such care, foresight and diligence as an ordinarily reasonable and prudent ~~man~~ person would act with ~~his~~ the ordinarily reasonable and prudent person's own property under like circumstances. If the exercise of power concerning the estate is improper, the personal representative is liable for breach of fiduciary duty to interested persons for resulting damage or loss to the same extent as a trustee of an express trust.

"Article 14.

"Notice to Creditors.

"§ 28A-14-1. Notice for claims.

(a) Every personal representative and collector after the granting of letters shall notify all persons, firms and corporations having claims against the decedent to present the same to such personal representative or collector, on or before a day to be named in such notice, which day must be at least three months from the day of the first publication or posting of such notice. The notice shall set out a mailing address for the personal representative or collector. The notice shall be published once a week for four consecutive weeks in a newspaper qualified to publish legal advertisements, if any such newspaper is published in the county. If there is no newspaper published in the county, but there is a newspaper having general circulation in the county, then at the option of the personal representative, or collector, the notice shall be published once a week for four consecutive weeks in the newspaper having general circulation in the county and posted at the courthouse or the notice shall be posted at the courthouse and four other public places in the county. Personal representatives are not required to publish or mail notice to creditors if the only asset of the estate consists of a claim for damages arising from death by wrongful act. When any collector or personal representative of an estate has published or mailed the notice provided for by this section, no further publication or mailing shall be required by any other collector or personal representative.

(b) Prior to filing the proof of notice required by G.S. 28A-14-2, every personal representative and collector shall personally deliver or send by first class mail to the last known address a copy of the notice required by subsection (a) of this section to all persons, firms, and corporations having unsatisfied claims against the decedent who are actually known or can be reasonably ascertained by the personal representative or collector within 75 days after the granting of letters. Provided, however, no notice shall be required to be delivered or mailed with respect to any claim that is recognized as a valid claim by the personal representative or collector.

(c) The personal representative or collector may personally deliver or mail by first class mail a copy of the notice required by subsection (a) of this section to all creditors of the estate whose names and addresses can be ascertained with reasonable diligence. If the personal representative or collector in good faith believes that the notice required by subsection (b) of this section to a particular creditor is or may be required and gives notice based on that belief, the personal representative or collector is not liable to any person for giving the notice, whether or not the notice is actually required by subsection (b) of this section. If the personal representative or collector in good faith fails to give notice required by subsection (b) of this section, the personal representative or collector is not liable to any person for such failure.

"§ 28A-14-1.1. Validation of certain notices.

(a) Any notice to creditors published or posted under G.S. 28A-14-1 which did not, in the advertisement, name the day after which claims could not be presented is validated.

(b) This section applies to all notices published and posted between October 1, 1975, and January 1, 1991, except that it does not affect any pending litigation or any litigation instituted within 90 days of January 1, 1991.

"§ 28A-14-2. Proof of notice.

A copy of the notice directed by G.S. 28A-14-1(a) to be posted or published, together with an affidavit or affidavits of one of the persons authorized by G.S. 1-600(a) to make affidavits to the effect that such notice was posted or published in accordance with G.S. 28A-14-1(a), and an affidavit of the personal representative or collector, or the attorney for the personal representative or collector, to the effect that a copy of the notice was personally delivered or mailed to each creditor entitled to notice in accordance with G.S. 28A-14-1(b) shall be filed in the office of the clerk of superior court by the personal representative or collector at the time the inventory required by G.S. 28A-20-1 is filed. The copy of the notice, together with the affidavit or affidavits, shall be deemed a record of the court and a copy thereof, duly certified by the clerk of superior court, shall be received as prima facie evidence of the fact of publication or mailing in all the courts of this State.

"§ 28A-14-3. Personal notice to creditor.

The personal representative or collector may cause the notice to be personally served on any creditor.

"Article 15.

"Assets; Discovery of Assets.

"§ 28A-15-1. Assets of the estate generally.

(a) All of the real and personal property, both legal and equitable, of a decedent shall be assets available for the discharge of debts and other claims against ~~his~~ the decedent's estate in the absence of a statute expressly excluding any such property. Provided that before real property is selected the personal representative must determine that such selection is in the best interest of the administration of the estate.

(b) In determining what property of the estate shall be sold, leased, pledged, mortgaged or exchanged for the payment of the debts of the decedent and other claims against ~~his~~ the decedent's estate, the personal representative shall select the assets which in ~~his~~ the personal representative's judgment are calculated to promote the best interests of the estate. In the selection of assets for this purpose, there shall be no necessary distinction between real and personal property, absent any contrary provision in the will.

(c) If it shall be determined by the personal representative that it is in the best interest of the administration of the estate to sell, lease, or mortgage any real estate or interest therein to obtain money for the payment of debts and other claims against the decedent's estate, the personal representative shall institute a special proceeding before the clerk of superior court for such purpose pursuant to Article 17 of this Chapter, except that no such proceeding shall be required for a sale made pursuant to authority given by will. A general provision granting authority to the personal representative to sell the testator's real property, or incorporation by reference of the provisions of G.S. 32-27(2) shall be sufficient to eliminate the necessity for a proceeding under Article 17. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-13-3(c), the personal representative may petition for sale, lease, or mortgage of any real property as a part of that proceeding and is not required to institute a separate special proceeding.

(d) The crops of every deceased person, remaining ungathered at ~~his~~ the person's death, shall, in all cases, belong to the personal representative or collector, as part of the personal assets of the decedent's estate; and shall not pass to the devisee by virtue of any devise of the land, unless such intent be manifest and specified in the will.

"§ 28A-15-2. Title and possession of property.

(a) Personal Property. – Subsequent to the death of the decedent and prior to the appointment and qualification of the personal representative or collector, the title and the right

of possession of personal property of the decedent is vested in ~~his~~ the decedent's heirs; but upon the appointment and qualification of the personal representative or collector, the heirs shall be divested of such title and right of possession which shall be vested in the personal representative or collector relating back to the time of the decedent's death for purposes of administering the estate of the decedent. But, if in the opinion of the personal representative, ~~his~~ the personal representative's possession, custody and control of any item of personal property is not necessary for purposes of administration, such possession, custody and control may be left with or surrendered to the heir or devisee presumptively entitled thereto.

(b) Real Property. – The title to real property of a decedent is vested in ~~his~~ the decedent's heirs as of the time of ~~his~~ the decedent's death; but the title to real property of a decedent devised under a valid probated will becomes vested in the devisees and shall relate back to the decedent's death, subject to the provisions of G.S. 31-39.

"§ 28A-15-3. Nonexoneration of encumbered property.

When real or personal property subject to any lien or security interest, except judgment liens, is specifically devised, the devisee takes the property subject to the encumbrance and without a right to have other assets of the decedent applied to discharge the secured obligation, unless an express provision of the will confers such right of exoneration. A general testamentary direction to pay the debts of the decedent is not sufficient to confer such right.

"§ 28A-15-4. Encumbered assets.

When any assets of the estate are encumbered by mortgage, pledge, lien or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance, or convey or transfer the encumbered assets to the creditor in satisfaction of ~~his~~ the creditor's lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, if it appears to be for the best interest of the estate; provided that payment of an encumbrance shall not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration by express provisions of the will.

"§ 28A-15-5. Order in which assets appropriated; abatement.

(a) General Rules. – In the absence of testamentary indication as to the order of abatement, or some other controlling statute, shares of devisees and of heirs abate, without any preference or priority as between real and personal property, in the following order:

(1) Property not disposed of by the will;
(2) Residuary devises;
(3) General devises;
(4) Specific devises.

For purposes of abatement, a demonstrative devise of money or property payable out of or charged on a particular fund or other property is treated as a specific devise; but if the particular fund or property out of which the demonstrative devise is to be paid is nonexistent or insufficient at the death of the testator, the deficiency is to be payable out of the general estate of the decedent and is to be regarded as a general devise and must abate pro rata with other general devises. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received, had full distribution of the property been made in accordance with the terms of the will.

(b) Abatement; Sales; Contribution. – When property which has been specifically devised is sold, leased, or mortgaged, or a security therein is created, by the personal representative, abatement shall be achieved by ratable adjustments in, or contributions from other interest in the remaining assets. The clerk of superior court shall, at the time of the hearing on the petition for final distribution, determine the amounts of the respective contributions and whether the same shall be made before distribution or shall constitute a lien on specific property which is distributed.

"§ 28A-15-6. Federal income tax refunds – joint returns.

Upon the determination by the United States Treasury Department of an overpayment of income tax by a married couple filing a joint federal income tax return, one of whom has died since the filing of such return or where a joint federal income tax return is filed on behalf of a husband and wife, one of whom has died prior to the filing of the return, any refund of the tax by reason of such overpayment, if not in excess of five hundred dollars ($500.00), shall be the sole and separate property of the surviving spouse. In the event that both spouses are dead at the time such overpayment is determined, such refund, if not in excess of five hundred dollars ($500.00), shall be the sole and separate property of the estate of the spouse who died last and may be paid directly by the Treasury Department to the executor or administrator of such estate, or to the person entitled to the possession of the assets of a small estate pursuant to the provisions of Article 25 of this Chapter.

"§ 28A-15-7. Federal income tax refunds – separate returns.

Upon the determination by the United States Treasury Department of an overpayment of income tax by any married person filing a separate return, any refund of the tax by reason of such overpayment, if not in excess of two hundred fifty dollars ($250.00), exclusive of interest, shall be the sole and separate property of the surviving spouse, and the United States Treasury Department may pay said sum directly to such surviving spouse, and such payment to the extent thereof shall operate as a complete acquittal and discharge of the United States Treasury Department.

"§ 28A-15-8. State income tax returns.

Upon the determination by the Secretary of Revenue of North Carolina of an overpayment of income tax by any married person, any refund of the tax by reason of such overpayment, if not in excess of two hundred dollars ($200.00) exclusive of interest, shall be the sole and separate property of the surviving spouse, and said Secretary of Revenue may pay said sum directly to such surviving spouse, and such payment to the extent thereof shall operate as a complete acquittal and discharge of the Secretary of Revenue.

"§ 28A-15-9. Excess funds.

If the amount of any refund exceeds the sums specified in G.S. 28A-15-6, 28A-15-7 or 28A-15-8, the sums specified therein and one half of any additional sums shall be the sole and separate property of the surviving spouse. The remaining one half of such additional sums shall be the property of the estate of the decedent spouse.

"§ 28A-15-9.1. Phase II payments.

A Phase II payment as defined in G.S. 28A-21-3.1 shall be the property of the distributees paid in accordance with that section.

"§ 28A-15-10. Assets of decedent's estate for limited purposes.

(a) When needed to satisfy claims against a decedent's estate, assets may be acquired by a personal representative or collector from the following sources:

(1) Tentative trusts created by the decedent in savings accounts for other persons.

(2) Gifts causa mortis made by the decedent.

(3) Joint deposit accounts with right of survivorship created by decedent pursuant to the provisions of G.S. 41-2.1 or otherwise; and joint tenancies with right of survivorship created by decedent in corporate stocks or other investment securities.

(4) An interest in a security passing to a beneficiary pursuant to the provisions of Article 4 of Chapter 41 of the General Statutes.

Such assets shall be acquired solely for the purpose of satisfying such claims, however, and shall not be available for distribution to heirs or devisees.

(b) Where there are not sufficient personal and real assets of the decedent to satisfy all the debts and other claims against ~~his~~ the decedent's estate, the personal representative shall have the right to sue for and recover any and all personal property or real property, or interest

therein, which the decedent may in any manner have transferred or conveyed with intent to hinder, delay, or defraud ~~his~~ the decedent's creditors, and any personal property or real property, or interest therein, so recovered shall constitute assets of the estate in the hands of the personal representative for the payment of debts and other claims against the estate of the decedent. But if the alienee has sold the personal property or real property, or interest therein, so fraudulently acquired by ~~him~~ the alienee from the decedent to a bona fide purchaser for value without notice of the fraud, then such personal property or real property, or interest therein, may not be recovered from such bona fide purchaser but the fraudulent alienee shall be liable to the personal representative for the value of the personal property or real property, or interest therein, so acquired and disposed of to a bona fide purchaser. If the whole recovery from the fraudulent alienee shall not be necessary for the payment of the debts and other claims against the estate of the decedent, the surplus shall be returned to such fraudulent alienee or ~~his~~ the fraudulent alienee's assigns.

(c) Where there has been a recovery in an action for wrongful death, the same shall not be applied to the payment of debts and other claims against the estate of decedent or devises, except as to the payment of reasonable burial and funeral expenses and reasonable hospital and medical expenses incident to the injury resulting in death and as limited and provided in G.S. 28-18-2 [G.S. 28A-18-2].

"§ 28A-15-11. Debt due from personal representative not discharged by appointment.

The appointment of any person as personal representative does not discharge any debt or demand due from such person to the decedent.

"§ 28A-15-12. ~~Examination of persons or corporations believed to have possession of~~ Actions to recover property of decedent.

(a) ~~Whenever a personal representative or collector makes oath or affirmation before the clerk of superior court of the county where the party to be examined resides or does business that he has reasonable ground to believe, setting forth the grounds of his belief, that any person, firm or corporation has in his or its possession any property of any kind belonging to the estate of his decedent, the clerk shall issue a notice to be served upon the person or any member of the firm or officer, agent or employee of the firm or corporation designated in the affidavit, to appear before the clerk at his office at a time fixed in the notice, not less than three days after the issuance of the notice, and be examined under oath by the personal representative or collector or his attorney concerning the possession of such property. If upon examination the clerk of superior court finds that the person examined or the firm or corporation for which he works has in his or its possession any property belonging solely to the decedent, and fails to show any satisfactory reason for retaining possession of the property, the clerk shall issue an order requiring the person, firm or corporation forthwith to deliver the property to said personal representative or collector and may enforce compliance with the order by proceedings as for contempt of court: Provided, that in the case of a firm or corporation, whenever any person other than a partner or executive officer of such firm or corporation is examined, no such order shall be made until at least three days after service of notice upon a partner or executive officer of such firm or corporation to show cause why such order should not be made.~~

(a1) A personal representative or collector shall have the right to bring an action to sue for and recover any property of any kind belonging to the estate of the personal representative's decedent, by action filed in the Superior Court Division of the General Court of Justice and shall be entitled to such other provisional remedies as provided for under Subchapter 13 of Chapter 1 of the General Statutes.

(b) ~~Any person aggrieved by the order of the clerk of superior court may, within five days, appeal to the judge holding the next session of superior court of the county after the order is made or to the resident judge of the district, but as a condition precedent to his appeal he shall give a justified bond in a sum at least double the value of the property in question, conditioned upon the safe delivery of the property and the payment of damages for its~~

~~detention, to the personal representative or collector in the event that the order of the clerk should be finally sustained. When the bond is executed and delivered to the court, no attachment as for contempt shall be served upon the appealing party and any contempt order theretofore issued shall be stayed; but if the appellant fails to have his appeal heard at the next session of superior court held in his county, or by the resident judge of the district within 30 days after giving notice, the appeal shall be deemed abandoned, and the stay of any contempt order theretofore issued shall terminate.~~

(b1) A personal representative, collector, or any interested person shall have the right to bring an estates proceeding seeking the examination of any persons reasonably believed to be in possession of property of any kind belonging to the estate of the decedent including a demand for the recovery of such property. An estates proceeding brought under the provisions of this subsection shall be instituted by the filing of a verified petition and shall be conducted in accordance with the provisions of Article 2 of this Chapter. The court may enter orders requiring the examination of persons consistent with this subsection and, if the court determines that a person is in possession of property of the estate of the decedent, shall have the authority to order recovery of that property. Orders issued by the clerk of superior court shall be enforceable by proceedings as for contempt of court.

(c) The party against whom the final judgment is rendered shall be adjudged to pay the costs of the proceedings hereunder.

(d) The remedies provided in this section shall not be exclusive, but shall be in addition to any remedies which are now or may hereafter be provided.

"§ 28A-15-13. Opening and inventory of decedent's safe-deposit box.

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

(1) Institution. – Any entity or person having supervision or possession of a safe-deposit box to which a decedent had access.

(1a) Deputy. – A person appointed in writing by a lessee or cotenant of a safe-deposit box as having right of access to the safe-deposit box without further authority or permission of the lessee or cotenant, in a manner and form designated by the institution.

(2) Letter of authority. – Letters of administration, letters testamentary, an affidavit of collection of personal property, an order of summary administration, or a letter directed to the institution designating a person entitled to receive the contents of a safe-deposit box to which the decedent had access. The letter of authority must be signed by the clerk of superior court or by the clerk's representative.

(3) Qualified person. – A person possessing a letter of authority or a person named as a deputy, lessee or cotenant of the safe-deposit box to which the decedent had access.

(b) Presence of Clerk Required. – Any safe-deposit box to which a decedent had access shall be sealed by the institution having supervision or possession of the box. Except as provided in subsection (c) of this section, the presence of the clerk of superior court of the county where the safe-deposit box is located or the presence of the clerk's representative is required before the box may be opened. The clerk or the clerk's representative shall open the safe-deposit box in the presence of the person possessing a key to the box and a representative of the institution having supervision or possession of the box. The clerk shall make an inventory of the contents of the box and furnish a copy to the institution and to the person possessing a key to the box.

(c) Presence of Clerk Not Required. – The presence of the clerk of superior court or the clerk's representative is not required when the person requesting the opening of the decedent's safe-deposit box is a qualified person. In that event, the qualified person shall make an

inventory of the contents of the box and furnish a copy to the institution and to the person possessing a key to the box if that person is someone other than the qualified person.

(d) Testamentary Instrument in Box. – If the safe-deposit box contains any writing that appears to be a will, codicil, or any other instrument of a testamentary nature, then the clerk of superior court or the qualified person shall file the instrument in the office of the clerk of superior court.

(e) Release of Contents. – Except as provided in subsection (d) for testamentary instruments, the institution shall not release any contents of the safe-deposit box to anyone other than a qualified person.

(f) No Tax Waiver Required. – No tax waiver is required for the release of the contents of the decedent's safe-deposit box.

"Article 16.

"Sales or Leases of Personal Property.

"§ 28A-16-1. Sales or leases without court order.

(a) A personal representative has the power to sell, at either a public or private sale, or to lease, personal property of the decedent without a court order.

(b) A personal representative who sells or leases personal property of the decedent without a court order is not required to file a special report or have the transaction confirmed by the clerk of superior court, or to follow any of the procedure set forth in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales," but shall include in ~~his~~ the personal representative's next account, either annual or final, a record of the receipts and disbursements incident to the transaction.

"§ 28A-16-2. Sales or leases by court order.

(a) All sales or leases of personal property of the decedent by a collector shall be made only upon order obtained, by motion, from the clerk of superior court.

(b) A personal representative may, if ~~he~~ the personal representative so desires, request the clerk of superior court to issue to ~~him~~ the personal representative an order to sell or lease personal property of the decedent.

(c) Sales or leases of personal property of the decedent held pursuant to court order shall be conducted as provided in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales."

(d) A personal representative may, for ~~his~~ the personal representative's own benefit, purchase or lease personal property belonging to the decedent at a public sale conducted under an order of the clerk of superior court, if the transaction is reported to the clerk of superior court and confirmed by ~~him.~~ the clerk of superior court.

"§ 28A-16-3. Sales of household furnishings.

If the decedent is survived by a spouse, no sale or lease shall be made of the household furnishings in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse, if such dwelling house was owned by the deceased spouse at the time of his or her death, until the expiration of the time limits set forth in G.S. 29-30(c) for the filing by the surviving spouse of an election in regard to the property of the decedent.

"Article 17.

"Sales, Leases or Mortgages of Real Property.

"§ 28A-17-1. Sales of real property.

Pursuant to authority contained in G.S. 28A-15-1 the personal representative may, at any time, apply to the clerk of superior court of the county where the decedent's real property or some part thereof is situated, by petition, to sell such real property for the payment of debts and other claims against the decedent's estate.

"§ 28A-17-2. Contents of petition for sale.

The petition to sell real property shall include:

(1) A description of the real property and interest therein sought to be sold;

(2) The names, ages and addresses, if known, of the devisees and heirs of the decedent;

(3) A statement that the personal representative has determined that it is in the best interest of the administration of the estate to sell the real property sought to be sold.

"§ 28A-17-3. Petition for partition.

When it is alleged that the real property of the decedent sought to be sold consists in whole or in part of an undivided interest in real property, the personal representative of the decedent may include, in the petition to sell the real property for the payment of debts and other claims against the decedent's estate, a request for partition of the lands sought to be sold.

"§ 28A-17-4. Heirs and devisees necessary parties.

No order to sell real property shall be granted until the heirs and devisees of the decedent have been made parties to the special proceeding by service of summons in the manner required by ~~law.~~ law, in accordance with G.S. 1A-1, Rule 4. Upon such service, the court shall appoint a guardian ad litem for heirs and devisees who are unknown or whose addresses are unknown, and summons shall issue to ~~him~~ the guardian ad litem as such. The guardian ad litem shall file answer for such heirs and devisees and defend for them, and ~~he~~ the guardian ad litem shall be paid such sum as the court may fix, to be paid as costs of the proceeding.

"§ 28A-17-5. Property subject to sale; conveyance by deceased in fraud of creditors.

The real property subject to sale under this Article shall include real property recovered from a fraudulent alienee pursuant to G.S. 28A-15-10(b).

"§ 28A-17-6. Adverse claimant to be heard; procedure.

When the real property sought to be sold, or any interest therein, is claimed by another person, such claimant may be made a party to the proceeding, and in any event may become a party upon ~~his~~ the claimant's own motion. When an issue of law or fact is joined between the parties, the procedure shall be as prescribed for other special proceedings.

"§ 28A-17-7. Order granted if petition not denied; public or private sale; procedure for sale.

If, by default or admission, the allegations in the petition are not controverted, the clerk of superior court may summarily order a sale. The procedure for the sale shall be as is provided in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales." If it is made to appear to the clerk by petition and by satisfactory proof that it will be for the best interest of the estate to sell by private sale, the clerk may authorize a private sale in accordance with the provisions of G.S. 1-339.33 through 1-339.40.

"§ 28A-17-8. Under power in will, sales public or private.

Sales of real property made pursuant to authority given by will may be either public or private, unless the will otherwise directs, and may be on such terms as in the opinion of the personal representative are most advantageous to those interested in the decedent's estate.

"§ 28A-17-9. Death of vendor under contract; representative to convey.

When any decedent has contracted to sell any real property and has given bond or other enforceable written contract to the purchaser to convey the same, ~~his~~ the decedent's personal representative may execute and deliver a deed to such real property and such deed shall convey the title as fully as if it had been executed and delivered by the decedent. No deed shall be made unless the purchaser complies with the terms of the bond or other written contract. If the contract for conveyance requires the giving of a warranty deed, the deed given by the personal representative shall contain such warranties as required by the contract and the warranties shall be binding on the estate and not on the personal representative personally.

"§ 28A-17-10. Title in personal representative for estate; he or successor to convey.

When real property is conveyed to a personal representative for the benefit of the estate ~~he~~ the personal representative represents, ~~he~~ the personal representative or any successor personal representative may sell and convey it upon such terms as ~~he~~ the personal representative may

deem just and for the advantage of the estate. The procedure shall be as is provided in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales." If it is made to appear to the clerk of superior court by petition and by satisfactory proof that it will be for the best interest of the estate to sell by private sale, the clerk may authorize a private sale in accordance with the provisions of G.S. 1-339.33 through 1-339.40.

"§ 28A-17-11. Personal representative may lease or mortgage.

In lieu of asking for an order of sale of real property, the personal representative may request the clerk of superior court to issue to ~~him~~ the personal representative an order to lease or to mortgage real property of the decedent. The clerk of superior court is authorized to issue an order to lease or mortgage on such terms as ~~he~~ the clerk deems to be in the best interest of the estate.

"§ 28A-17-12. Sale, lease or mortgage of real property by heirs or devisees.

(a) If the first publication or posting of the general notice to creditors as provided for in G.S. 28A-14-1 occurs within two years after the death of the decedent:

(1) All sales, leases or mortgages of real property by heirs or devisees of any resident or nonresident decedent made after the death of the decedent and before the first publication or posting of the general notice to creditors are void as to creditors and personal representatives; and

(2) All sales, leases or mortgages of real property by heirs or devisees of any resident or nonresident decedent made after such first publication or posting and before approval of the final account shall be void as to creditors and personal representatives unless the personal representative joins in the sale, lease or mortgage.

(b) If the first publication or posting of the general notice to creditors as provided for in G.S. 28A-14-1 does not occur within two years after the death of the decedent, all sales, leases or mortgages of real property by heirs or devisees of any resident or nonresident decedent shall be valid as to creditors and personal representatives of the decedent.

"§ 28A-17-13. Prior validating acts.

Chapter 70 of the Public Laws of 1923, Chapter 48 of the Public Laws of 1925, Chapter 146 of the Public Laws of 1931, and Chapters 31 and 381 of the Public Laws of 1935, all validating certain prior sales of real property by executors or administrators and heretofore codified as G.S. 28-100 through 28-104, shall remain in full force and effect, though no longer carried forward as part of the General Statutes.

"Article 18.

"Actions and Proceedings.

"§ 28A-18-1. Survival of actions to and against personal representative.

(a) Upon the death of any person, all demands whatsoever, and rights to prosecute or defend any action or special proceeding, existing in favor of or against such person, except as provided in subsection (b) hereof, shall survive to and against the personal representative or collector of ~~his~~ the person's estate.

(b) The following rights of action in favor of a decedent do not survive:

(1) Causes of action for libel and for slander, except slander of title;

(2) Causes of action for false imprisonment;

(3) Causes of action where the relief sought could not be enjoyed, or granting it would be nugatory after death.

"§ 28A-18-2. Death by wrongful act of another; recovery not assets.

(a) When the death of a person is caused by a wrongful act, neglect or default of another, such as would, if the injured person had lived, have entitled ~~him~~ the injured person to an action for damages therefor, the person or corporation that would have been so liable, and ~~his or their~~ the personal representatives or ~~collectors,~~ collectors of the person or corporation that would have been so liable, shall be liable to an action for damages, to be brought by the

personal representative or collector of the decedent; and this notwithstanding the death, and although the wrongful act, neglect or default, causing the death, amounts in law to a felony. The personal representative or collector of the decedent who pursues an action under this section may pay from the assets of the estate the reasonable and necessary expenses, not including attorneys' fees, incurred in pursuing the action. At the termination of the action, any amount recovered shall be applied first to the reimbursement of the estate for the expenses incurred in pursuing the action, then to the payment of attorneys' fees, and shall then be distributed as provided in this section. The amount recovered in such action is not liable to be applied as assets, in the payment of debts or legacies, except as to burial expenses of the deceased, and reasonable hospital and medical expenses not exceeding four thousand five hundred dollars ($4,500) incident to the injury resulting in death, except that the amount applied for hospital and medical expenses shall not exceed fifty percent (50%) of the amount of damages recovered after deducting attorneys' fees, but shall be disposed of as provided in the Intestate Succession Act. The limitations on recovery for hospital and medical expenses under this subsection do not apply to subrogation rights exercised pursuant to G.S. 135-40.13A. All claims filed for such services shall be approved by the clerk of the superior court and any party adversely affected by any decision of said clerk as to said claim may appeal to the superior court in term time.

(b) Damages recoverable for death by wrongful act include:

(1) Expenses for care, treatment and hospitalization incident to the injury resulting in death;

(2) Compensation for pain and suffering of the decedent;

(3) The reasonable funeral expenses of the decedent;

(4) The present monetary value of the decedent to the persons entitled to receive the damages recovered, including but not limited to compensation for the loss of the reasonably expected;

a. Net income of the decedent,

b. Services, protection, care and assistance of the decedent, whether voluntary or obligatory, to the persons entitled to the damages recovered,

c. Society, companionship, comfort, guidance, kindly offices and advice of the decedent to the persons entitled to the damages recovered;

(5) Such punitive damages as the decedent could have recovered pursuant to Chapter 1D of the General Statutes had ~~he~~ the decedent survived, and punitive damages for wrongfully causing the death of the decedent through malice or willful or wanton conduct, as defined in G.S. 1D-5;

(6) Nominal damages when the jury so finds.

(c) All evidence which reasonably tends to establish any of the elements of damages included in subsection (b), or otherwise reasonably tends to establish the present monetary value of the decedent to the persons entitled to receive the damages recovered, is admissible in an action for damages for death by wrongful act.

(d) In all actions brought under this section the dying declarations of the deceased shall be admissible as provided for in G.S. 8-51.1.

"§ 28A-18-3. To sue or defend in representative capacity.

All actions and proceedings brought by or against personal representatives or collectors upon any cause of action or right to which the estate of the decedent is the real party in interest, must be brought by or against them in their representative capacity.

"§ 28A-18-4. Service on or appearance of one binds all.

In actions against personal representatives or collectors, they are all to be considered as one person, representing the decedent; and if the summons is served on one or more, but not all, the

plaintiff may proceed against those served, and if ~~he~~ the plaintiff recovers, judgment may be entered against all.

"§ 28A-18-5. When creditors may sue on claim; execution in such action.

An action may be brought by a creditor against the personal representative or collector on a demand at any time after it is due, but no execution shall issue against the personal representative or collector on a judgment therein against ~~him~~ the personal representative or collector without leave of the court, upon notice of 20 days and upon proof that the defendant has refused to pay such judgment or its ratable part, and such judgment shall be a lien on the property of the estate of the decedent only from the time of such leave granted.

"§ 28A-18-6. Service by publication on executor without bond.

Whenever process may issue against an executor who has not given bond, and the same cannot be served upon ~~him~~ the executor by reason of ~~his~~ the executor's absence or concealment, service of such process may be made by publication in the manner prescribed in other civil actions.

"§ 28A-18-7. Execution by successor in office.

Any personal representative or collector may have execution issued on any judgment recovered by any person who preceded ~~him~~ the personal representative or collector in the administration of the estate, or by the decedent, in the same cases and the same manner as the original plaintiff might have done.

"§ 28A-18-8. Action to continue, though letters revoked.

In case the letters of a personal representative or collector are revoked, pending an action to which ~~he~~ the personal representative or collector is a party, the adverse party may, notwithstanding, continue the action against ~~him~~ the personal representative or collector in order to charge ~~him~~ the personal representative or collector personally. If such party does not elect so to do, within six months after notice of such revocation, the action may be continued against the successor of the personal representative or collector in the administration of the estate, in the same manner as in case of death.

"Article 19.

"Claims against the Estate.

"§ 28A-19-1. Manner of presentation of claims.

(a) A claim against a decedent's estate must be in writing and state the amount or item claimed, or other relief sought, the basis for the claim, and the name and address of the claimant; and must be presented by one of the following methods:

(1) By delivery in person or by mail to the personal representative, collector or the clerk of superior court. Such claim will be deemed to have been presented from the time of such delivery.

(2) By mailing, registered or certified mail, return receipt requested, to the personal representative or collector at the address set out in the general notice to creditors. Such claim will be deemed to have been presented from the time when the return receipt is signed by the personal representative, collector, or ~~his agent,~~ agent of the personal representative or collector, or is refused by the personal representative, collector, or ~~his agent.~~ agent of the personal representative or collector.

(3) By delivery to the clerk of court of the county in which the estate is pending, which notice shall be filed in the appropriate estate file and copy mailed first class by the clerk of superior court at the expense of the claimant to the personal representative, collector, or ~~his agent.~~ agent of the personal representative or collector. The claim will be deemed to have been presented from the time of delivery to the clerk of court.

(b) In an action commenced after the death of the decedent against ~~his~~ the decedent's personal representative or collector as such, the commencement of the action in the court in

which such personal representative or collector qualified will constitute the presentation of a claim and no further presentation is necessary. In an action filed in any other court such claim will be deemed to have been presented at the time of the completion of service of process on such personal representative or collector.

(c) In an action pending against the decedent at the time of ~~his~~ the decedent's death, which action survives at law, the court may order the substitution of the personal representative or collector for the decedent ~~or~~ on motion therefor and that motion will constitute the presentation of a ~~claim~~ claim, provided that substitution occurs within the time specified for the presentation of claims under G.S. 28A-19-3 and no further presentation is necessary. Such claim will be deemed to have been presented from the time of the substitution, or motion therefor.

"§ 28A-19-2. Further information or affidavit of claim may be required.

(a) If the personal representative or collector so elects, ~~he~~ the personal representative or collector may demand any or all of the following prior to taking action on the claim:

(1) If the claim is not yet due, that the date when it will become due be stated;

(2) If the claim is contingent or unliquidated, that the nature of the uncertainty be stated;

(3) If the claim is secured, that the security be described.

(b) Upon any claim being presented against the estate in the manner prescribed in G.S. 28A-19-1, the personal representative or collector may require the affidavit of the claimant or other satisfactory evidence that such claim is justly due, that no payments have been made thereon, and that there are no offsets against the same, to the knowledge of the claimant; or if any payments have been made, or any offsets exist that their nature and amount be shown by the evidence or stated in the affidavit.

"§ 28A-19-3. Limitations on presentation of claims.

(a) All claims against a decedent's estate which arose before the death of the decedent, except contingent claims based on any warranty made in connection with the conveyance of real estate and claims of the United States and tax claims of the State of North Carolina and subdivisions thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, secured or unsecured, founded on contract, tort, or other legal basis, which are not presented to the personal representative or collector pursuant to G.S. 28A-19-1 by the date specified in the general notice to creditors as provided for in G.S. 28A-14-1(a) or in those cases requiring the delivery or mailing of notice as provided for in G.S. 28A-14-1(b), within 90 days after the date of the delivery or mailing of the notice if the expiration of said 90-day period is later than the date specified in the general notice to creditors, are forever barred against the estate, the personal representative, the collector, the heirs, and the devisees of the decedent. Provided further, if the expiration of said 90-day period is later than the date specified in the general notice to creditors, the notice delivered or mailed to each creditor, if any, shall be accompanied by a statement which specifies the deadline for filing the claim of the affected creditor.

(b) All claims against a decedent's estate which arise at or after the death of the decedent, except claims of the United States and tax claims of the State of North Carolina and subdivisions thereof whether due or to become due, absolute or contingent, liquidated or unliquidated, secured or unsecured, founded on contract, tort, or other legal basis are forever barred against the estate, the personal representative, the collector, the heirs, and the devisees of the decedent unless presented to the personal representative or collector as follows:

(1) With respect to any claim based on a contract with the personal representative or collector, within six months after the date on which performance by the personal representative or collector is due;

(2) With respect to any claim other than a claim based on a contract with the personal representative or collector, within six months after the date on which the claim arises.

(c) Except as otherwise provided by subsection (f) of this section, no claim shall be barred by the statute of limitations which was not barred thereby at the time of the decedent's death, if the claim is presented within the period provided by subsection (a) hereof.

(d) All claims of creditors upon whom there has been personal service of notice as provided in G.S. 28A-14-3 are forever barred unless presented to the personal representative or collector within the time and manner set out in this Article.

(e) Except as otherwise provided by subsection (f) of this section, unless a claim has been presented pursuant to G.S. 28A-19-1 giving notice of an action or special proceeding pending against a decedent at the time of ~~his~~ the decedent's death and surviving under G.S. 28A-18-1 within the time provided by subsection (a) of this section, no recovery may be had upon any judgment obtained in any such action or proceeding against the estate, the personal representative, the collector, the heirs, and the devisees of the decedent.

(f) All claims barrable under the provisions of subsections (a) and (b) hereof shall, in any event, be barred if the first publication or posting of the general notice to creditors as provided for in G.S. 28A-14-1 does not occur within three years after the death of the decedent.

(g) Nothing in this section affects or prevents any action or proceeding to enforce any mortgage, deed of trust, pledge, lien (including judgment lien), or other security interest upon any property of the decedent's estate, but no deficiency judgment will be allowed if the provisions of this section are not complied with.

(h) The word "claim" as used in this section does not apply to claims of heirs or devisees to their respective shares or interests in the decedent's estate in their capacity as such heirs or devisees.

(i) Nothing in this section shall bar:

(1) Any claim alleging the liability of the decedent or personal representative; or

(2) Any proceeding or action to establish the liability of the decedent or personal representative; or

(3) The recovery on any judgment against the decedent or personal representative

to the extent that the decedent or personal representative is protected by insurance coverage with respect to such claim, proceeding or judgment or where there is underinsured or uninsured motorist coverage that might extend to such claim, proceeding, or judgment.

(j) Except as otherwise specifically provided in this section, the limitations on presentation of claims set forth in this section apply to claims by the State of North Carolina, its subdivisions, and its agencies.

"§ 28A-19-4. Payment of claims and charges.

As soon as the personal representative or collector is possessed of sufficient means over and above the other costs of administration, ~~he~~ the personal representative or collector shall pay the year's allowances in the amounts and in the manner prescribed in G.S. 30-15 to 30-33. Prior to the date specified in the general notice to creditors as provided for in G.S. 28A-14-1, the personal representative or collector may pay such other claims and charges as ~~he~~ the personal representative or collector deems in the best interest of the estate if the total assets are sufficient to pay all claims and charges against the estate.

"§ 28A-19-5. Contingent or unliquidated claims.

(a) If a contingent or unliquidated claim becomes absolute before the distribution of the estate of the decedent, it shall be paid in the same manner as absolute claims of the same class. In other cases the clerk of superior court may provide for the payment of contingent or unliquidated claims in any one of the following ways:

(1) The creditor and the personal representative or collector may determine, by agreement, arbitration, or compromise, the value of the contingent or unliquidated claim, according to its probable present worth, and with the approval of the clerk of superior court, it may be allowed and paid in the same manner as an absolute claim.

(2) The clerk of superior court may order the personal representative or collector to retain sufficient funds to pay the claim if and when the same becomes absolute, and order distribution of the balance of the estate.

(3) The clerk of superior court may order distribution of the estate as though the contingent or unliquidated claim did not exist, but the heirs and devisees of the estate of the decedent are liable to the creditor to the extent of the estate received by them, if the contingent or unliquidated claim thereafter becomes absolute; and the court may require such heirs and devisees to give bond for the performance of their liability to the contingent or unliquidated creditor.

(4) Such other method as the clerk of superior court may order.

(b) With respect to a contingent or unliquidated claim rejected by a personal representative pursuant to G.S. 28A-19-16, the claimant may, within the three-month period prescribed by G.S. 28A-19-16, file a petition for an order of the clerk of superior court in accordance with subsection (a) of this section, provided that nothing in this section shall require the clerk of superior court to hear and determine the validity of, priority of, or amount of a contingent or unliquidated claim that has yet become absolute.

"**§ 28A-19-6. Order of payment of claims.**

(a) After payment of costs and expenses of administration, the claims against the estate of a decedent must be paid in the following order:

First class. Claims which by law have a specific lien on property to an amount not exceeding the value of such property.

Second class. Funeral expenses to the extent of three thousand five hundred dollars ($3,500). This limitation shall not include burial place or gravestone. The preferential limitation herein granted shall be construed to be only a limit with respect to preference of payment and shall not be construed to be a limitation on reasonable funeral expenses which may be incurred; nor shall the preferential limitation of payment in the amount of three thousand five hundred dollars ($3,500) be diminished by any Veterans Administration, social security or other federal governmental benefits awarded to the estate of the decedent or to ~~his or her~~ the decedent's beneficiaries.

Third class. Costs associated with gravestones and reasonable costs for the purchase of a suitable burial place as provided in G.S. 28A-19-9 to the extent of one thousand five hundred dollars ($1,500). The preferential limitation herein granted shall be construed to be only a limit with respect to preference of payment and shall not be construed to be a limitation on reasonable gravestone or burial place expenses which may be incurred; nor shall the preferential limitation of payment in the amount of one thousand five hundred dollars ($1,500) be diminished by any Veterans Administration, social security or other federal governmental benefits awarded to the estate of the decedent or to ~~his or her~~ the decedent's beneficiaries.

Fourth class. All dues, taxes, and other claims with preference under the laws of the United States.

Fifth class. All dues, taxes, and other claims with preference under the laws of the State of North Carolina and its subdivisions.

Sixth class. Judgments of any court of competent jurisdiction within the State, docketed and in force, to the extent to which they are a lien on the property of the decedent at ~~his~~ the decedent's death.

Seventh class. Wages due to any employee employed by the decedent, which claim for wages shall not extend to a period of more than 12 months next preceding the death; or if such

employee was employed for the year current at the decease, then from the time of such employment; for medical services within the 12 months preceding the decease; for drugs and all other medical supplies necessary for the treatment of such decedent during the last illness of such decedent, said period of last illness not to exceed 12 months.

Eighth class. A claim for equitable distribution.

Ninth class. All other claims.

(b) Notwithstanding subsection (a) of this section, if payment of the commissions of the personal representative under G.S. 28A-23-3(g) would cause the estate to be unable to pay all claims against the estate of a decedent, then the commissions shall be limited to the amount allowed under G.S. 28A-23-3(a).

"§ 28A-19-7. Satisfaction of claims other than by payment.

Notwithstanding any provision of law to the contrary,

(1) If a decedent was liable in person at the time of ~~his~~ the decedent's death for the payment or satisfaction of any claim or the performance, satisfaction, or discharge of any liability or obligation, whether joint or several, primary or secondary, direct or contingent, or enforceable in any other manner or form whatsoever, or

(2) If only the property of a decedent or some part thereof was liable at the time of ~~his~~ the decedent's death for the payment or satisfaction of any claim or the performance, satisfaction, or discharge or any liability or obligation, whether joint or several, primary or secondary, direct or contingent, or enforceable in any other manner or form against the property of the decedent but not against ~~him~~ the decedent or ~~his~~ the decedent's estate as a personal liability, and

(3) If any person other than the personal representative of the decedent is willing to assume the liability of the decedent and of ~~his~~ the decedent's estate or to receive or accept property of the decedent subject to such liability in cases where the decedent was not personally liable and the creditor, obligee, or other person for whose benefit such liability exists is willing to accept an agreement with that effect and to discharge the personal representative of the decedent and the estate of the decedent from the payment, satisfaction, or discharge of such liability, and

(4) If such creditor, obligee, or other person for whose benefit such liability exists and the person assuming the liability or the person receiving or accepting property of the decedent subject to such liability shall execute, acknowledge, and deliver in the form and manner required for deeds conveying real property in North Carolina, an agreement between themselves as to such assumption of liability or the receipt or acceptance of property of the decedent subject to such liability which shall contain a release, as hereinafter defined, discharging the personal representative of the decedent and ~~his~~ the decedent's estate from the payment, satisfaction, or discharge of the liability, and thereafter the said creditor, obligee, or other person for whose benefit such liability exists shall have no remedy for the enforcement thereof except against the person assuming it or against the property subject to it as provided in the said agreement; then upon the filing with the clerk of superior court having jurisdiction over the estate and the personal representative of one duplicate original of the said agreement, or of a certified copy thereof if it is a duly recorded instrument, the same shall be accepted in the same manner as a voucher showing payment or discharge of the said liability in the accounts of the personal representative of the decedent.

The word "person" as used in this section shall include one or more natural persons, corporations, partnerships, or entities having the power to own property or to make contracts in regard thereto. The word "release" as used in this section shall include a covenant not to sue in any case in which an unqualified release or discharge of one obligee would discharge another, and if the liability involved is a negotiable instrument or other instrument transferable to a holder in due course, such release shall not be effective unless notice thereof is endorsed on the instrument involved, dated, and signed by the creditor or the holder of the indebtedness or person for whose benefit the property is encumbered.

"§ 28A-19-8. Funeral expenses of decedent.

(a) Any person authorized under G.S. 130A-420 to dispose of a decedent's body may bind a decedent's estate for funeral expenses and related charges, including interest and finance charges, in accordance with this section, including the execution and delivery on behalf of the estate of any agreements, promissory notes, and other instruments relating to the estate. Whether or not a personal representative of the estate has been appointed at the time the expenses are incurred, funeral expenses of a decedent, together with interest or finance charges if financed by the funeral establishment or a third-party creditor, or advanced by a health care agent exercising authority described in G.S. 32A-19(b), shall be considered as an obligation of the estate of the decedent and the decedent's estate shall be primarily liable for those expenses to the funeral establishment that provided the funeral service, to any third-party creditor that finances the payment of those expenses, or to any other person described in this section who has paid such expenses.

(b) The provisions of this section shall not affect the application of G.S. 28A-19-6 or G.S. 130A-420.

"§ 28A-19-9. Gravestone and burial place authorized.

(a) ~~It~~ If the decedent has duly appointed a health care agent pursuant to Article 3 of Chapter 32A of the General Statutes to provide for these expenses, the health care agent may make arrangements to provide a suitable gravestone to mark the grave of the testator or intestate, and the personal representative shall reimburse the health care agent subject to the monetary limitations and procedures contained in this section. If the decedent did not have a health care agent, or if the health care agent does not act, it is lawful for a personal representative or the decedent's duly appointed health care agent to provide a suitable gravestone to mark the graves of the testator or intestate and to pay for the cost of erecting the same. The cost thereof shall be treated as a third class claim under G.S. 28A-19-6 and credited as such in final accounts. The costs thereof shall be in the sound discretion of the personal ~~representative,~~ representative or health care agent, having due regard to the value of the estate and to the interests of creditors and needs of the surviving spouse and the heirs and devisees of the estate. Where the personal representative or health care agent desires to spend more than one thousand five hundred dollars ($1,500) for the purpose of a gravestone, and the will does not grant specific authority to the personal representative for such expenditures in excess of one thousand five hundred dollars ($1,500), the personal representative shall file a petition before the clerk of the court, and such order as will be made by the court shall specify the amount to be expended for such purpose. In specifying the amount, the clerk may consider the value of the estate. To the extent that the personal representative or health care agent advances the costs for providing a suitable gravestone to mark the graves of the testator or intestate and for erecting the same, the advancement shall be considered as an obligation of the decedent's estate, and the decedent's estate shall be primarily liable for the costs for providing a suitable gravestone to mark the graves of the testator or intestate and for erecting the same.

(b) It is lawful for ~~a personal representative~~ the decedent's duly appointed health care agent to provide a suitable burial place for the testator or intestate. If the decedent did not have a health care agent, or if the health care agent does not act, then the personal representative may provide a suitable burial place for the testator or intestate. The cost of a suitable burial place

shall be in the sound discretion of the personal ~~representative,~~ representative or the decedent's health care agent, having due regard to the value of the estate and to the interests of creditors and needs of the surviving spouse and the heirs and devisees of the estate, and shall be treated as a third class claim under G.S. 28A-19-6.

"§ 28A-19-10. Perpetual care of cemetery lot.

It shall be lawful for a personal representative to provide for perpetual care for the lot upon which is located the grave of the testator or intestate, and the cost thereof shall be paid and credited as such in final accounts: Provided, that the provisions of this section shall be applicable to an interment made in a cemetery authorized by law to operate as a perpetual-care cemetery or association, and the cost thereof shall be in the sound discretion of the personal representative having due regard to the value of the estate and to the interest of the surviving spouse and the heirs and devisees of the estate. Provided, where the personal representative desires to spend more than two hundred fifty dollars ($250.00) for such purpose, and the will does not grant specific authority to the personal representative for such expenditure in excess of two hundred fifty dollars ($250.00), ~~he~~ the personal representative shall file ~~his~~ the personal representative's petition before the clerk of the superior court and such order as will be made by the court shall specify the amount to be expended for such purpose.

"§ 28A-19-11. Pleading statute of limitations.

When claims are not barred pursuant to G.S. 28A-19-3, it shall be within the discretion of the personal representative or collector acting in good faith to determine whether or not any applicable statute of limitations shall be pleaded to bar a claim which ~~he~~ the personal representative or collector believes to be just. ~~His~~ The personal representative's or collector's admission of such claim or ~~his~~ the personal representative's or collector's decision not to plead the statute in an action brought on the claim shall, in the absence of any showing of collusion or bad faith, be binding on all persons interested in the estate.

"§ 28A-19-12. Claims due representative not preferred.

No property or assets of the decedent shall be retained by the personal representative or collector in satisfaction of ~~his~~ the personal representative's or collector's own claim, in preference to others of the same class. Prior to payment of ~~his~~ the personal representative's or collector's own claim the personal representative or collector shall receive written approval of the clerk of superior court. If the clerk does not approve the claim the personal representative or collector may refer the claim as a disputed claim under the provisions of G.S. 28A-19-15. The provisions of G.S. 28A-19-1 and G.S. 28A-19-3 shall not apply to such claims and the personal representative or collector may present ~~his~~ the personal representative's or collector's own claim at any time prior to the filing of ~~his~~ the personal representative's or collector's final account.

"§ 28A-19-13. No preference within class.

No personal representative or collector shall give to any claim any preference whatever, either by paying it out of its class or by paying thereon more than a pro rata proportion in its class.

"§ 28A-19-14. Claims not due rebated.

Claims owed by the estate but not yet due may be paid by the personal representative on a rebate of interest thereon for the time unexpired.

"§ 28A-19-15. Disputed claim may be referred.

If the personal representative doubts the justness of any claim so presented, ~~he~~ the personal representative may enter into an agreement, in writing, with the claimant, to refer the matter in controversy, whether the same be of a legal or equitable nature, to one or more disinterested persons, not exceeding three, whose proceedings shall be the same in all respects as if such reference had been ordered in an action. Such agreement to refer, and the award thereupon, shall be filed in the clerk's office where the letters were granted, and shall be a lawful voucher for the personal representative. The same may be impeached in any proceeding against the

personal representative for fraud therein: Provided, that the right to refer claims under this section shall extend to claims in favor of the estate as well as those against the estate.

"§ 28A-19-16. Disputed claim not referred barred in three months.

If a claim is presented to and rejected by the personal representative or collector, and not referred as provided in G.S. 28A-19-15, the claimant must, within three months, after due notice in writing of such rejection, ~~or after some part of the claim becomes due,~~ commence an action for the recovery thereof, or in the case of a contingent or unliquidated claim, file a petition for an order from the clerk of superior court pursuant to G.S. 28A-19-5(b), or be forever barred from maintaining an action thereon.

"§ 28A-19-17. No lien by suit against representative.

No lien shall be created by the commencement of a suit against a personal representative or collector.

"§ 28A-19-18. When costs against representative allowed.

No costs shall be recovered in any action against a personal representative or collector unless it appears that payment was unreasonably delayed or neglected, or that the defendant refused to refer the matter in controversy, in which case the court may award such costs against the defendant personally, or against the estate, as may be just.

"§ 28A-19-19. Claims for equitable distribution.

(a) The provisions of G.S. 28A-19-5 and G.S. 28A-19-7 shall not apply to claims for equitable distribution.

(b) The personal representative may enter into an agreement, in writing, with a claimant providing for distribution of marital or divisible property, or both, in a manner deemed by the personal representative and the claimant to be equitable. The agreement shall be filed in the clerk's office where the letters were granted and shall be a lawful voucher for the personal representative. The same may be impeached in any proceeding against the personal representative for fraud therein.

(c) Unless the claim for equitable distribution has been referred as provided in G.S. 28A-19-15, the claimant may at anytime, subject to the provisions of G.S. 28A-19-16, file an action with the district court for distribution of marital or divisible property in accordance with the provisions of G.S. 50-20.

"Article 20.

"Inventory.

"§ 28A-20-1. Inventory within three months.

Every personal representative and collector, within three months after ~~his qualification,~~ the qualification of that personal representative or collector, shall return to the clerk, on oath, a just, true and perfect inventory of all the real and personal property of the deceased, which have come to ~~his hands,~~ the hands of the personal representative or collector, or to the hands of any person for ~~him,~~ the personal representative or collector, which inventory shall be signed by ~~him~~ the personal representative or collector and be recorded by the clerk.

"§ 28A-20-2. Compelling the inventory.

(a) If the inventory specified in G.S. 28A-20-1 is not filed as prescribed, the clerk of superior court must issue an order requiring the personal representative or collector to file it within the time specified in the order, not less than 20 days, or to show cause why ~~he~~ the personal representative or collector should not be removed from office. If, after due service of the order, the personal representative or collector does not on or before the return day of the order file such inventory or obtain further time in which to file it, the clerk may remove ~~him~~ the personal representative or collector from office or may issue an attachment against ~~him~~ the personal representative or collector for a contempt and commit ~~him until he~~ the personal representative or collector until the personal representative or collector files said inventory report.

(b) The personal representative or collector shall be personally liable for the costs of any proceeding incident to ~~his~~ the personal representative's or collector's failure to file the inventory required by G.S. 28A-20-1. Such costs shall be taxed against ~~him~~ the personal representative or collector by the clerk of superior court and may be collected by deduction from any commissions which may be found due the personal representative or collector upon final settlement of the estate.

"§ 28A-20-3. Supplemental inventory.

(a) Whenever any property not included in the original inventory report becomes known to any personal representative or collector or whenever the personal representative or collector learns that the valuation or description of any property or interest therein indicated in the original inventory is erroneous or misleading, ~~he~~ the personal representative or collector shall prepare and file with the clerk of superior court a supplementary inventory in the same manner as prescribed for the original inventory. The clerk shall record the supplemental report with the original inventory.

(b) The making of the supplemental inventory shall be enforced in a manner specified in G.S. 28A-20-2.

"§ 28A-20-4. Employment of appraisers.

A personal representative or collector may, but shall not be required to, employ qualified and disinterested appraisers to assist in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets. The name and address of any appraiser shall be indicated in the inventory with the asset or assets ~~he~~ the appraiser appraised.

"Article 21.

"Accounting.

"§ 28A-21-1. Annual accounts.

Until the final account has been filed pursuant to G.S. 28A-21-2, the personal representative or collector shall, for so long as any of the property of the estate remains in ~~his~~ the control, custody or ~~possession,~~ possession of the personal representative or collector, file annually in the office of the clerk of superior court an inventory and account, under oath, of the amount of property received by ~~him,~~ the personal representative or collector, or invested by ~~him,~~ the personal representative or collector, and the manner and nature of such investment, and ~~his~~ the receipts and disbursements of the personal representative or collector for the past year. Such accounts shall be due by the fifteenth day of the fourth month after the close of the fiscal year selected by the personal representative or collector, and annually thereafter. The election of a fiscal year shall be made by the personal representative or collector upon filing of the first annual account. In no event may a personal representative or collector select a fiscal year-end which is more than twelve months from the date of death of the decedent or, in the case of trust administration, the date of the opening of the trust. Any fiscal year selected may not be changed without the permission of the clerk of superior court.

The personal representative or collector shall produce vouchers for all payments or verified proof for payments in lieu of vouchers. The clerk of superior court may examine, under oath, such accounting party, or any other person, concerning the receipts, disbursements or any other matter relating to the estate. ~~He~~ The clerk of superior court must carefully review and audit such account and, if ~~he~~ the clerk approves the account, ~~he~~ the clerk must endorse ~~his~~ the approval of the clerk thereon, which shall be **prima facie** evidence of correctness, and cause the same to be recorded.

"§ 28A-21-2. Final accounts.

(a) Unless the time for filing the final account has been extended by the clerk of superior court, the personal representative or collector must file the final account for settlement within one year after qualifying or within six months after receiving a State estate or inheritance tax release, or in the time period for filing an annual account pursuant to

G.S. 28A-21-1, whichever is later. If no estate or inheritance tax return was required to be filed for the estate, the personal representative or collector shall so certify in the final account filed with the clerk of superior court. Such certification shall list the amount and value of all of the decedent's property, and with respect to real estate, its particular location within or outside the State, including any property transferred by the decedent over which the decedent had retained any interest, or any property transferred within three years prior to the date of the decedent's death, and after being filed and accepted by the clerk of ~~the~~ superior court shall be prima facie evidence that such property is free of any State inheritance or State estate tax liability. The personal representative or collector shall produce vouchers for all payments or verified proof for all payments in lieu of vouchers. With the approval of the clerk of superior court, such account may be filed voluntarily at any time. In all cases, the accounting shall be reviewed, audited and recorded by the clerk of superior court in the manner prescribed in G.S. 28A-21-1.

(b) Except as provided in subsection (a), after the date specified in the general notice to creditors as provided for in G.S. 28A-14-1, if all of the debts and other claims against the estate of the decedent duly presented and legally owing have been paid in the case of a solvent estate or satisfied pro rata according to applicable statutes in the case of an insolvent estate, the personal representative or collector may file ~~his~~ the personal representative's or collector's final account to be reviewed, audited and recorded by the clerk of superior court. Nothing in this subsection shall be construed as limiting the right of the surviving spouse or minor children to file for allowances under G.S. 30-15 through 30-18 and the right of a surviving spouse to file for property rights under G.S. 29-30.

"§ 28A-21-2.2. Final accounting by limited personal representative.

(a) Filing Requirement. – A limited personal representative appointed pursuant to Article 29 of this Chapter shall file a sworn affidavit or report listing all debts and other claims duly presented to the limited personal representative and providing proof that the debts and other claims were satisfied, compromised, or denied, and that the time for filing suit thereon has expired. The sworn affidavit or report shall be filed within 30 days of the later of the following:

(1) The date by which a claim must be presented as set forth in the general notice to creditors provided for in G.S. 28A-14-1.

(2) The date by which an action for recovery of a rejected claim must be commenced under G.S. 28A-19-6.

(b) Action by Clerk. – The affidavit or report shall be reviewed and recorded by the clerk of superior court. Following the review, the clerk of superior court shall take one of the following actions:

(1) Discharge the limited personal representative from office.

(2) Require the filing of any additional information or documents determined by the clerk to be necessary to the understanding of the affidavit or report.

(3) Order the full administration of the decedent's estate and appoint a personal representative.

"§ 28A-21-3. What accounts must contain.

Accounts filed with the clerk of superior court pursuant to G.S. 28A-21-1, signed and under oath, shall contain:

(1) The period which the account covers and whether it is an annual accounting or a final accounting;

(2) The amount and value of the property of the estate according to the inventory and appraisal or according to the next previous accounting, the amount of income and additional property received during the period being accounted for, and all gains from the sale of any property or otherwise;

(3) All payments, charges, losses, and distributions;

(4) The property on hand constituting the balance of the account, if any; and

(5) Such other facts and information determined by the clerk to be necessary to an understanding of the account.

"§ 28A-21-3.1. Phase II tobacco grower and quota owner payments; list of Phase II distributees.

(a) The following definitions apply in this section:

(1) "National Tobacco Grower Settlement Trust" means the trust established by tobacco companies to provide payments to tobacco growers and tobacco quota owners in 14 states for the purposes of ameliorating potential adverse economic consequences of likely reduction in demand, sales, and prices for tobacco as an agricultural product as a result of the Master Settlement Agreement incorporated in the consent decree entered in the action of State of North Carolina vs. Philip Morris, Incorporated, et al., 98 CVS 14377, in the General Court of Justice, Superior Court Division, Wake County, North Carolina.

(2) "Phase II payment" means an amount certified by the North Carolina Phase II Tobacco Certification Entity, Inc., to be paid pursuant to the trust agreement establishing the National Tobacco Grower Settlement Trust.

(b) A personal representative or collector of the estate of a decedent who, during 1993 or any subsequent year, was a tobacco grower or a tobacco quota owner as defined in Section 4.01 of the trust agreement establishing the National Tobacco Grower Settlement Trust may file, along with a final account, a list of Phase II distributees for Phase II payments if all of the following conditions are met:

(1) There are no unsatisfied creditors.

(2) There are no unsatisfied general monetary bequests.

(3) All assets other than any potential Phase II payments have been distributed.

(c) A list of Phase II distributees, signed under oath, must contain the following information:

(1) The name and address of the personal representative or collector.

(2) The name and social security number of the decedent.

(3) The name and address, if known, of each devisee or heir entitled to receive Phase II payments and the percentage of Phase II payments to be received by each.

(d) The clerk of superior court must review the list of Phase II distributees to determine if the list of distributees and their shares of potential Phase II payments are in accordance with the will or, if there is no will, in accordance with the Intestate Succession Act. If the clerk accepts the list of Phase II distributees for filing, the clerk must endorse the clerk's approval thereon, which shall be prima facie evidence of correctness.

(e) Upon determination by the North Carolina Phase II Tobacco Certification Entity, Inc., that the estate of a decedent entitled to any Phase II payment covering a time period when the decedent was alive has been closed, the payment may be paid directly to those distributees and in those shares set forth on a list of Phase II distributees filed under this section without the estate's having to be reopened under G.S. 28A-23-5.

(f) The estate of a decedent who is entitled to any Phase II payment may be reopened, if necessary, in accordance with G.S. 28A-23-5 in order to file a list of Phase II distributees under this section.

(g) For purposes of this section, Phase II payments covering a time period when decedent was alive are deemed cash and shall not pass by virtue of any devise or inheritance of the decedent's real property.

"§ 28A-21-4. Clerk may compel account.

If any personal representative or collector fails to account as directed in G.S. 28A-9-3, 28A-21-1 or 28A-21-2 or renders an unsatisfactory account, the clerk of superior court shall,

upon ~~his own~~ motion of the clerk of superior court or upon the request of one or more creditors of the decedent or other interested party, promptly order such personal representative or collector to render a full satisfactory account within 20 days after service of the order. If, after due service of the order, the personal representative or collector does not on or before the return day of the order file such account, or obtain further time in which to file it, the clerk may remove ~~him~~ the personal representative or collector from office or may issue an attachment against ~~him~~ the personal representative or collector for a contempt and commit ~~him until he~~ the personal representative or collector until the personal representative or collector files said account.

"§ 28A-21-5. Vouchers presumptive evidence.

Vouchers, without other proof, are presumptive evidence of disbursement, unless impeached. If lost, the accounting party must, if required, make oath to that fact setting forth the manner of loss, and state the contents and purport of the voucher.

"§ 28A-21-6. Permissive Notice of Final Accounts.

The personal representative or collector may, but is not required to, give written notice of a proposed final account pursuant to G.S. 1A-1, Rule 4, to all devisees of the estate in the case of testacy, and to all heirs of the estate in the case of intestacy, of the date and place of filing of such account. In giving written notice, the personal representative shall attach a copy of the proposed final accounting with exhibits made a part thereof, but is not required to include copies of vouchers, account statements, or other supporting evidence submitted to the clerk. If the personal representative or collector elects to provide this notice, the personal representative or collector shall file with the clerk of superior court a certificate indicating that this notice has been given to all devisees and heirs. Notwithstanding any right to appeal an order or judgment under G.S. 1-301.3, any payment, distribution, action, or other matter disclosed on such account or any annual account for the estate filed by the personal representative or collector must be objected to by a devisee or heir within 30 days after the receipt of the written notice or will be deemed to be accepted by the devisee or heir.

"Article 22.

"Distribution.

"§ 28A-22-1. Scheme of distribution; testate and intestate estates.

After the payment of costs of administration, taxes and other valid claims against the decedent's estate, the personal representative shall distribute the remaining assets of the estate in accordance with the terms of decedent's valid probated will or the provisions of Chapter 29 of the General Statutes or as otherwise lawfully authorized.

"§ 28A-22-2. Shares of after-born and after-adopted children.

The share of an after-born or after-adopted child, as provided by G.S. 29-9 and 31-5.5, shall be allotted to ~~him~~ the after-born or after-adopted child out of any undevised real or personal property, or out of both, if there is enough such undevised property for that purpose. If there is no undevised real or personal property, or if there is not enough, then the whole of the child's share, or the deficiency, shall be made up from the devised real or personal property, or from both. The portion contributed by a devisee shall bear the same ratio to ~~his~~ the devisee's devise as the after-born or after-adopted child's share bears to the net estate.

"§ 28A-22-3. Special proceeding against unknown heirs of decedent before distribution of estate.

If there may be heirs, born or unborn, of the decedent, other than those known to the personal representative and whose names and residences are unknown, before distributing such estate the personal representative is authorized to institute a special proceeding before the clerk of superior court for the purpose of determining who are the heirs of the decedent. All unknown heirs of the decedent shall be made parties thereto and shall be served with summons by publication as provided by G.S. 1A-1, Rule 4. Upon such service being had, the court shall appoint some discreet person to act as guardian ad litem for said unknown heirs and summons

shall issue as to such guardian ad litem. Said guardian ad litem shall file answer on behalf of said unknown heirs and ~~he~~ the guardian ad litem may be paid for ~~his~~ services of the guardian ad litem such sum as the court may fix, to be paid as other costs out of the estate. Upon the filing of the answer by said guardian ad litem all such unknown heirs shall be before the court for the purposes of the proceeding to the same extent as if each had been personally served with summons. Any judgment entered by the court in such proceeding shall be as binding upon said unknown heirs as if they were personally before the court and any payment or distribution made by the personal representative under orders of the court shall have the effect of fully discharging such personal representative and any sureties on ~~his~~ the personal representative's official bond to the full extent of such payment or distribution as ordered.

"§ 28A-22-4. Distribution to nonresident trustee only upon appointment of process agent.

(a) No assets of the estate of a decedent subject to administration in this State shall be delivered or transferred to a trustee of a testamentary trust or an inter vivos trust who is a nonresident of this State who has not appointed a resident agent for the service of civil process for actions or proceedings arising out of the administration of the trust with regard to such property.

(b) If property is delivered or transferred to a trustee in violation of this section, process may be served outside this State or by publication, as provided by G.S. 1A-1, Rule 4, and the courts of this State shall have the same jurisdiction over the trustee as might have been obtained by service upon a properly appointed process agent. The provisions of this section with regard to jurisdiction shall be in addition to other means of obtaining jurisdiction permissible under the laws of this State.

"§ 28A-22-5. Distribution of assets in kind in satisfaction of bequests and transfers in trust.

(a) Subject to the provisions of subsection (b) of this section, whenever under any will or trust indenture the executor, trustee or other fiduciary is required to, or has an option to, satisfy a bequest or transfer in trust by a transfer of assets of the estate or trust in kind at the values as finally determined for federal estate tax purposes, the executor, trustee or other fiduciary shall, in the absence of contrary provisions in such will or trust indenture, be required to satisfy such bequest or transfer by the distribution of assets fairly representative of the appreciation or depreciation in the value of all property available for distribution in satisfaction of such bequest or transfer.

(b) The provisions of subsection (a) of this section shall not apply unless either:

(1) The decedent's surviving spouse is the beneficiary of the bequest or trust transfer described in subsection (a) of this section or of the residue of the estate or trust; or

(2) Any "skip person", as that term is defined in Chapter 13 of the Internal Revenue Code of 1986, as amended, is or may be a current or future beneficiary of the bequest or trust transfer described in subsection (a) of this section or of the residue of the estate or trust, and the value of the decedent's gross estate for federal tax purposes exceeds the value of the decedent's unused generation-skipping tax exemption available under Chapter 13 of the Internal Revenue Code of 1986, as amended.

"§ 28A-22-6. Agreements with taxing authorities to secure benefit of federal marital deduction.

The executor, trustee, or other fiduciary having discretionary powers under a will or trust indenture with respect to the selection of assets to be distributed in satisfaction of a bequest or transfer in trust to or for the benefit of the surviving spouse of a decedent shall be authorized to enter into agreements with the Commissioner of Internal Revenue of the United States of America, and other taxing authorities, requiring the fiduciary to exercise the fiduciary's discretion so that cash and other properties distributed in satisfaction of such bequest or transfer

in trust will be fairly representative of the net appreciation or depreciation in value on the date, or dates, of distribution of all property then available for distribution in satisfaction of such bequest or transfer in trust. Any such fiduciary shall be authorized to enter into any other agreement not in conflict with the express terms of the will or trust indenture that may be necessary or advisable in order to secure for federal estate tax purposes the appropriate marital deduction available under the Internal Revenue Laws of the United States of America and to do and perform all acts incident to such purpose.

"§ 28A-22-7. Distribution to parent or guardian of a minor.

(a) If a devise or legacy of personal property to a person under the age of 18 has a total value of less than one thousand five hundred dollars ($1,500), and the devisee or legatee is residing in the same household with a parent or a guardian appointed prior to the decedent's death, the personal representative may distribute to the parent or guardian the devise or legacy. However, such distribution shall only be made with the prior approval of the clerk of court who issued the letters testamentary or of administration.

(b) If such distribution has been made the parent or guardian shall use the property solely for the education, maintenance and support of the devisee or legatee. However, the parent or guardian shall not be required to file an accounting with the clerk of court or to the personal representative, nor shall such distribution be cause for a delay in the filing of the personal representative's final account under the provisions of Article 21 of this Chapter.

(c) This section establishes a procedure that is separate from the provisions of G.S. 33-69.1 and it is not the intention of this section to repeal in whole or in part the provisions of G.S. 33-69.1.

(d) This section may also be applied to several devises or legacies of personal property to a single devisee or legatee having a combined total value of less than one thousand five hundred dollars ($1,500).

"§ 28A-22-8. Executor or trustee; discretion over distributions.

Unless otherwise restricted by the terms of the will or trust, an executor or trustee shall have absolute discretion to make distributions in cash or in specific property, real or personal, or an undivided interest therein or partly in cash or partly in such property, and to do so without regard to the income tax basis for federal tax purposes of specific property allocated to any beneficiary.

"§ 28A-22-9. Distribution to known but unlocated devisees or heirs.

(a) If there are known but unlocated devisees or heirs of property held by the personal representative, the personal representative may deliver the share of such devisee or heir to the clerk of superior court immediately prior to filing of the final account. If the devisee or heir is located after the final account has been filed, ~~he~~ the devisee or heir may present a claim for the share to the clerk. If the clerk determines that the claimant is entitled to the share, ~~he~~ the clerk shall deliver the share to the devisee or claimant. If the clerk denies the claim, the claimant may take an appeal as in a special proceeding.

(b) The clerk shall hold the share without liability for profit or interest. If no claim has been presented within a period of one year after the filing of the final account, the clerk shall deliver the share to the State Treasurer as abandoned property.

(c) The clerk shall not be required to publish any notice to such devisee or heir and shall not be required to report such share to the State Treasurer. If the devisee or heir is located, the clerk shall inform the devisee or heir that ~~he~~ the devisee or heir is entitled to file a claim with the State Treasurer for the share under the provisions of G.S. 116B-67.

"§ 28A-22-10. Distribution of assets of inoperative trust.

When the facts at the time of distribution of property to a trust are such that the trust would be inoperative under the terms of the instrument creating the trust for any reason, including the death of a beneficiary, renunciation by a beneficiary, the exercise of a right to withdraw the property by a beneficiary, or the attainment of a stipulated age by a beneficiary, the personal

representative or the trustee authorized or required to make the distribution of that property to the trust may distribute the property directly to the person or persons entitled to it under the terms of the instrument creating the trust without the interposition of the establishment of the trust. If only a portion of the trust would be inoperative, the property distributable to that portion of the trust may be distributed directly to the person or persons entitled to the property under the terms of the instrument creating the trust.

"§ 28A-22-11. Agreements with heirs.

Any agreement by an heir, unknown or known but unlocated, the primary purpose of which is to locate or recover, or assist in the recovery of, a share in a decedent's estate shall be subject to the provisions of G.S. 116B-78.

"Article 23.

"Settlement.

"§ 28A-23-1. Settlement after final account filed.

When the personal representative or collector has paid or otherwise satisfied or provided for all claims against the estate, has distributed the remainder of the estate pursuant to G.S. 28A-22-1 and has filed ~~his~~ the personal representative's or collector's final account for settlement pursuant to G.S. 28A-21-2, if the clerk of superior court, after review of the personal representative's or collector's final account, approves the same, ~~he~~ the clerk of superior court shall enter an order discharging the personal representative or collector from further ~~liability.~~ duties and liabilities as personal representative or collector, including those set forth in Article 13 of this Chapter. However, that such an order shall not include a release or discharge of liability for any breach of duty set forth in G.S. 28A-13-10(c).

"§ 28A-23-2. Payment into court of fund due minor.

When any personal representative or collector holds property due a minor without a guardian and desires to file ~~his~~ the personal representative's or collector's petition for settlement, ~~he~~ the personal representative or collector may deliver the property to the clerk of superior court who shall invest upon interest or otherwise manage said property for the use of the minor or the clerk may proceed to appoint a guardian for the minor pursuant to the provisions of Chapter 35A of the General Statutes and then may deliver the property of the minor to the guardian.

"§ 28A-23-3. Commissions allowed personal representatives; representatives guilty of misconduct or default.

(a) Personal representatives, collectors or public administrators shall be entitled to commissions to be fixed in the discretion of the clerk of superior court not to exceed five percent (5%) upon the amounts of receipts, including the value of all personal property when received, and upon the expenditures made in accordance with law. In determining the maximum commissions allowable under this subsection, the clerk of superior court may take into consideration fees paid by the estate for professional services performed in the ordinary course of administering the estate, including services performed by attorneys and accountants. However, the clerk is not required to reduce the maximum commissions allowed by the aggregate fees paid to professionals on a dollar-for-dollar basis.

The commissions shall be charged as a part of the costs of administration and, upon allowance, may be retained out of the assets of the estate against creditors and all other persons claiming an interest in the estate. If the gross value of an estate is two thousand dollars ($2,000) or less, the clerk of superior court may fix the commission to be received by the personal representative, collector or public administrator in an amount the clerk of superior court, in the clerk's discretion, deems just and adequate.

(b) In determining the amount of the commissions, both upon personal property received and upon expenditures made, the clerk of superior court shall consider the time, responsibility, trouble and skill involved in the management of the estate. Where real property

is sold to pay debts or legacies, the commission shall be computed only on the proceeds actually applied in the payment of debts or legacies.

(c) The clerk of superior court may allow commissions from time to time during the course of the administration, but the total commissions allowed shall be determined on final settlement of the estate and shall not exceed the limit fixed in this section.

(d) Nothing in this section shall be construed to:

(1) Prevent the clerk of ~~the~~ superior court from allowing reasonable sums for necessary charges and disbursements incurred in the management of the estate.

(2) Allow commissions on distribution of the shares of heirs or on distribution of shares of devisees.

(3) Abridge the right of any party interested in the administration of a decedent's estate to appeal an order of the clerk of superior court to a judge of superior court.

(e) No personal representative, collector or public administrator, who has been guilty of default or misconduct in the due execution of ~~his or her~~ the personal representative's, collector's, or public administrator's office resulting in the revocation of ~~his or her~~ the appointment of the personal representative, collector, or public administrator under the provisions of G.S. 28A-9-1, shall be entitled to any commission under the provisions of this section.

(f) For the purpose of computing commissions whenever any portion of the dividends, interest, rents or other amounts payable to a personal representative, collector or public administrator is required by any law of the United States or other governmental unit to be withheld for income tax purposes by the person, corporation, organization or governmental unit paying the same, the amount withheld shall be deemed to have been received and expended.

(g) Subsection (a) of this section does not apply if the testator's will specifies a stipulated amount or method or standard for determining the compensation for the services rendered by the personal representative, including a provision in the will that the compensation of the personal representative is to be determined by applying the personal representative's regularly adopted schedule of compensation in effect at the time of performance of those services. Subsection (a) of this section also shall not apply if the testator's will provides that the personal representative is to receive "reasonable compensation" for those services or similar language to that effect if the personal representative and the beneficiaries whose shares would be charged with the payment of the personal representative's compensation consent in writing to the specific amount that constitutes reasonable compensation.

(h) Subsection (a) of this section shall apply if the testator's will provides that compensation of the personal representative shall be the amount "as provided by law," the "maximum amount provided by law," or other similar language.

"§ 28A-23-4. Counsel fees allowable to attorneys serving as representatives.

The clerk of superior court, in ~~his discretion,~~ the discretion of the clerk of superior court, is authorized and empowered to allow counsel fees to an attorney serving as a personal representative, collector or public administrator (in addition to the commissions allowed ~~him~~ the attorney as such representative, collector or public administrator) where such attorney in behalf of the estate ~~he~~ the attorney represents renders professional services, as an attorney, which are beyond the ordinary routine of administration and of a type which would reasonably justify the retention of legal counsel by any such representative, collector or public administrator not ~~himself~~ licensed to practice law.

"§ 28A-23-5. Reopening administration.

If, after an estate has been settled and the personal representative discharged, other property of the estate shall be discovered, or if it shall appear that any necessary act remains unperformed on the part of the personal representative, or for any other proper cause, the clerk

of superior court, upon the petition of any person interested in the estate and without notice or upon such notice as ~~he~~ the clerk of superior court may direct, may order that said estate be reopened. ~~He~~ The clerk of superior court may reappoint the personal representative or appoint another personal representative to administer such property or perform such acts as may be deemed necessary. Unless the clerk of superior court shall otherwise order, the provisions of this Chapter as to an original administration shall apply to the proceedings had in the reopened administration; but no claim which is already barred can be asserted in the reopened administration.

"Article 24.

"120-Hour Survivorship Requirement; Revised Simultaneous Death Act.

"§ 28A-24-1. Definitions.

In this Article:

(1) "Co-owners with right of survivorship" includes joint tenants in a joint tenancy with right of survivorship, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

(2) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with a POD designation, pension, profit sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

(3) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

"§ 28A-24-2. Requirement of survival by 120 hours.

(a) Except as otherwise provided in this Article, where the title to property, the devolution of property, the right to elect an interest in property, or any other right or benefit depends upon an individual's survivorship of the death of another individual, an individual who is not established by clear and convincing evidence to have survived the other individual by at least 120 hours is deemed to have predeceased the other individual.

(b) If the language of the governing instrument disposes of property in such a way that two or more beneficiaries are designated to take alternatively by reason of surviving each other and it is not established by clear and convincing evidence that any such beneficiary has survived any other such beneficiary by at least 120 hours, the property shall be divided into as many equal shares as there are alternative beneficiaries, and these shares shall be distributed respectively to each such beneficiary's estate.

(c) If the language of the governing instrument disposes of property in such a way that it is to be distributed to the member or members of a class who survived an individual, each member of the class will be deemed to have survived that individual by at least 120 hours unless it is established by clear and convincing evidence that the individual survived the class member or members by at least 120 hours.

"§ 28A-24-3. Co-owners with right of survivorship; requirement of survival by 120 hours.

Except as otherwise provided in this Article, (i) if it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by at least 120 hours, one-half of the property passes as if one had survived by at least 120 hours and one-half as if the other had survived by at least 120 hours and (ii) if there are more than two co-owners with right of survivorship and it is not established by clear and convincing evidence that at least one of them survived the others by at least 120 hours, the property passes to the estates of each of the co-owners in the proportion that one bears to the whole number of co-owners.

"§ 28A-24-4. Survival of an event; 120-hour period not applicable.

For purposes of a governing instrument that requires survival of an event, other than the death of another individual, the 120-hour survivorship requirement of this Article does not apply.

"§ 28A-24-5. Victim deemed to survive slayer.

Notwithstanding any other provisions of this Article, solely for the purpose of determining whether the victim is entitled to any right or benefit that depends on surviving the death of a slayer under G.S. 31A-3, the slayer is deemed to have predeceased the victim and the victim is deemed to have survived the slayer by at least 120 hours (or any greater survival period required of the victim under the slayer's will or other governing instrument) unless it is established by clear and convincing evidence that the slayer survived the victim by at least 120 hours.

"§ 28A-24-6. Exceptions to the 120-hour survival requirement.

Survival by 120 hours is not required if any of the following apply:

(1) The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and the language is operable under the facts of the case.

(2) The governing instrument expressly indicates that an individual is not required to survive the death of another individual by any specified period or expressly requires the individual to survive another individual for a specified period; but survival must be established by clear and convincing evidence.

(3) The imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under G.S. 41-15; but survival must be established by clear and convincing evidence.

(4) The application of a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition; but survival must be established by clear and convincing evidence.

(5) The application of a 120-hour requirement of survival would deprive an individual or the estate of an individual of an otherwise available tax exemption, deduction or credit, expressly including the marital deduction, resulting in the imposition of a tax upon a donor or testator or other person (or their estate) as the transferor of any property. "Tax" includes any federal or State gift, estate or inheritance tax.

(6) The application of a 120-hour requirement of survival would result in an escheat.

"§ 28A-24-7. Evidence of death or status.

For purposes of this Article, the following rules of evidence apply relating to the determination of death and status of a beneficiary subject to a requirement of survivorship and of the person the beneficiary must survive:

(1) Death occurs when an individual is determined to be dead pursuant to G.S. 90-323 or Chapter 28C of the General Statutes.

(2) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency in the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent. In the absence of evidence disputing the death certificate, that certificate shall be conclusive evidence of the fact, place, date, and time of death and the identity of the decedent.

(3) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or

alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report. The record or report is conclusive evidence of the status and of the dates, circumstances, and places disclosed by the record or report unless there is evidence to the contrary.

(4) In the absence of prima facie evidence of death under subdivision (2) or (3) of this section, the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

"§ 28A-24-8. Protection of payors, bona fide purchasers, and other third parties; personal liability of recipient.

(a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a person designated in a governing instrument who, under this Article, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the person's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this Article. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this Article.

Written notice of a claimed lack of entitlement under this Article must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this Article, a payor or other third party may pay any amount owed or transfer or deposit any item of property other than tangible personal property held by it to or with the clerk of the superior court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the clerk of the superior court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The clerk shall hold the funds or item of property and, upon the clerk's determination under this Article, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the clerk discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the clerk.

(b) A person who purchases property for value and without notice, or who received a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this Article to return the payment, item of property, or benefit, nor liable under this Article for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this Article is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this Article.

"Article 25.

"Small Estates.

"§ 28A-25-1. Collection of property by affidavit when decedent dies intestate.

(a) When a decedent dies intestate leaving personal property, less liens and encumbrances thereon, not exceeding twenty thousand dollars ($20,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, or an heir or creditor of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir or creditor or the public administrator stating:

(1) The name and address of the affiant and the fact that ~~he or she~~ the affiant is the public administrator or an heir or creditor of the decedent;
(2) The name of the decedent and ~~his~~ the decedent's residence at time of death;
(3) The date and place of death of the decedent;
(4) That 30 days have elapsed since the death of the decedent;
(5) That the value of all the personal property owned by the estate of the decedent, less liens and encumbrances thereon, does not exceed twenty thousand dollars ($20,000);
(6) That no application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction;
(7) The names and addresses of those persons who are entitled, under the provisions of the Intestate Succession Act, to the personal property of the decedent and their relationship, if any, to the decedent; and
(8) A description sufficient to identify each tract of real property owned by the decedent at the time of ~~his~~ the decedent's death.

In those cases in which the affiant is the surviving spouse and sole heir of the decedent, not disqualified under G.S. 28A-4-2, the property described in this subsection that may be collected pursuant to this section may exceed twenty thousand dollars ($20,000) in value but shall not exceed thirty thousand dollars ($30,000) in ~~value.~~ value, after reduction for any spousal allowance paid to the surviving spouse pursuant to G.S. 30-15. In such cases, the affidavit shall state: (i) the name and address of the affiant and the fact that ~~he or she~~ the affiant is the surviving spouse and is entitled, under the provisions of the Intestate Succession Act, to all of the property of the decedent; (ii) that the value of all of the personal property owned by the estate of the decedent, less liens and encumbrances thereon, does not exceed thirty thousand dollars ($30,000); and (iii) the information required under subdivisions (2), (3), (4), (6), and (8) of this subsection.

(b) Prior to the recovery of any assets of the decedent, a copy of the affidavit described in subsection (a) shall be filed in the office of the clerk of superior court of the county where the decedent ~~had his domicile at the time of his~~ was domiciled at the time of death. The affidavit shall be filed by the clerk upon payment of the fee provided in G.S. 7A-307, shall be indexed in the index to estates, and a copy thereof shall be mailed by the clerk to the persons shown in the affidavit as entitled to the personal property.

(c) The presentation of an affidavit as provided in subsection (a) shall be sufficient to require the transfer to the affiant or ~~his~~ the affiant's designee of the title and license to a motor vehicle registered in the name of the decedent owner; the ownership rights of a savings account or checking account in a bank in the name of the decedent owner; the ownership rights of a savings account or share certificate in a credit union, building and loan association, or savings and loan association in the name of the decedent owner; the ownership rights in any stock or security registered on the books of a corporation in the name of a decedent owner; or any other property or contract right owned by decedent at the time of ~~his~~ the decedent's death.

"§ 28A-25-1.1. Collection of property by affidavit when decedent dies testate.

(a) When a decedent dies testate leaving personal property, less liens and encumbrances thereon, not exceeding twenty thousand dollars ($20,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, a person named or designated as executor in the will, devisee, heir or creditor, of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir, the person named or

designated as executor in the will of the decedent, the creditor, the public administrator, or the devisee, stating:

(1) The name and address of the affiant and the fact that ~~he~~ the affiant is the public administrator, a person named or designated as executor in the will, devisee, heir or creditor, of the decedent;
(2) The name of the decedent and ~~his~~ the decedent's residence at time of death;
(3) The date and place of death of the decedent;
(4) That 30 days have elapsed since the death of the decedent;
(5) That the decedent died testate leaving personal property, less liens and encumbrances thereon, not exceeding twenty thousand dollars ($20,000) in value;
(6) That the decedent's will has been admitted to probate in the court of the proper county and a duly certified copy of the will has been recorded in each county in which is located any real property owned by the decedent at the time of ~~his~~ the decedent's death;
(7) That a certified copy of the decedent's will is attached to the affidavit;
(8) That no application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction;
(9) The names and addresses of those persons who are entitled, under the provisions of the will, or if applicable, of the Intestate Succession Act, to the property of the decedent; and their relationship, if any, to the decedent; and
(10) A description sufficient to identify each tract of real property owned by the decedent at the time of ~~his~~ the decedent's death.

In those cases in which the affiant is the surviving spouse, is entitled to all of the property of the decedent, and is not disqualified under G.S. 28A-4-2, the property described in this subsection that may be collected pursuant to this section may exceed twenty thousand dollars ($20,000) in value but shall not exceed thirty thousand dollars ($30,000) in value. In such cases, the affidavit shall state: (i) the name and address of the affiant and the fact that ~~he or she~~ the affiant is the surviving spouse and is entitled, under the provisions of the decedent's will, or if applicable, of the Intestate Succession Act, to all of the property of the decedent; (ii) that the decedent died testate leaving personal property, less liens and encumbrances thereon, not exceeding thirty thousand dollars ($30,000); and (iii) the information required under subdivisions (2), (3), (4), (6), (7), (8), and (10) of this subsection.

(b) Prior to the recovery of any assets of the decedent, a copy of the affidavit described in subsection (a) shall be filed in the office of the clerk of superior court of the county where the decedent ~~had his domicile at the time of his~~ was domiciled at the time of death. The affidavit shall be filed by the clerk upon payment of the fee provided in G.S. 7A-307, shall be indexed in the index to estates, and a copy shall be mailed by the clerk to the persons shown in the affidavit as entitled to the property.

(c) The presentation of an affidavit as provided in subsection (a) shall be sufficient to require the transfer to the affiant or ~~his~~ the affiant's designee of the title and license to a motor vehicle registered in the name of the decedent owner; the ownership rights of a savings account or checking account in a bank in the name of the decedent owner; the ownership rights of a savings account or share certificate in a credit union, building and loan association, or savings and loan association in the name of the decedent owner; the ownership rights in any stock or security registered on the books of a corporation in the name of a decedent owner; or any other property or contract right owned by decedent at the time of ~~his~~ the decedent's death.

"§ 28A-25-2. Effect of affidavit.

The person paying, delivering, transferring or issuing personal property or the evidence thereof pursuant to an affidavit meeting the requirements of G.S. 28A-25-1(a) or G.S. 28A-25-1.1(a) is discharged and released to the same extent as if ~~he~~ the person dealt with

a duly qualified personal representative of the decedent. ~~He~~ The person is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in an action brought for that purpose by or on behalf of the persons entitled thereto. The court costs and attorney's fee incident to the action shall be taxed against the person whose refusal to comply with the provisions of G.S. 28A-25-1(a) or G.S. 28A-25-1.1(a) made the action necessary. The heir or creditor to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any duly qualified personal representative or collector of the decedent's estate or to any other person having an interest in the estate.

"§ 28A-25-3. Disbursement and distribution of property collected by affidavit.

(a) If there has been no personal representative or collector appointed by the clerk of superior court, the affiant who has collected personal property of the decedent by affidavit pursuant to G.S. 28A-25-1 or G.S. 28A-25-1.1 shall:

(1) Disburse and distribute the same in the following order:

a. To the payment of the surviving spouse's year's allowance and the children's year's allowance assigned in accordance with G.S. 30-15 through G.S. 30-33;

b. To the payment of the debts and claims against the estate of the decedent in the order of priority set forth in G.S. 28A-19-6, or to the reimbursement of any person who has already made payment thereof;

c. To the distribution of the remainder of the personal property to the persons entitled thereto under the provisions of the will or of the Intestate Succession Act; and

(2) File an affidavit with the clerk of superior court that ~~he~~ the affiant has collected the personal property of the decedent and the manner in which ~~he~~ the affiant has disbursed and distributed the same. This final affidavit shall be filed within 90 days of the date of filing of the qualifying affidavit provided for in G.S. 28A-25-1 or G.S. 28A-25-1.1. If the affiant cannot file the final affidavit within 90 days, ~~he~~ the affiant shall file a report with the clerk within that time period stating ~~his~~ the affiant's reasons. Upon determining that the affiant has good reason not to file the final affidavit within 90 days, the clerk may extend the time for filing up to one year from the date of filing the qualifying affidavit.

(b) Nothing in this section shall be construed as changing the rule of G.S. 28A-15-1 and G.S. 28A-15-5 rendering both real and personal property, without preference or priority, available for the discharge of debts and other claims against the estate of the decedent. If it appears that it may be in the best interest of the estate to sell, lease, or mortgage any real property to obtain money for the payment of debts or other claims against the decedent's estate, the affiant shall petition the clerk of superior court for the appointment of a personal representative to conclude the administration of the decedent's estate pursuant to G.S. 28A-25-5.

"§ 28A-25-4. Clerk may compel compliance.

If any affiant who has collected personal property of the decedent by affidavit pursuant to G.S. 28A-25-1 or G.S. 28A-25-1.1 shall fail to make distribution or file affidavit as required by G.S. 28A-25-3, the clerk of superior court may, upon ~~his own~~ motion of the clerk of superior court or at the request of any interested person, issue an attachment against ~~him~~ the affiant for a contempt and commit ~~him~~ the affiant until ~~he~~ the affiant makes proper distribution and files the

affidavit. In addition to or in lieu of filing this attachment, the clerk may require the affiant to post a bond conditioned as provided in G.S. 28A-8-2.

"**§ 28A-25-5. Subsequently appointed personal representative or collector.**

Nothing in this Article shall preclude any interested person, including the affiant, from petitioning the clerk of superior court for the appointment of a personal representative or collector to conclude the administration of the decedent's estate. If such is done, the affiant who has been collecting personal property by affidavit shall cease to do so, shall deliver all assets in ~~his~~ the affiant's possession to the personal representative, and shall render a proper accounting to the personal representative or collector. A copy of the accounting shall also be filed with the clerk having jurisdiction over the personal representative or collector.

"**§ 28A-25-6. Payment to clerk of money owed decedent.**

(a) As an alternative to the small estate settlement procedures of this Article, any person indebted to a decedent may satisfy such indebtedness by paying the amount of the debt to the clerk of the superior court of the county of the domicile of the decedent:

(1) If no administrator has been appointed, and

(2) If the amount owed by such person does not exceed five thousand dollars ($5,000), and

(3) If the sum tendered to the clerk would not make the aggregate sum which has come into the clerk's hands belonging to the decedent exceed five thousand dollars ($5,000).

(b) Such payments may not be made to the clerk if the total amount paid or tendered with respect to any one decedent would exceed five thousand dollars ($5,000), even though disbursements have been made so that the aggregate amount in the clerk's hands at any one time would not exceed five thousand dollars ($5,000).

(c) If the sum tendered pursuant to this section would make the aggregate sum coming into the clerk's hands with respect to any one decedent exceed five thousand dollars ($5,000) the clerk shall appoint an administrator, or the sum may be administered under the preceding sections of this Article.

(d) If it appears to the clerk after making a preliminary survey that disbursements pursuant to this section would not exhaust funds received pursuant to this section, ~~he~~ the clerk may, in ~~his~~ the clerk's discretion, appoint an administrator, or the funds may be administered under the preceding sections of this Article.

(e) The receipt from the clerk of the superior court of a payment purporting to be made pursuant to this section is a full release to the debtor for the payment so made.

(f) If no administrator has been appointed, the clerk of superior court shall disburse the money received under this section for the following purposes and in the following order:

(1) To pay the surviving spouse's year's allowance and children's year's allowance assigned in accordance with law;

(2), (3) Repealed by Session Laws 1981, c. 383, s. 3.

(4) All other claims shall be disbursed according to the order set out in G.S. 28A-19-6.

Notwithstanding the foregoing provisions of this subsection, the clerk shall pay, out of funds provided the deceased pursuant to G.S. 111-18 and Part 3 of Article 2 of Chapter 108A of the General Statutes of North Carolina, any lawful claims for care provided by an adult care home to the deceased, incurred not more than 90 days prior to ~~his~~ the deceased's death. After the death of a spouse who died intestate and after the disbursements have been made in accordance with this subsection, the balance in the clerk's hands belonging to the estate of the decedent shall be paid to the surviving spouse, and if there is no surviving spouse, the clerk shall pay it to the heirs in proportion to their respective interests.

(g) The clerk shall not be required to publish notice to creditors.

(h) Whenever an administrator is appointed after a clerk of superior court has received any money pursuant to this section, the clerk shall pay to the administrator all funds which have not been disbursed. The clerk shall receive no commissions for payments made to the administrator, and the administrator shall receive no commissions for receiving such payments.

"Article 26.

"Foreign Personal Representatives and Ancillary Administration.

"§ 28A-26-1. Domiciliary and ancillary probate and administration.

The domiciliary, or original, administration of the estates of all decedents domiciled in North Carolina at the time of death shall be under the jurisdiction of this State and of a proper clerk of superior court in this State, and the original probate of all wills of such persons shall be in this State. Any administration of the estate and any probate of a will of such decedents outside North Carolina shall be ancillary only. All assets, except real estate (but including proceeds from the sale of real estate), subject to ancillary administration in a jurisdiction outside North Carolina shall, to the extent such assets are not necessary for the requirements of such ancillary administration, be transferred and delivered by the ancillary personal representative to the duly qualified personal representative in this State for administration and distribution by the domiciliary personal representative, and the domiciliary personal representative in this State shall have the duty of collecting all such assets from the ancillary personal representative. The receipt of the domiciliary personal representative shall fully acquit the ancillary personal representative with respect to the assets covered thereby. The domiciliary personal representative in North Carolina shall have the exclusive right and duty to pay all federal and North Carolina taxes owed by the estate of such decedent and to make proper distribution of all assets including those collected from the ancillary personal representative.

"§ 28A-26-2. Payment of debt and delivery of property to domiciliary personal representative of a nonresident decedent without ancillary administration in this State.

(a) At any time after the expiration of 60 days from the death of a nonresident decedent, any resident of this State indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the nonresident decedent may pay the debt or deliver the personal property, or the instrument evidencing the debt, obligation, stock or chose in action, to the domiciliary personal representative of the nonresident decedent upon being presented with a certified or exemplified copy of ~~his~~ the domiciliary personal representative's letters of appointment and an affidavit made by or on behalf of the domiciliary personal representative stating:

(1) The date of the death of the nonresident decedent;

(2) That to the best of ~~his~~ the domiciliary personal representative's knowledge no administration, or application or petition therefor, is pending in this State;

(3) That the domiciliary personal representative is entitled to payment or delivery.

(b) Payment or delivery made in good faith on the basis of the proof of appointment as domiciliary personal representative of a nonresident decedent and an affidavit meeting the requirements of subsection (a) constitutes a release to the same extent as if payment or delivery had been made to an ancillary personal representative.

(c) Payment or delivery under this section shall not be made if a resident creditor of the nonresident decedent has, by registered or certified mail, notified the resident debtor of the nonresident decedent or the resident having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary personal representative of the nonresident decedent. If no ancillary administrator qualifies within 90 days from the date of the notice, however, the resident debtor may pay the

debt or deliver the property directly to the nonresident domiciliary personal representative as set forth in subsection (a) of this section.

"§ 28A-26-3. Ancillary administration.

(a) Any domiciliary personal representative of a nonresident decedent upon the filing of a certified or exemplified copy of letters of appointment with the clerk of superior court who has venue under G.S. 28A-3-1 may be granted ancillary letters in this State notwithstanding that the domiciliary personal representative is a nonresident of this State or is a foreign corporation. If the domiciliary personal representative is a foreign corporation, it need not qualify under any other law of this State to authorize it to act as ancillary personal representative in the particular estate. If application is made for the issuance of ancillary letters to the domiciliary personal representative, the clerk of superior court shall give preference in appointment to the domiciliary personal representative unless the decedent shall have otherwise directed in a will.

(b) If, within 90 days after the death of the nonresident, or within 60 days after issue of domiciliary letters, should that be a shorter period, no application for ancillary letters has been made by a domiciliary personal representative, any person who could apply for issue of letters had the decedent been a resident may apply for issue of ancillary letters.

If it is known that there is a duly qualified domiciliary personal representative, the clerk of superior court shall send notice of such application, by registered mail, to that personal representative and to the appointing court. Such notice shall include a statement that, within 14 days after its mailing, the domiciliary personal representative may apply for the issue of ancillary letters with the preference specified in subsection (a) of this section; and that ~~his~~ failure of the domiciliary personal representative to do so will be deemed a waiver, with the result that letters will be issued to another. Upon such failure, the clerk of superior court may issue ancillary letters in accordance with the provisions of Article 4 of this Chapter.

If the applicant and the clerk of superior court have no knowledge of the existence of a domiciliary personal representative, the clerk of superior court may proceed to issue ancillary letters. Subsequently, upon it becoming known that a domiciliary personal representative has been appointed, whether such appointment occurred before or after the issue of ancillary letters, the clerk of superior court shall notify the domiciliary personal representative, by registered mail, of the action taken by the clerk of superior court and the state of the ancillary administration. Such notice shall include a statement that at any time prior to approval of the ancillary personal representative's final account the domiciliary personal representative may appear in the proceedings for any purpose ~~he~~ the domiciliary personal representative may deem advisable; and that ~~he~~ the domiciliary personal representative may apply to be substituted as ancillary personal representative, but that such request will not be granted unless the clerk of superior court finds that such action will be for the best interests of North Carolina administration of the estate.

"§ 28A-26-4. Bonds.

(a) Subject to the exception in subsection (b), any personal representative, including a domiciliary personal representative, who is granted ancillary letters of administration in this State must satisfy the bond requirements prescribed in Article 8 of this Chapter.

(b) Where a citizen or subject of a foreign country, or of any other state or territory of the United States, by will sufficient according to the laws of this State, and duly probated and recorded in the proper county, devises to ~~his~~ that person's executor, with power to sell and convey, real property situated in this State in trust for a person named in the will, the power being vested in the executor as such trustee, the executor may execute the power without giving bond in this State.

"§ 28A-26-5. Authority of domiciliary personal representative of a nonresident decedent.

The domiciliary personal representative of the nonresident decedent after qualifying as ancillary personal representative in this State is authorized to administer the North Carolina estate of the nonresident decedent in accordance with the provisions of this Chapter.

"§ 28A-26-6. Jurisdiction.

(a) A domiciliary personal representative of a nonresident decedent may invoke the jurisdiction of the courts of this State after qualifying as ancillary personal representative in this State except that ~~he~~ the domiciliary personal representative may invoke such jurisdiction prior to qualification for the purpose of appealing from a decision of the clerk of superior court regarding a question of qualification.

(b) A domiciliary personal representative of a nonresident decedent submits to the jurisdiction of the courts of this State:

(1) As provided in G.S. 1-75.4, or

(2) By receiving payment of money or taking delivery of personal property under G.S. 28A-26-2; or

(3) By acceptance of ancillary letters of administration in this State under G.S. 28A-26-3; or

(4) By doing any act as personal representative in this State which if done as an individual would have given the State jurisdiction over ~~him~~ the personal representative as an individual.

"§ 28A-26-7. Service on personal representative of a nonresident decedent.

A court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 28A-26-6 may exercise personal jurisdiction over a defendant by service of process in accordance with the provisions of G.S. 1A-1, Rule 4(j).

"§ 28A-26-8. Duties of personal representative in an ancillary administration.

(a) All assets of estates of nonresident decedents being administered in this State are subject to all claims, allowances and charges existing or established against the estate of the decedent wherever existing or established.

(b) An adjudication of a claim rendered in any jurisdiction in favor of or against any personal representative of the estate of a nonresident decedent is binding on the ancillary personal representative in this State and on all parties to the litigation.

(c) Limitations on presentation of claims shall be governed by the provisions of this Chapter except that creditors residing in the domiciliary state barred by the statutes of that state may not file claims in an ancillary administration in this State.

(d) In the payment of claims by the ancillary administrator, the following rules shall apply:

(1) If the value of the entire estate, wherever administered, equals or exceeds family exemptions and allowances, prior charges and claims against the entire estate, the claims allowed in this State shall be paid in full from assets in this State, if such assets are sufficient for the purpose.

(2) If such total exemptions, allowances, charges and claims exceed the value of the entire estate, the claims allowed in this State shall be paid their proper percentage pro rata by class, if assets in this State are sufficient for the purpose.

(3) If assets in this State are inadequate for either of the purposes stated in subdivisions (1) or (2) above, the claims allowed in this State shall be paid, pro rata by class, to the extent the local assets will permit.

(4) If the value of the entire estate, wherever administered, is insufficient to pay all exemptions and allowances, prior charges and claims against the entire estate, the priority for order of payment established by the law of the domicile will prevail.

"§ 28A-26-9. Remission of surplus assets by ancillary personal representative to domiciliary personal representative.

Unless a testator in a will otherwise directs, any assets (including proceeds from the sale of real estate) remaining after payment of claims against the estate of a nonresident decedent being administered by an ancillary personal representative other than the domiciliary personal representative shall be transferred and delivered to the domiciliary personal representative or, if none, to the court in the domicile of the decedent which has jurisdiction to administer the estate.

"Article 27.

"Apportionment of Federal Estate Tax.

"§ 28A-27-1. Definitions.

For the purposes of this Article:

(1) "Estate" means the gross estate of a decedent as determined for the purpose of the federal estate tax.

(2) "Fiduciary" includes a personal representative and a trustee.

(3) "Person" means any individual, partnership, association, joint stock company, corporation, governmental agency, including any multiples or combinations of the foregoing as, for example, individuals as joint tenants.

(4) "Person interested in the estate" means any person, including a personal representative, guardian, or trustee, entitled to receive, or who has received, from a decedent while alive or by reason of the death of a decedent any property or interest therein included in the decedent's taxable estate.

(5) "State" means any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(6) "Tax" means the net Federal Estate Tax due, after application of any available unified transfer tax credit, and interest and penalties imposed in addition to the tax.

"§ 28A-27-2. Apportionment.

(a) Except as otherwise provided in subsection (b) of this section, or in G.S. 28A-27-5, G.S. 28A-27-6, or G.S. 28A-27-8, the tax shall be apportioned among all persons interested in the estate in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values as finally determined for federal estate tax purposes shall be used for the purposes of this computation.

(b) In the event the decedent's will provides a method of apportionment of the tax different from the method provided in subsection (a) above, the method described in the will shall control. However, in the case of any will executed on or after October 1, 1986, a general direction in the will that taxes shall not be apportioned, whether or not referring to this Article, but shall be paid from the residuary portion of the estate shall not, unless specifically stated otherwise, apply to taxes imposed on assets which are includible in the valuation of the decedent's gross estate for federal estate tax purposes only by reason of Sections 2041, 2042 or 2044 of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent tax law. In the case of an estate administered under any will executed on or after October 1, 1986, in the event that the estate tax computation involves assets described in the preceding sentence, unless specifically stated otherwise, apportionment shall be made against such assets and the tax so apportioned shall be recovered from the persons receiving such assets as provided in Sections 2206, 2207 or 2207A of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent tax law.

"§ 28A-27-3. Procedure for determining apportionment.

(a) The personal representative of a decedent shall determine the apportionment of the tax.

(b) If the personal representative finds that it is inequitable to apportion interest and penalties in the manner provided in this Article because such interest or penalties were imposed due to the fault of one or more persons interested in the ~~estate he~~ estate, the personal representative may direct apportionment thereon in the manner ~~he~~ the personal representative finds equitable.

(c) The expenses reasonably incurred by the personal representative in connection with the apportionment of the tax shall be apportioned as provided for taxes under this Article. If the personal representative finds that it is inequitable to apportion the expenses because such expenses were incurred because of the fault of one or more persons interested in the ~~estate he~~ estate, the personal representative may direct other more equitable apportionment.

"§ 28A-27-4. Uncollected tax.

The personal representative shall not be under any duty to institute any suit or proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the six months next following final determination of the tax. A personal representative who institutes the suit or proceeding within a reasonable time after the six months' period shall not be subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectable at a time following the death of the decedent but thereafter became uncollectable. If the personal representative cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be apportioned among the other persons interested in the estate who are subject to apportionment. The apportionment shall be made in the proportion that the value of the interest of each remaining person interested in the estate bears to the total value of the interests of all remaining persons interested in the estate.

"§ 28A-27-5. Exemptions, deductions, and credits.

(a) Any interest for which a deduction or exemption is allowed under the federal revenue laws in determining the value of the decedent's net taxable estate, such as property passing to or in trust for a surviving spouse and gifts or bequests for charitable, public, or similar purposes, shall not be included in the computation provided for in G.S. 28A-27-2 to the extent of the allowable deduction or exemption. When such an interest is subject to a prior present interest which is not allowable as a deduction or exemption, such present interest shall not be included in the computation provided for in this Article and no tax shall be apportioned to or paid from principal.

(b) Any credit for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or ~~his~~ the decedent's estate shall inure to the proportionate benefit of all persons liable to apportionment; provided, however, that if the tax which gives rise to such a credit has in fact been paid by a person interested in the estate, the benefit of such credit shall inure to that person paying the tax.

(c) Any credit for inheritance, succession, or estate taxes or taxes in the nature thereof in respect to property or interests includible in the estate shall inure to the benefit of the persons or interests chargeable with the payment thereof to the extent that, or in the proportion that, the credit reduces the tax.

(d) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or bequest does not constitute an allowed deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in this Article, and to that extent no apportionment shall be made against the property. This section does not apply in any instance where the result will be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954 of the United States or corresponding provisions of any subsequent tax law, relating to deduction for State death taxes on transfers for public, charitable, or religious uses.

"§ 28A-27-6. No apportionment between temporary and remainder interests.

No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

"§ 28A-27-7. Fiduciary's rights and duties.

(a) The personal representative may withhold from any property of the decedent in ~~his~~ the personal representative's possession, distributable to any person interested in the estate, the amount of the tax apportioned to ~~his~~ the person's interest. If the property in possession of the personal representative and distributable to any person interested in the estate tax is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal ~~representative he~~ representative, the personal representative may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Article.

(b) If property held by the fiduciary or other person is distributed prior to final apportionment of the tax, the personal representative may require the distributee to provide a bond or other security for the apportionment liability in the form and amount prescribed by the fiduciary, with the approval of the clerk of superior court having jurisdiction of the administration of the estate.

"§ 28A-27-8. Difference with Federal Estate Tax Law.

If the liabilities of persons interested in the estate as prescribed by this Article differ from those which result under the Federal Estate Tax Law, the liabilities imposed by the federal law will control and the balance of this Article shall apply as if the resulting liabilities had been prescribed herein.

"§ 28A-27-9. Effective date.

The provisions of this Article shall not apply to taxes due on account of the death of decedents dying prior to October 1, 1986.

"Article 28.

"Summary Administration.

"§ 28A-28-1. Summary administration where spouse is sole beneficiary.

When a decedent dies testate or intestate leaving a surviving spouse as the sole devisee or heir, the surviving spouse may file a petition for summary administration with the clerk of superior court of the county where the decedent was domiciled at the time of death. This procedure is available if the decedent died partially testate, provided that the surviving spouse is the sole devisee under the will and the sole heir of the decedent's intestate property. This procedure is not available if the decedent's will provides that it is not available or if the devise to the surviving spouse is in trust rather than outright.

"§ 28A-28-2. Petition.

(a) The petition shall be signed by the surviving spouse and verified to be accurate and complete to the best of the spouse's knowledge and belief and shall state as follows:

(1) The name and address of the spouse and the fact that ~~he or she~~ the spouse is the surviving spouse of the decedent;

(2) The name and domicile of the decedent at the time of death;

(3) The date and place of death of the decedent;

(4) The date and place of marriage of the spouse and the decedent;

(5) A description sufficient to identify each tract of real property owned in whole or in part by the decedent at the time of death;

(6) A description of the nature of the decedent's personal property and the location of such property, as far as these facts are known or can with reasonable diligence be ascertained;

(7) The probable value of the decedent's personal property, so far as the value is known or can with reasonable diligence be ascertained;

(8) That no application or petition for appointment of a personal representative is pending or has been granted in this State;

(9) That the spouse is the sole devisee or sole heir, or both, of the decedent, and that there is no other devisee or heir; that the decedent's will, if any, does not prohibit summary administration; and that any property passing to the spouse under the will is not in trust;

(10) The name and address of any executor or coexecutor named by the will and that, if the decedent died testate, a copy of the petition has been personally delivered or sent by first-class mail by the spouse to the last-known address of any executor or coexecutor named by the will, if different from the spouse;

(11) That, to the extent of the value of the property received by the spouse under the will of the decedent or by intestate succession, the spouse assumes all liabilities of the decedent that were not discharged by reason of death and assumes liability for all taxes and valid claims against the decedent or the estate, as provided in G.S. 28A-28-6; and

(12) If the decedent died testate, that the decedent's will has been admitted to probate in the court of the proper county; that a duly certified copy of the will has been recorded in each county in which is located any real property owned by the decedent at the time of death; and that a certified copy of the decedent's will is attached to the petition.

(b) The petition shall be filed by the clerk upon payment of the fee provided in G.S. 7A-307 and shall be indexed in the index to estates.

"§ 28A-28-3. Clerk's order.

If it appears to the clerk that the petition and supporting evidence, if any, comply with the requirements of G.S. 28A-28-2 and on the basis thereof the spouse is entitled to summary administration, the clerk shall enter an order to that effect and no further administration of the estate is necessary. Nothing in this section shall preclude a petition under the provisions of G.S. 28A-28-7(a) or the appointment of a personal representative or a collector under the provisions of Article 6 or Article 11 of this Chapter.

"§ 28A-28-4. Effect of order.

(a) The presentation of a certified copy of the order described in G.S. 28A-28-3 shall be sufficient to require the transfer to the spouse of any property or contract right owned by the decedent at the time of death, including but not limited to: (i) wages and salary; (ii) the title and license to a motor vehicle registered in the name of the decedent owner; (iii) the ownership rights of a savings account, checking account, or certificate of deposit in a bank in the name of the decedent owner; (iv) the ownership rights of a savings account, share certificate, or certificate of deposit in a credit union, building and loan association, or savings and loan association in the name of the decedent owner; and (v) the ownership rights in any stock or security registered on the books of a corporation in the name of the decedent owner.

(b) After the entry of the order described in G.S. 28A-28-3, the spouse may convey, lease, sell, or mortgage any real property devised to or inherited by the spouse from the decedent, at public or private sale, upon such terms as the spouse may determine. This section shall not limit any other powers the spouse may have over property devised to or inherited by the spouse from the decedent. The provisions of G.S. 28A-17-12 are not applicable to a conveyance, sale, lease, or mortgage under this subsection.

"§ 28A-28-5. Effect of payment.

The person paying, delivering, transferring, or issuing property or the evidence thereof pursuant to the order described in G.S. 28A-28-3 is discharged and released to the same extent

as if the person dealt with a duly qualified personal representative of the decedent. The person is not required to see to the application of the property or evidence thereof or to inquire into the truth of any statement in the petition or order.

If any person to whom the order is presented refuses to pay, deliver, transfer, or issue any property or evidence thereof, the property may be recovered or its payment, delivery, transfer, or issuance may be compelled in an action brought for that purpose by the surviving spouse. The court costs and attorney's fee incident to the action shall be taxed against the person whose refusal to comply with the provisions of G.S. 28A-28-4 made the action necessary.

"§ 28A-28-6. Spouse's assumption of liabilities.

If the clerk grants the order for summary administration, the spouse shall be deemed to have assumed, to the extent of the value of the property received by the spouse under the will of the decedent or by intestate succession, all liabilities of the decedent that were not discharged by reason of death and liability for all taxes and valid claims against the decedent or the estate. The value of the property is the fair market value of the property on the date of death of the decedent less any liens or encumbrances on the property so received. The spouse may assert any defense, counterclaim, cross-claim, or setoff which would have been available to the decedent if the decedent had not died except for actions listed in G.S. 28A-18-1(b). A spouse shall not be deemed to have assumed any liabilities of the decedent that were discharged by reason of death.

"§ 28A-28-7. Right to petition for appointment of personal representative; discharge of spouse's liability.

(a) Nothing in this Article shall preclude any person qualified to serve as personal representative pursuant to G.S. 28A-4-1, including the surviving spouse, from petitioning the clerk of superior court for the appointment of a personal representative or collector to administer the decedent's estate. If a personal representative or collector is appointed, the spouse shall render a proper accounting to the personal representative or collector and file a copy of the accounting with the clerk. The spouse shall deliver assets of the decedent's estate, cash, or other property and shall be discharged of liability in accordance with the provisions of subsection (b) of this section.

(b) In the event that a personal representative or collector is appointed, the spouse shall be discharged of liability for the debts of the decedent as follows:

(1) If the spouse delivers to the personal representative or collector all of the property received by the spouse in the identical form that it was received by the spouse, then the spouse will be discharged of all liability.

(2) If the spouse does not deliver to the personal representative or collector all of the property in the identical form that it was received by the spouse, then the spouse shall be discharged of liability as follows:

a. For property delivered to the personal representative or collector that is in the identical form that it was received by the spouse, the spouse is discharged to the extent of the fair market value of the property at the time of the decedent's death or the fair market value at the time the property was received by the personal representative or collector, whichever is greater.

b. For property delivered to the personal representative or collector that is not in the identical form that it was received by the spouse, the spouse is discharged to the extent of the fair market value of such property at the time it was delivered to the personal representative or collector.

"Article 29.

"Notice to Creditors Without Estate Administration.

"§ 28A-29-1. Notice to creditors without estate administration.

When a decedent dies testate or intestate leaving no property subject to probate, any person otherwise qualified to serve as personal representative of the estate pursuant to Article 4 of this Chapter or the trustee then serving under the terms of a revocable trust created by the decedent may file a petition to be appointed as a limited personal representative to provide notice to creditors without administration of an estate before the clerk of superior court of the county where the decedent was domiciled at the time of death. This procedure is not available if the decedent's will provides that it is not available. A limited personal representative shall have the rights and obligations provided for in this Article."

SECTION 5. Chapter 29 of the General Statutes reads as rewritten:

"Chapter 29.

"Intestate Succession.

"Article 1.

"General Provisions.

"§ 29-1. Short title.

This Chapter shall be known and may be cited as the Intestate Succession Act.

"§ 29-2. Definitions.

As used in this Chapter, unless the context otherwise requires, the term:

(1) "Advancement" means an irrevocable inter vivos gift of property, made by an intestate donor to any person who would be ~~his~~ the donor's heir or one of ~~his~~ the donor's heirs upon ~~his~~ the donor's death, and intended by the intestate donor to enable the donee to anticipate ~~his~~ the donee's inheritance to the extent of the gift; except that no gift to a spouse shall be considered an advancement unless so designated by the intestate donor in a writing signed by the donor at the time of the gift.

(2) "Estate" means all the property of a decedent, including but not limited to:

a. An estate for the life of another; and

b. All future interests in property not terminable by the death of the owner thereof, including all reversions, remainders, executory interests, rights of entry and possibilities of reverter, subject, however, to all limitations and conditions imposed upon such future interests.

(3) "Heir" means any person entitled to take real or personal property upon intestacy under the provisions of this Chapter.

(4) "Lineal descendants" of a person means all children of such person and successive generations of children of such children.

(5) "Net estate" means the estate of a decedent, exclusive of family allowances, costs of administration, and all lawful claims against the estate.

(6) "Share," when used to describe the share of a net estate or property which any person is entitled to take, includes both the fractional share of the personal property and the undivided fractional interest in the real property, which the person is entitled to take.

"§ 29-3. Certain distinctions as to intestate succession abolished.

In the determination of those persons who take upon intestate succession there is no distinction:

(1) Between real and personal property, or

(2) Between ancestral and nonancestral property, or

(3) Between relations of the whole blood and those of the half blood.

"§ 29-4. Curtesy and dower abolished.

The estates of curtesy and dower are hereby abolished.

"§ 29-5. Computation of next of kin.

Degrees of kinship shall be computed as provided in G.S. 104A-1.

"**§ 29-6. Lineal succession unlimited.**

There shall be no limitation on the right of succession by lineal descendants of an intestate.

"**§ 29-7. Collateral succession limited.**

There shall be no right of succession by collateral kin who are more than five degrees of kinship removed from an intestate; provided that if there is no collateral relative within the five degrees of kinship referred to herein, then collateral succession shall be unlimited to prevent any property from escheating.

"**§ 29-8. Partial intestacy.**

If part but not all of the estate of a decedent is validly disposed of by ~~his~~ the decedent's will, the part not disposed of by such will shall descend and be distributed as intestate property.

"**§ 29-9. Inheritance by unborn infant.**

Lineal descendants and other relatives of an intestate born within 10 lunar months after the death of the intestate, shall inherit as if they had been born in the lifetime of the intestate and had survived him.

"**§ 29-10. Renunciation.**

Renunciation of an intestate share shall be as provided for in Chapter 31B of the General Statutes.

"**§ 29-11. Aliens.**

Unless otherwise provided by law, it shall be no bar to intestate succession by any person, that ~~he,~~ the person, or any other person through whom ~~he~~ the person traces ~~his~~ the person's inheritance, is or has been an alien.

"**§ 29-12. Escheats.**

If there is no person entitled to take under G.S. 29-14 or G.S. 29-15, or if in case of an illegitimate intestate, there is no one entitled to take under G.S. 29-21 or G.S. 29-22 the net estate shall escheat as provided in G.S. 116B-2.

"**§ 29-12.1. Controversies under this Chapter.**

Any controversy arising under this Chapter shall be determined as an estate proceeding under Article 2 of Chapter 28A of the General Statutes, except that controversies arising under Article 8 of this Chapter shall be determined as set forth in that Chapter.

"Article 2.

"Shares of Persons Who Take upon Intestacy.

"**§ 29-13. Descent and distribution upon intestacy; 120-hour survivorship requirement, revised simultaneous death act, Article 24, Chapter 28A.**

(a) All the estate of a person dying intestate shall descend and be distributed, subject to the payment of costs of administration and other lawful claims against the estate, and subject to the payment of State inheritance or estate taxes, as provided in this Chapter.

(b) The determination of whether an heir has predeceased a person dying intestate shall be made as provided by Article 24 of Chapter 28A of the General Statutes.

"**§ 29-14. Share of surviving spouse.**

(a) Real Property. – The share of the surviving spouse in the real property is:

(1) If the intestate is survived by only one child or by any lineal descendant of only one deceased child, a one-half undivided interest in the real property;

(2) If the intestate is survived by two or more children, or by one child and any lineal descendant of one or more deceased children or by lineal descendants of two or more deceased children, a one-third undivided interest in the real property;

(3) If the intestate is not survived by a child, children or any lineal descendant of a deceased child or children, but is survived by one or more parents, a one-half undivided interest in the real property;

(4) If the intestate is not survived by a child, children or any lineal descendant of a deceased child or children, or by a parent, all the real property.

(b) Personal Property. – The share of the surviving spouse in the personal property is:

(1) If the intestate is survived by only one child or by any lineal descendant of only one deceased child, and the net personal property does not exceed thirty thousand dollars ($30,000) in value, all of the personal property; if the net personal property exceeds thirty thousand dollars ($30,000) in value, the sum of thirty thousand dollars ($30,000) plus one half of the balance of the personal property;

(2) If the intestate is survived by two or more children, or by one child and any lineal descendant of one or more deceased children, or by lineal descendants of two or more deceased children, and the net personal property does not exceed thirty thousand dollars ($30,000) in value, all of the personal property; if the net personal property exceeds thirty thousand dollars ($30,000) in value, the sum of thirty thousand dollars ($30,000) plus one third of the balance of the personal property;

(3) If the intestate is not survived by a child, children, or any lineal descendant of a deceased child or children, but is survived by one or more parents, and the net personal property does not exceed fifty thousand dollars ($50,000) in value, all of the personal property; if the net personal property exceeds fifty thousand dollars ($50,000) in value, the sum of fifty thousand dollars ($50,000) plus one half of the balance of the personal property;

(4) If the intestate is not survived by a child, children, or any lineal descendant of a deceased child or children, or by a parent, all of the personal property.

(c) When an equitable distribution of property is awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent, the share of the surviving spouse determined under subsections (a) and (b) of this section shall be first determined as though no property had been awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent, and then reduced by the net value of the marital estate awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent.

"§ 29-15. Shares of others than surviving spouse.

Those persons surviving the intestate, other than the surviving spouse, shall take that share of the net estate not distributable to the surviving spouse, or the entire net estate if there is no surviving spouse, as follows:

(1) If the intestate is survived by only one child or by only one lineal descendant of only one deceased child, that person shall take the entire net estate or share, but if the intestate is survived by two or more lineal descendants of only one deceased child, they shall take as provided in G.S. 29-16; or

(2) If the intestate is survived by two or more children or by one child and any lineal descendant of one or more deceased children, or by lineal descendants of two or more deceased children, they shall take as provided in G.S. 29-16; or

(3) If the intestate is not survived by a child, children or any lineal descendant of a deceased child or children, but is survived by both parents, they shall take in equal shares, or if either parent is dead, the surviving parent shall take the entire share; or

(4) If the intestate is not survived by such children or lineal descendants or by a parent, the brothers and sisters of the intestate, and the lineal descendants of any deceased brothers or sisters, shall take as provided in G.S. 29-16; or

(5) If there is no one entitled to take under the preceding subdivisions of this section or under G.S. 29-14,

a. The paternal grandparents shall take one half of the net estate in equal shares, or, if either is dead, the survivor shall take the entire one half of the net estate, and if neither paternal grandparent survives, then the paternal uncles and aunts of the intestate and the lineal descendants of deceased paternal uncles and aunts shall take said one half as provided in G.S. 29-16; and

b. The maternal grandparents shall take the other one half in equal shares, or if either is dead, the survivor shall take the entire one half of the net estate, and if neither maternal grandparent survives, then the maternal uncles and aunts of the intestate and the lineal descendants of deceased maternal uncles and aunts shall take one half as provided in G.S. 29-16; but

c. If there is no grandparent and no uncle or aunt, or lineal descendant of a deceased uncle or aunt, on the paternal side, then those of the maternal side who otherwise would be entitled to take one half as hereinbefore provided in this subdivision shall take the whole; or

d. If there is no grandparent and no uncle or aunt, or lineal descendant of a deceased uncle or aunt, on the maternal side, then those on the paternal side who otherwise would be entitled to take one half as hereinbefore provided in this subdivision shall take the whole.

"Article 3.

"Distribution among Classes.

"§ 29-16. Distribution among classes.

(a) Children and Their Lineal Descendants. – If the intestate is survived by lineal descendants, their respective shares in the property which they are entitled to take under G.S. 29-15 of this Chapter shall be determined in the following manner:

(1) Children. – To determine the share of each surviving child, divide the property by the number of surviving children plus the number of deceased children who have left lineal descendants surviving the intestate.

(2) Grandchildren. – To determine the share of each surviving grandchild by a deceased child of the intestate in the property not taken under the preceding subdivision of this subsection, divide that property by the number of such surviving grandchildren plus the number of deceased grandchildren who have left lineal descendants surviving the intestate.

(3) Great-Grandchildren. – To determine the share of each surviving great-grandchild by a deceased grandchild of the intestate in the property not taken under the preceding subdivisions of this subsection, divide that property by the number of such surviving great-grandchildren plus the number of deceased great-grandchildren who have left lineal descendants surviving the intestate.

(4) Great-Great-Grandchildren. – To determine the share of each surviving great-great-grandchild by a deceased great-grandchild of the intestate in the property not taken under the preceding subdivisions of this subsection, divide that property by the number of such surviving great-great-grandchildren plus the number of deceased great-great-grandchildren who have left lineal descendants surviving the intestate.

(5) Other Lineal Descendants of Children. – Divide, according to the formula established in the preceding subdivisions of this subsection, any property not taken under such preceding subdivisions, among the lineal descendants of the children of the intestate not already participating.

(b) Brothers and Sisters and Their Lineal Descendants. – If the intestate is survived by brothers and sisters or the lineal descendants of deceased brothers and sisters, their respective shares in the property which they are entitled to take under G.S. 29-15 of this Chapter shall be determined in the following manner:

(1) Brothers and Sisters. – To determine the share of each surviving brother and sister, divide the property by the number of surviving brothers and sisters plus the number of deceased brothers and sisters who have left lineal descendants surviving the intestate within the fifth degree of kinship to the intestate.

(2) Nephews and Nieces. – To determine the share of each surviving nephew or niece by a deceased brother or sister of the intestate in the property not taken under the preceding subdivision of this subsection, divide that property by the number of such surviving nephews or nieces plus the number of deceased nephews and nieces who have left lineal descendants surviving the intestate within the fifth degree of kinship to the intestate.

(3) Grandnephews and Grandnieces. – To determine the share of each surviving grandnephew or grandniece by a deceased nephew or niece of the intestate in the property not taken under the preceding subdivisions of this subsection, divide that property by the number of such surviving grandnephews and grandnieces plus the number of deceased grandnephews and grandnieces who have left children surviving the intestate.

(4) Great-Grandnephews and Great-Grandnieces. – To determine the share of each surviving child of a deceased grandnephew or grandniece of the intestate, divide equally among the great-grandnephews and great-grandnieces of the intestate any property not taken under the preceding subdivisions of this subsection.

(5) Grandparents and Others. – If there is no one within the fifth degree of kinship to the intestate entitled to take the property under the preceding subdivisions of this subsection, then the intestate's property shall go to those entitled to take under G.S. 29-15(5).

(c) Uncles and Aunts and Their Lineal Descendants. – If the intestate is survived by uncles and aunts or the lineal descendants of deceased uncles and aunts, their respective shares in the property which they are entitled to take under G.S. 29-15 shall be determined in the following manner:

(1) Uncles and Aunts. – To determine the share of each surviving uncle and aunt, divide the property by the number of surviving uncles and aunts plus the number of deceased uncles and aunts who have left children or grandchildren surviving the intestate.

(2) Children of Uncles and Aunts. – To determine the share of each surviving child of a deceased uncle or aunt of the intestate in the property not taken under the preceding subdivision of this subsection, divide that property by the number of surviving children of deceased uncles and aunts plus the number of deceased children of deceased uncles and aunts who have left children surviving the intestate.

(3) Grandchildren of Uncles and Aunts. – To determine the share of each surviving child of a deceased child of a deceased uncle or aunt of the intestate, divide equally among the grandchildren of uncles or aunts of the intestate any property not taken under the preceding subdivisions of this subsection.

"Article 4.

"Adopted Children.

"**§ 29-17. Succession by, through and from adopted children.**

(a) A child, adopted in accordance with Chapter 48 of the General Statutes or in accordance with the applicable law of any other jurisdiction, and the heirs of such child, are entitled by succession to any property by, through and from ~~his~~ the child's adoptive parents and their heirs the same as if ~~he~~the child were the natural legitimate child of the adoptive parents.

(b) An adopted child is not entitled by succession to any property, by, through, or from ~~his~~ the child's natural parents or their heirs, except as provided in subsection (e) of this section.

(c) The adoptive parents and the heirs of the adoptive parents are entitled by succession to any property, by, through and from an adopted child the same as if the adopted child were the natural legitimate child of the adoptive parents.

(d) The natural parents and the heirs of the natural parents are not entitled by succession to any property, by, through or from an adopted child, except as provided in subsection (e) of this section.

(e) If a natural parent has previously married, is married to, or shall marry an adoptive parent, the adopted child is considered the child of such natural parent for all purposes of intestate succession.

"Article 5.

"Legitimated Children.

"**§ 29-18. Succession by, through and from legitimated children.**

A child born an illegitimate who shall have been legitimated in accordance with G.S. 49-10 or 49-12 or in accordance with the applicable law of any other jurisdiction, and the heirs of such child, are entitled by succession to property by, through and from ~~his~~ the child's father and mother and their heirs the same as if born in lawful wedlock; and if ~~he~~ the child dies intestate, ~~his~~ the child's property shall descend and be distributed as if ~~he~~ the child had been born in lawful wedlock.

"Article 6.

"Illegitimate Children.

"**§ 29-19. Succession by, through and from illegitimate children.**

(a) For purposes of intestate succession, an illegitimate child shall be treated as if ~~he~~ that child were the legitimate child of ~~his~~ the child's mother, so that ~~he~~ the child and ~~his~~ the child's lineal descendants are entitled to take by, through and from ~~his~~ the child's mother and ~~his~~ the child's other maternal kindred, both descendants and collaterals, and they are entitled to take from ~~him.~~ the child.

(b) For purposes of intestate succession, an illegitimate child shall be entitled to take by, through and from:

(1) Any person who has been finally adjudged to be the father of such child pursuant to the provisions of G.S. 49-1 through 49-9 or the provisions of G.S. 49-14 through 49-16;

(2) Any person who has acknowledged himself during his own lifetime and the child's lifetime to be the father of such child in a written instrument executed or acknowledged before a certifying officer named in G.S. 52-10(b) and filed during his own lifetime and the child's lifetime in the office of the clerk of superior court of the county where either he or the child resides.

Notwithstanding the above provisions, no person shall be entitled to take hereunder unless ~~he~~ the person has given written notice of the basis of ~~his~~ the person's claim to the personal representative of the putative father within six months after the date of the first publication or posting of the general notice to creditors.

(c) Any person described under subdivision (b)(1) or (2) above and ~~his~~ the person's lineal and collateral kin shall be entitled to inherit by, through and from the illegitimate child.

(d) Any person who acknowledges ~~himself to be~~ that he is the father of an illegitimate child in his duly probated last will shall be deemed to have intended that such child be treated

as expressly provided for in said will or, in the absence of any express provision, the same as a legitimate child.

"§ 29-20. Descent and distribution upon intestacy of illegitimate children.

All the estate of a person dying illegitimate and intestate shall descend and be distributed, subject to the payment of costs of administration and other lawful claims against the estate, and subject to the payment of State inheritance or estate taxes, as provided in this Article.

"§ 29-21. Share of surviving spouse.

The share of the surviving spouse of an illegitimate intestate shall be the same as provided in G.S. 29-14 for the surviving spouse of a legitimate person. In determining whether the illegitimate intestate is survived by one or more parents as provided in G.S. 29-14(3), any person identified as the father under G.S. 29-19(b)(1) or (b)(2) shall be regarded as a parent.

"§ 29-22. Shares of others than the surviving spouse.

Those persons surviving the illegitimate intestate, other than the surviving spouse, shall take that share of the net estate provided in G.S. 29-15. In determining whether the illegitimate intestate is survived by one or more parents or their collateral kindred as provided in G.S. 29-15, any person identified as the father under G.S. 29-19(b)(1) or (b)(2) shall be regarded as a parent.

"Article 7.

"Advancements.

"§ 29-23. In general.

If a person dies intestate as to all ~~his~~ the person's estate, property which ~~he~~ the person gave in his lifetime as an advancement shall be counted toward the advancee's intestate share, and to the extent that it does not exceed such intestate share, shall be taken into account in computing the estate to be distributed.

"§ 29-24. Presumption of gift.

A gratuitous inter vivos transfer is presumed to be an absolute gift and not an advancement unless shown to be an advancement.

"§ 29-25. Effect of advancement.

If the amount of the advancement equals or exceeds the intestate share of the ~~advance, he~~ advancee, the advancee he shall be excluded from any further portion in the distribution of the estate, but ~~he~~ the advancee shall not be required to refund any part of such advancement; and if the amount of the advancement is less than ~~his~~ the advancee's share, ~~he~~ the advancee shall be entitled to such additional amount as will give ~~him his~~ the advancee the advancee's full share of the intestate donor's estate.

"§ 29-26. Valuation.

The value of the property given as an advancement shall be determined as of the time when the advancee came into possession or enjoyment, or at the time of the death of the intestate, whichever first occurs. However, if the value of the property, so advanced, is stated by the intestate donor in a writing signed by ~~him~~ the intestate donor and designating the gift as an advancement, such value shall be deemed the value of the advancement.

"§ 29-27. Death of advancee before intestate donor.

If the advancee dies before the intestate donor leaving a lineal heir or heirs who take by intestate succession from the intestate donor, the advancement shall be taken into account in the same manner as if it had been made directly to such heir or heirs, but the value shall be determined as of the time the original advancee came into possession or enjoyment, or when the heir or heirs came into possession or enjoyment or at the time of the death of the intestate donor, whichever first occurs.

"§ 29-28. Inventory.

If any person who has, in the lifetime of an intestate donor, received a part of the donor's property, refuses, upon order of the clerk of superior court of the county in which the administrator or collector qualifies, to give an inventory on oath, setting forth therein to the best

of ~~his~~ the person's knowledge and belief the particulars of the transfer of such property, ~~he~~ the person shall be considered to have received ~~his~~ the person's full share of the donor's estate, and shall not be entitled to receive any further part or share.

"§ 29-29. Release by advancee.

If the advancee acknowledges to the intestate donor by a signed writing that ~~he~~ the advancee has been advanced ~~his~~ the advancee's full share of the intestate donor's estate, both ~~he~~ the advancee and those claiming through ~~him~~ the advancee shall be excluded from any further participation in the intestate donor's estate.

"Article 8.

"Election to Take Life Interest in Lieu of Intestate Share.

"§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share provided.

(a) In lieu of the intestate share provided in G.S. 29-14 or G.S. 29-21, or of the elective share provided in G.S. 30-3.1, the surviving spouse of an intestate or the surviving spouse who has petitioned for an elective share shall be entitled to take as ~~his or her~~ the surviving spouse's intestate share or elective share a life estate in one third in value of all the real estate of which the deceased spouse was seised and possessed of an estate of inheritance at any time during coverture, except that real estate as to which the surviving spouse:

(1) Has waived ~~his or her~~ the surviving spouse's rights by joining with the other spouse in a conveyance thereof, or

(2) Has ~~release~~ released or quitclaimed ~~his or her~~ the surviving spouse's interest therein in accordance with G.S. 52-10, or

(3) Was not required by law to join in conveyance thereof in order to bar the elective life estate, or

(4) Is otherwise not legally entitled to the election provided in this section.

(b) ~~Regardless of the value thereof and despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a), the life estate provided for in subsection (a) shall at the election of the surviving spouse include~~ The surviving spouse may elect to take a life estate in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse if such dwelling house were owned by the deceased spouse at the time of ~~his or her~~ the deceased spouse's death, together with the outbuildings, improvements and easements thereunto belonging or appertaining, and lands upon which situated and reasonably necessary to the use and enjoyment thereof, as well as a fee simple ownership in the household furnishings ~~therein.~~ therein, despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a) of this section. If the value of a life estate in the dwelling house is less than the value of a life estate in one-third in value of all the real estate, the surviving spouse may elect to take a life estate in the dwelling and a life estate in such other real estate as to make the aggregate life estate of the surviving spouse equal to a life estate in one-third in value of all the real estate.

(c) The election provided for in subsection (a) shall be made by the filing of a ~~notice thereof~~ petition in accordance with Article 2 of Chapter 28A of the General Statutes with the clerk of the superior court of the county in which the administration of the estate is pending, or, if no administration is pending, then with the clerk of the superior court of any county in which the administration of the estate could be commenced. ~~Such~~ The election shall be ~~made:~~made prior to the shorter of the following applicable periods:

(1) ~~At any time within~~ In case of testacy, (i) within 12 months of the date of death of the deceased spouse if letters testamentary are not issued within that period, or (ii) within one month after the expiration of the time ~~fixed~~ limit for ~~the~~ filing ~~of the petition~~ a claim for elective share ~~under Article 1A of Chapter 30, or~~ if letters have been issued.

(2) In case of intestacy, ~~then~~ (i) within 12 months after the date of death of the deceased spouse if letters of administration are not issued within that period, or

~~(3) If letters of administration are issued within 12 months after the date of the death of the deceased spouse, then~~ (ii) within one month after the expiration of the time ~~limited~~ limit for filing claims against the estate, ~~or~~ if letters have been issued.

(4) If litigation that affects the share of the surviving spouse in the estate is ~~pending,~~ pending, including a pending petition for determination of an elective share, then within such reasonable time as may be allowed by written order of the clerk of the superior court.

(5) Nothing in this subsection shall extend the period of time for a surviving spouse to petition for an elective share under Article 1A of Chapter 30 of the General Statutes.

(c1) The ~~notice of election~~ petition shall:

(1) Be directed to the clerk with whom filed;

(2) State that the surviving spouse making the same elects to take under this section rather than under the provisions of G.S. 29-14, 29-21, or 30-3.1, as applicable;

(3) Set forth the names of all heirs, devisees, legatees, personal representatives and all other persons in possession of or claiming an estate or an interest in the property described in subsection (a); and

(4) Request the allotment of the life estate provided for in subsection (a).

(c2) The ~~notice of election~~ petition may be filed in person, or by attorney authorized in a writing executed and duly acknowledged by the surviving spouse and attested by at least one witness. If the surviving spouse is a minor or an incompetent, the ~~notice of election~~ petition may be executed and filed by a general guardian or by the guardian of the person or estate of the minor or incompetent spouse. If the minor or incompetent spouse has no guardian, the ~~notice of election~~ petition may be executed and filed by a ~~next friend~~ guardian ad litem appointed by the clerk. The ~~notice of election,~~ petition, whether in person or by attorney, shall be filed as a record of the court, and a summons together with a copy of the ~~notice~~ petition shall be served upon each of the interested persons named in the ~~notice of election.~~petition, in accordance with G.S. 1A-1, Rule 4.

(d) In case of election to take a life estate in lieu of an intestate share or elective share, as provided in either G.S. 29-14, 29-21, or 30-3.3(a), the clerk of superior court, with whom the ~~notice of election~~ petition has been filed, shall summon and appoint a jury of three disinterested persons who being first duly sworn shall promptly allot and set apart to the surviving spouse the life estate provided for in subsection (a) and make a final report of such action to the clerk.

(e) The final report shall be filed by the jury not more than 60 days after the summoning and appointment thereof, shall be signed by all jurors, and shall describe by metes and bounds the real estate in which the surviving spouse shall have been allotted and set aside a life estate. It shall be filed as a record of court and a certified copy thereof shall be filed and recorded in the office of the register of deeds of each county in which any part of the real property of the deceased spouse, affected by the allotment, is located.

(f) In the election and procedure to have the life estate allotted and set apart provided for in this section, the rules of procedure relating to partition proceedings under Chapter 46 of the General Statutes shall apply except insofar as the same would be inconsistent with the provisions of this section. A determination of the life estate under this section may be appealed in accordance with G.S. 1-301.3.

(g) Neither the household furnishings in the dwelling house nor the life estates taken by election under this section shall be subject to the payment of debts due from the estate of the deceased spouse, except those debts secured by such property as follows:

(1) By a mortgage or deed of trust in which the surviving spouse has waived ~~his or her~~ the surviving spouse's rights by joining with the other spouse in the making thereof; or

(2) By a purchase money mortgage or deed of trust, or by a conditional sales contract of personal property in which title is retained by the vendor, made prior to or during the marriage; or

(3) By a mortgage or deed of trust made prior to the marriage; or

(4) By a mortgage or deed of trust constituting a lien on the property at the time of its acquisition by the deceased spouse either before or during the marriage.

(h) If no election is made in the manner and within the time provided for in subsection (c) the surviving spouse shall be conclusively deemed to have waived ~~his or her~~ the surviving spouse's right to elect to take under the provisions of this section, and any interest which the surviving spouse may have had in the real estate of the deceased spouse by virtue of this section shall terminate."

SECTION 6. G.S. 30-3.4 reads as rewritten:

"**§ 30-3.4. Procedure for determining the elective share.**

(a) Exercisable Only During Lifetime. – The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, by the surviving spouse's attorney-in-fact if the surviving spouse's power of attorney expressly authorizes the attorney-in-fact to do so or to generally engage in estate transactions, or, with approval of court, by the guardian of the surviving spouse's estate or general guardian. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. – A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration in connection with the will or intestate proceeding with respect to which the surviving spouse claims the elective share by (i) filing a petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

~~(c) Time for Hearing. – Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The surviving spouse shall give notice of the hearing to the personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.~~

(d) Repealed by Session Laws 2009, c. 368, s. 1, effective July 27, 2009, and applicable to decedents dying on or after October 1 , 2009.

(d1) Mediation. – The clerk may order mediation as described in G.S. 7A-38.3B of any disputes in connection with an elective share proceeding.

(e) Repealed by Session Laws 2009, c. 368, s. 1, effective July 27, 2009, and applicable to decedents dying on or after October 1 , 2009.

(e1) Procedure. – An elective share proceeding shall be an estate ~~matter and may be appealed pursuant to G.S. 1-301.3.~~ proceeding and shall be conducted in accordance with the procedures of Article 2 of Chapter 28A of the General Statutes.

(e2) Information About Total Net Assets. – In order to assist the clerk in determining whether a surviving spouse is entitled to an elective share, and, if so, the amount thereof, the following provisions apply:

(1) Submission within two months. – In every case in which a petition to determine an elective share has been filed, within two months of the filing of the petition, the personal representative shall submit sufficient information about the total assets for the clerk to determine the elective share. To fulfill its obligation to provide information, the personal representative may prepare and submit to the clerk a proposed Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 or other information as the clerk sees fit.

(2) Examination regarding assets. – If the personal representative, the surviving spouse, or a responsible person has reasonable grounds to believe that any person has a claim or has in its possession assets included in Total Net Assets, then the personal representative, surviving spouse, or responsible person may use the procedures set out in G.S. 28A-15-12 to cause the clerk to examine the person believed to have a claim or to possess assets included in Total Net Assets.

(f) Findings and Conclusions. – After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

(g) Repealed by Session Laws 2009, c. 368, s. 1, effective July 27, 2009, and applicable to decedents dying on or after October 1, 2009.

(h) Expenses. – The expenses (including attorneys' fees) reasonably incurred by the personal representative, other responsible persons, and the surviving spouse in connection with elective share proceedings shall be equitably apportioned by the clerk of court in the clerk's discretion among the personal representative, other responsible persons, and the surviving spouse."

SECTION 7. Article 4 of Chapter 30 of the General Statutes reads as rewritten:

"Article 4.

"Year's Allowance.

"Part 1. Nature of Allowance.

"§ 30-15. When spouse entitled to allowance.

Every surviving spouse of an intestate or of a testator, whether or not ~~he or she~~ the surviving spouse has petitioned for an elective share, shall, unless the surviving spouse has forfeited ~~his or her~~ the surviving spouse's right thereto, as provided by law, be entitled, out of the personal property of the deceased spouse, to an allowance of the value of twenty thousand dollars ($20,000) for the surviving spouse's support for one year after the death of the deceased spouse. Such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of the deceased spouse, and shall, in cases of testacy, be charged against the share of the surviving spouse.

"§ 30-16. Duty of personal representative, magistrate, or clerk to assign allowance.

It shall be the duty of every administrator, collector, or executor of a will, on application in writing, signed by the surviving spouse, at any time within one year after the death of the deceased spouse, to assign to the surviving spouse the year's allowance as provided in this Article.

If there shall be no administration, or if the personal representative shall fail or refuse to apply to a magistrate or clerk of court, as provided in G.S. 30-20, for 10 days after the surviving spouse has filed the aforesaid application, or if the surviving spouse is the personal representative, the surviving spouse may make application to the magistrate or clerk, and it shall be the duty of the magistrate or clerk to proceed in the same manner as though the application had been made by the personal representative.

Where any personal property of the deceased spouse shall be located outside the township or county where the deceased spouse resided at the time of ~~his~~ the deceased spouse's death, the personal representative or the surviving spouse may apply to any magistrate or to any clerk of court of any township or county where such personal property is located, and it shall be the duty of such magistrate or clerk to assign the year's allowance as if the deceased spouse had resided and died in that township.

"§ 30-17. When children entitled to an allowance.

Whenever any parent dies survived by any child under the age of 18 years, including an adopted child or a child with whom the widow may be pregnant at the death of her husband, or a child who is less than 22 years of age and is a full-time student in any educational institution, or a child under 21 years of age who has been declared mentally incompetent, or a child under 21 years of age who is totally disabled, or any other person under the age of 18 years residing with the deceased parent at the time of death to whom the deceased parent or the surviving parent stood in loco parentis, every such child shall be entitled to receive an allowance of two thousand dollars ($2,000) for the child's support for the year next ensuing the death of such parent. Such allowance shall be in addition to the child's share of the deceased parent's estate and shall be exempt from any lien by judgment or execution against the property of such parent. The personal representative of the deceased parent shall, within one year after the parent's death, assign to every such child the allowance herein provided for; but if there is no personal representative or if ~~he~~ the personal representative fails or refuses to act within 10 days after written request by a guardian ~~or next friend~~ on behalf of such child, the allowance may be assigned by a magistrate or clerk of court upon application of said ~~guardian or next friend.~~ guardian.

If the child resides with the widow of the deceased parent at the time such allowance is paid, the allowance shall be paid to said widow for the benefit of said child. If the child resides with its surviving parent who is other than the widow of the deceased parent, such allowance shall be paid to said surviving parent for the use and benefit of such child, regardless of whether the deceased died testate or intestate or whether the widow dissented from the will. Provided, however, the allowance shall not be available to an illegitimate child of a deceased father, unless such deceased father shall have recognized the paternity of such illegitimate child by deed, will or other paper-writing. If the child does not reside with a parent when the allowance is paid, the allowance shall be paid to the child's general guardian, if any, and if none, to the clerk of the superior court who shall receive and disburse same for the benefit of such child.

"§ 30-18. From what property allowance assigned.

Such allowance shall be made in money or other personal property of the estate of the deceased spouse.

"Part 2. Assigned by Magistrate or Clerk.

"§ 30-19. Value of property ascertained.

The value of the personal property assigned to the surviving spouse and children shall be ascertained by a magistrate or the clerk of court of the county in which administration was granted or the will probated.

"§ 30-20. Procedure for assignment.

Upon the application of the surviving spouse, a child by ~~his guardian or next friend,~~ the child's guardian, or the personal representative of the deceased, the clerk of superior court of

the county in which the deceased resided may assign the inquiry to a magistrate of the county. The clerk of court, or magistrate upon assignment, shall ascertain the person or persons entitled to an allowance according to the provisions of this Article, and determine the money or other personal property of the estate, and pay over to or assign to the surviving spouse and to the children, if any, so much thereof as they shall be entitled to as provided in this Article. Any deficiencies shall be made up from any of the personal property of the deceased, and if the personal property of the estate shall be insufficient to satisfy such allowance, the clerk of the superior court shall enter judgment against the personal representative for the amount of such deficiency, to be paid when a sufficiency of such assets shall come into ~~his hands.~~ the personal representative's hands.

"§ 30-21. Report of clerk or magistrate.

The clerk of court, or magistrate upon assignment, shall make and sign three lists of the money or other personal property assigned to each person, stating their quantity and value, and the deficiency to be paid by the personal representative. Where the allowance is to the surviving spouse, one of these lists shall be delivered to ~~him.~~ the surviving spouse. Where the allowance is to a child, one of these lists shall be delivered to the surviving parent with whom the child is living; or to the child's guardian ~~or next friend~~ if the child is not living with said surviving parent; or to the child if said child is not living with the surviving parent and has no ~~guardian or next friend.~~ guardian. One list shall be delivered to the personal representative. One list shall be returned by the magistrate or clerk, within 20 days after the assignment, to the superior court of the county in which administration was granted or the will probated, and the clerk shall file and record the same, together with any judgment entered pursuant to G.S. 30-20.

"§ 30-22. Repealed by Session Laws 1971, c. 528, s. 25.

"§ 30-23. Right of appeal.

The personal representative, or the surviving spouse, or child by ~~his guardian or next friend,~~ the child's guardian, or any creditor, legatee or heir of the deceased, may appeal from the finding of the magistrate or clerk of court to the superior court of the county, ~~and,~~ by filing a copy of the assignment and a notice of appeal within 10 days after the assignment, ~~cite the adverse party to appear before such court on a certain day, not less than five nor exceeding 10 days after the service of the citation.~~ and the appeal shall be heard as provided in G.S. 1-301.2, provided that the hearing on the appeal shall be at the next available session of superior court.

~~"§ 30-24. Hearing on appeal.~~

~~At or before the day named, the appellant shall file with the clerk a copy of the assignment and a statement of his exceptions thereto, and the issues thereby raised shall be decided de novo.~~

"§ 30-25. Personal representative entitled to credit.

Upon the settlement of the accounts of the personal representative, ~~he~~ the personal representative shall be credited with the articles assigned, and the value of the deficiency assessed as aforesaid, if the same shall have been paid, unless the allowance be impeached for fraud or gross negligence in him.

~~"§ 30-26. When above allowance is in full.~~

~~If the estate of a deceased be insolvent, or if his or her personal estate does not exceed twenty thousand dollars ($20,000), the allowances for the year's support of the surviving spouse and the children shall not, in any case, exceed the value prescribed in G.S. 30-15 and G.S. 30-17; and the allowances made to them as above prescribed shall preclude them from any further allowances.~~

"Part 3. Assigned in Superior Court.

"§ 30-27. Surviving spouse or child may apply to superior court.

~~It shall not, however, be obligatory on a~~ In addition to any support assigned to the surviving spouse or child ~~to have the support assigned~~ as above ~~prescribed. Without~~ prescribed, without application to the personal representative, the surviving spouse, or the child through ~~his~~ the

child's guardian ~~or next friend, may at any time~~ may, after the date specified in the general notice to creditors as provided for in G.S. 28A-14-1(a), and within one year after the decedent's death, apply to the superior court of the county in which administration was granted or the will probated to have a year's support ~~assigned.~~ assigned at an amount other than prescribed in G.S. 30-15 and G.S. 30-17.

"§ 30-28. Nature of proceeding; parties.

The application shall be by ~~summons, as is prescribed for special proceedings, in which the~~ petition in a special proceeding before the clerk of superior court. The personal representative of the deceased, if there ~~be~~ is one other than the ~~plaintiff, the largest known creditor, or legatee, or some distributee of the deceased, living in the county, shall be made defendant, and the proceedings shall be as prescribed for special proceedings between parties.~~ petitioner, all known creditors, and all known heirs of the deceased, if the deceased is intestate, and devisees of the deceased, if the deceased is testate, shall be made parties to the special proceeding. If the personal representative of the deceased is aware of a creditor, heir, or devisee who should have been made a respondent but was not, then the personal representative shall file a motion to add the creditor, heir, or devisee as a necessary party, and the court shall order such other party to appear in the proceeding.

"§ 30-29. What ~~complaint~~ petition must show.

In the ~~complaint~~ petition the ~~plaintiff~~ petitioner shall set forth, besides the facts entitling ~~plaintiff~~ petitioner to a year's support and the value of the support claimed, the further facts that the ~~estate of the decedent is not insolvent, and that the~~ personal estate of which ~~he or she~~ the decedent died possessed exceeded twenty thousand dollars ($20,000), and also whether or not an allowance has been made to ~~plaintiff~~ petitioner and the nature and value thereof.

"§ 30-30. Judgment and order for commissioners.

~~If the material allegations of the complaint be found true, the judgment shall be that plaintiff is entitled to the relief sought; and the court shall thereupon issue an order to the sheriff or other proper officer of the county, commanding him to summon a magistrate and two persons qualified to act as jurors, who~~ The clerk of superior court shall hear the matter and determine whether the petitioner is entitled to some or all of the relief sought and, if the clerk determines that the petitioner is so entitled, the clerk shall determine the money or other personal property of the estate and assign to the ~~plaintiff~~ petitioner a sufficiency thereof for ~~plaintiff's~~ petitioner's support for one year from the decedent's death. Any deficiency shall be made up from any of the personal property of the deceased, and if the personal property of the estate shall be insufficient for such support, the clerk of ~~the~~ superior court shall enter judgment against the personal representative for the amount of such deficiency, to be paid when a sufficiency of such assets shall come into ~~his~~ the personal representative's hands. Any judgment so rendered shall have the same priority over other debts and claims against the estate as an allowance assigned pursuant to G.S. 30-15 or G.S. 30-17.

"§ 30-31. ~~Duty of commissioners; amount~~ Amount of allowance.

~~The said commissioners shall be sworn by the magistrate and shall proceed as prescribed in this Chapter, except that they~~ The clerk of superior court may assign to the ~~plaintiff~~ petitioner a value sufficient for the support of ~~plaintiff~~ petitioner according to the estate and condition of the decedent and without regard to the limitations set forth in this Chapter; but the value allowed shall be fixed with due consideration for other persons entitled to allowances for year's support from the decedent's estate; and the total value of all allowances shall not in any case exceed the one half of the average annual net income of the deceased for three years next preceding ~~his~~ the deceased's death. This report shall be returned by the magistrate to the court.

"§ 30-31.1. Service of judgment and appeal.

The petitioner shall serve the clerk's judgment on all other parties. The judgment also shall be filed in the estate file of the deceased. Any aggrieved party may appeal the judgment in accordance with G.S. 1-301.2.

"**§ 30-31.2. Execution.**

If the clerk's judgment is not appealed as provided in G.S. 1-301.2, execution shall issue to enforce the judgment as in like cases under Article 28 of Chapter 1 of the General Statutes.

~~"§ 30-32. Exceptions to the report.~~

~~The personal representative, or any creditor, distributee or legatee of the deceased, within 10 days after the return of the report, may file exceptions thereto. The plaintiff shall be notified thereof and cited to appear before the court on a certain day, within 20 and not less than 10 days after service of the notice, and answer the same; the case shall thereafter be proceeded in, heard and decided as provided in special proceedings between parties.~~

~~"§ 30-33. Confirmation of report; execution.~~

~~If the report shall be confirmed, the court shall so declare, and execution shall issue to enforce the judgment as in like cases.~~"

SECTION 8. Chapter 31 of the General Statutes, as amended by Section 3 of this act, reads as rewritten:

"**Chapter 31.**

"**Wills.**

"Article 1.

"Execution of Will.

"**§ 31-1. Who may make will.**

Any person of sound mind, and 18 years of age or over, may make a will.

"**§ 31-2: Repealed by Session Laws 1953, c. 1098, s. 1.**

"**§ 31-3:** Rewritten and renumbered as G.S. 31-3.1 to 31-3.6 by Session Laws 1953, c. 1098, s. 2.

"**§ 31-3.1. Will invalid unless statutory requirements complied with.**

No will is valid unless it complies with the requirements prescribed therefor by this Article.

"**§ 31-3.2. Kinds of wills.**

(a) Personal property may be bequeathed and real property may be devised by

(1) An attested written will which complies with the requirements of G.S. 31-3.3, or

(2) A holographic will which complies with the requirements of G.S. 31-3.4.

(b) Personal property may also be bequeathed by a nuncupative will which complies with the requirements of G.S. 31-3.5.

"**§ 31-3.3. Attested written will.**

(a) An attested written will is a written will signed by the testator and attested by at least two competent witnesses as provided by this section.

(b) The testator must, with intent to sign the will, do so by actually signing the will ~~himself~~ or by having someone else in the testator's presence and at ~~his~~ the testator's direction sign the testator's name thereon.

(c) The testator must signify to the attesting witnesses that the instrument is ~~his~~ the testator's instrument by signing it in their presence or by acknowledging to them ~~his~~ the testator's signature previously affixed thereto, either of which may be done before the attesting witnesses separately.

(d) The attesting witnesses must sign the will in the presence of the testator but need not sign in the presence of each other.

"**§ 31-3.4. Holographic will.**

(a) A holographic will is a will

(1) Written entirely in the handwriting of the testator but when all the words appearing on a paper in the handwriting of the testator are sufficient to constitute a valid holographic will, the fact that other words or printed matter appear thereon not in the handwriting of the testator, and not affecting the

meaning of the words in such handwriting, shall not affect the validity of the will, and

(2) Subscribed by the testator, or with ~~his~~ the testator's name written in or on the will in ~~his~~ the testator's own handwriting, and

(3) Found after the testator's death among ~~his~~ the testator's valuable papers or effects, or in a safe-deposit box or other safe place where it was deposited by ~~him~~ the testator or under ~~his~~ the testator's authority, or in the possession or custody of some person with whom, or some firm or corporation with which, it was deposited by ~~him~~the testator or under ~~his~~ the testator's authority for safekeeping.

(b) No attesting witness to a holographic will is required.

"§ 31-3.5. Nuncupative will.

A nuncupative will is a will

(1) Made orally by a person who is in ~~his~~ that person's last sickness or in imminent peril of death and who does not survive such sickness or imminent peril, and

(2) Declared to be ~~his~~ that person's will before two competent witnesses simultaneously present at the making thereof and specially requested by ~~him~~ the person to bear witness thereto.

"§ 31-3.6. Seal not required.

A seal is not necessary to the validity of a will.

"§ 31-4. Execution of power of appointment by will.

No appointment, made by will in the exercise of any power, shall be valid unless the same be executed in the manner by law required for the execution of wills; and every will, executed in such manner, shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

"§ 31-4.1: Repealed by Session Laws 2010-181, s. 1, effective July 1, 2010.

"§ 31-4.2: Repealed by Session Laws 2010-181, s. 2, effective July 1, 2010.

"Article 2.

"Revocation of Will.

"§ 31-5: Rewritten and renumbered as G.S. 31-5.1 by Session Laws 1953, c. 1098, s. 3.

"§ 31-5.1. Revocation of written will.

A written will, or any part thereof, may be revoked only

(1) By a subsequent written will or codicil or other revocatory writing executed in the manner provided herein for the execution of written wills, or

(2) By being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it, by the testator himself or by another person in ~~his~~ the testator's presence and by ~~his~~ the testator's direction.

"§ 31-5.2. Revocation of nuncupative will.

A nuncupative will or any part thereof may be revoked

(1) By a subsequent nuncupative will, or

(2) By a subsequent written will or codicil or other revocatory writing executed in the manner provided herein for the execution of written wills.

"§ 31-5.3. Will not revoked by marriage; dissent from will made prior to marriage.

A will is not revoked by a subsequent marriage of the maker; and the surviving spouse may petition for an elective share when there is a will made prior to the marriage in the same manner, upon the same conditions, and to the same extent, as a surviving spouse may petition for an elective share when there is a will made subsequent to marriage.

"§ 31-5.4. Revocation by divorce or annulment; revival.

Dissolution of marriage by absolute divorce or annulment after making a will does not revoke the will of any testator but, unless otherwise specifically provided in the will, it revokes all provisions in the will in favor of the testator's former spouse or purported former spouse, including, but not by way of limitation, any provision conferring a general or special power of appointment on the former spouse or purported former spouse and any appointment of the former spouse or purported former spouse as executor, trustee, conservator, or guardian. If provisions are revoked solely by this section, they are revived by the testator's remarriage to the former spouse or purported former spouse.

"§ 31-5.5. After-born or after-adopted child; illegitimate child; effect on will.

(a) A will shall not be revoked by the subsequent birth of a child to the testator, or by the subsequent adoption of a child by the testator, or by the subsequent entitlement of an after-born illegitimate child to take as an heir of the testator pursuant to the provisions of G.S. 29-19(b), but any after-born, after-adopted or entitled after-born illegitimate child shall have the right to share in the testator's estate to the same extent ~~he~~ the after-born, after-adopted, or entitled after-born illegitimate child would have shared if the testator had died intestate unless:

(1) The testator made some provision in the will for the child, whether adequate or not;

(2) It is apparent from the will itself that the testator intentionally did not make specific provision therein for the child;

(3) The testator had children living when the will was executed, and none of the testator's children actually take under the will;

(4) The surviving spouse receives all of the estate under the will; or

(5) The testator made provision for the child that takes effect upon the death of the testator, whether adequate or not.

(b) The provisions of G.S. 28A-22-2 shall be construed as being applicable to after-adopted children and to after-born children, whether legitimate or entitled illegitimate.

(c) The terms "after-born," "after-adopted" and "entitled after-born" as used in this section refer to children born, adopted or entitled subsequent to the execution of the will.

"§ 31-5.6. No revocation by subsequent conveyance.

No conveyance or other act made or done subsequently to the execution of a will of, or relating to, any real or personal estate therein comprised, except an act by which such will shall be duly revoked, shall prevent the operation of the will with respect to any estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of ~~his~~ the testator's death.

"§ 31-5.7. Specific provisions for revocation exclusive; effect of changes in circumstances.

No will can be revoked in whole or in part by any act of the testator or by a change in ~~his~~ the testator's circumstances or condition except as provided by G.S. 31-5.1 through 31-5.6 inclusive.

"§ 31-5.8. Revival of revoked will.

No will or any part thereof that has been in any manner revoked can, except as provided in G.S. 31-5.4, be revived otherwise than by a reexecution thereof, or by the execution of another will in which the revoked will or part thereof is incorporated by reference.

"§ 31-6: Renumbered as G.S. 31-5.3 by Session Laws 1953, c. 1098, s. 5.

"§ 31-7: Repealed by Session Laws 1953, c. 1098, s. 9.

"§ 31-8: Renumbered as G.S. 31-5.6 by Session Laws 1953, c. 1098, s. 8.

"Article 3.

"Witnesses to Will.

"§ 31-8.1. Who may witness.

Any person competent to be a witness generally in this State may act as a witness to a will.

"§ 31-9. Executor competent witness.

No person, on account of being an executor of a will, shall be incompetent to be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

"§ 31-10. Beneficiary competent witness; when interest rendered void.

(a) A witness to an attested written or a nuncupative will, to whom or to whose spouse a beneficial interest in property, or a power of appointment with respect thereto, is given by the will, is nevertheless a competent witness to the will and is competent to prove the execution or validity thereof. However, if there are not at least two other witnesses to the will who are disinterested, the interested witness and ~~his~~ the interested witness' spouse and anyone claiming under ~~him~~ the interested witness shall take nothing under the will, and so far only as their interests are concerned the will is void.

(b) A beneficiary under a holographic will may testify to such competent, relevant and material facts as tend to establish such holographic will as a valid will without rendering void the benefits to be received by ~~him~~ the beneficiary thereunder.

"§ 31-10.1. Corporate trustee not disqualified by witnessing of will by stockholder.

A corporation named as a trustee in a will is not disqualified to act as trustee by reason of the fact that a person owning stock in the corporation signed the will as a witness.

"Article 4.

"Depository for Wills.

"§ 31-11. Depositories in offices of clerks of superior court where living persons may file wills.

The clerk of the superior court in each county of North Carolina shall be required to keep a receptacle or depository in which any person who desires to do so may file ~~his or her~~ that person's will for safekeeping; and the clerk shall, upon written request of the testator, or the duly authorized agent or attorney for the testator, permit said will or testament to be withdrawn from said depository or receptacle at any time prior to the death of the testator: Provided, that the contents of said will shall not be made public or open to the inspection of anyone other than the testator or ~~his~~ the testator's duly authorized agent until such time as the said will shall be offered for probate.

"§§ 31-11.1 through 31-11.5. Reserved for future codification purposes.

"Article 4A.

"Self-Proved Wills.

"§ 31-11.6. How attested wills may be made self-proved.

(a) Any will may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

"I, _____, the testator, sign my name to this instrument this ____ day of _____, ____ and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

_____

Testator

We _____, _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

_____

Witness

_____

Witness

THE STATE OF _____.

COUNTY OF _____.

Subscribed, sworn to and acknowledged before me by _____. the testator and subscribed and sworn to before me by _____ and _____, witnesses, this ____ day of _____

(SEAL)

(SIGNED) _____

(OFFICIAL CAPACITY OF OFFICER)"

(b) An attested written will executed as provided by G.S. 31-3.3 may at any time subsequent to its execution be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the attesting witnesses, each made before an officer authorized to administer oaths under the laws of this State, and evidenced by the officer's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

"STATE OF NORTH CAROLINA

"COUNTY/CITY OF _____

"Before me, the undersigned authority, on this day personally appeared _____, and _____, known to me to be the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn. The testator, declared to me and to the witnesses in my presence: That said instrument is his last will; that he had willingly signed or directed another to sign the same for him, and executed it in the presence of said witnesses as his free and voluntary act for the purposes therein expressed; or, that the testator signified that the instrument was his instrument by acknowledging to them his signature previously affixed thereto.

The said witnesses stated before me that the foregoing will was executed and acknowledged by the testator as his last will in the presence of said witnesses who, in his presence and at his request, subscribed their names thereto as attesting witnesses and that the testator, at the time of the execution of said will, was over the age of 18 years and of sound and disposing mind and memory.

_____

Testator

_____

Witness

_____

Witness

_____

Witness

Subscribed, sworn and acknowledged before me by _____, the testator, subscribed and sworn before me by _____, _____ and _____ witnesses, this ____ day of _____, A.D. ____

(SEAL)

(SIGNED) _____

(OFFICIAL CAPACITY OF OFFICER)"

(c) The sworn statement of any such witnesses taken as herein provided shall be accepted by the court as if it had been taken before such court.

"Article 5.
"Probate of Will.
"**§§ 31-12 through 31-31.2:** Recodified as Article 2A of Chapter 28A of the General Statutes by Section 3 of this act.
"Article 6.
"Caveat to Will.
"**§ 31-32. ~~When and by whom caveat filed.~~ Filing of caveat.**
(a) At the time of application for probate of any will, and the probate thereof in common form, or at any time within three years thereafter, any ~~person entitled under such will, or~~ party interested in the estate, may appear in person or by attorney before the clerk of the superior court and enter a caveat to the probate of such ~~will: Provided,~~ will; provided, that if any person entitled to file a caveat be within the age of 18 years, or ~~insane, or imprisoned,~~ incompetent as defined in G.S. 35A-1101(7) or (8), then such person may file a caveat within three years after the removal of such disability.
~~Notwithstanding the provisions of the first paragraph of this section, as to persons not under disability, a caveat to the probate of a will probated in common form prior to May 1, 1951, must be filed within seven years of the date of probate or within three years from May 1, 1951, whichever period of time is shorter.~~
(b) The caveat shall be filed in the decedent's estate file. The clerk of superior court shall give notice of the filing by making an entry upon the page of the will book where the will is recorded, evidencing that the caveat has been filed and giving the date of such filing.
(c) If a will has been probated in solemn form pursuant to G.S. 28A-2A-7, any party who was properly served in that probate in solemn form shall be barred from filing a caveat.
"**§ 31-33. ~~Bond given and cause~~ Cause transferred to trial docket.**
~~When a caveator shall have given bond with surety approved by the clerk, in the sum of two hundred dollars ($200.00), payable to the propounder of the will, conditioned upon the payment of all costs which shall be adjudged against such caveator in the superior court or when a caveator shall have deposited money or given a mortgage in lieu of such bond, or shall have filed affidavits and satisfied the clerk of his inability to give such bond or otherwise secure such costs,~~
(a) Upon the filing of a caveat, the clerk shall transfer the cause to the superior court for ~~trial. Such~~ trial by jury. The caveat shall be served upon all interested parties in accordance with G.S. 1A-1, Rule 4 of the Rules of Civil Procedure.
(b) After service under subsection (a) of this section, the caveator shall cause notice of ~~the caveat proceeding to be given to all devisees, legatees, or other persons in interest in the manner provided for service of process by G.S. 1A-1, Rule 4(j) and (k). The notice shall advise such devisees, legatees, or other persons in interest, of the session of superior court to which the proceeding has been transferred and shall call upon them to appear and make themselves proper parties to the proceeding if they so choose. At the session of court to which such proceeding is transferred, or as soon thereafter as motion to that effect shall be made by the propounder, and before trial, the judge shall require any of the devisees, legatees or other persons in interest so cited, either those who make themselves~~ a hearing to align the parties to be served upon all parties in accordance with G.S. 1A-1, Rule 5 of the Rules of Civil Procedure. At the alignment hearing, all of the interested parties who wish to be aligned as parties shall appear and be aligned by the court as parties with the caveators or ~~whose interests appear to him antagonistic to that of~~ parties with the propounders of the ~~will, to align themselves and to file bond within such time as he shall direct and before trial. Upon the failure of any party to file such bond,~~ will. If an interested party does not appear to be aligned or chooses not to be aligned, the judge shall dismiss that interested party from the ~~proceeding~~ proceeding, but that party shall be bound by the proceeding.

(c) Within 30 days following the entry of an order aligning the parties, any interested party who was aligned may file a responsive pleading to the caveat, provided, however, that failure to respond to any averment or claim of the caveat shall not be deemed an admission of that averment or claim. An extension of time to file a responsive pleading to the caveat may be granted as provided by G.S. 1A-1, Rule 6 of the Rules of Civil Procedure.

(d) Upon motion of an aligned party, the court may require a caveator to provide security in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by the estate if the estate is found to have been wrongfully enjoined or restrained. The court may consider relevant facts related to whether a bond should be required and the amount of any such bond, including, but not limited to, (i) whether the estate may suffer irreparable injury, loss, or damage as a result of the caveat and (ii) whether the caveat has substantial merit. Provisions for bringing suit in forma pauperis apply to the provisions of this subsection.

~~"§ 31-34. Prosecution bond required in actions to contest wills.~~

~~When any action is instituted to contest a will the clerk of the superior court will require the prosecution bond required in other civil actions: Provided, however, that provisions for bringing suit in forma pauperis shall also apply to the provisions of this section.~~

"§ 31-35. Affidavit of witness as evidence.

Whenever the subscribing witness to any will shall die, or be ~~insane or~~ mentally incompetent, or be absent beyond the State, it shall be competent upon any issue of devisavit vel non to give in evidence the affidavits and proofs taken by the clerk upon admitting the will to probate in common form, and such affidavit and proceedings before the clerk shall be prima facie evidence of the due and legal execution of said will.

"§ 31-36. Effect of caveat on estate administration.

(a) Order of Clerk. – Where a caveat is ~~entered and bond given,~~ filed, the clerk of the superior court shall forthwith issue an order that shall apply during the pendency of the caveat to any personal representative, having the estate in charge, as follows:

(1) Distributions to beneficiaries. – That there shall be no distributions of assets of the estate to any beneficiary;

(2) Commissions. – That no commissions shall be advanced or awarded to any personal representative;

(3) Accountings. – That the personal representative shall file all accountings required by the clerk of superior court and that the personal representative may pay any applicable filing fees associated with those accountings from the assets of the estate;

(4) Preservation of estate assets. – That the personal representative shall preserve the property of the estate and that the personal representative is authorized to pursue and prosecute claims that the estate may have against others; and

(5) Taxes, claims and debts of estate. – That the personal representative may file all appropriate tax returns and that the personal representative may pay, in accordance with the procedures of subsection (b) of this section: taxes; funeral expenses of the decedent; debts that are a lien upon the property of the decedent; bills of the decedent accrued before death; claims against the estate that are timely filed; professional fees related to administration of the estate, including fees for tax return preparation, appraisal fees, and attorneys' fees for estate administration.

(b) Procedures. – In regard to payment of any of the items listed in subdivision (5) of subsection (a) of this section, the personal representative shall file with the clerk a notice of the personal representative's intent to pay those items and shall serve the notice upon all parties to the caveat, pursuant to G.S. 1A-1, Rule 4 of the Rules of Civil Procedure. If within 10 days of

service any party files with the clerk a written objection to that payment, the clerk shall schedule a hearing and determine whether the proposed payment shall be made. If no such objection is filed with the clerk, the clerk may approve the payment without hearing, and upon that approval, the personal representative may make the payment. The parties to the caveat may consent to any such payment, and upon such consent, the clerk may approve the payment without hearing. The clerk may defer ruling on the payment pending the resolution of the caveat.

(c) Preservation of Estate Assets. – Questions regarding the use, location, and disposition of assets that cannot be resolved by the parties and consented to by the clerk shall be decided by the clerk. When a question has not been resolved by agreement, either party may request a hearing before the clerk upon 10 days notice and shall serve the notice upon all parties to the caveat, pursuant to G.S. 1A-1, Rule 4 of the Rules of Civil Procedure. Decisions of the clerk may be appealed to the superior ~~court.~~ court pursuant to G.S. 1-301.3.

"~~§ 31-37. Superior court clerks to enter notice of caveat on will book; final judgment also to be entered.~~

~~Wherever a caveat is filed with the clerk of the superior court of any county in the State to any last will and testament which has been admitted to probate in said office, it shall be the duty of such clerk, and he is hereby directed to give notice of the filing of such caveat by making an entry upon the page of the will book where such last will and testament is recorded, evidencing that such caveat has been filed and giving the date of such filing. When such caveat and proceedings resulting therefrom shall have resulted in final judgment with respect to such will, the clerk of the court shall make a further entry upon the page of the will book where such last will and testament is recorded to the effect that final judgment has been entered, either sustaining or setting aside such will.~~

"§ 31-37.1. ~~Parties may enter into a settlement agreement.~~Settlement agreement; filing of judgment.

(a) Prior to an entry of judgment by the superior court in a caveat proceeding, the parties may enter into a settlement agreement, ~~whereupon judgment may be entered by the court,~~ which must be approved by the superior court. Upon approval of a settlement agreement, the court shall enter judgment, without a verdict by a jury, in accordance with the terms of the settlement ~~agreement,~~ agreement. The consent of interested parties who are not aligned as parties pursuant to G.S. 31-33 is not necessary for a settlement agreement under this section.

(b) When judgment is entered by the superior court in a caveat proceeding, the clerk of superior court shall file a copy of the judgment in the estate file and shall make entry upon the page of the will book where such will is recorded to the effect that final judgment has been entered, either sustaining or setting aside the ~~contested~~ will.

"Article 7.

"Construction of Will.

"§ 31-38. Devise presumed to be in fee.

When real estate shall be devised to any person, the same shall be held and construed to be a devise in fee simple, unless such devise shall, in plain and express words, show, or it shall be plainly intended by the will, or some part thereof, that the testator intended to convey an estate of less dignity.

"§ 31-39. Probate necessary to pass title; recordation in county where land lies; rights of innocent purchasers.

No will shall be effectual to pass real or personal estate unless it shall have been duly proved and allowed in the probate court of the proper county, and a duly certified copy thereof shall be recorded in the office of the superior court clerk of the county wherein the land is situate, and the probate of a will devising real estate shall be conclusive as to the execution thereof against the heirs and devisees of the testator, whenever the probate thereof under the like cirumstances, would be conclusive against the next of kin and legatees of the testator:

Provided, that the probate and registration of any will shall not affect the rights of innocent purchasers for value from the heirs at law of the testator when such purchase is made more than two years after the death of such testator or when such purchase is made after the filing of the final account by the duly authorized administrator of the decedent and the approval thereof by the clerk of the superior court having jurisdiction of the estate. Such conveyances, if made before the expiration of the time required by this section to have elapsed in order for same to be valid against the heirs and devisees of the testator, shall, upon the expiration of such time, become good and valid to the same effect as if made after the expiration of such time, unless in the meantime a proceeding shall have been instituted in the proper court to probate the will of the testator.

"§ 31-40. What property passes by will.

Any testator, by ~~his~~ the testator's will duly executed, may devise, bequeath, or dispose of all real and personal estate which ~~he~~ the testator shall be entitled to at the time of ~~his~~ the testator's death, and which, if not so devised, bequeathed, or disposed of, would descend or devolve upon ~~his~~ the testator's heirs at law, or upon ~~his~~ the testator's executor or administrator; and the power hereby given shall extend to all contingent, executory, or other future interest in any real or personal estate, whether the testator may or may not be the person or one of the persons in whom the same may become vested, or whether ~~he~~ the testator may be entitled thereto under the instrument by which the same was created, or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken, whether any such condition has or has not been broken at the testator's death, all other rights of entry, and possibilities of reverter; and also to such of the same estates, interests, and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of ~~his~~ the testator's death, notwithstanding that ~~he~~ the testator may become entitled to the same subsequently to the execution of ~~his~~ the testator's will.

"§ 31-41. Will relates to death of testator.

Every will shall be construed, with reference to the real and personal estate comprised therein, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

"§ 31-42. Failure of devises by lapse or otherwise; renunciation; 120-hour survivorship requirement, revised simultaneous death act, Article 24, Chapter 28A.

(a) Unless the will indicates a contrary intent, if a devisee predeceases the testator, whether before or after the execution of the will, and if the devisee is a grandparent of or a descendant of a grandparent of the testator, then the issue of the predeceased devisee shall take in place of the deceased devisee. The devisee's issue shall take the deceased devisee's share in the same manner that the issue would take as heirs of the deceased devisee under the intestacy provisions in effect at the time of the testator's death. The provisions of this section apply whether the devise is to an individual, to a class, or is a residuary devise. In the case of the class devise, the issue shall take whatever share the deceased devisee would have taken had the devisee survived the testator; in the event the deceased class member leaves no issue, the devisee's share shall devolve upon the members of the class who survived the testator and the issue of any deceased members taking by substitution.

(b) Unless the will indicates a contrary intent, if the provisions of subsection (a) of this section do not apply to a devise to a devisee who predeceases the testator, or if a devise otherwise fails, the property shall pass to the residuary devisee or devisees in proportion to their share of the residue. If the devise is a residuary devise, it shall augment the shares of the other residuary devisees, including the shares of any substitute takers under subsection (a) of this section. If there are no residuary devisees, then the property shall pass by intestacy.

(c) Renunciation of a devise is as provided for in Chapter 31B of the General Statutes.

(c1) The determination of whether a devisee has predeceased the testator shall be made as provided by Article 24 of Chapter 28A of the General Statutes.

(d) As used in this section, "devisee" means any person entitled to take real or personal property under the provisions of a will.

"§§ 31-42.1 through 31-42.2. Repealed by Session Laws 1965, c. 938, s. 2.

"§ 31-43. General gift by will an execution of power of appointment.

A general devise of the real estate of the testator, or of ~~his~~ the testator's real estate in any place or in the occupation of any person mentioned in the will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend, as the case may be, which ~~he~~ the testator may have power to appoint in any manner ~~he~~ the testator may think proper; and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property, described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend, as the case may be, which ~~he~~ testator may have power to appoint in any manner ~~he~~ the testator may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

"§ 31-44. Repealed by Session Laws 1951, c. 762, s. 2.

"§ 31-45: Rewritten and renumbered as G.S. 31-5.5 by Session Laws 1953, c. 1098, s. 7.

"§ 31-46. Validity of will; which laws govern.

A will is valid if it meets the requirements of the applicable provisions of law in effect in this State either at the time of its execution or at the time of the death of the testator.

"§ 31-46.1. Construction of certain formula clauses applicable to estates of decedents dying in calendar year 2010.

(a) Purpose. – The federal estate tax and generation-skipping transfer tax expired January 1, 2010, for one year. To carry out the intent of decedents in the construction of wills and trusts and to promote judicial economy in the administration of trusts and estates, this section construes certain formula clauses that reference federal estate and generation-skipping transfer tax laws and that are used in wills or codicils of decedents who die in or before calendar year 2010.

(b) Applicability. – This section applies to the following:

(1) To a will or codicil executed by a decedent before December 31, 2009, that contains a formula provision described in subsection (c) of this section if the decedent dies after December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax, unless the will or codicil clearly manifests an intent that a rule contrary to the rule of construction described in subsection (c) of this section applies.

(2) To the terms of a will or codicil executed by a decedent who dies before December 31, 2009, providing for a disposition of property that contains a formula provision described in subsection (c) of this section and occurs as a result of the death of another individual who dies after December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax, unless the terms of the will or codicil clearly manifests an intent that a rule contrary to the rule of construction described in subsection (c) of this section applies.

(c) Construction. – A will or codicil subject to this section is considered to refer to the federal estate and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009, if the will or codicil contains a formula that meets one or more of the following conditions:

(1) The formula refers to any of the following: "applicable credit amount," "applicable exclusion amount," "applicable exemption amount," "applicable

fraction," "estate tax exemption," "generation-skipping transfer tax exemption," "GST exemption," "inclusion ratio," "marital deduction," "maximum marital deduction," "unified credit," or "unlimited marital deduction."

(2) The formula measures a share of an estate or trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer taxes.

(3) The formula is otherwise based on a provision of federal estate tax or federal generation-skipping transfer tax law similar to the provisions in subdivision (1) or (2) of this subsection.

(d) Judicial Determination. – The personal representative or an affected beneficiary under a will or testamentary trust may bring an action in the superior court division of the General Court of Justice under Article 26 of Chapter 1 of the General Statutes, and the trustee of a trust created under the will or an affected beneficiary under the trust may bring a proceeding as permitted under Article 2 of Chapter 36C of the General Statutes to determine whether the decedent intended that the references under subsection (c) of this section be construed with respect to the federal law as it existed after December 31, 2009. The action must be commenced within 12 months following the death of the decedent.

"Article 8.

"Testamentary Additions to Trusts.

"§ 31-47. Testamentary additions to trusts.

(a) A will may validly devise property to:

(1) The trustee of a trust established before the testator's death by the testator, by the testator and some other person, or by some other person, including a trust authorized by G.S. 36C-4-401.1; or

(2) The trustee of a trust to be established at the testator's death, if the trust is identified in the testator's will and its terms are set forth in a written instrument executed before or concurrently with the execution of the testator's will, regardless of the existence, size, or character of the corpus of the trust during the testator's lifetime.

The devise is not invalid because the trust is amendable or revocable, or because the trust instrument or any amendment thereto was not executed in the manner required for wills, or because the trust was amended after the execution of the testator's will or after the testator's death. A revocable trust to which property is first transferred under subdivision (2) of this subsection is an inter vivos trust and not a testamentary trust and, as of the date of the execution of the trust instrument, is subject to Article 6 of Chapter 36C of the General Statutes.

(b) Unless the testator's will provides otherwise, property devised to the trustee of a trust described in subsection (a) of this section is not held under a testamentary trust of the testator, but it becomes a part of the trust to which it is devised, and shall be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

(c) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

(d) A devise to a trust shall be construed as a devise to the trustee of that trust.

(e) For purposes of this section, "devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

(f) Nothing in this section alters, amends, or in any manner affects the application of the doctrine of acts of independent significance.

"Article 9.

"Incorporation by Reference; Acts of Independent Significance.

"**§ 31-51. Incorporation by reference.**

A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

"**§ 31-52. Acts and events of independent significance.**

A will may dispose of property by reference to acts and events that have significance apart from their effect upon the disposition made by the will, whether they occur before or after the execution of the will or before or after the testator's death. These acts and events may include the execution or revocation of another individual's will and the safekeeping of items in a secured depository.

SECTION 9. G.S. 31B-1.2 reads as rewritten:

"**§ 31B-1.2. Right of fiduciary to institute a proceeding for review of renunciation.**

(a) Prior to renouncing, if a fiduciary so elects, the fiduciary may institute a proceeding by petition before the clerk of court for a determination as to whether a renunciation would be compatible with the fiduciary's duties. ~~Commencement~~ In the case of a trustee, commencement of the proceeding, jurisdiction, venue, parties, representation, and notice shall be governed by Chapter 36C of the General Statutes. In the case of a personal representative, commencement of the proceeding, jurisdiction, venue, parties, representation, and notice shall be governed by Chapter 28A of the General Statutes. In addition to any other notice requirements, notice of the proceeding shall be given to all persons entitled to delivery of a copy of an instrument of renunciation under G.S. 31B-2.1.

(b) After renouncing, if a fiduciary so elects, the fiduciary has a right to institute a declaratory judgment action pursuant to Article 26 of Chapter 1 of the General Statutes for a determination as to whether the renunciation is compatible with the fiduciary's duties. In addition to any other notice requirements, notice of the action shall be given to all persons entitled to delivery of a copy of an instrument of renunciation under G.S. 31B-2.1.

(c) A proceeding or action instituted under this section shall comply with all of the following:

(1) The petition or complaint shall state the basis for the fiduciary's allegation that the renunciation is compatible with the fiduciary's duties, considering among other things the intended purposes of the trust or other instrument and the impact of the renunciation on beneficiaries and potential beneficiaries. A petition or complaint filed by a trustee of a charitable trust shall contain a statement that a copy of the petition or complaint is being provided to the Attorney General.

(2) After considering among other things the intended purposes of the trust or other instrument and the impact of the renunciation on beneficiaries and potential beneficiaries, the court shall enter an order stating the court's determination as to whether the renunciation is compatible with the fiduciary's duties.

(d) The effectiveness of a renunciation is not affected by a determination under this section that the renunciation is not compatible with a fiduciary's duties."

SECTION 10. G.S. 32A-20(a) reads as rewritten:

"(a) A health care power of attorney shall become effective when and if the physician or physicians or, in the case of mental health treatment, physician or eligible psychologist as defined in G.S. 122C-3(13d), designated by the principal determine in writing that the principal lacks sufficient understanding or capacity to make or communicate decisions relating to the health care of the principal, and shall continue in effect during the incapacity of the principal. The determination shall be made by the principal's attending physician or eligible psychologist if the physician or physicians or eligible psychologist designated by the principal is unavailable or is otherwise unable or unwilling to make this determination or if the principal failed to

designate a physician or physicians or eligible psychologist to make this determination. A health care power of attorney may include a provision that, if the principal does not designate a physician for reasons based on his religious or moral beliefs as specified in the health care power of attorney, a person designated by the principal in the health care power of attorney may certify in writing, acknowledged before a notary public, that the principal lacks sufficient understanding or capacity to make or communicate decisions relating to his health care. The person so designated must be a competent person 18 years of age or older, not engaged in providing health care to the principal for remuneration, and must be a person other than the health care agent. For purposes of exercising authority described in G.S. 32A-19(b), however, a health care power of attorney shall be effective following the death of the principal without regard to the principal's understanding or capacity when the principal was living. Nothing in this section shall be construed to prevent a principal from revoking a health care power of attorney."

SECTION 11. G.S. 36C-2-205(d) reads as rewritten:

"(d) Extensions of Time. – The clerk of superior court, for cause shown at any time in the clerk's discretion, with or without motion or notice, may enter an order enlarging the period of time within which an act is required or permitted by this Article, by any applicable Rules of Civil Procedure or by order of the court, if the request is made before the expiration of the period originally prescribed, but not to exceed 10 days, ~~nor more than once.~~ except to the extent that the court finds the justice requires that the time be enlarged for a period of greater than 10 days. Upon motion made after the expiration of the specified period, the clerk of superior court may permit the act where the failure to act was the result of excusable neglect. Notwithstanding any other provision of this subsection, the parties to a proceeding may enter into binding stipulations, without approval of the clerk of superior court, enlarging the time within which an act is required or permitted by this Article, by any applicable Rules of Civil Procedure or by order of the court, not to exceed 30 days."

SECTION 12. G.S. 36C-2-205(e) reads as rewritten:

"(e) Rules of Civil Procedure. – Unless the clerk of superior court otherwise directs, G.S. 1A-1, Rules 4, 5, 6(a), 6(d), 6(e), 18, 19, 20, 21, 24, ~~and 45~~ 45, 56, and 65 of the Rules of Civil Procedure shall apply to trust proceedings. Upon motion of a party or the clerk of superior court, the clerk may further direct that any or all of the ~~following~~ remaining Rules of Civil ~~Procedure~~ Procedure, shall ~~apply: Rules 15, 16, 17, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37;~~ apply, including, without limitation, discovery rules; however, nothing in Rule 17 requires the appointment of a guardian ad litem for a party represented except as provided under ~~G.S. 36C-3-305.~~ G.S. 36C-2-206. In applying these Rules to a trust proceeding pending before the clerk of superior court, the term "judge" shall be construed as "clerk of superior court."

SECTION 13. G.S. 36C-6-604 reads as rewritten:

"**§ 36C-6-604. Limitation on action contesting validity of revocable trust; distribution of trust property.**

(a) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

(1) Three years after the settlor's death; or

(2) 120 days after the trustee sent the person a copy of the trust instrument and ~~a notice~~ written notice pursuant to G.S. 1A-1, Rule 4 of the Rules of Civil Procedure, informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

(b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

(1) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(2) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust, and a judicial proceeding is commenced within 60 days after the contestant sent the notification.

(c) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received."

SECTION 14. This act becomes effective January 1, 2012, and applies to estates of decedents dying on or after that date.

SENATE BILL 432:
Revise Probate Code

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 21, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition S432-CSRN-10		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 432 would amend the provisions of the probate code, would define the jurisdiction of the clerk of superior court consistent with the provisions of the Uniform Trust Code, would recodify provisions relating to the probate of wills, and would update the procedure for claiming spousal and children's allowances. The Proposed Committee Substitute (1) contains all of the provisions from the PCS handed out on April 19 (S-432-CSRN-7), (2) incorporates the two amendments adopted in committee on April 19, and (3) modifies Section 10, which deals with health care powers of attorney, by moving the language to G.S. 32A-20(a) (was in G.S. 32A-20(b)) and by clarifying that nothing in the section prevents a principal from revoking a health care power of attorney.***

BILL ANALYSIS: The PCS for Senate Bill 432 does all of the following:

- Provides that G.S. 1-301.3 applies to the administration of trusts (was, testamentary trusts) and of estates of decedents, incompetents and minors. Provides that a party wishing to appeal an order or judgment by the clerk may file a written notice of appeal containing a short and plain statement of the basis for the appeal (was, required written notice to specify the basis for the appeal) within ten days of the entry of the order or judgment after service of the order on that party. Provides that in an appeal to superior court, if the record is insufficient, the judge of superior court may receive additional evidence on the factual (was evidentiary) issue in question.
- Amends G.S. 7A-307 to add estate proceedings to the list of those whose costs are assessed under this section. Adds that the cost assessed for the filing of a caveat to a will is $200. Provides that the only cost assessed with reopening an estate administration is forty cents per $100, or major fraction, of any additional gross estate, including income, coming into the hands of the fiduciary after the estate is reopened; caps the total cost assessed, including the total cost assessed in all previous administrations of the estate, at $6,000.
- Recodifies portions of the General Statutes.
- Expands the definitions under G.S. 28A-1-1.
- Enacts new G.S. 28A-2-4 providing that the clerks of superior court of North Carolina, as ex-officio judges of probate, have original jurisdiction of estate proceedings. Provides types of estate proceedings under the subject matter jurisdiction of the clerk of superior court. Also provides criteria regarding the transfer of an estate proceeding to superior court. Provides that nothing in this section affects a person's right to file an action in the Superior Court for declaratory relief under Article 26, G.S. Chapter 1. Provides additional specifications regarding requests for declaratory relief and motions for a transfer of proceedings to superior court. Declares that the clerk of superior court does not have jurisdiction of (1) actions by or against creditors or debtors of an estate except as provided in Article 19 of G.S. Chapter 28A; (2) actions involving claims for monetary damages; (3) caveats, except as provide under GS 31-36; (4) proceedings to determine venue; and (5) recovery of property transferred or conveyed by a

decedent with the intent to hinder, delay, or defraud creditors, pursuant to G.S. 28A-15-10(b). Enacts new G.S. 28-2-5 to provide that the clerk of superior court has jurisdiction over special proceedings and that nothing in the statute is to be construed as limiting the jurisdiction of the clerk of superior court in special proceedings.

- Enacts new G.S. 28A-2-6. Provides directives for the commencement of contested and uncontested estate proceedings. Additionally, provides directives regarding pleadings, extensions of time, consolidation of an estate proceeding and a civil action involving a common question of law or fact, joinder of claims, and providing notice of transfer. Provides that unless otherwise directed by the clerk of superior court, the listed Rules of Civil Procedure apply to estate proceedings. Also provides that the clerk may further direct that any or all of the remaining rules apply.
- Enacts additional new statutory provisions regarding representation of parties (G.S. 28A-2-7), waiver of notice (G.S. 28A-2-8), appeals of estate proceedings and special proceedings (G.S. 28A-2-9), and approval of settlement agreements by the clerk (G.S. 28A-2-10).

The act makes the following changes to new Article 2A of G.S. Chapter 28A.

- Authorizes the clerk of superior court to shorten the initial 60-day period during which the executor may apply to have the will proved, if good cause is shown. Enacts new GS 28A-2A-7 to provide that a person entitled to apply for probate of a will may file a petition for probate of the will in solemn form, and the matter will proceed as an estate proceeding governed by Article 2 of G.S. Chapter 28A. Provides directives regarding probate of a will in solemn form and regarding contesting the validity of a will by an interested party.
- Administration of Decedents' Estates. Amends G.S. 28A-3-2 to provide that any interested person may file a petition to determine the proper venue for the administration of the estate..
- Amends G.S. 28A-5-1 regarding the implied renunciation by a named or designated executor, providing the procedures to be followed should a person named or designated as an executor fail to qualify or renounce the office of executor within 30 days after the will has been admitted to probate. Amends G.S. 28A-5-2 regarding the implied renunciation of the right to administer an estate by a person entitled to apply for letters of administration, providing the procedures to be followed should a person so entitled fail to apply for letters of administration within 30 days from the date of death of the intestate decedent. Amends both G.S. 28A-5-1 and G.S. 28A-5-2 to delete provision authorizing the clerk of superior court to issue a citation against a person who has failed to qualify or renounce to show cause that the person should not be determined to have renounced the office of executor; instead provides for the clerk of superior court to issue a notice to that person to qualify or move for an extension of time to qualify within 15 days. Also provides that any interested person may file a petition in accordance with Article 2 of G.S. Chapter 28A seeking an order finding that the person be deemed to have renounced the office of executor.
- Amends G.S. 28A-6-1 to provide that the clerk of superior court may rely on the following as evidence of death: (1) a certified or authenticated copy of a death certificate purported to be issued by an official or agency of the place where the death purportedly occurred, (2) a certified or authenticated copy of any record or report of a domestic or foreign governmental agency evidencing the date of death, (3) a certificate or authenticated copy of medical records evidencing the date of death, or (4) any other evidence that clerk of superior court deems sufficient to confirm the date of death.

- Amends G.S. 28A-6-2 to provide that letters of administration or testamentary letters may be issued without notice including upon a finding of implied renunciation. Provides that all persons entitled to an equal or higher preference for appointment than an applicant who is not entitled to a priority of appointment under G.S. 28A-4-1 are to be given 15 days prior written notice of the application of the person who is not entitled to a priority of appointment, unless the persons with an equal or higher preference have renounced.
- Amends G.S. 28A-6-4 to clarify that before letters of administration or letters testamentary are issued, any interested person may by written petition (was, objection), filed with the clerk of superior court and served on interested persons as directed by the clerk of superior court, contest the issuing of letters of administration or letters testamentary to a person who is otherwise entitled to apply for the letters. Directs the clerk to conduct a hearing to determine to whom the letters are to be issued and provides that an appeal from the order may be taken as in an estate proceeding under G.S. 1-301.3.
- Amends G.S. 28A-8-1 to provide that no bond is required for a personal representative who is a trust institution licensed under G.S. 53-159 (was, a national banking association having its principal place of business in this state or a state bank acting under G.S. 53-159).
- Amends G.S. 28A-8-3 to provide that upon receipt of a verified petition filed by an interested party requesting modification of bond requirements, the clerk of superior court is to conduct a hearing in accordance with Article 2 of G.S. Chapter 28A (was, required the clerk to issue a citation requiring the personal representative to show cause why the bond should not be modified). Amends G.S. 28A-8-4 to provide that if any personal representative fails to comply with an order by the clerk regarding additional bond or new bond within the time specified in the order (not less than five days or more than 15 days), the clerk is to proceed as provided in G.S. 28A-9-2.
- Amends G.S. 28A-8-5 to direct the clerk conduct a hearing under Article 2 of G.S. Chapter 28A upon verified petition from any surety, on the bond of a personal representative, who is in danger of loss of the surety's suretyship. Amends subsection (b) of G.S. 28A-9-1 to allow the clerk to conduct a hearing, on the clerk's own motion or upon the verified petition of any person interested in the estate, to determine if any of the grounds for revocation of letters of administration, letters testamentary, or letters of collection as indicated in subsection (a) of this section exist. Amends G.S. 28A-9-4 and G.S. 28A-10-6 to clarify that (1) an appeal from the order of the clerk granting or denying revocation and (2) an appeal from an order of the clerk denying or allowing the resignation of a personal representative are special proceedings pursuant to G.S. 28A-2-9(b). Authorizes the clerk to issue a stay of an order of revocation or of an order allowing resignation upon the appellant posting an appropriate bond set by the clerk until such time as the cause is heard and determined upon appeal.
- Amends G.S. 28A-13-3. Current law requires a personal representative to petition the clerk to obtain an order authorizing the personal representative's custody, control, or possession over real property of the estate. Makes an exception for real property that is given to the personal representative in the deceased person's will, or real property to which the personal representative acquires title during the administration of the estate, providing that the personal representative is immediately entitled to custody, possession, and control of real property meeting this exception and may institute an estate proceeding under subsection (d) of this section to enforce those rights. Subsection (d) provides that the personal representative may institute an estate proceeding under Article 2 of G.S. Chapter 28A. Also provides that if the real property is occupied by a tenant or

lessee, the personal representative may seek ejectment of the tenant or lessee only through the summary ejectment provisions of Article 3 of G.S. Chapter 42.

- Amends G.S. 28A-13-6(c1), deletes "trust" and substitutes "estate." Deletes subsection (a) and replaces it with subsection (a1) providing that a personal representative or collector has the right to sue in superior court to recover any property of any kind that belongs to the estate of the decedent and is entitled to provisional remedies as provided for under Subchapter 13 of Chapter 1. Also deletes subsection (b) and replaces it with subsection (b1) providing a personal representative, collector, or any interested person has the right to file a verified petition to institute an estates proceeding for examination of any persons reasonably believed to be in possession of property of any kind belonging to the decedent's estate and to make a demand for the recovery of that property.
- Amends G.S. 28A-19-1 to provide that in a pending legal action against the decedent at the time of the decedent's death, which survives the decedent's death, the court may order, on motion, the substitution of the personal representative or collector for the decedent and that motion will constitute the presentation of a claim providing that the substitution occurs within the time specified for the presentation of claims under G.S. 28A-19-3.
- Amends G.S. 28A-19-3 to clarify that except as otherwise specifically provided in this section, the limitations on presentation of claims set out in this section apply to claims by the State of North Carolina, its subdivisions, and its agencies.
- Amends G.S. 28A-19-5 providing that the clerk may provide for the payment of contingent and unliquidated claims via transfer of a petition filed under subsection (b) of G.S. 28A-19-5 to the superior court trial division for a determination of the validity or priority of the claim. Clarifies that clerks are not required to rule on the validity of contingent and unliquidated claims.
- Amends G.S. 28A-19-8 to provide that funeral expenses of a decedent advanced by a health care agent exercising authority are considered as an obligation of the estate regardless as to whether or not a personal representative of the estate has been appointed at the time the expenses are incurred. Amends GS 28A-19-9 to authorize a decedent's health care agent duly appointed under Article 3 of G.S. Chapter 32A to purchase a gravestone and provide a suitable burial place and receive reimbursement for the expenses incurred subject to the monetary limitations and procedures contained in this section. Amends GS 28A-19-16 to provide that a claimant must begin an action for recovery with regards to a claim that is presented and rejected within three months of receiving written notice of the rejection (was, after due notice in writing or after some part of claim becomes due). Provides that in the cares of a contingent or unliquidated claim, the claimant must file a petition for an order from the clerk pursuant to GS 23A-19-5(b).
- Amends G.S. 28A-21-2 to provide that absent an extension by the clerk of the time for filing the final account the personal representative or collector must file the final account for settlement within one year after qualifying or within six months after receiving a state estate or inheritance tax release, or in the time period for filing an annual account under G.S. 28A-21-1, whichever is later.
- Enacts new G.S. 28A-21-6 to provide that the personal representative or collector may give written notice of a proposed final account to all devises of the estate in the case of a will, and to all heirs of the state when the decedent was without a will, indicating the date and place of the filing of the final account. Provides guidelines regarding the permissive notice of final accounts.

- Amends G.S. 28A-23-1 to direct the clerk, upon reviewing and approving the personal representative's or collector's final account, to enter an order discharging the personal representative or collector from further duties and liabilities (was, liabilities), including those set out in Article 13 of G.S. Chapter 28A. Prohibits the discharge order from including a release or discharge of liability for any breach of duty by a personal representative or collector as set forth in G.S. 28A-13-10(c).
- Amends G.S. 28A-25-1 regarding the collection of property through use of an affidavit when the decedent dies intestate. Provides that when the person collecting the property by affidavit is the surviving spouse and only heir of the decedent, and not disqualified under GS 28A-4-2, the property that may be collected under this section may be more than $20,000 in value but may not exceed $30,000 in value, after reduction for any spousal allowance paid to the surviving spouse under G.S. 30-15.
- Makes conforming and clarifying changes to Chapter 28A.
- Intestate Succession. Enacts new G.S. 29-12.1 to provide that controversies arising under Chapter 29 are to be determined as an estate proceeding under Article 2 of G.S. Chapter 28A except for controversies arising under Article 8 of G.S. Chapter 29 (Election to Take Life Interest in Lieu of Intestate Share), which are to be determined as set out in G.S. Chapter 29. Amends G.S. 29-30 to provide that when a surviving spouse of an intestate decedent elects to take a life estate in the dwelling house and the value of that life estate is less than one-third in value of all the real estate, the surviving spouse may elect to take a life estate in other real estate of the intestate decedent so as to make the aggregate life estate of the surviving spouse equal to a life estate that is one-third in value of all the real estate. Provides that the election of the surviving spouse to tale a life estate in one-third value of all the real estate of the decedent is to be made by the filing of a petition (was filing of a notice) in accordance with Article 2 of G.S. Chapter 28A with the clerk of superior court in the appropriate county. Also lists applicable time periods for making the election and requires that the election be made before the shorter of the applicable time periods. Directs that no provisions in subsection (c) of GS 29-30 extends the time period for a surviving spouse to petition for an elective share under Article 1A of G.S. Chapter 30. Provides for service of the petition in accordance with GS 1A-1, Rule 4.
- Provides that the rules of procedure relating to partition proceedings under Chapter 46 apply to the election and procedure to allot and set apart the life estate, except to the extent they would be inconsistent with the provisions of this section. Provides that a determination of the life estate under this section may be appealed in accordance with GS 1-301.3.
- Amends G.S. 30-3.4 to provide that an elective share proceeding is an estate proceeding and is to be conducted under the procedures of Article 2 of GS Chapter 28A (was, an estate matter to be conducted under GS 1-301.3).
- Year's Allowance. Amends G.S. 30-17 regarding surviving children who are entitled to an allowance to delete reference to the authority of the guardian or next friend acting on behalf of the child and replacing it with simply, guardian. Current law provides that the clerk or on assignment by the clerk, the magistrate of the county in which administration was granted or the will was probated is to ascertain the value of the personal property from which the allowance is assigned. Provides for a right of appeal from the assignment by filing a copy of the assignment and a notice of appeal within 10 days after the assignment, and directs that the appeal is to be heard as provided in G.S. 1-301.2 at the next available session of superior court. Deletes

provision requiring the appellant to file a copy of the assignment with the clerk and a statement of the appellant's exceptions and declaring that the issues will be decided de novo.

- Amends G.S. 30-27 to provide that a surviving spouse or child may apply to superior court after specified conditions are met and within one year after the decedent's death to have a year's support assigned at an amount other than prescribed in G.S. 30-15 (when spouse entitled to allowance) and G.S. 30-17 (when children entitled to an allowance). Provides for the nature of the proceedings (G.S. 30-28) requiring that application be by petition in a special proceeding before the clerk of superior court and specifies persons to be made parties to the special proceeding, including all known creditors, heirs, and devisees. Makes conforming changes to G.S. 30-29 replacing complaint with petition and plaintiff with petitioner. Provides that the clerk is to hear the matter and determine if the petitioner is entitled to the relief sought (G.S. 30-30). Provides that any judgment rendered in favor of the petitioner is subject to the same priority over other debts and claims against the estate as an allowance assigned under G.S. 30-15 or G.S. 30-17. Amends GS 30-31 to provide that the clerk may assign a value sufficient for the support of the petitioner to the petitioner. Amends GS 30-31.1 to require the petitioner to serve the clerk's judgment on all other parties and requires the judgment to be filed in the estate file of the deceased. Provides that any aggrieved party may appeal the judgment under GS 1-301.2. Provides that if the judgment is not appealed that the judgment is to be executed. Makes additional conforming changes.

- Wills. Provides that GS 31-12 through GS 31-31.2 are recodified as Article 2A of GS Chapter 28A by Section 3 of this act. Amends GS 31-32 as follows. Declares that if any person who is entitled to file a caveat is within the age of 18 years, or incompetent then that person may file a caveat within three years after the removal of the disability. Requires the caveat to be placed in the decedent's estate file and directs the clerk to give notice of the filing by making an entry on the page of the will book where the will is recorded that includes the date of the filing. Provides that if a will has been probated in solemn form under GS 28A-2A-7, any party that was properly served in that probate in solemn form is prohibited from filing a caveat.

- Amends GS 31-33 as follows. Directs the clerk to transfer the cause to superior court upon the filing of a caveat. Requires service of the caveat on all interested parties in accordance with GS 1A-1, Rule 4 of the Rules of Civil Procedure (Rules), after which the caveator is responsible for causing notice of hearing to be served on all parties in accordance with Rule 5. Provides that at the alignment hearing, all of the interested parties who wish to be aligned are to appear in court and be aligned by the court as parties with the caveator or parties with the propounders of the will. Directs the judge to dismiss from the proceeding an interested party who does not appear to be aligned or chooses not to be aligned. Deletes provisions requiring that the caveator and all interested parties who wish to be aligned by the court as parties in the action to file bond as directed by the court. Provides that the court, upon motion of an aligned party, may require a caveator to provide security in an amount determined by the court. Provides that the court is to consider relevant facts related to the need for a bond and the amount of any bond. Permits any interested party who was aligned to file a responsive pleading to caveat within 30 days following the entry of an order aligning the parties. Provides that failure to respond to any claim or averment of the caveat is not deemed to be an admission. Provides that an extension of time to file a responsive pleading may be granted as provided by Rule 6 of the Rules.

- Current law provides that questions regarding the use, location, and disposition of assets that cannot be resolved by the parties are to be decided by the clerk. Amends G.S. 31-36 to provide that decisions of the clerk may be appealed to superior court.

- Amends G.S. 31-37.1 to clarify that a settlement agreement entered into by the parties must be approved by the superior court and the judgment entered by the court. Provides that the consent of parties that are not aligned as prescribed in G.S. 31-33 is not necessary for a settlement agreement under this section. Requires the clerk to file a copy of the judgment entered by the superior court in a caveat proceeding in the estate file and to make an entry on the page of the will book where the will is recorded declaring that the final judgment has been entered either sustaining or setting aside the will (was, contested will) (this provision was previously codified in GS 31-37).
- Makes conforming changes deleting GS 31-34 and GS 31-37.
- Current law provides a fiduciary may institute a proceeding for review of renunciation. Amends GS 31B-1.2 to provide that if the fiduciary is a trustee, the proceeding is governed by GS Chapter 36C; however, if the fiduciary is a personal representative, then the proceeding is governed by GS Chapter 28A.
- Amends GS 32A-20(a) to provide that a health care power of attorney is effective following the death of the person granting the authority (principal) without regard to the principal's understanding or capacity when the principal was living for the purpose of exercising the authority described in GS 32A-19(b) (This allows a health care power of attorney to authorize the health care agent to exercise any and all rights the principal may have with respect to anatomical gifts, the authorization of any autopsy, and the disposition of remains). This section also clarifies that nothing shall be construed to prevent a principal from revoking a health care power of attorney.
- Amends GS 36C-2-205(d) to delete restriction that extensions of time not be granted more than once under Article 2 (Judicial Proceedings) of GS Chapter 36C and to provide that the court may enlarge an extension of time beyond 10 days if the court finds that justice requires that the time be extended beyond that time.
- Amends GS 36C-2-205(e) to add Rules 4, 56, and 65 to the list of Rules of Civil Procedure that apply to trust proceedings unless the clerk directs otherwise. Provides that the clerk may direct that any or all of the remaining Rules of Civil Procedure apply, including discovery rules.
- Amends GS 36C-6-604 to provide that the notice informing a person of the existence of a trust must be written notice pursuant to GS 1A-1, Rule 4 of the Rules of Civil Procedure.

EFFECTIVE DATE: The act is effective January 1, 2012, and applies to estates of decedents dying on or after that date.

S432-SMRN-31(CSRN-10) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 435

Short Title:	Civil Pro./Require Certificate of Merit.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary I.	

March 29, 2011

A BILL TO BE ENTITLED

AN ACT REQUIRING A CERTIFICATE OF MERIT ON CIVIL ACTIONS FILED AGAINST A PERSON OR FIRM PROVIDING ARCHITECTURE OR ENGINEERING SERVICES IN THIS STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter VI of Chapter 1 of the General Statutes is amended by adding the following new Article to read:

"Article 12A.

"Certificate of Merit for Civil Actions Against Design Professionals.

"**§ 1-123.1. Definitions.**

The following definitions shall apply in this Article:

(1) Certificate of merit. – A certification from a third-party licensed professional engineer or licensed architect that a civil action filed against a design professional has merit.

(2) Design professional. – A professional engineer licensed pursuant to Chapter 89C of the General Statutes, an architect licensed pursuant to Chapter 83A of the General Statutes, or any firm in which the licensed engineer or architect practices, including a corporation, professional corporation, limited liability corporation, partnership, limited liability partnership, sole proprietorship, joint venture, or any other business entity.

(3) Practice of architecture. – As defined by G.S. 83A-1(7).

(4) Practice of engineering. – As defined by G.S. 89C-3(6).

"**§ 1-123.2. Certificate of merit for civil actions against design professionals.**

(a) In any civil action or arbitration proceeding for damages arising out of the provision of professional services performed by a design professional, the plaintiff shall be required to file with the complaint an affidavit of a third-party licensed professional engineer or licensed architect. The third-party licensed professional engineer or licensed architect shall (i) be competent to testify and hold the same professional license and practice in the same area of practice as the defendant design professional and (ii) offer testimony based upon knowledge, skill, experience, education, training, and practice. The affidavit shall specifically state for each theory of recovery for which damages are sought, the negligence, if any, or other action, error, or omission of the design professional in providing the professional service, including any error or omission in providing advice, judgment, opinion, or a similar professional skill claimed to exist and the factual basis for each such claim. The third-party licensed professional engineer or licensed architect shall be licensed in this State and actively engaged in the practice of engineering or architecture respectively.

(b) The contemporaneous filing requirement of subsection (a) of this section shall not apply to any case in which the period of limitation will expire within 10 days of the date of filing the action and, because of these time constraints, the plaintiff has alleged that an affidavit of a third-party licensed professional engineer or licensed architect could not be prepared. In these instances, the plaintiff shall have 30 days after the filing of the complaint to supplement the pleadings with the affidavit. The court may, on motion, after hearing and for good cause, extend the time within which the affidavit is to be filed, as justice requires.

(c) The defendant shall not be required to file an answer to the complaint and affidavit until 30 days after the filing of the affidavit.

(d) The plaintiff's failure to file the affidavit in accordance with subsection (a) or (b) of this section shall result in a dismissal of the complaint against the defendant. In the court's discretion, the dismissal may be with prejudice.

(e) An order granting or denying a motion for dismissal is immediately appealable as an interlocutory order.

(f) This section shall not be construed to extend any applicable period of limitation or repose.

(g) This section does not apply to any suit or action for the payment of fees arising out of the provision of professional services performed by a design professional."

SECTION 2. G.S. 1A-1, Rule 9, is amended by adding a new subsection to read:

"(j1) Civil Actions Against Design Professionals. – Any complaint alleging damages arising out of the provision of professional services performed by a design professional, as defined by G.S. 1-123.1(2), shall be filed in accordance with Article 12A of Chapter 1 of the General Statutes."

SECTION 3. G.S. 89C-10 is amended by adding a new subsection to read:

"(j) The Board shall have the power to adopt rules to discipline professional engineers licensed under this Chapter who certify a civil action that is without merit in violation of Article 12A of Chapter 1 of the General Statutes."

SECTION 4. G.S. 83A-6(a) is amended by adding a new subdivision to read:

"(a) The Board shall have the power to adopt bylaws, rules, and standards of professional conduct to carry out the purposes of this Chapter, including, but not limited to:

...

(6) The disciplining of architects licensed under this Chapter who certify a civil action that is without merit in violation of Article 12A of Chapter 1 of the General Statutes."

SECTION 5. This act becomes effective October 1, 2011, and applies to complaints and affidavits filed on or after that date.

SENATE BILL 435:
Civil Pro./Require Certificate of Merit

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 20, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Susan Sitze
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 435 would require a certificate of merit on civil actions filed against a person or firm providing architecture or engineering services in this State.***

BILL ANALYSIS:

Section 1 of the bill would amend Chapter 1 of the General Statutes by adding a new Article 12 entitled "Certificate of Merit for Civil Actions Against Design Professionals".

A "design professional" would be a professional engineer licensed pursuant to Chapter 89C, an architect licensed pursuant to Chapter 83A, or any firm in which the licensed engineer or architect practices.

The new Article would require that in any civil action or arbitration proceeding arising out of the provision of professional services by a design professional, except an action for the payment of fees, the plaintiff must file with the complaint an affidavit of a third-party licensed professional who is competent to testify and holds the same professional license in this State and actively practices in the same area as the defendant and who can offer testimony based upon knowledge, skill, experience, education, training, and practice. The affidavit must specifically state the theory of recovery for damages, the exact negligence or error claimed to exist and a factual basis for each claim.

If the period of limitation will expire within 10 days of the date of the filing of the action, and the plaintiff alleges the affidavit cannot be prepared in time because of the time constraint, the plaintiff would have 30 days after the filing of the complaint to supplement the pleadings with the required affidavit. The court may extend the time to file the affidavit upon motion, hearing and good cause. The defendant shall not be required to file an answer to the complaint until 30 days after the filing of the affidavit.

Failure to file the affidavit would result in a dismissal of the complaint, and the court may choose to dismiss with prejudice. An order granting or denying a motion for dismissal is immediately appealable as an interlocutory order.

Section 2 of the bill would make a conforming change to G.S. 1A-1, Rule 9.

Sections 3 & 4 of the bill would amend the statutes relating to professional engineers and architects to allow the respective licensing boards to discipline licensed professional engineers or architects who certify a civil action that is without merit in violation of the provisions of Section 1 of the bill.

EFFECTIVE DATE: The act becomes effective October 1, 2011, and applies to complaints and affidavits filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 135

Short Title:	Allow Juvenile Record/Risk Determination/Bond.	(Public)
Sponsors:	Senators Clodfelter; and Jones.	
Referred to:	Judiciary II.	

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW A JUVENILE RECORD TO BE CONSIDERED IN MAKING THE RISK DETERMINATION FOR ESTABLISHING A BOND UNDER THE LAWS PERTAINING TO THE JUVENILE CODE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-3000(e) reads as rewritten:

"(e) Notwithstanding any other provision of law, if the defendant in a criminal proceeding involving a Class A1 misdemeanor or a felony was less than 21 years of age at the time of the offense, information obtained pursuant to subsection (b) of this section regarding the juvenile's record of an adjudication of delinquency for an offense that would be a Class A1 misdemeanor or a felony if committed by an ~~adult, where the adjudication occurred 18 months or less before the defendant reached 16 years of age or the adjudication occurred after the defendant reached 16 years of age,~~adult may be used by law enforcement, the magistrate, the courts, and the prosecutor for pretrial release, plea negotiating decisions, and plea acceptance decisions. Information obtained regarding any juvenile record shall remain confidential and shall not be placed in any public record."

SECTION 2. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

SENATE BILL 135:
Allow Juvenile Record/Risk Determination/Bond

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 25, 2011
Introduced by:	Sen. Clodfelter	**Prepared by:**	Susan Sitze
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 135 would allow the use of certain juvenile records in pre-trial release, plea negotiations, and plea acceptance decisions.

CURRENT LAW: G.S. 7B-3000(e) allows the use of juvenile adjudications for Class A1 misdemeanors or felonies to be used in pre-trial release, plea negotiations, and plea acceptance decisions for persons under 21 charged as an adult with a Class A1 misdemeanor or felony, **if the juvenile adjudication occurred within 18 months before the person's 16th birthday, or after the 16th birthday.**

BILL ANALYSIS: Senate Bill 135 would remove the restriction that the juvenile adjudication has to occur within 18 months before the 16th birthday, or after the 16th birthday. Any juvenile adjudication, no matter when it occurred, for a Class A1 misdemeanor or a felony could be considered in determining pre-trial release, in plea negotiations, or in plea acceptance decisions.

EFFECTIVE DATE: This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 488

Short Title:	Landlord/State Bar Notice of Lease Default.	(Public)
Sponsors:	Senators Stein, Vaughan, and Newton.	
Referred to:	Judiciary I.	

April 4, 2011

A BILL TO BE ENTITLED

AN ACT REQUIRING LANDLORDS TO GIVE NOTICE TO THE NORTH CAROLINA STATE BAR OF AN ATTORNEY'S DEFAULT ON A LEASE IN ORDER TO PROTECT THE CONFIDENTIALITY OF THE ATTORNEY'S FILES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 42 of the General Statutes is amended by adding a new section to read as follows:

"**§ 42-14.4. Notice to State Bar of attorney default on lease.**

(a) If a landlord has knowledge that a tenant is or may have been an attorney, the landlord shall deliver notice to the North Carolina State Bar (hereinafter "State Bar") at least 30 days prior to the destruction or sale of any "potentially confidential materials" remaining in the premises after the landlord obtains possession of the premises, whether by summary ejectment under Article 3 of this Chapter or by any other means, including the tenant vacating the premises. For purposes of this section, the term "potentially confidential materials" means client files, trust or operating account records, or other materials relating to client matters. The landlord's notice to the State Bar shall contain the name of the attorney who is presumed to be the tenant, the location of the potentially confidential materials, and a phone number, address, or other means to contact the landlord. If the landlord removes the potentially confidential materials from the premises, the landlord must store the potentially confidential materials in a reasonably secure location in file cabinets, boxes, or other appropriate containers. The landlord shall exercise reasonable care to maintain the potentially confidential materials intact and undamaged by the landlord's actions.

(b) The State Bar or its designee may take possession of the materials, at its sole expense, within the 30-day period provided for in subsection (a) of this section without the necessity of a court order. Upon the request of the State Bar, the landlord shall cooperate with and allow the State Bar to take possession of the potentially confidential materials, and the landlord shall not be liable in any way to the tenant for his or her cooperation. However, if the tenant elects to take possession of the potentially confidential materials prior to the State Bar obtaining possession of them, and there is no court order to the contrary having been previously delivered to the landlord, the landlord may deliver possession of the potentially confidential materials to the tenant and shall promptly notify the State Bar of his or her actions. If neither the State Bar nor its designee take possession of the potentially confidential materials within the 30-day period provided for in subsection (a) of this section, the landlord may destroy or discard the materials in a manner that will provide reasonable protection against access to the potentially confidential materials by third parties, including shredding or delivering the potentially confidential materials to a corporate document disposal service."

SECTION 2. G.S. 44A-2 is amended by adding a new subsection to read as follows:

"(h) Any landlord of residential or nonresidential property, including any storage or self-storage space, in which potentially confidential materials, as that term is defined in G.S. 42-14.4(a), remains after the landlord has obtained possession of the property, must provide notice to the North Carolina State Bar as required in G.S. 42-14.4. Potentially confidential materials shall not be the subject of a lien under the provisions of this Article and must be destroyed or safely discarded if the State Bar or its designee does not take possession pursuant to G.S. 42-14.4."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 488
PROPOSED COMMITTEE SUBSTITUTE S488-CSTG-16 [v.4]

4/27/2011 5:09:27 PM

Short Title: Landlord/State Bar Notice of Lease Default. (Public)

Sponsors:

Referred to:

April 4, 2011

A BILL TO BE ENTITLED

AN ACT REQUIRING LANDLORDS TO GIVE NOTICE TO THE NORTH CAROLINA STATE BAR OF AN ATTORNEY'S DEFAULT ON A LEASE IN ORDER TO PROTECT THE CONFIDENTIALITY OF THE ATTORNEY'S FILES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 42 of the General Statutes is amended by adding a new section to read as follows:

"**§ 42-14.4. Notice to State Bar of attorney default on lease.**

(a) If a landlord has actual knowledge that a tenant is an attorney, the landlord shall deliver notice to the North Carolina State Bar (hereinafter "State Bar") at least 15 days prior to the destruction or discard of any "potentially confidential materials" remaining in the premises after the landlord obtains possession of the premises, whether by summary ejectment under Article 3 of this Chapter or by any other means, including the tenant vacating the premises. For purposes of this section, the term "potentially confidential materials" means client files, trust or operating account records, or other materials relating to client matters. For purposes of this section, the term "landlord" means any owner and any rental management company, rental agency, or any other person having the actual or apparent authority of an agent to perform the duties imposed by this Article. The landlord's notice to the State Bar shall contain the name of the attorney who is presumed to be the tenant, the location of the potentially confidential materials, and a phone number, address, or other means to contact the landlord. During the 15 day period after notice, a landlord may move for storage purposes, but shall not throw away, dispose of, or sell potentially confidential materials remaining on the premises.

(b) The State Bar or its designee may take possession of the materials, at its sole expense, within the 15-day period provided for in subsection (a) of this section without the necessity of a court order. Upon the request of the State Bar, the landlord shall cooperate with and allow the State Bar to take possession of the potentially confidential materials, and the landlord shall not be liable in any way to the tenant for his or her cooperation. However, if the tenant elects to take possession of the potentially confidential materials prior to the State Bar obtaining possession of them, and there is no court order to the contrary having been previously delivered to the landlord, the landlord may deliver possession of the potentially confidential materials to the tenant and shall promptly notify the State Bar of his or her actions. If neither the State Bar nor its designee take possession of the potentially confidential materials within the 15-day period provided for in subsection (a) of this section, the landlord may destroy or discard the materials in accordance with the lease agreement with the defaulting tenant.

(c) A landlord that attempts in good faith to comply with the requirements of this section shall not be liable for losses to any person arising directly or indirectly out of the disposal of any potentially confidential materials. Failure to comply with this section shall not constitute an unfair trade practice under G.S. 75-1.1."

SECTION 2. G.S. 44A-2 is amended by adding a new subsection to read as follows:

"(h) Any landlord of nonresidential property, including any storage or self-storage space, in which potentially confidential materials, as that term is defined in G.S. 42-14.4(a), remains after the landlord has obtained possession of the property, must provide notice to the North Carolina State Bar and comply with the provisions of G.S. 42-14.4, if the landlord has actual knowledge that the former tenant is an attorney. Potentially confidential materials shall not be the subject of a lien under the provisions of this Article."

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

SENATE BILL 488:
Landlord/State Bar Notice of Lease Default

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 26, 2011
Introduced by:	Sens. Stein, Vaughan, Newton	**Prepared by:**	Bill Patterson
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 488 requires that a landlord with actual knowledge that a tenant is an attorney, upon taking possession of the demised premises, must give the State Bar notice and an opportunity to retrieve any potentially confidential materials left behind by the tenant.*** ***The PCS changes the knowledge triggering a duty under the statute to "actual knowledge that a tenant is an attorney," defines "landlord," permits storage of the materials in the 15 days after notice is given to State Bar, relieves the landlord who complies with this section from liability for resulting losses, clarifies that violation is not an unfair trade practice, and makes other conforming changes.***

CURRENT LAW: Under current law, landlords who have regained possession of leased premises pursuant to summary ejectment must hold any personal property left in the premises for ten days, and must release it to the tenant upon request within that ten day period. If the tenant does not request release of the property within the permitted time, however, the landlord may dispose of or sell the personal property by following the procedures of G.S. 42-25.9(g), in which case all costs of summary ejectment, execution and storage proceedings shall be charged as court costs to the tenant, and constitute a lien on the stored property. There are no specific requirements for disposal of records that may constitute confidential client files left in the premises by an attorney-tenant. G.S. 44A-2 gives lessors of nonresidential premises and of spaces for manufactured homes a lien on personal property that remains on the demised premises for 21 or more days after the lessor is entitled to possession of the premises, for payment of any lawful claim for damages against the tenant.

BILL ANALYSIS: Section 1 enacts G.S. 42-14.4, which requires that a landlord who has actual knowledge that a tenant is an attorney, and who takes possession of the demised premises, must notify the State Bar at least 15 days before destroying or discarding potentially confidential client files left behind by the tenant, and must permit the State Bar or its designee to retrieve the materials. A landlord is not liable to the former tenant for cooperating with the State Bar in compliance with this section. In the absence of a court order to the contrary, the landlord may allow the tenant to retrieve the files before the State Bar does so, but must notify the State Bar if this occurs. During the 15 day period after notice, the landlord is permitted to move the materials to another location for storage.

If the materials are not retrieved by the tenant or the State Bar within 15 days after notice is given, the landlord may destroy or discard the materials in accordance with the lease agreement. A landlord who attempts in good faith to comply with this section's requirements is not liable to any person for resulting losses, and a violation of this section does not constitute an unfair trade practice.

Section 2 of the bill amends G.S. 44A-2 to provide that landlords having actual knowledge that a former tenant is an attorney are not entitled to a lien on potentially confidential materials that remain on the premises, but must follow the procedure of G.S. 42-14.4 in dealing with any such materials.

EFFECTIVE DATE: This act is effective when it becomes law.

S488-SMTG-20(e1) v5

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 521

Short Title:	Repeal Rule in Dumpor's Case.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

April 6, 2011

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT A RESTRICTION ON THE TRANSFER OF REAL PROPERTY OR A TENANT'S INTEREST IN A LEASE APPLIES TO A SUBSEQUENT TRANSFER OF THE REAL PROPERTY OR INTEREST IN THE LEASE UNLESS THE GRANTOR OR LANDLORD EXPRESSLY PROVIDES OTHERWISE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 39 of the General Statutes is amended by adding a new section to read as follows:

"**§ 39-6.8. Subsequent transfers of real property; effect of grantor's consent to or waiver of restrictions on prior transfers.**

A restriction on the transfer of land or an interest in land contained in a deed, lease, or other written conveyance applies to a subsequent transfer of the land or interest in the land notwithstanding the grantor's consent to a prior transfer or the grantor's waiver of a standard or condition for a prior transfer. However, the provisions of this section shall not apply if one of the following conditions is met:

(1) The deed, lease, or other written conveyance expressly provides that the restriction on transfer is limited to the original grantee, trustee, beneficiary, tenant, or other person to whom the land or interest in land was conveyed.

(2) The grantor expressly states in writing that the consent or waiver applies to a subsequent transfer."

SECTION 2. Chapter 42 of the General Statutes is amended by adding a new section to read as follows:

"**§ 42-14.4. Subsequent transfers of tenant's interest; effect of landlord's consent to or waiver of restrictions on prior transfers.**

A restriction on the transfer of a tenant's interest in a lease applies to a subsequent transfer by a tenant or subtenant notwithstanding the landlord's consent to a prior transfer or the landlord's waiver of a standard or condition for a prior transfer. However, the provisions of this section shall not apply if one of the following conditions is met:

(1) The lease expressly provides that the restriction on transfer is limited to the original tenant.

(2) The landlord expressly states in writing that the consent or waiver applies to a subsequent transfer."

SECTION 3. This act becomes effective October 1, 2011, and applies to all subsequent transfers of real property or interests in a lease that occur on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 521
PROPOSED COMMITTEE SUBSTITUTE S521-CSTG-15 [v.1]

4/25/2011 11:40:44 AM

Short Title: Repeal Rule in Dumpor's Case. (Public)

Sponsors:

Referred to:

April 6, 2011

A BILL TO BE ENTITLED

AN ACT ABOLISHING THE RULE IN DUMPOR'S CASE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 41 of the General Statutes is amended by adding a new section to read as follows:

"**§ 41-6.4. Rule in Dumpor's case abolished.**

(a) The rule of property known as the rule in Dumpor's case is abolished.

(b) This section shall become effective October 1, 2011, and applies to transfers of property that take effect on or after that date."

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

SENATE BILL 521:
Repeal Rule in Dumpor's Case

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 21, 2011
Introduced by:	Sen. Clodfelter	**Prepared by:**	Bill Patterson
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 521 abolishes the Rule in Dumpor's Case. The PCS completely rewrote and simplified the original bill.

CURRENT LAW: The ancient Rule in Dumpor's Case[1] provides that once consent is given to a covenant or condition in a lease, that covenant or condition is discharged forever and may not subsequently be enforced. Unlike courts in other states, North Carolina courts have not expressly repudiated this rule.[2]

BILL ANALYSIS: Senate Bill 521 abolishes the Rule in Dumpor's Case.

EFFECTIVE DATE: This act becomes effective October 1, 2011, and applies to all transfers of property that occur on or after that date.

S521-SMTG-19(e1) v4

[1] 4 Coke 119b, 76 En. Rep. 1110 (1603).

[2] In Childs v. Theatres, Inc., 200 N.C. 333, 156 S.E. 923 (1931), the North Carolina Supreme Court distinguished Dumpor's Case without repudiating it. See Webster's Real Estate Law in North Carolina, Fifth Edition, pp. 526-527.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 620

Short Title:	Clarify Use of Position.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

April 19, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A LEGISLATOR'S OR PUBLIC SERVANT'S PUBLIC POSITION MAY BE DISCLOSED IN AN AGENDA OR OTHER DOCUMENT RELATED TO A MEETING, CONFERENCE, OR SIMILAR EVENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 138A-31 reads as rewritten:

"**§ 138A-31. Use of public position for private gain.**

(a) Except as permitted under G.S. 138A-38, a covered person or legislative employee shall not knowingly use the covered person's or legislative employee's public position in an official action or legislative action that will result in financial benefit to the covered person or legislative employee, a member of the covered person's or legislative employee's extended family, or business with which the covered person or legislative employee is associated. This subsection shall not apply to financial or other benefits derived by a covered person or legislative employee that the covered person or legislative employee would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the covered person's or legislative employee's ability to protect the public interest and perform the covered person's or legislative employee's official duties would not be compromised.

(b) A covered person shall not mention or ~~permit~~ authorize another person to mention the covered person's public position in nongovernmental advertising that advances the private interest of the covered person or others. The prohibition in this subsection shall not apply to any of the following:

(1) ~~political advertising,~~Political advertising.

(2) ~~news stories, news articles,~~News stories and articles.

(3) ~~the~~The inclusion of a covered person's public position in a directory or biographical ~~listing,~~listing.

(4) The inclusion of a covered person's public position in an agenda or other document related to a meeting, conference, or similar event when the disclosure could reasonably be considered material by a person in attendance of the meeting, conference, or similar event, provided the meeting, conference, or similar event is sponsored by a nonprofit organization.

(5) ~~or the~~The inclusion of a covered person's public position in a charitable solicitation for a nonprofit business entity qualifying under 26 U.S.C. § 501(c)(3). ~~Disclosure of a covered person's position to an existing or prospective customer, supplier, or client is not considered advertising for~~

~~purposes of this subsection when the disclosure could reasonably be considered material by the customer, supplier, or client.~~

(c) Notwithstanding G.S. 163-278.16A, no covered person shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, television, magazines, or billboards, that contains that covered person's name, picture, or voice, except in case of State or national emergency and only if the announcement is reasonably necessary to the covered person's official function. This subsection shall not apply to fund-raising on behalf of and aired on public radio or public television.

(d) For purposes of this section, disclosure of a covered person's public position to an existing or prospective customer, supplier, or client is not considered when the disclosure could reasonably be considered material by the customer, supplier, or client."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 620
PROPOSED COMMITTEE SUBSTITUTE S620-CSST-21 [v.1]

4/21/2011 2:39:36 PM

Short Title: Clarify Use of Position. (Public)

Sponsors:

Referred to:

April 19, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A LEGISLATOR'S OR PUBLIC SERVANT'S PUBLIC POSITION MAY BE DISCLOSED IN AN AGENDA OR OTHER DOCUMENT RELATED TO A MEETING, CONFERENCE, OR SIMILAR EVENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 138A-31(b) reads as rewritten:

"(b) A covered person shall not mention or ~~permit~~ authorize another person to mention the covered person's public position in nongovernmental advertising that advances the private interest of the covered person or others. The prohibition in this subsection shall not apply to any of the following:

(1) ~~political advertising,~~Political advertising.

(2) ~~news stories, news articles,~~News stories and articles.

(3) ~~the~~The inclusion of a covered person's public position in a directory or a biographical ~~listing,~~listing.

(4) The inclusion of a covered person's public position in an agenda or other document related to a meeting, conference, or similar event when the disclosure could reasonably be considered material by an individual attending the meeting, conference, or similar event.

(5) ~~or the~~The inclusion of a covered person's public position in a charitable solicitation for a nonprofit business entity qualifying under 26 U.S.C. § 501(c)(3).

(6) ~~Disclosure~~ The disclosure of a covered person's position to an existing or prospective customer, supplier, or client ~~is not considered advertising for purposes of this subsection~~ when the disclosure could reasonably be considered material by the customer, supplier, or client."

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

SENATE BILL 620:
Clarify Use of Position

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 22, 2011
Introduced by:	Sen. Clodfelter	**Prepared by:**	R. Erika Churchill
Analysis of:	PCS to First Edition S620-CSST-21		Committee Counsel

SUMMARY: The proposed committee substitute for Senate Bill 620 would clarify the prohibition on the use of public title in non-governmental advertising for legislators and public servants under the State Government Ethics Act.

CURRENT LAW: The State Government Ethics Act sets forth a code of conduct for legislators, legislative employees and public servants. As part of that code of conduct legislators and public servants are prohibited from mentioning, or allowing another to mention, their public position in non-governmental advertising that advances the private interest of the legislator or public servant, or another. Exceptions apply for: political advertising, news stories and articles, directories and biographical listings, charitable solicitations for 501(c)(3) non-profits, and disclosure to an existing or prospective customer, supplier or client if the public position could reasonably be considered material by the customer, supplier or client.

For purposes of the State Government Ethics Act, "public servant" has a specific definition that includes the council of state, certain high level State employees, and members of non-advisory boards and commissions, including the Board of Governors, the university's boards of trustees, and the Community College boards of trustees.

For purposes of the State Government Ethics Act, "covered person" means all legislators and public servants.

BILL ANALYSIS: The proposed committee substitute would clarify that the prohibition also did not apply to the inclusion of a legislator's or public servant's public position on an agenda for a conference, meeting or similar event when that inclusion could reasonably be considered material by an individual attending the conference, meeting, or similar event.

The proposed committee substitute would also modify the prohibition to require an authorization by the legislator or public servant to use their public position in the non-governmental advertising, instead of permitting its use.

EFFECTIVE DATE: October 1, 2011.

S620-SMST-27(CSST-21) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SENATE BILL 458

Short Title:	Judicial Appointment/Voter Retention.	(Public)
Sponsors:	Senators Clodfelter and Hartsell.	
Referred to:	Judiciary I.	

March 30, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO REPLACE THE PRESENT PRACTICE OF SELECTING JUSTICES AND JUDGES OF THE APPELLATE DIVISION AND JUDGES OF THE SUPERIOR COURT GENERALLY BY GUBERNATORIAL APPOINTMENT, FOLLOWED BY ELECTIONS, WITH A METHOD BY WHICH (1) TWO CANDIDATES FOR JUSTICE AND JUDGE WILL BE NOMINATED BY A JUDICIAL NOMINATING COMMISSION, THE GOVERNOR WILL APPOINT ONE OF THEM, AND AT THE NEXT ELECTION THE VOTERS WILL CHOOSE IN A NONPARTISAN ELECTION BETWEEN THE TWO PERSONS, (2) AT THE END OF THE TERM OF A JUSTICE OR JUDGE WHO HAS SUCCESSFULLY WON AN ELECTION, THE QUESTION OF THE JUSTICE'S OR JUDGE'S RETENTION IN OFFICE IS SUBMITTED FOR APPROVAL OR DISAPPROVAL BY NONPARTISAN VOTE OF THE PEOPLE, (3) PROVISION IS MADE FOR THE CASE OF WITHDRAWAL OF A CANDIDATE BEFORE THE ELECTION, AND (4) PROVISION IS MADE FOR APPOINTMENT OF THE CHIEF JUSTICE FROM AMONG THE ASSOCIATE JUSTICES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 16 of Article IV of the North Carolina Constitution reads as rewritten:

"Sec. 16.(1) Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court. Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court shall be elected and retained by the qualified voters as provided by this section and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the Supreme Court and Judges of the Court of Appeals shall be elected and retained by the qualified voters of the State. Regular Judges of the Superior Court ~~may~~ shall be elected and retained by the qualified voters of ~~the State or by the voters of~~ their respective ~~districts, as the General Assembly may prescribe.~~districts.

(2) General principles. Justices and Judges of the Appellate Division and Judges of the Superior Court should be selected for and continue to hold office solely upon the basis of personal and professional fitness to administer justice wisely, according to law, and without favor, denial, or delay to all persons who come into the courts. While their continuation in office should be periodically subject to approval by the people, both their initial selection and continuation in office should be free from the influences and necessities of partisan political activity.

(3) Nomination, appointment, election, and retention election. Nomination, appointment, election, retention election, and terms of Justices and Judges are as follows:

a. When a vacancy occurs in the office of Associate Justice of the Supreme Court, Judge of the Appellate Division, or Judge of Superior Court, the Governor shall appoint a person to fill the vacancy from among two nominees of the Judicial Nominating Commission. For purposes of this subsection, creation of a new judgeship creates a vacancy.

b. The term of office by appointment as Associate Justice of the Supreme Court, Judge of the Appellate Division, or Judge of Superior Court extends through January 31 after the next statewide election for members of the General Assembly that is held more than 210 days after the vacancy. That election shall be between the two candidates nominated by the Judicial Nominating Commission, with the winning candidate elected to a regular term.

c. If the person not appointed by the Governor chooses by July 31 of the year of the election not to seek election, the person holding by appointment the office of Associate Justice of the Supreme Court, Judge of the Appellate Division, or Judge of Superior Court who desires to continue in office shall be subject to approval by nonpartisan ballot, by a majority of the votes cast on the issue of the Justice's or Judge's retention. An Associate Justice, Judge of the Appellate Division, or Judge of Superior Court then approved for retention serves a regular term.

d. If the person appointed by the Governor chooses by July 31 of the year of the election not to seek election, the Judicial Nominating Commission shall nominate to the Governor two persons to hold office beginning the next February 1 as if there were a vacancy occurring on that next February 1, and the Governor shall appoint one of them to fill the vacancy.

e. An incumbent Justice or Judge who was successful in a contested election, or was successful in a retention election, files for retention by February 1 of the year of election is subject to approval by nonpartisan ballot, by a majority of the votes cast on the issue of the Justice's or Judge's retention for the subsequent term. If the person does not file for retention by that date, the office shall become vacant at the end of the term of office, and it shall be filled by nomination and appointment as prescribed in this section as if the vacancy occurred on February 1 after the election.

f. The regular terms of office of the Associate Justice of the Supreme Court, Judge of the Court of Appeals, and Judge of Superior Court is eight years and expires on January 31.

g. If the voters fail to approve the retention in office of an Associate Justice, Judge of the Court of Appeals, or Judge of Superior Court serving an appointed or regular term, the office shall become vacant at the end of the term of office and it shall be filled by nomination and appointment as prescribed in this section as if the vacancy occurred on February 1 after the election.

h. The General Assembly shall implement this Section by general law.

(4) Chief Justice. If a vacancy occurs in the office of Chief Justice, the Governor shall appoint to that office an Associate Justice who was elected to that position to serve as Chief Justice. The person appointed to be Chief Justice shall serve in that capacity for the remaining portion of the term to which the person serving was elected as Associate Justice. At the end of the term, the person so appointed shall be subject to a retention election as if the position were Associate Justice under subsection (3) of this Section. If there is no Associate Justice who was elected, the Governor shall appoint an Associate Justice to be Chief Justice, and the person shall be treated as if filling a vacancy as Associate Justice under subsection (3) of this Section.

Appointment of an Associate Justice as Chief Justice creates a vacancy in the office of Associate Justice.

(5) Transition provisions. The term of office of a person who has been elected before January 1, 2013, to the office of Chief Justice, Associate Justice, or Judge of the Appellate Division for a term which extends beyond January 1, 2013, and who is in office on December 31, 2012, is extended through January 31 of the year following the eighth year after the date any such Justice or Judge was last elected to the office. If the person so elected continues to serve for the remainder of the term, that person may stand for retention in the office for a succeeding regular term as provided in this Section, subject to the provisions of law relating to mandatory retirement. If the person continues to serve for the remainder of the term but does not stand for retention election, a vacancy is created in the office upon expiration of the term, and this vacancy shall be filled by nomination and appointment as provided in this Section.

The term of office of a person who has been appointed prior to January 1, 2013, to a vacancy occurring during the period beginning on the sixtieth day before the 2012 general election and ending December 31, 2012, to the office of Chief Justice, Associate Justice, or Judge of the Appellate Division for a term which extends beyond January 1, 2013, and who is in office on December 31, 2012, shall end on January 31, 2015. If the person so appointed continues to serve for the remainder of the term, that person may stand for retention in the office for a regular term as provided by this Section at the statewide election for members of the General Assembly held in 2014.

Upon the death, resignation, removal, or retirement of any incumbent Justice or Judge on or after January 1, 2013, and before the expiration of the Justice's or Judge's term of office, the resulting vacancy shall be filled by nomination and appointment as provided in this Section.

Vacancies in judicial offices in the Appellate Division occurring before January 1, 2012, and not filled by that date, shall be filled by nomination and appointment as provided in this Section.

From the date any incumbent described in this subsection is continued in office by retention vote for a term next succeeding the term in progress on January 1, 2013, or is succeeded in office by another person, the office is held subject to the provisions of this Section.

(6) The General Assembly shall create by law a Judicial Nominating Commission. Once established, the composition and method of choosing the members of the Commission shall not be changed except by a law approved by two-thirds of the members of each house present and voting. The law may provide for direct appointments by officers and leaders of the General Assembly. Except to fill a vacancy in the office of Chief Justice as provided by this Section, the Judicial Nominating Commission shall recommend two eligible persons to fill the vacancy, and the Governor may only appoint a person so recommended.

(7) The General Assembly may implement this Section by general law."

SECTION 2. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at an election on November 6, 2012, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendment to replace the present practice of selecting Justices and Judges of the Appellate Division and Judges of the Superior Court by gubernatorial appointment, followed by elections, with a method by which (i) two candidates for Justice and Judge will be nominated by a nominating commission, the Governor will appoint one of them, and at the next election the voters will choose in a nonpartisan election between the two persons, (ii) at the end of the term of a Justice or Judge who has successfully won an election, the question of the Justice's or Judge's retention in office is submitted for approval or disapproval by nonpartisan vote of the people, (iii) provision is made for the case of withdrawal

of a candidate before the election, and (iv) provision is made for appointment of the Chief Justice from among the Associate Justices."

SECTION 3. If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment becomes effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

SECTION 4. Chapter 7A of the General Statutes is amended by adding a new Article to read:

"Article 1A.

"Appointment of Justices and Judges; Retention Elections.

"**§ 7A-4.1. Nomination of justices and judges by Judicial Nominating Commission and appointment by Governor.**

Vacancies in the offices of justice of the Supreme Court, judge of the Court of Appeals, and judge of superior court are filled by nomination of two candidates by the Judicial Nomination Commission and appointment of one of the two nominees by the Governor in accordance with Section 16 of Article IV of the North Carolina Constitution.

"**§ 7A-4.2. Judicial Nominating Commission – creation; membership; terms; administration.**

(a) The Judicial Nominating Commission is created within the Administrative Office of the Courts for budgetary purposes.

(b) The Commission shall consist of 16 voting members appointed as follows:

(1) Two persons who are not attorneys, appointed by the Governor.

(2) One person who is not an attorney, appointed by the President Pro Tempore of the Senate.

(3) One person who is not an attorney, appointed by the Speaker of the House of Representatives.

(4) One person who is not an attorney, appointed by the minority leader of the Senate.

(5) One person who is not an attorney, appointed by the minority leader of the House of Representatives.

(6) One person who is not an attorney, appointed by the majority leader or minority leader of the Senate of the party with which the Governor is not affiliated.

(7) One person who is not an attorney, appointed by the majority leader or minority leader of the House of Representatives of the party with which the Governor is not affiliated.

(8) One person appointed by the Governor from a list of three persons authorized to practice law in the courts of this State, submitted by the North Carolina Bar Association.

(9) One person appointed by the Governor from a list of three persons authorized to practice law in the courts of this State, submitted by the North Carolina Advocates For Justice, Inc.

(10) One person appointed by the Governor from a list of three persons authorized to practice law in the courts of this State, submitted by the North Carolina Association of Defense Attorneys.

(11) One person appointed by the Governor from a list of three persons authorized to practice law in the courts of this State, submitted by the North Carolina Association of Women Attorneys, Inc.

(12) One person appointed by the Governor from a list of three persons authorized to practice law in the courts of this State, submitted by the North Carolina Association of Black Lawyers, Inc.

(13) One person appointed by the Governor from a list of three persons authorized to practice law in the courts of this State, submitted by the Council of the State Bar.

(14) One person appointed by the Governor from a list of three persons authorized to practice law in the courts of this State, submitted by the North Carolina Conference of District Attorneys.

(15) One person appointed by the Governor from a list of three persons authorized to practice law in the courts of this State, submitted by the Commission on Indigent Defense Services.

(c) In addition to the voting members, all retired Chief Justices are nonvoting members, but shall not be considered in determining a quorum, and may serve in addition to any other offices they are authorized to hold under Chapter 128 of the General Statutes.

(d) Members of the Commission shall serve staggered four-year terms. One-half of the appointees shall serve an initial term of two years, as determined by lot at the first meeting of the Commission. The remainder of the appointees shall serve an initial term of four years. Commission members may not serve more than one full four-year term.

(e) Vacancies in the membership of the Commission shall be filled for the remainder of the unexpired term by the appointing officer who made the initial appointment under the same process as a regular appointment.

(f) The Governor shall appoint a chair from among the voting membership to serve a two-year term. The Commission shall appoint from among its membership a vice-chair for a two-year term and shall appoint a Secretary.

(g) Members of the Commission shall not receive compensation but shall be paid necessary subsistence and travel expenses as provided by G.S. 138-5 and G.S. 138-6 as applicable, paid from funds appropriated to implement this Article and within the limits of those funds.

(h) No member of the General Assembly shall serve concurrently as a member of the Commission.

(i) In making appointments to the Commission from among lists of three nominated persons, the Governor shall consider and give due regard to the following:

(1) An even balance of party affiliation.

(2) Law practice background, practice area, and practice setting.

(3) Race and ethnicity.

(4) Gender.

(5) Geography.

"**§ 7A-4.3. Judicial Nominating Commission; duties.**

The Commission shall do the following:

(1) Establish operating procedures for the Commission.

(2) Solicit judicial nominations from interested persons and members of the general public to fill appellate and superior court vacancies.

(3) Establish and publicize the procedures for submitting a candidate to be considered by the Commission.

(4) Interview and investigate candidates for judicial appointment to the appellate courts.

(5) Nominate persons to the Governor for appointment to the appellate and superior courts.

(6) Review and evaluate the tenure of justices and judges who must stand for a contested or retention election.

(7) Issue a report on justices and judges standing for a contested or retention election 90 days before the election. The report shall include (i) information the Commission believes would be helpful to the citizens of North Carolina and (ii) information regarding any disciplinary action taken against a justice or judge during tenure. The report may include a recommendation by the Commission for or against the justice's or judge's retention.

(8) Perform any other duties the Commission deems necessary to carry out the mandate of this Article.

"**§ 7A-4.4. Nomination procedures.**

(a) The Commission shall conduct an investigation of a candidate for nomination based on criteria it establishes, including the following at a minimum:

(1) Integrity.

(2) Legal knowledge and ability.

(3) Professional experience demonstrating excellence in the profession.

(4) Judicial temperament.

(5) Diligence.

(6) Health.

(7) Personal financial responsibility.

(8) Public service.

(b) In choosing nominees, the Commission shall foster diversity in race, sex, ethnicity, geography, and professional experience.

(c) The Commission shall establish a procedure for eligible persons to submit themselves as candidates for nomination. If fewer than two eligible persons apply, the Commission shall reopen the process one time.

(d) A candidate for nomination shall be given an opportunity to present to the Commission any information that the candidate determines to be appropriate.

(e) The commission shall not investigate any candidate for nomination who is not eligible to hold the office.

(f) Notwithstanding G.S. 7A-377, the Commission may inspect the files of the Judicial Standards Commission by request of the chair of the Commission. Testimony and other evidence presented to the Commission are privileged in any action for defamation.

(g) The Commission shall nominate two persons to be considered by the Governor for judicial appointment within 60 days of any vacancy in office. The Governor shall appoint one of the persons nominated by the Commission.

(h) The internal files and information obtained by the Commission during the examination of a potential judicial nominee are not public records until such time as the candidate is recommended to the Governor for a judicial appointment. Nominations, the Commission's vote on judicial nominees, and reports made by the Commission are public records.

"**§ 7A-4.5. Governor to issue commissions to justices and judges.**

Every person duly nominated by the Judicial Nomination Commission and appointed by the Governor as Associate Justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court shall procure from the Governor a commission attesting that fact."

SECTION 5. G.S. 7A-10(a) reads as rewritten:

"(a) The Supreme Court shall consist of a Chief Justice and six associate justices, ~~elected by the qualified voters of the State for terms of eight years.~~selected as provided by Article 1A of this Chapter. Before entering upon the duties of his office, each justice shall take an oath of office. Four justices shall constitute a quorum for the transaction of the business of the court. Sessions of the court shall be held in the city of Raleigh, and scheduled by rule of court so as to discharge expeditiously the court's business. The court may by rule hold sessions not more than twice annually in the Old Chowan County Courthouse (1767) in the Town of Edenton, which is

a State-owned court facility that is designated as a National Historic Landmark by the United States Department of the Interior."

SECTION 6. G.S. 7A-16 reads as rewritten:

"**§ 7A-16. Creation and organization.**

~~The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.~~

~~The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.~~

~~Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.~~

~~Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general election for members of the General Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.~~

~~Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1979. Their successors shall be elected at the general election for members of the General Assembly in November, 1978, and shall take office on January 1, 1979, to serve the remainder of the unexpired term which began on January 1, 1977.~~

~~On or after December 15, 2000, the Governor shall appoint three additional judges to increase the number of judges to 15.~~

The Court of Appeals shall consist of 15 judges, selected as provided in Article 1A of this Chapter. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Court of Appeals shall sit in panels of three judges each. The Chief Judge insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member. He shall preside over the panel of which he is a member, and shall designate the presiding judge of the other panel or panels.

Three judges shall constitute a quorum for the transaction of the business of the court, except as may be provided in G.S. 7A-32.

In the event the Chief Judge is unable, on account of absence or temporary incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting Chief Judge from the other judges of the Court, to temporarily discharge the duties of Chief Judge."

SECTION 7. G.S. 163-1 is amended in the table by deleting the entries for "Justices and Judges of the Appellate Division."

SECTION 8. G.S. 163-9 reads as rewritten:

"**§ 163-9. Filling vacancies in ~~State and district judicial offices.~~district court.**

~~(a) Vacancies occurring in the offices of Justice of the Supreme Court, judge of the Court of Appeals, and judge of the superior court for causes other than expiration of term shall be filled by appointment of the Governor. An appointee to the office of Justice of the Supreme Court or judge of the Court of Appeals shall hold office until January 1 next following the election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held for an eight-year term and until a successor is elected and qualified.~~

~~(b) Except for judges specified in the next paragraph of this subsection, an appointee to the office of judge of superior court shall hold his place until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill the unexpired term of the office.~~

~~Appointees for judges of the superior court from any district:~~

~~(1) With only one resident judge; or~~

~~(2) In which no county is subject to section 5 of the Voting Rights Act of 1965,~~ ~~shall hold the office until the next election of members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill an eight-year term.~~

~~(c) When the unexpired term of the office in which the vacancy has occurred expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office.~~

(d) Vacancies in the office of district judge which occur before the expiration of a term shall not be filled by election. Vacancies in the office of district judge shall be filled in accordance with G.S. 7A-142."

SECTION 9. G.S. 143-318.11(a) is amended by adding the following new subdivision to read:

"(10) To consider the qualifications, competence, performance, character, and fitness of a candidate who is seeking a judicial nomination to the Governor by the Judicial Nominating Commission."

SECTION 10. The title of Subchapter X of Chapter 163 of the General Statutes reads as rewritten:

"**SUBCHAPTER X. ELECTION AND RETENTION ELECTION OF ~~APPELLATE, SUPERIOR,~~ APPELLATE AND SUPERIOR COURT JUDGES, AND ELECTION OF ~~AND~~ DISTRICT COURT JUDGES.**"

SECTION 11. G.S. 163-321 reads as rewritten:

"**§ 163-321. Applicability.**

The ~~nomination and~~ election and retention election of justices of the Supreme Court, judges of the Court of Appeals, and superior court judges and the nomination and election of district court judges of the General Court of Justice shall be as provided by this Article."

SECTION 12. G.S. 163-323 reads as rewritten:

"**§ 163-323. Notice of candidacy.**

(a) Form of Notice. – Each person offering to be a candidate for election as district court judge shall do so by filing a notice of candidacy with the State Board of Elections in the following form, inserting the words in parentheses when appropriate:

Date: _____

I hereby file notice that I am a candidate for election to the office of _____ district court judge in the regular election to be held _____, ____.

Signed: _____
(Name of Candidate)

Witness: _____

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the State Board of Elections, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections. In signing a notice of candidacy, the candidate shall use only the candidate's legal name and, in his discretion, any nickname by which commonly known. A candidate may also, in lieu of that candidate's first name and legal middle initial or middle name, if any, sign that candidate's nickname, provided the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way the candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

(b) Time for Filing Notice of Candidacy. – Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the election:

~~Justices of the Supreme Court.~~
~~Judges of the Court of Appeals.~~
~~Judges of the superior courts.~~
Judges of the district courts.

(c) Withdrawal of Notice of Candidacy. – Any person who has filed a notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (b) of this section.

(d) Certificate That Candidate Is Registered Voter. – Candidates shall file along with their notice a certificate signed by the chairman of the board of elections or the supervisor of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, and if the candidacy is for superior court judge and the county contains more than one superior court district, stating the superior court district of which the person is a resident. In issuing such certificate, the chairman or supervisor shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline, the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(e) Candidacy for More Than One Office Prohibited. – No person may file a notice of candidacy for more than one office ~~or group of offices~~ described in subsection (b) of this section, or for an office ~~or group of offices~~ described in subsection (b) of this section and an office described in G.S. 163-106(c), for any one election. If a person has filed a notice of candidacy with a board of elections under this section or under G.S. 163-106(c) for one office or group of offices, then a notice of candidacy may not later be filed for any other office or group of offices under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (c) of this section.

(f) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any election in which there are two or more vacancies for the office of ~~justice of the Supreme Court, judge of the Court of Appeals, or~~ district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which the candidate seeks election. Votes cast for a candidate shall be effective only for election to the vacancy for which the candidate has given notice of candidacy as provided in this subsection.

A person seeking election for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which the person seeks nomination.

~~(g) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV, Section 9(1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected.~~"

SECTION 13. G.S. 163-325 reads as rewritten:

"**§ 163-325. Petition in lieu of payment of filing fee.**

(a) General. – Any qualified voter who seeks election as district court judge under this Article may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the State Board of Elections.

(b) Requirements of Petition; Deadline for Filing. – If the candidate is seeking the office of ~~justice of the Supreme Court, judge of the Court of Appeals, or superior or~~ district court judge, that individual shall file a written petition with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. ~~If the office is justice of the Supreme Court or judge of the Court of Appeals, the petition shall be signed by 10,000 registered voters in the State. If the office is superior court or district court judge, the~~ The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for. The board of elections shall verify the names on the petition, and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall be printed on the appropriate ballot. Petitions must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms."

SECTION 14. G.S. 163-326(b) reads as rewritten:

"(b) Notification of Local Boards. – No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-323(b) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the offices of ~~justice of the Supreme Court, judge of the Court of Appeals, and superior and~~ district court judge who have filed the required notice and paid the required filing fee or presented the required petition to the State Board of Elections, so that their names may be printed on the official ~~judicial ballot for justice of the Supreme Court, judge of the Court of Appeals, and superior and district court.~~ ballot."

SECTION 15. G.S. 163-328(e) is repealed.

SECTION 16. G.S. 163-329(a) is repealed.

SECTION 17. G.S. 163-329(b1) is repealed.

SECTION 18. G.S. 163-332(b) reads as rewritten:

"(b) Ballots to Be Furnished by County Board of Elections. – It shall be the duty of the county board of elections to print official ballots for the following offices to be voted for in the primary:

Justice of the Supreme Court.
Judge of the Court of Appeals.
Superior court judge.
District court judge.

In printing ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

Three days before the election, the chairman of the county board of elections shall distribute official ballots to the chief judge of each precinct in his county, and the chief judge shall give a receipt for the ballots received. On the day of the primary, it shall be the chief judge's duty to have all the ballots so delivered available for use at the precinct voting place.

Ballots for justice of the supreme court, judge of the Court of Appeals, and superior court judge shall be either (i) between the two candidates nominated by the Judicial Nominating Commission in accordance with Section 16 of Article IV of the North Carolina Constitution, G.S. 7A-4.4, and G.S. 163-331.1 or (ii) on the question of retention of the justice or judge in accordance with Section 16 of Article IV of the North Carolina Constitution and G.S. 163-331.2."

SECTION 19. Article 25 of Chapter 163 of the General Statutes is amended by adding new sections to read:

"**§ 163-333.1. Contested election after appointment by the Governor.**

(a) When two persons have been nominated by the Judicial Nominating Commission for the Governor to appoint to fill a vacancy, and an election is to be held in accordance with Section 16 of Article IV of the North Carolina Constitution between the person appointed by the Governor and the person not appointed by the Governor, it shall be held under the applicable provisions of this Chapter. The ballot shall allow the voter to choose between the two candidates, and the party affiliation of the two candidates shall not appear on the ballot.

(b) If the nominee of the Judicial Nominating Commission not appointed by the Governor to fill the vacancy files with the State Board of Elections prior to August 1 of the year of the election notice that the person does not seek election, no election shall be held under this section, but a retention election shall be held under G.S. 163-331.2.

(c) If the person appointed by the Governor prior to August 1 of the year of the election files notice with the State Board of Elections that the person chooses not to seek election, no election shall be held under this Article that year, and the Judicial Nominating Commission shall nominate to the Governor two persons to hold office beginning the next February 1 as if there were a vacancy occurring on that next February 1, and the Governor shall appoint one of them to fill the vacancy.

(d) Any notice under this section shall be on a form prescribed by the State Board of Elections.

"**§ 163-331.2. Retention elections.**

(a) As provided by Section 16 of Article IV of the North Carolina Constitution, an Associate Justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court desiring to continue in office shall be subject to approval by nonpartisan ballot, by a majority of votes cast on the issue of the justice's or judge's retention. This section applies (i) when the incumbent was elected to that term under G.S. 163-331.1(a), (ii) when the person not appointed declines candidacy under G.S. 163-331.1(b), (iii) where an Associate Justice has been appointed Chief Justice under Section 16(4) of Article IV of the North Carolina Constitution and seeks retention at the end of the term as provided therein, or (iv) in the case of a person holding office on December 31, 2012, where the provisions of Section 16(5) of Article IV of the North Carolina Constitution provides for a retention election in 2014.

(b) A person subject to subsection (a) of this section shall indicate the choice to continue in office by filing a notice to that effect with the State Board of Elections no later than 12:00 noon on February 1 in the year of the election. The notice shall be on a form approved by the State Board of Elections. Notice can be withdrawn at any time prior to the deadline for filing notice under this subsection.

(c) Retention elections shall be conducted and canvassed in accordance with rules of the State Board of Elections in the same general manner as general elections under Chapter 163 of the General Statutes, except that the retention election is nonpartisan. The form of the ballot shall be determined by the State Board of Elections. The ballot shall ask whether the named justice or judge shall continue in an office for another term.

(d) If a person who has filed a notice calling a retention election dies or is removed from office prior to the time that the ballots are printed, the retention election is cancelled. If a person who has filed a notice calling a retention election dies or is removed from office after the ballots are printed, the State Board of Elections may cancel the election if it determines that the ballots can be reprinted without significant expense. If the ballots cannot be reprinted, then the results of the election shall be ineffective."

SECTION 20. G.S. 163-182.16 reads as rewritten:

"**§ 163-182.16. Governor to issue commissions for certain offices.**

The Secretary of State shall send a notice to the Governor that a certificate of election has been issued for any of the following offices, and upon receiving the notice, the Governor shall provide to each such elected official a commission attesting to that person's ~~election:~~ election or retention:

(1) Members of the United States House of Representatives.

(2) Justices, judges, and district attorneys of the General Court of Justice."

SECTION 21. Sections 4 through 20 of this act are effective only if the constitutional amendment proposed by Section 1 of this act is approved by the qualified voters in accordance with Section 2 of this act.

SECTION 22. Except as otherwise provided for herein, this act is effective when it becomes law.

SENATE BILL 458:
Judicial Appointment/Voter Retention

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 27, 2011
Introduced by:	Sens. Clodfelter, Hartsell	**Prepared by:**	R. Erika Churchill
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 458 would amend the constitution of North Carolina, upon voter approval, to provide for appointment, election and retention election of justices and judges of the Appellate Courts and Superior Courts.

CURRENT LAW: The North Carolina Court System is comprised of the Trial Division and the Appellate Division. The Trial Division includes the Superior and District courts. The Appellate Division includes the Court of Appeals and the Supreme Court.

Under Section 16 of Article IV of the State Constitution, Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court are elected by the voters and serve 8 year terms. The General Assembly is to set a mandatory retirement age for justices and judges (Article IV, Section 8), which has been set as the last day of the month in which the justice or judge reaches age 72 (G.S. 7A-4.20).

The Supreme Court consists of a Chief Justice and 6 Associate Justices; the General Assembly is authorized to increase the number of Associate Justices to not more than eight. Article IV, Section 6. The Court of Appeals structure, organization and composition is to be determined by the General Assembly, with no less than 5 members. Article IV, Section 7. Currently, the Court of Appeals consists of a total of 15 members, sitting in panels of 3 judges each. G.S. 7A-16. The Superior Court is to be divided into a convenient number of districts, with each judge residing in the district from which he or she is elected. Additional special and emergency judges may be provided for by statute. Article IV, Section 9.

BILL ANALYSIS:

Sections 1-3. Constitutional Amendment.

The bill would amend the constitution of North Carolina to provide for appointment, then contested election, then retention election for justices and judges of the Appellate Courts and Superior Court. The constitutional amendment would be on the ballot for voter approval in the 2012 general election, and become effective if a majority of the voters approve the amendment.

Under the constitutional amendment, appointment, election and retention election would occur as follows:

- Associate Justice of the Appellate Court or Judge of the Superior Court
  - Upon vacancy, the Judicial Nomination Commission sends forth 2 names to the Governor. The Governor appoints one of the two.
  - The appointee serves through January 31 after the next statewide general election for the General Assembly that is held more than 210 days after the vacancy.
  - In the year of the election, the appointee and the person not appointed must decide whether or not they will seek election by July 31st. If the appointee decides not to run, the Judicial Nominating Commission is to present a list of 2 names for

appointment to fill the vacancy beginning the next February 1st. If the person not appointed decided not to run, the appointee is to be placed on the ballot for retention.

- After election, the justice or judge serves for a term of 8 years.
- After the 8 year term, the justice or judge is on the ballot for a retention election, after filing for such by February 1 of the year of the election.

- Chief Justice
  - A vacancy in the office of Chief Justice is filled by appointment by the Governor. The appointee must be an elected Associate Justice. It there is no elected Associate Justice, then the Governor appoints an associate justice, and an election is held as if for filling a vacancy for associate justice.

The General Assembly is to enact statutory provisions to implement the constitutional amendment. Once enacted, a 2/3 vote of the General Assembly would be needed to amend the statutory provisions.

Section 4. Judicial Nomination Commission.

The Judicial Nomination Commission would be created, consisting of 16 members, one half lawyers, one half non-lawyers. Appointments would be made by the Governor, the President Pro Tem, the Speaker, the majority leaders of each chamber, and the minority leaders of each chamber. Terms would be for 4 years, with vacancies filled by the appointing authority. Persons could only serve one full 4 year term.

The Commission would be charged with interviewing and investigating candidates for judicial appointment to the Appellate Courts, nominating candidates for Superior Court, reviewing and evaluating the tenure of justices and judges, and issuing a report on justices and judges standing for contested election, including recommendations for or against a candidate and disclosing any disciplinary actions against the candidate.

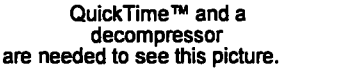
The Commission would investigate nominees, including integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, health, personal financial responsibility, and public service. The Commission would have access to inspect files of the Judicial Standards Commission.

Sections 5-20. Conforming changes.

Conforming changes to existing statutory provisions providing for election of justices and judges, and enacting new sections to establish new procedures for election and retention of appointed justices and judges.

EFFECTIVE DATE: Effective when it becomes law, with a majority vote of the people for the constitutional amendment.

S458-SMST-31(e1) v1



In 2008, the NC Center for Voter Education launched the Better Courts Project as a three to five year campaign to carry out the public education and outreach necessary to raise awareness and understanding of important issues relating to the judiciary.

In the first year, the Better Courts Project engaged in the most extensive research on North Carolina public attitudes concerning the courts in nearly two decades. Combining public opinion research with focus group surveys, the Center captured a very detailed picture of how North Carolinians view their state judiciary. A full report of the 2008 work is available from Center staff, but two areas seem most relevant to the current discussion:

- Most North Carolinians (60%) say they are either "not too familiar" or "not familiar at all" with the way judges in North Carolina are selected. Only 2% considered themselves to be very familiar about the judicial selection process.

- When respondents were asked to choose between having voters elect judges or the governor appoint them, a solid majority (77%) said they preferred having voters elect statewide judges.

Following up on the extensive research in 2008, the Center recently conducted a statewide survey about two specific proposals currently being discussed. The results of this poll, conducted in April of 2009, are below. It is important to not underestimate the public's desire to have a say in judicial selection. Even if voters self-identify as uninformed, they still overwhelmingly support a competitive elections. Therefore, in order for any proposal to muster public support, some form of competitive election must be preserved.

NORTH CAROLINA SURVEY

There is a proposal in the General Assembly right now that would alter the way statewide judges in North Carolina are chosen. They would be nominated by a commission and then appointed by the Governor. After a set period of time a 'retention' election would be held where the voters would have an up or down vote on keeping that individual in office or ending their term. What is your position on this proposal?

24% Strongly Support		
28% Somewhat Support	TOTAL SUPPORT	52%
13% Somewhat Oppose	TOTAL OPPOSE	30%
17% Strongly Oppose		
19% Not Sure		

Another proposal in the General Assembly right now would also change the way judges are elected. It would create a commission that would allow individuals to apply for statewide judicial positions, then choose the top two candidates. Voters would then choose between the recommended candidates in a statewide election. What is your position on this proposal?

22% Strongly Support		
33% Somewhat Support	TOTAL SUPPORT	55%
14% Somewhat Oppose	TOTAL OPPOSE	23%
9% Strongly Oppose		
22% Not Sure		

If you had a choice between the two proposals I just outlined, would your preference be the one where the Governor appointed judges who were then subject to a retention election, or one where a commission chose two candidates and let the voters pick between them?

21% Retention Election	APPOINTED	21%
65% Commission Chooses 'Finalists'	VOTERS PICK	65%
14% Not Sure		

NOTES:
Poll Conducted on April 28 -30th 2009, Margin of error = 3.8%

Merit Selection: Some Facts

- **Judicial nominating commissions represent the interests of the community and guarantee legal expertise in a nonpolitical screening process.** Unlike political appointments by governors or contested elections, merit selection systems guarantee input from the public and the specialized knowledge of lawyers in choosing judges. A survey of nominating commissioners found that lawyers value the role of non-lawyers in the process and non-lawyers likewise value the input of lawyers. The typical composition of nominating commissions ensures a balance between professional assessment of an applicant's legal ability and the voice of citizens. Only 1% of commissioners reported that political considerations were regularly included in commission deliberations.

- **Merit selection is good for economic growth.** A vibrant business climate that can create jobs depends upon a state's commitment to the rule of law, including fair and impartial courts that bring stability and consistency to economic decision-making. Each year, the U.S. Chamber Institute for Legal Reform ranks all states' litigation environments. In the 2010 survey, 4 of the 5 "best" states use merit selection for all appellate court judges; 4 of the 5 "worst" use judicial elections. Of those surveyed for the report, 37% list "Biased/Partial Juries or Judges" as the most important factor in creating an unfair and unreasonable litigation environment. Four of the five states ranked as having the most impartial judges use merit selection to choose all appellate judges. All of the states ranked "worst" for impartiality use judicial elections.

- **Merit selection produces ethical judges.** An AJS study of six states finds that elected judges are more frequently disciplined for ethical violations than are judges chosen through merit selection. When disciplined, the harshest punishments were generally given to elected judges, indicating that elected judges are more frequently engaged in more egregious ethical violations than are merit-selected judges.

- **Merit selection advances diversity on the bench.** Recent AJS research indicates that merit selection is the most effective way to advance diversity on state high courts. Even after controlling for a wide range of factors that may influence diversity on the bench, merit selection significantly increases the likelihood that minorities will be chosen to serve on state supreme courts. Ongoing research has consistently found that merit selection is as effective as other methods of selection for promoting women and minorities to the state bench.

- **Judicial retention elections are generally inexpensive—bucking a national trend of soaring special-interest group contributions in competitive court races.** According to "The New Politics of Judicial Elections, 2000-2009: Decade of Change," more than $204 million was raised by candidates in contestable judicial elections. During the same period, less than $2.3 million was raised by all judges running in retention elections nationwide. In 2010, retention elections in Iowa and several other states generated increased spending and interest-group involvement. AJS expressed concerns about trends in retention elections in a December 2010 editorial.

The American Judicature Society strongly supports the merit selection system, believing that it lessons political influence in judicial appointments while providing for accountability to the public. In a merit selection system, a commission screens potential appointees and presents a list of qualified candidates to the governor. The governor then appoints one person from the list. Once appointed, judges in most states run in regular retention elections, where the public has the opportunity to remove them from the bench. Merit selection reduces the role of special interests and money in the selection process, and increases the quality of state judges, thereby increasing the public's trust and confidence in a fair and independent judiciary.

The American Judicature Society works to maintain the independence and integrity of the courts and increase public understanding of the justice system. AJS is a nonpartisan organization based in Des Moines, Iowa, with a national membership of judges, lawyers and other citizens interested in the administration of justice. For more information on judicial selection in the states visit our web site at www.judicialselection.us.

PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027

DATE: 4-28 **TIME:** 9AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Blake Scruggs	Chapel Hill	Atwater
2 Bailey Sherrill	Hiddenite	Soucek
3 Nora Standish	Concord	Hartsell
4 Heather Green	Rutherfordton	Clary (10 AM)
5 ~~Joseph Clay~~	~~Ellenboro~~	~~Senator Clary~~
6 Marques McPhail	Goldsboro	Pate
7		
8		
9		
10		

Do not add names below the grid.

VISITOR REGISTRATION SHEET

Senate Judiciary I — **Name of Committee**

4/28/2011 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DAVID BARNES	PS
Sarah Preston	ACLU-NC
Day Pens	Selig
Cady Thomas	NCAR
Andrew Henson	Civitas
Curtis Aldendifer	NCREC
Mildred Spearman	AOC
[signature]	AOC
David Farrell	NC Land Tit. Assn.
[signature]	TSS
[signature]	NCAOR

VISITOR REGISTRATION SHEET

Senate Judiciary I — 4/28/2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Rowe	NC Justice Center
Will Pitt	NC GOP
Gary Robertson	AP
Kathryn Westcott	ACEC/NC
Doug Lassiter	NCSTA
Preston Howard	NCIC
Thom Mc	Fox Rothschild
Wendy Kelly	Policy Group
C. Hollis	FSS
Evelyn Hawthorne	ETHOR
Henry W. Jones	Jordan Price

VISITOR REGISTRATION SHEET

Senate Judiciary I — 4/28/2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BRUCE THOMPSON	PARKER POE
RLAMM	RLA
Sam Taylor	NCBIO
Tommy Robertson	TLR

VISITOR REGISTRATION SHEET

Senate Judiciary I — 4/28/2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ben Rewara	SEC
Kathleen Edwards	SEC
Paul Kohut	NCBA
Rebecca Smitherman	NCBA
Kimi Crowl	NCBA
Lorrin Freeman	Wake Co Clerk of Superior Court
Barbara Moore	Conf. of Clerks of Sup Ct
Katherine Wilkerson	NCBA
Courtney Denning	NCBA
Damon Circosta	NC Voter Ed.
John McMillan	NFOC
McMillan Frazier	NFOC

VISITOR REGISTRATION SHEET

Senate Judiciary I — 4/28/2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dana Fenton	City of Charlotte
Philip Isley	NCAJ
Joe McCleer	McCleer Consulting
Elizabeth Hudgins	CFTF
Russell Rawlings	NC Bar Assoc. Ph # 657.1555
Bo Heath	McGuire Woods

SENATE JUDICIARY I COMMITTEE
May 3, 2011 at 9:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 9:00 AM on May 3, 2011, in Room 1027 of the Legislative Building. Fifteen members of the committee were present. Senator Thom Goolsby presided.

Senator Goolsby called the meeting to order at 10:05 a.m.

Senate Bill 435
Senator Hartsell was recognized to introduce the bill
Kathy Wescott from the American Council of Engineering Companies was recognized to speak on the bill
David Crawford from the American Institute of Architects was recognized to speak on the bill
Senator Jenkins was recognized to ask a question, and Crawford answered
Senator Hartsell was recognized for comments
Dave Simpson from Carolinas AGC was recognized to speak against the bill
Henry Jones from Carolinas Electrical Contractors Association was recognized to speak against the bill
Senator Rucho was recognized to ask a question, and Jones answered
Simpson also answered Senator Rucho's question
Senator Goolsby asked Jones for clarification, and Jones answered
Dick Taylor from the Advocates for Justice was recognized to speak against the bill
Senator Hartsell was recognized for comments on the bill
Senator Nesbitt was recognized to make comments on the bill
Senator Hartsell was recognized to make comments in response
Senator Tillman was recognized to ask a question, and Senator Hartsell was recognized to answer
Senator Tillman was recognized for a follow-up comment
Senator Stein was recognized for a question, and Senator Hartsell answered
Senator Goolsby made comments

Senate Bill 356
Senator Robinson was recognized to introduce the bill
Erika Churchill was recognized to explain the bill
Senator Nesbitt was recognized to make a comment
Senator Tillman was recognized to make a comment

Senate Bill 459
Senator Brock was recognized to introduce the bill
Senator Mansfield was recognized to ask a question, and Erika Churchill was recognized to answer
Senator Mansfield was recognized for a follow-up question, and Senator Brock answered
Senator Stein was recognized to ask a question, and Erika Churchill answered
Senator Mansfield was recognized to ask a question, and Erika Churchill answered
Senator Mansfield was recognized for a follow-up question, and Erika Churchill answered
Senator Mansfield was recognized for a follow-up comment, and Senator Brock answered

Senator Stein was recognized to ask a question, and Erika Churchill was recognized to answer
Senator Brock was recognized to answer
Senator Tillman was recognized to ask a question, and Senator Brock answered
Senator Tillman was recognized for a follow-up question, and Erika Churchill answered
Senator Tillman was recognized for a comment

Meeting adjourned at 10:54 a.m.

Thom Goolsby, Presiding

Sarah Hardin, Committee Clerk

Senate Judiciary I Committee
Tuesday, May 3, 2011, 10:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 435	Civil Pro./Require Certificate of Merit.	Senator Hartsell
SB 356	No Filing for Party and Unaffiliated.	Senator Robinson
SB 459	Repeal Matching Funds.	Senator Brock
SB 712	Adjust Quarterly Reporting.	Senator Brown Senator Nesbitt,

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 435

Short Title:	Civil Pro./Require Certificate of Merit.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary I.	

March 29, 2011

A BILL TO BE ENTITLED

AN ACT REQUIRING A CERTIFICATE OF MERIT ON CIVIL ACTIONS FILED AGAINST A PERSON OR FIRM PROVIDING ARCHITECTURE OR ENGINEERING SERVICES IN THIS STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter VI of Chapter 1 of the General Statutes is amended by adding the following new Article to read:

"Article 12A.

"Certificate of Merit for Civil Actions Against Design Professionals.

"**§ 1-123.1. Definitions.**

The following definitions shall apply in this Article:

(1) Certificate of merit. – A certification from a third-party licensed professional engineer or licensed architect that a civil action filed against a design professional has merit.

(2) Design professional. – A professional engineer licensed pursuant to Chapter 89C of the General Statutes, an architect licensed pursuant to Chapter 83A of the General Statutes, or any firm in which the licensed engineer or architect practices, including a corporation, professional corporation, limited liability corporation, partnership, limited liability partnership, sole proprietorship, joint venture, or any other business entity.

(3) Practice of architecture. – As defined by G.S. 83A-1(7).

(4) Practice of engineering. – As defined by G.S. 89C-3(6).

"**§ 1-123.2. Certificate of merit for civil actions against design professionals.**

(a) In any civil action or arbitration proceeding for damages arising out of the provision of professional services performed by a design professional, the plaintiff shall be required to file with the complaint an affidavit of a third-party licensed professional engineer or licensed architect. The third-party licensed professional engineer or licensed architect shall (i) be competent to testify and hold the same professional license and practice in the same area of practice as the defendant design professional and (ii) offer testimony based upon knowledge, skill, experience, education, training, and practice. The affidavit shall specifically state for each theory of recovery for which damages are sought, the negligence, if any, or other action, error, or omission of the design professional in providing the professional service, including any error or omission in providing advice, judgment, opinion, or a similar professional skill claimed to exist and the factual basis for each such claim. The third-party licensed professional engineer or licensed architect shall be licensed in this State and actively engaged in the practice of engineering or architecture respectively.

(b) The contemporaneous filing requirement of subsection (a) of this section shall not apply to any case in which the period of limitation will expire within 10 days of the date of filing the action and, because of these time constraints, the plaintiff has alleged that an affidavit of a third-party licensed professional engineer or licensed architect could not be prepared. In these instances, the plaintiff shall have 30 days after the filing of the complaint to supplement the pleadings with the affidavit. The court may, on motion, after hearing and for good cause, extend the time within which the affidavit is to be filed, as justice requires.

(c) The defendant shall not be required to file an answer to the complaint and affidavit until 30 days after the filing of the affidavit.

(d) The plaintiff's failure to file the affidavit in accordance with subsection (a) or (b) of this section shall result in a dismissal of the complaint against the defendant. In the court's discretion, the dismissal may be with prejudice.

(e) An order granting or denying a motion for dismissal is immediately appealable as an interlocutory order.

(f) This section shall not be construed to extend any applicable period of limitation or repose.

(g) This section does not apply to any suit or action for the payment of fees arising out of the provision of professional services performed by a design professional."

SECTION 2. G.S. 1A-1, Rule 9, is amended by adding a new subsection to read:

"(j1) Civil Actions Against Design Professionals. – Any complaint alleging damages arising out of the provision of professional services performed by a design professional, as defined by G.S. 1-123.1(2), shall be filed in accordance with Article 12A of Chapter 1 of the General Statutes."

SECTION 3. G.S. 89C-10 is amended by adding a new subsection to read:

"(j) The Board shall have the power to adopt rules to discipline professional engineers licensed under this Chapter who certify a civil action that is without merit in violation of Article 12A of Chapter 1 of the General Statutes."

SECTION 4. G.S. 83A-6(a) is amended by adding a new subdivision to read:

"(a) The Board shall have the power to adopt bylaws, rules, and standards of professional conduct to carry out the purposes of this Chapter, including, but not limited to:

...

(6) The disciplining of architects licensed under this Chapter who certify a civil action that is without merit in violation of Article 12A of Chapter 1 of the General Statutes."

SECTION 5. This act becomes effective October 1, 2011, and applies to complaints and affidavits filed on or after that date.

SENATE BILL 435:
Civil Pro./Require Certificate of Merit

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 20, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Susan Sitze
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 435 would require a certificate of merit on civil actions filed against a person or firm providing architecture or engineering services in this State.***

BILL ANALYSIS:

Section 1 of the bill would amend Chapter 1 of the General Statutes by adding a new Article 12 entitled "Certificate of Merit for Civil Actions Against Design Professionals".

A "design professional" would be a professional engineer licensed pursuant to Chapter 89C, an architect licensed pursuant to Chapter 83A, or any firm in which the licensed engineer or architect practices.

The new Article would require that in any civil action or arbitration proceeding arising out of the provision of professional services by a design professional, except an action for the payment of fees, the plaintiff must file with the complaint an affidavit of a third-party licensed professional who is competent to testify and holds the same professional license in this State and actively practices in the same area as the defendant and who can offer testimony based upon knowledge, skill, experience, education, training, and practice. The affidavit must specifically state the theory of recovery for damages, the exact negligence or error claimed to exist and a factual basis for each claim.

If the period of limitation will expire within 10 days of the date of the filing of the action, and the plaintiff alleges the affidavit cannot be prepared in time because of the time constraint, the plaintiff would have 30 days after the filing of the complaint to supplement the pleadings with the required affidavit. The court may extend the time to file the affidavit upon motion, hearing and good cause. The defendant shall not be required to file an answer to the complaint until 30 days after the filing of the affidavit.

Failure to file the affidavit would result in a dismissal of the complaint, and the court may choose to dismiss with prejudice. An order granting or denying a motion for dismissal is immediately appealable as an interlocutory order.

Section 2 of the bill would make a conforming change to G.S. 1A-1, Rule 9.

Sections 3 & 4 of the bill would amend the statutes relating to professional engineers and architects to allow the respective licensing boards to discipline licensed professional engineers or architects who certify a civil action that is without merit in violation of the provisions of Section 1 of the bill.

EFFECTIVE DATE: The act becomes effective October 1, 2011, and applies to complaints and affidavits filed on or after that date.



Victor O. Schinnerer & Company, Inc.
Two Wisconsin Circle
Chevy Chase, MD 20815
301/961-9800 – phone
301/951-5444 – fax
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GUIDANCE FOR DESIGN PROFESSIONALS

CERTIFICATE OF MERIT LEGISLATION: CLEARING THE JUDICIAL SYSTEM OF MERITLESS CLAIMS

In 1957, Victor O. Schinnerer & Company, Inc.—in conjunction with The American Institute of Architects and the National Society of Professional Engineers—developed the nation's first professional liability insurance policy and risk management program addressing the coverage needs of design professionals. Since that time, Schinnerer, the underwriting manager, and CNA Insurance Companies, the insurer for the program, have kept records of the nature and sources of claims against design professionals insured in the program.

An analysis of claims against construction-related professional firms insured by the CNA/Schinnerer program illustrates the cost and effort spent by firms in defending themselves against meritless claims. These findings indicate that the inefficiencies of the judicial system diminish the ability of firms to effectively provide design services to protect public health, safety and welfare.

Most Claims are Meritless

It is clear from national statistics that design professionals are infrequently found responsible for causing property damage or personal injury through their negligence in providing professional design services. It also becomes apparent that because of the nature of the United States civil justice system and a misunderstanding of the services provided by design professionals, they often are subjected to defending their professional practices against unfounded allegations of negligence. These claims appear to result in:

- unnecessary judicial administrative costs;
- defense costs to those design professionals alleged to be negligent—costs that must be covered by increasing fees to all public and private clients;
- a loss of productivity because of the time that such claims consume;
- groundless damage to the reputation of the firm and its profession; and
- wasted effort by attorneys representing plaintiffs.

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Our study of claims on a national basis indicates that from 2000 through 2004 only **29.7** percent of all claims brought against North Carolina design professionals insured in the CNA/Schinnerer program resulted in a payment by the program on behalf of the policyholder to correct property or economic damage or provide a remedy for a personal injury. The national average is 25.6 percent.

This indicates that in **70.3** percent of the claims, design professionals were determined to have had no responsibility for damage or injury as measured by having no indemnity payment by the insurer on behalf of the design professional. In each situation, however, these firms were forced to diminish their productivity by expending their time and money to defend them. Clearly, claims that resulted in no payment to correct damage or harm drained the design professions and the economy of productive time and forced an increase in the cost of providing professional services.

Claims Rarely Require Fault-Based Indemnity

The following table separates claims into those for which the insurer either made no payment whatsoever or paid only expenses, such as defense costs, and those claims that required an indemnity payment by the insurance company on behalf of the insured firm.

STATUS OF 616 CLOSED CLAIMS BROUGHT IN NORTH CAROLINA AGAINST CNA/SCHINNERER INSURED FIRMS							
Resolution of Claim	**Percentage of Closed Claims**						
	2000	**2001**	**2002**	**2003**	**2004**	**NC AVERAGE**	**NATIONAL AVERAGE**
Closed Without Any Payment by Insurer	53.4%	64.0%	43.3%	55.9%	53.0%	54.2%	43.8%
Closed With Expense Payments Only	14.9%	9.9%	20.3%	13.7%	20.9%	16.1%	30.6%
CLOSED WITH INDEMNITY PAYMENT MADE BY INSURER	**31.7%**	**26.1%**	**36.4%**	**30.4%**	**26.1%**	**29.7%**	**25.6%**
MERITLESS CLAIMS (WITHOUT ANY INDEMNITY PAYMENT)	**68.3%**	**73.9%**	**63.6%**	**69.6%**	**73.9%**	**70.3%**	**74.4%**

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Those claims that had sufficient merit—a finding of fault or an agreement to pay—to require the insurance company to pay on behalf of the insured for damage or harm account less than one-third of claims filed. In more than two-thirds of the situations, there was no payment to rectify damage or compensate the party bringing the claims for an injury or loss. In North Carolina it appears that a great percentage of claims brought against design professionals are without merit and produce no recovery to the plaintiff or the plaintiff's attorney.

Every insured firm carries a deductible obligation as part of its professional liability insurance. That deductible is usually consumed by the expense of the firm's defense. Firm's must charge clients to recover these defense costs as well as to pay for insurance coverage and lost productivity. It is clear that construction-related design firms that pay to defend themselves, and erode their productivity by responding to claims without merit, are victimized by a civil justice system that allows specious allegations or unfounded complaints to drive up the operating costs of professional service firms. Firms must pass on to public and private clients a significant cost of claims that result in no payment to remedy damage or injury caused by their negligence.

A certificate of merit system requires that before a negligence claim against a professional is filed, an industry expert must review the facts and certify that the claim is not frivolous. Our legal system, because of the rules of civil procedure, relies on a finder of fact in litigation, usually a jury, to separate claims with factual merit from those that may not be justifiable. A certificate of merit law moves the first step in this procedure to much earlier in the process. It usually requires an affidavit from an expert in the field in question to specify the factual basis for a claim. Thus, meritorious lawsuits survive this process while claims with no merit are removed from the legal system. Plaintiffs benefit because they can better focus their claim on facts. Attorneys representing plaintiffs benefit because they do not have to bring parties into litigation from whom the plaintiff will not recover. Defendants benefit because they no longer have significant defense costs or damage to their reputations from meritless claims. And our society benefits because the costs of litigation and of lost productivity are minimized.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 356*

Short Title:	No Filing for Party and Unaffiliated.	(Public)
Sponsors:	Senators Robinson; Garrou, Jones, Kinnaird, Mansfield, and Walters.	
Referred to:	Judiciary I.	

March 17, 2011

A BILL TO BE ENTITLED

AN ACT TO LIMIT A PARTY NOMINEE FROM FILING AS AN UNAFFILIATED CANDIDATE FOR ANOTHER OFFICE EXCEPT IN CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-122 is amended by adding a new subsection to read:

"(a1) No person who is the nominee of a party for one office may file a petition under this section to have that person's name on the ballot for another office for the same general election, except in the following cases:

(1) When the other office is for the remainder of the unexpired term for an office and the party nomination is being made by the appropriate executive committee because the time of occurrence of the vacancy did not allow filing for a primary.

(2) When the petition is filed more than 120 days before the general election and the person submitting the petition resigns as the nominee of the party prior to the 120th day before the general election."

SECTION 2. This act becomes effective with respect to elections occurring on or after January 1, 2012.

SENATE BILL 356:
No Filing for Party and Unaffiliated

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 2, 2011
Introduced by:	Sen. Robinson	**Prepared by:**	R. Erika Churchill
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 356 would limit a party nominee from filing as an unaffiliated candidate for another office, except to fill the remainder of the term of a vacancy or if the individual resigned as the nominee of the party more than 120 days before the general election.

[As introduced, this bill was identical to H363, as introduced by Reps. Adams, Harrison, which is currently in House Elections.]

CURRENT LAW: Generally, candidates gain access to the general election ballot in a number of ways, as follows:

- ***Party nominees:***
  - By filing a notice of candidacy and running in a primary. G.S. 163-106.
  - By nomination of a new political party. G.S. 163-98
- ***Unaffiliated Candidates***: By filing a petition with the appropriate board of elections by noon on the last Friday in July before the general election, with the appropriate number of signatures as follows:
  - *For Statewide office:* Petition must have signature of qualified voters equal to 2% of the vote for Governor in the most recent election, and must be signed by 200 voters from 4 Congressional districts.
  - *For district office:* Petition must have signature of qualified voters of the district equal to 4% of the total number of registered voters in that district.
  - *For county office or single county legislative district:* Petition must have signature of qualified voters of the county equal to 4% of the total number of registered voters in that county.
  - *For partisan municipal office*: Petition must have signature of qualified voters of the municipality equal to 4% of the total number of registered voters in that municipality (petition is due by noon on Friday before 7th Saturday before the election).
- ***Write-in Candidates:*** By filing a declaration of intent, and filing a subsequent petition by noon on the 90th day before the general election with the appropriate board of elections, with the appropriate number of signatures as follows:
  - *For Statewide office:* Petition must have signatures of 500 qualified voters of the State.
  - *For district office:* Petition must have signatures of 250 qualified voters.
  - *For county office, single county legislative district, or partisan school district:* Petition must have signatures of 100 qualified voters who are eligible to vote for the office, unless fewer than 5,000 people are eligible to vote for the office, then signatures of at least 1% of the registered voters eligible to vote.

Individuals are permitted to file only one notice of candidacy per election, unless it is to fill an unexpired term as U.S. Senator or U.S. Representative. G.S. 163-106(h). Changes in party affiliation must be completed at least 90 days before filing a notice of candidacy for a party primary. Individuals registered as unaffiliated are ineligible to file as a candidate in a party primary election. G.S. 163-106(b). An individual who appeared on the primary ballot is not eligible to be nominated to fill a vacancy in the nomination of another party for the same office in the same year. G.S. 163-114.

Individuals appearing on the primary ballot for the same office are not eligible as unaffiliated candidates for that office. G.S. 163-122. Individuals appearing on the primary ballot are not eligible to have votes counted for that individual as a write-in candidate for the same office in that year. G.S. 163-123.

BILL ANALYSIS: The bill would prohibit any individual who is the nominee of a party for elected office from filing a petition as an unaffiliated candidate for another office on the ballot in the same general election unless one of the following applies:

1. The second office is for the remainder of the unexpired term for an office and the party nomination is being made by the appropriate executive committee because of the timing of the vacancy did not allow for filing for a primary.
2. The petition is filed more than 120 days before the general election and the petitioner resigned as the nominee of the party prior to the 120th day before the general election.

EFFECTIVE DATE: January 1, 2012, but may not be implemented until the session law has received 'preclearance' approval under Section 5 of the Voting Rights of 1965 by the U.S. Department of Justice.

S356-SMST-33(e1) v1

SENATE BILL 459

Short Title:	Repeal Matching Funds.	(Public)
Sponsors:	Senator Brock.	
Referred to:	Judiciary I.	

March 30, 2011

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE MATCHING FUNDS PROVISIONS OF THE PUBLIC CAMPAIGN ACT AND THE VOTER-OWNED ELECTION ACT, CONSISTENT WITH THE DECISION OF THE SUPREME COURT OF THE UNITED STATES IN DAVIS V. FEDERAL ELECTION COMMISSION, AND TO MAKE CONFORMING AND RELATED CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.62(18) is repealed.

SECTION 2. G.S. 163-278.66 is repealed.

SECTION 3. G.S. 163-278.67 is repealed.

SECTION 4. G.S. 163-278.64(d)(2) reads as rewritten:

"(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate may accept only qualifying contributions, contributions under ten dollars ($10.00) from North Carolina voters, and personal and family contributions permitted under subdivision (4) of this subsection. The total contributions the candidate may accept during this period shall not exceed the maximum qualifying contributions for that candidate. In addition to these contributions, the candidate may only expend during this period the remaining money raised pursuant to subdivision (1) of this ~~subsection and possible matching funds received pursuant to G.S. 163-278.67.~~subsection. Except for personal and family contributions permitted under subdivision (4) of this subsection, multiple contributions from the same contributor to the same candidate shall not exceed five hundred dollars ($500.00)."

SECTION 5. G.S. 163-278.64A(a) reads as rewritten:

"(a) Participation Provisions Modified. – Candidates involved in elections described in G.S. 163-329 may participate in the Fund subject to the provisions of G.S. 163-278.64 as modified by this section. The Board shall adapt other provisions of this ~~Article, including G.S. 163-278.67,~~ Article to those elections."

SECTION 6. G.S. 163-278.65(b)(2) reads as rewritten:

"(2) Contested primaries. – No funds shall be ~~distributed except as provided in G.S. 163-278.67.~~distributed."

SECTION 7. G.S. 163-278.68(d) reads as rewritten:

"(d) Board to Adopt Rules and Issue Opinions. – The Board shall adopt rules and issue opinions to ensure effective administration of this Article. Such rules and opinions shall include, but not be limited to, procedures for obtaining qualifying contributions, certification of candidates, addressing circumstances involving special elections, vacancies, recounts, withdrawals, or replacements, collection of revenues for the Fund, distribution of Fund revenue

to certified candidates, return of unspent Fund disbursements, and compliance with this Article. ~~The Board shall adopt procedures for the distribution of matching money that further the purpose and avoid the subversion of G.S. 163-278.67.~~ For races involving special elections, recounts, vacancies, withdrawals, or replacement candidates, the Board shall establish procedures for qualification, certification, disbursement of Fund revenues, and return of unspent Fund revenues. The Board shall fulfill each of these duties in consultation with the Advisory Council on the Public Campaign Fund."

SECTION 8. G.S. 163-278.96(17) is repealed.

SECTION 9. G.S. 163-278.99A is repealed.

SECTION 10. G.S. 163-278.99B is repealed.

SECTION 11. G.S. 163-278.98(e)(2) reads as rewritten:

"(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate may accept only qualifying contributions, contributions under ten dollars ($10.00) from North Carolina voters, in-kind party contributions as permitted in subdivision (4) of this subsection, and personal and family contributions permitted under subdivision (4a) of this subsection. The total contributions the candidate may accept during this period shall not exceed the maximum qualifying contributions for that candidate. In addition to these contributions, the candidate may only expend during this period the remaining money raised pursuant to subdivision (1) of this ~~subsection and possible matching funds received pursuant to G.S. 163-278.99B~~ subsection. If the candidate has any remaining money that was raised as contributions before August 1 of the year before the election, the candidate may not expend that money after filing the declaration of intent, except for purposes permitted under subdivision (2), (3), (6), (7), or (8) of G.S. 163-278.16B(a)."

SECTION 12. G.S. 163-278.98(e)(3) reads as rewritten:

"(3) After the qualifying period and through the date of the general election, the candidate shall cease campaign-related fund-raising activities and shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163-278.99(b) plus any funds remaining from the qualifying ~~period and possible matching funds.~~period."

SECTION 13. G.S. 163-278.99(b)(2) reads as rewritten:

"(2) Contested primaries. – No funds shall be ~~distributed except as provided in G.S. 163-278.99B.~~distributed."

SECTION 14. G.S. 163-278.13(e4) is repealed.

SECTION 15. This act is effective when it becomes law.

SENATE BILL 459:
Repeal Matching Funds

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 22, 2011
Introduced by:	Sen. Brock	**Prepared by:**	R. Erika Churchill
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 459 would repeal the matching funds provisions in both the judicial and council of state public funding for campaigns programs.***

CURRENT LAW: North Carolina currently provides two separate programs for public financing of elections – one for appellate judicial races and one for 3 of the 10 Council of State races (Auditor, Superintendent of Public Instruction and Commissioner of Insurance).

To participate, the candidate must file a declaration of intent with the State Board of Elections BEFORE collecting any qualifying contributions. The declaration of intent has to be filed before or during the "qualifying period," which is September 1 of the year before the election until the day of the primary. After filing the declaration of intent, the candidate must collect qualifying contributions from a certain number of registered voters during the qualifying period. The State Board of Elections "certifies" that the candidate has filed a declaration of intent, collected the appropriate contributions, filed a notice of candidacy. Once certified, the candidate is entitled to receive distributions from the public financing fund. Distributions are as follows: none for an uncontested primary or general election; an initial distribution within 5 business days of certification by the State Board for a candidate in a contested general election; and matching funds, upon trigger.

If participating candidates are faced with "funds in opposition to a certified candidate or in support of an opponent to that candidate" exceed the trigger amount, the public financing programs provide for "matching funds" to be released to those participating certified candidates. In the case of a primary, the trigger amount equals the maximum qualifying contributions for participating candidates. In the case of a contested general election, the trigger amount equals the base level of funding available for the contested election for that office.

The opposition spending is subject to 24-hour expedited reporting so the matching fund provision can be administered. Matching funds are available in amounts matching the opposition spending, up to twice the trigger amount.

BILL ANALYSIS: The bill would repeal all of the matching funds provisions in the judicial public financing program (Sections 1-7 of the bill) and the council of state public financing program (Sections 8-14 of the bill), while making necessary corresponding conforming changes.

EFFECTIVE DATE: When it becomes law.

BACKGROUND: Senate Judiciary I has previously heard Senate Bill 419, Campaign Finance and Regulatory Reforms, which would repeal all public financing provisions.

S459-SMST-28(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 712

Short Title:	Adjust Quarterly Reporting.	(Public)
Sponsors:	Senators Nesbitt and Brown.	
Referred to:	Judiciary I.	

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO ADJUST THE CALENDAR PERIODS COVERED BY QUARTERLY REPORTS OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.9(a)(5a) reads as rewritten:

"(5a) Quarterly Reports. – During even-numbered years during which there is an election for that candidate or in which the campaign committee is supporting or opposing a candidate, the treasurer shall file a report by mailing or otherwise delivering it to the Board no later than seven working days after the end of each calendar quarter covering the prior calendar quarter, except that:

a. The report for the first quarter shall also cover the period in April through the seventeenth day before the primary, the first quarter report shall be due seven days after that date, and the second quarter report shall not include that period if a first quarter report was required to be ~~filed; and~~filed.

b. The report for the third quarter shall also cover the period in October through the seventeenth day before the election, the third quarter report shall be due seven days after that date, and the fourth quarter report shall not include that period if a third quarter report was required to be filed.

c. The report for the fourth quarter shall also cover the month of January after the election, and the next required report shall not cover that period if a fourth quarter report was required to be filed."

SECTION 2. This act becomes effective October 1, 2012, and applies to reports covering calendar periods occurring after that date.

SENATE BILL 712:
Adjust Quarterly Reporting

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 2, 2011
Introduced by:	Sens. Nesbitt, Brown	**Prepared by:**	R. Erika Churchill Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 712 would change the calendar period for fourth quarter campaign finance reports of candidates, political committees, electioneering communications and independent expenditures.

CURRENT LAW: Current law requires certain reports to be filed at certain times with respect to campaign finance. The same reporting schedule applies to:

- Political committees – candidates included
- Political parties
- Independent expenditures
- Electioneering communications

The following reports are to be filed at the time stated:

- Organizational Report – within 10 days following organization
- 48 Hour Report – within 48 hours of receipt of a contribution or transfer of $1,000 or more before an election but after the period covered by the last report due before the election
- Quarterly Reports – in even-numbered years, within 7 working days after the end of the calendar quarter for that quarter, except that:
  - In the 1st quarter, the report shall include the period in April through the 17th day before the primary and the 2nd quarter report shall not include that period
  - In the 3rd quarter, the report shall include the period in October through the 17th day before the election, and the 4th quarter report shall not include that period
- Semi-annual reports – in any time period not already covered, if contributions are received or expenditures are made, then a report is due on the last day of July for the period January 1 – June 30, and on the last day of January for July 1 – December 31.

BILL ANALYSIS: The bill would add to the provision requiring quarterly reports that in the 4th quarter, the report shall include the January following the election, and the next required report shall not include that period.

EFFECTIVE DATE: October 1, 2012.

S712-SMST-32(e1) v3

Brunstetter

PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027

DATE: 5-3 **TIME:** 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Taajae' Bailey	Raleigh	Blue
2 Lizzy Stroman	Raleigh	P. Berger
3		
4		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

VISITOR REGISTRATION SHEET

Senate Judiciary I — May 3, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
mike olsen	nc state gov. rel
Doug Heath	NM
Jeni Corn	NCSU - Friday Institute
Emily Jack	LEARN NC - UNC Chapel Hill
Ashley Ray	Hunt Institute
Bill Brooks	NCFPC
Trina Gabriel	UNC-G
Chip Killian	nelson mullins

VISITOR REGISTRATION SHEET

Senate Judiciary I — May 3, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michelle Frazier	MF&S
Jake Cashion	NC Chamber
[illegible]	Public Sch Forum
Beverly Vance	NC DPI
Laura French	Prof. Educators NC
[illegible]	Kaylor Law Firm
Doug Lassiter	NCSBA
Susan Valaoras	Nationwide
[illegible]	NCAHP
[illegible]	NC BIX

VISITOR REGISTRATION SHEET

Senate Judiciary I — May 3, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gary Bartlett	SBE
Johnnie McLean	SBE
Heather Barnett	Williams Mullen
Adam Pridemore	School of Government
Dave Simpson	CAUC
Jacqueline C. McMillan	AARP
Dennis D. Hollett	AARP
Jon Taylor	AARP
HAROLD MEDLOCK	CMPD
MICHAEL ADAMS	CMPD
Angie Harris	Williams Mullen

VISITOR REGISTRATION SHEET

Senate Judiciary I — May 3, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elaine Darby	EPFP
B Bangess	EPFP
Sarah Preston	ACLU-NC
DAVID BARNES	PS
[illegible]	NCFOS
[illegible]	N. Underwriters
[illegible]	Public School EPFP
Steven Hill	Lenoir Co. Pub. Sch / STEM
BB Hall	Democracy NC
Cyo Byrd	NCMS
Robert Wilson	SOS

VISITOR REGISTRATION SHEET

Senate Judiciary I — May 3, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Betsy Bailey	PTENC
David Crawford	AIANC
Damon Circosta	NC Voter Ed
Kathryn Westcott	ACEC/NC
Henry Jones	Attorney Raleigh
David Ferrell	Vandeventer Black LLP
L Pursley	NCCLGR
Henry Hutaff	N.C. B.A.
Dick Taylor	UCA
Paige Johnson	PPCNC
Stephanie Lemon	EPFP

SENATE JUDICIARY I COMMITTEE
May 10, 2011 at 9:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 9:00 AM on May 10, 2011, in Room 1027 of the Legislative Building. Ten members of the committee were present. Senator Thom Goolsby presided.

Senator Goolsby called the meeting to order at 10:04 a.m.

Senate Bill 600
Senator Brown moved to adopt the PCS for purposes of discussion
Motion carries
Senator Clodfelter was recognized to explain the bill
Senator Clodfelter moves to amend the bill
Motion carries
Senator Tillman moves that the amendment be rolled into a committee substitute
Motion carries

Senate Bill 712—For Discussion Only
Senator Brown moved to adopt the PCS for purposes of discussion
Senator Nesbitt was recognized to introduce the bill
Senator Pate was recognized to ask a question, and Senator Nesbitt answered
Senator Brown was recognized to ask a question, and Senator Nesbitt answered
Senator Nesbitt made comments
Bob Hall from Democracy NC was recognized to speak in favor of the bill

Senate Bill 456—For Discussion Only
Senator Goolsby explained the bill
No further discussion

Meeting adjourned at 10:15 a.m.

Thom Goolsby, Presiding

Sarah Hardin, Committee Clerk

Senate Judiciary I Committee
Tuesday, May 10, 2011, 10:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 456	Candidate List Party or Unaffiliated Status.	Senator Goolsby
SB 600	Out-of-State Law Enforcement/Special Events.	Senator Clodfelter
SB 712	Adjust Quarterly Reporting.	Senator Brown Senator Nesbitt

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 600

Short Title:	Out-of-State Law Enforcement/Special Events.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

April 19, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A CITY WITH A POPULATION OF MORE THAN FIVE HUNDRED THOUSAND PEOPLE WHICH HOLDS A NATIONAL CONVENTION TO CONTRACT WITH OUT-OF-STATE LAW ENFORCEMENT AGENCIES TO PROVIDE LAW ENFORCEMENT AND SECURITY FOR THE NATIONAL CONVENTION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-288.3. Assistance by out-of-state law enforcement officers; rules.**

(a) In accordance with rules, policies, or guidelines officially adopted by the governing body of the city by which the officer is employed, and subject to any conditions or restrictions included therein, the head of any law enforcement agency of a municipality with a population that exceeds 500,000 may request and enter into temporary intergovernmental law enforcement agreements with out-of-state law enforcement agencies or officers to aid in enforcing the laws of North Carolina within the jurisdiction of the requesting municipality if so requested in writing by the head of the requesting agency. The assistance may comprise allowing officers of the out-of-state agencies to work temporarily with officers of the requesting agency (including in an undercover capacity) and lending equipment and supplies. While working with the requesting agency under the authority of this section, an officer shall have the same jurisdiction, powers, rights, privileges, and immunities (including those relating to the defense of civil actions and payment of judgments) as the officers of the requesting agency. While on duty with the requesting agency, the officer shall be subject to the lawful operational commands of the chief of police and the chief's chain of command for the requesting agency.

(b) As used in this section, the following definitions apply:

(1) "Head" means any director or chief officer of a law enforcement agency, including the chief of police of the requesting agency or an officer of the requesting agency to whom the head of that agency has delegated authority to make or grant requests under this section.

(2) "Law enforcement agency" means a municipal police department for a municipality that has a population of more than 500.000. All other State and local agencies are exempted from the provisions of this section.

(3) "Out-of-state law enforcement officer" means a full-time paid employee of a governmental employer who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State or serving civil processes, and who possesses the power of arrest by virtue of an oath

administered under the authority of the home state, who is in good standing and has no pending civil, criminal, or departmental action that would disqualify the officer if the officer were certified by this State.

(4) "Out-of-state law enforcement agency" means an employer which is a governmental agency outside of this State and which is assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State or serving civil processes, and which has employees who possess the power of arrest by virtue of an oath administered under the authority of the home state.

(5) "Temporary intergovernmental law enforcement agreement" means any agreement entered into by the agency head with the head of another out-of-state law enforcement agency for the use of officers or equipment for a designated period of time.

(c) This section in no way reduces the jurisdiction or authority of State law enforcement officers.

(d) Notwithstanding the provisions of G.S. 128-1 and G.S. 128-1.1(c1), out-of-state law enforcement officers shall be authorized to hold dual offices when the one of the appointive offices held is that of out-of-state law enforcement officer and the other appointive office is that of a law enforcement officer for a municipality authorized to enter into temporary intergovernmental law enforcement agreements pursuant to this section.

(e) An intergovernmental law enforcement agreement entered into pursuant to this section shall address standards of conduct for the out-of-state officers, including the requesting agencies' policies regarding the use of force. Additionally, the intergovernmental law enforcement agreement shall require all out-of-state law enforcement officers to successfully complete training as prescribed by the requesting agency. The intergovernmental law enforcement agreement shall also address the compensation of out-of-state law enforcement officers and the protocol for processing claims made against or by the out-of-state law enforcement officer.

(f) This section shall expire on October 1, 2012."

SECTION 2. This act becomes effective January 1, 2012, and applies to all intergovernmental law enforcement agreements entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 600
PROPOSED COMMITTEE SUBSTITUTE S600-CSMA-17 [v.3]

5/9/2011 2:51:48 PM

Short Title: Out-of-State Law Enforcement/Special Events. (Public)

Sponsors:

Referred to:

April 19, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A CITY WITH A POPULATION OF MORE THAN FIVE HUNDRED THOUSAND PEOPLE WHICH HOLDS A NATIONAL CONVENTION TO CONTRACT WITH OUT-OF-STATE LAW ENFORCEMENT AGENCIES TO PROVIDE LAW ENFORCEMENT AND SECURITY FOR THE NATIONAL CONVENTION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-288.3. Assistance by out-of-state law enforcement officers; rules.**

(a) In accordance with rules, policies, or guidelines adopted by the governing body of the city by which the officer is employed, and subject to any conditions or restrictions included therein, the head of any law enforcement agency of a municipality with a population that exceeds 500,000 may request and enter into temporary intergovernmental law enforcement agreements with out-of-state law enforcement agencies or officers to aid in enforcing the laws of North Carolina within the jurisdiction of the requesting municipality if so requested in writing by the head of the requesting agency. The assistance may comprise allowing out-of-state law enforcement officers to work temporarily with officers of the requesting agency (including in an undercover capacity) and lending equipment and supplies. While working with the requesting agency under the authority of this section, an out-of-state law enforcement officer shall have the same jurisdiction, powers, rights, privileges, and immunities (including those relating to the defense of civil actions and payment of judgments) as the officers of the requesting agency. While on duty with the requesting agency, the out-of-state law enforcement officer shall be subject to the lawful operational commands of the chief of police and the chief's chain of command for the requesting agency.

(b) As used in this section, the following definitions apply:

(1) "Head" means any director or chief officer of a law enforcement agency, including the chief of police of the requesting agency or an officer of the requesting agency to whom the head of that agency has delegated authority to make or grant requests under this section.

(2) "Law enforcement agency" means a municipal police department for a municipality that has a population of more than 500,000. All other State and local agencies are exempted from the provisions of this section.

(3) "Out-of-state law enforcement officer" means a full-time paid employee of a governmental employer who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the officer's home jurisdiction or serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the authority of the home jurisdiction, who is in good standing and has no pending civil, criminal, or departmental action that would disqualify the officer if the officer were certified by this State.

(4) "Out-of-state law enforcement agency" means an employer which is a governmental agency outside of this State and which is assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the home jurisdiction or serving civil processes, and which has employees who possess the power of arrest by virtue of an oath administered under the authority of the home jurisdiction.

(5) "Temporary intergovernmental law enforcement agreement" means any agreement entered into by the agency head with the head of another out-of-state law enforcement agency for the use of officers or equipment for a designated period of time.

(c) This section in no way reduces the jurisdiction or authority of State law enforcement officers.

(d) Notwithstanding the provisions of G.S. 128-1 and G.S. 128-1.1(c1), out-of-state law enforcement officers shall be authorized to hold dual offices when the one of the appointive offices held is that of out-of-state law enforcement officer and the other appointive office is that of a law enforcement officer for a municipality authorized to enter into temporary intergovernmental law enforcement agreements pursuant to this section.

(e) Notwithstanding the provisions of Chapter 17C and Chapter 17E of the General Statutes, out-of-state law enforcement officers certified and sworn in the officer's home jurisdiction and subject to the provisions of an intergovernmental law enforcement agreement under this section shall be deemed to have met the certification requirements of this State for the purposes of being sworn as a law enforcement officer with the requesting agency.

(f) An intergovernmental law enforcement agreement entered into pursuant to this section shall address standards of conduct for the out-of-state law enforcement officers, including the requesting agencies' policies regarding the use of force. Additionally, the intergovernmental law enforcement agreement shall require all out-of-state law enforcement officers to successfully complete training as prescribed by the requesting agency. The intergovernmental law enforcement agreement shall also address the compensation of out-of-state law enforcement officers and the protocol for processing claims made against or by the out-of-state law enforcement officer.

(g) This section shall expire on October 1, 2012."

SECTION 2. This act becomes effective January 1, 2012, and applies to all intergovernmental law enforcement agreements entered into on or after that date.

SENATE BILL 600:
Out-of-State Law Enforcement/Special Events

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 10, 2011
Introduced by:	Sen. Clodfelter	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition S600-CSMA-17		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 600 would authorize a city with a population of more than 500,000 which holds a national convention to contract with out-of-state law enforcement agencies to provide security for the national convention. The PCS (1) deletes the term "home state" and substitutes the term "home jurisdiction" in the definitions of "out-of-state law enforcement officer" and "out-of-state law enforcement agency" and (2) makes other technical changes (uses the defined term "out-of-state law enforcement officers" where some of those words were inadvertently left out).***

CURRENT LAW: Article 13 of Chapter 160A governs law enforcement for municipalities. The statutes address cooperation between law enforcement agencies, assistance by State law enforcement officers, and assistance to State law enforcement agencies. However, the statutes do not appear to address assistance by out-of-state law enforcement officers.

BILL ANALYSIS: The PCS for Senate Bill 600 would do all of the following:

- Allow the head of any law enforcement agency of a municipality with a population that exceeds 500,000 (e.g. Charlotte) to request and enter into temporary intergovernmental law enforcement agreements with out-of-state law enforcements agencies.
- Gives an out-of-state officer the same jurisdiction as the officers of the requesting agency and requires the out-of-state law enforcement officer to be subject to the commands of the chief of police for the requesting agency.
- Clarifies that the statute does not reduce the jurisdiction of State law enforcement officers.
- Authorizes out-of-state law enforcement officers to hold dual offices—to serve as out-of-state law enforcement officer and an officer for Charlotte—as provided in the act.
- Provides that officers sworn in their home jurisdictions are deemed to have met certification requirements for the purpose of being a sworn officer of the requesting agency.
- Provides that intergovernmental agreements must (1) address standards of conduct for the out-of-state officers, (2) require out-of-state law enforcement officers to complete training required by the requesting agency, and (3) address compensation of out-of-state law enforcement officers and the protocol for processing claims by or against out-of-state law enforcement officers.
- Provides that the section shall expire on October 1, 2012.

EFFECTIVE DATE: The act becomes effective January 1, 2012, and applies to all intergovernmental law enforcement agreements entered into on or after that date.

BACKGROUND: The City of Charlotte will be hosting the 2012 Democratic National Convention. Senate Bill 600 would give the city the authority to seek assistance and additional security from out-of-state law enforcement agencies.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 600

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

S600-ARN-9 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S-600-CSMA-17[v.3]

Date May 10 ,2011

Senator Clodfelter

moves to amend the bill on page 1, line 15, by inserting between the phrase "or officers" the phrase "out-of-state law enforcement".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 712

Short Title:	Adjust Quarterly Reporting.	(Public)
Sponsors:	Senators Nesbitt and Brown.	
Referred to:	Judiciary I.	

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO ADJUST THE CALENDAR PERIODS COVERED BY QUARTERLY REPORTS OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.9(a)(5a) reads as rewritten:

"(5a) Quarterly Reports. – During even-numbered years during which there is an election for that candidate or in which the campaign committee is supporting or opposing a candidate, the treasurer shall file a report by mailing or otherwise delivering it to the Board no later than seven working days after the end of each calendar quarter covering the prior calendar quarter, except that:

a. The report for the first quarter shall also cover the period in April through the seventeenth day before the primary, the first quarter report shall be due seven days after that date, and the second quarter report shall not include that period if a first quarter report was required to be ~~filed; and~~filed.

b. The report for the third quarter shall also cover the period in October through the seventeenth day before the election, the third quarter report shall be due seven days after that date, and the fourth quarter report shall not include that period if a third quarter report was required to be filed.

c. The report for the fourth quarter shall also cover the month of January after the election, and the next required report shall not cover that period if a fourth quarter report was required to be filed."

SECTION 2. This act becomes effective October 1, 2012, and applies to reports covering calendar periods occurring after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 712
PROPOSED COMMITTEE SUBSTITUTE S712-CSST-26 [v.1]

5/4/2011 11:46:43 AM

Short Title: Adjust Quarterly Reporting. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO ADJUST THE CALENDAR PERIODS COVERED BY QUARTERLY REPORTS OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.9(a)(5a) reads as rewritten:

"(5a) Quarterly Reports. – During even-numbered years during which there is an election for that candidate or in which the campaign committee is supporting or opposing a candidate, the treasurer shall file a report by mailing or otherwise delivering it to the Board no later than seven working days after the end of each calendar quarter covering the prior calendar quarter, except that:

a. The report for the first quarter shall also cover the period in April through the seventeenth day before the primary, the first quarter report shall be due seven days after that date, and the second quarter report shall not include that period if a first quarter report was required to be ~~filed; and~~filed.

b. The report for the third quarter shall also cover the period in October through the seventeenth day before the election, the third quarter report shall be due seven days after that date, and the fourth quarter report shall not include that period if a third quarter report was required to be filed.

c. The report for the fourth quarter shall also cover the month of January after the election, the fourth quarter report shall be due seven days after that date, and the next required report shall not cover that period if a fourth quarter report was required to be filed."

SECTION 2. This act becomes effective October 1, 2012, and applies to reports covering calendar periods occurring after that date.



SENATE BILL 712:
Adjust Quarterly Reporting

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 9, 2011
Introduced by:	Sens. Nesbitt, Brown	**Prepared by:**	R. Erika Churchill
Analysis of:	PCS to First Edition S712-CSST-26		Committee Counsel

SUMMARY: Senate Bill 712 would change the calendar period for fourth quarter campaign finance reports of candidates, political committees, electioneering communications and independent expenditures.

CURRENT LAW: Current law requires certain reports to be filed at certain times with respect to campaign finance. The same reporting schedule applies to:

- Political committees – candidates included
- Political parties
- Independent expenditures
- Electioneering communications

The following reports are to be filed at the time stated:

- Organizational Report – within 10 days following organization
- 48 Hour Report – within 48 hours of receipt of a contribution or transfer of $1,000 or more before an election but after the period covered by the last report due before the election
- Quarterly Reports – in even-numbered years, within 7 working days after the end of the calendar quarter for that quarter, except that:
  - In the 1st quarter, the report shall include the period in April through the 17th day before the primary and the 2nd quarter report shall not include that period
  - In the 3rd quarter, the report shall include the period in October through the 17th day before the election, and the 4th quarter report shall not include that period
- Semi-annual reports – in any time period not already covered, if contributions are received or expenditures are made, then a report is due on the last day of July for the period January 1 – June 30, and on the last day of January for July 1 – December 31.

BILL ANALYSIS: The bill would add to the provision requiring quarterly reports that in the 4th quarter, the report shall include the January following the election, the next required report shall not include that period, and the 4th quarter report is due within 7 days after the close of period.

EFFECTIVE DATE: October 1, 2012.

S712-SMST-34(CSST-26) v1

SENATE BILL 456
Corrected Copy 3/31/11

Short Title:	Candidate List Party or Unaffiliated Status.	(Public)
Sponsors:	Senators Goolsby; Bingham, Blake, Brown, Daniel, Davis, Forrester, Gunn, Hartsell, Hise, Hunt, Jackson, Meredith, Newton, Preston, Rabon, Rouzer, Rucho, Soucek, Stevens, and Tillman.	
Referred to:	Judiciary I.	

March 30, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW A CANDIDATE TO LIST PARTY AFFILIATION OR UNAFFILIATED STATUS ON THE BALLOT IN ALL ELECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 115C-37(a) reads as rewritten:

"(a) Method of Election. – The county boards of education shall be elected on a nonpartisan basis at the time of the primary election in 1970 and biennially thereafter. ~~The~~ Unless a candidate in the notice of candidacy under G.S. 163-106 chooses to list the political party recognized under Article 9 of Chapter 163 of the General Statutes that the candidate is affiliated with, the names of the candidates shall be printed on the ballots without reference to any party affiliation and any qualified voter residing in the county shall be entitled to vote such ballots. A candidate not affiliated with a political party may also list that status on the ballot by so providing in the notice of candidacy under G.S. 163-106. Except as otherwise provided herein, the election shall be conducted according to the provisions of Chapter 163 of the General Statutes then governing primary elections."

SECTION 1.(b) Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-37.2. Nonpartisan elections under local act.**

Whenever a local act or plan of consolidation and merger provides that an election for a county or city or merged board of education is to be elected on a nonpartisan basis, unless a candidate in the notice of candidacy provided by law chooses to list the political party recognized under Article 9 of Chapter 163 of the General Statutes with which the candidate is affiliated, the names of the candidates shall be printed on the ballots without reference to any party affiliation. A candidate not affiliated with a political party may also list that status on the ballot by so providing in the notice of candidacy provided by law."

SECTION 2. G.S. 163-323 is amended by adding a new subsection to read:

"(h) Unless a candidate in the notice of candidacy under this section chooses to list the political party recognized under Article 9 of this Chapter with which the candidate is affiliated, the names of the candidates shall be printed on the ballots without reference to any party affiliation. A candidate not affiliated with a political party may also list that status on the ballot by so providing in the notice of candidacy under this section."

SECTION 3. G.S. 163-294.2 is amended by adding a new subsection to read:

"(g) Unless a candidate in the notice of candidacy under this section chooses to list the political party recognized under Article 9 of this Chapter with which the candidate is affiliated,

the names of the candidates shall be printed on the ballots without reference to any party affiliation. A candidate not affiliated with a political party may also list that status on the ballot by so providing in the notice of candidacy under this section."

SECTION 4. G.S. 139-6 reads as rewritten:

"**§ 139-6. District board of supervisors – elective members; certain duties.**

(a) After the issuance of the certificate of organization of the soil and water conservation district by the Secretary of State, an election shall be held in each county of the district to elect the members of the soil and water conservation district board of supervisors as herein provided.

(b) The district board of supervisors shall consist of three elective members to be elected in each county of the district, and that number of appointive members as provided in G.S. 139-7. Upon the creation of a district, the first election of the members shall be held at the next succeeding election for county officers.

All elections for members of the district board of supervisors shall be held at the same time as the regular election for county officers beginning in November 1974. The election shall be nonpartisan and no primary election shall be held. The election shall be held and conducted by the county board of elections.

Candidates shall file their notice of candidacy on forms prescribed by the county board of elections. The notice of candidacy must be filed no earlier than noon on the second Monday in June and no later than noon on the first Friday in July preceding the election. The candidate shall pay a filing fee of five dollars ($5.00) at the time of filing the notice of candidacy.

Unless a candidate in the notice of candidacy under this section chooses to list the political party recognized under Article 9 of Chapter 163 of the General Statutes with which the candidate is affiliated, the names of the candidates shall be printed on the ballots without reference to any party affiliation. A candidate not affiliated with a political party may also list that status on the ballot by so providing in the notice of candidacy under this section.

(c) Beginning with the election to be held in November 1974, the two candidates receiving the highest number of votes shall be elected for a term of four years, and the candidate receiving the next highest number of votes shall be elected for a term of two years; thereafter, as their terms expire, their successors shall be elected for terms of four years. If the position of district supervisor is not filled by failure to elect, then the office shall be deemed vacant upon the expiration of the term of the incumbent, and the office shall be filled as provided in G.S. 139-7.

The persons elected in 1974 and thereafter shall take office on the first Monday in December following their election.

The terms of the present members of the soil and water conservation districts, both elective and appointive members, are hereby extended to or terminated on the first Monday in December 1974.

All qualified voters of the district shall be eligible to vote in the election. Except as provided in this Chapter, the election shall be held in accordance with the applicable provisions of Articles 23 and 24 of Chapter 163 of the General Statutes.

(d) The district board of supervisors, after the appointment of the appointive members has been made, shall select from its members a chairman, a vice-chairman and a secretary. It shall be the duty of the district board of supervisors to perform those powers, duties, and authority conferred upon supervisors under this Chapter; to develop annual county and district goals and plans for soil conservation work therein; to request agencies, whose duties are such as to render assistance in soil and water conservation, to set forth in writing what assistance they may have available in the county and district."

SECTION 5. This act is effective with respect to elections conducted on or after January 1, 2012.

SENATE BILL 456:
Candidate List Party or Unaffiliated Status

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 9, 2011
Introduced by:	Sen. Goolsby	**Prepared by:**	R. Erika Churchill
Analysis of:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 456 would allow candidates running in non-partisan races for appellate judge, superior or district court judge, local school board, municipal council, and soil and water conservation districts to have that candidate's party affiliation printed on the ballot.

CURRENT LAW: Non-partisan elections are conducted for the following offices, without the party affiliation of any candidate being listed on the ballot for that office:

- Appellate judge
- Superior court judge
- District court judge
- Local school board, with some exceptions
- Municipal elections, with some exceptions
- Sanitary boards established under Chapter 130A of the General Statutes
- Soil and Water Conservation boards established under Chapter 139 of the General Statutes

BILL ANALYSIS: For all of the elections listed above, except sanitary boards, a candidate for a non-partisan election could request that candidate's party affiliation be printed on the ballot.

EFFECTIVE DATE: The act is effective for elections occurring on or after January 1, 2012, but may not be implemented until the session law has received 'preclearance' approval under Section 5 of the Voting Rights of 1965 by the U.S. Department of Justice.

S456-SMST-35(e2) v1

PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027

DATE: 5-10 **TIME:** 10 am

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Jessica Williford	Fuquay-Varina	Berger, Phil
2 Keona Phelps	Creswell	Stan White
4		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

ges: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

VISITOR REGISTRATION SHEET

Senate Judiciary I — May 10, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amy Baum	NCACC
Damon Circosta	NC Voter Education
Bob Hall	Democracy NC
Annette Newkirk	NCCCC
John Harris	NCGA
Michael James	NCGA
Jeff Gray	FOP

SENATE JUDICIARY I COMMITTEE
May 17, 2011 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on May 17, 2011, in Room 1027 of the Legislative Building. Twelve members of the committee were present. Senator Thom Goolsby presided.

Senator Goolsby called the meeting to order at 10:02 a.m.

Senate Bill 440
Senator Brock was recognized to introduce the bill
Erika Churchill was recognized for explanation
Senator Pate was recognized to ask a question, and Senator Brock answered
Senator Tillman was recognized to ask a question, and Senator Brock answered
Gary Bartlett from the State Board of Elections was recognized to answer the question
Senator Brock was recognized to make further comments
Senator Pate was recognized to ask a question, and Senator Brock answered
Senator Jenkins was recognized to ask a question, and Senator Brock answered
Senator Jenkins was recognized to ask follow up questions, and Senator Brock answered
Senator Stein was recognized to make a comment, and Senator Brock answered
Chris Delesca from the public was recognized to make comments on the bill

Senate Bill 143
Senator Meredith was recognized to introduce the bill
Senator Nesbitt was recognized to ask a question, and Senator Meredith answered
Senator Nesbitt asked follow up questions, and Senator Meredith answered
Karen Cochrane-Brown was recognized to provide further clarification
Senator Nesbitt was recognized for more follow-up questions, and Karen Cochrane-Brown answered
Senator Tillman was recognized to ask a question, and Senator Goolsby answered
Senator Tillman was recognized for a follow-up question, and Senator Brown answered
Senator Stein was recognized to ask a question
The bill will be held until there are answers to these questions

Senate Bill 659
Senator Clodfelter was recognized to introduce the bill
Senator Pate was recognized to ask a question and Senator Clodfelter answered
Senator Walters was recognized to ask a question, and Senator Clodfelter answered
Senator Stein was recognized to ask a question, and Senator Clodfelter answered
Senator Stein was recognized to ask a follow up question, and Senator Clodfelter answered
Senator Stein was recognized for a follow up question, and Senator Clodfelter answered
Senator Goolsby asked a question, and Senator Clodfelter answered
Senator Goolsby asked a follow up question, and Senator Clodfelter answered
Senator Nesbitt was recognized to ask a question, and Senator Clodfelter answered
The bill will be held until there are answers to these questions

Senate Bill 595

Erika Churchill was recognized to explain the bill
Senator Clary was recognized to introduce the bill
Senator Walters was recognized to ask a question, and Senator Clary answered
Senator Stein was recognized to ask a question, and Gary Bartlett from the State Board of Elections was recognized to answer
Senator Clary was recognized for follow up comments
Senator Jenkins was recognized to ask a question, and Senator Clary answered
Senator Pate was recognized to ask a question, and Senator Clary answered
Senator Nesbitt was recognized to ask a question, and Senator Clary answered
Senator Stein was recognized to ask a question, and Senator Clary answered
Senator Clodfelter was recognized to ask a question, and Senator Clary answered
Senator Clodfelter was recognized for a follow up comment
Senator Tillman was recognized to make a follow up comment

Meeting was adjourned at 10:58 a.m.

Thom Goolsby, Presiding

Sarah Hardin, Committee Clerk

Senate Judiciary I Committee
Tuesday, May 17, 2011, 10:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 440	Presidential Primary in March. *For discussion only*	Senator Brock
SB 143	Detention Facility Requirements.	Senator Mansfield
SB 659	WC/Taxi Driver/Independent Contractor.	Senator Clodfelter
SB 595	Voter Identification at Polls. *For introduction only*	Senator Clary

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 440

Short Title:	Presidential Primary in March.	(Public)
Sponsors:	Senators Brock; and Jackson.	
Referred to:	Judiciary I.	

March 29, 2011

A BILL TO BE ENTITLED

AN ACT TO MOVE THE PRESIDENTIAL PREFERENCE PRIMARY TO MARCH.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-213.2 reads as rewritten:

"**§ 163-213.2. Primary to be held; date; qualifications and registration of voters.**

On the ~~Tuesday after the first Monday in May, 1992,~~ first Tuesday in March 2012, and every four years thereafter, the voters of this State shall be given an opportunity to express their preference for the person to be the presidential candidate of their political party.

Any person otherwise qualified who will become qualified by age to vote in the general election held in the same year of the presidential preference primary shall be entitled to register and vote in the presidential preference primary. Such persons may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6 prior to the said primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections."

SECTION 2. G.S. 163-213.4 reads as rewritten:

"**§ 163-213.4. Nomination by State Board of Elections.**

By the ~~first~~ third Tuesday in ~~February~~ December of the year preceding the North Carolina presidential preference primary, the chair of each political party shall submit to the State Board of Elections a list of its presidential candidates to be placed on the presidential preference primary ballot. The list must be comprised of candidates whose candidacy is generally advocated and recognized in the news media throughout the United States or in North Carolina, unless any such candidate executes and files with the chair of the political party an affidavit stating without qualification that the candidate is not and does not intend to become a candidate for nomination in the North Carolina Presidential Preference Primary Election. The State Board of Elections shall prepare and publish a list of the names of the presidential candidates submitted. The State Board of Elections shall convene in Raleigh on the first Tuesday in ~~March~~ January preceding the presidential preference primary election. At the meeting required by this section, the State Board of Elections shall nominate as presidential primary candidates all candidates affiliated with a political party, recognized pursuant to the provisions of Article 9 of Chapter 163 of the General Statutes, who have been submitted to the State Board of Elections. Immediately upon completion of these requirements, the Board shall release to the news media all such nominees selected. Provided, however, nothing shall prohibit the partial selection of nominees prior to the meeting required by this section, if all provisions herein have been complied with."

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



SENATE BILL 440:
Presidential Primary in March

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 13, 2011
Introduced by:	Sen. Brock	**Prepared by:**	R. Erika Churchill
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 440 would move North Carolina's presidential primary from the Tuesday after the first Monday in May (in 2012, May 8) to the first Tuesday in March (in 2012, March 6).

CURRENT LAW: Currently, North Carolina holds its presidential primaries at the same time as party primaries for other federal, State, and county offices, which is on the Tuesday after the first Monday in May. In 2012, that day will fall on May 8.

Current law provides two alternative methods for a presidential candidate to get on the ballot in the N.C. Presidential primary:

1. **Nomination by the State Board of Elections.** G.S. 163-213.4. The chair of each political party submits a list of its presidential candidates to be placed on presidential preference primary ballot by the 1st Tuesday in February of the year preceding the primary, which is February 7, 2012. The list is to be compromised of candidates whose candidacy is generally advocated and recognized in the news media throughout the United States or in North Carolina, unless that candidate executes and files with the chair of the political party an affidavit stating without qualification that the candidate is not and does not intend to become a candidate for nomination in the North Carolina Presidential Preference Primary Election. The State Board then prepares and publishes the list.
2. **Nomination by Petition.** The candidate collects signatures from 10,000 registered voters of the same party in North Carolina. Those signatures must be filed with the State Board of Elections by 5:00 pm on the day before its meeting to nominate presidential primary candidates on the first Tuesday in March, March 6, 2012.

Candidates for president can seek to have their name printed on the general election ballot as an unaffiliated candidate in other following ways:

- By filing a petition with the State Board by noon on the last Friday in June, which is June 29, 2012, signed by 2% of the total number of voters voting the most recent Governor's election (85,379).
- By filing a declaration of intent to become a write-in candidate and a petition with the signatures of at least 500 qualified voters of the State by noon on the 90th day before the general election, or Friday, August 17, 2012.
- By nomination of a new political party following the party convention, no later than July 1st.

The parties are required to allocate the delegates to their national presidential nominating conventions proportionally according to the votes of the primary. However, if that law puts the State's party in conflict with the national rules of its party, the party's State executive committee may resolve the conflict by adopting the national rules, but only to the extent of the conflict. *GS 163-213.8.*

BILL ANALYSIS:

Section 1. The bill moves the presidential primary from the Tuesday after the first Monday in May to the first Tuesday in March. In 2012, that would mean from May 8 to March 6.

It leaves the primaries for non-presidential offices in May, so NC would have two separate primaries, the presidential one in March and the non-presidential one in May.

Section 2. The bill moves two dates:

1. The date for the meeting at which each political party is to submit a list of its presidential candidates to be placed on the primary ballot, from the first Tuesday in February to the third Tuesday in December of the year preceding the primary. That is from February 7, 2012 to December 20, 2011.
2. The date for the meeting at which the State Board of Elections approves candidates for the presidential preference primary ballot from the first Tuesday in March to the first Tuesday in January. That is from March 6 back to January 3 for the year 2012.

To get on the NC primary ballot, presidential candidates would have to either become eligible for federal primary matching payments by January 3, 2012, or file their 10,000 signatures by January 2, 2012.

EFFECTIVE DATE: Effective when it becomes law, but may not be implemented until the session law has received 'preclearance' approval under Section 5 of the Voting Rights of 1965 by the U.S. Department of Justice.
S440-SMST-38(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 143

Short Title:	Detention Facility Requirements.	(Public)
Sponsors:	Senator Mansfield.	
Referred to:	Rules and Operations of the Senate.	

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO MODIFY DORMITORY REQUIREMENTS IN CERTAIN COUNTY DETENTION FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-221(d) reads as rewritten:

"(d) Notwithstanding any law or rule to the contrary, each dormitory in a county detention facility may house up to ~~56~~64 inmates as long as the dormitory provides all of the following:

(1) A minimum floor space of 70 square feet per inmate, including both the sleeping and dayroom areas.
(2) One shower per eight inmates, one toilet per eight inmates, one sink with a security mirror per eight inmates, and one water fountain.
(3) A telephone jack or other telephone arrangement provided within the dormitory.
(4) Space designed to allow a variety of activities.
(5) Sufficient seating and tables for all inmates.
(6) A way for officers to observe the entire area from the entrance.

This subsection applies only to those counties that have a population in excess of ~~600,000,~~ 300,000, according to the most recent decennial federal census."

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

SENATE BILL 143:
Detention Facility Requirements

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 17, 2011
Introduced by:	Sen. Mansfield	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 143 would modify the requirement regarding the maximum number of inmates that may be housed in a dormitory of a county detention facility located in certain counties.***

CURRENT LAW: Under current law, the Secretary of the Department of Health and Human Services is directed to establish minimum standards for the operation of local confinement facilities with a view to providing secure custody of prisoners and to protecting their health and welfare and providing for their humane treatment.

The Secretary has adopted an administrative rule (10A NCAC 14J .1226) which provides that each dormitory shall house no more than 40 inmates and shall have:

(1) A minimum floor space of 70 square feet per inmate, including both the sleeping and dayroom areas.
(2) One shower per eight inmates, one toilet per eight inmates, one sink with a security mirror per eight inmates, and one water fountain.
(3) A telephone jack or other telephone arrangement provided within the dormitory.
(4) Space designed to allow a variety of activities.
(5) Sufficient seating and tables for all inmates.
(6) A way for officers to observe the entire area from the entrance.

In 2008, the law was amended to authorize certain county detention facilities to increase dormitory capacity to up to 56 inmates, notwithstanding the administrative rule which required a capacity of no more than 40 inmates. This exception was limited to counties with a population in excess of 600,000 according to the most recent decennial federal census. The only counties to which the exception currently applies are Wake and Mecklenburg.

BILL ANALYSIS:

Senate Bill 143 would increase the current exception applicable to Wake and Mecklenburg counties relating to dormitory capacity from 56 to 64 inmates. The bill would also make the exception applicable to counties that have a population in excess of 300,000 according to the most recent decennial federal census. This would extend the exception to Cumberland, Guilford, and Forsyth counties.

EFFECTIVE DATE: This act is effective when it becomes law.

S143-SMRO-23(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 659

Short Title:	WC/Taxi Driver/Independent Contractor.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO EXEMPT TAXICAB DRIVERS WHO ARE INDEPENDENT CONTRACTORS FROM COVERAGE UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 96 of the General Statutes is amended by adding a new section to read:

"**§ 97-5.1. Presumption that taxicab drivers are independent contractors.**

(a) It shall be a conclusive presumption under this Chapter that any person who operates, and who has an ownership or leasehold interest in, a passenger motor vehicle that is operated as a taxicab is an independent contractor for the purposes of this Chapter and not an employee as defined in G.S. 97-2.

(b) The following definitions apply in this section:

(1) Lease. – A contract under which the lessor provides a vehicle to a lessee for consideration.

(2) Leasehold. – Includes, but is not limited to, a lease for a shift or a longer period.

(3) Passenger motor vehicle that is operated as a taxicab. – Any vehicle that:

a. Has a passenger seating capacity that does not exceed seven persons; and

b. Is transporting persons, property, or both on a route that begins or ends in this State and either:

1. Carries passengers for hire when the destination and route traveled may be controlled by a passenger and the fare is calculated on the basis of any combination of an initial fee, distance traveled, or waiting time; or

2. Is in use under a contract to provide specific service to a third party to transport designated passengers or to provide errand services to locations selected by the third party."

SECTION 2. This act is effective when it becomes law and applies to persons affected on or after that date.

SENATE BILL 659:
WC/Taxi Driver/Independent Contractor

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 16, 2011
Introduced by:	Sen. Clodfelter	**Prepared by:**	Bill Patterson
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 659 creates a conclusive presumption that taxi operators who own or lease their vehicles are independent contractors not covered under the Workers Compensation Act.

CURRENT LAW: The Workers Compensation Act, Article 2 of Chapter 97 of the General Statutes, applies to employers regularly employing three or more "employees" in the same business or establishment. "Employee" is defined in G.S. 97-2. Independent contractors are not covered under the Act. Whether someone who performs work for another is regarded as an employee or as an independent contractor is generally determined by applying ordinary common-law tests[1] to the facts of each case.[2]

BILL ANALYSIS: Senate Bill 659 enacts new G.S. 97-5.1, establishing a conclusive presumption that a person who operates, and who has an ownership or leasehold interest in, a motor vehicle with a passenger seating capacity of up to seven persons "that is operated as a taxicab," is an independent contractor and is not an "employee" subject to the Workers Compensation Act.

Under the bill a "leasehold interest" includes, without limitation a lease for a shift or a longer period. To be "operated as a taxicab," the vehicle must begin or end its trip in this State and either carry passengers who control the destination and route in exchange for a fare based on an initial fee, distance traveled, waiting time, or any combination thereof, or transport designated passengers or provide errand service under a contract with a third party to locations the third party has selected.

EFFECTIVE DATE: This act is effective when it becomes law and applies to persons affected on or after that date.

S659-SMTG-23(e1) v2

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[1] The elements of a contract creating the relationship of employer and independent contractor were set out in Hayes v. Elon College, 224 N.C. 11, 29 S.E.2d 137 (1944):

> The person employed (a) is engaged in an independent business, calling, or occupation; (b) is to have the independent use of his special skill, knowledge, or training in the execution of the work; (c) is doing a specified piece of work at a fixed price or for a lump sum or upon a quantitative basis; (d) is not subject to discharge because he adopts one method of doing the work rather than another; (e) is not in the regular employ of the other contracting party; (f) is free to use such assistants as he may think proper; (g) has full control over such assistants; and (h) selects his own time.

224 N.C. at 16, 29 S.E.2d at 140. "The court [in Hayes] went on to state that the presence of no particular one of these indicia is controlling, nor is the presence of all required. However, they are to be considered along with all other circumstances to determine whether the one employed has that degree of independence necessary to require his classification as independent contractor rather than employee." Denton v. South Mountain Pulpwood Co., 69 N.C.App. 366, 377, 317 S.E.2d 433, 440 (1984).

[2] See, e.g., Travelers Indem. Co. v. Crown Cab Co., Inc. , 2011 WL 1791323, 1 (W.D.N.C. 2011)(independent contractor): Gilreath v. Yellow Cab of Charlotte, 2007 WL 3775, 3 (N.C.App. 2007)(employee); Fulcher v. Willard's Cab Co., 132 N.C.App. 74, 511 S.E.2d 9 (1999)(independent contractor); Alford v. Cab Co., 30 N.C.App. 657, 228 S.E.2d 43 (1976)(independent contractor); State ex rel. Employment Security Comm. v. Faulk, 88 N.C.App. 369, 363 S.E.2d 225 (1988)(employee).

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 595

Short Title:	Voter Identification at Polls.	(Public)
Sponsors:	Senators Clary; Allran, Apodaca, Bingham, Blake, Brock, Brunstetter, Daniel, Davis, East, Forrester, Goolsby, Gunn, Harrington, Hartsell, Hise, Hunt, Jackson, Meredith, Newton, Pate, Rabon, Rouzer, Rucho, Soucek, Stevens, Tillman, and Tucker.	
Referred to:	Judiciary I.	

April 14, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT VOTERS PROVIDE PHOTO IDENTIFICATION PRIOR TO VOTING; AND TO PROVIDE FOR THE ISSUANCE OF NORTH CAROLINA VOTER IDENTIFICATION CARDS; AND TO REQUIRE VOTER EDUCATION ON PROPER IDENTIFICATION FOR VOTING; AND TO PROVIDE FOR THE ISSUANCE OF NO FEE SPECIAL IDENTIFICATION CARDS TO REGISTERED VOTERS WITHOUT PROPER IDENTIFICATION FOR VOTING.

The General Assembly of North Carolina enacts:

SECTION 1.1. Article 14A of Chapter 163 of the General Statutes is amended by adding the following new sections to read:

"**§ 163-166.13. Requirement for presentation of identification to local election officials at a voting place.**

(a) Except as provided in subsection (c) of this section, every individual seeking to vote in person shall present proper identification to a local election official at a voting place prior to voting there. Proper identification shall consist of one of the following, provided the identification contains a photograph of the registered voter:

(1) A North Carolina drivers license that was issued by the appropriate State agency.

(2) A valid North Carolina voter identification card issued under G.S. 163-166.14 or other identification card issued by a branch, department, agency, or entity of the State of North Carolina, any other state, or the United States permitted by law to issue personal identification.

(3) A valid United States passport.

(4) A valid employee identification card issued by any branch, department, agency, or entity of the United States government, the State of North Carolina, or any county, municipality, board, authority, or other entity of the State.

(5) A valid United States military identification card.

(6) A valid tribal identification card.

(b) Except as provided in subsection (c) of this section, if an individual is unable to produce any of the items of identification listed in subsection (a) of this section, the individual shall be allowed to vote a provisional ballot upon executing a written affirmation before an election official at the voting place pursuant to G.S. 163-166.11. Such provisional ballot shall

be counted only if the county board of elections is able to verify proper identification of the individual as provided in subsection (a) of this section prior to the canvass conducted by the county board of elections pursuant to G.S. 163-182.5.

(c) An individual subject to the requirements of G.S. 163-166.12 shall present the identification required by that section to a local election official prior to voting at a voting place. If the individual is unable to produce the required identification, the individual may vote a provisional ballot pursuant to G.S. 163-166.12.

"**§ 163-166.14. Voter identification cards.**

(a) Each county board of elections shall provide at least one place in the county at which it shall accept applications for and issue North Carolina voter identification cards which shall be valid only for purposes of voter identification under this Chapter and available only to registered voters of this State. No fee shall be charged or collected for the application for or issuance of a North Carolina voter identification card.

(b) No person shall be eligible for a North Carolina voter identification card if such person has a valid unexpired drivers license or special identification card issued under G.S. 20-37.7.

(c) The North Carolina voter identification card shall be captioned "NORTH CAROLINA VOTER IDENTIFICATION CARD" and shall contain a prominent statement that under North Carolina law it is valid only as identification for voting purposes. The North Carolina voter identification card shall be laminated, shall contain a digital color photograph of the applicant, and shall include the following information:

(1) Full legal name.
(2) Address of residence.
(3) Birth date.
(4) Date identification card was issued.
(5) Sex.
(6) Height.
(7) Weight.
(8) Eye color.
(9) County where the identification card was issued.
(10) Such other information or identification as required by rule of the State Board of Elections.

(d) The application for a North Carolina voter identification card shall elicit the information required under subsection (c) of this section and such other information as may be required by rule of the State Board of Elections. The application shall be signed and sworn to by the applicant and any falsification or fraud in the making of the application shall constitute a Class I felony.

(e) The county board of elections shall require presentation and verification of the following information before issuing a North Carolina voter identification card to a person:

(1) A photo identity document, except that a nonphoto identity document is acceptable if it includes both the person's full legal name and date of birth.
(2) Documentation showing the person's date of birth.
(3) Evidence that the person is registered to vote in this State.
(4) Documentation showing the person's name and address of residence.

(f) A North Carolina voter identification card shall remain valid so long as a person resides at the same address and remains qualified to vote. It shall be the duty of a person who moves his or her residence within the State to surrender his or her card to the county board of elections of the county of his or her new residence; and such person may after such surrender apply for and receive a new card if such person is otherwise eligible under this section. It shall be the duty of a person who moves his or her residence outside the State or who ceases to be

qualified to vote to surrender his or her card to the county board of elections by which it was issued.

(g) The State Board of Elections shall provide each county board of elections with the necessary equipment, forms, supplies, and training for the production of the North Carolina voter identification cards and shall maintain such equipment.

(h) The State Board of Elections shall adopt rules and regulations for the administration of this section. Such rules and regulations may further define or prescribe the types of documentation required under subsection (e) of this section."

SECTION 1.2. G.S. 163-22 is amended by adding a new subsection to read:

"(r) The State Board of Elections shall formulate and conduct a voter education program concerning voting procedures for voting by absentee ballot and at the polls with particular emphasis on proper identification required for voting."

SECTION 1.3. G.S. 163-82.6A(b) reads as rewritten:

"(b) Both Attestation and Proof of Residence Required. – To vote under this section, a voter must present proper identification as defined by G.S. 163-166.13(a). This requirement is separate from the requirement to provide proof of residence under subdivision (2) of this subsection. If an individual does not present the required identification, that individual may vote a provisional official ballot subject to the requirements of G.S. 163-166.13(b). To register ~~and vote~~ under this section, the person shall do both of the following:

(1) Complete a voter registration form as prescribed in G.S. 163-82.4, including the attestation requirement of G.S. 163-82.4(b) that the person meets each eligibility requirement. Such attestation is signed under penalty of a Class I felony under G.S. 163-275(13); and

(2) Provide proof of residence by presenting any of the following valid documents that show the person's current name and current residence address: a North Carolina drivers license, a photo identification from a government agency, or any of the documents listed in G.S. 163-166.12(a)(2). The State Board of Elections may designate additional documents or methods that suffice and shall prescribe procedures for establishing proof of residence."

SECTION 1.4. G.S. 163-166.7(a) reads as rewritten:

"(a) Checking Registration. – A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence ~~address.~~ address and present proper identification in accordance with G.S. 163-166.13. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots. If a precinct official states that the person is duly registered, the person shall sign the pollbook, other voting record, or voter authorization document in accordance with subsection (c) of this section before voting."

SECTION 1.5. G.S. 163-166.11(2) reads as rewritten:

"(2) The individual may cast a provisional official ballot at that voting place upon executing a written affirmation before an election official at the voting place, stating that the individual is a registered voter in the jurisdiction as provided in G.S. 163-82.1 in which the individual seeks to vote and is eligible to vote in that election. The individual shall also present the identification required by G.S. 163-166.13."

SECTION 1.6. G.S. 163-227.2(b) reads as rewritten:

"(b) Not earlier than the third Thursday before an election, in which absentee ballots are authorized, in which a voter seeks to vote and not later than 1:00 P.M. on the last Saturday before that election, the voter shall appear in person only at the office of the county board of elections, except as provided in subsection (g) of this section. A county board of elections shall conduct one-stop voting on the last Saturday before the election until 1:00 P.M. and may conduct it until 5:00 P.M. on that Saturday. That voter shall enter the voting enclosure at the board office through the appropriate entrance and shall at once state his or her name and place of residence to an authorized member or employee of the ~~board.~~ board and present proper identification in accordance with G.S. 163-166.13. If an individual does not present the required identification, that individual may vote a provisional official ballot subject to the requirements of G.S. 163-166.13(b). In a primary election, the voter shall also state the political party with which the voter affiliates and in whose primary the voter desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party under G.S. 163-119, the voter shall state the name of the authorizing political party in whose primary he wishes to vote. The board member or employee to whom the voter gives this information shall announce the name and residence of the voter in a distinct tone of voice. After examining the registration records, an employee of the board shall state whether the person seeking to vote is duly registered. If the voter is found to be registered that voter may request that the authorized member or employee of the board furnish the voter with an application form as specified in G.S. 163-227. The voter shall complete the application in the presence of the authorized member or employee of the board, and shall deliver the application to that person."

SECTION 1.7. G.S. 20-37.7(d) reads as rewritten:

"(d) Expiration and Fee. – A special identification card issued to a person for the first time under this section expires when a drivers license issued on the same day to that person would expire. A special identification card renewed under this section expires when a drivers license renewed by the card holder on the same day would expire.

The fee for a special identification card is the same as the fee set in G.S. 20-14 for a duplicate license. The fee does not apply to a special identification card issued to a resident of this State ~~who is~~ who:

(1) Is legally ~~blind,~~blind.

(2) ~~is~~ Is at least 70 years ~~old,~~old.

(3) ~~is homeless,~~Is homeless. To obtain a special identification card without paying a fee, a homeless person must present a letter to the Division from the director of a facility that provides care or shelter to homeless persons verifying that the person is homeless.

(4) ~~or who has~~Has been issued a drivers license but the drivers license is cancelled under G.S. 20-15, in accordance with G.S. 20-9(e) and (g), as a result of a physical or mental disability or disease. ~~To obtain a special identification card without paying a fee, a homeless person must present a letter to the Division from the director of a facility that provides care or shelter to homeless persons verifying that the person is homeless.~~

(5) Is a registered North Carolina voter who lacks proper identification required for voting by G.S. 163-166.13. To obtain a special identification card without paying a fee, the individual must produce evidence that he or she is registered to vote in the State of North Carolina, and must swear under oath that the individual desires an identification card in order to vote in a primary or election in North Carolina, and that the individual does not have any other form of identification that is acceptable under G.S. 163-166.13. An individual who has been issued a valid drivers license shall not be eligible for a special identification card under this subdivision."

SECTION 1.8. This act becomes effective January 1, 2012, and applies to elections held on or after that date.

SENATE BILL 595:
Voter Identification at Polls

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 22, 2011
Introduced by:	Sen. Clary	**Prepared by:**	R. Erika Churchill
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 595 would require voters voting in person to present photo identification prior to voting.

CURRENT LAW: Pursuant to the Help America Vote Act, enacted by the U.S. Congress in 2002, G.S. 163-166.12 requires individuals who register to vote by mail after January 1, 2003, who have not previously voted in an election with a federal ballot item to show one of the following forms of identification prior to voting:

- A current and valid photo ID.
- A copy of any one of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

An individual is exempted from showing the required identification if that individual included as part of the voter registration one of the forms of ID listed above, a driver's license number, or the last four digits of their social security number. The driver's license number or social security numbers are used by the State Board of Elections to cross match to an existing State identification record.

The statute also provides exceptions from the identification requirement as provided under federal law, such as overseas and military voters entitled to vote by absentee ballot, and voters entitled to vote other than in person under the federal Voting Accessibility for the Elderly and Handicapped Act.

BILL ANALYSIS:

The bill would require all voters voting in person to present a photo ID prior to voting.

Section 1.1.

Valid Photo ID: The following identification would be accepted, but only if it contained a photograph of the voter:

- North Carolina driver's license.
- Valid North Carolina voter identification card issued by a county board of elections, or other identification card issued by a branch, department, agency, or entity of the State of North Carolina, any other state, or the federal government that is permitted by law to issue personal identification.
- Valid United States passport.
- Valid employee identification card issued by a branch, department, agency, or entity of the federal government, State of North Carolina, or any county, municipality, board, authority, or other entity of the State.
- Valid United States military identification card.
- Valid tribal identification card.

Any voter not providing the photo identification would be allowed to vote a provisional ballot upon executing a written affirmation before an election official at the voting place. The provisional ballot would be counted only if the county board of elections is able to verify proper photo identification prior to the canvass, which is 10 days after the election.

Voter Identification Cards.

County boards of elections would be required to issue voter identification cards at no cost to registered voters who do not have a valid North Carolina drivers' license or North Carolina non-operators special identification card. The voter identification cards could only be used for voting.

In application for a North Carolina voter identification card, voter would be required to present certain information and provide certain information. The application must be signed and sworn, with falsification or fraud punishable as a Class I felony. The information that must be provided and presented by the registered voter is:

1. A photo identity document or a nonphoto identity document that includes the voter's full legal name and date of birth.
2. Documentation of date of birth.
3. Evidence of the person's voter registration.
4. Documentation of name and address of residence.
5. Full legal name.
6. Address.
7. Date of birth.
8. Sex.
9. Height.
10. Eye color.
11. County of issuance.
12. Date of issuance.
13. Digital color photograph of the voter.
14. Any other information required by the State Board of Elections.

Items 5-14 must be printed on the voter identification card. The voter identification card would remain valid as long as the person resided at the same address and remained qualified to vote. The voter would be responsible for surrendering the card to the county board of elections if the voter changes residence or ceases to be qualified to vote.

The State Board of Elections is to provide supplies and equipment necessary to issue voter identification cards to the county boards of elections and adopt policies for administration.

Sections 1.3 through 1.6. Conforming changes: The bill would make conforming changes to the following statutes where an individual presents to vote in person:

- Same Day Registration – Section 1.3.
- Election Day voting – Section 1.4
- Provisional voting on Election Day – Section 1.5
- Early Voting – Section 1.6

Photo identification would not be required for mail-in absentee voting. The current identification requirements of G.S. 163-166.12 for first-time voters who register by mail would still apply to mail-in absentee voting.

Section 1.7. Special ID Cards for Nonoperators: The bill would permit registered North Carolina voters who do not have valid photo ID required for voting to be issued a special ID card without a fee, upon swearing under oath that individual has no other acceptable photo ID for voting.

EFFECTIVE DATE: January 1, 2012, but may not be implemented until the session law has received 'preclearance' approval under Section 5 of the Voting Rights of 1965 by the U.S. Department of Justice as the bill impacts elections in the 40 counties in North Carolina subject to Section 5.

S595-SMST-29(e1) v2

Brunstetter

PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027

DATE: 5-17 **TIME:** 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!

Page Name Percy	Hometown	Sponsoring Senator
1 Micaela [redacted]	Cary	Berger, P.
2 Tyler Hinnant	Tabor City	Jackson
3 Jordan Scott	Salemburg	Jackson
4 Anthony Lucas	Salemburg	Jackson
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

VISITOR REGISTRATION SHEET

Judiciary I — May 17, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Pulley	NCAJ
Forrest Gilliam	Governor's Office
Bob Hall	Democracy NC
[illegible]	NC HBA
Jim Morrill	Charlotte Observer
Ted Fulda	Guardian Unea
Mike Waters	NCRPA
Chris Telesca	Wake Uni. Fed Voting
David Crawford	AIANC
Tom West	Federal Youth Alternatives, Inc.

VISITOR REGISTRATION SHEET

Judiciary I — May 17, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Miles Chalmers	ABC Commission
Damon Circosta	NC voter ED
Lao Rubeat	CYPC
Johanna Reese	DMV
Cherie Poucher	Wake Co. BOE
Veronica Degraffenred	SBOE
Johnnie McLean	SBE
Gary O. Bartlett	SBE
Jon Williams	ABC
Eddie Caldwell	NC Sheriffs' Assn.
Matthew Burr	NC Insider

SENATE JUDICIARY I COMMITTEE
May 19, 2011 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on May 19, 2011, in Room 1027 of the Legislative Building. Twelve members of the committee were present. Senator Thom Goolsby presided.

Senator Goolsby called the meeting to order at 10:03 a.m.

Senate Bill 143
Senator Mansfield was recognized to introduce the bill
Senator Apodaca moved for a favorable report
Motion carries

Meeting adjourned at 10:18 a.m.

Thom Goolsby, Presiding

Sarah Hardin, Committee Clerk

Senate Judiciary I Committee
Thursday, May 19, 2011, 10:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 143	Detention Facility Requirements.	Senator Mansfield
SB 772	Consolidate Ethics, Elections, and Lobbying. *For discussion only*	Senator Brock

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 143

Short Title:	Detention Facility Requirements.	(Public)
Sponsors:	Senator Mansfield.	
Referred to:	Rules and Operations of the Senate.	

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO MODIFY DORMITORY REQUIREMENTS IN CERTAIN COUNTY DETENTION FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-221(d) reads as rewritten:

"(d) Notwithstanding any law or rule to the contrary, each dormitory in a county detention facility may house up to ~~56~~64 inmates as long as the dormitory provides all of the following:

(1) A minimum floor space of 70 square feet per inmate, including both the sleeping and dayroom areas.
(2) One shower per eight inmates, one toilet per eight inmates, one sink with a security mirror per eight inmates, and one water fountain.
(3) A telephone jack or other telephone arrangement provided within the dormitory.
(4) Space designed to allow a variety of activities.
(5) Sufficient seating and tables for all inmates.
(6) A way for officers to observe the entire area from the entrance.

This subsection applies only to those counties that have a population in excess of ~~600,000,~~ 300,000, according to the most recent decennial federal census."

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

SENATE BILL 143:
Detention Facility Requirements

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 17, 2011
Introduced by:	Sen. Mansfield	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 143 would modify the requirement regarding the maximum number of inmates that may be housed in a dormitory of a county detention facility located in certain counties.***

CURRENT LAW: Under current law, the Secretary of the Department of Health and Human Services is directed to establish minimum standards for the operation of local confinement facilities with a view to providing secure custody of prisoners and to protecting their health and welfare and providing for their humane treatment.

The Secretary has adopted an administrative rule (10A NCAC 14J .1226) which provides that each dormitory shall house no more than 40 inmates and shall have:

(1) A minimum floor space of 70 square feet per inmate, including both the sleeping and dayroom areas.
(2) One shower per eight inmates, one toilet per eight inmates, one sink with a security mirror per eight inmates, and one water fountain.
(3) A telephone jack or other telephone arrangement provided within the dormitory.
(4) Space designed to allow a variety of activities.
(5) Sufficient seating and tables for all inmates.
(6) A way for officers to observe the entire area from the entrance.

In 2008, the law was amended to authorize certain county detention facilities to increase dormitory capacity to up to 56 inmates, notwithstanding the administrative rule which required a capacity of no more than 40 inmates. This exception was limited to counties with a population in excess of 600,000 according to the most recent decennial federal census. The only counties to which the exception currently applies are Wake and Mecklenburg.

BILL ANALYSIS:

Senate Bill 143 would increase the current exception applicable to Wake and Mecklenburg counties relating to dormitory capacity from 56 to 64 inmates. The bill would also make the exception applicable to counties that have a population in excess of 300,000 according to the most recent decennial federal census. This would extend the exception to Cumberland, Guilford, and Forsyth counties.

EFFECTIVE DATE: This act is effective when it becomes law.

SENATE BILL 772

Short Title:	Consolidate Ethics, Elections, and Lobbying.	(Public)
Sponsors:	Senator Brock.	
Referred to:	Judiciary I.	

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE ETHICS, ELECTIONS, AND LOBBYING UNDER THE STATE BOARD OF ETHICS AND ELECTIONS ENFORCEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 163A.**

"**State Elections and Ethics Act.**

"Article 1.

"General Provisions.

"**§ 163A-100. Title.**

This Chapter shall be known and may be cited as the 'State Elections and Ethics Act.'

"**§ 163A-101. Definitions.**

The following definitions apply in this Chapter:

(1) Blind trust. – A trust established by or for the benefit of a covered person or a member of the covered person's immediate family for divestiture of all control and knowledge of assets. A trust qualifies as a blind trust under this subdivision if the covered person or a member of the covered person's immediate family has no knowledge of the holdings and sources of income of the trust, the trustee of the trust is independent of and not associated with or employed by the covered person or a member of the covered person's immediate family and is not a member of the covered person's extended family, and the trustee has sole discretion as to the management of the trust assets.

(2) Board. – Any State board, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, as determined and designated by the State Board, except for those public bodies that have only advisory authority.

(3) Business. – Any of the following organized for profit:

a. Association.
b. Business trust.
c. Corporation.
d. Enterprise.
e. Joint venture.
f. Organization.
g. Partnership.
h. Proprietorship.
i. Vested trust.

j. Every other business interest, including ownership or use of land for income.

(4) Business with which associated. – A business in which the covered person or filing person or any member of that covered person's or filing person's immediate family does any of the following:

a. Is an employee.

b. Holds a position as a director, officer, partner, proprietor, or member or manager of a limited liability company, irrespective of the amount of compensation received or the amount of the interest owned.

c. Owns a legal, equitable, or beneficial interest of ten thousand dollars ($10,000) or more in the business or five percent (5%) of the business, whichever is less, other than as a trustee on a deed of trust.

d. Is a lobbyist registered under this Chapter.

For purposes of this subdivision, the term "business" shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

1. The covered person, filing person, or a member of the covered person's or filing person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.

2. The fund is publicly traded, or the fund's assets are widely diversified.

(5) Committee. – The Legislative Ethics Committee as created in Part 3 of Article 14 of Chapter 120 of the General Statutes.

(6) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any covered person or filing person in return for services rendered or to be rendered by that covered person or filing person or another. This term does not include campaign contributions properly received and reported as required by this Chapter.

(7) Confidential information. – Information defined as confidential by the law.

(8) Constitutional officers of the State. – Officers whose offices are established by Article III of the North Carolina Constitution.

(9) Contract. – Any agreement, including sales and conveyances of real and personal property, and agreements for the performance of services.

(10) Covered person. – A legislator, public servant, or judicial officer, as identified by the State Board under G.S. 163A-204.

(11) Designated individual. – A legislator, legislative employee, or public servant.

(12) Employing entity. – For public servants, any of the following bodies of State government of which the public servant is an employee or a member, or over which the public servant exercises supervision: agencies, authorities, boards, State Boards, committees, councils, departments, offices, institutions and their subdivisions, and constitutional offices of the State. For legislators, it is the house of which the legislator is a member. For legislative employees, it is the authority that hired the individual. For judicial employees, it is the Chief Justice.

(13) Executive action. – The preparation, research, drafting, development, consideration, modification, amendment, adoption, approval, tabling, postponement, defeat, or rejection of a policy, guideline, request for

proposal, procedure, regulation, or rule by a public servant purporting to act in an official capacity. This term does not include any of the following:

a. Present, prior, or possible proceedings of a contested case hearing under Chapter 150B of the General Statutes, of a judicial nature, or of a quasi-judicial nature.

b. A public servant's communication with a person, or another person on that person's behalf, with respect to any of the following:

1. Applying for a permit, license, determination of eligibility, or certification.

2. Making an inquiry about or asserting a benefit, claim, right, obligation, duty, entitlement, payment, or penalty.

3. Making an inquiry about or responding to a request for proposal made under Chapter 143 of the General Statutes.

4. Rate making.

c. Internal administrative functions, including those functions exempted from the definition of "rule" in G.S. 150B-2(8a).

d. Ministerial functions.

e. A public servant's communication with a person or another person on that person's behalf with respect to public comments made at an open meeting, or submitted as written comment, on a proposed executive action in response to a request for public comment, provided the identity of the person on whose behalf the comments are made is disclosed as part of the public participation, and no reportable expenditure is made.

(14) Extended family. – Spouse, lineal descendant, lineal ascendant, sibling, spouse's lineal descendant, spouse's lineal ascendant, spouse's sibling, and the spouse of any of these individuals.

(15) Filing person. – An individual required to file a statement of economic interest under this Chapter.

(16) Financial benefit. – A direct pecuniary gain or loss to the legislator, the public servant, or a person with which the legislator or public servant is associated, or a direct pecuniary loss to a business competitor of the legislator, the public servant, or a person with which the legislator or public servant is associated.

(17) Gift. – Anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, liaison personnel, or a person described under G.S. 138A-32(d)(1), (2), or (3). The following shall not be considered gifts under this subdivision:

a. Anything for which fair market value, or face value if shown, is paid by the covered person or legislative employee.

b. Commercially available loans made on terms not more favorable than generally available to the general public in the normal course of business if not made for lobbying.

c. Contractual arrangements or commercial relationships or arrangements made in the normal course of business if not made for lobbying.

d. Academic or athletic scholarships based on the same criteria as applied to the public.

e. Any campaign contribution properly reported as required under this Chapter.

f. Expressions of condolence related to a death of an individual, sent within a reasonable time of the death, if the expression is one of the following:
1. A sympathy card, letter, or note.
2. Flowers.
3. Food or beverages for immediate consumption.
4. Donations to a religious organization, charity, the State or a political subdivision of the State, not to exceed a total of two hundred dollars ($200.00) per death per donor.

(18) Governmental unit. – A political subdivision of the State, and any other entity or organization created by a political subdivision of the State.

(19) Honorarium. – Payment for services for which fees are not legally or traditionally required.

(20) Immediate family. – An unemancipated child of the covered person residing in the household and the covered person's spouse, if not legally separated. A member of a covered person's extended family shall also be considered a member of the immediate family if actually residing in the covered person's household.

(21) In session. – One of the following:
a. The General Assembly is in extra session from the date the General Assembly convenes until the General Assembly:
1. Adjourns sine die.
2. Recesses or adjourns for more than 10 days.
b. The General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly:
1. Adjourns sine die.
2. Recesses or adjourns for more than 10 days.

(22) Judicial employee. – The director and assistant director of the Administrative Office of the Courts and any other individual, designated by the Chief Justice, employed in the Judicial Department whose annual compensation from the State is sixty thousand dollars ($60,000) or more.

(23) Judicial officer. – Justice or judge of the General Court of Justice, district attorney, clerk of court, or any individual elected or appointed to any of these positions prior to taking office.

(24) Legislative action. – The preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by a legislator or legislative employee acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(25) Legislative employee. – Employees and officers of the General Assembly, consultants and counsel to committees of either house of the General Assembly or of legislative State Boards, who are paid by State funds, and students at an accredited law school while in an externship program at the General Assembly approved by the Legislative Services State Board, but not including legislators, members of the Council of State, nonsupervisory

employees of the Administrative Division's Facility Maintenance and Food Services staff, or pages.

(26) Legislator. – A member or presiding officer of the General Assembly, or an individual elected or appointed a member or presiding officer of the General Assembly before taking office.

(27) Liaison personnel. – Any State employee, counsel employed under G.S. 147-17, or officer whose principal duties, in practice or as set forth in that individual's job description, include lobbying legislators or legislative employees.

(28) Lobby or Lobbying. – Any of the following:

a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that designated individual's immediate family.

b. Developing goodwill through communications or activities, including the building of relationships, with a designated individual or that designated individual's immediate family with the intention of influencing current or future legislative or executive action, or both.

The terms "lobby" or "lobbying" do not include communications or activities as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both.

(29) Lobbyist. – An individual who engages in lobbying for payment and meets any of the following criteria:

a. Represents another person or governmental unit, but is not directly employed by that person or governmental unit.

b. Contracts for payment for lobbying.

c. Is employed by a person and a significant part of that employee's duties include lobbying. In no case shall an employee be considered a lobbyist if in no 30-day period less than five percent (5%) of that employee's actual duties include engaging in lobbying as defined in subdivision (9)a. of this section or if in no 30-day period less than five percent (5%) of that employee's actual duties include engaging in lobbying as defined in subdivision (9)b. of this section.

The term "lobbyist" shall not include individuals who are specifically exempted from this Chapter under Article 6 of this Chapter or registered as liaison personnel under Article 7 of this Chapter.

(30) Lobbyist principal and principal. – The person or governmental unit on whose behalf the lobbyist lobbies and who makes payment for the lobbying. In the case where a lobbyist is paid by a law firm, consulting firm, or other entity retained by a person or governmental unit for lobbying, the principal is the person or governmental unit whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist principal is the association or other organization, not the individual members of the association or other organization.

The term "lobbyist principal" shall not include those designating registered liaison personnel under Article 7 of this Chapter.

(31) Nonprofit corporation or organization with which associated. – Any not-for-profit corporation, organization, or association, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational

purposes and of which the covered person, filing person, or any member of the covered person's or filing person's immediate family is a director, officer, governing board member, employee, lobbyist registered under this Chapter, or independent contractor. Nonprofit corporation or organization with which associated shall not include any board, entity, or other organization created by this State or by any political subdivision of this State.

(32) Official action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(33) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.

(34) Payment. – Any money, thing of value, or economic benefit conveyed to the lobbyist for lobbying, other than reimbursement of actual travel, administrative expenses, or subsistence.

(35) Permanent designee. – An individual designated by a public servant to serve and vote in the absence of the public servant on a regular basis on a board on which the public servant serves.

(36) Person. – Any individual, firm, partnership, committee, association, corporation, business, or any other organization or group of persons acting together. The term "person" does not include the State, a political subdivision of the State, a board, or any other entity or organization created by the State or a political subdivision of the State.

(37) Person with which the legislator is associated. – Any of the following:

a. A member of the legislator's extended family.

b. A client of the legislator.

c. A business with which the legislator or a member of the legislator's immediate family is associated.

d. A nonprofit corporation or association with which the legislator or a member of the legislator's immediate family is associated.

e. The State, a political subdivision of the State, a board, or any other entity or organization created by the State or a political subdivision of the State that employs the legislator or a member of the legislator's immediate family.

(38) Person with which the public servant is associated. – Any of the following:

a. A member of the public servant's extended family.

b. A client of the public servant.

c. A business with which the public servant or a member of the public servant's immediate family is associated.

d. A nonprofit corporation or association with which the public servant or a member of the public servant's immediate family is associated.

e. The State, a political subdivision of the State, a board, or any other entity or organization created by the State or a political subdivision of the State that employs the public servant or a member of the public servant's immediate family.

(39) Political party. – Either of the two largest political parties in the State based on statewide voter registration at the applicable time.

(40) Public servants. – All of the following:

a. Constitutional officers of the State and individuals elected or appointed as constitutional officers of the State prior to taking office.

b. Employees of the Office of the Governor.
c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.
d. The chief deputy and chief administrative assistant of each individual designated under sub-subdivision a. or c. of this subdivision.
e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2) to individuals designated under sub-subdivision a., c., or d. of this subdivision.
f. Employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a) and confidential secretaries to these individuals.
g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.
h. Judicial employees.
i. All voting members of boards, including ex officio members, permanent designees of any voting member, and members serving by executive, legislative, or judicial branch appointment.
j. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.
k. For the Community College System, the voting members of the State Board of Community Colleges, the president and the chief financial officer of the Community College System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.
l. Members of the State Board, the executive director, and the assistant executive directors of the State Board.
m. Individuals under contract with the State working in or against a position included under this subdivision.
n. The director of the Office of State Personnel.
o. The State Controller.
p. The chief information officer, deputy chief information officers, chief financial officers, and general counsel of the Office of Information Technology Services.
q. The director of the State Museum of Art.
r. The executive director of the Agency for Public Telecommunications.
s. The State Board of Motor Vehicles.
t. The State Board of Banks and the chief deputy of the State Board of the Banking State Board.
u. The executive director of the North Carolina Housing Finance Agency.
v. The executive director, chief financial officer, and chief operating officer of the North Carolina Turnpike Authority.

(41) Reportable expenditure. – Any of the following that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a designated individual or that individual's immediate family member:

a. Any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge, or thing of value greater than ten dollars ($10.00) per designated individual per single calendar day.
b. A contract, agreement, promise, or other obligation whether or not legally enforceable.

(42) State agency. – An agency in the executive branch of the government of this State, including the Governor's Office, a board, a department, a division, and any other unit of government in the executive branch.

(43) State Board. – The State Board of Elections and Ethics Enforcement as established by this Chapter.

(44) Solicitation of others. – A solicitation of members of the public to communicate directly with or contact one or more designated individuals to influence or attempt to influence legislative or executive action to further the solicitor's position on that legislative or executive action, when that request is made by any of the following methods:
a. A broadcast, cable, or satellite transmission.
b. An e-mail communication or a Web site posting.
c. A communication delivered by print media as defined in G.S. 163-278.38Z.
d. A letter or other written communication delivered by mail or by comparable delivery service.
e. Telephone.
f. A communication at a conference, meeting, or similar event.

The term "solicitation of others" does not include communications made by a person or by the person's agent to that person's stockholders, employees, board members, officers, members, subscribers, or other recipients who have affirmatively assented to receive the person's regular publications or notices.

(45) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the covered person or a member of the covered person's immediate family, except a blind trust. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:
a. The covered person or a member of the covered person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and
b. The fund is publicly traded, or the fund's assets are widely diversified.

"**§ 163A-102. Application to the Lieutenant Governor.**

For purposes of this Chapter, the Lieutenant Governor shall be considered a legislator when carrying out the Lieutenant Governor's duties under Section 13 of Article II of the North Carolina Constitution and a public servant for all other purposes.

"**§ 163A-103. Application to candidates to certain offices.**

For purposes of Articles 3, 4, 5, 6, and 7 of this Chapter, the term "legislator" and the term "public servant" shall include an individual having filed a notice of candidacy for such office under this Chapter.

"Article 2.

"Board of Elections and Ethics Enforcement.

"**§ 163A-200. Board of Elections and Ethics Enforcement established.**

There is established the State Board of Elections and Ethics Enforcement.

"**§ 163A-201. Membership.**

(a) The State Board shall consist of nine members. Three members shall be appointed by the Governor, of whom no more than two shall be of the same political party. Six members shall be appointed by the General Assembly, three upon the recommendation of the Speaker of the House of Representatives, neither of whom shall be of the same political party, and three upon the recommendation of the President Pro Tempore of the Senate, neither of whom shall be of the same political party. Members shall serve for three year terms, beginning January 1, 2012, except for the initial terms that shall be as follows:

(1) One member appointed by the Governor shall serve an initial term of one year.

(2) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of one year.

(3) One member appointed by the Governor shall serve initial terms of two years.

(4) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one member upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of two years.

(b) Members shall be removed from the Board only for misfeasance, malfeasance, or nonfeasance. Members appointed by the Governor may be removed by the Governor. Members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be removed by the Governor upon the recommendation of the Speaker. Members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall be removed by the Governor upon the recommendation of the President Pro Tempore.

(c) Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of any unfulfilled term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122 for the remainder of any unfulfilled term.

(d) No member while serving on the State Board or employee while employed by the Board shall:

(1) Hold or be a candidate for any other office or place of trust or profit under the United States, the State, or a political subdivision of the State.

(2) Hold office in any political party above the precinct level.

(3) Participate in or contribute to the political campaign of any covered person or any candidate for a public office as a covered person over which the Board would have jurisdiction or authority.

(4) Otherwise be an employee of the State, a community college, or a local school system, or serve as a member of any other state board.

(e) The Governor shall annually appoint a member of the Board to serve as chair of the State Board. The State Board shall elect a vice-chair annually from its membership. The vice-chair shall act as the chair in the chair's absence or if there is a vacancy in that position.

(f) Members of the Board shall receive compensation for service on the Board.

"**§ 163A-202. Meetings and quorum.**

The State Board shall meet at least quarterly and at other times as called by its chair or by four of its members. In the case of a vacancy in the chair, meetings may be called by the vice-chair. Five members of the State Board constitute a quorum.

"**§ 163A-203. Staff and offices.**

The State Board may employ professional and clerical staff, including an executive director. The State Board shall be located within the Department of Administration for administrative purposes only, but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Administration, and is subject to the direction and supervision of the Secretary of Administration only with respect to the management functions of coordinating and reporting.

"**§ 163A-204. Powers and duties.**

(a) In addition to other powers and duties specified in this Chapter, the State Board shall:

(1) Provide reasonable assistance to covered persons in complying with this Chapter.

(2) Develop readily understandable forms, policies, and procedures to accomplish the purposes of this Chapter.

(3) Identify and publish the following:

a. A list of nonadvisory boards.

b. The names of individuals subject to this Chapter as covered persons and legislative employees.

(4) Receive and review all statements of economic interests filed with the State Board by prospective and actual covered persons and evaluate whether (i) the statements conform to the law and the rules of the State Board and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest. This subdivision does not apply to statements of economic interest filed by legislators or judicial officers.

(5) Conduct inquiries of alleged violations against judicial officers, legislators, and legislative employees in accordance with G.S. 138A-12.

(6) Conduct inquiries into alleged violations against public servants in accordance with this Chapter.

(7) Render advisory opinions in accordance with this Chapter and G.S. 120C-102.

(8) Initiate and maintain oversight of educational programs for ethics, lobbying, and campaign finance consistent with G.S. 163A-208.

(9) Conduct a continuing study of governmental ethics in the State and propose changes to the General Assembly in the government process and the law as are conducive to promoting and continuing high ethical behavior by governmental officers and employees.

(10) Adopt rules and forms necessary to implement this Chapter.

(11) Report annually to the General Assembly and the Governor on the State Board's activities and generally on the subject of public disclosure, ethics, and conflicts of interest, including recommendations for administrative and legislative action, as the State Board deems appropriate.

(12) Publish annually statistics on complaints filed with or considered by the Board, including the number of complaints filed, the number of complaints referred under G.S. 163A-206(b), the number of complaints dismissed under G.S. 163A-206(c)(4), the number of complaints dismissed under G.S. 163A-206(f), the number of complaints referred for criminal prosecution under G.S. 163A-206, the number of complaints dismissed under G.S. 163A-206(h), the number of complaints referred for appropriate action under G.S. 163A-206(h) or G.S. 163A-206(k)(3), and the number and age of complaints pending action by the Board.

(13) Provide general supervision over the primaries and elections in the State and shall have authority to make such reasonable rules and regulations with

respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of this Chapter.

(14) Publish and furnish to the county boards of elections and other election officials a sufficient number of indexed copies of all election laws and State Board rules and regulations. It shall also publish, issue, and distribute to the electorate such materials explanatory of primary and election laws and procedures as the State Board shall deem necessary.

(15) Appoint, in the manner provided by law, and advise all members of the county boards of elections as to the proper methods of conducting primaries and elections. The State Board shall require such reports from the county boards of elections as are provided by law, or as are deemed necessary by the State Board, and shall compel observance of the requirements of the election laws by county boards of elections and other election officers. In performing these duties, the State Board shall have the right to hear and act on complaints arising by petition or otherwise, on the failure or neglect of a county board of elections to comply with any part of the election laws imposing duties upon such a board. The State Board shall have power to remove from office any member of a county board of elections for incompetency, neglect or failure to perform duties, fraud, or for any other satisfactory cause. Before exercising this power, the State Board shall notify the county board member affected and give that board member an opportunity to be heard. When any county board member shall be removed by the State Board, the vacancy occurring shall be filled by the State Board.

(16) Investigate when necessary or advisable the administration of election laws, frauds, and irregularities in elections in any county, municipal, and special district and shall report violations of the election laws to the Attorney General or district attorney or prosecutor of the district for further investigation and prosecution.

(17) Determine, in the manner provided by law, the form and content of ballots, instruction sheets, pollbooks, tally sheets, abstract and return forms, certificates of election, and other forms to be used in primaries and elections. The State Board shall furnish to the county boards of elections the voter registration application forms required pursuant to this Chapter. The State Board shall direct the county boards of elections to purchase a sufficient quantity of all forms attendant to the registration and elections process. In addition, the State Board shall provide a source of supply from which the county boards of elections may purchase the quantity of pollbooks needed for the execution of its responsibilities. In the preparation of ballots, pollbooks, abstract and return forms, and all other forms, the State Board may call to its aid the Attorney General of the State, and it shall be the duty of the Attorney General to advise and aid in the preparation of these books, ballots, and forms.

(18) Prepare, print, distribute to the county boards of elections all ballots for use in any primary or election held in the State which the law provides shall be printed and furnished by the State to the counties. The State Board shall instruct the county boards of elections as to the printing of county and local ballots.

(19) Certify to the appropriate county boards of elections the names of candidates for district offices who have filed notice of candidacy with the State Board and whose names are required to be printed on county ballots.

(20) Tabulate the primary and election returns to declare the results and to prepare abstracts of the votes cast in each county in the State for offices which, according to law, shall be tabulated by the State Board.

(21) Make recommendations to the Governor and legislature relative to the conduct and administration of the primaries and elections in the State as it may deem advisable.

(22) Perform systematic reviews of reports required to be filed under this Chapter on a regular basis to assure complete and timely disclosure. Complaints of violations of this Chapter, all other records accumulated in conjunction with the investigation of these complaints, and any records accumulated in the performance of a systematic review shall be considered confidential records and may be released only by order of a court of competent jurisdiction. Any information obtained by the State Board from any law enforcement agency, administrative agency, or regulatory organization on a confidential or otherwise restricted basis in the course of an investigation or systematic review shall be confidential and exempt from G.S. 132-6 to the same extent that it is confidential in the possession of the providing agency or organization.

(23) Publish annual statistics on complaints received and systematic reviews conducted under this section, including the number of systematic reviews, the number of complaints, the number of apparent violations of this Chapter referred to a district attorney, the number of complaints dismissed, and the number and age of complaints pending. Subject to the provisions of Chapter 132 of the General Statutes, the levy of all civil fines, including the amount of the fine and the identity of the person or governmental unit against whom it was levied, shall be a public record as defined in G.S. 132-1(a).

(24) Perform other duties as may be necessary to accomplish the purposes of this Chapter.

(b) Notwithstanding the provisions of any other section of this Chapter, the State Board is empowered to have access to any ballot boxes and their contents, any voting machines and their contents, any registration records, pollbooks, voter authorization cards or voter lists, any lists of absentee voters, any lists of presidential registrants under the Voting Rights Act of 1965 as amended, and any other voting equipment or similar records, books, or lists in any precinct, county, municipality, or electoral district over whose elections it has jurisdiction or for whose elections it has responsibility.

(c) Notwithstanding the provisions contained in Article 31 of this Chapter, the State Board shall be authorized, by resolution adopted prior to the printing of the primary ballots, to reduce the time by which absentee ballots are required to be printed and distributed for the primary election from 50 days to 45 days. This authority shall not be authorized for absentee ballots to be voted in the general election, except if the law requires ballots to be available for mailing 60 days before the general election, and they are not ready by that date, the State Board shall allow the counties to mail them out as soon as they are available.

(d) Notwithstanding any other provision of law, in order to obtain judicial review of any decision of the State Board rendered in the performance of its duties or in the exercise of its powers under this Chapter, the petition seeking review shall be filed in the Superior Court of Wake County.

(e) The State Board shall adopt rules for the minimum requirements of the number of pollbooks, voting machines, and curbside ballots to be available at each precinct, such that more will be available at general elections and a sufficient number will be available to allow voting without excessive delay. The State Board shall provide additional testing of voting machines to ensure that they operate properly even with complicated ballots.

(f) The State Board shall require counties with voting systems to have sufficient personnel available on election day with technical expertise to make repairs in such equipment, to investigate election day problems, and assist in curbside voting.

(g) The State Board may assign responsibility for enumerated administrative matters to the Executive Director by resolution, if that resolution provides a process for the State Board to review any administrative decision made by the Executive Director. The State Board may authorize the staff of the State Board to evaluate statements of economic interest as authorized under subdivision (a)(4) of this section.

(h) The State Board shall possess full power and authority to maintain order and to enforce obedience to its lawful commands during its sessions and shall be constituted an inferior court for that purpose. If any person shall refuse to obey the lawful commands of the State Board or its chair, or by disorderly conduct in its hearing or presence shall interrupt or disturb its proceedings, it may, by an order in writing, signed by its chair, and attested by its secretary, commit the person so offending to the common jail of the county for a period not exceeding 30 days. Such order shall be executed by any sheriff to whom the same shall be delivered, or if a sheriff shall not be present, or shall refuse to act, by any other person who shall be deputed by the State Board in writing, and the keeper of the jail shall receive the person so committed and safely keep that person for such time as shall be mentioned in the commitment: Provided, that any person committed under the provisions of this section shall have the right to post a two hundred dollar ($200.00) bond with the clerk of the superior court and appeal to the superior court for a trial on the merits of the commitment.

"**§ 163A-208. Education programs.**

(a) The State Board shall develop and implement an ethics and lobbying education and awareness program designed to instill in all covered persons and legislative employees a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest.

(b) The State Board shall offer basic ethics and lobbying education and awareness presentations to all public servants upon their election, appointment, or employment and shall offer periodic refresher presentations as the State Board deems appropriate. Every public servant shall participate in an ethics and lobbying presentation approved by the State Board within six months of the public servant's election, reelection, appointment, or employment and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the State Board deems appropriate. This subsection shall not apply to judicial officers.

(c) A public servant appointed to a board determined and designated as nonadvisory under G.S. 138A-10(a)(3) shall attend an ethics and lobbying presentation approved by the Board within six months of notification of the designation by the State Board and at least every two years thereafter in a manner as the State Board deems appropriate.

(d) The State Board, jointly with the Legislative Ethics Committee, shall make basic ethics and lobbying education and awareness presentations to all legislators and legislative employees upon their election, reelection, appointment, or employment and shall offer periodic refresher presentations as the State Board and the Committee deem appropriate. Every legislator shall participate in an ethics and lobbying presentation approved by the State Board and Committee within two months of either the convening of the General Assembly to which the legislator is elected or within two months of the legislator's appointment, whichever is later. Every legislative employee shall participate in an ethics and lobbying presentation approved by the State Board and Committee within three months of employment and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the State Board and Committee deem appropriate.

(e) The State Board shall develop and implement a lobbying education and awareness program designed to instill in lobbyists and lobbyists' principals a keen and continuing

awareness of their obligations and sensitivity to situations that might result in real or potential violation of this Chapter or other related laws. The State Board shall make lobbying education and awareness programs available to lobbyists and lobbyists' principals.

(f) Upon request, the State Board shall assist each State agency in developing in-house ethics and lobbying education programs and procedures necessary or desirable to meet the State agency's particular needs for ethics education, conflict identification, and conflict avoidance.

(g) Each State agency head shall designate an ethics liaison who shall maintain active communication with the State Board on all State agency ethics and lobbying issues. The ethics liaison shall attend ethics and lobbying education and awareness programs as provided under this section. The ethics liaison shall continuously assess and advise the State Board of any issues or conduct which might reasonably be expected to result in a conflict of interest and seek advice and rulings from the State Board as to their appropriate resolution.

(h) The State Board shall publish a newsletter containing summaries of the State Board's opinions, policies, procedures, and interpretive bulletins with respect to ethics and lobbying as issued from time to time. The newsletter shall be distributed to all covered persons and legislative employees. Publication under this subsection may be done electronically.

(i) The State Board shall publish a newsletter containing summaries of the State Board's opinions, policies, procedures, and interpretive decisions with respect to campaign finance as issued from time to time. The newsletter shall be distributed to all treasurers and candidates. Publication under this section may be done electronically.

(j) The State Board shall assemble and maintain a collection of relevant State laws, rules, and regulations and set forth ethical standards applicable to covered persons, lobbying laws and regulations, and campaign finance laws and regulations. This collection shall be made available electronically as resource material.

(k) The State Board shall provide specific training to county boards of elections regarding rules for registering all voters.

(l) The State Board shall provide for training and screening program for county boards of elections, county directors of elections, chief judges, and judges.

"**§ 163A-209. Requests for advice.**

(a) At the written request of any public servant or legislative employee, any individual who is responsible for the supervision or appointment of a public servant or legislative employee, legal counsel for any public servant or legislative employee, any ethics liaison under G.S. 163A-208, or any member of the State Board, the State Board shall render advice on specific questions involving the meaning and application of Articles 9 and 10 of this Chapter and the public servant's or legislative employee's compliance therewith. This subsection shall apply to judicial officers only for advice related to Article 9 of this Chapter.

(b) At the request of a legislator, the State Board shall render recommended advice on specific questions involving the meaning and application of this Chapter and Part 1 of Article 14 of Chapter 120 of the General Statutes and the legislator's compliance therewith. Any recommended formal advisory opinion issued to a legislator under this subsection shall immediately be delivered to the chairs of the Committee, together with a copy of the request. Except for the Lieutenant Governor, the immunity granted under this section shall not apply after the time the Committee modifies or overturns the advisory opinion of the State Board in accordance with G.S. 120-104.

(c) At the written request of any person, State agency, or governmental unit affected by Articles 3, 4, 5, 6, and 7 of this Chapter, the State Board shall render advice on specific questions involving the meaning and application of Articles 3, 4, 5, 6, and 7 of this Chapter and that person's, State agency's, or any governmental unit's compliance therewith.

(d) At the written request of candidates, the communications media, political committees, referendum committees, or other entities upon request shall render advice on specific questions regarding filing procedures and compliance with Articles of this Chapter.

(e) On its own motion, the State Board may render advisory opinions on specific questions involving the meaning and application of this Chapter.

(f) All written requests for advice and advice rendered in response to those requests shall relate prospectively to real or reasonably anticipated fact settings or circumstances.

(g) A request for a formal advisory opinion under subsections (a), (b), and (c) of this section shall be in writing, electronic or otherwise. The State Board shall issue formal advisory opinions having prospective application only. Any individual, person, or governmental unit who relies upon the advice provided on a specific matter addressed by the requested formal advisory opinion shall be immune from all of the following:

(1) Investigation by the State Board, except for an inquiry under G.S. 163A-206(b)(3).

(2) Any adverse action by the employing entity.

(3) Investigation by the Secretary of State.

(h) At the request of the Auditor, the State Board shall render advisory opinions on specific questions involving the meaning and application of this Chapter, Article 14 of Chapter 120 of the General Statutes, and an affected person's compliance therewith. The request shall be in writing, electronic or otherwise, and relate to real fact settings and circumstances. Except when the question involves a question governed by subsection (b) of this section, the State Board shall issue an advisory opinion under this subsection within 60 days of the receipt of all information deemed necessary by the State Board to render an opinion. If the question involves a question governed by subsection (b) of this section, the State Board shall comply with the provisions of that section prior to responding to the Auditor by delivering the recommended advisory opinion to the Committee within 60 days of the receipt of all information deemed necessary by the State Board to render an opinion. The Committee shall act on the opinion within 30 days of receipt and the Committee shall deliver the opinion to the Auditor. If the Committee fails to act on a recommended advisory opinion under this subsection with 30 days of receipt, the State Board shall deliver its recommended advisory opinion to the Auditor. Notwithstanding subsection (k) of this section, the Auditor may only release those portions of the advisory opinion necessary to comply with the requirements of G.S. 147-64.6(c)(1).

(i) Staff to the State Board may issue advice, but not formal or recommended formal advisory opinions, under procedures adopted by the State Board.

(j) The State Board shall publish its formal advisory opinions within 30 days of issuance. These formal advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting formal advisory opinions. When the State Board issues a recommended formal advisory opinion to a legislator under subsection (b) of this section, the State Board shall publish only the edited formal advisory opinion of the Committee within 30 days of receipt of the edited opinion from the Committee.

(k) Except as provided under subsections (h), (j), and (l) of this section, a request for advice, any advice provided by State Board staff, any formal or recommended formal advisory opinions, any supporting documents submitted or caused to be submitted to the State Board or State Board staff, and any documents prepared or collected by the State Board or State Board staff in connection with a request for advice are confidential. The identity of the individual making the request for advice, the existence of the request, and any information related to the request may not be revealed without the consent of the requestor. An individual who requests advice or receives advice, including a formal or recommended formal advisory opinion, may authorize the release to any other person, the State, or any governmental unit of the request, the advice, or any supporting documents.

For purposes of this section, "document" is as defined in G.S. 120-129. Requests for advice, any advice, and any documents related to requests for advice are not "public records" as defined in G.S. 132-1.

(l) Staff to the State Board may share all information and documents related to requests for advice, made by legislators under this section with staff to the Committee. The information and documents in the possession of staff to the Committee are confidential and are not public records.

(m) Requests for advice may be withdrawn by the requestor at any time prior to the issuance of the advice.

"**§ 163A-210. Enforcement.**

In addition to any other remedy, penalty, or crime in this Chapter:

(1) Violation of Articles 9 and 10 of this Chapter by any covered person or legislative employee is grounds for disciplinary action. Except as specifically provided in this Chapter and for perjury under G.S. 163A-206 and G.S. 138A-24, no criminal penalty shall attach for any violation of Articles 9 and 10 of this Chapter.

(2) The willful failure of any public servant serving on a board to comply with Articles 9 and 10 of this Chapter is misfeasance, malfeasance, or nonfeasance. In the event of misfeasance, malfeasance, or nonfeasance, the offending public servant serving on a board is subject to removal from the board of which the public servant is a member. For appointees of the Governor and members of the Council of State, the appointing authority may remove the offending public servant. For appointees of the Speaker of the House of Representatives, the Speaker of the House of Representatives may remove the offending public servant. For appointees of the General Assembly made upon the recommendation of the Speaker of the House of Representatives, the Governor at the recommendation of the Speaker of the House of Representatives may remove the offending public servant. For appointees of the President Pro Tempore of the Senate, the President Pro Tempore of the Senate may remove the offending public servant. For appointees of the General Assembly made upon the recommendation of the President Pro Tempore of the Senate, the Governor at the recommendation of the President Pro Tempore of the Senate may remove the offending public servant. For public servants elected to a board by either the Senate or House of Representatives, the electing house of the General Assembly shall exercise the discretion of whether to remove the offending public servant. For all other appointees, the State Board shall exercise the discretion of whether to remove the offending public servant.

(3) The willful failure of any public servant serving as a State employee to comply with Articles 9 and 10 of this Chapter is a violation of a written work order, thereby permitting disciplinary action as allowed by the law, including termination from employment. For employees of State departments headed by a member of the Council of State, the appropriate member of the Council of State shall make all final decisions on the manner in which the offending public servant shall be disciplined. For public servants who are judicial employees, the Chief Justice shall make all final decisions on the matter in which the offending judicial employee shall be disciplined. For legislative employees, the Legislative Services State Board shall make or refer to the hiring authority all final decisions on the matter in which the offending legislative employee shall be disciplined. For public servants appointed or elected for The University of North Carolina or the Community Colleges System, the appointing or electing authority shall make all final decisions on the matter in which the offending public servant shall be disciplined. For any other public servant serving as a State employee, the

Governor shall make all final decisions on the manner in which the offending public servant shall be disciplined.

(4) The willful failure of any constitutional officer of the State to comply with Articles 9 and 10 of this Chapter is malfeasance in office for purposes of G.S. 123-5.

(5) The willful failure of a legislator, other than the Lieutenant Governor, to comply with Articles 9 and 10 of this Chapter is grounds for sanctions under G.S. 120-103.1.

(6) The State Board may seek to enjoin violations of G.S. 138A-34.

(7) Whoever willfully violates any provision of Article 3 or 4 of this Chapter shall be guilty of a Class 1 misdemeanor, except as provided in those Articles. In addition, no lobbyist who is convicted of a violation of the provisions of those Articles shall in any way act as a lobbyist for a period of two years from the date of conviction.

(8) In addition to the criminal penalties set forth in this section, State Board may levy civil fines for a violation of any provision of Article 3, 5, or 8 of this Chapter up to five thousand dollars ($5,000) per violation.

(9) Complaints of violations of this Chapter involving the State Board or any member or employee of the State Board shall be referred to the Attorney General for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person or governmental unit who violates any provision of this Chapter.

(10) Nothing in this Chapter affects the power of the State to prosecute any person for any violation of the criminal law.

"**§ 163A-212. Powers of the chair in the execution of State Board duties.**

(a) In the performance of the duties enumerated in this Chapter, the chair of the State Board shall have power to administer oaths, issue subpoenas, summon witnesses, and compel the production of papers, books, records, and other evidence.

(b) Upon the written request or requests of two or more members of the State Board , the chair shall issue subpoenas for designated witnesses or identified papers, books, records, and other evidence.

(c) In the absence of the chair or upon the chair's refusal to act, any two members of the State Board may issue subpoenas, summon witnesses, and compel the production of papers, books, records, and other evidence. In the absence of the chair or upon the chair's refusal to act, any member of the State Board may administer oaths.

(d) The State Board may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

"**§ 163A-215. Executive Director of the State Board.**

(a) There is hereby created the position of Executive Director of the State Board, who shall perform all duties imposed by statute and such duties as might be assigned by the State Board.

(b) The State Board shall appoint an Executive Director for a term of four years with compensation to be determined by the Department of Personnel. The Executive Director shall serve, unless removed for cause, until a successor is appointed. In the event of a vacancy, the vacancy shall be filled for the remainder of the term.

(c) The Executive Director shall be responsible for staffing, administration, execution of the State Board's decisions and orders, and shall perform such other responsibilities as may be assigned by the State Board.

SECTION 2. Article 1 of Chapter 120C of the General Statutes is repealed.

SECTION 3. Article 2 of Chapter 120C of the General Statutes is recodified as Article 3 of Chapter 163A of the General Statutes.

SECTION 4. Article 3 of Chapter 120C of the General Statutes is recodified as Article 4 of Chapter 163A of the General Statutes.

SECTION 5. Article 4 of Chapter 120C of the General Statutes is recodified as Article 5 of Chapter 163A of the General Statutes.

SECTION 6. Article 5 of Chapter 120C of the General Statutes is recodified as Article 6 of Chapter 163A of the General Statutes.

SECTION 7. Article 6 of Chapter 120C of the General Statutes is repealed.

SECTION 8. Article 7 of Chapter 120C of the General Statutes is recodified as Article 7 of Chapter 163A of the General Statutes.

SECTION 9. Article 8 of Chapter 120C of the General Statutes is recodified as Article 8 of Chapter 163A of the General Statutes.

SECTION 10. Article 1 of Chapter 138A of the General Statutes is repealed.

SECTION 11.(a) G.S. 138A-6 is repealed.

SECTION 11.(b) G.S. 138A-7 is repealed.

SECTION 11.(c) G.S. 138A-8 is repealed.

SECTION 11.(d) G.S. 138A-9 is repealed.

SECTION 11.(e) G.S. 138A-10 is repealed.

SECTION 11.(f) G.S. 138A-11 is recodified as G.S. 163A-205.

SECTION 11.(g) G.S. 138A-12 is recodified as G.S. 163A-206.

SECTION 11.(h) G.S. 138A-13 is repealed.

SECTION 11.(i) G.S. 138A-14 is repealed.

SECTION 11.(j) G.S. 138A-15 is recodified as G.S. 163A-212.

SECTION 12. Article 3 of Chapter 138A of the General Statutes is recodified as Article 9 of Chapter 163A of the General Statutes.

SECTION 13. Article 4 of Chapter 138A of the General Statutes is recodified as Article 10 of Chapter 163A of the General Statutes.

SECTION 14. Article 5 of Chapter 138A of the General Statutes is repealed.

SECTION 15. Article 1 of Chapter 163 of the General Statutes is recodified as Article 11 of Chapter 163A of the General Statutes.

SECTION 16. Article 2 of Chapter 163 of the General Statutes is recodified as Article 12 of Chapter 163A of the General Statutes.

SECTION 17.(a) G.S. 163-19 is repealed.

SECTION 17.(b) G.S. 163-20 is repealed.

SECTION 17.(c) G.S. 163-21 is repealed.

SECTION 17.(d) G.S. 163-22 is repealed.

SECTION 17.(e) G.S. 163-22.3 is recodified as G.S. 163A-211.

SECTION 17.(f) G.S. 163-23 is repealed.

SECTION 17.(g) G.S. 163-24 is recodified as G.S. 163A-213.

SECTION 17.(h) G.S. 163-25, as amended by S.L. 2011-31, is recodified as G.S. 163-214.

SECTION 17.(i) G.S. 163-26 is repealed.

SECTION 17.(j) G.S. 163-27 is repealed.

SECTION 17.(k) G.S. 163-27.1 is recodified as G.S. 163A-216.

SECTION 17.(l) G.S. 163-28 is repealed.

SECTION 18. Article 4 of Chapter 163 of the General Statutes is recodified as Article 13 of Chapter 163A of the General Statutes.

SECTION 19. Article 5 of Chapter 163 of the General Statutes is recodified as Article 14 of Chapter 163A of the General Statutes.

SECTION 20. Article 6 of Chapter 163 of the General Statutes is recodified as Article 15 of Chapter 163A of the General Statutes.

SECTION 21. Article 7A of Chapter 163 of the General Statutes is recodified as Article 16 of Chapter 163A of the General Statutes.

SECTION 22. Article 8 of Chapter 163 of the General Statutes is recodified as Article 17 of Chapter 163A of the General Statutes.

SECTION 23. Article 8A of Chapter 163 of the General Statutes is recodified as Article 18 of Chapter 163A of the General Statutes.

SECTION 24. Article 9 of Chapter 163 of the General Statutes is recodified as Article 19 of Chapter 163A of the General Statutes.

SECTION 25. Article 10 of Chapter 163 of the General Statutes is recodified as Article 20 of Chapter 163A of the General Statutes.

SECTION 26. Article 11 of Chapter 163 of the General Statutes is recodified as Article 21 of Chapter 163A of the General Statutes.

SECTION 27. Article 11B of Chapter 163 of the General Statutes is recodified as Article 22 of Chapter 163A of the General Statutes.

SECTION 28. Article 12 of Chapter 163 of the General Statutes is recodified as Article 23 of Chapter 163A of the General Statutes.

SECTION 29. Article 12A of Chapter 163 of the General Statutes is recodified as Article 24 of Chapter 163A of the General Statutes.

SECTION 30. Article 13 of Chapter 163 of the General Statutes is recodified as Article 25 of Chapter 163A of the General Statutes.

SECTION 31. Article 14A of Chapter 163 of the General Statutes is recodified as Article 26 of Chapter 163A of the General Statutes.

SECTION 32. Article 15A of Chapter 163 of the General Statutes is recodified as Article 27 of Chapter 163A of the General Statutes.

SECTION 33. Article 17 of Chapter 163 of the General Statutes is recodified as Article 28 of Chapter 163A of the General Statutes.

SECTION 34. Article 18A of Chapter 163 of the General Statutes is recodified as Article 29 of Chapter 163A of the General Statutes.

SECTION 35. Article 19 of Chapter 163 of the General Statutes is recodified as Article 30 of Chapter 163A of the General Statutes.

SECTION 36. Article 21 of Chapter 163 of the General Statutes is recodified as Article 31 of Chapter 163A of the General Statutes.

SECTION 37. Article 22 of Chapter 163 of the General Statutes is recodified as Article 32 of Chapter 163A of the General Statutes.

SECTION 38. Article 22A of Chapter 163 of the General Statutes is recodified as Article 33 of Chapter 163A of the General Statutes.

SECTION 39. Article 22B of Chapter 163 of the General Statutes is recodified as Article 34 of Chapter 163A of the General Statutes.

SECTION 40. Article 22C of Chapter 163 of the General Statutes is recodified as Article 35 of Chapter 163A of the General Statutes.

SECTION 41. Article 22D of Chapter 163 of the General Statutes is recodified as Article 36 of Chapter 163A of the General Statutes.

SECTION 42. Article 22G of Chapter 163 of the General Statutes is recodified as Article 37 of Chapter 163A of the General Statutes.

SECTION 43. Article 22H of Chapter 163 of the General Statutes is recodified as Article 38 of Chapter 163A of the General Statutes.

SECTION 44. Article 22J of Chapter 163 of the General Statutes is recodified as Article 39of Chapter 163A of the General Statutes.

SECTION 45. Article 22M of Chapter 163 of the General Statutes is recodified as Article 40 of Chapter 163A of the General Statutes.

SECTION 46. Article 23 of Chapter 163 of the General Statutes is recodified as Article 41 of Chapter 163A of the General Statutes.

SECTION 47. Article 24 of Chapter 163 of the General Statutes is recodified as Article 42 of Chapter 163A of the General Statutes.

SECTION 48. Article 25 of Chapter 163 of the General Statutes is recodified as Article 43 of Chapter 163A of the General Statutes.

SECTION 49. The State Ethics Commission is transferred to the State Board of Elections and Ethics Enforcement, and the transfer shall have all the elements of a Type I transfer under G.S. 143A-6. The State Board of Elections is transferred to the State Board of Elections and Ethics Enforcement, and the transfer shall have all the elements of a Type I transfer under G.S. 143A-6. The lobbying registration and lobbying enforcement functions of the Secretary of State are transferred to the State Board of Elections and Ethics Enforcement, and the transfer shall have all the elements of a Type I transfer under G.S. 143A-6.

SECTION 50. The Revisor of Statutes shall change the terms "Commission," "Secretary of State," and "Secretary" to "State Board" wherever it appears in Chapter 163A of the General Statutes.

SECTION 51. The Revisor of Statutes shall change the term "State Board of Elections" to "State Board" wherever it appears in Chapter 163A of the General Statutes.

SECTION 52. The Revisor of Statutes shall change the cite "G.S. 138A-3" to "G.S. 163A-101" wherever it appears in the General Statutes.

SECTION 53. The State Board of Elections and Ethics Enforcement shall report to the 2012 Session of the 2011 General Assembly on or before May 1, 2012, and to the 2013 Regular Session of the General Assembly on or before February 1, 2013, as to recommendations for statutory changes necessary to further implement this consolidation.

SECTION 54. This act becomes effective July 1, 2011.

SENATE BILL 772:
Consolidate Ethics, Elections, and Lobbying

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 18, 2011
Introduced by:	Sen. Brock	**Prepared by:**	R. Erika Churchill
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 772 would consolidate the boards and functions of the State Ethics Commission, State Board of Elections and the Lobbying Section of the Secretary of State.***

CURRENT LAW:

The State Board of Elections administers elections and campaign finance, including providing guidance, advice, and training for the county boards of elections with respect to both of those. The State Board consists of 5 members appointed by the Governor. No more than three of the five are to be of the same political party as the Governor. Members serve 4 year terms, may be reappointed, but may not be elected or hold an office in a political committee.

The State Ethics Commission administers the State Government Ethics Act, including providing guidance to public servants and ethics education. The advisory authority of the State Ethics Commission includes advising all persons affected by the lobbying laws, Chapter 120C of the General Statutes. The State Ethics Commission consists of 8 members, with a bi-partisan make up. Members serve 4 year terms and may be reappointed; but may not be elected, hold an office in a political committee, or be an employee of the State, community colleges or local school systems.

The Secretary of State administers the reporting and audit function of the lobbying laws.

BILL ANALYSIS:

Section 1. The bill would consolidate the functions of lobbying, ethics, and elections under one board, the new Board of Elections and Ethics Enforcement. The Board would consist of 9 members with 3 appointed by the Governor and no more than 2 of the same political party, 3 by the General Assembly upon recommendation of the Speaker and neither of whom are to be of the same political party, and 3 by the General Assembly upon recommendation of the President Pro Tem and neither of whom are to be of the same political party. Members would serve 3 year staggered terms, and could be reappointed. The Governor would select the chair annually, and the committee selects the vice-chair. Members may not be elected, hold an office in a political committee, or be an employee of the State, community colleges or local school systems.

The bill would consolidate, into one statute, the current statutory duties and responsibilities of the State Ethics Commission and the State Board of Elections. The bill would statutorily create the position of Executive Director, to be filled by the Board, serving a term of 4 years and removable for cause.

Sections 2-48. The bill would make conforming changes, either transferring existing provisions in Chapter 120C (Lobbying Law), Chapter 138A (State Government Ethics Act), and Chapter 163 (Election Laws) or repealing provisions re-set out in Section 1 of the bill.

Section 49. The bill would transfer the staffs of the State Ethics Commission, State Board of Elections, lobbying registration and enforcement to the State Board of Elections and Ethics Enforcement created by Section 1 of the bill.

Sections 50-52. The bill would instruct the Codifier of Statutes to change the references to Secretary of State, State Ethics Commission and State Board of Elections, and any derivation thereof, to to "State Board" where those terms are used in Chapters 120C, 138A and 163.

Section 53. The bill would require the newly consolidated board to report to the 2012 General Assembly and to the 2013 General Assembly as to further statutory changes needed to implement the consolidation.

EFFECTIVE DATE: July 1, 2011.

S772-SMST-39(e1) v1

PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027

DATE: 5-19 **TIME:** 10 am

PLEASE PRINT LEGIBILY!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Jay Joyce	Kannapolis	Hartsell
2 Rina Annisa	Indonesia	Daniel
3 Amber Pritchard ~~Heather Heim~~	Belmont ~~[redacted]~~	Harrington ~~[redacted]~~
4		
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Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

VISITOR REGISTRATION SHEET

Senate Judiciary I — May 19, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Phillips	Common Cause NC
Mitch Leonard	SEANC
Chuck Stone	SEANC
MICHELLE HEALY	SMITH ANDERSON
Peggy Nowell	SEC
Mary Stumpf	SEC
[illegible]	SOS
Haley Haynes	SOS
Gary O. Bartlett	SBE
Johnnie McLean	SBE
Chris Telesca	Wake Verified Voting

VISITOR REGISTRATION SHEET

Senate Judiciary I — May 19, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Krista Anderson	Raleigh NC
[signature]	CSS
Amy Whited	NCMS
Kim McClees	McClees Consulting
Kendra Hill	Office of the Governor
Annaliese Dolph	DPNC
John Bowdish	AstraZeneca
Barbara Conder	BI-OK
Bo Heath	McGuire Woods Consulting
Emily Grimm	" "
Daniel Baum	Daniel Baum

VISITOR REGISTRATION SHEET

Senate Judiciary I — May 19, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jean Sanaire	NCSJJJP
Kathy Dudley	NC DJJDP
BRUCE THOMPSON	PARKER POE

Senate Judiciary I Committee
Thursday, June 2, 2011, 10:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

~~SB 134~~	Chief Dist. Ct Judge Appoints Magistrates.	Senator Clodfelter
SB 148	General Statutes Comm. Technical Corrections.	Senator Hartsell
~~SB 654~~	WC/Adjust Organ Injury Benefit Annually.	Senator Newton Senator Goolsby Senator Daniel
SB 659	WC/Taxi Driver/Independent Contractor.	Senator Clodfelter
SB 684	Post-Release Supervision/Sex Offenders.	Senator Apodaca

Presentations

Other Business

Adjournment

SB 148 favorable

SB 659 unfav to bill favorable to PCS

SB 684 same

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 148*

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

March 1, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 28A-15-9.1 and G.S. 28A-21-3.1 are repealed.

SECTION 2. G.S. 135-45.8(13) reads as rewritten:

"(13) Charges for routine eye examinations, eyeglasses or other corrective lenses (except for cataract lenses certified as medically necessary for aphakia persons) and, except as authorized under G.S. 58-3-285, hearing aids or examinations for the prescription or fitting thereof.
~~hearing aids or examinations for the prescription or fitting thereof.~~"

SECTION 3.(a) G.S. 148-132(5) is repealed.

SECTION 3.(b) G.S. 148-132, as amended by subsection (a) of this section, reads as rewritten:

"**§ 148-132. Distribution of products and services.**

(a) The Division of Correction Enterprises is empowered and authorized to market and sell products and services produced by Correction Enterprises to any of the following entities:

(1) Any public agency or institution owned, managed, or controlled by the State.
(2) Any county, city, or town in this State.
(3) Any federal, state, or local public agency or institution in any other state of the union.
(4) An entity or organization that has tax-exempt status pursuant to section 501(c)(3) of the Internal Revenue Code and also receives local, state, or federal grant funding.
(5) Repealed.

(b) Products purchased by State and local governmental employees and retirees under the authority of subdivision (a)(5) of this section before July 1, 2012, may not be resold."

SECTION 3.(c) This section becomes effective July 1, 2012.

SECTION 4. Unless otherwise provided, this act is effective when it becomes law.

State of North Carolina
General Statutes Commission
9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM

TO: House Committee on Rules/Senate Judiciary I Committee

FROM: General Statutes Commission

DATE: May 11, 2011

RE: House Bill 190/Senate Bill 148 (General Statutes Comm. Technical Corrections)

General Comments

Sections 1 through 3 of this bill contain corrections of a technical nature to the General Statutes that are recommended by the General Statutes Commission. These amendments include correcting grammatical and redlining errors and deleting obsolete provisions.

Specific Comments

Section 1. This section repeals as obsolete G.S. 28A-15-9.1 (Phase II payments) and G.S. 28A-21-3.1 (Phase II tobacco grower and quota owner payments; list of Phase II distributees) *(for text see Appendix)*.

These two statutes were enacted in 2003 as a recommendation of the General Statutes Commission. Their purpose was to permit Phase II payments under the National Tobacco Grower Settlement Trust to be paid to a decedent's devisees or heirs, after a solvent estate had been closed, without reopening the estate. The Phase II program has been superseded by the Tobacco Transition Payment Program (TTPP). The TTPP was established by the Fair and Equitable Tobacco Reform Act of 2004, Title VI of the American Jobs Creation Act of 2004, Public Law No. 108-357, which ended the tobacco marketing quota and price support loan programs. The TTPP will provide payments over a ten-year period (from 2005 through 2014) to quota holders and producers of quota tobacco to help them make the transition from the federally-regulated program to a free-market system. Unlike the Phase II payment program, the TTPP has its own way of dealing with payments when a quota holder or producer of quota tobacco has died. As a result, G.S. 28A-15-9.1 and G.S. 28A-21-3.1 are now obsolete and no replacement provisions are needed.

Section 2. This section amends G.S. 135-45.8(13) to remove a duplicated phrase caused by a redlining error. G.S. 135-45.8(13) was amended last year by S.L. 2010-2, s. 2, to insert a cross-reference to an insurance statute. In the process, the underlining was accidently extended to the end of the subdivision, covering not only the new language but also the existing phrase "hearing aids or examinations for the prescription or fitting thereof." The effect was to duplicate that phrase.

Section 3. This section amends G.S. 148-132 to correct a grammatical problem.

G.S. 148-132 allows the Division of Correction Enterprises to sell its products to five listed categories of purchasers. The category in subdivision (5) consists of State and local government employees and retirees, whose purchases are subject to a yearly limit of $2,500 and a prohibition on resale. Most of subdivision (5) will expire on July 1, 2012. As of that date, only the sentence containing the prohibition on resale will remain. The subdivision will no longer fit the grammatical structure of the statute, and it will also not be particularly clear what the subdivision means.

To fix the problem described above, subsection 3(a) of this bill completely repeals G.S. 148-132(5), which will remove the State and local government employee and retiree category from the list as was intended by the original session law that enacted the provision. Subsection 3(b) then codifies the existing text as G.S. 148-132(a) and enacts a new G.S. 148-132 (b) that brings forward the resale prohibition and clarifies that it applies to previously authorized sales. Subsection 3(c) makes these amendments effective July 1, 2012, to match the timing of the "fix" with the date when the resale problem arises.

Here is the current text in pertinent part:

§ 148-132. Distribution of products and services.

The Division of Correction Enterprises is empowered and authorized to market and sell products and services produced by Correction Enterprises to any of the following entities:

. . . .

(5) *(Effective until July 1, 2012)* Any current employee or retiree of the State of North Carolina or of a unit of local government of this State, verified through State-issued identification, or through proof of retirement status, but purchases by a State or local governmental employee or retiree may not exceed two thousand five hundred dollars ($2,500) during any calendar year. Products purchased by State and local governmental employees and retirees under this section may not be resold.

(5) *(Effective July 1, 2012)* Products purchased by State and local governmental employees and retirees under this section may not be resold. (2007-280, s. 1; 2009-451, s. 19.16.)

Section 4. This section makes the bill effective when it becomes law, except where otherwise provided.

Appendix

§ 28A-15-9.1. Phase II payments.

A Phase II payment as defined in G.S. 28A-21-3.1 shall be the property of the distributees paid in accordance with that section. (2003-295, s. 1.)

§ 28A-21-3.1. Phase II tobacco grower and quota owner payments; list of Phase II distributees.

(a) The following definitions apply in this section:

(1) "National Tobacco Grower Settlement Trust" means the trust established by tobacco companies to provide payments to tobacco growers and tobacco quota owners in 14 states for the purposes of ameliorating potential adverse economic consequences of likely reduction in demand, sales, and prices for tobacco as an agricultural product as a result of the Master Settlement Agreement incorporated in the consent decree entered in the action of State of North Carolina vs. Philip Morris, Incorporated, et al., 98 CVS 14377, in the General Court of Justice, Superior Court Division, Wake County, North Carolina.

(2) "Phase II payment" means an amount certified by the North Carolina Phase II Tobacco Certification Entity, Inc., to be paid pursuant to the trust agreement establishing the National Tobacco Grower Settlement Trust.

(b) A personal representative or collector of the estate of a decedent who, during 1993 or any subsequent year, was a tobacco grower or a tobacco quota owner as defined in Section 4.01 of the trust agreement establishing the National Tobacco Grower Settlement Trust may file, along with a final account, a list of Phase II distributees for Phase II payments if all of the following conditions are met:

(1) There are no unsatisfied creditors.

(2) There are no unsatisfied general monetary bequests.

(3) All assets other than any potential Phase II payments have been distributed.

(c) A list of Phase II distributees, signed under oath, must contain the following information:

(1) The name and address of the personal representative or collector.

(2) The name and social security number of the decedent.

(3) The name and address, if known, of each devisee or heir entitled to receive Phase II payments and the percentage of Phase II payments to be received by each.

(d) The clerk of superior court must review the list of Phase II distributees to determine if the list of distributees and their shares of potential Phase II payments are in accordance with the will or, if there is no will, in accordance with the Intestate Succession Act. If the clerk accepts the list of Phase II distributees for filing, the clerk must endorse the clerk's approval thereon, which shall be prima facie evidence of correctness.

(e) Upon determination by the North Carolina Phase II Tobacco Certification Entity, Inc., that the estate of a decedent entitled to any Phase II payment covering a time period when the decedent was alive has been closed, the payment may be paid directly to those distributees and in those shares set forth on a list of Phase II distributees filed under this section without the estate's having to be reopened under G.S. 28A-23-5.

(f) The estate of a decedent who is entitled to any Phase II payment may be reopened, if necessary, in accordance with G.S. 28A-23-5 in order to file a list of Phase II distributees under this section.

(g) For purposes of this section, Phase II payments covering a time period when decedent was alive are deemed cash and shall not pass by virtue of any devise or inheritance of the decedent's real property. (2003-295, s. 2.)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 659
PROPOSED COMMITTEE SUBSTITUTE S659-PCS15168-TG-22

Short Title: WC/Taxi Driver/Independent Contractor. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO EXEMPT TAXICAB DRIVERS WHO ARE INDEPENDENT CONTRACTORS FROM COVERAGE UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 97 of the General Statutes is amended by adding a new section to read:

"**§ 97-5.1. Presumption that taxicab drivers are independent contractors.**

(a) It shall be a rebuttable presumption under this Chapter that any person who operates, and who has an ownership or leasehold interest in, a passenger motor vehicle that is operated as a taxicab is an independent contractor for the purposes of this Chapter and not an employee as defined in G.S. 97-2. The presumption is not rebutted solely because the operator is required to comply with rules and regulations imposed on taxicabs by the local government unit that licenses companies, taxicabs, or operators.

(b) The following definitions apply in this section:

(1) Lease. – A contract under which the lessor provides a vehicle to a lessee for consideration.

(2) Leasehold. – Includes, but is not limited to, a lease for a shift or a longer period.

(3) Passenger motor vehicle that is operated as a taxicab. – Any vehicle that:

a. Has a passenger seating capacity that does not exceed seven persons; and

b. Is transporting persons, property, or both on a route that begins or ends in this State and either:

1. Carries passengers for hire when the destination and route traveled may be controlled by a passenger and the fare is calculated on the basis of any combination of an initial fee, distance traveled, or waiting time; or

2. Is in use under a contract between the operator and a third party to provide specific service to transport designated passengers or to provide errand services to locations selected by the third party."

SECTION 2. This act is effective when it becomes law and applies to persons affected on or after that date..

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE June 2, 2011

S. B. No. 659 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Clodfelter
Sen.)

1 moves to amend the bill on page 1, line 6

2 ( ) WHICH CHANGES THE TITLE

3 by deleting "96" and substituting "97".

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SIGNED Daniel H Clodfelter

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027

DATE: 6-2 **TIME:** 10 AM

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	Page Name	Hometown	Sponsoring Senator
1	~~Hollan Robinson~~	~~Greensboro~~	~~G. Robinson~~
2	Eleanor Yarboro	Goldsboro	Rouzer
3	Thomas Jarrell	High Point	Vaughan
4	Charlotte Yarboro	Goldsboro	Rouzer
5	~~Yarboro~~		
6			
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Do not add names below the grid.

VISITOR REGISTRATION SHEET

Judiciary I — **June 2, 2011**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Natalie Caviness	NCDOL
Kay Emanuel	Legislative Reporting Services
Mildred Spearman	NCAOC
Paul Kaylor	Kaylor Law Firm
David Miner	TRG INC
[illegible]	NCBA

VISITOR REGISTRATION SHEET

Judiciary I — **Name of Committee**

June 2, 2011 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gina Cammarano	NCAJ
TOM FETZER	FETZER STRATEGIC
SARA PERDUE	NCSPAC
Mike Okun	NC State AFL-CIO
James Andrews	NC State AFL-CIO
Hank Patterson	Patterson Harkavy LLP

SENATE JUDICIARY I COMMITTEE
June 7, 2011 at 9:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 9:00 AM on June 7, 2011, in Room 1027 of the Legislative Building. Fifteen members of the committee were present. Senator Pete Brunstetter presided.

Senator Brunstetter called the meeting to order at 9:04 a.m.

Senate Bills 419, 459, and 725 are pulled from the calendar

Senate Bill 268
Senator McKissick was recognized to introduce the bill
Karen Cochrane-Brown was recognized to explain the bill
Senator Nesbitt asked a question, and Senator McKissick answered
Senator Nesbitt was recognized for a follow-up question, and Lori Kroll answered
Senator Nesbitt was recognized for a second follow-up question, and Senator McKissick answered
Senator Clodfelter asked a question, and Senator McKissick answered
Senator Nesbitt was recognized for comments
The bill was displaced for the drafting of an amendment

Senate Bill 411
Senator Newton was recognized to explain the bill
Senator Nesbitt asked a question, and Senator Newton answered
Senator Mansfield made comments

Senate Bill 268
Senator Walters moved to amend the bill to delete Section I
Motion carries
Senator Mansfield moved for a favorable report
Senator Stevens was recognized to make comments
Senator Nesbitt was recognized to make comments
The bill was displaced

Senate Bill 411
Senator Newton answered Senator Mansfield's earlier question
Senator Clodfelter asked a question, and Senator Newton answered
Senator Clodfelter made follow-up comments
Senator Tillman was recognized to make comments
Senator Stein made comments
Senator Soucek made comments
Senator Pate moved for a favorable report
Division was called
Seven in favor, seven against, the Chairman broke the tie
Senator Pate's motion carried

Senate Bill 268
Senator Stevens moves to amend the bill to change the class of the felony
Senator Clodfelter asked a question, and Senator McKissick answered
Senator Stevens' amendment passes
Senator Apodaca was recognized to make comments
Senator Soucek moved to roll the amendments into a new PCS and report it favorable, unfavorable to original bill
Motion carries

Senate Bill 435
Senator Hartsell was recognized to introduce the bill
Bill Patterson was recognized to explain the bill
Senator Clodfelter was recognized to ask a question, and Bill Patterson answered
Senator Clodfelter asked a follow-up question, and Bill Patterson answered
Senator Clodfelter asked a follow-up question, and Senator Hartsell answered
Senator Nesbitt asked a question, and Katherine Wescott from ACEC answered
Senator Nesbitt asked a follow-up question, and Bill Patterson answered
Senator Nesbitt made comments
Senator Stein asked a question, and Dave Simpson from Carolinas AGC answered
Senator Stein asked a follow-up question, and Bill Patterson answered
Senator Stein asked a second follow-up, and Bill Patterson answered
Senator Stein was recognized to make comments
Senator Clodfelter moved to amend the bill by adding a new Section D
Senator Hartsell was recognized to make comments
Senator Clodfelter's motion carried
Senator Clodfelter was recognized to make comments
Senator Stein moved to amend the bill by deleting lines
Senator Hartsell made comments
Senator Soucek asked a question
Senator Hartsell made comments
The bill was displaced

Senate Bill 349
Senator Purcell was recognized to explain the bill
Senator Stein moved for a favorable report
Motion carried

Senate Bill 356
Senator Robinson was recognized to explain the bill
Senator Tillman moved for a favorable report
Senator Clodfelter asked a question, and Erika Churchill answered
Senator Tillman's motion carried

Senate Bill 435
Senator Hartsell was recognized to make comments
Senator Brunstetter clarified the amendment from Senator Stein
Bill Patterson was recognized to make comments
Senator Nesbitt asked a question
Motion from Senator Stein carried
Senator Stevens moved to roll the amendments into a new PCS
Motion carries

Senate Bill 580
Senator Hartsell was recognized to explain the bill
Susan Sitze was recognized to explain the bill
Senator Stevens was recognized to ask a question and Senator Apodaca answered
Judge Smith from AOC was recognized
Senator Nesbitt was recognized
Susan Sitze was recognized
Senator Clodfelter asked questions, and Susan Sitze answered
Senator Stevens moved to amend the bill
Motion carries
Senator Clodfelter moved to amend the bill
Motion carried
Senator Pate was recognized to ask a question and move to amend the bill
Judge Smith answered
Senator Pate was recognized for a follow-up question, and Senator Hartsell answered
Senator Nesbitt asked a question, and Judge Smith answered
Tammy Smith, legal counsel for AOC, answered
Senator Nesbitt made comments
Senator Clodfelter made comments
The bill was temporarily displaced

Senate Bill 324
Senator Apodaca moves to adopt the PCS for purposes of discussion
Senator Apodaca was recognized to explain the bill
Brad Krehely was recognized to explain the bill
Rev. Mark Creech from the Christian Action League was recognized to comment on the bill
Bob Blankenship from the Tribal Alcoholic Beverage Control Commission was recognized to comment on the bill
Senator Tillman moves to accept the bill, unfavorable as to original bill, favorable as to PCS
Senator Nesbitt was recognized to ask a question, and Senator Apodaca answered
Senator Nesbitt was recognized to ask a question, and Senator Apodaca answered
Motion for a favorable report carries

Senate Bill 47
Senator Tillman moves to adopt the PCS for discussion
Senator Tillman was recognized to explain the bill
Senator Tillman moves to amend the bill, Erika Churchill was recognized to explain the amendment
Motion carries
Senator Stein was recognized to comment on the bill
Senator Tillman was recognized to respond to Senator Stein
Senator Apodaca was recognized for a comment
Senator Pate was recognized to make a comment
Senator Nesbitt was recognized to ask a question, and Erika Churchill answered
Senator Nesbitt was recognized to ask a question, and propose an amendment
Bill will need to be displaced until the afternoon for the drafting of that amendment

Senate Bill 456
Senator Goolsby moves to adopt the bill for purposes of discussion
Senator Goolsby was recognized to explain the bill

Senator Mansfield was recognized to ask a question, and Erika Churchill answered
Senator Clodfelter was recognized to ask a question
Bill displaced until the afternoon meeting

Senate Bill 712
Senator Nesbitt moves to adopt the PCS for purposes of discussion
Senator Nesbitt was recognized to explain the bill
Senator Tillman moves for Unfav as to fill, fav as to PCS
Motion carries

Meeting adjourned at 10:50 a.m.

Peter Brunstetter, Presiding

Sarah Hardin, Committee Clerk

Senate Judiciary I Committee
Tuesday, June 7, 2011, 10:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 47	Restore Partisan Judicial Elections.	Senator Tillman
SB 268	Enhance Protection of Victims and Witnesses.	Senator McKissick Senator Stevens
SB 324	ABC Law/Eastern Band of Cherokee Indians.	Senator Davis Senator Apodaca
SB 349	Confidentiality/Investigative Info/Optometry.	Senator Pate Senator Purcell
SB 356	No Filing for Party and Unaffiliated.	Senator Robinson
SB 411	Vote for the Person, Not the Party Act.	Senator Newton Senator Brown Senator Meredith
SB 419	Campaign Finance and Regulatory Reforms.	Senator Davis
SB 435	Civil Pro./Require Certificate of Merit.	Senator Hartsell
SB 456	Candidate List Party or Unaffiliated Status.	Senator Goolsby
SB 459	Repeal Matching Funds.	Senator Brock
SB 580	AOC Omnibus Courts Act.	Senator Hartsell
SB 712	Adjust Quarterly Reporting.	Senator Brown Senator Nesbitt
SB 725	Campaign Finance Reform.	Senator Hise Senator Goolsby

Adjournment

S 1

SENATE BILL 268

Short Title:	Enhance Protection of Victims and Witnesses.	(Public)
Sponsors:	Senators McKissick, Stevens; Allran, Apodaca, Atwater, D. Berger, Brown, Hise, Mansfield, Purcell, Robinson, Tillman, and Vaughan.	
Referred to:	Rules and Operations of the Senate.	

March 9, 2011

A BILL TO BE ENTITLED

AN ACT TO CREATE ENHANCED PROTECTIONS FOR VICTIMS AND WITNESSES BY ADDING AN EXCEPTION TO THE HEARSAY RULE THAT ALLOWS THE STATEMENT OF AN UNAVAILABLE WITNESS TO BE INTRODUCED INTO EVIDENCE IN CERTAIN CIRCUMSTANCES AND BY INCREASING THE CRIMINAL PENALTY FOR THE OFFENSE OF INTIMIDATING OR INTERFERING WITH A WITNESS.

The General Assembly of North Carolina enacts:

SECTION 1. Rule 804(b) of the North Carolina Rules of Evidence, as contained in G.S. 8C-1, is amended by adding a new subdivision to read:

"(6) Forfeiture by wrongdoing. – A statement is not excluded by the hearsay rule if the statement is offered against a party that has engaged or acquiesced in wrongdoing that was intended to and did procure the unavailability of a witness who was the declarant of the statement. The court shall determine the admissibility of the statement under this section by a preponderance of the evidence."

SECTION 2. G.S. 14-226(a) reads as rewritten:

"(a) If any person shall by threats, menaces or in any other manner intimidate or attempt to intimidate any person who is summoned or acting as a witness in any of the courts of this State, or prevent or deter, or attempt to prevent or deter any person summoned or acting as such witness from attendance upon such court, ~~he~~ the person shall be guilty of a ~~Class H felony.~~Class D felony."

SECTION 3. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

SENATE BILL 268:
Enhance Protection of Victims and Witnesses

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 6, 2011
Introduced by:	Sens. McKissick, Stevens	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 268 would amend the Rules of Evidence to create an exception to the Hearsay rule for a statement offered against a party that has engaged or acquiesced in wrongdoing that resulted in the unavailability of a witness. The bill would also increase the penalty for intimidating or interfering with a witness.

CURRENT LAW:

Under current law, "hearsay" is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Hearsay is generally not admissible unless an exception is provided by law.

The following categories of statements are not excluded by the hearsay rule if the declarant is unavailable as a witness:

- Former Testimony. – Testimony given as a witness at another hearing if the party against whom the testimony is offered had an opportunity to examine the witness.
- Statement Under Belief of Impending Death. – A statement by a declarant who believed his death was imminent about the cause or circumstances of his impending death.
- Statement Against Interest. – A statement which at the time it was made was so far contrary to the declarant's pecuniary or proprietary interest or so far tended to subject him to civil or criminal liability that a reasonable person would not have made the statement unless he believed it to be true.
- Statement of Personal or Family History. – A statement concerning a declarant's own birth, adoption, marriage, divorce, legitimacy or other similar fact of personal or family history; or a statement concerning the foregoing, and death, of another person if the declarant was related by blood, adoption, or marriage, or so closely associated with the other person's family as to be likely to have accurate information.
- Other Exceptions. – Statements having equivalent circumstantial guarantees of trustworthiness if the court makes certain determinations.

BILL ANALYSIS:

Senate Bill 268 would add another hearsay exception to the list in the case of a statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to and did procure the unavailability of the witness who was the declarant of the statement. The court shall determine the admissibility of the statement by a preponderance of the evidence.

The bill also increases the penalty for intimidating or interfering with a witness from a Class H felony to Class D felony.

EFFECTIVE DATE: This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

S268-SMRO-33(e1) v1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6/7/11

S. B. No. 268 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

1 moves to amend the bill on page 1, line 9-16
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the lines and renumbering
4 the sections accordingly
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ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE June 7, 2011

S. B. No. 268 Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
(Sen.) Stevens

1 moves to amend the bill on page 1, line 22
2 ( ) WHICH CHANGES THE TITLE
3 by deleting "Class D" and
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5 substituting "Class E".
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PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 411

Short Title:	Vote for the Person, Not the Party Act.	(Public)
Sponsors:	Senators Newton, Meredith, Brown; Bingham, Blake, Clary, Davis, Forrester, Goolsby, Gunn, Hise, Hunt, Jackson, Pate, Preston, Rabon, Rucho, Soucek, Stevens, and Tucker.	
Referred to:	Judiciary I.	

March 24, 2011

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE OPTION OF STRAIGHT-PARTY TICKET VOTING ON BALLOTS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-165.6(e) is repealed.

SECTION 2. G.S. 163-182.1(a)(7) is repealed.

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

SENATE BILL 411:
Vote for the Person, Not the Party Act

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 6, 2011
Introduced by:	Sens. Newton, Meredith, Brown	**Prepared by:**	R. Erika Churchill Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 411 would eliminate the option of straight party voting in North Carolina.

CURRENT LAW: As of October 2008, North Carolina is one of 16 states that offer straight ticket voting. Straight ticket voting, generally, is the ability to choose a party's entire slate of candidates by marking once on the ballot to vote for every candidate of that party on that ballot.

In North Carolina, this is true, with one exception. In a presidential election, the voter must mark his or her choice for president separate and apart from the straight ticket option. The straight-ticket option would apply to remainder of the partisan ballot.

BILL ANALYSIS: The bill would repeal the authority for allowing, and counting, straight party voting in North Carolina.

EFFECTIVE DATE: Effective when it becomes law, but but may not be implemented until the session law has received 'preclearance' approval under Section 5 of the Voting Rights of 1965.

S411-SMST-55(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 435
PROPOSED COMMITTEE SUBSTITUTE S435-CSTG-26 [v.11]

6/6/2011 7:30:23 PM

Short Title: Civil Pro./Require Certificate of Merit. (Public)

Sponsors:

Referred to:

March 29, 2011

A BILL TO BE ENTITLED

AN ACT REQUIRING A CERTIFICATE OF MERIT IN CIVIL ACTIONS OR ARBITRATION PROCEEDINGS BROUGHT AGAINST A PERSON OR FIRM PROVIDING ARCHITECTURE OR ENGINEERING SERVICES IN THIS STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter VI of Chapter 1 of the General Statutes is amended by adding the following new Article to read:

"Article 12A.

"Certificate of Merit in Malpractice Claims Against Design Professionals.

"**§ 1-123.1. Definitions.**

The following definitions shall apply in this Article:

(1) Claim. – A claim, counterclaim, crossclaim, or third-party claim alleging malpractice against a design professional.

(2) Defendant. – A design professional against whom a claim of malpractice is asserted.

(3) Design professional. – A professional engineer licensed pursuant to Chapter 89C of the General Statutes, an architect licensed pursuant to Chapter 83A of the General Statutes, or any firm in which the licensed engineer or architect practices, including a corporation, professional corporation, limited liability corporation, partnership, limited liability partnership, sole proprietorship, joint venture, or any other business entity.

(4) Practice of architecture. – As defined by G.S. 83A-1(7).

(5) Practice of engineering. – As defined by G.S. 89C-3(6).

"**§ 1-123.2. Certificate of merit in malpractice claims against design professionals.**

(a) Any claim in a civil action or arbitration proceeding asserting malpractice by a design professional shall be dismissed unless both of the following conditions are met:

(1) The pleading asserting the claim specifically asserts that the professional services provided by the defendant and all records pertaining to the alleged negligence that are available to the claimant after reasonable inquiry have been reviewed by a licensed professional engineer or licensed architect who holds the same type of professional license and practices in the same area of practice as the design professional against whom the claim is being brought, who is willing to testify that the professional services provided by the

defendant did not comply with the applicable standard of care, and who either is reasonably expected to qualify as an expert witness under G.S. 8C-1, Rule 702, or is a person whom the claimant will seek to have qualified as an expert witness by motion under subsection (b) of this section filed with the pleading; and

(2) The pleading asserting the claim is accompanied by a certificate of merit signed by a licensed professional engineer or licensed architect who holds the same type of professional license and practices in the same area of practice as the design professional against whom the claim is being brought, certifying that the engineer or architect has reviewed the services provided by the defendant and all records provided by the claimant relating to those services, has reviewed the pleading asserting the claim against the defendant, and is willing to testify that the claim of malpractice against the defendant has merit.

The claimant shall provide, at the request of the defendant, proof of compliance with this subsection through up to ten written interrogatories, the answers to which shall be verified by the expert required under this section. These interrogatories do not count against the interrogatory limit under G.S. 1A-1, Rule 33.

(b) Upon motion by either party, a resident judge of the superior court in the county or judicial district in which the action or proceeding is pending may allow expert testimony on the appropriate standard of care by a witness who does not meet the requirements of G.S. 8C-1, Rule 702 or of subdivision (a)(2) of this section relating to type of license and area of practice, but who is otherwise qualified as an expert witness, upon a showing by the movant of extraordinary circumstances and a determination by the court that the motion should be allowed to serve the ends of justice.

(c) Upon motion by the plaintiff prior to the expiration of the applicable statute of limitations, a resident judge of the superior court for a judicial district in which venue for the cause of action is appropriate under G.S. 1-82 or, if no resident judge for that judicial district is physically present in that judicial district, otherwise available, or able or willing to consider the motion, then any presiding judge of the superior court for that judicial district may allow a motion to extend the statute of limitations for a period not to exceed 120 days to file a complaint in an action alleging malpractice by a design professional in order to comply with this section, upon a determination that good cause exists for the granting of the motion and that the ends of justice would be served by an extension."

SECTION 2. G.S. 1A-1, Rule 9, is amended by adding a new subsection to read:

"(j1) Design Professional Malpractice. – Any pleading alleging malpractice by a design professional, as defined by G.S. 1-123.1(3), shall be filed in accordance with Article 12A of Chapter 1 of the General Statutes."

SECTION 3. G.S. 89C-10 is amended by adding a new subsection to read:

"(j) The Board shall have the power to adopt rules to discipline professional engineers licensed under this Chapter who certify a civil action that is without merit in violation of Article 12A of Chapter 1 of the General Statutes."

SECTION 4. G.S. 83A-6(a) is amended by adding a new subdivision to read:

"(a) The Board shall have the power to adopt bylaws, rules, and standards of professional conduct to carry out the purposes of this Chapter, including, but not limited to:

...

(6) The disciplining of architects licensed under this Chapter who certify a civil action that is without merit in violation of Article 12A of Chapter 1 of the General Statutes."

SECTION 5. This act becomes effective October 1, 2011, and applies to actions and proceedings commenced on or after that date.

SENATE BILL 435:
Civil Pro./Require Certificate of Merit

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 6, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Bill Patterson
Analysis of:	PCS to First Edition S435-CSTG-26		Committee Counsel

SUMMARY: ***The PCS to Senate Bill 435 would require a certificate of merit in civil actions or arbitration proceedings asserting malpractice claims against a person or firm providing architecture or engineering services in this State.***

BILL ANALYSIS:

Section 1 of the bill would amend Chapter 1 of the General Statutes by adding a new Article 12 entitled "Certificate of Merit in Malpractice Claims Against Design Professionals".

A "design professional" is defined as a professional engineer licensed pursuant to Chapter 89C, an architect licensed pursuant to Chapter 83A, or any firm in which the licensed engineer or architect practices.

The new Article requires dismissal of any action or arbitration proceeding alleging malpractice by a design professional unless the pleading asserting the claim states that the professional design services and all records relating to the alleged negligence have been reviewed by a licensed engineer or architect holding the same type of license and practicing in the same area as the defendant, who is willing to testify that the claim has merit, and who either is reasonably expected to qualify as an expert witness or is someone the plaintiff will seek to have qualified by motion, filed with the pleading, showing extraordinary circumstances warranting expert testimony to serve the ends of justice.

The pleading also must be accompanied by a certificate of merit signed by the engineer or architect certifying that he or she has reviewed all records provided by the claimant, has reviewed the allegations of the complaint, and is willing to testify that the malpractice claim has merit.

On motion of the plaintiff prior to the expiration of the applicable statute of limitations, the court can extend the statute of limitations by not more than 120 days upon a showing of good cause, in order to permit the plaintiff to comply with this requirement.

Section 2 of the bill would make a conforming change to G.S. 1A-1, Rule 9.

Sections 3 & 4 of the bill would amend the statutes relating to professional engineers and architects to allow the respective licensing boards to discipline licensed professional engineers or architects who certify a civil action that is without merit in violation of the provisions of Section 1 of the bill.

EFFECTIVE DATE: The act becomes effective October 1, 2011, and applies to actions and proceedings commenced on or after that date.

Susan Sitze, counsel to Senate Judiciary I, substantially contributed to this summary.

S435-SMTG-33(CSTG-26) v3

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6/7/11

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Caldwell
Sen.)

1 moves to amend the bill on page 2, line s 34-35
2 ( ) WHICH CHANGES THE TITLE
3 by adding the following between those lines:
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5 "(d) This section shall not apply to a claim
6 for breach of contract or breach of warranty.".
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SIGNED Daniel G. Clodfelter

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PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE June 7, 21

S. B. No. PCS 435 Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Stein
Sen.)

moves to amend the bill on page 2, lines 39-49

( ) WHICH CHANGES THE TITLE

by deleting those lines in their entirety and renumbering the remaining section of the bill;

and on page 2, line 22 by deleting "subdivision (a)(2)" and substituting "subsection (a)".

SIGNED _____

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PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 349
PROPOSED COMMITTEE SUBSTITUTE S349-CSRN-6 [v.7]

4/19/2011 2:24:18 PM

Short Title: Confidentiality/Investigative Info/Optometry. (Public)

Sponsors:

Referred to:

March 16, 2011

A BILL TO BE ENTITLED

AN ACT WHICH ALLOWS THE NORTH CAROLINA STATE BOARD OF EXAMINERS IN OPTOMETRY TO CONSIDER CERTAIN INVESTIGATIVE INFORMATION AS CONFIDENTIAL, REQUIRES LICENSEES TO COOPERATE WITH LAW ENFORCEMENT AGENCIES, AND REQUIRES LICENSEES TO SELF-REPORT CERTAIN INDICTMENTS, ARRESTS, MEDICAL JUDGMENTS, AWARDS, PAYMENTS, AND SETTLEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-121.5. Confidentiality of investigative information; cooperation with law enforcement; self-reporting requirements.**

(a) The Board may, in a closed session, receive information or evidence involving or concerning the treatment of a patient who has not expressly or impliedly consented to the public disclosure of the treatment when necessary for the protection of the rights of the patient or the accused licensee and the full presentation of relevant evidence.

(b) All records, papers, investigative files, investigative notes, reports, other investigative information, and other documents containing information in the possession of or received, gathered, or completed by the Board, its members, staff, employees, attorneys, or consultants as a result of investigations, inquiries, assessments, or interviews conducted in connection with a license, complaint, assessment, potential impairment, disciplinary matter, or report of professional liability insurance awards or settlements shall not be considered public records within the meaning of Chapter 132 of the General Statutes. Such documents are privileged, confidential, and not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the Board or its employees or consultants involved in the application for licensure, impairment assessment, or discipline of a licensee, except as provided in this section. However, any notice or statement of charges against any licensee or applicant, any notice to any licensee or applicant of a hearing in any proceeding, or any decision rendered in connection with a hearing in any proceeding shall be a public record within the meaning of Chapter 132 of the General Statutes, notwithstanding that the documentation may contain information collected and compiled as a result of the investigation, inquiry, or hearing. Identifying information concerning the treatment of or delivery of services to a patient or client who has not consented to the public disclosure of the treatment or services may be deleted. If any record, paper, or other document containing information collected and

compiled by or on behalf of the Board is received and admitted in evidence in any hearing before the Board, the documents shall be a public record within the meaning of Chapter 132 of the General Statutes, subject to any deletions of identifying information concerning the treatment of or delivery of professional services to a patient who has not consented to the public disclosure of the treatment or services.

For purposes of this subsection, 'investigative information' includes (i) formal or informal complaints received or information relating to the identity of, or a report made by, another licensee or other person performing an expert review or similar analysis for the Board or (ii) transcripts of any deposition taken or affidavit or statement obtained by Board counsel in preparation for or anticipation of a hearing held pursuant to this Article but not admitted into evidence at the hearing.

(b1) When the Board receives a complaint regarding a licensee's care of a patient, the Board shall determine whether there is reasonable cause to believe that a licensee has violated a statute or rule governing the practice of optometry. In making such determination, the Board shall provide the licensee with a copy of the complaint and ask for a response. If providing a copy of the complaint identifies an anonymous complainant or compromises the integrity of an investigation, the Board shall provide the licensee with a summary of all substantial elements of the complaint. Upon written request of a patient, the Board may provide the patient a licensee's written response to a complaint filed by the patient with the Board regarding the patient's care. Upon written request of a complainant, who is not the patient but is authorized by State and federal law to receive protected health information about the patient, the Board may provide the complainant a licensee's written response to a complaint filed with the Board regarding the patient's care.

(b2) If information in the possession of the Board, its employees, or agents indicates that a crime may have been committed, the Board may report the information to the appropriate law enforcement agency or district attorney of the district in which the offense was committed.

(b3) The Board shall cooperate with and assist a law enforcement agency or district attorney conducting a criminal investigation or prosecution of a licensee by providing information that is relevant to the criminal investigation or prosecution to the investigating agency or district attorney. Information disclosed by the Board to an investigative agency or district attorney remains confidential and may not be disclosed by the investigating agency except as necessary to further the investigation.

(b4) All persons licensed under this Article shall self-report to the Board within 30 days of arrest or indictment any of the following:

(1) Any felony arrest or indictment.

(2) Any arrest for driving while impaired or driving under the influence.

(3) Any arrest or indictment for the possession, use, or sale of any controlled substance.

(c) The Board, its members, attorneys, and staff may release confidential or nonpublic information to any health care licensure board in this State or another state or authorized Department of Health and Human Services personnel with enforcement or investigative responsibilities about (i) the issuance, denial, annulment, suspension, revocation, or other public disciplinary action taken concerning a license, (ii) the voluntary surrender to the Board of a license by a licensee, including the reasons for the action, or (iii) any disciplinary action taken by the Board. The Board shall notify the licensee in writing within 60 days after the information is transmitted. A summary of the information that is being transmitted shall be furnished to the licensee. If the licensee requests in writing within 30 days after being notified that the information has been transmitted, the licensee shall be furnished a copy of all information transmitted but shall be liable for the reasonable expense of the copies. The notice or copies of the information shall not be provided if the information relates to an ongoing

criminal investigation by any law enforcement agency or authorized Department of Health and Human Services personnel with enforcement or investigative responsibilities."

SECTION 2. Article 6 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-121.6 Reporting and publication of judgments, awards, payments, and settlements.**

(a) All optometrists licensed or applying for licensure by the Board shall report to the Board:

(1) All medical malpractice judgments or awards affecting or involving the optometrist.

(2) All settlements in the amount of seventy-five thousand dollars ($75,000) or more related to an incident of alleged medical malpractice affecting or involving the optometrist where the settlement occurred on or after May 1, 2008.

(3) All settlements in the aggregate amount of seventy-five thousand dollars ($75,000) or more related to any one incident of alleged medical malpractice affecting or involving the optometrist not already reported pursuant to subdivision (2) of this subsection where, instead of a single payment of seventy-five thousand dollars ($75,000) or more occurring on or after May 1, 2008, there is a series of payments made to the same claimant which, in the aggregate, equal or exceed seventy-five thousand dollars ($75,000).

(b) The report required under subsection (a) of this section shall contain the following information:

(1) The date of the judgment, award, payment, or settlement.

(2) The city, state, and country in which the incident occurred that resulted in the judgment, award, payment, or settlement.

(3) The date the incident occurred that resulted in the judgment, award, payment, or settlement.

(c) The Board shall publish on the Board's Web site or other publication information collected under this section. The Board shall publish this information for seven years from the date of the judgment, award, payment, or settlement. The Board shall not release or publish individually identifiable numeric values of the reported judgment, award, payment, or settlement. The Board shall not release or publish the identity of the patient associated with the judgment, award, payment, or settlement. The Board shall allow the optometrist to publish a statement explaining the circumstances that led to the judgment, award, payment, or settlement, and whether the case is under appeal. The Board shall ensure these statements:

(1) Conform to the ethics of optometry.

(2) Not contain individually identifiable numeric values of the judgment, award, payment, or settlement.

(3) Not contain information that would disclose the patient's identity.

(d) The term "settlement" for the purpose of this section includes a payment made from personal funds, a payment by a third party on behalf of the optometrist, or a payment from any other source of funds.

(e) Nothing in this section shall limit the Board from collecting information needed to administer this Article."

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

SENATE BILL 349:
Confidentiality/Investigative Info/Optometry

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 6, 2011
Introduced by:	Sens. Purcell, Pate	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition S349-CSRN-6		Committee Counsel

SUMMARY: ***Senate Bill 349 would allow the North Carolina State Board of Examiners in Optometry to consider certain investigative information as confidential. The Proposed Committee Substitute (PCS) (1) would provide additional complaint procedures, (2) would permit the Board to report information indicating that a crime may have been committed, (3) would require the Board to cooperate with law enforcement or the district attorney conducting an investigation of a licensee, (4) would require licensees to self-report to the Board certain arrests and indictments, and (5) would require the reporting and publication of judgments and settlements against optometrists and applicants for licensure. This PCS is identical to the PCS that was distributed and discussed on April 21, 2011.***

CURRENT LAW: The North Carolina State Board of Examiners in Optometry (Board) regulates the practice of optometry. It consists of 5 optometrists that have been in the practice for at least 5 years and two members of the public. The President of the Board and/or secretary-treasurer may issue subpoenas. The Board may also make necessary regulations to carry out its duties. The Board may hear and determine all complaints, allegations, and charges of malpractice made against any licensed optometrist. The Board may refuse to issue or renew a license, revoke or suspend a license, and invoke other disciplinary measures. Before taking action that would affect a licensee, the Board shall grant a hearing.

BILL ANALYSIS:

Section 1 does all of the following:

- Allows the Board to receive, in closed session, information or evidence on the treatment of a patient who has not expressly or impliedly consented to public disclosure of the treatment when necessary for the protection of the rights of the patient or the accused licensee and to allow full presentation of relevant evidence.
- Specifies that records, papers, "investigative information," and documents gathered as a result of an investigation in connection with a license, complaint, or disciplinary matter are not public records. Provides that these documents are privileged, confidential, and not subject to discovery, subpoena, or other release to any person other than the Board, its employees, or consultants (except as provided in this section).
- Provides that the following are public records:
    - Any notice or statement of charges against any licensee or applicant.
    - Any notice of a hearing to a licensee or applicant.
    - Any decision rendered in connection with a hearing.
    - Records admitted into evidence in a hearing (subject to deletions of identifying information where a patient has not consented to public disclosure of treatment).
- Defines "investigative information" to include:

- Formal or informal complaints received or information relating to the identity of or a report made by another licensee for the Board.
- Transcripts of depositions, affidavits, or statements obtained by Board counsel in preparation for a hearing, but not admitted into evidence.

- Provides that when the Board receives a complaint regarding a licensee's care of a patient, the Board must determine whether there is reasonable cause to believe that a licensee has violated a statute or rule governing optometry. The Board must provide the licensee with a copy of the complaint and ask for a response; a summary can be provided if sending a copy would identify an anonymous complainant or compromise an investigation. If the patient makes a written request, the Board may to provide a patient with the licensee's response to a complaint filed by the patient.
- Allows the Board to report information that a crime may have been committed.
- Requires the Board to assist a law enforcement agency or district attorney conducting a criminal investigation or prosecution of a licensee. The information is confidential except as necessary to further the investigation.
- Requires licensees to self-report any of the following to the Board within 30 days:
  - Any felony arrest or indictment.
  - Any arrest for driving while impaired or driving under the influence.
  - Any arrest or indictment for the possession, use, or sale of any controlled substance.
- Allows the Board, members, attorneys, and staff to release confidential information to any health care licensure board in North Carolina or another state or to authorized Department of Health and Human Services (DHHS) personnel with enforcement responsibilities about:
  - Issuance, suspension, or public disciplinary action concerning a license.
  - Voluntary surrender to the Board of a license (by a licensee).
  - Any disciplinary action taken by the Board.
- If confidential information is released to a licensure board or DHHS, the Board must notify the licensee within 60 days after the information is transmitted. A summary of the information must be furnished to the licensee. The licensee must be furnished a copy of all the information transmitted if a licensee makes a request in writing within 30 days after notification (but not if the information is related to an ongoing criminal investigation).

Section 2 requires optometrists licensed or applying for licensure to report the following to the Board:

- All medical malpractice judgments or awards affecting or involving the optometrist.
- Settlements of $75,000 or more related to an incident of alleged medical malpractice affecting or involving the optometrist on or after May 1, 2008.
- Settlements in the aggregate amount of $75,000 or more related to any one incident of alleged medical malpractice affecting or involving the optometrist not already reported where, instead of a single payment of $75,000, there is a series of payments made to the same claimant which, in the aggregate, equal or exceed $75,000. Applies to settlements on or after May 1, 2008.

The report provided to the Board must also include the date of the judgment or settlement, the location where the incident occurred, and the date the incident occurred.

Section 2 also imposes the following requirements on the Board:

- To publish information collected under this section on the Board's Web site or other publication for seven years from the date of the judgment or settlement.
- To not release or publish numeric values of the reported judgment or settlement.
- To not release or publish the identity of the patient associated with the judgment or settlement.
- To allow the optometrist to publish a statement explaining the circumstances that led to the judgment or settlement (with certain restrictions on these statements).

Section 2 does not limit the Board from collecting information needed to administer these provisions.

EFFECTIVE DATE: The act is effective when it becomes law.

S349-SMRN-32(CSRN-6) v7

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 356*
PROPOSED COMMITTEE SUBSTITUTE S356-CSST-27 [v.4]

6/6/2011 5:21:48 PM

Short Title: No Run for Two Offices/Same General Elections. (Public)

Sponsors:

Referred to:

March 17, 2011

A BILL TO BE ENTITLED

AN ACT TO LIMIT AN INDIVIDUAL FROM RUNNING ON THE SAME GENERAL ELECTION BALLOT FOR MORE THAN ONE OFFICE, EXCEPT TO FILL A VACANCY FOR THE REMAINDER OF AN UNEXPIRED TERM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 11 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-124. No run for two separate offices at the same time.**

(a) No individual is eligible to have that individual's name on the general election ballot for two separate offices, unless one of the offices is for the remainder of the unexpired term for an office that requires an election to fill the unexpired portion of the term.

(b) This section shall apply to any individual nominated under Article 9 of this Chapter, filing under G.S. 163-106, or filing a petition under this Article."

SECTION 2. This act becomes effective with respect to elections occurring on or after January 1, 2012.

SENATE BILL 356:
No Filing for Party and Unaffiliated

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 3, 2011
Introduced by:	Sen. Robinson	**Prepared by:**	R. Erika Churchill
Analysis of:	PCS to First Edition S356-CSST-27		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 356 limits an individual from running on the same general election ballot for more than one office except to fill a vacancy for the remainder of an unexpired term.***

[As introduced, this bill was identical to H363, as introduced by Reps. Adams, Harrison, which is currently in House Elections.]

CURRENT LAW: Generally, candidates gain access to the general election ballot in a number of ways, as follows:

- ***Party nominees:***
  - By filing a notice of candidacy and running in a primary. G.S. 163-106.
  - By nomination of a new political party. G.S. 163-98.
- ***Unaffiliated Candidates***: By filing a petition with the appropriate board of elections by noon on the last Friday in July before the general election, with the appropriate number of signatures as follows:
  - *For Statewide office:* Petition must have signature of qualified voters equal to 2% of the vote for Governor in the most recent election, and must be signed by 200 voters from 4 Congressional districts.
  - *For district office:* Petition must have signature of qualified voters of the district equal to 4% of the total number of registered voters in that district.
  - *For county office or single county legislative district:* Petition must have signature of qualified voters of the county equal to 4% of the total number of registered voters in that county.
  - *For partisan municipal office*: Petition must have signature of qualified voters of the municipality equal to 4% of the total number of registered voters in that municipality (petition is due by noon on Friday before 7th Saturday before the election).
- ***Write-in Candidates:*** By filing a declaration of intent, and filing a subsequent petition by noon on the 90th day before the general election with the appropriate board of elections, with the appropriate number of signatures as follows:
  - *For Statewide office:* Petition must have signatures of 500 qualified voters of the State.
  - *For district office:* Petition must have signatures of 250 qualified voters.
  - *For county office, single county legislative district, or partisan school district:* Petition must have signatures of 100 qualified voters who are eligible to vote for the office, unless fewer than 5,000 people are eligible to vote for the office, then signatures of at least 1% of the registered voters eligible to vote.

Individuals are permitted to file only one notice of candidacy per election, unless it is to fill an unexpired term as U.S. Senator or U.S. Representative. G.S. 163-106(h). Changes in party affiliation must be completed at least 90 days before filing a notice of candidacy for a party primary. Individuals registered as unaffiliated are ineligible to file as a candidate in a party primary election. G.S. 163-106(b). An individual who appeared on the primary ballot is not eligible to be nominated to fill a vacancy in the nomination of another party for the same office in the same year. G.S. 163-114.

Individuals appearing on the primary ballot for the same office are not eligible as unaffiliated candidates for that office. G.S. 163-122. Individuals appearing on the primary ballot are not eligible to have votes counted for that individual as a write-in candidate for the same office in that year. G.S. 163-123.

BILL ANALYSIS: The proposed committee substitute would limit an individual from running on the same general election ballot for more than one office except to fill a vacancy for the remainder of an unexpired term, regardless of how that individual gained access to the ballot.

EFFECTIVE DATE: January 1, 2012, but may not be implemented until the session law has received 'preclearance' approval under Section 5 of the Voting Rights of 1965.

S356-SMST-52(CSST-27) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 324
PROPOSED COMMITTEE SUBSTITUTE S324-CSRN-22 [v.3]

6/6/2011 9:22:01 PM

Short Title: ABC Law/Eastern Band of Cherokee Indians. (Public)

Sponsors:

Referred to:

March 14, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE EASTERN BAND OF CHEROKEE INDIANS, A FEDERALLY RECOGNIZED INDIAN TRIBE AND SOVEREIGN NATION, TO RECEIVE SHIPMENTS OF SPIRITUOUS LIQUOR FROM THE NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL COMMISSION AND TO AUTHORIZE THE EASTERN BAND OF CHEROKEE INDIANS TO ESTABLISH A TRIBAL ALCOHOLIC BEVERAGE CONTROL COMMISSION TO REGULATE THE PURCHASE, POSSESSION, CONSUMPTION, SALE, AND DELIVERY OF ALCOHOLIC BEVERAGES AT RETAIL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-109(b) reads as rewritten:

"(b) Armed Forces ~~Installation.~~Installation and Indian Country Lands. – No person shall have malt beverages or unfortified wine shipped directly from a point outside this State to an armed forces installation within this State if those alcoholic beverages are for resale on the installation or to the Eastern Band of Cherokee Indians for resale on Indian Country lands within this State under the jurisdiction of the Eastern Band of Cherokee Indians."

SECTION 2. G.S. 18B-203(a)(17) reads as rewritten:

"(a) Powers. – The Commission shall have authority to:

. . .

(17) Provide for the distribution of spirituous liquor to armed forces installations within this State for resale on the ~~installation;~~installation and to the Eastern Band of Cherokee Indians for resale on Indian Country lands within this State under the jurisdiction of the Eastern Band of Cherokee Indians.

. . . ."

SECTION 3. Article 1 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-112. Tribal alcoholic beverage control.**

(a) Application of this Chapter. – The Eastern Band of Cherokee Indians, a federally recognized Indian tribe and sovereign nation, shall be exempt from the provisions of this Chapter, except for those made applicable by this section. The Eastern Band of Cherokee Indians tribe shall adopt by ordinance the provisions of this Chapter which are made applicable to the tribe by this section and such ordinance shall be approved by the Secretary of the United States Department of the Interior and published in the Federal Register accordingly. The Eastern Band of Cherokee Indians shall hold lawful tribal elections as set out in

G.S. 18B-600(a), and if the result of such election authorizes the activity upon which a vote was held, the activity shall be deemed authorized by this section. For the purposes of this section, the tribal alcoholic beverage control commission shall possess the same powers and authority conveyed upon the North Carolina Alcoholic Beverage Control Commission by any section of this Chapter made applicable to the tribe by this section.

(b) Compliance Required. – The Eastern Band of Cherokee Indians shall comply with the following provisions of this Chapter to the extent they apply to or can be made applicable to the tribe:

(1) The following provisions of Article 1. – General Provisions.
  a. G.S. 18B-101(4), (7), 7(c), (9), (10), (11), (12), (12a), (13), (14) (14a), (14b) and (15).
  b. G.S. 18B-102.1.
  c. G.S. 18B-104.
  d. G.S. 18B-105 except that this section shall not apply to any establishment where gaming is permitted under a state compact and pursuant to federal law.
  e. G.S. 18B-109(b).
  f. G.S. 18B-110.
  g. G.S. 18B-111.
  h. G.S. 18B-112.

(2) Article 1A. – Compensation for Injury Caused by Sales to Underage Persons to the extent it applies to retail establishments or the tribal alcoholic beverage control commission if it operates ABC stores, or any other permitted establishment, at retail pursuant to the provisions of this section.

(3) Article 3. – Sale, Possession, and Consumption, except for G.S. 18B-308 and 18B-309.

(4) Article 4. – Transportation.

(5) Article 5. – Enforcement, except for G.S. 18B-500 and G.S. 18B-501.

(7) Article 9. – Issuance of Permits, except for G.S. 18B-902(g) and (h) and G.S. 18B-906.

(8) Article 10. – Retail Activity, except for G.S. 18B-1001.1, G.S. 18B-1001.2, and G.S.18B-1001.3.

Any provision of this Chapter which has not been made applicable to the Eastern Band of Cherokee Indians by this section shall act as a bar to engaging in any activity authorized by that Article or section.

(c) Alcoholic Beverages Which May Be Sold. – No alcoholic beverage may be sold on Indian Country lands under the jurisdiction of the Eastern Band of Cherokee Indians pursuant to this section which has not been approved for sale in this State by the North Carolina Alcoholic Beverage Control Commission.

(d) Establishment of a Tribal Commission. – In accordance with the provisions of 18 U.S.C. § 1161, the Eastern Band of Cherokee Indians, is authorized to establish a tribal alcoholic beverage control commission to regulate the purchase, possession, consumption, sale, and delivery of alcoholic beverages at retail on any land designated as Indian Country pursuant to 18 U.S.C. § 1151 under the jurisdiction of the Eastern Band of Cherokee Indians. The tribal commission shall have exclusive authority to issue retail permits to retail establishments, located wholly on Indian Country lands under the jurisdiction of the Eastern Band of Cherokee Indians, and to regulate the purchase, possession, consumption, sale, and delivery of alcoholic beverages at retail outlets and premises. Permits issued by the tribal commission pursuant to this section shall be deemed issued by the state for the purposes of sales and delivery of beer and wine by wholesalers to the retail outlets located on Indian Country lands. The fees generated by the tribal alcoholic beverage control commission for the issuance of retail permits

may be retained by the Eastern Band of Cherokee Indians to offset costs of operating the tribal alcoholic beverage control commission.

(e) Establishment of Rules. – The tribal alcoholic beverage control commission shall adopt the rules of the North Carolina Alcoholic Beverage Control Commission regulating retail outlet activity.

(f) Authority of the North Carolina Alcoholic Beverage Control Commission. – The North Carolina Alcoholic Beverage Control Commission shall have the authority to enter into agreements with the tribal alcoholic beverage control commission to provide for the sale, delivery, and distribution of spirituous liquor to the tribal alcoholic beverage control commission. The tribal alcoholic beverage control commission shall purchase spirituous liquor for resale by the tribal alcoholic beverage control commission exclusively from the North Carolina Alcoholic Beverage Control Commission at the same price and on the same basis that such spirits are purchased by local boards. To the extent there is a conflict between the tribal alcoholic beverage control commission's authority or purpose and the North Carolina Alcoholic Beverage Control Commission's authority or purpose, the North Carolina Alcoholic Beverage Control Commission shall prevail.

(g) Discrimination. – The tribal alcoholic beverage control commission shall not discriminate against non-Indians in the application of the Tribal ABC law. Non-Indians shall be entitled to apply for and receive ABC permits in the same manner as an Indian on Indian Country lands under the jurisdiction of the Eastern Band of Cherokee Indians.

(h) Resolution of Contested Cases. – If the tribal alcoholic beverage control commission levies a fine, or suspends or revokes a permit pursuant to the provisions of G.S. 18B-104 for a violation of the provisions applicable to the Eastern Band of Cherokee Indians in this Section, the permittee shall have the right of appeal of an agency final decision of the tribal commission to the tribal courts. Any further appeal shall be to the appellate courts of the tribe. All fines paid to the tribal commission in satisfaction of any penalty assessed by the tribal commission may be retained by the Eastern Band of Cherokee Indians to offset costs of operating the tribal alcoholic beverage control commission.

(i) Failure to Comply With Laws of This State. – If the Eastern Band of Cherokee Indians fails to adopt the provisions of this Chapter, made applicable to the tribe by this section, by ordinance, fails to amend tribal ordinances to comply with amendments to the provisions of this Chapter, made applicable to the tribe by this section, within six months of passage of such amendments, or fails to comply with the provisions of this Chapter, made applicable to the tribe by this section, as required by 18 U.S.C. § 1161, the North Carolina Alcoholic Beverage Control Commission is authorized to terminate and prohibit future delivery of any alcoholic beverages from any person to the tribal alcoholic beverage control commission until the Eastern Band of Cherokee Indians complies with the provisions of this Chapter made applicable to the tribe by this section and 18 U.S.C. § 1161.

(j) Conflict of Laws. – If any provision of this section or its application conflicts with federal law, the conflict of laws shall be resolved in favor of the federal law unless compliance with the federal law abrogates a right reserved to the State under the Constitution of the United States."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 580

Short Title:	AOC Omnibus Courts Act.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary I.	

April 14, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR AUTOMATIC REINSTATEMENT OF CASES THAT WERE DISMISSED WITH LEAVE IF THOSE CASES ARE WAIVABLE, TO CLARIFY THE CONDITIONS OF PRETRIAL RELEASE WHEN A DNA SAMPLE IS REQUIRED, TO ALLOW FOR SERVICE OF CRIMINAL PROCESS BY A LAW ENFORCEMENT OFFICER BEFORE A MAGISTRATE EVEN WHEN THE OFFICER IS OUTSIDE THE OFFICER'S TERRITORIAL JURISDICTION, TO ADD TO THE STATUTORY DUTIES OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE COURTS, TO DECREASE THE PERIOD OF TIME THAT STATE EMPLOYEES MUST BE SEPARATED FROM EMPLOYMENT PRIOR TO BEING SELECTED TO SERVE IN A POSITION WITHIN THE JUDICIAL BRANCH, TO ELIMINATE THE NECESSITY OF A HEARING TO REMOVE A PERSONAL REPRESENTATIVE IN ESTATE CASES, TO REPEAL THE REQUIREMENT THAT MAGISTRATES BE RESIDENTS OF THE COUNTY TO WHICH THEY ARE APPOINTED TO SERVE, TO CLARIFY WHEN A CLERK OF SUPERIOR COURT MAY RELEASE FUNDS HELD UNDER A CLAIM OF LIEN ON REAL PROPERTY, TO CHANGE THE DATE ON WHICH A NEWLY ELECTED CLERK OF SUPERIOR COURT TAKES OFFICE, TO GRANT THE COURT THE DISCRETION TO FIND THAT DISTANCE FROM THE COURT IS GOOD CAUSE TO EXEMPT A PARTY FROM CUSTODY MEDIATION, AND TO PROVIDE THAT FEES COLLECTED BY THE DISPUTE RESOLUTION COMMISSION ARE NONREVERTING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-932 is amended by adding a new subsection to read:

"(d1) If the proceeding was dismissed pursuant to subdivision (2) of subsection (a) of this section and charged only offenses for which written appearance, waiver of trial or hearing, and plea of guilty or admission of responsibility are permitted pursuant to G.S. 7A-148(a), and the defendant later tenders to the court that waiver and payment in full of all applicable fines, costs, and fees, the clerk shall accept said waiver and payment without need for a written reinstatement from the prosecutor. Upon disposition of the case pursuant to this subsection, the clerk shall recall any outstanding criminal process in the case pursuant to G.S. 15A-301(g)(2)b."

SECTION 2. G.S. 15A-534(a) reads as rewritten:

"(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.
(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.

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 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,~~ G.S. 15A-266.3A, 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."

SECTION 3.(a) G.S. 15A-301(c) reads as rewritten:

"(c) Service. –

(1) A ~~law enforcement~~ law enforcement officer or other employee designated as provided in subsection (b) receiving for service or execution a criminal process that was first created and exists only in paper form must note thereon the date and time of its receipt. A law enforcement officer receiving a copy of a criminal process that was printed in paper form as provided in G.S. 15A-301.1 shall cause the date of receipt to be recorded as provided in that section. Upon execution or service, a copy of the process must be delivered to the person arrested or served.
(2) A corporation may be served with criminal summons as provided in G.S. 15A-773.
(3) Notwithstanding any other provision of law, a municipal law enforcement officer may serve criminal process in a building housing a court or office of the General Court of Justice or before any judicial official authorized to conduct an initial appearance if the officer otherwise has territorial jurisdiction to serve criminal process in a municipality located in that county. The officer may arrest the person named in the process as provided in G.S. 15A-402(b). A municipal law enforcement officer serving criminal process as provided in this subdivision shall be protected under subsection (f) of this section."

SECTION 3.(b) G.S. 15A-402(b) reads as rewritten:

"(b) Territorial Jurisdiction of County and City Officers. – ~~Law enforcement~~ Law enforcement officers of cities and counties may arrest persons within their particular cities or counties and on any property and rights-of-way owned by the city or county outside its limits. Law enforcement officers of cities serving criminal process as provided in G.S. 15A-301(c)(3) may arrest the person named in the process when required by the process."

SECTION 4.(a) G.S. 7A-343 reads as rewritten:

"**§ 7A-343. Duties of Director.**

The Director is the Administrative Officer of the Courts, and the Director's duties include all of the following:

(1) Collect and compile statistical data and other information on the judicial and financial operation of the courts and on the operation of other offices directly related to and serving the courts.

(2) Determine the state of the dockets and evaluate the practices and procedures of the courts, and make recommendations concerning the number of judges, district attorneys, and magistrates required for the efficient administration of justice.

(3) Prescribe uniform administrative and business methods, systems, forms and records to be used in the offices of the clerks of superior court.

(3a) Maintain and staff as necessary an Internal Audit Division of the Judicial Department and the Administrative Office of the Courts that:

a. Evaluates and discloses potential weaknesses in the effectiveness of internal controls in the court system for the purpose of safeguarding public funds and assets and minimizing incidences of fraud, waste, and abuse.

b. Examines and analyzes the design and effectiveness of administrative and procedural operations.

c. Ensures overall compliance with federal and State laws, internal and external regulations, rules and procedures, and other applicable requirements.

d. Inspects and reviews the effectiveness and efficiency of processes and proceedings conducted by judicial officers.

e. Collaborates with other divisions to guide, direct, and support court officials in efforts to conform to both recommended and required compliance standards.

f. Executes routine audits of the Judicial Department's systems and controls, including, but not limited to:

1. Accounting systems and controls.
2. Administrative systems and controls.
3. Electronic data processing systems and controls.

(4) Prepare and submit budget estimates of State appropriations necessary for the maintenance and operation of the Judicial Department, and authorize expenditures from funds appropriated for these purposes.

(5) Investigate, make recommendations concerning, and assist in the securing of adequate physical accommodations for the General Court of Justice.

(6) Procure, distribute, exchange, transfer, and assign such equipment, books, forms and supplies as are to be acquired with State funds for the General Court of Justice.

(7) Make recommendations for the improvement of the operations of the Judicial Department.

(8) Prepare and submit an annual report on the work of the Judicial Department to the Chief Justice, and transmit a copy to each member of the General Assembly. <u>The annual report shall include the activities of each North Carolina Business Court site, including the number of new, closed, and pending cases, the average age of pending cases, and the annual expenditures for the prior fiscal year.</u>

(9) Assist the Chief Justice in performing his duties relating to the transfer of district court judges for temporary or specialized duty.

(9a) Establish and operate systems and services that provide for electronic filing in the court system and further provide electronic transaction processing and access to court information systems pursuant to G.S. 7A-343.2.

(9b) Enter into contracts with one or more private vendors to provide for the payment of fines, fees, and costs due to the court by credit, charge, or debit

cards; such contracts may provide for the assessment of a convenience or transaction fee by the vendor to cover the costs of providing this service.

(9c) Prescribe policies and procedures for the appointment and payment of foreign language interpreters in those cases specified in G.S. 7A-314(f). These policies and procedures shall be applied uniformly throughout the General Court of Justice. After consultation with the Joint Legislative Commission on Governmental Operations, the Director may also convert contractual foreign language interpreter positions to permanent State positions when the Director determines that it is more cost-effective to do so.

(9d) Analyze the use of contractual positions in the Judicial Department and, after consultation with the Joint Legislative Commission on Governmental Operations, convert contractual positions to permanent State positions when the Director determines it is in the best interests of the Judicial Department to do so.

(9e) Prescribe policies and procedures for the appointment and payment of deaf and hearing-impaired interpreters, in accordance with G.S. 8B-8(a), for those cases specified in G.S. 8B-8(b) and (c). These policies and procedures shall be applied uniformly throughout the General Court of Justice. After consultation with the Joint Legislative Commission on Governmental Operations, the Director may also convert contractual hearing-impaired interpreter positions to permanent State positions when the Director determines that it is more cost-effective to do so.

(9f) Prescribe policies and procedures for the payment of those experts acting on behalf of the court or prosecutorial offices, as provided for in G.S. 7A-314(d).

(10) Perform such additional duties and exercise such additional powers as may be prescribed by statute or assigned by the Chief Justice.

(11) Prescribe policies and procedures for the assignment and compensation of magistrates performing temporary duty outside their county of residence during an emergency, as provided for in G.S. 7A-146(9).

(12) Issue photographic identification cards to appropriate Judicial Department employees and officials authorizing those employees and officials to travel to and from, enter, and work in court and court-related locations for the conduct or support of essential court operations in preparation for, during, or in the aftermath of emergency situations, including, but not limited to, catastrophic conditions. Notwithstanding any other provision of the law, and notwithstanding any emergency restrictions on travel or closures that may have been issued due to the emergency situations, an identification card issued pursuant to this subdivision shall be honored by all State and local law enforcement, emergency and health officers, and other authorities to permit the person to whom the card was issued to travel to and from court and court-related locations and otherwise carry out the purposes authorized by this subdivision. An identification card issued pursuant to this subdivision shall set forth its effective date and the full name, position, and employing unit of the person to whom the card is issued, with a provision, signed by the person, stating that the person is credentialed solely for the purposes stated in this subdivision and that the card shall not be used for any other purpose.

(13) Prescribe policies and procedures and establish and operate systems for the exchange of criminal and civil information from and to the Judicial Department and local, State, and federal governments and the Eastern Band of Cherokee Indians.

(14) Transfer equipment and supply funds to the appropriate programs and between programs as the equipment priorities and supply consumptions occur during the operating year.

(15) Notwithstanding the provisions of G.S. 138-6(a)(1), elect to establish a per-mile reimbursement rate for transportation by privately owned vehicles at a rate less than the business standard mileage rate set by the Internal Revenue Service."

SECTION 4.(b) G.S. 7A-146 reads as rewritten:

"**§ 7A-146. Administrative authority and duties of chief district judge.**

The chief district judge, subject to the general supervision of the Chief Justice of the Supreme Court, has administrative supervision and authority over the operation of the district courts and magistrates in his district. These powers and duties include, but are not limited to, the following:

....

(9) Assigning magistrates during an emergency to temporary duty outside the county of their residence but within that ~~district;~~ district pursuant to the policies and procedures prescribed under G.S. 7A-343(11); and, upon the request of a chief district judge of an adjoining district and upon the approval of the Administrative Officer of the Courts, to temporary duty in the district of the requesting chief district ~~judge.~~ judge pursuant to the policies and procedures prescribed under G.S. 7A-343(11).

...."

SECTION 5. G.S. 135-1(20) reads as rewritten:

"(20) "Retirement" means the termination of employment and the complete separation from active service with no intent or agreement, express or implied, to return to service. A retirement allowance under the provisions of this Chapter may only be granted upon retirement of a member. In order for a member's retirement to become effective in any month, the member must render no service, including part-time, temporary, substitute, or contractor service, at any time during the six months immediately following the effective date of ~~retirement.~~ retirement, except for persons rendering service, including part-time, temporary, substitute, or contractor service for the Judicial Branch. For purposes of this subdivision, service as a member of a school board or as an unpaid bona fide volunteer in a local school administrative unit shall not be considered service. For persons selected to render service, including part-time, temporary, substitute, or contractor service for the Judicial Branch, a member's retirement becomes effective in any month that the member has rendered no service, including part-time, temporary, substitute, or contractor service, for a period of 30 days immediately following the effective date of retirement."

SECTION 6.(a) G.S. 28A-9-1(a)(3) is repealed.

SECTION 6.(b) G.S. 28A-9-2(a) reads as rewritten:

"(a) Grounds. – Letters testamentary, letters of administration, or letters of collection, shall be revoked by the clerk of superior court without hearing when:

(1) After letters of administration or collection have been issued, a will is subsequently admitted to probate.

(2) After letters testamentary have been issued:

a. The will is set aside, or

b. A subsequent testamentary paper revoking the appointment of the executor is admitted to probate.

(3) Any personal representative or collector required to give a new bond or furnish additional security pursuant to G.S. 28A-8-3 fails to do so within the time ordered.
(4) A nonresident personal representative refuses or fails to obey any citation, notice, or process served on him or his process agent.
(5) A trustee in bankruptcy, liquidating agent, or receiver has been appointed for any personal representative or collector, or any personal representative or collector has executed an assignment for the benefit of creditors.
(6) A personal representative has failed to file an inventory or an annual account with the clerk of superior court, as required by Article 20 and Article 21 of this Chapter, and proceedings to compel such filing pursuant to G.S. 28A-20-2 or 28A-21-4 cannot be had because service cannot be completed because the personal representative cannot be found.
(7) The person to whom they were issued has violated a fiduciary duty through default or misconduct in the execution of his office."

SECTION 7. G.S. 7A-171.2(a) is repealed.

SECTION 8. G.S. 44A-16 reads as rewritten:

"**§ 44A-16. Discharge of record claim of lien on real property.**

(a) Any claim of lien on real property filed under this Article may be discharged by any of the following methods:

(1) The lien claimant of record, the claimant's agent or attorney, in the presence of the clerk of superior court may acknowledge the satisfaction of the claim of lien on real property indebtedness, whereupon the clerk of superior court shall forthwith make upon the record of such claim of lien on real property an entry of such acknowledgment of satisfaction, which shall be signed by the lien claimant of record, the claimant's agent or attorney, and witnessed by the clerk of superior court.
(2) The owner may exhibit an instrument of satisfaction signed and acknowledged by the lien claimant of record which instrument states that the claim of lien on real property indebtedness has been paid or satisfied, whereupon the clerk of superior court shall cancel the claim of lien on real property by entry of satisfaction on the record of such claim of lien on real property.
(3) By failure to enforce the claim of lien on real property within the time prescribed in this Article.
(4) By filing in the office of the clerk of superior court the original or certified copy of a judgment or decree of a court of competent jurisdiction showing that the action by the claimant to enforce the claim of lien on real property has been dismissed or finally determined adversely to the claimant.
(5) Whenever a sum equal to the amount of the claim or claims of lien on real property claimed is deposited with the clerk of court, to be applied to the payment finally determined to be due, whereupon the clerk of superior court shall cancel the claim or claims of lien on real property or claims of lien on real property of record.
(6) Whenever a corporate surety bond, in a sum equal to one and one-fourth times the amount of the claim or claims of lien on real property claimed and conditioned upon the payment of the amount finally determined to be due in satisfaction of said claim or claims of lien on real property, is deposited with the clerk of court, whereupon the clerk of superior court shall cancel the claim or claims of lien on real property of record.

(b) The clerk may release funds held or a corporate surety bond upon receipt of one of the following:

(1) Written agreement of the parties.

(2) A final judgment of a court of competent jurisdiction.

(3) A consent order."

SECTION 9. G.S. 163-1(d) reads as rewritten:

"(d) If primaries for the State Senate or State House of Representatives are temporarily moved from the date provided in subsection (b) of this section for any election year, all primaries shall be held on the same day.

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
...			
Clerk of superior court	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first ~~Monday~~ day in December next after election

...."

SECTION 10. G.S. 50-13.1(c) reads as rewritten:

"(c) For good cause, on the motion of either party or on the court's own motion, the court may waive the mandatory setting under Article 39A of Chapter 7A of the General Statutes of a contested custody or visitation matter for mediation. Good cause may include, but is not limited to, the following: a showing of undue hardship to a party; an agreement between the parties for voluntary mediation, subject to court approval; allegations of abuse or neglect of the minor child; allegations of alcoholism, drug abuse, or domestic violence between the parents in common; or allegations of severe psychological, psychiatric, or emotional problems. A showing by either party that the party resides more than fifty miles from the court ~~shall~~ may be considered good cause."

SECTION 11. G.S. 7A-38.2(d) reads as rewritten:

"(d) An administrative fee, not to exceed two hundred dollars ($200.00), may be charged by the Administrative Office of the Courts to applicants for certification and annual renewal of certification for mediators and mediation training programs operating under this Article. The fees collected may be used by the Director of the Administrative Office of the Courts to establish and maintain the operations of the Commission and its staff. Notwithstanding the provisions of G.S. 143C-1-2(b), certification and renewal fees collected by the Dispute Resolution Commission are nonreverting and are only to be used at the direction of the Commission."

SECTION 12. This act becomes effective July 1, 2011.

SENATE BILL 580:
AOC Omnibus Courts Act

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 6, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Susan Sitze
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 580 makes various changes to statutes related to the Administrative Office of the Courts (AOC) and the Judicial Branch.***

BILL ANALYSIS:

Section 1 would authorize the automatic reinstatement of a case that was dismissed with leave for failure of the defendant to appear, for offenses for which written appearance, waiver of trial or hearing and plea of guilty or admission of responsibility are permitted, if the defendant tenders the waiver and payment in full of all applicable fines, cost, and fees. The clerk shall accept the waiver and payment without written reinstatement from the prosecutor and shall recall any outstanding criminal process.

Section 2 would remove from the conditions of pre-trial release that a defendant must provide a DNA sample that is required for conviction of an offense before being released. The statute would keep the requirement that the defendant must provide a DNA sample required based on arrest for certain offenses.

Section 3 would authorize a city police officer to serve criminal process outside the city limits if they are serving the process in a building housing a court or office of the General Court of Justice, or in front of a judicial official authorized to conduct an initial appearance, and would authorize them to arrest that person pursuant to the criminal process if required.

Section 4 amends the duties of the AOC Director as follows:

- Clarifies that the annual report on the Judicial Department shall include activities and specific information on each NC Business Court site.
- Adds authority to prescribe policies and procedures for assignment and compensation of magistrates performing temporary duty outside their county of residence in emergency situations.
- Authorizes the issuance of photo ID cards to Judicial Department employees for use in emergency situations to travel to and from, enter, and work in court and court-related locations, notwithstanding restrictions on travel.
- Adds authority to prescribe policies and procedures and establish and operate systems for exchange of criminal and civil information from and to the Judicial Department and local, State, and federal governments and the Eastern Band of Cherokee Indians.
- Authorizes the transfer of equipment and supply funds to the appropriate programs and between programs as equipment priorities and supply consumptions occur during the operating year.
- Authorizes the establishment of a per-mile reimbursement rate for transportation by privately owned vehicles at a rate less than the business standard mileage rate set by the IRS.

Section 5 would decrease the separation time for retirement to become effective from 6 months to 30 days for the Judicial Branch.

Section 6 would eliminate the necessity of a hearing to remove a personal representative in estate cases where the representative has violated a fiduciary duty.

Section 7 would eliminate the requirement that magistrates must reside in the county for which they are appointed.

Section 8 would authorize a clerk to release funds held under a claim of lien on real property or a corporate security bond when the clerk receives a written agreement of the parties, a final judgment of a court of competent jurisdiction, or a consent order.

Section 9 would provide that the term of office for the clerk of superior court runs for 4 years from the first day in December after the election, rather than the first Monday in December.

Section 10 would amend the statute allowing the court to waive the mandatory setting of a contested custody or visitation case for mediation upon motion of showing and good cause, to permit, rather than require, the court to consider a showing that either party lives more than 50 miles from the court as good cause.

Section 11 would provide that certification and renewal fees collected by the Dispute Resolution Commission are nonreverting and may be used only at the direction of the Commission.

EFFECTIVE DATE: This act becomes effective July 1, 2011.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6/7/11

S. B. No. 580 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ~~Ø~~

Rep.)
Sen.) Stevens

moves to amend the bill on page 5, line s 23 - 40

( ) WHICH CHANGES THE TITLE

by deleting those lines and renumbering the remaining bill sections accordingly;

and on page 1, lines 8-11 by rewriting those lines to read:

"OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE COURTS, TO ELIMINATE THE NECESSITY OF".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6/7/11

S. B. No. 580 Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Clodfelter

moves to amend the bill on page 1, lines 3-4

( ) WHICH CHANGES THE TITLE

by rewriting those lines to read:

"DISMISSED WITH LEAVE IF THOSE CASES ARE WAIVABLE, TO";

and on page 1, line 32 through page 2, line 17 by deleting those lines;

and renumbering the bill sections accordingly.

SIGNED Samuel R. Clodfelter

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6/7/11

S. B. No. 580 Amendment No. 3
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Pate
Sen.)

moves to amend the bill on page 1, lines 13-14

( ) WHICH CHANGES THE TITLE

by rewriting those lines to read:

"TO CLARIFY WHEN A";

and on page 6, line 16 by deleting that line;

and renumbering the bill sections accordingly.

SIGNED Louis M Pate, Jr.

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 324:
ABC Law/Eastern Band of Cherokee Indians

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 7, 2011
Introduced by:	Sens. Apodaca, Davis	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition S324-CSRN-22		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 324 would authorize the Eastern Band of Cherokee Indians to receive shipments of spirituous liquor from the North Carolina ABC Commission and would authorize the Eastern Band of Cherokee Indians to establish a tribal ABC Commission to regulate the purchase, consumption, sale, and delivery of alcoholic beverages at retail. The Proposed Committee Substitute makes the following changes: (1) provides that when the Eastern Band of Cherokees adopts by ordinance the provisions made applicable to the tribe, the ordinance must be approved by the U.S. Secretary of the Interior and published in the Federal Register, (2) requires the Eastern Band of Cherokees to hold tribal elections for malt beverages, unfortified wine, ABC store, and mixed beverages, (3) specifies a number of provisions of Chapter 18B with which the Eastern Band of Cherokees must comply, (4) provides that the tribal commission must adopt the NC ABC Commission rules regulating retail activity, and (5) provides that the tribal ABC Commission must not discriminate against non-Indians in the application of tribal ABC law.***

CURRENT LAW: Chapter 18B of the North Carolina General Statutes governs the regulation of alcoholic beverages. Federal law addresses the application of Indian liquor laws. Generally, the provisions related to Indian liquor laws do not apply if (1) an area is not Indian country or (2) is in an area that is Indian country if the act conforms with both the laws of the State in which the act occurs and with an ordinance adopted by the tribe having jurisdiction over the area of Indian country.

BILL ANALYSIS:

Section 1 prohibits any person from having malt beverages or unfortified wine shipped directly from a point outside this State to the Eastern Band of Cherokee Indians for resale on Indian Country lands in the State if those alcoholic beverages are for resale.

Section 2 provides that the ABC Commission has the authority to provide for the distribution of spirituous liquor to the Eastern Band of Cherokee Indians for resale on Indian County lands within the State and under the jurisdiction of the Eastern Band of Cherokee Indians.

Section 3 creates a new section that does all of the following:

- Provides that the Eastern Band of Cherokee Indians are exempt from Chapter 18B, except for those provisions made applicable under the new G.S. 18B-112.
- Requires the Eastern Band of Cherokees to adopt by ordinance the provisions made applicable to the tribe by G.S. 18B-112. The ordinance will be approved by the Secretary of the Interior and published in the Federal Register.
- Requires the Eastern Band of Cherokees to hold lawful tribal elections (for malt beverages, unfortified wine, ABC store, and mixed beverage). If the election authorizes the activity for which a vote was held, the activity will be deemed authorized.
- Provides that the tribal ABC commission will have the same powers and authority the NC ABC Commission by any section of this Chapter made applicable by the tribe.

- Provides that the Eastern Band of Cherokee Indians must comply with the following provisions of Chapter 18 to the extent they apply or can be made applicable to the tribe:
    - Various definitions set forth in 18B-101.
    - Prohibitions on direct shipments of alcoholic beverages from an out-of-state retail or wholesale dealer (G.S. 18B-102.1).
    - Administrative penalties in 18B-104.
    - Rules on advertising in 18B-105, except that the advertising provisions do not apply to an establishment where gaming is allowed under a state compact under federal law.
    - Prohibitions on having malt beverages or unfortified wine shipped from outside the State to an armed services installation within the State for resale on the installation (18B-109(b).
    - Provisions allowing the governor to close ABC stores or order cessation of sales or bottling of alcoholic beverages during a "state of emergency." (18B-110).
    - Provisions prohibiting the possession, transport, or sale of nontaxpaid alcoholic beverages. (18B-111).
    - Article 1A- Compensation for Injury Caused by Sales to Underage Persons- to the extent it applies to retail establishments or the tribal alcoholic beverage control commission if it operates ABC stores, or any other permitted establishment.
    - Article 3- Sale, Possession, and Consumption, except for G.S. 18B-308 (Sale and Consumption at Bingo Games) and 18B-309 (Alcoholic Beverage Sales in Urban Redevelopment Areas).
    - Article 4-Transportation.
    - Article 5- Enforcement, except for 18B-500 (Alcohol law-enforcement agents) and 18B-501 (Local ABC Officers).
    - Article 9-Issuance of Permits, except for provisions requiring that collected fees go the General Fund (18B-902(g)), provisions requiring a recycling plan (18B-902(h)), and provisions dealing with the applicability of the Administrative Procedure Act (18B-906).
    - Article 10- Retail Activity, except 18B-1000.1 (Authorization of Wine Shipper Permit), 18B-1001.2 (Additional Wine Shipping Requirements), and 18B-1001.3 (Authorization of Wine Shipper Packager Permit).
- Provides that any provision of Chapter 18 that has not been made applicable to the Eastern Band of Cherokee Indians under newly-enacted 18B-112 will act as a bar to engaging in any activity authorized by that provision.
- **Alcoholic Beverages which may be sold-** Provides that no alcoholic beverage may be sold on Indian Country lands which has not been approved by the North Carolina ABC Commission.
- **Establishment of a Tribal Commission-** Authorizes the Eastern Band of Cherokee Indians to establish a tribal alcoholic beverage control commission to regulate the purchase, possession, sale, and delivery of alcoholic beverages at retail on land designated as Indian Country.
    - **Permits-** Gives the tribal commission the exclusive authority to issue permits at retail establishments located on Indian Country lands.

- Provides that the fees generated by the issuance of retail permits may be retained by the Eastern Band of Cherokee Indians to offset the costs of operating the tribal alcoholic beverage control commission.

- **Establishment of Rules-** Provides that the tribal ABC commission must adopt rules of the NC ABC Commission which regulate retail outlet activity.
- **Authority of NC ABC Commission-** Provides that the NC ABC Commission may enter into agreements with the tribal commission to commission to provide for the sale, delivery, and distribution of spirituous liquor to the tribal alcoholic beverage control commission. The tribal ABC commission must purchase spirituous liquor for resale exclusively from the NC ABC Commission at the same price and same basis as local boards. If there is a conflict between the NC ABC Commission's authority or purpose and the tribal commission's authority or purpose, the ABC Commission's authority or purpose prevails.
- **Discrimination-** Provides that the tribal alcoholic beverage control commission shall not discriminate against non-Indians in the application of the Tribal ABC law. Non-Indians shall be entitled to apply for and receive ABC permits in the same manner as an Indian on Indian Country lands.
- **Contested Cases-** Provides that if the tribal alcoholic beverage control commission levies a fine, or suspends or revokes a permit for a violation of the provisions applicable to the Eastern Band of Cherokee Indians, the permittee will have the right to appeal an agency final decision of the tribal commission to the tribal courts. Any further appeal shall be to the appellate courts of the tribe.
    - All fines paid to the tribal commission may be retained by the Eastern Band of Cherokee Indians to offset costs of operating the tribal alcoholic beverage control commission.
- **Failure to Comply With State Law**. –Provides that if the Eastern Band of Cherokee Indians fails to adopt the provisions of this Chapter fails to amend tribal ordinances to comply with amendments to the provisions of this Chapter, within six months of passage of such amendments, then the North Carolina ABC Commission may terminate and prohibit future delivery of any alcoholic beverages from any person to the tribal alcoholic beverage control commission until the Eastern Band of Cherokee Indians complies.
- **Conflict of Laws-** Provides that if any provision of this section conflicts with federal law, then the federal law prevails unless compliance with the federal law abrogates a right reserved to the State under the U.S. Constitution.

EFFECTIVE DATE: The act is effective when it becomes law.

S324-SMRN-60(CSRN-22) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 712
PROPOSED COMMITTEE SUBSTITUTE S712-CSST-26 [v.3]

6/6/2011 8:56:57 PM

Short Title: Adjust Quarterly Reporting. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO ADJUST THE CALENDAR PERIODS COVERED BY QUARTERLY REPORTS OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.9(a)(5a) reads as rewritten:

"(5a) Quarterly Reports. – During even-numbered years during which there is an election for that candidate or in which the campaign committee is supporting or opposing a candidate, the treasurer shall file a report by mailing or otherwise delivering it to the Board no later than seven working days after the end of each calendar quarter covering the prior calendar quarter, except that:

a. The report for the first quarter shall also cover the period in April through the seventeenth day before the primary, the first quarter report shall be due seven days after that date, and the second quarter report shall not include that period if a first quarter report was required to be ~~filed; and~~filed.

b. The report for the third quarter shall also cover the period in October through the seventeenth day before the election, the third quarter report shall be due seven days after that date, and the fourth quarter report shall not include that period if a third quarter report was required to be filed.

c. The report for the fourth quarter shall also cover the period through the last day in January after the election, the fourth quarter report shall be due fourteen days after that date, and the next required report shall not cover that period if a fourth quarter report was required to be filed."

SECTION 2. This act becomes effective October 1, 2012, and applies to reports covering calendar periods occurring after that date.

SENATE BILL 712:
Adjust Quarterly Reporting

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 3, 2011
Introduced by:	Sens. Nesbitt, Brown	**Prepared by:**	R. Erika Churchill
Analysis of:	PCS to First Edition S712-CSST-26		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 712 would change the calendar period for fourth quarter campaign finance reports of candidates, political committees, electioneering communications and independent expenditures.***

CURRENT LAW: Current law requires certain reports to be filed at certain times with respect to campaign finance. The same reporting schedule applies to:

- Political committees – candidates included
- Political parties
- Independent expenditures
- Electioneering communications

The following reports are to be filed at the time stated:

- Organizational Report – within 10 days following organization.
- 48 Hour Report – within 48 hours of receipt of a contribution or transfer of $1,000 or more before an election but after the period covered by the last report due before the election.
- Quarterly Reports – in even-numbered years, within 7 working days after the end of the calendar quarter for that quarter, except that:
  - In the 1st quarter, the report shall include the period in April through the 17th day before the primary and the 2nd quarter report shall not include that period.
  - In the 3rd quarter, the report shall include the period in October through the 17th day before the election, and the 4th quarter report shall not include that period.
- Semi-annual reports – in any time period not already covered, if contributions are received or expenditures are made, then a report is due on the last day of July for the period January 1 – June 30, and on the last day of January for July 1 – December 31.

BILL ANALYSIS: The proposed committee substitute would amend the provision requiring quarterly reports to provide that in the 4th quarter, the report shall include the January following the election, the next required report shall not include that period, and the 4th quarter report is due within 14 days after the close of period.

EFFECTIVE: October 1, 2012 and applies to reports covering dates after that.

S712-SMST-51(CSST-26) v3

PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027

DATE: 6-7- **TIME:** 9 am

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Addie Griffin	Louisburg	D. Berger
2 Lizzy Sirkin	New Bern	Preston
3 Blythe Layne	Cary	R. Stevens
4 Hannah Lee Leidy	Elizabeth City	White
5 Tucker Loflin	Greensboro	D. Vaughan
6		
7		
8		
9		
10		

Do not add names below the grid.

VISITOR REGISTRATION SHEET

~~State and Local Government~~ J. 1 ~~03-15-2011~~ 6-7-11

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Morack	Progress Group
Bob Blankenship	Cherokee
Fred Gregory	AIC
Mustelle Heavy	Smith Anderson
Jake Cashion	NC Chamber
Hunt Harris	NMSS
Lori Anne Harris	LAHM
Allison Waller	Nelson Mullins
W. Dawson Cole	DLC & HSOC
Matt Twiford	Democracy NC
Ben Miles, JR	McLeansville, NC
Hernan Huertas	N.C.B.A.
Chip Killian	Nelson Mullins

VISITOR REGISTRATION SHEET

~~State and Local Government~~ J.1 ~~03-15-2011~~ 6-7-11

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Pam Stone	NCSEA
David Huskins	Charlotte ABC Comm.
Rev. Mark Creech	CAL
JAIME King	NCTL
Andrew Cagle	NC Sheriffs Assn.
Tom Bennett	NCVAN
Michelle Frazier	MFTS
Emily Gunn	MWC
Robert LeHeup	Sen. McKissick
Bob Phillips	CCNC
Heather Barrett	Williams Mullen

VISITOR REGISTRATION SHEET

House and Senate Finance Committee J.T Feb. 3, 2011 ~~6-7-11~~

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Mike Watts	NCRPA
Johnny Loper	Womble Carlyle Attys
Jo Kooi	CAS
Angel Sams	NSS
Alan Eamon	NMSS NC
Johnnie McLean	SBE
Gary Bartlett	SBE
Chuck Stone	SEANC
PAIGE WORSHAM	LEGISLATIVE REPORTING SERVICE
Tammy Smith	AOC
STEVE KEENE	NC Med Soc

VISITOR REGISTRATION SHEET

~~House and Senate Finance Committee~~ J-I Feb. 3, 2011 6-7-11

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
KRIS GARDNER	BEER & WINE WHOLESALERS ASSOC.
TIM KENT	NC Beer & Wine Wholesalers Assn.
Elizabeth Robinson	NCRLA
Andy Ellen	NCRLA
Jessi Harris	NCHBA
Amanda Martin-Kramer	Office of the Gov.
John W Smith	AOC
Mildred Spearman	AOC
ALLAN HEAD	NC Bar Assoc.
ZACH ORTH	NCICL
NICK LIVENGOOD	NCICL

VISITOR REGISTRATION SHEET

~~House and Senate Finance Committee~~ JI ~~Feb. 3, 2011~~ 6-7-11

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Lincicome	NCICL
Kristin Szafranski	JLF
Jonathan Martin	JLF
Krista Anderson	NCDP
DAVID RICE	MANNING FULTON
J BUSSIAN	NC Press Assn
Gregg Stahl	NC AOC
Lorrin FREEMAN	Wake CSC
	Civitas
	NCAJ

SENATE JUDICIARY I COMMITTEE
June 7, 2011 at 4:00 PM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 4:00 PM on June 7, 2011, in Room 1027 of the Legislative Building. Fourteen members of the committee were present. Senator Pete Brunstetter presided.

Senator Brunstetter called the meeting to order at 4:17 p.m.

Senate Bill 456
Senator Brunstetter recapped the previous discussion
Senator Tillman moves to accept the bill, unfavorable as to the bill, favorable as to the PCS
Motion carries

Senate Bill 47
Senator Nesbitt moves to amend the bill
Senator Apodaca moves to roll the amendment into a new PCS, unfavorable as to original bill, favorable as to PCS

Senate Bill 580
Senator Apodaca moves to adopt the PCS for purposes of discussion
Senator Hartsell is recognized to explain the PCS
Suzan Sitze is recognized to explain the PCS
Senator Nesbitt was recognized to ask a question, and Senator Hartsell answered
Judge Smith from AOC was recognized to answer the question
Senator Pate moves to amend the bill
Senator Hartsell is recognized to make comments
Susan Sitze is recognized for clarification
Senator Nesbitt made comments
Motion fails
Senator Apodaca moves for a favorable report, unfavorable as to bill, favorable as to PCS

Meeting adjourned at 4:34 p.m.

Peter Brunstetter, Presiding

Sarah Hardin, Committee Clerk

Senate Judiciary I Committee
Tuesday, June 7, 2011, 4:30 PM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 47	Restore Partisan Judicial Elections.	Senator Tillman
SB 456	Candidate List Party or Unaffiliated Status.	Senator Goolsby
SB 580	AOC Omnibus Courts Act.	Senator Hartsell

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 456
Corrected Copy 3/31/11
PROPOSED COMMITTEE SUBSTITUTE S456-CSST-47 [v.1]

6/3/2011 10:24:32 PM

Short Title: Candidate List Party or Unaffiliated Status. (Public)

Sponsors:

Referred to:

March 30, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW A CANDIDATE TO LIST PARTY AFFILIATION OR UNAFFILIATED STATUS ON THE BALLOT IN ALL ELECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 115C-37(a) reads as rewritten:

"(a) Method of Election. – The county boards of education shall be elected on a nonpartisan basis at the time of the primary election in 1970 and biennially thereafter. ~~The~~ Unless a candidate in the notice of candidacy under G.S. 163-106 chooses to list the political party recognized under Article 9 of Chapter 163 of the General Statutes that the candidate is affiliated with, the names of the candidates shall be printed on the ballots without reference to any party affiliation and any qualified voter residing in the county shall be entitled to vote such ballots. A candidate not affiliated with a political party may also list that status on the ballot by so providing in the notice of candidacy under G.S. 163-106. Except as otherwise provided herein, the election shall be conducted according to the provisions of Chapter 163 of the General Statutes then governing primary elections."

SECTION 1.(b) Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-37.2. Nonpartisan elections under local act.**

Whenever a local act or plan of consolidation and merger provides that an election for a county or city or merged board of education is to be elected on a nonpartisan basis, unless a candidate in the notice of candidacy provided by law chooses to list the political party recognized under Article 9 of Chapter 163 of the General Statutes with which the candidate is affiliated, the names of the candidates shall be printed on the ballots without reference to any party affiliation. A candidate not affiliated with a political party may also list that status on the ballot by so providing in the notice of candidacy provided by law."

SECTION 2. G.S. 130A-50(c) reads as rewritten:

"(c) The election shall be nonpartisan and decided by simple plurality as provided in G.S. 163-292 and shall be held and conducted by the county board of elections in accordance with the applicable provisions of Articles 23 and 24 of Chapter 163 of the General Statutes. Unless a candidate in the notice of candidacy under this section chooses to list the political party recognized under Article 9 of this Chapter with which the candidate is affiliated, the names of the candidates shall be printed on the ballots without reference to any party affiliation.

A candidate not affiliated with a political party may also list that status on the ballot by so providing in the notice of candidacy under this section. If the district is in more than one county, then the county board of elections of the county including the largest part of the district shall conduct the election for the entire district with the assistance and full cooperation of the boards of elections in the other counties."

SECTION 3. G.S. 163-165.5 reads as rewritten:

"**§ 163-165.5. Contents of official ballots.**

Each official ballot shall contain all the following elements:

(1) The heading prescribed by the State Board of Elections. The heading shall include the term "Official Ballot".

(2) The title of each office to be voted on and the number of seats to be filled in each ballot item.

(3) The names of the candidates as they appear on their notice of candidacy filed pursuant to G.S. 163-106 or G.S. 163-323, or on petition forms filed in accordance with G.S. 163-122. No title, appendage, or appellation indicating rank, status, or position shall be printed on the official ballot in connection with the candidate's name. Candidates, however, may use the title Mr., Mrs., Miss, or Ms. Nicknames shall be permitted on an official ballot if used in the notice of candidacy or qualifying petition, but the nickname shall appear according to standards adopted by the State Board of Elections. Those standards shall allow the presentation of legitimate nicknames in ways that do not mislead the voter or unduly advertise the candidacy. In the case of candidates for presidential elector, the official ballot shall not contain the names of the candidates for elector but instead shall contain the nominees for President and Vice President which the candidates for elector represent. The State Board of Elections shall establish a review procedure that local boards of elections shall follow to ensure that candidates' names appear on the official ballot in accordance with this subdivision.

(4) Party designations in partisan ballot ~~items.~~items and in non-partisan ballot items as requested by the candidate.

(5) A means by which the voter may cast write-in votes, as provided in G.S. 163-123. No space for write-ins is required unless a write-in candidate has qualified under G.S. 163-123 or unless the ballot item is exempt from G.S. 163-123.

(6) Instructions to voters, unless the State Board of Elections allows instructions to be placed elsewhere than on the official ballot.

(7) The printed title and facsimile signature of the chair of the county board of elections."

SECTION 4. G.S. 163-165.6(e) reads as rewritten:

"(e) Straight-Party Voting. – Each official ballot shall be arranged so that the voter may cast one vote for a party's nominees for all offices except President and Vice President. A vote for President and Vice President shall be cast separately from a straight-party vote. The official ballot shall be prepared so that a voter may cast a straight-party vote, but then make an exception to that straight-party vote by voting for a candidate not nominated by that party or by voting for fewer than all the candidates nominated by that party. The official ballot shall clearly indicate that non-partisan races with party designations are not included in the straight-party vote. Instructions for general election ballots shall clearly advise voters of the rules in this subsection and of the statutes providing for the counting of ballots."

SECTION 5. G.S. 163-323 is amended by adding a new subsection to read:

"(h) Unless a candidate in the notice of candidacy under this section chooses to list the political party recognized under Article 9 of this Chapter with which the candidate is affiliated, the names of the candidates shall be printed on the ballots without reference to any party affiliation. A candidate not affiliated with a political party may also list that status on the ballot by so providing in the notice of candidacy under this section."

SECTION 6. G.S. 163-294.2 is amended by adding a new subsection to read:

"(g) Unless a candidate in the notice of candidacy under this section chooses to list the political party recognized under Article 9 of this Chapter with which the candidate is affiliated, the names of the candidates shall be printed on the ballots without reference to any party affiliation. A candidate not affiliated with a political party may also list that status on the ballot by so providing in the notice of candidacy under this section."

SECTION 7. G.S. 139-6 reads as rewritten:

"**§ 139-6. District board of supervisors – elective members; certain duties.**

(a) After the issuance of the certificate of organization of the soil and water conservation district by the Secretary of State, an election shall be held in each county of the district to elect the members of the soil and water conservation district board of supervisors as herein provided.

(b) The district board of supervisors shall consist of three elective members to be elected in each county of the district, and that number of appointive members as provided in G.S. 139-7. Upon the creation of a district, the first election of the members shall be held at the next succeeding election for county officers.

All elections for members of the district board of supervisors shall be held at the same time as the regular election for county officers beginning in November 1974. The election shall be nonpartisan and no primary election shall be held. The election shall be held and conducted by the county board of elections.

Candidates shall file their notice of candidacy on forms prescribed by the county board of elections. The notice of candidacy must be filed no earlier than noon on the second Monday in June and no later than noon on the first Friday in July preceding the election. The candidate shall pay a filing fee of five dollars ($5.00) at the time of filing the notice of candidacy.

Unless a candidate in the notice of candidacy under this section chooses to list the political party recognized under Article 9 of Chapter 163 of the General Statutes with which the candidate is affiliated, the names of the candidates shall be printed on the ballots without reference to any party affiliation. A candidate not affiliated with a political party may also list that status on the ballot by so providing in the notice of candidacy under this section.

(c) Beginning with the election to be held in November 1974, the two candidates receiving the highest number of votes shall be elected for a term of four years, and the candidate receiving the next highest number of votes shall be elected for a term of two years; thereafter, as their terms expire, their successors shall be elected for terms of four years. If the position of district supervisor is not filled by failure to elect, then the office shall be deemed vacant upon the expiration of the term of the incumbent, and the office shall be filled as provided in G.S. 139-7.

The persons elected in 1974 and thereafter shall take office on the first Monday in December following their election.

The terms of the present members of the soil and water conservation districts, both elective and appointive members, are hereby extended to or terminated on the first Monday in December 1974.

All qualified voters of the district shall be eligible to vote in the election. Except as provided in this Chapter, the election shall be held in accordance with the applicable provisions of Articles 23 and 24 of Chapter 163 of the General Statutes.

(d) The district board of supervisors, after the appointment of the appointive members has been made, shall select from its members a chairman, a vice-chairman and a secretary. It shall be the duty of the district board of supervisors to perform those powers, duties, and authority conferred upon supervisors under this Chapter; to develop annual county and district goals and plans for soil conservation work therein; to request agencies, whose duties are such as to render assistance in soil and water conservation, to set forth in writing what assistance they may have available in the county and district."

SECTION 8. This act is effective with respect to elections conducted on or after January 1, 2012.

SENATE BILL 456:
Candidate List Party or Unaffiliated Status

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 3, 2011
Introduced by:	Sen. Goolsby	**Prepared by:**	R. Erika Churchill Committee Counsel
Analysis of:	PCS to Second Edition S456-CSST-47		

SUMMARY: ***The proposed committee substitute for Senate Bill 456 would allow candidates running in non-partisan races for appellate judge, superior or district court judge, local school board, municipal council, sanitary boards, and soil and water conservation districts to have that candidate's party affiliation printed on the ballot.***

CURRENT LAW: Non-partisan elections are conducted for the following offices, without the party affiliation of any candidate being listed on the ballot for that office:

- Appellate judge
- Superior court judge
- District court judge
- Local school board, with some exceptions
- Municipal elections, with some exceptions
- Sanitary boards established under Chapter 130A of the General Statutes
- Soil and Water Conservation boards established under Chapter 139 of the General Statutes

BILL ANALYSIS: For all of the elections listed above, the proposed committee substitute would allow a candidate for a non-partisan election to request that candidate's party affiliation be printed on the ballot.

The proposed committee substitute makes conforming changes to allow for the printing of party affiliation in non-partisan races.

EFFECTIVE DATE: The act is effective for elections occurring on or after January 1, 2012, but may not be implemented until the session law has received 'preclearance' approval under Section 5 of the Voting Rights of 1965.

S456-SMST-53(CSST-47) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 47
PROPOSED HOUSE COMMITTEE SUBSTITUTE S47-CSST-50 [v.1]

6/6/2011 6:30:04 PM

Short Title: Restore Partisan Judicial Elections. (Public)

Sponsors:

Referred to:

February 9, 2011

A BILL TO BE ENTITLED

AN ACT TO RESTORE JUDICIAL ELECTIONS TO A PARTISAN BASIS.

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter X (Article 25) of Chapter 163 of the General Statutes is repealed.

SECTION 2. G.S. 163-106(c) reads as rewritten:

"(c) Time for Filing Notice of Candidacy. – Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

Governor
Lieutenant Governor
All State executive officers
Justices of the Supreme Court, Judges of the Court of Appeals
Judges of the superior courts
Judges of the district courts
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

State Senators
Members of the State House of Representatives
All county offices."

SECTION 3. G.S. 163-106(d) reads as rewritten:

"(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any primary in which there are two or more vacancies for associate justices for the Supreme Court, two or more vacancies for the Court of Appeals, two or more vacancies for district court judge, or two vacancies for United States Senator from North Carolina, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which ~~he~~ that candidate seeks nomination. Votes cast for a candidate shall be

effective only for ~~his~~ nomination to the vacancy for which ~~he~~ that candidate has given notice of candidacy as provided in this subsection."

SECTION 4. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which ~~he~~ that candidate files under the provisions of G.S. 163-106 a filing fee for the office ~~he seeks~~ sought in the amount specified in the following tabulation:

Office Sought	**Amount of Filing Fee**
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All Justices, Judges, and District Attorneys of the General Court of Justice	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)

The salary of any office that is the basis for calculating the filing fee is the starting salary for the office, rather than the salary received by the incumbent, if different. If no starting salary can be determined for the office, then the salary used for calculation is the salary of the incumbent, as of January 1 of the election year."

SECTION 5. G.S. 163-107.1(c) reads as rewritten:

"(c) County, Municipal and District Primaries. – If the candidate is seeking one of the offices set forth in G.S. 163-106(c) but which is not listed in subsection (b) of this section, or a municipal or any other office requiring a partisan primary which is not set forth in G.S. 163-106(c) or (d), ~~he~~ the candidate shall file a written petition with the appropriate board of elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for, who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 200 registered voters regardless of said voter's political party affiliation, whichever requirement is greater. The board of elections shall verify the names on the petition, and if the petition is found to be sufficient, the candidate's name shall be printed on the appropriate primary ballot. Petitions for candidates for member of the U.S. House of Representatives, District Attorney, judge of the superior court, judge of the district court, and members of the State House of Representatives from multi-county districts or members of the State Senate from multi-county districts must be presented to the county board of elections for

verification at least 15 days before the petition is due to be filed with the State Board of Elections, and such petition must be filed with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms."

SECTION 6. G.S. 163-111(c)(1) reads as rewritten:

"(c) Procedure for Requesting Second Primary. –

(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing with the Executive Director of the State Board of Elections no later than 12:00 noon on the ninth day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
Justices, Judges, or District Attorneys of the General Court of Justice,
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and
Members of the State House of Representatives in multi-county representative districts."

SECTION 7. G.S. 163-114 reads as rewritten:

"**§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.**

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	
President Vice President	Vacancy is to be filled by appointment of national executive committee of political party in which vacancy occurs
Presidential elector or alternate elector Any elective State office United States Senator	Vacancy is to be filled by appointment of State executive committee of political party in which vacancy occurs
A district office, including: Member of the United States House of Representatives Judge of district court	Appropriate district executive committee of political party in which vacancy occurs

District Attorney State Senator in a multi-county senatorial district Member of State House of Representatives in a multi-county representative district	
State Senator in a single-county senatorial district Member of State House of Representatives in a single-county representative district Any elective county office	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote
Judge of superior court in a single-county judicial district where the district is the whole county or part of the county	County executive committee of political party in which vacancy occurs; provided, in the case of a superior court judge in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote
Judge of superior court in a multi-county judicial district	Appropriate district executive committee of political party in which vacancy occurs.

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, that has jurisdiction over the ballot item under G.S. 163-182.4. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S.163-165.3(c) shall apply. If a vacancy occurs in a nomination of a political party and that vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county which is partly in a multi-county judicial district, in choosing that county's member or members of the judicial district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county,

only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to be nominated to fill a vacancy in the nomination of another party for the same office in the same year."

SECTION 8. G.S. 138A-22(d) reads as rewritten:

"(d) A candidate for an office subject to this Article shall file the statement of economic interest at the same place and in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106 ~~or G.S. 163-323~~ within 10 days of the filing deadline for the office the candidate seeks. An individual who is nominated under G.S. 163-114 after the primary and before the general election, and an individual who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. An individual nominated under G.S. 163-114 shall file the statement within three days following the individual's nomination, or not later than the day preceding the general election, whichever occurs first. An individual seeking to qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. An individual seeking to have write-in votes counted for that individual in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98."

SECTION 9. G.S. 163-22.3 reads as rewritten:

"**§ 163-22.3. State Board of Elections littering notification.**

At the time an individual files with the State Board of Elections a notice of candidacy pursuant to G.S. 163-106, 163-112, 163-291, ~~163-294.2, or 163-323,~~ or 163-294.2, is certified to the State Board of Elections by a political party executive committee to fill a nomination vacancy pursuant to G.S. 163-114, is certified to the State Board of Elections by a new political party as that party's nominee pursuant to G.S. 163-98, qualifies with the State Board of Elections as an unaffiliated or write-in candidate pursuant to Article 11 of this Chapter, or formally initiates a candidacy with the State Board of Elections pursuant to any statute or local act, the State Board of Elections shall notify the candidate of the provisions concerning campaign signs in G.S. 136-32 and G.S. 14-156, and the rules adopted by the Department of Transportation pursuant to G.S. 136-18."

SECTION 10. G.S. 163-82.10B reads as rewritten:

"**§ 163-82.10B. Confidentiality of date of birth.**

Boards of elections shall keep confidential the date of birth of every voter-registration applicant and registered voter, except in the following situations:

(1) When a voter has filed notice of candidacy for elective office under G.S. 163-106, 163-122, 163-123, or 163-294.2, ~~or 163-323,~~ has been nominated as a candidate under G.S. 163-98 or G.S. 163-114, or has otherwise formally become a candidate for elective office. The exception of this subdivision does not extend to an individual who meets the definition of "candidate" only by beginning a tentative candidacy by receiving funds or

making payments or giving consent to someone else to receive funds or transfer something of value for the purpose of exploring a candidacy.

(2) When a voter is serving in an elective office.

(3) When a voter has been challenged pursuant to Article 8 of this Chapter.

(4) When a voter-registration applicant or registered voter expressly authorizes in writing the disclosure of that individual's date of birth.

The disclosure of an individual's age does not constitute disclosure of date of birth in violation of this section.

The county board of elections shall give precinct officials access to a voter's date of birth where necessary for election administration, consistent with the duty to keep dates of birth confidential.

Disclosure of a date of birth in violation of this section shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of a date of birth in violation of this subsection as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable."

SECTION 11. G.S. 163-165.5(3) reads as rewritten:

"**§ 163-165.5. Contents of official ballots.**

Each official ballot shall contain all the following elements:

...

(3) The names of the candidates as they appear on their notice of candidacy filed pursuant to G.S. 163-106 ~~or G.S. 163-323,~~ or on petition forms filed in accordance with G.S. 163-122. No title, appendage, or appellation indicating rank, status, or position shall be printed on the official ballot in connection with the candidate's name. Candidates, however, may use the title Mr., Mrs., Miss, or Ms. Nicknames shall be permitted on an official ballot if used in the notice of candidacy or qualifying petition, but the nickname shall appear according to standards adopted by the State Board of Elections. Those standards shall allow the presentation of legitimate nicknames in ways that do not mislead the voter or unduly advertise the candidacy. In the case of candidates for presidential elector, the official ballot shall not contain the names of the candidates for elector but instead shall contain the nominees for President and Vice President which the candidates for elector represent. The State Board of Elections shall establish a review procedure that local boards of elections shall follow to ensure that candidates' names appear on the official ballot in accordance with this subdivision.

...."

SECTION 12. G.S. 163-278.100(1) reads as rewritten:

"**§ 163-278.100. Definitions.**

As used in this Article, the following terms have the following definitions:

(1) The term "candidate-specific communication" means any broadcast, cable, or satellite communication that has all the following characteristics:

a. Refers to a clearly identified candidate for a statewide office or the General Assembly.

b. Is aired in an even-numbered year after the final date on which a Notice of Candidacy can be filed for the office, pursuant to ~~G.S. 163-106(c) or G.S. 163-323,~~ G.S. 163-106(c), and through the day on which the general election is conducted, excluding the time period set in the definition for "electioneering communication" in G.S. 163-278.80(2)b.

c. Is targeted to the relevant electorate.

...."

SECTION 13. G.S. 163-278.110(1) reads as rewritten:

"**§ 163-278.110. Definitions.**

As used in this Article, the following terms have the following definitions:

(1) The term "candidate-specific communication" means any mass mailing or telephone bank that has all the following characteristics:

a. Refers to a clearly identified candidate for a statewide office or the General Assembly.

b. Is transmitted in an even-numbered year after the final date on which a Notice of Candidacy can be filed for the office, pursuant to ~~G.S. 163-106(c) or G.S. 163-323,~~ G.S. 163-106(c), and through the day on which the general election is conducted, excluding the time period set in the definition for "electioneering communication" in G.S. 163-278.90(2)b.

c. Is targeted to the relevant electorate.

...."

SECTION 14. G.S. 163-1(b) reads as rewritten:

"(b) On Tuesday next after the first Monday in May preceding each general election to be held in November for the officers referred to in subsection (a) of this section, there shall be held in all election precincts within the territory for which the officers are to be elected a primary election for the purpose of nominating candidates for each political party in the State for those ~~offices, and nonpartisan candidates as to offices elected under the provisions of Article 25 of this Chapter.~~offices."

SECTION 15. G.S. 163-122(c) is repealed.

SECTION 16. G.S. 163-123(g) reads as rewritten:

"(g) Municipal and Nonpartisan Elections Excluded. – This section does not apply to municipal elections conducted under Subchapter IX of Chapter 163 of the General Statutes, and does not apply to nonpartisan elections.~~elections except for elections under Article 25 of this Chapter.~~"

SECTION 17. G.S. 163-278.64(c) reads as rewritten:

"(c) Certification of Candidates. – Upon receipt of a submittal of the record of demonstrated support by a participating candidate, the Board shall determine whether or not the candidate has complied with all the following requirements:

(1) Signed and filed a declaration of intent to participate in this Article.

(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.

(3) Filed a valid notice of candidacy pursuant to Article ~~25~~ 10 of this ~~Chapter.~~ Chapter, a valid petition or declaration of intent under Article 11 of this Chapter, or is nominated under G.S. 163-98.

(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of demonstrated support."

SECTION 18. G.S. 163-278.64A is repealed.

SECTION 19.(a) Notwithstanding Section 1 of this act, G.S. 163-329 reads as rewritten:

"**§ 163-329. Elections to fill vacancy in office created after primary filing period opens.**

(a) General. – If a vacancy is created in the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted without a primary using the method provided in subsection (b1) of this section. If a vacancy is created in the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163-322.

(b) Repealed by Session Laws 2006-192, s. 8(a), effective August 3, 2006, and applicable to vacancies occurring on or after that date.

(b1) Method for Vacancy Election. – If a vacancy for the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of the superior court occurs more than 60 days before the general election and after the opening of the filing period for the primary, then the State Board of Elections shall designate a special filing period of one week for candidates for the office. If more than two candidates file and qualify for the office in accordance with G.S. 163-323, then the Board shall conduct the election for the office as follows:

(1) When the vacancy described in this section occurs more than 63 days before the date of the second primary for members of the General Assembly, a special primary shall be held on the same day as the second primary. The two candidates with the most votes in the special primary shall have their names placed on the ballot for the general election held on the same day as the general election for members of the General Assembly.

(2) When the vacancy described in this section occurs less than 64 days before the date of the second primary, a general election for all the candidates shall be held on the same day as the general election for members of the General Assembly and the plurality method of determining the results shall be used, as follows:

a. When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected.

b. When more persons are seeking election to two or more offices as superior court judge (constituting a group) than there are offices to be filled, those candidates receiving the highest numbers of votes, equal in number to the number of offices to be filled, shall be declared elected.

~~"instant runoff voting" method shall be used to determine the winner. Under "instant runoff voting," voters rank up to three of the candidates by order of preference, first, second, or third. If the candidate with the greatest number of first choice votes receives more than fifty percent (50%) of the first choice votes, that candidate wins. If no candidate receives that minimum number, the two candidates with the greatest number of first choice votes advance to a second round of counting. In this round, each ballot counts as a vote for whichever of the two final candidates is ranked highest by the voter. The candidate with the most votes in the second round wins the election. If more than one seat is to be filled in the same race, the voter votes the same way as if one seat were to be filled. The counting is the same as when one seat is to be filled, with one or two rounds as needed,~~

~~except that counting is done separately for each seat to be filled. The first count results in the first winner. Then the second count proceeds without the name of the first winner. This process results in the second winner. For each additional seat to be filled, an additional count is done without the names of the candidates who have already won. In multi-seat contests, the State Board of Elections may give the voter more than three choices.~~

(3) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall resolve the tie in accordance with G.S. 163-182.8.

(c) Applicable Provisions. – Except as provided in this section, the provisions of this Article apply to elections conducted under this section.

(d) Rules. – The State Board of Elections shall adopt rules for the implementation of this section. The rules are not subject to Article 2A of Chapter 150B of the General Statutes. ~~The rules shall include the following:~~

~~(1) If after the first choice candidate is eliminated, a ballot does not indicate one of the uneliminated candidates as an alternative choice, the ballot is exhausted and shall not be counted after the initial round.~~

~~(2) The fact that the voter does not designate a second or third choice does not invalidate the voter's higher choice or choices.~~

~~(3) The fact that the voter gives more than one ranking to the same candidate shall not invalidate the vote. The highest ranking given a particular candidate shall count as long as the candidate is not eliminated.~~

~~(4) In case of a tie between candidates such that two or more candidates have an equal number of first choices and more than two candidates qualify for the second round, instant runoff voting shall be used to determine which two candidates shall advance to the second round.~~"

SECTION 19.(b) G.S. 163-329, as amended by this section, is recodified as G.S. 163-120.

SECTION 20. This act becomes effective with respect to primaries and elections held on or after January 1, 2012.

SENATE BILL 47:
Restore Partisan Judicial Elections

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 6, 2011
Introduced by:	Sen. Tillman	**Prepared by:**	R. Erika Churchill
Analysis of:	PCS to First Edition S47-CSST-50		Committee Counsel

SUMMARY: The proposed committee substitute for Senate Bill 47 would provide that elections of appellate court, superior court and district court judges be conducted in partisan manner.

[As introduced, this bill was identical to H64, as introduced by Reps. Sager, Dixon, Cleveland, Jones, which is currently in House Elections.]

CURRENT LAW: Prior to 1996, elections of judges in North Carolina were conducted in partisan manner. In 1996, the law governing the elections of superior court judges was amended to make those elections nonpartisan. In 2001, the law governing the elections of district court judges was amended to make those elections nonpartisan. In 2002, the law governing the elections of appellate court judges was amendment to make those elections nonpartisan, beginning with the 2004 elections. As a result, currently, all elections of appellate court, superior court and district court judges in North Carolina are conducted in a nonpartisan manner.

Appellate Court justices are elected statewide, and serve eight year terms. The Superior and District Court Divisions of the General Court of Justice consist of various district courts organized in territorial districts, with at least one district judge in each district. The General Assembly determines the number of judges for each district. Each judge must be a resident of the district to which he or she is elected. Superior Court judges serve eight-year terms, district court judges serve four-year terms. Vacancies in the offices are filled for the unexpired term by appointment of the Governor. from nominations submitted by the district bar. If elected from a district, nominees must be residents of the district who are licensed to practice law in the district and who are members of the same political party as the vacating judge.

The provisions for nonpartisan judicial races are set out in Article 25 of Chapter 163 of the General Statutes. Candidates run in nonpartisan primaries, held on the same day in May as the party primaries. The primaries reduce the field to twice the number to be elected, eliminating additional candidates. Then, the reduced field runs in the November general election. The system is patterned after the nonpartisan primary and elections used by some cities to elect their mayors and city councils. The nonpartisan primaries and elections are by district for superior and district court judges.

BILL ANALYSIS:

Section 1 would repeal Article 25 of Chapter 163 of the General Statutes, which sets out the process for conducting nonpartisan judicial races.

Sections 2-7 would amend various partisan election procedural statutes to include judicial candidates.

Sections 8-19 would make conforming changes necessary to implement the repeal of Article 25 of Chapter 163 of the General Statutes and repeal instant run-off voting method used to determine elections to fill certain judicial vacancies.

EFFECTIVE DATE: Effective January 1, 2012, but may not be implemented until the session law has received 'preclearance' approval under Section 5 of the Voting Rights of 1965.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 47

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

S47-AST-42 [v.2]

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

Date June 7 ,2011

Senator Tillman

moves to amend the bill on page 9, lines 28-29 by inserting the following between those lines:

"**SECTION 20.** G.S. 105-159.2(b) reads as rewritten:

"(b) Returns. – Individual income tax returns must give an individual an opportunity to agree to the allocation of three dollars ($3.00) of the individual's tax liability to the North Carolina Public Campaign Fund. The Department must make it clear to the taxpayer that the dollars ~~will support a nonpartisan court system, that the dollars~~ will go to the Fund if the taxpayer marks an agreement, and that allocation of the dollars neither increases nor decreases the individual's tax liability. The following statement must be used to meet this requirement: "Mark 'Yes' if you want to designate $3 of taxes to this special Fund for voter education materials and for candidates who accept spending limits. Marking 'Yes' does not change your tax or refund." The Department must consult with the State Board of Elections to ensure that the information given to taxpayers complies with the intent of this section.

The Department must inform the entities it approves to reproduce the return that they must comply with the requirements of this section and that a return may not reflect an agreement or objection unless the individual completing the return decided to agree or object after being presented with the statement required by subsection (b) of this section and, as available background information or instructions, the information required by subsection (c) of this section. No software package used in preparing North Carolina income tax returns may default to an agreement or objection. A paid preparer of tax returns may not mark an agreement or objection for a taxpayer without the taxpayer's consent.";

and renumbering the bill sections accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 47

AMENDMENT NO. 2
(to be filled in by Principal Clerk)

S47-AST-45 [v.1]

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

Date June 7 ,2011

Senator Nesbitt

moves to amend the bill on page 9, lines 28-29 by inserting the following between those lines:

"**SECTION 21.(a)** G.S. 84-34 reads as rewritten:

"**§ 84-34. Membership fees and list of members.**

Every active member of the North Carolina State Bar shall, prior to the first day of July of each year, pay to the secretary-treasurer an annual membership fee in an amount determined by the Council but not to exceed ~~three hundred dollars ($300.00), plus a surcharge of fifty dollars ($50.00) for the implementation of Article 22D of Chapter 163 of the General Statutes,~~ three hundred dollars ($300.00) and every member shall notify the secretary-treasurer of the member's correct mailing address. Any member who fails to pay the required dues by the last day of June of each year shall be subject to a late fee in an amount determined by the Council but not to exceed thirty dollars ($30.00). All dues for prior years shall be as were set forth in the General Statutes then in effect. The membership fee shall be regarded as a service charge for the maintenance of the several services authorized by this Article, and shall be in addition to all fees required in connection with admissions to practice, and in addition to all license taxes required by law. The fee shall not be prorated: Provided, that no fee shall be required of an attorney licensed after this Article shall have gone into effect until the first day of January of the calendar year following that in which the attorney was licensed; but this proviso shall not apply to attorneys from other states admitted on certificate. The fees shall be disbursed by the secretary-treasurer on the order of the Council. ~~The fifty-dollar ($50.00) surcharge shall be sent on a monthly schedule to the State Board of Elections.~~ The secretary-treasurer shall annually, at a time and in a law magazine or daily newspaper to be prescribed by the Council, publish an account of the financial transactions of the Council in a form to be prescribed by it. The secretary-treasurer shall compile and keep currently correct from the names and mailing addresses forwarded to the secretary-treasurer and from any other available sources of information a list of members of the North Carolina State Bar and furnish to the clerk of the superior court in each county, not later than the first day of October in each year, a list showing the name and address of each attorney for that county who has not complied with the provisions of this Article. The name of each of the active members who are in arrears in the payment of membership fees shall be furnished to the presiding judge at the next term of the superior court after the first day of October of each year, by the clerk of the superior court of each county wherein the member or members reside, and the court shall thereupon take action that is necessary and proper. The names and addresses of attorneys so certified shall be kept available

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 47

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

S47-AST-45 [v.1]

to the public. The Secretary of Revenue is hereby directed to supply the secretary-treasurer, from records of license tax payments, with any information for which the secretary-treasurer may call in order to enable the secretary-treasurer to comply with this requirement.

The list submitted to several clerks of the superior court shall also be submitted to the Council at its October meeting of each year and it shall take the action thereon that is necessary and proper."

SECTION 21.(b) G.S. 163-278.63(b)(7) is repealed.

SECTION 21.(c) Any unexpended funds from the tax on attorneys under G.S. 163-278.63(b)(7) and G.S. 84-34 shall be retained by the State Board of Elections for the North Carolina Public Campaign Fund.";

and renumbering the bill sections accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 580
PROPOSED COMMITTEE SUBSTITUTE S580-CSSA-58 [v.1]

6/7/2011 3:36:20 PM

Short Title: AOC Omnibus Courts Act. (Public)

Sponsors:

Referred to:

April 14, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR AUTOMATIC REINSTATEMENT OF CASES THAT WERE DISMISSED WITH LEAVE IF THOSE CASES ARE WAIVABLE, TO ALLOW FOR SERVICE OF CRIMINAL PROCESS BY A LAW ENFORCEMENT OFFICER BEFORE A MAGISTRATE EVEN WHEN THE OFFICER IS OUTSIDE THE OFFICER'S TERRITORIAL JURISDICTION, TO ADD TO THE STATUTORY DUTIES OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE COURTS, TO REPEAL THE REQUIREMENT THAT MAGISTRATES BE RESIDENTS OF THE COUNTY TO WHICH THEY ARE APPOINTED TO SERVE, TO CLARIFY WHEN A CLERK OF SUPERIOR COURT MAY RELEASE FUNDS HELD UNDER A CLAIM OF LIEN ON REAL PROPERTY, TO GRANT THE COURT THE DISCRETION TO FIND THAT DISTANCE FROM THE COURT IS GOOD CAUSE TO EXEMPT A PARTY FROM CUSTODY MEDIATION, AND TO PROVIDE THAT FEES COLLECTED BY THE DISPUTE RESOLUTION COMMISSION ARE NONREVERTING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-932 is amended by adding a new subsection to read:

"(d1) If the proceeding was dismissed pursuant to subdivision (2) of subsection (a) of this section and charged only offenses for which written appearance, waiver of trial or hearing, and plea of guilty or admission of responsibility are permitted pursuant to G.S. 7A-148(a), and the defendant later tenders to the court that waiver and payment in full of all applicable fines, costs, and fees, the clerk shall accept said waiver and payment without need for a written reinstatement from the prosecutor. Upon disposition of the case pursuant to this subsection, the clerk shall recall any outstanding criminal process in the case pursuant to G.S. 15A-301(g)(2)b."

SECTION 2.(a) G.S. 15A-301(c) reads as rewritten:

"(c) Service. –

(1) A ~~law enforcement~~ law enforcement officer or other employee designated as provided in subsection (b) receiving for service or execution a criminal process that was first created and exists only in paper form must note thereon the date and time of its receipt. A law enforcement officer receiving a copy of a criminal process that was printed in paper form as provided in G.S. 15A-301.1 shall cause the date of receipt to be recorded as provided in

that section. Upon execution or service, a copy of the process must be delivered to the person arrested or served.

(2) A corporation may be served with criminal summons as provided in G.S. 15A-773.

(3) Notwithstanding any other provision of law, a municipal law enforcement officer may serve criminal process in a building housing a court or office of the General Court of Justice or before any judicial official authorized to conduct an initial appearance if the officer otherwise has territorial jurisdiction to serve criminal process in a municipality located in that county. The officer may arrest the person named in the process as provided in G.S. 15A-402(b). A municipal law enforcement officer serving criminal process as provided in this subdivision shall be protected under subsection (f) of this section."

SECTION 2.(b) G.S. 15A-402(b) reads as rewritten:

"(b) Territorial Jurisdiction of County and City Officers. – ~~Law enforcement~~ Law enforcement officers of cities and counties may arrest persons within their particular cities or counties and on any property and rights-of-way owned by the city or county outside its limits. Law enforcement officers of cities serving criminal process as provided in G.S. 15A-301(c)(3) may arrest the person named in the process when required by the process."

SECTION 3.(a) G.S. 7A-343 reads as rewritten:

"**§ 7A-343. Duties of Director.**

The Director is the Administrative Officer of the Courts, and the Director's duties include all of the following:

(1) Collect and compile statistical data and other information on the judicial and financial operation of the courts and on the operation of other offices directly related to and serving the courts.

(2) Determine the state of the dockets and evaluate the practices and procedures of the courts, and make recommendations concerning the number of judges, district attorneys, and magistrates required for the efficient administration of justice.

(3) Prescribe uniform administrative and business methods, systems, forms and records to be used in the offices of the clerks of superior court.

(3a) Maintain and staff as necessary an Internal Audit Division of the Judicial Department and the Administrative Office of the Courts that:

a. Evaluates and discloses potential weaknesses in the effectiveness of internal controls in the court system for the purpose of safeguarding public funds and assets and minimizing incidences of fraud, waste, and abuse.

b. Examines and analyzes the design and effectiveness of administrative and procedural operations.

c. Ensures overall compliance with federal and State laws, internal and external regulations, rules and procedures, and other applicable requirements.

d. Inspects and reviews the effectiveness and efficiency of processes and proceedings conducted by judicial officers.

e. Collaborates with other divisions to guide, direct, and support court officials in efforts to conform to both recommended and required compliance standards.

f. Executes routine audits of the Judicial Department's systems and controls, including, but not limited to:

1. Accounting systems and controls.
2. Administrative systems and controls.
3. Electronic data processing systems and controls.

(4) Prepare and submit budget estimates of State appropriations necessary for the maintenance and operation of the Judicial Department, and authorize expenditures from funds appropriated for these purposes.

(5) Investigate, make recommendations concerning, and assist in the securing of adequate physical accommodations for the General Court of Justice.

(6) Procure, distribute, exchange, transfer, and assign such equipment, books, forms and supplies as are to be acquired with State funds for the General Court of Justice.

(7) Make recommendations for the improvement of the operations of the Judicial Department.

(8) Prepare and submit an annual report on the work of the Judicial Department to the Chief Justice, and transmit a copy to each member of the General Assembly. The annual report shall include the activities of each North Carolina Business Court site, including the number of new, closed, and pending cases, the average age of pending cases, and the annual expenditures for the prior fiscal year.

(9) Assist the Chief Justice in performing his duties relating to the transfer of district court judges for temporary or specialized duty.

(9a) Establish and operate systems and services that provide for electronic filing in the court system and further provide electronic transaction processing and access to court information systems pursuant to G.S. 7A-343.2.

(9b) Enter into contracts with one or more private vendors to provide for the payment of fines, fees, and costs due to the court by credit, charge, or debit cards; such contracts may provide for the assessment of a convenience or transaction fee by the vendor to cover the costs of providing this service.

(9c) Prescribe policies and procedures for the appointment and payment of foreign language interpreters in those cases specified in G.S. 7A-314(f). These policies and procedures shall be applied uniformly throughout the General Court of Justice. After consultation with the Joint Legislative Commission on Governmental Operations, the Director may also convert contractual foreign language interpreter positions to permanent State positions when the Director determines that it is more cost-effective to do so.

(9d) Analyze the use of contractual positions in the Judicial Department and, after consultation with the Joint Legislative Commission on Governmental Operations, convert contractual positions to permanent State positions when the Director determines it is in the best interests of the Judicial Department to do so.

(9e) Prescribe policies and procedures for the appointment and payment of deaf and hearing-impaired interpreters, in accordance with G.S. 8B-8(a), for those cases specified in G.S. 8B-8(b) and (c). These policies and procedures shall be applied uniformly throughout the General Court of Justice. After consultation with the Joint Legislative Commission on Governmental Operations, the Director may also convert contractual hearing-impaired interpreter positions to permanent State positions when the Director determines that it is more cost-effective to do so.

(9f) Prescribe policies and procedures for the payment of those experts acting on behalf of the court or prosecutorial offices, as provided for in G.S. 7A-314(d).

(10) Perform such additional duties and exercise such additional powers as may be prescribed by statute or assigned by the Chief Justice.

(11) Prescribe policies and procedures for the assignment and compensation of magistrates performing temporary duty outside their county of residence during an emergency, as provided for in G.S. 7A-146(9).

(12) Issue photographic identification cards to appropriate Judicial Department employees and officials authorizing those employees and officials to travel to and from, enter, and work in court and court-related locations for the conduct or support of essential court operations in preparation for, during, or in the aftermath of emergency situations, including, but not limited to, catastrophic conditions. Notwithstanding any other provision of the law, and notwithstanding any emergency restrictions on travel or closures that may have been issued due to the emergency situations, an identification card issued pursuant to this subdivision shall be honored by all State and local law enforcement, emergency and health officers, and other authorities to permit the person to whom the card was issued to travel to and from court and court-related locations and otherwise carry out the purposes authorized by this subdivision. An identification card issued pursuant to this subdivision shall set forth its effective date and the full name, position, and employing unit of the person to whom the card is issued, with a provision, signed by the person, stating that the person is credentialed solely for the purposes stated in this subdivision and that the card shall not be used for any other purpose.

(13) Prescribe policies and procedures and establish and operate systems for the exchange of criminal and civil information from and to the Judicial Department and local, State, and federal governments and the Eastern Band of Cherokee Indians.

(14) Transfer equipment and supply funds to the appropriate programs and between programs as the equipment priorities and supply consumptions occur during the operating year.

(15) Notwithstanding the provisions of G.S. 138-6(a)(1), elect to establish a per-mile reimbursement rate for transportation by privately owned vehicles at a rate less than the business standard mileage rate set by the Internal Revenue Service."

SECTION 3.(b) G.S. 7A-146 reads as rewritten:

"**§ 7A-146. Administrative authority and duties of chief district judge.**

The chief district judge, subject to the general supervision of the Chief Justice of the Supreme Court, has administrative supervision and authority over the operation of the district courts and magistrates in his district. These powers and duties include, but are not limited to, the following:

....

(9) Assigning magistrates during an emergency to temporary duty outside the county of their residence but within that ~~district;~~ district pursuant to the policies and procedures prescribed under G.S. 7A-343(11); and, upon the request of a chief district judge of an adjoining district and upon the approval of the Administrative Officer of the Courts, to temporary duty in the district of the requesting chief district ~~judge.~~ judge pursuant to the policies and procedures prescribed under G.S. 7A-343(11).

...."

SECTION 4. G.S. 7A-171.2(a) is repealed.

SECTION 5. G.S. 44A-16 reads as rewritten:

"**§ 44A-16. Discharge of record claim of lien on real property.**

(a) Any claim of lien on real property filed under this Article may be discharged by any of the following methods:

(1) The lien claimant of record, the claimant's agent or attorney, in the presence of the clerk of superior court may acknowledge the satisfaction of the claim of lien on real property indebtedness, whereupon the clerk of superior court shall forthwith make upon the record of such claim of lien on real property an entry of such acknowledgment of satisfaction, which shall be signed by the lien claimant of record, the claimant's agent or attorney, and witnessed by the clerk of superior court.

(2) The owner may exhibit an instrument of satisfaction signed and acknowledged by the lien claimant of record which instrument states that the claim of lien on real property indebtedness has been paid or satisfied, whereupon the clerk of superior court shall cancel the claim of lien on real property by entry of satisfaction on the record of such claim of lien on real property.

(3) By failure to enforce the claim of lien on real property within the time prescribed in this Article.

(4) By filing in the office of the clerk of superior court the original or certified copy of a judgment or decree of a court of competent jurisdiction showing that the action by the claimant to enforce the claim of lien on real property has been dismissed or finally determined adversely to the claimant.

(5) Whenever a sum equal to the amount of the claim or claims of lien on real property claimed is deposited with the clerk of court, to be applied to the payment finally determined to be due, whereupon the clerk of superior court shall cancel the claim or claims of lien on real property or claims of lien on real property of record.

(6) Whenever a corporate surety bond, in a sum equal to one and one-fourth times the amount of the claim or claims of lien on real property claimed and conditioned upon the payment of the amount finally determined to be due in satisfaction of said claim or claims of lien on real property, is deposited with the clerk of court, whereupon the clerk of superior court shall cancel the claim or claims of lien on real property of record.

(b) The clerk may release funds held or a corporate surety bond upon receipt of one of the following:

(1) Written agreement of the parties.

(2) A final judgment of a court of competent jurisdiction.

(3) A consent order."

SECTION 6. G.S. 50-13.1(c) reads as rewritten:

"(c) For good cause, on the motion of either party or on the court's own motion, the court may waive the mandatory setting under Article 39A of Chapter 7A of the General Statutes of a contested custody or visitation matter for mediation. Good cause may include, but is not limited to, the following: a showing of undue hardship to a party; an agreement between the parties for voluntary mediation, subject to court approval; allegations of abuse or neglect of the minor child; allegations of alcoholism, drug abuse, or domestic violence between the parents in common; or allegations of severe psychological, psychiatric, or emotional problems. A

showing by either party that the party resides more than fifty miles from the court ~~shall~~ may be considered good cause."

SECTION 7. G.S. 7A-38.2(d) reads as rewritten:

"(d) An administrative fee, not to exceed two hundred dollars ($200.00), may be charged by the Administrative Office of the Courts to applicants for certification and annual renewal of certification for mediators and mediation training programs operating under this Article. The fees collected may be used by the Director of the Administrative Office of the Courts to establish and maintain the operations of the Commission and its staff. Notwithstanding the provisions of G.S. 143C-1-2(b), certification and renewal fees collected by the Dispute Resolution Commission are nonreverting and are only to be used at the direction of the Commission."

SECTION 8. This act becomes effective July 1, 2011.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 580

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

S580-ASA-23 [v.1]

Comm. Sub. [YES]
Amends Title [YES]
S580-CSSA-58

Date June 7, ,2011

Senator Pate

moves to amend the bill on page 1, lines 7-9
by rewriting those lines to read:
"DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE COURTS, TO CLARIFY WHEN A CLERK OF"

And on page 5, line 2
By deleting that line;

And by renumbering the remaining sections of the bill accordingly.

SIGNED Louis M Pate Jr
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027

DATE: 6-7 **TIME:** 4:30-5 PM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

	Page Name	Hometown	Sponsoring Senator
1	Blythe Layne	Cary	R. Stevens
2	Corinne May	Raleigh	Nesbitt
3	Chris Brasier	Durham	Atwater
4	Nick Pruthi	Durham	Kinnaird
5			
6			
7			
8			
9			
10			

Do not add names below the grid.

VISITOR REGISTRATION SHEET

Judiciary I (PM) — 6/07/11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ken Melton	K.M.A.
Paul Pulley	NCAJ
Chuck Stone	SEANC
Blake Proctor	SEANC
Kyle Haney	NC Dems
John W Smith	AOC
Gene Causby	NCSCA
Mitch Leonard	SEANC
Mildred Spearman	NCAOC
Rob Lamm	RLA
Lorrin Freeman	Wake CSC
Chris Telesca	Wake Verified Voting

VISITOR REGISTRATION SHEET

Judiciary I (PM) — 6/07/11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John McMillan	MFAS
Bill Rowe	NC Justice Center
Johnnie McLean	SBE
Gary Bartlett	SBE
DAVID BARNES	DPS
Carley	NCHC
Kristi Anderson	NCDOT
Rance May	NCLM
Kim Crawford	NCBA
BRUCE THOMPSON	PARKER POE
David Anders	PFPWC
Donald Ragsdale	11

VISITOR REGISTRATION SHEET

Judiciary I (PM) — 6-07-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rebecca Troutman	NCACC
Amy Baum	NCACC

SENATE JUDICIARY I COMMITTEE
June 9, 2011 at 8:30 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 8:30 AM on June 9, 2011, in Room 1027 of the Legislative Building. Fifteen members of the committee were present. Senator Pete Brunstetter presided.

Senator Brunstetter called the meeting to order at 8:34 a.m.

House Bill 165
Senator Brunstetter recognized Representative McGee to explain the bill
Representative Weiss was recognized to explain the bill
Karen Cochrane-Brown was recognized to explain the bill
Senator Pate moved for a favorable report
Motion carries

House Bill 112
Representative Dollar was recognized to explain the bill
Senator Stevens moved for a favorable report

House Bill 250 & House Bill 262
Representative Martin was recognized to explain the bills
Senator Soucek moved for a favorable report on HB 250
Motion carries
Senator Apodaca moves for a favorable report on HB 262
Motion carries

House Bill 514
Representative Martin was recognized to explain the bill
Senator Stein moves to amend the bill
Erika Churchill was recognized to explain the amendment
Motion carries
Senator Pate moves for a favorable report of the PCS, unfavorable to original bill
Motion carries

Senate Bill 518
Senator Stein moves to adopt the PCS for discussion
Senator Vaughan was recognized to explain the bill
Bill Patterson was recognized to explain the bill
Senator Pate moved for a favorable report
Motion carries

House Bill 331
Representative Hollo was recognized to explain the bill
Senator Brock moves for a favorable report

House Bill 379

Representative Glazier was recognized to explain the bill
Senator Stein was recognized to ask a question, and Brad Rohnbeck from the Bar Association was recognized to answer the question
Senator Stein moves for a favorable report
House Bill 380
Representative Glazier was recognized to explain the bill
Senator Mansfield was recognized to ask a question, and Representative Glazier answered
Senator Mansfield moved for a favorable report
Motion carries

House Bill 408
Senator Stevens moved to adopt the PCS for discussion
Representative Moore was recognized to explain the bill
Susan Sitze was recognized to make a comment
Senator Stevens moved for a favorable report

House Bill 642
Representative Guice was recognized to explain the bill
Senator Brown moves to amend the bill
Motion carries
Senator Brown moves to amend the bill
Senator Brown is recognized to explain the amendment
Susan Sitze was recognized to explain the amendment
Senator Brock was recognized to ask a question, and Representative Guice answered
Senator Soucek was recognized to ask a question, and Representative Guice answered
Motion carries
Senator Brown moves to amend the bill
Susan Sitze was recognized to explain the amendment
Motion carries
Senator Pate asked a question, and Representative Guice answered
Senator Clodfelter was recognized to ask a question, and Hal Pell answered
Senator Clodfelter asked a follow up question, and Doug Holbrook from Fiscal Research answered
Senator Clodfelter was recognized for a series of questions, and Doug Holbrook answered
Senator Clodfelter asked a question, and Representative Guice answered
Senator Clodfelter asked a follow-up question, and Doug Holbrook answered
Senator Clodfelter asked a question, and Hal Pell answered
Senator Stevens asked a question, and Doug Holbrook answered
Senator Stevens moved for a favorable report
Senator Goolsby was recognized to make comments
Motion carries

House Bill 542
Senator Brock moves to adopt the PCS for purposes of discussion
Representative Rhyne was recognized to explain the bill
Bill Patterson was recognized to explain the bill
Dick Taylor from the Advocates for Justice was recognized to speak against the bill
John McAlister from the NC Chamber was recognized to speak in support of the bill
Sam Taylor from NC Biosciences was recognized to speak for the bill
Janet Ward-Black, attorney from Greensboro, was recognized to speak on Section 2.2 of the bill
Ward-Black introduced Scott Pruitt from Arden

Jennifer Epperson from the Department of Justice was recognized to speak on the bill
Senator Mansfield was recognized to ask a question, and Representative Rhyne answered
Senator Stein was recognized to ask a question, and Bill Patterson answered
Senator Stein was recognized for a follow-up question, and Representative Rhyne answered
Senator Clodfelter was recognized to make comments and distribute a proposed amendment
Senator Mansfield was recognized to ask a question, and Bill Patterson answered
Senator Mansfield was recognized for a follow-up, and Bill Patterson answered
Senator Stein was recognized to make comments and ask a question, and Representative Rhyne answered

Meeting adjourned at 10:04 a.m.

Peter Brunstetter, Presiding

Sarah Hardin, Committee Clerk

Senate Judiciary I Committee
Thursday, June 9, 2011, 8:30 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

	HB 112	Realign Wake Superior Court Districts.	Representative Dollar Representative Avila Representative Stam Representative Murry
	HB 165	Planned Community & Condo Act Amends.	Representative Earle Representative Weiss Representative Howard Representative McGee
	HB 250	Various Clarifying Militia Law Amendments.	Representative Martin Representative Ross Representative Hall
	HB 262	References to Military Orgs./Make Uniform.	Representative Martin Representative Ross Representative Hall
	HB 331	Allow PAs and NPs to Sign Death Cert.	Representative Justice Representative Brubaker Representative Dollar Representative Hollo
	HB 379	Uniform Depositions and Discovery Act.	Representative McGrady Representative Ross Representative Rhyne, Jr. Representative Glazier
	HB 380	Amend RCP/Electronically Stored Information.	Representative Ross Representative Jordan Representative Glazier Representative Moore
PCS	HB 408	Amend Criminal Discovery Laws. (Susan)	Representative Shepard Representative Moore Representative Spear

	HB 514	Uniform Military and Overseas Voters Act.	Representative Lewis Representative Martin Representative Glazier Representative Killian
PCS	HB 542	Tort Reform for Citizens and Businesses. (Bill)	Representative McComas Representative Crawford, Jr. Representative Rhyne, Jr. Representative Brisson
	HB 642	Justice Reinvestment Act.	Representative Bordsen Representative Parmon Representative Faircloth, Jr. Representative Guice
PCS	SB 518	Buyer Choice/Title Insurer & Settlement Agent. (Bill)	Senator Vaughan Senator Stein

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 3

HOUSE BILL 165
Committee Substitute Favorable 5/31/11
Third Edition Engrossed 6/1/11

Short Title: Planned Community & Condo Act Amends. (Public)

Sponsors:

Referred to:

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PLANNED COMMUNITY ACT AND THE CONDOMINIUM ACT CONCERNING THE TIME PERIOD FOR FORECLOSURE OF A CLAIM OF LIEN FOR UNPAID ASSESSMENTS, TO AMEND THE LAW CONCERNING DISCLOSURE OF INFORMATION ABOUT HOMEOWNERS ASSOCIATIONS TO POTENTIAL PURCHASERS, AND TO REQUIRE THE REAL ESTATE COMMISSION TO PREPARE AND MAKE AVAILABLE INFORMATION ABOUT RESTRICTIVE COVENANTS TO POTENTIAL PURCHASERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47F-3-116(a) reads as rewritten:

"(a) Any assessment levied against a lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. No fewer than 15 days prior to filing the lien, the association shall mail a statement of the assessment amount due by first-class mail to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. If the lot owner is a corporation, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation. Unless the declaration otherwise provides, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, the ~~association~~ association, acting through the executive board, may foreclose the claim of lien in like manner as a mortgage on real estate under of power of sale or under Article 2A of Chapter 45 of the General ~~Statutes.~~Statutes, if the assessment remains unpaid for 90 days or more. The association shall not foreclose the claim of lien unless the executive board votes to commence the proceeding against the specific lot."

SECTION 2. G.S. 47C-3-116(a) reads as rewritten:

"(a) Any assessment levied against a unit remaining unpaid for a period of 30 days or longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the unit is located in the manner provided herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts to ensure that its records contain the unit owner's current mailing address. No fewer than 15 days prior to filing the lien, the association shall mail a statement of the assessment amount due

by first-class mail to the physical address of the unit and the unit owner's address of record with the association, and, if different, to the address for the unit owner shown on the county tax records and the county real property records for the unit. If the unit owner is a corporation, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation. Unless the declaration otherwise provides, fees, charges, late charges and other charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, the ~~association~~ association, acting through the executive board, may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale or under Article 2A of Chapter 45 of the General ~~Statutes.~~Statutes, if the assessment remains unpaid for 90 days or more. The association shall not foreclose the claim of lien unless the executive board votes to commence the proceeding against the specific unit."

SECTION 3.(a) G.S. 47E-2 reads as rewritten:

"**§ 47E-2. Exemptions.**

The following transfers are exempt from the provisions of this Chapter:

...

(11) Transfers between parties when both parties agree not to complete a residential property disclosure ~~statement.~~statement or an owners' association and mandatory covenants disclosure statement."

SECTION 3.(b) G.S. 47E-4 reads as rewritten:

"**§ 47E-4. Required disclosures.**

(a) With regard to transfers described in G.S. 47E-1, the owner of the real property shall furnish to a purchaser a residential property disclosure statement. The disclosure statement shall:

(1) Disclose those items which are required to be disclosed relative to the characteristics and condition of the property and of which the owner has actual knowledge; or

(2) State that the owner makes no representations as to the characteristics and condition of the real property or any improvements to the real property except as otherwise provided in the real estate contract.

(b) The North Carolina Real Estate Commission shall develop and require the use of a standard disclosure statement to comply with the requirements of this section. The disclosure statement shall specify that certain transfers of residential property are excluded from this requirement by G.S. 47E-2, including transfers of residential property made pursuant to a lease with an option to purchase where the lessee occupies or intends to occupy the dwelling, and shall include at least the following characteristics and conditions of the property:

(1) The water supply and sanitary sewage disposal system;

(2) The roof, chimneys, floors, foundation, basement, and other structural components and any modifications of these structural components;

(3) The plumbing, electrical, heating, cooling, and other mechanical systems;

(4) Present infestation of wood-destroying insects or organisms or past infestation the damage for which has not been repaired;

(5) The zoning laws, restrictive covenants, building codes, and other land-use restrictions affecting the real property, any encroachment of the real property from or to adjacent real property, and notice from any governmental agency affecting this real property; and

(6) Presence of lead-based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material (whether buried or covered), and other environmental contamination.

The disclosure statement shall provide the owner with the option to indicate whether the owner has actual knowledge of the specified characteristics or conditions, or the owner is making no representations as to any characteristic or condition.

(b1) With regard to transfers described in G.S. 47E-1, the owner of the real property shall furnish to a purchaser an owners' association and mandatory covenants disclosure statement.

(1) The North Carolina Real Estate Commission shall develop and require the use of a standard disclosure statement to comply with the requirements of this subsection. The disclosure statement shall specify that certain transfers of residential property are excluded from this requirement by G.S. 47E-2, including transfers of residential property made pursuant to a lease with an option to purchase where the lessee occupies or intends to occupy the dwelling. The standard disclosure statement shall require disclosure of whether or not the property to be conveyed is subject to regulation by one or more owners' association(s) and governing documents which impose various mandatory covenants, conditions, and restrictions upon the property, including, but not limited to, obligations to pay regular assessments or dues and special assessments. The statement required by this subsection shall include information on all of the following:

a. The name, address, telephone number, or e-mail address for the president or manager of the association to which the lot is subject.

b. The amount of any regular assessments or dues to which the lot is subject.

c. Whether there are any services that are paid for by regular assessments or dues to which the lot is subject.

d. Whether, as of the date the disclosure is signed, there are any assessments, dues, fees, or special assessments which have been duly approved as required by the applicable declaration or bylaws, payable to an association to which the lot is subject.

e. Whether, as of the date the disclosure is signed, there are any unsatisfied judgments against or pending lawsuits involving the lot, the planned community or the association to which the lot is subject, with the exception of any action filed by the association for the collection of delinquent assessments on lots other than the lot to be sold.

f. Any fees charged by an association or management company to which the lot is subject in connection with the conveyance or transfer of the lot to a new owner.

(2) The owners' association and mandatory covenants disclosure statement shall provide the owner with the option to indicate whether the owner has actual knowledge of the specified characteristics, or conditions or the owner is making no representations as to any characteristic or condition contained in the statement.

(c) The rights of the parties to a real estate contract as to conditions of the property of which the owner had no actual knowledge are not affected by this Article unless the residential disclosure statement or the owners' association and mandatory covenants disclosure statement, as applicable, states that the owner makes no representations as to those conditions. If the statement states that an owner makes no representations as to the conditions of the property, then the owner has no duty to disclose those conditions, whether or not the owner should have known of them."

SECTION 3.(c) G.S. 47E-5 reads as rewritten:

"§ 47E-5. Time for disclosure; cancellation of contract.

(a) The owner of real property subject to this Chapter shall deliver to the purchaser the disclosure ~~statement~~ statements required by this Chapter no later than the time the purchaser makes an offer to purchase, exchange, or option the property, or exercises the option to purchase the property pursuant to a lease with an option to purchase. The residential property disclosure statement or the owners' association and mandatory covenants disclosure statement may be included in the real estate contract, in an addendum, or in a separate document.

(b) If the disclosure ~~statement~~ statements required by this Chapter ~~is~~ are not delivered to the purchaser prior to or at the time the purchaser makes an offer, the purchaser may cancel any resulting real estate contract. The purchaser's right to cancel shall expire if not exercised prior to the following, whichever occurs first:

(1) The end of the third calendar day following the purchaser's receipt of the disclosure statement;

(2) The end of the third calendar day following the date the contract was made;

(3) Settlement or occupancy by the purchaser in the case of a sale or exchange; or

(4) Settlement in the case of a purchase pursuant to a lease with option to purchase.

Any right of the purchaser to cancel the contract provided by this subsection is waived conclusively if not exercised in the manner required by this subsection.

In order to cancel a real estate contract when permitted by this section, the purchaser shall, within the time required above, give written notice to the owner or the owner's agent either by hand delivery or by depositing into the United States mail, postage prepaid, and properly addressed to the owner or the owner's agent. If the purchaser cancels a real estate contract in compliance with this subsection, the cancellation shall be without penalty to the purchaser, and the purchaser shall be entitled to a refund of any deposit the purchaser may have paid. Any rights of the purchaser to cancel or terminate the contract for reasons other than those set forth in this subsection are not affected by this subsection."

SECTION 3.(d) G.S. 47E-6 reads as rewritten:

"§ 47E-6. Owner liability for disclosure of information provided by others.

The owner may discharge the duty to disclose imposed by this Chapter by providing a written report attached to the residential property disclosure statement and the owners' association and mandatory covenants disclosure statement by a public agency or by an attorney, engineer, land surveyor, geologist, pest control operator, contractor, home inspector or other expert, dealing with matters within the scope of the public agency's functions or the expert's license or expertise. The owner shall not be liable for any error, inaccuracy, or omission of any information delivered pursuant to this section if the error, inaccuracy, or omission was made in reasonable reliance upon the information provided by the public agency or expert and the owner was not grossly negligent in obtaining the information or transmitting it."

SECTION 3.(e) G.S. 47E-7 reads as rewritten:

"§ 47E-7. Change in circumstances.

If, subsequent to the owner's delivery of a residential property disclosure statement and the owners' association and mandatory covenants disclosure statement to a purchaser, the owner discovers a material inaccuracy in ~~the~~ a disclosure ~~statement,~~ statement, or ~~the~~ a disclosure statement is rendered inaccurate in a material way by the occurrence of some event or circumstance, the owner shall promptly correct the inaccuracy by delivering a corrected disclosure statement or statements to the purchaser. Failure to deliver ~~the~~ a corrected disclosure statement or to make the repairs made necessary by the event or circumstance shall result in such remedies for the buyer as are provided for by law in the event the sale agreement requires the property to be in substantially the same condition at closing as on the date of the offer to purchase, reasonable wear and tear excepted."

SECTION 3.(f) G.S. 47E-8 reads as rewritten:

"**§ 47E-8. Agent's duty.**

A real estate broker or salesman acting as an agent in a residential real estate transaction has the duty to inform each of the clients of the real estate broker or salesman of the client's rights and obligations under this Chapter. Provided the owner's real estate broker or salesman has performed this duty, the broker or salesman shall not be responsible for the owner's willful refusal to provide a prospective purchaser with a residential property disclosure ~~statement.~~statement or an owners' association and mandatory covenants disclosure statement. Nothing in this Chapter shall be construed to conflict with, or alter, the broker or salesman's duties under Chapter 93A of the General Statutes."

SECTION 3.(g) This section becomes effective January 1, 2012, and applies to real estate transfers or dispositions occurring on or after that date. The North Carolina Real Estate Commission shall develop and make available the standard disclosure form required by G.S. 47E-4(b1), as enacted by Section 3(b) of this act, by December 1, 2011.

SECTION 4. The North Carolina Real Estate Commission shall develop and make available for homebuyers a brochure about restrictive covenants. The brochure shall include an explanation that unpaid assessments, fines, fees, or charges may result in foreclosure of the owner's property. The brochure shall be available by December 1, 2011.

SECTION 5. This act is effective when it becomes law and applies to foreclosure actions filed on or after October 1, 2011.

HOUSE BILL 165:
Planned Community & Condo Act Amends

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 8, 2011
Introduced by:	Reps. McGee, Weiss, Earle, Howard	**Prepared by:**	Giles S. Perry
Analysis of:	Third Edition		Committee Counsel

SUMMARY: House Bill 165 makes changes to the Planned Community Act and the Condominium Act to require a claim of lien for an assessment to remain unpaid for 90 or more days before foreclosure, to require specified disclosure of information about homeowners' associations to potential purchasers, and to require the Real Estate Commission to prepare and make available information about restrictive covenants to potential purchasers

CURRENT LAW: Under current law, when any homeowner or unit owner assessments levied against a lot or unit remain unpaid for 30 days or longer, the association is authorized to file a claim of lien against the property in the office of the clerk of superior court.

G.S. 47C-3-116 (North Carolina Condominium Act) and G.S. 47F-3-116 (North Carolina Planned Community Act) provide that the association may use power of sale foreclosure, Article 2A of Chapter 45, to enforce a lien for assessments, but may only use judicial foreclosure (Article 29A of Chapter 1) if the lien is solely for fines, interest, or attorney's fees.

BILL ANALYSIS:

Section 1 of the bill amends the North Carolina Planned Community Act to provide that an association, acting through its executive board, may foreclose a claim of lien under power of sale if the assessment remains unpaid for 90 days or more, and if the executive board votes to commence the proceeding against the specific lot.

Section 2 of the bill amends the North Carolina Condominium Act to provide that an association, acting through its executive board, may foreclose a claim of lien under power of sale if the assessment remains unpaid for 90 days or more, and if the executive board votes to commence the proceeding against the specific lot.

Section 3 of the bill amends the provisions of the Residential Property Disclosure Act, as follows:

- In **Section 3.(a)**, to amend the law providing that the Act does not apply to transfers between parties when both parties agree not to complete a residential property disclosure statement, to add an owners' association and mandatory covenants disclosure statement.
- In **Section 3.(b)**, to amend the list of required disclosures, to require the owner of real property to furnish to a purchaser an owners' association and mandatory covenants disclosure statement. The North Carolina Real Estate Commission is directed to develop the disclosure statement, which must include the specified elements.
- In **Section 3.(c)**, to amend the law requiring owners to deliver to purchasers disclosure statements, and providing that they may be included in the real estate contract, in an addendum, or in a separate document, to add owners' association and mandatory covenant disclosure statements.
- In **Section 3.(d)**, to amend the statute allowing the owner to discharge the duty to disclose by attaching a report to the residential property disclosure statement, to add owners' association and

mandatory covenants disclosure statements, and by adding reports from attorneys as an acceptable form of disclosure.

- In **Section 3.(e)**, to amend the statute requiring correction to disclosure statements upon discovery of material changes in circumstances, to include owners' association and mandatory covenants disclosure statements.
- In **Section 3.(f)**, to amend the statute that provides a broker or salesman is not responsible for the owner's willful refusal to provide a prospective purchaser with a residential property disclosure statement, to include owners' association and mandatory covenants disclosure statements.
- In **Section 3.(g)**, to provide that Section 3 is effective January 1, 2012, and applies to real estate transfers or dispositions occurring on or after that date.

  This section also provides that the North Carolina Real Estate Commission shall develop and make available the standard disclosure form required by G.S. 47E-4(b1), as enacted by Section 3.(b) of this act, by December 1, 2011.

Section 4 of the bill directs the North Carolina Real Estate Commission to develop and make available for homebuyers a brochure about restrictive covenants. The brochure shall include an explanation that unpaid assessments, fines, fees or charges may result in foreclosure of the owner's property. The brochure shall be available by December 1, 2011.

EFFECTIVE DATE: Effective when it becomes law, and applies to foreclosure actions filed on or after October 1, 2011.

H165-SMRW-150(e3) v3

HOUSE BILL 112

Committee Substitute Favorable 5/19/11
Third Edition Engrossed 5/23/11

Short Title: Realign Wake Superior Court Districts. (Public)

Sponsors:

Referred to:

February 17, 2011

A BILL TO BE ENTITLED

AN ACT TO REALIGN THE DISTRICTS FOR WAKE COUNTY SUPERIOR COURT JUDGE SEATS TO PROVIDE FOR SINGLE MEMBER DISTRICTS AND EQUAL REPRESENTATION IN THOSE DISTRICTS, WHICH ARE TO BE DETERMINED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-41(a) reads as rewritten:

"(a) The counties of the State are organized into judicial divisions and superior court districts, and each superior court district has the counties, and the number of regular resident superior court judges set forth in the following table, and for districts of less than a whole county, as set out in subsection (b) of this section:

Judicial Division	Superior Court District	Counties	No. of Resident Judges
First	1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	2
First	2	Beaufort, Hyde, Martin, Tyrrell, Washington	1
First	3A	Pitt	2
Second	3B	Carteret, Craven, Pamlico	3
Second	4A	Duplin, Jones, Sampson	1
Second	4B	Onslow	1
Second	5A	(part of New Hanover, part of Pender see subsection (b))	1
	5B	(part of New Hanover, part of Pender see subsection (b))	1

	5C	(part of New Hanover, see subsection (b))	1
First	6A	Halifax	1
First	6B	Bertie, Hertford, Northampton	1
First	7A	Nash	1
First	7B	(part of Wilson, part of Edgecombe, see subsection (b))	1
First	7C	(part of Wilson, part of Edgecombe, see subsection (b))	1
Second	8A	Lenoir and Greene	1
Second	8B	Wayne	1
Third	9	Franklin, Granville, Vance, Warren	2
Third	9A	Person, Caswell	1
Third	10A	(part of Wake, see subsection (b))	~~2~~1
Third	10B	(part of Wake, see subsection (b))	~~2~~1
Third	10C	(part of Wake, see subsection (b))	1
Third	10D	(part of Wake, see subsection (b))	1
Third	10E	(part of Wake, see subsection (b))	1
Third	10F	(part of Wake, see subsection (b))	1
Fourth	11A	Harnett, Lee	1
Fourth	11B	Johnston	1
Fourth	12A	(part of Cumberland, see subsection (b))	1
Fourth	12B	(part of Cumberland, see subsection (b))	1
Fourth	12C	(part of Cumberland, see subsection (b))	2
Fourth	13A	Bladen, Columbus	1
Fourth	13B	Brunswick	1
Third	14A	(part of Durham, see subsection (b))	1
Third	14B	(part of Durham, see subsection (b))	3
Third	15A	Alamance	2
Third	15B	Orange, Chatham	2
Fourth	16A	Scotland, Hoke	1
Fourth	16B	Robeson	2
Fifth	17A	Rockingham	2
Fifth	17B	Stokes, Surry	2
Fifth	18A	(part of Guilford,	1

			see subsection (b))
Fifth	18B	(part of Guilford,	1
		see subsection (b))	
Fifth	18C	(part of Guilford,	1
		see subsection (b))	
Fifth	18D	(part of Guilford,	1
		see subsection (b))	
Fifth	18E	(part of Guilford,	1
		see subsection (b))	
Sixth	19A	Cabarrus	1
Fifth	19B	Montgomery, Randolph	1
Sixth	19C	Rowan	1
Fifth	19D	Moore	1
Sixth	20A	Anson, Richmond,	2
		Stanley	
Sixth	20B	Union	2
Fifth	21A	(part of Forsyth,	1
		see subsection (b))	
Fifth	21B	(part of Forsyth,	1
		see subsection (b))	
Fifth	21C	(part of Forsyth,	1
		see subsection (b))	
Fifth	21D	(part of Forsyth,	1
		see subsection (b))	
Sixth	22A	Alexander, Iredell	2
Sixth	22B	Davidson, Davie	2
Fifth	23	Alleghany, Ashe,	1
		Wilkes, Yadkin	
Eighth	24	Avery, Madison,	2
		Mitchell,	
		Watauga, Yancey	
Seventh	25A	Burke, Caldwell	2
Seventh	25B	Catawba	2
Seventh	26A	(part of Mecklenburg,	2
		see subsection (b))	
Seventh	26B	(part of Mecklenburg,	3
		see subsection (b))	
Seventh	26C	(part of Mecklenburg,	2
		see subsection (b))	
Seventh	27A	Gaston	2
Seventh	27B	Cleveland, Lincoln	2
Eighth	28	Buncombe	2
Eighth	29A	McDowell,	1
		Rutherford	
Eighth	29B	Henderson, Polk,	1
		Transylvania	
Eighth	30A	Cherokee, Clay,	1
		Graham, Macon,	
		Swain	
Eighth	30B	Haywood, Jackson"	

SECTION 2. G.S. 7A-41(b) reads as rewritten:

"(b) For superior court districts of less than a whole county, or with part of one county with part of another, the composition of the district and the number of judges is as follows:

(1) Superior Court District 7B consists of County Commissioner Districts 1, 2, and 3 of Wilson County, Blocks 127 and 128 of Census Tract 6 of Wilson County, and Townships 12 and 14 of Edgecombe County. It has one judge.

(2) Superior Court District 7C consists of the remainder of Edgecombe and Wilson Counties not in Judicial District 7B. It has one judge.

(3) Superior Court District 10A consists of Wake County ~~Precincts~~Precincts: VTD: 01-01, VTD: 01-02, VTD: 01-06, VTD: 01-07, VTD: 01-14, VTD: 01-16, VTD: 01-23, VTD: 01-29, VTD: 01-31, VTD: 01-32, VTD: 01-33, VTD: 01-41, VTD: 01-48, VTD: 01-49, VTD: 04-01, VTD: 04-02, VTD: 04-03, VTD: 04-04, VTD: 04-06, VTD: 04-07, VTD: 04-10, VTD: 04-11, VTD: 04-12, VTD: 04-13, VTD: 04-14, VTD: 04-15, VTD: 04-16, VTD: 04-19, VTD: 04-20, VTD: 04-21, VTD: 11-02, VTD: 18-01, VTD: 18-04, VTD: 18-06, VTD: 18-08. ~~01-12, 01-13, 01-14, 01-18, 01-19, 01-20, 01-22, 01-25, 01-26, 01-28, 01-34, 01-35, 01-40, 01-50, 17-03, and 17-07.~~ It has ~~two judges~~one judge.

(4) Superior Court District 10B consists of Wake County ~~Precincts~~Precincts: VTD: 01-12, VTD: 01-13, VTD: 01-18, VTD: 01-19, VTD: 01-20, VTD: 01-21, VTD: 01-22, VTD: 01-25, VTD: 01-26, VTD: 01-27, VTD: 01-34, VTD: 01-35, VTD: 01-38, VTD: 01-40, VTD: 01-46, VTD: 01-50, VTD: 13-01: Block(s) 1830527043000, 1830527043023, 1830527043024, 1830540181012, 1830540181013, 1830540181014, 1830540181015, 1830540181016, 1830540181017, 1830540181018, 1830540181027, 1830540181033, 1830540181034, 1830541041022, 1830541041023, 1830541041024, 1830541041025, 1830541041026, 1830541041028, 1830541041030, 1830541041031, 1830541041032, 1830541041033, 1830541041039, 1830541041040, 1830541041041, 1830541041042, 1830541041043, 1830541041044, 1830541041045, 1830541041046, 1830541041047, 1830541041048, 1830541041049, 1830541041050, 1830541042000, 1830541042002, 1830541042010, 1830541042023, 1830541042024, 1830541042025, 1830541042026, 1830541042027, 1830541042029, 1830541042030, 1830541043014, 1830541043015, 1830541043016, 1830541043017, 1830541043018, 1830541043019, 1830541043045; VTD: 13-05, VTD: 13-07, VTD: 16-02, VTD: 16-03, VTD: 16-06, VTD: 16-08, VTD: 17-06, VTD: 17-07, VTD: 17-08, VTD: 17-09, VTD: 17-10, VTD: 17-11. ~~01-01, 01-02, 01-03, 01-04, 01-05, 01-06, 01-07, 01-07A, 01-09, 01-10, 01-11, 01-16, 01-21, 01-23, 01-27, 01-29, 01-31, 01-32, 01-33, 01-36, 01-41, 01-48, 01-49, 03-00, 04-01, 04-02, 04-03, 04-04, 04-05, 04-06, 04-07, 04-08, 04-09, 04-10, 04-11, 04-12, 04-13, 04-14, 04-15, 04-16, 04-17, 04-18, 04-19, 04-20, 05-01, 05-02, 06-01, 06-02, 06-03, 07-01, 07-10, 11-01, 11-02, 12-01, 12-02, 12-03, 12-04, 12-05, 12-06, 18-01, 18-02, 18-03, 18-04, 18-05, 18-06, 18-07, 18-08, 20-01, 20-02, 20-03, 20-04, 20-05, 20-06, 20-07, 20-08, 20-09, and 20-10.~~ It has ~~two judges~~one judge.

(5) Superior Court District 10C consists of Wake County ~~Precincts~~Precincts: VTD: 02-01, VTD: 02-02, VTD: 02-03, VTD: 02-04, VTD: 02-05, VTD: 02-06, VTD: 07-02, VTD: 07-06, VTD: 07-07, VTD: 07-11, VTD: 07-12, VTD: 08-02, VTD: 08-03, VTD: 08-04, VTD: 08-05, VTD: 08-06, VTD: 08-07, VTD: 08-08, VTD: 08-09, VTD: 08-10, VTD: 08-11, VTD: 13-10, VTD: 13-11, VTD: 14-01, VTD: 14-02, VTD:

19-03, VTD: 19-04, VTD: 19-05, VTD: 19-06, VTD: 19-07, VTD: 19-09, VTD: 19-10, VTD: 19-11, VTD: 19-12. ~~02-01, 02-02, 02-03, 02-04, 02-05, 02-06, 07-02, 07-12, 08-01, 08-02, 08-03, 08-04, 08-05, 08-06, 08-07, 08-08, 09-01, 09-02, 09-03, 10-01, 10-02, 10-03, 10-04, 14-01, 14-02, 15-01, 15-02, 15-03, 15-04, 16-01, 16-02, 16-03, 16-04, 16-05, 16-06, 16-07, 19-01, 19-02, 19-03, 19-04, 19-05, 19-06, 19-07, and 19-08.~~It has one judge.

(6) Superior Court District 10D consists of Wake County ~~Precincts~~Precincts: VTD: 01-03, VTD: 01-04, VTD: 01-05, VTD: 01-09, VTD: 01-10, VTD: 01-11, VTD: 01-15, VTD: 01-17, VTD: 01-30, VTD: 01-36, VTD: 01-37, VTD: 01-39, VTD: 01-43, VTD: 01-45, VTD: 01-51, VTD: 04-05, VTD: 04-08, VTD: 04-09, VTD: 04-17, VTD: 04-18, VTD: 05-01, VTD: 05-03, VTD: 05-04, VTD: 05-05, VTD: 05-06, VTD: 07-01, VTD: 07-03, VTD: 07-04, VTD: 07-05, VTD: 07-09, VTD: 07-10, VTD: 07-13, VTD: 11-01, VTD: 20-02, VTD: 20-04, VTD: 20-10. ~~01-15, 01-17, 01-30, 01-37, 01-38, 01-39, 01-42, 01-43, 01-44, 01-45, 01-46, 01-47, 01-51, 07-03, 07-04, 07-05, 07-06, 07-07, 07-07A, 07-09, 07-11, 13-01, 13-02, 13-03, 13-04, 13-05, 17-01, 17-02, 17-04, 17-05, 17-06, and 17-08.~~It has one judge.

(6a) Superior Court District 10E consists of Wake County Precincts: VTD: 01-28, VTD: 01-42, VTD: 01-44, VTD: 01-47, VTD: 09-01, VTD: 09-02, VTD: 09-03, VTD: 10-01, VTD: 10-02, VTD: 10-03, VTD: 10-04, VTD: 13-01: Block(s) 1830541041000, 1830541041001, 1830541041002, 1830541041003, 1830541041004, 1830541041005, 1830541041006, 1830541041007, 1830541041008, 1830541041009, 1830541041010, 1830541041011, 1830541041012, 1830541041013, 1830541041014, 1830541041015, 1830541041016, 1830541041017, 1830541041018, 1830541041019, 1830541041020, 1830541041021, 1830541042028; VTD: 13-02, VTD: 13-06, VTD: 13-08, VTD: 13-09, VTD: 15-01, VTD: 15-03, VTD: 15-04, VTD: 16-01, VTD: 16-04, VTD: 16-05, VTD: 16-07, VTD: 16-09, VTD: 17-01, VTD: 17-02, VTD: 17-03, VTD: 17-04, VTD: 17-05, VTD: 19-16, VTD: 19-17. It has one judge.

(6b) Superior Court District 10F consists of Wake County Precincts: VTD: 03-00, VTD: 06-01, VTD: 06-04, VTD: 06-05, VTD: 06-06, VTD: 06-07, VTD: 12-01, VTD: 12-02, VTD: 12-04, VTD: 12-05, VTD: 12-06, VTD: 12-07, VTD: 12-08, VTD: 12-09, VTD: 15-02, VTD: 18-02, VTD: 18-03, VTD: 18-05, VTD: 18-07, VTD: 20-01, VTD: 20-03, VTD: 20-05, VTD: 20-06, VTD: 20-08, VTD: 20-09, VTD: 20-11, VTD: 20-12. It has one judge.

(7) Superior Court District 12A consists of that part of Cross Creek Precinct #18 north of Raeford Road, Montclair Precinct, that part of Precinct 71-1 not in Judicial District 12B, Precinct 71-2, Morganton #2 Precinct, Cottonade Precinct, Cumberland Precincts 1 and 2, and Brentwood Precinct. It has one judge.

(8) Superior Court District 12B consists of all of State House of Representatives District 17, except for Westarea Precinct, and it also includes that part of Cross Creek Precinct #15 east of Village Drive. It has one judge.

(9) Superior Court District 12C consists of the remainder of Cumberland County not in Superior Court Districts 12A or 12B. It has two judges.

(10) Superior Court District 14A consists of Durham Precincts 9, 11, 12, 13, 14, 15, 18, 34, 40, 41, and 42, and that part of Durham Precinct 39 east of North Carolina Highway #751. It has one judge.

(10a) Effective with the 2004 election, in addition to the boundaries provided for in this section, Superior Court District 14A also includes that portion of Durham Precinct 53 east of North Carolina Highway #751.

(11) Superior Court District 14B consists of the remainder of Durham County not in Superior Court District 14A. It has three judges.

(12) Superior Court District 18A consists of Fentress Precincts 1 and 2; Greensboro Precincts 4, 5, 6, 46, 52, 67, 68, 69, 70, 71, 72, 73, 74, and 75; North Clay Precinct; Pleasant Garden Precincts 1 and 2; and South Clay Precinct. It has one judge.

(13) Superior Court District 18B consists of High Point Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27; HP Precinct; Jamestown Precincts 1 and 5; North Deep River Precinct; and South Deep River Precinct. It has one judge.

(14) Superior Court District 18C consists of Center Grove Precincts 1, 2, and 3; Friendship Precincts 1, 2, 3, 4, and 5; Greensboro Precincts 17, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40A, 40B, 41, 42, 43, 64, 65, and 66; Jamestown Precincts 2, 3, and 4; Monroe Precinct 3; North Center Grove Precinct; Oak Ridge Precincts 1 and 2; Summerfield Precincts 1, 2, 3, and 4; and Stokesdale Precinct. It has one judge.

(15) Superior Court District 18D consists of Greensboro Precincts 1, 11, 12, 13, 14, 15, 16, 19, 35, 44, 45, 47, 48, 49, 50, 51, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, and 63; and Sumner Precincts 1, 2, 3, and 4. It has one judge.

(16) Superior Court District 18E consists of Gibsonville Precinct; Greene Precinct; Greensboro Precincts 2, 3, 7, 8, 9, 10, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29; Jefferson Precincts 1, 2, 3, and 4; Monroe Precincts 1 and 2; North Madison Precinct; North Washington Precinct; Rock Creek Precincts 1 and 2; South Madison Precinct; and South Washington Precinct. It has one judge.

(17) Superior Court District 21A consists of Forsyth County Precincts 051, 052, 053, 054, 055, 071, 072, 073, 074, 075, 091, 092, 122, 123, 131, 132, 133, 701, 702, 703, 704, 705, 706, 707, 708, 709, 806, 807, and 808. It has one judge.

(18) Superior Court District 21B consists of Forsyth County Precincts 042, 043, 501, 502, 503, 504, 505, 506, 507, 601, 602, 603, 604, 605, 606, 607, 901, 902, 903, 904, 905, and 907. It has one judge.

(19) Superior Court District 21C consists of Forsyth County Precincts 011, 012, 013, 014, 015, 021, 031, 032, 033, 034, 061, 062, 063, 064, 065, 066, 067, 068, 101, 111, 112, 801, 802, 803, 804, 805, 809, 906, 908, and 909. It has one judge.

(20) Superior Court District 21D consists of Forsyth County Precincts 081, 082, 083, 201, 203, 204, 205, 206, 207, 301, 302, 303, 304, 305, 306, 401, 402, 403, 404, and 405. It has one judge.

(21) Superior Court District 26A consists of Charlotte Precincts 11, 12, 13, 14, 15, 16, 22, 23, 24, 25, 26, 27, 31, 33, 39, 41, 42, 46, 52, 54, 55, 56, 58, 60, 77, 78, and 82, and Long Creek Precinct #2 of Mecklenburg County. It has two judges.

(22) Superior Court District 26B consists of Charlotte Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 17, 18, 20, 21, 28, 29, 30, 32, 34, 35, 36, 37, 38, 43, 44, 45, 47, 51,

61, 62, 63, 65, 66, 67, 68, 69, 71, 74, 83, 84, and 86, Crab Orchard Precincts 1 and 2, and Mallard Creek Precinct 1. It has two judges.

(23) Superior Court District 26C consists of the remainder of Mecklenburg County not in Superior Court Districts 26A or 26B. It has two judges.

(24), (25) Repealed by Session Laws 2003-284, s. 13.14.(b), effective July 1, 2003.

(26) Superior Court District 5A consists of the New Hanover County precincts of Cape Fear #1, Cape Fear #2, Harnett #1, Harnett #4, Harnett #6, Wilmington #1, Wilmington #2, Wilmington #3, Wilmington #4, Wilmington #6, Wilmington #7, Wilmington #8, Wilmington #9, Wilmington #10, Wilmington #15, Wilmington #19, and the part of Harnett #7 that consists of the part of Block Group 6 of 1990 Census Tract 0116.02 containing Blocks 601B, 602B, 603, 611, 612, 613, 614, 615, 616, 617, 618, 619; and the Pender County precincts of Canetuck, Caswell, Columbia, Grady, Upper Holly, and Upper Union. It has one judge.

(27) Superior Court District 5B consists of the New Hanover County precincts of Cape Fear #3, Harnett #2, Harnett #5, the part of Harnett #7 that is not in Superior Court District 5A, Harnett #8, Wrightsville Beach, Wilmington #11, Wilmington #12, Wilmington #13, Wilmington #22, Wilmington #24, and the part of Harnett #3 that consists of the part of Block Group 1 of 1990 Census Tract 0119.01 containing Blocks 102, 105, 106A, 106B, 107A, 107B, 107C, 107D, and 108, the part of Block Group 1 of 1990 Census Tract 0119.02 containing Blocks 103, 104, and 114, and the part of Block Group 1 of 1990 Census Tract 0120.01 containing Blocks 101A, 101B, 101C, 101D, 102A, 102B, 103, 104, 105A, 105B, 115A, and 115B; and the following precincts of Pender County: North Burgaw, South Burgaw, Middle Holly, Long Creek, Penderlea, Lower Union, Rocky Point, Lower Topsail, Upper Topsail, Scotts Hill, and Surf City. It has one judge.

(28) Superior Court District 5C consists of the part of New Hanover County that is not in Superior Court Districts 5A or 5B. It has one judge."

SECTION 3. G.S. 7A-41(c)(2a) reads as rewritten:

"(2a) For Wake County, ~~the precincts are as they were adopted by the Wake County Board of Elections and in effect as of January 1, 2001;~~the names and boundaries of voting tabulation districts and blocks specified in this section are as shown on the 2010 Census Redistricting TIGER/Line Shapefiles."

SECTION 4. The judgeships established for Wake County Superior Court, as created by Sections 1 and 2 of this act, shall be filled as follows, according to district:

(1) District 10A, by Paul C. Ridgeway whose term expires on December 31, 2014.

(2) District 10B, by Michael R. Morgan whose term expires on December 31, 2012.

(3) District 10C, by Paul G. Gessner whose term expires on December 31, 2014.

(4) District 10D, by Donald Stephens whose term expires on December 31, 2012.

(5) District 10E, by Abraham P. Jones whose term expires on December 31, 2012.

(6) District 10F, by Howard E. Manning, Jr., whose term expires December 31, 2016.

SECTION 5. This act becomes effective January 1, 2013, and applies to the 2012 election.

Ideal Versus Actual Populations Based on 2010 Census Results
Plan_OST_13

District	2010 Pop	Ideal Pop	Ideal +/-	% +/-
1	148,723	150,166	-1,443	-0.96%
2	154,854	150,166	4,688	3.12%
3	153,253	150,166	3,087	2.06%
4	144,022	150,166	-6,144	-4.09%
5	148,442	150,166	-1,724	-1.15%
6	151,699	150,166	1,533	1.02%

House Bill 112, 2nd Edition, Rep. Dollar



Highways w/Limited Access
US Highways
NC Highways
Roads
County
Voter Tabulation Districts

OST-13 Districts

1
2
3
4
5
6

0 1 2 4 6 Miles

Produced by North Carolina General Assembly, Information Systems Division, May 18, 2011.

Voting Age Population by Race																		Total Population by Ethnicity					
District	Total	White	% White	Black	% Black	NA	% NA	A/PI	% A/PI	Other	[redacted]ther	MR	[redacted] % MR	MR Black	% MR Black	Total Black	% Total Black	Hisp	% Hisp	Non Hisp	% Non Hisp	White Non Hisp	% White Non Hisp
1	108,667	68,432	62.97%	29,580	27.22%	586	0.54%	2,881	2.65%	5,301	4.88%	1,887	1.74%	839	0.77%	30,419	27.99%	10,362	9.54%	98,305	90.46%	64,525	59.38%
2	111,920	92,251	82.43%	12,049	10.77%	310	0.28%	4,271	3.82%	1,615	1.44%	1,424	1.27%	505	0.45%	12,554	11.22%	4,977	4.45%	106,943	95.55%	89,356	79.84%
3	114,505	82,808	72.32%	13,224	11.55%	340	0.30%	13,701	11.97%	2,520	2.20%	1,912	1.67%	722	0.63%	13,946	12.18%	6,430	5.62%	108,075	94.38%	79,448	69.38%
4	104,408	37,790	36.19%	51,797	49.61%	698	0.67%	2,504	2.40%	9,479	9.08%	2,140	2.05%	1,169	1.12%	52,966	50.73%	17,226	16.50%	87,182	83.50%	31,929	30.58%
5	121,844	91,566	75.15%	15,123	12.41%	554	0.45%	8,181	6.71%	4,108	3.37%	2,312	1.90%	816	0.67%	15,939	13.08%	9,138	7.50%	112,706	92.50%	87,459	71.78%
6	105,036	84,928	80.86%	11,423	10.88%	567	0.54%	3,976	3.79%	2,770	2.64%	1,372	1.31%	484	0.46%	11,907	11.34%	7,029	6.69%	98,007	93.31%	81,291	77.39%
Totals:	**666,380**	**457,775**	**68.70%**	**133,196**	**19.99%**	**3,055**	**0.46%**	**35,514**	**5.33%**	**25,793**	**3.87%**	**11,047**	**1.66%**	**4,535**	**0.68%**	**137,731**	**20.67%**	**55,162**	**8.28%**	**611,218**	**91.72%**	**434,008**	**65.13%**

A=Asian NA=American Indian and Alaskan Native PI=Native Hawaiian and other Pacific Islander
MR=Multi-Race Hisp=Hispanic or Latino (of any race)

Total Population by Race																		Total Population by Ethnicity					
District	Total	White	% White	Black	% Black	NA	% NA	A/PI	% A/PI	Other	% Other	MR	% MR	MR Black	% MR Black	Total Black	Total % Black	Hisp	% Hisp	Non Hisp	% Non Hisp	White Non Hisp	% White Non Hisp
1	148,723	88,410	59.45%	42,901	28.85%	891	0.60%	3,823	2.57%	8,613	5.79%	4,085	2.75%	2,164	1.46%	45,065	30.30%	17,146	11.53%	131,577	88.47%	82,124	55.22%
2	154,854	125,884	81.29%	16,868	10.89%	445	0.29%	5,894	3.81%	2,525	1.63%	3,238	2.09%	1,360	0.88%	18,228	11.77%	7,786	5.03%	147,068	94.97%	121,438	78.42%
3	153,253	107,120	69.90%	17,998	11.74%	499	0.33%	20,010	13.06%	3,703	2.42%	3,923	2.56%	1,593	1.04%	19,591	12.78%	9,588	6.26%	143,665	93.74%	102,196	66.68%
4	144,022	47,244	32.80%	73,000	50.69%	1,032	0.72%	3,310	2.30%	15,258	10.59%	4,178	2.90%	2,561	1.78%	75,561	52.46%	27,779	19.29%	116,243	80.71%	38,033	26.41%
5	148,442	108,056	72.79%	19,577	13.19%	784	0.53%	10,120	6.82%	6,176	4.16%	3,729	2.51%	1,498	1.01%	21,075	14.20%	13,553	9.13%	134,889	90.87%	102,136	68.81%
6	151,699	120,832	79.65%	16,166	10.66%	852	0.56%	5,783	3.81%	4,653	3.07%	3,413	2.25%	1,392	0.92%	17,558	11.57%	12,070	7.96%	139,629	92.04%	114,609	75.55%
Totals:	**900,993**	**597,546**	**66.32%**	**186,510**	**20.70%**	**4,503**	**0.50%**	**48,940**	**5.43%**	**40,928**	**4.54%**	**22,566**	**2.50%**	**10,568**	**1.17%**	**197,078**	**21.87%**	**87,922**	**9.76%**	**813,071**	**90.24%**	**560,536**	**62.21%**

A=Asian NA=American Indian and Alaskan Native PI=Native Hawaiian and other Pacific Islander
MR=Multi-Race Hisp=Hispanic or Latino (of any race)

North Carolina General Assembly

Stat. Pack Report of Voter Registration by Gender, Age & Ethnicity
Plan_OST_13

Data Source: NC Board of Elections January 2011

	Voter Registration by Gender							Voter Registration by Age									Voter Registration by Ethnicity						
District	Total	Male	Male %	Female	Female %	Undes.		Total	18-25	18-25 %	26-40	26-40 %	41-65	41-65 %	66+	66+ %	Total	Hispanic	Hisp %	Non-Hisp	Non H %	Undesign.	Undes. %
1	93,969	42,319	45.04%	51,026	54.30%	624	0.66%	93,965	9,440	10.05%	[redacted]379	30.52%	44,031	46.86%	11,815	12.57%	93,966	1798	1.91%	73498	78.22%	18670	19.87%
2	107,927	50,368	46.67%	56,904	52.72%	655	0.61%	107,927	10,326	9.57%	30,804	28.54%	54,099	50.13%	12,698	11.77%	107,927	1462	1.35%	89434	82.87%	17031	15.78%
3	99,481	45,982	46.22%	52,805	53.08%	694	0.70%	99,481	9,660	9.71%	33,604	33.78%	44,942	45.18%	11,275	11.33%	99,481	1621	1.63%	76758	77.16%	21102	21.21%
4	80,234	34,664	43.20%	44,666	55.67%	904	1.13%	80,238	11,204	13.96%	27,248	33.96%	32,451	40.45%	9,335	11.63%	80,237	1921	2.39%	54518	67.95%	23798	29.66%
5	95,745	45,602	47.63%	49,326	51.52%	817	0.85%	95,745	16,998	17.75%	29,801	31.13%	37,255	38.91%	11,691	12.21%	95,745	1635	1.71%	71750	74.94%	22360	23.35%
6	97,804	46,123	47.16%	51,212	52.36%	469	0.48%	97,804	8,892	9.09%	29,168	29.82%	49,496	50.61%	10,248	10.48%	97,804	1554	1.59%	78121	79.88%	18129	18.54%
Totals:	**575,160**	**265,058**	**46.08%**	**305,939**	**53.19%**	**4,163**	**0.72%**	**575,160**	**66,520**	**11.57%**	**179,304**	**31.17%**	**262,274**	**45.60%**	**67,062**	**11.66%**	**575,160**	**9,991**	**1.74%**	**444,079**	**77.21%**	**121,090**	**21.05%**

Please note that if a district splits VTDs, there may be differences in the totals reflected at the district level, due to the mechanics of the process by which VTD-level values are allocated down to the census block level.

		Registration by Party																Registration by Race Without Regard to Party			
			Racial %s among D's					Racial %s among R's					Racial %s among U's								
District	VR Total	% D	White % of D	Black % of D	NA % of D	Other % of D	% R	White % of R	Black % of R	NA % of R	Other % of R	% U	White % of U	Black % of U	NA % of U	Other % of U	% L	% White	% Black	% NA	% Other
1	93930	47.68%	43.53%	50.60%	0.28%	5.59%	29.12%	93.68%	2.58%	0.16%	3.58%	23.05%	72.69%	16.21%	0.32%	10.78%	0.15%	64.91%	28.62%	0.25%	6.22%
2	107927	32.69%	68.72%	24.46%	0.20%	6.62%	38.65%	95.65%	0.78%	0.13%	3.44%	28.46%	84.73%	5.37%	0.15%	9.75%	0.20%	83.73%	9.83%	0.16%	6.29%
3	99481	36.97%	67.42%	22.64%	0.30%	9.64%	31.37%	94.22%	1.00%	0.16%	4.62%	31.41%	77.50%	6.20%	0.22%	16.08%	0.25%	79.03%	10.64%	0.23%	10.10%
4	80273	65.44%	20.19%	73.88%	0.24%	5.69%	13.91%	85.11%	8.77%	0.27%	5.86%	20.49%	49.68%	34.17%	0.28%	15.87%	0.15%	35.33%	56.60%	0.25%	7.81%
5	95745	41.85%	68.32%	23.40%	0.28%	8.00%	26.80%	94.43%	1.14%	0.13%	4.30%	31.07%	79.04%	7.05%	0.25%	13.67%	0.29%	78.69%	12.31%	0.23%	8.77%
6	97804	32.35%	66.04%	27.18%	0.28%	6.50%	38.31%	96.01%	0.88%	0.13%	2.98%	29.12%	85.23%	5.09%	0.18%	9.51%	0.21%	83.16%	10.62%	0.19%	6.03%
Totals:	575,160	41.92%	52.85%	39.99%	0.26%	6.90%	30.35%	94.31%	1.69%	0.15%	3.85%	27.52%	77.03%	10.28%	0.22%	12.47%	0.21%	72.15%	20.11%	0.22%	7.52%

D=Democratic, R=Republican, U=Unaffiliated, L=Libertarian, NA= American Indian.
Voters who do not designate a race are omitted from this chart, so the percentages may not add up to 100%

b

	2008 A. G. Cooper-Crumley				2008 Comm. Ag Cobb-Troxler				2008 Comm. of Lab Bonnan-Berry				2008 Governor Perdue-McCory-Munger						2008 President Obama-McCain-Barr-Wrt. In						2008 US Senate Hagan-Dole						2008 Straight Party					
District	Dem	Dem %	Rep	Rep %	Dem	Dem %	Rep	Rep %	Dem	Dem %	Rep	Rep %	Dem	Dem %	Rep	Rep %	Lib	Lib %	Dem	Dem %	Rep	Rep %	Other	Other %	Dem	Dem %	Rep	Rep %	Other	Other %	Dem	Dem %	Rep	Rep %	Lib.	Lib%
1	49,464	69.20%	22,019	30.80%	35,007	49.50%	35,718	50.50%	36,584	52.05%	33,697	47.95%	38,903	53.54%	31,538	43.4[redacted]	2,227	3.06%	41,[redacted]	[redacted]6.11%	31,483	43.02%	633	0.87%	41,184	56.65%	29,523	40.61%	1,995	2.74%	23,218	62.24%	13,853	37.13%	234	0.63%
2	48,016	59.04%	33,315	40.96%	30,169	37.78%	49,686	62.22%	32,070	40.33%	47,443	59.67%	34,478	41.35%	45,641	54.74[redacted]	3,264	3.91%	39,8[redacted]	47.29%	43,502	51.69%	861	1.02%	39,076	46.82%	41,932	50.24%	2,454	2.94%	17,526	45.82%	20,462	53.49%	264	0.69%
3	48,525	66.68%	24,243	33.32%	32,332	45.36%	38,954	54.64%	34,387	48.30%	36,804	51.70%	36,206	48.46%	35,451	47.45%	3,054	4.09%	42,450	56.17%	32,367	42.83%	762	1.01%	41,201	55.00%	31,440	41.97%	2,268	3.03%	19,096	56.79%	14,259	42.40%	271	0.81%
4	49,687	85.34%	8,535	14.66%	43,008	74.50%	14,722	25.50%	43,561	75.62%	14,045	24.38%	44,366	75.16%	13,165	22.30%	1,501	2.54%	47,328	79.42%	11,917	20.00%	348	0.58%	46,118	78.09%	11,669	19.76%	1,267	2.15%	32,265	85.97%	5,085	13.55%	180	0.48%
5	49,523	70.35%	20,876	29.65%	34,427	49.72%	34,813	50.28%	36,911	53.48%	32,113	46.52%	38,355	52.96%	30,649	42.32%	3,423	4.73%	44,683	60.87%	27,782	37.85%	937	1.28%	43,255	59.57%	26,850	36.98%	2,507	3.45%	21,209	63.19%	11,992	35.73%	361	1.08%
6	43,164	58.73%	30,333	41.27%	27,130	37.52%	45,186	62.48%	28,936	40.12%	43,188	59.88%	31,724	42.00%	40,800	54.01%	3,017	3.99%	35,568	46.60%	39,950	52.34%	812	1.06%	34,940	46.21%	38,014	50.27%	2,665	3.52%	16,002	46.38%	18,219	52.80%	283	0.82%
Totals:	288,379	67.43%	139,321	32.57%	202,073	47.98%	219,079	52.02%	212,449	50.61%	207,290	49.39%	224,032	51.18%	197,244	45.06%	16,486	3.77%	250,891	56.73%	187,001	42.28%	4,353	0.98%	245,774	56.07%	179,428	40.93%	13,156	3.00%	129,316	60.21%	83,870	39.05%	1,593	0.74%

	2004 Auditor Campbell-Merritt				2004 Governor Easley-Ballantine-Howe						2004 President Kerry-Bush-Badnarik-Cobb-Nader-Brown								2004 US Senate Bowles-Burr-Bailey-Rucker							
District	Dem	Dem %	Rep	Rep %	Dem	Dem %	Rep	Rep %	Lib	Lib %	Dem	[redacted] %	Rep	[redacted] %	Lib	Lib %	Other	Other %	Dem	Dem %	Rep	Rep %	Lib	Lib %	Other	Other %
1	18,447	50.22%	18,288	49.78%	21,405	56.40%	15,997	42.15%	549	1.45%	16,903	[redacted]%	20,676	[redacted]2%	117	0.31%	17	0.05%	18,147	48.50%	18,806	50.26%	463	1.24%	0	0.00%
2	17,743	41.22%	25,306	58.78%	23,215	51.27%	21,432	47.33%	637	1.41%	17,047	37.66%	28,012	61.89%	169	0.37%	36	0.08%	18,189	40.74%	25,916	58.05%	538	1.21%	0	0.00%
3	20,175	49.38%	20,680	50.62%	24,980	57.99%	17,349	40.27%	751	1.74%	19,895	46.09%	23,026	53.35%	208	0.48%	33	0.08%	20,789	48.89%	21,123	49.68%	610	1.43%	0	0.00%
4	21,177	73.95%	7,461	26.05%	21,934	74.88%	6,885	23.50%	475	1.62%	20,024	69.08%	8,823	30.44%	118	0.41%	20	0.07%	20,700	71.71%	7,845	27.18%	323	1.12%	0	0.00%
5	22,919	54.21%	19,361	45.79%	27,048	60.56%	16,633	37.24%	981	2.20%	22,787	50.91%	21,602	48.26%	299	0.67%	72	0.16%	23,521	53.41%	19,734	44.81%	780	1.77%	0	0.00%
6	15,406	41.17%	22,013	58.83%	19,937	50.46%	18,962	48.00%	609	1.54%	14,521	36.83%	24,705	62.67%	170	0.43%	26	0.07%	15,522	39.90%	22,819	58.66%	558	1.43%	0	0.00%
Totals:	115,867	50.60%	113,109	49.40%	138,519	57.77%	97,258	40.56%	4,002	1.67%	111,177	46.46%	126,844	53.00%	1,081	0.45%	204	0.09%	116,868	49.44%	116,243	49.18%	3,272	1.38%	0	0.00%

	2010 Straight Party						2010 US Senate Marshall-Burr-Beitler-Write-In					
District	Dem	Dem %	Rep	Rep %	[redacted]	Lib %	[redacted]em	Dem %	Rep	Rep %	Other	Other %
1	13,398	55.06%	10,822	44.48%	112	0.46%	22,955	49.79%	22,158	48.06%	989	2.15%
2	9,905	38.28%	15,857	61.29%	111	0.43%	20,924	37.90%	32,901	59.59%	1,388	2.51%
3	10,758	48.80%	11,191	50.76%	98	0.44%	22,545	46.62%	24,568	50.81%	1,243	2.57%
4	17,963	82.00%	3,865	17.64%	78	0.36%	26,152	74.89%	8,229	23.57%	539	1.54%
5	10,710	55.05%	8,629	44.35%	116	0.60%	22,673	52.86%	18,998	44.29%	1,225	2.86%
6	9,135	38.78%	14,312	60.75%	111	0.47%	18,075	37.20%	29,278	60.25%	1,242	2.56%
Totals:	**71,869**	**52.39%**	**64,676**	**47.15%**	**626**	**0.46%**	**133,324**	**48.29%**	**136,132**	**49.31%**	**6,626**	**2.40%**

HOUSE BILL 250*
Committee Substitute Favorable 3/24/11

Short Title: Various Clarifying Militia Law Amendments. (Public)

Sponsors:

Referred to:

March 9, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE REFERENCES IN CHAPTER 127A OF THE NORTH CAROLINA GENERAL STATUTES TO FEDERAL AND STATE MILITARY ORGANIZATIONS PROPER AND UNIFORM, AS DIRECTED BY SESSION LAW 2009-281, AS AMENDED BY SESSION LAW 2010-152, AND TO MAKE OTHER CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Chapter 127A of the General Statutes reads as rewritten:

"**Chapter 127A.**

"**Militia.**

"Article 1.

"Classification of Militia.

"**§ 127A-1. Composition of militia.**

The militia of the State shall consist of all able-bodied citizens of the State and of the United States and ~~such~~ all other able-bodied persons who have or shall declare their intention to become citizens of the United States, subject to ~~such~~ the qualifications ~~as may be hereinafter prescribed,~~ prescribed in this Chapter, who shall be drafted into ~~said~~ the militia or shall voluntarily accept commission, appointment, or assignment to duty therein.

...

"**§ 127A-3. Organized militia; National Guard.**

The North Carolina National Guard, both ~~army and air,~~ Army and Air, shall consist of regularly commissioned, warrant and enlisted personnel ~~between such ages as may be~~ within the age limits established by regulations promulgated by the secretary of the appropriate service and shall be organized, governed, armed, equipped and have ~~such~~ the duties and responsibilities ~~as hereinafter provided.~~provided in this Chapter.

"**§ 127A-4. Organized militia; naval militia.**

The naval militia shall consist of regularly commissioned, warrant and enlisted personnel ~~between such ages as may be~~ within the age limits established by regulations promulgated by the secretary of the appropriate service and shall be organized, governed, armed, equipped and have ~~such~~ the duties and responsibilities ~~as hereinafter provided.~~provided in this Chapter.

"**§ 127A-5. Organized militia; State defense militia.**

The State defense militia shall consist of commissioned, warrant and enlisted personnel called, ordered, appointed or enlisted therein by the Governor under the provisions of Article 5 of this Chapter and shall be organized, governed, armed, equipped and have ~~such~~ the duties and responsibilities ~~as hereinafter provided.~~provided in this Chapter.

"**§ 127A-6. Organized militia; historic military commands.**

Historic military commands are those historic groups which remain active by meeting at least once a month and which follow military procedures. Only ~~such~~ groups ~~as may be~~ designated by the Governor shall fall within this branch of the militia. Any maximum age limits prescribed by this Chapter ~~shall not be applicable~~ do not apply to members of historic military commands.

"§ 127A-7. Composition of unorganized militia.

The unorganized militia shall consist of all other able-bodied citizens of the State and of the United States and ~~such~~ all other able-bodied persons who have or shall declare their intention to become citizens of the United States, who shall be at least 17 years of age, except those who have been convicted of a felony or discharged from any component of the military under other than honorable conditions.

"§ 127A-8. Exemptions from duty with the militia.

The officers, judicial and executive, of the government of the United States and the State of North Carolina, persons in the military or naval service of the United States, customhouse clerks, persons employed by the United States in the transmission of mail, artificers and personnel employed in the armories, arsenals and navy yards of the United States, pilots, and mariners actually employed in the sea service of any citizen or merchant within the United States shall be exempt from duty with the militia without regard to age, and all persons who, because of religious beliefs, ~~shall~~ claim exemption from duty with the militia, if the conscientious holding of ~~such~~ the belief by ~~such~~ that person ~~shall be~~ is established under ~~such~~ the regulations ~~as are or may be~~ prescribed for exemption from service with the ~~armed forces~~ Armed Forces of the United States, shall be exempted from militia service in a combatant capacity; but no person so exempted shall be exempt from militia service in any capacity that shall be declared noncombatant for the ~~armed forces~~ Armed Forces of the United States.

"§ 127A-9. Number of troops authorized.

In time of peace the State shall maintain only ~~such~~ those troops ~~as may be~~ that are authorized by the President of the United States; but nothing contained in this Chapter shall be construed as limiting the rights of the State in the use of the North Carolina National Guard or the State defense militia or both within its borders in time of peace. Nothing contained in this Chapter shall prevent the organization and maintenance of State police or constabulary.

"§ 127A-10. Corps entitled to retain privileges.

Any corps of artillery, cavalry, or infantry existing in the State on the passage of the act of Congress of May 8, 1792, which by the laws, customs, or usages of the State has been in continuous existence since the passage of ~~such~~ that act, under its provisions and under the provisions of section 232 and sections 1625 to 1660, both inclusive, of Title 16 of the revised statutes of 1873 and the act of Congress of January 21, 1903, relating to the militia, shall be allowed to retain its ancient privileges, subject, nevertheless, to all duties required by law of the militia; but ~~such~~ these organizations may be a part of the North Carolina National Guard, and entitled to all the privileges of this Chapter, and shall conform in all respects to the organization, discipline, and training of the North Carolina National Guard in time of war. For purposes of training and when on active duty in the service of the United States they may be assigned to higher units, as the President may direct, and shall be subject to the orders of officers under whom they shall be serving.

"Article 2.

"General Administrative Officers.

...

"§ 127A-17. Commander in chief to prescribe regulations.

The commander in chief shall have the power and ~~it shall be his duty~~the duty, from time to ~~time~~ time, to issue ~~such~~ orders and to prescribe ~~such~~ regulations relating to the organized and unorganized militia ~~as will cause~~that are necessary for the ~~same~~ militia at all times to conform to the federal requirements of the United States government relating thereto.

"§ 127A-17.1. Confidentiality of National Guard records.

Notwithstanding any provision of Chapter ~~143B,~~143B of the General Statutes, no records of the North Carolina National Guard in the Department of Crime Control and Public Safety shall be disclosed or used for any purpose except for official purposes, and no records shall be disclosed, destroyed or used in any manner which is in violation of any existing federal law or regulation. Nothing in this Chapter shall convert records which are the property of the federal government into State property.

"§ 127A-18. Personal staff of Governor.

The Governor may detail not more than 10 active North Carolina National Guard members and two active naval militia members who shall in addition to their regular duties, perform the duties of aides-de-camp on the personal staff of the Governor.

"§ 127A-19. Adjutant General.

The military head of the militia shall be the Adjutant General who shall hold the rank of major general. The Adjutant General shall be appointed by the Governor in ~~his~~ the Governor's capacity as commander in chief of the militia, in consultation with the Secretary of Crime Control and Public Safety, and shall serve at the pleasure of the Governor. No person shall be appointed as Adjutant General who has less than five years' commissioned service in an active status in any component of the ~~armed forces~~Armed Forces of the United States. The Adjutant General, while holding ~~such~~ this office, may be a member of the active North Carolina National Guard or naval militia.

Subject to the approval of the Governor and in consultation with the ~~Secretary,~~ ~~Department~~Secretary of Crime Control and Public Safety, the Adjutant General may appoint (i) a deputy adjutant general who may hold the rank of major general, and (ii) an assistant adjutant general for Army National Guard, and an assistant adjutant general for Air National Guard, each of whom may hold the rank of brigadier general and who shall serve at the pleasure of the Governor. The Adjutant General may also employ ~~such~~ staff members and other personnel as ~~may be~~ authorized by the Secretary and funded.

...

"§ 127A-21. United States property and fiscal officer.

(a) The Governor of the State, in consultation with the Secretary of Crime Control and Public Safety, shall appoint, designate, or detail, subject to the approval of the Secretary of the Army and the Secretary of the Air Force, a qualified commissioned officer of the North Carolina National Guard who is also a commissioned officer of the Army National Guard of the United States or the Air National Guard of the United States, as the case may be, to be the United States property and fiscal officer for North Carolina. If the officer is not on active duty, the President may order ~~him~~ the officer to active duty, with ~~his~~ the officer's consent, to serve as a property and fiscal officer.

(b) The status of the United States property and fiscal officer is that of a reserve commissioned officer of the ~~army or air force,~~United States Army or Air Force, as appropriate, on extended active duty and detailed for duty with the National Guard Bureau for administrative purposes. In ~~his~~ the officer's capacity as United States property and fiscal officer, ~~he~~ the officer will function under the direction of and cooperate fully with the State Adjutant General.

(c) The assumption and performance of duties and responsibilities, pay and allowances, and other personnel actions to include retention and retirement of an officer appointed and serving as the United States property and fiscal officer will be governed by regulations promulgated by the National Guard Bureau or pursuant to regulations promulgated by the secretary of the appropriate service.

"§ 127A-22. North Carolina property and fiscal officer.

(a) Upon full mobilization of the North Carolina National Guard into federal service to the extent that the functions of a United States property and fiscal officer no longer exist or are

authorized under federal statutes, the Governor of the State, in consultation with the Secretary of Crime Control and Public Safety, may appoint, designate or detail a qualified individual to serve at the pleasure of the Governor as the North Carolina property and fiscal officer for any composition of a nonfederally recognized State National Guard or State defense militia organized under the provisions of ~~G.S. 127A-1 et seq.~~this Chapter.

(b) In consideration of ~~his~~ the North Carolina property and fiscal officer's services for the responsibility, care, utilization, and issue of State or federal facilities and property, under the jurisdiction of the State of North Carolina, the ~~North Carolina property and fiscal~~ officer shall receive from the State ~~such~~ a just and proper salary as ~~the Governor may authorize to be just and proper;~~authorized by the Governor; the salary to constitute a charge upon appropriations made to the Department of Crime Control and Public Safety.

(c) The North Carolina property and fiscal officer ~~for North Carolina~~ shall be an employee of the Department of Crime Control and Public Safety. ~~He~~ The officer shall be required to give good and sufficient bond to the State, the amount thereof to be determined by the Governor, for the faithful performance of ~~his~~ duties and for the safekeeping and proper distribution of ~~such~~ the funds and property entrusted to ~~his~~ the officer's care. ~~He~~ The officer shall receipt for and account for all funds and property allotted to ~~his~~ the officer's custody from the appropriation for military purposes by State and federal agencies, and shall make ~~such~~ returns and reports through the Secretary of Crime Control and Public Safety concerning ~~same~~ the property and funds as ~~may be~~ required by the Governor or State laws.

"§ 127A-23. Commissions for commandants and officers at qualified educational institutions.

The Governor of North Carolina is authorized to appoint and commission, as staff officers of the North Carolina unorganized militia, the officers of any university, college, academy or other educational institution which qualifies as ~~herein provided.~~provided in this section. Any university, college, academy or other educational institution shall be qualified under this section when ~~such~~ the institution has been regularly incorporated under and by virtue of the laws of North Carolina; the institution, as a part of its courses of study, regularly teaches military science and tactics; the Department of Defense at Washington, D.C., has detailed an officer of the ~~armed forces~~Armed Forces of the United States as professor or assistant professor of military science and tactics; the institution has been designated as qualified by the secretary of the appropriate service and has been made a unit of the Senior or Junior Reserve Officers' Training Corps, or the institution, not having a unit of the Reserve Officers' Training Corps, has been approved and authorized by the Secretary of Defense to participate in the National Defense Cadet Corps Training Program or other military training programs under Title 10, United States Code, sections 3540 and 4651.

Any qualified institution desiring the appointment of officers in the North Carolina unorganized militia shall make application to the Governor setting forth all requisite facts as to its qualifications, the names of the persons to be commissioned, the rank desired for each, and the person's position at the institution. The application shall be signed by the chancellor, president, superintendent or other presiding official, under the seal of the institution. Upon receipt of the application, the Governor may appoint and commission the officers of ~~such~~ a qualified institution as follows: the chancellor, president, superintendent or other presiding official, as colonel; the vice-president, principal or other officer second in authority, as major; the professors and members of the faculty, as captains. The persons so commissioned shall have no connection with the North Carolina National Guard or other military forces of the State, nor shall they exercise any military authority other than in the discharge of their duties at their respective institutions. The commissions issued under this section may be terminated at the will of the Governor.

"Article 3.

"National Guard.

"**§ 127A-29. National Guard.**

The North Carolina National Guard class of the four classes of the organized militia as established under G.S. 127A-2 is hereby designated the ~~North Carolina National Guard.~~North Carolina National Guard.' Those elements of the North Carolina National Guard which receive federal recognition by the United States government shall hold a dual status both as State troops and as a reserve component of the ~~armed forces~~Armed Forces of the United States. In its federal status, the North Carolina National Guard shall be subject to federal laws and regulations pertaining thereto. The Adjutant General shall insure compliance with ~~such~~ those federal laws and regulations and with all State laws and orders of the Governor not inconsistent with ~~those federal laws and regulations.~~them.

"**§ 127A-30. Organization of National Guard units.**

Except as otherwise specifically provided by the laws of the United States, the organization of the North Carolina National Guard, including the composition of all ~~units thereof,~~its units, shall be the same as that which is or may hereafter be prescribed for the regular ~~army or air force~~United States Army or Air Force subject in time of peace to ~~such~~ general exceptions ~~as may be~~ authorized by the Secretary of Defense.

"**§ 127A-31. Location of units.**

The Governor shall determine and fix the location of the units and headquarters of the North Carolina National Guard within the State; but no organization of the North Carolina National Guard, members of which shall be entitled to and shall have received compensation under the provisions of the act of Congress approved June 3, 1916, as amended, shall be disbanded without the consent of the President, nor without ~~such~~ that consent shall the commissioned or enlisted strength of any such organization be reduced below the minimum that is now or shall be hereafter prescribed therefor by the President.

"**§ 127A-32. Officers appointed and commissioned; oath of office.**

All officers of the North Carolina National Guard shall be appointed and commissioned by the Governor as follows, viz.:

(1) Except as otherwise specifically provided by the laws of the United States, the qualifications for appointment as an officer in the North Carolina National Guard shall be the same as those prescribed for the regular establishment, subject to ~~such~~ general exceptions ~~as may be~~ authorized by the Secretary of Defense.

(2) Candidates for ~~such~~ appointment shall make written application therefor on ~~such~~ forms ~~as may be~~ prescribed by the secretary of the appropriate service, to the Adjutant General, State of North Carolina, through command channels for comment by endorsements thereon.

(3) No person shall hereafter be appointed an officer of the North Carolina National Guard unless ~~he~~ the person has established to the satisfaction of a board of officers ~~his~~ that person's physical, moral, and professional qualifications to perform the duties of the grade and position for which examined, subject to ~~such~~ general exceptions ~~as may be~~ authorized by the Secretary of Defense. The board shall consist of three or more commissioned officers of the appropriate service, appointed under ~~such~~ regulations ~~as may be~~ promulgated by the secretary of the appropriate service.

(4) Candidates appointed as officers of the North Carolina National Guard shall take and subscribe to the following oath of office:

"I, (First Name – Middle Name – Last Name), do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the State of North Carolina against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey orders of the President of the United States and of the Governor of the

State of North Carolina; that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of (Grade) (Branch) in the National Guard of the State of North Carolina upon which I am about to enter, so help me God."

"**§ 127A-33. Promotion of officers by seniority and in accordance with regulations.**

The promotion of all officers shall be by seniority as far as ~~the same is~~ practicable and ~~to~~ in the best interest of the service within the organization, and in accordance with regulations promulgated by the secretary of the appropriate service.

...

"**§ 127A-35. Elimination and disposition of officers; efficiency board; transfer to inactive status.**

(a) Whenever the efficiency or general fitness, including physical fitness, of a North Carolina National Guard officer is in question, the Adjutant General, State of North Carolina, may order ~~him~~ the officer to appear before an efficiency board to determine whether or not the appointment of the officer should be withdrawn. The efficiency board will be composed of not less than three commissioned officers, all senior in rank to the officer undergoing investigation. A member of the board serving in a legal or medical advisory capacity may be junior to any person, other than a judge advocate, law specialist, or medical officer being considered. The findings of an efficiency board are not final until reviewed and approved by the Secretary ~~of the Department~~ of Crime Control and Public Safety and the Governor of the State of North Carolina.

(b) Commissions of officers of the North Carolina National Guard may be vacated upon resignation, absence without leave for 30 days, pursuant to sentence of a court martial, or pursuant to regulations promulgated by the secretary of the appropriate service.

(c) Officers of the North Carolina National Guard may, upon their own request, be transferred to the inactive North Carolina National Guard, subject to ~~such~~ exceptions ~~as may be~~ authorized by the Adjutant General, State of North Carolina, or the Secretary of Defense.

...

"**§ 127A-37. Enlistments in National Guard; oath of enlistment.**

(a) Enlistments in the North Carolina National Guard shall be for ~~such~~ the periods and subject to ~~such~~ the qualifications as prescribed by the secretary of the appropriate service.

(b) Enlisted ~~men~~ persons shall not be recognized as members of the North Carolina National Guard until they shall have subscribed to the following oath of enlistment:

"I do hereby acknowledge to have voluntarily enlisted this ____day of_____, ____, in the (Army) (Air) National Guard of the State of North Carolina and as a Reserve of the (Army) (Air Force) with membership in the (Army National Guard of the United States) (Air National Guard of the United States) for a period of (Years – Months – Days) under the conditions prescribed by law, unless sooner discharged by proper authority.

"I, (First Name – Middle Name – Last Name), do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and of the State of North Carolina against all enemies, foreign and domestic; that I will bear true faith and allegiance to them; and that I will obey the orders of the President of the United States and the Governor of North Carolina and the orders of the officers appointed over me, according to law, regulations, and the Uniform Code of Military Justice, so help me God."

"**§ 127A-38. Discharge of enlisted personnel.**

(a) Enlisted personnel discharged from service in the North Carolina National Guard shall receive a discharge in writing in ~~such~~ the form and with ~~such~~ the classification ~~as~~ that is or shall be prescribed under regulations promulgated by the appropriate service.

(b) Discharges may be given prior to the expiration of terms of enlistment under ~~such~~ regulations ~~as may be~~ prescribed by the Adjutant General, State of North Carolina, or pursuant to regulations promulgated by the secretary of the appropriate service.

"§ 127A-39. Membership continued in the National Guard.

When called or ordered into federal service and discharged therefrom, members shall continue their membership in the North Carolina National Guard until the expiration of their enlistment or appointment, unless sooner terminated by proper authority.

"§ 127A-40. Pensions for the members of the North Carolina National Guard.

(a) Every member and former member of the North Carolina National Guard who meets the requirements ~~hereinafter set forth~~of this section shall receive, commencing at age 60, a pension of ninety-five dollars ($95.00) per month for 20 years' creditable military service with an additional nine dollars fifty cents ($9.50) per month for each additional year of such service; provided, however, that the total pension shall not exceed one hundred ninety dollars ($190.00) per month. The requirements for ~~such~~ a pension are that each member shall:

(1) Have served and qualified for at least 20 years' creditable military service, including National Guard, reserve and active duty, under the same requirement specified for entitlement to retired pay for nonregular service under Chapter 67, Title 10, United States Code.

(2) Have at least 15 years of the aforementioned service as a member of the North Carolina National Guard.

(3) Have received an honorable discharge from the North Carolina National Guard.

(b) Payment to a retired member of the North Carolina National Guard under the provisions of this section will cease at the death of the individual and no payment will be made to beneficiaries or to the decedent's estate, except that the legal representative of a retired member who dies shall be entitled to a full check for the month in which the death occurred.

(c) No individual receiving retired pay as a result of length of service, age or physical disability retirement from any of the regular components of the ~~armed forces~~Armed Forces of the United States will be eligible for benefits under this section.

(d) Nothing contained in this section shall preclude or in any way affect the benefits that an individual may be entitled to from State, federal or private retirement systems.

(e) Repealed by Session Laws 1989, c. 792, s. 2.3.

(f) The Secretary of Crime Control and Public Safety shall determine the eligibility of ~~guard~~ North Carolina National Guard members for the benefits ~~herein~~ provided in this section and shall certify those eligible to the State Treasurer. In addition, the Department of Crime Control and Public Safety shall, on and after July 1, 1983, provide the Department of State Treasurer with an annual census population, by age and the number of years of creditable service, for all former members of the North Carolina National Guard in receipt of a pension as well as for all active members of the North Carolina National Guard who are not in receipt of a pension and who have seven and more years of creditable service. The Department of Crime Control and Public Safety shall also provide the State Treasurer a census population of all former members of the North Carolina National Guard who are not in receipt of a pension and who have 15 and more years of creditable service. The Department of State Treasurer shall make pension payments to those persons certified from the North Carolina National Guard Pension Fund, which shall include general fund appropriations made to the Department of State Treasurer. The Department of State Treasurer shall have performed an annual actuarial valuation of the fund and shall have the financial responsibility for maintaining the fund on a generally accepted actuarial basis. The Department of Crime Control and Public Safety shall provide the Department of State Treasurer with whatever assistance is required by the State Treasurer in carrying out ~~his~~ the State Treasurer's financial responsibilities.

(g) The provisions of this section shall apply to any member or former member of the North Carolina National Guard who is qualified for the above retirements with eligibility ~~of such person~~ commencing at age 60 or July 1, 1974, whichever is the later date.

(h) If, for any reason, the North Carolina National Guard Pension Fund shall be insufficient to pay in full any pension benefits, or other charges, then all benefits or payments shall be reduced pro rata, for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a pension or benefit payment shall have been reduced.

(h1) Any member or former member of the North Carolina National Guard who is qualified for benefits under this section and who is a member of a domiciled employees' or retirees' association that has at least 2,000 members, the majority of whom are active or retired employees of the State or public school employees, may authorize, in writing, the periodic deduction from the member's retirement benefits a designated lump sum to be paid to the employees' or retirees' association. The authorization shall remain in effect until revoked by the member. A plan of deductions pursuant to this subsection shall become void if the employees' or retirees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit.

(i) Pensions for members of the North Carolina National Guard shall be subject to future legislative change or revision.

"§ 127A-41. Uniforms, arms and equipment.

The North Carolina National Guard shall, as far as practicable, be uniformed, ~~armed~~ armed, and equipped with the same type of uniforms, arms and equipment as is or shall be provided for the appropriate regular service.

"§ 127A-41.1. Stay of legal and court proceedings because of State military service.

At any stage of any legal proceeding in any court in which a person called into service of the State by the Governor is involved, either as plaintiff or defendant, during the period of service or within 60 days after the conclusion of the period of active service, all actions and proceedings:

(1) May be stayed by the court on its own motion; or

(2) Shall be stayed on application by the member or by a person acting on behalf of the member, unless, in the opinion of the court, the ability of the plaintiff to prosecute the action or the defendant to conduct ~~his~~ a defense is not materially affected by reason of the military service.

...

"§ 127A-42. Distinguished Service Medal by Governor of North Carolina.

There is hereby created the North Carolina Distinguished Service Medal which shall be of appropriate design, and a ribbon, together with a rosette or other device to be worn in lieu thereof. This medal and appurtenances thereto shall be of a design approved by the Governor. Upon the recommendation of the Secretary of Crime Control and Public Safety and a board consisting of the Adjutant General and all other general officers and officers assigned to authorized general-officer-grade ~~vacancies,~~vacancies of the North Carolina National Guard, the Governor is authorized to present ~~such~~ the medal to any member or former member of the ~~armed forces~~Armed Forces of the United States discharged under honorable conditions, who has distinguished himself or herself by exceptionally meritorious conduct in the performance of outstanding service to the North Carolina National Guard. The Governor, on ~~his~~ the Governor's own authority, may award ~~such~~ the medal to the Secretary of Crime Control and Public Safety, the Adjutant General, or any other active or inactive general officer or flag officer of the ~~armed forces,~~Armed Forces of the United States who has distinguished himself or herself by especially meritorious conduct in the performance of his or her duties.

"§ 127A-43. North Carolina National Guard Meritorious Service Medal.

There is hereby created the North Carolina National Guard Meritorious Service Medal which shall be of appropriate design, and a ribbon, together with a rosette or other device to be

worn in lieu thereof. This medal and appurtenances thereto shall be of a design approved by the Governor or ~~his designated representative.~~the Governor's designee. The Governor or ~~his designated representative~~the Governor's designee is authorized to award this medal upon the recommendation of the Secretary of Crime Control and Public Safety in consultation with the Adjutant General and a board of officers appointed by the Adjutant General. Any member or former member of the ~~armed forces~~Armed Forces of the United States discharged under honorable conditions, who has distinguished himself or herself by heroism, meritorious achievement, or meritorious service to the North Carolina National Guard, is eligible for this award. The Governor, on ~~his~~ the Governor's own authority, may award ~~such~~ the medal to the Secretary of Crime Control and Public Safety, the Adjutant General or any other active or inactive general officer or flag officer of the ~~armed forces~~Armed Forces of the United States who has distinguished himself or herself by heroism, meritorious achievement, or meritorious service to the North Carolina National Guard. The required heroism, achievement, or service, while of a lesser degree than that required for awarding of the North Carolina Distinguished Service Medal, must nevertheless be accomplished with distinction.

"§ 127A-44. North Carolina National Guard Commendation Medal.

There is hereby created the North Carolina National Guard Commendation Medal which shall be of appropriate design, and a ribbon, together with a rosette or other device to be worn in lieu thereof. This medal and appurtenances thereto shall be of a design approved by the Governor or ~~his designated representative.~~the Governor's designee. The Adjutant General of North Carolina or ~~his designated representative,~~the Adjutant General's designee, who shall not be below the rank of colonel (O-6), may award this medal. Any member or former member of the ~~armed forces~~Armed Forces of the United States discharged under honorable conditions, who distinguishes himself or herself by ~~his~~ example or the performance of a specific act in behalf of the North Carolina National Guard, is eligible for this award.

"§ 127A-44.1. North Carolina National Guard Achievement Medal.

There is hereby created the North Carolina National Guard Achievement Medal which shall be of appropriate design, and a ribbon, together with a rosette or other device to be worn in lieu thereof. This medal and appurtenances thereto shall be of a design approved by the Governor or ~~his designated representative.~~the Governor's designee. The Adjutant General of North Carolina or ~~his designated representative,~~the Adjutant General's designee, who shall not be below the rank of lieutenant colonel (O-5), may award this medal. Any member or former member of the ~~armed forces~~Armed Forces of the United States discharged under honorable conditions, who distinguishes himself or herself by ~~his~~ example or the performance of a specific act in behalf of the North Carolina National Guard, is eligible for this award.

"§ 127A-45. North Carolina National Guard State Active Duty Award.

There is hereby created the North Carolina National Guard State Active Duty Award which shall be a ribbon of appropriate design. This ribbon and appurtenances thereto shall be of a design approved by the Governor or ~~his designated representative.~~the Governor's designee. The Adjutant General of North Carolina may present this ribbon to members of the North Carolina National Guard who, by order of the Governor, satisfactorily serve a tour of State active duty. To be worthy of this award, the nature of the tour of State active duty must have been a distinct and notable service to the State or to a community, as determined by the Adjutant General of North Carolina. On or after July 1, 1991, this award may also be presented to active guard personnel and reserve personnel who satisfactorily participate in tours of State active duty.

"§ 127A-45.1. North Carolina National Guard Governor's Unit Citation.

There is hereby created the North Carolina National Guard Governor's Unit Citation which shall be a streamer, a unit emblem, and a certificate, all of appropriate design as approved by the Governor or ~~his designated representative.~~the Governor's designee. The Governor or ~~his designated representative~~the Governor's designee is authorized to present ~~such~~ the unit citation, upon recommendation of the Adjutant General, subject to the approval of the Secretary, to any

unit of North Carolina National Guard distinguishing itself by extraordinary heroism or meritorious service while in a State active duty status. The unit must display such gallantry, determination, and esprit de corps in accomplishing its mission under conditions which set it apart and above other units.

"§ 127A-45.2. North Carolina National Guard Meritorious Unit Citation.

There is hereby created the North Carolina National Guard Meritorious Unit Citation which shall be a streamer, a unit emblem, and a certificate, all of appropriate design as approved by the Governor or ~~his designated representative.~~the Governor's designee. The Adjutant General is authorized to present ~~such~~ this citation to any unit of the North Carolina National Guard distinguishing itself through heroism or meritorious service to the State of North Carolina. The required heroism or meritorious service, while of a lesser degree than that required for the award of the North Carolina National Guard Governor's Unit Citation, must nevertheless have been accomplished with distinction.

"§ 127A-45.2A. North Carolina National Guard Outstanding Unit Award.

There is hereby created the North Carolina National Guard Outstanding Unit Award which shall be a streamer, a unit emblem, and a certificate, all of appropriate design as approved by the Governor or ~~his designated representative.~~the Governor's designee. The Adjutant General may present this citation to any unit of the North Carolina National Guard distinguishing itself through meritorious achievement or service to the State of North Carolina. The required meritorious service, while of a lesser degree than that required for the award of the North Carolina National Guard Meritorious Unit Citation, must nevertheless have been accomplished with distinction.

"§ 127A-45.3. North Carolina National Guard Distinguished Civilian Service Medal.

There is hereby created the North Carolina National Guard Distinguished Civilian Service Medal which shall be of appropriate design, rosette or other device to be worn in lieu thereof, and citation certificate, of a design approved by the Governor or ~~his designated representative.~~the Governor's designee. The Governor or ~~his designated representative~~the Governor's designee is authorized to award this medal upon the recommendation of the Adjutant General of North Carolina and a board of officers and noncommissioned officers appointed by the Adjutant General, to United States citizens and governmental officials at the policy development level who render distinguished service to the North Carolina National Guard.

"§ 127A-45.4. North Carolina National Guard Outstanding Civilian Service Medal.

There is hereby created the North Carolina National Guard Outstanding Civilian Service Medal which shall be of appropriate design, rosette or other device to be worn in lieu thereof, and citation certificate, of a design approved by the Governor or ~~his designated representative.~~the Governor's designee. The Adjutant General of North Carolina is authorized to award this medal upon the recommendation of a board of officers and noncommissioned officers, appointed by the Adjutant General, to United States citizens and governmental officials who render outstanding service to the North Carolina National Guard.

"§ 127A-45.5. North Carolina National Guard Meritorious Civilian Service Award.

There is hereby created the North Carolina National Guard Meritorious Civilian Service Award which shall consist of a certificate of a design approved by the Governor or ~~his designated representative.~~the Governor's designee. The Adjutant General of North Carolina or ~~a designated representative,~~the Adjutant General's designee, who shall not be below the grade of general officer, is authorized to confer this award. This award may be granted to individuals, organizations, corporations, associations and other groups, making a substantial contribution to the North Carolina National Guard.

"§ 127A-45.5A. Other awards.

The Adjutant General may, from time to time, create ~~such~~ other awards and medals to recognize meritorious service or outstanding achievement. The creation of ~~such~~ the awards and

medals shall be approved by the Governor. The Governor or ~~his~~ the Governor's designee shall approve the design of ~~such~~ the awards and medals.

"§ 127A-46. Authority to wear medals, ribbons and other awards.

The Adjutant General may prescribe those medals, ribbons and other awards and decorations ~~which~~ that may be worn by members of the militia, not inconsistent with regulations of the respective ~~armed services~~Armed Forces of the United States.

"§ 127A-47. Courts-martial for National Guard.

Courts-martial for ~~organizations~~ military personnel of the North Carolina National Guard not in the service of the United States shall be of three kinds, namely, general courts-martial, special courts-martial, and summary courts-martial. They shall be constituted, have cognizance of the same subjects, and possess like powers as similar courts provided for by the Uniform Code of Military Justice and Manual for Courts-Martial, United States. The proceedings of courts-martial of the North Carolina National Guard shall follow the forms and modes of procedure prescribed for such similar courts.

"§ 127A-48. General courts-martial.

General courts-martial for military personnel of the North Carolina National Guard not in the service of the United States may be convened by orders of the Governor of the State or of the Adjutant General, and ~~such~~ these courts shall have the power to impose punishments in like manner and to the extent prescribed by the Uniform Code of Military Justice and Manual for Courts-Martial, United States, as shall be in use by the ~~armed forces~~Armed Forces of the United States at the time of the offense, except that (i) no court shall have the authority to impose confinement as part of the sentence unless the court consisted of a military judge and not less than five members, except that a defendant who requests a military judge alone may be sentenced to confinement, and (ii) no court shall have the authority to impose confinement in excess of one year and one day as part of a sentence.

"§ 127A-49. Special courts-martial; appointments, power and authority.

In the North Carolina National Guard, not in the service of the United States, special courts-martial may be appointed by any of the following:

(1) The commander of a brigade, regiment, comparable or higher command of the North Carolina Army National Guard, provided that ~~such~~ the commander is a general officer.

(2) The commander of a wing, group, separate squadron, comparable or higher command of the North Carolina Air National Guard, provided that ~~such~~ the commander is a general officer.

(3) The commander or officer in charge of any North Carolina National Guard command when empowered by the Governor or the Adjutant General of North Carolina, provided that ~~such~~ the commander or officer is a general officer.

Except as to commissioned officers, ~~such~~ special courts-martial shall have the power and authority to try any person subject to military law for any crimes or offenses within the jurisdiction of a general military court. ~~Such~~ Special courts-martial shall have the power to impose punishments in like manner and to the extent prescribed by the Uniform Code of Military Justice and Manual for Courts-Martial, United States, as shall be in use by the ~~armed forces~~Armed Forces of the United States at the time of the offense, except that (i) no court shall have the authority to impose confinement as part of the sentence unless the court consisted of a military judge and not less than three members except that a defendant who requests a military judge alone may be sentenced to confinement, and (ii) no court shall have the authority to impose confinement in excess of six months as part of a sentence.

"§ 127A-50. Summary courts-martial.

In the North Carolina National Guard, not in the service of the United States, summary courts-martial may be appointed by any of the following:

(1) Any person who may convene a general or special court-martial.
(2) The commander of a battalion, comparable or higher command of the North Carolina Army National Guard, provided that ~~such~~ the commander is an officer of the grade of major or above.
(3) The commander of a detached squadron, comparable or higher command of the North Carolina Air National Guard, provided that ~~such~~ the commander is an officer of the grade of major or above.

~~Such~~ The court shall consist of one officer who shall have the power to administer oaths and try enlisted personnel of each respective command for breaches of discipline and violations of laws governing ~~such~~ those organizations. ~~Such~~ These courts shall also have the power to impose punishments in like manner and to the extent prescribed by the Uniform Code of Military Justice and Manual for Courts-Martial, United States, as shall be in use by the ~~armed forces~~Armed Forces of the United States at the time of the offense, except that no court shall have the authority to impose confinement as part of a sentence. There shall be no right to demand trial by court-martial.

"§ 127A-50.1. Military judges.

The Adjutant General shall appoint military judges to preside over courts-martial of the North Carolina National Guard not in federal service. Minimum requirements for appointment as a military judge are:

(1) Certification as a military judge by the Judge Advocate General of the United States Army, Air Force, Navy, Marines, or Coast Guard.
(2) Designation as a judge advocate by ~~The~~ the Judge Advocate General of the United States Army, Navy, Air Force, Marines, or Coast Guard.
(3) Membership in the North Carolina National Guard, the National Guard of another state, or the active or reserve components of ~~any of the military services.~~the Armed Forces of the United States.

"§ 127A-51. Nonjudicial punishment.

Any commander of the North Carolina National Guard, not in the service of the United States, may, in addition to or in lieu of admonition or reprimand, impose nonjudicial punishment in like manner and to the extent prescribed by Article 15 of the Uniform Code of Military Justice and Manual for Courts-Martial, United States, as shall be currently in use by the ~~armed forces~~Armed Forces of the United States except that there shall be no right to demand trial by court-martial.

"§ 127A-52. Jurisdiction of courts-martial.

The jurisdiction of courts-martial of the North Carolina National Guard, not in the service of the United States, shall be as prescribed by the Manual for Courts-Martial, United States, as shall be currently in use by the ~~armed forces~~Armed Forces of the United States. Such courts-martial shall have jurisdiction to try accused persons for offenses committed while serving without the State and while going to and returning from ~~such~~ service without the State in like manner and to the same extent as while serving within the State.

"§ 127A-53. Manual for Courts-Martial.

Trials and proceedings by all courts and boards shall be in accordance with the Manual for Courts-Martial, United States, as shall be currently in use by the ~~armed forces~~Armed Forces of the United States, except as modified by this Chapter.

...

"§ 127A-55. Forms for courts-martial procedure.

In the North Carolina National Guard, not in the service of the United States, forms for courts-martial procedure shall be substantially as those set forth in the Appendices, Manual for Courts-Martial, United States, as shall be currently in use by the ~~armed forces~~Armed Forces of the United States, with any modifications required by this Chapter.

"§ 127A-56. Powers of courts-martial.

In the North Carolina National Guard, not in the service of the United States, presidents of courts-martial and summary court officers shall have power to issue warrants to arrest an accused person and to bring the person before a court for trial whenever ~~such~~ the person has disobeyed an order in writing from the convening authority to appear before ~~such~~ the court, a copy of the charge or charges having been delivered to the accused with ~~such~~ the order, and to issue subpoenas and subpoenas duces tecum, and to enforce by attachment attendance of witnesses and the production of books, papers, records and other articles subject to a subpoena duces tecum, and to sentence for a refusal to be sworn or to answer as provided in actions before civil courts. The presiding officer shall also have power to punish for contempt occurring in the presence of the court.

"§ 127A-57. Execution of processes and sentences.

All warrants and other processes authorized by this Chapter and sentences of any of the military courts of this State shall be executed by any sheriff, deputy sheriff, or State or local law enforcement officer into whose hands ~~the same~~they may be placed for service or execution, and ~~such~~ the officer shall make return thereof to the officer issuing or imposing the same. ~~Such~~ The service or execution of process or sentence shall be made by ~~such~~ the officer without tender or advancement of fee therefor; but all costs in ~~such~~ these cases shall be paid from funds appropriated to the Department of Crime Control and Public Safety.

...

"§ 127A-59. Sentences.

When any sentence to fine or imprisonment ~~shall be~~is imposed by any military court of this State, it shall be the duty of the military judge, president of ~~said~~ the court, or summary court officer, upon the approval of the court's findings and ~~sentence of such court,~~sentence, to make out and sign a certificate entitling the case, giving the name of the accused, the date and place of trial, the date of approval of sentence, and the terms of the sentence. The trial counsel shall deliver ~~such~~ the certificate to the Clerk of the Superior Court of Wake County, and it shall thereupon be the duty of the clerk to take ~~such~~ the actions ~~as are~~ necessary to carry ~~said~~ the sentence into execution in the same manner as prescribed by law for the collection of fines, or commitment to service of terms of imprisonment, in criminal cases determined in the courts of this State. The Administrative Office of the Courts shall ensure that the State's criminal history records include pertinent information relating to a court-martial under this Chapter in a like manner as a comparable offense under the State's criminal laws would be recorded.

"§ 127A-60. Approval of sentence.

No sentence imposed by a special or general court-martial of the North Carolina National Guard, not in the service of the United States, shall be executed until approved by the Governor. Any officer convicted by a general court-martial and dismissed from the service shall be forever disqualified from holding a commission in the militia.

...

"§ 127A-62. Appeals; discretionary review.

(a) Jurisdiction. – Court-martial judgments which include a sentence to confinement shall have a right of appeal to the Wake County Superior Court. The provisions of G.S. 15A-1451 shall apply to appeals under this section.

(b) Filing and Service. – An appeal under this section must be made in writing and filed with the Clerk of Superior Court of Wake County within 10 days after the approval of the sentence by the Governor. A copy of the petition shall be filed with the military court and the military trial counsel of record. For the purposes of a filing fee, the appeal shall be treated as an administrative appeal to the Superior Court.

(c) Assertion of Errors. – All errors, including, but not limited to, the following, must be asserted or shall be deemed waived:

(1) Any error of law, including the following:

a. The court erroneously failed to dismiss the charge prior to the court-martial.
b. The court's ruling was contrary to law with regard to motions made before or during the trial or with regard to the admission or exclusion of evidence.
c. The evidence, at the close of all the evidence, was insufficient to justify submission of the case to the court-martial panel, whether or not a motion so asserting was made before verdict.
d. The court erroneously instructed the court-martial panel.

(2) The verdict is contrary to the weight of the evidence.

(3) For any other cause, the defendant did not receive a fair and impartial trial.

(d) Appointment of Superior Court Judge. – The appeal shall be heard by a judge assigned by the Chief Justice of the North Carolina Supreme Court, to be heard at ~~such a~~ session of the Wake County Superior Court ~~as the Chief Justice shall direct.~~designated by the Chief Justice.

(e) Applicable Law. – The presiding judge, in determining whether there were errors, shall apply the law as provided for trial by courts-martial under this Article.

(f) Setting Aside of Findings or Sentence. – The findings or sentence, or both, may be modified or set aside, in whole or in part, by the court on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused.

(g) Hearings and Rehearings. – The court may remand the matter to the court-martial for ~~such~~ evidentiary hearings or other proceedings, to be conducted by a military judge alone, ~~as~~ that it deems necessary prior to the court's final disposition of the case. If the court sets aside the findings or sentence, the court may, except when the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If the court sets aside the findings and sentence and does not order a rehearing, the court shall dismiss the charges. If the court orders a rehearing, but the convening authority finds a rehearing impractical, the convening authority shall dismiss the charges.

(h) Counsel. –

(1) The Staff Judge Advocate of the North Carolina National Guard shall:
a. Designate a judge advocate who is qualified and certified under Article 27(b) of the Uniform Code of Military Justice, and who is a member of the North Carolina Bar, to represent the defendant.
b. Designate a judge advocate who is qualified and certified under Article 27(b) of the Uniform Code of Military Justice, and who is a member of the North Carolina Bar, to represent the State.

(2) The counsel designated to represent the defendant under sub-subdivision a. of subdivision (1) of this subsection shall not be the counsel who represented the defendant at the court-martial.

(3) Where a defendant alleges ineffective assistance of prior counsel as a ground for relief, the defendant shall be deemed to waive the attorney-client privilege with respect to both oral and written communications between ~~such counsel and~~ the defendant and the prior counsel to the extent the defendant's prior counsel reasonably believes ~~such~~ the communications are necessary to defend against the allegations of ineffectiveness. This waiver of the attorney-client privilege shall be automatic upon the filing of the pleadings alleging ineffective assistance of prior counsel, and the Wake County Superior Court need not enter an order waiving the privilege.

(4) The Adjutant General, upon the recommendation of the Staff Judge Advocate, shall place the designated judge advocates described in this

subsection onto State active duty for ~~such~~ the periods of time ~~as~~ necessary for either counsel to provide adequate representation to the respective parties, if regularly scheduled unit training periods are insufficient. The Staff Judge Advocate shall verify to the Adjutant General whether any such additional periods of time are necessary.

(i) Discretionary Review. – Review of decisions by the Wake County Superior Court shall be pursuant to G.S. 7A-31.1.

(j) The rules for practice and procedure for review of courts-martial by the Wake County Superior Court shall be consistent with those prescribed for review of administrative appeals by the Superior Court, except as modified by this section.

"Article 4.

"Naval Militia.

"§ 127A-67. Organization and equipment.

The organization of the naval militia shall be units of convenient size, in each of which the number and rank of officers and the distribution of the total enlisted strength among the several ratings of petty officers and other enlisted personnel shall be such as are prescribed by the Secretary of the Navy, who may also prescribe the number of officers and the number of petty officers and other enlisted personnel required for the organization of ~~such~~ the units into larger bodies for administrative and other purposes, and the arms and equipment of the naval militia shall be those which are now or may hereafter be prescribed by the Secretary of the Navy.

"§ 127A-68. Officers appointed to naval militia.

Officers of the United States ~~navy and marine corps~~Navy and Marine Corps may, with the approval of the Secretary of the Navy, be appointed by the Governor and commissioned as officers of the naval militia.

...

"§ 127A-70 Discipline in naval militia.

The naval militia shall be subject to the system of discipline prescribed for the United States ~~navy and marine corps,~~Navy and Marine Corps, and the commanding officer of a naval militia ~~battalion or brigade,~~unit or a naval militia officer in command of naval militia forces on shore or on any vessel of the ~~navy~~ United States Navy loaned to the State, or on any vessel on which such forces are training, whether within or without the State, or wherever, either within or without the State, naval militia forces of the State shall be assembled pursuant to orders, shall have power without trial by courts-martial to impose upon members of the naval militia the punishments which the commanding officer of a vessel of the ~~navy~~ United States Navy is authorized by law to impose.

"§ 127A-71. Disbursing and accounting officer.

The Governor shall appoint a disbursing officer, approved by and of ~~such~~ a rank ~~as may be~~ prescribed by the Secretary of the Navy, to perform ~~such~~ the duties ~~as~~ the Secretary of the Navy may prescribe. The Governor shall also appoint the ~~above described~~ disbursing officer, or ~~such other~~another officer of the ~~pay corps~~appropriate finance office of the naval militia ~~as he~~that the Governor may elect, as accounting officer for each ~~battalion~~ unit thereof, or at ~~his~~ the Governor's option for each larger unit or combination of ~~units of the same,~~units, who shall be responsible for the proper accounting for all public property issued to and for the use of ~~such battalion~~ the unit or larger unit or combination of units.

"§ 127A-72. Rendition of accounts.

Accounting officers shall render accounts as prescribed by the Governor or by the Secretary of the Navy, and shall be required to give good and sufficient bond to the State and to the United States, in ~~such~~ the sums ~~as~~ that the Governor or the Secretary of the Navy ~~may direct,~~directs, and conditioned upon the faithful accounting for all public property and for the safekeeping of ~~such~~ the part thereof ~~as may be~~ in the personal custody of ~~such~~ the officer. Accounting officers may issue any or all such property to other officers or enlisted personnel of

the naval militia under ~~such rules and regulations as may be prescribed.~~applicable rules and regulations.

...

"§ 127A-74. Courts-martial for naval militia.

Courts-martial for the naval militia, not in the service of the United States, shall be organized, have the same powers, functions and authorities, and follow the same procedures as courts-martial for the North Carolina National Guard as set forth in G.S. 127A-47 through ~~127A-61.~~127A-62.

"Article 5.

"State Defense Militia.

"§ 127A-80. Authority to organize and maintain ~~State defense militia of North Carolina.~~North Carolina State Defense Militia.

(a) The Governor is authorized to organize ~~such~~ any part of the unorganized militia as a State force for discipline and training, into companies, battalions, regiments, brigades or similar organizations, as ~~may be~~ deemed necessary for the defense of the State; to maintain, uniform and equip ~~such~~ this military force within the appropriations available; to exercise discipline in the same manner as is now or may hereafter be provided by the laws of the State for the North Carolina National Guard. ~~Such~~ The military force shall be subject to the call or the order of the Governor to execute the law and secure the safety of persons and property, suppress riots or insurrections, repel invasions or provide disaster relief, as may now or hereafter be provided by law for the North Carolina National Guard or for the State militia.

(b) ~~Such~~ The military force shall be designated as the "North Carolina State Defense Militia" and shall be composed of personnel of the unorganized militia as may volunteer for service therein or be drafted as provided by law. To be eligible for service in an enlisted status, a person must be at least 17 years of age. To be eligible for service as an officer, a person must be at least 18 years of age. The force and its personnel shall be additional to and distinct from the North Carolina National Guard organized under existing law. A person may not become a member of the defense militia established under this section, if a member of a reserve component of the ~~armed forces.~~Armed Forces of the United States.

(c) The Governor is hereby authorized: to prescribe rules and regulations governing the appointment of officers, the enlistment of other personnel, the organization, administration, equipment, discipline and discharge of the personnel of ~~such~~ the military force; to requisition from the Secretary of Defense ~~such~~ arms and equipment ~~as may be~~that are in possession of and can be spared by the Department of Defense; and to furnish the facilities of available armories, equipment, State premises and property, for the purpose of drill and instruction.

(d) ~~Such~~ The force shall not be called, ordered, or in any manner drafted, as such, into the military service of the United States, but no person shall by reason of membership therein, be exempt from military service under any federal law.

(e) The Governor is hereby authorized to transfer to the benefit of the State defense militia any available and unexpended funds which ~~he shall find~~ the Governor finds necessary for its use from any appropriations to the North Carolina National Guard by the General Assembly, and for the same purpose to allot ~~moneys~~ monies from the Contingency and Emergency Fund with the concurrence of the Council of State. Upon disbandment of the State defense militia any ~~moneys~~ monies or balance to the credit of any unit of this organization shall be paid into the State treasury for the benefit of the North Carolina National Guard, and all property, clothing, and equipment belonging to the State shall be transferred to the account of the North Carolina National Guard for disposition in accordance with the best interests of the State and as deemed advisable by the Governor. Upon disbandment of any unit of the State defense militia prior to the disbandment of the entire organization, the Governor is authorized to direct the transfer of any State property or balance of funds of the disbanded unit to any other

unit, including any new unit or units organized to fill vacancies, or otherwise, as the Governor may direct.

(f) The ~~North Carolina~~ State defense militia shall be subject to the military laws of the State not inconsistent with or contrary to the provisions contained in this Article with the following exceptions:

The provisions of G.S. 127A-117, 127A-118, and 127A-139 as amended, shall not be applicable to the personnel and units of the State defense militia.

(g) There shall be allowed annually to each unit or company of the State defense militia ~~such~~ the funds ~~as may be~~ necessary ~~to be applied to the payment of~~for armory rent, heat, light, stationery, printing, and other expenses.

(h) All payments are to be made by the Secretary of ~~the Department of~~ Crime Control and Public Safety in accordance with State laws in semiannual installments on the first day of July and the first day of January of each year, but no payment shall be made unless all assemblies and duties required by law are duly performed by all organizations named.

(i) The commander of each organization participating in the appropriation herein named shall render an itemized statement of all funds received from any source whatsoever for the support of the organization in ~~such~~ the manner and on ~~such~~ the forms ~~as may be~~ prescribed by the Secretary of ~~the Department of~~ Crime Control and Public Safety. Failure on the part of any commander to submit promptly when due the financial statement of the organization will be sufficient cause to withhold all appropriations for the organization.

"§ 127A-81. State defense militia cadre.

(a) The Governor is authorized: to organize and regulate part of the unorganized militia as a State defense militia cadre in units or commands which ~~he~~ the Governor may deem necessary to provide a cadre for an active State defense militia; to prescribe regulations for the maintenance of the property and equipment of the cadre, for the exercise of its discipline, and for its training and duties.

(b) The cadre shall be designated the "North Carolina State Defense Militia Cadre" and shall be composed of a force of officers and enlisted personnel raised by appointment of the Governor, or otherwise, as may be provided by law. The Secretary of ~~the Department of~~ Crime Control and Public Safety may reimburse cadre members for expenses actually incurred, not to exceed the amount appropriated and authorized for ~~such purposes~~the purpose by the General Assembly.

(c) The Governor's authority ~~hereunder~~ under this Article shall not be subject to regulations prescribed by the Secretary of Defense. Age and membership requirements for the State defense militia generally, as set forth in ~~G.S. 127A-80~~G.S. 127A-80, shall apply. The training of the cadre need not be in accordance with training regulations issued by the Department of Defense. The provisions of G.S. 127A-80(c), (d), (g), (h) and (i) shall also apply to cadres.

(d) The total authorized strength of the cadre, its authorized officer and enlisted strength, the composition of each of its units or commands, and the allocation of cadre units or commands among the counties, cities, and towns of the State, shall be as prescribed by the Governor in suitable regulations enforced through the Adjutant General, or as otherwise provided by law.

(e) The duties of the State defense militia cadre shall be as ordered and directed by the Governor from time to time, or in regulations, and may include authority to take charge of armories and other military installations and real properties used by the North Carolina National Guard, together with ~~such~~ any other property ~~as~~ that the regulations may provide, when and if the North Carolina National Guard, or any part thereof, ~~may be~~is inducted into the service of the United States, or, for any extended period of time, ~~may be~~is absent on any duty from its home station. In addition, the cadre shall have duties appropriate to the organization,

maintenance, and training of a military cadre to act as a nucleus for the organization of an active State defense militia whenever the necessity may arise.

"Article 6.

"Unorganized Militia.

"§ 127A-87. Unorganized militia ordered out for service.

The commander in chief may at any time, in order to execute the law, secure the safety of persons and property, suppress riots or insurrections, repel invasions or provide disaster relief, in addition to the North Carolina National Guard, the State defense militia and the naval militia, order out the whole or any part of the unorganized militia. When the militia of this State or a part thereof is called forth under the Constitution and laws of the United States, the Governor shall first order out for service the North Carolina National Guard, the State defense militia or naval militia, or ~~such~~ any part thereof ~~as~~ that may be necessary, and if the number available ~~be~~ is insufficient, ~~he~~ the Governor shall then order out ~~such a~~any part of the unorganized militia ~~as he~~that the Governor may deem necessary. During the absence or organizations of the North Carolina National Guard or naval militia in the service of the United States, their state designations shall not be given to new organizations.

"§ 127A-88. Manner of ordering out unorganized militia.

The Governor shall, when ordering out the unorganized militia, designate the number. ~~He~~ The Governor may order them out either by calling for volunteers or by draft. ~~He~~ The Governor may attach them to the several organizations of the North Carolina National Guard, the State defense militia or naval militia, as may be best for the service.

"§ 127A-89. Draft of unorganized militia.

If the unorganized militia is ordered out by draft, the Governor shall designate the persons in each county to make the draft, and prescribe rules and regulations for conducting ~~the same.~~it.

"§ 127A-90. Punishment for failure to appear.

Every member of the militia ordered out for duty, or who shall volunteer or be drafted, who does not appear at the time and place ordered, shall be liable to ~~such~~ punishment as ~~a court-martial may determine.~~determined by a court-martial.

"§ 127A-91. Promotion of marksmanship.

The Adjutant General is authorized to detail a commissioned officer of the North Carolina National Guard or member of the State defense militia to promote rifle marksmanship among the State defense militia and the unorganized militia of the State. ~~Such~~ The officer or member so detailed shall serve without pay and it shall be ~~his duty~~the duty of the officer or member to organize and supervise rifle clubs in schools, colleges, universities, clubs and other groups, under ~~such~~ rules and regulations ~~as~~ prescribed by the Adjutant General ~~shall prescribe~~ and in ~~such~~ a manner ~~to~~ that will make them, when duly organized, acceptable for membership in the National Rifle Association. Provided, that ~~such~~ these duties and efforts shall in nowise interfere or conflict with clubs of schools or units operating in ~~R.O.T.C.~~Reserve Officers' Training Corps or similar schools under the supervision of ~~armed forces instructors.~~instructors of the Armed Forces of the United States.

"Article 7.

"Regulations as to Active Service.

"§ 127A-97. National Guard and naval militia first ordered out.

In all cases the North Carolina National Guard and naval militia as provided for in this Chapter shall be first ordered into service.

"§ 127A-98. Regulations enforced on active State service.

Whenever any portion of the militia ~~shall be~~is called into active State service to execute the law, secure the safety of persons and property, suppress riots or insurrections, repel invasions or provide disaster relief, the provisions of the Uniform Code of Military Justice of the United States, governing the ~~armed forces~~Armed Forces of the United States, and the regulations prescribed for the ~~armed forces~~Armed Forces of the United States, and the regulations issued

thereunder, shall be enforced and regarded as part of this Chapter until ~~said forces shall be~~this portion of the militia is relieved from ~~such~~ the duty. As to offenses committed when ~~such~~ the provisions of the Uniform Code of Military Justice of the United States are so enforced, courts-martial shall possess, in addition to the jurisdiction and power of sentence and punishment herein vested in them, all additional jurisdiction and power of sentence and punishment exercisable by like courts under ~~such~~ the provisions of the Uniform Code of Military Justice of the United States or regulations or laws governing the ~~United States armed forces~~Armed Forces of the United States or the customs and usages thereof; but no punishment under ~~such~~ the Code ~~which shall extend~~that extends to the taking of life shall in any case be inflicted except in case of war, invasion, or insurrection, declared by a proclamation of the Governor to exist and then only after approval by the Governor of the sentence inflicting ~~such~~ that punishment. Imprisonment other than in guardhouse shall be executed in county jails or other prisons designated by the Governor for that purpose.

"§ 127A-99. Regulations governing unorganized militia.

Whenever any part of the unorganized militia is ordered out, it shall be governed by the same rules and regulations and be subject to the same penalties as the North Carolina National Guard or naval militia.

"Article 8.

"Pay of Militia.

...

"§ 127A-106. Paid by the State.

When the militia or any portion thereof ~~shall be~~is ordered by the Governor into State service, the pay (including payment for any leave earned as a result of more than 30 days of continuous service), subsistence, transportation and other necessary expenses incident thereto shall be paid by the State Treasurer, upon the approval of the Governor.

"§ 127A-107. Rate of pay for other service.

The Governor may, whenever the public service requires it, order upon special or regular duty any officer or enlisted member of the North Carolina National Guard or naval militia, and the expenses and compensation therefor of ~~such~~ the officer ~~and~~ or enlisted member shall be paid out of the appropriations made to the Department of Crime Control and Public Safety. ~~Such officers and enlisted members~~The officers or enlisted members shall receive the same rate of pay as officers and enlisted members of the same grade and like service of the ~~regular service,~~Armed Forces of the United States, provided that no such officer or enlisted member shall receive less than 18 times the minimum hourly wage per day as provided for in G.S. 95-25.3(a). Officers and enlisted members when on duty in connection with examining boards, efficiency boards, advisory boards, courts of inquiry or similar duty shall be allowed per diem and subsistence prescribed for lawful State boards and commissions generally for such duty. Officers and enlisted members serving on general or special courts-martial shall receive the base pay of their rank. No staff officer or enlisted member who receives a salary from the State as such shall be entitled to any additional compensation other than actual and necessary expenses incurred while traveling upon orders issued by the proper authority.

"§ 127A-108. Pay and care of soldiers, airmen and sailors disabled in service.

A member of the North Carolina National Guard, the State defense militia, or the naval militia who without fault or negligence on ~~his~~ the member's part is disabled through illness, injury, or disease contracted or incurred while on duty or by reason of duty in the service of the State or while reasonably proceeding to or returning from ~~such~~ duty shall receive the actual necessary expenses for care and medicine and medical attention at the expense of the State and if ~~such shall~~the disability temporarily ~~incapacitate him for~~incapacitates the member from pursuing ~~his~~ the member's usual business or occupation ~~he~~ the member shall receive during ~~such~~ his or her incapacity the pay and allowances ~~as~~ that are provided for the same grade and rating in like circumstances in the active ~~armed forces~~Armed Forces of the United States. If

~~such~~ the member is permanently disabled, ~~he~~ the member shall receive the pensions and ~~rewards~~ benefits that persons under similar circumstances in the ~~military service~~Armed Forces of the United States receive from the United States. In case ~~any such~~a member ~~shall die~~dies as a result of such an injury, illness or disease within one year after it has been incurred or contracted, the surviving spouse, minor children, or dependent parents of the member shall receive ~~such~~ the pension and ~~rewards~~ benefits as persons under similar circumstances receive from the United States.

The cost incurred by reason of this section shall be paid out of the Contingency and Emergency Fund, or ~~such~~another ~~other~~ fund ~~as may be~~ designated by law.

The Adjutant General, with the approval of the Governor, shall make and publish ~~such~~ regulations pursuant to this section ~~as may be~~that are necessary for its implementation. Before the name of any person is placed on the disability or pension rolls of the State under this section, proof shall be made in accordance with ~~such~~ these regulations that the applicant is entitled to ~~such~~ the care, pension, or ~~reward.~~benefit.

Nothing ~~herein~~ in this section shall in any way limit or condition any other payment to ~~such~~ a member ~~as by law may be allowed: Provided, however,~~that the law allows, except that any payments made under the provisions of Chapter 97 of the General Statutes or under federal statutes as now or hereafter amended shall be deducted from the payments made under this section.

...

"§ 127A-110. Proceedings against third party injuring or killing ~~guard~~ organized militia personnel.

(a) The right of a member of the North Carolina National Guard, the State defense militia, or the naval militia to compensation and other benefits under G.S. 127A-108 shall not be affected by the fact that the injury or death was caused under circumstances creating a liability in some person other than the ~~State~~ State, or "third party," to pay damages ~~therefor, such person hereinafter being referred to as the "third party."~~ therefor. The respective rights and interests of the ~~guard~~ member under this Article, and the State, if any, in respect of the common-law cause of action against ~~such~~ a third party and the damages recovered shall be as set forth in this section.

(b) The ~~guard~~ member or personal representative if ~~guard~~ the member be dead, shall have the exclusive right to proceed to enforce the liability of the third party by appropriate proceedings if ~~such~~ the proceedings are instituted not later than 12 months after the date of injury or death, whichever is later. During ~~said~~ this 12-month period, and at any time thereafter if summons is issued against the third party during ~~said~~ the 12-month period, the ~~guard~~ member or personal representative shall have the right to settle with the third party and to give a valid and complete release of all claims to the third party by reason of ~~such~~ the injury or death, subject to the provisions of ~~(h) below.~~subsection (h) of this section.

(c) If settlement is not made and summons is not issued within ~~said~~ the 12-month ~~period,~~period described in subsection (b) of this section, then all rights of the ~~guard~~ member, or personal representative if ~~guard~~ the member be dead, against the third party shall pass by operation of the period fixed by the statute of limitations applicable to ~~such~~ these rights and if the State ~~shall not have~~has not settled with or instituted proceedings against the third party within ~~such~~ this time, then all such rights shall revert to the ~~guard~~ member or personal representative 60 days before the expiration of the applicable statute of limitations.

(d) The person in whom the right to bring ~~such~~ a proceeding or make settlement is vested shall, during the continuation thereof, also have the exclusive right to make settlement with the third party and the release of the person having the right shall fully acquit and discharge the third party except as provided by ~~(h) below.~~subsection (h) of this section. A proceeding so instituted by the person having the right shall be brought in the name of the ~~guard~~ member or personal representative and the State shall not be a necessary or proper party

thereto. If the ~~guard~~ member or personal representative ~~should refuse~~refuses to cooperate with the State by being the party plaintiff, then the action shall be brought in the name of the State and the ~~guard~~ member or personal representative shall be made a party plaintiff or party defendant by order of court.

(e) The amount of compensation and other benefits paid or payable on account of ~~such~~ the injury or death shall not be admissible in evidence in any proceeding against the third party. If the third party defending ~~such~~ the proceeding, by answer duly served on the State, sufficiently alleges that actionable negligence of the State joined and concurred with the negligence of the third party in producing the injury or death, then an issue shall be submitted to the jury in ~~such~~ the case as to whether actionable negligence of the State joined and concurred with the negligence of the third party in producing the injury or death. The State shall have the right to appear, to be represented, to introduce evidence, to cross-examine adverse witnesses, and to argue to the jury as to this issue as fully as though it were a party although not named or joined as a party to the proceeding. ~~Such issue~~The issue as to the State's negligence shall be the last of the issues submitted to the jury. If the verdict ~~shall be~~is that actionable negligence of the State did join and concur with that of the third party in producing the injury or death, then the court shall reduce the damages awarded by the jury against the third party by the amount which the State would otherwise be entitled to receive therefrom by way of subrogation hereunder and the entire amount recovered, after such reduction, shall belong to the ~~guard~~ member or personal representative free of any claim by the State and the third party shall have no further right by way of contribution or otherwise against the State, except any right which may exist by reason of an express contract of indemnity between the State and the third party, which was entered into prior to the injury to the ~~guard~~ member.

(f) (1) Any amount obtained by any person by settlement with, judgment against, or otherwise from the third party by reason of ~~such~~ the injury or death shall be disbursed by order of the court for the following purposes and in the following order of priority:

a. First to the payment of actual court costs taxed by judgment.

b. Second to the payment of the fee of the attorney representing the person making settlement or obtaining judgment, and ~~such~~ this fee shall not exceed one third of the amount obtained or recovered of the third party.

c. Third to the reimbursement of the State for all benefits by way of compensation or medical treatment expense paid or to be paid by the State pursuant to G.S. 127A-108.

d. Fourth to the payment of any amount remaining to the ~~guard~~ member or personal representative.

(2) The attorney fee paid under ~~(f)(1)~~subdivision (1) of this section shall be paid by the ~~guard~~ member and the State in direct proportion to the amount each shall receive under ~~(f)(1)c and (f)(1)d hereof~~sub-subdivisions (1)c. and d. of this subsection and shall be deducted from ~~such~~ the payments when distribution is made.

(g) In any proceeding against or settlement with the third party, every party to the claim for compensation shall have a lien to the extent of the party's interest under ~~(f) hereof~~subsection (f) of this section upon any payment made by the third party by reason of ~~such~~ the injury or death, whether paid in settlement, in satisfaction of judgment, as consideration for covenant not to sue, or otherwise and ~~such~~ the lien may be enforced against any person receiving ~~such~~ the funds. Neither the ~~guard~~ member or personal representative nor the State shall make any settlement with or accept any payment from the third party without the written consent of the other and no release to or agreement with the third party shall be valid or enforceable for any purpose unless both State and ~~guard~~ member or personal representative join therein; provided,

that this sentence shall not apply if the State is made whole for all benefits paid or to be paid by ~~him~~ the member or personal representative under this Chapter less attorney's fees as provided by ~~(f)(1) and (2) hereof~~subsection (f) of this section and the release to or agreement with the third party is executed by the ~~guard~~ member. The Attorney General shall have the right on behalf of the State to reduce by compromise its claim.

(h) Institution of proceedings against or settlement with the third party, or acceptance of benefits under this Chapter, shall not in any way or manner affect any other remedy which any party to the claim for compensation may have except as otherwise specifically provided in this Chapter, and the exercise of one remedy shall not in any way or manner be held to constitute an election of remedies so as to bar the other.

...

"Article 9.

"Privilege of Organized State Militia and Reserve Components of the Armed Forces of the United States ~~Armed Forces~~.

...

"§ 127A-117. Contributing members.

Each organization of the North Carolina National Guard and naval militia may, besides its regular and active members, enroll contributing members on payment in advance by each person desiring to become ~~such~~ a contributing member of not less than ten dollars ($10.00) per annum, which money shall be paid into the unit fund. Each contributing member shall be entitled to receive from the commanding officer thereof a certificate of membership.

"§ 127A-118. Organizations may own property; actions.

Organizations of the North Carolina National Guard and naval militia shall have the right to own and keep real and personal property, which shall belong to the organization; and the commanding officer of any organization may recover for its use debts or effects belonging to it, or damages for injury to ~~such property,~~the property. An action for ~~such~~ recovery ~~to~~ of debts, effects, or damages must be brought in the name of the commanding officer ~~thereof~~ of the organization before any court of justice within the State having jurisdiction; and no suit or complaint pending in his or her name shall be abated by his or her ceasing to be commanding officer of the organization; but upon motion of the commander succeeding him ~~such~~ or her the new commander shall be admitted to prosecute the suit or complaint in like manner and with like effect as if it had been originally commenced by him or her.

"§ 127A-119. When families of soldiers, airmen and sailors supported by county.

When any citizen of the State is absent on duty as a member of the North Carolina National Guard, State defense militia or naval militia, and ~~his~~ the member's family members are unable to support themselves during ~~his~~ the member's absence, the board of commissioners of ~~his~~ the member's county, on application, shall make a reasonable allowance towards their ~~maintenance such allowance as may be deemed reasonable.~~maintenance.

"Article 10.

"Care of Military Property.

"§ 127A-125. Custody of military property.

All public military property, except when used in the performance of military duty, shall be kept in armories, or other properly designated places of deposit; and it shall be unlawful for any person charged with the care and safety of ~~said~~ public military property to allow ~~the same~~it out of his or her custody, except as ~~above specified.~~specified in this section.

"§ 127A-126. Other suitable storage facilities.

All public military property of every description which may not be distributed among the units of the North Carolina National Guard or State defense militia according to law shall be stored and kept at suitable storage facilities as determined by the Adjutant General.

"§ 127A-127. Property kept in good order.

Every officer and enlisted member belonging to any unit equipped with public military property shall keep and preserve ~~such~~ the property in good order; and for neglect to do so may be punished as a court-martial may direct.

"§ 127A-128. Equipment and vehicles.

Equipment and vehicles issued by the Department of Defense to the North Carolina National Guard or State defense militia shall be used solely for military purposes, except in those specific cases where nonmilitary use is authorized by the Department of Defense ~~and/or~~or the Governor. Necessary expense in maintaining ~~such~~ equipment and vehicles, not provided for by the federal ~~government~~ government, shall be a proper charge against State funds appropriated for the North Carolina National Guard: Provided, ~~such~~ the expense shall be specifically authorized by the Governor and certified by the Adjutant General.

"§ 127A-129. Transfer of property.

All officers accountable or responsible for public funds, property, or books, before being relieved from the duty, shall turn them over ~~the same~~ according to the regulations prescribed by the Governor.

"§ 127A-130. Replacement of lost or damaged property.

Whenever any military property issued to the North Carolina National Guard or State defense militia ~~of the State~~ shall have been lost, damaged, or destroyed, and upon report of a disinterested surveying officer it shall appear that the loss, damage, or destruction of property was due to carelessness or neglect, or that its loss, damage or destruction could have been avoided by exercise of able care, the money value of ~~such~~ the property shall be charged to the responsible officer or enlisted member, and the pay of ~~such~~ the officers and enlisted members from both federal and State funds at any time accruing may be stopped and applied to the payment of any such indebtedness until ~~same~~ it is discharged.

"§ 127A-131. Unlawful conversion or willful destruction of military property.

(a) If any person shall willfully or wantonly destroy or injure, willfully retain after demand made or otherwise convert to ~~his~~ the person's own use any property of the State or of the United States issued for the purpose of arming or equipping the militia of the State or if any person shall purchase any property of the State or of the United States knowing it to be unlawfully obtained, ~~he~~ the person shall be guilty of a Class 1 misdemeanor.

(b) Any person, firm or corporation receiving in pledge or buying from any other person, firm or corporation for the purpose of resale any goods, to include arms, ammunition, explosives, equipment, clothing, supplies and materials, which may reasonably be thought to be the property of the ~~armed forces~~Armed Forces of the United States and their reserve components or of the militia of the State of North Carolina, shall keep a register and shall enter therein a true and accurate record of each purchase, showing the name, social security number and address of the person from whom purchased, the name and address of the firm or corporation from whom purchased, together with the amount paid for each item or lot of small items, the date of purchase, the serial numbers of all items bearing serial numbers, and any other marks, brands or descriptions which will serve to identify the items purchased. The register shall be at all times open to the inspection of the public. Any person, firm or corporation failing to comply with this provision shall be guilty of a Class 1 misdemeanor; and any person, firm or corporation making a false entry in such register shall be guilty of a Class 1 misdemeanor.

"Article 11.

"Support of Militia.

...

"§ 127A-137. Requisition for federal funds.

The Governor shall make requisition upon the secretary of the appropriate service for ~~such~~ the State allotment from federal funds as may be appropriate for the support of the militia.

"§ 127A-138. Local appropriations; unit funds.

(a) Every municipality and county within the State is hereby authorized and empowered to appropriate for the benefit of any unit or units of the militia ~~such~~ the amounts of public funds from year to year as the governing body of ~~such~~ the municipality or county may deem wise, patriotic and expedient; and is further authorized, either alone or in connection with others, to provide heat, electricity, water, telephone service and other costs of operation and maintenance of any armory. ~~Such~~ These appropriations may be funded by the levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 or by the allocation of other revenues whose use is not otherwise restricted by law.

(b) Any funds donated to any unit or units of the militia by local governments, civic organizations or private sources, short-term rental of their armory buildings, or funds earned through vending machine commissions and items of similar nature shall remain at the unit or units to be expended in accordance with rules and regulations prescribed by the Secretary.

"§ 127A-139. Allowances made to different organizations and personnel.

(a) There may be allowed each year to the following officers, under rules and regulations prescribed by the Secretary of Crime Control and Public Safety, as follows: to general officers, and commanders of divisions, corps, groups, brigades, regiments, separate battalions, squadrons or similar organizations, not to exceed two hundred and twenty-five dollars ($225.00); to commanding officers of companies, batteries, troops, detachments and similar units not to exceed two hundred dollars ($200.00); to executive officers, adjutants, plans and training officers, logistical officers and commissioned officers in comparable assignments in divisions, corps, groups, brigades, regiments, battalions, squadrons and similar organizations, not to exceed two hundred dollars ($200.00). No officer shall be entitled to receive any part of the amounts named ~~herein~~ in this subsection unless ~~he~~ the officer has performed satisfactorily all duties required of ~~him~~ the officer by law and regulations and has pursued ~~such~~ any course of instruction ~~as~~ that may from time to time be required.

(b) There may be allowed annually to the supply sergeant of each company, battery, troop, detachment, and similar organizations, a sum of money not to exceed one hundred dollars ($100.00) for services satisfactorily performed.

(c) There shall be allowed annually sufficient funds to be allocated by the Secretary of Crime Control and Public Safety among the federally recognized units of the North Carolina National Guard and their headquarters, ~~NCNG State Pistol Team, NCNG State Rifle Team, NCARNG Aviation Support Facility, and NCARNG Aviation Flight Activity~~a pistol team, a rifle team, aviation support facilities, and aviation flight activities for administrative and operating expenses, including heat, electricity, telephone, postage, office supplies and equipment, minor repairs and replacement of equipment, and ~~such~~ any other expenses and special items of equipment not otherwise provided ~~as~~ that may be authorized in accordance with North Carolina National Guard rules and regulations.

(d) Repealed by Session Laws 1979, c. 701, s. 2.

(e) The commanding officers of all organizations participating in the appropriations herein made shall render an itemized statement of all funds received from any source whatever for the support of their respective organizations in ~~such~~ the manner and on ~~such~~ the forms ~~as may be~~ prescribed by the Secretary through the Adjutant General. Failure on the part of any officer to submit promptly when due the financial statement of ~~his~~ the officer's organization will be sufficient cause to withhold all appropriations for ~~such organizations.~~ the organization.

"Article 12.

"General Provisions.

"§ 127A-145. Reports of officers.

All officers of the North Carolina National Guard, the State defense militia, and the naval militia shall make ~~such~~ returns and reports to the Governor, the Secretary of Defense, or to ~~such~~ officers ~~as they may designated~~ designated by them, at ~~such~~ the times and in ~~such~~ the form ~~as may~~ from time to time ~~be~~ prescribed.

"§ 127A-146. Officer to give notice of absence.

When any officer shall have occasion to be absent from ~~his~~ the officer's usual residence one week or more, ~~he~~ the officer shall notify the officer next in command, and also ~~his~~ the officer's next superior officer in command, of ~~his~~ the officer's intended absence, and shall arrange for the officer next in command to handle and attend to all official communications.

"§ 127A-147. Orders, rules, regulations and Uniform Code of Military Justice applicable to militia when not in service of United States.

The North Carolina National Guard, State defense militia and naval militia, when not in the service of the United States, shall be governed by State law, the orders, rules and regulations of the Adjutant General, regulations promulgated by the secretary of the appropriate service of the ~~armed forces~~ Armed Forces of the United States, and the Uniform Code of Military Justice, as amended from time to time.

"§ 127A-148. Commander may prevent trespass and disorder.

The commander upon any occasion of duty may place in arrest during the continuance thereof any person who shall trespass upon the campground, parade ground, armory, or other place devoted to ~~such~~ that duty, or who shall in any way or manner interrupt or molest the orderly discharge of duty by those under arms, or shall disturb or prevent the passage of troops going to or returning from any duty. ~~He~~ The commander may prohibit and prevent the sale or use of all spirituous liquors, wine, ale, beer, or cider, the holding of huckster or auction sales, and all gambling within the limits of the post, ~~campground,~~ campground or place of encampment, ~~parade,~~ parade or drill under his or her command, or within ~~such~~ any limits not exceeding one mile therefrom ~~as he~~ that the commander may prescribe. ~~And he~~ The commander may in ~~his~~ the commander's discretion abate as common nuisance all such sales.

"§ 127A-149. Power of arrest in certain emergencies.

In the event members of the North Carolina National Guard or State defense militia are called out by the Governor pursuant to the authority vested in ~~him~~ the Governor by the Constitution, they shall have ~~such~~ the power of arrest ~~as may be~~ reasonably necessary to accomplish the purpose for which they have been called out.

"§ 127A-150. Immunity of guardsmen from civil and criminal liability.

(a) A member of the North Carolina National Guard or State defense militia, while acting in aid of civil authorities and in the line of duty, shall have the immunities of a law-enforcement officer.

(b) ~~Whenever members~~ Members of the North Carolina National Guard or State defense militia shall have the immunities of a law-enforcement officer whenever they are called upon to execute the ~~laws,~~ laws; engage in disaster ~~relief,~~ relief; suppress or prevent actual or threatened riot or ~~insurrection,~~ insurrection; repel ~~invasion,~~ invasion; or apprehend or ~~disburse~~ disperse any sniper, rioters, mob or unlawful ~~assembly, they shall have the immunities of a law-enforcement officer.~~ assembly.

(c) Any civil claim against a member of the North Carolina National Guard or State defense militia allegedly arising from the action or inaction of ~~such~~ the member of the North Carolina National Guard or State defense militia while in line of duty shall be filed within two years of the date of the occurrence or forever barred.

"§ 127A-151. Organizing company without authority.

If any person shall organize a military company, or drill or parade under arms as a military body, except under the militia laws and regulations of the State, or shall exercise or attempt to exercise the power or authority of a military officer in this State, without holding a commission from the Governor, ~~he~~ the person shall be guilty of a Class 1 misdemeanor.

"§ 127A-152. Placing name on muster roll wrongfully.

If any officer of the militia of the State shall knowingly or willfully place, or cause to be placed, on any muster roll the name of any person not regularly or lawfully enlisted, or the name of any enlisted ~~man~~ member who is dead or who has been discharged, transferred, or has

lost membership for any cause whatsoever, or who has been convicted of any infamous crime, ~~he~~ the officer shall be guilty of a Class 1 misdemeanor.

"§ 127A-153. Protection of uniform.

(a) The wearing of any military uniform of the United States ~~government~~ by members of the militia shall be pursuant to applicable regulations promulgated by the respective ~~armed services~~ branches of the Armed Forces of the United States and regulations of the Adjutant General of North Carolina not inconsistent with federal uniform regulations.

(b) The wearing of any military uniform of the ~~North Carolina~~ State ~~government~~ by members of the militia shall be pursuant to applicable regulations promulgated by the Adjutant General of North Carolina.

(c) Members of the militia who violate the regulations referred to in ~~(a) and (b) above~~ subsections (a) and (b) of this section shall, upon conviction by a court-martial, be punished in like manner and to the extent prescribed by Article 134 of the Uniform Code of Military Justice and Manual for Courts-Martial, United States, as shall be in use by the ~~armed forces~~ Armed Forces of the United States at the time of the offense.

(d) Persons not subject to courts-martial who violate the regulations referred to in ~~(a) and (b) above~~ subsections (a) and (b) of this section may be charged and tried in the State courts and upon conviction shall be punished as provided in ~~(c) above.~~subsection (c) of this section.

"§ 127A-154. Upkeep of properties.

There shall be paid from the appropriations ~~from~~ for the North Carolina National Guard ~~such~~ the amounts ~~as may be~~ necessary for the maintenance, upkeep, and improvement of State military properties and facilities. Provided, ~~such~~ these expenditures shall be approved and authorized by the Governor.

"§ 127A-155. When officers authorized to administer oaths.

Officers of the North Carolina National Guard are authorized to administer oaths in all circumstances pertaining to any military matter whenever an oath is required.

"Article 13.

"Armories.

"§ 127A-161. Definitions.

As used in this Article, the following terms mean:

(1) ~~Armory:~~ Armory. – Any building or building complex and related facilities, including the lands for them, which are intended to be utilized by the militia for training, administration, storage, and the maintenance and servicing of equipment.

(2) ~~Armory site:~~ Armory site. – That land, meeting federal and State specifications, upon which an armory may be constructed.

(3) ~~Department:~~ Department. – The North Carolina Department of Crime Control and Public Safety.

(4) ~~Facilities:~~ Facilities. – Those adjuncts to an armory, including but not limited to yards, storage buildings, sheds, ramps, racks, target ranges, furniture, fixtures and other equipment and installations.

(5) ~~Funds:~~ Funds. – Any ~~moneys~~ monies appropriated by any municipality, county, the State or the United States government and made available for the purpose of acquiring armory sites or constructing or repairing any armory, warehouse, or other facility for the use of any unit or for any other purpose in connection with the housing, training, instruction or promotion of the interest of any unit.

(6) ~~Municipality:~~ Municipality. – Any incorporated city, town or village.

(7) ~~Unit:~~ Unit. – Any organizational entity of the militia.

...

"**§ 127A-163. Powers of Department specified.**

The Department of Crime Control and Public Safety is further authorized and empowered:

(1) To act as an agency of the State of North Carolina for the purpose of setting up and administering any statewide plan for the acquisition of armories and armory sites, for the construction and maintenance of armories and for providing facilities which are now or may be necessary in order to comply with any federal law and in order to receive, administer and disburse any funds which may be provided by act of Congress for such purpose;

(2) ~~As such~~When acting as an agency of the State of North ~~Carolina,~~ Carolina under subdivision (1) of this section, to promulgate statewide plans for the acquisition of armories and armory sites, for the construction and maintenance of armories and ~~such~~ other facilities ~~as may be found~~ that are desirable or necessary to meet the requirements and receive the benefits of any federal legislation with respect thereto;

(3) To receive and administer any funds which may be appropriated by any act of Congress or otherwise for the acquisition of armories and armory ~~sites;~~ sites, for the construction and maintenance of ~~armories~~ armories, and for providing ~~facilities, which~~ facilities that may at any time become available for ~~such~~ those purposes;

(4) To receive and administer any other funds which may be available in furtherance of any activity in which the Department of Crime Control and Public Safety is authorized and empowered to engage under the provisions of this Article; and

(5) To adopt ~~such~~ rules ~~and regulations as may be necessary~~ to carry out the intent and purpose of this Article.

...

"**§ 127A-167. Appropriations to supplement available funds authorized.**

Any city or town and any county in the State, separately or jointly, may make appropriations to supplement available federal or State funds to be used for the construction of armory facilities for the North Carolina National Guard. Appropriations made under authority of this Article shall be in ~~such~~ the amounts and in ~~such~~ the proportions ~~as may be~~ deemed adequate and necessary by the governing body of the county and/or municipality desiring to participate in the armory construction program.

"**§ 127A-168. Local financial support.**

Each county and city in this State is authorized to make appropriations for the purposes of this Article and to fund them by levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law.

"**§ 127A-169. Unexpended portion of State appropriation.**

The unexpended portion of any appropriation from the ~~general fund~~General Fund of the State for the purposes set out in this Article, remaining at the end of any biennium, shall not revert to the ~~general fund~~ General Fund of the State, but shall constitute part of a permanent fund to be expended from time to time in the manner and for the purposes set out in this Article.

"Article 14.

"National Guard Mutual Assistance Compact.

...

"**§ 127A-177. Definitions; mutual aid.**

(a) As used in this Article:

(1) "Emergency" means an occurrence or condition, temporary in nature, in which police and other public safety officials and locally available National

Guard forces are, or may reasonably be expected to be, unable to cope with substantial and imminent danger to the public safety.

(2) "Requesting state" means the state whose governor requests assistance in coping with an emergency.

(3) "Responding state" means the state furnishing aid, or requested to furnish aid.

(b) Upon request of the governor of a party state for assistance in an emergency, the governor of a responding state shall have authority under this Compact to send without the borders of ~~his~~ the responding state and place under the temporary command of the appropriate National Guard or other military authorities of the requesting state all or any part of the National Guard forces of ~~his~~ the responding state as ~~he~~ the governor of the responding state may deem necessary, and the exercise of ~~his~~ the governor's discretion in this regard shall be conclusive.

(c) The governor of a party state may withhold the National Guard forces of ~~his~~ that governor's state from such use and recall any forces or part or member thereof previously deployed in a requesting state.

(d) Whenever National Guard forces of any party state are engaged in another state in carrying out the purposes of this Compact, the members thereof so engaged shall have the same powers, duties, rights, privileges and immunities as members of National Guard forces in such other state. The requesting state shall save members of the National Guard forces of responding states harmless from civil liability for acts or omissions in good faith which occur in the performance of their duty while engaged in carrying out the purposes of this Compact, whether the responding forces are serving the requesting state within its borders or are in transit to or from such service.

(e) Subject to the provisions of subsections (f), (g) and (h) of this section, all liability that may arise under the laws of the requesting state, the responding state, or a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

(f) Any responding state rendering aid pursuant to this Compact shall be reimbursed by the requesting state for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of the materials, transportation and maintenance of National Guard personnel and equipment incurred in connection with such request: Provided, that nothing herein contained shall prevent any responding state from assuming such loss, damage, expense or other cost.

(g) Each party state shall provide, in the same amounts and manner as if they were on duty within their state, for the pay and allowances of the personnel of its National Guard units while engaged without the state pursuant to this Compact and while going to and returning from such duty pursuant to this Compact. Such pay and allowances shall be deemed items of expense reimbursable under subsection (f) of this section by the requesting state.

(h) Each party state providing for the payment of compensation and death benefits to injured members and the representatives of deceased members of its National Guard forces in case such members sustain injuries or are killed within their own state, shall provide for the payment of compensation and death benefits in the same manner and on the same terms in case such members sustain injury or are killed while rendering aid pursuant to this Compact. Such compensation and death benefits shall be deemed items of expense reimbursable pursuant to subsection (f) of this section.

"§ 127A-178. Delegation.

Nothing in this Compact shall be construed to prevent the governor of a party state from delegating any of ~~his~~ the governor's responsibilities or authority respecting the National Guard, provided that such delegation is otherwise in accordance with law. For purposes of this

Compact, however, the governor shall not delegate the power to request assistance from another state.

"**§ 127A-179. Limitations.**

Nothing in this Compact shall:

(1) Expand or add to the functions of the National Guard, except with respect to the jurisdictions within which such functions may be performed;

(2) Authorize or permit National Guard units to be placed under the field command of any person not having the military or National Guard rank or status required by law for the field command position in question.

...

"**§ 127A-181. Payment of liability to responding state.**

Upon presentation of a claim therefor by an appropriate authority of a state whose National Guard forces have aided this State pursuant to the Compact, any liability of this State pursuant to G.S. 127A-177(f) ~~of this Compact~~ shall be paid out of the general fund.

"**§ 127A-182. Status, rights and benefits of forces engaged pursuant to Compact.**

In accordance with ~~G.S. 127A-177(h) of this Compact,~~ G.S. 127A-177(h), members of the National Guard forces of this State shall be deemed to be in State service at all times when engaged pursuant to this Compact, and shall be entitled to all rights and benefits provided pursuant to the laws of this State.

"**§ 127A-183. Injury or death while going to or returning from duty.**

All benefits to be paid under G.S. 127A-177(h) ~~of the foregoing Compact~~ shall include any injury or death sustained while going to or returning from such duty.

"**§ 127A-184. Authority of responding state required to relieve from assignment or reassign officers.**

Nothing in ~~the foregoing~~ this Compact shall authorize or permit state officials or military officers of the requesting state to relieve from assignment or reassign officers or noncommissioned officers of National Guard units of the responding state without authorization by the appropriate authorities of the responding state.

...

"Article 16.

"National Guard Reemployment Rights.

...

"**§ 127A-202. Rights.**

Upon release from State duty, the employee shall make written application to ~~his~~ the employee's previous employer for reemployment within five days of ~~his~~ the employee's release from duty or from hospitalization continuing after release. If the employee is still qualified for ~~his~~ the employee's previous employment, ~~he~~ the employee shall be restored to his previous position or to a position of like seniority, status and salary, unless the employer's circumstances now make the restoration unreasonable. If the employee is no longer qualified for ~~his~~ the employee's previous employment, ~~he~~ the employee shall be placed in another position, for which ~~he~~ the employee is qualified, and which will give ~~him~~ the employee appropriate seniority, status and salary, unless the employer's circumstances now make the placement unreasonable.

...."

SECTION 1.(b) The Revisor of Statutes is authorized to substitute, consistent with this act, the term "Armed Forces of the United States" for the following terms, wherever these terms appear in the General Statutes, when referring to the Armed Forces of the United States:

(1) "armed forces."

(2) "Armed Forces."

(3) "armed forces of the United States."

(4) "armed services of the United States."

(5) "United States armed services."
(6) "United States armed forces."
(7) "United States Armed Forces."
(8) "U.S. armed forces."
(9) "U.S. Armed Forces."

SECTION 1.(c) The Revisor of Statutes is authorized to insert, consistent with this act, the words "United States" before references to the "army," "navy," "marine corps," "coast guard," and "air force," wherever these terms appear in the General Statutes, when referring to a branch or branches of the Armed Forces of the United States, and to capitalize those terms.

SECTION 1.(d) The Revisor of Statutes is authorized to substitute, consistent with this act, the term "North Carolina National Guard" for the terms "National Guard," "national guard," and "guard," wherever these terms appear in the General Statutes, when referring to the North Carolina National Guard.

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

HOUSE BILL 262

Short Title:	References to Military Orgs./Make Uniform.	(Public)
Sponsors:	Representatives Ross, Martin, and Hall (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee A.	

March 9, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE REFERENCES IN THE NORTH CAROLINA GENERAL STATUTES TO FEDERAL AND STATE MILITARY ORGANIZATIONS PROPER AND UNIFORM, AS DIRECTED BY SESSION LAW 2009-281, AS AMENDED BY SESSION LAW 2010-152, AND TO MAKE CONFORMING CHANGES AND OTHER TECHNICAL CORRECTIONS TO THOSE SECTIONS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-82 reads as rewritten:

"**§ 1-82. Venue in all other cases.**

In all other cases the action must be tried in the county in which the plaintiffs or the defendants, or any of them, reside at its commencement, or if none of the defendants reside in the State, then in the county in which the plaintiffs, or any of them, reside; and if none of the parties reside in the State, then the action may be tried in any county which the plaintiff designates in ~~his~~ the plaintiff's summons and complaint, subject to the power of the court to change the place of trial, in the cases provided by statute; provided that any person who has resided on or been stationed in a United States ~~army, navy, marine corps, coast guard or air force~~ Army, Navy, Marine Corps, Coast Guard, or Air Force installation or reservation within this State for a period of one (1) year or more next preceding the institution of an action shall be deemed a resident of the county within which such installation or reservation, or part thereof, is situated and of any county adjacent to such county where such person stationed at such installation or reservation lives in such adjacent county, for the purposes of this section. The term person shall include military personnel and the spouses and dependents of such personnel."

SECTION 2. G.S. 7B-101(14) reads as rewritten:

"(14) Juvenile. – A person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the ~~armed forces~~ Armed Forces of the United States."

SECTION 3. G.S. 7B-600(a) reads as rewritten:

"(a) In any case when no parent appears in a hearing with the juvenile or when the court finds it would be in the best interests of the juvenile, the court may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court. The guardian may

consent to certain actions on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in the ~~armed forces,~~ Armed Forces of the United States, and (iii) enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to Article 35 of Subchapter IV of this Chapter, or until the juvenile reaches the age of majority."

SECTION 4. G.S. 7B-1501(17) reads as rewritten:

"(17) Juvenile. – Except as provided in subdivisions (7) and (27) of this section, any person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the ~~armed forces~~ Armed Forces of the United States. Wherever the term "juvenile" is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well."

SECTION 5. G.S. 7B-2001 reads as rewritten:

"§ 7B-2001. Appointment of guardian.

In any case when no parent, guardian, or custodian appears in a hearing with the juvenile or when the court finds it would be in the best interests of the juvenile, the court may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. Unless the court orders otherwise, the guardian:

...

(3) May consent to certain actions on the part of the juvenile in place of the parent or custodian, including (i) marriage, (ii) enlisting in the ~~armed forces,~~ Armed Forces of the United States, and (iii) enrollment in school.

...."

SECTION 6. G.S. 7B-3402 reads as rewritten:

"§ 7B-3402. Exceptions.

This Article shall not apply to any juvenile under the age of 18 who is married or who is serving in the ~~armed forces~~ Armed Forces of the United States, or who has been emancipated."

SECTION 7. G.S. 10B-20(g) reads as rewritten:

"(g) Persons authorized by federal law or regulation to perform notarial acts may perform the acts for persons serving in or with the Armed Forces of the United ~~States armed forces,~~ States, their spouses, and their dependents."

SECTION 8. G.S. 14-34.3(b)(1) reads as rewritten:

"(b) This section does not apply to:

(1) Officers and enlisted personnel of the ~~armed forces~~ Armed Forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms or weapons, civil officers of the United States while in the 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;".

SECTION 9. G.S. 14-269.7(b)(1) reads as rewritten:

"(b) This section does not apply:

(1) To officers and enlisted personnel of the ~~armed forces~~ Armed Forces of the United States when in discharge of their official duties or acting under orders requiring them to carry handguns."

SECTION 10. G.S. 14-288.1 reads as rewritten:

"§ 14-288.1. Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this Article:

(1) "Chairman of the board of county commissioners": The chairman of the board of county commissioners or, in case of ~~his~~ the chairman's absence or disability, the person authorized to act in ~~his~~ the chairman's stead. Unless the governing body of the county has specified who is to act in lieu of the chairman with respect to a particular power or duty set out in this Article, the term "chairman of the board of county commissioners" shall apply to the person generally authorized to act in lieu of the chairman.

...

(5) "Law-enforcement officer": Any officer of the State of North Carolina or any of its political subdivisions authorized to make arrests; any other person authorized under the laws of North Carolina to make arrests and either acting within ~~his~~ that person's territorial jurisdiction or in an area in which ~~he~~ that person has been lawfully called to duty by the Governor or any mayor or chairman of the board of county commissioners; any member of the ~~armed forces~~ Armed Forces of the United States, the North Carolina National Guard, or the ~~State defense militia~~ North Carolina State Defense Militia called to duty in a state of emergency in North Carolina and made responsible for enforcing the laws of North Carolina or preserving the public peace; or any officer of the United States authorized to make arrests without warrant and assigned to duties that include preserving the public peace in North Carolina.

(6) "Mayor": The mayor or other chief executive official of a municipality or, in case of ~~his~~ that person's absence or disability, the person authorized to act in ~~his~~ that person's stead. Unless the governing body of the municipality has specified who is to act in lieu of the mayor with respect to a particular power or duty set out in this Article, the word "mayor" shall apply to the person generally authorized to act in lieu of the mayor.

...."

SECTION 11. G.S. 14-288.20(a)(4) reads as rewritten:

"(4) The term "law-enforcement officer" means any officer of the United States, any state, any political subdivision of a state, or the District of Columbia charged with the execution of the laws thereof; civil officers of the United States; officers and soldiers of the organized militia and state guard of any state or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia; and members of the ~~armed forces~~ Armed Forces of the United States."

SECTION 12. G.S. 14-401.6(a)(1) reads as rewritten:

"(1) By officers and enlisted personnel of the ~~armed forces~~ Armed Forces of the United States or this State while in the discharge of their official duties and acting under orders requiring them to carry arms or weapons;".

SECTION 13. G.S. 14-404(c)(6) reads as rewritten:

"(6) One who has been discharged from the ~~armed forces~~ Armed Forces of the United States under dishonorable conditions."

SECTION 14. G.S. 14-415.4(e)(5) reads as rewritten:

"(5) The petitioner is or has been dishonorably discharged from the ~~armed forces.~~ Armed Forces of the United States."

SECTION 15. G.S. 14-415.10(2a) reads as rewritten:

"(2a) Military permittee. – A person who holds a permit who is also a member of the ~~armed forces~~ Armed Forces of the United States, the ~~armed forces reserves~~ reserve components of the Armed Forces of the United States, the

North Carolina Army National Guard, or the North Carolina Air National Guard."

SECTION 16. G.S. 14-415.12(b)(7) reads as rewritten:

"(7) Is or has been discharged from the ~~armed forces~~ Armed Forces of the United States under conditions other than honorable."

SECTION 17. G.S. 15A-1340.11(7)c. reads as rewritten:

"c. In the courts of the United States, another state, the ~~armed services~~ Armed Forces of the United States, or another country, regardless of whether the offense would be a crime if it occurred in North Carolina,".

SECTION 18. G.S. 15A-1340.16(e)(14) reads as rewritten:

"(14) The defendant has been honorably discharged from the ~~United States armed services.~~Armed Forces of the United States."

SECTION 19. G.S. 18B-109(b) reads as rewritten:

"(b) Armed Forces Installation. – No person shall have malt beverages or unfortified wine shipped directly from a point outside this State to an ~~armed forces~~ installation of the Armed Forces of the United States within this State if those alcoholic beverages are for resale on the installation."

SECTION 20. G.S. 18B-203(a)(17) reads as rewritten:

"(17) Provide for the distribution of spirituous liquor to ~~armed forces~~ installations of the Armed Forces of the United States within this State for resale on the installation;".

SECTION 21. G.S. 20-7(f) reads as rewritten:

"(f) Duration and Renewal of Licenses. – Drivers licenses shall be issued and renewed pursuant to the provisions of this subsection:

...

(3b) Renewal for certain members of the Armed Forces of the United States and reserve components of the Armed Forces of the United States.

a. The Division may renew a drivers license, without limitation on the period of time before the license expires, if the person applying for renewal is a member of the Armed Forces of the United States or of a reserve component of the Armed Forces of the United States and provides orders that place the member on active duty and duty station outside this State.

b. A person who is a member of a reserve component of the Armed Forces of the United States whose license bears an expiration date that occurred while the person was on active duty outside this State shall be considered to have a valid license until 60 days after the date of release from active duty upon showing proof of the release date, unless the license was rescinded, revoked, or otherwise invalidated under some other provision of law. Notwithstanding the provisions of this sub-subdivision, no license shall be considered valid more than 18 months after the date of expiration.

(4) Renewal by mail. – The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:

a. Is a member of the Armed Forces of the United States or a reserve component of the Armed Forces of the United States serving on active duty and is stationed outside this State.

b. Is a resident of this State and has been residing outside the State for at least 30 continuous days.

When renewing a license by mail, the Division may waive the examination that would otherwise be required for the renewal and may impose any conditions it finds advisable. A license renewed by mail is a temporary license that expires 60 days after the person to whom it is issued returns to this State.

...."

SECTION 22. G.S. 20-37.13 reads as rewritten:

"**§ 20-37.13. Commercial drivers license qualification standards.**

(a) No person shall be issued a commercial drivers license unless ~~he:~~ the person:

(1) Is a resident of this State;

(2) Is 21 years of age;

(3) Has passed a knowledge test and a skills test for driving a commercial motor vehicle that comply with minimum federal standards established by federal regulation enumerated in 49 C.F.R., Part 383, Subparts F, G and H; and

(4) Has satisfied all other requirements of the Commercial Motor Vehicle Safety Act in addition to other requirements of this Chapter or federal regulation.

For the purpose of skills testing and determining commercial drivers license classification, only the manufacturer's GVWR shall be used.

The tests shall be prescribed and conducted by the Division. Provided, a person who is at least 18 years of age may be issued a commercial drivers license if ~~he~~ the person is exempt from, or not subject to, the age requirements of the federal Motor Carrier Safety Regulations contained in 49 C.F.R., Part 391, as adopted by the Division.

...

(c) Prior to October 1, 1992, the Division may waive the skills test for applicants licensed at the time they apply for a commercial drivers license if:

(1) For an application submitted by April 1, 1992, the applicant has not, and certifies that he or she has not, at any time during the two years immediately preceding the date of application done any of the following and for an application submitted after April 1, 1992, the applicant has not, and certifies that he or she has not, at any time during the two years preceding April 1, 1992:

a. Had more than one drivers license, except during the 10-day period beginning on the date he or she is issued a drivers license, or unless, prior to December 31, 1989, he or she was required to have more than one license by a State law enacted prior to June 1, 1986;

b. Had any drivers license or driving privilege suspended, revoked, or cancelled;

c. Had any convictions involving any kind of motor vehicle for the offenses listed in G.S. 20-17 or had any convictions for the offenses listed in G.S. 20-17.4;

d. Been convicted of a violation of State or local laws relating to motor vehicle traffic control, other than a parking violation, which violation arose in connection with any reportable traffic accident; or

e. Refused to take a chemical test when charged with an implied consent offense, as defined in G.S. 20-16.2; and

(2) The applicant certifies, and provides satisfactory evidence, that he or she is regularly employed in a job requiring the operation of a commercial motor vehicle, and he or she either:

a. Has previously taken and successfully completed a skills test that was administered by a state with a classified licensing and testing system and the test was behind the wheel in a vehicle representative

of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed; or

b. Has operated for the relevant two-year period under subpart (1)a. of this subsection, a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed.

(c1) The Division may waive the skills test for applicants at the time they apply for a commercial drivers license if the applicant meets all of the following:

...

(3) The applicant certifies, and provides satisfactory evidence on the date of application, that the applicant is a member of an active or reserve component of ~~a branch of the United States Armed Forces~~ the Armed Forces of the United States and is regularly employed in a job requiring the operation of a commercial motor vehicle, and the applicant either:

...

(d) A commercial drivers license or learner's permit shall not be issued to a person while ~~he~~ the person is subject to a disqualification from driving a commercial motor vehicle, or while ~~his~~ the person's drivers license is suspended, revoked, or cancelled in any state; nor shall a commercial drivers license be issued unless the person who has applied for the license first surrenders all other drivers licenses issued by the Division or by another state. If a person surrenders a drivers license issued by another state, the Division must return the license to the issuing state for cancellation.

...."

SECTION 23. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

(33) Cold War Veteran. – Issuable to a veteran of the ~~armed services~~ Armed Forces of the United States who served during the Cold War era, September 2, 1945, through December 26, 1991, and who was separated from the ~~armed services~~ Armed Forces of the United States under honorable conditions. The plate shall bear the words "Cold War Veteran" and an insignia representing the Cold War era. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(36) Combat Veteran. – Issuable to a veteran of the Armed Forces of the United States who served in a combat zone, or in waters adjacent to a combat zone, during a period of war and who was separated from the Armed Forces of the United States under honorable conditions. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate. A "period of war" is any of the following:

...

(87) Military Veteran. – Issuable to an individual who served honorably in the ~~armed services~~ Armed Forces of the United States. The plate shall bear the words "U.S. Military Veteran" and the name and insignia of the branch of service in which the individual served. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(88) Military Wartime Veteran. – Issuable to either a member or veteran of the ~~armed services~~ Armed Forces of the United States who served during a period of war who received a campaign or expeditionary ribbon or medal for their service. If the person is a veteran of the ~~armed services,~~ Armed Forces

of the United States, then the veteran must be separated from the ~~armed services~~ Armed Forces of the United States under honorable conditions. The plate shall bear a word or phrase identifying the period of war and a replica of the campaign badge or medal awarded for that war. The Division may not issue the plate authorized by this subdivision unless it receives a total of 300 applications for all periods of war, combined, to be represented on this plate. A "period of war" is any of the following:

...

(113) Prisoner of War. – Issuable to the following:

a. A member or veteran member of the Armed Forces of the United States who has been captured and held prisoner by forces hostile to the United States while serving in the Armed ~~Forces.~~Forces of the United States.

b. The surviving spouse of a person who had a prisoner of war plate at the time of death so long as the surviving spouse continues to renew the plate and does not remarry.

...."

SECTION 24. G.S. 20-311(g) reads as rewritten:

"(g) Notwithstanding the penalty and restoration fee provisions of this section, any monetary penalty or restoration fee shall be waived for any person who, at the time of notification of a lapse in coverage, was deployed as a member of the ~~United States~~ Armed Forces of the United States outside of the continental United States for a total of 45 or more days. In addition, no insurance points under the Safe Driver Incentive Plan shall be assessed for any violation for which a monetary penalty or restoration fee is waived pursuant to this subsection. Any person qualifying under this subsection shall:

(1) Have an affirmative defense to any criminal charge based upon the failure to return any registration card or registration plate to the Division;

(2) Upon reregistration, receive without cost from the Division all necessary registration cards or plates; and

(3) Upon notice of revocation, be permitted to transfer the vehicle's registration immediately to his or her spouse, child, or spouse's child, notwithstanding the provisions of subsection (e) of this section."

SECTION 25. G.S. 28B-1 reads as rewritten:

"**§ 28B-1. Absentee in military service; definition.**

Any person serving in or with the ~~armed forces~~ Armed Forces of the United States, in or with the Red Cross, in or with the ~~merchant marines,~~ United States Merchant Marine, during any time when a state of hostilities exists between the United States and any other power, who has been reported or listed by the appropriate federal agency as missing in action or as a prisoner of war for a period of one year, shall be an "absentee in military service" within the meaning of this Chapter."

SECTION 26. G.S. 28C-20 reads as rewritten:

"**§ 28C-20. Provisions applicable to person held incommunicado in foreign country.**

As to a person who is known to be held incommunicado in a foreign country, G.S. 28C-1 through 28C-8 and G.S. 28C-10 may be applied as though ~~such~~ the person were an absentee within the meaning of this Chapter, and if ~~his~~ the person's whereabouts becomes unknown, the other provisions of this Chapter may be applied by such amendments to the pending proceeding as may be required. This section shall not apply to personnel serving in or with the ~~armed forces,~~ Armed Forces of the United States, the ~~merchant marine,~~ United States Merchant Marine, or the Red Cross during a period of hostilities between the United States and some other power who are listed by the appropriate federal agency as prisoners of war or as missing in action."

SECTION 27. G.S. 31-18.4 reads as rewritten:

"**§ 31-18.4. Probate of wills of members of the ~~armed forces~~ Armed Forces of the United States.**

In addition to the methods already provided in existing statutes therefor, a will executed by a person while in the ~~armed forces~~ Armed Forces of the United States or the ~~merchant marine,~~United States Merchant Marine shall be admitted to probate (whether there were subscribing witnesses thereto or not, if they, or either of them, is out of the State at the time ~~said~~ the will is offered for probate) upon the oath of at least three credible witnesses that the signature to ~~said~~ the will is in the handwriting of the person whose will it purports to be. Such will so proven shall be effective to devise real property as well as to bequeath personal estate of all kinds. This section shall not apply to cases pending in courts and at issue on the date of its ratification."

SECTION 28. G.S. 35A-1228 reads as rewritten:

"**§ 35A-1228. Guardians of children of servicemen; allotments and allowances.**

In all cases where a person serving in the ~~armed forces~~ Armed Forces of the United States has made an allotment or allowance to a resident of this State who is his child or other minor dependent as provided by the Wartime Allowances to Service Men's Dependents Act or any other act of Congress, the clerk in the county of the minor's residence may act as temporary guardian, or appoint some suitable person to act as temporary guardian, of the person's minor dependent for purposes of receiving and disbursing allotments and allowance funds for the benefit of the minor dependent, when:

(1) The other parent of the child or other minor dependent, or other person designated in the allowance or allotment to receive and disburse such moneys for the benefit of the minor dependent, dies or becomes mentally incompetent; and

(2) The person serving in the ~~armed forces~~ Armed Forces of the United States is reported as missing in action or as a prisoner of war and is unable to designate another person to receive and disburse the allotment or allowance to the minor dependent."

SECTION 29.(a) G.S. 42-45(a) reads as rewritten:

"(a) Any member of the ~~United States Armed Forces~~ Armed Forces of the United States who (i) is required to move pursuant to permanent change of station orders to depart 50 miles or more from the location of the dwelling unit, or (ii) is prematurely or involuntarily discharged or released from active duty with the ~~United States Armed Forces~~ Armed Forces of the United States, may terminate ~~his~~ the member's rental agreement for a dwelling unit by providing the landlord with a written notice of termination to be effective on a date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the member's commanding officer."

SECTION 29.(b) G.S. 42-45(a1) reads as rewritten:

"(a1) Any member of the ~~United States Armed Forces~~ Armed Forces of the United States who is deployed with a military unit for a period of not less than 90 days may terminate ~~his~~ the member's rental agreement for a dwelling unit by providing the landlord with a written notice of termination. The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the member's commanding officer. Termination of a lease pursuant to this subsection is effective 30 days after the first date on which the next rental payment is due or 45 days after the landlord's receipt of the notice, whichever is shorter, and payable after the date on which the notice of termination is delivered."

SECTION 30. G.S. 47-2 reads as rewritten:

"**§ 47-2. Officials of the United States, foreign countries, and sister states.**

The execution of all such instruments and writings as are permitted or required by law to be registered may be proved or acknowledged before any one of the following officials of the United States, of the District of Columbia, of the several states and territories of the United States, of countries under the dominion of the United States and of foreign countries: Any judge of a court of record, any clerk of a court of record, any notary public, any commissioner of deeds, any commissioner of oaths, any mayor or chief magistrate of an incorporated town or city, any ambassador, minister, consul, vice-consul, consul general, vice-consul general, associate consul, or any other person authorized by federal law to acknowledge documents as consular officers, or commercial agent of the United States, any justice of the peace of any state or territory of the United States, any officer of the ~~army or air force of the~~ United States Army or Air Force or United States ~~marine corps~~ Marine Corps having the rank of warrant officer or higher, any officer of the United States ~~navy~~ Navy or ~~coast guard~~ Coast Guard having the rank of warrant officer, or higher, or any officer of the United States ~~merchant marine~~ Merchant Marine having the rank of warrant officer, or higher. No official seal shall be required of ~~said military, naval~~ a military or merchant marine ~~official,~~ officer, but ~~he~~ the officer shall sign ~~his~~ the officer's name, designate ~~his~~ the officer's rank, and give the name of ~~his~~ the officer's ship or military organization and the date, and for the purpose of certifying ~~said~~ the acknowledgment, ~~he~~ the officer shall use a form in substance as follows:

On this the ____ day of ____, ____, before me ____, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be accompanying or serving in or with the ~~armed forces~~ Armed Forces of the United States (or to be the spouse of a person accompanying or serving in or with the ~~armed forces~~ Armed Forces of the United States) and to be the person whose name is subscribed to the within instruments and acknowledged that ____ ~~he~~ the person ____ executed the same for the purposes therein contained. And the undersigned does further certify that ~~he~~ the undersigned is at the date of this certificate a commissioned officer of the rank stated below and is in the active service of the ~~armed forces~~ Armed Forces of the United States.

_____

Signature of Officer

_____

Rank of Officer and command to which attached.

If the proof or acknowledgment of the execution of an instrument is had before a justice of the peace of any state of the United States other than this State or of any territory of the United States, the certificate of ~~such~~ the justice of the peace shall be accompanied by a certificate of the clerk of some court of record of the county in which ~~such~~ the justice of the peace resides, which certificate of the clerk shall be under ~~his~~ the clerk's hand and official seal, to the effect that ~~such~~ the justice of the peace was at the time the certificate of ~~such justice~~ the justice bears date an acting justice of the peace of ~~such~~ the county and state or territory and that the genuine signature of ~~such~~ the justice of the peace is set to ~~such~~ the certificate."

SECTION 31. G.S. 47-2.1 reads as rewritten:

"§ 47-2.1. Validation of instruments proved before officers of certain ranks.

Any instrument or writing, required by law to be proved or acknowledged before an officer, which prior to the ratification of this section was proved or acknowledged before an officer of the United States ~~army or United States marine corps~~ Army or Marine Corps having the rank of second lieutenant or higher, or any officer of the United States ~~navy~~ Navy, or United States ~~coast guard~~ Coast Guard, or United States ~~merchant marine~~ Merchant Marine, having the rank of ensign or higher, is hereby validated and declared sufficient for all purposes."

SECTION 32. G.S. 47-81.2 reads as rewritten:

"**§ 47-81.2. Before ~~army,~~ United States Army, etc., officers.**

In all cases where instruments and writings have been proved or acknowledged before any officer of the ~~army of the United States or~~ United States ~~marine corps~~ Army or Marine Corps having the rank of captain or higher, before any officer of the United States ~~navy or coast guard~~ Navy or Coast Guard having the rank of lieutenant, senior grade, or higher, or any officer of the United States ~~merchant marine~~ Merchant Marine having the rank of lieutenant, senior grade, or higher, such proofs or acknowledgments, where valid in other respects, are hereby ratified, confirmed and declared valid."

SECTION 33. The title of Article 5 of Chapter 47 of the General Statutes reads as rewritten:

"Article 5.

Registration of Official Discharges from the ~~Military and Naval~~ Armed Forces of the United States."

SECTION 34. G.S. 47-109 reads as rewritten:

"**§ 47-109. Book for record of discharges in office of register of deeds; specifications.**

There shall be provided, and at all times maintained, in the office of the register of deeds of each county in North Carolina a special and permanent book, in which shall be recorded official discharges from the ~~army, navy, marine corps~~ United States Army, Navy, Marine Corps and other branches of the ~~armed forces~~ Armed Forces of the United States. ~~Said~~ The book shall be securely bound, and the pages of the ~~same~~ book shall be printed in the form of discharge papers, with sufficient blank lines for the recording of such dates as may be contained in the discharge papers offered for registration."

SECTION 35. G.S. 47-110 reads as rewritten:

"**§ 47-110. Registration of official discharge or certificate of lost discharge.**

Upon the presentation to the register of deeds of any county of any official discharge, or official certificate of lost discharge, from the ~~army, navy, marine corps,~~ United States Army, Navy, Marine Corps, or any other branch of the ~~armed forces~~ Armed Forces of the United States ~~he~~ the register of deeds shall record the same without charge in the book provided for in G.S. 47-109."

SECTION 36. G.S. 47-111 reads as rewritten:

"**§ 47-111. Inquiry by register of deeds; oath of applicant.**

If any register of deeds shall be in doubt as to whether or not any paper so presented for registration is an official discharge from the ~~army, navy, or marine corps of the United States,~~ United States Army, Navy, Marine Corps, or any other branch of the Armed Forces of the United States or an official certificate of lost discharge, ~~he~~ the register of deeds shall have power to examine, under oath, the person so presenting such discharge, or otherwise inquire into its validity; and every register of deeds to whom a discharge or certificate of lost discharge is presented for registration shall administer to the person offering such discharge or certificate of lost discharge for registration the following oath, to be recorded with and form a part of the registration of such discharge or certificate of lost discharge:

'I, _____, being duly sworn, depose and say that the foregoing discharge (or certificate of lost discharge) is the original discharge (or certificate of lost discharge) issued to me by the government of the United States; and that no alterations have been made therein by me, or by any person to my knowledge.

_____

Subscribed and sworn to before me this ____ day of _____, ____

_____'".

SECTION 37. G.S. 47-113 reads as rewritten:

"**§ 47-113. Certified copy of registration.**

Any person desiring a certified copy of any such discharge, or certificate of lost discharge, registered under the provisions of this Article shall apply for the same to the register of deeds

of the county in which such discharge or certificate of lost discharge is registered. The register of deeds shall furnish certified copies of instruments registered under this Article without charge to any member or former member of the ~~armed forces~~ Armed Forces of the United States who applies therefor."

SECTION 38. G.S. 47-113.2(b)(3) reads as rewritten:

"(3) Military discharge document. – Any document that purports to represent a notice of separation from or service in ~~any armed forces~~ the Armed Forces of the United States or armed forces of any state, including, but not limited to, Department of Defense Form 214 or 215, WD AGO 53, WD AGO 55, WD AGO 53-55, NAVMC 78-PD, and NAVPERS ~~553, or any other letter relating to the separation from the armed forces.~~553."

SECTION 39. G.S. 50-18 reads as rewritten:

"**§ 50-18. Residence of military personnel; payment of defendant's travel expenses by plaintiff.**

In any action instituted and prosecuted under this Chapter, allegation and proof that the plaintiff or the defendant has resided or been stationed at a United States ~~army, navy, marine corps, coast guard or air force~~ Army, Navy, Marine Corps, Coast Guard, or Air Force installation or reservation or any other location pursuant to military duty within this State for a period of six months next preceding the institution of the action shall constitute compliance with the residence requirements set forth in this Chapter; provided that personal service is had upon the defendant or service is accepted by the defendant, within or without the State as by law provided.

Upon request of the defendant or attorney for the defendant, the court may order the plaintiff to pay necessary travel expenses from defendant's home to the site of the court in order that the defendant may appear in person to defend said action."

SECTION 40. G.S. 50B-3.1(k) reads as rewritten:

"(k) Official Use Exemption. – This section shall not prohibit law enforcement officers and members of any branch of the ~~United States armed forces,~~ Armed Forces of the United States, not otherwise prohibited under federal law, from possessing or using firearms for official use only."

SECTION 41. G.S. 53-141 reads as rewritten:

"**§ 53-141. Powers.**

Industrial banks shall have perpetual duration and succession in their corporate name unless a limited period of duration is stated in their certificate of incorporation. They shall have the powers conferred by subdivisions (1), (2), and (3) of subsection (a) of G.S. 55-3-02, and subdivision (3) of G.S. 53-43, such additional powers as may be necessary or incidental for the carrying out of their corporate purposes, and in addition thereto the following powers:

...

(7) To transact any lawful business in aid of the United States in time of war or engagement of the ~~nation's armed forces~~ Armed Forces of the United States in hostile military operations."

SECTION 42. G.S. 58-33-66(a) reads as rewritten:

"(a) The Commissioner may issue a temporary insurance producer license for a period not to exceed 180 days or longer, for good cause, without requiring an examination if the Commissioner deems that the temporary license is necessary for the servicing of an insurance business in any of the following cases:

...

(3) To the designee of a licensed insurance producer entering active service in the ~~armed forces of the United States of America.~~Armed Forces of the United States.

(4) In any other circumstance where the Commissioner deems that the public interest will be served best by the issuance of this license."

SECTION 43. G.S. 58-37-1(4a) reads as rewritten:

"(4a) "Eligible risk," for the purpose of nonfleet private passenger motor vehicle insurance, means:

...

e. A nonresident of the State who is one of the following:

1. A member of the ~~armed forces~~ Armed Forces of the United States stationed in this State, or deployed outside this State from a home base in this State, who intends to return to his or her home state;
2. The spouse of a nonresident member of the ~~armed forces~~ Armed Forces of the United States stationed in this State, or deployed outside this State from a home base in this State, who intends to return to his or her home state;
3. An out-of-state student who intends to return to his or her home state upon completion of his or her time as a student enrolled in school in this State; or

...."

SECTION 44. G.S. 58-58-325 reads as rewritten:

"**§ 58-58-325. Scope.**

This Part applies only to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member of the ~~United States armed forces.~~ Armed Forces."

SECTION 45. G.S. 58-58-330(b) reads as rewritten:

"(b) Nothing in this Part shall be construed to abrogate the ability of nonprofit organizations (and/or other organizations) to educate members of the ~~United States armed forces~~ Armed Forces in accordance with Department of Defense ~~DoD~~ "DoD Instruction 1344.07 – Personal Commercial Solicitation on DoD ~~Installations~~ Installations" or successor directive."

SECTION 46. G.S. 58-58-335 reads as rewritten:

"**§ 58-58-335. Definitions.**

As used in this Part:

(1) "Active duty" means full-time duty in the active military service of the United States and includes service by members of the reserve component (National Guard and Reserve) while serving under published orders for active duty or full-time training. "Active duty" does not include service by members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than 31 calendar days.

(1a) 'Armed Forces' means all components of the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.

...

(11) "Service member" means any active duty commissioned officer, any active duty warrant officer, or any active duty enlisted member of the ~~armed forces.~~Armed Forces.

...

~~(15) "United States armed forces" or "armed forces" means all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.~~

...."

SECTION 47. G.S. 58-58-340 reads as rewritten:

"§ 58-58-340. **Practices declared false, misleading, deceptive, or unfair on a military installation.**

(a) The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation of life insurance are declared to be false, misleading, deceptive, or unfair:

...

(8) Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the ~~armed forces~~ Armed Forces without first obtaining for the insurer's files a completed copy of any required form that confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives, or rules of the Department of Defense or any branch of the ~~armed forces.~~Armed Forces.

(b) The following acts or practices when committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive, or unfair:

(1) Using Department of Defense personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members.

(2) Using an insurance producer to participate in any ~~armed forces~~ Armed Forces sponsored education or orientation program."

SECTION 48.(a) G.S. 58-58-345(a) reads as rewritten:

"(a) The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive, or unfair:

(1) Submitting, processing, or assisting in the submission or processing of any allotment form or similar device used by the ~~United States armed forces~~ Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member's MyPay account or other similar Internet or electronic medium for such purposes. This subdivision does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form.

...."

SECTION 48.(b) G.S. 58-58-345(b) reads as rewritten:

"(b) The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval, or affiliation and are declared to be false, misleading, deceptive, or unfair:

(1) Making any representation, or using any device, title, descriptive name, or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer, or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned, or recommended by the U.S. Government, the ~~United States armed forces,~~ Armed Forces, or any state or federal agency or government entity. Examples of prohibited insurance producer titles include, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant," or "Veteran's Benefits Counselor." Nothing in this subdivision prohibits a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited

institution of higher learning. Those designations include, but are not limited to, Chartered Life Underwriter (CLU), Chartered Financial Consultant, (ChFC), Certified Financial Planner (CFP), Master of Science in Financial Services (MSFS), or Masters of Science Financial Planning (MS).

(2) Soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the ~~United States armed forces~~ Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer, or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned, or recommended by the U.S. Government or the ~~United States armed forces.~~Armed Forces."

SECTION 48.(c) G.S. 58-58-345(d) reads as rewritten:

"(d) The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI are declared to be false, misleading, deceptive, or unfair:

...

(3) Suggesting, recommending, or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy that replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the ~~armed forces.~~Armed Forces."

SECTION 49. G.S. 65-43 reads as rewritten:

"**§ 65-43. Definitions.**

For purposes of this Article, the following definitions shall apply, unless the context requires otherwise:

(1) "Honorable military service" means:

a. Service on active duty, other than for training, as a member of the Armed Forces of the United States, when the service was terminated under honorable conditions;

b. Service on active duty as a member of the Armed Forces of the United States at the time of death under honorable conditions;

c. Service on active duty for training or full-time service as a member of ~~the Reserve~~ a reserve component of the Armed Forces of the United States, the Army National Guard, the Air National Guard, or the Reserve Officer Training Corps of the Army, Navy, or Air Force, at the time of death under honorable conditions.

(2) A "legal resident" of a state means a person whose principal residence or abode is in that state, who uses that state to establish his or her right to vote and other rights in a state, and who intends to live in that state, to the exclusion of maintaining a legal residence in any other state.

(3) A "qualified veteran" means a veteran who meets the requirements of sub-subdivisions a. and b. of this subdivision:

a. A veteran who served an honorable military service or who served a period of honorable nonregular service and is any of the following:

1. A veteran who is entitled to retired pay for nonregular service under 10 U.S.C. §§ 12731-12741, as amended.

2. A veteran who would have been entitled to retired pay for nonregular service under 10 U.S.C. §§ 12731-12741, as amended, but for the fact that the person was under 60 years of age.

3. A veteran who is eligible for interment in a national cemetery under 38 U.S.C. § 2402, as amended.

b. Who is a legal resident of North Carolina:

1. At the time of death, or
2. For a period of at least 10 years, or
3. At the time he or she entered the Armed Forces of the United States."

SECTION 50. G.S. 66-58(c)(3b) reads as rewritten:

"(3b) The operation of a military business center by a community college. For the purposes of this subdivision, the term "military business center" means a facility that serves to coordinate and facilitate interactions between the ~~United States Armed Forces;~~ Armed Forces of the United States; military personnel, veterans, and their families; and private businesses."

SECTION 51. G.S. 86A-14(2) reads as rewritten:

"(2) Commissioned medical or surgical officers of the ~~U.S.~~ United States Army or other components of the ~~U.S. armed forces,~~ Armed Forces of the United States, and those working under their supervision;".

SECTION 52. G.S. 86A-17(c) reads as rewritten:

"(c) All persons serving in the Armed Forces of the United States ~~armed forces~~ and persons whose certificates of registration as a registered barber were in force one year prior to entering service may, without taking the required examination, renew their certificates within 90 days after receiving an honorable discharge, by paying the current annual license fee and furnishing the State Board of Barber Examiners with a satisfactory health certificate if required by the Board."

SECTION 53. G.S. 89C-25(6) reads as rewritten:

"(6) Practice by members of the ~~armed forces;~~ Armed Forces of the United States; employees of the government of the United States while engaged in the practice of engineering or land surveying solely for the government on government-owned works and projects; or practice by those employees of the Natural Resources Conservation Service, county employees, or employees of the Soil and Water Conservation Districts who have federal engineering job approval authority that involves the planning, designing, or implementation of best management practices on agricultural lands."

SECTION 54. G.S. 90-12.1A(a)(3) reads as rewritten:

"(3) Is authorized to treat ~~personnel enlisted~~ military personnel serving in a branch of the ~~United States armed services~~ Armed Forces of the United States or veterans."

SECTION 55. G.S. 90-12.4(3) reads as rewritten:

"(3) Is a member of the ~~United States armed services~~ Armed Forces of the United States or is employed by the Veterans' Administration or another federal agency."

SECTION 56. G.S. 90-18.1(h) reads as rewritten:

"(h) A physician assistant serving active duty in the ~~United States military~~ Armed Forces of the United States is exempt from the requirements of subdivision (g)(3) of this section."

SECTION 57. G.S. 90-29(c)(2) reads as rewritten:

"(2) The practice of dentistry, in the discharge of their official duties, by dentists in any branch of the ~~military service~~ Armed Forces of the United States or in the full-time employ of any agency of the United States;".

SECTION 58. G.S. 90-36(c)(2) reads as rewritten:

"(2) Has not been the subject of final or pending disciplinary action in the ~~military,~~ Armed Forces of the United States, in any state or territory in which the applicant is or has ever been licensed to practice dentistry, or in any state or territory in which the applicant has held any other professional license."

SECTION 59. G.S. 90-37.1(a)(1) reads as rewritten:

"(1) Has an out-of-state current or expired license, or an expired license in this State, or is authorized to treat veterans of or personnel ~~enlisted~~ serving in the ~~United States armed services~~ Armed Forces of the United States; and".

SECTION 60. G.S. 90-87(23)(a) reads as rewritten:

"a. A written order or other order which is promptly reduced to writing for a controlled substance as defined in this Article, or for a preparation, combination, or mixture thereof, issued by a practitioner who is licensed in this State to administer or prescribe drugs in the course of his professional practice; or issued by a practitioner serving on active duty with the ~~armed forces~~ Armed Forces of the United States or the United States Veterans Administration who is licensed in this or another state or Puerto Rico, provided the order is written for the benefit of eligible beneficiaries of armed services medical care; a prescription does not include an order entered in a chart or other medical record of a patient by a practitioner for the administration of a drug; or".

SECTION 61. G.S. 90-115.1(1) reads as rewritten:

"(1) The practice of optometry, in the discharge of their official duties, by optometrists in any branch of the ~~military service of the United States~~ Armed Forces of the United States or in the full employ of any agency of the United States."

SECTION 62. G.S. 90-187.10 reads as rewritten:

"§ 90-187.10. Necessity for license; certain practices exempted.

No person shall engage in the practice of veterinary medicine or own all or part interest in a veterinary medical practice in this State or attempt to do so without having first applied for and obtained a license for such purpose from the North Carolina Veterinary Medical Board, or without having first obtained from ~~said~~ the Board a certificate of renewal of license for the calendar year in which ~~such~~ the person proposes to practice and until ~~he~~ the person shall have been first licensed and registered for such practice in the manner provided in this Article and the rules and regulations of the ~~said~~ Board.

Nothing in this Article shall be construed to prohibit:

(1) Any person ~~or his employee~~ from administering to animals, the title to which is vested in ~~himself,~~ the person or the person's employer, except when ~~said~~ the title is so vested for the purpose of circumventing the provisions of this Article;

(2) Any person who is a regular student or instructor in a legally chartered college from the performance of those duties and actions assigned as ~~his~~ the person's responsibility in teaching or research;

(3) Any veterinarian not licensed by the Board who is a member of the ~~armed forces~~ Armed Forces of the United States or who is an employee of the United States Department of Agriculture, the United States Public Health Service or other federal agency, or the State of North Carolina, or political subdivision thereof, from performing official duties while so commissioned or employed;

...

(7) Any physician licensed to practice medicine in this State, or ~~his~~ the physician's assistant, while engaged in medical research;

...

(9) Any veterinarian licensed to practice in another state from examining livestock or acting as a consultant in North Carolina, provided ~~he~~ the consulting veterinarian is directly supervised by a veterinarian licensed by the Board who must, at or prior to the first instance of consulting, notify the Board, in writing, that he or she is supervising the consulting veterinarian, give the Board the name, address, and licensure status of the consulting veterinarian, and also verify to the Board that the supervising veterinarian assumes responsibility for the professional acts of the consulting veterinarian; and provided further, that the consultation by the veterinarian in North Carolina does not exceed 10 days or parts thereof per year, and further that all infectious or contagious diseases diagnosed are reported to the State Veterinarian within 48 hours; or

(10) Any person employed by the North Carolina Department of Agriculture and Consumer Services as a livestock inspector or by the U.S. Department of Agriculture as an animal health technician from performing regular duties assigned to him or her during the course and scope of that person's employment."

SECTION 63. G.S. 90-210.25(a) reads as rewritten:

"(a) Qualifications, Examinations, Resident Traineeship and Licensure. –

...

(4) ...

d. A certificate of resident traineeship shall be signed by the resident trainee and upon payment of the renewal fee shall be renewable one year after the date of original registration; but the certificate may not be renewed more than two times. The Board shall mail to each registered trainee at his last known address a notice that the renewal fee is due and that, if not paid within 30 days of the notice, the certificate will be canceled. A late fee, in addition to the renewal fee, shall be charged for a late renewal, but the renewal of the registration of any resident trainee who is engaged in ~~the~~ active service in the ~~military service~~ Armed Forces of the United States at the time renewal is due may, at the discretion of the Board, be held in abeyance for the duration of that service without penalties. No credit shall be allowed for the 12-month period of resident traineeship that shall have been completed more than five years preceding the examination for a license.

...

(5) The Board by regulation may recognize other examinations that the Board deems equivalent to its own.

...

b. The holder of any license issued by the Board who shall fail to renew the same on or before February 1 of the calendar year for which the license is to be renewed shall have forfeited and surrendered the license as of that date. No license forfeited or surrendered pursuant to the preceding sentence shall be reinstated by the Board unless it is shown to the Board that the applicant has, throughout the period of forfeiture, engaged full time in another state of the United States or the District of Columbia in the practice to which ~~his~~ the applicant's

North Carolina license applies and has completed for each such year continuing education substantially equivalent in the opinion of the Board to that required of North Carolina licensees; or has completed in North Carolina a total number of hours of accredited continuing education computed by multiplying five times the number of years of forfeiture; or has passed the North Carolina examination for the forfeited license. No additional resident traineeship shall be required. The applicant shall be required to pay all delinquent annual renewal fees and a reinstatement fee. The Board may waive the provisions of this section for an applicant for a forfeiture which occurred during ~~his~~ the applicant's service in the ~~armed forces~~ Armed Forces of the United States provided ~~he~~ the applicant applies within six months following severance therefrom.

...."

SECTION 64. G.S. 90-210.101 reads as rewritten:

"**§ 90-210.101. Member ~~in armed forces~~ of Armed Forces failing to pay assessments; reinstatement.**

If a member of a burial association who is in the ~~military or naval forces~~ Armed Forces of the United States fails to pay any assessment, ~~he~~ the member shall be in bad standing, and unless and until restored, shall not be entitled to benefits. However, the ~~said~~ member shall be reinstated in the burial association upon application made by ~~him~~ the member at any time until 12 months after ~~his~~ the member's discharge from the ~~military or naval forces~~ Armed Forces of the United States, notwithstanding ~~his~~ the member's physical condition and without the payment of assessments which have become due during ~~his~~ the member's service in the ~~military or naval forces~~ Armed Forces of the United States. Benefits will be in force immediately after such reinstatement."

SECTION 65. G.S. 90-224.1(c)(2) reads as rewritten:

"(2) Has no history of disciplinary action or pending disciplinary action in the ~~military~~ Armed Forces of the United States or in any state or territory in which the applicant is or has ever been licensed."

SECTION 66. G.S. 90-270.34(a)(3) reads as rewritten:

"(3) Practitioners of physical therapy employed in the ~~United States armed services,~~ Armed Forces of the United States, United States Public Health Service, Veterans Administration or other federal agency, to the extent permitted under federal law, so long as the practitioner limits services to those directly relating to work with the employing government agency;".

SECTION 67. G.S. 90-664(3) reads as rewritten:

"(3) A respiratory care practitioner serving in the ~~armed forces~~ Armed Forces or the Public Health Service of the United States or employed by the Veterans Administration when performing duties associated with that service or employment."

SECTION 68. G.S. 93B-15 reads as rewritten:

"**§ 93B-15. Payment of license fees by members of the ~~armed forces;~~ Armed Forces; board waiver rules.**

(a) An individual who is serving in the ~~armed forces~~ Armed Forces of the United States and to whom G.S. 105-249.2 grants an extension of time to file a tax return is granted an extension of time to pay any license fee charged by an occupational licensing board as a condition of retaining a license granted by the board. The extension is for the same period that would apply if the license fee were a tax.

(b) Occupational licensing boards shall adopt rules to postpone or waive continuing education, payment of renewal and other fees, and any other requirements or conditions

relating to the maintenance of licensure by an individual who is currently licensed by and in good standing with the board, is serving in the ~~armed forces~~ Armed Forces of the United States, and to whom G.S. 105-249.2 grants an extension of time to file a tax return."

SECTION 69.(a) G.S. 96-8(6)i. reads as rewritten:

"i. The term "employment" includes service performed for any State and local governmental employing unit or for any Indian tribe, except that employment does not include service performed (a) as an elected official; (b) as a member of a legislative body or a member of the judiciary, of a State or political subdivision thereof or of an Indian tribe; (c) as a member of the ~~State~~ North Carolina National ~~Guard or Air National~~ Guard; (d) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or (e) in a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week. The services to which clause (d) of the preceding sentence applies include but are not limited to temporary emergency services compensated solely by a fixed payment for each emergency call answered whether or not provided for by prior agreement and training in preparation for such temporary emergency service whether or not compensated."

SECTION 69.(b) G.S. 96-8(8b) reads as rewritten:

"(8b) "Severely disabled veteran" means an honorably discharged veteran of the ~~armed forces~~ Armed Forces of the United States who has received a disability rating from the United States Department of Veterans Affairs that meets the disability percentage requirements set forth in 38 CFR 4.16, as amended, if the veteran (i) has a right to apply to the United States Department of Veterans Affairs for compensation based on total disability or individual unemployability, and (ii) has elected to work instead of assert the right to receive compensation from the United States Department of Veterans Affairs based on total disability or individual unemployability."

SECTION 69.(c) Effective July 1, 2011, G.S. 96-8(10) reads as rewritten:

"(10) Total and partial unemployment.

a. For the purpose of establishing a benefit year, an individual shall be deemed to be unemployed:

1. If ~~he~~ the individual has payroll attachment but, because of lack of work during the payroll week for which ~~he~~ the individual is requesting the establishment of a benefit year, ~~he~~ the individual worked less than the equivalent of three customary scheduled full-time days in the establishment, plant, or industry in which ~~he~~the individual has payroll attachment as a regular employee. If a benefit year is established, it shall begin on the Sunday preceding the payroll week ending date.

2. If ~~he~~the individual has no payroll attachment on the date ~~he~~the individual reports to apply for unemployment insurance. If a benefit year is established, it shall begin on the Sunday of the calendar week with respect to which the claimant met the reporting requirements provided by Commission regulation.

b. For benefit weeks within an established benefit year, a claimant shall be deemed to be:

1. Totally unemployed, irrespective of job attachment, if ~~his~~ the claimant's earnings for such week, including payments defined in ~~subparagraph c below,~~ sub-subdivision c. of this subdivision, would not reduce ~~his~~ the claimant's weekly benefit amount as prescribed by G.S. 96-12(c).
2. Partially unemployed, if ~~he~~ the claimant has payroll attachment but because of lack of work during the payroll week for which ~~he~~the claimant is requesting benefits ~~he~~the claimant worked less than three customary scheduled full-time days in the establishment, plant, or industry in which ~~he~~the claimant is employed and whose earnings from such employment (including payments defined in ~~subparagraph c below)~~ sub-subdivision c. of this subdivision) would qualify ~~him~~the claimant for a reduced payment as prescribed by G.S. 96-12(c).
3. Part-totally unemployed, if the claimant had no job attachment during all or part of such week and whose earnings for odd jobs or subsidiary work (including payments defined in ~~subparagraph c below)~~ sub-subdivision c. of this subdivision) would qualify ~~him~~ the claimant for a reduced payment as prescribed by G.S. 96-12(c).

c. No individual shall be considered unemployed if, with respect to the entire calendar week, ~~he~~ the individual is receiving, has received, or will receive as a result of ~~his~~ the individual's separation from employment, remuneration in the form of (i) wages in lieu of notice, (ii) accrued vacation pay, (iii) terminal leave pay, (iv) severance pay, (v) separation pay, or (vi) dismissal payments or wages by whatever name. Provided, however, if such payment is applicable to less than the entire week, the claimant may be considered to be unemployed as defined in ~~subsections a and b of this paragraph.~~ sub-subdivisions a. and b. of this subdivision. Sums received by any individual for services performed as an elected official who holds an elective office, as defined in G.S. 128-1.1(d), or as a member of the ~~N. C.~~ North Carolina National Guard, as defined in G.S. 127A-3, or as a member of any reserve component of the ~~United States~~ Armed Forces of the United States shall not be considered in determining that individual's employment status under this subsection. Provided further, however, that an individual shall be considered to be unemployed as to receipt of severance pay for any week the individual is registered at or attending any institution of higher education as defined in G.S. 96-8(5)j., or secondary school as defined in G.S. 96-8(5)q., or Commission approved vocational, educational, or training programs as defined in G.S. 96-13.

d. An individual's week of unemployment shall be deemed to commence only after ~~his~~ the individual's registration at an employment office, except as the Commission may by regulation otherwise prescribe.

e. Repealed by Session Laws 2009-506, s. 2, effective October 1, 2009, and applicable to claims filed on or after that date.

f. No substitute teacher or other substitute school personnel shall be considered unemployed for days or weeks when not called to work

unless the individual is or was employed as a full-time substitute during the period of time for which the individual is requesting benefits. For the purposes of this subsection, full-time substitute is defined as a substitute employee who works more than 30 hours a week on a continual basis for a period of six months or more."

SECTION 70. G.S. 96-9(c)(6) reads as rewritten:

"(6) If the Commission finds that an employer's business is closed solely because of the entrance of one or more of the owners, officers, partners, or the majority stockholder into the Armed Forces of the United States, or of any of its allies, or of the United Nations, such employer's experience rating account shall not be terminated; and, if the business is resumed within two years after the discharge or release from active duty in the Armed Forces of the United States of such person or persons, the employer's account shall be deemed to have been chargeable with benefits throughout more than 13 consecutive calendar months ending July 31 immediately preceding the computation date. This subdivision shall apply only to employers who are liable for contributions under the experience rating system of financing unemployment benefits. This subdivision shall not be construed to apply to employers who are liable for payments in lieu of contributions or to employers using the reimbursable method of financing benefit payments."

SECTION 71. G.S. 105-113.81(c) reads as rewritten:

"(c) Sales to Armed ~~Forces.~~ Forces of the United States. – Wholesalers and importers of malt beverages and wine are not required to remit excise taxes on malt beverages and wine sold to the ~~United States Armed Forces.~~ Armed Forces of the United States. The Secretary may require malt beverages and wine sold to the ~~Armed Forces~~Armed Forces of the United States to be marked "For Military Use Only" to facilitate identification of those beverages."

SECTION 72. G.S. 105-158 reads as rewritten:

"**§ 105-158. Taxation of certain ~~armed forces~~ Armed Forces personnel and other individuals upon death.**

An individual is not subject to the tax imposed by this Part for a taxable year if, under section 692 of the Code, the individual is not subject to federal income tax for that same taxable year."

SECTION 73. G.S. 105-244.1 reads as rewritten:

"**§ 105-244.1. Cancellation of certain assessments.**

The Secretary of Revenue is hereby authorized, empowered and directed to cancel and abate all assessments made after October 16, 1940, for or on account of any tax owing to the State of North Carolina and which is payable to the Department of Revenue against any person who was killed while a member of the ~~armed forces~~ Armed Forces of the United States or who has a service connected disability as a result of which the United States is paying him disability compensation. This provision shall apply only to assessments made after October 16, 1940, for taxes which were due prior to the time the taxpayer was inducted into the ~~armed forces.~~ Armed Forces of the United States. If any such assessment is or has been paid, the Secretary of Revenue may refund the amount paid but shall not add thereto any interest."

SECTION 74. G.S. 108A-55.3(b)(13) reads as rewritten:

"(13) A document from the U.S. Department of Veterans Affairs, ~~U.S. Military,~~U.S. Department of Defense, or the U.S. Department of Homeland Security verifying the applicant's intent to live in North Carolina permanently or for an indefinite period of time or that the applicant is residing in North Carolina to seek employment or with a job commitment."

SECTION 75. G.S. 110-129(2) reads as rewritten:

"(2) "Dependent child" means any person under the age of 18 who is not otherwise emancipated, married or a member of the ~~armed forces~~ Armed Forces of the United States, or any person over the age of 18 for whom a court orders that support payments continue as provided in G.S. 50-13.4(c)."

SECTION 76. G.S. 113-130(4)e. reads as rewritten:

"e. Military Personnel and Their Dependents. – A member of the ~~armed forces~~ Armed Forces of the United States stationed at a military facility in North Carolina, ~~his~~ the member's spouse, and any dependent under 18 years of age residing with ~~him~~ the member are deemed residents of the State, of the county in which they live, and also, if different, of any county in which the military facility is located."

SECTION 77. G.S. 115C-254 reads as rewritten:

"**§ 115C-254. Use of school buses by State defense militia or ~~national guard.~~North Carolina National Guard.**

When requested to do so by the Governor, the board of education of any local school administrative unit is authorized and directed to furnish a sufficient number of school buses to the North Carolina State Defense Militia or the North Carolina National Guard for the purpose of transporting members of the State defense militia or members of the North Carolina National Guard to and from authorized places of encampment, or to and from places to which members of the State defense militia or members of the North Carolina National Guard are ordered to proceed for the purpose of suppressing riots or insurrections, repelling invasions or dealing with any other emergency. Public school buses so furnished by any local school administrative unit to the ~~North Carolina State Defense Militia~~ State defense militia or the North Carolina National Guard shall be operated by members or employees of the State defense militia or North Carolina National Guard, and all expense of such operation, including any repair or replacement of any bus occasioned by such operation, shall be paid by the State from the appropriations available for the use of the State defense militia or the North Carolina National Guard."

SECTION 78. G.S. 115C-302.1(g) reads as rewritten:

"(g) Service in Armed Forces. – The State Board of Education, in fixing the State standard salary schedule of teachers as authorized by law, shall provide that teachers who entered the ~~armed~~ Armed Forces or auxiliary forces of the United States after September 16, 1940, and who left their positions for such service shall be allowed experience increments for the period of such service as though the same had not been interrupted thereby, in the event such persons return to the position of teachers, principals, and superintendents in the public schools of the State after having been honorably discharged from the ~~armed~~ Armed Forces or auxiliary forces of the United States."

SECTION 79. G.S. 115D-5.1(f1) reads as rewritten:

"(f1) Notwithstanding any other provision of law, the State Board of Community Colleges may adopt guidelines that allow the Customized Training Program to use funds appropriated for that program to support training projects for the various branches of the ~~United States Armed Forces.~~Armed Forces of the United States."

SECTION 80. G.S. 115D-39(a) reads as rewritten:

"(a) The State Board of Community Colleges shall fix and regulate all tuition and fees charged to students for applying to or attending any institution pursuant to this Chapter.

The receipts from all student tuition and fees, other than student activity fees, shall be State funds and shall be deposited as provided by regulations of the State Board of Community Colleges.

The legal resident limitation with respect to tuition, set forth in G.S. 116-143.1 and G.S. 116-143.3, shall apply to students attending institutions operating pursuant to this Chapter;

provided, however, that when an employer other than the ~~armed services,~~ Armed Forces, as that term is defined in G.S. 116-143.3, pays tuition for an employee to attend an institution operating pursuant to this Chapter and when the employee works at a North Carolina business location, the employer shall be charged the in-State tuition rate; provided further, however, a community college may charge in-State tuition to up to one percent (1%) of its out-of-state students, rounded up to the next whole number, to accommodate the families transferred by business, the families transferred by industry, or the civilian families transferred by the ~~military,~~ Armed Forces, consistent with the provisions of G.S. 116-143.3, into the State. Notwithstanding these requirements, a refugee who lawfully entered the United States and who is living in this State shall be deemed to qualify as a domiciliary of this State under G.S. 116-143.1(a)(1) and as a State resident for community college tuition purposes as defined in G.S. 116-143.1(a)(2). Also, a nonresident of the United States who has resided in North Carolina for a 12-month qualifying period and has filed an immigrant petition with the United States Immigration and Naturalization Service shall be considered a State resident for community college tuition purposes."

SECTION 81. G.S. 116-15(e) reads as rewritten:

"(e) Post-secondary Degree Activity within the ~~Military.~~Armed Forces of the United States. – To the extent that an institution undertakes post-secondary degree activity on the premises of military posts or reservations located in this State for military personnel stationed on active duty there, or their dependents, the institution shall be exempt from the licensure requirements of this section."

SECTION 82. G.S. 116-21.3(c) reads as rewritten:

"(c) Any member of the ~~armed services,~~Armed Forces, as defined in G.S. 116-143.3(a), abiding in this State incident to active military duty, who does not qualify as a resident for tuition purposes, as defined under G.S. 116-143.1, is eligible for a legislative tuition grant pursuant to this section if the member is enrolled as a full-time undergraduate student or as a licensure student. The member's legislative tuition grant shall not exceed the cost of tuition less any tuition assistance paid by the member's employer."

SECTION 83. G.S. 116-143.1(h) reads as rewritten:

"(h) No person shall lose his or her resident status for tuition purposes solely by reason of serving in the ~~armed forces~~ Armed Forces of the United States outside this State."

SECTION 84. G.S. 116-143.3 reads as rewritten:

"**§ 116-143.3. Tuition of ~~armed services~~ Armed Forces personnel and their dependents.**

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

(1) The term "abode" shall mean the place where a person actually lives, whether temporarily or permanently; the term "abide" shall mean to live in a given place.

(2) The term ~~"armed services"~~ "Armed Forces" shall mean the United States Air Force, Army, Coast Guard, Marine Corps, and Navy; the North Carolina National Guard; and any ~~Reserve Component~~ reserve component of the foregoing.

(3) Repealed by Session Laws 2007-484, s. 15, effective August 30, 2007.

(b) Any active duty member of the ~~armed services~~ Armed Forces qualifying for admission to an institution of higher education as defined in G.S. 116-143.1(a)(3) but not qualifying as a resident for tuition purposes under G.S. 116-143.1 shall be charged the in-State tuition rate and applicable mandatory fees for enrollments while the member of the ~~armed services~~ Armed Forces is abiding in this State incident to active military duty in this State. In the event the active duty member of the ~~armed services~~ Armed Forces is reassigned outside of North Carolina or retires, the member shall continue to be eligible for the in-State tuition rate and applicable mandatory fees so long as the member is continuously enrolled in the degree or other program in which the member was enrolled at the time the member is reassigned. In the

event the active duty member of the ~~armed services~~ Armed Forces receives an Honorable Discharge from military service, the member shall continue to be eligible for the in-State tuition rate and applicable mandatory fees so long as the member establishes residency in North Carolina within 30 days after the discharge and is continuously enrolled in the degree or other program in which the member was enrolled at the time the member is discharged.

(b1), (b2) Repealed by Session Laws 2004-130, s. 1, effective August 1, 2004.

(c) Any dependent relative of a member of the ~~armed services~~ Armed Forces who is abiding in this State incident to active military duty, as defined by the Board of Governors of The University of North Carolina and by the State Board of Community Colleges while sharing the abode of that member shall be eligible to be charged the in-State tuition rate, if the dependent relative qualifies for admission to an institution of higher education as defined in G.S. 116-143.1(a)(3). The dependent relatives shall comply with the requirements of the Selective Service System, if applicable, in order to be accorded this benefit. In the event the member of the ~~armed services~~ Armed Forces is reassigned outside of North Carolina or retires, the dependent relative shall continue to be eligible for the in-State tuition rate and applicable mandatory fees so long as the dependent relative is continuously enrolled in the degree or other program in which the dependent relative was enrolled at the time the member is reassigned or retires. In the event the member of the ~~armed services~~ Armed Forces receives an Honorable Discharge from military service, the dependent relative shall continue to be eligible for the in-State tuition rate and applicable mandatory fees so long as the dependent relative establishes residency within North Carolina within 30 days after the discharge and is continuously enrolled in the degree or other program in which the dependent relative was enrolled at the time the member is discharged.

(d) The person applying for the benefit of this section has the burden of proving entitlement to the benefit.

(e) A person charged less than the out-of-state tuition rate solely by reason of this section shall not, during the period of receiving that benefit, qualify for or be the basis of conferring the benefit of G.S. 116-143.1(g), (h), (i), (j), (k), or (l)."

SECTION 85. G.S. 116-209.51 reads as rewritten:

"**§ 116-209.51. Purpose.**

The General Assembly of North Carolina, recognizing that the North Carolina National Guard is the only organized, trained and equipped military force subject to the control of the State, hereby establishes a program of tuition assistance for qualifying guard members for the purpose of encouraging voluntary membership in the ~~guard,~~ North Carolina National Guard, improving the educational level of its members, and thereby benefiting the State as a whole."

SECTION 86.(a) G.S. 116-209.54(a) reads as rewritten:

"(a) Active members of the North Carolina National Guard who are enrolled or who shall enroll in any business or trade school, private educational institution, or State educational institution shall be eligible to apply for this tuition assistance benefit: Provided, that the applicant has a minimum obligation of two years remaining as a member of the North Carolina National Guard from the end of the academic period for which tuition assistance is provided or that the applicant commit himself or herself to extended membership for at least two additional years from the end of that academic period."

SECTION 86.(b) G.S. 116-209.54(c)(2)a. reads as rewritten:

"a. The applicant has a minimum obligation of two years remaining as a member of the North Carolina National Guard from the time of the application; or"

SECTION 87. G.S. 116-209.55(c) reads as rewritten:

"(c) All tuition benefit disbursements shall be made to the business or trade school or State or private educational institution concerned, for credit to the tuition account of each recipient. Funds disbursed pursuant to subsection (g) of this section shall be made to the student

loan creditor concerned to be applied against the outstanding student loans of each North Carolina National Guard member beneficiary."

SECTION 88. G.S. 116-235(b)(1) reads as rewritten:

"(1) Admission of Students. – The School shall admit students in accordance with criteria, standards, and procedures established by the Board of Trustees. To be eligible to be considered for admission, an applicant must be either a legal resident of the State, as defined by G.S. 116-143.1(a)(1), or a student whose parent is an active duty member of the ~~armed services,~~ Armed Forces, as defined by G.S. 116-143.3(2), who is abiding in this State incident to active military duty at the time the application is submitted, provided the student shares the abode of that parent; eligibility to remain enrolled in the School shall terminate at the end of any school year during which a student becomes a nonresident of the State. The Board of Trustees shall ensure, insofar as possible without jeopardizing admission standards, that an equal number of qualified applicants is admitted to the program and to the residential summer institutes in science and mathematics from each of North Carolina's congressional districts. In no event shall the differences in the number of qualified applicants offered admission to the program from each of North Carolina's congressional districts be more than two and one-half percentage points from the average number per district who are offered admission."

SECTION 89. G.S. 120-4.12(d) reads as rewritten:

"(d) Any member of the Retirement System who has eight or more years of creditable service as a member of the General Assembly may purchase prior service credit for service in the ~~armed forces~~ Armed Forces of the United States at the same rates and conditions as set forth in G.S. 120-4.14 and G.S. 120-4.16; provided that credit is allowed only for the initial period of active duty in the ~~armed forces~~Armed Forces of the United States up to the time the member was first eligible to be separated or released therefrom, and subsequent periods of such active duty as required by the ~~armed forces~~ Armed Forces of the United States up to the date of first eligibility for separation or release therefrom; and further provided that the member submits satisfactory evidence of the service claimed and that service credit be allowed only for the period of active service in the ~~armed forces~~ Armed Forces of the United States not creditable in any other retirement system, except the National Guard or any reserve component of the ~~armed forces~~ Armed Forces of the United States."

SECTION 90. G.S. 126-2(b)(3) reads as rewritten:

"(3) Two State employees subject to the State Personnel Act serving in nonexempt positions, appointed by the Governor, including one of whom is a veteran of the ~~armed forces~~ Armed Forces of the United States appointed upon the nomination of the Veterans' Affairs Commission. One employee shall serve in a State government position having supervisory duties, and one employee shall serve in a nonsupervisory position. Neither employee may be a human resources professional. The Governor shall consider nominations submitted by the State Employees Association of North Carolina. The initial members appointed under this subdivision shall serve terms expiring June 30, 2001; the terms of subsequent appointees shall be six years."

SECTION 91. G.S. 127B-2 reads as rewritten:

"**§ 127B-2. Military property defined.**

"Military property" means property originally manufactured for the United States or State of North Carolina which is a type and kind issued for use in, or furnished and intended for, the ~~military service~~ Armed Forces of the United States or the militia of the State of North Carolina."

SECTION 92. G.S. 127B-11 reads as rewritten:

"**§ 127B-11. Private discrimination prohibited.**

No person shall discriminate against any officer, warrant officer or enlisted person of the military ~~or naval~~ forces of the State or of the United States because of their membership therein. No member of these military forces shall be prejudiced or injured by any person, employer, officer or agent of any corporation, company or firm with respect to their employment, position or status or denied or disqualified for employment by virtue of their membership or service in the military forces of this State or of the United States."

SECTION 93. G.S. 127B-12 reads as rewritten:

"**§ 127B-12. Public discrimination prohibited.**

No officer or employee of the State, or of any county, city and county, municipal corporation, school district, water district, or other district shall discriminate against any officer, warrant officer or enlisted person of the military ~~or naval~~ forces of the State or of the United States because of their membership therein. No member of the military forces shall be prejudiced or injured by any officer or employee of the State, or of any county, city and county, municipal corporation, school district, water district, or other district with respect to their employment, appointment, position or status or denied or disqualified for or discharged from their employment or position by virtue of their membership or service in the military forces of this State or of the United States."

SECTION 94. G.S. 127B-13 reads as rewritten:

"**§ 127B-13. Refusing entrance prohibited.**

No person shall prohibit or refuse entrance to any officer, warrant officer or enlisted person of the military ~~or naval~~ forces of this State or of the United States into any public place of entertainment, of amusement, or accommodation because the officer or enlisted person is wearing the uniform of the organization to which they belong or because of their membership or service in the military forces of this State or of the United States."

SECTION 95. G.S. 127B-14 reads as rewritten:

"**§ 127B-14. Employer discrimination prohibited.**

No employer or officer or agent of any corporation, company, or firm, or other person shall discharge any person from employment because of the performance of any emergency military duty by reason of being an officer, warrant officer or enlisted person of the military ~~or naval~~ forces of this State or the United States."

SECTION 96. G.S. 128-15(c) reads as rewritten:

"**§ 128-15. Employment preference for veterans and their spouses or surviving spouses.**

(c) Hereafter, in all evaluations of applicants for positions with this State or any of its departments, institutions or agencies, a preference shall be awarded to all eligible veterans who are citizens of the State and who served the State or the United States honorably in ~~either the army, navy, marine corps, nurses' corps, air corps, air force, coast guard, or any of the armed services~~ the military forces of this State or of the United States during a period of war. This preference applies to initial employment with the State and extends to other employment events including subsequent hirings, promotions, reassignments, and horizontal transfers."

SECTION 97.(a) G.S. 128-26(a) reads as rewritten:

"**§ 128-26. Allowance for service.**

(a) Each person who becomes a member during the first year of his or her employer's participation, and who was an employee of the same employer at any time during the year immediately preceding the date of participation, shall file a detailed statement of all service rendered by him or her to that employer prior to the date of participation for which he or she claims credit.

A participating employer may allow prior service credit to any of its employees on account of: their earlier service to the aforesaid employer; or, their earlier service to any other employer

as the term employer is defined in G.S. 128-21(11); or, their earlier service to any state, territory, or other governmental subdivision of the United States other than this State.

A participating employer may allow prior service credit to any of its employees on account of service, as defined in G.S. 135-1(23), to the State of North Carolina to the extent of such service prior to the establishment of the Teachers' and State Employees' Retirement System on July 1, 1941; provided that employees allowed such prior service credit pay in a total lump sum an amount calculated on the basis of compensation the employee earned when ~~he~~ the employee first entered membership and the employee contribution rate at that time together with interest thereon from year of first membership to year of payment shall be one half of the calculated cost.

With respect to a member retiring on or after July 1, 1967, the governing board of a participating unit may allow credit for any period of military service in the ~~armed forces~~ Armed Forces of the United States if the person returned to the service of ~~his~~ the person's employer within two years after having been honorably discharged, or becoming entitled to be discharged, released, or separated from such ~~armed services;~~ the Armed Forces of the United States; provided that, notwithstanding the above provisions, any member having credit for not less than 10 years of otherwise creditable service may be allowed credit for such military services which are not creditable in any other governmental retirement system; provided further, that a member will receive credit for military service under the provisions of this paragraph only if ~~he~~ the member submits satisfactory evidence of the military service claimed and the participating unit of which ~~he~~ the member is an employee agrees to grant credit for such military service prior to January 1, 1972.

A member retiring on or after July 1, 1971, who is not granted credit for military service under the provisions of the preceding paragraph will be allowed credit for any period in the ~~armed services~~ Armed Forces of the United States up to the date ~~he~~ the member was first eligible to be separated or released therefrom; provided that ~~he~~ the member was an employee as defined in G.S. 128-21(10) at the time ~~he~~ the member entered military service, and either of the following conditions is met:

(1) ~~He~~ The member returns to service, with the employer by whom ~~he~~ the member was employed when ~~he~~ the member entered military service, within a period of two years after ~~he~~ the member is first eligible to be separated or released from such military service under other than dishonorable conditions.

(2) ~~He~~ The member is in service, with the employer by whom ~~he~~ the member was employed when ~~he~~ the member entered military service, for a period of not less than 10 years after ~~he~~ the member is separated or released from ~~such armed services~~ the Armed Forces of the United States under other than dishonorable conditions."

SECTION 97.(b) G.S. 128-26(j1)(1) reads as rewritten:

"(1) For members who completed 10 years of membership service, and retired members who completed 10 years of membership service prior to retirement, and whose membership began on or prior to January 1, 1988, and who make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when ~~he~~ the member first entered membership service times the employee contribution rate at that time times the months of service to be purchased with sufficient interest added thereto so as to equal one-half of the cost of allowing such service, plus an administrative fee to be set by the Board of Trustees."

SECTION 98. G.S. 128-39.1(a) reads as rewritten:

"(a) Any elective or appointive State official may obtain leave of absence from the official's duties when the official enters active duty in the ~~armed forces~~ Armed Forces of the United States or the North Carolina National Guard as a result of being voluntarily or involuntarily activated, drafted, or otherwise called to duty. The official shall receive no salary during the period of leave. No vacancy is created by a State official obtaining a leave of absence under this section."

SECTION 99. G.S. 128-42(a) reads as rewritten:

"(a) Any elective or appointive county or municipal official may obtain leave of absence from the official's duties when the official enters active duty in the ~~armed forces~~ Armed Forces of the United States or the North Carolina National Guard as a result of being voluntarily or involuntarily activated, drafted, or otherwise called to duty. The official shall receive no salary during the period of leave. No vacancy is created by a county or municipal official obtaining a leave of absence under this section."

SECTION 100. G.S. 135-1(10) reads as rewritten:

"(10) "Employee" shall mean all full-time employees, agents or officers of the State of North Carolina or any of its departments, bureaus and institutions other than educational, whether such employees are elected, appointed or employed: Provided that the term "employee" shall not include any person who is a member of the Consolidated Judicial Retirement System, any member of the General Assembly or any part-time or temporary employee. Notwithstanding any other provision of law, "employee" shall include all employees of the General Assembly except participants in the Legislative Intern Program, pages, and beneficiaries in receipt of a monthly retirement allowance under this Chapter who are reemployed on a temporary basis. "Employee" also includes any participant whose employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, if that participant was an employee at the time of the interruption; if the participant does not return immediately after that service to employment with a covered employer in this System, then the participant shall be deemed "in service" until the date on which the participant was first eligible to be separated or released from his or her involuntary military service. In all cases of doubt, the Board of Trustees shall determine whether any person is an employee as defined in this Chapter. "Employee" shall also mean every full-time civilian employee of the ~~Army National Guard and Air National Guard of this State~~ North Carolina National Guard who is employed pursuant to section 709 of Title 32 of the United States Code and paid from federal appropriated funds, but held by the federal authorities not to be a federal employee: Provided, however, that the authority or agency paying the salaries of such employees shall deduct or cause to be deducted from each employee's salary the employee's contribution in accordance with applicable provisions of G.S. 135-8 and remit the same, either directly or indirectly, to the Retirement System; coverage of employees described in this sentence shall commence upon the first day of the calendar year or fiscal year, whichever is earlier, next following the date of execution of an agreement between the Secretary of Defense of the United States and the Adjutant General of the State acting for the Governor in behalf of the State, but no credit shall be allowed pursuant to this sentence for any service previously rendered in the above-described capacity as a civilian employee of the North Carolina National Guard: Provided, further, that the Adjutant General, in ~~his~~ the

Adjutant General's discretion, may terminate the Retirement System coverage of the above-described North Carolina National Guard employees if a federal retirement system is established for such employees and the Adjutant General elects to secure coverage of such employees under such federal retirement system. Any full-time civilian employee of the North Carolina National Guard described above who is now or hereafter may become a member of the Retirement System may secure Retirement System credit for such service as a North Carolina National Guard civilian employee for the period preceding the time when such employees became eligible for Retirement System coverage by paying to the Retirement System an amount equal to that which would have constituted employee contributions if ~~he~~ the employee had been a member during the years of ineligibility, plus interest. Employees of State agencies, departments, institutions, boards, and commissions who are employed in permanent job positions on a recurring basis and who work 30 or more hours per week for nine or more months per calendar year are covered by the provisions of this subdivision. On and after August 1, 2001, a person who is a nonimmigrant alien and who otherwise meets the requirements of this subdivision shall not be excluded from the definition of "employee" solely because the person holds a temporary or time-limited visa."

SECTION 101. G.S. 135-4(f) reads as rewritten:

"(f) Armed Service Credit. –

(1) Teachers and other State employees who entered the ~~armed services~~ Armed Forces of the United States on or after September 16, 1940, and prior to February 17, 1941, and who returned to the service of the State within a period of two years after they were first eligible to be separated or released from ~~such armed services~~ the Armed Forces of the United States under other than dishonorable conditions shall be entitled to full credit for all prior service.

(2) Teachers and other State employees who entered the ~~armed services~~ Armed Forces of the United States on or after September 16, 1940, and who returned to the service of the State prior to October 1, 1952, or who devote not less than 10 years of service to the State after they are separated or released from ~~such armed services~~ the Armed Forces of the United States under other than dishonorable conditions, shall be entitled to full credit for all prior service, and, in addition they shall receive membership service credit for the period of service in ~~such armed services~~ the Armed Forces of the United States up to the date they were first eligible to be separated or released therefrom, occurring after the date of establishment of the Retirement System.

(3) Teachers and other State employees who enter the ~~armed services~~ Armed Forces of the United States on or after July 1, 1950, or who engage in active military service on or after July 1, 1950, and who return to the service of the State within a period of two years after they are first eligible to be separated or released from such active military service under other than dishonorable conditions shall be entitled to full membership service credit for the period of such active service in the ~~armed services.~~ Armed Forces of the United States.

(4) Under such rules as the Board of Trustees shall adopt, credit will be provided by the Retirement System with respect to each such teacher or other State employee in the amounts that he or she would have been paid

during such service in ~~such armed services~~ the Armed Forces of the United States on the basis of his or her earnable compensation when such service commenced. Such contributions shall be credited to the individual account of the member in the annuity savings fund, in such manner as the Board of Trustees shall determine, but any such contributions so credited and any regular interest thereon shall be available to the member only in the form of an annuity, or benefit in lieu thereof, upon ~~his~~ the member's retirement on a service, disability or special retirement allowance; and in the event of cessation of membership or death prior thereto, any such contributions so credited and regular interest thereon shall not be payable to ~~him~~ the member or on ~~his~~ the member's account, but shall be transferred from the annuity savings fund to the pension accumulation fund. If any payments were made by a member on account of such service as provided by subdivision (5) of subsection (b) of G.S. 135-8, the Board of Trustees shall refund to or reimburse such member for such payments.

(5) The provisions of this subsection shall also apply to members of the North Carolina National Guard with respect to teachers and State employees who are called into federal service or who are called into State service, to the extent that such persons fail to receive compensation for performance of the duties of their employment other than for service in the North Carolina National Guard.

(6) Repealed by Session Laws 1981, c. 636, s. 1. For proviso as to inchoate or accrued rights, see Editor's Note below.

(7) Notwithstanding any other provision of this Chapter, any member and any retired member as herein described may purchase creditable service in the Armed Forces of the United States, not otherwise allowed, by paying a total lump sum payment determined as follows:

a. For members who completed 10 years of membership service, and retired members who completed 10 years of membership service prior to retirement, whose membership began on or prior to July 1, 1981, and who make this purchase within three years after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when ~~he~~ the member first entered membership service times the employee contribution rate at that time times the months of service to be purchased, with sufficient interest added thereto so as to equal one-half of the cost of allowing this service, plus an administrative fee to be set by the Board of Trustees.

...."

SECTION 102. G.S. 135-45.1(17) reads as rewritten:

"(17) National Guard members. – Members of the North Carolina ~~Army and Air~~ National Guard who are not eligible for any type of comprehensive group health insurance or other comprehensive group health benefit coverage and who have been without any form of group health insurance or other comprehensive group health benefit coverage for at least six months. Members of the North Carolina ~~Army and Air~~ National Guard include those who are actively serving in the North Carolina National Guard as well as former members of the North Carolina National Guard who have completed 20 or more years of service in the North Carolina National Guard but have not attained the minimum age to begin receipt of a uniformed service military retirement benefit. Comprehensive group health insurance and other benefit coverage consists of inpatient and outpatient hospital and medical

benefits, as well as other outpatient medical services, prescription drugs, medical supplies, and equipment that are generally available in the health insurance market. Comprehensive group health insurance and other benefit coverage includes Medicare benefits, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) benefits, and other Uniformed Services benefits. North Carolina National Guard units shall certify the eligibility of their members to the Plan for their participation in its benefits prior to enrollment."

SECTION 103. G.S. 135-45.12(d)(2) reads as rewritten:

"(2) In the event of approved leave of absence without pay, other than for active duty in the ~~armed forces~~ Armed Forces of the United States, coverage under this Plan for an employee and his or her dependents may be continued during the period of such leave of absence by the employee's paying one hundred percent (100%) of the cost."

SECTION 104. G.S. 143-166.2(e) reads as rewritten:

"(e) The term "spouse" shall mean the wife or husband of the deceased officer, fireman, rescue squad worker or senior Civil Air Patrol member who survives him and who was residing with such officer, fireman, rescue squad worker, or senior Civil Air Patrol member at the time of and during the six months next preceding the date of injury to such officer, fireman, rescue squad worker or senior Civil Air Patrol member which resulted in his death and who also resided with such officer, fireman, rescue squad worker or senior Civil Air Patrol member from that date of injury up to and at the time of his death and who remains unmarried during the time benefits are forthcoming; provided, however, the part of this section requiring the spouse to have been residing with the deceased officer, fireman, rescue squad worker or senior Civil Air Patrol member for six months next preceding the date of the injury which resulted in his death shall not apply where marriage occurred during this six-month period or where the officer, fireman, rescue squad worker or senior Civil Air Patrol member was absent during this six-month period due to service in the ~~armed forces of this country.~~ Armed Forces of the United States."

SECTION 105. G.S. 143B-515(14) reads as rewritten:

"(14) Juvenile. – Except as provided in subdivisions (7) and (22) of this section, any person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the ~~armed forces~~ Armed Forces of the United States. Wherever the term "juvenile" is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well."

SECTION 106. G.S. 145-32 reads as rewritten:

"**§ 145-32. Honor and Remember Flag.**

The Honor and Remember Flag created by Honor and Remember, Inc., is adopted as a symbol to honor and recognize members of the ~~United States~~ Armed Forces of the United States who have died in the line of duty."

SECTION 107. G.S. 147-33.2 reads as rewritten:

"**§ 147-33.2. Emergency war powers of the Governor.**

Upon ~~his~~ the Governor's own initiative, or on the request or recommendation of the President of the United States, the ~~army, navy~~ United States Army, Navy, or any other branch of the ~~armed forces~~ Armed Forces of the United States, the federal Director of Civilian Defense, or any other federal officer, department or agency having duties and responsibilities related to the prosecution of the war or the health, welfare, safety and protection of the civilian population, whenever in ~~his~~ the Governor's judgment any such action is in the public interest and is necessary for the protection of the lives or property of the people of the State, or for the defense and security of the State or nation, or for the proper conduct of the war and the

successful prosecution thereof, the Governor may, with the approval of the Council of State, at any time and from time to time during the existing state of war:

...

(6) Authorize any department or agency of the State to lease or lend to the ~~army, navy~~ United States Army, Navy, or any other branch of the ~~armed forces~~ Armed Forces of the United States, any real or personal property of the State upon such terms and conditions as ~~he~~ the Governor may impose, or, on behalf of the State, to make a contract directly therefor.

(7) Authorize the temporary transfer of personnel of the State for employment by the ~~army, navy~~ United States Army, Navy, or any other branch of the ~~armed forces~~ Armed Forces of the United States and fix the terms and conditions of such transfers.

(8) At any time when the General Assembly is not in session, suspend, or modify, in whole or in part, generally or in its application to certain classes of persons, firms, corporations or circumstances, any law, rule or regulation with reference to the subjects hereinafter enumerated, when ~~he~~ the Governor shall find and proclaim after such study, investigation or hearings as ~~he~~ the Governor may direct, make or conduct, that the operation, enforcement or application of such law, or any part thereof, materially hinders, impedes, delays or interferes with the proper conduct of the war; said subjects being as follows:

...

d. Whenever it should be certified by the Adjutant General of the State that emergency conditions require such procedure, the Governor, with the approval of the Council of State, shall have the power to call up and mobilize the State militia; to provide transportation and facilities for mobilization and full utilization of the State militia, in such emergency; and to allocate from the Contingency and Emergency Fund such amounts as may be necessary for such purposes during the period of such emergency;

...

(13) Hold and conduct hearings, administer oaths and take testimony, issue subpoenas to compel the attendance of witnesses and the production of relevant books, papers, records or documents, in connection with any investigation made by ~~him~~ the Governor under the authority of this Article."

SECTION 108. G.S. 157-53(f) reads as rewritten:

"(f) "Persons engaged in national defense activities," as used in this Article shall include: enlisted personnel in the ~~armed services~~ Armed Forces of the United States and employees of the Defense Department assigned to duty at ~~armed forces~~ reservations, posts or ~~bases;~~ bases of the Armed Forces of the United States; and workers engaged or to be engaged in industries connected with and essential to the National Defense Program; and shall include the families of the aforesaid persons who are living with them."

SECTION 109. G.S. 161-10.1 reads as rewritten:

"§ 161-10.1. Exemption of ~~armed forces~~ Armed Forces discharge documents and certain other records needed in support of claims for veterans' benefits.

Any schedule of fees which is now or may be prescribed in Chapter 161 of the General Statutes or in G.S. 161-10 shall not apply to nor shall the same repeal any of the provisions of Article 5 of Chapter 47 of the General Statutes. Any schedule of fees which is now or may be hereafter prescribed in Chapter 161 of the General Statutes or as may appear in G.S. 161-10 shall not apply to nor shall the same repeal any of the provisions of G.S. 165-11."

SECTION 110. G.S. 163-27.1(3) reads as rewritten:

"(3) An armed conflict involving ~~United States armed forces,~~ Armed Forces of the United States, or mobilization of those forces, including ~~State~~ North Carolina National Guard and reserve components of the Armed Forces of the United States."

SECTION 111. G.S. 163-82.21 reads as rewritten:

"§ 163-82.21. Voter registration at military recruitment offices.

The Executive Director, jointly with the Department of Defense, shall develop and implement procedures for persons to apply to register to vote at recruitment offices of the ~~armed forces~~ Armed Forces of the United States in compliance with section 7(c) of the National Voter Registration Act."

SECTION 112. G.S. 165-3(4)b. reads as rewritten:

"b. For entitlement to the services of the Department of Administration, any person who may be entitled to any benefits or rights under the laws of the United States by reason of service in the ~~armed forces~~ Armed Forces of the United States."

SECTION 113. G.S. 165-13 reads as rewritten:

"§ 165-13. Definition.

As used in this Article, "veteran" means any person who may be entitled to any benefits or rights under the laws of the United States, by reason of service in the ~~armed forces~~ Armed Forces of the United States."

SECTION 114. G.S. 165-17 reads as rewritten:

"§ 165-17. Definition.

As used in this Article, "veteran" means any person who may be entitled to any benefits or rights under the laws of the United States, by reason of service in the ~~armed forces~~ Armed Forces of the United States."

SECTION 115. G.S. 165-20 reads as rewritten:

"§ 165-20. Definitions.

As used in this Article the terms defined in this section shall have the following meaning:

(1) "Active federal service" means full-time duty in the ~~armed forces~~ Armed Forces other than active duty for training; however, if disability or death occurs while on active duty for training (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war, such active duty for training shall be considered as active federal service.

(2) ~~"Armed forces"~~ "Armed Forces" means the ~~army, navy, marine corps, air force and coast guard,~~ United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including their reserve components.

(3) "Child" means a person: (i) under 25 years of age at the time of application for a scholarship, (ii) who is a domiciliary of North Carolina and is a resident of North Carolina when applying for a scholarship, (iii) who has completed high school or its equivalent prior to receipt of a scholarship awarded under this Article, (iv) who has complied with the requirements of the Selective Service System, if applicable, and (v) who further meets one of the following requirements:

a. A person whose veteran parent was a legal resident of North Carolina at the time of said veteran's entrance into that period of service in the ~~armed forces~~ Armed Forces during which eligibility is established under G.S. 165-22.

...

(4) "Period of war" and "wartime" shall mean any of the periods or circumstances as defined below:

a. World War I, meaning (i) the period beginning on April 6, 1917 and ending on November 11, 1918, and (ii) in the case of a veteran who served with the ~~United States armed forces~~ Armed Forces in Russia, the period beginning on April 6, 1917 and ending on April 1, 1920.

b. World War II, meaning the period beginning on December 7, 1941 and ending on December 31, 1946.

c. Korean Conflict, meaning the period beginning on June 27, 1950 and ending on January 31, 1955.

d. Vietnam era, meaning the period beginning on August 5, 1964, and ending on May 7, 1975.

d1. Persian Gulf War, meaning the period beginning on August 2, 1990, and ending on the date prescribed by Presidential proclamation or concurrent resolution of the United States Congress.

e. Any period of service in the ~~armed forces~~ Armed Forces during which the veteran parent of an applicant for a scholarship under this Article suffered death or disability (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war.

...

(7) "Veteran" means a person who served as a member of the ~~armed forces of the United States~~ Armed Forces in active federal service during a period of war and who was separated from the ~~armed forces~~ Armed Forces under conditions other than dishonorable. A person who was separated from the ~~armed forces~~ Armed Forces under conditions other than dishonorable and whose death or disability was incurred (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war, shall also be deemed a "veteran" and such death or disability shall be considered wartime service-connected."

SECTION 116. G.S. 165-22 reads as rewritten:

"**§ 165-22. Classes or categories of eligibility under which scholarships may be awarded.**

A child, as defined in this Article, who falls within the provisions of any eligibility class described below shall, upon proper application be considered for a scholarship, subject to the provisions and limitations set forth for the class under which ~~he~~ the child is considered:

(1) Class I-A: Under this class a scholarship shall be awarded to any child whose veteran parent

a. Was killed in action or died from wounds or other causes not due to ~~his~~ the parent's own willful misconduct while a member of the armed forces during a period of war, or

b. Has died of service-connected injuries, wounds, illness or other causes incurred or aggravated during wartime service in the ~~armed forces,~~ Armed Forces, as rated by the United States Department of Veterans Affairs.

...

(3) Class II: Under this class a scholarship may be awarded to not more than 100 children yearly, each of whose veteran parent, at the time the benefits pursuant to this Article are sought to be availed of:

a. Is or was at the time of ~~his~~ the parent's death receiving compensation for a wartime service-connected disability of twenty percent (20%) or more, but less than one hundred percent (100%), as rated by the United States Department of Veterans Affairs, or

b. Was awarded a Purple Heart for wounds received as a result of an act of any opposing armed force, as a result of an international terrorist attack, or as a result of military operations while serving as part of a peacekeeping force.

...

(5) Class IV: Under this class a scholarship as defined in G.S. 165-21 shall be awarded to any child whose parent, while serving honorably as a member of the ~~armed forces of the United States~~ Armed Forces in active federal service during a period of war, as defined in G.S. 165-20(4), was listed by the United States government as (i) missing in action, (ii) captured in line of duty by a hostile force, or (iii) forcibly detained or interned in line of duty by a foreign government or power."

SECTION 117. G.S. 165-24 reads as rewritten:

"**§ 165-24. Finding and declaration of necessity.**

It is hereby declared that conditions resulting from the concentration in various cities and towns of the State having a population of more than one hundred thousand inhabitants of persons serving in the ~~armed forces~~ Armed Forces of the United States in connection with the present war, or who after having served in the ~~armed services~~ Armed Forces of the United States during the present war, or previously have been honorably discharged, require the construction, maintenance and operation of adequate recreation facilities for the use of such persons; that it is in the public interest that adequate recreation facilities be provided in such concentrated centers; and the necessity, in the public interest, for the provisions hereinafter enacted is hereby declared as a matter of legislative determination."

SECTION 118. G.S. 165-25(10) reads as rewritten:

"(10) "Veteran" shall include every person who has enlisted or who has been inducted, warranted or commissioned, and who served honorably in active duty in the military ~~or naval~~ service of the United States at any time, and who is honorably separated or discharged from such service, or who, at the time of making use of the facilities, is still in active service, or has been retired, or who has been furloughed to a reserve. This definition shall be liberally construed, with a view completely to effectuate the purpose and intent of this Article."

SECTION 119. G.S. 165-39 reads as rewritten:

"**§ 165-39. Validity of acts of agent performed after death of principal.**

No agency created by a power of attorney in writing given by a principal who is at the time of execution, or who, after executing such power of attorney, becomes, either (i) a member of the ~~armed forces~~ Armed Forces of the United States, or (ii) a person serving as a merchant seaman outside the limits of the United States, included within the several states and the District of Columbia; or (iii) a person outside said limits by permission, assignment or direction of any department or official of the United States government, in connection with any activity pertaining to or connected with the prosecution of any war in which the United States is then engaged, shall be revoked or terminated by the death of the principal, as to the agent or other person who, without actual knowledge or actual notice of the death of the principal, shall have acted or shall act, in good faith, under or in reliance upon such power of attorney or agency, and any action so taken, unless otherwise invalid or unenforceable, shall be binding on the heirs, devisees, legatees, or personal representatives of the principal."

SECTION 120. G.S. 165-43 reads as rewritten:

"**§ 165-43. Protecting status of State employees in ~~armed forces,~~ Armed Forces, etc.**

Any employee of the State of North Carolina, who has been granted a leave of absence for service in either (i) the ~~armed forces~~ Armed Forces of the United States; or (ii) the ~~merchant marine of the United States;~~ United States Merchant Marine; or (iii) outside the continental

United States with the Red Cross, shall, upon return to State employment, if reemployed in the same position and if within the time limits set forth in the leave of absence, receive an annual salary of at least (i) the annual salary the employee was receiving at the time such leave was granted; plus (ii) an amount obtained by multiplying the step increment applicable to the employee's classification as provided in the classification and salary plan for State employees by the number of years of such service, counting a fraction of a year as a year; provided that no such employee shall receive a salary in excess of the top of the salary range applicable to the classification to which such employee is assigned upon return."

SECTION 121. G.S. 165-44 reads as rewritten:

"**§ 165-44. Korean and Vietnam veterans; benefits and privileges.**

(a) All benefits and privileges now granted by the laws of this State to veterans of World War I and World War II and their dependents and next of kin are hereby extended and granted to veterans of the Korean Conflict and their dependents and next of kin.

For the purposes of this section, the term "veterans of the Korean Conflict" means those persons serving in the ~~armed forces~~ Armed Forces of the United States during the period beginning on June 27, 1950, and ending on January 31, 1955.

(b) All benefits and privileges now granted by the laws of this State to veterans of World War I, World War II, the Korean Conflict, and their dependents and next of kin are hereby extended and granted to veterans of the Vietnam era and their dependents and next of kin.

For purposes of this section, the term "veterans of the Vietnam era" means those persons serving in the ~~armed forces~~ Armed Forces of the United States during the period beginning August 5, 1964, and ending on such date as shall be prescribed by Presidential proclamation or concurrent resolution of the Congress."

SECTION 122. G.S. 165-44.01(d)(1) reads as rewritten:

"(1) Military service medal. – Any medal, badge, ribbon, or other decoration awarded by the active or reserve components of the ~~armed forces~~ Armed Forces of the United ~~States, the North Carolina Air National Guard, or the North Carolina Army National Guard~~ States or the North Carolina National Guard to members of those forces."

SECTION 123. The title of Article 7A of Chapter 165 of the General Statutes reads as rewritten:

"Article 7A.

Priority in Employment Assistance for ~~United States Armed Forces Veterans.~~Veterans of the Armed Forces of the United States."

SECTION 124. G.S. 165-44.2 reads as rewritten:

"**§ 165-44.2. Veteran defined.**

For the purposes of this Article, "veteran" means a person who served on active duty (other than for training) in any component of the ~~United States~~ Armed Forces of the United States for a period of 180 days or more, unless released earlier because of service-connected disability, and who was discharged or released from the ~~armed forces~~ Armed Forces of the United States under honorable conditions."

SECTION 125. G.S. 165-51 reads as rewritten:

"**§ 165-51. Program staff.**

The Division shall appoint and fix the salary of an Administrative Officer for the State veterans home program. The Administrative Officer shall be an honorably discharged veteran who has served in active military service in the ~~armed forces~~ Armed Forces of the United States for other than training purposes. The Administrative Officer shall direct the establishment of the State veterans home program, coordinate the master planning, land acquisition, and construction of all State veterans homes under the procedures of the Office of State Construction, and oversee the ongoing operation of said veterans homes. The Division may hire

any required additional administrative staff to help with administrative and operational responsibilities at each established State ~~Veterans Home.~~ veterans home."

SECTION 126. G.S. 165-53(a) reads as rewritten:

"(a) To be eligible for admission to a State veterans home, an applicant shall meet the following requirements:

(1) The veteran shall have served in the active ~~armed forces~~ Armed Forces of the United States for other than training purposes;

(2) The veteran shall have been discharged from the ~~armed forces~~ Armed Forces of the United States under honorable conditions;

(3) The veteran shall be disabled by age, disease, or other reason as determined through a physical examination by a State veterans home physician; and

(4) The veteran shall have resided in the State of North Carolina for two years immediately prior to the date of application."

SECTION 127.(a) The Revisor of Statutes is authorized to substitute, consistent with this act, the term "Armed Forces of the United States" for the following terms, wherever these terms appear in the General Statutes, when referring to the Armed Forces of the United States:

(1) "armed forces."
(2) "Armed Forces."
(3) "armed forces of the United States."
(4) "armed services of the United States."
(5) "United States armed services."
(6) "United States armed forces."
(7) "United States Armed Forces."
(8) "U.S. armed forces."
(9) "U.S. Armed Forces."

SECTION 127.(b) The Revisor of Statutes is authorized to insert, consistent with this act, the words "United States" before references to the "army," "navy," "marine corps," "coast guard," and "air force," wherever these terms appear in the General Statutes, when referring to a branch or branches of the Armed Forces of the United States, and to capitalize those terms.

SECTION 127.(c) The Revisor of Statutes is authorized to substitute, consistent with this act, the term "North Carolina National Guard" for the terms "National Guard," "national guard," and "guard," wherever these terms appear in the General Statutes, when referring to the North Carolina National Guard.

SECTION 128. Except as provided in subsection (c) of Section 69 of this act, this act is effective when it becomes law.

State of North Carolina
General Statutes
Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM
May 31, 2011

TO: Senate Judiciary I Committee
FROM: General Statutes Commission
RE: **House Bill 262 (References to Military Orgs./Make Uniform)**

Session Law 2009-281 (Capitalize National Guard/GSC Study), as amended by Session Law 2010-152, directed the General Statutes Commission to study and recommend to the 2011 General Assembly ways to ensure that the General Statutes properly and uniformly refer to federal and State military organizations. This bill and House Bill 250 (Various Clarifying Militia Law Amendments) are the results of that study.

Terms Referring to Federal Military Organizations

Primarily, House Bill 262 substitutes "Armed Forces of the United States" as a proper and uniform term for various references to the nation's armed forces. The term "Armed Forces of the United States" was selected because it is used in the General Statutes more often than any other term in this context, and because "Armed Forces" is the current defined term in 10 U.S.C. § 101. Replacements are as follows:

Terms Replaced by "Armed Forces of the United States":	***Replacement Found In:***
armed forces	Sections 3 (G.S. 7B-600(a)), 5 (G.S. 7B-2001), 14 (G.S. 14-415.4(e)(5)), 16 (G.S. 14-415.12(b)(7)), 19 (G.S. 18B-109(b)), 20 (G.S. 18B-203(a)(17)), 26 (G.S. 28C-20), 53 (G.S. 89C-25(6)), 73 (G.S. 105-244.1), 90 (G.S. 126-2(b)(3)), 117 (G.S. 165-24), 124 (G.S. 165-44.2), 126 (G.S. 165-53(a))
Armed Forces	Sections 21 (G.S. 20-7(f)), 23 (G.S. 20-79.4(b)), 49 (G.S. 65-43), 70 (G.S. 96-9(c)(6)), 71 (G.S. 105-113.81(c))
armed forces of the United States	Sections 2 (G.S. 7B-101(14)), 4 (G.S. 7B-1501(17)), 6 (G.S. 7B-3402), 8 (G.S. 14-34.3(b)(1)), 9 (G.S. 14-269.7(b)(1)), 10 (G.S. 14-288.1), 11 (G.S. 14-288.20(a)(4)), 12 (G.S. 14-401.6(a)(1)), 13 (G.S. 14-404(c)(6)), 15 (G.S. 14-415.10(2a)), 25 (G.S. 28B-1), 27 (G.S. 31-18.4), 28 (G.S. 35A-1228), 30 (G.S. 47-2), 34 (G.S. 47-109), 35 (G.S. 47-110), 37 (G.S. 47-113), 38 (G.S. 47-113.2(b)(3)), 43 (G.S. 58-37-1(4a)), 60 (G.S. 90-87(23)(a)), 62 (G.S. 90-187.10), 63 (G.S. 90-210.25(a)), 67 (G.S.

	90-664(3)), 68 (G.S. 93B-15), 69.(b) (G.S. 96-8(8b)), 75 (G.S. 110-129(2)), 76 (G.S. 113-130(4)c.), 78 (G.S. 115C-302.1(g)), 89 (G.S. 120-4.12(d)), 97.(a) (G.S. 128-26(a)), 98 (G.S. 128-39.1(a)), 99 (G.S. 128-42(a)), 103 (G.S. 135-45.12(d)(2)), 105 (G.S. 143B-515(14)), 107 (G.S. 147-33.2), 111 (G.S. 163-82.21), 112 (G.S. 165-3(4)b.), 113 (G.S. 165-13), 114 (G.S. 165-17), 119 (G.S. 165-39), 120 (G.S. 165-43), 121 (G.S. 165-44), 122 (G.S. 165-44.01(d)(1)), 125 (G.S. 165-51), 126 (G.S. 165-53(a))
armed forces of the United States of America	Section 42 (G.S. 58-33-66(a))
armed forces of this country	Section 104 (G.S. 143-166.2(e))
armed services	Sections 23 (G.S. 20-79.4(b)), 97.(a) (G.S. 128-26(a)), 101 (G.S. 135-4(f)), 117 (G.S. 165-24)
armed services of the United States	Sections 17 (G.S. 15A-1340.11(7)c.), 23 (G.S. 20-79.4(b)), 97.(a) (G.S. 128-26(a)), 101 (G.S. 135-4(f)), 108 (G.S. 157-53(f))
United States armed services	Sections 18 (G.S. 15A-1340.16(e)(14)), 54 (G.S. 90-12.1A(a)(3)), 55 (G.S. 90-12.4(3)), 59 (G.S. 90-37.1(a)(1)), 66 (G.S. 90-270.34(a)(3))
United States armed forces	Sections 7 (G.S. 10B-20(g)), 40 (G.S. 50B-3.1(k)), 52 (G.S. 86A-17(c)), 110 (G.S. 163-27.1(3))
United States Armed Forces	Sections 22 (G.S. 20-37.13), 24 (G.S. 20-311(g)), 29.(a) (G.S. 42-45(a)), 29.(b) (G.S. 42-45(a1)), 50 (G.S. 66-58(c)(3b)), 69.(c) (G.S. 96-8(10)), 71 (G.S. 105-113.81(c)), 79 (G.S. 115D-5.1(f1)), 106 (G.S. 145-32), 123 (title of Article 7A of Chapter 165), 124 (G.S. 165-44.2)
U.S. armed forces	Section 51 (G.S. 86A-14(2))
nation's armed forces	Section 41 (G.S. 53-141)
military service of the United States	Sections 57 (G.S. 90-29(c)(2)), 61 (G.S. 90-115.1(1)), 63 (G.S. 90-210.25(a)), 91 (G.S. 127B-2)
military and/or naval forces of the United States	Sections 33 (title of Article 5 of Chapter 47), 64 (G.S. 90-210.101)

United States military	Section 56 (G.S. 90-18.1(h))
military	Sections 58 (G.S. 90-36(c)(2)), 65 (G.S. 90-224.1(c)(2)), 81 (G.S. 116-15(e))

The term "Armed Forces of the United States" was not used in some places where it appeared that an exception was warranted.

First, because shortened forms can be appropriate in catchlines, Sections 72 and 109 amend the catchlines of G.S. 105-158 and G.S. 161-10.1, respectively, to capitalize "armed forces" without adding "of the United States."

Second, where one of the terms for which "Armed Forces of the United States" appears as a defined term, the defined term is changed to "Armed Forces" and any needed conforming changes are made. Specifically:

- Section 46 amends G.S. 58-58-335, which is a definitions section for Part 6 of Article 58 of Chapter 58 of the General Statutes, to replace the current defined alternative terms "United States armed forces" and "armed forces" with "Armed Forces." Sections 44, 45, 46, 47, 48.(a), 48.(b), and 48.(c) amend G.S. 58-58-325, 58-58-330(b), 58-58-335, 58-58-340, 58-58-345(a), 58-58-345(b), and 58-58-345(d), respectively, to replace references to the current alternative terms with the term "Armed Forces."

- Section 84 amends G.S. 116-143.3 to replace the defined term "armed services" with the term "Armed Forces." Sections 80, 82, and 88 amend G.S. 115D-39(a), 116-21.3(c) and G.S. 116-235(b)(1), respectively, to replace the term "armed services" with the term "Armed Forces." All three statutes cross-refer to the defined term in G.S. 116-143.3.

- Section 115 amends G.S. 165-20 to capitalize the defined term "Armed forces." Sections 115 and 116 amend G.S. 165-20 and G.S. 165-22, respectively, to capitalize that term wherever it appears in the two statutes (the definitions in G.S. 165-20 apply to G.S. 165-22).

Third, no change was made to Article 21 of Chapter 163 (Military Absentee Registration and Voting in Primary and General Elections), because the Article uses a nonstandard definition for the term "armed forces of the United States" (see G.S. 163-245(b) and G.S. 163-254 (1)).

The bill also standardizes references to the branches of the Armed Forces of the United States by inserting "United States" before, and capitalizing, references to the "army," "navy," "marine corps," "coast guard," "air force," and "merchant marine," whether set out individually or in a list, in the following sections: Sections 1 (G.S. 1-82), 25 (G.S. 28B-1), 26 (G.S. 28C-20), 27 (G.S. 31-18.4), 30 (G.S. 47-2), 31 (G.S. 47-2.1), 32 (G.S. 47-81.2), 34

(G.S. 47-109), 35 (G.S. 47-110), 36 (G.S. 47-111), 39 (G.S. 50-18), 107 (G.S. 147-33.2), 115 (G.S. 165-20), and 120 (G.S. 165-43).

The bill also substitutes "reserve components of the Armed Forces of the United States" for "armed forces reserves of the United States" in Section 15 (G.S. 14-415.10(2a)), because the term "reserve components" is currently used in 10 U.S.C. § 101.

Terms referring to State Military Organizations

The bill substitutes the term "North Carolina National Guard," where appropriate, for the following terms:

Terms Replaced by "North Carolina National Guard":	***Replacement Found In:***
State National Guard or Air National Guard	Section 69.(a) (G.S. 96-8(6)i.)
N.C. National Guard	Section 69.(c) (G.S. 96-8(10))
National Guard	Sections 77 (G.S. 115C-254), 86.(a) (G.S. 116-209.54(a)), 86.(b) (G.S. 116-209.54(c)(2)a.), 87 (G.S. 116-209.55(c)), 100 (G.S. 135-1(10)), 101 (G.S. 135-4(f)), 102 (G.S. 135-45.1(17))
national guard	Section 77 (G.S. 115C-254)
guard	Section 85 (G.S. 116-209.51)
Army National Guard and Air National Guard of this State	Section 100 (G.S. 135-1(10))
North Carolina Army and Air National Guard	Section 102 (G.S. 135-45.1(17))
State National Guard	Section 110 (G.S. 163-27.1(3))
North Carolina Air National Guard, or the North Carolina Army National Guard	Section 122 (G.S. 165-44.01(d)(1))

Section 10 amends G.S. 14-288.1 to substitute the term "North Carolina State Defense Militia" for the term "State defense militia," since the reference appears to be in a list of proper names.

Section 77 amends G.S. 115C-254 in part to standardize the references to the State defense militia. After the first reference, which uses the State defense militia's proper name,

this section substitutes the term "State defense militia" for the terms "North Carolina State Defense Militia" and"State militia" in the remainder of the section to standardize the usage.

Other Amendments

Section 54 amends G.S. 90-12.1A(a)(3) to change "personnel enlisted" to "military personnel serving" because "personnel enlisted" excludes commissioned officers. The statute authorizes the North Carolina Medical Board to issue a "military limited volunteer license" to an applicant who, among other things, is authorized to treat "personnel enlisted" in a branch of the Armed Forces of the United States or veterans. The exclusion of commissioned officers appears to be unintentional. This change has been approved by the Executive Director of the North Carolina Medical Board.

Section 59 similarly amends G.S. 90-37.1(a)(1) to change "personnel enlisted" to personnel serving" because the existing language inadvertently excludes commissioned officers.

Section 74 amends G.S. 108A-55.3(b)(13) to change "U.S. Military" to "U.S. Department of Defense."

Sections 92, 93, 94, and 95 amend G.S. 127B-11, 127B-12, 127B-13, and 127B-14, respectively, to delete as redundant the words "or naval" in the phrase "military or naval forces of the State or of the United States."

Section 96 amends G.S. 128-15(c) to substitute the words "the military forces of this State or of the United States" for the words "either the army, navy, marine corps, nurses' corps, air corps, air force, coast guard, or any of the armed services."

Section 118 amends G.S. 165-25(10) to delete as redundant the words "or naval" in the phrase "military or naval service of the United States." This amendment is similar to the one in Sections 92, 93, 94, and 95.

The bill also makes conforming changes and other technical corrections to various sections of the General Statutes otherwise amended by the bill.

Section 127(a), (b), and (c) of the bill authorizes the Revisor of Statutes to make changes, consistent with this bill, in sections of the General Statutes added or amended during the 2011 General Assembly.

Section 128 provides that, except as provided in Section 69.(c) of the bill, the bill is effective when it becomes law. Section 69.(c) is effective July 1, 2011, and has a special effective date in order to coordinate with previously enacted technical corrections due to expire on that date.

HOUSE BILL 514
Committee Substitute Favorable 5/12/11

Short Title: Uniform Military and Overseas Voters Act. (Public)

Sponsors:

Referred to:

March 30, 2011

A BILL TO BE ENTITLED

AN ACT TO ADOPT PROVISIONS OF THE UNIFORM MILITARY AND OVERSEAS VOTERS ACT PROMULGATED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAW, WHILE RETAINING EXISTING NORTH CAROLINA LAW MORE BENEFICIAL TO THOSE VOTERS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 21A.

"Uniform Military and Overseas Voters Act.

"**§ 163-258.1. Short title.**

This Article may be cited as the Uniform Military and Overseas Voters Act.

"**§ 163-258.2. Definitions.**

As used in this Article:

(1) "Covered voter" means any of the following:

a. A uniformed-service voter or an overseas voter who is registered to vote in this State.

b. A uniformed-service voter defined in subdivision (7) of this section whose voting residence is in this State and who otherwise satisfies this State's voter eligibility requirements.

c. An overseas voter who, before leaving the United States, was last eligible to vote in this State and, except for a State residency requirement, otherwise satisfies this State's voter eligibility requirements.

d. An overseas voter who, before leaving the United States, would have been last eligible to vote in this State had the voter then been of voting age and, except for a State residency requirement, otherwise satisfies this State's voter eligibility requirements.

e. An overseas voter who was born outside the United States, is not described in sub-subdivision c. or d. of this subdivision, and, except for a State residency requirement, otherwise satisfies this State's voter eligibility requirements, if:

1. The last place where a parent or legal guardian of the voter was, or under this Article would have been, eligible to vote before leaving the United States is within this State; and

2. The voter has not previously registered to vote in any other state.

(2) "Dependent" means an individual recognized as a dependent by a uniformed service.

(3) "Military-overseas ballot" means any of the following:

a. A federal write-in absentee ballot described in the Uniformed and Overseas Citizens Absentee Voting Act, section 103, 42 U.S.C. § 1973ff-2.

b. A ballot specifically prepared or distributed for use by a covered voter in accordance with this Article.

c. A ballot cast by a covered voter in accordance with this Article.

(4) "Overseas voter" means a United States citizen who is outside the United States.

(5) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(6) "Uniformed service" means any of the following:

a. Active and reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard of the United States.

b. The Merchant Marine, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration of the United States.

c. The National Guard and state militia units.

(7) "Uniformed-service voter" means an individual who is qualified to vote and is one of the following:

a. A member of the active or reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States who is on active duty.

b. A member of the Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States.

c. A member of the National Guard or state militia unit who is on activated status.

d. A spouse or dependent of a member referred to in this subdivision.

(8) "United States," used in the territorial sense, means the several states, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

"**§ 163-258.3. Elections covered.**

The voting procedures in this Article apply to all of the following:

(1) A primary, general, or special election for federal or State office.

(2) A State ballot measure.

(3) A primary, general, special, or runoff election for local government office or a local ballot measure if absentee balloting is allowed under Article 20 of this Chapter.

"**§ 163-258.4. Role of State Board of Elections.**

(a) The State Board of Elections is the State official responsible for implementing this Article and the State's responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. § 1973ff, et seq.

(b) The State Board of Elections shall make available to covered voters information regarding voter registration procedures for covered voters and procedures for casting military-overseas ballots. The State Board of Elections may delegate the responsibility under this subsection only to the State office designated in compliance with the Uniformed and Overseas Citizens Absentee Voting Act, section 102(b)(1), 42 U.S.C. § 1973ff-1(b)(1).

(c) The State Board of Elections shall establish an electronic transmission system through which covered voters may apply for and receive voter registration materials, military-overseas ballots, and other information under this Article.

(d) The State Board of Elections shall develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in this State, and, to the extent reasonably possible, shall do so in coordination with other states.

(e) The State Board of Elections shall prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of an overseas-military ballot. The declaration shall be based on the declaration prescribed to accompany a federal write-in absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act, section 103, 42 U.S.C. § 1973ff-2, as modified to be consistent with this Article. The State Board of Elections shall ensure that a form for the execution of the declaration, including an indication of the date of execution of the declaration, is a prominent part of all balloting materials for which the declaration is required.

"**§ 163-258.5. Overseas voter's registration address.**

In registering to vote, an overseas voter who is eligible to vote in this State shall use and shall be assigned to the precinct of the address of the last place of residence of the voter in this State, or, in the case of a voter described by G.S. 163-258.2(1)e., the address of the last place of residence in this State of the parent or legal guardian of the voter. If that address is no longer a recognized residential address, the voter shall be assigned an address for voting purposes.

"**§ 163-258.6. Methods of registering to vote.**

(a) In addition to any other approved method for registering to vote, a covered voter may use a federal postcard application, as prescribed under the Uniformed and Overseas Citizens Absentee Voting Act, section 101(b)(2), 42 U.S.C. § 1973ff(b)(2), or the application's electronic equivalent, to apply to register to vote.

(b) A covered voter may use the declaration accompanying the federal write-in absentee ballot, as prescribed under the Uniformed and Overseas Citizens Absentee Voting Act, section 103, 42 U.S.C. § 1973ff-2, to apply to register to vote simultaneously with the submission of the federal write-in absentee ballot.

(c) The State Board of Elections shall ensure that the electronic transmission system described in G.S. 163-258.4(c) is capable of accepting both a federal postcard application and any other approved electronic registration application sent to the appropriate election official. The voter may use the electronic transmission system or any other approved method to register to vote.

(d) A covered voter's registration to vote by any method authorized by this section may be received at any time prior to the primary or election, but no later than 5:00 P.M. on the day before the primary or election.

"**§ 163-258.7. Methods of applying for military-overseas ballot.**

(a) A covered voter who is registered to vote in this State may apply for a military-overseas ballot using either the regular application provided by Article 20 of this Chapter or the federal postcard application, as prescribed under the Uniformed and Overseas Citizens Absentee Voting Act, section 101(b)(2), 42 U.S.C. § 1973ff(b)(2), or the application's electronic equivalent.

(b) A covered voter who is not registered to vote in this State may use the federal postcard application or the application's electronic equivalent simultaneously to apply to register to vote under G.S. 163-258.6 and to apply for a military-overseas ballot.

(c) The State Board of Elections shall ensure that the electronic transmission system described in G.S. 163-258.4(c) is capable of accepting the submission of both a federal

postcard application and any other approved electronic military-overseas ballot application sent to the appropriate election official. The voter may use the electronic transmission system or any other approved method to apply for a military-overseas ballot.

(d) A covered voter may use the declaration accompanying the federal write-in absentee ballot, as prescribed under the Uniformed and Overseas Citizens Absentee Voting Act, section 103, 42 U.S.C. § 1973ff-2, as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate election official no later than 5:00 P.M. on the day before the election.

(e) To receive the benefits of this Article, a covered voter shall inform the appropriate election official that the voter is a covered voter. Methods of informing the appropriate election official that a voter is a covered voter include any of the following:

(1) The use of a federal postcard application or federal write-in absentee ballot.

(2) The use of an overseas address on an approved voter registration application or ballot application.

(3) The inclusion on an approved voter registration application or ballot application of other information sufficient to identify the voter as a covered voter.

(f) This Article does not preclude a covered voter from voting an absentee ballot under Article 20 of this Chapter.

"**§ 163-258.8. Timeliness and scope of application for military-overseas ballot.**

An application for a military-overseas ballot is timely if received by the appropriate election official by 5:00 P.M. of the day before the election or primary. An application from a covered voter for a military-overseas ballot shall be considered a valid absentee ballot request for any election covered under G.S. 163-258.3 held during the calendar year in which the application was received.

"**§ 163-258.9. Transmission of unvoted ballots.**

(a) Not later than 60 days before the statewide general election in even-numbered years and not later than 50 days before any other election, the county board of elections shall transmit a ballot and balloting materials to all covered voters who by that date submit a valid military-overseas ballot application, except for a second primary. However, in the case of municipal elections, absentee ballots shall be made available no later than 30 days before an election. For a second primary which includes a candidate for federal office, the county board of elections shall transmit a ballot and balloting material to all covered voters who by that date submit a valid military-overseas ballot application no later than 45 days before the second primary. For a second primary which does not include a candidate for federal office, the transmission of the ballot and ballot materials shall be as soon as practicable, and shall be transmitted electronically no later than three business days and by mail no later than 15 days from the date the appropriate board of elections orders that the second primary be held pursuant to G.S. 163-111. If additional offices are added to the ballot to fill a vacancy occurring after the deadline provided by this subsection, those ballots shall be transmitted as soon as practicable.

(b) A covered voter who requests that a ballot and balloting materials be sent to the voter by electronic transmission may choose facsimile transmission or electronic mail delivery, or, if offered by the voter's jurisdiction, Internet delivery. The election official in each jurisdiction charged with distributing a ballot and balloting materials shall transmit the ballot and balloting materials to the voter using the means of transmission chosen by the voter.

(c) If a ballot application from a covered voter arrives after the jurisdiction begins transmitting ballots and balloting materials to voters, the official charged with distributing a ballot and balloting materials shall transmit them to the voter not later than two business days after the application arrives.

"**§ 163-258.10. Timely casting of ballot.**

To be valid, a military-overseas ballot shall either be received by the appropriate county board of elections no later than the close of the polls or the covered voter shall submit the ballot for mailing, electronic transmission, or other authorized means of delivery not later than 12:01 A.M., at the place where the voter completes the ballot, on the date of the election.

"**§ 163-258.11. Federal write-in absentee ballot.**

A covered voter may use the federal write-in absentee ballot, in accordance with the Uniformed and Overseas Citizens Absentee Voting Act, section 103, 42 U.S.C. § 1973ff-2, to vote for all offices and ballot measures in a covered election.

"**§ 163-258.12. Receipt of voted ballot.**

(a) A valid military-overseas ballot cast in accordance with G.S. 163-258.10 shall be counted if it is delivered to the address that the appropriate State or local election office has specified by the end of business on the business day before the canvass conducted by the county board of elections held pursuant to G.S. 163-182.5 to determine the final official results.

(b) If the ballot is timely received, it may not be rejected on the basis that it has a late postmark, an unreadable postmark, or no postmark.

"**§ 163-258.13. Declaration.**

Each military-overseas ballot shall include or be accompanied by a declaration signed by the voter declaring that a material misstatement of fact in completing the document may be grounds for a conviction of perjury under the laws of the United States or this State.

"**§ 163-258.14. Confirmation of receipt of application and voted ballot.**

The State Board of Elections, in coordination with local election officials, shall implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether:

(1) The voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted; and

(2) The voter's military-overseas ballot has been received and the current status of the ballot.

"**§ 163-258.15. Use of voter's electronic mail address.**

(a) The county board of elections shall request an electronic-mail address from each covered voter who registers to vote after January 1, 2012. An electronic-mail address provided by a covered voter is not a public record under Chapter 132 of the General Statutes. The address may be used only for official communication with the voter about the voting process, including transmitting military-overseas ballots and election materials if the voter has requested electronic transmission, and verifying the voter's mailing address and physical location, as needed. The request for an electronic-mail address shall describe the purposes for which the electronic-mail address may be used and include a statement that any other use or disclosure of the electronic-mail address is prohibited.

(b) A covered voter who provides an electronic-mail address may request that the voter's application for a military-overseas ballot be considered a standing request for electronic delivery of a ballot for all elections held through December 31 of the year following the calendar year of the date of the application or another shorter period the voter specifies, including for any runoff elections that occur as a result of such elections. An election official shall provide a military-overseas ballot to a voter who makes a request for each election to which the request is applicable. A covered voter entitled to receive a military-overseas ballot for a primary election under this subsection is also entitled to receive a military-overseas ballot for the general election.

"**§ 163-258.16. Publication of election notice.**

(a) Not later than 100 days before a regularly scheduled election to which this Article applies, and as soon as practicable in the case of an election or vacancy election not regularly scheduled, each county board of elections shall prepare an election notice for that jurisdiction to be used in conjunction with the federal write-in absentee ballot described in

G.S. 163-258.11. For a second primary required by G.S 163-111, the county board of elections shall prepare, no later than the day following the date the appropriate board of elections orders that a second primary be held, an election notice for that jurisdiction to be used in conjunction with the federal write-in absentee ballot. The election notice shall contain a list of all of the ballot measures and federal, State, and local offices that as of that date the official expects to be on the ballot on the date of the election. The notice also shall contain specific instructions for how a voter is to indicate on the federal write-in absentee ballot the voter's choice for each office to be filled and for each ballot measure to be contested.

(b) A covered voter may request a copy of an election notice. The official charged with preparing the election notice shall send the notice to the voter by facsimile, electronic mail, or regular mail, as the voter requests.

(c) As soon as ballot styles are printed, the county board of elections shall update the notice with the certified candidates for each office and ballot measure questions and make the updated notice publicly available.

(d) A county board of elections that maintains an Internet Web site shall make updated versions of its election notices regularly available on the Web site.

"**§ 163-258.17. Prohibition of nonessential requirements.**

(a) If a voter's mistake or omission in the completion of a document under this Article does not prevent determining whether a covered voter is eligible to vote, the mistake or omission does not invalidate the document. Failure to satisfy a nonessential requirement, such as using paper or envelopes of a specified size or weight, does not invalidate a document submitted under this Article. In any write-in ballot authorized by this Article or in any vote for a write-in candidate on a regular ballot, if the intention of the voter is discernable under this State's uniform definition of what constitutes a vote, as required by the Help America Vote Act, 42 U.S.C. § 15481(a)(6), an abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be accepted as a valid vote.

(b) An authentication, other than the declaration specified in G.S. 163-278.13 or the declaration on the federal postcard application and federal write-in absentee ballot, is not required for execution of a document under this Article. The declaration and any information in the declaration may be compared against information on file to ascertain the validity of the document.

"**§ 163-258.18. Issuance of injunction or other equitable relief.**

A court may issue an injunction or grant other equitable relief appropriate to ensure substantial compliance with, or enforce, this Article on application by:

(1) A covered voter alleging a grievance under this Article; or

(2) An election official in this State.

"**§ 163-258.19. Uniformity of application and construction.**

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

"**§ 163-258.20. Relation to Electronic Signatures in Global and National Commerce Act.**

This Article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. § 7003(b)."

SECTION 2. Article 21 of Chapter 163 of the General Statutes is repealed, except that G.S. 163-251, 253, 254, 255, 256, and 258 are recodified as G.S. 163-258.21 through G.S. 163-258.26, respectively, and as such read as rewritten:

"**§ ~~163-258-21.~~163-258.21 Certified list of approved ~~military-absentee~~military-overseas ballot applications; record of ballots received; disposition of list; list constitutes registration.**

(a) Preparation of List. – The ~~chairman~~ chair of the county board of elections shall prepare, or cause to be prepared, a list in quadruplicate of all ~~military absentee~~military-overseas ballots returned to the county board of elections under this Article to be counted which have been approved by the county board of elections. At the end of the list the ~~chairman~~ chair shall execute the following certificate under oath:

"State of North Carolina
County of _____
I, _____, ~~Chairman~~ Chair of the _____ County Board of Elections, do hereby certify that the foregoing is a list of all executed ~~military absentee~~military-overseas ballots to be voted in the election to be conducted on the _____ day of _____, _____, which have been approved by the County Board of Elections. I further certify that I have issued ballots to no other persons than those listed herein and further that I have not delivered ~~military absentee~~military-overseas ballots to persons other than those listed herein; that this list constitutes the only precinct registration of ~~military absentee~~covered voters whose names have not heretofore been entered on the regular registration of the appropriate precinct.
This the _____ day of _____, _____.

_____
(Signature of ~~Chairman~~ Chair of County Board of Elections)
Sworn to and subscribed before me this _____ day of _____, _____

_____
(Signature of Officer administering oath)

_____
(Title of officer)"

(b) Distribution of List. – No earlier than 3:00 P.M. on the day before the election and no later than 10:00 A.M. on election day, the ~~chairman~~ chair shall cause one copy of the list of executed ~~military absentee~~military-overseas ballots, which may be a continuing countywide list or a separate list for each precinct, to be immediately deposited as first-class mail to the State Board of Elections. The ~~chairman~~ chair shall retain one copy in the board office for public inspection and ~~he~~ shall cause two copies of the appropriate precinct list to be delivered to the chief judge of each precinct in the county. The chief judge shall post one copy in the voting place and retain one copy until all challenges of absentee ballots have been heard by the county board of elections. Challenges shall be made as provided in G.S. 163-89.

After receipt of the list of absentee voters required by this section the chief judge shall call the name of each person recorded on the list and enter an "A" in the appropriate voting square on the voter's permanent registration record, if ~~any~~ any, or a similar entry on the computer list used at the polls. If such person is already recorded as having voted in that election, the chief judge shall enter a challenge which shall be presented to the ~~chairman~~ chair of the county board of elections for resolution by the board of elections prior to certification of results by the board.

(c) List Constitutes Registration. – The "List of Applicants for ~~Military Absentee~~Military-Overseas Ballots to Whom Ballots Have Been Issued" prescribed by this section, when delivered to the chief judges of the various precincts, shall constitute the only precinct registration of the ~~military absentee~~covered voters listed thereon whose names are not already entered in the registration records of the appropriate precinct. Chief judges shall not add the names of persons listed on the ~~military absentee~~ covered voters list to the regular registration books of their precincts.

(d) Counting Ballots, Hearing Challenges. – The county board of elections shall count ~~military~~ military-overseas ballots as provided for civilian absentee ballots in G.S. 163-234, and shall hear challenges as provided in G.S. 163-89.

"§ 163-258.22. Article inapplicable to persons after change of status; reregistration not required.

~~Upon discharge from the armed forces of the United States or termination of any other status qualifying the voter to register and vote by absentee ballot~~An individual who no longer qualifies as a covered voter under the provisions of this ~~Article, the voter~~Article shall not be entitled subsequently to vote by ~~military absentee ballot,~~military-overseas ballot under this Article, but if the covered voter was registered under the provisions of this Article that voter's registration shall remain valid for the remainder of the calendar year that voter registered, and that voter shall be entitled to vote in any primary or election for the remainder of the calendar year without having to reregister. If requested by election officials, the voter shall present proof of military status at the time of registration. This section does not entitle a person to vote in North Carolina if that person has become disqualified because of change of permanent residence to another State or because of conviction of a felony.

"§ 163-258.23. Registration and voting on primary or election day.

Notwithstanding any other provisions of ~~Chapter 163 of the General Statutes,~~ this Chapter, an individual shall be permitted to register in person at any time the office of the board of elections or the voting place is open, including the day of a primary or election if that individual was absent on the day the registration records close for an election, but returns to that individual's county of residence in North Carolina thereafter, and if the absence is due to uniformed service as defined by G.S. 163-258.2. ~~an occupation or status of that individual listed below:~~

~~(1) Individuals serving in the armed forces of the United States, including (but not limited to) the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Merchant Marine, the National Oceanic and Atmospheric Administration, the commissioned corps of the Public Health Service, and members of the National Guard and military reserve.~~

~~(2) Spouses of individuals serving in the armed forces of the United States residing outside the counties of their spouses' voting residence.~~

~~(3) Disabled war veterans in United States government hospitals.~~

~~(4) Civilians attached to and serving outside the United States with the armed forces of the United States.~~

~~(5) Members of the Peace Corps.~~

If an individual so absent on the day registration closes shall appear in person at the voting place on election day and is otherwise eligible to vote, that individual shall be entitled to register and vote at the voting place that day, regardless of whether the person's ~~occupation or status as outlined in subdivisions (1) through (5) of this section~~ uniformed service status has changed since the close of registration.

"§ 163-258.24. Absentee voting at office of board of elections.

Notwithstanding any other provisions of ~~Chapter 163 of the General Statutes,~~ this Chapter, any ~~person eligible to vote an absentee ballot pursuant to G.S. 163-245~~covered voter under this Article shall be permitted to vote an absentee ballot pursuant to G.S. 163-227.2 if the ~~person~~ covered voter has not already voted an absentee ballot which has been returned to the board of elections, and if ~~he~~ the covered voter will not be in the county on the day of the primary or election.

In the event an absentee application or ballot has already been mailed to ~~such person~~the covered voter applying to vote pursuant to G.S. 163-227.2, the board of elections shall void the application and ballot unless the voted absentee ballot has been received by the board of

elections. ~~Such person~~The covered voter shall be eligible to vote pursuant to G.S. 163-227.2 no later than 5:00 P.M. on the day next preceding the primary, second primary or election.

"**§ 163-258.25. Regulations of State Board of Elections.**

(a) The State Board of Elections shall adopt rules and regulations to carry out the intent and purpose of G.S. ~~163-254 and 163-255,~~ 163-278.23 and G.S. 163-278.24 and to ensure that a proper list of persons voting under said sections shall be maintained by the boards of elections, and to ensure proper registration records, and such rules and regulations shall not be subject to the provisions of Article 2A of Chapter 150B of the General Statutes.

(b) The State Board of Elections shall be the single office responsible for providing information concerning voter registration and absentee voting procedures to be used by ~~absent uniformed services voters and overseas~~covered voters as to all elections and procedures relating to the use of federal write-in absentee ballots. Unless otherwise required by law, the State Board of Elections shall be responsible for maintaining contact and cooperation with the Federal Voting Assistance Program, the United States Department of Defense, and other federal entities that deal with military and overseas voting. The State Board of Elections shall, as needed, make recommendations concerning military and overseas citizen voting to the General Assembly, the Governor, and other State officials.

"**§ 163-258.26. Emergency powers.**

If an international, national, or local emergency or other situation arises that makes substantial compliance with this Article or the Uniformed and Overseas Citizens Absentee Voting Act impossible or unreasonable, the State Board of Elections may prescribe, by emergency rule, such special procedures or requirements as may be necessary to facilitate absentee voting by those absent uniformed services voters or overseas voters directly affected who are eligible to vote in this State. The rule shall become effective when filed with the Codifier of Rules."

SECTION 3. G.S. 163-22(k) reads as rewritten:

"(k) Notwithstanding the provisions contained in Article 20 or Article ~~21~~ 21A of Chapter 163 the State Board of Elections shall be authorized, by resolution adopted prior to the printing of the primary ballots, to reduce the time by which absentee ballots are required to be printed and distributed for the primary election from 50 days to 45 days. This authority shall not be authorized for absentee ballots to be voted in the general election, except if the law requires ballots to be available for mailing 60 days before the general election, and they are not ready by that date, the State Board of Elections shall allow the counties to mail them out as soon as they are available."

SECTION 4. G.S. 163-111(e) reads as rewritten:

"(e) Date of Second Primary; Procedures. – If a second primary is required under the provisions of this section, the appropriate board of elections, State or county, shall order that it be held ~~seven weeks after the first primary.~~10 weeks after the first primary if any of the offices for which a second primary is required are for a candidate for the office of United States Senate or member of the United State House of Representatives. Otherwise, the second primary shall be held seven weeks after the first primary.

There shall be no registration of voters between the dates of the first and second primaries. Persons whose qualifications to register and vote mature after the day of the first primary and before the day of the second primary may register on the day of the second primary and, when thus registered, shall be entitled to vote in the second primary. The second primary is a continuation of the first primary and any voter who files a proper and timely written affirmation of change of address within the county under the provisions of G.S. 163-82.15, in the first primary may vote in the second primary without having to refile that written affirmation if ~~he~~ the voter is otherwise qualified to vote in the second primary. Subject to this provision for registration, the second primary shall be held under the laws, rules, and regulations provided for the first primary."

SECTION 5. G.S. 163-231(b) reads as rewritten:

"(b) Transmitting Executed Absentee Ballots to County Board of Elections. – The sealed container-return envelope in which executed absentee ballots have been placed shall be transmitted to the county board of elections who issued them as follows: All ballots issued under the provisions of Articles 20 and ~~21~~ 21A of this Chapter shall be transmitted by mail or by commercial courier service, at the voter's expense, or delivered in person, or by the voter's near relative or verifiable legal guardian not later than 5:00 p.m. on the day before the statewide primary or general election or county bond election. Ballots issued under the provisions of Article 21A may also be electronically transmitted. If ballots are received later than that hour, they shall not be accepted unless (i) federal law so requires, (ii) if ballots issued under Article 20 of this Chapter are postmarked by the day of the statewide primary or general election or county bond election and are received by the county board of elections not later than three days after the election by 5:00 p.m., or (iii) if ballots issued under Article ~~21~~ 21A of this Chapter are received by the county board of elections not later than the end of business on the business day before the canvass conducted by the county board of elections held pursuant to G.S. 163-182.5. ~~three days after the election by 5:00 p.m.~~ Ballots issued under Article 20 of this Chapter not postmarked by the day of the election shall not be accepted by the county board of elections."

SECTION 6. G.S. 163-232.1(b) reads as rewritten:

"(b) The county board of elections shall prepare, or cause to be prepared, a list in at least triplicate, of all ~~military-absentee~~military-overseas ballots issued under Article ~~21~~ 21A of this Chapter and returned to the county board of elections to be counted, which have been approved by the county board of elections, have not been included on the certified list prepared pursuant to G.S. 163-232, and which have been received by the county board of elections not later than three days after the election by 5:00 p.m. The list shall be supplemented with new information each business day following the day of the election until the deadline for receipt of such absentee ballots. At the end of the list, the ~~chairman~~ chair shall execute the following certificate under oath:

"State of North Carolina

County of _____

I, _____, ~~chairman~~ chair of the _____ County Board of Elections, do hereby certify that the foregoing is a list of all executed ~~military-absentee~~military-overseas ballots to be voted in the election to be conducted on the ____ day of _____, _____, which have been approved by the county board of elections, and which have been postmarked by the day of the statewide primary or general election or county bond election and received by the county board of elections not later than three days after the election by 5:00 p.m. I further certify that I have issued ballots to no other persons than those listed herein and further that I have not delivered ~~military-absentee~~military-overseas ballots to persons other than those listed herein; that this list constitutes the only precinct registration of ~~military-absentee~~covered voters whose names have not heretofore been entered on the regular registration of the appropriate precinct.

This the _____ day of _____, _____

_____

(Signature of ~~chairman~~ chair of
county board of elections)

Sworn to and subscribed before me this _____ day of _____, ____.

Witness my hand and official seal.

_____

(Signature of officer
administering oath)

_____

(Title of officer)".

SECTION 7. G.S. 163-234(2) reads as rewritten:

"(2) The county board of elections shall meet at 5:00 p.m. on election day in the board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 p.m. on election day and those received pursuant to G.S. 163-231(b)(ii) or (iii). Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, provided the elector shall not in any manner interfere with the election officials in the discharge of their duties.

Provided, that the county board of elections is authorized to begin counting absentee ballots issued under Article 21A of this Chapter between the hours of 9:00 A.M. and 5:00 P.M and to begin counting all absentee ballots between the hours of 2:00 p.m. and 5:00 p.m. upon the adoption of a resolution at least two weeks prior to the election wherein the hour and place of counting absentee ballots shall be stated. Such resolution also may provide for an additional meeting following the day of the election and prior to the day of canvass to count absentee ballots received pursuant to G.S. 163-231(b)(ii) or (iii) as provided in subdivision (10) of this section. A copy of the resolutions shall be published once a week for two weeks prior to the election, in a newspaper having general circulation in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. The count shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable necessity, except that if the count has been completed prior to the time the polls close, it shall be suspended until that time pending receipt of any additional ballots. Nothing in this section shall prohibit a county board of elections from taking preparatory steps for the count earlier than the times specified in this section, as long as the preparatory steps do not reveal to any individual not engaged in the actual count election results before the times specified in this subdivision for the count to begin. By way of illustration and not limitation, a preparatory step for the count would be the entry of tally cards from direct record electronic voting units into a computer for processing. The board shall not announce the result of the count before 7:30 p.m."

SECTION 8. G.S. 163-239 reads as rewritten:

"**§ 163-239. Article ~~21~~ 21A relating to absentee voting by ~~servicemen and certain civilians~~ military and overseas voters not applicable.**

Except as otherwise provided therein, Article ~~21~~ 21A of this ~~Chapter, relating to absentee registration and voting by servicemen and certain civilians,~~ Chapter shall not apply to or modify the provisions of this Article."

SECTION 9. This act becomes effective January 1, 2012.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 514

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

H514-AST-52 [v.1]

Comm. Sub. [NO]
Amends Title [NO]
Second Edition

Date June 9 ,2011

Senator Stein

moves to amend the bill on page 6, line 27 by deleting "G.S. 163-278.13" and substituting "G.S. 163-258.13" on that line;

and on page 11, lines 40-41 by inserting the following between those lines:

"**SECTION 9.** G.S. 163-82.10(a) reads as rewritten:

"(a) Official Record. – The State voter registration system is the official voter registration list for the conduct of all elections in the State. The State Board of Elections and the county board of elections may keep copies of voter registration data, including voter registration applications, in any medium and format expressly approved by the Department of Cultural Resources pursuant to standards and conditions established by the Department and mutually agreed to by the Department and the State Board of Elections. A completed and signed registration application form, if available, described in G.S. 163-82.3, once approved by the county board of elections, becomes backup to the official registration record of the voter. Full or partial social security numbers, dates of birth, the identity of the public agency at which the voter registered under G.S. 163-82.20, any electronic-mail address submitted under Article 21A of this Chapter, and drivers license numbers that may be generated in the voter registration process, by either the State Board of Elections or a county board of elections, are confidential and shall not be considered public records and subject to disclosure to the general public under Chapter 132 of the General Statutes. Cumulative data based on those items of information may be publicly disclosed as long as information about any individual cannot be discerned from the disclosed data. Disclosure of information in violation of this subsection shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of information in violation of this subsection as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The signature of the voter, either on the paper application or an electronically captured image of it, may be viewed by the public but may not be copied or traced except by election officials for election administration purposes. Any such copy or tracing is not a public record.";

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 514

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

H514-AST-52 [v.1]

and by renumbering the bill sections accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 518
PROPOSED COMMITTEE SUBSTITUTE S518-CSTG-33 [v.4]

6/8/2011 5:24:29 PM

Short Title: Buyer Choice/Title Insurer & Closing Atty. (Public)

Sponsors:

Referred to:

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS BY REQUIRING NOTICE OF BUYER'S RIGHT TO CHOOSE TITLE INSURER AND CLOSING ATTORNEY. .

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 45 of the General Statutes is amended by adding a new section to read:

"**§ 45-45.3. Buyer's choice of title insurer and closing attorney.**

(a) The following definitions apply in this section:

(1) Acquiring party. – Any person or entity who acquires residential property through a judicial foreclosure or foreclosure under power of sale of a deed of trust or mortgage held by such person or entity, or held by another person or entity who assigned the successful bid at the foreclosure sale to such person or entity that acquired the residential property, and who seeks to sell the residential property to a buyer.

(2) Conspicuous. – In reference to a document, language that is so written, displayed, or presented that a reasonable person who reads the notice ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

a. A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

b. Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(3) Residential property. – Real property improved by four or fewer dwelling units acquired by an acquiring party through a judicial foreclosure or foreclosure under power of sale.

(b) A buyer of residential property shall have the right to select the title insurer and closing attorney of the buyer's choice.

(c) This section shall not prohibit a buyer from agreeing to accept the services of a title insurer and/or a closing attorney selected or designated by the acquiring party to be used in the

transaction if written notice of the right to make an independent selection of those services is first provided to the buyer by the acquiring party. The notice may either be separate from or included in the sales contract, and in either event, shall:

(1) contain the following conspicuous statement: "The Buyer shall have the right to make an independent selection of title insurance and closing attorney services. The buyer's use of title insurance and closing attorney services selected or designated by the Seller is not a condition of this sale."; and

(2) provide, in conspicuous language, that a buyer who agrees to accept the services of a title insurer or a closing attorney selected or designated by the acquiring party to be used in the transaction may rescind the buyer's acceptance of such services at any time not later than ten (10) days after the written notice is received by the buyer.

The notice may also contain the following statement: "If the buyer selects the title insurer and closing attorney, the buyer's closing costs may be different from the closing costs charged by the title insurer and closing attorney selected by the seller."

(d) A transaction subject to this section shall not be invalidated because of the failure of any person to comply with any provision of this section."

SECTION 2. This act is effective when it becomes law and applies to all sales placed under a sales contract on or after that date.

SENATE BILL 518:
Buyer Choice/Title Insurer & Settlement Agent

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 8, 2011
Introduced by:	Sens. Vaughan, Stein	**Prepared by:**	Bill Patterson
Analysis of:	PCS to First Edition S518-CSTG-33		Committee Counsel

SUMMARY: ***The PCS to Senate Bill 518 requires any person selling residential real property improved by four or fewer dwelling units obtained through foreclosure to provide a buyer of the property with notice of the buyer's right to use a title insurer or closing attorney of the buyer's choosing. (The PCS removed provisions in the original bill prohibiting a mortgagee from requiring a buyer to use the title insurer or settlement agent designated by the mortgagee and imposing liability for violations, and substituted the term "closing attorney" for "settlement agent.")***

BILL ANALYSIS: Senate Bill 518 adds a new G.S. 45-45.3 to Article 5 of Chapter 45, Mortgages and Deeds of Trusts, requiring any person selling residential real property improved by four or fewer dwelling units, acquired through foreclosure, to provide written notice to a buyer of the buyer's right to choose the title insurer or closing attorney.

A violation of this provision does not invalidate any transaction subject to it.

EFFECTIVE DATE: This act is effective when it becomes law and applies to all sales placed under a sales contract on or after that date.

S518-SMTG-41(CSTG-33) v1

HOUSE BILL 331
Committee Substitute Favorable 3/22/11

Short Title: Allow PAs and NPs to Sign Death Cert. (Public)

Sponsors:

Referred to:

March 14, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PHYSICIAN ASSISTANTS AND NURSE PRACTITIONERS TO COMPLETE MEDICAL CERTIFICATIONS AS TO THE CAUSE OF DEATH FOR DEATH REGISTRATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-18.1 is amended by adding a new subsection to read:

"(e1) Any medical certification completed by a physician assistant for a death certificate shall be deemed to have been authorized by the physician approved by the Board as the supervisor of the physician assistant, and the supervising physician shall be responsible for authorizing the completion of the medical certification."

SECTION 2. G.S. 90-18.2 is amended by adding a new subsection to read:

"(e1) Any medical certification completed by a nurse practitioner for a death certificate shall be deemed to have been authorized by the physician approved by the boards as the supervisor of the nurse practitioner, and the supervising physician shall be responsible for authorizing the completion of the medical certification."

SECTION 3. G.S. 130A-115(c) and (d) read as rewritten:

"(c) The medical certification shall be completed and signed by the physician in charge of the patient's care for the illness or condition which resulted in death, except when the death falls within the circumstances described in G.S. 130A-383. In the absence of the physician or with the physician's approval, the certificate may be completed and signed by an associate physician, a physician assistant in a manner consistent with G.S. 90-18.1(e1), a nurse practitioner in a manner consistent with G.S. 90-18.2(e1), the chief medical officer of the hospital or facility in which the death occurred or a physician who performed an autopsy upon the decedent under the following circumstances: the individual has access to the medical history of the deceased; the individual has viewed the deceased at or after death; and the death is due to natural causes. When specifically approved by the State Registrar, an electronic signature or facsimile signature of the ~~physician~~ physician, physician assistant, or nurse practitioner shall be acceptable. As used in this section, the term electronic signature has the same meaning as applies in G.S. 66-58.2. The ~~physician~~ physician, physician assistant, or nurse practitioner shall state the cause of death on the certificate in definite and precise terms. A certificate containing any indefinite terms or denoting only symptoms of disease or conditions resulting from disease as defined by the State Registrar, shall be returned to the person making the medical certification for correction and more definite statement.

(d) The ~~physician~~ physician, physician assistant, nurse practitioner, or medical examiner making the medical certification as to the cause of death shall complete the medical certification no more than three days after death. The ~~physician~~ physician, physician assistant, nurse practitioner, or medical examiner may, in appropriate cases, designate the cause of death

as unknown pending an autopsy or upon some other reasonable cause for delay, but shall send the supplementary information to the local registrar as soon as it is obtained."

SECTION 4. This act becomes effective October 1, 2011, and applies to certifications signed on or after that date.

HOUSE BILL 331:
Allow PAs and NPs to Sign Death Cert

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 9, 2011
Introduced by:	Reps. Hollo, Brubaker, Dollar, Justice	**Prepared by:**	Brad Krehely
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 331 would allow physician assistants and nurse practitioners to complete medical certifications as to the cause of death.

CURRENT LAW: G.S. 130A-115 governs the registration of deaths that occur in North Carolina. The statute provides that for each death occurring in the State a death certificate shall be completed and filed within 5 days to the local registrar in the county where the death occurred, where the body was found, or where the body was removed from the conveyance in the case where the death occurred in a moving conveyance. The statute further provides that the person making the medical certification as to the cause of death shall complete the certificate within 3 days of the death.

Except for deaths resulting from violence, poisoning, accident, suicide or homicide, or occurring in certain State facilities, the medical certificate is completed and signed by the physician in charge of the patient's care for the illness or condition which resulted in death. A certificate may also be completed and signed by a physician who performed the autopsy, an associate physician, or the chief medical examiner of the hospital/facility where the death occurred if the death was due to natural causes and the individual had access to the medical history and viewed the deceased at or after death. Currently, physician assistants and nurse practitioners may not sign death certificates.

BILL ANALYSIS:

Section 1 provides that a physician assistant may complete a medical certification for a death certificate, and it will be deemed to have been authorized by the physician assistant's supervising physician.

Section 2 provides that a nurse practitioner may complete a medical certification for a death certificate, and it will be deemed to have been authorized by the nurse practitioner's supervising physician.

Section 3 allows physician assistants and nurse practitioners to use electronic or facsimile signatures on medical certifications of death certificates without specific approval by the State Registrar. It also makes conforming changes.

EFFECTIVE DATE: The act becomes effective October 1, 2011, and applies to certifications signed on or after that date.

BACKGROUND: The provisions of House Bill 331 are identical to the provisions in the Second Edition of Senate Bill 191- Death Certificate Signatures. That version of Senate Bill 191 received a favorable report in Senate Judiciary I on March 21, 2011, passed the Senate, and currently is in the House Health and Human Services Committee.

H331-SMRN-65(e2) v3

Shawn Parker contributed to the drafting of this summary.

HOUSE BILL 379
Committee Substitute Favorable 5/9/11

Short Title: Uniform Depositions and Discovery Act. (Public)

Sponsors:

Referred to:

March 17, 2011

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA INTERSTATE DEPOSITIONS AND DISCOVERY ACT AND TO MAKE CONFORMING AMENDMENTS TO THE NORTH CAROLINA RULES OF CIVIL PROCEDURE.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 1F.**

"**North Carolina Interstate Deposition and Discovery Act.**

"**§ 1F-1. Short title.**

This Chapter may be cited as the 'North Carolina Uniform Interstate Depositions and Discovery Act.'

"**§ 1F-2. Definitions.**

The following definitions apply in this Chapter:

(1) Foreign jurisdiction. – A state other than North Carolina.

(2) Foreign subpoena. – A subpoena issued under authority of a court of record of a foreign jurisdiction.

(3) 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.

(4) State. – A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

(5) Subpoena. – A document, however denominated, issued under authority of a court of record requiring a person to:

a. Attend and give testimony at a deposition, either oral or upon written questions;

b. Produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or

c. Permit inspection of premises under the control of the person.

"**§ 1F-3. Issuance of subpoena.**

(a) To request issuance of a subpoena under this section, a party must submit a foreign subpoena to a clerk of court in the county in which discovery is sought to be conducted in this State. A request for the issuance of a subpoena under this act does not constitute an appearance in the courts of this State.

(b) When a party submits a foreign subpoena to a clerk of court in this State, the clerk, in accordance with that court's procedure, shall promptly open an appropriate court file, assign a file number, collect the applicable filing fee pursuant to G.S. 7A-305(a)(2), and issue a subpoena for service upon the person to which the foreign subpoena is directed.

(c) A subpoena under subsection (b) of this section must:

(1) Incorporate the terms used in the foreign subpoena; and

(2) Contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

"**§ 1F-4. Service of subpoena.**

A subpoena issued by a clerk of court in North Carolina under G.S. 1F-3 must be served in compliance with Rule 45(b) of the North Carolina Rules of Civil Procedure.

"**§ 1F-5. Deposition; production; inspection.**

Rules 26, 28, 30, 31, 34, and 45 of G.S. 1A-1, the North Carolina Rules of Civil Procedure, apply to subpoenas issued under G.S. 1F-3.

"**§ 1F-6. Application to court.**

An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under G.S. 1F-3 must comply with the rules or statutes of this State and be submitted to the court in the county in which discovery is to be conducted. Where a dispute exists between the parties to the action, the party opposing the discovery shall apply for appropriate relief to the court in which the action is pending and not to the court in the state in which the discovery is sought.

"**§ 1F-7. Uniformity of application and construction.**

In applying and construing this Chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that have enacted the Uniform Interstate Depositions and Discovery Act."

SECTION 2. G.S. 1A-1, Rule 28(d), reads as rewritten:

"(d) Depositions to be used ~~outside this State.~~ in foreign countries. –

(1) A person desiring to take depositions in this State to be used in proceedings pending in the courts of any other ~~state or~~ country may present to a judge of the superior or district court a commission, order, notice, consent, or other authority under which the deposition is to be taken, whereupon it shall be the duty of the judge to issue the necessary subpoenas pursuant to Rule 45. Orders of the character provided in Rules 30(b), 30(d), and 45(b) may be made upon proper application therefor by the person to whom such subpoena is directed. Failure by any person without adequate excuse to obey a subpoena served upon him pursuant to this rule may be deemed a contempt of the court from which the subpoena issued.

...."

SECTION 3. G.S. 1A-1, Rule 45, is amended by adding the following new subsection to read:

"(f) Discovery From Persons Residing Outside the State. –

(1) Any party may obtain discovery from a person residing in another state of the United States or a territory or an insular possession subject to its jurisdiction in any one or more of the following forms: (i) oral depositions, (ii) depositions upon written questions, or (iii) requests for production of documents and tangible things. In doing so, the party shall use and follow any applicable process and procedures required and available under the laws of the state, territory, or insular possession where the discovery is to be obtained. If required by the process or procedure of the state, territory, or insular possession where the discovery is to be obtained, a commission may

issue from the court in which the action is pending in accordance with the procedures set forth in subdivision (2) of this subsection.

(2) Obtaining a commission. –

a. The party desiring a commission to obtain discovery outside the State shall prepare and file a motion indicating the party's intent to obtain a commission and requesting that the commission be issued.

b. The motion shall indicate that the moving party has conferred, or describe fully the moving party's good faith attempts to confer, with counsel for all other parties regarding the request and shall indicate whether the motion is unopposed. The motion shall also attach a copy of any proposed subpoena, notice of deposition, or other papers to be served on the person from whom the moving party is seeking to obtain discovery.

c. The motion shall indicate that counsel for the moving party has read the applicable rules and procedures of the foreign state and that the moving party will comply with those rules and procedures in obtaining the requested discovery.

d. If the motion reflects that it is unopposed or indicates that the moving party has made reasonable, good faith efforts to confer with all other parties and that no other party has indicated that it opposes the motion, the motion shall immediately be placed on the calendar for a hearing within 20 days before the court in which the action is pending where the commission shall be issued. However, if the court determines, in its discretion, that the moving party has failed to make reasonable, good faith efforts to confer with all other parties prior to filing the motion, the court shall refuse to issue the commission, and the motion shall be denied.

e. If the motion does not reflect that it is unopposed or that the moving party has made reasonable, good faith efforts to confer with all other parties and that no other party has indicated that it opposes the motion, any party wishing to oppose the motion shall file written objections to issuance of the commission within 10 days of being served with the motion, and the motion shall immediately be placed on the calendar for a hearing to be held within 20 days before the court in which the action is pending. The hearing may be held by telephone in the court's discretion. The court may refuse to issue the commission only upon a showing of substantial good cause to deny the motion.

f. If the court, in its discretion, determines that any party opposing the motion did so without good cause, the court shall require the party opposing the motion to pay the moving party the reasonable costs and expenses incurred in obtaining the order, including attorneys' fees, unless circumstances exist which make an award of expenses unjust.

(3) In addition to any terms required by the foreign jurisdiction to initiate the process of obtaining the requested discovery, the commission shall:

a. State the time and place at which the requested discovery is to occur; and

b. State the name and address of the person from whom the discovery is sought, if known, and, if unknown, a general description sufficient to

identify the person or the particular class or group to which he or she belongs.

c. Attach a copy of any case management order, discovery order, local rule, or other rule or order establishing any discovery deadlines in the North Carolina action."

SECTION 4. The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Comments to the Uniform Interstate Depositions and Discovery Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

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

HOUSE BILL 379:
Uniform Depositions and Discovery Act

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 9, 2011
Introduced by:	Reps. Glazier, Rhyne, Ross, McGrady	**Prepared by:**	Brad Krehely
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 379 would adopt a slightly modified version of the Uniform Interstate Depositions and Discovery Act and would amend Rule 45 of the North Carolina Rules of Civil Procedure (NCRCP) to provide a uniform procedure for obtaining commissions to take discovery from out-of-state witnesses in cases pending in the North Carolina courts.***

CURRENT LAW: The process for obtaining a North Carolina subpoena to depose an in-state witness in cases pending in other states is spread over three sources – Rule 28(d) of the NCRCP, an AOC memorandum to Superior Court clerks and judges, and, for Mecklenburg County, Local Rule 18. There is no set procedure in North Carolina for obtaining a commission from a North Carolina court for use in obtaining a subpoena in another state for discovery in that state.

BILL ANALYSIS:

Section 1 would add a new Chapter 1F to the General Statutes that would establish a procedure for the issuance of North Carolina subpoenas for discovery in cases pending in other states.

G.S. 1F-1 sets out the title – The North Carolina Uniform Interstate Depositions and Discovery Act.

G.S. 1F-2 provides the definitions applicable to the Chapter. "Foreign jurisdiction" means a state other than North Carolina. "Foreign subpoena" means a subpoena issued under the authority of a court of record of another state. "Subpoena" is defined as a document requiring a person to attend and testify at a deposition, either oral or on written questions, produce and permit inspection of documents and things, and permit inspection of premises under control of the person.

G.S. 1F-3 sets out the process for the issuance of the subpoena. The party seeking the subpoena must submit the foreign subpoena to the clerk of court of the county in which discovery is sought. The request for issuance of a subpoena is not an appearance in the North Carolina courts. (Under current law, the party seeking the subpoena would have to hire local counsel or move for admission pro hac vice).

When presented with a foreign subpoena, the clerk is to promptly open a court file, collect the appropriate filing fee, and issue a subpoena for service upon the person sought to be deposed. The subpoena must incorporate the terms of the foreign subpoena and contain the names, addresses, and telephone numbers of all counsel of record in the relevant proceeding and of any party not represented.

G.S. 1F-4 provides that service of the subpoena under G.S. 1F-3 must follow Rule 45 of the NCRCP.

G.S. 1F-5 provides that the NCRCP relating to discovery, depositions, production of documents, and subpoenas, specifically Rules 26, 28, 30, 31, 34, and 45 apply to subpoenas issued under 1F-3.

G.S. 1F-6 provides that issues between the party seeking discovery and the person from whom discovery is sought must be submitted to the court in the county in which the discovery is to be conducted and North Carolina law applies. For disputes between parties to the action, appropriate relief is to be had in he court in which the action is pending.

G.S. 1F-7 provides that in construing the Act, the need to promote uniformity should be considered.

Section 2 amends G.S. 1A-1, Rule 28(d) to make that provision of the NCRCP applicable only to persons wishing to take depositions in North Carolina to be used in proceedings in foreign countries. Rule 28(d) will no longer apply to depositions in North Carolina for actions pending in other states.

Section 3 amends G.S. 1A-1 Rule 45 to provide a procedure for obtaining discovery from persons outside of North Carolina. Discovery may be had through oral depositions, depositions upon written questions, and requests for production of documents. The party seeking discovery shall follow the procedures required under the laws of the jurisdiction in which discovery is sought.

Where the foreign jurisdiction requires a commission, a commission may be obtained from the court in which the action is pending by filing a motion requesting the commission be issued.

- The motion shall indicate that the moving party has conferred, or made a good faith effort to confer, with counsel for all other parties and whether the motion is unopposed.
- Copies of any proposed subpoena or notice of deposition shall be attached.
- The motion shall indicate that the moving party has read the applicable rules and procedures of the other state and will comply with such.
- If the motion is unopposed or good faith efforts to confer have been made, the motion must be calendared for a hearing within 20 days before the court in which the action is pending.
- If the court determines that the moving party has failed to make good faith efforts to confer with all other parties before filing the motion, the court shall refuse to issue the commission.
- If the motion does not reflect that it is unopposed, or that reasonable good faith efforts to confer have been made, a party wishing to oppose the motion shall file written objections within 10 days of service of the motion and the motion shall be placed on the calendar for a hearing to be held within 20 days. Permits the hearing to be held by telephone.
- The court may refuse to issue the commission only on a showing of substantial good cause.
- If the court determines that a party opposed the motion without good cause, the court must require that party to pay the moving party reasonable costs and expenses incurred including attorneys' fees, unless there are circumstances that would make such an award unjust.

The commission shall include any terms required by the foreign jurisdiction to obtain the discovery. It shall also (1) state the time and place the discovery is to occur, (2) state the name and address of the person from whom the discovery is sought, if known and if not known, a general description of the person sufficient to identify the person or the particular class or group to which he or she belongs, and (3) include a copy of any case management order, discovery order, or other rule or order establishing discovery deadlines in the North Carolina action.

Section 4 directs the Revisor of Statutes to print, as annotations to the statutes, the relevant portions of the Official Comments to the Act and explanatory comments as the Revisor deems appropriate.

EFFECTIVE DATE: Effective December 1, 2011 (applies to all cases then pending or filed on or after that date.)

BACKGROUND: The Uniform Interstate Depositions and Discovery Act (2007) has been adopted, either by court rule or enactment, by at least 10 States: California, Colorado, Idaho, Kentucky, Maryland, Montana, New Mexico, Tennessee, Utah, and Virginia.

H379-SMRN-64(e2) v1

Barbara Riley, Counsel to House Judiciary Subcommittee A, contributed substantially to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 379

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

H379-ARN-12 [v.1]

Comm. Sub. [NO]
Amends Title [NO]
Second Edition

Date June 9 ,2011

Senator
~~Representative~~ Stevens

moves to amend the bill on page 3, line 48, by deleting the word "and";

and on page 4, line 2, by rewriting the line to read:
"belongs; and".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 2

HOUSE BILL 380
Committee Substitute Favorable 5/9/11

Short Title: Amend RCP/Electronically Stored Information. (Public)

Sponsors:

Referred to:

March 17, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROCEDURE FOR DISCOVERY OF ELECTRONICALLY STORED INFORMATION AND TO MAKE CONFORMING CHANGES TO THE NORTH CAROLINA RULES OF CIVIL PROCEDURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 16, reads as rewritten:

"**Rule 16. Pre-trial procedure; formulating issues.**

(a) In any action, the ~~judge~~ court may in ~~his~~ its discretion direct the attorneys for the parties to appear before ~~him~~ the court for a conference to consider

(1) The simplification and formulation of the issues;
(2) The necessity or desirability of amendments to the pleadings;
(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
(4) The limitation of the number of expert witnesses;
(5) The advisability or necessity of a reference of the case, either in whole or in part;
(6) Matters of which the court is to be asked to take judicial notice;
(7) Such other matters as may aid in the disposition of the action.

If a conference is held, the judge ~~may~~ shall make an order which recites the action taken at the conference, ~~the~~ any amendments allowed to the pleadings, and ~~the~~ any agreements made by the parties as to any of the matters considered, and which ~~limits~~ may limit the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. If any issue for trial as stated in the order is not raised by the pleadings in accordance with the provisions of Rule 8, upon motion of any party, the order shall require amendment of the pleadings.

(b) In a medical malpractice action as defined in G.S. 90-21.11, at the close of the discovery period scheduled pursuant to ~~Rule 26(f1),~~ Rule 26(g), the judge shall schedule a final conference. After the conference, the judge shall refer any consent order calendaring the case for trial to the senior resident superior court judge or the chief district court judge, who shall approve the consent order unless ~~he~~ the judge finds that:

(1) The date specified in the order is unavailable,
(2) The terms of the order unreasonably delay the trial, or
(3) The ends of justice would not be served by approving the order.

If the senior resident superior court judge or the chief district court judge does not approve the consent order, ~~he~~ the judge shall calendar the case for trial.

In calendaring the case, the court shall take into consideration the nature and complexity of the case, the proximity and convenience of witnesses, the needs of counsel for both parties concerning their respective calendars, the benefits of an early disposition and such other matters as the court may deem proper."

SECTION 2. G.S. 1A-1, Rule 26, reads as rewritten:

"**Rule 26. General provisions governing discovery.**

(a) Discovery methods. – Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery scope and limits. – Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. – Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, electronically stored information, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence nor is it grounds for objection that the examining party has knowledge of the information as to which discovery is sought. For the purposes of these rules regarding discovery, the phrase 'electronically stored information' includes reasonably accessible metadata that will enable the discovering party to have the ability to access such information as the date sent, date received, author, and recipients. The phrase does not include other metadata unless the parties agree otherwise or the court orders otherwise upon motion of a party and a showing of good cause for the production of certain metadata.

(2) Limitations on Frequency and Extent. – The frequency or extent of use of the discovery methods set forth in section (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under section (c).

(3) Specific Limitations on Electronically Stored Information. – In addition to any limitations imposed by subdivision (b)(2) of this rule, discovery of electronically stored information is subject to the limitations set forth in Rule 34(b). The court may specify conditions for the discovery, including allocation of discovery costs.

~~(2)~~(4) Insurance Agreements. – A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance

agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this subsection, an application for insurance shall not be treated as part of an insurance agreement.

~~(3)~~(5) Trial Preparation; Materials. – Subject to the provisions of subsection ~~(b)(4)~~ (b)(6) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subsection (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's consultant, surety, indemnitor, insurer, or agent only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of ~~his~~ the case and that ~~he~~ the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court may not permit disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation in which the material is sought or work product of the attorney or attorneys of record in the particular action.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (i) a written statement signed or otherwise adopted or approved by the person making it, or (ii) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

~~(4)~~(6) Trial Preparation; Experts. – Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subsection (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

a. 1. A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

2. Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to ~~subdivision~~ sub-subdivision ~~(b)(4)c~~ (b)(6)b. of this rule, concerning fees and expenses as the court may deem appropriate.

b. Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivision ~~(b)(4)a2~~ (b)(6)a2 of this rule; and (ii) with respect to discovery obtained under subdivision ~~(b)(4)a2~~ (b)(6)a2 of this rule the court may require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(7) Claiming privilege or protecting trial-preparation materials.

a. Information withheld. – When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must (i) expressly make the claim and (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed, and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

b. Information produced. – If information subject to a claim of privilege or protection as trial-preparation material is inadvertently produced in response to a discovery request, the party that produced the material may assert the claim by notifying any party that received the information of the claim and basis for it. After being notified, a party (i) must promptly return, sequester, or destroy the specified information and any copies it has, (ii) must not use or disclose the information until the claim is resolved, (iii) must take reasonable steps to retrieve the information if the party disclosed it before being notified, and (iv) may promptly present the information to the court under seal for determination of the claim. The producing party must preserve the information until the claim is resolved.

(c) Protective orders. – Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the judge of the court in which the action is pending may make any order which justice requires to protect a party or person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (i) that the discovery not be had; (ii) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (iii) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (iv) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (v) that discovery be conducted with no one present except persons designated by the court; (vi) that a deposition after being sealed be opened only by order of the court; (vii) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (viii) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

A party seeking a protective order on the basis that electronically stored information sought is from a source identified as not reasonably accessible because of undue burden or cost has the burden of showing that the basis exists. If the showing is made, the court may nonetheless order discovery from the source if the requesting party shows good cause, but only after considering the limitations of subsection (b)(2) of this rule.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and timing of discovery. – Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery. Any order or rule of court setting the time within which discovery must be completed shall be construed to fix the date after which the pendency of discovery will not be allowed to delay trial or any other proceeding before the court, but shall not be construed to prevent any party

from utilizing any procedures afforded under Rules 26 through 36, so long as trial or any hearing before the court is not thereby delayed.

(e) Supplementation of responses. – A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement ~~his~~ the party's response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement ~~his~~ the party's response with respect to any question directly addressed to (i) the identity and location of persons having knowledge of discoverable matters, and (ii) the identity of each person expected to be called as an expert witness at trial, the subject matter on which ~~he~~ the person is expected to testify, and the substance of ~~his~~ the testimony.

(2) A party is under a duty seasonably to amend a prior response if ~~he~~ the party obtains information upon the basis of which (i) ~~he~~ the party knows that the response was incorrect when made, or (ii) ~~he~~ the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(f) Discovery ~~conference.~~ meeting, discovery conference, discovery plan. – ~~At any time after commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court may do so upon motion by the attorney for any party if the motion includes:~~

~~(1) A statement of the issues as they then appear;~~

~~(2) A proposed plan and schedule of discovery;~~

~~(3) Any limitations proposed to be placed on discovery;~~

~~(4) Any other proposed orders with respect to discovery; and~~

~~(5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Each party and his attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.~~

~~Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.~~

~~Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by Rule 16.~~

(1) No earlier than 40 days after the complaint is filed in an action, any party's attorney or an unrepresented party may request a meeting on the subject of discovery, including the discovery of electronically stored information. If such a request is filed, the parties shall meet in the county in which the action is pending not less than 21 days after the initial request for a meeting is filed and served upon the parties, unless agreed otherwise by the parties or their attorneys and unless an earlier time for the meeting is ordered by the court or agreed by the parties. Even if the parties or their attorneys do not seek to have a discovery meeting, at any time after commencement of an

action the court may direct the parties or their attorneys to appear before it for a discovery conference.

(2) During a discovery meeting held pursuant to subdivision (f)(1) of this rule, the attorneys and any unrepresented parties shall (i) consider the nature and basis of the parties' claims and defenses and the possibilities for promptly settling or resolving the case and (ii) discuss the preparation of a discovery plan as set forth in subdivision (f)(3) of this rule. Attorneys for the parties, and any unrepresented parties, that have appeared in the case are jointly responsible for arranging the meeting, for being prepared to discuss a discovery plan, and for attempting in good faith to agree on a discovery plan. The meeting may be held by telephone, by videoconference, or in person, or a combination thereof, unless the court, on motion, orders the attorneys and the unrepresented parties to attend in person. If a discovery plan is agreed upon, the plan shall be submitted to the court within 14 days after the meeting, and the parties may request a conference with the court regarding the plan. If the parties do not agree upon a discovery plan, they shall submit to the court within 14 days after the meeting a joint report containing those parts of a discovery plan upon which they agree and the position of each of the parties on the parts upon which they disagree. Unless the parties agree otherwise, the attorney for the first plaintiff listed on the complaint shall be responsible for submitting the discovery plan or joint report.

(3) A discovery plan shall contain the following: (i) a statement of the issues as they then appear; (ii) a proposed plan and schedule of discovery, including the discovery of electronically stored information; (iii) with respect to electronically stored information, and if appropriate under the circumstances of the case, a reference to the preservation of such information, the media form, format, or procedures by which such information will be produced, the allocation of the costs of preservation, production, and, if necessary, restoration, of such information, the method for asserting or preserving claims of privilege or of protection of the information as trial-preparation materials if different from that provided in subdivision (b)(7) of this rule, the method for asserting or preserving confidentiality and proprietary status, and any other matters addressed by the parties; (iv) any limitations proposed to be placed on discovery, including, if appropriate under the circumstances of the case, that discovery be conducted in phases or be limited to or focused on particular issues; (v) when discovery should be completed; and (vi) if appropriate under the circumstances of the case, any limitations or conditions pursuant to section (c) of this rule regarding protective orders.

(4) If the parties are unable to agree to a discovery plan at a meeting held pursuant to subdivision (f)(1) of this rule, they shall, upon motion of any party, appear before the court for a discovery conference at which the court shall order the entry of a discovery plan after consideration of the report required to be submitted under subdivision (f)(2) of this rule and the position of the parties. The order may address other matters, including the allocation of discovery costs, as are necessary for the proper management of discovery in the action. An order may be altered or amended as justice may require.

The court may combine the discovery conference with a pretrial conference authorized by Rule 16. A discovery conference in a medical malpractice action shall be governed by subsection (g) of this rule.

~~(f1)~~(g) Medical malpractice discovery conference. – In a medical malpractice action as defined in G.S. 90-21.11, upon the case coming at issue or the filing of a responsive pleading or

motion requiring a determination by the court, the judge shall, within 30 days, direct the attorneys for the parties to appear for a discovery conference. At the conference the court may consider the matters set out in Rule 16 and subdivision (f)(3) of this rule and shall:

(1) Rule on all motions;

(2) Establish an appropriate schedule for designating expert witnesses, consistent with a discovery schedule pursuant to subdivision (3), to be complied with by all parties to the action such that there is a deadline for designating all expert witnesses within an appropriate time for all parties to implement discovery mechanisms with regard to the designated expert witnesses;

(3) Establish by order an appropriate discovery schedule designated so that, unless good cause is shown at the conference for a longer time, and subject to further orders of the court, discovery shall be completed within 150 days after the order is issued; nothing herein shall be construed to prevent any party from utilizing any procedures afforded under Rules 26 through 36, so long as trial or any hearing before the court is not thereby delayed; and

(4) Approve any consent order which may be presented by counsel for the parties relating to ~~parts~~ subdivisions (2) and (3) of this subsection, unless the court finds that the terms of the consent order are unreasonable.

If a party fails to identify an expert witness as ordered, the court shall, upon motion by the moving party, impose an appropriate sanction, which may include dismissal of the action, entry of default against the defendant, or exclusion of the testimony of the expert witness at trial.

~~(g)~~(h) Signing of discovery requests, responses, and objections. – Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in ~~his individual~~ that attorney's name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state ~~his~~ that party's address. The signature of the attorney or party constitutes a certification that ~~he~~ the attorney or party has read the request, response, or objection and that to the best of ~~his~~ the knowledge, information, and belief of that attorney or party formed after a reasonable inquiry it is: (1) consistent with the rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee."

SECTION 3. G.S. 1A-1, Rule 33(c), reads as rewritten:

"(c) Option to produce business records. – Where the answer to an interrogatory may be derived or ascertained from the business ~~records~~ records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and

to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained."

SECTION 4. G.S. 1A-1, Rule 34, reads as rewritten:

"**Rule 34. Production of ~~documents and things and~~ documents, electronically stored information, and things; entry upon land for inspection and other purposes.**

(a) Scope. – Any party may serve on any other party a request (i) to produce and permit the party making the request, or someone acting on ~~his~~ that party's behalf, to inspect and copy, ~~any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy,~~ test, or sample any designated documents, electronically stored information, or tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (ii) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. – The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. In addition to other bases for objection, the response may state an objection to production of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. The response may also state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form, or if no form is specified in the request, the party must state the form or forms it intends to use. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

Unless otherwise stipulated by the parties or ordered by the court, the following procedures apply to producing documents or electronically stored information:

(1) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(2) If a request does not specify a form for producing the electronically stored information, a party must produce it in a reasonably usable form or forms; and

(3) A party need not produce the same electronically stored information in more than one form.

(c) Form of response. – There shall be sufficient space following each request in which the respondent may state the response. The respondent shall: (1) state the response in the space provided, using additional pages if necessary; or (2) restate the request to be followed by the response. An objection to a request shall be made by stating the objection and the reason therefor either in the space following the request or following the restated request.

~~(c)~~(d) Persons not parties. – This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land."

SECTION 5. G.S. 1A-1, Rule 37, reads as rewritten:

"Rule 37. Failure to make discovery; sanctions.

(a) Motion for order compelling discovery. – A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate Court. – An application for an order to a party or a deponent who is not a party may be made to a judge of the court in which the action is pending, or, on matters relating to a deposition where the deposition is being taken in this State, to a judge of the court in the county where the deposition is being taken, as defined by Rule 30(h).

(2) Motion. – If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question shall complete the examination on all other matters before ~~he adjourns~~ the examination is adjourned, in order to apply for an order. If the motion is based upon an objection to production of electronically stored information from sources the objecting party identified as not reasonably accessible because of undue burden or cost, the objecting party has the burden of showing that the basis for the objection exists.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) Evasive or Incomplete Answer. – For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of Expenses of Motion. – If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was

substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to comply with order. –

(1) Sanctions by Court in County Where Deposition Is Taken. – If a deponent fails to be sworn or to answer a question after being directed to do so by a judge of the court in the county in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanctions by Court in Which Action Is Pending. – If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under section (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f) a judge of the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

a. An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

b. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting ~~him~~ the party from introducing designated matters in evidence;

c. An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

d. In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

e. Where a party has failed to comply with an order under Rule 35(a) requiring ~~him~~ the party to produce another for examination, such orders as are listed in subdivisions a, b, and c of this subsection, unless the party failing to comply shows that ~~he~~ the party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Failure to provide electronically stored information. – Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of routine, good-faith operation of an electronic information system.

~~(c)~~(d) Expenses on failure to admit. – If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, ~~he~~ the requesting party may apply to the court for an order requiring the other party to pay to him or her the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (i) the request was held objectionable

pursuant to Rule 36(a), or (ii) the admission sought was of no substantial importance, or (iii) the party failing to admit had reasonable ground to believe that he or she might prevail on the matter, or (iv) there was other good reason for the failure to admit.

~~(d)~~(e) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. – If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (i) to appear before the person who is to take ~~his~~ the deposition, after being served with a proper notice, or (ii) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (iii) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subdivisions a, b, and c of subsection (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this section may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

~~(e),~~ (f) Reserved for future codification purposes.

(g) Failure to participate in the framing of a discovery plan. – If a party or ~~his~~ the party's attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by Rule 26(f), the court may, after opportunity for hearing, require such party or ~~his~~ the party's attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure."

SECTION 6. G.S. 1A-1, Rule 45, reads as rewritten:

"**Rule 45. Subpoena.**

(a) Form; Issuance. –

(1) Every subpoena shall state all of the following:

a. The title of the action, the name of the court in which the action is pending, the number of the civil action, and the name of the party at whose instance the witness is summoned.

b. A command to each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated records, books, papers, documents, electronically stored information, or tangible things in the possession, custody, or control of that person therein specified.

c. The protections of persons subject to subpoenas under subsection (c) of this rule.

d. The requirements for responses to subpoenas under subsection (d) of this rule.

(2) A command to produce ~~evidence~~ records, books, papers, electronically stored information, or tangible things may be joined with a command to appear at trial or hearing or at a deposition, or any subpoena may be issued separately. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(3) A subpoena shall issue from the court in which the action is pending.

(4) The clerk of court in which the action is pending shall issue a subpoena, signed but otherwise blank, to a party requesting it, who shall complete it before service. Any judge of the superior court, judge of the district court,

magistrate, or attorney, as officer of the court, may also issue and sign a subpoena.

(b) Service. –

(1) Manner. – Any subpoena may be served by the sheriff, by the sheriff's deputy, by a coroner, or by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to that person or by registered or certified mail, return receipt requested. Service of a subpoena for the attendance of a witness only may also be made by telephone communication with the person named therein only by a sheriff, the sheriff's designee who is not less than 18 years of age and is not a party, or a coroner.

(2) Service of copy. – A copy of the subpoena served under subdivision ~~(1)~~ (b)(1) of this subsection shall also be served upon each party in the manner prescribed by Rule 5(b). ~~This subdivision~~

(3) Subdivision (b)(2) of this subsection does not apply to subpoenas issued under G.S. 15A-801 or G.S. 15A-802.

(c) Protection of Persons Subject to Subpoena. –

(1) Avoid undue burden or expense. – A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena. The court shall enforce this subdivision and impose upon the party or attorney in violation of this requirement an appropriate sanction that may include compensating the person unduly burdened for lost earnings and for reasonable attorney's fees.

(2) For production of public records or hospital medical records. – Where the subpoena commands any custodian of public records or any custodian of hospital medical records, as defined in G.S. 8-44.1, to appear for the sole purpose of producing certain records in the custodian's custody, the custodian subpoenaed may, in lieu of personal appearance, tender to the court in which the action is pending by registered or certified mail or by personal delivery, on or before the time specified in the subpoena, certified copies of the records requested together with a copy of the subpoena and an affidavit by the custodian testifying that the copies are true and correct copies and that the records were made and kept in the regular course of business, or if no such records are in the custodian's custody, an affidavit to that effect. When the copies of records are personally delivered under this subdivision, a receipt shall be obtained from the person receiving the records. Any original or certified copy of records or an affidavit delivered according to the provisions of this subdivision, unless otherwise objectionable, shall be admissible in any action or proceeding without further certification or authentication. Copies of hospital medical records tendered under this subdivision shall not be open to inspection or copied by any person, except to the parties to the case or proceedings and their attorneys in depositions, until ordered published by the judge at the time of the hearing or trial. Nothing contained herein shall be construed to waive the physician-patient privilege or to require any privileged communication under law to be disclosed.

(3) Written objection to subpoenas. – Subject to subsection (d) of this rule, a person commanded to appear at a deposition or to produce and permit the inspection and copying of ~~records~~ records, books, papers, documents, electronically stored information, or tangible things may, within 10 days

after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the subpoena written objection to the subpoena, setting forth the specific grounds for the objection. The written objection shall comply with the requirements of Rule 11. Each of the following grounds may be sufficient for objecting to a subpoena:

a. The subpoena fails to allow reasonable time for compliance.

b. The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection.

c. The subpoena subjects a person to an undue ~~burden.~~burden or expense.

d. The subpoena is otherwise unreasonable or oppressive.

e. The subpoena is procedurally defective.

(4) Order of court required to override objection. – If objection is made under subdivision (3) of this subsection, the party serving the subpoena shall not be entitled to compel the subpoenaed person's appearance at a deposition or to inspect and copy materials to which an objection has been made except pursuant to an order of the court. If objection is made, the party serving the subpoena may, upon notice to the subpoenaed person, move at any time for an order to compel the subpoenaed person's appearance at the deposition or the production of the materials designated in the subpoena. The motion shall be filed in the court in the county in which the deposition or production of materials is to occur.

(5) Motion to quash or modify subpoena. – A person commanded to appear at a trial, hearing, deposition, or to produce and permit the inspection and copying of records, books, papers, documents, electronically stored information, or other tangible things, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, may file a motion to quash or modify the subpoena. The court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the reasons set forth in subdivision (3) of this subsection. The motion shall be filed in the court in the county in which the trial, hearing, deposition, or production of materials is to occur.

(6) Order to compel; expenses to comply with subpoena. – When a court enters an order compelling a deposition or the production of records, books, papers, documents, electronically stored information, or other tangible things, the order shall protect any person who is not a party or an agent of a party from significant expense resulting from complying with the subpoena. The court may order that the person to whom the subpoena is addressed will be reasonably compensated for the cost of producing the records, books, papers, documents, electronically stored information, or tangible things specified in the subpoena.

(7) Trade secrets; confidential information. – When a subpoena requires disclosure of a trade secret or other confidential research, development, or commercial information, a court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or when the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship, the court may order a person to make an appearance or produce the materials only on specified conditions stated in the order.

(8) Order to quash; expenses. – When a court enters an order quashing or modifying the subpoena, the court may order the party on whose behalf the subpoena is issued to pay all or part of the subpoenaed person's reasonable expenses including attorney's fees.

(d) Duties in Responding to Subpoenas. –

(1) Form of response. – A person responding to a subpoena to produce ~~documents~~ records, books, documents, electronically stored information, or tangible things shall produce them as they are kept in the usual course of business or shall organize and label ~~the documents~~ them to correspond with the categories in the request.

(2) Form of producing electronically stored information not specified. – If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it ordinarily is maintained or in a reasonably useable form or forms.

(3) Electronically stored information in only one form. – The person responding need not produce the same electronically stored information in more than one form.

(4) Inaccessible electronically stored information. – The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, after considering the limitations of Rule 26(b)(2). The court may specify conditions for discovery, including requiring the party that seeks discovery from a nonparty to bear the costs of locating, preserving, collecting, and producing the electronically stored information involved.

~~(2)~~(5) Specificity of objection. – When information subject to a subpoena is withheld on the objection that it is subject to protection as trial preparation materials, or that it is otherwise privileged, the objection shall be made with specificity and shall be supported by a description of the nature of the communications, records, books, papers, documents, electronically stored information, or other tangible things not produced, sufficient for the requesting party to contest the objection.

(d1) Opportunity for Inspection of Subpoenaed Material. – A party or attorney responsible for the issuance and service of a subpoena shall, within five business days after the receipt of material produced in compliance with the subpoena, serve all other parties with notice of receipt of the material produced in compliance with the subpoena and, upon request, shall provide all other parties a reasonable opportunity to copy and inspect such material at the expense of the inspecting party.

(e) Contempt; Expenses to Force Compliance With Subpoena. –

(1) Failure by any person without adequate excuse to obey a subpoena served upon the person may be deemed a contempt of court. Failure by any party without adequate cause to obey a subpoena served upon the party shall also subject the party to the sanctions provided in Rule 37(d).

(2) The court may award costs and attorney's fees to the party who issued a subpoena if the court determines that a person objected to the subpoena or filed a motion to quash or modify the subpoena, and the objection or motion was unreasonable or was made for improper purposes such as unnecessary delay."

SECTION 7. The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all explanatory comments of the drafters of this act, the North Carolina Bar Association Litigation Section E-Discovery Committee, as the Revisor may deem appropriate.

SECTION 8. This act becomes effective October 1, 2011, and shall apply to actions filed on or after that date.

HOUSE BILL 380:
Amend RCP/Electronically Stored Information

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 8, 2011
Introduced by:	Reps. Glazier, T. Moore, Ross, Jordan	**Prepared by:**	Susan Sitze* Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 380 makes changes to the North Carolina Rules of Civil Procedure concerning discovery of electronically stored information.***

BILL ANALYSIS:

Section 1 of the bill amends Rule 16 (Pre-trial procedure; formulating issues) of Article 3 (Pleadings and Motions) the Rules of Civil Procedure, to:

- provide that, if the parties are directed by the court to appear at a pretrial conference, the judge shall issue an order reflecting the action taken at the conference, including any amendments to the pleadings and agreements reached by the parties; and
- provide that the judge may, in the order, limit the issues for trial to those not disposed of by admissions or agreements of counsel.

Section 2 of the bill amends Rule 26 (General provisions regarding discovery) of Article 5 (Depositions and discovery) of the Rules of Civil Procedure, to:

- include electronically stored information within the meaning of the discovery rule.
- provide that the phrase "electronically stored information" includes reasonably accessible metadata that will enable the discovering party to have the ability to access such information as the date sent, date received, author, and recipients. The phrase does not include other metadata unless the parties agree otherwise or the court orders otherwise.
- provide that discovery of electronically stored information is subject to the limitations of this rule and Rule 34(b) (See Section 4 of the bill), and that the court may specify conditions for the discovery, including allocation of discovery costs.
- add language concerning when a party can withhold information by claiming that the information is privileged or subject to protection as trial preparation material; and concerning inadvertent production information subject to a claim of privilege or protection as trial preparation material.
- provide that a party seeking a protective order on the basis that electronically stored information sought is from a source identified as not reasonably accessible because of undue burden or cost has the burden of showing that the basis exists. If the showing is made, the court may nonetheless order discovery if the requesting party shows good cause.
- provide a process for a meeting on the process of discovery, including the discovery of electronically stored information, no earlier than 40 days after the complaint is filed.
- provide that during the discovery meeting, the attorneys shall consider the parties' claims and defenses and the possibilities for promptly settling or resolving the case, discuss the preparation of a discovery plan, if agreed, its submittal to the court, and the scheduling of a conference with the court regarding the plan.

- provide the elements that should be in the discovery plan, including the discovery of electronically stored information.
- provide that if the parties are unable to agree to a discovery plan, they shall, upon motion of any party, appear before the court for a discovery conference at which the court shall order the entry of a discovery plan.
- provide that the court may combine the discovery conference with a pretrial conference authorized by Rule 16 (see Section 1).
- make a conforming change to the malpractice discovery conference provisions.

Section 3 of the bill amends Rule 33 (Interrogatories to parties) of Article 5 (Depositions and Discovery) of the Rules of Civil Procedure, to:

- provide that when a response to an interrogatory specifies business records from which the answer may be derived, the term "business records" includes electronically stored information; and
- provide that such a specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

Section 4 of the bill amends Rule 34 (Production of documents, electronically stored information, etc.) of Article 5 (Depositions and Discovery) of the Rules of Civil Procedure) to:

- specifically includes electronically stored information under this discovery rule.
- provide that a discovery request for electronically stored information may include the form in which it is to be produced.
- provide that a response to a request for electronically stored information may state an objection due to undue burden or cost, or to the requested form for producing electronically stored information. If the responding party objects to the requested form, the party must state the form it intends to use.
- provide procedures that apply to production of electronically stored information.

Section 5 of the bill amends Rule 37 (Failure to make discovery; sanctions) of Article 5 (Depositions and Discovery) of the Rules of Civil Procedure, to:

- provide that if a motion to compel discovery of electronically stored information is based on objection to the production on the basis that the information is not reasonably accessible because of undue burden or cost, the party objecting to production has the burden of showing the basis for the objection.
- provide that a court may not impose sanction for failure to provide electronically stored information that is lost as a result of routine, good-faith operation of an electronic information system.

Section 6 of the bill amends Rule 45 (Subpoena) of Article 6 (Trials) of the Rules of Civil Procedure to conform the provision for subpoenas concerning electronically stored information to the other discovery rule changes made by the bill, as follows:

- amends the subpoena rule to include the phrase "electronically stored information", and provides that a subpoena may specify the form in which electronically stored information is to be produced.
- provides that if a subpoena does not specify the form for producing electronically stored information, the person producing it may do so in a form that it is ordinarily maintained, or in a reasonably usable form.
- provides that electronically stored information need not be produced in more than one form.
- provides that the person responding does not have to provide electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost; that on a motion to compel discovery, the person responding must show the undue burden. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, and specify conditions for discovery.

Section 7 of the bill provides that the Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all explanatory comments of the drafters of this act, the North Carolina Bar Association Litigation Section E-Discovery Committee, as the Revisor may deem appropriate.

EFFECTIVE DATE: This act becomes effective October 1, 2011, and shall apply to all cases filed on or after that date.

BACKGROUND: House Bill 380 is the recommendation of the North Carolina Bar Association Litigation Section E-Discovery Committee.

**This summary was originally written by Giles S. Perry, Staff Attorney*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 408
Committee Substitute Favorable 5/12/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H408-CSSA-61 [v.1]

6/8/2011 4:00:20 PM

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) ~~Make~~ The State to make available to the defendant the complete files of all law enforcement ~~and prosecutorial agencies~~agencies, investigatory agencies, and 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, but not limited to, 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.

~~c.~~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.

~~d.~~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) On a timely basis,~~Upon request by the State, a~~ law enforcement ~~or prosecutorial agency~~ and investigatory agencies 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). ~~All public and private entities~~Investigatory agencies that obtain ~~such~~ information and materials ~~shall ensure that all material~~ listed in subdivision (1) of subsection (a) of this section shall ensure that such information and materials are~~is~~ fully disclosed to the ~~referring prosecutorial agency~~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 ~~State~~ 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 expends 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:	Senate Judiciary I	**Date:**	June 8, 2011
Introduced by:	Reps. T. Moore, Spear, Shepard	**Prepared by:**	Susan Sitze*
Analysis of:	PCS to Second Edition H408-CSSA-61		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. 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.

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-SMSA-75(CSSA-61) v1

**Janice Paul, Staff Attorney, contributed substantially to this summary.*

HOUSE BILL 642
Committee Substitute Favorable 4/14/11
Committee Substitute #2 Favorable 5/31/11
Fourth Edition Engrossed 6/2/11

Short Title: Justice Reinvestment Act. (Public)

Sponsors:

Referred to:

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT CERTAIN RECOMMENDATIONS OF THE JUSTICE REINVESTMENT PROJECT AND TO PROVIDE THAT THE ACT SHALL BE ENTITLED "THE JUSTICE REINVESTMENT ACT OF 2011."

The General Assembly of North Carolina enacts:

PART I. STRENGTHEN PROBATION SUPERVISION

SECTION 1.(a) G.S. 15A-1340.11(2) reads as rewritten:

"(2) Community punishment. – A sentence in a criminal case that does not include an active punishment or assignment to a drug treatment court. ~~punishment, an intermediate punishment, or any of the conditions of probation listed in subdivision (6) of this section.~~It may include any one or more of the conditions set forth in G.S. 15A-1343(a1)."

SECTION 1.(b) G.S. 15A-1340.11(6) reads as rewritten:

"(6) Intermediate punishment. – A sentence in a criminal case that places an offender on supervised probation. ~~probation and includes at least one~~ It may include drug treatment court, in addition to one or more of the ~~following conditions:~~conditions set forth in G.S. 15A-1343(a1).

~~a. Special probation as defined in G.S. 15A-1351(a).~~
~~b. Assignment to a residential program.~~
~~c. House arrest with electronic monitoring.~~
~~d. Intensive supervision.~~
~~e. Assignment to a day reporting center.~~
~~f. Assignment to a drug treatment court program.~~"

SECTION 1.(c) G.S. 15A-1343 is amended by adding a new subsection to read:

"(a1) Community and Intermediate Probation Conditions. – In addition to any conditions a court may be authorized to impose pursuant to G.S. 15A-1343(b1), the court may include any one or more of the following conditions as part of a community or intermediate punishment:

(1) House arrest with electronic monitoring.
(2) Special probation as defined in G.S. 15A-1351(a).
(3) Perform community service.
(4) Submission to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month

confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods.

(5) Substance abuse assessment, monitoring, or treatment.

(6) Participation in an educational or vocational skills development program, including an evidence-based program.

(7) Submission to satellite-based monitoring, pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.40(a)(2)."

SECTION 1.(d) G.S. 15A-1343.2(e) reads as rewritten:

"(e) Delegation to Probation Officer in Community Punishment. – Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Community Corrections in the Department of Correction may require an offender sentenced to community punishment ~~to:~~to do any of the following:

(1) Perform up to 20 hours of community service, and pay the fee prescribed by law for this ~~supervision;~~supervision.

(2) Report to the offender's probation officer on a frequency to be determined by the ~~officer; or~~officer.

(3) Submit to substance abuse assessment, monitoring or treatment.

(4) Submit to house arrest with electronic monitoring.

(5) Submit to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods.

(6) Submit to a curfew which requires the offender to remain in a specified place for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored electronically.

(7) Participate in an educational or vocational skills development program, including an evidence-based program.

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

The probation officer may exercise authority delegated to him or her by the court pursuant to subsection (e) of this section after administrative review and approval by a Chief Probation Officer. The offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. However, the offender shall have no right of review if he or she has signed a written waiver of rights as required by this subsection. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court or the offender is determined to be high risk based on the results of the risk assessment in G.S. 15A-1343.2, except that the condition at subdivision (5) of this subsection may not be imposed unless the Division determines that the offender failed to comply with one or more of the conditions imposed by the court. Nothing in this section shall be construed to limit the availability of the procedures authorized under G.S. 15A-1345.

~~If the probation officer exercises authority delegated to him or her by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court.~~

The Department shall adopt guidelines and procedures to implement the requirements of this section, which shall include a supervisor's approval prior to exercise of the delegation of authority authorized by this section. Prior to imposing confinement pursuant to subdivision (5) of this subsection, the probationer must first be presented with a violation report, with the alleged violations noted and advised of the right (i) to a hearing before the court on the alleged violation, with the right to present relevant oral and written evidence; (ii) to have counsel at the hearing, and that one will be appointed if the probationer is indigent; (iii) to request witnesses who have relevant information concerning the alleged violations; and (iv) to examine any witnesses or evidence. Upon the signing of a waiver of rights by the probationer, with both the probation officer and a supervisor signing as witnesses, the probationer may be confined for the period designated on the violation report."

SECTION 1.(e) G.S. 15A-1343.2(f) reads as rewritten:

"(f) Delegation to Probation Officer in Intermediate Punishments. – Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Community Corrections in the Department of Correction may require an offender sentenced to intermediate punishment ~~to:~~to do any of the following:

(1) Perform up to 50 hours of community service, and pay the fee prescribed by law for this ~~supervision;~~supervision.

(2) Submit to a curfew which requires the offender to remain in a specified place for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored ~~electronically;~~ electronically.

(3) Submit to substance abuse assessment, monitoring or ~~treatment;~~ treatment.

(4) Participate in an educational or vocational skills development ~~program.~~program, including an evidence-based program.

(5) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.40(a)(2).

(6) Submit to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods.

(7) Submit to house arrest with electronic monitoring.

(8) Report to the offender's probation officer on a frequency to be determined by the officer.

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

The probation officer may exercise authority delegated to him or her by the court pursuant to subsection (f) of this section after administrative review and approval by a Chief Probation Officer. The offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. However, the offender shall have no right of review if he or she has signed a written waiver of rights as required by this subsection. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court or the offender is determined to be high risk based on the results of the risk assessment in G.S. 15A-1343.2, except that the condition at subdivision (6) of this subsection may not be imposed unless the Division determines that the offender failed to comply with one or more of the conditions imposed by the court. Nothing in this section shall be construed to limit the availability of the procedures authorized under G.S. 15A-1345.

~~If the probation officer exercises authority delegated to him or her by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court.~~

The Department shall adopt guidelines and procedures to implement the requirements of this section, which shall include a supervisor's approval prior to exercise of the delegation of authority authorized by this section. Prior to imposing confinement pursuant to subdivision (6) of this subsection, the probationer must first be presented with a violation report, with the alleged violations noted and advised of the right (i) to a hearing before the court on the alleged violation, with the right to present relevant oral and written evidence; (ii) to have counsel at the hearing, and that one will be appointed if the probationer is indigent; (iii) to request witnesses who have relevant information concerning the alleged violations; and (iv) to examine any witnesses or evidence. Upon the signing of a waiver of rights by the probationer, with both the probation officer and a supervisor signing as witnesses, the probationer may be confined for the period designated on the violation report."

SECTION 1.(f) G.S. 15A-1343.2 is amended by adding a new subsection to read:

"(b1) Departmental Risk Assessment by Validated Instrument Required. – As part of the probation program developed by the Department of Correction pursuant to subsection (b) of this section, the Department of Correction shall use a validated instrument to assess each probationer for risk of reoffending and shall place a probationer in a supervision level based on the probationer's risk of reoffending and criminogenic needs."

SECTION 1.(g) G.S. 15A-1343(b1)(3b) is repealed.

SECTION 1.(h) G.S. 15A-1340.11(3) is repealed.

SECTION 1.(i) G.S. 15A-1340.11(5) is repealed.

SECTION 1.(j) G.S. 15A-1340.11(8) is repealed.

SECTION 1.(k) G.S. 15A-1343.2(c) reads as rewritten:

"(c) Probation Caseload Goals. – It is the goal of the General Assembly that, subject to the availability of funds, caseloads for probation officers supervising persons who are determined to be high or moderate risk of rearrest as determined by the Department's validated risk assessment should not exceed an average of 60 offenders per officer.~~sentenced to community punishment should not exceed an average of 90 offenders per officer, and caseloads for offenders sentenced to intermediate punishments should not exceed an average of 60 offenders per officer by July 1, 1998.~~"

SECTION 1.(l) This section becomes effective December 1, 2011, and applies to persons placed on probation based on offenses which occur on or after December 1, 2011; however, this section and the provisions of this act requiring the Department of Correction to adopt guidelines and procedures are effective when this act becomes law.

PART II. POST-RELEASE SUPERVISION CHANGES

SECTION 2.(a) G.S. 15A-1368.1 reads as rewritten:

"§ 15A-1368.1. Applicability of Article 84A.

This Article applies to all felons ~~in Class B1 through Class E~~ sentenced to an active punishment under Article 81B of this Chapter, but does not apply to felons in Class A and Class B1 sentenced to life imprisonment without parole. Prisoners subject to Articles 85 and 85A of this Chapter are excluded from this Article's coverage."

SECTION 2.(b) G.S. 15A-1368.2 reads as rewritten:

"§ 15A-1368.2. Post-release supervision eligibility and procedure.

(a) A prisoner to whom this Article applies shall be released from prison for post-release supervision on the date equivalent to his maximum imposed prison term less ~~nine~~

~~months,~~ 12 months in the case of Class B1 through E felons and less nine months in the case of Class F through I felons, less any earned time awarded by the Department of Correction or the custodian of a local confinement facility under G.S. 15A-1340.13(d). If a prisoner has not been awarded any earned time, the prisoner shall be released for post-release supervision on the date equivalent to his maximum prison term less nine months.

(b) A prisoner shall not refuse post-release supervision.

(c) A supervisee's period of post-release supervision shall be for a period of ~~nine months,~~ 12 months in the case of Class B1 through E felons and nine months in the case of Class F through I felons, unless the offense is an offense for which registration is required pursuant to Article 27A of Chapter 14 of the General Statutes. For offenses subject to the registration requirement of Article 27A of Chapter 14 of the General Statutes, the period of post-release supervision is five years. The conditions of post-release supervision are as authorized in G.S. 15A-1368.5.

...."

SECTION 2.(c) G.S. 15A-1368.4(e) is amended by adding a new subdivision to read:

"(7a) Not to abscond, by willfully avoiding supervision or by willfully making the supervisee's whereabouts unknown to the supervising probation officer."

SECTION 2.(d) G.S. 15A-1368.3(c) reads as rewritten:

"(c) Effect of Violation. – If the supervisee violates a condition, described in G.S. 15A-1368.4, at any time before the termination of the supervision period, the Commission may continue the supervisee on the existing supervision, with or without modifying the conditions, or if continuation or modification is not appropriate, may revoke post-release supervision as provided in G.S. 15A-1368.6 and reimprison the supervisee for a term consistent with the following requirements:

(1) ~~The supervisee~~Supervisees who were convicted of an offense for which registration is required under Article 27A of Chapter 14 of the General Statutes and supervisees whose supervision is revoked for a violation of the required controlling condition under G.S. 15A-1368.4(b) or for absconding in violation of G.S. 15A-1368.4(e)(7a) will be returned to prison up to the time remaining on ~~his~~their maximum imposed ~~term.~~terms. All other supervisees will be returned to prison for three months and may be returned for three months on each of two subsequent violations, after which supervisees who were Class B1 through E felons may be returned to prison up to the time remaining on their maximum imposed terms.

(2) The supervisee shall not receive any credit for days on post-release supervision against the maximum term of imprisonment imposed by the court under G.S. 15A-1340.13.

(3) Pursuant to Article 19A of Chapter 15, the Department of Correction shall award a prisoner credit against any term of reimprisonment for all time spent in custody as a result of revocation proceedings under G.S. 15A-1368.6.

(4) The prisoner is eligible to receive earned time credit against the maximum prison term as provided in G.S. 15A-1340.13(d) for time served in prison after the revocation."

SECTION 2.(e) G.S. 15A-1340.17(d) reads as rewritten:

"(d) Maximum Sentences Specified for Class F through Class I Felonies. – Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class F through Class I felonies. The first figure in each cell in the table is the minimum term and the second is the maximum term.

~~3-4~~	~~4-5~~	~~5-6~~	~~6-8~~	~~7-9~~	~~8-10~~	~~9-11~~	~~10-12~~
~~11-14~~	~~12-15~~	~~13-16~~	~~14-17~~	~~15-18~~	~~16-20~~	~~17-21~~	~~18-22~~
~~19-23~~	~~20-24~~	~~21-26~~	~~22-27~~	~~23-28~~	~~24-29~~	~~25-30~~	~~26-32~~
~~27-33~~	~~28-34~~	~~29-35~~	~~30-36~~	~~31-38~~	~~32-39~~	~~33-40~~	~~34-41~~
~~35-42~~	~~36-44~~	~~37-45~~	~~38-46~~	~~39-47~~	~~40-48~~	~~41-50~~	~~42-51~~
~~43-52~~	~~44-53~~	~~45-54~~	~~46-56~~	~~47-57~~	~~48-58~~	~~49-59~~	
3-13	4-14	5-15	6-17	7-18	8-19	9-20	10-21
11-23	12-24	13-25	14-26	15-27	16-29	17-30	18-31
19-32	20-33	21-35	22-36	23-37	24-38	25-39	26-41
27-42	28-43	29-44	30-45	31-47	32-48	33-49	34-50
35-51	36-53	37-54	38-55	39-56	40-57	41-59	42-60
43-61	44-62	45-63	46-65	47-66	48-67	49-68".	

SECTION 2.(f) G.S. 15A-1340.17(e) reads as rewritten:

"(e) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum Terms up to 339 Months. – Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class B1 through Class E felonies. The first figure in each cell of the table is the minimum term and the second is the maximum term.

~~15-27~~	~~16-29~~	~~17-30~~	~~18-31~~	~~19-32~~	~~20-33~~	~~21-35~~	~~22-36~~
~~23-37~~	~~24-38~~	~~25-39~~	~~26-41~~	~~27-42~~	~~28-43~~	~~29-44~~	~~30-45~~
~~31-47~~	~~32-48~~	~~33-49~~	~~34-50~~	~~35-51~~	~~36-53~~	~~37-54~~	~~38-55~~
~~39-56~~	~~40-57~~	~~41-59~~	~~42-60~~	~~43-61~~	~~44-62~~	~~45-63~~	~~46-65~~
~~47-66~~	~~48-67~~	~~49-68~~	~~50-69~~	~~51-71~~	~~52-72~~	~~53-73~~	~~54-74~~
~~55-75~~	~~56-77~~	~~57-78~~	~~58-79~~	~~59-80~~	~~60-81~~	~~61-83~~	~~62-84~~
~~63-85~~	~~64-86~~	~~65-87~~	~~66-89~~	~~67-90~~	~~68-91~~	~~69-92~~	~~70-93~~
~~71-95~~	~~72-96~~	~~73-97~~	~~74-98~~	~~75-99~~	~~76-101~~	~~77-102~~	~~78-103~~
~~79-104~~	~~80-105~~	~~81-107~~	~~82-108~~	~~83-109~~	~~84-110~~	~~85-111~~	~~86-113~~
~~87-114~~	~~88-115~~	~~89-116~~	~~90-117~~	~~91-119~~	~~92-120~~	~~93-121~~	~~94-122~~
~~95-123~~	~~96-125~~	~~97-126~~	~~98-127~~	~~99-128~~	~~100-129~~	~~101-131~~	~~102-132~~
~~103-133~~	~~104-134~~	~~105-135~~	~~106-137~~	~~107-138~~	~~108-139~~	~~109-140~~	~~110-141~~
~~111-143~~	~~112-144~~	~~113-145~~	~~114-146~~	~~115-147~~	~~116-149~~	~~117-150~~	~~118-151~~
~~119-152~~	~~120-153~~	~~121-155~~	~~122-156~~	~~123-157~~	~~124-158~~	~~125-159~~	~~126-161~~
~~127-162~~	~~128-163~~	~~129-164~~	~~130-165~~	~~131-167~~	~~132-168~~	~~133-169~~	~~134-170~~
~~135-171~~	~~136-173~~	~~137-174~~	~~138-175~~	~~139-176~~	~~140-177~~	~~141-179~~	~~142-180~~
~~143-181~~	~~144-182~~	~~145-183~~	~~146-185~~	~~147-186~~	~~148-187~~	~~149-188~~	~~150-189~~
~~151-191~~	~~152-192~~	~~153-193~~	~~154-194~~	~~155-195~~	~~156-197~~	~~157-198~~	~~158-199~~
~~159-200~~	~~160-201~~	~~161-203~~	~~162-204~~	~~163-205~~	~~164-206~~	~~165-207~~	~~166-209~~
~~167-210~~	~~168-211~~	~~169-212~~	~~170-213~~	~~171-215~~	~~172-216~~	~~173-217~~	~~174-218~~
~~175-219~~	~~176-221~~	~~177-222~~	~~178-223~~	~~179-224~~	~~180-225~~	~~181-227~~	~~182-228~~
~~183-229~~	~~184-230~~	~~185-231~~	~~186-233~~	~~187-234~~	~~188-235~~	~~189-236~~	~~190-237~~
~~191-239~~	~~192-240~~	~~193-241~~	~~194-242~~	~~195-243~~	~~196-245~~	~~197-246~~	~~198-247~~
~~199-248~~	~~200-249~~	~~201-251~~	~~202-252~~	~~203-253~~	~~204-254~~	~~205-255~~	~~206-257~~
~~207-258~~	~~208-259~~	~~209-260~~	~~210-261~~	~~211-263~~	~~212-264~~	~~213-265~~	~~214-266~~
~~215-267~~	~~216-269~~	~~217-270~~	~~218-271~~	~~219-272~~	~~220-273~~	~~221-275~~	~~222-276~~
~~223-277~~	~~224-278~~	~~225-279~~	~~226-281~~	~~227-282~~	~~228-283~~	~~229-284~~	~~230-285~~
~~231-287~~	~~232-288~~	~~233-289~~	~~234-290~~	~~235-291~~	~~236-293~~	~~237-294~~	~~238-295~~
~~239-296~~	~~240-297~~	~~241-299~~	~~242-300~~	~~243-301~~	~~244-302~~	~~245-303~~	~~246-305~~
~~247-306~~	~~248-307~~	~~249-308~~	~~250-309~~	~~251-311~~	~~252-312~~	~~253-313~~	~~254-314~~
~~255-315~~	~~256-317~~	~~257-318~~	~~258-319~~	~~259-320~~	~~260-321~~	~~261-323~~	~~262-324~~

~~263-325~~ ~~264-326~~ ~~265-327~~ ~~266-329~~ ~~267-330~~ ~~268-331~~ ~~269-332~~ ~~270-333~~
~~271-335~~ ~~272-336~~ ~~273-337~~ ~~274-338~~ ~~275-339~~ ~~276-341~~ ~~277-342~~ ~~278-343~~
~~279-344~~ ~~280-345~~ ~~281-347~~ ~~282-348~~ ~~283-349~~ ~~284-350~~ ~~285-351~~ ~~286-353~~
~~287-354~~ ~~288-355~~ ~~289-356~~ ~~290-357~~ ~~291-359~~ ~~292-360~~ ~~293-361~~ ~~294-362~~
~~295-363~~ ~~296-365~~ ~~297-366~~ ~~298-367~~ ~~299-368~~ ~~300-369~~ ~~301-371~~ ~~302-372~~
~~303-373~~ ~~304-374~~ ~~305-375~~ ~~306-377~~ ~~307-378~~ ~~308-379~~ ~~309-380~~ ~~310-381~~
~~311-383~~ ~~312-384~~ ~~313-385~~ ~~314-386~~ ~~315-387~~ ~~316-389~~ ~~317-390~~ ~~318-391~~
~~319-392~~ ~~320-393~~ ~~321-395~~ ~~322-396~~ ~~323-397~~ ~~324-398~~ ~~325-399~~ ~~326-401~~
~~327-402~~ ~~328-403~~ ~~329-404~~ ~~330-405~~ ~~331-407~~ ~~332-408~~ ~~333-409~~ ~~334-410~~
~~335-411~~ ~~336-413~~ ~~337-414~~ ~~338-415~~ ~~339-416~~

15-30 16-32 17-33 18-34 19-35 20-36 21-38 22-39
23-40 24-41 25-42 26-44 27-45 28-46 29-47 30-48
31-50 32-51 33-52 34-53 35-54 36-56 37-57 38-58
39-59 40-60 41-62 42-63 43-64 44-65 45-66 46-68
47-69 48-70 49-71 50-72 51-74 52-75 53-76 54-77
55-78 56-80 57-81 58-82 59-83 60-84 61-86 62-87
63-88 64-89 65-90 66-91 67-93 68-94 69-95 70-96
71-98 72-99 73-100 74-101 75-102 76-104 77-105 78-106
79-107 80-108 81-110 82-111 83-112 84-113 85-114 86-115
87-117 88-118 89-119 90-120 91-122 92-123 93-124 94-125
95-126 96-128 97-129 98-130 99-131 100-132 101-134 102-135
103-136 104-137 105-138 106-140 107-141 108-142 109-143 110-144
111-146 112-147 113-148 114-149 115-150 116-152 117-153 118-154
119-155 120-156 121-158 122-159 123-160 124-161 125-162 126-164
127-165 128-166 129-167 130-168 131-170 132-171 133-172 134-173
135-174 136-176 137-177 138-178 139-179 140-180 141-182 142-183
143-184 144-185 145-186 146-188 147-189 148-190 149-191 150-192
151-194 152-195 153-196 154-197 155-198 156-200 157-201 158-202
159-203 160-204 161-206 162-207 163-208 164-209 165-210 166-212
167-213 168-214 169-215 170-216 171-218 172-219 173-220 174-221
175-222 176-224 177-225 178-226 179-227 180-228 181-230 182-231
183-232 184-233 185-234 186-236 187-237 188-238 189-239 190-240
191-242 192-243 193-244 194-245 195-246 196-248 197-249 198-250
199-251 200-252 201-254 202-255 203-256 204-257 205-258 206-260
207-261 208-262 209-263 210-264 211-266 212-267 213-268 214-269
215-270 216-271 217-273 218-274 219-275 220-276 221-278 222-279
223-280 224-281 225-282 226-284 227-285 228-286 229-287 230-288
231-290 232-291 233-292 234-293 235-294 236-296 237-297 238-298
239-299 240-300 241-302 242-303 243-304 244-305 245-306 246-308
247-309 248-310 249-311 250-312 251-314 252-315 253-316 254-317
255-318 256-320 257-321 258-322 259-323 260-324 261-326 262-327
263-328 264-329 265-330 266-332 267-333 268-334 269-335 270-336
271-338 272-339 273-340 274-341 275-342 276-344 277-345 278-346
279-347 280-348 281-350 282-351 283-352 284-353 285-354 286-356
287-357 288-358 289-359 290-360 291-362 292-363 293-364 294-365
295-366 296-368 297-369 298-370 299-371 300-372 301-374 302-375
303-376 304-377 305-378 306-380 307-381 308-382 309-383 310-384
311-386 312-387 313-388 314-389 315-390 316-392 317-393 318-394
319-395 320-396 321-398 322-399 323-400 324-401 325-402 326-404
327-405 328-408 329-407 330-408 331-410 332-411 333-412 334-413
335-414 336-416 337-417 338-418 339-419".

SECTION 2.(g) G.S. 15A-1340.17(e1) reads as rewritten:

"(e1) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum Terms of 340 Months or More. – Unless provided otherwise in a statute establishing a punishment for a specific crime, when the minimum sentence is 340 months or more, the corresponding maximum term of imprisonment shall be equal to the sum of the minimum term of imprisonment and twenty percent (20%) of the minimum term of imprisonment, rounded to the next highest month, plus ~~nine~~ 12 additional months."

SECTION 2.(h) This section becomes effective December 1, 2011, and applies to offenses committed on or after that date.

PART III. STATUS OFFENSE OF HABITUAL BREAKING AND ENTERING

SECTION 3.(a) Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 2D.

"Habitual Breaking and Entering Status Offense.

"**§ 14-7.25. Definitions.**

The following definitions apply in this Article:

(1) "Breaking and entering." – The term means any of the following felony offenses:

a. First degree burglary (G.S. 14-51).

b. Second degree burglary (G.S. 14-51).

c. Breaking out of dwelling house burglary (G.S. 14-53).

d. Breaking or entering buildings generally (G.S. 14-54(a)).

e. Breaking or entering a building that is a place of religious worship (G.S. 14-54.1).

f. Any repealed or superseded offense substantially equivalent to any of the offenses in sub-subdivision a., b., c., d., or e. of this subdivision.

g. Any offense committed in another jurisdiction substantially similar to any of the offenses in sub-subdivision a., b., c., d., or e. of this subdivision.

(2) "Convicted." – The person has been adjudged guilty of or has entered a plea of guilty or no contest to the offense of breaking and entering.

(3) "Status offender." – A person who is a habitual breaking and entering status offender as described in G.S. 14-7.26.

"**§ 14-7.26. Habitual breaking and entering status offender.**

Any person who has been convicted of or pled guilty to one or more prior felony offenses of breaking and entering in any federal court or state court in the United States, or combination thereof, is guilty of the status offense of habitual breaking and entering and may be charged with that status offense pursuant to this Article.

This Article does not apply to a second felony offense of breaking and entering unless it is committed after the conviction of the first felony offense of breaking and entering. For purposes of this Article, felony offenses of breaking and entering committed before the person is 18 years of age shall not constitute more than one felony of breaking and entering. Any felony to which a pardon has been extended shall not, for the purposes of this Article, constitute a felony offense of breaking and entering.

"**§ 14-7.27. Punishment.**

When any person is charged with a felony offense of breaking and entering and is also charged with being a status offender as defined in G.S. 14-7.26, the person must, upon conviction, be sentenced and punished as a status offender as provided by this Article.

"**§ 14-7.28. Charge of habitual breaking and entering status offender.**

(a) The district attorney, in his or her discretion, may charge a person with the status offense of habitual breaking and entering pursuant to this Article. To sustain a conviction of a person as a status offender, the person must be charged separately for the felony offense of breaking and entering and for the habitual breaking and entering status offense. The indictment charging the defendant as a status offender shall be separate from the indictment charging the person with the principal felony offense of breaking and entering.

(b) An indictment that charges a person with being a status offender must set forth the date that the prior felony offense of breaking and entering was committed, the name of the state or other sovereign against whom the felony offense of breaking and entering was committed, the dates that the plea of guilty was entered into or conviction returned in the felony offense of breaking and entering, and the identity of the court in which the plea or conviction took place. No defendant charged with being a status offender in a bill of indictment shall be required to go to trial on the charge within 20 days of the finding of a true bill by the grand jury; provided, the defendant may waive this 20-day period.

"**§ 14-7.29. Evidence of prior convictions of breaking and entering.**

In all cases in which a person is charged under the provisions of this Article with being a status offender, the record of prior conviction of the felony offense of breaking and entering shall be admissible in evidence, but only for the purpose of proving that the person has been convicted of a former felony offense of breaking and entering. A prior conviction may be proved by stipulation of the parties or by the original or a certified copy of the court record of the prior conviction. The original or certified copy of the court record, bearing the same name as that by which the defendant is charged, shall be prima facie evidence that the defendant named therein is the same as the defendant before the court and shall be prima facie evidence of the facts set out therein.

"**§ 14-7.30. Verdict and judgment.**

(a) When an indictment charges a person with a felony offense of breaking and entering as provided by this Article and an indictment also charges that the person is a status offender, the defendant shall be tried for the principal offense of breaking and entering as provided by law. The indictment that the person is a status offender shall not be revealed to the jury unless the jury shall find that the defendant is guilty of the principal felony offense of breaking and entering with which the defendant is charged.

(b) If the jury finds the defendant guilty of the felony offense of breaking and entering, the bill of indictment charging the defendant as a status offender may be presented to the same jury. Except that the same jury may be used, the proceedings shall be as if the issue of status offender were a principal charge.

(c) If the jury finds that the defendant is a status offender, the trial judge shall enter judgment according to the provisions of this Article. If the jury finds that the defendant is not a status offender, the trial judge shall pronounce judgment on the principal felony offense of breaking and entering as provided by law.

"**§ 14-7.31. Sentencing of status offenders.**

(a) When a status offender as defined in this Article commits a felony offense of breaking and entering under the laws of the State of North Carolina, the status offender must, upon conviction or plea of guilty under indictment as provided in this Article, be sentenced as a Class E felon.

(b) In determining the prior record level, any conviction used to establish a person's status as a status offender shall not be used. Sentences imposed under this Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section.

(c) A conviction as a status offender under this Article shall not constitute commission of a felony for the purpose of either Article 2A or Article 2B of Chapter 14 of the General Statutes."

SECTION 3.(b) G.S. 14-7.1 reads as rewritten:

"**§ 14-7.1. Persons defined as habitual felons.**

Any person who has been convicted of or pled guilty to three felony offenses in any federal court or state court in the United States or combination thereof is declared to be an habitual ~~felon.~~ felon and may be charged as a status offender pursuant to this Article. For the purpose of this Article, a felony offense is defined as an offense which is a felony under the laws of the State or other sovereign wherein a plea of guilty was entered or a conviction was returned regardless of the sentence actually imposed. Provided, however, that federal offenses relating to the manufacture, possession, sale and kindred offenses involving intoxicating liquors shall not be considered felonies for the purposes of this Article. For the purposes of this Article, felonies committed before a person attains the age of 18 years shall not constitute more than one felony. The commission of a second felony shall not fall within the purview of this Article unless it is committed after the conviction of or plea of guilty to the first felony. The commission of a third felony shall not fall within the purview of this Article unless it is committed after the conviction of or plea of guilty to the second felony. Pleas of guilty to or convictions of felony offenses prior to July 6, 1967, shall not be felony offenses within the meaning of this Article. Any felony offense to which a pardon has been extended shall not for the purpose of this Article constitute a felony. The burden of proving such pardon shall rest with the defendant and the State shall not be required to disprove a pardon."

SECTION 3.(c) G.S. 14-7.3 reads as rewritten:

"**§ 14-7.3. Charge of habitual felon.**

The district attorney, in his or her discretion, may charge a person as an habitual felon pursuant to this Article. An indictment which charges a person who is an habitual felon within the meaning of G.S. 14-7.1 with the commission of any felony under the laws of the State of North Carolina must, in order to sustain a conviction of habitual felon, also charge that said person is an habitual felon. The indictment charging the defendant as an habitual felon shall be separate from the indictment charging him with the principal felony. An indictment which charges a person with being an habitual felon must set forth the date that prior felony offenses were committed, the name of the state or other sovereign against whom said felony offenses were committed, the dates that pleas of guilty were entered to or convictions returned in said felony offenses, and the identity of the court wherein said pleas or convictions took place. No defendant charged with being an habitual felon in a bill of indictment shall be required to go to trial on said charge within 20 days of the finding of a true bill by the grand jury; provided, the defendant may waive this 20-day period."

SECTION 3.(d) G.S. 14-7.6 reads as rewritten:

"**§ 14-7.6. Sentencing of habitual felons.**

When an habitual felon as defined in this Article commits any felony under the laws of the State of North Carolina, the felon must, upon conviction or plea of guilty under indictment as provided in this Article (except where the felon has been sentenced as a Class A, B1, or B2 felon) be sentenced ~~as a Class C felon.~~ at a felony class level that is four classes higher than the principal felony for which the person was convicted; but under no circumstances shall an habitual felon be sentenced at a level higher than a Class C felony. In determining the prior record level, convictions used to establish a person's status as an habitual felon shall not be used. Sentences imposed under this Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section."

SECTION 3.(e) This section becomes effective December 1, 2011, and applies to any offense that occurs on or after that date and that is the principal felony offense for a charge of either the status offenses of habitual breaking and entering or habitual felon. 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.

PART IV. LIMIT TIME/CERTAIN VIOLATIONS OF PROBATION

SECTION 4.(a) G.S. 15A-1343(b) is amended by adding a new subdivision to read:

"(3a) Not to abscond, by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer."

SECTION 4.(b) G.S. 15A-1344(a) reads as rewritten:

"(a) Authority to Alter or Revoke. – Except as provided in subsection (a1) or (b), probation may be reduced, terminated, continued, extended, modified, or revoked by any judge entitled to sit in the court which imposed probation and who is resident or presiding in the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, where the sentence of probation was imposed, where the probationer violates probation, or where the probationer resides. Upon a finding that an offender sentenced to community punishment under Article 81B has violated one or more conditions of probation, the court's authority to modify the probation judgment includes the authority to require the offender to comply with conditions of probation that would otherwise make the sentence an intermediate punishment. The court may only revoke probation for a violation of a condition of probation under G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a), except as provided in G.S. 15A-1344(d2). Imprisonment may be imposed pursuant to G.S. 15A-1344(d2) for a violation of a requirement other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a). The district attorney of the prosecutorial district as defined in G.S. 7A-60 in which probation was imposed must be given reasonable notice of any hearing to affect probation substantially."

SECTION 4.(c) G.S. 15A-1344 is amended by adding a new subsection to read:

"(d2) Confinement in Response to Violation. – When a defendant has violated a condition of probation other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a), the court may impose a 90-day period of confinement, but may not revoke probation unless the defendant has previously received a total of two 90-day periods of confinement under this subsection. A defendant may receive only two 90-day periods of confinement under this subsection. If the time remaining on the defendant's maximum imposed sentence is less than 90 days, then the term of confinement is for the remaining period of the sentence. Confinement under this section shall be credited pursuant to G.S. 15-196.1."

SECTION 4.(d) This section is effective December 1, 2011, and applies to probation violations occurring on or after that date.

PART V. DIVERSION PROGRAM/FELONY DRUG POSSESSION

SECTION 5.(a) G.S. 90-96 reads as rewritten:

"**§ 90-96. Conditional discharge for first offense.**

(a) Whenever any person who has not previously been convicted of (i) any felony offense under any state or federal laws; (ii) any offense under this ~~Article~~ Article; or (iii) an offense under any statute of the United States or any state relating to those substances included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of Chapter ~~90~~90 of the General Statutes pleads guilty to or is found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules ~~II~~ I through VI of this Article or by possessing drug paraphernalia as prohibited by G.S. 90 113.22, or (ii) a felony under G.S. 90-95(a)(3), ~~G.S. 90-95(a)(3) by possessing less than one gram of cocaine,~~ the court ~~may,~~ shall, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A 1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the

court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Health and Human ~~Services.~~ Services or in the Treatment for Effective Community Supervision Program under Article 6B of Chapter 143B of the General Statutes. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under this Article. Discharge and dismissal under this section or G.S. 90 113.14 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge and dismiss under this section the court shall make a finding that the defendant has no record of previous convictions ~~under the "North Carolina Controlled Substances Act", Article 5, Chapter 90, the "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.~~as provided in this subsection.

(a1) Upon the first conviction only of any offense ~~included in G.S. 90-95(a)(3) or G.S. 90-113.22 and subject to the provisions of this subsection (a1),~~ which qualifies under the provisions of subsection (a) of this section, and the provisions of this subsection, the court may place defendant on probation under this section for an offense under this Article including an offense for which the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less than one year and shall contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the Department of Health and Human Services pursuant to G.S. 90 96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

(1) There is no drug education school within a reasonable distance of the defendant's residence; or

(2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

The court shall enter such specific findings in the record; provided that in the case of subdivision (2) above, such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

Upon fulfillment of the terms and conditions of the probation, the court shall discharge such person and dismiss the proceedings against the person.

For the purposes of determining whether the conviction is a first conviction or whether a person has already had discharge and dismissal, no prior offense occurring more than seven years before the date of the current offense shall be considered. In addition, convictions for violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or 90-113.12, or 90-113.22 shall be considered previous convictions.

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation pursuant to this subsection and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to G.S. 15A-145.2. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the course as provided in G.S. 90-96.01(b), or any other manner in which the person fails to complete the course successfully. The instructor of the

course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete the program successfully, the court shall revoke probation, shall not discharge such person, shall not dismiss the proceedings against the person, and shall deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to G.S. 15A-145.2. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(b) Upon the discharge of such person, and dismissal of the proceedings against the person under subsection (a) or (a1) of this section, such person, if he or she was not over 21 years of age at the time of the offense, may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.2(a).

(c) Repealed by Session Laws 2009-510, s. 8(b), effective October 1, 2010.

(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules ~~II~~ I through VI of this Article or a felony under ~~G.S. 90-95(a)(3) by possessing less than one gram of cocaine,~~ G.S. 90-95(a)(3), upon dismissal by the State of the charges against such person, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, the person may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.2(b).

(e) Whenever any person who has not previously been convicted of (i) any felony offense under any state or federal laws; (ii) any offense under this Article; or (iii) an offense under any statute of the United States or any state relating to ~~Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to~~ controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules ~~II~~ I through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or (ii) a felony under ~~G.S. 90-95(a)(3) by possessing less than one gram of cocaine,~~G.S. 90-95(a)(3), the person may be eligible to apply for cancellation of the judgment and expunction of certain records related to the offense pursuant to G.S. 15A-145.2(c).

...."

SECTION 5.(b) G.S. 15A-145.2 reads as rewritten:

"**§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.**

...

(b) Whenever any person is charged with a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules ~~II~~ I through VI of Article 5 of Chapter 90 of the General Statutes or a felony under ~~G.S. 90-95(a)(3) by possessing less than one gram of cocaine,~~ G.S. 90-95(a)(3), upon dismissal by the State of the charges against the person, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his or her arrest, indictment or information, or trial. If the court determines, after hearing, that such person was not over 21 years of age at the time the offense for which the person was charged occurred, it shall enter such order. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason

of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

(c) Whenever any person who has not previously been convicted of (i) any felony offense under any state or federal laws; (ii) any offense under Chapter 90 of the General Statutes; or (iii) an offense under any statute of the United States or any state relating to controlled substances included in any schedule of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes, pleads guilty to or has been found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules I through VI of Chapter 90, or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3), ~~Whenever any person who has not previously been convicted of an offense under Article 5 of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules through VI of Article 5 of Chapter 90 of the General Statutes or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or (ii) a felony under~~ the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the petitioner's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes for possessing a controlled substance included within Schedules ~~II~~ I through VI of Article 5 of Chapter 90 of the General Statutes or for possessing drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under ~~G.S. 90-95(a)(3) for possession of less than one gram of cocaine,~~ G.S. 90-95(a)(3), that the petitioner has no disqualifying previous convictions as set forth in this subsection, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status the petitioner occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge

such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order all law enforcement agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local agencies identified by the petitioner as bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150."

SECTION 5.(c) Article 81B of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1340.18. Advanced supervised release.**

(a) Definitions. – For the purposes of this section, the following definitions apply:

(1) "Advanced supervised release" or "ASR" means release from prison and placement on post-release supervision under this section if an eligible defendant is sentenced to active time.

(2) "Eligible defendant" means a defendant convicted and sentenced based upon any of the following felony classes and prior record levels:

a. Class D, Prior Record Level I-III.

b. Class E, Prior Record Level I-IV.

c. Class F, Prior Record Level I-V.

d. Class G, Prior Record Level I-VI.

e. Class H, Prior Record Level I-VI.

(3) "Risk reduction incentive" is a sentencing condition which, upon successful completion during incarceration, results in a prisoner being placed on ASR.

(b) The Department of Correction is authorized to create risk reduction incentives consisting of treatment, education, and rehabilitative programs. The incentives shall be designed to reduce the likelihood that the prisoner who receives the incentive will reoffend.

(c) The court, in its discretion and without objection from the prosecutor, may include a risk reduction incentive or incentives in sentencing an eligible defendant to an active sentence.

(d) The court shall impose a sentence calculated pursuant to Article 81B of the General Statutes. The ASR date shall be the shortest mitigated sentence for the offense at the offender's prior record level. If the court utilizes the mitigated range in sentencing the defendant, then the ASR date shall be eighty percent (80%) of the minimum sentence imposed.

(e) The defendant shall be notified at sentencing that if the defendant completes the risk reduction incentives as identified by the Department, then he or she will be released on the ASR date. If the Department determines that the defendant is unable to complete the incentives by the ASR date, through no fault of the defendant, then the defendant shall be released at the ASR date.

(f) Termination from the risk reduction incentive program shall result in the nullification of the ASR date, and the defendant's release date shall be calculated based upon the adjudged sentence. A prisoner who has completed the risk reduction incentives prior to the ASR date may have the ASR date nullified due to noncompliance with Department rules or regulations.

(g) A defendant released on the ASR date is subject to post-release supervision under this Article. Notwithstanding the provisions in G.S. 15A-1368.3(c), if the defendant has been returned to prison for three, three-month periods of confinement, a subsequent violation shall result in the defendant returning to prison to serve the time remaining on the maximum

imposed term, and is ineligible for further post-release supervision regardless of the amount of time remaining to be served.

(h) The Department shall adopt policies and procedures for the assessment to occur at diagnostic processing, for documentation of the inmate's progress, and for termination from the incentive program due to a lack of progress or a pattern of noncompliance in the program or with other Department rules or regulations."

SECTION 5.(d) G.S. 15A-1340.13(d) reads as rewritten:

"(d) Service of Minimum Required; Earned Time Authorization. – An offender sentenced to an active punishment shall serve the minimum term ~~imposed.~~ imposed, except as provided in G.S. 15A-1340.18. The maximum term may be reduced to, but not below, the minimum term by earned time credits awarded to an offender by the Department of Correction or the custodian of the local confinement facility, pursuant to rules adopted in accordance with law."

SECTION 5.(e) This section becomes effective January 1, 2012, and applies to persons entering a plea or who are found guilty of an offense on or after that date.

PART VI. REFOCUS CRIMINAL JUSTICE PARTNERSHIP PROGRAM

SECTION 6.(a) Article 6A of Chapter 143B of the General Statutes is repealed.

SECTION 6.(b) Chapter 143B of the General Statutes is amended by adding a new Article to read:

"Article 6B.

"Treatment for Effective Community Supervision Program.

"**§ 143B-274.1. Short title.**

This Article is the "Treatment for Effective Community Supervision Act of 2011" and may be cited by that name.

"**§ 143B-274.2. Legislative policy.**

The policy of the General Assembly with respect to the Treatment for Effective Community Supervision Program is to support the use of evidence-based practices to reduce recidivism and to promote coordination between State and community-based corrections programs.

"**§ 143B-274.3. Definitions.**

The following definitions apply in this Article:

(1) Certified and licensed. – North Carolina Substance Abuse Professional Practice Board certified or licensed substance abuse professionals or Department of Health and Human Services licensed agencies.

(2) Department. – The Department of Correction.

(3) Division. – The Department of Correction, Division of Community Corrections.

(4) Eligible entity. – A local or regional government, a nongovernmental entity, or collaborative partnership that demonstrates capacity to provide services that address the criminogenic needs of offenders.

(5) Program. – A community-based corrections program.

(6) Secretary. – The Secretary of the Department of Correction.

(7) State Board. – The State Community Corrections Advisory Board.

"**§ 143B-274.4. Goals of community-based corrections programs funded under this Article.**

The goals of community-based programs funded under this Article are to reduce recidivism and to reduce the rate of probation and post-release supervision revocations from the rate in the 2009-2010 fiscal year.

"**§ 143B-274.5. Eligible population.**

(a) An eligible offender is an adult offender who was convicted of a misdemeanor or a felony offense or is sentenced under the conditional discharge program as defined in G.S. 90-96 and meets any one of the following criteria:

(1) Received a nonincarcerative sentence of a community punishment.

(2) Received a nonincarcerative sentence of an intermediate punishment.

(3) Is serving a term of parole or post-release supervision after serving an active sentence of imprisonment.

(b) The priority populations for programs funded under this Article shall be as follows:

(1) Offenders convicted of a felony or offenders sentenced under G.S. 90-96 conditional discharge for a felony offense.

(2) Offenders identified by the Department of Correction using a validated risk assessment instrument to have a high likelihood of reoffending and a moderate to high need for substance abuse treatment.

"**§ 143B-274.6. Duties of Department of Correction.**

(a) In addition to those otherwise provided by law, the Department of Correction shall have the following duties:

(1) To enter into contractual agreements with eligible entities for the operation of community-based corrections programs and monitor compliance with those agreements.

(2) To develop the minimum program standards, policies, and rules for community-based corrections programs and to consult with the Department of Health and Human Services on those standards, policies, and rules that are applicable to licensed and credentialed substance abuse services.

(3) To monitor, oversee, and evaluate contracted service providers.

(4) To act as an information clearinghouse regarding community-based corrections programs.

(5) To collaborate with the Department of Health and Human Services on focusing treatment resources on high-risk and moderate to high need offenders on probation, parole, and post-release supervision.

(b) The Department of Correction, Division of Community Corrections, shall develop and publish a recidivism reduction plan for the State that accomplishes the following:

(1) Articulates a goal of reducing revocations among people on probation and post-release supervision by twenty percent (20%) from the rate in the 2009-2010 fiscal year.

(2) Identifies the number of people on probation and post-release supervision in each county that are in the priority population and have a likely need for substance abuse and/or mental health treatment, employment, education, and/or housing.

(3) Identifies the program models that research has shown to be effective at reducing recidivism for the target population and ranks those programs based on their cost-effectiveness.

(4) Propose a plan to fund the provision of the most cost-effective programs and services across the State. The plan shall describe the number and types of programs and/or services to be funded in each region of the State and how that program capacity compares with the needs of the target population in that region.

(c) The Department of Correction shall report by March 1 of each year to the Chairs of the Senate and House of Representatives Appropriations Committees, the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the status

of the Treatment for Effective Community Supervision Program. The report shall include the following information:

(1) The dollar amount and purpose of funds provided on a contractual basis to service providers for the previous fiscal year.

(2) An analysis of offender participation data received, including the following:

a. The number of people on probation and post-release supervision that are in the priority population that received services.

b. The number of people on probation and post-release supervision that are in the priority population that did not receive services.

c. The number of people on probation and post-release supervision outside of the priority population that received services.

d. The type of services provided to these populations.

e. The rate of revocations and successful completions for people who received services.

f. Other measures as determined appropriate.

(3) The dollar amount needed to provide additional services to meet the needs of the priority population in the upcoming budget year.

(4) Details of personnel, travel, contractual, operating, and equipment expenditures for each program type.

"**§ 143B-274.7. Contract for services.**

(a) The Department of Correction shall contract with service providers through a competitive procurement process to provide community-based services to offenders on probation, parole, or post-release supervision.

(b) Contracts for substance abuse treatment services shall be awarded to certified or licensed substance abuse professionals and appropriately licensed agencies to provide services and use practices that have a demonstrated evidence base.

(c) The Department of Correction, in partnership with the Department of Health and Human Services, shall develop standard service definitions and performance measures for substance abuse and aftercare support services for inclusion in the contracts.

(d) The percentage of funds received by a service provider that may be used for administrative purposes is up to fifteen percent (15%).

"**§ 143B-274.8. State Community Corrections Advisory Board.**

(a) The State Board shall act as an advisory body to the Secretary with regard to this Article. The State Board shall consist of 23 members as follows, to be appointed as provided in subsection (b) of this section:

(1) A member of the Senate.

(2) A member of the House of Representatives.

(3) A judge of the superior court.

(4) A judge of the district court.

(5) A district attorney.

(6) A criminal defense attorney.

(7) A county sheriff.

(8) A chief of a city police department.

(9) Two county commissioners, one from a predominantly urban county and one from a predominantly rural county.

(10) A representative of an existing community-based corrections program.

(11) A member of the public who has been the victim of a crime.

(12) Two rehabilitated ex-offenders.

(13) A member of the business community.

(14) Three members of the general public, one of whom is a person recovering from chemical dependency or who is a previous consumer of substance abuse treatment services.

(15) A victim service provider.

(16) A member selected from each of the following service areas: mental health, substance abuse, and employment and training.

(17) A clerk of superior court.

(b) The membership of the State Board shall be selected as follows:

(1) The Governor shall appoint the following members: the county sheriff, the chief of a city police department, the member of the public who has been the victim of a crime, a rehabilitated ex-offender, and the members selected from each of the service areas.

(2) The Lieutenant Governor shall appoint the following members: the member of the business community, one member of the general public who is a person recovering from chemical dependency or who is a previous consumer of substance abuse treatment services, and the victim service provider.

(3) The Chief Justice of the North Carolina Supreme Court shall appoint the following members: the superior court judge, the district court judge, the district attorney, the clerk of superior court, the criminal defense attorney, and the representative of an existing community-based corrections program.

(4) The President Pro Tempore of the Senate shall appoint the following members: the member of the Senate, the county commissioner from a predominantly urban county, and one member of the general public.

(5) The Speaker of the House of Representatives shall appoint the following members: the member of the House of Representatives, the county commissioner from a predominantly rural county, and one member of the general public.

In appointing the members of the State Board, the appointing authorities shall make every effort to ensure fair geographic representation of the State Board membership and to ensure that minority persons and women are fairly represented.

(c) The initial members shall serve staggered terms; one-third shall be appointed for a term of one year, one-third shall be appointed for a term of two years, and one-third shall be appointed for a term of three years. The members identified in subdivisions (1) through (7) of subsection (a) of this section shall be appointed initially for a term of one year. The members identified in subdivisions (8) through (13) in subsection (a) of this section shall be appointed initially for a term of two years. The members identified in subdivisions (14) through (16) of subsection (a) of this section shall each be appointed for a term of three years. The additional member identified in subdivision (17) in subsection (a) of this section shall be appointed initially for a term of three years.

At the end of their respective terms of office their successors shall be appointed for terms of three years. A vacancy occurring before the expiration of the term of office shall be filled in the same manner as original appointments for the remainder of the term. Members may be reappointed without limitation.

(d) Each appointing authority shall have the power to remove a member it appointed from the State Board for misfeasance, malfeasance, or nonfeasance.

(e) The members of the State Board shall, within 30 days after the last initial appointment is made, meet and elect one member as Chair and one member as Vice-Chair.

(f) The State Board shall meet at least quarterly and may also hold special meetings at the call of the Chair. For purposes of transacting business, a majority of the membership shall constitute a quorum.

(g) Any member who has an interest in a governmental agency or unit or private nonprofit agency which is applying for a Treatment for Effective Community Supervision Program contract or which has received a contract and which is the subject of an inquiry or vote by a contract oversight committee, shall publicly disclose that interest on the record and shall take no part in discussion or have any vote in regard to any matter directly affecting that particular grant applicant or grantee. "Interest" in a grant applicant or grantee means a formal and direct connection to the entity, including, but not limited to, employment, partnership, serving as an elected official, board member, director, officer, or trustee, or being an immediate family member of someone who has such a connection to the grant applicant or grantee.

(h) The members of the State Board shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses.

"**§ 143B-274.9. State Community Corrections Advisory Board; powers and duties.**

(a) The State Community Corrections Advisory Board, as defined under this Article, has the following duties and responsibilities:

(1) To review the criteria for monitoring and evaluating community-based corrections programs.

(2) To recommend community-based corrections program priorities.

(3) To review the minimum program standards, policies, and rules for community-based corrections programs.

(4) To review the evaluation of programs funded by this Article.

"**§ 143B-274.10. North Carolina Sentencing and Policy Advisory Commission report.**

The North Carolina Sentencing and Policy Advisory Commission shall report by April 30 of each even-numbered year to the General Assembly and the Governor on recidivism rates for offenders on probation, parole, and post-release supervision participating in programming funded through this Article according to risk level.

"**§ 143B-274.11. Program types eligible for funding; community-based corrections programs.**

Based on the prioritized populations in G.S. 143B-274.5(b), program types eligible for funding may include, but are not limited to, the following:

(1) Substance abuse treatment services, to include co-occurring substance abuse and mental health disorder services, residential, intensive outpatient, outpatient, peer support, and relapse prevention.

(2) Cognitive behavioral programming and other evidence-based programming deemed to be the most cost-effective method to reduce criminogenic needs identified by the risk/needs assessment."

SECTION 6.(c) This section becomes effective July 1, 2011. The Department of Correction may enter into contracts under this section with current program providers in the Criminal Justice Partnership Program on a sole-source basis during the 2011-2012 fiscal year.

PART VII. MOST MISDEMEANANTS TO SERVE SENTENCES IN JAIL

SECTION 7.(a) It is the intent of the General Assembly to authorize the Department of Correction to enter into voluntary agreements with counties to provide housing for misdemeanants serving periods of confinement of more than 90 days and up to 180 days, except for those serving a sentence for an impaired driving offense. It is further the intent of the General Assembly, that the Department of Correction in conjunction with the North Carolina Sheriffs' Association establish a program for housing misdemeanants serving periods of confinement of more than 90 days and up to 180 days, except for those serving sentences for an impaired driving offense. It is also the intent of the General Assembly that the Department of Correction contract with the North Carolina Sheriffs' Association to provide a service that identifies space in local confinement facilities that is available for housing these misdemeanants.

The General Assembly intends that the cost of housing and caring for these misdemeanants, including, but not limited to, care, supervision, transportation, medical, and any other related costs be covered by State funds and not be imposed as a local cost. Therefore, the General Assembly intends that the funds in the Statewide Misdemeanor Confinement Fund be used to provide funding to cover the costs of managing a system for providing that housing of misdemeanants in local confinement facilities as well as reimbursing the counties for housing and related expenses for those misdemeanants.

SECTION 7.(b) G.S. 15A-1352(b) reads as rewritten:

"(b) A person sentenced to imprisonment for a felony under this Article shall be committed for the term designated by the court to the custody of the Department of ~~Correction; except that, upon request of the sheriff or the board of commissioners of a county, the presiding judge may, in his discretion, sentence the person to a local confinement facility in that county.~~Correction."

SECTION 7.(c) G.S. 15A-1352 is amended by adding a new subsection to read:

"(e) A person sentenced for a misdemeanor who has a sentence imposed that requires confinement for a period of more than 90 days and up to 180 days, except for those serving sentences for an impaired driving offense under G.S. 20-138.1 under this Article or for nonpayment of a fine under Article 84 of this Chapter, shall be committed for the term designated by the court to confinement pursuant to the Statewide Misdemeanant Confinement Program established by G.S. 148-32.1."

SECTION 7.(d) G.S. 148-32.1(b) reads as rewritten:

"(b) In the event that the custodian of the local confinement facility certifies in writing to the clerk of the superior court in the county in which ~~said~~ the local confinement facility is located that the local confinement facility is filled to capacity, or that the facility cannot reasonably accommodate any more prisoners due to segregation requirements for particular prisoners, or that the custodian anticipates, in light of local experiences, an influx of temporary prisoners at that time, or if the local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221, any judge of the district court in the district court district as defined in G.S. 7A-133 where the facility is located, or any superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or G.S. 7A-48 in a district or set of districts as defined in G.S. 7A-41.1 where the facility is located may order that ~~the~~ a prisoner not housed pursuant to the Statewide Misdemeanor Confinement Program established in subsection (b1) of this section be transferred to any other qualified local confinement facility within that district or within another such district where space is available, including a satellite jail unit operated pursuant to G.S. 153A-230.3 if the prisoner is a non-violent misdemeanant, which local facility shall accept the transferred ~~prisoner, if the prison population has exceeded a manageable level as provided for in G.S. 148-4.1(a). If no such local confinement facility is available, then any such judge may order the prisoner transferred to such camp or facility as the proper authorities of the Department of Correction shall designate, notwithstanding that the term of imprisonment of the prisoner is 90 days or less. In no event, however, shall a prisoner whose term of imprisonment is less than 30 days be assigned or ordered transferred to any such camp or facility.~~prisoner.

If no other local confinement facility is available and the reason for the requested transfer is that the local confinement facility that would be required to house the prisoner cannot reasonably accommodate any more prisoners due to segregation requirements for particular prisoners or the local facility does not meet the minimum standards published pursuant to G.S. 153A-221, then the judge may order that a prisoner not housed pursuant to the Statewide Misdemeanor Confinement Program established in subsection (b1) of this section be transferred to a facility operated by the Department of Correction as designated by the Department of Correction. In no event, however, shall a prisoner whose term of imprisonment is less than 30 days be assigned or ordered transferred to a facility operated by the Department of Correction."

SECTION 7.(e) G.S. 148-32.1 is amended by adding a new subsection to read:

"(b1) The Statewide Misdemeanor Confinement Program is established. The Program shall provide for the housing of misdemeanants from all counties serving sentences imposed for a period of more than 90 days and up to 180 days, except for those serving sentences for an impaired driving offense under G.S. 20-138.1. Those misdemeanants shall be confined in local confinement facilities except as provided in subsections (b2) and (b3) of this section. The Program shall address methods for the placement and transportation of inmates and reimbursement to counties for the housing of those inmates. Any county that voluntarily agrees to house misdemeanants from that county or from other counties pursuant to the Program may enter into a written agreement with the Department of Correction to do so.

This Program shall only operate as long as sufficient State funds are available through the Statewide Misdemeanor Confinement Fund established in G.S. 148-10.4(c)."

SECTION 7.(f) The North Carolina Sheriffs' Association in consultation with the Department of Correction shall develop the Statewide Misdemeanor Confinement Program established in G.S. 148-32.1, as enacted in subsection (e) of this section, by September 1, 2011.

Notwithstanding any other provision of law, no later than November 1, 2011, the Secretary of Correction shall contract with the North Carolina Sheriffs' Association to implement the Program. The contract terms shall include all of the following:

(1) A provision that the Program shall be operated on a statewide basis no later than January 1, 2012, but may be phased in beginning at an earlier date.

(2) A provision addressing the method of payment to the North Carolina Sheriffs' Association for the costs of administering the Program.

(3) A provision authorizing reimbursement by the North Carolina Sheriffs' Association to counties or to the Department of Correction, as appropriate, for all expenses incurred on behalf of those misdemeanants.

SECTION 7.(g) G.S. 148-32.1 is amended by adding new subsections to read:

"(b2) The custodian of a local confinement facility may request a judicial order to transfer a misdemeanant housed pursuant to the Statewide Misdemeanor Confinement Program to a facility operated by the Department of Correction by certifying in writing to the clerk of the superior court in the county in which the local confinement facility is located that:

(1) The misdemeanant poses a security risk because the misdemeanant:

a. Poses a serious escape risk;

b. Exhibits violently aggressive behavior that cannot be contained and warrants a higher level of supervision;

c. Needs to be protected from other inmates, and the county jail facility cannot provide such protection;

d. Is a female or a person 18 years of age or younger, and the county jail facility does not have adequate housing for such prisoners;

e. Is in custody at a time when a fire or other catastrophic event has caused the county jail facility to cease or curtail operations; or

f. Otherwise poses an imminent danger to the staff of the county jail facility or to other prisoners in the facility.

(2) The misdemeanant requires medical or mental health treatment that the county decides can best be provided by the Department of Correction.

(3) The local confinement facility that would be required to house the prisoner (i) cannot reasonably accommodate any more prisoners due to segregation requirements for particular prisoners, or the local facility does not meet the minimum standards published pursuant to G.S. 153A-221; and (ii) no other local confinement facility is available.

Upon receiving such request and certification in writing, any superior or district court judge for the district in which the local confinement facility is located may, after ascertaining that the

request meets the criteria set forth in subdivision (1), (2), or (3) of this subsection, order the misdemeanant transferred to a unit of the State prison system designated by the Secretary of Correction or the Secretary's authorized representative. The Department of Correction shall be reimbursed from the Statewide Misdemeanor Confinement Fund for the costs of housing the misdemeanant, including the care, supervision, and transportation of the misdemeanant.

(b3) A misdemeanant housed under the Statewide Misdemeanor Confinement Program established pursuant to subsection (b1) of this section may be transferred to a facility operated by the Department of Correction if the North Carolina Sheriffs' Association determines that the local confinement facilities available for housing misdemeanants under the Program are filled to capacity. The Department of Correction shall be reimbursed from the Statewide Misdemeanor Confinement Fund for the costs of housing the misdemeanant, including the care, supervision, and transportation of the misdemeanant."

SECTION 7.(h) Article 1 of Chapter 148 of the General Statutes is amended by adding a new section to read:

"**§ 148-10.4. Statewide Misdemeanor Confinement Fund.**

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

(1) Department. – Department of Correction.

(2) Fund. – The Statewide Misdemeanor Confinement Fund established by this section.

(3) Program. – Statewide Misdemeanor Confinement Program established under G.S. 148-32.1(b2).

(4) Sheriffs' Association. – North Carolina Sheriffs' Association, Inc.

(b) Intent and Purpose. – It is the intent of the General Assembly that the funds in the Fund established by this section be used to reimburse local governments for expenses incurred for housing misdemeanants under the Program, and other related expenses; and to cover administrative costs incurred by the North Carolina Sheriffs' Association for services provided by it regarding the housing of these misdemeanants.

(c) Statewide Misdemeanor Confinement Fund established. – There is created within the Department of Correction a special nonreverting fund called the Statewide Misdemeanor Confinement Fund.

(d) Fund Uses. – Moneys in the Fund may be used for the following:

(1) Reimbursements by the Sheriffs' Association to counties for the costs of housing misdemeanants under the Program, including the care, supervision, and transportation of those misdemeanants.

(2) Reimbursements to the Department of Correction for the cost of housing misdemeanants transferred to the Department pursuant to G.S. 148-32.1(b2), including the care, supervision, and transportation of those misdemeanants.

(3) To pay the Sheriffs' Association for administrative and operating expenses pursuant to subsection (e) of this section.

(4) To pay the Department of Correction for administrative and operating expenses pursuant to subsection (e) of this section.

(e) Operating and Administrative Expenses. – Ten percent (10%) of the monthly receipts collected and credited to the Statewide Misdemeanor Confinement Fund shall be transferred on a monthly basis to the Sheriffs' Association to be used to support the Program and for administrative and operating expenses of the Association and its staff. One percent (1%) of the monthly receipts collected and credited to the Statewide Misdemeanor Confinement Fund shall be transferred on a monthly basis to the General Fund to be allocated to the Department of Correction for its administrative and operating expenses for the Program."

SECTION 7.(i) The North Carolina Sheriffs' Association shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by October 1, 2011, on the implementation of this Part, and shall report thereafter as requested by the

Committee. The report shall include relevant information collected monthly by the Sheriffs' Association regarding the jail capacity and population in each county.

SECTION 7.(j) The General Assembly finds that while the Program developed pursuant to G.S. 148-32.1(b1) as enacted by subsection (e) of this section shall be available statewide on January 1, 2012, it may be available to some counties at an earlier date. Therefore, notwithstanding any other provision of law, a misdemeanant, who has a sentence imposed of more than 90 days and up to 180 days prior to January 1, 2012, excluding those serving sentences for an impaired driving offense under G.S. 20-138.1, may be transferred or reassigned to a local confinement facility designated by the Sheriffs' Association as provided by the Program developed pursuant to G.S. 148-32.1(b1).

SECTION 7.(k) Of the funds appropriated to the Department of Correction for the 2011-2012 fiscal year, the Department shall transfer the sum of three hundred thousand dollars ($300,000) to the North Carolina Sheriffs' Association for expenses related to initiating the provisions of this Part.

SECTION 7.(l) If there is not adequate capacity in the Statewide Misdemeanor Confinement program, such that the Department of Correction must continue to house prisoners serving more than 90 and up to 180 days pursuant to G.S. 148-32.1(b3), then the Department of Correction is authorized to use funds received from the Statewide Misdemeanor Confinement Fund to operate facilities previously identified for closure and for diagnostic staff positions.

SECTION 7.(m) G.S. 148-32.1(b1), as enacted by subsection (e) of this section, and subsections (a), (h), (i), (j), (k), and (l) of this section become effective July 1, 2011. The remainder of this section becomes effective January 1, 2012, and applies to sentences imposed on or after that date.

PART VIII. ANNUAL REPORT

SECTION 8. Article 4 of Chapter 164 of the General Statutes is amended by adding a new section to read:

"**§ 164-50. Annual report on implementation of Justice Reinvestment Project.**

The Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, and the Department of Correction shall jointly conduct ongoing evaluations regarding the implementation of the Justice Reinvestment Act of 2011. The Commission shall present the first evaluation report to the Joint Legislative Correction, Crime Control, and Juvenile Justice Oversight Committee and to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 15, 2012, and future reports shall be made annually by April 15 of each year."

PART IX. TITLE

SECTION 9. This act shall be known as "The Justice Reinvestment Act of 2011."

PART X. EFFECTIVE DATE

SECTION 10. Except as otherwise provided in this act, this act is effective when it becomes law. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

HOUSE BILL 642:
Justice Reinvestment Act

2011-2012 General Assembly

Committee:	Senate Ref to Judiciary I. If fav, re-ref to Appropriations/Base Budget. If fav, re-ref to Finance	**Date:**	June 8, 2011
Introduced by:	Reps. Guice, Faircloth, Bordsen, Parmon	**Prepared by:**	Hal Pell Susan Sitze Staff Attorneys
Analysis of:	Fourth Edition		

SUMMARY: ***This act revises State criminal laws, criminal procedure laws, and probation statutes based upon the recommendations of the Justice Reinvestment Project. Unless otherwise provided in the act, it is effective when it becomes law.***

BACKGROUND: Since 2009, the Council of State Governments (CSG) Justice Center has been developing a statewide policy framework [Justice Reinvestment Project] to reduce spending on corrections and reinvest in strategies to increase public safety. The Justice Reinvestment Project was the result of a request for technical assistance by the Governor and other State officials. The CSG has been collecting data from multiple sources including FBI Uniform Crime Reports, the North Carolina Department of Correction (DOC), the North Carolina Sentencing and Policy Advisory Commission, the North Carolina Administrative Office of the Courts, and the North Carolina Department of Health and Human Services, along with other state agencies, county agencies and organizations.

n addition to these quantitative analyses, the CSG Justice Center staff conducted meetings and interviews with criminal justice practitioners and stakeholders from around the state, including superior and district court judges, district attorneys, defense attorneys, behavioral health treatment providers, family members, consumers, law enforcement officials, victim advocates, and probation officers.

BILL ANALYSIS:

PART I. STRENGTHEN PROBATION SUPERVISION

Section 1.(a) – Redefines Community Punishment in the Structured Sentencing Act. The amendment will authorize a sentencing court to impose drug treatment court or any one or more of the conditions listed in the G.S. 15A-1343(a1) [see the description of G.S. 15A-1343(a1) at **Section 1.(c),** below]. The change broadens the court's discretion by enlarging the scope of sentences which may be ordered by the court. In order to allow for these conditions to be "delegated" to the Department of Correction [see **Section 1.(d)** below], they must initially be available to the sentencing court.

Section 1(b) – Redefines Intermediate Punishment in the Structured Sentencing Act. In addition to the current requirement of placement on supervised probation, the amendment will authorize a sentencing court to impose drug treatment court or any one or more of the conditions listed in the G.S. 15A-1343(a1) [see the description of G.S. 15A-1343(a1) at **Section 1.(c),** below]. The change broadens the court's discretion by enlarging the scope of sentences which may be ordered by the court. In order to allow for these conditions to be "delegated" to the Department of Correction [see **Section 1.(e)** below], they must initially be available to the sentencing court.

Section 1.(c) – Enacts a new subsection that lists the probation conditions for either community or intermediate punishments. In addition to any special conditions of probation that may be ordered, the court may impose any one or more of the following:

- House arrest with electronic monitoring.
- Special probation (probation with confinement portion)
- Community service.
- Periods of confinement in a local confinement facility (up to six days per month, limited to consecutive 2 or 3 day periods, in any three months of the period of probation).
- Substance abuse assessment, monitoring, or treatment.
- Participation in an educational or vocational skills development program, including an evidence-based program.
- Satellite-monitoring based on sex offender statutes [if authorized by statute].

Section 1.(d) – Amends the current statute which delegates authority to the Department to require offenders sentenced to community punishment to comply with certain conditions, unless the court decides that delegation is not appropriate. Currently, the Department can require: up to 20 hours of community service; a frequency for reporting; and that the probationer submit to substance abuse assessment, monitoring or treatment. The act would add the following: house arrest with electronic monitoring; confinement for up to six days per month in 2 or 3 day consecutive periods (in any of 3 months of the probation); curfew with electronic monitoring; and participation in an educational or vocational skills program, including an evidence-based program.

- The conditions may be imposed if the Department determines that either: (1) the probationer has failed to comply with one or more court-ordered conditions, or (2) the offender is determined to be a "high risk" offender based upon a departmental assessment. The periods of confinement may only be used upon the failure to comply with one or more court-ordered conditions.
- The offender has the right to judicial review of any imposed condition.
- Probation officers must obtain administrative review and approval before exercising any delegated authority.
- The Department of Correction must establish guidelines and procedures for the imposition of the requirements, including a waiver of rights form if the Department wants to impose a period of confinement. The form must include waiver of a hearing before the court, assistance of counsel, and other procedural rights.
- The use of any of the requirements does not prevent the Department from utilizing the statutes which provide for probation revocation.

Section 1.(e) – Amends the current statute which delegates authority to the Department to require offenders sentenced to intermediate punishment to comply with certain conditions, unless the court

'ecides that delegation is not appropriate. Currently, the Department can require: up to 50 hours of ommunity service; curfew with electronic monitoring; substance abuse assessment, monitoring or treatment; participation in an educational or vocational skills program (act adds "including evidence-based programs"); and satellite monitoring for sex offenders (if authorized by statute). The act would add the following: house arrest with electronic monitoring; confinement for up to six days per month in 2 or 3 day consecutive periods (in any of 3 months during the probation); and reporting on a frequency determined by the officer.

- The conditions may be imposed if the Department determines that either: (1) the probationer has failed to comply with one or more court-ordered conditions, or (2) the offender is determined to be a "high risk" offender based upon a departmental assessment. The periods of confinement may only be used upon the failure to comply with one or more court-ordered conditions.
- The offender has the right to judicial review of any imposed condition.
- Probation officers must obtain administrative review and approval before exercising any delegated authority.
- The Department of Correction must establish guidelines and procedures for the imposition of the requirements, including a waiver of rights form if the Department wants to impose a period of confinement. The form must include waiver of a hearing before the court, assistance of counsel, and other procedural rights.
- The use of any of the requirements does not prevent the Department from utilizing the statutes which provide for revocation of probation.

Section 1.(f) – Requires the Department to use a validated risk assessment instrument in assessing each probationer for determining (i) the offender's risk of reoffending, and (ii) an appropriate supervision level based upon the risk of reoffending and the offender's criminogenic needs.

Section 1.(g) – Repeals intensive supervision as a special condition of probation.

Section 1.(h) – Repeals the definition of "day-reporting center" as a conforming change.

Section 1.(i) – Repeals the definition of "intensive probation" as a conforming change.

Section 1.(j) – Repeals the definition of "residential program" as a conforming change.

Section 1.(k) – Amends the statute setting forth the Department's caseload goals. The amendment uses the characterization of "high or moderate risk of rearrest" offenders in lieu of offenders sentenced to community or intermediate punishments. The goal states that a probation officer should have an average of no more than 60 "high or moderate risk of rearrest" offenders.

Section 1.(l) – This section becomes effective December 1, 2011, and applies to persons placed on probation based on offenses which occur on or after December 1, 2011; however, this section and the provisions of this act requiring the Department of Correction to adopt a risk assessment instrument are effective when the act becomes law.

PART II. POST RELEASE SUPERVISION CHANGES

Section 2.(a) – Amends the post-release supervision statutes to include all felons, except Class A and Class B1 prisoners sentenced to life imprisonment without parole. Currently, only Class B1 (non-life without parole) through Class E felons are included.

Section 2.(b) – Amends the post-release supervision release date to 12 months (from 9 months) before the maximum imposed prison term for Class B1 through Class E felons, and sets the post-supervision release date for Class F through Class I felons at 9 months before the maximum imposed prison term.

The period of post-release supervision is set at 12 months for Class B1 through Class E felons, and 9 months for Class F through Class I felons. Sex offenders have a 5 year period of post-release supervision. [Note: It would be possible for a sex offender to serve the maximum imposable term of confinement prior to the end of the 5 year period; consequently, further confinement would not be possible for violations of post-release supervision].

Secton 2.(c) – Amends the conditions of probation that can result in a revocation of post-release supervision to add a "non-absconding" condition. A probationer who willfully avoids supervision, or willfully makes his or her whereabouts unknown to the probation officer, is subject to revocation of post-release supervision.

Section 2.(d) – Amends the statute providing for imprisonment for violation of post-release supervision conditions. A person required to register on the sex offender registry who commits a new offense or absconds is returned to prison to complete the maximum imposed term. Other felons are returned for 3 months, and may be returned for 3 months on 2 subsequent occasions. If the supervisee is a Class B1 through Class E felon, and has completed 3 periods of confinement of 3 months each, then a fourth violation can result in the completion of the maximum imposed prison term.

Section 2.(e) – Adds 9 months to the maximum term for Class F through Class I felonies, to provide for a post-release supervision release date that is equivalent to the current maximum imposed term.

Section 2.(f) – Adds 3 months to the maximum term for Class B1 through Class E felonies. Nine months have already been included in the maximum in the table to account for the current release date, which is 9 months prior to the maximum term. The addition of 3 months adjusts the time to take into account the increase of post-release supervision from 9 months to 12 months for these offenders.

Section 2.(g) – Amends the statute which provides for the period of post-release supervision for offenders with a minimum sentence of 340 months or more (adds 3 months, to bring the total period to 12 months—equal to that of Class B1 through E offenders).

Section 2.(h) – This section becomes effective December 1, 2011, and applies to offenses committed on or after that date.

PART III. STATUS OFFENSE OF HABITUAL BREAKING AND ENTERING

Section 3.(a) – Creates a new status offense for habitual breaking and entering. If a defendant has one or more prior convictions for any of the listed offenses, then he or she is subject to separate indictments for the offense upon which he or she was arrested, and for the habitual breaking and entering felony charge. A person with more than one felony conviction prior to the age of 18 will only considered to have one prior felony conviction for the purposes of determining the number of prior convictions.

Section 3.(b) – Changes the law to allow discretion in charging the offense.

Section 3.(c) – Conforming change authorizing the district attorney to charge the offense in his or her discretion.

Section 3.(d) – Changes the penalty for a conviction under the habitual felon statute. The felon must be sentenced at a level that is four levels higher than the underlying felony for which the person was convicted, with a maximum sentence at the Class C felony level.

Section 3.(e) – The section becomes effective December 1, 2011, and applies to any offense that occurs on or after that date, and that is the principal offense for a charge of either the status offenses of habitual breaking and entering or habitual felon. 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.

PART IV. LIMIT TIME/CERTAIN VIOLATIONS OF PROBATION

Section 4.(a) -- The act adds a duty not to abscond to the regular conditions of probation, which are applicable to all offenders placed on probation.

Section 4.(b) – The section provides that the court may not revoke probation for violations of conditions of probation other than for a new criminal offense or for absconding (except as provided in Section 4.(c) below), but that the court may impose imprisonment for the other types of violations. **[See Section 4.(c), below].**

Section 4.(c) – Provides that if a probation commits a violation of a condition of probation (other than a new crime or absconding, which can result in probation revocation), then the court may impose a 90-day period of confinement on two occasions. The court may not revoke the probation for a violation unless the two 90-day periods have previously been imposed. If there are less than 90 days left on the maximum imposed term, then the term of confinement is for the remaining part of the sentence. If the probationer serves confinement under the section, then that period counts toward service of the maximum imposed term.

Section 4.(d) – This section is effective December 1, 2011, and applies to probation violations occurring on or after that date.

PART V. DIVERSION PROGRAM/FELONY DRUG POSSESSION/ADVANCED SUPERVISED RELEASE PROGRAM

Section 5.(a) and 5.(b) -- Amends the controlled substance diversion program, which provides for dismissal of charges upon successful completion of probation.

The act adds all first-time felony drug possession offenders eligible for the program. If the defendant has had no prior felony convictions, and no prior misdemeanor convictions under the Controlled Substances Act, then the court "shall" enter the defendant into the program. Currently, the program is discretionary and only allows drug offense misdemeanants, and persons convicted of felony possession of less than one gram of cocaine. The sections also amend the expunction statutes that provide for expunction of all first-time drug possession offenses.

Section 5.(c) – The act creates a procedure for a defendant, through completion of designated "risk reduction incentives" to be released on post-release supervision in advance of the minimum imposed term. The section:

- Designates who is an eligible defendant.

- Authorizes the Department to create incentives consisting of treatment, education, and rehabilitative programs. The programs must be designed to reduce the likelihood that the offender will reoffend.
- Authorizes the court, in its discretion (and without objection of the prosecutor) to include a risk reduction incentive or incentives in a sentence which includes an active term. The court would first adjudge and impose an authorized sentence for the offense class pursuant to the Structured Sentencing Act, which will have a minimum and maximum imposed term.
- The Advanced Supervised Release (ASR) date would be the shortest mitigated sentence for the offense at the offender's prior record level. If the court utilized the mitigated range in determining the sentence, then the ASR date would be 80% of the minimum term imposed by the court.
- The defendant would be notified at sentencing that if the defendant completes the risk reduction incentive or incentives, then he or she will be released on the ASR date. If the prisoner cannot complete the incentives through no fault of the defendant, then the prisoner would still be released on the ASR date.
- If the prisoner is terminated from the program due to a lack of progress or a rules violation, then the ASR date is nullified. The prisoner's release date would then revert back to the original imposed sentence. A prisoner who completes the incentives prior to the ASR date, and then violates rules, may have the ASR date nullified.
- A prisoner released on the ASR date will be placed on post-release supervision. If the prisoner is returned to prison three times (a total of nine months), a subsequent violation shall result in revocation of post-release status and the prisoner must serve the remainder of the maximum imposed sentence.
- The Department is required to adopt policies and procedures for assessment of the prisoner; documentation of the prisoner's progress; and for termination from the program.

Section 5.(d) – Adds a conforming change to include the ASR program in the statute which designates the minimum time which must be served by a prisoner.

Section 5.(e) -- The section becomes effective January, 2012, and applies to persons entering a plea or who are found guilty of an offense on or after that date.

PART VI. REFOCUS CRIMINAL JUSTICE PARTNERSHIP PROGRAM

Section 6.(a) and 6.(b) – Repeals the current Criminal Justice Partnership Program (CJPP), eliminates the local CJPP boards, and creates a new Article entitled the "Treatment for Effective Community Supervision Act of 2011." The Article provides for a program called Treatment for Effective Community Supervision. The act does the following:

- Establishes the eligibility criteria for offenders. Persons who were (i) convicted of drug offenses, (ii) have a high likelihood of reoffending, and (iii) have a high to moderate need for substance abuse treatment are designated as priority participants.
- Provides for duties of the Department, including the formulation of a recidivism reduction plan.
- Requires the Department to report annually on funds expended by contract, and to provide an analysis of the participants and services.

- Establishes a State Community Corrections Advisory Board, with the following duities and responsibilities: review the criteria for monitoring and evaluating community-based corrections programs; recommend community-based corrections program priorities; review minimum program standards, policies, and rules for community-based corrections programs; and review the evaluation of programs.
- Requires the North Carolina Sentencing Policy and Advisory Commission to report by April 30 on each even-numbered year to the General Assembly and the Governor on recidivism rates for offenders on probation, parole, and post-release supervision who are Program participants.
- Establishes types of programs which are eligible for funding, to include: substance abuse treatment services and cognitive behavioral programming.

Section 6.(c) -- This section becomes effective July 1, 2011. Authorizes the Department of Correction to enter into contracts with current program providers in the Criminal Justice Partnership Program on a sole-source basis during the 2011-2012 fiscal year.

PART VII. MISDEMEANANTS TO SERVE SENTENCES IN JAIL

Sections 7.(a) through 7.(l) –

- States the intent of the General Assembly to authorize the Department of Correction to enter into voluntary agreements with counties to provide housing for misdemeanants serving periods of confinement of more than 90 days and up to 180 days. The costs of housing these prisoners, including, but not limited to, care, supervision, transportation, medical, and any other related costs, are to be covered by State funds and not be imposed as local costs. The agreements would not apply to misdemeanants sentenced for violations of the impaired driving laws. Also states the intent of the General Assembly that the Department of Correction contract with the North Carolina Sheriffs' Association to provide a service that identifies space in local confinement facilities that is available for housing these misdemeanants.
- Provides that persons convicted of a felony must be committed to the custody of the Department of Correction.
- States that a person sentenced for a misdemeanor who must serve more than 90 days and up to 180 days are committed for the term designated by the court pursuant to the Statewide Misdemeanant Confinement program. Excepted from the program are persons serving sentences for an impaired driving offense, or for the nonpayment of a fine.
- Provides that the North Carolina Sheriffs' Association, in consultation with the Department of Correction, shall develop a plan for the Statewide Misdemeanor Confinement Program by September 1, 2011. By November 1, 2011, the Secretary shall contract with the North Carolina Sheriffs' Association to implement the Program. The contract terms shall include:
    - A provision that the Program shall be operated on a statewide basis by January 1, 2012, but may be phased in beginning at an earlier date.
    - A provision addressing the method of payment to the North Carolina Sheriffs' Association for the costs of administering the Program.

  - A provision authorizing reimbursement by the Sheriffs' Association to counties or to the Department of Correction, as appropriate, for all expenses incurred on behalf of those misdemeanants.

- Allows, by judicial order, the transfer of a program prisoner into the custody of the Department of Correction if the inmate is a security risk, or needs medical or mental health treatment. The prisoner may also be transferred for segregation requirements or if the local facility does not meet minimum standards, if no other local facility is available.
- States that the Program shall only operate as long as sufficient State funds are available through the Statewide Misdemeanor Confinement Fund established in G.S. 148-10.4(c).
- Creates the Statewide Misdemeanor Confinement Fund, a non-reverting fund established within the Department of Correction. Moneys in the Fund may be used for the following:
  - Reimbursements by the Sheriffs' Association to counties for the costs of housing misdemeanants under the Program, including the care, supervision, and transportation of those misdemeanants.
  - Reimbursements to the Department of Correction for the cost of housing misdemeanants transferred to the Department pursuant to G.S. 148-32.1(b2), including the care, supervision, and transportation of those misdemeanants.
  - To pay the Sheriffs' Association for administrative and operating expenses.
  - To pay the Department of Correction for administrative and operating expenses.
- Ten percent (10%) of the monthly receipts collected and credited to the Statewide Misdemeanor Confinement Fund will be transferred on a monthly basis to the Sheriffs' Association to be used to support the Program and for administrative and operating expenses of the Association and its staff.
- One percent (1%) of the monthly receipts collected and credited to the Statewide Misdemeanor Confinement Fund will be transferred on a monthly basis to the General Fund to be allocated to the Department of Correction for its administrative and operating expenses for the Program.
- Allows for implementation of the program to some counties at a date earlier than the planned statewide implementation date of January 1, 2012. Authorizes the transfer of prisoners serving more than 90 and up to 180 days to be transferred or reassigned to a local confinement facility designated by the Sheriffs' Association as provided by the program.
- Of the funds appropriated to the Department of Correction for the 2011-2012 fiscal year, the Department is to transfer the sum of three hundred thousand dollars ($300,000) to the North Carolina Sheriffs' Association for expenses related to initiating the program.
- Provides that the Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, and the Department of Correction shall jointly conduct ongoing evaluations regarding the implementation of the Justice Reinvestment Act of 2011.
- Provides that the North Carolina Sheriffs' Association shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by October 1, 2011, on the implementation of the program, and shall report thereafter as requested by the Committee. The report shall include relevant information collected monthly by the Sheriffs' Association regarding the jail capacity and population in each county.

- Authorizes the Department of Correction to use funds received from the Statewide Misdemeanor Confinement Fund to operate facilities previously identified for closure and for diagnostic staff positions, if there is not adequate capacity in the Statewide Misdemeanor Confinement program and the Department must continue to house prisoners serving more than 90 and up to 180 days.
- The sections relating to the fund, and for planning and contracting for the program, are effective July 1, 2011; the remaining sections are effective January 1, 2012.

PART VIII. ANNUAL REPORT

Section 8. – Requires the North Carolina Sentencing and Policy Advisory Commission, and the Department of Correction, to report on the implementation and results of the implementation of the act to the Joint Legislative Correction, Crime Control, and Juvenile Justice Oversight Committee and to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, by April 15, 2012. Reports are to be made annually by April 15 of each year.

PART IX. TITLE

Section 9. – Provides for the title of the act: The Justice Reinvestment Act of 2011.

EFFECTIVE DATE: Unless otherwise provided in the act, it is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 642

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

H642-ASA-25 [v.1]

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

Date June 9 ,2011

Senator Brown

moves to amend the bill on page 24, line 22
by deleting "and (l)" and inserting "(l), and (m)"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 642

AMENDMENT NO. 2
(to be filled in by Principal Clerk)

H642-ALH-78 [v.4]

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

Date June 9 ,2011

Senator BROWN

moves to amend the bill on page 20, line 41 through page 21, line 7,
by rewriting those lines to read:

SECTION 7.(a) G.S. 148-32.1 is amended by adding a new subsection to read:

"(b1) It is the intent of the General Assembly to authorize the Department of Correction to enter into voluntary agreements with counties to provide housing for misdemeanants serving periods of confinement of more than 90 days and up to 180 days, except for those serving a sentence for an impaired driving offense. It is further the intent of the General Assembly, that the Department of Correction in conjunction with the North Carolina Sheriffs' Association, Inc., establish a program for housing misdemeanants serving periods of confinement of more than 90 days and up to 180 days, except for those serving sentences for an impaired driving offense. It is also the intent of the General Assembly that the Department of Correction contract with the North Carolina Sheriffs' Association, Inc., to provide a service that identifies space in local confinement facilities that is available for housing these misdemeanants.

The General Assembly intends that the cost of housing and caring for these misdemeanants, including, but not limited to, care, supervision, transportation, medical, and any other related costs be covered by State funds and not be imposed as a local cost. Therefore, the General Assembly intends that the funds in the Statewide Misdemeanor Confinement Fund be used to provide funding to cover the costs of managing a system for providing that housing of misdemeanants in local confinement facilities as well as reimbursing the counties for housing and related expenses for those misdemeanants."; and

Moves to amend the bill on page 21, line 32 and line 47; page 22, line 2; page 23, line 7;
By deleting "(b1)" each time it appears and substituting "(b2)" each time it appears on those lines; and

Moves to amend the bill on page 24, lines 4, 10, and 21,
By deleting "(b1)" each time it appears on those lines and substituting "(b2)"; and

Moves to amend the bill on page 22, line 6 and line 27,
By deleting "(b2)" each time it appears on those lines and substituting "(b3)"; and

Moves to amend the bill on page 23, line 21 and line 36,

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 642

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

H642-ALH-78 [v.4]

By deleting "G.S. 148-32.1(b2)" and substituting "G.S. 148-32.1(b3)"; and

Moves to amend the bill on page 22, line 6 and page 23, line 6,
By deleting "(b3)" each time it appears on those lines and substituting "(b4)"; and

Moves to amend the bill on page 24, line 17,
By deleting "G.S. 148-32.1(b3)" and substituting "G.S. 148-32.1(b4)".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 642

AMENDMENT NO. 3
(to be filled in by Principal Clerk)

H642-ARK-90 [v.1]

Comm. Sub. [NO]
Amends Title [NO]
Fourth Edition

Date June 9 ,2011

Senator Brown

moves to amend the bill on page 24, line 26, by rewriting the line to read:

"**PART VIII. ANNUAL REPORT AND SENTENCING COMMISSION DUTIES**", and

on page 24, line 27, page deleting "**SECTION 8**" and substituting "**SECTION 8.(a)**", and

on page 24, between lines 36 and 37, by inserting the following:

"**SECTION 8.(b)** G.S. 164-44(a) reads as rewritten:

(a) The Commission shall have the secondary duty of collecting, developing, and maintaining statistical data relating to sentencing, corrections, and juvenile justice so that the primary duties of the Commission will be formulated using data that is valid, accurate, and relevant to this State. All State agencies shall provide data as it is requested by the Commission. For the purposes of G.S. 114-19.1, the Commission shall be considered to be engaged in the administration of criminal justice. All meetings of the Commission shall be open to the public and the information presented to the Commission shall be available to any State agency or member of the General Assembly."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

for distribution and review only

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 542

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

H542-ATG-174 [v.2]

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

Date _____,2011

Senator Clodfelter

moves to amend the bill on page 3, line 1, by rewriting that line to read:

"(a) Except as provided in subsection (b), (c) or (d) of this section, in any product liability";

and on page 3, line 24, by rewriting that line to read:

"effective or that the manufacturer failed to provide an adequate warning.

(d) This section does not apply if the claimant establishes by a preponderance of the evidence all of the following:

(1) The manufacturer or seller recommended, promoted, or advertised the drug for an indication not approved by the United States Food and Drug Administration.

(2) The drug was used as recommended, promoted, or advertised.

(3) The recommended, promoted, or advertised use of the drug was the proximate cause of the claimant's injury.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

Judiciary I — 6/9/11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BRAD ROEHRENBECK	N.C. BAR ASSOCIATION - LITIGATION SECTION
M Sherrill	NC Med Soc
Sarah Sasser	UNC
Charles Meier	N.C. Bar Assn - Community Assoc Committee
Jocelyn Lawton	CAI NC IAC
Henry Ogburn	Attorney Rel
P. Bay Hall	General Statutes Commission
Floyd Lewis	General Statutes Commission
Paul Stock	NCBA
Ha Nguyen	NCCOB
Bradford Sneeden	Gov. Office

Judiciary I — 6/9/11

Name	Firm or Agency
Lao Rubert	CJPC
Shonda Stacey	Nurse of the day
Bill Rowe	NC Justice Centr
David Barnes	DS
Emily Gwinn	NWC
Elizabeth Robinson	NCRVA
Todd Ba	NCAT
Susan Valcourt	NW
Sam Taylor	NCBIO
Conor Brockett	NCMS
Kristi Huff	NCHCFA
Dana Simpson	SIA
Breeder Blackwell	NCHA
Drew Morris	Raleigh Chamber
Hugh Tilson	DCHA

VISITOR REGISTRATION SHEET

Judiciary I — Name of Committee

6/9/11 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
D Hanks	MCIC
C Herrman	MCIC
Andrew Cagle	NC Sheriffs' Assn.
Brad Bannon	NC Advocates For Justice
Kim Brough	NCBA
Katherine Wilkerson	NCBA
Janet Ward Black	Ward Black law Greensboro
Paul Pulley	NCAJ
Burton Craige	NCAJ
Scott E. Prewitt	From Arden NC.
Ken Kyre	NCBA

Judiciary I 6/9/11

Name	Firm or Agency
Sara Fender	IFNC
Paul Shorr	ALFB
Josh McCulla	MFHS
Eddie Caldwell	NC Sheriffs' Assn
Holly Sobi	DRNC
Jennifer Upperson	NC DOJ
Kevin Beaumont	NCACC
Jessi Hays	NCHBA
Bill Russo	ACT
Kelli Kuhn	NCLM
Lorie Mayo	AANC
Paul Moore	AANC
Brent Tuxell	NCACC
Amy Bason	NCACC
Michele Frazier	MFHS
Ken Melton	K.M.A.

VISITOR REGISTRATION SHEET

Judiciary I — Name of Committee

6/9/11 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Deamon Circosta	NC Voter ED
Brandon Wicht	NCBA
Bob Crumly	NCAA
Whitney Christensen	Jordan Price
Michelle Healy	Smith Anderson
Daniel Baum	Troutman Sanders
Amy Jones	Vandeventer Black
Pamela Walker	NCDOC
Nicole Sullivan	DOC
James Freund	NCDOC
Thomas Maher	[illegible]

Judiciary I 6/9/11

Name	Firm or Agency
Robert Desmond	Smith Anderson
Pam Burke	NWC
John Maeller	NC Sentencing Commission
Tony Brown	SEANC
Amy Whited	NCMS
Kira Whitacre	NC DOJ
Amber Barwick	Conf. of DAs
Jennifer Cohen	IFNC
Chuck Hobbs	SEANC
Ben Mark	NCDOC
Bob Kaylor	Kaylor Law Firm
Cadey Thomas	PCAR
John Rubin	NCWA
Gary Shamido	GS/L
Angel Sams	NSS
Amy McConkey	NC Bev Assn
Mary Beth	Smith Anderson

PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027

DATE: 6-9 **TIME:** 8:30

PLEASE PRINT LEGIBILY!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Nathan Ravenel	Cary	Stevens
2 Metta Longo	Holly Springs	R. Stevens
3 Nicole Day	Raleigh	Hunt
4 Hannah Lee Leidy	Elizabeth City	White
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE JUDICIARY I COMMITTEE
June 13, 2011 at 4:30 PM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 4:30 PM on June 13, 2011, in Room 1027 of the Legislative Building. Fifteen members of the committee were present. Senator Pete Brunstetter presided.

Senator Brunstetter called the meeting to order at 4:47 p.m.

House Bill 542
Senator Brunstetter moves to amend the bill (former Mansfield amendment)
Senator Brunstetter explained the amendment
Bill Patterson was recognized to explain the amendment
Motion carries
Senator Brunstetter moves to amend the bill
Senator Brunstetter explained the amendment
Bill Patterson explained the amendment
Motion carries
Senator Stein moves to amend the bill
Senator Stein was recognized to explain the amendment
Senator Brunstetter asked a question about the amendment
Bill Patterson answered Senator Brunstetter's questions
Senator Clodfelter was recognized to make comments about the amendment
Senator Brunstetter made comments
Senator Stein moved to perfect the amendment by removing lines 8-10
Senator Goolsby was recognized to ask a question, and Bill Patterson answered
Senator Brunstetter asked Senator Stein a series of questions, and Senator Stein answered
Senator Stevens asked Senator Stein a series of questions, and Senator Stein answered
Senator Brunstetter made comments, and Senator Stein answered
Senator Clodfelter made comments
Senator Stein withdraws his amendment
Senator Nesbitt asked a question, and Senator Brunstetter redirected the question to Bill Patterson, who answered
Senator Clodfelter made comments
Senator Brunstetter answered Senator Nesbitt's question
Senator Rouzer made a comment about the amendment
Senator Brown moves to roll the amendments in to a new PCS and give the new PCS a favorable report
Motion carries

Meeting adjourned at 5:14 PM

Peter Brunstetter, Presiding

Sarah Hardin, Committee Clerk

Senate Judiciary I Committee
Monday, June 13, 2011, 4:30 PM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 542	Tort Reform for Citizens and Businesses.	Representative McComas Representative Crawford, Jr. Representative Rhyne, Jr. Representative Brisson

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 542
Committee Substitute Favorable 5/10/11
Third Edition Engrossed 6/1/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H542-CSTG-31 [v.3]

6/8/2011 11:10:05 AM

Short Title: Tort Reform for Citizens and Businesses. (Public)

Sponsors:

Referred to:

March 31, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TORT REFORM FOR NORTH CAROLINA CITIZENS AND BUSINESSES.

The General Assembly of North Carolina enacts:

PART I. GENERAL REFORMS

SECTION 1.1. Article 4 of Chapter 8C of the General Statutes is amended by adding a new section to read:

"**Rule 414. Evidence of medical expenses.**

Evidence offered to prove past medical expenses shall be limited to evidence of the amounts actually paid to satisfy the bills that have been satisfied, regardless of the source of payment, and evidence of the amounts actually necessary to satisfy the bills that have been incurred but not yet satisfied. This rule does not impose upon any party an affirmative duty to seek a reduction in billed charges to which the party is not contractually entitled. Nothing in this rule modifies current law governing the admissibility of evidence relating to collateral sources of payments, except that a provider, as that term is defined in G.S. 8-58.1(b), may disclose the existence of a contract or negotiation with a third party as the basis for any discount provided to a plaintiff."

SECTION 1.2. G.S. 8-58.1 reads as rewritten:

"**§ 8-58.1. Injured party as witness when medical charges at issue.**

(a) Whenever an issue of hospital, medical, dental, pharmaceutical, or funeral charges arises in any civil proceeding, the injured party or his guardian, administrator, or executor is competent to give evidence regarding the amount paid or required to be paid in full satisfaction of such charges, provided that records or copies of such charges showing the amount paid or required to be paid in full satisfaction of such charges accompany such testimony.

(b) The testimony of ~~such~~ a person pursuant to subsection (a) of this section establishes a rebuttable presumption of the reasonableness of the amount paid or required to be paid in full satisfaction of the ~~charges.~~charges. However, in the event that the provider of hospital, medical, dental, pharmaceutical, or funeral services gives sworn testimony that the charge for that provider's service either was satisfied by payment of an amount less than the amount charged, or can be satisfied by payment of an amount less than the amount charged, then with respect to that provider's charge only, the presumption of the reasonableness of the amount charged is

rebutted and a rebuttable presumption is established that the lesser satisfaction amount is the reasonable amount of the charges for the testifying provider's services. For the purposes of this subsection, the word "provider" shall include the agent or employee of a provider of hospital, medical, dental, pharmaceutical or funeral services, or a person with responsibility to pay a provider of hospital, medical, dental, pharmaceutical or funeral services on behalf of an injured party.

(c) The fact that a provider charged for services provided to the injured person establishes a permissive presumption that the services provided were reasonably necessary but no presumption is established that the services provided were necessary because of injuries caused by the acts or omissions of an alleged tortfeasor."

SECTION 1.3. G.S. 8C-702(a) reads as rewritten:

"(a) If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an ~~opinion.~~opinion, or otherwise if all of the following apply:

(1) The testimony is based upon sufficient facts or data.

(2) The testimony is the product of reliable principles and methods.

(3) The witness has applied the principles and methods reliably to the facts of the case."

PART II. REFORM APPLICABLE TO PRODUCTS LIABILITY ACTIONS

SECTION 2.1. G.S. 99B-1 reads as rewritten:

"**§ 99B-1. Definitions.**

When used in this Chapter, unless the context otherwise requires:

(1) "Claimant" means a person or other entity asserting a claim and, if said claim is asserted on behalf of an estate, an incompetent or a minor, "claimant" includes plaintiff's decedent, guardian, or guardian ad litem.

(1a) "Government agency" means this State or the United States, or any agency of this State or the United States, or any entity vested with the authority of this State or of the United States to issue rules, regulations, orders, or standards concerning the design, manufacture, packaging, labeling, or advertising of a product or provision of a service.

(2) "Manufacturer" means a person or entity who designs, assembles, fabricates, produces, constructs or otherwise prepares a product or component part of a product prior to its sale to a user or consumer, including a seller owned in whole or significant part by the manufacturer or a seller owning the manufacturer in whole or significant part.

(3) "Product liability action" includes any action brought for or on account of personal injury, death or property damage caused by or resulting from the manufacture, construction, design, formulation, development of standards, preparation, processing, assembly, testing, listing, certifying, warning, instructing, marketing, selling, advertising, packaging, or labeling of any product.

(4) "Seller" includes a retailer, wholesaler, or distributor, and means any individual or entity engaged in the business of selling a product, whether such sale is for resale or for use or consumption. "Seller" also includes a lessor or bailor engaged in the business of leasing or bailment of a product."

SECTION 2.2. Chapter 99B of the General Statutes is amended by adding the following new section to read:

"**§ 99B-12. Regulatory compliance.**

(a) Except as provided in subsection (b) or (c) of this section, in any product liability action against a manufacturer or seller of a drug, if the drug that is alleged to have caused the harm was approved for safety and efficacy by the United States Food and Drug Administration, and the drug and its labeling were in compliance with the United States Food and Drug Administration's approval at the time the drug left the control of the manufacturer or seller, there is a rebuttable presumption that the drug was safe and effective for its approved use, and the manufacturer or seller is not liable. This presumption may be rebutted only by clear and convincing evidence.

(b) This section does not apply if the claimant proves that the manufacturer or seller, at any time before the event that allegedly caused the harm, did any of the following:

(1) Sold the drug in the United States after the effective date of an order of the United States Food and Drug Administration to remove the drug from the market, to withdraw its approval, or to substantially alter the terms of approval in a manner that would have avoided the claimant's alleged injury.

(2) Intentionally, and in violation of applicable regulations as determined by final agency action, withheld from or misrepresented to the United States Food and Drug Administration information material to the approval or maintaining of approval of the drug, and such information is relevant to the harm which the claimant allegedly suffered.

(3) Made an illegal payment to an official or employee of a government agency for the purpose of securing or maintaining approval of the drug.

(c) This section shall not bar an action brought pursuant to Article 51 of Chapter 1 of the General Statutes, if the action is not based upon allegations that the product was not safe or effective or that the manufacturer failed to provide an adequate warning."

PART III. OTHER REFORMS

SECTION 3.1. G.S. 6-21.1 reads as rewritten:

"**§ 6-21.1. Allowance of counsel fees as part of costs in certain cases.**

(a) In any personal injury or property damage suit, or suit against an insurance company under a policy issued by the defendant insurance company ~~and~~ in which the insured or beneficiary is the plaintiff, instituted in a court of record, upon ~~a finding~~findings by the court (i) that there was an unwarranted refusal by the defendant ~~insurance company~~ to negotiate or pay the claim which constitutes the basis of such suit, ~~instituted in a court of record, where~~ (ii) that the ~~judgment for recovery of~~amount of damages recovered is ~~ten thousand dollars ($10,000)~~twenty thousand dollars ($20,000) or less, and (iii) that the amount of damages recovered exceeded the highest offer made by the defendant no later than 90 days before the commencement of trial, the presiding judge may, in ~~his~~the judge's discretion, allow a reasonable ~~attorney fee~~ attorneys' fees to the duly licensed ~~attorney~~ attorneys representing the litigant obtaining a judgment for damages in said suit, said ~~attorney's fee~~ attorneys' fees to be taxed as a part of the court costs. The attorneys' fees so awarded shall not exceed ten thousand dollars ($10,000).

(b) When the presiding judge determines that an award of attorneys' fees is to be made under this statute, the judge shall issue a written order including findings of fact detailing the factual basis for the finding of an unwarranted refusal to negotiate or pay the claim, and setting forth the amount of the highest offer made 90 days or more before the commencement of trial, and the amount of damages recovered, as well as the factual basis and amount of any such attorneys' fees to be awarded."

SECTION 3.2. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 38B.**

"**Trespasser Responsibility.**

"**§ 38B-1. Title.**

This Chapter may be cited as the Trespasser Responsibility Act.

"**§ 38B-2. General rule.**

A possessor of land, including an owner, lessee, or other occupant, does not owe a duty of care to a trespasser and is not subject to liability for any injury to a trespasser.

"**§ 38B-3. Exceptions.**

Notwithstanding G.S. 38B-2, a possessor of land may be subject to liability for physical injury or death to a trespasser in the following situations:

(1) Intentional harms. – A possessor may be subject to liability if the trespasser's bodily injury or death resulted from the possessor's willful or wanton conduct, or was intentionally caused by the possessor, except that a possessor may use reasonable force to repel a trespasser who has entered the land or a building with the intent to commit a crime.

(2) Harms to trespassing children caused by artificial condition. – A possessor may be subject to liability for bodily injury or death to a child trespasser resulting from an artificial condition on the land if all of the following apply:

a. The possessor knew or had reason to know that children were likely to trespass at the location of the condition.

b. The condition is one the possessor knew or reasonably should have known involved an unreasonable risk of serious bodily injury or death to such children.

c. The injured child did not discover the condition or realize the risk involved in the condition or in coming within the area made dangerous by it.

d The utility to the possessor of maintaining the condition and the burden of eliminating the danger were slight as compared with the risk to the child involved.

e. The possessor failed to exercise reasonable care to eliminate the danger or otherwise protect the injured child.

(3) Position of peril. – A possessor may be subject to liability for physical injury or death to a trespasser if the possessor discovered the trespasser in a position of peril or helplessness on the property and failed to exercise ordinary care not to injure the trespasser.

"**§ 38B-4. Definitions.**

The following definitions shall apply in this Chapter:

(1) Child trespasser. – A trespasser who is less than 14 years of age or who has the level of mental development found in a person less than 14 years of age.

(2) Possessor. – A person in lawful possession of land, including an owner, lessee, or other occupant, or a person acting on behalf of such a lawful possessor of land.

(3) Trespasser. – A person who enters on the property of another without permission and without an invitation, express or implied."

PART IV. MISCELLANEOUS PROVISIONS

SECTION 4.1. Severability. – If any provision of this act or its application to any person or circumstance is held invalid, the remainder of this act or the application of the provision to other persons or circumstances is not affected.

SECTION 4.2. Sections 2.1, 2.2, and 3.2 of this act become effective October 1, 2011, and apply to causes of actions arising on or after that date. The remainder of this act becomes effective October 1, 2011, and applies to actions commenced on or after that date.

HOUSE BILL 542:
Tort Reform for Citizens and Businesses

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 8, 2011
Introduced by:	Reps. Rhyne, McComas, Brisson, Crawford	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to Third Edition H542-CSTG-31		

SUMMARY: The PCS to House Bill 542 makes the following changes in the law:

- ***Section 1.1** enacts a new evidence rule under which proof of past medical expenses is restricted to evidence of the amount actually paid or required to be paid to fully satisfy the bills. **(Changed by PCS)***
- ***Section 1.2** amends G.S. 8-58.1 to modify the presumption that arises when a party testifies and offers records of the charges for medical or funeral services. **(Changed by PCS)***
- ***Section 1.3** adopts the federal evidence rule governing the admissibility of expert witness testimony.*
- ***Section 2.1** establishes a rebuttable presumption that a drug was safe and effective for its approved use if it was in compliance with FDA approval of the drug at the time it left the manufacturer's or seller's control, unless the approval was obtained by bribery or by withholding or misrepresenting material facts relating to the harm to the claimant, or if a drug is sold after the FDA withdraws its approval or recalls the drug. This section would not bar actions under the False Claims Act not based on allegations that the drug was not safe or effective or that inadequate warnings were provided by the manufacturer.*
- ***Section 3.1** changes the law governing an award of attorneys' fees in certain lawsuits, to double the size of the maximum award that qualifies a case for consideration of an attorney's fee award, to place a cap of $10,000 on the attorney's fees that can be awarded, and to prohibit an award of attorney's fees absent court determination that the amount recovered was more than the highest pre-trial offer made, and that there was an unwarranted refusal by the defendant to negotiate or pay the claim. **(Changed by PCS)***
- ***Section 3.2** codifies the existing common law general rule of no landowner liability for injury to trespassers, with an exception for willful and wanton or intentional injury, and for negligent injury to child trespassers too young to appreciate the danger of the artificial condition causing injury.*

CURRENT LAW AND BILL ANALYSIS:

Section 1.1: Evidence of Medical Expenses

Current Law: In negligence actions, an award of medical expenses includes all bills reasonably incurred or to be incurred in the future by the plaintiff as a proximate result of the negligence or wrongful conduct of the defendant. To be reasonably incurred, medical expenses must: 1) be reasonable in amount, 2) must have been reasonably necessary for the proper treatment of the plaintiff's injury, and 3) must have been incurred as a proximate result of the defendant's negligence. If the expense has been incurred, there need not be evidence of actual payment. Further, the fact that medical expenses were

paid by the plaintiff's employer, his medical insurer, or some other collateral source generally does not deprive the plaintiff of the right to recover them."[1]

The common law "collateral source" rule prohibits the admission of evidence that the plaintiff has or will receive compensation to pay medical expenses from a source other than the defendant.

Bill Analysis: Section 1.1 of the bill enacts a new rule of evidence that limits the evidence that may be offered to prove past medical expenses to evidence of the amount actually paid in satisfaction of the bills that have been paid, and the amount actually required to satisfy any bills incurred but not yet paid. The rule does not require any party to negotiate a reduction in a provider's bill to which the party is not contractually entitled, and does modify the collateral source rule, except **the PCS permits permit a provider to disclose the existence of a contract or negotiation with a third-party as the basis for any discount provided to a plaintiff.**

Section 1.2: G.S. 8-58.1 (Presumption of Reasonableness of Medical and Funeral Charges)

Current Law: G.S. 8-58.1 provides that:

> Whenever an issue of hospital, medical, dental, pharmaceutical, or funeral charges arises in any civil proceeding, the injured party or his guardian, administrator, or executor is competent to give evidence regarding the amount of such charges, provided that records or copies of such charges accompany such testimony. The testimony of such a person establishes a rebuttable presumption of the reasonableness of the amount of the charges.

Bill Analysis: Section 1.2 amends G.S 8-58.1 to change what the testifying injured party is competent to give evidence regarding from "the amount of such charges" to the amount "paid or required to be paid in full satisfaction of such charges," and changes the resulting presumption from a presumption of the "reasonableness of the charges" to a presumption of the "reasonableness of the amount paid or required to be paid in full satisfaction of the charges."

The PCS provides that sworn testimony (changed from "testimony given in person") of the provider, **the provider's agent or employee** or a person with responsibility to pay the provider on behalf of an injured party that the charge was or can be satisfied for less than the full amount of the charge rebuts any presumption that the amount charged was reasonable, and establishes a rebuttable presumption of the reasonableness of the lesser amount. **In the PCS, the fact that a provider charged for services provided to the injured person establishes a permissive presumption (was a "rebuttable presumption" in bill) that the services provided were reasonably necessary, but such fact does not establish a presumption that the services were necessary because of injuries caused by an alleged tortfeasor.**

Section 1.3: Expert Witness Testimony

Current Law: Rule 702(a) of the N.C. Rules of Evidence permits the court to allow expert opinion testimony "[i]f scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education." In applying this rule, courts consider whether:

- the expert's proffered method of proof is reliable
- the witness presenting the evidence qualifies as an expert in that area
- the evidence is relevant

[1] N.C. Pattern Jury Instructions, Civil 810.04, & n. 3-4 (citations omitted).

In deciding these issues, state trial courts currently have wide discretion and will not be overturned on appeal absent an abuse of discretion.[2]

Bill Analysis: Section 1.3 of the bill amends Rule 702(a) to impose the following additional requirements for the admission of expert opinion testimony:

- it must be based on sufficient data or facts
- it must be the result of reliable methods and scientific principles
- the expert must have applied the principles and methods reliably to the facts of the case[3]

Section 3.1: Rebuttable Presumption Arising from FDA Approval

Current Law: Under current law, in determining whether a manufacturer is liable for inadequate design or formulation of a product, G.S. 99B-6 requires the following factors, among others, to be considered:

- The extent to which the design or formulation conformed to any applicable government standard that was in effect when the product left the control of its manufacturer[4]
- The extent to which the labeling for a prescription or nonprescription drug approved by the United States Food and Drug Administration conformed to any applicable government or private standard that was in effect when the product left the control of its manufacturer[5]

In neither instance does a presumption arise.

Bill Analysis: Section 3.1 of the bill enacts a new Section 99B-12, providing that if the FDA approved a drug for safety and efficacy and if the drug's labeling was in compliance with FDA approval at the time it left the control of the manufacturer or seller, a rebuttable presumption arises that the drug was safe and effective for its approved use. This presumption may be rebutted only by clear and convincing evidence.

The defense is not available if FDA approval of the product was obtained through bribery or intentional withholding or misrepresentation of material information relevant to the harm caused to the plaintiff, or if the drug was sold after the effective date of an FDA order recalling the product or withdrawing its approval or substantially altering the terms of approval in a way that would have avoided the claimant's injury.

In addition, the defense is not available to bar an action brought under the False Claims Act, Article 51 of Chapter 1 of the General Statutes, if the action is not based on allegations that the dug was not safe or effective or that the manufacturer failed to provide an adequate warning.

Section 3.1: Attorneys' Fees in Small Cases

Current Law: G.S. 6-21.1 gives the court discretion to award an attorney fee under the following cases when the plaintiff recovers $10,000 or less:

- Personal injury suits
- Property damage suits
- Suits against an insurance company under a policy issued by the defendant insurance company and in which the insured or beneficiary is the plaintiff, upon a finding by the court

---

[2] State v. Morgan, 359 N.C. 131, 160 (2004).
[3] As amended, Rule 702(a) will mirror Federal Rule 702(a), which was amended in 2000 to conform to the standard outlined in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993).
[4] G.S. 99B-6(b)(3).
[5] G.S. 99B-6(b)(4).

that there was an unwarranted refusal by the defendant insurance company to pay the claim which constitutes the basis of such suit

Bill Analysis: Section 3.1 of the bill raises the maximum damages award qualifying a case for consideration of an award of attorney's fees under the statute to $20,000, and requires the following findings in order for attorneys' fees to be awarded:

- there was an unwarranted refusal to negotiate or pay the claim by the defendant
- the amount of the damages recovered at trial exceeded the defendant's highest pretrial offer made no later than 90 days before trial

Section 3.1 also places a cap on any award of attorneys' fees in the amount of $10,000.

Section 3.2: Trespasser Liability

Current Law: Under North Carolina common law, a trespasser may not recover against an owner or occupier of land for injuries resulting from encountering a passive existing condition on the land unless the injury was caused by the owner or occupier's willful or wanton negligence.[6] Under the "attractive nuisance" doctrine, the common law makes a limited exception to this general rule in certain cases involving injuries to children caused by dangerous conditions if the child could not reasonably be expected to have realized or appreciated the risk the condition posed. This exception is generally available to child trespassers who are younger than 14 years of age; older children are only entitled to recover on a showing that their mental development was that of a younger child.

Bill Analysis: Section 4.2 of the bill codifies the general rule that persons in lawful possession of land are not liable to trespassers for injuries resulting from their encounter with conditions on the land, with exceptions for willful and wanton or intentional conduct and for trespassers less than 14 years of age, or who have the level of mental development found in a person less than 14 years of age.

EFFECTIVE DATE: The act becomes effective October 1, 2011. Sections 2.1, 2.2, and 3.2 apply to causes of action arising on or after that date. The remainder of the act applies to actions commenced on or after that date.

H542-SMTG-40(CSTG-31) v2

[6] "Nelson v. Freeland, 349 N.C. 615, 632, 507 S.E.2d 882, 892 (1998).

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 542

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

H542-ATG-182 [v.4]

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

Date June 13, ,2011

Senator ~~Mansfield~~ Brunstetter

moves to amend the bill on page 4, lines 46-47, by inserting the following between those lines:

"**SECTION 4.1.(a).** If Senate Bill 33 of the 2011 Session of the General Assembly becomes law, then G.S. 90-21.12(b), as enacted by Section 6 of Senate Bill 33, reads as rewritten:

"(b) In any medical malpractice action arising out of the furnishing or the failure to furnish professional services in the treatment of an emergency medical condition, as the term "emergency medical condition" is defined in ~~42 U.S.C. 1395dd(e)(1),~~42 U.S.C. 1395dd(e)(1)(A), the claimant must prove a violation of the standards of practice set forth in subsection (a) of this section by clear and convincing evidence.";

and on page 4, line 47, by deleting the words "**SECTION 4.2.**" and substituting "**SECTION 4.2.** Section 4.1(a). of this Act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 542

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H542-ATG-181 [v.1]

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

Date June 13 ,2011

Senator Brunstetter

moves to amend the bill on page 2, line 20 through page 3, line 24, by deleting those lines in their entirety;

and on page 4, lines 47-48, by deleting the words "Sections 2.1, 2.2, and 3.2 of this act become effective October 1, 2011, and apply to causes of actions arising on or after that date.", and substituting "Section 3.2 of this act becomes effective October 1, 2011, and applies to causes of actions arising on or after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 542

AMENDMENT NO. 3
(to be filled in by Principal Clerk)

H542-ATG-176 [v.2]

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

Date _____,2011

Senator _____

moves to amend the bill on page 1, lines 9-17, by rewriting those lines to read:

"In any action to recover damages for personal injury or wrongful death, evidence of past medical expenses may include:

(1) The bills submitted by the provider of medical services.

(2) The amount actually paid for the medical services.

(3) The amount or estimate of the amount that is necessary to discharge the liability to the provider of medical services.

~~No evidence of collateral sources shall be made known to the jury in presenting the evidence of past medical expenses, except that the claimant may introduce evidence of the source and of any obligation to reimburse that source for payment of medical expenses.~~ JHS

Nothing herein shall be construed to limit the evidence admissible to prove the reasonable value of volunteer services provided to an injured party.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

WITHDRAWN

VISITOR REGISTRATION SHEET

Senate Judiciary I — June 13, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kristi Hunt	NCHCFA
John McAlister	NC Chamber
Lew Ebert	NC Chamber
Gary Salamida	GSK
Joe Lanier	Nelson Mullins
J Goodman	NC Chamber
BJ Miller	Cone Health
Hugh Tilson	NCHA
George Ewing	J&J
Tony Robinson	NCREIA
Allen Crouse	NC REIA

VISITOR REGISTRATION SHEET

Senate Judiciary I — Name of Committee

June 13, 2011 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Bowdich	AstraZeneca
KIRA WHITACRE	NCDOJ
Jennifer Epperson	NCDOJ
John Hardin	MFS
Katherine Ross	PPAB
[illegible]	NC Chamber
Mitch Leonard	SEANC
Chuck Stone	SEANC
Allison Walker	Nelson Mullins
Maeve Boff	Smith Anderson
Jessi Hayes	NC HBA

VISITOR REGISTRATION SHEET

Senate Judiciary - I
Name of Committee

June 13, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
PEYTON MAYNARD	

VISITOR REGISTRATION SHEET

Senate Judiciary I — June 13, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Erin McBrayer	JLF
Chris Valaun	Takeda Pharmaceuticals
Jake Cashion	NC Chamber
Drew Reese	Raleigh Chamber
John Morris	Policy Strategies
Dana Simpson	Smith Anderson
Cayo Byrd	NCMS
Nick Tosco	NCLM
Heather Barrett	Williams Mullen
PAIGE WORCHAM	Daily Bulletin

VISITOR REGISTRATION SHEET

Senate Judiciary I — June 13, 2011

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bradford Sneeden	Gov. Office
Bryan Craig	NCAJ
Dick Taylor	NCAJ
Paul Pulley	NCAJ
Dennis Roach	Smith Anderson
Robert Desmond	Smith Anderson
Jeff Mixon	AFP
Karen Duquette	Civitas
Amy Fullbright	KI Tales
Josh Colton	Law Offices of Robert Orr
Colleen Kochanek	ICL6

SENATE JUDICIARY I COMMITTEE
June 14, 2011 at 9:30 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 9:30 AM on June 14, 2011, in Room 1027 of the Legislative Building. Seventeen members of the committee were present. Senator Pete Brunstetter presided.

Senator Brunstetter called the meeting to order at 9:35 a.m.

House Bill 351
Senator Apodaca moved to accept the PCS for purposes of discussion
Senator Brunstetter recognized Representative Killian to introduce the bill
Erika Churchill was recognized to explain the bill
Damon Circosta from the Center for Voter Education was recognized to speak against the bill
Jay Johnson from NC FIRE was recognized to speak for the bill
Senator Apodaca moved for a favorable report, unfavorable as to bill, favorable as to PCS
Senator Clodfelter was recognized to ask a question, and Senator Brunstetter answered
Senator Soucek was recognized to ask a question, and Erika Churchill answered
Senator Soucek was recognized for a series of questions, and Erika Churchill answered
Senator Brunstetter asked a question, and Representative Killian answered
Senator Nesbitt was recognized to ask a question, and Representative Killian answered
Senator Nesbitt asked a question, and Erika Churchill answered
Senator Nesbitt asked a follow-up, and Senator Brunstetter answered
Senator Brown asked a question, and Erika Churchill answered
Senator Tillman made a comment
Senator Brock asked a question, and Representative Killian answered
Senator Brock asked a follow-up question, and Representative Killian answered
Senator Clodfelter asked a question, and Representative Killian answered
Senator Clodfelter asked a follow-up question, and Erika Churchill answered
Senator Nesbitt asked a question, and Representative Killian answered
Senator Nesbitt asked a follow-up question, and Representative Killian answered
Senator Nesbitt asked a follow-up question, and Representative Lewis answered
Senator Stein asked a question, and Representative Killian answered
Senator Stein asked a follow-up question, and Representative Lewis answered
Senator Stein made a comment
Senator Apodaca made a comment
Motion carries

Meeting adjourned at 10:30 a.m.

[redacted], Presiding
Peter Brunstetter

Sarah Hardin, Committee Clerk

Senate Judiciary I Committee
Tuesday, June 14, 2011, 9:30 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 351	Restore Confidence in Government.	Representative Lewis Representative Killian Representative Moore

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 351
Committee Substitute Favorable 4/7/11
Committee Substitute #2 Favorable 6/7/11
Fourth Edition Engrossed 6/9/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H351-CSST-67 [v.2]

6/13/2011 8:58:40 PM

Short Title: Restore Confidence in Government. (Public)

Sponsors:

Referred to:

March 15, 2011

A BILL TO BE ENTITLED

AN ACT TO RESTORE CONFIDENCE IN GOVERNMENT BY REQUIRING THAT VOTERS PROVIDE PHOTO IDENTIFICATION BEFORE VOTING.

The General Assembly of North Carolina enacts:

SECTION 1.1. Article 14A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-166.13. Photo identification requirement for voting in person.**

(a) Every individual voting in person shall present photo identification to a local election official at the voting place before voting.

(b) Notwithstanding subsection (a) of this section, any voter without photo identification shall be permitted to vote a provisional official ballot.

(c) As used in this section, "photo identification" means any of the following that contain a photograph of the registered voter:

(1) A North Carolina drivers license issued under Article 2 of Chapter 20 of the General Statutes, including a learner's permit or a provisional license.

(2) A special identification card for nonoperators issued under G.S. 20-37.7.

(3) An identification card issued by a branch, department, agency, or entity of this State, any other state, or the United States.

(4) A United States passport.

(5) An employee identification card issued by any branch, department, agency, or entity of the United States government, this State, or any county, municipality, board, authority, or other entity of this State.

(6) A United States military identification card.

(7) A tribal identification card.

(8) A North Carolina voter identification card issued under G.S. 163-166.14."

SECTION 1.2. Article 14A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-166.14. Voter identification card.**

(a) Each county board of elections shall accept applications for and issue North Carolina voter identification cards to registered voters in that county. The voter identification

card shall be valid only for purposes of voter identification and proof of voter registration under this Chapter and available only to registered voters of this State. No fee shall be charged or collected for the application for or issuance of a North Carolina voter identification card.

(b) No registered voter shall be eligible for a North Carolina voter identification card if that registered voter has a valid unexpired drivers license, learner's permit, provisional license, or a special identification card for nonoperators issued under G.S. 20-37.7.

(c) The North Carolina voter identification card shall be captioned "NORTH CAROLINA VOTER IDENTIFICATION CARD" and shall contain a prominent statement that under North Carolina law it is valid only as identification for voting purposes. The North Carolina voter identification card shall be laminated, shall contain a digital color photograph of the applicant, and shall include all of the following information:

(1) Full legal name.
(2) Address of residence.
(3) Birth date.
(4) Date identification card was issued.
(5) Sex.
(6) Eye color.
(7) County where the identification card was issued.
(8) Such other information or identification as required by rule of the State Board of Elections.

(d) The application for a North Carolina voter identification card shall elicit the information required under subsection (c) of this section and such other information as may be required by rule of the State Board of Elections. The application shall be signed by the applicant registered voter. The information collected by the county board of elections shall be subject to G.S. 163-82.10 and G.S. 163-82.10B.

(e) The county board of elections shall require, and shall verify, all of the following information before issuing a North Carolina voter identification card to a registered voter:

(1) A photo identity document, except that a nonphoto identity document is acceptable if it includes the registered voter's name.
(2) Evidence that the individual is registered to vote in this State.
(3) Documentation showing the registered voter's name and residence address.

(f) A North Carolina voter identification card shall remain valid so long as a person resides at the same address and remains qualified to vote. If a person moves his or her residence within the State, that person may apply for and receive a new card if such person is otherwise eligible under this section.

(g) The State Board of Elections shall provide each county board of elections issuing North Carolina voter identification cards with the necessary equipment, forms, supplies, and training for the production of the North Carolina voter identification cards and shall maintain such equipment.

(h) The State Board of Elections shall adopt policies for the administration of this section and, without limiting the generality of the foregoing, such policies may further define or prescribe the types of documentation required under subsection (e) of this section."

SECTION 1.3. G.S. 163-82.6A(b) reads as rewritten:

"(b) Both Attestation and Proof of Residence Required. – To vote under this section, a voter must present photo identification as required by G.S. 163-166.13. This requirement is separate from the requirement to provide proof of residence under subdivision (2) of this subsection. If an individual does not present the required photo identification, that individual may vote a provisional official ballot. To register ~~and vote~~ under this section, the person shall do both of the following:

(1) Complete a voter registration form as prescribed in G.S. 163-82.4, including the attestation requirement of G.S. 163-82.4(b) that the person meets each eligibility requirement. Such attestation is signed under penalty of a Class I felony under G.S. 163-275(13); and

(2) Provide proof of residence by presenting any of the following valid documents that show the person's current name and current residence address: a North Carolina drivers license, a photo identification from a government agency, or any of the documents listed in G.S. 163-166.12(a)(2). The State Board of Elections may designate additional documents or methods that suffice and shall prescribe procedures for establishing proof of residence."

SECTION 1.4. G.S. 163-166.7(a) reads as rewritten:

"(a) Checking Registration. – A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence ~~address.~~ address and presenting photo identification in accordance with G.S. 163-166.13. If an individual does not present the required identification, that individual may vote a provisional official ballot. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots. If a precinct official states that the person is duly registered, the person shall sign the pollbook, other voting record, or voter authorization document in accordance with subsection (c) of this section before voting."

SECTION 1.5. G.S. 163-227.2(b) reads as rewritten:

"(b) Not earlier than the third Thursday before an election, in which absentee ballots are authorized, in which a voter seeks to vote and not later than 1:00 P.M. on the last Saturday before that election, the voter shall appear in person only at the office of the county board of elections, except as provided in subsection (g) of this section. A county board of elections shall conduct one-stop voting on the last Saturday before the election until 1:00 P.M. and may conduct it until 5:00 P.M. on that Saturday. That voter shall enter the voting enclosure at the board office through the appropriate entrance and shall at once state his or her name and place of residence to an authorized member or employee of the ~~board.~~ board and present photo identification in accordance with G.S. 163-166.13. If an individual does not present the required identification, that individual may vote a provisional official ballot. In a primary election, the voter shall also state the political party with which the voter affiliates and in whose primary the voter desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party under G.S. 163-119, the voter shall state the name of the authorizing political party in whose primary he wishes to vote. The board member or employee to whom the voter gives this information shall announce the name and residence of the voter in a distinct tone of voice. After examining the registration records, an employee of the board shall state whether the person seeking to vote is duly registered. If the voter is found to be registered that voter may request that the authorized member or employee of the board furnish the voter with an application form as specified in G.S. 163-227. The voter shall complete the application in the presence of the authorized member or employee of the board, and shall deliver the application to that person."

SECTION 1.6. Article 15A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-182.1A. Counting of provisional official ballots cast because of failure to provide valid photo identification at the polls.

(a) A voter who cast a provisional official ballot wholly or partly as a result of the voter's inability or declination to provide proof of identification may personally appear at an office of the county board of elections not later than the date of the conclusion of the election canvass for that county to seek counting of the provisional official ballot as provided in subsection (b) or (c) of this section.

(b) Unless the vote is disqualified for some other reason provided by law, the county board of elections shall find that the voter's provisional ballot is valid and direct that the provisional ballot be opened and counted in accordance with this Chapter if the voter both:

(1) Provides valid photo identification to the county board of elections; and

(2) Executes an affidavit, in the form prescribed by the State Board of Elections, affirming under the penalties of perjury that the voter is the same individual who:

a. Personally appeared to vote on the day of election or at an early voting site; and

b. Cast the provisional ballot on that day.

(c) Unless the vote is disqualified for some other reason provided by law, the county board of elections shall find that the voter's provisional ballot is valid and direct that the provisional ballot be opened and counted in accordance with this Chapter if the voter executes an affidavit before the county board of elections, in the form prescribed by the State Board of Elections, affirming under the penalties of perjury that:

(1) The voter is the same individual who:

a. Personally appeared to vote on the day of election or at an early voting site; and

b. Cast the provisional ballot on that day; and

(2) The voter has a sincerely held religious objection to being photographed.

(d) If the county board of elections determines that a voter described in subsection (b) or (c) of this section has also cast a provisional official ballot for a cause other than the voter's inability or declination to provide valid photo identification, the board shall both:

(1) Note on the envelope containing the provisional official ballot that the voter has complied with the proof of valid photo identification requirement; and

(2) Proceed to determine any other reasons for which the ballot was cast provisionally before ruling on the validity of the voter's provisional ballot."

SECTION 1.7. G.S. 163-87 reads as rewritten:

"**§ 163-87. Challenges allowed on day of primary or election.**

On the day of a primary or election, at the time a registered voter offers to vote, any other registered voter of the precinct may exercise the right of challenge, and when ~~he~~ the voter does so may enter the voting enclosure to make the challenge, but ~~he~~ the voter shall retire therefrom as soon as the challenge is heard.

On the day of a primary or election, any other registered voter of the precinct may challenge a person for one or more of the following reasons:

(1) One or more of the reasons listed in G.S. 163-85(c).

(2) That the person has already voted in that primary or election.

(3) Repealed by Session Laws 2009-541, s. 16.1(b), effective August 28, 2009.

(4) If the challenge is made with respect to voting in a partisan primary, that the person is a registered voter of another political party.

(5) The voter does not present proof of identification as required by G.S. 163-166.13.

The chief judge, judge, or assistant appointed under G.S. 163-41 or 163-42 may enter challenges under this section against voters in the precinct for which appointed regardless of the place of residence of the chief judge, judge, or assistant.

If a person is challenged under this subsection, and the challenge is sustained under G.S. 163-85(c)(3), the voter may still transfer his registration under G.S. 163-82.15(e) if eligible under that section, and the registration shall not be cancelled under G.S. 163-90.2(a) if the transfer is made. A person who has transferred his registration under G.S. 163-82.15(e) may be challenged at the precinct to which the registration is being transferred."

SECTION 1.8. G.S. 20-37.7(d) reads as rewritten:

"(d) Expiration and Fee. – A special identification card issued to a person for the first time under this section expires when a drivers license issued on the same day to that person would expire. A special identification card renewed under this section expires when a drivers license renewed by the card holder on the same day would expire.

The fee for a special identification card is the same as the fee set in G.S. 20-14 for a duplicate license. The fee does not apply to a special identification card issued to a resident of this State who (i) is legally blind, (ii) is at least 70 years old, (iii) is registered to vote in this State but does not have photo identification acceptable under G.S. 163-166.13, (iv) is homeless, or (v) ~~who~~ has been issued a drivers license but the drivers license is cancelled under G.S. 20-15, in accordance with G.S. 20-9(e) and (g), as a result of a physical or mental disability or disease. To obtain a special identification card without paying a fee, a homeless person must present a letter to the Division from the director of a facility that provides care or shelter to homeless persons verifying that the person is homeless. To obtain a special identification card without paying a fee, a registered voter shall sign an unnotarized affidavit stating the registered voter is registered and does not have other photo identification acceptable under G.S. 163-166.13."

SECTION 1.9.(a) Education and Publicity Requirements. – The public shall be educated about the photo identification to vote requirements of this act as follows:

(1) As counties use their regular processes to notify voters of assignments and reassignments to districts for election to the United States House of Representatives, State Senate, State House of Representatives, or local office, by including information about the provisions of this act.

(2) As counties send new voter registration cards to voters as a result of new registration, changes of address, or other reasons, by including information about the provisions of this act.

(3) Counties that maintain a board of elections Web site shall include information about the provisions of this act.

(4) Notices of elections published by county boards of elections under G.S. 163-22(8) for the 2012 primary and 2012 general election shall include a brief statement that photo identification is required to vote.

(5) The State Board of Elections shall include on its Web site information about the provisions of this act.

(6) Counties shall post at the polls and at early voting sites beginning with the 2012 primary elections information about the provisions of this act.

(7) The State Board of Elections shall include in the Judicial Voter Guide described in G.S. 163-278.69 information about the provisions of this act and shall also include the information in the Voter Guide under G.S. 163-278.99E if it is published separately.

(8) The State Board of Elections and the county boards of elections shall take reasonable steps to provide public service announcements about the provisions of this act through print, radio, television, online, and social

media. Of the funds appropriated in Section 1.10 of this act, the sum of six hundred thousand dollars ($600,000) for the 2011-2012 fiscal year shall be placed in a special reserve to carry out the provisions of this subdivision and to provide for issuance of North Carolina voter identification cards under G.S. 163-166.13 as enacted by this act. Those funds shall be made available as follows:

a. $100,000 to the State Board of Elections.
b. $100,000 in an equal share to each county board of elections.
c. $200,000 to county boards of elections in proportion to the number of registered voters in the county.
d. $200,000 to county boards of elections in counties covered by section 5 of the Voting Rights Act of 1965, in proportion to the number of registered voters in the county.

SECTION 1.9.(b) G.S. 163-278.69 is amended by adding a new subsection to read:

"(d) The Judicial Voter Guide published under this section shall also include information on the photo identification requirement for voting in person pursuant to G.S. 163-166.13."

SECTION 1.10.(a) Of the unexpended funds remaining in the North Carolina Voter-Owned Elections Fund, up to four hundred twenty-nine thousand four hundred fifty-five dollars ($429,455) shall be used for the purposes of implementing this act and are hereby appropriated.

SECTION 1.10.(b) Fund from the surcharge on attorney membership fees under G.S. 84-34 collected on or after July 1, 2011, may be used for the purpose of the judicial voter guide as provided in G.S. 163-278.69, as amended by this act.

SECTION 1.10.(c) Of the funds appropriated to the General Assembly for the 2010-2011 fiscal year, the sum of two hundred thirty-one thousand four hundred thirty-seven dollars ($231,437) remaining on June 30, 2011, is transferred to the State Board of Elections for the 2011-2012 fiscal year to implement the provisions of this act and are hereby appropriated.

SECTION 1.10.(d) Of the funds appropriated to the General Assembly for the 2010-2011 fiscal year, the sum of thirty-nine thousand one hundred twenty-eight dollars ($39,128) remaining on June 30, 2011, is transferred to the State Board of Elections for the 2012-2013 fiscal year to implement the provisions of this act and are hereby appropriated.

SECTION 1.10.(e) Of the funds appropriated to the Department of Transportation, Division of Motor Vehicles, up to one million four hundred sixty-eight thousand thirty-three dollars ($1,468,033) for the 2011-2012 fiscal year and the sum of one hundred thousand four hundred thirty-eight dollars ($100,438) for the 2012-2013 fiscal year may be used from the Highway Fund, including unexpended funds within the Inspections Program Account and Telecommunications Account created by G.S. 20-183.7, to support the costs of issuing special identification cards for nonoperators and for costs associated with modifications to the State Automated Driver License System.

SECTION 2. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 3. Sections 1.8, 1.9, and 1.10 of this act become effective July 1, 2011. Except as otherwise provided, this act is effective when it becomes law and applies to primaries and elections conducted on or after January 1, 2012.

HOUSE BILL 351:
Restore Confidence in Government

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 13, 2011
Introduced by:	Reps. Lewis, T. Moore, Killian	**Prepared by:**	R. Erika Churchill Committee Counsel
Analysis of:	PCS to Fourth Edition H351-CSST-67		

SUMMARY: ***The proposed committee for House Bill 351 would require any person voting in person to show photo identification prior to voting.***

[As introduced, this bill was identical to S352, as introduced by Sens. Meredith, Hise, which is currently in Senate Judiciary I.]

CURRENT LAW:

When appearing at the polls, the voter is to state their name and residence address to the precinct official so requesting. The individual, if verified by the precinct official as a registered voter, is then to sign their name to the pollbook, other voting record, or voter authorization document prior to voting.

For individuals who register to vote by mail after January 1, 2003, and have not previously voted in an election with a federal ballot item since that time, who appear at the polls to vote, that voter is also required to provide following forms of identification prior to voting:

- A current and valid photo ID.
- A copy of one of the following documents that shows the name and address of the voter: current utility bill, bank statement, government check, paycheck, or other government document.

An individual is exempted from showing identification if that individual included as part of the voter registration one of the forms of ID listed above, or their driver's license number or the last four digits of their social security number. The identification provided is then used to provide a match to an existing State identification record. Also exempt are those individuals, such as overseas and military voters entitled to vote by absentee ballot and voters entitled to vote other than in person under the federal Voting Accessibility for the Elderly and Handicapped Act, who are exempted under the federal law.

BILL ANALYSIS:

All voters appearing in person to vote, whether on election day, one-stop absentee, or same-day registration voting, would be required to present a photo ID when voting in-person under the new section, G.S. 163-166.13. The following photo IDs would be accepted:

- North Carolina drivers' license, including a learner's permit or provisional license.
- Special NC ID card for non-operators.
- ID card issued by a branch, department, agency, or entity of the State of NC, any other state, or the United States.
- US passport.

- Employer ID card issued by a branch, department, agency, or entity of the US government, State of NC, or any county, municipality, board, authority, or other entity of the State of NC.
- US military ID card.
- Tribal ID card.
- NC Voter ID card.

Any individual not having one of the required photo IDs would be allowed to vote a provisional ballot. Voters casting provisional ballots as a result of failure to show photo ID would be required to appear in person at the county board of election no later than the conclusion of the election canvass (10^{th} day following the general election and 7^{th} day following any other election. G.S. 163-182.5) to seek counting of the provisional ballot in one of two ways:

1. Provide photo ID and execute an affidavit that the person voted on the relevant day and cast a provisional ballot.
2. Execute an affidavit that the voter has a sincerely held religious objection to being photographed and that the person voted on the relevant day and cast a provisional ballot.

Unless the vote is disqualified for some other legal reason, the board must count the ballot.

For those individuals without one of the required photo IDs, two options would exist to obtain a required photo ID:

1. County boards of elections would issue voter identification cards at no cost to registered voters of that county who do not have a valid unexpired drivers' license, learner's permit, provisional license, or special ID card for non-operators. The cards could only be used for voting purposes and would require certain information about the person be printed on the card, including a photograph of the voter. A voter would be required to present a photo identity document or a nonphoto identity document that includes the person's name, evidence of the person's voter registration, and documentation of name and address. The card would remain valid as long as the person resided at the same address and remained qualified to vote. A person who moved within the State may apply for a new voter ID card if otherwise eligible to vote. The State Board would provide supplies and equipment to county boards of elections and adopt policies for administration, including policies to define the types of documentation needed to be verified before issuing a voter ID card.
2. The Department of Motor Vehicles would issue, to individuals registered to vote in North Carolina without a photo ID required for voting, a special ID card upon the individual signing an un-notarized affidavit attesting to registration and lack of acceptable photo ID. DMV could not charge a fee for the special ID under these circumstances.

The bill would require voters be educated about the photo ID requirements through regular mailings, State and county board of election websites, notices of elections, posting at polling sites, the Judicial Voters Guide, and public service announcements. Sources of funding for publicity and to provide for issuance of ID cards would be:

- Unexpended funds in the NC Voter Owned Elections Fund.

- Funds from the surcharge on attorney membership fees as related to judicial elections collected on or after July 1, 2011.
- A $600,000 special reserve to be created within the State Board of Elections from the appropriations in Section 1.10 of the act. That money would be used for voter education and the issuance of voter ID's by the county boards of election. The State Board of Elections is required to provide the counties with the necessary equipment, forms, supplies, and training for the production of the voter ID, as well as maintain the equipment.

Additionally, the bill would appropriate monies as follows:

- **Section 1.10(d)** - In 2011-2012, $231,437 from the funds appropriated to the General Assembly, and in 2012-2013, $39,128 from the funds appropriated to the General Assembly, is transferred to the State Board of Elections to implement the provisions of this act.
- **Section 1.10(e)** - In 2011-2012, $1,468,033 of the funds appropriated to the Department of Motor Vehicles, and in 2012-2013, $100,438 of the funds appropriated to the Department of Motor Vehicles is to be used to implement the provisions of this act.

EFFECTIVE DATE: The appropriations would become effective July 1, 2011. The substantive provisions of the act would become effective when it becomes law and apply to primaries and elections conducted on or after January 1, 2012, but may not be implemented until the session law has received "preclearance" approval under Section 5 of the Voting Rights of 1965.

H351-SMST-61(CSST-67) v1

PAGES ATTENDING

Date: 6-14

Committee: Judiciary I **Room:** 1027 9:30 Am -11 Am

PLEASE PRINT LEGIBILY!!!!!

Page Name	Hometown	Sponsoring Senator
1 Mimi McCarthy	Greenville	Pate
2 ~~Brandon Patton~~	Youngsville	D. Berger
3 Mallory Lowe	Trinity	Bingham
4 Saren Calclough	Clayton	Ronzer
5 Chase Hinnant	Clayton	Rouzer
6		
7		
8		
9		

Do not add additional names below the grid.

Pages: Please present this form to either the Committee Clerk at the meeting or a Sgt. at Arms.

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Melissa Hunter	NCCE
Bob Phillips	Common Cause
Allison Fowler	NC State Grange
BILL GILKESON	BAILEY & DIXON
Regan Gatlin	NC Center for VOter. Edu.
Damon Circosta	NC Center For VoterEd
Jonathon Martin	JLF
Erin McBrayer	JLF
Kristin Szafranski	JLF
Rosalyn Raines	Shawdow / Harry Brown

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Chris Telesca	Wake Verified Voting
Johnnie McLean	LBE
Veronica Degraffenreid	SBOE
Gary Bartlett	SBE
David Boaz	Womble
Travis Wherry	Womble
Matt Tripletf	Womble
Janie Hauser	Womble
Scott Gallisdorfer	Womble
Andy Rinehart	Womble

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Michelle Frazier	MF+S
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Todd Barlow	NCAJ
Nicki Tosco	NCLM
Bob LaMunyon	RLA
John Purcell	NCLIA

Senate Judiciary I Committee
Monday, September 12, 2011, 1:30 PM
643 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 823	Governance of the Dep't of Public Instruction.	Representative Holloway Representative Brubaker Representative Blackwell Representative Hilton

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 823
Committee Substitute Favorable 5/24/11
Third Edition Engrossed 5/26/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H823-PCS90131-RN-34

Short Title: Speaker/Pro Tem Term Limits. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO LIMIT THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT PRO TEMPORE OF THE SENATE TO SERVICE FOR FOUR CONSECUTIVE TWO-YEAR TERMS IN THOSE OFFICES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 15 of Article II of the North Carolina Constitution reads as rewritten:

"**Sec. 15. Officers of the House of Representatives.**

(1) The House of Representatives shall elect its Speaker and other officers.

(2) No person may serve as Speaker in more than four consecutive General Assemblies. The initial convening of a regular session of the General Assembly after the terms of members commence shall constitute a new General Assembly for the purpose of this Section. Only service as Speaker during any part of an odd-numbered year constitutes service as Speaker for that General Assembly for the purpose of this Section. Service as Speaker in the 2011 and subsequent regular sessions of the General Assembly shall be considered in applying the limit established by this subsection."

SECTION 2. Section 14 of Article II of the North Carolina Constitution reads as rewritten:

"**Sec. 14. Other officers of the Senate.**

(1) President Pro Tempore – succession to presidency. The Senate shall elect from its membership a President Pro Tempore, who shall become President of the Senate upon the failure of the Lieutenant Governor-elect to qualify, or upon succession by the Lieutenant Governor to the office of Governor, or upon the death, resignation, or removal from office of the President of the Senate, and who shall serve until the expiration of his term of office as Senator.

(1a) No person may serve as President Pro Tempore in more than four consecutive General Assemblies. The initial convening of a regular session of the General Assembly after the terms of members commence shall constitute a new General Assembly for the purpose of this Section. Only service as President Pro Tempore during any part of an odd-numbered year constitutes service as President Pro Tempore for that General Assembly for the purpose of this

Section. Service as President Pro Tempore in the 2011 and subsequent regular sessions of the General Assembly shall be considered in applying the limit established by this subsection.

(2) President Pro Tempore – temporary succession. During the physical or mental incapacity of the President of the Senate to perform the duties of his office, or during the absence of the President of the Senate, the President Pro Tempore shall preside over the Senate.

(3) Other officers. The Senate shall elect its other officers."

SECTION 3. The amendments set out in Sections 1 and 2 of this act shall be submitted to the qualified voters of the State at the general election on November 6, 2012, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Term Limits: Constitutional amendments providing that neither the Speaker of the House of Representatives nor the President Pro Tempore of the Senate may serve more than four consecutive terms."

SECTION 4. If a majority of the votes cast on the question are in favor of the amendments set out in Sections 1 and 2 of this act, the State Board of Elections shall certify the amendments to the Secretary of State, and the amendments become effective upon certification. The Secretary of State shall enroll the amendments so certified among the permanent records of that office.

SECTION 5. This act is effective when it becomes law.

HOUSE BILL 823:
Speaker/Pro Tem Term Limits

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	September 12, 2011
Introduced by:	Reps. Holloway, Hilton, Brubaker, Blackwell	**Prepared by:**	Brad Krehely
Analysis of:	PCS to Third Edition H823-CSRN-34		Committee Counsel

SUMMARY: The Proposed Committee Substitute (PCS) for House Bill 823 would amend the North Carolina Constitution to limit the North Carolina Speaker of the House of Representatives and the President Pro Tempore of the North Carolina Senate to four consecutive two-year terms in those offices.

CURRENT LAW: Currently, the State Constitution and statutes do no limit the terms of the Speaker of the House of Representatives or the President Pro Tempore of the Senate.

BILL ANALYSIS: The PCS would place on the November 6, 2012 general election ballot an amendment to the North Carolina Constitution that, if approved by a majority of the votes cast, would do all of the following:

- Provide that neither the Speaker of the House of Representatives nor the President Pro Tempore of the Senate may serve more than 4 consecutive terms.
- Only service as Speaker or President Pro Tempore during any part of an odd-numbered year constitutes service as Speaker or President Pro Tempore.
- Service as Speaker or President Pro Tempore in the 2011 and subsequent regular sessions must be considered in applying the term limit.
- Effective Date- If a majority of votes cast on the question are in favor or the amendments in Part II, then the State Board of Elections must certify the amendment to the Secretary of State. The amendment would become effective upon certification.

EFFECTIVE DATE: The act is effective when it becomes law, and the constitutional amendments would become effective as described above.

BACKGROUND: The current North Carolina Constitution provisions governing the Speaker of the House of Representatives and the President Pro Tempore of the Senate are set forth below.

Article II, Sec. 11. Sessions.

(1) Regular Sessions. The General Assembly shall meet in regular session in 1973 and every two years thereafter on the day prescribed by law. Neither house shall proceed upon public business unless a majority of all of its members are actually present.

(2) Extra sessions on legislative call. The President of the Senate and the Speaker of the House of Representatives shall convene the General Assembly in extra session by their joint proclamation upon receipt by the President of the Senate of written requests therefor signed by three-fifths of all the members of the Senate and upon receipt by the Speaker of the House of Representatives of written requests therefor signed by three-fifths of all the members of the House of Representatives.

ticle II, Sec. 15. Officers of the House of Representatives.

ıe House of Representatives shall elect its Speaker and other officers.

Article II, Sec. 14. Other officers of the Senate.

(1) President Pro Tempore - succession to presidency. The Senate shall elect from its membership a President Pro Tempore, who shall become President of the Senate upon the failure of the Lieutenant Governor-elect to qualify, or upon succession by

the Lieutenant Governor to the office of Governor, or upon the death, resignation, or removal from office of the President of the Senate, and who shall serve until the expiration of his term of office as Senator.

(2) President Pro Tempore - temporary succession. During the physical or mental incapacity of the President of the Senate to perform the duties of his office, or during the absence of the President of the Senate, the President Pro Tempore shall preside over the Senate.

(3) Other officers. The Senate shall elect its other officers.

H823-SMRN-76(CSRN-34) v3

Giles Perry contributed to the drafting of this summary.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 823

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

H823-ARN-27 [v.1]

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

Date September 12 ,2011

Senator Stein

moves to amend the bill on page 2, lines 13-15, by rewriting those lines to read:

"Term Limits: Constitutional amendments providing that no person shall serve as Speaker of the House of Representatives for more than four consecutive terms in that office and no person shall serve as President Pro Tempore of the Senate for more than four consecutive terms in that office.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

* was distributed but not voted upon

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 823

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

H823-ARN-26 [v.3]

Comm. Sub. [YES]
Amends Title [YES]
Third Edition

Date _____,2011

Senator _____

moves to amend the bill on page 1, lines 4-5, by rewriting those lines to read:
"TEMPORE OF THE SENATE."; and

on page 1, lines 11-17, by rewriting those lines to read:
"(2) No person may serve as Speaker in more than four consecutive General Assemblies. A person who has served in four consecutive General Assemblies as Speaker shall not be eligible to serve as Speaker for any period in the immediately following General Assembly. A person who has served as Speaker for less than one year of a term to which some other person has been elected Speaker may serve as Speaker for four consecutive General Assemblies in addition to the partial term. The initial convening of a regular session of the General Assembly after the terms of members commence shall constitute a new General Assembly for the purpose of this Section. Service as Speaker in the 2011 and subsequent regular sessions of the General Assembly shall be considered in applying the limit established by this subsection."; and

on page 1, line 27 through page 2, line 2, by rewriting those lines to read:

"(1a) No person may serve as President Pro Tempore in more than four consecutive General Assemblies. A person who has served in four consecutive General Assemblies as President Pro Tempore shall not be eligible to serve as President Pro Tempore for any period in the immediately following General Assembly. A person who has served as President Pro

Tempore for less than one year of a term to which some other person has been elected President Pro Tempore may serve as President Pro Tempore for four consecutive General Assemblies in addition to the partial term. The initial convening of a regular session of the General Assembly after the terms of members commence shall constitute a new General Assembly for the purpose of this Section. Service as President Pro Tempore in the 2011 and subsequent regular sessions of the General Assembly shall be considered in applying the limit established by this subsection.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

Senate Judiciary I — September 12, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

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Ann McCall	SBE
Jaime King	NCEL
[illegible]	TVC
Todd Cooper	Compass NC
Chip Baggett	NCMS
Mary Garlock	CWA-NC
Becki Gray	JLF
Melissa Whatley	JLF
[illegible]	NMRS

VISITOR REGISTRATION SHEET

Senate Judiciary I
Name of Committee

September 12, 2011
Date

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Jennifer Geer	
M Hill	SBE
Katherine Joyce	NCASA
Sean Holmes	NCSBA
Dean Plunkett	PS

Judicial Selection—An Overview

James Drennan
UNC School of Government
October 26, 2011

The Court's Job

- **Magna Carta:** *To no one will we sell, to no one deny or delay right or justice.*
- *In the 1660's the English Crown instructed the Lord Proprietors to build a system of courts 'to do equal justice to all men to the best of their skill and judgment, without corruption, favor or affection'.*
- **N C Constitution:** Right and justice shall be administered without favor, denial and delay.
- **N C Code of Judicial Conduct:** A judge should respect and comply with the law and should conduct himself/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. . . A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

What People Tend to Agree On

- Judges should be (In addition to being competent in the law, in descending order)
  - Honest
  - Fair
  - Unbiased
  - Good Managers
  - Hardworking
  - Consistent
  - Speedy

– *Commission on the Future of Justice And the Courts in North Carolina, 1995*

What People Often Disagree About

- How to select judges who have those qualities
- How to weigh those various qualities
- What the role of a judge should be
- Whether the same system works for trial and appellate courts
- How to best keep judges accountable when they should be and independent when they should be

Things to Consider in Any Selection System

- Providing appropriate candidate pool
  - Providing appropriate job security to candidates selected
- Providing appropriate safeguards to protect public from poor choices
- Providing appropriate public input

How Others Do It

- Federal Model
  - Appointment by President, confirmed by Senate
    - Indefinite term, guaranteed salary
  - *"He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries." Declaration of Independence*
- Basic methods used by States
  - Appointment by Executive
  - Appointment by Legislature
  - "Merit" Selection
  - Nonpartisan Election
  - Partisan Election

- State judicial selection is classic federalism
  - Many states combine more than one method
  - Many use different methods for different courts
- Building blocks for a system
  - Filling vacancies in mid term
  - Filling vacancies at end of term
  - Selection for full term
  - Retention

Appointments

- Clustered in original colonies, in Northeast.
  - Some have indefinite terms ("good behavior")
  - Others has specific terms
  - Most use some form of screening, either formal or informal
  - Legislature/Senate confirms
  - No elections for subsequent terms

Partisan Elections

- Began to appear in 1830's as part of Jacksonian democracy movement
  - Initial method for most new states and for states rethinking method during the 19th century
- Seen as creating independence from appointing authorities
- Candidates selected by parties
- Run in elections on party banners
- Currently in South and Great Lakes area (Pa., Ill., Ohio, W. Va.)
- Used more often for trial courts than appellate courts

Nonpartisan elections

- Began to appear in early around turn of the 20th century
- Established to provide independence from political parties
- Candidates run without party designation
- Clustered in upper Midwest and Northwest
- More common in trial courts
- Some states have moved from partisan to nonpartisan in last generation

"Merit" Selection

- First adopted in Missouri in 1940; popular in 1960's and 1970's
- Appointment by Governor for initial term from screened candidates
- Screening done by nominating commission
  - Typically bipartisan, with multiple appointing authorities
- Subsequent, full terms are usually by retention election
- Occasionally, nominee is confirmed by some other body
- Used more often in appellate courts than trial courts
- Clustered in mid-western states

Legislative Appointment

- Used in only two states, South Carolina and Virginia
- Reflects distrust of executive power common when states were established
- Applies to both initial appointment and reappointments
- May also involve some screening by outside entity

Some numbers

- Pure merit selection states—6
- Full-term election only states—22
- States with both merit selection and elections for full terms—11
- States with no elections—12

Some More Numbers

- States that use elections partly or fully—33
- States that use merit selection for vacancies or for full terms—38
- Election-only states that use merit selection nominating commissions for vacancies—11
- Election-only states that don't limit appointments for vacancies—11
  - Election-only states that have EO's setting up commissions for vacancies—2

NC's Judicial Selection

- Crown/provisional governors appointed colonial judges
- Legislature appointed judges until 1868
- Partisan elections in 1868 constitution
- Nonpartisan elections in last fifteen years
  - Superior Court, then District Court, then Appellate Courts

Recent Efforts to Change

- Bell Commission (1958)
  - Recommended appointment of district judges, not of superior and supreme court judges
- Courts Commission (1970-85)
  - Recommended merit selection plans
- Judicial Selection Study Commission (1986-87)
  - Recommended appointment by Governor, confirmation by legislature, reconfirmation by legislature after review by Judicial Standards Commission
- Efforts since 1989 have not had formal study commission support
  - Focused on appellate judges, appointments by governor, with and without legislative confirmation and with and without nominating commission screening

Litigation Developments

- NC voting rights litigation in 1980's
  - Led to establishment of smaller superior court districts
- Republican party litigation in 1990's
  - Led to district elections for superior court
- Republican Party of Minnesota v. White, 2002
  - Established judicial candidates right to speak on disputed legal or political issues
- Caperton v. AT Massey Coal, 2009
  - Found due process violation when major contributor to judge's election had case pending which supreme court judge cast deciding vote on

Efforts By Some States to Provide Information to Voters

- Judicial evaluations
- Voter guides
- Recommendation from nominating commissions

Independence and accountability

- Methods to promote independence
  - Salary guarantee
  - Terms of Office
  - More security in retention decision than in initial decision
  - Committees to defend judges

Independence and Accountability

- Methods of holding judges accountable
  - Elections
  - Judicial Standards
  - Criminal prosecution
  - Recusal statutes
  - Appellate review
  - Public media
  - Judicial evaluation

"There Ain't No Good Way to Select Judges"

- Bottom line—There is a tension between accountability and independence
- States have been seeking the right balance since they were established
- They still are

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

This document is confidential and/or privileged and is protected pursuant to G.S. 120-130 and G.S. 120-131.

MEMORANDUM OF LAW

TO: Rep. Paul Stam

FROM: Hal Pell, Staff Attorney

DATE: November 26, 2011

ISSUE: Whether a petitioner seeking relief under the Racial Justice Act (RJA), who committed the capital offense prior to October 1, 1994, would be eligible for release from prison—even though the RJA provides that if racial bias is found to be a significant factor in seeking or imposing the death sentence, the petitioner is to be sentenced to life without parole.

ANSWER: The North Carolina Supreme Court has held that where a capital defendant was subject to either death or life with the possibility of parole at the time of the offense, the imposition of a life without parole sentence would be more onerous than life with the possibility of parole—and therefore a violation of the ex post facto clause. The case law related to whether a jury could be instructed on sentencing a defendant to life without parole, and not whether a statute could impose a life without parole sentence to ameliorate a death sentence.

At least one federal court and a state supreme court have ruled that, depending upon the circumstances, sentencing a capital defendant to life without parole--although not a possible sentence at the time of the offense--was not an ex post facto violation. The appellate courts will have the final say on whether it violates the ex post facto clause to sentence a defendant to life without parole when that sentence was not available at the time of the offense—or that the statute is ameliorative and does not disadvantage the defendant in relation to the sentence that was actually imposed.

I. Background

In 1994, the General Assembly amended the capital sentencing statutes to provide that a person convicted of first degree murder could be sentenced to death or life in prison without

parole. The act was effective October 1, 1994. Prior to that date, the options were a death sentence, or life with the possibility of parole after 20 years of confinement. In addition, although the statute provided for "life without parole," for offenses occurring between 1994 and 1998, the statutes continued to provide that a defendant could, after serving 25 years, seek release though a hearing before a superior court judge. It wasn't until 1998, when the 25 year provision was repealed, that all possibility of release was eliminated for a prisoner serving a life without parole sentence.

II. State v. Connor

In *State v. Connor*, 345 N.C. 319 (1997), the North Carolina Supreme Court considered a case where the defendant had been convicted of a murder which had occurred before the "life without parole" sentencing statute became effective. The defendant had requested that the jury be instructed that it could sentence him to life without parole—even though that sentence was not enacted until after the murder offense. Connor believed that he had a better chance of escaping a death sentence if the jury had the life without parole option, instead of just death or life with the possibility of parole.

The North Carolina Supreme Court held that because (1) the life without parole statute was passed after the offense occurred, and (2) it increased the penalty of life with the possibility of parole to life without parole, that it would have been a violation of the ex post facto clause of the Constitution to have sentenced Connor to life without parole. The ex post facto clause (in both the U.S. and State Constitutions) prevents a harsher sentence from being imposed than was in the law at the time of the offense.

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III. Barnes v. Scott

Three years after State v. Connor was decided, a federal circuit court of appeals took a different approach. In *Barnes v. Scott,* 201 F.3d 1292 (10th Cir. 2000), the defendant had committed first degree murder at a time when the punishment in Oklahoma was the death penalty or life imprisonment with the possibility of parole. Subsequent to the date of the murder, Oklahoma amended its capital sentencing law to allow for a third option, life imprisonment without parole. The State did not seek the death penalty. The conviction was reversed on unrelated grounds, and following a retrial, Barnes was sentenced to life without parole.

Barnes argued on appeal that because the statute providing for life without parole was passed subsequent to the date of the offense, applying it in his case violated the ex post facto clause as it was more severe than life with the possibility of parole. *Id.* at 1293. The court rejected the argument and held that the imposition of life without parole, although not an available punishment at the time of the offense, did not violate defendant's rights under the ex post facto clause:

> [T]he [life without parole statute] provides an intermediate alternative punishment for the crime of first degree murder. It does not alter the crime for which Mr. Barnes was indicted, increase the maximum punishment prescribed for that crime, or change the quantity or level of proof necessary to convict him. *See Dobbert v. Florida,* 432 U.S. 282, 294, 97 S.Ct. 2290, 53 L.Ed.2d 344 (1977) (holding it "axiomatic that for a law to be ex post facto it must be more onerous than the prior law").
>
> . . .
>
> In sum, it is our conclusion that at the time Mr. Barnes committed the crime, he was on notice that the presumptive sentencing range for first degree murder in Oklahoma was life imprisonment to death. At the time of his trial, his presumptive sentencing range remained life imprisonment to death. Adding an intermediate punishment did not prescribe more onerous punishment than that available under the old law.

Barnes, 201 F.3d at 1296 (emphasis added). Thus, unlike the Connor court, the federal court held that the life without parole statute did not alter the maximum sentence (death) that the

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defendant could have received—it did not prescribe "more onerous punishment than that available under the old law." Since it did not make the penalty more onerous, its application to an offense committed prior to its passage was not a violation of the ex post facto clause. In contrast, the Connor Court had looked to the minimum penalty for the offense, not the maximum, in making its "more onerous" determination.

IV. State v. Fortin

More recently, the New Jersey Supreme Court addressed the issue. The State of New Jersey had repealed its death penalty statute and replaced it with life without parole. The state prosecutor attempted to have the court impose a sentence of life without parole in Fortin's case—even though his offense occurred before that sentence was available.

The court noted that the State argued that a life without parole sentence did not violate the Ex Post Facto Clause, because the statute was ameliorative, i.e., it eliminated death as a sentencing option. Essentially, the State argued the position of the court in the Barnes case: since life without parole was less than the maximum penalty (death), then it was not an ex post facto violation. *State v. Fortin*, 198 N.J. 619, 625-626 (2009). As stated by the court:

> [T]he State asserts that the courts below wrongly compared the thirty-year parole disqualifier provision in the earlier statute with the life-without-parole provision in the amended statute to find an increased penalty, when instead the comparison should be between the former maximum penalty of death and the current less severe punishment of life without parole.
>
> . . .
>
> Defendant argues that the courts below correctly ruled that applying the mandatory term of life without parole to him would violate the *Ex Post Facto* Clause because the new law makes the punishment for his crime more burdensome [than life with possibility of parole].

Id. Thus, while the State argued the position of the federal court in Barnes (life without parole not greater than the maximum penalty), the defendant argued the position of the North Carolina

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Supreme Court in Connor (life without parole increased the minimum penalty of life with possibility of parole).

The court essentially agreed with the State, i.e., that Fortin was subject to life without parole. However, before it would allow the possibility of life without parole, it required the State to prove that the defendant could have been sentenced to death based upon the statutory requirement (a showing that aggravating factors existed that would have resulted in a death sentence). The court's ruling implies that if the sentence ameliorative (would result in a lesser sentence that would have been imposed), then it is not an ex post facto violation—even though the sentence did not exist at the time of the offense.

V. State v. Connor and the Racial Justice Act

In the Connor case, the defendant did argue that the statute which created the life without parole statute was ameliorative, even though it made a sentence of life imprisonment "more onerous" than life with the possibility of parole. The court held that the statute creating the life without parole statute was not ameliorative, because it

> clearly increased the punishment for first degree murder by making it a crime for which parole is no longer a possibility. . . . By its plain terms, the amendment increases, rather than decreases, a penalty. Therefore, retroactive application of the amendment would violate the constitutional prohibition on *ex post facto* application of punitive laws. *See State v. Wright,* 302 N.C. 122, 128, 273 S.E.2d 699, 704 (1981) ("Any legislation which increases the punishment for a crime between the time the offense was committed and the time a defendant is punished therefor is considered an invalid *ex post facto* law as applied to that defendant.").

Conner, 345 N.C. at 331-332; *see also State v. Fullwood*, 343 N.C. 725, 741(1996)(applying life without parole statute would violate the prohibition against *ex post facto* laws because it makes the minimum sentence for first degree murder more onerous than life with the possibility of parole after twenty years, the punishment in effect when the crime was committed).

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The RJA provides that if the court does find that race was a significant factor in seeking or imposing the death penalty, then the court must resentence the defendant to life in prison without parole. For defendants who committed first degree murder on or after October 1, 1994, there would be no issue that this resentencing was a violation of the ex post facto clause because life without parole was in effect at the time of their offenses. However, if the murder was committed before October 1, 1994, then those petitioners would have a strong argument that they could not be sentenced to life without parole, based on the Connor decision. *See United States v. Dobbert,* 432 U.S. 282, 300 (1977)("[T]he ex post facto clause looks to the standard of punishment prescribed by a statute, rather than to the sentence actually imposed."). It could also be argued that defendants who committed their offenses between 1994 and 1998, would still be eligible for parole after 25 years of confinement. The Connor holding, that the trial jury could not be instructed that life without parole was a possible sentence for offenses committed prior to the life without parole statute, was reaffirmed by the Court in *State v. Warren*, 348 N.C. 80 (1998).

The Connor decision emphasized that any legislation that increases the punishment for a crime between the time it was committed and when the defendant is punished is an invalid ex post facto law. The RJA requires the trial court to resentence the petitioner. A defendant, upon the hearing judge determining that race was a significant factor in his case, could assert based on Connor that the application of a life without parole sentence was a violation of the ex post facto clause. A defense counsel representing the defendant may well be required to raise this issue in fulfilling his or her responsibility to be a zealous advocate for the client. In that there is certainly a good faith argument to be made, in light of N.C. Supreme Court precedent, there would likely be an appealable issue if counsel failed to make this argument.

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The State, in this circumstance, would be left attempting to distinguish Connor's holding, arguing that the Racial Justice Act is, in fact, an ameliorative act. In this case (as opposed to the facts in Connor), a life without parole sentence is a lesser sentence than the death penalty, which was actually adjudged—not a more severe sentence than what could have been adjudged. As such, there is no factual issue (as in Fortin) as to whether the defendant would have received the death penalty. The State may also argue that federal law, decided subsequent to Connor, has determined that the "calculation" as to what is more onerous should be based upon the maximum penalty (as in Barnes), not the minimum. State law has emphasized the federal and State law on the ex post facto law should be parallel. *See State v. Wiley*, 355 N.C. 592, 625 (2002)("Because both the federal and state constitutional ex post facto provisions are evaluated under the same definition, we analyze defendant's state and federal constitutional contentions jointly.")

VI. Conclusion

There has not been a Racial Justice Act case where a court has found that race was a significant factor in seeking or imposing a death sentence, and resentenced the defendant. Exactly what will occur is unknown. The appellate courts will have the final say on whether it violates the ex post facto clause to sentence a defendant to life without parole when that sentence was not available at the time of the offense—or that the statute is ameliorative and does not disadvantage the defendant in relation to the sentence that was actually imposed.

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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

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MEMORANDUM OF LAW

TO: Rep. Paul Stam

FROM: Hal Pell, Staff Attorney

DATE: November 25, 2011

ISSUE: Whether a retroactive application of a repeal of the Racial Justice Act which abates current proceedings in Superior Courts would violate the Ex post facto clauses of the State or federal Constitutions.

ANSWER: No. Under an ex post facto constitutional analysis, the key issues in determining whether a law is ex post facto is whether the crime for which the present defendant was indicted, the punishment prescribed therefor, and the quantity or the degree of proof necessary to establish his guilt, were affected by the law. For persons convicted of first degree murder, either prior to or after the enactment of the Racial Justice Act, none of these factors would be affected by a repeal of the Act's hearing provisions.

A. The Racial Justice Act

Article 101 of Chapter 15 of the General Statutes (G.S. 15A-2010 et seq.) is entitled the "North Carolina Racial Justice Act" (RJA). The RJA was enacted on July 11, 2009, and changed the criminal procedure applicable to persons who had been sentenced to death or charged with a capital offense prior to or following its enactment. The Act provided a new procedure by which a capital defendant or capital prisoner, in either pretrial or posttrial proceedings, may prove by the use of statistical evidence that race was a significant factor in decisions to seek or impose the

death penalty in the county, the prosecutorial district, the judicial division, or the State. G.S. 15A-2011(b). Relevant statistics can include that:

(1) Death sentences were sought or imposed significantly more frequently upon persons of one race than upon persons of another race.
(2) Death sentences were sought or imposed significantly more frequently as punishment for capital offenses against persons of one race than as punishment of capital offenses against persons of another race.
(3) Race was a significant factor in decisions to exercise peremptory challenges during jury selection.

G.S. 15A-2011 (b). If the court finds that race was a significant factor in decisions to seek or impose the death penalty in the county, the prosecutorial district, the judicial division, or the State at the time of the defendant's case, then the court must order that the death not be sought in the case, or that the adjudged death penalty be vacated and a sentence of life without parole be imposed. G.S. 15A-2012(a)(3).

B. Ex post facto Law

In general, "an impermissible ex post facto law is one which, among other things, aggravates a crime or makes it a greater crime than when committed, or changes the punishment of a crime to make the punishment greater than the law permitted when the crime was committed." *State v. Mason*, 126 N.C.App. 318, 324, 484 S.E.2d 818, 821 (1997)(emphasis added), cert. denied, 354 N.C. 72, 553 S.E.2d 208 (2001). The North Carolina Court of Appeals has noted that under Article I, Section 10 of the United States Constitution, there are two critical elements which must be present for a law to be considered ex post facto: (1) the case law or statute must apply to events occurring before its enactment, and (2) the case law or statute as applied must disadvantage the offender affected by it. *Harter v. Vernon*, 532 S.E.2d 836 (N.C.Ct.App. 2000). *See State v. Jones*, 133 N.C.App. 448, 516 S.E.2d 405 (1999), and *In Re*

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Hayes, 111 N.C.App. 384, 432 S.E.2d 862 (1993). With regard to "disadvantage," a federal Circuit Court of Appeals, citing the United States Supreme Court, stated:

> The United States Constitution expressly prohibits states from enacting ex post facto laws. U.S. Const. Art. I, § 10, cl. 1. "The focus of the ex post facto inquiry is not on whether a legislative change produces some ambiguous sort of 'disadvantage' [to covered offenders] ... but on whether any such change alters the definition of criminal conduct or increases the penalty by which a crime is punishable." California Dep't of Corrections v. Morales, 514 U.S. 499, 506 n. 3, 115 S.Ct. 1597, 131 L.Ed.2d 588 (1995).

Barnes v. Scott, 201 F.3d 1292, 1294 (10th Cir. 2000)(emphasis added). In Barnes, the defendant had committed first degree murder at a time when the punishment in Oklahoma was the death penalty or life imprisonment. Subsequent to the date of the murder, Oklahoma amended its capital sentencing law to allow for a third option, life imprisonment without parole. The State did not seek the death penalty. The conviction was reversed on unrelated grounds, and following a retrial, Barnes was sentenced to life without parole.

Barnes argued on appeal that because the statute providing for life without parole was passed subsequent to the date of the offense, it violated the Ex post facto clause, and could not be constitutionally applied in his case. Id. at 1293. The court rejected the argument and held that the imposition of life without parole, although not an available punishment at the time of the offense, did not violate defendant's rights under the Ex post facto Clause. Because the 1987 amendment did not alter either the minimum or maximum penalty for first degree murder, the amendment was procedural in nature and therefore, not in violation of the Ex post facto Clause. The North Carolina Supreme Court took a different approach in *State v. Connor*, 345 N.C. 319 (1997), where a defendant sought a jury instruction that life without parole statute was a possible sentence—even though the life without parole statute was not passed until after the offense. The Court noted that since life without parole increased the penalty of life with the

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possibility of parole, it would have been a violation of the ex post facto clause of the Constitution to have sentenced Connor to life without parole.

Provisions relating to relief from punishments, which were in effect at the time of the offense, can also be the subject of an ex post facto law. For example, a rule or policy that rescinds or alters the amount of a prisoner's "good time" or "gain time" in effect at the time of an offense, may violate the ex post facto prohibition. As stated by the U.S. Supreme Court:

> Critical to relief under the Ex post facto Clause is not an individual's right to less punishment, but the lack of fair notice and governmental restraint when the legislature increases the punishment beyond what was prescribed when the crime was consummated. Thus, even if a statute merely alters penal provisions accorded by the grace of the legislature, it violates the Clause if it is both retrospective and more onerous than the law in effect on the date of the offense.

Weaver v. Graham, 450 U.S. 24, 29-31 (1981).

It is also clear that changes in trial procedure, including evidentiary rules, can be applied to trials where the offender committed the offense prior to the enactment of the legislation authorizing those changes. The United States Supreme Court, in a leading case on ex post facto law, where the defendant had been sentenced to death, reiterated that any statute which punishes as a crime an act previously committed, which was innocent when done; which makes more burdensome the punishment for a crime, after its commission, or which deprives one charged with crime of any defense available according to law at the time when the act was committed, is prohibited as ex post facto. *Dobbert v. Florida*, 432 U.S. 282, 292 (1977). However, the Court went on to note:

> It is equally well settled, however, that "(t)he inhibition upon the passage of ex post facto laws does not give a criminal a right to be tried, in all respects, by the law in force when the crime charged was committed." . . "(T)he constitutional provision was intended to secure substantial personal rights against arbitrary and oppressive legislation, see Malloy v. South Carolina, . . . and not to limit the legislative control of remedies and modes of procedure which do not affect matters of substance.

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> Even though it may work to the disadvantage of a defendant, a procedural change is not ex post facto.

Dobbert v. Florida, 432 U.S. at 293 (emphasis added). The Court then illustrated its point by describing instances where procedural changes in the law had been applied to defendants who had committed their offenses prior to the law going into effect. In *Hopt v. Utah*, on the date of an alleged homicide, a convicted felon was barred from being a witness. Prior to Hopt's trial, the law was changed and a convicted felon testified against him. Although the law worked to Hopt's disadvantage, the Court ruled that the law was not an ex post facto violation. *Id. citing Hopt v. Utah,* 100 U.S. 574 (1884). In Thompson v. Missouri, the defendant was convicted based upon circumstantial evidence. The conviction was reversed based upon the inadmissibility of certain evidence that was introduced at trial. Prior to the retrial, the law was changed to allow the evidence, and the defendant was again convicted. The U.S. Supreme Court upheld the conviction. *Dobbert,* 432 U.S. at 293.

In Dobbert, at issue was Florida's change to its capital sentencing law. At the time of Dobbert's offense, the law provided that a person convicted of first degree murder was to be punished by death unless mercy was recommended by majority of jury. Subsequent to the offense, the law was changed so that the jury gave only an advisory opinion. In finding that the law was procedural only, and not ex post facto, the Court stated:

> In the case at hand, the change in the statute was clearly procedural. The new statute simply altered the methods employed in determining whether the death penalty was to be imposed; there was no change in the quantum of punishment attached to the crime. The following language from Hopt v. Utah, supra, applicable with equal force to the case at hand, summarizes our conclusion that the change was procedural and not a violation of the Ex post facto Clause: "The crime for which the present defendant was indicted, the punishment prescribed therefor, and the quantity or the degree of proof necessary to establish his guilt, all remained unaffected by the subsequent statute."

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Dobbert, 432 U.S. 293-294. (emphasis added). The Supreme Court also addressed the issue of procedural changes in *Collins v. Youngblood,* 497 U.S. 37 (1990) stating its "best knowledge of the original understanding of the Ex post facto Clause: Legislatures may not retroactively alter the definition of crimes or increase the punishment for criminal acts." *Youngblood,* 497 U.S. at 43. The Court notes that several of its cases have described changes as "procedural" which, although they worked to the disadvantage of an accused, did not violate the Ex post facto Clause. *Id., citing Dobbert v. Florida*, 432 U.S. at 292-293, and n.6; *Beazell v. Ohio*, 269 U.S. 167, 171; *Mallett v. North Carolina*, 181 U.S. 589, 597 (1901). Recognizing that the cases did not explicitly define the word " 'procedural,' it is logical to think that the term refers to changes in the procedures by which a criminal case is adjudicated, as opposed to changes in the substantive law of crimes."

The Court agreed with the defendant that a procedural change may constitute an ex post facto violation if it affects matters of substance, by depriving a defendant of substantial protections with which the existing law surrounds the person accused of crime, or arbitrarily infringing upon "substantial personal rights." *Youngblood,* 497 U.S. at 45 (cits. omitted)(quots. omitted). The Court determined that the "best way to make sense" of the discussion in the cases was to say that "by simply labeling a law 'procedural,' a legislature does not thereby immunize it from scrutiny under the Ex post facto Clause." *Id.* The Court related these substantial protections to the analysis explained in Beazell and other cases, i.e., does the law punish as a crime an act previously committed, which was innocent when done; make more burdensome the punishment for a crime, after its commission; or deprive one charged with crime of any defense available according to law at the time when the act was committed? *See Youngblood*, 497 U.S. at 52. For example, a law that abolishes an affirmative defense of justification or excuse—

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although related to trial procedure--contravenes the ex post facto clause, because it expands the scope of a criminal prohibition after the act is done. *Id.* at 49.

The North Carolina Court of Appeals addressed the ex post facto clause in the federal and State Constitutions in a case where a statute was changed to require a defendant, who had been acquitted based on the insanity defense and committed, to carry the burden of proving that that he was no longer dangerous or mentally ill as a prerequisite for release. At the time of the homicides to which he had pled not guilty by reason of insanity, the law had required the State to prove continuing mental illness and dangerousness of an acquitted. *In the Matter of Michael Charles Hayes*, 111 N.C.App. 384, *appeal dismissed*, 335 N.C. 173 (1993). The court initially noted that even "a procedural change which deprived a defendant of "substantial protections" may constitute an ex post facto violation." *Matter of Hayes,* 111 N.C.App. at 390 (original emphasis)(cit. omitted). The court then stated:

> Although the Youngblood Court noted that a law labeled as procedural will not necessarily immunize it from ex post facto scrutiny, the Court held that for purposes of the Ex post facto Clause, it is logical to presume that a change in procedure by which a criminal case is adjudicated, as opposed to substantive changes in the law, will not violate the Clause even though the change may work to the accused's disadvantage. Youngblood, 497 U.S. at 49-50, 110 S.Ct. at 2722-23, 111 L.Ed.2d at 43-44. In other words, only a procedural change that alters the definition of an offense or increases the punishment, thereby expanding the scope of a criminal prohibition after the act is done, violates the Ex post facto Clause. *Id.*

Hayes, 111 N.C.App. at 390 (emphasis added). The court found that neither of the statutory amendments made an innocent act criminal, altered the nature of the offense, or increased the punishment for a criminal act. The court concluded that shifting the burden of proof to the respondent, as well as making the hearing open to the public, were procedural changes that did not violate substantive rights or protections, even though they might disadvantage the respondent. *Id.* at 391. In support of its ruling, the court citing the holdings in *In the Matter of*

Rogers, 63 N.C.App. 705 (1983)("statute requiring hearing for insanity acquittees before release from mental institution not ex post facto law under federal or state constitutions because procedures do not compromise punishment for crime"), and *United States v. Mest*, 789 F.2d 1069 (4th Cir.), *cert. denied*, 479 U.S. 846 (1986)("procedural change, although retroactive in application, not violative of Ex post facto Clause if it does not increase punishment, change ingredients of offense, or ultimate facts necessary to establish guilt").

C. Application of the Law

Initially, the Racial Justice Act applies to two different "classes" of offenders: those that committed capital offenses prior to its enactment, and those that will be tried or have been convicted of capital offenses which occurred on or after July 11, 2009 (the enactment date). For offenses committed prior to the Act, the Supreme Court's decisional law removes them from consideration as subject to ex post facto analysis. At the time the offenses occurred, the defendants had no expectation of any procedures included in North Carolina's criminal justice system designed to permit the use of statistical evidence relating to other capital cases that might result in a lesser sentence. *See Weaver v. Graham*, 450 U.S. 24, 30 ("Critical to relief under the Ex post facto Clause is not an individual's right to less punishment, but the lack of fair notice and governmental restraint when the legislature increases punishment beyond what was prescribed when the crime was consummated.") (emphasis added).

Thus, under a constitutional analysis with respect to the application of ex post facto laws to capital defendants currently seeking post-conviction relief under the RJA, the key issue is whether there was a lack of "fair notice" to the offender at the time the offense was committed. A defendant who committed the capital offense prior to the enactment of the RJA had no notice or rights to any procedures under the RJA at the time of an offense committed before its

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enactment; consequently, a repeal of RJA hearing provisions would not implicate any ex post facto violations for these offenses. Second, elimination of hearings for capital defendants who committed offenses on or after July 11, 2009, would not violate the ex post facto clause. A repeal would result in a procedural change to the law; they would not make an innocent act criminal, alter the nature of the offense of first degree murder, or increase the punishment for first degree murder. *See Barnes v. Scott*, 201 F.3d 1292 (10th Cir. 2000)(sentencing defendant to life without parole, which was not a penalty at the time of the offense, did not alter either the minimum or maximum penalty for first degree murder; therefore, the amendment adding the punishment was procedural in nature and not in violation of the Ex post facto Clause.)

Further, the U.S. Supreme Court decision in *McCleskey v. Kemp*, 481 U.S. 279 (1987) appears to remove any doubt as to whether the procedures in the Racial Justice Act protect substantive rights, and might be the type of "substantive right" which, although procedural, may not be repealed without implicating the ex post facto clause. See Youngblood, above. McCleskey's base holding was that a statistical study was insufficient to support an inference that any of the decision makers in the defendant's case acted with discriminatory purpose. The study had indicated that the death penalty in Georgia was more frequently imposed on black defendants, and defendants killing white victims, than on white defendants, and defendants killing black victims. Because a defendant must show that the decision makers in his own case acted with discriminatory purpose, the decision relegates the type of statistical information allowed by the Racial Justice Act into the category of evidence that fails to create an inference—and it's submission would not be a substantive right.

The North Carolina Supreme Court has held, citing Rule 402 of the North Carolina Rules of Evidence, that in order for evidence to be admissible, it must be relevant. *State v. Burke*, 342

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N.C. 113, 118 (1995). "The test of relevancy of evidence is whether it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Id.* (cit. omitted). Because the U.S. Supreme Court has held that the type of evidence precluded by the amendments fails to create an inference that the decision makers in a defendant's case acted with discriminatory purpose, removing a defendant's ability to introduce this type of evidence would not qualify as retroactively depriving a defendant of a "substantive right."

D. Conclusion

A long line of cases decided by the U.S. Supreme Court, and followed by the North Carolina courts, set forth some basic considerations for determining whether a law, which purports to apply to offenses which occurred prior to its passage, is proscribed by the Ex post facto clause. Does the law make innocent conduct unlawful or expand the scope of an offense? Does it prescribe punishment for an offense which was beyond that which was authorized at the time of the offense? Does it change the necessary facts to establish guilt for the offense? These questions would be answered in the negative as to a law which repealed the Racial Justice Act's hearing provisions. Such a law would not change the crime of first degree murder, nor affect the defendant's rights relating to defenses to the crime. They would not increase the statutory maximum or minimum punishments for first degree murder for offenders. A defendant charged with first degree murder—before or after the enactment of the RJA—was and is on "fair notice" that the maximum penalty for first degree murder is death, and the minimum penalty is life without parole. The right provided in the RJA to include statistical evidence is not a "substantive right." For the above stated reasons, a law repealing rights to a hearing at which statistical evidence may be admitted would not be proscribed by the Ex post facto clauses of the federal or

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State Constitutions. Upon passage of such a law, a court would be without jurisdiction to continue a hearing that had commenced prior to the law's enactment.

SENATE BILL 9:
No Discriminatory Purpose in Death Penalty

2011-2012 General Assembly

Committee:		**Date:**	November 25, 2011
Introduced by:		**Prepared by:**	Hal Pell
Analysis of:	Third Edition		Staff Attorney
	S9-CSRK-64		

SUMMARY: ***This act would remove provisions in the Racial Justice Act that allow the introduction of certain statistical evidence to show discrimination in either pretrial or posttrial proceedings in capital cases. This act is effective when it becomes law, and applies to all capital cases—based on offenses occurring prior to, on, or after the effective date.***

CURRENT LAW:

Article 101 of Chapter 15 of the General Statutes (G.S. 15A-2010 et seq.) is entitled the "North Carolina Racial Justice Act" (RJA). The RJA was enacted on July 11, 2009, and changed the criminal procedure applicable to persons who had been sentenced to death or charged with a capital offense prior to or following its enactment. The Act provided a new procedure by which a capital defendant or capital prisoner, in either pretrial or posttrial proceedings, may prove by the use of statistical evidence that race was a significant factor in decisions to seek or impose the death penalty in the county, the prosecutorial district, the judicial division, or the State. G.S. 15A-2011(b). Relevant statistics can include that:

(1) Death sentences were sought or imposed significantly more frequently upon persons of one race than upon persons of another race.
(2) Death sentences were sought or imposed significantly more frequently as punishment for capital offenses against persons of one race than as punishment of capital offenses against persons of another race.
(3) Race was a significant factor in decisions to exercise peremptory challenges during jury selection.

G.S. 15A-2011 (b). If the court finds that race was a significant factor in decisions to seek or impose the death penalty in the county, the prosecutorial district, the judicial division, or the State at the time of the defendant's case, then the court must order that the death not be sought in the case, or that the adjudged death penalty be vacated and a sentence of life without parole be imposed. G.S. 15A-2012(a)(3).

In *McCleskey v. Kemp*, the United States Supreme Court held that a capital defendant, in making a discrimination claim, must prove that the decision makers in the defendant's case acted with discriminatory purpose. In that case, the Court held that the statistical studies indicating that the death penalty in Georgia was more frequently imposed on black defendants and defendants killing white victims, than on white defendants and defendants killing black victims, was insufficient to support an inference that any of decision makers in the defendant's case acted with discriminatory purpose.

In general, a law that impacts offenses committed prior to the enactment of the law is not in violation of the ex post facto clauses of the State or federal constitutions if it does not punish as a crime an act previously committed, which was innocent when done; make more burdensome the punishment for a crime, after its commission; or deprive one charged with crime of any defense available according to

law at the time when the act was committed. *Collins v. Youngblood*, 497 U.S. 37 (1990). Changes in procedures which do not affect substantive rights, even though they may disadvantage a defendant, do not constitute ex post facto applications of the law. *In the Matter of Michael Charles Hayes*, 111 N.C.App. 384 (1993).

BILL ANALYSIS. The act:

- Deletes all provision in the Racial Justice Act that provided for pretrial or posttrial proceedings, at which a defendant is allowed to introduce statistical evidence relating to the (1) frequency of the imposition of the death penalty depending on the race of the defendant and the victim, and (2) on the race of jurors who were excused by peremptory challenges.
- Amends the statute to include the language used in the McCleskey case, i.e., that the defendant has the burden of proving that the decision makers in the defendant's case acted with discriminatory purpose.
- Nullifies all hearings that may have been ordered under the current law.
- Provides that the act does not change the laws relating to pretrial or posttrial proceedings which were in effect prior to the passage of the Racial Justice Act, and that the act does not authorize any hearings, i.e., defendant has (had) the right to claim that the decision makers acted with a discriminatory purpose in his or her case, either before trial or in postconviction proceedings, prior to the enactment of Article 101 of Chapter 15A.

EFFECTIVE DATE: The act is effective when it becomes law and applies to all capital trials held prior to, on, or after the effective date of the act and to all capital defendants sentenced to the death penalty prior to, on, or after the effective date of this act.

S9-SMRK-148(CSRK-64) v2

VISITOR REGISTRATION SHEET

Senate Judiciary I
(Committee Name)

11/28/11
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

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Becki Gray	JLF
Chris Fitzsimon	NC Policy Watch
Rev. Mark Creech	CAL
Courtney Crowder	office of the Governor
Sam Bibbs	Asheville, NC
Jimmy Broughton	WCSR
Kimberly N Overton	Conference of District Attorneys
Sam Currin	T-Google
Jim O'Neill	
Mike Silver	Forsyth County District Attorney
Peg Dorer	Conference of DAs
Brandy Vickory	District Atty - 8th District

09-21-201

VISITOR REGISTRATION SHEET

Senate Judiciary I
(Committee Name)

11/28/11
Date

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NAME	FIRM OR AGENCY AND ADDRESS
William Stackhouse	DAs Office District 8
Matthew Jelbridge	"
Ernie Lee District Atty.	DA office District 4
Kristy Newton	District Attorney 16A
BRAD GREENWAY	DIST ATTY 29A
Robert Jackson	bobrobert@yahoo.com 27278 3110 Dairyland Rd Hillsborough NC
KEITH TATUM	290 US Hwy 158 W Yanceyville, NC
B. Renée Carter	District Attorney's Office Dist 12 117 Dick St. Fayetteville, NC
Sharon Hucks	1545 Mintz Ave, Fay. NC 28303
Gayle Raynor Norris	Janie & Paul Kutz 1986 Fayetteville N.C. Cumberland Co.
Frank Lesko	St. Francis of Assisi Church 11401 Leesville Rd Raleigh, NC
Tom Bennett	NCVAN
BUD FREEMAN	3317 BOSTIC SUN. Hwy, BOSTIC NC 28018
LOIS FREEMAN	3317 BOSTIC SUN. Hwy, BOSTIC N.C 28018
Seth Edwards	DA - District 2
Fred Rutledge	Col Randolph Co Sheriff's Office
Dena Sweeney	2238 Rosswood Rd Trinity 27370

09-21-201

VISITOR REGISTRATION SHEET

Senate Judiciary I
(Committee Name)

11/28/11
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

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Garrison N. Yates	DA's District 19B
Garry W. Frank	DA District 22B
Krista Anderson	NCDP
Tom Brew	AP
Jon David	DA - 13
Ben David	DA. 5
Rick Shaffer	DA's
Andy Stokes	Davie Co Sheriff
Marsha Howell	Family of Victim Davie County
Orlanda Howell	"
Tonzie Howell	"
Crystal Davis	Family of Victim Davidson Co.
Angie Wiest	Family of victim Johnston Co
Susan Doyle	DA - 11B
A.A. Adams	
Bridie Funk	Justice for Caitlyn - Brunswick Co.
Sheria Reid	Legis. Reporting Service

09-21-201

VISITOR REGISTRATION SHEET

Senate Judiciary I
(Committee Name)

11/28/11
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jennifer Epperson	NC DOJ
Haley Phillips	NC DOJ
TYE HUNTER	NCDAL
Hamish Batty	Citizen
Liam Grigg	Citizen
Paul Peterson	ACLU
Kevin Rogers	Action NC
Darryl Hunt	NAACP
Rob Stephens	NAACP
Thaddeus Washington	NAACP
	PFADP
Stephen Dear	PFADP
Tawch Callahan	NCCM
MARK RABIC	WINSTON-SALEM, NC
Tom Fewel	MVFR

VISITOR REGISTRATION SHEET

Senate Judiciary I
(Committee Name)

11/28/11
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lao Rubert	Carolina Justice Policy Center
Mark Klenschmidt	Fair Trial Initiative
Sarah Preston	ACLU-NC
Greta Stein	CDPL
Hannah Autry	NCCU School of Law
Paula A. Wolf	NC NOW
Ken Rose	CDPL
Jane Volland	CJ Policy Center
Daniel A. Young	Daniel A. Young
Kerry Sutton	Atty
Dirk Taylor	NCAJ
Scott Barz	
Diane Clare C. Frappier	Stanly Cty - NC
Gerard L. Frappier	
Alan P. Pelletier	NC Methodist Church

09-21-201

VISITOR REGISTRATION SHEET

Senate Judiciary I
(Committee Name)

11/28/11
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Martha Brock	Blue NC (media)
Andrew Henson	Civitas
Dallas Woodhouse	AFPNC
Jeff Mixon	AFPNC
Karen Duquette	Citel
Angel Sams	NSS
Chris Anderson	citizen
Cady Thomas	NCAR
Laura DeVivo	WCSR
Lori Ann Harris	CAHA
Leanne Winn	NCSBA
Ray Stanley	NCDA+CS
Joy Hicks	NCDA+CS
Jessi Hayes	NCHBA
Lisa Martin	NCHBA

09-21-201

Public Comments Sign-Up

Senate Judiciary I - November 28, 2011

Comments will be limited to 3 minutes

Name	Organization or Agency	Supporting/Opposing HB 823	
Susan Doyle ✓	NC Conference of DAs	Supporting	X
Scott Bass	Murder Victims' Families for Reconciliation	Opposing	X
Ben David	DA, New Hanover	Supporting	X
[redacted]	[redacted]	[redacted]	
Tom Fewel	Murder Victims' Families for Reconciliation	Opposing	X
Diane Frappier	Murder Victims' Families for Reconciliation	Opposing	X
Tye Hunter	Defense Attorney, Durham	Opposing	X
Ken Rose	Defense Attorney, Durham	Opposing	X
Rev. Dr. William Barber	NAACP	Opposing	X
Al McSurely	Attorney, NAACP	Opposing ?	X
Darryl Hunt	Darryl Hunt Project for Freedom & Justice	Opposing	X
Pastor Alan Felton	United Methodist Ch, Oxford	Opposing	X
Kevin Rodgers	Action NC	Opposing	X
Rep. Larry Womble		Opposing	X
Sen. Floyd McKissick		**Opposing**	X
Rep. Earline Parmon		**Opposing**	
Daniel Young	Citizens of NC	Supporting	X
Robert Jackson	(victim) NC Conference of DAs	Supporting	X
Orlando Howell	(victim) NC Conference of DAs	Supporting	X
Crystal Davis	(victim) NC Conference of DAs	Supporting	X
Angie West	(victim) NC Conference of DAs	Supporting	X
Gail Norris	(victim) NC Conference of DAs	Supporting	X
Deana Summey	(victim) NC Conference of DAs	Supporting	X
Lola & Bob Freeman	(victim) NC Conference of DAs	Supporting	X

Public Comments Sign-Up

Senate Judiciary I - November 28, 2011

Comments will be limited to 3 minutes

Name	Organization or Agency	Supporting/Opposing HB 823
Mike Silverman X	Prosecutor, Forsyth	supporting X

NORTH CAROLINA GENERAL ASSEMBLY

Judiciary I
2011 – 2012 SESSION



Senator Pete Brunstetter
Chair



Senator Thom Goolsby
Vice chair



Senator Tom Apodaca



Senator Andrew Brock



Senator Dan Clodfelter



Senator Kathy Harrington



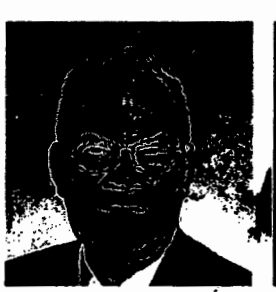
Senator Clark Jenkins



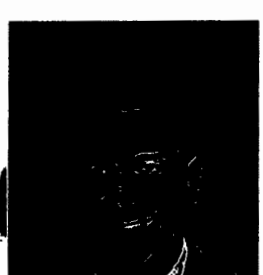
Senator Eric Mansfield



Senator Martin Nesbitt



Senator Louis Pate



Senator David Rouzer



Senator Bob Rucho



Senator Dan Soucek



Senator Josh Stein



Senator Richard Stevens



Senator Jerry Tillman



Senator Michael Walters

[return to Bill Inquiry] FULL VERSION

NCGA Bill Inquiry Results

2011-2012 Session

Search Criteria: Committee = "Currently in SEN Judiciary I (70)"
Sorted By: Bill Number
Total Bills Returned: 81

Bill	Short Title	Action	Date	Action Text
H8 (= S37)	Eminent Domain.	S	05/02/2011	Ref To Com On Judiciary I
H61	Speaker/Pro Tem Term Limits.	S	04/12/2011	Ref To Com On Judiciary I
H125	Opt 2nd Prim. Vote Centers & Suff Ballots.	S	06/10/2011	Ref To Com On Judiciary I
H139	Limit Contributions by State Vendors.	S	05/25/2011	Ref To Com On Judiciary I
H156 (= S161)	Lenoir Fox Trapping.	S	06/25/2012	Re-ref Com On Judiciary I
H300	Election Fairness Act of 2011.	S	06/10/2011	Ref To Com On Judiciary I
H346	Elections Omnibus.	S	06/13/2011	Ref To Com On Judiciary I
H348	Offenders/No Access to Personnel Records.-AB	S	05/19/2011	Ref To Com On Judiciary I
H366	Special Election Dates.	S	05/23/2011	Ref To Com On Judiciary I
H452	Judicial Elections Changes.	S	06/08/2011	Ref To Com On Judiciary I
H489	Mechanics Lien and Bond Law Changes.	S	06/01/2011	Ref To Com On Judiciary I
H597	UI/Fix Aggrieved Party Definition.	S	06/08/2011	Ref To Com On Judiciary I
H623 (= S653)	Eliminate Agency Final Decision Authority.	S	05/31/2011	Ref To Com On Judiciary I
H638	Uniform Faithful Presidential Electors Act.	S	05/23/2011	Ref To Com On Judiciary I
H658	Change Early Voting Period.	S	05/23/2011	Ref To Com On Judiciary I
H857	Sex Offenders/Electronic Monitoring.	S	04/26/2011	Ref To Com On Judiciary I
H968 (= S881)	Transfer Evidence Warehouse to DPS.	S	06/07/2012	Ref To Com On Judiciary I
S37 (= H8)	Eminent Domain.	S	02/07/2011	Ref To Com On Judiciary I
S40 (= H27)	Forensic Sciences Act.	S	02/08/2011	Ref To Com On Judiciary I
S67	Sunshine Amendment.	S	02/16/2011	Ref To Com On Judiciary I
S70	Expunge Nonviolent Crimes.	S	02/16/2011	Ref to Judiciary I. If fav, re-ref to Finance
S86 (= H49)	Laura's Law.	S	02/21/2011	Ref To Com On Judiciary I
S87 (= H129)	Level Playing Field/Local Gov't Competition.	S	02/21/2011	Ref To Com On Judiciary I
S108	Civil Litigation Costs Reform Act of 2011.	S	02/23/2011	Ref To Com On Judiciary I
S132	Interpreting Services in the Courts.	S	04/07/2011	Re-ref Com On Judiciary I
S134	Chief Dist. Ct Judge Appoints Magistrates.	S	02/28/2011	Ref To Com On Judiciary I
S190	Allow Electronic Signatures on Death Certs.	S	03/03/2011	Ref To Com On Judiciary I
S220 (= H277)	General Statutes Comm/Collateral Consequences.	S	05/02/2011	Re-ref Com On Judiciary I
S251 (= H250)	Various Clarifying Militia Law Amendments.	S	03/09/2011	Ref To Com On Judiciary I
S253 (= H262)	References to Military Orgs./Make Uniform.	S	03/09/2011	Ref To Com On Judiciary I
S266	Filling Vacancies in Local Office.	S	03/09/2011	Ref To Com On Judiciary I
S317	Amend Law Re: State Info. Techology Services.	S	03/14/2011	Ref To Com On Judiciary I
S344	Government Transparency Act of 2011.	S	03/15/2011	Ref To Com On Judiciary I
S352 (= H351)	Restore Confidence in Government.	S	03/16/2011	Ref To Com On Judiciary I
S374 (= H762)	Landowner Protection Act.	S	05/12/2011	Re-ref Com On Judiciary I
S379	Revise Restitution Damage Awards.	S	03/21/2011	Ref To Com On Judiciary I
S391	SPA/Repeal RIF Priority Consideration.	S	03/23/2011	Ref To Com On Judiciary I
S398	Perpetuities & Trusts/Amend Constitution.	S	03/23/2011	Ref To Com On Judiciary I
S412	Public Meetings/Records Law Violations.	S	03/24/2011	Ref To Com On Judiciary I
S419	Campaign Finance and Regulatory Reforms.	S	03/28/2011	Ref To Com On Judiciary I
S420	Municipal Sunshine Act.	S	03/28/2011	Ref To Com On Judiciary I
S440	Presidential Primary in March.	S	03/29/2011	Ref To Com On Judiciary I
S458	Judicial Appointment/Voter Retention.	S	03/30/2011	Ref To Com On Judiciary I
S459	Repeal Matching Funds.	S	03/30/2011	Ref To Com On Judiciary I
S468 (= H234)	Juror Qualifications/Disabilities.	S	03/31/2011	Ref To Com On Judiciary I
S478	Office of Prosecution Services.	S	03/31/2011	Ref To Com On Judiciary I
S482	ALJ Final Decison Authority.	S	04/04/2011	Ref To Com On Judiciary I
S502	Voting Materials in English.	S	04/05/2011	Ref To Com On Judiciary I
S503	No Second Primaries.	S	04/05/2011	Ref To Com On Judiciary I
S516 (= H641)	Certification of Restoration of Rights Act.	S	04/06/2011	Ref To Com On Judiciary I
S535	APA: Modify Final Administrative Decisions.	S	04/12/2011	Ref To Com On Judiciary I

S568	Clarify Trusts as Beneficiaries in POD Accts.	S	04/14/2011	Ref To Com On Judiciary I
S583	Law Enforcement on Interstate Highways.	S	04/14/2011	Ref To Com On Judiciary I
S588	HOA/Uniform Procedure for Lien Enforcement.	S	04/14/2011	Ref To Com On Judiciary I
S591	Horton Independent Redistricting Comm.	S	04/14/2011	Ref To Com On Judiciary I
S595	Voter Identification at Polls.	S	04/14/2011	Ref To Com On Judiciary I
S596	Statewide Public Defender Offices.	S	04/14/2011	Ref To Com On Judiciary I
S624	Modify Hearing & Mailings for Rule Making.	S	04/27/2011	Re-ref Com On Judiciary I
S642	Med. Mal. Review Board.	S	04/19/2011	Ref to Judiciary I. If fav, re-ref to Program Evaluation
S653 (= H623)	Eliminate Agency Final Decision Authority.	S	04/20/2011	Ref To Com On Judiciary I
S654	WC/Adjust Organ Injury Benefit Annually.	S	04/20/2011	Ref To Com On Judiciary I
S657	Voting Integrity.	S	04/20/2011	Ref To Com On Judiciary I
S674	Civil Justice System Reforms.	S	04/20/2011	Ref To Com On Judiciary I
S706 (= H714)	Legal Services.	S	04/20/2011	Ref To Com On Judiciary I
S714	Satellite Early Voting Minimum Times.	S	04/20/2011	Ref To Com On Judiciary I
S723	Strengthen Controlled Sub. Reporting System.	S	04/20/2011	Ref To Com On Judiciary I
S725	Campaign Finance Reform.	S	04/20/2011	Ref To Com On Judiciary I
S735	Congressional Plan - Odell School.	S	04/20/2011	Ref To Com On Judiciary I
S740	Allow Surety Agent to File Motions/Bail Bonds.	S	04/20/2011	Ref To Com On Judiciary I
S741	Jurisdictional Amts/Arbitration/Sm Claims Ct.	S	04/20/2011	Ref To Com On Judiciary I
S742	Video of DWI Stops and Chemical Tests.	S	04/20/2011	Ref To Com On Judiciary I
S768	Standards for Electronic Prescriptions.	S	04/20/2011	Ref To Com On Judiciary I
S772	Consolidate Ethics, Elections, and Lobbying.	S	04/20/2011	Ref To Com On Judiciary I
S773	City/County Electronic Notice.	S	04/20/2011	Ref To Com On Judiciary I
S774	Update Electronic Prescription Rules.	S	04/20/2011	Ref To Com On Judiciary I
S843 (= H1069)	Intestate Property/Child's Year's Allowance.	S	05/22/2012	Ref to Judiciary I. If fav, re-ref to Finance
S845 (= H1067)	Co-owners/Unequal Shares/Simultaneous Death.	S	05/22/2012	Ref To Com On Judiciary I
S846 (= H1066)	Passing Title by Will.	S	05/22/2012	Ref to Judiciary I. If fav, re-ref to Finance
S864 (= H1052)	Mechanics Liens/Payment Bond Reforms.	S	05/23/2012	Ref to Judiciary I. If fav, re-ref to Finance
S922	Sex Trafficking/Sex Offender Registration.	S	05/30/2012	Ref To Com On Judiciary I
S923	End Collection/Traffic Enforcement Statistics.	S	05/30/2012	Ref To Com On Judiciary I

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2011-2012 Biennium

Leg. Day: H-138/S-138

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0003	Stam	EXCLUSIONARY RULE/ GOOD FAITH EXCEPTION.	*SR	Ch. SL 2011-6	02-14-11	03-03-11
H0008=	Stam	EMINENT DOMAIN.	*S	Ref To Com On Judiciary I	05-02-11	
H0012=	Cleveland	STOP METHAMPHETAMINE LABS.	*SR	Ch. SL 2011-240	06-10-11	06-13-11
H0021	Crawford	COUNTY ADMINISTRATION OF MUNICIPAL ELECTIONS.	*SR	Ch. SL 2011-31	03-16-11	03-31-11
H0027=	Glazier	FORENSIC SCIENCES ACT.	*SR	Ch. SL 2011-19	02-17-11	03-21-11
H0032=	LaRoque	ELECTORAL FREEDOM ACT OF 2011.	*SF	Failed 2nd Reading	06-08-11	07-25-11
H0032=	LaRoque	ELECTORAL FREEDOM ACT OF 2011.	*SF	Failed 2nd Reading	07-26-11	07-03-12
H0049=	T. Moore	LAURA'S LAW.	*SR	Ch. SL 2011-191	03-23-11	04-12-11
H0061	Blust	SPEAKER/PRO TEM TERM LIMITS.	*S	Ref To Com On Judiciary I	04-12-11	
H0112	Dollar	REALIGN WAKE SUPERIOR COURT DISTRICTS.	*SR	Ch. SL 2011-203	05-24-11	06-09-11
H0125	Sager	OPT 2ND PRIM. VOTE CENTERS & SUFF BALLOTS.	*S	Ref To Com On Judiciary I	06-10-11	
H0139	Stam	LIMIT CONTRIBUTIONS BY STATE VENDORS.	*S	Ref To Com On Judiciary I	05-25-11	
H0149	Killian	TERRORISM/STATE OFFENSE.	*SR	Ch. SL 2012-38	04-12-11	04-25-12
H0149	Killian	TERRORISM/STATE OFFENSE.	*SR	Ch. SL 2012-38	05-31-12	06-05-12
H0153	Howard	NO PUBLIC RETIREMENT FOR CONVICTED FELONS.	*S	Pres. To Gov. 6/ 29/2012	04-07-11	04-19-11
H0156=	LaRoque	LENOIR FOX TRAPPING.	*S	Re-ref Com On Judiciary I	06-25-12	
H0165	McGee	PLANNED COMMUNITY & CONDO ACT AMENDS.	*SR	Ch. SL 2011-362	06-02-11	06-09-11
H0205	Hastings	MOTORCYCLE AWARENESS MONTH.	S	Re-ref Com On Rules and Operations of the Senate	03-23-11	04-07-11
H0234=	Glazier	JUROR QUALIFICATIONS/ DISABILITIES.	*SR	Ch. SL 2011-42	03-23-11	03-31-11
H0250=	Ross	VARIOUS CLARIFYING MILITIA LAW AMENDMENTS.	*SR	Ch. SL 2011-195	03-30-11	06-09-11
H0262=	Ross	REFERENCES TO MILITARY ORGS./MAKE UNIFORM.	SR	Ch. SL 2011-183	03-28-11	06-09-11
H0300	Jones	ELECTION FAIRNESS ACT OF 2011.	*S	Ref To Com On Judiciary I	06-10-11	
H0310	LaRoque	KINSTON MAYORAL VETO.	*SR	Ch. SL 2011-67	04-05-11	04-14-11
H0331	Hollo	ALLOW PAS AND NPS TO SIGN DEATH CERT.	*SR	Ch. SL 2011-197	03-24-11	06-09-11
H0346	Randleman	ELECTIONS OMNIBUS.	*S	Ref To Com On Judiciary I	06-13-11	
H0348	Randleman	OFFENDERS/NO ACCESS TO PERSONNEL RECORDS.- AB	*S	Ref To Com On Judiciary I	05-19-11	

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

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0351=	Lewis	RESTORE CONFIDENCE IN GOVERNMENT.	*S	Placed On Cal For 5/29/2012	06-10-11	06-14-11
)366	H. Warren	SPECIAL ELECTION DATES.	*S	Ref To Com On Judiciary I	05-23-11	
H0379	Glazier	UNIFORM DEPOSITIONS AND DISCOVERY ACT.	*SR	Ch. SL 2011-247	05-11-11	06-09-11
H0380	Glazier	AMEND RCP/ ELECTRONICALLY STORED INFORMATION.	*SR	Ch. SL 2011-199	05-11-11	06-09-11
H0408	T. Moore	AMEND CRIMINAL DISCOVERY LAWS.	*SR	Ch. SL 2011-250	05-17-11	06-13-11
H0452	Starnes	JUDICIAL ELECTIONS CHANGES.	*S	Ref To Com On Judiciary I	06-08-11	
H0483	Burr	DNA SAMPLES/ ADDITIONAL FELONIES.	*S	Re-ref Com On Appropriations/ Base Budget	05-10-11	06-07-12
H0489	Pridgen	MECHANICS LIEN AND BOND LAW CHANGES.	*S	Ref To Com On Judiciary I	06-01-11	
H0514	Martin	UNIFORM MILITARY AND OVERSEAS VOTERS ACT.	*SR	Ch. SL 2011-182	05-17-11	06-09-11
H0517	Stevens	MAGISTRATES/ CALENDARING.	*S	Conf Com Appointed	06-01-11	05-24-12
H0542	Rhyne	TORT REFORM FOR CITIZENS AND BUSINESSES.	*SR	Ch. SL 2011-283	06-06-11	06-13-11
H0597	Murry	UI/FIX AGGRIEVED PARTY DEFINITION.	*S	Ref To Com On Judiciary I	06-08-11	
H0614	Murry	ENACT VOLUNTEER HEALTH CARE SERVICES ACT.	*S	Pres. To Gov. 7/3/ 2012	06-04-12	06-07-12
)623=	McCormick	ELIMINATE AGENCY FINAL DECISION AUTHORITY.	*S	Ref To Com On Judiciary I	05-31-11	
H0638	Jordan	UNIFORM FAITHFUL PRESIDENTIAL ELECTORS ACT.	*S	Ref To Com On Judiciary I	05-23-11	
H0642	Guice	JUSTICE REINVESTMENT ACT.	*SR	Ch. SL 2011-192	06-06-11	06-09-11
H0658	Jones	CHANGE EARLY VOTING PERIOD.	*S	Ref To Com On Judiciary I	05-23-11	
H0659	Stevens	CAPITAL PROCEDURE/ SEVERE MENTAL DISABILITY.	*S	Re-ref Com On Appropriations/ Base Budget	06-06-11	06-09-11
H0687	Brawley	ATTY FEES/CITY OR COUNTY ACTION OUTSIDE AUTH.	*SR	Ch. SL 2011-299	05-31-11	06-14-11
H0690	Stevens	AMEND EVIDENCE & DNA EXPUNCTION LAWS.	*S	Re-ref Com On Rules and Operations of the Senate	05-23-11	06-07-12
H0707	Rhyne	REGISTER OF DEEDS/ DIRECTED TRUSTEES/ ESTATES.	*SR	Ch. SL 2012-18	06-06-11	06-04-12
H0778	Stevens	AMEND INNOCENCE COMMISSION LAWS.	*SR	Ch. SL 2012-7	06-06-11	05-24-12
H0803	Rhyne	ALLOW COURT TO ASSESS	*S	Ref To Com On	04-26-11	05-22-12

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2011-2012 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		ATTY FEES/50C ORDERS.		Judiciary Subcommittee C		
)823	Holloway	SPEAKER/PRO TEM TERM LIMITS	*S	Conf Com Appointed	09-12-11	09-12-11
H0843	Martin	MODERNIZE NC EMERGENCY MANAGEMENT ACT.	*SR	Ch. SL 2012-12	05-25-11	05-31-12
H0854=	Samuelson	ABORTION-WOMAN'S RIGHT TO KNOW ACT.	*SR	Ch. SL 2011-405	06-09-11	06-14-11
H0857	Holloway	SEX OFFENDERS/ ELECTRONIC MONITORING.	*S	Ref To Com On Judiciary I	04-26-11	
H0968=	Randleman	TRANSFER EVIDENCE WAREHOUSE TO DPS.	S	Ref To Com On Judiciary I	06-07-12	
H0971	Shepard	ACTIVE DUTY DEATH/ LEASE TERMINATION.	*SR	Ch. SL 2012-64	06-14-12	06-19-12
H1052=	Stevens	MECHANICS LIENS/ PAYMENT BOND REFORMS.	*S	Pres. To Gov. 6/ 29/2012	06-25-12	06-26-12
H1066=	Blust	PASSING TITLE BY WILL.	*SR	Ch. SL 2012-68	06-04-12	06-07-12
H1067=	Blust	CO-OWNERS/UNEQUAL SHARES/SIMULTANEOUS DEATH.	*SR	Ch. SL 2012-69	06-04-12	06-07-12
H1068=	Blust	AMEND UCC ARTICLE 9/ SECURED TRANSACTIONS.	SR	Ch. SL 2012-70	06-04-12	06-19-12
H1069=	Blust	INTESTATE PROPERTY/ CHILD'S YEAR'S ALLOWANCE.	SR	Ch. SL 2012-71	06-04-12	06-07-12
S0009=	Harry Brown	NO DISCRIMINATORY PURPOSE IN DEATH PENALTY.	*S	Ref To Com On Rules, Calendar, and Operations of the House	06-16-11	07-28-11
)009=	Harry Brown	NO DISCRIMINATORY PURPOSE IN DEATH PENALTY.	*S	Ref To Com On Rules, Calendar, and Operations of the House	07-28-11	11-28-11
S0026	Don Vaughan	NORTH CAROLINA BENEFIT CORPORATION ACT.	*S	Re-ref Com On Judiciary Subcommittee C	02-02-11	03-21-11
S0031	Eric Mansfield	CLARIFY PENALTY UNAUTH. PRACTICE OF MEDICINE.	*SR	Ch. SL 2011-194	02-03-11	03-03-11
S0033	Tom Apodaca	MEDICAL LIABILITY REFORMS.	*SR	Ch. SL 2011-400	02-03-11	03-01-11
S0037=	Brent Jackson	EMINENT DOMAIN.	S	Ref To Com On Judiciary I	02-07-11	
S0040=	Ed Jones	FORENSIC SCIENCES ACT.	S	Ref To Com On Judiciary I	02-08-11	
S0042	Eric Mansfield	MECH. LIENS/PVT LIEN AGENT.	*S	Pres. To Gov. 6/ 28/2012	06-25-12	06-26-12
S0047=	Jerry W. Tillman	RESTORE PARTISAN JUDICIAL ELECTIONS.	*S	Re-ref Com On Elections	02-09-11	06-07-11
S0067	Debbie A. Clary	SUNSHINE AMENDMENT.	S	Ref To Com On Judiciary I	02-16-11	
S0070	Eleanor Kinnaird	EXPUNGE NONVIOLENT CRIMES.	S	Ref to Judiciary I. If fav, re-ref to Finance	02-16-11	
S0086=	Kathy Harrington	LAURA'S LAW.	S	Ref To Com On	02-21-11	

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
				Judiciary I		
S0087=	Tom Apodaca	LEVEL PLAYING FIELD/ LOCAL GOV'T COMPETITION.	S	Ref To Com On Judiciary I	02-21-11	
S0108	David Rouzer	CIVIL LITIGATION COSTS REFORM ACT OF 2011.	S	Ref To Com On Judiciary I	02-23-11	
S0131	Daniel G. Clodfe	AOC COLLECTION ASSISTANCE FEE.	*SR	Ch. SL 2011-323	04-07-11	05-02-11
S0132	Daniel G. Clodfe	INTERPRETING SERVICES IN THE COURTS.	S	Re-ref Com On Judiciary I	04-07-11	
S0133=	Daniel G. Clodfe	MODERNIZE JURY LIST PROCEDURES.	*S	Pres. To Gov. 6/ 29/2012	02-28-11	03-15-11
S0134	Daniel G. Clodfe	CHIEF DIST. CT JUDGE APPOINTS MAGISTRATES.	S	Ref To Com On Judiciary I	02-28-11	
S0135	Daniel G. Clodfe	ALLOW JUVENILE RECORD/ RISK DETERMINATION/ BOND.	*SR	Ch. SL 2011-277	04-07-11	05-02-11
S0143	Eric Mansfield	DETENTION FACILITY REQUIREMENTS.	*SR	Ch. SL 2011-324	03-22-11	05-19-11
S0148=	Fletcher L. Hart	GSC TECH CORRECTIONS/ OTHER CHANGES.	*SR	Ch. SL 2011-326	03-01-11	06-02-11
S0190	Eric Mansfield	ALLOW ELECTRONIC SIGNATURES ON DEATH CERTS.	S	Ref To Com On Judiciary I	03-03-11	
S0191	Eric Mansfield	LME GOVERNANCE.	*S	Pres. To Gov. 7/3/ 2012	03-03-11	03-21-11
S0207	Fletcher L. Hart	INCREASE STATUTORY HOMESTEAD EXEMPTION.	S	Re-ref Com On Finance	03-07-11	04-07-11
S0220=	Fletcher L. Hart	GENERAL STATUTES COMM/ COLLATERAL CONSEQUENCES.	S	Re-ref Com On Judiciary I	05-02-11	
S0251=	Fletcher L. Hart	VARIOUS CLARIFYING MILITIA LAW AMENDMENTS.	S	Ref To Com On Judiciary I	03-09-11	
S0252=	Fletcher L. Hart	DEVISEE/DEVISE/ STATUTORY CONSTRUCTION.	SR	Ch. SL 2011-284	03-09-11	03-24-11
S0253=	Fletcher L. Hart	REFERENCES TO MILITARY ORGS./MAKE UNIFORM.	S	Ref To Com On Judiciary I	03-09-11	
S0254=	Fletcher L. Hart	ALLOW NONATTORNEY OWNERSHIP OF PC LAW FIRMS.	S	Re-ref Com On Rules and Operations of the Senate	03-09-11	03-21-11
S0266	Daniel G. Clodfe	FILLING VACANCIES IN LOCAL OFFICE.	S	Ref To Com On Judiciary I	03-09-11	
S0268	Floyd B. McKissi	ENHANCE PROTECTION OF VICTIMS AND WITNESSES.	*SR	Ch. SL 2011-190	04-27-11	06-07-11
S0272	Peter S. Brunste	VICTIMS' COMPENSATION LAW CHANGES.-AB	*SR	Ch. SL 2011-267	03-09-11	04-12-11
S0317	Peter S. Brunste	AMEND LAW RE: STATE INFO. TECHOLOGY SERVICES.	S	Ref To Com On Judiciary I	03-14-11	
S0324	Tom Apodaca	ABC LAW/EASTERN BAND OF CHEROKEE INDIANS.	*SR	Ch. SL 2011-333	04-27-11	06-07-11

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
S0344	Debbie A. Clary	GOVERNMENT TRANSPARENCY ACT OF 2011.	S	Ref To Com On Judiciary I	03-15-11	
S0349	William R. Purce	CONFIDENTIALITY/ OPTOMETRY/RE CLOSING INT .	*SR	Ch. SL 2011-336	03-16-11	06-07-11
S0352=	Wesley Meredith	RESTORE CONFIDENCE IN GOVERNMENT.	S	Ref To Com On Judiciary I	03-16-11	
S0356=	Gladys A. Robins	NO RUN FOR TWO OFFICES/SAME GENERAL ELECTIONS.	*SR	Ch. SL 2011-214	03-17-11	06-07-11
S0364	Daniel G. Clodfe	CANCEL AIRCRAFT LIEN W/ SURETY BOND DEPOSIT.	S	Re-ref Com On Rules, Calendar, and Operations of the House	04-07-11	04-14-11
S0374=	Tom Apodaca	LANDOWNER PROTECTION ACT.	*S	Re-ref Com On Judiciary I	05-12-11	
S0379	Thom Goolsby	REVISE RESTITUTION DAMAGE AWARDS.	S	Ref To Com On Judiciary I	03-21-11	
S0391	Peter S. Brunste	SPA/REPEAL RIF PRIORITY CONSIDERATION.	S	Ref To Com On Judiciary I	03-23-11	
S0394	E. S. (Buck) New	CLARIFY PROCESS/ REPORTABLE OFFENSES IN SCH.	*SR	Ch. SL 2011-248	03-23-11	04-11-11
S0398	Thom Goolsby	PERPETUITIES & TRUSTS/ AMEND CONSTITUTION.	S	Ref To Com On Judiciary I	03-23-11	
S0407	Fletcher L. Hart	TRUSTS AND ESTATE PLANNING CHANGES.	*SR	Ch. SL 2011-339	03-24-11	04-11-11
S0411	E. S. (Buck) New	STANLY COUNTY LOCAL CHANGES.	*SR	Ch. SL 2011-175	03-24-11	06-07-11
S0412	Thom Goolsby	PUBLIC MEETINGS/ RECORDS LAW VIOLATIONS.	S	Ref To Com On Judiciary I	03-24-11	
S0413	Daniel G. Clodfe	ORDINANCE FIRST READING VOTE.	*S	Re-ref Com On Rules, Calendar, and Operations of the House	03-24-11	04-05-11
S0414	Daniel G. Clodfe	ALLOW ATTORNEYS' FEES IN BUSINESS CONTRACTS.	*SR	Ch. SL 2011-341	03-24-11	04-11-11
S0419	Jim Davis	CAMPAIGN FINANCE AND REGULATORY REFORMS.	S	Ref To Com On Judiciary I	03-28-11	
S0420	Don Vaughan	MUNICIPAL SUNSHINE ACT.	S	Ref To Com On Judiciary I	03-28-11	
S0432	Fletcher L. Hart	REVISE PROBATE CODE.	*SR	Ch. SL 2011-344	03-29-11	05-02-11
S0434	Fletcher L. Hart	JUVENILE AGE TO 18.	*S	Re-ref Com On Appropriations	03-29-11	04-19-11
S0435	Fletcher L. Hart	CIVIL PRO./REQUIRE CERTIFICATE OF MERIT.	*S	Ref To Com On House Select Committee on Tort Reform	03-29-11	06-07-11
S0440	Andrew C. Brock	PRESIDENTIAL PRIMARY IN MARCH.	S	Ref To Com On Judiciary I	03-29-11	
S0456	Thom Goolsby	CANDIDATE LIST PARTY OR UNAFFILIATED STATUS.	*S	Ref To Com On Elections	03-30-11	06-07-11

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
S0457	Daniel G. Clodfe	AMEND ARTICLE 13 OF BUSINESS CORPORATION ACT.	SR	Ch. SL 2011-347	03-30-11	04-14-11
S0458	Daniel G. Clodfe	JUDICIAL APPOINTMENT/ VOTER RETENTION.	S	Ref To Com On Judiciary I	03-30-11	
S0459	Andrew C. Brock	REPEAL MATCHING FUNDS.	S	Ref To Com On Judiciary I	03-30-11	
S0468=	Daniel G. Clodfe	JUROR QUALIFICATIONS/ DISABILITIES.	S	Ref To Com On Judiciary I	03-31-11	
S0474=	Tom Apodaca	PHOTO ID FOR CERTAIN CONTROLLED SUBSTANCES.	*SR	Ch. SL 2011-349	03-31-11	04-19-11
S0478	Stan Bingham	OFFICE OF PROSECUTION SERVICES.	S	Ref To Com On Judiciary I	03-31-11	
S0482	Fletcher L. Hart	ALJ FINAL DECISON AUTHORITY.	S	Ref To Com On Judiciary I	04-04-11	
S0486	Josh Stein	RELEASE SUBDIVIDED LOTS FROM TAX LIENS.	*S	Re-ref Com On Finance	04-04-11	04-26-11
S0487	Josh Stein	DISPUTED EARNEST MONEY/ATTORNEYS DEPOSIT.	*SR	Ch. SL 2011-350	04-04-11	04-26-11
S0488	Josh Stein	LANDLORD NOTICE NC BAR/HOMEOWNER-BUYER PROT.	*S	Re-ref Com On Rules, Calendar, and Operations of the House	04-04-11	05-02-11
S0502	Andrew C. Brock	VOTING MATERIALS IN ENGLISH.	S	Ref To Com On Judiciary I	04-05-11	
S0503	Jim Davis	NO SECOND PRIMARIES.	S	Ref To Com On Judiciary I	04-05-11	
S0516=	Fletcher L. Hart	CERTIFICATION OF RESTORATION OF RIGHTS ACT.	S	Ref To Com On Judiciary I	04-06-11	
S0518	Don Vaughan	LANDLORD/STATE BAR NOTICE OF LEASE DEFAULT.	*SR	Ch. SL 2012-76	04-06-11	06-09-11
S0521	Daniel G. Clodfe	RULE IN DUMPOR'S CASE/ BROKER PRICE OPINIONS.	*S	Pres. To Gov. 6/ 28/2012	04-06-11	05-02-11
S0535	Fletcher L. Hart	APA: MODIFY FINAL ADMINISTRATIVE DECISIONS.	S	Ref To Com On Judiciary I	04-12-11	
S0554	Peter S. Brunste	PERSONNEL RECORDS TECHNICAL CHANGES.	S	Re-ref Com On Finance	04-12-11	06-09-11
S0568	Peter S. Brunste	CLARIFY TRUSTS AS BENEFICIARIES IN POD ACCTS.	S	Ref To Com On Judiciary I	04-14-11	
S0580	Fletcher L. Hart	AOC OMNIBUS COURTS ACT.	*SR	Ch. SL 2011-411	04-14-11	06-07-11
S0583	Tom Apodaca	LAW ENFORCEMENT ON INTERSTATE HIGHWAYS.	S	Ref To Com On Judiciary I	04-14-11	
S0588	Don Vaughan	HOA/UNIFORM PROCEDURE FOR LIEN ENFORCEMENT.	S	Ref To Com On Judiciary I	04-14-11	
S0591	Eleanor Kinnaird	HORTON INDEPENDENT REDISTRICTING COMM.	S	Ref To Com On Judiciary I	04-14-11	
S0595	Debbie A. Clary	VOTER IDENTIFICATION AT POLLS.	S	Ref To Com On Judiciary I	04-14-11	
S0596	Debbie A. Clary	STATEWIDE PUBLIC DEFENDER OFFICES.	S	Ref To Com On Judiciary I	04-14-11	

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2011-2012 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
S0600	Daniel G. Clodfe	OUT-OF-STATE LAW ENFORCEMENT/SPECIAL EVENTS.	*SR	Ch. SL 2011-316	04-19-11	05-10-11
S0620	Daniel G. Clodfe	CLARIFY USE OF POSITION.	*SR	Ch. SL 2011-393	04-19-11	05-02-11
S0624	Jean Preston	MODIFY HEARING & MAILINGS FOR RULE MAKING.	S	Re-ref Com On Judiciary I	04-27-11	
S0642	Fletcher L. Hart	MED. MAL. REVIEW BOARD.	S	Ref to Judiciary I. If fav, re-ref to Program Evaluation	04-19-11	
S0653=	Warren Daniel	ELIMINATE AGENCY FINAL DECISION AUTHORITY.	S	Ref To Com On Judiciary I	04-20-11	
S0654	Thom Goolsby	WC/ADJUST ORGAN INJURY BENEFIT ANNUALLY.	S	Ref To Com On Judiciary I	04-20-11	
S0657	Jim Davis	VOTING INTEGRITY.	S	Ref To Com On Judiciary I	04-20-11	
S0659	Daniel G. Clodfe	WC/TAXI DRIVER/ INDEPENDENT CONTRACTOR.	*S	Ref To Com On Judiciary Subcommittee A	04-20-11	06-02-11
S0674	Peter S. Brunste	CIVIL JUSTICE SYSTEM REFORMS.	S	Ref To Com On Judiciary I	04-20-11	
S0684	Tom Apodaca	SEX OFFENDER SUPERVISION/FORENSIC AMENDMENTS.	*SR	Ch. SL 2011-307	04-20-11	06-02-11
S0706=	Tommy Tucker	LEGAL SERVICES.	S	Ref To Com On Judiciary I	04-20-11	
S0712	Martin L. Nesbit	ADJUST QUARTERLY REPORTING.	*S	Ref To Com On Elections	04-20-11	06-07-11
S0714	Martin L. Nesbit	SATELLITE EARLY VOTING MINIMUM TIMES.	S	Ref To Com On Judiciary I	04-20-11	
S0723	Ralph Hise	STRENGTHEN CONTROLLED SUB. REPORTING SYSTEM.	S	Ref To Com On Judiciary I	04-20-11	
S0725	Ralph Hise	CAMPAIGN FINANCE REFORM.	S	Ref To Com On Judiciary I	04-20-11	
S0735	Fletcher L. Hart	CONGRESSIONAL PLAN - ODELL SCHOOL.	S	Ref To Com On Judiciary I	04-20-11	
S0740	Thom Goolsby	ALLOW SURETY AGENT TO FILE MOTIONS/BAIL BONDS.	S	Ref To Com On Judiciary I	04-20-11	
S0741	Thom Goolsby	JURISDICTIONAL AMTS/ ARBITRATION/SM CLAIMS CT.	S	Ref To Com On Judiciary I	04-20-11	
S0742	Thom Goolsby	VIDEO OF DWI STOPS AND CHEMICAL TESTS.	S	Ref To Com On Judiciary I	04-20-11	
S0756	Debbie A. Clary	AMEND BAIL LAW/ PRETRIAL RELEASE PROGRAMS.	*S	Re-ref Com On Appropriations Subcommittee on Justice and Public Safety	05-02-11	05-16-11
S0768	Andrew C. Brock	STANDARDS FOR ELECTRONIC PRESCRIPTIONS.	S	Ref To Com On Judiciary I	04-20-11	

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2011-2012 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
S0772	Andrew C. Brock	CONSOLIDATE ETHICS, ELECTIONS, AND LOBBYING.	S	Ref To Com On Judiciary I	04-20-11	
S0773	Andrew C. Brock	CITY/COUNTY ELECTRONIC NOTICE.	S	Ref To Com On Judiciary I	04-20-11	
S0774	Andrew C. Brock	UPDATE ELECTRONIC PRESCRIPTION RULES.	S	Ref To Com On Judiciary I	04-20-11	
S0798	Peter S. Brunste	VARIOUS EMERGENCY MANAGEMENT CHANGES.	*SR	Ch. SL 2012-90	05-16-12	05-22-12
S0843=	Fletcher L. Hart	INTESTATE PROPERTY/ CHILD'S YEAR'S ALLOWANCE.	S	Ref to Judiciary I. If fav, re-ref to Finance	05-22-12	
S0845=	Fletcher L. Hart	CO-OWNERS/UNEQUAL SHARES/SIMULTANEOUS DEATH.	S	Ref To Com On Judiciary I	05-22-12	
S0846=	Fletcher L. Hart	PASSING TITLE BY WILL.	S	Ref to Judiciary I. If fav, re-ref to Finance	05-22-12	
S0847=	Fletcher L. Hart	GSC TECHNICAL CORRECTIONS/OTHER CHANGES.	*S	Pres. To Gov. 7/3/ 2012	05-22-12	06-26-12
S0864=	Peter S. Brunste	MECHANICS LIENS/ PAYMENT BOND REFORMS.	S	Ref to Judiciary I. If fav, re-ref to Finance	05-23-12	
S0880	Thom Goolsby	DEPT. OF PUBLIC SAFETY/TECH & OTHER CHANGES.	S	Re-ref Com On Judiciary II	05-24-12	06-07-12
S0881=	Thom Goolsby	TRANSFER EVIDENCE WAREHOUSE TO DPS.	*SR	Ch. SL 2012-83	05-24-12	06-07-12
S0908	Peter S. Brunste	MATCHING FUNDS REPEAL.	S	Ref To Com On Elections	05-30-12	06-05-12
)922	Thom Goolsby	SEX TRAFFICKING/SEX OFFENDER REGISTRATION.	S	Ref To Com On Judiciary I	05-30-12	
S0923	Thom Goolsby	END COLLECTION/ TRAFFIC ENFORCEMENT STATISTICS.	S	Ref To Com On Judiciary I	05-30-12	

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ATTENDANCE

Committee: **Judiciary I 2012 Short Session**

Meeting Start Date May 17, 2012 – June 26, 2012

DATES / NAMES	17	22	24	31	5	7	19	26								
Senator Peter Brunstetter	X	X	X	X	X	X	X	X								
Vice Chair: Senator Thom Goolsby	X	X	X	X	X	X	X	X								
Senator tom Apodaca	X					X		X								
Senator Andrew Brock	X	X	X	X	X	X	X	X								
Senator Harry Brown	X	X	X	X	X	X	X	X								
Senator Dan Clodfelter	X	X	X				X	X								
Senator Kathy Harrington	X	X	X	X	X	X	X	X								
Senator Clark Jenkins	X	X	X		X	X		X								
Senator Eric Mansfield	X	X	X	X	X	X	X	X								
Senator Martin Nesbitt	X	X		X		X	X	X								
Senator Louis Pate	X	X	X	X	X	X	X	X								
Senator David Rouzer	X	X		X	X	X	X	X								
Senator Bob Rucho	X	X	X	X		X	X	X								
Senator Dan Soucek	X	X	X	X	X	X	X	X								
Senator Josh Stein	X	X	X	X	X	X	X	X								
Senator Richard Stevens	X	X	X			X	X	X								
Senator Jerry Tillman	X	X	X	X	X	X	X	X								
Senator Michael Walters	X	X		X	X	X		X								
STAFF																
Michael Lewis, Committee Clerk	X	X	X	X	X	X	X	X								
Brad Krehely (Bill Drafting	X	X	X	X	X	X	X	X								
Bill Patterson					X	X	X	X								
Ericka Churchill	X	X		X	X	X	X	X								
Lori Kroll (Senator Brunstetter)	X	X	X	X	X	X	X	X								
Susan Sitze (Research)	X	X	X	X	X	X	X	X								
Sherry Pearson, Senate LA Office	X	X	X	X	X	X	X	X								

SENATE JUDICIARY I COMMITTEE
Thursday, May 17, 2012 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on May 17, 2012, in Room 1027 of the Legislative Building. 18 members of the committee were present. Senator Brunstetter, presided.

HB 843-MODERNIZE NC EMERGENCY MANAGEMENT ACT-Senator Apodaca moves that the PCS for the bill be brought before the committee for the purpose of consideration. Representative Martin was recognized to explain the PCS. The bill would make several changes to the NC Emergency Management Act, including correcting the effective date to October 1, 2012 and Chapter 166A. The committee members agreed to review the legislation over the weekend and no action was taken on the bill.

SB 798-VARIOUS EMERGENCY MANAGEMENT CHANGES-Senator Goolsby was recognized to chair the committee. Senator Brunstetter was recognized to explain the bill. The bill was the product of a committee appointed by President Pro-Tem Berger. The bill changes the length of disaster declarations. Clarifies that if a federal aid program is enacted during that declaration, aid would continue to flow pursuant to that federal program after the declaration expires. The committee members agreed to review the legislation over the weekend and no action was taken on the bill.

HB 489-MECHANICS LIEN & BOND LAW CHANGES-Senator Brunstetter recognized to explain the bill. The legislation responds to the decision in *Bateman v. Perdue* and repeals the unconstitutional ban on firearms during emergencies and disasters in accordance with *Bateman v. Perdue*. Allows municipalities to enact ordinances regarding the possession of firearms in disaster areas, but prohibits restrictions on firearms and ammunition for self-defense on one's property. The committee members agreed to review the legislation over the weekend and no action was taken on the bill.

The meeting adjourned at 10:28AM.

Senator Brunstetter, Presiding

Michael Lewis, Committee Clerk

Senate Judiciary I Committee
Thursday, May 17, 2012, 10:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 483	DNA Samples/Additional Felonies.	Representative Ingle Representative Pridgen Representative Burr
HB 489	Mechanics Lien and Bond Law Changes.	Representative Martin Representative Pridgen Representative Stam
HB 843	Modernize NC Emergency Management Act.	Representative Martin
SB 798	Various Emergency Management Changes.	Senator Brunstetter

Presentations

Other Business

Adjournment

Principal Clerk ____
Reading Clerk ____

Corrected Notice

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	May 17, 2012	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 489	Mechanics Lien and Bond Law Changes.	Representative Martin Representative Pridgen Representative Stam
HB 483	DNA Samples/Additional Felonies.	Representative Ingle Representative Pridgen Representative Burr
HB 843	Modernize NC Emergency Management Act.	Representative Martin
HB 857	Sex Offenders/Electronic Monitoring.	Representative Holloway Representative Daughtry Representative Randleman Representative Moore
HB 125	Opt 2nd Prim. Vote Centers & Suff Ballots.	Representative Sager Representative Jordan Representative Shepard Representative Stevens

EPC (Brunstetter) Emergency Management Changes

Senator Peter S. Brunstetter, Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	May 16, 2012	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 483	DNA Samples/Additional Felonies.	Representative Ingle Representative Pridgen Representative Burr
HB 489	Mechanics Lien and Bond Law Changes.	Representative Martin Representative Pridgen Representative Stam
HB 125	Opt 2nd Prim. Vote Centers & Suff Ballots.	Representative Sager Representative Jordan Representative Shepard Representative Stevens
HB 843	Modernize NC Emergency Management Act.	Representative Martin
HB 857	Sex Offenders/Electronic Monitoring.	Representative Holloway Representative Daughtry Representative Randleman Representative Moore

EPC (Brunstetter) Emergency Management Changes

Senator Peter S. Brunstetter, Chair

HOUSE BILL 483
Second Edition Engrossed 5/9/11

Short Title:	DNA Samples/Additional Felonies.	(Public)
Sponsors:	Representatives Burr, Pridgen, and Ingle (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee B.	

March 29, 2011

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE LIST OF FELONIES FOR WHICH A DNA SAMPLE SHALL BE TAKEN UPON ARREST AND TO APPROPRIATE FUNDS TO FACILITATE THE EXPANSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-266.3A(f) reads as rewritten:

"(f) This section shall apply to a person arrested for violating any one of the following offenses in Chapter 14 of the General Statutes:

(1) G.S. 14-17, First and Second Degree Murder.

(2) G.S. 14-18, Manslaughter.

(3) Any offense in Article 7A, Rape and Other Sex Offenses.

(4) G.S. 14-32, Felonious assault with deadly weapon with intent to kill or inflicting serious injury; G.S. 14-32.1(e), Assault on handicapped person; G.S. 14-32.2, Patient abuse and neglect; G.S. 14-32.4(a), Assault inflicting serious bodily injury; G.S. 14-34.1, Discharging certain barreled weapons or a firearm into occupied property; G.S. 14-34.2, Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers; G.S. 14-34.4, Adulterated or misbranded food, drugs, or cosmetics; intent to cause serious injury or death; intent to extort; G.S. 14-34.5, Assault with a firearm on a law enforcement, probation, or parole officer or on a person employed at a State or local detention facility; G.S. 14-34.6, Assault or affray on a firefighter, an emergency medical technician, medical responder, emergency department nurse, or emergency department physician; and G.S. 14-34.7, Assault inflicting serious injury on a law enforcement, probation, or parole officer or on a person employed at a State or local detention ~~facility.~~facility; G.S. 14-34.9, Discharging a weapon from within an enclosure.

(5) Any offense in Article 10; Kidnapping and Abduction, or Article 10A, Human Trafficking.

(5a) Any offense in Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material.

(5b) G.S. 14-50.18, Soliciting; encouraging participation of minor.

(6) G.S. 14-51, First and second degree burglary; G.S. 14-53, Breaking out of dwelling house burglary; G.S. 14-54.1, Breaking or entering a place of religious worship; and G.S. 14-57, Burglary with explosives.

(7) Any offense in Article 15, Arson.
(8) G.S. 14-87, Armed ~~robbery.~~robbery; G.S. 14-87.1, Punishment for common law robbery.
(8a) G.S. 14-190.7, Dissemination to minors under the age of 16 years; G.S. 14-190.8, Dissemination to minors under the age of 13 years.
(9) Any offense which would require the person to register under the provisions of Article 27A of Chapter 14 of the General Statutes, Sex Offender and Public Protection Registration Programs.
(10) G.S. 14-196.3, Cyberstalking.
(10a) G.S. 14-208.44(a) and (b), Failure to enroll in a satellite-based monitoring program; tampering with device.
(11) G.S. 14-277.3A, Stalking.
(12) G.S. 14-315(a1), Selling or giving weapons (handguns) to minors.
(13) G.S. 14-318.4, Child abuse a felony.
(14) G.S. 14-320.1, Transporting child outside the State with intent to violate custody order.
(15) Any felony offense under G.S. 14-321.1, Prohibit babysitting service by sex offender or in the home of a sex offender.
(16) G.S. 14-322.1, Abandonment of child or children for six months.
(17) G.S. 90-95(h), Trafficking in a controlled substance."

SECTION 2. There is appropriated from the General Fund to the Department of Justice the sum of sixty-nine thousand nine hundred thirty-four dollars ($69,934) for fiscal year 2011-2012, and the sum of one hundred twenty-three thousand five hundred forty-three dollars ($123,543) for fiscal year 2012-2013 to be allocated to the State Bureau of Investigation for testing and analysis of the DNA samples required by this act. There is appropriated from the General Fund to the Judicial Department the sum of forty-four thousand seven hundred sixty dollars ($44,760) for fiscal year 2012-2013 to be allocated to the Administrative Office of the Courts for the administration of the provisions of this act.

SECTION 3. Section 1 of this act becomes effective December 1, 2011, and applies to offenses committed on or after that date. The remainder of this act becomes effective July 1, 2011.

HOUSE BILL 489
Committee Substitute Favorable 5/25/11

Short Title: Mechanics Lien and Bond Law Changes. (Public)

Sponsors:

Referred to:

March 29, 2011

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO STUDY NORTH CAROLINA'S MECHANICS' LIEN AND BOND LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. The Legislative Research Commission may study North Carolina's mechanics' lien and bond laws and may make recommendations on ways to modernize and improve those laws and may propose legislation for consideration by the 2011 General Assembly, 2012 Regular Session, and the 2013 General Assembly. In its study, the Commission may consider all of the following:

(1) Hidden mechanics' liens and requiring the filing and posting of Notices of Commencement and Notices to Owners as a means of preventing them.

(2) Protecting general contractors from incurring double liability under payment bonds on public projects by requiring subcontractors to serve the contractor with notice that they are furnishing labor or materials on a project.

(3) Protecting subcontractors and addressing bankruptcy court rulings that prevent subcontractors from perfecting and enforcing mechanics' liens after a bankruptcy is filed.

(4) Ensuring that extremely small mechanics' liens do not hold up much larger pay applications.

(5) Addressing any concerns produced by the Business Court's decision in Wachovia v. Superior Construction, under which a partial lien waiver could act to waive a contractor's first date of furnishing.

(6) Addressing the current Notice of Contract problem created when a general contractor is hired to perform work on a project either directly or as a replacement contractor more than 30 days after the building permit is issued.

(7) Creating standard statutory forms for partial and final lien waivers.

(8) Providing all contractors who furnish work on a project and comply with applicable statutory requirements the same mechanics' lien priority date.

(9) Providing a savings clause for contractors who fail to timely file and serve their Notice to Owner within 30 days from the first date of furnishing.

(10) Providing a residential carve-out for owner-builder projects involving one- to four-unit residential structures.

(11) Any other issues the Commission considers relevant to this topic.

SECTION 2. The Legislative Research Commission may make an interim report to the 2011 General Assembly, 2012 Regular Session, and shall make its final report to the 2013 General Assembly.

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

HOUSE BILL 489:
Dangerous Weapon Restrictions in Emergencies

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 16, 2012
Introduced by:	Reps. Pridgen, Stam, Martin	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to Second Edition H489-CSSA-71		

SUMMARY: The Proposed Committee Substitute for House Bill 489 would authorize the possession, storage, and use of dangerous weapons during a state of emergency for self-defense in a person's home; or for other lawful purposes in a person's home; and would authorize the transportation, possession, sale, or purchase of ammunition for self-defense purposes in a person's home or for other lawful purposes in a person's home.

CURRENT LAW: Under the current G.S. 14-288.7, it is a Class 1 misdemeanor for any person to transport or possess off his own premises any dangerous weapon or substance in any area (i) in which a declared state of emergency exists, or (ii) within the immediate vicinity of a riot. Additionally, G.S. 14-288.12 authorizes a municipality to enact ordinances dealing with states of emergency that include prohibitions and restrictions upon the "possession, transportation, sale, purchase, storage, and use of dangerous weapons and substances..."

On March 29, 2012, in *Bateman v. Perdue,* the US District Court for the Eastern District of North Carolina declared these statutes unconstitutional as applied to the plaintiffs. The court stopped short of declaring the statutes unconstitutional on their face, but the ruling indicates that future restrictions on dangerous weapons will need to be more narrowly tailored.

BILL ANALYSIS: The PCS for H489 would amend the statutes relating to regulation of dangerous weapons during an emergency.

Section 1 of the PCS would repeal G.S. 14-288.7, therefore removing the "automatic" ban on transporting weapons during an emergency or in the vicinity of a riot.

Section 2 of the PCS would amend the statute authorizing municipalities to adopt ordinances dealing with states of emergency. The amendments in this statute would also apply to ordinances adopted by a county or control exercised by the Governor, as the statutes authorizing those restrictions all refer back to the statute amended by this PCS. The amendments would do the following:

- Clarify that places that sell dangerous weapons are treated the same as other places of business.
- Limit gun restrictions to those situations in which they are necessary to preserve the public peace where there is an imminent risk of damage, injury, or loss of life or property.
- Prohibit restrictions on possession, storage or use of a dangerous weapon for self-defense in a person's home or other lawful purpose in a person's home or on other real property in which they have a lawful possessory or ownership interest.
- Prohibit restrictions on the transportation, possession, sale, purchase or use of ammunition for self-defense purposes in a person's home or on other real property in which a person has a lawful possessory or ownership interest.

Sections 3, 4 and 5 of the PCS are contingent on the passing of H843, which, if enacted, would modify or repeal the statutes amended in Sections 1 and 2 of this PCS and would recodify G.S. 14-288.12 and

other relevant statutes. The provisions of these sections of this PCS would make the same changes as in Section 1 and 2 of this PCS to the statutes as they would exist should H843 be enacted.

EFFECTIVE DATE: This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 843
Second Edition Engrossed 5/24/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H843-CSMD-22 [v.13]

5/15/2012 4:09:34 PM

Short Title: Modernize NC Emergency Management Act. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE NORTH CAROLINA EMERGENCY MANAGEMENT ACT AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

I. CHANGES TO CHAPTER 166A OF THE GENERAL STATUTES

SECTION 1.(a) G.S. 166A-6.1 is recodified as G.S. 166A-29 and the remainder of Article 1 of Chapter 166A is repealed.

SECTION 1.(b) Chapter 166A of the General Statutes is amended by adding a new Article to read:

"Article 1A.
"North Carolina Emergency Management Act.
"Part 1. General Provisions.

"**§ 166A-19. Short title.**

This Article may be cited as 'North Carolina Emergency Management Act.'

"**§ 166A-19.1. Purposes.**

The purposes of this Article are to set forth the authority and responsibility of the Governor, State agencies, and local governments in prevention of, preparation for, response to, and recovery from natural or man-made emergencies or hostile military or paramilitary action and to do the following:

(1) Reduce vulnerability of people and property of this State to damage, injury, and loss of life and property;

(2) Prepare for prompt and efficient rescue, care, and treatment of threatened or affected persons;

(3) Provide for the rapid and orderly rehabilitation of persons and restoration of property; and

(4) Provide for cooperation and coordination of activities relating to emergency mitigation, preparedness, response, and recovery among agencies and officials of this State and with similar agencies and officials of other states,

with local and federal governments, with interstate organizations, and with other private and quasi-official organizations.

"**§ 166A-19.2. Limitations.**

Nothing in this Article shall be construed 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.

(2) Limit, modify, or abridge the authority of the Governor to declare martial law or exercise any other powers vested in the Governor under the North Carolina Constitution, statutes, or common law of this State independent of, or in conjunction with, any provisions of this Article.

"**§ 166A-19.3. Definitions.**

The following definitions apply in this Article:

(1) Account. – The State Emergency Response Account established in G.S. 166A-19.42.

(2) Chairman of the board of county commissioners. – The chairman of the board of county commissioners or, in case of the chairman's absence or disability, the person authorized to act in the chairman's stead. Unless the governing body of the county has specified who is to act in lieu of the chairman with respect to a particular power or duty set out in this Article, this term shall mean the person generally authorized to act in lieu of the chairman.

(3) Disaster declaration. – A gubernatorial declaration that the impact or anticipated impact of an emergency constitutes a disaster of one of the types enumerated in G.S. 166A-19.21(b).

(4) Division. – The Division of Emergency Management established in Subpart A of Part 5 of Article 13 of Chapter 143B of the General Statutes.

(5) Eligible entity. – Any political subdivision. The term also includes an owner or operator of a private nonprofit utility that meets the eligibility criteria set out in this Article.

(6) Emergency. – An occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military, paramilitary, weather-related, or riot-related cause.

(7) Emergency area. – The geographical area covered by a state of emergency.

(8) Emergency management. – Those measures taken by the populace and governments at federal, State, and local levels to minimize the adverse effect of any type emergency, which includes the never-ending preparedness cycle of planning, prevention, mitigation, warning, movement, shelter, emergency assistance, and recovery.

(9) Emergency management agency. – A State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction.

(10) Hazard risk management. – The systematic application of policies, practices, and resources to the identification, assessment, and control of risk associated with hazards affecting human health and safety and property. Hazard, risk, and cost-benefit analysis are used to support development of risk reduction options, program objectives, and prioritization of issues and resources.

(11) Mayor. – The mayor or other chief executive official of a municipality or, in case of that person's absence or disability, the person authorized to act in that person's stead. Unless the governing body of the municipality has specified who is to act in lieu of the mayor with respect to a particular power or duty set out in this Article, the term shall mean the person generally authorized to act in lieu of the mayor.

(12) Political subdivision. – Counties and incorporated cities, towns, and villages.

(13) Preliminary damage assessment. – The initial estimate prepared by State, local, or federal emergency management workers used to determine the severity and magnitude of damage caused by an emergency.

(14) Private nonprofit utility. – A utility that would be eligible for federal public assistance disaster funds pursuant to 44 C.F.R. Part 206.

(15) Secretary. – The Secretary of the Department of Public Safety.

(16) Stafford Act. – The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288, 88 Stat. 143, codified generally at 42 U.S.C. § 5121, et seq., as amended.

(17) State Acquisition and Relocation Fund. – State funding for supplemental grants to homeowners participating in a federal Hazard Mitigation Grant Program Acquisition and Relocation Program. These grants are used to acquire safe, decent, and sanitary housing by paying the difference between the cost of the home acquired under the federal Hazard Mitigation Grant Program Acquisition and Relocation Program and the cost of a comparable home located outside the 100-year floodplain.

(18) State of emergency. – A finding and declaration by any of the following authorities that an emergency exists:

a. The Governor, acting under the authority of G.S. 166A-19.20.

b. The General Assembly, acting under the authority of G.S. 166A-19.20.

c. The governing body of a municipality or the mayor of a municipality, acting under the authority of G.S. 166A-19.22.

d. The governing body of a county or the chairman of the board of commissioners of a county, acting under the authority of G.S. 166A-19.22.

"Part 2. State Emergency Management.

"**§ 166A-19.10. Powers of the Governor.**

(a) State Emergency Management Program. – The State Emergency Management Program includes all aspects of preparations for, response to, recovery from, and mitigation against war or peacetime emergencies.

(b) Powers of the Governor. – The Governor is authorized and empowered to do the following:

(1) To exercise general direction and control of the State Emergency Management Program and to be responsible for carrying out the provisions of this Article, other than those provisions that confer powers and duties exclusively on local governments.

(2) To make, amend, or rescind the necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor herein, with due consideration of the policies of the federal government.

(3) To delegate any authority vested in the Governor under this Article and to provide for the subdelegation of any such authority.

(4) To cooperate and coordinate with the President and the heads of the departments and agencies of the federal government, and with other appropriate federal officers and agencies, and with the officers and agencies of other states and local units of government in matters pertaining to the emergency management of the State and nation.

(5) To enter into agreements with the American National Red Cross, Salvation Army, Mennonite Disaster Service, and other disaster relief organizations.

(6) To make, amend, or rescind mutual aid agreements in accordance with G.S. 166A-19.72.

(7) To utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the State and of the political subdivisions thereof. The officers and personnel of all such departments, offices, and agencies are required to cooperate with and extend such services and facilities to the Governor upon request. This authority shall extend to a state of emergency declared pursuant to G.S. 166A-19.20, to the imminent threat of an emergency that will likely require an emergency to be declared pursuant to G.S. 166A-19.20, or to emergency management planning and training purposes.

(8) To agree, when required to obtain federal assistance in debris removal, that the State will indemnify the federal government against any claim arising from the removal of the debris.

(9) To sell, lend, lease, give, transfer, or deliver materials or perform services for emergency purposes on such terms and conditions as may be prescribed by any existing law, and to account to the State Treasurer for any funds received for such property.

(10) In an emergency, or when requested by the governing body of a political subdivision in the State, to assume operational control over all or any part of the emergency management functions within this State.

"**§ 166A-19.11. Powers of the Secretary of Public Safety.**

The Secretary shall be responsible to the Governor for State emergency management activities. The Secretary shall have the following powers and duties as delegated by the Governor:

(1) To activate the State and local plans applicable to the areas in question and to authorize and direct the deployment and use of any personnel and forces to which the plan or plans apply, and the use or distribution of any supplies, equipment, materials, and facilities available pursuant to this Article or any other provision of law.

(2) To adopt the rules to implement those provisions of this Article that deal with matters other than those that are exclusively local.

(3) To develop a system to produce a preliminary damage assessment from which the Secretary will recommend the appropriate level of disaster declaration to the Governor. The system shall, at a minimum, consider whether the damage involved and its effects are of such a severity and magnitude as to be beyond the response capabilities of the local government or political subdivision.

(4) Additional authority, duties, and responsibilities as may be prescribed by the Governor. The Secretary may subdelegate his authority to the appropriate member of the Secretary's department.

"**§ 166A-19.12. Powers of the Division of Emergency Management.**

The Division of Emergency Management shall have the following powers and duties as delegated by the Governor and Secretary of Public Safety:

(1) Coordination of the activities of all State agencies for emergency management within the State, including planning, organizing, staffing, equipping, training, testing, and activating emergency management programs.

(2) Preparation and maintenance of State plans for emergencies. The State plans or any parts thereof may be incorporated into department regulations and into executive orders of the Governor.

(3) 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:

a. The epidemiologic investigation of a known or suspected threat caused by nuclear, biological, or chemical agents.

b. The examination and testing of persons and animals that may have been exposed to a nuclear, biological, or chemical agent.

c. The procurement and allocation of immunizing agents and prophylactic antibiotics.

d. The allocation of the Strategic National Stockpile.

e. The appropriate conditions for quarantine and isolation in order to prevent further transmission of disease.

f. Immunization procedures.

g. The issuance of guidelines for prophylaxis and treatment of exposed and affected persons.

(4) Establishment of a voluntary model registry for use by political subdivisions in identifying functionally and medically fragile persons in need of assistance during an emergency. All records, data, information, correspondence, and communications relating to the registration of persons with special needs or of functionally and medically fragile persons obtained pursuant to this subdivision are confidential and are not a public record pursuant to G.S. 132-1 or any other applicable statute, except that this information shall be available to emergency response agencies, as determined by the local emergency management director. This information shall be used only for the purposes set forth in this subdivision.

(5) Promulgation of standards and requirements for local plans and programs consistent with federal and State laws and regulations, determination of eligibility for State financial assistance provided for in G.S. 166A-19.15 and provision of technical assistance to local governments. Standards and requirements for local plans and programs promulgated under this subdivision shall be reviewed by the Division at least biennially and updated as necessary.

(6) Development and presentation of training programs, including the Emergency Management Certification Program established under Article 5 of this Chapter, and public information programs to insure the furnishing of adequately trained personnel and an informed public in time of need.

(7) Making of such studies and surveys of the resources in this State as may be necessary to ascertain the capabilities of the State for emergency management, maintaining data on these resources, and planning for the most efficient use thereof.

(8) Coordination of the use of any private facilities, services, and property.

(9) Preparation for issuance by the Governor of executive orders, declarations, and regulations as necessary or appropriate.

(10) Cooperation and maintenance of liaison with the other states, the federal government, and any public or private agency or entity in achieving any purpose of this Article and in implementing programs for emergency or war prevention, preparation, response, and recovery.

(11) Making recommendations, as appropriate, for zoning, building, and other land-use controls, and safety measures for securing mobile homes or other nonpermanent or semipermanent works designed to protect against or mitigate the effects of an emergency.

(12) Coordination of the use of existing means of communications and supplementing communications resources and integrating them into a comprehensive State or State-federal telecommunications or other communications system or network.

(13) Administration of federal and State grant funds provided for emergency management purposes, including those funds provided for planning and preparedness activities by emergency management agencies.

(14) Serving as the lead State agency for the coordination of information and resources for hazard risk management, which shall include the following responsibilities:

a. Coordinating with other State agencies and county governments in conducting hazard risk analysis. To the extent another State agency has primary responsibility for the adoption of hazard mitigation standards, those standards shall be applied in conducting a hazard risk analysis.

b. Establishing and maintaining a hazard risk management information system and tools to display natural hazards and vulnerabilities and conducting risk assessment.

c. Acquiring and leveraging all natural hazard data generated or maintained by State agencies and county governments.

d. Acquiring and leveraging all vulnerability data generated or maintained by State agencies and county governments.

e. Maintaining a clearinghouse for methodologies and metrics for calculating and communicating hazard probability and loss estimation.

(15) Utilizing and maintaining technology that enables efficient and effective communication and management of resources between political subdivisions, State agencies, and other governmental entities involved in emergency management activities.

(16) Establishing and operating a 24 hour Operations Center to serve as a single point of contact for local governments to report the occurrence of emergency and disaster events, and to coordinate local and state response assets.

(17) Developing, maintaining, and implementing plans for response to any emergency occurring at a fixed nuclear power generating facility located in or near the borders of the State of North Carolina.

(18) Maintaining the State Emergency Operations Center as the facility to house the State Emergency Response Team whenever it is activated for disaster response.

(19) Serving as the agency responsible for the management of intrastate and interstate mutual aid planning, implementation, and resource procurement necessary for supporting emergency response and recovery.

"Part 3. Local Emergency Management.

"**§ 166A-19.15. County and municipal emergency management.**

(a) Governing Body of Counties Responsible for Emergency Management. – The governing body of each county is responsible for emergency management within the geographical limits of such county. All emergency management efforts within the county will be coordinated by the county, including activities of the municipalities within the county.

(b) Counties May Establish and Maintain Emergency Management Agencies. – The governing body of each county is hereby authorized to establish and maintain an emergency management agency for the purposes contained in G.S. 166A-19.1. The governing body of each county which establishes an emergency management agency pursuant to this authorization shall appoint a coordinator who will have a direct responsibility for the organization, administration, and operation of the county program and will be subject to the direction and guidance of such governing body. In the event that any county fails to establish an emergency management agency, and the Governor, in the Governor's discretion, determines that a need exists for such an emergency management agency, then the Governor is hereby empowered to establish an emergency management agency within that county.

(c) Municipalities May Establish and Maintain Emergency Management Agencies. – All incorporated municipalities are authorized to establish and maintain emergency management agencies subject to coordination by the county.

(d) Joint Agencies Authorized. – Counties and incorporated municipalities are authorized to form joint emergency management agencies composed of a county and one or more municipalities within the county's borders, between two or more counties, or between two or more counties and one or more municipalities within the borders of those counties.

(e) Local Appropriations Authorized. – Each county and incorporated municipality in this State is authorized to make appropriations for the purposes of this Article and to fund them by levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues, whose use is not otherwise restricted by law.

(f) Additional Powers. – In carrying out the provisions of this Article each political subdivision is authorized to do the following:

(1) To appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for emergency management purposes and to provide for the health and safety of persons and property, including emergency assistance, consistent with this Article.

(2) To direct and coordinate the development of emergency management plans and programs in accordance with the policies and standards set by the Division, consistent with federal and State laws and regulations.

(3) To assign and make available all available resources for emergency management purposes for service within or outside of the physical limits of the subdivision.

(4) To delegate powers in a local state of emergency declared pursuant to G.S. 166A-19.22.

(5) To coordinate the voluntary registration of functionally and medically fragile persons in need of assistance during an emergency either through a registry established by this subdivision or by the State. All records, data, information, correspondence, and communications relating to the registration of persons with special needs or of functionally and medically fragile persons obtained pursuant to this subdivision are confidential and are

not a public record pursuant to G.S. 132-1 or any other applicable statute, except that this information shall be available to emergency response agencies, as determined by the local emergency management director. This information shall be used only for the purposes set forth in this subdivision.

(g) County Eligibility for State and Federal Financial Assistance. – Each county which establishes an emergency management agency pursuant to State standards and which meets requirements for local plans and programs may be eligible to receive State and federal financial assistance, including State and federal funding appropriated for emergency management planning and preparedness, and for the maintenance and operation of a county emergency management program. Such financial assistance is subject to an appropriation being made for this purpose. Where the appropriation does not allocate appropriated funds among counties, the amount allocated to each county shall be determined annually by the Division. The size of this allocation shall be based in part on the degree to which local plans and programs meet State standards and requirements promulgated by the Division, including those relating to professional competencies of local emergency management personnel. However, in making an allocation determination, the Division shall, where appropriate, take into account the fact that a particular county may lack sufficient resources to meet the standards and requirements promulgated by the Division.

"Part 4. Declarations of State of Emergency.

"**§ 166A-19.20. Gubernatorial or legislative declaration of state of emergency.**

(a) Declaration. – A state of emergency may be declared by the Governor, or by a resolution of the General Assembly, if either of these finds that an emergency exists.

(b) Emergency Area. – An executive order or resolution declaring a state of emergency shall include a definition of the area constituting the emergency area.

(c) Expiration of States of Emergency. – A state of emergency declared pursuant to this section shall expire when it is rescinded by the authority that issued it.

(d) Exercise of Powers Not Contingent on Declaration of Disaster Type. – Once a state of emergency has been declared pursuant to this section, the fact that a declaration of disaster type has not been issued shall not preclude the exercise of powers otherwise conferred during a state of emergency.

"**§ 166A-19.21. Gubernatorial disaster declaration.**

(a) Preliminary Damage Assessment. – When a state of emergency is declared pursuant to G.S. 166A-19.20, the Secretary shall provide the Governor and the General Assembly with a preliminary damage assessment as soon as the assessment is available.

(b) Declaration of Disaster. – Upon receipt of a preliminary damage assessment, the Governor is authorized to issue a disaster declaration declaring the impact or anticipated impact of the emergency to constitute a disaster of one of the following types:

(1) Type I Disaster. – A Type I disaster may be declared 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, if all of the following criteria are met:

a. A local state of emergency has been declared pursuant to G.S. 166A-19.22 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-19.41(b)(2)a.

c. A major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared.

(2) Type II Disaster. – 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.

(3) Type III Disaster. – 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 either of the following is true:

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.

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, businesses, or political subdivisions affected by the emergency.

(c) Expiration of Disaster Declarations. –

(1) Expiration of Type I Disaster Declarations. – A Type I disaster declaration shall expire 30 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) Expiration of Type II Disaster Declarations. – A Type II disaster declaration shall expire six 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 exceed a total of 12 months 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 II disaster declaration.

(3) Expiration of Type III Disaster Declarations. – A Type III disaster declaration shall expire 12 months after its issuance unless renewed by the General Assembly.

(4) Expiration of Disaster Declarations Declared Prior to July 1, 2001. – Any state of disaster declared or proclaimed before July 1, 2001, irrespective of type, shall terminate by a declaration of the Governor or resolution of the General Assembly. A declaration 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, the Secretary of State, and the clerks of superior court in the area to which it applies.

"**§ 166A-19.22. Municipal or county declaration of state of emergency.**

(a) Declaration. – A state of emergency may be declared by the governing body of a municipality or county if either of these finds that an emergency exists. Authority to declare a state of emergency under this section may also be delegated by ordinance to the mayor of a municipality or to the chairman of the board of county commissioners of a county.

(b) Emergency Area. – The emergency area shall be determined in accordance with the following:

(1) Unless another subdivision of this subsection is applicable, the emergency area shall not exceed the area over which the municipality or county has

jurisdiction to enact general police-power ordinances. The governing body declaring the state of emergency may declare that the emergency area includes part or all of the governing body's jurisdiction. Unless the governing body declaring the state of emergency provides otherwise, the emergency area includes this entire jurisdiction, subject to the limitations contained in the other subdivisions in this subsection.

(2) The emergency area of a state of emergency declared by a county shall not include any area within the corporate limits of any municipality, or within any area of the county over which a municipality has jurisdiction to enact general police-power ordinances, unless the municipality's governing body or mayor consents to or requests the state of emergency's application. Such an extension may be with respect to one or more of the prohibitions and restrictions imposed in that county pursuant to the authority granted in G.S. 166A-19.31 and need not be with respect to all prohibitions and restrictions authorized by that section.

(3) The board of commissioners or chairman of the board of commissioners of any county who has been requested to do so by a mayor may by declaration extend the emergency area of a state of emergency declared by a municipality to any area within the county in which the board or chairman determines it to be necessary to assist in the controlling of the emergency within the municipality. The extension may be with respect to one or more of the prohibitions and restrictions imposed in that mayor's municipality pursuant to the authority granted in G.S. 166A-19.31 and need not be with respect to all prohibitions and restrictions authorized by that section. Extension of the emergency area pursuant to this subdivision shall be subject to the following additional limitations:

a. The extension of the emergency area shall not include any area within the corporate limits of a municipality, or within any area of the county over which a municipality has jurisdiction to enact general police-power ordinances, unless the mayor or governing body of that other municipality consents to its application.

b. A chairman of a board of county commissioners extending the emergency area under the authority of this subdivision shall take reasonable steps to give notice of its terms to those likely to be affected.

c. The chairman of the board of commissioners shall declare the termination of any prohibitions and restrictions extended pursuant to this subdivision upon the earlier of:

1. The chairman's determination that they are no longer necessary.
2. The determination of the board of county commissioners that they are no longer necessary.
3. The termination of the prohibitions and restrictions within the municipality.

d. The powers authorized under this subdivision may be exercised whether or not the county has enacted ordinances under the authority of G.S. 166A-19.31. Exercise of this authority shall not preclude the imposition of prohibitions and restrictions under any ordinances enacted by the county under the authority of G.S. 166A-19.31.

(c) Expiration of States of Emergency. – Unless an ordinance adopted pursuant to G.S. 166A-19.31 provides otherwise, a state of emergency declared pursuant to this section shall expire when it is terminated by the official or governing body that declared it.

(d) Effect of Declaration. – The declaration of a state of emergency pursuant to this section shall activate the local ordinances authorized in G.S. 166A-19.31 and any and all applicable local plans, mutual assistance compacts and agreements and shall also authorize the furnishing of assistance thereunder.

"**§ 166A-19.23. Excessive pricing prohibitions.**

A declaration issued pursuant to this Article shall trigger the prohibitions against excessive pricing during states of disaster, states of emergency, or abnormal market disruptions pursuant to G.S. 75-37 and 75-38.

"Part 5. Additional Powers During States of Emergency.

"**§ 166A-19.30. Additional powers of the Governor during state of emergency.**

(a) In addition to any other powers conferred upon the Governor by law, during a gubernatorially or legislatively declared state of emergency, the Governor shall have the following powers:

(1) To utilize all available State resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services.

(2) To take such action and give such directions to State and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article and with the orders, rules, and regulations made pursuant thereto.

(3) To take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety.

(4) Subject to the provisions of the State Constitution to relieve any public official having administrative responsibilities under this Article of such responsibilities for willful failure to obey an order, rule, or regulation adopted pursuant to this Article.

(b) During a gubernatorially or legislatively declared state of emergency, with the concurrence of the Council of State, the Governor has the following powers:

(1) To direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State, to prescribe routes, modes of transportation, and destinations in connection with evacuation; and to control ingress and egress of an emergency area, the movement of persons within the area, and the occupancy of premises therein.

(2) To establish a system of economic controls over all resources, materials, and services to include food, clothing, shelter, fuel, rents, and wages, including the administration and enforcement of any rationing, price freezing, or similar federal order or regulation.

(3) To regulate and control the flow of vehicular and pedestrian traffic, the congregation of persons in public places or buildings, lights and noises of all kinds, and the maintenance, extension, and operation of public utility and transportation services and facilities.

(4) To waive a provision of any regulation or ordinance of a State agency or a political subdivision which restricts the immediate relief of human suffering.

(5) To perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population.

(6) To appoint or remove an executive head of any State agency or institution the executive head of which is regularly selected by a State board or commission.

a. Such an acting executive head will serve during the following:

1. The physical or mental incapacity of the regular office holder, as determined by the Governor after such inquiry as the Governor deems appropriate.

2. The continued absence of the regular holder of the office.

3. A vacancy in the office pending selection of a new executive head.

b. An acting executive head of a State agency or institution appointed in accordance with this subdivision may perform any act and exercise any power which a regularly selected holder of such office could lawfully perform and exercise.

c. All powers granted to an acting executive head of a State agency or institution under this section shall expire immediately:

1. Upon the termination of the incapacity as determined by the Governor of the officer in whose stead the Governor acts;

2. Upon the return of the officer in whose stead the Governor acts; or

3. Upon the selection and qualification of a person to serve for the unexpired term, or the selection of an acting executive head of the agency or institution by the board or commission authorized to make such selection, and the person's qualification.

(7) To procure, by purchase, condemnation, seizure, or by other means to construct, lease, transport, store, maintain, renovate, or distribute materials and facilities for emergency management without regard to the limitation of any existing law.

(c) In addition to any other powers conferred upon the Governor by law, during a gubernatorially or legislatively declared state of emergency, if the Governor determines that local control of the emergency is insufficient to assure adequate protection for lives and property because (i) needed control cannot be imposed locally because local authorities responsible for preservation of the public peace have not enacted appropriate ordinances or issued appropriate declarations as authorized by G.S. 166A-19.31; (ii) local authorities have not taken implementing steps under such ordinances or declarations, if enacted or declared, for effectual control of the emergency that has arisen; (iii) the area in which the emergency exists has spread across local jurisdictional boundaries and the legal control measures of the jurisdictions are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will be, severely hampered; or (iv) the scale of the emergency is so great that it exceeds the capability of local authorities to cope with it, the Governor has the following powers:

(1) To impose by declaration prohibitions and restrictions in the emergency area. These prohibitions and restrictions may, in the Governor's discretion, as appropriate to deal with the emergency, impose any of the types of prohibitions and restrictions enumerated in G.S. 166A-19.31(b), and may amend or rescind any prohibitions and restrictions imposed by local

authorities. Prohibitions and restrictions imposed pursuant to this subdivision shall take effect in accordance with the provisions of G.S. 166A-19.31(d) and shall expire upon the earliest occurrence of either of the following: (i) the prohibition or restriction is terminated by the Governor or (ii) the state of emergency is terminated.

(2) Give to all participating State and local agencies and officers such directions as may be necessary to assure coordination among them. These directions may include the designation of the officer or agency responsible for directing and controlling the participation of all public agencies and officers in the emergency. The Governor may make this designation in any manner which, in the Governor's discretion, seems most likely to be effective. Any law enforcement officer participating in the control of a state of emergency in which the Governor is exercising control under this section shall have the same power and authority as a sheriff throughout the territory to which the law enforcement officer is assigned.

(d) Violation. – Any person who violates any provision of a declaration or executive order issued pursuant to this section shall be guilty of a Class 2 misdemeanor in accordance with G.S. 14-288.20A.

"**§ 166A-19.31. Power of municipalities and counties to enact ordinances to deal with states of emergency.**

(a) Authority to Enact Prohibitions and Restrictions. – The governing body of any municipality or county may enact ordinances designed to permit the imposition of prohibitions and restrictions within the emergency area during a state of emergency declared pursuant to G.S. 166A-19.22. Authority to impose by declaration prohibitions and restrictions under this section, and to impose those prohibitions and restrictions at a particular time as appropriate, may be delegated by ordinance to the mayor of a municipality or to the chairman of the board of county commissioners of a county.

(b) Type of Prohibitions and Restrictions Authorized. – The ordinances authorized by this section may permit prohibitions and restrictions:

(1) Of movements of people in public places, including imposing a curfew; directing and compelling the voluntary or mandatory evacuation of all or part of the population from any stricken or threatened area within the governing body's jurisdiction; prescribing routes, modes of transportation, and destinations in connection with evacuation; and controlling ingress and egress of an emergency 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 the possession, transportation, sale, purchase, storage, and use of dangerous weapons and substances, and gasoline. As used in this subdivision, the term 'dangerous weapon and substance' has the same meaning as it does under G.S. 14-288.1.

(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 authorized by this section need not require or provide for the imposition of all of the types of prohibitions or restrictions, or any particular prohibition or restriction, authorized by this section during an emergency but may instead authorize the official or

officials who impose those prohibitions or restrictions to determine and impose the prohibitions or restrictions deemed necessary or suitable to a particular state of emergency.

(c) When Ordinances Take Effect. – Notwithstanding any other provision of law, whether general or special, relating to the promulgation or publication of ordinances by any municipality or county, upon the declaration of a state of emergency by the mayor or chairman of the board of county commissioners within the municipality or the county, any ordinance enacted under the authority of this section shall take effect immediately unless the ordinance sets a later time. If the effect of this section is to cause an ordinance to go into effect sooner than it otherwise could under the law applicable to the municipality or county, the mayor or chairman of the board of county commissioners, as the case may be, shall take steps to cause reports of the substance of the ordinance to be disseminated in a fashion that its substance will likely be communicated to the public in general, or to those who may be particularly affected by the ordinance if it does not affect the public generally. As soon as practicable thereafter, appropriate distribution or publication of the full text of any such ordinance shall be made.

(d) When Prohibitions and Restrictions Take Effect. – All prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under this section shall take effect in the emergency area immediately upon publication of the declaration unless the declaration sets a later time. For the purpose of requiring compliance, publication may consist of reports of the substance of the prohibitions and restrictions in the mass communications media serving the emergency area or other effective methods of disseminating the necessary information quickly. As soon as practicable, however, appropriate distribution of the full text of any declaration shall be made. This subsection shall not be governed by the provisions of G.S. 1-597.

(e) Expiration of Prohibitions and Restrictions. – Prohibitions and restrictions imposed pursuant to this section shall expire upon the earliest occurrence of any of the following:

(1) The prohibition or restriction is terminated by the official or entity that imposed the prohibition or restriction.

(2) The state of emergency terminates.

(f) Intent to Supplement Other Authority. – This section is intended to supplement and confirm the powers conferred by G.S. 153A-121(a), G.S. 160A-174(a), and all other general and local laws authorizing municipalities and counties to enact ordinances for the protection of the public health and safety in times of riot or other grave civil disturbance or emergency.

(g) Previously Enacted Ordinances Remain in Effect. – Any ordinance of a type authorized by this section promulgated prior to October 1, 2012, if otherwise valid, continue in full force and effect without reenactment.

(h) Violation. – Any person who violates any provision of an ordinance or a declaration enacted or declared pursuant to this section shall be guilty of a Class 2 misdemeanor in accordance with G.S. 14-288.20A.

"Part 6. Funding of Emergency Preparedness and Response.

"**§ 166A-19.40. Use of contingency and emergency funds.**

(a) Use of Funds for Relief and Assistance. –The Governor may use contingency and emergency funds as necessary and appropriate to provide relief and assistance from the effects of an emergency and may reallocate such other funds as may reasonably be available within the appropriations of the various departments when the severity and magnitude of the emergency so requires and the contingency and emergency funds are insufficient or inappropriate.

(b) Use of Funds for National Guard Training. – In preparation for a state of emergency, with the concurrence of the Council of State, the Governor may use contingency and emergency funds as necessary and appropriate for National Guard training in preparation for emergencies.

"**§ 166A-19.41. State emergency assistance funds.**

(a) Governor May Make Funds Available for Emergency Assistance. – In the event of a gubernatorially or legislatively declared state of emergency, the Governor may make State funds available for emergency assistance as authorized by this section. Any State funds made available by the Governor for emergency assistance may be administered through State emergency assistance programs which may be established by the Governor upon the declaration of a state of emergency. It is the intent of the General Assembly in authorizing the Governor to make State funds available for emergency assistance and in authorizing the Governor to establish State emergency assistance programs to provide State assistance for recovery from those emergencies for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the emergency area.

(b) Emergency Assistance in a Type I Disaster. – In the event that a Type I disaster is declared, the Governor may make State funds available for emergency assistance in the emergency area in the form of individual assistance and public assistance as provided in this subsection.

(1) Individual assistance. – State emergency assistance in the form of grants to individuals and families may be made available when damage meets or exceeds the criteria set out in 13 C.F.R. Part 123 for the Small Business Administration Disaster Loan Program. Individual assistance grants shall include benefits comparable to those provided by the Stafford Act and may be provided for the following:

a. Provision of temporary housing and rental assistance.

b. Repair or replacement of dwellings. Grants for repair or replacement of housing may include amounts necessary to locate the individual or family in safe, decent, and sanitary housing.

c. Replacement of personal property (including clothing, tools, and equipment).

d. Repair or replacement of privately owned vehicles.

e. Medical or dental expenses.

f. Funeral or burial expenses resulting from the emergency.

g. Funding for the cost of the first year's flood insurance premium to meet the requirements of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. § 4001, et seq.

(2) Public assistance. – State emergency assistance in the form of public assistance grants may be made available to eligible entities located within the emergency area on the following terms and conditions:

a. Eligible entities shall meet the following qualifications:

1. The eligible entity suffers a minimum of ten thousand dollars ($10,000) in uninsurable losses;

2. The eligible entity suffers uninsurable losses in an amount equal to or exceeding one percent (1%) of the annual operating budget;

3. For a state of emergency declared pursuant to G.S. 166A-19.20(a) after the deadline established by the Federal Emergency Management Agency pursuant to the Disaster Mitigation Act of 2002, P.L. 106-390, the eligible entity shall have a hazard mitigation plan approved pursuant to the Stafford Act; and

4. For a state of emergency declared pursuant to G.S. 166A-19.20(a), after August 1, 2002, the eligible entity

shall be participating in the National Flood Insurance Program in order to receive public assistance for flooding damage.

b. Eligible entities shall be required to provide non-State matching funds equal to twenty-five percent (25%) of the eligible costs of the public assistance grant.

c. An eligible entity that receives a public assistance grant pursuant to this subsection may use the grant for the following purposes only:

1. Debris clearance.
2. Emergency protective measures.
3. Roads and bridges.
4. Crisis counseling.
5. Assistance with public transportation needs.

(c) Emergency Assistance in a Type II Disaster. – If a Type II disaster is declared, the Governor may make State funds available for emergency assistance in the emergency area in the form of the following types of grants:

(1) State Acquisition and Relocation Funds.

(2) Supplemental repair and replacement housing grants available to individuals or families in an amount necessary to locate the individual or family in safe, decent, and sanitary housing not to exceed twenty-five thousand dollars ($25,000) per family.

(d) Emergency Assistance in a Type III Disaster. – If a Type III disaster is declared, the Governor may make State funds available for emergency assistance in the emergency area in the form of the following types of grants:

(1) State Acquisition and Relocation Funds.

(2) Supplemental repair and replacement housing grants available to individuals or families in an amount necessary to locate the individual or family in safe, decent, and sanitary housing not to exceed twenty-five thousand dollars ($25,000) per family.

(3) Any programs authorized by the General Assembly.

"**§ 166A-19.42. State Emergency Response Account.**

(a) Account Established. – There is established a State Emergency Response Account as a reserve in the General Fund. Any funds appropriated to the Account shall remain available for expenditure as provided by this section, unless directed otherwise by the General Assembly.

(b) Use of Funds. – The Governor may spend funds from the Account for the following purposes:

(1) To cover the start-up costs of State Emergency Response Team operations for an emergency that poses an imminent threat of a Type I, Type II, or Type III disaster.

(2) To cover the cost of first responders to a Type I, Type II, or Type III disaster and any related supplies and equipment needed by first responders that are not provided for under subdivision (1) of this subsection.

All other types of emergency assistance authorized by this Part shall continue to be financed by the funds made available under G.S. 166A-19.41.

(c) Reporting Requirement. – The Governor shall report to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Appropriations Committees of the Senate and House of Representatives on any expenditures from the State Emergency Response Account no later than 30 days after making the expenditure. The report shall include a description of the emergency and type of action taken.

"Part 7. Immunity and Liability.

"§ 166A-19.60. Immunity and exemption.

(a) Generally. – All functions hereunder and all other activities relating to emergency management as provided for in this Chapter or elsewhere in the General Statutes are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence, or bad faith, any emergency management worker, firm, partnership, association, or corporation complying with or reasonably attempting to comply with this Article or any order, rule, or regulation promulgated pursuant to the provisions of this Article or pursuant to any ordinance relating to any emergency management measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity.

(b) Immunity. – The immunity provided to firms, partnerships, associations, or corporations, under subsection (a) of this section, is subject to all of the following conditions:

(1) The immunity applies only when the firm, partnership, association, or corporation is acting without compensation or with compensation limited to no more than actual expenses and one of the following applies:

a. Emergency management services are provided at any place in this State during a state of emergency declared by the Governor or General Assembly pursuant to this Article, and the services are provided under the direction and control of the Secretary pursuant to G.S. 166A-19.10, 166A-19.11, 166A-19.12, 166A-19.20, 166A-19.30, and 143B-602, or the Governor.

b. Emergency management services are provided during a state of emergency declared pursuant to G.S. 166A-19.22, and the services are provided under the direction and control of the governing body of a municipality or county under G.S. 166A-19.31, or the chair of a board of county commissioners under G.S. 166A-19.22(b)(3).

c. The firm, partnership, association, or corporation is engaged in planning, preparation, training, or exercises with the Division, the Division of Public Health, or the governing body of each county or municipality under G.S. 166A-19.15 related to the performance of emergency management services or measures.

(2) The immunity shall not apply to any firm, partnership, association, or corporation, or to any employee or agent thereof, whose act or omission caused in whole or in part the actual or imminent emergency or whose act or omission necessitated emergency management measures.

(3) To the extent that any firm, partnership, association, or corporation has liability insurance, that firm, partnership, association, or corporation shall be deemed to have waived the immunity to the extent of the indemnification by insurance for its negligence. An insurer shall not under a contract of insurance exclude from liability coverage the acts or omissions of a firm, partnership, association, or corporation for which the firm, partnership, association, or corporation would only be liable to the extent indemnified by insurance as provided by this subdivision.

(c) No Effect on Benefits. – The rights of any person to receive benefits to which the person would otherwise be entitled under this Article or under the Workers' Compensation Law or under any pension law and the right of any such person to receive any benefits or compensation under any act of Congress shall not be affected by performance of emergency management functions.

(d) License Requirements Suspended. – Any requirement for a license to practice any professional, mechanical, or other skill shall not apply to any authorized emergency management worker who shall, in the course of performing the worker's duties as such, practice such professional, mechanical, or other skill during a state of emergency.

(e) Definition of Emergency Management Worker. – As used in this section, the term 'emergency management worker' shall include any full- or part-time paid, volunteer, or auxiliary employee of this State or other states, territories, possessions, or the District of Columbia, of the federal government or any neighboring country or of any political subdivision thereof, or of any agency or organization performing emergency management services at any place in this State, subject to the order or control of or pursuant to a request of the State government or any political subdivision thereof. The term 'emergency management worker' under this section shall also include any health care worker performing health care services as a member of a hospital-based or county-based State Medical Assistance Team designated by the North Carolina Office of Emergency Medical Services and any person performing emergency health care services under G.S. 90-12.2.

(f) Powers of Individuals Operating Pursuant to Mutual Aid Agreements. – Any emergency management worker, as defined in this section, performing emergency management services at any place in this State pursuant to agreements, compacts, or arrangements for mutual aid and assistance to which the State or a political subdivision thereof is a party, shall possess the same powers, duties, immunities, and privileges the person would ordinarily possess if performing duties in the State, or political subdivision thereof, in which normally employed or rendering services.

"**§ 166A-19.61. No private liability.**

Any person, firm, or corporation 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, 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.

"**§ 166A-19.62. Civil liability of persons who willfully ignore a warning in an emergency.**

In an emergency, a person who willfully ignores a warning regarding personal safety issued by a federal, State, or local law enforcement agency, emergency management agency, or other governmental agency responsible for emergency management under this Article is civilly liable for the cost of a rescue effort to any governmental agency or nonprofit agency cooperating with a governmental agency conducting a rescue on the endangered person's behalf if all of the following are true:

(1) The person ignores the warning and (i) engages in an activity or course of action that a reasonable person would not pursue or (ii) fails to take a course of action that a reasonable person would pursue.

(2) As a result of ignoring the warning the person places himself or herself or another in danger.

(3) A governmental rescue effort is undertaken on the endangered person's behalf.

"Part 8. Miscellaneous Provisions.

"**§ 166A-19.70. Ensuring availability of emergency supplies and utility services.**

(a) Executive Order. – In addition to any other powers conferred on the Governor by law, whenever a curfew has been imposed, the Governor may declare by executive order that the health, safety, or economic well-being of persons or property in this State require that

persons transporting essentials in commerce to the curfew area, or assisting in ensuring their availability, and persons assisting in restoring utility services, be allowed to enter or remain in areas from which they would otherwise be excluded for the limited purpose of delivering the essentials, assisting in ensuring their availability, or assisting in restoring utility services.

(b) Maximum Hours of Service Waiver. – As part of an executive order issued pursuant to subsection (a) of this section, or independently of such an order, the Governor may declare by executive order that the health, safety, or economic well-being of persons or property in this State require that the maximum hours of service prescribed by the Department of Public Safety pursuant to G.S. 20-381 and similar rules be waived for persons transporting essentials or assisting in the restoration of utility services.

(c) Certification System. – The Secretary shall develop a system pursuant to which a person who transports essentials in commerce, or assists in ensuring their availability, and persons who assist in the restoring of utility services can be certified as such. The certification system shall allow for both preemergency declaration and postemergency declaration certification and may include an annually renewable precertification. The Secretary shall only allow those who routinely transport or distribute essentials or assist in the restoring of utility services to be certified. A certification of the employer shall constitute a certification of the employer's employees. The Secretary shall create an easily recognizable indicium of certification in order to assist local officials' efforts to determine which persons have received certification by the system established under this subsection.

(d) Presence in Curfew Area Permitted. – Notwithstanding the existence of any curfew, a person who is certified pursuant to the system established under subsection (c) of this section shall be allowed to enter or remain in the curfew area for the limited purpose of delivering or assisting in the distribution of essentials or assisting in the restoration of utility services and shall be allowed to provide service that exceeds otherwise applicable hours of service maximums, to the extent authorized by an executive order executed pursuant to subsection (a) of this section. Nothing in this section prohibits law enforcement or other local officials from specifying the permissible route of ingress or egress for persons with certifications.

(e) Abnormal Market Disruptions with Respect to Petroleum. – If the Governor declares the existence of an abnormal market disruption with respect to petroleum pursuant to, G.S. 75-38(f), the Governor shall contemporaneously seek all applicable waivers under the federal Clean Air Act, 42 U.S.C. § 7401, et seq., and any other applicable federal law to facilitate the transportation of fuel within this State in order to address or prevent a fuel supply emergency in this State. Waiver requests shall be directed to the appropriate federal agencies and shall seek waivers of the following:

(1) The Reformulated Gasoline requirements throughout the State.

(2) The Federal and State Implementation Plan summertime gasoline requirements (low RVP) throughout the State.

(3) Any other waiver that will, if obtained, facilitate the transportation of fuel within this State.

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

(1) Curfew. – Any restriction on ingress and egress to the emergency area of a state of emergency or any restriction on the movement of persons within such an area.

(2) Curfew area. – The area that is subject to a curfew.

(3) Essentials. – Any goods that are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being of persons or their property. The Secretary shall determine what goods constitute essentials for purposes of this section.

"**§ 166A-19.71. Accept services, gifts, grants, and loans.**

Whenever the federal government or any agency or officer thereof or of any person, firm, or corporation shall offer to the State, or through the State to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for emergency management purposes, the State acting through the Governor, or such political subdivision, acting with the consent of the Governor and through its governing body, may accept such offer. Upon such acceptance the Governor of the State or governing body of such political subdivision may authorize any officer of the State or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the State or of such political subdivision, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

"**§ 166A-19.72. Establishment of mutual aid agreements.**

(a) Governor Authorized to Enter Agreements with Other States and Federal Government. – The Governor may establish mutual aid agreements with other states and with the federal government provided that any special agreements so negotiated are within the Governor's authority.

(b) Governor Authorized to Enter Agreements with Political Subdivisions. – The Governor may establish mutual aid agreements with political subdivisions in the State with the concurrence of the subdivision's governing body.

(c) Political Subdivisions Authorized to Enter Agreements with Other Political Subdivisions. – The chief executive of each political subdivision, with the concurrence of the subdivision's governing body, may develop mutual aid agreements for reciprocal emergency management aid and assistance. Such agreements shall be consistent with the State emergency management program and plans.

(d) Political Subdivisions Authorized to Enter Agreements with Political Subdivisions in Other States. – The chief executive officer of each political subdivision, with the concurrence of the governing body and subject to the approval of the Governor, may enter into mutual aid agreements with local chief executive officers in other states for reciprocal emergency management aid and assistance. These agreements shall be consistent with the State emergency management program and plans.

(e) Terms of Agreements. – Mutual aid agreements may include, but are not limited to, the furnishing or exchange of such supplies, equipment, facilities, personnel, and services as may be needed; the reimbursement of costs and expenses for equipment, supplies, personnel, and similar items; and on such terms and conditions as deemed necessary.

"**§ 166A-19.73. Compensation.**

(a) Extent of Compensation. – Compensation for services or for the taking or use of property shall be only to the extent that legal obligations of individual citizens are exceeded in a particular case and then only to the extent that the claimant has not been deemed to have volunteered his services or property without compensation.

(b) Limitation; Basis of Compensation. – Compensation for property shall be only if the property was commandeered, seized, taken, condemned, or otherwise used in coping with an emergency and this action was ordered by the Governor. The State shall make compensation for the property so seized, taken, or condemned on the following basis:

(1) In case property is taken for temporary use, the Governor, within 30 days of the taking, shall fix the amount of compensation to be paid for such damage or failure to return. Whenever the Governor shall deem it advisable for the State to take title to property taken under this section, the Governor shall forthwith cause the owner of such property to be notified thereof in writing by registered mail, postage prepaid, or by the best means available, and forthwith cause to be filed a copy of said notice with the Secretary of State.

(2) If the person entitled to receive the amounts so determined by the Governor as just compensation is unwilling to accept the same as full and complete compensation for such property or the use thereof, the person shall be paid seventy-five percent (75%) of such amount and shall be entitled to recover from the State of North Carolina in an action brought in the superior court in the county of residence of claimant, or in Wake County, in the same manner as other condemnation claims are brought, within three years after the date of the Governor's award.

"**§ 166A-19.74. Nondiscrimination in emergency management.**

State and local governmental bodies and other organizations and personnel who carry out emergency management functions under the provisions of this Article are required to do so in an equitable and impartial manner. Such State and local governmental bodies, organizations, and personnel shall not discriminate on the grounds of race, color, religion, nationality, sex, age, or economic status in the distribution of supplies, the processing of applications, and other relief and assistance activities.

"**§ 166A-19.75. Emergency management personnel.**

(a) Limitation. – No person shall be employed or associated in any capacity in any emergency management agency established under this Article if that person does or has done any of the following:

(1) Advocates or has advocated a change by force or violence in the constitutional form of the Government of the United States or in this State.

(2) Advocates or has advocated the overthrow of any government in the United States by force or violence.

(3) Has been convicted of any subversive act against the United States.

(4) Is under indictment or information charging any subversive act against the United States.

(5) Has ever been a member of the Communist Party.

(b) Oath. – Each person who is appointed to serve in any emergency management agency shall, before entering upon the person's duties, take a written oath before a person authorized to administer oaths in this State, which oath shall be substantially as follows:

'I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of North Carolina, against all enemies, foreign and domestic; and that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter. And I do further swear (or affirm) that I do not advocate, nor am I, nor have I ever knowingly been, a member of any political party or organization that advocates the overthrow of the Government of the United States or of this State by force or violence; and that during such time as I am a member of the State Emergency Management Agency I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States or of this State by force or violence, so help me God.'

(c) No Violation of Dual Office Holding Prohibition. – No position created by or pursuant to this Article shall be deemed an office within the meaning of Section 9 of Article 6 of the North Carolina Constitution.

"**§ 166A-19.76. Leave options for voluntary firefighters, rescue squad workers, and emergency medical service personnel called into service.**

(a) Leave Without Pay. – A member of a volunteer fire department, rescue squad, or emergency medical services agency called into service of the State after a declaration of a state of emergency by the Governor or by the General Assembly, or upon the activation of the State Emergency Response Team in response to an emergency, shall have the right to take leave

without pay from his or her civilian employment. No member of a volunteer fire department, rescue squad, or emergency medical services agency shall be forced to use or exhaust his or her vacation or other accrued leave from his or her civilian employment for a period of active service. The choice of leave shall be solely within the discretion of the member.

(b) Request in Writing Required. – For the volunteer member to be entitled to take leave without pay pursuant to this section, his or her services shall be requested in writing by the Director of the Division or by the head of a local emergency management agency. The request shall be directed to the Chief of the member's volunteer fire department, rescue squad, or emergency medical services agency and a copy shall be provided to the member's employer. This section shall not apply to those members whose services have been certified by their employer to the Director of the Division, or to the head of a local emergency management agency, as essential to the employer's own ongoing emergency relief activities.

(c) Definition of an Emergency Requiring Activation of the State Emergency Response Team. – For purposes of this section, an emergency requiring the activation of the State Emergency Response Team means an emergency at Activation Level 2 or greater according to the North Carolina State Emergency Operations Plan of November 2002. Activation Level 2 requires the State Emergency Operations Center to be fully activated with 24-hour staffing from all State Emergency Response Team members.

(d) Enforcement. – The Commissioner of Labor shall enforce the provisions of this section pursuant to Chapter 95 of the General Statutes.

"**§ 166A-19.77. Division of Forest Resources designated as emergency response agency.**

The Division of Forest Resources of the Department of Agriculture and Consumer Services is designated an emergency response agency of the State of North Carolina for purposes of the following:

(1) Supporting the Division in responding to all-risk incidents.
(2) Receipt of any applicable State or federal funding.
(3) Training of other State and local agencies in emergency management.
(4) Any other emergency response roles for which the Division has special training or qualifications.

"**§ 166A-19.78. Governor's power to order evacuation of public building.**

When it is determined by the Governor that a great public crisis, disaster, riot, catastrophe, or any other similar public emergency exists, or the occurrence of any such condition is imminent, and, in the Governor's opinion it is necessary to evacuate any building owned or controlled by any department, agency, institution, school, college, board, division, commission, or subdivision of the State in order to maintain public order and safety or to afford adequate protection for lives or property, the Governor is hereby authorized to issue an order of evacuation directing all persons within the building to leave the building and its premises forthwith. The order shall be delivered to any law enforcement officer or officer of the National Guard, and such officer shall, by a suitable public address system, read the order to the occupants of the building and demand that the occupants forthwith evacuate said building within the time specified in the Governor's order.

"**§ 166A-19.79. Severability.**

If any provision of this Article or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable."

SECTION 1.(c) The title of Article 36A of Chapter 14 of the General Statutes reads as rewritten:

"Article 36A.

~~Riots and Civil Disorders.~~Riots, Civil Disorders, and Emergencies."

SECTION 1.(d) Article 36A of Chapter 14 is amended by adding a new section to read:

"**§ 14-288.20A. Violation of emergency prohibitions and restrictions.**

Any person who does any of the following is guilty of a Class 2 misdemeanor:

(1) Violates any provision of an ordinance or a declaration enacted or declared pursuant to G.S. 166A-19.31.

(2) Violates any provision of a declaration or executive order issued pursuant to G.S. 166A-19.30

(3) Willfully refuses to leave the building as directed in a Governor's order issued pursuant to G.S. 166A-19.78."

II. CONFORMING CHANGES

SECTION 2.(a) G.S. 14-288.1 reads as rewritten:

"**§ 14-288.1. Definitions.**

Unless the context clearly requires otherwise, the ~~definitions in this section apply throughout this Article:~~ following definitions apply in this Article:

(1) ~~"Chairman of the board of county commissioners":~~Chairman of the board of county commissioners. – The chairman of the board of county commissioners or, in case of the chairman's absence or disability, the person authorized to act in the chairman's stead. Unless the governing body of the county has specified who is to act in lieu of the chairman with respect to a particular power or duty set out in this Article, the term "chairman of the board of county commissioners" shall apply to the person generally authorized to act in lieu of the chairman.

(2) ~~"Dangerous weapon or substance":~~Dangerous weapon or substance. – Any deadly weapon, ammunition, explosive, incendiary device, radioactive material or device, as defined in G.S. 14-288.8(c)(5), or any instrument or substance designed for a use that carries a threat of serious bodily injury or destruction of property; or any instrument or substance that is capable of being used to inflict serious bodily injury, when the circumstances indicate a probability that such instrument or substance will be so used; or any part or ingredient in any instrument or substance included above, when the circumstances indicate a probability that such part or ingredient will be so used.

(3) ~~"Declared state of emergency":~~Declared state of emergency. – A state of emergency as that term is defined in G.S. 166A-19.3 or a state of emergency found and ~~proclaimed by the Governor under the authority of G.S. 14-288.15, by any mayor or other municipal official or officials under the authority of G.S. 14-288.12, by any chairman of the board of commissioners of any county or other county official or officials under the authority of G.S. 14-288.13, by any chairman of the board of county commissioners acting under the authority of G.S. 14-288.14, by~~ declared by any chief executive official or acting chief executive official of any county or municipality acting under the authority of any other applicable statute or provision of the common law to preserve the public peace in a state of emergency, or by any executive official or military commanding officer of the United States or the State of North Carolina who becomes primarily responsible under applicable law for the preservation of the public peace within any part of North Carolina.

(4) ~~"Disorderly conduct":~~Disorderly conduct. – As defined in G.S. 14-288.4(a).

(4a) Emergency. – As defined in G.S. 166A-19.3.

(5) ~~"Law enforcement officer":~~Law enforcement officer. – Any officer of the State of North Carolina or any of its political subdivisions authorized to make arrests; any other person authorized under the laws of North Carolina to make arrests and either acting within that person's territorial jurisdiction or in an area in which that person has been lawfully called to duty by the Governor or any mayor or chairman of the board of county commissioners; any member of the Armed Forces of the United States, the North Carolina National Guard, or the North Carolina State Defense Militia called to duty in a state of emergency in North Carolina and made responsible for enforcing the laws of North Carolina or preserving the public peace; or any officer of the United States authorized to make arrests without warrant and assigned to duties that include preserving the public peace in North Carolina.

(6) ~~"Mayor":~~Mayor. – The mayor or other chief executive official of a municipality or, in case of that person's absence or disability, the person authorized to act in that person's stead. Unless the governing body of the municipality has specified who is to act in lieu of the mayor with respect to a particular power or duty set out in this Article, the word "mayor" shall apply to the person generally authorized to act in lieu of the mayor.

(7) ~~"Municipality":~~Municipality. – Any active incorporated city or town, but not including any sanitary district or other municipal corporation that is not a city or town. An "active" municipality is one which has conducted the most recent election required by its charter or the general law, whichever is applicable, and which has the authority to enact general police-power ordinances.

(8) ~~"Public disturbance":~~Public disturbance. – Any annoying, disturbing, or alarming act or condition exceeding the bounds of social toleration normal for the time and place in question which occurs in a public place or which occurs in, affects persons in, or is likely to affect persons in a place to which the public or a substantial group has access. The places covered by this definition shall include, but not be limited to, highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

(9) ~~"Riot":~~Riot. – As defined in G.S. 14-288.2(a).

~~(10) "State of emergency": The condition that exists whenever, during times of public crisis, disaster, rioting, catastrophe, or similar public emergency, public safety authorities are unable to maintain public order or afford adequate protection for lives or property, or whenever the occurrence of any such condition is imminent.~~"

SECTION 2.(b) G.S. 14-288.4(a)(4)c. reads as rewritten:

"(a) Disorderly conduct is a public disturbance intentionally caused by any person who does any of the following:

...

(4) Refuses to vacate any building or facility of any public or private educational institution in obedience to any of the following:

...

c. If ~~a state of~~ an emergency is occurring or is imminent within the institution, an order given by any law-enforcement officer acting within the scope of the officer's authority."

SECTION 2.(c) G.S. 14-288.7(a) reads as rewritten:

"**§ 14-288.7. Transporting dangerous weapon or substance during emergency; possessing off premises; exceptions.**

(a) Except as otherwise provided in this section, it is unlawful for any person to transport or possess off his own premises any dangerous weapon or substance in any area:

~~(1) In which a declared state of emergency exists; or~~

(2) Within the immediate vicinity of which a riot is occurring."

SECTION 2.(d) G.S. 14-288.11 reads as rewritten:

"**§ 14-288.11. Warrants to inspect vehicles in riot areas or approaching municipalities during emergencies.**

(a) Notwithstanding the provisions of Article 4 of Chapter 15, any law-enforcement officer may, under the conditions specified in this section, obtain a warrant authorizing inspection of vehicles under the conditions and for the purpose specified in subsection (b).

(b) The inspection shall be for the purpose of discovering any dangerous weapon or substance likely to be used by one who is or may become unlawfully involved in a riot. The warrant may be sought to inspect:

(1) All vehicles entering or approaching a municipality in which ~~a state of~~ an emergency exists; or

(2) All vehicles which might reasonably be regarded as being within or approaching the immediate vicinity of an existing riot.

(c) The warrant may be issued by any judge or justice of the General Court of Justice.

(d) The issuing official shall issue the warrant only when he has determined that the one seeking the warrant has been specifically authorized to do so by the head of the law-enforcement agency of which the affiant is a member, and:

(1) If the warrant is being sought for the inspection of vehicles entering or approaching a municipality, that ~~a state of~~ an emergency exists within the municipality; or

(2) If the warrant being sought is for the inspection of vehicles within or approaching the immediate vicinity of a riot, that a riot is occurring within that area.

Facts indicating the basis of these determinations must be stated in an affidavit and signed by the affiant under oath or affirmation.

(e) The warrant must be signed by the issuing official and must bear the hour and date of its issuance.

(f) The warrant must indicate whether it is for the inspection of vehicles entering or approaching a municipality or whether it is for the inspection of vehicles within or approaching the immediate vicinity of a riot. In either case, it must also specify with reasonable precision the area within which it may be exercised.

(g) The warrant shall become invalid 24 hours following its issuance and must bear a notation to that effect.

(h) Warrants authorized under this section shall not be regarded as search warrants for the purposes of application of Article 4 of Chapter 15.

(i) Nothing in this section is intended to prevent warrantless frisks, searches, and inspections to the extent that they may be constitutional and consistent with common law and governing statutes."

SECTION 2.(e) G.S. 14-288.12 through G.S. 14-288.17 and G.S. 14-288.19 are repealed.

SECTION 2.(f) G.S. 14-288.18 reads as rewritten:

"**§ 14-288.18. Injunction to cope with emergencies at public and private educational institutions.**

(a) The chief administrative officer, or his authorized representative, of any public or private educational institution may apply to any superior court judge for injunctive relief if ~~a state of~~ an emergency exists ~~or is imminent~~ within his institution. For the purposes of this section, the superintendent of any city or county administrative school unit shall be deemed the chief administrative officer of any public elementary or secondary school within his unit.

(b) Upon a finding by a superior court judge, to whom application has been made under the provisions of this section, that ~~a state of~~ an emergency exists ~~or is imminent~~ within a public or private educational institution by reason of riot, disorderly conduct by three or more persons, or the imminent threat of riot, the judge may issue an injunction containing provisions appropriate to cope with the emergency then occurring or threatening. The injunction may be addressed to named persons or named or described groups of persons as to whom there is satisfactory cause for believing that they are contributing to the ~~existing or imminent state of~~ emergency, and ordering such persons or groups of persons to take or refrain or desist from taking such various actions as the judge finds it appropriate to include in his order."

SECTION 2.(g) G.S. 20-118.4(a) reads as rewritten:

"**§ 20-118.4. Firefighting equipment exempt from size and weight restrictions while transporting or moving heavy equipment in an emergency; permits.**

(a) Exemption From Weight and Size Restrictions During Emergency Response. – Any overweight or oversize vehicle owned and operated by a State or local government or cooperating federal agency is exempt from the weight and size restrictions of this Chapter and implementing rules while it is actively engaged in (i) a response to a fire under the authority of a forest ranger pursuant to G.S. 113-55(a); (ii) a county request for forest protection assistance pursuant to G.S. 113-59; (iii) a request for assistance under a state of emergency declared pursuant to ~~G.S. 14-288.12, 14-288.13, 14-288.14, 14-288.15,~~G.S. 166A-19.20 or G.S. 166A-19.22, and any other applicable statutes and provisions of common law; (iv) a request for assistance under a disaster declared pursuant to ~~G.S 166A-6 or G.S. 166A-8,~~ G.S. 166A-19.21 when the vehicle meets the following conditions:

...."

SECTION 2.(h) G.S. 42A-36 reads as rewritten:

"**§ 42A-36. Mandatory evacuations.**

If State or local authorities, acting pursuant to ~~Article 36A of Chapter 14 or Article 1 of Chapter 166A~~ Article 1A of Chapter 166A of the General Statutes, order a mandatory evacuation of an area that includes the residential property subject to a vacation rental, the tenant under the vacation rental agreement, whether in possession of the property or not, shall comply with the evacuation order. Upon compliance, the tenant shall be entitled to a refund from the landlord of the rent, taxes, and any other payments made by the tenant pursuant to the vacation rental agreement as a condition of the tenant's right to occupy the property prorated for each night that the tenant is unable to occupy the property because of the mandatory evacuation order. The tenant shall not be entitled to a refund if: (i) prior to the tenant taking possession of the property, the tenant refused insurance offered by the landlord or real estate broker that would have compensated the tenant for losses or damages resulting from loss of use of the property due to a mandatory evacuation order; or (ii) the tenant purchased insurance offered by the landlord or real estate broker. The insurance offered shall be provided by an insurance company duly authorized by the North Carolina Department of Insurance, and the cost of the insurance shall not exceed eight percent (8%) of the total amount charged for the vacation rental to the tenant less the amount paid by the tenant for a security deposit."

SECTION 2.(i) G.S. 58-2-46 reads as rewritten:

"**§ 58-2-46. State of ~~disaster;~~emergency automatic stay of proof of loss requirements; premium and debt deferrals; loss adjustments for separate windstorm policies.**

Whenever a state of ~~disaster~~ emergency is proclaimed for the State or for an area within the State under ~~G.S. 166A-6~~ G.S. 166A-19.20 or whenever the President of the United States has issued a major disaster declaration for the State or for an area within the State under the Stafford Act, 42 U.S.C. § 5121, et seq., as amended:

...."

SECTION 2.(j) G.S. 58-2-47 reads as rewritten:

"**§ 58-2-47. Incident affecting operations of the Department; stay of deadlines and deemer provisions.**

Regardless of whether a state of ~~disaster~~ emergency has been proclaimed under ~~G.S. 166A-6~~ G.S. 166A-19.20 or declared under the Stafford Act, whenever an incident beyond the Department's reasonable control, including an act of God, insurrection, strike, fire, power outage, or systematic technological failure, substantially affects the daily business operations of the Department, the Commissioner may issue an order, effective immediately, to stay the application of any deadlines and deemer provisions imposed by law or rule upon the Commissioner or Department or upon persons subject to the Commissioner's jurisdiction, which deadlines and deemer provisions would otherwise operate during the time period for which the operations of the Department have been substantially affected. The order shall remain in effect for a period not exceeding 30 days. The order may be renewed by the Commissioner for successive periods not exceeding 30 days each for as long as the operations of the Department remain substantially affected, up to a period of one year from the effective date of the initial order."

SECTION 2.(k) G.S. 58-3-228(b)(2) reads as rewritten:

"(2) The covered person requesting coverage of the refill or replacement prescription resides in a county that:

a. Is covered under a ~~proclamation of state of disaster~~state of emergency issued by the Governor or ~~by a resolution of the~~ General Assembly under ~~G.S. 166A-6,~~ G.S. 166A-19.20, or a declaration of major disaster issued by the President of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as amended; or

~~b. Is declared to be under a state of emergency in a proclamation issued by the Governor under G.S. 14-288.15.~~"

SECTION 2.(l) G.S. 58-33-70(e) reads as rewritten:

"(e) The Commissioner may permit an experienced adjuster, who regularly adjusts in another state and who is licensed in the other state (if that state requires a license), to act as an adjuster in this State without a North Carolina license only for an insurance company authorized to do business in this State, for emergency insurance adjustment work, for a period to be determined by the Commissioner, done for an employer who is an adjuster licensed by this State or who is a regular employer of one or more adjusters licensed by this State; provided that the employer shall furnish to the Commissioner a notice in writing immediately upon the beginning of any such emergency insurance adjustment work. As used in this subsection, "emergency insurance adjustment work" includes, but is not limited to, (i) adjusting of a single loss or losses arising out of an event or catastrophe common to all of those losses or (ii) adjusting losses in any area declared to be a state of ~~disaster~~ emergency by the Governor under ~~G.S. 166A-6~~ G.S. 166A-19.20 or by the President of the United States under applicable federal law."

SECTION 2.(m) G.S. 58-44-70(a) reads as rewritten:

"(a) This Part provides for a nonadversarial alternative dispute resolution procedure for a facilitated claim resolution conference prompted by the critical need for effective, fair, and timely handling of insurance claims arising out of damages to residential property as the result

of an event for which there is a state of ~~disaster~~ emergency declared within 60 days of the event. This Part applies only (i) if a state of ~~disaster~~ emergency has been proclaimed for the State or for an area within the State by the Governor or by a resolution of the General Assembly under ~~G.S. 166A-6;~~ G.S. 166A-19.20; or (ii) if the President of the United States has issued a major disaster declaration for the State or for an area within the State under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as amended; and (iii) if the Commissioner issues an order establishing the mediation procedure authorized by this Part."

SECTION 2.(n) G.S. 58-44-75(2) reads as rewritten:

"**§ 58-44-75. Definitions.**

As used in this Part:

...

(2) Disaster. ~~As defined in G.S. 166A-4(1).~~As the term 'emergency' is defined in G.S. 166A-19.3(6)."

SECTION 2.(o) G.S. 75-38(d) reads as rewritten:

"(d) A "triggering event" means the declaration of a state of emergency ~~pursuant to G.S. 166A-8 or Article 36A of Chapter 14 of the General Statutes, the proclamation of a state of disaster pursuant to G.S. 166A-6,~~ pursuant to Article 1A of Chapter 166A of the General Statutes or a finding of abnormal market disruption pursuant to G.S. 75-38(e)."

SECTION 2.(p) G.S. 83A-13.1(a) reads as rewritten:

"(a) A professional architect who voluntarily, without compensation, provides structural, electrical, mechanical, or other architectural services at the scene of a declared disaster or emergency, declared under federal law or in accordance with the provisions of ~~Article 1 of Chapter 166A of the General Statutes or Article 36A of Chapter 14 of the General Statutes,~~ Article 1A of Chapter 166A of the General Statutes, at the request of a public official, law enforcement official, public safety official, or building inspection official, acting in an official capacity, shall not be liable for any personal injury, wrongful death, property damage, or other loss caused by the professional architect's acts or omissions in the performance of the architectural services."

SECTION 2.(q) G.S. 89C-19.1(a) reads as rewritten:

"(a) A professional engineer who voluntarily, without compensation, provides structural, electrical, mechanical, or other engineering services at the scene of a declared disaster or emergency, declared under federal law or in accordance with the provisions of ~~Article 1 of Chapter 166A of the General Statutes or Article 36A of Chapter 14 of the General Statutes,~~ Article 1A of Chapter 166A of the General Statutes, at the request of a public official, law enforcement official, public safety official, or building inspection official, acting in an official capacity, shall not be liable for any personal injury, wrongful death, property damage, or other loss caused by the professional engineer's acts or omissions in the performance of the engineering services."

SECTION 2.(r) G.S. 122C-409 reads as rewritten:

"**§ 122C-409. Community of Butner comprehensive emergency management plan.**

The Department of Public Safety shall establish an emergency management agency as defined in ~~G.S. 166A-4(2)~~ G.S. 166A-19.3(9) for the Camp Butner Reservation, and the Town of Butner."

SECTION 2.(s) G.S. 131D-7 reads as rewritten:

"**§ 131D-7. Waiver of rules for certain adult care homes providing shelter or services during disaster or emergency.**

(a) The Division of Health Service Regulation may temporarily waive, during disasters or emergencies declared in accordance with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes, any rules of the Commission pertaining to adult care homes to the extent

necessary to allow the adult care home to provide temporary shelter and temporary services requested by the emergency management agency. The Division may identify, in advance of a declared disaster or emergency, rules that may be waived, and the extent the rules may be waived, upon a disaster or emergency being declared in accordance with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the adult care home. The emergency management agency requesting temporary shelter or temporary services shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(b) As used in this section, "emergency management agency" is as defined in ~~G.S. 166A-4(2).~~G.S. 166A-19.3."

SECTION 2.(t) G.S. 131E-84 reads as rewritten:

"**§ 131E-84. Waiver of rules for hospitals that provide temporary shelter or temporary services during a disaster or emergency.**

(a) The Division of Health Service Regulation may temporarily waive, during disasters or emergencies declared in accordance with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes, any rules of the Commission pertaining to a hospital to the extent necessary to allow the hospital to provide temporary shelter and temporary services requested by the emergency management agency. The Division may identify, in advance of a declared disaster or emergency, rules that may be waived, and the extent to which the rules may be waived, upon a declaration of disaster or emergency in accordance with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the hospital. The emergency management agency requesting temporary shelter or temporary services shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(b) As used in this section, "emergency management agency" is as defined in ~~G.S. 166A-4.~~G.S. 166A-19.3."

SECTION 2.(u) G.S. 131E-112 reads as rewritten:

"**§ 131E-112. Waiver of rules for health care facilities that provide temporary shelter or temporary services during a disaster or emergency.**

(a) The Division of Health Service Regulation may temporarily waive, during disasters or emergencies declared in accordance with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes, any rules of the Commission pertaining to facilities or home care agencies to the extent necessary to allow the facility or home care agency to provide temporary shelter and temporary services requested by the emergency management agency. The Division may identify, in advance of a declared disaster or emergency, rules that may be waived, and the extent the rules may be waived, upon a disaster or emergency being declared in accordance with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the facility. The emergency management agency requesting temporary shelter or temporary services shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(b) As used in this section, "emergency management agency" is as defined in ~~G.S. 166A-4(2).~~G.S. 166A-19.3."

SECTION 2.(v) G.S. 143C-4-4(b) reads as rewritten:

"(b) Authorized Uses. – Notwithstanding any other provision of law, funds appropriated to the Contingency and Emergency Fund may be used only for expenditures required: (i) by a court or Industrial Commission order, (ii) to respond to events as authorized under ~~G.S. 166A-5(1)a.9.~~ G.S. 166A-19.40(a) of the North Carolina Emergency Management Act, or (iii) for other statutorily authorized purposes or other contingencies and emergencies."

SECTION 2.(w) G.S. 143C-5-2 reads as rewritten:

"**§ 143C-5-2. Order of appropriations bills.**

Each house of the General Assembly shall first pass its version of the Current Operations Appropriations Act on third reading and order it sent to the other chamber before placing any other appropriations bill on the calendar for second reading. This section does not apply to the following bills:

(1) An appropriations bill to respond to ~~a disaster as defined by G.S. 166A-4(1).~~an emergency as defined by G.S. 166A-19.3.

(2) An appropriations bill making adjustments to the current year budget.

(3) An appropriations bill authorizing continued operations at current funding levels."

SECTION 2.(x) G.S. 143C-6-4(b)(2) reads as rewritten:

"(b) Adjustments to the Certified Budget. – Notwithstanding the provisions of G.S. 143C-6-1, a State agency may, with approval of the Director of the Budget, spend more than was authorized in the certified budget for all of the following:

...

(2) A purpose or program if the overexpenditure of the purpose or program is:

a. Required by a court or Industrial Commission order;

b. Authorized under ~~G.S. 166A-5(1)a.9.~~ G.S. 166A-19.40(a) of the North Carolina Emergency Management Act; or

c. Required to call out the National Guard."

SECTION 2.(y) G.S. 166A-24 read as rewritten:

"**§ 166A-24. Immunity of Regional Response Team Personnel.**

Members of a regional response team shall be protected from liability under the provisions of ~~G.S. 166A-14(a)~~ G.S. 166A-19.60(a) while responding to a hazardous materials or terrorist incident pursuant to authorization from the Division of Emergency Management."

SECTION 2.(z) G.S. 14-409.40(f) reads as rewritten:

"(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 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, 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 declared under ~~Article 36A of this Chapter.~~Article 1A of Chapter 166A of the General Statutes."

SECTION 2.(aa) G.S. 14-415.4(e)(6) reads as rewritten:

"(e) Disqualifiers Requiring Denial of Petition. – The court shall deny the petition to restore the firearms rights of any petitioner if the court finds any of the following:

...

(6) The petitioner 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 a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or 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, 14-277.3, 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,~~ 14-288.20A, 14-318.2, 14-415.21(b), or 14-415.26(d), or a substantially similar out-of-state or federal offense."

SECTION 2.(bb) G.S. 14-415.12(b)(8) reads as rewritten:

"(b) The sheriff shall deny a permit to an applicant who:

...

(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,~~ 14-288.20A, 14-318.2, 14-415.21(b), 14-415.26(d), or former G.S. 14-277.3."

SECTION 2.(cc) G.S. 18B-110 reads as rewritten:

"**§ 18B-110. Emergency.**

When the Governor finds that ~~a "state of emergency," as defined in G.S. 14-288.1,~~ an emergency, as that term is defined in G.S. 166A-19.3, exists anywhere in this State, ~~he~~the Governor may

(1) Order the closing of all ABC stores, and

(2) Order the cessation of all sales, transportation, manufacture, and bottling of alcoholic beverages.

The Governor's order shall apply in those portions of the State designated in the order, for the duration of the state of emergency. Any order by the Governor under this section shall be directed to the Chairman of the Commission and to the Secretary of Public Safety."

SECTION 2.(dd) G.S. 70-13.1(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears upon an applicant's fitness to conduct archaeological investigaions under G.S. 70-13. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers and Court Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 19C, Financial Identity Fraud; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots,

Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(ee) G.S. 74F-18(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice locksmithing. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(ff) G.S. 90-12.5 reads as rewritten:

"**§ 90-12.5. Disasters and emergencies.**

In the event of an occurrence which the Governor of the State of North Carolina has declared ~~a disaster or when the Governor has declared~~ a state of emergency, or in the event of an occurrence for which a county or municipality has enacted an ordinance to deal with states of emergency under ~~G.S. 14-288.12, 14-288.13, or 14-288.14,~~ G.S. 166A-19.31, or to protect the public health, safety, or welfare of its citizens under Article 22 of Chapter 130A of the General Statutes, G.S. 160A-174(a) or G.S. 153A-121(a), as applicable, the Board may waive the requirements of this Article in order to permit the provision of emergency health services to the public."

SECTION 2.(gg) G.S. 90-85.25(a) reads as rewritten:

"**§ 90-85.25. Disasters and emergencies.**

(a) In the event of an occurrence which the Governor of the State of North Carolina has declared ~~a disaster or when the Governor has declared~~ a state of emergency, or in the event of

an occurrence for which a county or municipality has enacted an ordinance to deal with states of emergency under ~~G.S. 14-288.12, 14-288.13, or 14-288.14,~~ G.S. 166A-19.31, or to protect the public health, safety, or welfare of its citizens under G.S. 160A-174(a) or G.S. 153A-121(a), as applicable, the Board may waive the requirements of this Article in order to permit the provision of drugs, devices, and professional services to the public."

SECTION 2.(hh) G.S. 90-113.31A(14) reads as rewritten:

"(14) Criminal history. – A history of conviction of a State crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice substance abuse professional services. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(ii) G.S. 90-171.48(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a State crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice nursing. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses

Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including salé to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(jj) G.S. 90-270.63(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a State or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice marriage and family therapy. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(kk) G.S. 90-288.01(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure as a nursing home administrator. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services

by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(ll) G.S. 90-345(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a State or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice professional counseling. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(mm) G.S. 93E-2-11(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for registration to act as a real estate appraisal management company. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses;

Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(nn) G.S. 114-19.6(a)(2) reads as rewritten:

"(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Health and Human Services or the Division of Juvenile Justice of the Department of Public Safety. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(oo) G.S. 114-19.12(a)(2) reads as rewritten:

"(2) Criminal history. – A State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for holding a paid or volunteer position with a fire department. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(pp) G.S. 114-19.23(a)(2) reads as rewritten:

"(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Public Instruction. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes,

and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(qq) G.S. 115C-238.29K(a)(1) reads as rewritten:

"(1) "Criminal history" means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates an individual (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel. These crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(rr) G.S. 115C-332(a)(1) reads as rewritten:

"(1) "Criminal history" means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as public school personnel. Such crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace;

Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subparagraph, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(ss) G.S. 121-25.1(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears upon an applicant's fitness to conduct activities related to the surveillance, protection, preservation, and archaeological recovery of property subject to the exclusive dominion and control of the State under G.S. 121-22. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers and Court Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 19C, Financial Identity Fraud; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(tt) G.S. 122C-80(e) reads as rewritten:

"(e) Relevant Offense. – As used in this section, "relevant offense" means a county, state, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of persons needing mental health, developmental disabilities, or substance abuse services. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18,

Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(uu) G.S. 131D-40(d) reads as rewritten:

"(d) Relevant Offense. – As used in this section, "relevant offense" means a county, state, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of aged or disabled persons. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(vv) G.S. 143-143.10A(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure under this Part. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article

26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(ww) G.S. 143-215.94II reads as rewritten:

"**§ 143-215.94II. Emergency proclamation; Governor's powers.**

(a) Whenever any emergency exists or appears imminent, arising from the discharge of oil or other pollutants within the marine environment, the Governor shall by proclamation declare ~~the fact and that~~ a state of emergency ~~exists~~ in the appropriate sections of the State. Upon such proclamation, the Governor shall have all powers enumerated in ~~G.S. 14-288.15,~~ G.S. 166A-19.30(c) subject to the ~~provisions of G.S. 14-288.16.~~limitations contained in that subsection.

(b) If the Governor is unavailable, the Lieutenant Governor shall, by proclamation, ~~declare the fact and that a~~ declare a state of emergency ~~exists~~ in the appropriate sections of the State.

(c) In performing his duties under this section, the Governor is authorized and directed to cooperate with all departments and agencies of the federal government, the offices and agencies of other states and foreign countries and the political subdivisions thereof, and private agencies in all matters pertaining to an emergency described herein.

(d) In addition to the powers enumerated in ~~G.S. 14-288.15,~~ G.S. 166A-19.30(c), in the case of such an emergency described in subsection (a) of this section, the Governor is further authorized and empowered to transfer any funds available to him by statute for emergency use into the Oil or Other Hazardous Substances Pollution Protection Fund created pursuant to G.S. 143-215.87, to be utilized for the purposes specified therein."

SECTION 2.(xx) G.S. 143B-146.16(a)(1) reads as rewritten:

"(1) "Criminal history" means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel. Such crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses

Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(yy) G.S. 153A-129 reads as rewritten:

"**§ 153A-129. Firearms.**

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.~~Article 1A of Chapter 166A of the General Statutes."

SECTION 2.(zz) G.S. 160A-189 reads as rewritten:

"**§ 160A-189. Firearms.**

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.~~Article 1A of Chapter 166A of the General Statutes."

EFFECTIVE DATE

SECTION 3. This act becomes effective October 1, 2012.

HOUSE BILL 843
Second Edition Engrossed 5/24/11

Short Title:	Modernize NC Emergency Management Act.	(Public)
Sponsors:	Representative Martin (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 MODERNIZE THE NORTH CAROLINA EMERGENCY MANAGEMENT ACT AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

I. CHANGES TO CHAPTER 166A OF THE GENERAL STATUTES

SECTION 1.(a) G.S. 166A-6.1 is recodified as G.S. 166A-29 and the remainder of Article 1 of Chapter 166A is repealed.

SECTION 1.(b) Chapter 166A of the General Statutes is amended by adding a new Article to read:

"Article 1A.

"North Carolina Emergency Management Act.

"Part 1. General Provisions.

"**§ 166A-19. Short title.**

This Article may be cited as 'North Carolina Emergency Management Act.'

"**§ 166A-19.1. Purposes.**

The purposes of this Article are to set forth the authority and responsibility of the Governor, State agencies, and local governments in prevention of, preparation for, response to, and recovery from natural or man-made emergencies or hostile military or paramilitary action and to do the following:

(1) Reduce vulnerability of people and property of this State to damage, injury, and loss of life and property;

(2) Prepare for prompt and efficient rescue, care, and treatment of threatened or affected persons;

(3) Provide for the rapid and orderly rehabilitation of persons and restoration of property; and

(4) Provide for cooperation and coordination of activities relating to emergency mitigation, preparedness, response, and recovery among agencies and officials of this State and with similar agencies and officials of other states, with local and federal governments, with interstate organizations, and with other private and quasi-official organizations.

"**§ 166A-19.2. Limitations.**

Nothing in this Article shall be construed 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.

(2) Limit, modify, or abridge the authority of the Governor to declare martial law or exercise any other powers vested in the Governor under the North Carolina Constitution, statutes, or common law of this State independent of, or in conjunction with, any provisions of this Article.

"**§ 166A-19.3. Definitions.**

The following definitions apply in this Article:

(1) Account. – The State Emergency Response Account established in G.S. 166A-19.42.

(2) Chairman of the board of county commissioners. – The chairman of the board of county commissioners or, in case of the chairman's absence or disability, the person authorized to act in the chairman's stead. Unless the governing body of the county has specified who is to act in lieu of the chairman with respect to a particular power or duty set out in this Article, this term shall mean the person generally authorized to act in lieu of the chairman.

(3) Division. – The Division of Emergency Management established in Part 8 of Article 11 of Chapter 143B of the General Statutes.

(4) Eligible entity. – Any political subdivision. The term also includes an owner or operator of a private nonprofit utility that meets the eligibility criteria set out in this Article.

(5) Emergency. – An occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military, paramilitary, weather-related, or riot-related cause. For purposes of this Article, the term 'disaster' is synonymous with this term.

(6) Emergency area. – The geographical area covered by a state of emergency.

(7) Emergency management. – Those measures taken by the populace and governments at federal, State, and local levels to minimize the adverse effect of any type emergency, which includes the never-ending preparedness cycle of planning, prevention, mitigation, warning, movement, shelter, emergency assistance, and recovery.

(8) Emergency management agency. – A State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction.

(9) Hazard risk management. – The systematic application of policies, practices, and resources to the identification, assessment, and control of risk associated with hazards affecting human health and safety and property. Hazard, risk, and cost-benefit analysis are used to support development of risk reduction options, program objectives, and prioritization of issues and resources.

(10) Mayor. – The mayor or other chief executive official of a municipality or, in case of the mayor's absence or disability, the person authorized to act in the mayor's stead. Unless the governing body of the municipality has specified who is to act in lieu of the mayor with respect to a particular power or duty set out in this Article, the term shall mean the person generally authorized to act in lieu of the mayor.

(11) Political subdivision. – Counties and incorporated cities, towns, and villages.

(12) Preliminary damage assessment. – The (initial estimate prepared) process used by State, local, or federal emergency management workers to determine the severity and magnitude of damage caused by an emergency.

(13) Private nonprofit utility. – A utility that would be eligible for federal public assistance disaster funds pursuant to 44 C.F.R. Part 206.

(14) Secretary. – The Secretary of the Department of Crime Control and Public Safety.

(15) Stafford Act. – The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288, 88 Stat. 143, codified generally at 42 U.S.C. § 5121, et seq., as amended.

(16) State Acquisition and Relocation Fund. – State funding for supplemental grants to homeowners participating in a Hazard Mitigation Grant Program Acquisition and Relocation Program. These grants are used to acquire safe, decent, and sanitary housing by paying the difference between the cost of the home acquired under the Hazard Mitigation Grant Program Acquisition and Relocation Program and the cost of a comparable home located outside the 100-year floodplain.

(17) State of emergency. – A finding and declaration by any of the following authorities that an emergency exists:

a. The Governor, acting under the authority of G.S. 166A-19.20.

b. The General Assembly, acting under the authority of G.S. 166A-19.20.

c. The governing body of a municipality or the mayor of a municipality, acting under the authority of G.S. 166A-19.21.

d. The governing body of a county or the chairman of the board of commissioners of a county, acting under the authority of G.S. 166A-19.21.

"Part 2. State Emergency Management.

"**§ 166A-19.10. Powers of the Governor.**

(a) State Emergency Management Program. – The State Emergency Management Program includes all aspects of preparations for, response to, and recovery from war or peacetime emergencies.

(b) Powers of the Governor. – The Governor is authorized and empowered to do the following:

(1) To exercise general direction and control of the State Emergency Management Program and to be responsible for carrying out the provisions of this Article, other than those provisions that confer powers and duties exclusively on local governments.

(2) To make, amend, or rescind the necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor herein, with due consideration of the policies of the federal government.

(3) To delegate any authority vested in the Governor under this Article and to provide for the subdelegation of any such authority.

(4) To cooperate and coordinate with the President and the heads of the departments and agencies of the federal government, and with other appropriate federal officers and agencies, and with the officers and agencies of other states and local units of government in matters pertaining to the emergency management of the State and nation.

(5) To enter into agreements with the American National Red Cross, Salvation Army, Mennonite Disaster Service, and other disaster relief organizations.

(6) To make, amend, or rescind mutual aid agreements in accordance with G.S. 166A-19.72.

(7) To utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the State and of the political subdivisions thereof. The officers and personnel of all such departments, offices, and agencies are required to cooperate with and extend such services and facilities to the Governor upon request. This authority shall extend to a state of emergency declared pursuant to G.S. 166A-19.20, to the imminent threat of an emergency that will likely require an emergency to be declared pursuant to G.S. 166A-19.20, or to emergency management planning and training purposes.

(8) To agree, when required to obtain federal assistance in debris removal, that the State will indemnify the federal government against any claim arising from the removal of the debris.

(9) To sell, lend, lease, give, transfer, or deliver materials or perform services for emergency purposes on such terms and conditions as may be prescribed by any existing law, and to account to the State Treasurer for any funds received for such property.

(10) In an emergency, or when requested by the governing body of a political subdivision in the State, to assume operational control over all or any part of the emergency management functions within this State.

"**§ 166A-19.11. Powers of the Secretary of Crime Control and Public Safety.**

The Secretary shall be responsible to the Governor for State emergency management activities. The Secretary shall have the following powers and duties as delegated by the Governor:

(1) To activate the State and local plans applicable to the areas in question and to authorize and direct the deployment and use of any personnel and forces to which the plan or plans apply, and the use or distribution of any supplies, equipment, materials, and facilities available pursuant to this Article or any other provision of law.

(2) To adopt the rules to implement those provisions of this Article that deal with matters other than those that are exclusively local.

(3) To develop a system of damage assessment through which the Secretary will recommend the appropriate level of emergency declaration to the Governor. The system shall, at a minimum, consider whether the damage involved and its effects are of such a severity and magnitude as to be beyond the response capabilities of the local government or political subdivision.

(4) Additional authority, duties, and responsibilities as may be prescribed by the Governor. The Secretary may subdelegate his authority to the appropriate member of the Secretary's department.

"**§ 166A-19.12. Powers of the Division of Emergency Management.**

The Division of Emergency Management shall have the following powers and duties as delegated by the Governor and Secretary of Crime Control and Public Safety:

(1) Coordination of the activities of all State agencies for emergency management within the State, including planning, organizing, staffing, equipping, training, testing, and the activation of emergency management programs.

(2) Preparation and maintenance of State plans for emergencies. The State plans or any parts thereof may be incorporated into department regulations and into executive orders of the Governor.

(3) 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:
a. The epidemiologic investigation of a known or suspected threat caused by nuclear, biological, or chemical agents.
b. The examination and testing of persons and animals that may have been exposed to a nuclear, biological, or chemical agent.
c. The procurement and allocation of immunizing agents and prophylactic antibiotics.
d. The allocation of the National Pharmaceutical Stockpile.
e. The appropriate conditions for quarantine and isolation in order to prevent further transmission of disease.
f. Immunization procedures.
g. The issuance of guidelines for prophylaxis and treatment of exposed and affected persons.

(4) Establishment of a voluntary model registry for use by political subdivisions in identifying functionally and medically fragile persons in need of assistance during an emergency. All records, data, information, correspondence, and communications relating to the registration of persons with special needs or of functionally and medically fragile persons obtained pursuant to this subdivision are confidential and are not a public record pursuant to G.S. 132-1 or any other applicable statute, except that this information shall be available to emergency response agencies, as determined by the local emergency management director. This information shall be used only for the purposes set forth in this subdivision.

(5) Promulgation of standards and requirements for local plans and programs consistent with federal and State laws and regulations, determination of eligibility for State financial assistance provided for in G.S. 166A-19.15 and provision of technical assistance to local governments. Standards and requirements for local plans and programs promulgated under this subdivision shall be reviewed by the Division at least biennially and updated as necessary.

(6) Development and presentation of training programs, including the Emergency Management Certification Program established under Article 5 of this Chapter, and public information programs to insure the furnishing of adequately trained personnel and an informed public in time of need.

(7) Making of such studies and surveys of the resources in this State as may be necessary to ascertain the capabilities of the State for emergency management, maintaining data on these resources, and planning for the most efficient use thereof.

(8) Coordination of the use of any private facilities, services, and property.

(9) Preparation for issuance by the Governor of executive orders, declarations, and regulations as necessary or appropriate.

(10) Cooperation and maintenance of liaison with the other states, the federal government, and any public or private agency or entity in achieving any purpose of this Article and in implementing programs for emergency or war prevention, preparation, response, and recovery.

(11) Making recommendations, as appropriate, for zoning, building, and other land-use controls, and safety measures for securing mobile homes or other nonpermanent or semipermanent works designed to protect against or mitigate the effects of an emergency.

(12) Coordination of the use of existing means of communications and supplementing communications resources and integrating them into a comprehensive State or State-federal telecommunications or other communications system or network.

(13) Administration of federal and State grant funds provided for emergency management purposes, including those funds provided for planning and preparedness activities by emergency management agencies.

(14) Serving as the lead State agency for the coordination of information and resources for hazard risk management, which shall include the following responsibilities:

a. Coordinating with other State agencies and county governments in conducting hazard risk analysis. To the extent another State agency has primary responsibility for the adoption of hazard mitigation standards, those standards shall be applied in conducting a hazard risk analysis.

b. Establishing and maintaining a hazard risk management information system and tools to display natural hazards and vulnerabilities and conducting risk assessment.

c. Acquiring and leveraging all natural hazard data generated or maintained by State agencies and county governments.

d. Acquiring and leveraging all vulnerability data generated or maintained by State agencies and county governments.

e. Maintaining a clearinghouse for methodologies and metrics for calculating and communicating hazard probability and loss estimation.

(15) Utilizing and maintaining technology that enables efficient and effective communication and management of resources between political subdivisions, State agencies, and other governmental entities involved in emergency management activities.

"Part 3. Local Emergency Management.

"**§ 166A-19.15. County and municipal emergency management.**

(a) Governing Body of Counties Responsible for Emergency Management. – The governing body of each county is responsible for emergency management within the geographical limits of such county. All emergency management efforts within the county will be coordinated by the county, including activities of the municipalities within the county.

(b) Counties May Establish and Maintain Emergency Management Agencies. – The governing body of each county is hereby authorized to establish and maintain an emergency management agency for the purposes contained in G.S. 166A-19.1. The governing body of each county which establishes an emergency management agency pursuant to this authorization shall appoint a coordinator who will have a direct responsibility for the organization, administration, and operation of the county program and will be subject to the direction and guidance of such governing body. In the event that any county fails to establish an emergency management agency, and the Governor, in the Governor's discretion, determines that a need exists for such an emergency management agency, then the Governor is hereby empowered to establish an emergency management agency within that county.

(c) Municipalities May Establish and Maintain Emergency Management Agencies. – All incorporated municipalities are authorized to establish and maintain emergency management agencies subject to coordination by the county.

(d) Joint Agencies Authorized. – Counties and incorporated municipalities are authorized to form joint emergency management agencies composed of a county and one or

more municipalities within the county's borders, between two or more counties, or between two or more counties and one or more municipalities within the borders of those counties.

(e) Local Appropriations Authorized. – Each county and incorporated municipality in this State is authorized to make appropriations for the purposes of this Article and to fund them by levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues, whose use is not otherwise restricted by law.

(f) Additional Powers. – In carrying out the provisions of this Article each political subdivision is authorized to do the following:

(1) To appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for emergency management purposes and to provide for the health and safety of persons and property, including emergency assistance, consistent with this Article.

(2) To direct and coordinate the development of emergency management plans and programs in accordance with the policies and standards set by the Division, consistent with federal and State laws and regulations.

(3) To assign and make available all available resources for emergency management purposes for service within or outside of the physical limits of the subdivision.

(4) To delegate powers in a local state of emergency declared pursuant to G.S. 166A-19.21.

(5) To coordinate the voluntary registration of functionally and medically fragile persons in need of assistance during an emergency either through a registry established by this subdivision or by the State. All records, data, information, correspondence, and communications relating to the registration of persons with special needs or of functionally and medically fragile persons obtained pursuant to this subdivision are confidential and are not a public record pursuant to G.S. 132-1 or any other applicable statute, except that this information shall be available to emergency response agencies, as determined by the local emergency management director. This information shall be used only for the purposes set forth in this subdivision.

(g) County Eligibility for State and Federal Financial Assistance. – Each county which establishes an emergency management agency pursuant to State standards and which meets requirements for local plans and programs may be eligible to receive State and federal financial assistance, including State and federal funding appropriated for emergency management planning and preparedness, and for the maintenance and operation of a county emergency management program. Such financial assistance is subject to an appropriation being made for this purpose. Where the appropriation does not allocate appropriated funds among counties, the amount allocated to each county shall be determined annually by the Division. The size of this allocation shall be based in part on the degree to which local plans and programs meet State standards and requirements promulgated by the Division, including those relating to professional competencies of local emergency management personnel. However, in making an allocation determination, the Division shall, where appropriate, take into account the fact that a particular county may lack sufficient resources to meet the standards and requirements promulgated by the Division.

"Part 4. Declarations of State of Emergency.

"**§ 166A-19.20. Gubernatorial or legislative declaration of state of emergency.**

(a) Declaration. – A state of emergency may be declared by the Governor, or by a resolution of the General Assembly, if either of these finds that an emergency exists. A Type L emergency may only be declared by the Governor.

(b) Preliminary Damage Assessment. – When a state of emergency other than a Type L emergency is declared pursuant to this section, the Secretary shall provide the Governor and the

General Assembly with a preliminary damage assessment as soon as the assessment is available.

(c) Declaration of Emergency Area and Emergency Type. – Upon receipt of a preliminary damage assessment, the Governor shall issue a declaration defining the emergency area and declaring the state of emergency to be one of the types defined in subsection (d) of this section. If the Governor declares the state of emergency to be a Type L emergency, then no preliminary damage assessment is required for that declaration and the declaration of type shall be made at the same time as the emergency is declared.

(d) Types of Emergency. –

(1) Type I Disaster. – A Type I disaster may be declared 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, if all of the following criteria are met:

a. A local state of emergency has been declared pursuant to G.S. 166A-19.21 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-19.41(b)(2)a.

c. A major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared.

(2) Type II Disaster. – 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.

(3) Type III Disaster. – 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 either of the following is true:

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.

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 emergency.

(4) Type L Emergency. – A Type L emergency may be declared if the Governor determines that an emergency exists in any part of North Carolina and further finds that local control of the emergency is insufficient to assure adequate protection for lives and property. Local control shall be deemed insufficient only if the Governor finds that at least one of the following is true: (i) needed control cannot be imposed locally because local authorities responsible for preservation of the public peace have not enacted appropriate ordinances or issued appropriate declarations as authorized by G.S. 166A-19.31; (ii) local authorities have not taken implementing steps under such ordinances or declarations, if enacted or declared, for effectual control of the emergency that has arisen; (iii) the area in which the emergency exists has spread across local jurisdictional boundaries and the legal control measures of the jurisdictions are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will

be, severely hampered; or (iv) the scale of the emergency is so great that it exceeds the capability of local authorities to cope with it.

(e) Expiration of States of Emergency. –

(1) Expiration of Type I disaster declarations. – A Type I disaster declaration shall expire 30 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) Expiration of Type II disaster declarations. – A Type II disaster declaration shall expire six 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 exceed a total of 12 months 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 II disaster declaration.

(3) Expiration of Type III disaster declarations. – A Type III disaster declaration shall expire 12 months after its issuance unless renewed by the General Assembly.

(4) Expiration of Type L emergency declarations. – A Type L emergency declaration shall expire 10 days after its issuance unless renewed by the Governor one or more times. Renewals expire 10 days after issuance.

(5) Expiration of disaster declarations declared prior to July 1, 2001. – Any state of disaster declared or proclaimed before July 1, 2001, irrespective of type, shall terminate by a declaration of the Governor or resolution of the General Assembly. A declaration 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, the Secretary of State, and the clerks of superior court in the area to which it applies.

(f) Relation of Type L Emergency to Other Types of Emergency. – The declaration of a Type L emergency shall not preclude a simultaneous or subsequent declaration of a Type I, II, or III disaster in the same emergency area.

(g) Exercise of Powers Not Contingent on Declaration of Disaster Type. – Once a state of emergency has been declared pursuant to subsection (a) of this section, the fact that a declaration of disaster type has not yet been issued shall not preclude the exercise of powers that are otherwise conferred during a state of emergency.

"**§ 166A-19.21. Municipal or county declaration of state of emergency.**

(a) Declaration. – A state of emergency may be declared by the governing body of a municipality or county if either of these finds that an emergency exists. Authority to declare a state of emergency under this section may also be delegated by ordinance to the mayor of a municipality or to the chairman of the board of county commissioners of a county.

(b) Emergency Area. – The emergency area of a state of emergency declared pursuant to this section, or pursuant to an ordinance authorized by this section, shall be determined in accordance with the following:

(1) Unless another subdivision of this subsection is applicable, the emergency area shall not exceed the area over which the municipality or county has jurisdiction to enact general police-power ordinances, and unless the governing body declaring the state of emergency provides otherwise, the

emergency area includes this entire jurisdiction, subject to the limitations contained in the other subdivisions in this subsection.

(2) The emergency area of a state of emergency declared by a county shall not include any area within the corporate limits of any municipality, or within any area of the county over which a municipality has jurisdiction to enact general police-power ordinances, unless the municipality by resolution consents to the state of emergency's application. Such an extension may be with respect to one or more of the prohibitions and restrictions imposed in that county pursuant to the authority granted in G.S. 166A-19.31 and need not be with respect to all prohibitions and restrictions authorized by that section.

(3) The chairman of the board of commissioners of any county who has been requested to do so by a mayor may by declaration extend the emergency area of a state of emergency declared by a municipality to any area within the county in which the chairman determines it to be necessary to assist in the controlling of the emergency within the municipality. The extension may be with respect to one or more of the prohibitions and restrictions imposed in that mayor's municipality pursuant to the authority granted in G.S. 166A-19.31 and need not be with respect to all prohibitions and restrictions authorized by that section. Extension of the emergency area pursuant to this subdivision shall be subject to the following additional limitations:

a. The extension of the emergency area shall not include any area within the corporate limits of a municipality, or within any area of the county over which a municipality has jurisdiction to enact general police-power ordinances, unless that other municipality consents to its application.

b. A chairman of a board of county commissioners extending the emergency area under the authority of this subdivision shall take reasonable steps to give notice of its terms to those likely to be affected.

c. The chairman of the board of commissioners shall declare the termination of any prohibitions and restrictions extended pursuant to this subdivision upon the earlier of:

1. The chairman's determination that they are no longer necessary.
2. The determination of the board of county commissioners that they are no longer necessary.
3. The termination of the prohibitions and restrictions within the municipality.

d. The powers authorized under this subdivision may be exercised whether or not the county has enacted ordinances under the authority of G.S. 166A-19.31. Exercise of this authority shall not preclude the imposition of prohibitions and restrictions under any ordinances enacted by the county under the authority of G.S. 166A-19.31.

(c) Expiration of States of Emergency. – Unless an ordinance adopted pursuant to G.S. 166A-19.31 provides otherwise, a state of emergency declared pursuant to this section shall expire when it is terminated by the official or governing body that declared it.

(d) Effect of Declaration. – The declaration of a state of emergency pursuant to this section shall activate the local ordinances authorized in G.S. 166A-19.31 and any and all

applicable local plans, mutual assistance compacts and agreements and shall also authorize the furnishing of assistance thereunder.

"Part 5. Additional Powers During States of Emergency.

"§ 166A-19.30. Additional powers of the Governor during state of emergency.

(a) In addition to any other powers conferred upon the Governor by law, during a gubernatorially or legislatively declared state of emergency, other than a Type L emergency, the Governor shall have the following powers:

(1) To utilize all available State resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services.

(2) To take such action and give such directions to State and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article and with the orders, rules, and regulations made pursuant thereto.

(3) To take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety.

(4) Subject to the provisions of the State Constitution to relieve any public official having administrative responsibilities under this Article of such responsibilities for willful failure to obey an order, rule, or regulation adopted pursuant to this Article.

(b) During a gubernatorially or legislatively declared state of emergency other than a Type L emergency, with the concurrence of the Council of State, the Governor has the following powers:

(1) To direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State, to prescribe routes, modes of transportation, and destinations in connection with evacuation; and to control ingress and egress of an emergency area, the movement of persons within the area, and the occupancy of premises therein.

(2) To establish a system of economic controls over all resources, materials, and services to include food, clothing, shelter, fuel, rents, and wages, including the administration and enforcement of any rationing, price freezing, or similar federal order or regulation.

(3) To regulate and control the flow of vehicular and pedestrian traffic, the congregation of persons in public places or buildings, lights and noises of all kinds, and the maintenance, extension, and operation of public utility and transportation services and facilities.

(4) To waive a provision of any regulation or ordinance of a State agency or a political subdivision which restricts the immediate relief of human suffering.

(5) To perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population.

(6) To appoint or remove an executive head of any State agency or institution the executive head of which is regularly selected by a State board or commission.

a. Such an acting executive head will serve during the following:

1. The physical or mental incapacity of the regular office holder, as determined by the Governor after such inquiry as the Governor deems appropriate.

2. The continued absence of the regular holder of the office.
3. A vacancy in the office pending selection of a new executive head.

b. An acting executive head of a State agency or institution appointed in accordance with this subdivision may perform any act and exercise any power which a regularly selected holder of such office could lawfully perform and exercise.

c. All powers granted to an acting executive head of a State agency or institution under this section shall expire immediately:
1. Upon the termination of the incapacity as determined by the Governor of the officer in whose stead he acts;
2. Upon the return of the officer in whose stead he acts; or
3. Upon the selection and qualification of a person to serve for the unexpired term, or the selection of an acting executive head of the agency or institution by the board or commission authorized to make such selection, and his qualification.

(7) To procure, by purchase, condemnation, seizure, or by other means to construct, lease, transport, store, maintain, renovate, or distribute materials and facilities for emergency management without regard to the limitation of any existing law.

(c) In addition to any other powers conferred upon the Governor by law, during a Type L emergency the Governor shall have the following powers:

(1) To impose by declaration prohibitions and restrictions in the emergency area. These prohibitions and restrictions may, in the Governor's discretion, as appropriate to deal with the emergency, impose any of the types of prohibitions and restrictions enumerated in G.S. 166A-19.31(b), and may amend or rescind any prohibitions and restrictions imposed by local authorities. Prohibitions and restrictions imposed pursuant to this subdivision shall take effect in accordance with the provisions of G.S. 166A-19.31(d) and shall expire upon the earliest occurrence of either of the following: (i) the prohibition or restriction is terminated by the Governor or (ii) the state of emergency is terminated.

(2) Give to all participating State and local agencies and officers such directions as may be necessary to assure coordination among them. These directions may include the designation of the officer or agency responsible for directing and controlling the participation of all public agencies and officers in the emergency. The Governor may make this designation in any manner which, in the Governor's discretion, seems most likely to be effective. Any law enforcement officer participating in the control of a state of emergency in which the Governor is exercising control under this section shall have the same power and authority as a sheriff throughout the territory to which the law enforcement officer is assigned.

(d) Violation. – Any person who violates any provision of a declaration or executive order issued pursuant to this section shall be guilty of a Class 2 misdemeanor in accordance with G.S. 14-288.20A.

"**§ 166A-19.31. Power of municipalities and counties to enact ordinances to deal with states of emergency.**

(a) Authority to Enact Prohibitions and Restrictions. – The governing body of any municipality or county may enact ordinances designed to permit the imposition of prohibitions and restrictions within the emergency area during a state of emergency declared pursuant to G.S. 166A-19.21. Authority to impose by declaration prohibitions and restrictions under this

section, and to impose those prohibitions and restrictions at a particular time as appropriate, may be delegated by ordinance to the mayor of a municipality or to the chairman of the board of county commissioners of a county.

(b) Type of Prohibitions and Restrictions Authorized. – 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 an emergency 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 the possession, transportation, sale, purchase, storage, and use of dangerous weapons and substances, and gasoline. As used in this subdivision, the term 'dangerous weapon and substance' has the same meaning as it does under G.S. 14-288.1.

(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 authorized by this section need not require or provide for the imposition of all of the types of prohibitions or restrictions, or any particular prohibition or restriction, authorized by this section during an emergency but may instead authorize the official or officials who impose those prohibitions or restrictions to determine and impose the prohibitions or restrictions deemed necessary or suitable to a particular state of emergency.

(c) When Ordinances Take Effect. – Notwithstanding any other provision of law, whether general or special, relating to the promulgation or publication of ordinances by any municipality or county, upon the declaration of a state of emergency by the mayor or chairman of the board of county commissioners within the municipality or the county, any ordinance enacted under the authority of this section shall take effect immediately unless the ordinance sets a later time. If the effect of this section is to cause an ordinance to go into effect sooner than it otherwise could under the law applicable to the municipality or county, the mayor or chairman of the board of county commissioners, as the case may be, shall take steps to cause reports of the substance of the ordinance to be disseminated in a fashion that its substance will likely be communicated to the public in general, or to those who may be particularly affected by the ordinance if it does not affect the public generally. As soon as practicable thereafter, appropriate distribution or publication of the full text of any such ordinance shall be made.

(d) When Prohibitions and Restrictions Take Effect. – All prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under this section shall take effect in the emergency area immediately upon publication of the declaration unless the declaration sets a later time. For the purpose of requiring compliance, publication may consist of reports of the substance of the prohibitions and restrictions in the mass communications media serving the emergency area or other effective methods of disseminating the necessary information quickly. As soon as practicable, however, appropriate distribution of the full text of any declaration shall be made. This subsection shall not be governed by the provisions of G.S. 1-597.

(e) Expiration of Prohibitions and Restrictions. – Prohibitions and restrictions imposed pursuant to this section shall expire upon the earliest occurrence of any of the following:

(1) The prohibition or restriction is terminated by the governing body of the county or municipality.

(2) The state of emergency terminates.

(f) Intent to Supplement Other Authority. – This section is intended to supplement and confirm the powers conferred by G.S. 153A-121(a), G.S. 160A-174(a), and all other general and local laws authorizing municipalities and counties to enact ordinances for the protection of the public health and safety in times of riot or other grave civil disturbance or emergency.

(g) Previously Enacted Ordinances Remain in Effect. – Any ordinance of a type authorized by this section promulgated prior to [Date Bill Becomes Law], 2011, shall, if otherwise valid, continue in full force and effect without reenactment.

(h) Violation. – Any person who violates any provision of an ordinance or a declaration enacted or declared pursuant to this section shall be guilty of a Class 2 misdemeanor in accordance with G.S. 14-288.20A.

"Part 6. Funding of Emergency Preparedness and Response.

"**§ 166A-19.40. Use of contingency and emergency funds.**

(a) Use of Funds for Relief and Assistance. –The Governor may use contingency and emergency funds as necessary and appropriate to provide relief and assistance from the effects of an emergency and may reallocate such other funds as may reasonably be available within the appropriations of the various departments when the severity and magnitude of the emergency so requires and the contingency and emergency funds are insufficient or inappropriate.

(b) Use of Funds for National Guard Training. – In preparation for a state of emergency, with the concurrence of the Council of State, the Governor may use contingency and emergency funds as necessary and appropriate for National Guard training in preparation for emergencies.

"**§ 166A-19.41. State emergency assistance funds.**

(a) Governor May Make Funds Available for Emergency Assistance. – In the event of a gubernatorially or legislatively declared state of emergency, the Governor may make State funds available for emergency assistance as authorized by this section. Any State funds made available by the Governor for emergency assistance may be administered through State emergency assistance programs which may be established by the Governor upon the declaration of a state of emergency. It is the intent of the General Assembly in authorizing the Governor to make State funds available for emergency assistance and in authorizing the Governor to establish State emergency assistance programs to provide State assistance for recovery from those emergencies for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the emergency area.

(b) Emergency Assistance in a Type I Disaster. – In the event that a Type I disaster is declared, the Governor may make State funds available for emergency assistance in the emergency area in the form of individual assistance and public assistance as provided in this subsection.

(1) Individual assistance. – State emergency assistance in the form of grants to individuals and families may be made available when damage meets or exceeds the criteria set out in 13 C.F.R. Part 123 for the Small Business Administration Disaster Loan Program. Individual assistance grants shall include benefits comparable to those provided by the Stafford Act and may be provided for the following:

a. Provision of temporary housing and rental assistance.

b. Repair or replacement of dwellings. Grants for repair or replacement of housing may include amounts necessary to locate the individual or family in safe, decent, and sanitary housing.

c. Replacement of personal property (including clothing, tools, and equipment).

d. Repair or replacement of privately owned vehicles.

e. Medical or dental expenses.
f. Funeral or burial expenses resulting from the emergency.
g. Funding for the cost of the first year's flood insurance premium to meet the requirements of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. § 4001, et seq.

(2) Public assistance. – State emergency assistance in the form of public assistance grants may be made available to eligible entities located within the emergency area on the following terms and conditions:

a. Eligible entities shall meet the following qualifications:
1. The eligible entity suffers a minimum of ten thousand dollars ($10,000) in uninsurable losses;
2. The eligible entity suffers uninsurable losses in an amount equal to or exceeding one percent (1%) of the annual operating budget;
3. For a state of emergency declared pursuant to G.S. 166A-19.20(a) after the deadline established by the Federal Emergency Management Agency pursuant to the Disaster Mitigation Act of 2002, P.L. 106-390, the eligible entity shall have a hazard mitigation plan approved pursuant to the Stafford Act; and
4. For a state of emergency declared pursuant to G.S. 166A-19.20(a), other than a Type L emergency, after August 1, 2002, the eligible entity shall be participating in the National Flood Insurance Program in order to receive public assistance for flooding damage.

b. Eligible entities shall be required to provide non-State matching funds equal to twenty-five percent (25%) of the eligible costs of the public assistance grant.

c. An eligible entity that receives a public assistance grant pursuant to this subsection may use the grant for the following purposes only:
1. Debris clearance.
2. Emergency protective measures.
3. Roads and bridges.
4. Crisis counseling.
5. Assistance with public transportation needs.

(c) Emergency Assistance in a Type II Disaster. – If a Type II disaster is declared, the Governor may make State funds available for emergency assistance in the emergency area in the form of the following types of grants:

(1) State Acquisition and Relocation Funds.
(2) Supplemental repair and replacement housing grants available to individuals or families in an amount necessary to locate the individual or family in safe, decent, and sanitary housing not to exceed twenty-five thousand dollars ($25,000) per family.

(d) Emergency Assistance in a Type III Disaster. – If a Type III disaster is declared, the Governor may make State funds available for emergency assistance in the emergency area in the form of the following types of grants:

(1) State Acquisition and Relocation Funds.
(2) Supplemental repair and replacement housing grants available to individuals or families in an amount necessary to locate the individual or family in safe, decent, and sanitary housing not to exceed twenty-five thousand dollars ($25,000) per family.

(3) Any programs authorized by the General Assembly.

"**§ 166A-19.42. State Emergency Response Account.**

(a) Account Established. – There is established a State Emergency Response Account as a reserve in the General Fund. Any funds appropriated to the Account shall remain available for expenditure as provided by this section, unless directed otherwise by the General Assembly.

(b) Use of Funds. – The Governor may spend funds from the Account for the following purposes:

(1) To cover the start-up costs of State Emergency Response Team operations for an emergency that poses an imminent threat of a Type I, Type II, or Type III disaster.

(2) To cover the cost of first responders to a Type I, Type II, or Type III disaster and any related supplies and equipment needed by first responders that are not provided for under subdivision (1) of this subsection.

All other types of emergency assistance authorized by this Part shall continue to be financed by the funds made available under G.S. 166A-19.41.

(c) Reporting Requirement. – The Governor shall report to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Appropriations Committees of the Senate and House of Representatives on any expenditures from the State Emergency Response Account no later than 30 days after making the expenditure. The report shall include a description of the emergency and type of action taken.

"Part 7. Immunity and Liability.

"**§ 166A-19.60. Immunity and exemption.**

(a) Generally. – All functions hereunder and all other activities relating to emergency management as provided for in this Chapter or elsewhere in the General Statutes are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence, or bad faith, any emergency management worker, firm, partnership, association, or corporation complying with or reasonably attempting to comply with this Article or any order, rule, or regulation promulgated pursuant to the provisions of this Article or pursuant to any ordinance relating to any emergency management measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity.

(b) Immunity. – The immunity provided to firms, partnerships, associations, or corporations, under subsection (a) of this section, is subject to all of the following conditions:

(1) The immunity applies only when the firm, partnership, association, or corporation is acting without compensation or with compensation limited to no more than actual expenses and one of the following applies:

a. Emergency management services are provided at any place in this State during a state of emergency declared by the Governor or General Assembly pursuant to this Article, and the services are provided under the direction and control of the Secretary pursuant to G.S. 166A-19.10, 166A-19.11, 166A-19.12, 166A-19.20, 166A-19.30, and 143B-476, or the Governor.

b. Emergency management services are provided during a state of emergency declared pursuant to G.S. 166A-19.21, and the services are provided under the direction and control of the governing body of a municipality or county under G.S. 166A-19.31, or the chair of a board of county commissioners under G.S. 166A-19.21(b)(3).

c. The firm, partnership, association, or corporation is engaged in planning, preparation, training, or exercises with the Division, the Division of Public Health, or the governing body of each county or

municipality under G.S. 166A-19.15 related to the performance of emergency management services or measures.

(2) The immunity shall not apply to any firm, partnership, association, or corporation, or to any employee or agent thereof, whose act or omission caused in whole or in part the actual or imminent emergency or whose act or omission necessitated emergency management measures.

(3) To the extent that any firm, partnership, association, or corporation has liability insurance, that firm, partnership, association, or corporation shall be deemed to have waived the immunity to the extent of the indemnification by insurance for its negligence. An insurer shall not under a contract of insurance exclude from liability coverage the acts or omissions of a firm, partnership, association, or corporation for which the firm, partnership, association, or corporation would only be liable to the extent indemnified by insurance as provided by this subdivision.

(c) No Effect on Benefits. – The rights of any person to receive benefits to which the person would otherwise be entitled under this Article or under the Workers' Compensation Law or under any pension law and the right of any such person to receive any benefits or compensation under any act of Congress shall not be affected by performance of emergency management functions.

(d) License Requirements Suspended. – Any requirement for a license to practice any professional, mechanical, or other skill shall not apply to any authorized emergency management worker who shall, in the course of performing the worker's duties as such, practice such professional, mechanical, or other skill during a state of emergency.

(e) Definition of Emergency Management Worker. – As used in this section, the term 'emergency management worker' shall include any full- or part-time paid, volunteer, or auxiliary employee of this State or other states, territories, possessions, or the District of Columbia, of the federal government or any neighboring country or of any political subdivision thereof, or of any agency or organization performing emergency management services at any place in this State, subject to the order or control of or pursuant to a request of the State government or any political subdivision thereof. The term 'emergency management worker' under this section shall also include any health care worker performing health care services as a member of a hospital-based or county-based State Medical Assistance Team designated by the North Carolina Office of Emergency Medical Services and any person performing emergency health care services under G.S. 90-12.2.

(f) Powers of Individuals Operating Pursuant to Mutual Aid Agreements. – Any emergency management worker, as defined in this section, performing emergency management services at any place in this State pursuant to agreements, compacts, or arrangements for mutual aid and assistance to which the State or a political subdivision thereof is a party, shall possess the same powers, duties, immunities, and privileges the person would ordinarily possess if performing duties in the State, or political subdivision thereof, in which normally employed or rendering services.

"**§ 166A-19.61. No private liability.**

Any person, firm, or corporation 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, 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.

"**§ 166A-19.62. Civil liability of persons who willfully ignore a warning in a disaster.**

In an emergency, a person who willfully ignores a warning regarding personal safety issued by a federal, State, or local law enforcement agency, emergency management agency, or other governmental agency responsible for emergency management under this Article is civilly liable for the cost of a rescue effort to any governmental agency or nonprofit agency cooperating with a governmental agency conducting a rescue on the endangered person's behalf if all of the following are true:

(1) The person ignores the warning and (i) engages in an activity or course of action that a reasonable person would not pursue or (ii) fails to take a course of action that a reasonable person would pursue.

(2) As a result of ignoring the warning the person places himself or herself or another in danger.

(3) A governmental rescue effort is undertaken on the endangered person's behalf.

"Part 8. Miscellaneous Provisions.

"**§ 166A-19.70. Ensuring availability of emergency supplies and utility services.**

(a) Executive Order. – In addition to any other powers conferred on the Governor by law, whenever a curfew has been imposed, the Governor may declare by executive order that the health, safety, or economic well-being of persons or property in this State require that persons transporting essentials in commerce to the curfew area, or assisting in ensuring their availability, and persons assisting in restoring utility services, be allowed to enter or remain in areas from which they would otherwise be excluded for the limited purpose of delivering the essentials, assisting in ensuring their availability, or assisting in restoring utility services.

(b) Maximum Hours of Service Waiver. – As part of an executive order issued pursuant to subsection (a) of this section, or independently of such an order, the Governor may declare by executive order that the health, safety, or economic well-being of persons or property in this State require that the maximum hours of service prescribed by the Department of Crime Control and Public Safety pursuant to G.S. 20-381 and similar rules be waived for persons transporting essentials or assisting in the restoration of utility services.

(c) Certification System. – The Secretary of Crime Control and Public Safety shall develop a system pursuant to which a person who transports essentials in commerce, or assists in ensuring their availability, and persons who assist in the restoring of utility services can be certified as such. The certification system shall allow for both preemergency declaration and postemergency declaration certification and may include an annually renewable precertification. The Secretary shall only allow those who routinely transport or distribute essentials or assist in the restoring of utility services to be certified. A certification of the employer shall constitute a certification of the employer's employees. The Secretary shall create an easily recognizable indicium of certification in order to assist local officials' efforts to determine which persons have received certification by the system established under this subsection.

(d) Presence in Curfew Area Permitted. – Notwithstanding the existence of any curfew, a person who is certified pursuant to the system established under subsection (c) of this section shall be allowed to enter or remain in the curfew area for the limited purpose of delivering or assisting in the distribution of essentials or assisting in the restoration of utility services and shall be allowed to provide service that exceeds otherwise applicable hours of service maximums, to the extent authorized by an executive order executed pursuant to subsection (a) of this section. Nothing in this section prohibits law enforcement or other local officials from specifying the permissible route of ingress or egress for persons with certifications.

(e) Abnormal Market Disruptions with Respect to Petroleum. – If the Governor declares the existence of an abnormal market disruption with respect to petroleum pursuant to, G.S. 75-38(f), the Governor shall contemporaneously seek all applicable waivers under the federal Clean Air Act, 42 U.S.C. § 7401, et seq., and any other applicable federal law to

facilitate the transportation of fuel within this State in order to address or prevent a fuel supply emergency in this State. Waiver requests shall be directed to the appropriate federal agencies and shall seek waivers of the following:

(1) The Reformulated Gasoline requirements throughout the State.

(2) The Federal and State Implementation Plan summertime gasoline requirements (low RVP) throughout the State.

(3) Any other waiver that will, if obtained, facilitate the transportation of fuel within this State.

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

(1) Curfew. – Any restriction on ingress and egress to the emergency area of a state of emergency or any restriction on the movement of persons within such an area.

(2) Curfew area. – The area that is subject to a curfew.

(3) Essentials. – Any goods that are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being of persons or their property. The Secretary shall determine what goods constitute essentials for purposes of this section.

"**§ 166A-19.71. Accept services, gifts, grants, and loans.**

Whenever the federal government or any agency or officer thereof or of any person, firm, or corporation shall offer to the State, or through the State to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for emergency management purposes, the State acting through the Governor, or such political subdivision, acting with the consent of the Governor and through its governing body, may accept such offer. Upon such acceptance the Governor of the State or governing body of such political subdivision may authorize any officer of the State or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the State or of such political subdivision, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

"**§ 166A-19.72. Establishment of mutual aid agreements.**

(a) Governor Authorized to Enter Agreements with Other States and Federal Government. – The Governor may establish mutual aid agreements with other states and with the federal government provided that any special agreements so negotiated are within the Governor's authority.

(b) Governor Authorized to Enter Agreements with Political Subdivisions. – The Governor may establish mutual aid agreements with political subdivisions in the State with the concurrence of the subdivision's governing body.

(c) Political Subdivisions Authorized to Enter Agreements with Other Political Subdivisions. – The chief executive of each political subdivision, with the concurrence of the subdivision's governing body, may develop mutual aid agreements for reciprocal emergency management aid and assistance. Such agreements shall be consistent with the State emergency management program and plans.

(d) Political Subdivisions Authorized to Enter Agreements with Political Subdivisions in Other States. – The chief executive officer of each political subdivision, with the concurrence of the governing body and subject to the approval of the Governor, may enter into mutual aid agreements with local chief executive officers in other states for reciprocal emergency management aid and assistance. These agreements shall be consistent with the State emergency management program and plans.

(e) Terms of Agreements. – Mutual aid agreements may include, but are not limited to, the furnishing or exchange of such supplies, equipment, facilities, personnel, and services as

may be needed; the reimbursement of costs and expenses for equipment, supplies, personnel, and similar items; and on such terms and conditions as deemed necessary.

"**§ 166A-19.73. Compensation.**

(a) Extent of Compensation. – Compensation for services or for the taking or use of property shall be only to the extent that legal obligations of individual citizens are exceeded in a particular case and then only to the extent that the claimant has not been deemed to have volunteered his services or property without compensation.

(b) Limitation; Basis of Compensation. – Compensation for property shall be only if the property was commandeered, seized, taken, condemned, or otherwise used in coping with an emergency and this action was ordered by the Governor. The State shall make compensation for the property so seized, taken, or condemned on the following basis:

(1) In case property is taken for temporary use, the Governor, within 30 days of the taking, shall fix the amount of compensation to be paid for such damage or failure to return. Whenever the Governor shall deem it advisable for the State to take title to property taken under this section, the Governor shall forthwith cause the owner of such property to be notified thereof in writing by registered mail, postage prepaid, or by the best means available, and forthwith cause to be filed a copy of said notice with the Secretary of State.

(2) If the person entitled to receive the amounts so determined by the Governor as just compensation is unwilling to accept the same as full and complete compensation for such property or the use thereof, the person shall be paid seventy-five percent (75%) of such amount and shall be entitled to recover from the State of North Carolina in an action brought in the superior court in the county of residence of claimant, or in Wake County, in the same manner as other condemnation claims are brought, within three years after the date of the Governor's award.

"**§ 166A-19.74. Nondiscrimination in emergency management.**

State and local governmental bodies and other organizations and personnel who carry out emergency management functions under the provisions of this Article are required to do so in an equitable and impartial manner. Such State and local governmental bodies, organizations, and personnel shall not discriminate on the grounds of race, color, religion, nationality, sex, age, or economic status in the distribution of supplies, the processing of applications, and other relief and assistance activities.

"**§ 166A-19.75. Emergency management personnel.**

(a) Limitation. – No person shall be employed or associated in any capacity in any emergency management agency established under this Article if that person does or has done any of the following:

(1) Advocates or has advocated a change by force or violence in the constitutional form of the Government of the United States or in this State.

(2) Advocates or has advocated the overthrow of any government in the United States by force or violence.

(3) Has been convicted of any subversive act against the United States.

(4) Is under indictment or information charging any subversive act against the United States.

(5) Has ever been a member of the Communist Party.

(b) Oath. – Each person who is appointed to serve in any emergency management agency shall, before entering upon the person's duties, take a written oath before a person authorized to administer oaths in this State, which oath shall be substantially as follows:

'I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of North Carolina, against all enemies, foreign and domestic; and that I will bear true faith and allegiance to the same; that I take this

obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter. And I do further swear (or affirm) that I do not advocate, nor am I, nor have I ever knowingly been, a member of any political party or organization that advocates the overthrow of the Government of the United States or of this State by force or violence; and that during such time as I am a member of the State Emergency Management Agency I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States or of this State by force or violence, so help me God.'

(c) No Violation of Dual Office Holding Prohibition. – No position created by or pursuant to this Article shall be deemed an office within the meaning of Section 9 of Article 6 of the North Carolina Constitution.

"**§ 166A-19.76. Leave options for voluntary firefighters, rescue squad workers, and emergency medical service personnel called into service.**

(a) Leave Without Pay. – A member of a volunteer fire department, rescue squad, or emergency medical services agency called into service of the State after a declaration of a state of emergency by the Governor or by the General Assembly, or upon the activation of the State Emergency Response Team in response to an emergency, shall have the right to take leave without pay from his or her civilian employment. No member of a volunteer fire department, rescue squad, or emergency medical services agency shall be forced to use or exhaust his or her vacation or other accrued leave from his or her civilian employment for a period of active service. The choice of leave shall be solely within the discretion of the member.

(b) Request in Writing Required. – For the volunteer member to be entitled to take leave without pay pursuant to this section, his or her services shall be requested in writing by the Director of the Division or by the head of a local emergency management agency. The request shall be directed to the Chief of the member's volunteer fire department, rescue squad, or emergency medical services agency and a copy shall be provided to the member's employer. This section shall not apply to those members whose services have been certified by their employer to the Director of the Division, or to the head of a local emergency management agency, as essential to the employer's own ongoing emergency relief activities.

(c) Definition of an Emergency Requiring Activation of the State Emergency Response Team. – For purposes of this section, an emergency requiring the activation of the State Emergency Response Team means an emergency at Activation Level 2 or greater according to the North Carolina State Emergency Operations Plan of November 2002. Activation Level 2 requires the State Emergency Operations Center to be fully activated with 24-hour staffing from all State Emergency Response Team members.

(d) Enforcement. – The Commissioner of Labor shall enforce the provisions of this section pursuant to Chapter 95 of the General Statutes.

"**§ 166A-19.77. Division of Forest Resources designated as emergency response agency.**

The Division of Forest Resources of the Department of Environment and Natural Resources is designated an emergency response agency of the State of North Carolina for purposes of the following:

(1) Supporting the Division of Emergency Management of the Department of Crime Control and Public Safety in responding to all-risk incidents.
(2) Receipt of any applicable State or federal funding.
(3) Training of other State and local agencies in emergency management.
(4) Any other emergency response roles for which the Division has special training or qualifications.

"**§ 166A-19.78. Governor's power to order evacuation of public building.**

When it is determined by the Governor that a great public crisis, disaster, riot, catastrophe, or any other similar public emergency exists, or the occurrence of any such condition is imminent, and, in the Governor's opinion it is necessary to evacuate any building owned or

controlled by any department, agency, institution, school, college, board, division, commission, or subdivision of the State in order to maintain public order and safety or to afford adequate protection for lives or property, the Governor is hereby authorized to issue an order of evacuation directing all persons within the building to leave the building and its premises forthwith. The order shall be delivered to any law enforcement officer or officer of the National Guard, and such officer shall, by a suitable public address system, read the order to the occupants of the building and demand that the occupants forthwith evacuate said building within the time specified in the Governor's order.

"**§ 166A-19.79. Severability.**

If any provision of this Article or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable."

SECTION 1.(c) The title of Article 36A of Chapter 14 of the General Statutes reads as rewritten:

"Article 36A.

~~Riots and Civil Disorders.~~Riots, Civil Disorders, and Emergencies."

SECTION 1.(d) Article 36A of Chapter 14 is amended by adding a new section to read:

"**§ 14-288.20A. Violation of emergency prohibitions and restrictions.**

Any person who does any of the following is guilty of a Class 2 misdemeanor:

(1) Violates any provision of an ordinance or a declaration enacted or declared pursuant to G.S. 166A-19.31.

(2) Violates any provision of a declaration or executive order issued pursuant to G.S. 166A-19.30

(3) Willfully refuses to leave the building as directed in a Governor's order issued pursuant to G.S. 166A-19.78."

II. CONFORMING CHANGES

SECTION 2.(a) G.S. 14-288.1 reads as rewritten:

"**§ 14-288.1. Definitions.**

Unless the context clearly requires otherwise, the ~~definitions in this section apply throughout this Article:~~ following definitions apply in this Article:

(1) ~~"Chairman of the board of county commissioners":~~Chairman of the board of county commissioners. – The chairman of the board of county commissioners or, in case of his absence or disability, the person authorized to act in his stead. Unless the governing body of the county has specified who is to act in lieu of the chairman with respect to a particular power or duty set out in this Article, the term "chairman of the board of county commissioners" shall apply to the person generally authorized to act in lieu of the chairman.

(2) ~~"Dangerous weapon or substance":~~Dangerous weapon or substance. – Any deadly weapon, ammunition, explosive, incendiary device, radioactive material or device, as defined in G.S. 14-288.8(c)(5), or any instrument or substance designed for a use that carries a threat of serious bodily injury or destruction of property; or any instrument or substance that is capable of being used to inflict serious bodily injury, when the circumstances indicate a probability that such instrument or substance will be so used; or any part or ingredient in any instrument or substance included above, when the

circumstances indicate a probability that such part or ingredient will be so used.

(3) ~~"Declared state of emergency":~~Declared state of emergency. – A state of emergency as that term is defined in G.S. 166A-19.3 or a state of emergency found and ~~proclaimed by the Governor under the authority of G.S. 14-288.15, by any mayor or other municipal official or officials under the authority of G.S. 14-288.12, by any chairman of the board of commissioners of any county or other county official or officials under the authority of G.S. 14-288.13, by any chairman of the board of county commissioners acting under the authority of G.S. 14-288.14, by~~ declared by any chief executive official or acting chief executive official of any county or municipality acting under the authority of any other applicable statute or provision of the common law to preserve the public peace in a state of emergency, or by any executive official or military commanding officer of the United States or the State of North Carolina who becomes primarily responsible under applicable law for the preservation of the public peace within any part of North Carolina.

(4) ~~"Disorderly conduct":~~Disorderly conduct. – As defined in G.S. 14-288.4(a).

(4a) Emergency. – As defined in G.S. 166A-19.3.

(5) ~~"Law enforcement officer":~~Law enforcement officer. – Any officer of the State of North Carolina or any of its political subdivisions authorized to make arrests; any other person authorized under the laws of North Carolina to make arrests and either acting within his territorial jurisdiction or in an area in which he has been lawfully called to duty by the Governor or any mayor or chairman of the board of county commissioners; any member of the armed forces of the United States, the North Carolina National Guard, or the State defense militia called to duty in a state of emergency in North Carolina and made responsible for enforcing the laws of North Carolina or preserving the public peace; or any officer of the United States authorized to make arrests without warrant and assigned to duties that include preserving the public peace in North Carolina.

(6) ~~"Mayor":~~Mayor. – The mayor or other chief executive official of a municipality or, in case of his absence or disability, the person authorized to act in his stead. Unless the governing body of the municipality has specified who is to act in lieu of the mayor with respect to a particular power or duty set out in this Article, the word "mayor" shall apply to the person generally authorized to act in lieu of the mayor.

(7) ~~"Municipality":~~Municipality. – Any active incorporated city or town, but not including any sanitary district or other municipal corporation that is not a city or town. An "active" municipality is one which has conducted the most recent election required by its charter or the general law, whichever is applicable, and which has the authority to enact general police-power ordinances.

(8) ~~"Public disturbance":~~Public disturbance. – Any annoying, disturbing, or alarming act or condition exceeding the bounds of social toleration normal for the time and place in question which occurs in a public place or which occurs in, affects persons in, or is likely to affect persons in a place to which the public or a substantial group has access. The places covered by this definition shall include, but not be limited to, highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

(9) ~~"Riot":~~Riot. – As defined in G.S. 14-288.2(a).

~~(10) "State of emergency": The condition that exists whenever, during times of public crisis, disaster, rioting, catastrophe, or similar public emergency, public safety authorities are unable to maintain public order or afford adequate protection for lives or property, or whenever the occurrence of any such condition is imminent.~~"

SECTION 2.(c) G.S. 14-288.4(a)(4)c. reads as rewritten:

"(a) Disorderly conduct is a public disturbance intentionally caused by any person who does any of the following:

...

(4) Refuses to vacate any building or facility of any public or private educational institution in obedience to any of the following:

...

c. If ~~a state of~~ an emergency is occurring or is imminent within the institution, an order given by any law-enforcement officer acting within the scope of the officer's authority."

SECTION 2.(c) G.S. 14-288.7 is amended by adding a new subsection to read:

"(d) For purposes of this section, the term 'declared state of emergency' does not include a legislatively or gubernatorially declared state of emergency, other than a Type L emergency, as that term is defined in G.S. 166A-19.20."

SECTION 2.(d) G.S. 14-288.11 reads as rewritten:

"**§ 14-288.11. Warrants to inspect vehicles in riot areas or approaching municipalities during emergencies.**

(a) Notwithstanding the provisions of Article 4 of Chapter 15, any law-enforcement officer may, under the conditions specified in this section, obtain a warrant authorizing inspection of vehicles under the conditions and for the purpose specified in subsection (b).

(b) The inspection shall be for the purpose of discovering any dangerous weapon or substance likely to be used by one who is or may become unlawfully involved in a riot. The warrant may be sought to inspect:

(1) All vehicles entering or approaching a municipality in which ~~a state of~~ an emergency exists; or

(2) All vehicles which might reasonably be regarded as being within or approaching the immediate vicinity of an existing riot.

(c) The warrant may be issued by any judge or justice of the General Court of Justice.

(d) The issuing official shall issue the warrant only when he has determined that the one seeking the warrant has been specifically authorized to do so by the head of the law-enforcement agency of which the affiant is a member, and:

(1) If the warrant is being sought for the inspection of vehicles entering or approaching a municipality, that ~~a state of~~ an emergency exists within the municipality; or

(2) If the warrant being sought is for the inspection of vehicles within or approaching the immediate vicinity of a riot, that a riot is occurring within that area.

Facts indicating the basis of these determinations must be stated in an affidavit and signed by the affiant under oath or affirmation.

(e) The warrant must be signed by the issuing official and must bear the hour and date of its issuance.

(f) The warrant must indicate whether it is for the inspection of vehicles entering or approaching a municipality or whether it is for the inspection of vehicles within or approaching the immediate vicinity of a riot. In either case, it must also specify with reasonable precision the area within which it may be exercised.

(g) The warrant shall become invalid 24 hours following its issuance and must bear a notation to that effect.

(h) Warrants authorized under this section shall not be regarded as search warrants for the purposes of application of Article 4 of Chapter 15.

(i) Nothing in this section is intended to prevent warrantless frisks, searches, and inspections to the extent that they may be constitutional and consistent with common law and governing statutes."

SECTION 2.(e) G.S. 14-288.12 through G.S. 14-288.17 and G.S. 14-288.19 are repealed.

SECTION 2.(f) G.S. 14-288.18 reads as rewritten:

"**§ 14-288.18. Injunction to cope with emergencies at public and private educational institutions.**

(a) The chief administrative officer, or his authorized representative, of any public or private educational institution may apply to any superior court judge for injunctive relief if ~~a state of~~ an emergency exists ~~or is imminent~~ within his institution. For the purposes of this section, the superintendent of any city or county administrative school unit shall be deemed the chief administrative officer of any public elementary or secondary school within his unit.

(b) Upon a finding by a superior court judge, to whom application has been made under the provisions of this section, that ~~a state of~~ an emergency exists ~~or is imminent~~ within a public or private educational institution by reason of riot, disorderly conduct by three or more persons, or the imminent threat of riot, the judge may issue an injunction containing provisions appropriate to cope with the emergency then occurring or threatening. The injunction may be addressed to named persons or named or described groups of persons as to whom there is satisfactory cause for believing that they are contributing to the ~~existing or imminent state of~~ emergency, and ordering such persons or groups of persons to take or refrain or desist from taking such various actions as the judge finds it appropriate to include in his order."

SECTION 2.(g) G.S. 20-118.4(a) reads as rewritten:

"**§ 20-118.4. Firefighting equipment exempt from size and weight restrictions while transporting or moving heavy equipment in an emergency; permits.**

(a) Exemption From Weight and Size Restrictions During Emergency Response. – Any overweight or oversize vehicle owned and operated by a State or local government or cooperating federal agency is exempt from the weight and size restrictions of this Chapter and implementing rules while it is actively engaged in (i) a response to a fire under the authority of a forest ranger pursuant to G.S. 113-55(a); (ii) a county request for forest protection assistance pursuant to G.S. 113-59; (iii) a request for assistance under a state of emergency declared pursuant to G.S. 14-288.12, 14-288.13, 14-288.14, 14-288.15, and any other applicable statutes and provisions of common law; (iv) a request for assistance under a disaster declared pursuant to ~~G.S 166A-6 or G.S. 166A-8,~~ G.S. 166A-19.20 or G.S. 166A-19.21, when the vehicle meets the following conditions:

...."

SECTION 2.(h) G.S. 42A-36 reads as rewritten:

"**§ 42A-36. Mandatory evacuations.**

If State or local authorities, acting pursuant to ~~Article 36A of Chapter 14 or Article 1 of Chapter 166A~~ Article 1A of Chapter 166A of the General Statutes, order a mandatory evacuation of an area that includes the residential property subject to a vacation rental, the tenant under the vacation rental agreement, whether in possession of the property or not, shall comply with the evacuation order. Upon compliance, the tenant shall be entitled to a refund from the landlord of the rent, taxes, and any other payments made by the tenant pursuant to the vacation rental agreement as a condition of the tenant's right to occupy the property prorated for each night that the tenant is unable to occupy the property because of the mandatory evacuation order. The tenant shall not be entitled to a refund if: (i) prior to the tenant taking possession of

the property, the tenant refused insurance offered by the landlord or real estate broker that would have compensated the tenant for losses or damages resulting from loss of use of the property due to a mandatory evacuation order; or (ii) the tenant purchased insurance offered by the landlord or real estate broker. The insurance offered shall be provided by an insurance company duly authorized by the North Carolina Department of Insurance, and the cost of the insurance shall not exceed eight percent (8%) of the total amount charged for the vacation rental to the tenant less the amount paid by the tenant for a security deposit."

SECTION 2.(i) G.S. 58-2-46 reads as rewritten:

"**§ 58-2-46. State of disaster; automatic stay of proof of loss requirements; premium and debt deferrals; loss adjustments for separate windstorm policies.**

Whenever a state of disaster is proclaimed for the State or for an area within the State under ~~G.S. 166A-6~~ G.S. 166A-19.20 or whenever the President of the United States has issued a major disaster declaration for the State or for an area within the State under the Stafford Act, 42 U.S.C. § 5121, et seq., as amended:

...."

SECTION 2.(j) G.S. 58-2-47 reads as rewritten:

"**§ 58-2-47. Incident affecting operations of the Department; stay of deadlines and deemer provisions.**

Regardless of whether a state of disaster has been proclaimed under ~~G.S. 166A-6~~ G.S. 166A-19.20 or declared under the Stafford Act, whenever an incident beyond the Department's reasonable control, including an act of God, insurrection, strike, fire, power outage, or systematic technological failure, substantially affects the daily business operations of the Department, the Commissioner may issue an order, effective immediately, to stay the application of any deadlines and deemer provisions imposed by law or rule upon the Commissioner or Department or upon persons subject to the Commissioner's jurisdiction, which deadlines and deemer provisions would otherwise operate during the time period for which the operations of the Department have been substantially affected. The order shall remain in effect for a period not exceeding 30 days. The order may be renewed by the Commissioner for successive periods not exceeding 30 days each for as long as the operations of the Department remain substantially affected, up to a period of one year from the effective date of the initial order."

SECTION 2.(k) G.S. 58-3-228(b)(2) reads as rewritten:

"(2) The covered person requesting coverage of the refill or replacement prescription resides in a county that:

a. Is covered under a proclamation of state of disaster issued by the Governor or by a resolution of the General Assembly under ~~G.S. 166A-6,~~ G.S. 166A-19.20, or a declaration of major disaster issued by the President of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as amended; or

b. Is declared to be under a state of emergency in a proclamation issued by the Governor under G.S. 14-288.15."

SECTION 2.(l) G.S. 58-33-70(e) reads as rewritten:

"(e) The Commissioner may permit an experienced adjuster, who regularly adjusts in another state and who is licensed in the other state (if that state requires a license), to act as an adjuster in this State without a North Carolina license only for an insurance company authorized to do business in this State, for emergency insurance adjustment work, for a period to be determined by the Commissioner, done for an employer who is an adjuster licensed by this State or who is a regular employer of one or more adjusters licensed by this State; provided that the employer shall furnish to the Commissioner a notice in writing immediately upon the beginning of any such emergency insurance adjustment work. As used in this subsection,

"emergency insurance adjustment work" includes, but is not limited to, (i) adjusting of a single loss or losses arising out of an event or catastrophe common to all of those losses or (ii) adjusting losses in any area declared to be a state of disaster by the Governor under ~~G.S. 166A-6~~ G.S. 166A-19.20 or by the President of the United States under applicable federal law."

SECTION 2.(m) G.S. 58-44-70(a) reads as rewritten:

"(a) This Part provides for a nonadversarial alternative dispute resolution procedure for a facilitated claim resolution conference prompted by the critical need for effective, fair, and timely handling of insurance claims arising out of damages to residential property as the result of an event for which there is a state of disaster declared within 60 days of the event. This Part applies only (i) if a state of disaster has been proclaimed for the State or for an area within the State by the Governor or by a resolution of the General Assembly under ~~G.S. 166A-6;~~ G.S. 166A-19.20; or (ii) if the President of the United States has issued a major disaster declaration for the State or for an area within the State under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as amended; and (iii) if the Commissioner issues an order establishing the mediation procedure authorized by this Part."

SECTION 2.(n) G.S. 58-44-75(2) reads as rewritten:

"**§ 58-44-75. Definitions.**

As used in this Part:

...

(2) Disaster. ~~As defined in G.S. 166A-4(1).~~ As the term 'emergency' is defined in G.S. 166A-19.3(5)."

SECTION 2.(o) G.S. 75-38(d) reads as rewritten:

"(d) A "triggering event" means the declaration of a state of emergency ~~pursuant to G.S. 166A-8 or Article 36A of Chapter 14 of the General Statutes, the proclamation of a state of disaster pursuant to G.S. 166A-6,~~ pursuant to Article 1A of Chapter 166A of the General Statutes or a finding of abnormal market disruption pursuant to G.S. 75-38(e)."

SECTION 2.(p) G.S. 83A-13.1(a) reads as rewritten:

"(a) A professional architect who voluntarily, without compensation, provides structural, electrical, mechanical, or other architectural services at the scene of a declared disaster or emergency, declared under federal law or in accordance with the provisions of ~~Article 1 of Chapter 166A of the General Statutes or Article 36A of Chapter 14 of the General Statutes,~~ Article 1A of Chapter 166A of the General Statutes, at the request of a public official, law enforcement official, public safety official, or building inspection official, acting in an official capacity, shall not be liable for any personal injury, wrongful death, property damage, or other loss caused by the professional architect's acts or omissions in the performance of the architectural services."

SECTION 2.(q) G.S. 89C-19.1(a) reads as rewritten:

"(a) A professional engineer who voluntarily, without compensation, provides structural, electrical, mechanical, or other engineering services at the scene of a declared disaster or emergency, declared under federal law or in accordance with the provisions of ~~Article 1 of Chapter 166A of the General Statutes or Article 36A of Chapter 14 of the General Statutes,~~ Article 1A of Chapter 166A of the General Statutes, at the request of a public official, law enforcement official, public safety official, or building inspection official, acting in an official capacity, shall not be liable for any personal injury, wrongful death, property damage, or other loss caused by the professional engineer's acts or omissions in the performance of the engineering services."

SECTION 2.(r) G.S. 122C-409 reads as rewritten:

"**§ 122C-409. Community of Butner comprehensive emergency management plan.**

The Department of Crime Control and Public Safety shall establish an emergency management agency as defined in ~~G.S. 166A-4(2)~~ G.S. 166A-19.3(8) for the Camp Butner Reservation, and the Town of Butner."

SECTION 2.(s) G.S. 131D-7 reads as rewritten:

"**§ 131D-7. Waiver of rules for certain adult care homes providing shelter or services during disaster or emergency.**

(a) The Division of Health Service Regulation may temporarily waive, during disasters or emergencies declared in accordance with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes, any rules of the Commission pertaining to adult care homes to the extent necessary to allow the adult care home to provide temporary shelter and temporary services requested by the emergency management agency. The Division may identify, in advance of a declared disaster or emergency, rules that may be waived, and the extent the rules may be waived, upon a disaster or emergency being declared in accordance with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the adult care home. The emergency management agency requesting temporary shelter or temporary services shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(b) As used in this section, "emergency management agency" is as defined in ~~G.S. 166A-4(2).~~G.S. 166A-19.3."

SECTION 2.(t) G.S. 131E-84 reads as rewritten:

"**§ 131E-84. Waiver of rules for hospitals that provide temporary shelter or temporary services during a disaster or emergency.**

(a) The Division of Health Service Regulation may temporarily waive, during disasters or emergencies declared in accordance with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes, any rules of the Commission pertaining to a hospital to the extent necessary to allow the hospital to provide temporary shelter and temporary services requested by the emergency management agency. The Division may identify, in advance of a declared disaster or emergency, rules that may be waived, and the extent to which the rules may be waived, upon a declaration of disaster or emergency in accordance with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the hospital. The emergency management agency requesting temporary shelter or temporary services shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(b) As used in this section, "emergency management agency" is as defined in ~~G.S. 166A-4.~~G.S. 166A-19.3."

SECTION 2.(u) G.S. 131E-112 reads as rewritten:

"**§ 131E-112. Waiver of rules for health care facilities that provide temporary shelter or temporary services during a disaster or emergency.**

(a) The Division of Health Service Regulation may temporarily waive, during disasters or emergencies declared in accordance with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes, any rules of the Commission pertaining to facilities or home care agencies to the extent necessary to allow the facility or home care agency to provide temporary shelter and temporary services requested by the emergency management agency. The Division may identify, in advance of a declared disaster or emergency, rules that may be waived, and the extent the rules may be waived, upon a disaster or emergency being declared in accordance

with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the facility. The emergency management agency requesting temporary shelter or temporary services shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(b) As used in this section, "emergency management agency" is as defined in ~~G.S. 166A-4(2).~~G.S. 166A-19.3."

SECTION 2.(v) G.S. 143C-4-4(b) reads as rewritten:

"(b) Authorized Uses. – Notwithstanding any other provision of law, funds appropriated to the Contingency and Emergency Fund may be used only for expenditures required: (i) by a court or Industrial Commission order, (ii) to respond to events as authorized under ~~G.S. 166A-5(1)a.9.~~ G.S. 166A-19.40(a) of the North Carolina Emergency Management Act, or (iii) for other statutorily authorized purposes or other contingencies and emergencies."

SECTION 2.(w) G.S. 143C-5-2 reads as rewritten:

"**§ 143C-5-2. Order of appropriations bills.**

Each house of the General Assembly shall first pass its version of the Current Operations Appropriations Act on third reading and order it sent to the other chamber before placing any other appropriations bill on the calendar for second reading. This section does not apply to the following bills:

(1) An appropriations bill to respond to ~~a disaster as defined by G.S. 166A-4(1).~~an emergency as defined by G.S. 166A-19.3.

(2) An appropriations bill making adjustments to the current year budget.

(3) An appropriations bill authorizing continued operations at current funding levels."

SECTION 2.(x) G.S. 143C-6-4(b)(2) reads as rewritten:

"(b) Adjustments to the Certified Budget. – Notwithstanding the provisions of G.S. 143C-6-1, a State agency may, with approval of the Director of the Budget, spend more than was authorized in the certified budget for all of the following:

...

(2) A purpose or program if the overexpenditure of the purpose or program is:

a. Required by a court or Industrial Commission order;

b. Authorized under ~~G.S. 166A-5(1)a.9.~~ G.S. 166A-19.40(a) of the North Carolina Emergency Management Act; or

c. Required to call out the National Guard."

SECTION 2.(y) G.S. 166A-24 read as rewritten:

"**§ 166A-24. Immunity of Regional Response Team Personnel.**

Members of a regional response team shall be protected from liability under the provisions of ~~G.S. 166A-14(a)~~ G.S. 166A-19.60(a) while responding to a hazardous materials or terrorist incident pursuant to authorization from the Division of Emergency Management."

SECTION 2.(z) G.S. 14-409.40(f) reads as rewritten:

"(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 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, 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 declared under ~~Article 36A of this Chapter.~~Article 1A of Chapter 166A of the General Statutes."

SECTION 2.(aa) G.S. 14-415.4(e)(6) reads as rewritten:

"(e) Disqualifiers Requiring Denial of Petition. – The court shall deny the petition to restore the firearms rights of any petitioner if the court finds any of the following:

...

(6) The petitioner 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 a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or 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, 14-277.3, 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,~~ 14-288.20A, 14-318.2, 14-415.21(b), or 14-415.26(d), or a substantially similar out-of-state or federal offense."

SECTION 2.(bb) G.S. 14-415.12(b)(8) reads as rewritten:

"(b) The sheriff shall deny a permit to an applicant who:

...

(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,~~ 14-288.20A, 14-318.2, 14-415.21(b), 14-415.26(d), or former G.S. 14-277.3."

SECTION 2.(cc) G.S. 18B-110 reads as rewritten:

"**§ 18B-110. Emergency.**

When the Governor finds that ~~a "state of emergency," as defined in G.S. 14-288.1,~~ an emergency, as that term is defined in G.S. 166A-19.3, exists anywhere in this State, he may

(1) Order the closing of all ABC stores, and

(2) Order the cessation of all sales, transportation, manufacture, and bottling of alcoholic beverages.

The Governor's order shall apply in those portions of the State designated in the order, for the duration of the state of emergency. Any order by the Governor under this section shall be directed to the Chairman of the Commission and to the Secretary of Crime Control and Public Safety."

SECTION 2.(dd) G.S. 70-13.1(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears upon an applicant's fitness to conduct archaeological investigations under G.S. 70-13. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers and Court Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article

19C, Financial Identity Fraud; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(ee) G.S. 74F-18(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice locksmithing. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(ff) G.S. 90-12.5 reads as rewritten:

"**§ 90-12.5. Disasters and emergencies.**

In the event of an occurrence which the Governor of the State of North Carolina has declared ~~a disaster or when the Governor has declared~~ a state of emergency, or in the event of an occurrence for which a county or municipality has enacted an ordinance to deal with states of emergency under ~~G.S. 14-288.12, 14-288.13, or 14-288.14,~~ G.S. 166A-19.31, or to protect the public health, safety, or welfare of its citizens under Article 22 of Chapter 130A of the General Statutes, G.S. 160A-174(a) or G.S. 153A-121(a), as applicable, the Board may waive the requirements of this Article in order to permit the provision of emergency health services to the public."

SECTION 2.(gg) G.S. 90-85.25(a) reads as rewritten:

"**§ 90-85.25. Disasters and emergencies.**

(a) In the event of an occurrence which the Governor of the State of North Carolina has declared ~~a disaster or when the Governor has declared~~ a state of emergency, or in the event of an occurrence for which a county or municipality has enacted an ordinance to deal with states of emergency under ~~G.S. 14-288.12, 14-288.13, or 14-288.14,~~ G.S. 166A-19.31, or to protect the public health, safety, or welfare of its citizens under G.S. 160A-174(a) or G.S. 153A-121(a), as applicable, the Board may waive the requirements of this Article in order to permit the provision of drugs, devices, and professional services to the public."

SECTION 2.(hh) G.S. 90-113.31A(14) reads as rewritten:

"(14) Criminal history. – A history of conviction of a State crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice substance abuse professional services. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(ii) G.S. 90-171.48(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a State crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice nursing. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article

26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(jj) G.S. 90-270.63(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a State or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice marriage and family therapy. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(kk) G.S. 90-288.01(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure as a nursing home administrator. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings;

Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(ll) G.S. 90-345(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a State or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice professional counseling. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(mm) G.S. 93E-2-11(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for registration to act as a real estate appraisal management company. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative

Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(nn) G.S. 114-19.6(a)(2) reads as rewritten:

"(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(oo) G.S. 114-19.12(a)(2) reads as rewritten:

"(2) Criminal history. – A State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for holding a paid or volunteer position with a fire department. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(pp) G.S. 114-19.23(a)(2) reads as rewritten:

"(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Public Instruction. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of

G.S. 18B-302, or driving while impaired violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(qq) G.S. 115C-238.29K(a)(1) reads as rewritten:

"(1) "Criminal history" means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates an individual (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel. These crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(rr) G.S. 115C-332(a)(1) reads as rewritten:

"(1) "Criminal history" means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as public school personnel. Such crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; and Article 60,

Computer-Related Crime. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subparagraph, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(ss) G.S. 121-25.1(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears upon an applicant's fitness to conduct activities related to the surveillance, protection, preservation, and archaeological recovery of property subject to the exclusive dominion and control of the State under G.S. 121-22. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers and Court Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 19C, Financial Identity Fraud; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(tt) G.S. 122C-80(e) reads as rewritten:

"(e) Relevant Offense. – As used in this section, "relevant offense" means a county, state, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of persons needing mental health, developmental disabilities, or substance abuse services. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses

Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(uu) G.S. 131D-40(d) reads as rewritten:

"(d) Relevant Offense. – As used in this section, "relevant offense" means a county, state, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of aged or disabled persons. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(vv) G.S. 143-143.10A(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure under this Part. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots,

Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(ww) G.S. 143-215.94II reads as rewritten:

"**§ 143-215.94II. Emergency proclamation; Governor's powers.**

(a) Whenever any emergency exists or appears imminent, arising from the discharge of oil or other pollutants within the marine environment, the Governor shall by proclamation declare ~~the fact and that~~ a state of emergency ~~exists~~ in the appropriate sections of the State. Upon such proclamation, the Governor shall have all powers enumerated in ~~G.S. 14-288.15,~~ G.S. 166A-19.30(c) subject to the ~~provisions of G.S. 14-288.16.~~limitations contained in that subsection.

(b) If the Governor is unavailable, the Lieutenant Governor shall, by proclamation, declare the fact and ~~that a~~ shall declare a state of emergency ~~exists~~ in the appropriate sections of the State.

(c) In performing his duties under this section, the Governor is authorized and directed to cooperate with all departments and agencies of the federal government, the offices and agencies of other states and foreign countries and the political subdivisions thereof, and private agencies in all matters pertaining to an emergency described herein.

(d) In addition to the powers enumerated in ~~G.S. 14-288.15,~~ G.S. 166A-19.30(c), in the case of such an emergency described in subsection (a) of this section, the Governor is further authorized and empowered to transfer any funds available to him by statute for emergency use into the Oil or Other Hazardous Substances Pollution Protection Fund created pursuant to G.S. 143-215.87, to be utilized for the purposes specified therein."

SECTION 2.(xx) G.S. 143B-146.16(a)(1) reads as rewritten:

"(1) "Criminal history" means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel. Such crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; and Article 60,

Computer-Related Crime. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(yy) G.S. 153A-129 reads as rewritten:

"**§ 153A-129. Firearms.**

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.~~Article 1A of Chapter 166A of the General Statutes."

SECTION 2.(zz) G.S. 160A-189 reads as rewritten:

"**§ 160A-189. Firearms.**

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.~~Article 1A of Chapter 166A of the General Statutes."

EFFECTIVE DATE

SECTION 3. This act becomes effective October 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

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.

SENATE BILL 798:
Various Emergency Management Changes

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 22, 2012
Introduced by:	Sen. Brunstetter	**Prepared by:**	Brad Krehely
Analysis of:	First Edition		Committee Counsel

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-SMRN-79(e1) v4

**Ben Stanley contributed substantially to the drafting of this summary.*

VISITOR REGISTRATION SHEET

Judiciary I-2012 Short Session — 5-17-2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Lassiter	NCSTA
Dennis Allen	North Carolina Rifle & Pistol Assoc
Mike Mahan	NCRPA
Penny Hufham	School of Gov.
Elise Quick	Troutman Sanders
Karen Bostmon	Troutman Sanders
Susanna Hailey	K&L Gates
Dayton Holbrook	NC DPS
Mary Lewis	NCDPS

VISITOR REGISTRATION SHEET

Judiciary I-2012 Short Session — 5-17-2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chip Killian	Nelson Mullins
Susanna Hailey	K&L Gates
Will Polk	NCDPS
[illegible]	Bar Assn.
Kim Wilson	NCAJ
Meredith Darlington	Intern (Sen. Mansfield)
Leah Elliott	CISNC
Julie White	NCMMC
David Elmore	Moore & Van Allen
John Tucker	Moore & Van Allen
Ches McDowell	BMLI
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

Judiciary I-2012 Short Session — 5-17-2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dirk Carlyn	Law Offices of Richard H. Carlyn
Kevin Leonard	NCACC
Holly Safi	DOA
Rose Vaughn Williams	NCDOT
Betsy Bailey	PENC
[illegible]	UNC
Jeff Carey	SACM
Doug Hoell	NCEM - NCDPS
Mildred Spearman	NCDOC
Jennifer Epperson	NC DOJ
Safa Sajadi	NC DOJ - intern

VISITOR REGISTRATION SHEET

Judiciary I-2012 Short Session — 5-17-2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andrew Cagle	NC Sheriffs' Assoc.
John Rolfe	NCAOC
Lisa Martin	NC Home Builders
Colleen Kachanek	Kachanek Law Group
Rick Zechini	Progress Energy
David Barnes	PS
Henry Jones	Jordan Price
Nelson Jones	Jordan Price
Danielle Musselwhite	Jdson Deans Assoc
Laurie Anne	Jason Dean Assoc.
Joe McClees	McClees Consult

SENATE JUDICIARY I COMMITTEE
Tuesday, May 22, 2012 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on May 22, 2012, in Room 1027 of the Legislative Building. 16 members of the committee were present. Senator Brunstetter , Presided.

S.B. 798 – Various Emergency Management Changes

Senator Brunstetter asked Vice-Chairman Senator Goolsby to preside. Senator Brunstetter was recognized to explain the bill. The bill makes various changes to the emergency management statutes and creates a Joint Oversight Committee. Senator Brunstetter moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 517- Magistrate Calendaring

Representative Stevens was recognized to explain the bill. This bill would amend the statutes to provide for the appointment of a Chief Magistrate, discipline of magistrates, a study on magistrate appointment, and for calendaring by the court under certain circumstances. Staff attorney was recognized to explain the analysis of the PCS, which (1) corrects the effective date, (2) changes the date by which the Administrative Office of the Courts must report the results of its study to no later than March 1, 2013, (3) provides that a magistrate's suspension is for a period of time set by the court at its discretion, and (4) makes other technical changes. Members of the public were recognized to voice concern. The bill was held for a later vote to allow members to study the bill.

H.B. 778- Amend Innocence Commission Laws

Representative Stevens was recognized to explain the bill. The bill would amend statutes relating to claims referred to the Innocence Inquiry Commission, and to the preservation of physical and biological evidence. The bill was held for a later vote.

H.B. 803-Allow Court to Assess Atty Fees/50C Orders

Representative Stevens was recognized to explain the bill. The bill would authorize the court to assess attorneys' fees in Chapter 50 civil no-contact orders. Senator Brunstetter moved for a favorable report and the motion carried.

The meeting adjourned at 10:17 AM .

Senator Peter Brunstetter, Presiding

Michael Lewis, Committee Clerk

Senate Judiciary I Committee
Tuesday, May 22, 2012, 10:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

Remove	HB 517	Magistrates/Calendaring.	Representative Sager Representative Stevens
Remove	HB 778	Amend Innocence Commission Laws.	Representative Stevens
	HB 803	Allow Court to Assess Atty Fees/50C Orders.	Representative Rhyne, Jr.
	SB 798	Various Emergency Management Changes.	Senator Brunstetter

Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY

SENATE

JUDICIARY I COMMITTEE REPORT

Senator Peter S. Brunstetter, Chair

Tuesday. May 22, 2012

Senator BRUNSTETTER,

submits the following with recommendations as to passage:

FAVORABLE

S.B. **798** Various Emergency Management Changes.

Sequential Referral: None

Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **803** Allow Court to Assess Atty Fees/50C Orders.

Draft Number: PCS70270

Sequential Referral: None

Recommended Referral: None

Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comments:

Senator Brunstetter will speak on S798 & H803

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 803
Committee Substitute Favorable 4/20/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H803-CSST-93 [v.1]

5/21/2012 11:40:01 AM

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 becomes effective October 1, 2012, and applies to actions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 2

HOUSE BILL 803
Committee Substitute Favorable 4/20/11

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 becomes effective October 1, 2011, and applies to actions filed on or after that date.

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.

SENATE BILL 798:
Various Emergency Management Changes

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 22, 2012
Introduced by:	Sen. Brunstetter	**Prepared by:**	Brad Krehely
Analysis of:	First Edition		Committee Counsel

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-SMRN-79(e1) v4

**Ben Stanley contributed substantially to the drafting of this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 517
Committee Substitute Favorable 5/25/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H517-CSRN-41 [v.4]

5/21/2012 6:46:25 PM

Short Title: Magistrates/Calendaring. (Public)

Sponsors:

Referred to:

March 30, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE APPOINTMENT OF CHIEF MAGISTRATES, TO PROVIDE FOR ADDITIONAL DISCIPLINE OF MAGISTRATES, TO PROVIDE FOR A STUDY ON THE METHOD OF APPOINTING MAGISTRATES, AND TO PROVIDE FOR CERTAIN CONTROL OF CALENDARING IN SUPERIOR COURT BY THE SENIOR RESIDENT SUPERIOR COURT JUDGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-146 reads as rewritten:

"**§ 7A-146. Administrative authority and duties of chief district judge.**

The chief district judge, subject to the general supervision of the Chief Justice of the Supreme Court, has administrative supervision and authority over the operation of the district courts and magistrates in his district. These powers and duties include, but are not limited to, the following:

...

(4) Assigning matters to magistrates, and consistent with the salaries set by the Administrative Officer of the Courts, prescribing times and places at which magistrates shall be available for the performance of their duties; however, the chief district judge may in writing delegate his authority to prescribe times and places at which magistrates in a particular county shall be available for the performance of their duties to another district court judge or the clerk of the superior court, or the judge may appoint a chief magistrate to fulfill some or all of the duties under subdivision (12) of this section, and the person to whom such authority is delegated shall make monthly reports to the chief district judge of the times and places actually served by each magistrate.

...

(12) Designating a full-time magistrate in a county to serve as chief magistrate for that county for an indefinite term and at the judge's pleasure. The chief magistrate shall have the derivative administrative authority assigned by the chief district court judge under subdivision (4) of this section. This subdivision applies only to counties in which the chief district court judge determines that designating a chief magistrate would be in the interest of justice."

SECTION 2. G.S. 7A-173 reads as rewritten:

"**§ 7A-173. ~~Suspension;~~ Suspension pending a hearing; ~~removal;~~ removal or suspension from duties; reinstatement.**

(a) A magistrate may be suspended from performing the duties of ~~his~~the magistrate's office by the chief district judge of the district court district in which his county is located, ~~or~~ and suspended or removed from office by the senior regular resident superior court judge of, or any regular superior court judge holding court in, the district or set of districts as defined in G.S. 7A-41.1(a) in which the county is located. Grounds for suspension or removal are the same as for a judge of the General Court of Justice.

(b) Suspension from performing the duties of the office may be ordered by the chief district judge upon filing of sworn written charges in the office of clerk of superior court for the county in which the magistrate resides. If the chief district judge, upon examination of the sworn charges, finds that the charges, if true, constitute grounds for removal, ~~he~~ the chief district judge may enter an order suspending the magistrate from performing the duties of his office until a final determination of the charges on the merits. During suspension the salary of the magistrate continues.

(c) If a hearing, with or without suspension, is ordered, the magistrate against whom the charges have been made shall be given immediate written notice of the proceedings and a true copy of the charges, and the matter shall be set by the chief district judge for hearing before the senior regular resident superior court judge or a regular superior court judge holding court in the district or set of districts as defined in G.S. 7A-41.1(a) in which the county is located. The hearing shall be held in a county within the district or set of districts not less than 10 days nor more than 30 days after the magistrate has received a copy of the charges. The hearing shall be open to the public. All testimony offered shall be recorded. At the hearing the superior court judge shall receive evidence, and make findings of fact and conclusions of law. If ~~he~~ the court finds that grounds for removal exist, ~~he shall~~ the court may enter an order permanently removing the magistrate from office, and terminating his salary. In lieu of a permanent removal, the court may order the magistrate to be suspended from any performance of the duties of the magistrate's office for a period of time set by the court at its discretion. A magistrate who is suspended under this subsection shall receive no salary during the period of that suspension. If ~~he~~ the court finds that no ~~such~~ grounds for disciplinary action exist, ~~he~~ the court shall terminate the ~~suspension,~~ suspension imposed under subsection (b) of this section, if any. Upon a determination that a magistrate has engaged in conduct that is not of such a nature as would warrant suspension or removal, the court may issue to the magistrate a public reprimand.

(d) A magistrate may appeal from an order of removal or suspension under subsection (c) of this section to the Court of Appeals on the basis of error of law by the superior court judge. Pending decision of the case on appeal, the magistrate shall not perform any of the duties of ~~his~~ the magistrate's office. If, upon final determination, ~~he~~ the magistrate is ordered reinstated, either by the appellate division or by the superior court on remand, ~~his~~the magistrate's salary shall be restored from the date of the original order of ~~removal.~~removal or suspension."

SECTION 3. The Administrative Office of the Courts, in consultation with the Conference of Superior Court Judges, the Conference of District Court Judges, the Conference of Clerks of Superior Court, and the North Carolina Magistrates Association, shall study the issue of whether the State constitutional provision that the senior resident superior court judge shall appoint magistrates from nominations by the Clerk of Superior Court should continue as the method for appointment of magistrates, or whether an amendment to the State Constitution to provide for a different method would be both practical in light of the current responsibilities of officers of the court and lead to better efficiencies in the administration of justice. The Administrative Office of the Courts shall submit a report of its findings and recommendations,

including any legislative recommendations, to the 2013 General Assembly no later than March 1, 2013.

SECTION 4. G.S. 7A-49.4(c) reads as rewritten:

"(c) Definite Trial Date. – When a case has not otherwise been scheduled for trial within 120 days of indictment or of service of notice of indictment if required by law, then upon motion by the defendant at any time thereafter, the senior resident superior court judge, or a superior court judge designated by the senior resident superior court judge, may hold a hearing for the purpose of establishing a trial date for the defendant. Notwithstanding the establishment of a trial date under this subsection, if a case has not been tried within nine months after the defendant has been indicted or bound over to superior court, the senior resident superior court judge may give notice to the district attorney and the defendant's attorney and schedule a trial conference for trial of the case, unless the district attorney provides good cause that the case is not yet ready for trial."

SECTION 5. Sections 1 and 3 of the act are effective when this act becomes law. Section 2 of this act becomes effective January 1, 2013, and applies to the filing of charges on or after that date. Section 4 of this act becomes effective January 1, 2013. The remainder of this act is effective when it becomes law.

HOUSE BILL 517
Committee Substitute Favorable 5/25/11

Short Title: Magistrates/Calendaring. (Public)

Sponsors:

Referred to:

March 30, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE APPOINTMENT OF CHIEF MAGISTRATES, TO PROVIDE FOR ADDITIONAL DISCIPLINE OF MAGISTRATES, TO PROVIDE FOR A STUDY ON THE METHOD OF APPOINTING MAGISTRATES, AND TO PROVIDE FOR CERTAIN CONTROL OF CALENDARING IN SUPERIOR COURT BY THE SENIOR RESIDENT SUPERIOR COURT JUDGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-146 reads as rewritten:

"**§ 7A-146. Administrative authority and duties of chief district judge.**

The chief district judge, subject to the general supervision of the Chief Justice of the Supreme Court, has administrative supervision and authority over the operation of the district courts and magistrates in his district. These powers and duties include, but are not limited to, the following:

...

(4) Assigning matters to magistrates, and consistent with the salaries set by the Administrative Officer of the Courts, prescribing times and places at which magistrates shall be available for the performance of their duties; however, the chief district judge may in writing delegate his authority to prescribe times and places at which magistrates in a particular county shall be available for the performance of their duties to another district court judge or the clerk of the superior court, or the judge may appoint a chief magistrate to fulfill some or all of the duties under subdivision (12) of this section, and the person to whom such authority is delegated shall make monthly reports to the chief district judge of the times and places actually served by each magistrate.

...

(12) Designating a full-time magistrate in a county to serve as chief magistrate for that county for an indefinite term and at the judge's pleasure. The chief magistrate shall have the derivative administrative authority assigned by the chief district court judge under subdivision (4) of this section. This subdivision applies only to counties in which the chief district court judge determines that designating a chief magistrate would be in the interest of justice."

SECTION 2. G.S. 7A-173 reads as rewritten:

"**§ 7A-173. ~~Suspension;~~ Suspension pending a hearing; ~~removal;~~ removal or suspension from duties; reinstatement.**

(a) A magistrate may be suspended from performing the duties of his office by the chief district judge of the district court district in which his county is located, ~~or~~ and suspended or removed from office by the senior regular resident superior court judge of, or any regular superior court judge holding court in, the district or set of districts as defined in G.S. 7A-41.1(a) in which the county is located. Grounds for suspension or removal are the same as for a judge of the General Court of Justice.

(b) Suspension from performing the duties of the office may be ordered upon filing of sworn written charges in the office of clerk of superior court for the county in which the magistrate resides. If the chief district judge, upon examination of the sworn charges, finds that the charges, if true, constitute grounds for removal, ~~he~~ the court may enter an order suspending the magistrate from performing the duties of his office until a final determination of the charges on the merits. During suspension the salary of the magistrate continues.

(c) If a hearing, with or without suspension, is ordered, the magistrate against whom the charges have been made shall be given immediate written notice of the proceedings and a true copy of the charges, and the matter shall be set by the chief district judge for hearing before the senior regular resident superior court judge or a regular superior court judge holding court in the district or set of districts as defined in G.S. 7A-41.1(a) in which the county is located. The hearing shall be held in a county within the district or set of districts not less than 10 days nor more than 30 days after the magistrate has received a copy of the charges. The hearing shall be open to the public. All testimony offered shall be recorded. At the hearing the superior court judge shall receive evidence, and make findings of fact and conclusions of law. If ~~he~~ the court finds that grounds for removal exist, ~~he shall~~ the court may enter an order permanently removing the magistrate from office, and terminating his salary. In lieu of a permanent removal, the court may order the magistrate to be suspended from any performance of the duties of the magistrate's office. A magistrate who is suspended shall receive no compensation during the period of that suspension. If ~~he~~ the court finds that no ~~such~~ grounds for disciplinary action exist, ~~he~~ the court shall terminate the ~~suspension,~~ suspension imposed under subsection (b) of this section, if any. Upon a determination that a magistrate has engaged in conduct that is not of such a nature as would warrant suspension or removal, the court may issue to the magistrate a public reprimand.

(d) A magistrate may appeal from an order of removal or suspension to the Court of Appeals on the basis of error of law by the superior court judge. Pending decision of the case on appeal, the magistrate shall not perform any of the duties of ~~his~~ the magistrate's office. If, upon final determination, he is ordered reinstated, either by the appellate division or by the superior court on remand, his salary shall be restored from the date of the original order of ~~removal.~~removal or suspension."

SECTION 3. The Administrative Office of the Courts, in consultation with the Conference of Superior Court Judges, the Conference of District Court Judges, the Conference of Clerks of Superior Court, and the North Carolina Magistrates Association, shall study the issue of whether the State constitutional provision that the senior resident superior court judge shall appoint magistrates from nominations by the Clerk of Superior Court should continue as the method for appointment of magistrates, or whether an amendment to the State Constitution to provide for a different method would be both practical in light of the current responsibilities of officers of the court and lead to better efficiencies in the administration of justice. The Administrative Office of the Courts shall submit a report of its findings and recommendations, including any legislative recommendations, to the 2012 Regular Session of the General Assembly upon its convening.

SECTION 4. G.S. 7A-49.4(c) reads as rewritten:

"(c) Definite Trial Date. – When a case has not otherwise been scheduled for trial within 120 days of indictment or of service of notice of indictment if required by law, then upon motion by the defendant at any time thereafter, the senior resident superior court judge, or a

superior court judge designated by the senior resident superior court judge, may hold a hearing for the purpose of establishing a trial date for the defendant. Notwithstanding the establishment of a trial date under this subsection, if a case has not been tried within nine months after the defendant has been indicted or bound over to superior court, the senior resident superior court judge may give notice to the district attorney and the defendant's attorney and schedule a trial conference for trial of the case, unless the district attorney provides good cause that the case is not yet ready for trial."

SECTION 5. Sections 1, 3 and this section of the act are effective when this act becomes law. The remainder of this act becomes effective January 1, 2012.

HOUSE BILL 517:
Magistrates/Calendaring

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 22, 2012
Introduced by:	Reps. Stevens, Sager	**Prepared by:**	Brad Krehely
Analysis of:	PCS to Second Edition H517-CSRN-41		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 517 (PCS) amends the statutes to provide for the appointment of a Chief Magistrate, discipline of magistrates, a study on magistrate appointment, and for calendaring by the court under certain circumstances. The PCS (1) corrects the effective date, (2) changes the date by which the Administrative Office of the Courts must report the results of its study to no later than March 1, 2013, (3) provides that a magistrate's suspension is for a period of time set by the court at its discretion, and (4) makes other technical changes.***

BILL ANALYSIS:

Section 1: The chief district judge may currently appoint another district court judge or the clerk of superior court to perform administrative duties. The act authorizes the appointment of a "chief magistrate" as well.

Section 2: Currently, a magistrate may only be removed from office following a hearing by the senior regular resident superior court judge or a regular superior court judge. The act would also allow the magistrate to be suspended without pay, or receive a public reprimand.

Section 3: The act provides for a study by the Administrative Office of the Courts on whether an amendment to the State Constitution to provide for a different method for appointment of magistrates would be both practical in light of the current responsibilities of officers of the court and lead to better efficiencies in the administration of justice. The Administrative Office of the Courts shall submit a report of its findings and recommendations, including any legislative recommendations, to the 2013 General Assembly no later than March 1, 2013.

Section 4: G.S. 7A-49.4 deals with Superior Court criminal case docketing. Section 4 authorizes the senior resident superior court judge to schedule a trial conference if the case has not been tried within 9 months of indictment or the defendant has not been bound over to superior court unless the district attorney provides good cause as to why the case is not ready for trial.

EFFECTIVE DATE: Sections 1 and 3 are effective when the act becomes law. Section 2 becomes effective January 1, 2013, and applies to the filing of charges on or after that date. Section 4 becomes effective January 1, 2013. The remainder of this act is effective when it becomes law.

H517-SMRN-80(CSRN-41) v3

**Hal Pell, Counsel to House Judiciary Subcommittee B, contributed to the drafting of this summary.*

HOUSE BILL 778
Committee Substitute Favorable 6/2/11
Third Edition Engrossed 6/3/11

Short Title: Amend Innocence Commission Laws. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND LAWS RELATING TO THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION AND THE PRESERVATION OF BIOLOGICAL EVIDENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-268(a1) reads as rewritten:

"(a1) Notwithstanding any other provision of law and subject to subsection (b) of this section, a custodial agency shall preserve any physical ~~evidence~~ evidence, regardless of the date of collection, that is reasonably likely to contain any biological evidence collected in the course of a criminal investigation or prosecution. Evidence shall be preserved in a manner reasonably calculated to prevent contamination or degradation of any biological evidence that might be present, subject to a continuous chain of custody, and securely retained with sufficient official documentation to locate the evidence."

SECTION 2. G.S. 15A-268(a7) reads as rewritten:

"(a7) Upon written request by the defendant, the custodial agency shall prepare an inventory of biological evidence relevant to the defendant's case that ~~has been preserved pursuant to this section.~~is in the custodial agency's custody. If the evidence was destroyed through court order or other written directive, the custodial agency shall provide the defendant with a copy of the court order or written directive."

SECTION 3. G.S. 15A-268(b) reads as rewritten:

"(b) The custodial agency required to preserve evidence pursuant to subsection (a1) of this section may dispose of the evidence prior to the expiration of the period of time described in subsection (a6) of this section if all of the following conditions are met:

(1) The custodial agency sent notice of its intent to dispose of the evidence to the district attorney in the county in which the conviction was obtained.

(1a) The custodial agency has determined that it has no duty to preserve the evidence under G.S. 15A-1471.

(2) The district attorney gave to each of the following persons written notification of the intent of the custodial agency to dispose of the evidence: any defendant convicted of a felony who is currently incarcerated in connection with the case, the defendant's counsel of record for that case, and the Office of Indigent Defense Services. The notice shall be consistent with the provisions of this section, and the district attorney shall send a copy of the notice to the custodial agency. Delivery of written notification from the district attorney to the defendant was effectuated by the district attorney transmitting the written notification to the superintendent of the correctional

facility where the defendant was assigned at the time and the superintendent's personal delivery of the written notification to the defendant. Certification of delivery by the superintendent to the defendant in accordance with this subdivision was in accordance with subsection (c) of this section.

(3) The written notification from the district attorney specified the following:

a. That the custodial agency would destroy the evidence collected in connection with the case unless the custodial agency received a written request that the evidence not be destroyed.

b. The address of the custodial agency where the written request was to be sent.

c. That the written request from the defendant, or his or her representative, must be received by the custodial agency within 90 days of the date of receipt by the defendant of the district attorney's written notification.

d. That the written request must ask that the evidence not be destroyed or disposed of for one of the following reasons:

1. The case is currently on appeal.

2. The case is currently in postconviction proceedings.

3. The defendant will file a motion for DNA testing pursuant to G.S. 15A-269 within 180 days of the postmark of the defendant's response to the district attorney's written notification of the custodial agency's intent to dispose of the evidence, unless a request for extension is requested by the defendant and agreed to by the custodial agency.

4. The case has been referred to the North Carolina Innocence Inquiry Commission pursuant to Article 92 of Chapter 15A of the General Statutes.

(4) The custodial agency did not receive a written request in compliance with the conditions set forth in sub-subdivision (3)d. of this subsection within 90 days of the date of receipt by the defendant of the district attorney's written notification."

SECTION 4. G.S. 15A-1460 reads as rewritten:

"**§ 15A-1460. Definitions.**

The following definitions apply in this Article:

(1) "Claim of factual innocence" means a claim on behalf of a living person convicted of a felony in the General Court of Justice of the State of North Carolina, asserting the complete innocence of any criminal responsibility for the felony for which the person was convicted and for any other reduced level of criminal responsibility relating to the crime, and for which there is some credible, verifiable evidence of innocence that has not previously been presented at trial or considered at a hearing granted through postconviction relief.

(1a) "Claimant" means a person asserting that he or she is completely innocent of any criminal responsibility for a felony crime upon which the person was convicted and for any other reduced level of criminal responsibility relating to the crime.

(2) "Commission" means the North Carolina Innocence Inquiry Commission established by this Article.

(3) "Director" means the Director of the North Carolina Innocence Inquiry Commission.

(4) "Victim" means the victim of the crime, or if the victim of the crime is deceased, the next of kin of the victim."

SECTION 5. G.S. 15A-1467(a) reads as rewritten:

"(a) A claim of factual innocence may be referred to the Commission by any court, ~~person, or agency.~~ a State or local agency, a claimant, or a claimant's counsel. The Commission shall not consider a claim of factual innocence if the convicted person is deceased. The determination of whether to grant a formal inquiry regarding any other claim of factual innocence is in the discretion of the Commission. The Commission may informally screen and dismiss a case summarily at its discretion."

SECTION 6. G.S. 15A-1468(b) reads as rewritten:

"(b) The Director shall use all due diligence to notify the victim at least 30 days prior to any proceedings of the full Commission held in regard to the victim's case. The Commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Article. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance of the proceedings of his or her intent to attend. ~~If the Commission determines that the victim's presence may interfere with the investigation, the Commission may close any portion of the proceedings to the victim.~~"

SECTION 7. The Innocence Inquiry Commission shall include, as part of its rules of operation, the holding of a prehearing conference to be held at least 10 days prior to any proceedings of the full Commission. Only the following persons shall be notified and authorized to attend the prehearing conference: the District Attorney, or the District Attorney's designee, of the district where the claimant was convicted of the felony upon which the claim of factual innocence is based; the claimant's counsel, if any; the Chair of the Commission; the Executive Director of the Commission; and any Commission staff designated by the Director. The District Attorney, or designee, shall be provided (i) an opportunity to inspect any evidence that may be presented to the Commission that has not previously been presented to any judicial officer or body and (ii) any information that he or she deems relevant to the proceedings. Prior to any Commission proceedings, the District Attorney or designee is authorized to provide the Commission with a written statement, which shall be included in the record of the Commission's proceedings. Any statement included in the record shall be part of the Commission's record of proceedings pursuant to G.S. 15A-1468(e).

SECTION 8. G.S. 15A-1469 reads as rewritten:

"**§ 15A-1469. Postcommission three-judge panel.**

(a) If the Commission concludes there is sufficient evidence of factual innocence to merit judicial review, the Chair of the Commission shall request the Chief Justice to appoint a three-judge panel, not to include any trial judge that has had substantial previous involvement in the case, and issue commissions to the members of the three-judge panel to convene a special session of the superior court of the original jurisdiction to hear evidence relevant to the Commission's recommendation. The senior judge of the panel shall preside. The Chief Justice shall appoint the three-judge panel within 20 days of the filing of the Commission's opinion finding sufficient evidence of factual innocence to merit judicial review.

(a1) If ~~there is an allegation of or evidence~~ the Commission concludes that there is credible evidence of prosecutorial misconduct in the case, the Chair of the Commission ~~or the district attorney of the district of conviction~~ may request the ~~Director of the Administrative Office of the Courts~~ Attorney General to appoint a special prosecutor to represent the State in lieu of the district attorney of the district of conviction or the district attorney's designee. The request for the special prosecutor shall be made within 20 days of the filing of the Commission's opinion finding sufficient evidence of innocence to merit judicial review.

Upon receipt of a request under this subsection to appoint a special prosecutor, the ~~Director of the Administrative Office of the Courts~~ Attorney General may temporarily assign a district

attorney, assistant district attorney, or other qualified attorney, ~~including one from the prosecutorial district where the convicted person was tried,~~ to represent the State at the hearing before the three-judge panel. However, the ~~Director of the Administrative Office of the Courts~~ Attorney General shall not appoint as special prosecutor any attorney who prosecuted or assisted with the prosecution in the trial of the convicted ~~person.~~ person, or is a prosecuting attorney in the district where the convicted person was tried. The appointment shall be made ~~pursuant to G.S. 7A-64 and shall be made~~ no later than 20 days after the receipt of the request.

(b) The senior resident superior court judge shall enter an order setting the case for hearing at the special session of superior court for which the three-judge panel is commissioned and shall require the State to file a response to the Commission's opinion within 90 days of the date of the order. Such response, at the time of original filing or through amendment at any time before or during the proceedings, may include joining the defense in a motion to dismiss the charges with prejudice on the basis of innocence.

(c) The district attorney of the district of conviction, or the district attorney's designee, shall represent the State at the hearing before the three-judge panel, except as otherwise provided by this section.

(d) The three-judge panel shall conduct an evidentiary hearing. At the hearing, the court, and the defense and prosecution through the court, may compel the testimony of any witness, including the convicted person. All credible, verifiable evidence relevant to the case, even if considered by a jury or judge in a prior proceeding, may be presented during the hearing. The convicted person may not assert any privilege or prevent a witness from testifying. The convicted person has a right to be present at the evidentiary hearing and to be represented by counsel. A waiver of the right to be present shall be in writing.

(e) The senior resident superior court judge shall determine the convicted person's indigence status and, if appropriate, enter an order for the appointment of counsel. The court may also enter an order relieving an indigent convicted person of all or a portion of the costs of the proceedings.

(f) The clerk of court shall provide written notification to the victim 30 days prior to any case-related hearings.

(g) Upon the motion of either party, the senior judge of the panel may direct the attorneys for the parties to appear before him or her for a conference on any matter in the case.

(h) The three-judge panel shall rule as to whether the convicted person has proved by clear and convincing evidence that the convicted person is innocent of the charges. Such a determination shall require a unanimous vote. If the vote is unanimous, the panel shall enter dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief.

(i) A person who is determined by the three-judge panel to be innocent of all charges and against whom the charges are dismissed pursuant to this section is eligible for compensation under Article 8 of Chapter 148 of the General Statutes without obtaining a pardon of innocence from the Governor."

SECTION 9. G.S. 7A-64(a1) is repealed.

SECTION 10. Article 92 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1471. Preservation of files and evidence; production of files and evidence; forensic and DNA testing.**

(a) Upon receiving written notice from the Commission of a Commission inquiry, the State shall preserve all files and evidence subject to disclosure under G.S. 15A-903. Once the Commission provides written notice to the State that the Commission's inquiry is complete, the duty to preserve under this section shall cease; however, other preservation requirements may be applicable.

(b) The Commission is entitled to a copy of all records preserved under subsection (a) of this section, including access to inspect and examine all physical evidence.

(c) Upon request of the Commission, the State shall transfer custody of physical evidence to the Commission's Director, or the Director's designee, for forensic and DNA testing. The Commission shall preserve evidence in a manner reasonably calculated to prevent contamination or degradation of any biological evidence that might be present, while subject to a continuous chain of custody and securely retained with sufficient official documentation to locate the evidence. At or prior to the completion of the Commission's inquiry, the Commission shall return all remaining evidence.

(d) The Commission shall have the right to subject physical evidence to forensic and DNA testing, including consumption of biological material, as necessary for the Commission's inquiry. If testing complies with FBI requirements and the data meets NDIS criteria, profiles obtained from the testing shall be searched and uploaded to CODIS. The Commission shall incur all costs associated with ensuring compliance with FBI requirements and NDIS criteria."

SECTION 11. G.S. 148-82(b) reads as rewritten:

"(b) Any person who, having been convicted of a felony after pleading not guilty or nolo contendere and having been imprisoned therefor in a State prison of this State, and who is determined to be innocent of all charges and against whom the charges are dismissed pursuant to G.S. 15A-1469 may as hereinafter provided present by petition a claim against the State for the pecuniary loss sustained by the person through his or her erroneous conviction and imprisonment, provided the petition is presented within five years of the date that the dismissal of the charges is entered by the three-judge panel under G.S. 15A-1469."

SECTION 12. This act is effective when it becomes law and applies to any pending claims on the effective date or claims filed on or after the effective date.

HOUSE BILL 803:
Allow Court to Assess Atty Fees/50C Orders

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 21, 2012
Introduced by:	Rep. Rhyne	**Prepared by:**	R. Erika Churchill Committee Counsel
Analysis of:	PCS to Second Edition H803-CSST-93		

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.

G.S. 50C-5 permits the court to issue a no-contact order where it is found that the complainant is a victim of unlawful conduct. The court may order the respondent to not visit, assault, molest or otherwise interfere with the victim. The court may order the respondent to cease stalking, harassing, abusing, injuring, or contacting the victim by telephone, written communication or electronic means. The court may also order the respondent to stay away from the victim including prohibitions against entering the victim's residence, school, place of employment or other specified places at times when the complainant is present.

Currently, recovery of attorneys' fees is not authorized in civil no-contact orders.

BILL ANALYSIS: The proposed committee substitute for House Bill 803 would authorize the court to assess attorneys' fees in Chapter 50C civil no-contact orders.

EFFECTIVE DATE: October 1, 2012 and applies to actions filed on or after that date.

H803-SMST-72(CSST-93) v1

PAGES ATTENDING

COMMITTEE: Judiciary I (Brunstetter) **ROOM:** 1027 LB

DATE: 5-22 **TIME:** 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Jen Browne	Fuquay-Varina	Atwater
2 Jackson Hooks	Wilson	Newton
3 Christina Lee	Four Oaks	P. Berger
4 George Smith	Four Oaks	Rouzer
5 Aida Daniel	Morganton	Daniel
6 Jamie Bynum	Wilson	Newton
7 Lexus Sanders	Cary	Blue
8		
9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

VISITOR REGISTRATION SHEET

Judiciary I

(Committee Name)

May 22, 2012

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Henry Hultay	N.C.S.B.A.
Stephen Kouba	CompassNC
Shad Bradke	Ward & Smith
Fran Piercy	Ragsdale Liggett
BRUCE THOMPSON	PARKER POE
SHARON STELLATO	INNOCENCE COMM
Kendra Montgomery-Blinn	"
Lindsay Quice Smith	" "
Elise Quick	Troutman Sanders
Susanna Hailey	K&L Gates
Ben Miles	GRNC
Jeff Rau	GRNC
Dick Taylor	NCAJ
Peg Dorer	Conf. of DAs
Tom Maher	JDS
Zach Greene	Progress Energy
Ashley Harris	NC Coalition Against Sexual Assault

VISITOR REGISTRATION SHEET
Judiciary I

(Committee Name)

May 22, 2012

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert Youngblood	Grass Roots, NC Vice Chair Randolph Tea Party
Joseph Thaden	Legislative Intern Sen. Bounstetter
[signature]	K & L Tales

09-21-201

VISITOR REGISTRATION SHEET
Judiciary I

(Committee Name)

May 22, 2012

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Todd Barlow	NC Advocates for Justice
Mitchell	NCDHHS
Kevin Leonard	NCACC
Sara Khan	NCACC
Chris Mumm	NCCAT
Ken Leonard	NCBA

09-21-201

VISITOR REGISTRATION SHEET
Judiciary I

(Committee Name)

May 22, 2012

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Todd Miller	Perquimans CSC.
Barbara Moore	Cof J Clerks Assn
Jovin Freeman	Wake CSC
Anthony Roulette	NRA
Meredith Darlington	intern (Sen. Mansfield)
Barbara Carden	BBGC
Daniel Auburn	NCRMA
Cameron Hanley	Electricities
Weldon Jones	Jordan Price
Jena M. Edelman	Sen. Jenkins
Amy Whited	NCMS
Maeu Gardner	GSIC
Penny Huffman	School of Gov.
Nicole King	Intern Rep Sarah Stevens
Mildred Spearman	NCAOC
Chuck Price	President-Elect NCMA
David Elmore	Moore + Van Allen

09-21-201

SENATE JUDICIARY I COMMITTEE
Thursday, May 24, 2012 at 9:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 9:00 AM on May 24, 2012, in Room 1027 of the Legislative Building. 12 members of the committee were present. Senator Brunstetter, presided.

H.B. 517-Senator Brown was recognized to offer an amendment. Senator Brown yielded to Representative Stevens to explain the PCS as amended. Senator Clodfelter was recognized for comment and announced support for the bill. Senator Brown moved for an unfavorable report as to the original bill, and a favorable report as to the PCS as amended, and the motion carried. The amendment will be rolled into a new PCS. A copy is attached.

H.B. 778- Representative Stevens was recognized to explain the bill. The bill would amend statutes relating to claims referred to the Innocence Inquiry Commission, and to the preservation of physical and biological evidence. Senator Brunstetter moved for a favorable report and the motion carried.

The meeting adjourned at 9:09 AM .

Senator Brunstetter , Presiding

Michael Lewis, Committee Clerk

Senate Judiciary I Committee
Thursday, May 24, 2012 9:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 517	Magistrates/Calendaring.	Representative Sager Representative Stevens
Removed HB 597	UI/Fix Aggrieved Party Definition.	Representative Murry
Removed HB 690	RE Closing ~~Interest/Civil~~ Penalty UPL.	Representative Jordan Representative Stevens Representative Moore
Removed HB 707	~~Deeds of Trust/Modernize Procedures.~~	Representative Rhyne, Jr.
HB 778	Amend Innocence Commission Laws.	Representative Stevens

Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY

SENATE

JUDICIARY I COMMITTEE REPORT

Senator Peter S. Brunstetter, Chair

Thursday. May 24, 2012

Senator BRUNSTETTER,

submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) **778** Amend Innocence Commission Laws.

Sequential Referral: None

Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **517** Magistrates/Calendaring.

Draft Number: PCS70285

Sequential Referral: None

Recommended Referral: None

Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comments:

HB517 Senator Brunstetter

HB778 Senator Brunstetter

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 517
Committee Substitute Favorable 5/25/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H517-CSRN-41 [v.4]

5/21/2012 6:46:25 PM

Short Title: Magistrates/Calendaring. (Public)

Sponsors:

Referred to:

March 30, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE APPOINTMENT OF CHIEF MAGISTRATES, TO PROVIDE FOR ADDITIONAL DISCIPLINE OF MAGISTRATES, TO PROVIDE FOR A STUDY ON THE METHOD OF APPOINTING MAGISTRATES, AND TO PROVIDE FOR CERTAIN CONTROL OF CALENDARING IN SUPERIOR COURT BY THE SENIOR RESIDENT SUPERIOR COURT JUDGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-146 reads as rewritten:

"**§ 7A-146. Administrative authority and duties of chief district judge.**

The chief district judge, subject to the general supervision of the Chief Justice of the Supreme Court, has administrative supervision and authority over the operation of the district courts and magistrates in his district. These powers and duties include, but are not limited to, the following:

...

(4) Assigning matters to magistrates, and consistent with the salaries set by the Administrative Officer of the Courts, prescribing times and places at which magistrates shall be available for the performance of their duties; however, the chief district judge may in writing delegate his authority to prescribe times and places at which magistrates in a particular county shall be available for the performance of their duties to another district court judge or the clerk of the superior court, or the judge may appoint a chief magistrate to fulfill some or all of the duties under subdivision (12) of this section, and the person to whom such authority is delegated shall make monthly reports to the chief district judge of the times and places actually served by each magistrate.

...

(12) Designating a full-time magistrate in a county to serve as chief magistrate for that county for an indefinite term and at the judge's pleasure. The chief magistrate shall have the derivative administrative authority assigned by the chief district court judge under subdivision (4) of this section. This subdivision applies only to counties in which the chief district court judge determines that designating a chief magistrate would be in the interest of justice."

SECTION 2. G.S. 7A-173 reads as rewritten:

"**§ 7A-173. ~~Suspension;~~ Suspension pending a hearing; ~~removal;~~ removal or suspension from duties; reinstatement.**

(a) A magistrate may be suspended from performing the duties of ~~his~~the magistrate's office by the chief district judge of the district court district in which his county is located, ~~or~~ and suspended or removed from office by the senior regular resident superior court judge of, or any regular superior court judge holding court in, the district or set of districts as defined in G.S. 7A-41.1(a) in which the county is located. Grounds for suspension or removal are the same as for a judge of the General Court of Justice.

(b) Suspension from performing the duties of the office may be ordered by the chief district judge upon filing of sworn written charges in the office of clerk of superior court for the county in which the magistrate resides. If the chief district judge, upon examination of the sworn charges, finds that the charges, if true, constitute grounds for removal, ~~he~~ the chief district judge may enter an order suspending the magistrate from performing the duties of his office until a final determination of the charges on the merits. During suspension the salary of the magistrate continues.

(c) If a hearing, with or without suspension, is ordered, the magistrate against whom the charges have been made shall be given immediate written notice of the proceedings and a true copy of the charges, and the matter shall be set by the chief district judge for hearing before the senior regular resident superior court judge or a regular superior court judge holding court in the district or set of districts as defined in G.S. 7A-41.1(a) in which the county is located. The hearing shall be held in a county within the district or set of districts not less than 10 days nor more than 30 days after the magistrate has received a copy of the charges. The hearing shall be open to the public. All testimony offered shall be recorded. At the hearing the superior court judge shall receive evidence, and make findings of fact and conclusions of law. If ~~he~~ the court finds that grounds for removal exist, ~~he shall~~ the court may enter an order permanently removing the magistrate from office, and terminating his salary. In lieu of a permanent removal, the court may order the magistrate to be suspended from any performance of the duties of the magistrate's office for a period of time set by the court at its discretion. A magistrate who is suspended under this subsection shall receive no salary during the period of that suspension. If ~~he~~ the court finds that no ~~such~~ grounds for disciplinary action exist, ~~he~~ the court shall terminate the ~~suspension,~~ suspension imposed under subsection (b) of this section, if any. Upon a determination that a magistrate has engaged in conduct that is not of such a nature as would warrant suspension or removal, the court may issue to the magistrate a public reprimand.

(d) A magistrate may appeal from an order of removal or suspension under subsection (c) of this section to the Court of Appeals on the basis of error of law by the superior court judge. Pending decision of the case on appeal, the magistrate shall not perform any of the duties of ~~his~~ the magistrate's office. If, upon final determination, ~~he~~ the magistrate is ordered reinstated, either by the appellate division or by the superior court on remand, ~~his~~the magistrate's salary shall be restored from the date of the original order of ~~removal.~~removal or suspension."

SECTION 3. The Administrative Office of the Courts, in consultation with the Conference of Superior Court Judges, the Conference of District Court Judges, the Conference of Clerks of Superior Court, and the North Carolina Magistrates Association, shall study the issue of whether the State constitutional provision that the senior resident superior court judge shall appoint magistrates from nominations by the Clerk of Superior Court should continue as the method for appointment of magistrates, or whether an amendment to the State Constitution to provide for a different method would be both practical in light of the current responsibilities of officers of the court and lead to better efficiencies in the administration of justice. The Administrative Office of the Courts shall submit a report of its findings and recommendations,

including any legislative recommendations, to the 2013 General Assembly no later than March 1, 2013.

SECTION 4. G.S. 7A-49.4(c) reads as rewritten:

"(c) Definite Trial Date. – When a case has not otherwise been scheduled for trial within 120 days of indictment or of service of notice of indictment if required by law, then upon motion by the defendant at any time thereafter, the senior resident superior court judge, or a superior court judge designated by the senior resident superior court judge, may hold a hearing for the purpose of establishing a trial date for the defendant. Notwithstanding the establishment of a trial date under this subsection, if a case has not been tried within nine months after the defendant has been indicted or bound over to superior court, the senior resident superior court judge may give notice to the district attorney and the defendant's attorney and schedule a trial conference for trial of the case, unless the district attorney provides good cause that the case is not yet ready for trial."

SECTION 5. Sections 1 and 3 of the act are effective when this act becomes law. Section 2 of this act becomes effective January 1, 2013, and applies to the filing of charges on or after that date. Section 4 of this act becomes effective January 1, 2013. The remainder of this act is effective when it becomes law.

HOUSE BILL 517
Committee Substitute Favorable 5/25/11

Short Title: Magistrates/Calendaring. (Public)

Sponsors:

Referred to:

March 30, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE APPOINTMENT OF CHIEF MAGISTRATES, TO PROVIDE FOR ADDITIONAL DISCIPLINE OF MAGISTRATES, TO PROVIDE FOR A STUDY ON THE METHOD OF APPOINTING MAGISTRATES, AND TO PROVIDE FOR CERTAIN CONTROL OF CALENDARING IN SUPERIOR COURT BY THE SENIOR RESIDENT SUPERIOR COURT JUDGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-146 reads as rewritten:

"**§ 7A-146. Administrative authority and duties of chief district judge.**

The chief district judge, subject to the general supervision of the Chief Justice of the Supreme Court, has administrative supervision and authority over the operation of the district courts and magistrates in his district. These powers and duties include, but are not limited to, the following:

...

(4) Assigning matters to magistrates, and consistent with the salaries set by the Administrative Officer of the Courts, prescribing times and places at which magistrates shall be available for the performance of their duties; however, the chief district judge may in writing delegate his authority to prescribe times and places at which magistrates in a particular county shall be available for the performance of their duties to another district court judge or the clerk of the superior court, or the judge may appoint a chief magistrate to fulfill some or all of the duties under subdivision (12) of this section, and the person to whom such authority is delegated shall make monthly reports to the chief district judge of the times and places actually served by each magistrate.

...

(12) Designating a full-time magistrate in a county to serve as chief magistrate for that county for an indefinite term and at the judge's pleasure. The chief magistrate shall have the derivative administrative authority assigned by the chief district court judge under subdivision (4) of this section. This subdivision applies only to counties in which the chief district court judge determines that designating a chief magistrate would be in the interest of justice."

SECTION 2. G.S. 7A-173 reads as rewritten:

"**§ 7A-173. ~~Suspension;~~ Suspension pending a hearing; ~~removal;~~ removal or suspension from duties; reinstatement.**

(a) A magistrate may be suspended from performing the duties of his office by the chief district judge of the district court district in which his county is located, ~~or~~ and suspended or removed from office by the senior regular resident superior court judge of, or any regular superior court judge holding court in, the district or set of districts as defined in G.S. 7A-41.1(a) in which the county is located. Grounds for suspension or removal are the same as for a judge of the General Court of Justice.

(b) Suspension from performing the duties of the office may be ordered upon filing of sworn written charges in the office of clerk of superior court for the county in which the magistrate resides. If the chief district judge, upon examination of the sworn charges, finds that the charges, if true, constitute grounds for removal, ~~he~~ the court may enter an order suspending the magistrate from performing the duties of his office until a final determination of the charges on the merits. During suspension the salary of the magistrate continues.

(c) If a hearing, with or without suspension, is ordered, the magistrate against whom the charges have been made shall be given immediate written notice of the proceedings and a true copy of the charges, and the matter shall be set by the chief district judge for hearing before the senior regular resident superior court judge or a regular superior court judge holding court in the district or set of districts as defined in G.S. 7A-41.1(a) in which the county is located. The hearing shall be held in a county within the district or set of districts not less than 10 days nor more than 30 days after the magistrate has received a copy of the charges. The hearing shall be open to the public. All testimony offered shall be recorded. At the hearing the superior court judge shall receive evidence, and make findings of fact and conclusions of law. If ~~he~~ the court finds that grounds for removal exist, ~~he shall~~ the court may enter an order permanently removing the magistrate from office, and terminating his salary. In lieu of a permanent removal, the court may order the magistrate to be suspended from any performance of the duties of the magistrate's office. A magistrate who is suspended shall receive no compensation during the period of that suspension. If ~~he~~ the court finds that no ~~such~~ grounds for disciplinary action exist, ~~he~~ the court shall terminate the ~~suspension,~~ suspension imposed under subsection (b) of this section, if any. Upon a determination that a magistrate has engaged in conduct that is not of such a nature as would warrant suspension or removal, the court may issue to the magistrate a public reprimand.

(d) A magistrate may appeal from an order of removal or suspension to the Court of Appeals on the basis of error of law by the superior court judge. Pending decision of the case on appeal, the magistrate shall not perform any of the duties of ~~his~~ the magistrate's office. If, upon final determination, he is ordered reinstated, either by the appellate division or by the superior court on remand, his salary shall be restored from the date of the original order of ~~removal.~~ removal or suspension."

SECTION 3. The Administrative Office of the Courts, in consultation with the Conference of Superior Court Judges, the Conference of District Court Judges, the Conference of Clerks of Superior Court, and the North Carolina Magistrates Association, shall study the issue of whether the State constitutional provision that the senior resident superior court judge shall appoint magistrates from nominations by the Clerk of Superior Court should continue as the method for appointment of magistrates, or whether an amendment to the State Constitution to provide for a different method would be both practical in light of the current responsibilities of officers of the court and lead to better efficiencies in the administration of justice. The Administrative Office of the Courts shall submit a report of its findings and recommendations, including any legislative recommendations, to the 2012 Regular Session of the General Assembly upon its convening.

SECTION 4. G.S. 7A-49.4(c) reads as rewritten:

"(c) Definite Trial Date. – When a case has not otherwise been scheduled for trial within 120 days of indictment or of service of notice of indictment if required by law, then upon motion by the defendant at any time thereafter, the senior resident superior court judge, or a

superior court judge designated by the senior resident superior court judge, may hold a hearing for the purpose of establishing a trial date for the defendant. Notwithstanding the establishment of a trial date under this subsection, if a case has not been tried within nine months after the defendant has been indicted or bound over to superior court, the senior resident superior court judge may give notice to the district attorney and the defendant's attorney and schedule a trial conference for trial of the case, unless the district attorney provides good cause that the case is not yet ready for trial."

SECTION 5. Sections 1, 3 and this section of the act are effective when this act becomes law. The remainder of this act becomes effective January 1, 2012.

HOUSE BILL 517:
Magistrates/Calendaring

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 22, 2012
Introduced by:	Reps. Stevens, Sager	**Prepared by:**	Brad Krehely
Analysis of:	PCS to Second Edition H517-CSRN-41		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 517 (PCS) amends the statutes to provide for the appointment of a Chief Magistrate, discipline of magistrates, a study on magistrate appointment, and for calendaring by the court under certain circumstances. The PCS (1) corrects the effective date, (2) changes the date by which the Administrative Office of the Courts must report the results of its study to no later than March 1, 2013, (3) provides that a magistrate's suspension is for a period of time set by the court at its discretion, and (4) makes other technical changes.***

BILL ANALYSIS:

Section 1: The chief district judge may currently appoint another district court judge or the clerk of superior court to perform administrative duties. The act authorizes the appointment of a "chief magistrate" as well.

Section 2: Currently, a magistrate may only be removed from office following a hearing by the senior regular resident superior court judge or a regular superior court judge. The act would also allow the magistrate to be suspended without pay, or receive a public reprimand.

Section 3: The act provides for a study by the Administrative Office of the Courts on whether an amendment to the State Constitution to provide for a different method for appointment of magistrates would be both practical in light of the current responsibilities of officers of the court and lead to better efficiencies in the administration of justice. The Administrative Office of the Courts shall submit a report of its findings and recommendations, including any legislative recommendations, to the 2013 General Assembly no later than March 1, 2013.

Section 4: G.S. 7A-49.4 deals with Superior Court criminal case docketing. Section 4 authorizes the senior resident superior court judge to schedule a trial conference if the case has not been tried within 9 months of indictment or the defendant has not been bound over to superior court unless the district attorney provides good cause as to why the case is not ready for trial.

EFFECTIVE DATE: Sections 1 and 3 are effective when the act becomes law. Section 2 becomes effective January 1, 2013, and applies to the filing of charges on or after that date. Section 4 becomes effective January 1, 2013. The remainder of this act is effective when it becomes law.

H517-SMRN-80(CSRN-41) v3

**Hal Pell, Counsel to House Judiciary Subcommittee B, contributed to the drafting of this summary.*

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 517 - CSRN-41[v.4) DATE May 22, 2012

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X

Rep.)
Sen.) ~~Stevens~~ Brown

1 moves to amend the bill on page 3, lines 12-13

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting those lines to read:

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5 "conference."

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ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 3

HOUSE BILL 778
Committee Substitute Favorable 6/2/11
Third Edition Engrossed 6/3/11

Short Title: Amend Innocence Commission Laws. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND LAWS RELATING TO THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION AND THE PRESERVATION OF BIOLOGICAL EVIDENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-268(a1) reads as rewritten:

"(a1) Notwithstanding any other provision of law and subject to subsection (b) of this section, a custodial agency shall preserve any physical ~~evidence~~ evidence, regardless of the date of collection, that is reasonably likely to contain any biological evidence collected in the course of a criminal investigation or prosecution. Evidence shall be preserved in a manner reasonably calculated to prevent contamination or degradation of any biological evidence that might be present, subject to a continuous chain of custody, and securely retained with sufficient official documentation to locate the evidence."

SECTION 2. G.S. 15A-268(a7) reads as rewritten:

"(a7) Upon written request by the defendant, the custodial agency shall prepare an inventory of biological evidence relevant to the defendant's case that ~~has been preserved pursuant to this section.~~is in the custodial agency's custody. If the evidence was destroyed through court order or other written directive, the custodial agency shall provide the defendant with a copy of the court order or written directive."

SECTION 3. G.S. 15A-268(b) reads as rewritten:

"(b) The custodial agency required to preserve evidence pursuant to subsection (a1) of this section may dispose of the evidence prior to the expiration of the period of time described in subsection (a6) of this section if all of the following conditions are met:

(1) The custodial agency sent notice of its intent to dispose of the evidence to the district attorney in the county in which the conviction was obtained.

(1a) The custodial agency has determined that it has no duty to preserve the evidence under G.S. 15A-1471.

(2) The district attorney gave to each of the following persons written notification of the intent of the custodial agency to dispose of the evidence: any defendant convicted of a felony who is currently incarcerated in connection with the case, the defendant's counsel of record for that case, and the Office of Indigent Defense Services. The notice shall be consistent with the provisions of this section, and the district attorney shall send a copy of the notice to the custodial agency. Delivery of written notification from the district attorney to the defendant was effectuated by the district attorney transmitting the written notification to the superintendent of the correctional

facility where the defendant was assigned at the time and the superintendent's personal delivery of the written notification to the defendant. Certification of delivery by the superintendent to the defendant in accordance with this subdivision was in accordance with subsection (c) of this section.

(3) The written notification from the district attorney specified the following:

a. That the custodial agency would destroy the evidence collected in connection with the case unless the custodial agency received a written request that the evidence not be destroyed.

b. The address of the custodial agency where the written request was to be sent.

c. That the written request from the defendant, or his or her representative, must be received by the custodial agency within 90 days of the date of receipt by the defendant of the district attorney's written notification.

d. That the written request must ask that the evidence not be destroyed or disposed of for one of the following reasons:

1. The case is currently on appeal.

2. The case is currently in postconviction proceedings.

3: The defendant will file a motion for DNA testing pursuant to G.S. 15A-269 within 180 days of the postmark of the defendant's response to the district attorney's written notification of the custodial agency's intent to dispose of the evidence, unless a request for extension is requested by the defendant and agreed to by the custodial agency.

4. The case has been referred to the North Carolina Innocence Inquiry Commission pursuant to Article 92 of Chapter 15A of the General Statutes.

(4) The custodial agency did not receive a written request in compliance with the conditions set forth in sub-subdivision (3)d. of this subsection within 90 days of the date of receipt by the defendant of the district attorney's written notification."

SECTION 4. G.S. 15A-1460 reads as rewritten:

"**§ 15A-1460. Definitions.**

The following definitions apply in this Article:

(1) "Claim of factual innocence" means a claim on behalf of a living person convicted of a felony in the General Court of Justice of the State of North Carolina, asserting the complete innocence of any criminal responsibility for the felony for which the person was convicted and for any other reduced level of criminal responsibility relating to the crime, and for which there is some credible, verifiable evidence of innocence that has not previously been presented at trial or considered at a hearing granted through postconviction relief.

(1a) "Claimant" means a person asserting that he or she is completely innocent of any criminal responsibility for a felony crime upon which the person was convicted and for any other reduced level of criminal responsibility relating to the crime.

(2) "Commission" means the North Carolina Innocence Inquiry Commission established by this Article.

(3) "Director" means the Director of the North Carolina Innocence Inquiry Commission.

(4) "Victim" means the victim of the crime, or if the victim of the crime is deceased, the next of kin of the victim."

SECTION 5. G.S. 15A-1467(a) reads as rewritten:

"(a) A claim of factual innocence may be referred to the Commission by any court, ~~person, or agency.~~ a State or local agency, a claimant, or a claimant's counsel. The Commission shall not consider a claim of factual innocence if the convicted person is deceased. The determination of whether to grant a formal inquiry regarding any other claim of factual innocence is in the discretion of the Commission. The Commission may informally screen and dismiss a case summarily at its discretion."

SECTION 6. G.S. 15A-1468(b) reads as rewritten:

"(b) The Director shall use all due diligence to notify the victim at least 30 days prior to any proceedings of the full Commission held in regard to the victim's case. The Commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Article. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance of the proceedings of his or her intent to attend. ~~If the Commission determines that the victim's presence may interfere with the investigation, the Commission may close any portion of the proceedings to the victim.~~"

SECTION 7. The Innocence Inquiry Commission shall include, as part of its rules of operation, the holding of a prehearing conference to be held at least 10 days prior to any proceedings of the full Commission. Only the following persons shall be notified and authorized to attend the prehearing conference: the District Attorney, or the District Attorney's designee, of the district where the claimant was convicted of the felony upon which the claim of factual innocence is based; the claimant's counsel, if any; the Chair of the Commission; the Executive Director of the Commission; and any Commission staff designated by the Director. The District Attorney, or designee, shall be provided (i) an opportunity to inspect any evidence that may be presented to the Commission that has not previously been presented to any judicial officer or body and (ii) any information that he or she deems relevant to the proceedings. Prior to any Commission proceedings, the District Attorney or designee is authorized to provide the Commission with a written statement, which shall be included in the record of the Commission's proceedings. Any statement included in the record shall be part of the Commission's record of proceedings pursuant to G.S. 15A-1468(e).

SECTION 8. G.S. 15A-1469 reads as rewritten:

"**§ 15A-1469. Postcommission three-judge panel.**

(a) If the Commission concludes there is sufficient evidence of factual innocence to merit judicial review, the Chair of the Commission shall request the Chief Justice to appoint a three-judge panel, not to include any trial judge that has had substantial previous involvement in the case, and issue commissions to the members of the three-judge panel to convene a special session of the superior court of the original jurisdiction to hear evidence relevant to the Commission's recommendation. The senior judge of the panel shall preside. The Chief Justice shall appoint the three-judge panel within 20 days of the filing of the Commission's opinion finding sufficient evidence of factual innocence to merit judicial review.

(a1) If ~~there is an allegation of or evidence~~ the Commission concludes that there is credible evidence of prosecutorial misconduct in the case, the Chair of the Commission ~~or the district attorney of the district of conviction~~ may request the ~~Director of the Administrative Office of the Courts~~ Attorney General to appoint a special prosecutor to represent the State in lieu of the district attorney of the district of conviction or the district attorney's designee. The request for the special prosecutor shall be made within 20 days of the filing of the Commission's opinion finding sufficient evidence of innocence to merit judicial review.

Upon receipt of a request under this subsection to appoint a special prosecutor, the ~~Director of the Administrative Office of the Courts~~ Attorney General may temporarily assign a district

attorney, assistant district attorney, or other qualified attorney, ~~including one from the prosecutorial district where the convicted person was tried,~~ to represent the State at the hearing before the three-judge panel. However, the ~~Director of the Administrative Office of the Courts~~ Attorney General shall not appoint as special prosecutor any attorney who prosecuted or assisted with the prosecution in the trial of the convicted ~~person.~~ person, or is a prosecuting attorney in the district where the convicted person was tried. The appointment shall be made ~~pursuant to G.S. 7A-64 and shall be made~~ no later than 20 days after the receipt of the request.

(b) The senior resident superior court judge shall enter an order setting the case for hearing at the special session of superior court for which the three-judge panel is commissioned and shall require the State to file a response to the Commission's opinion within 90 days of the date of the order. Such response, at the time of original filing or through amendment at any time before or during the proceedings, may include joining the defense in a motion to dismiss the charges with prejudice on the basis of innocence.

(c) The district attorney of the district of conviction, or the district attorney's designee, shall represent the State at the hearing before the three-judge panel, except as otherwise provided by this section.

(d) The three-judge panel shall conduct an evidentiary hearing. At the hearing, the court, and the defense and prosecution through the court, may compel the testimony of any witness, including the convicted person. All credible, verifiable evidence relevant to the case, even if considered by a jury or judge in a prior proceeding, may be presented during the hearing. The convicted person may not assert any privilege or prevent a witness from testifying. The convicted person has a right to be present at the evidentiary hearing and to be represented by counsel. A waiver of the right to be present shall be in writing.

(e) The senior resident superior court judge shall determine the convicted person's indigence status and, if appropriate, enter an order for the appointment of counsel. The court may also enter an order relieving an indigent convicted person of all or a portion of the costs of the proceedings.

(f) The clerk of court shall provide written notification to the victim 30 days prior to any case-related hearings.

(g) Upon the motion of either party, the senior judge of the panel may direct the attorneys for the parties to appear before him or her for a conference on any matter in the case.

(h) The three-judge panel shall rule as to whether the convicted person has proved by clear and convincing evidence that the convicted person is innocent of the charges. Such a determination shall require a unanimous vote. If the vote is unanimous, the panel shall enter dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief.

(i) A person who is determined by the three-judge panel to be innocent of all charges and against whom the charges are dismissed pursuant to this section is eligible for compensation under Article 8 of Chapter 148 of the General Statutes without obtaining a pardon of innocence from the Governor."

SECTION 9. G.S. 7A-64(a1) is repealed.

SECTION 10. Article 92 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1471. Preservation of files and evidence; production of files and evidence; forensic and DNA testing.**

(a) Upon receiving written notice from the Commission of a Commission inquiry, the State shall preserve all files and evidence subject to disclosure under G.S. 15A-903. Once the Commission provides written notice to the State that the Commission's inquiry is complete, the duty to preserve under this section shall cease; however, other preservation requirements may be applicable.

(b) The Commission is entitled to a copy of all records preserved under subsection (a) of this section, including access to inspect and examine all physical evidence.

(c) Upon request of the Commission, the State shall transfer custody of physical evidence to the Commission's Director, or the Director's designee, for forensic and DNA testing. The Commission shall preserve evidence in a manner reasonably calculated to prevent contamination or degradation of any biological evidence that might be present, while subject to a continuous chain of custody and securely retained with sufficient official documentation to locate the evidence. At or prior to the completion of the Commission's inquiry, the Commission shall return all remaining evidence.

(d) The Commission shall have the right to subject physical evidence to forensic and DNA testing, including consumption of biological material, as necessary for the Commission's inquiry. If testing complies with FBI requirements and the data meets NDIS criteria, profiles obtained from the testing shall be searched and uploaded to CODIS. The Commission shall incur all costs associated with ensuring compliance with FBI requirements and NDIS criteria."

SECTION 11. G.S. 148-82(b) reads as rewritten:

"(b) Any person who, having been convicted of a felony after pleading not guilty or nolo contendere and having been imprisoned therefor in a State prison of this State, and who is determined to be innocent of all charges and against whom the charges are dismissed pursuant to G.S. 15A-1469 may as hereinafter provided present by petition a claim against the State for the pecuniary loss sustained by the person through his or her erroneous conviction and imprisonment, provided the petition is presented within five years of the date that the dismissal of the charges is entered by the three-judge panel under G.S. 15A-1469."

SECTION 12. This act is effective when it becomes law and applies to any pending claims on the effective date or claims filed on or after the effective date.

HOUSE BILL 778:
Amend Innocence Commission Laws

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 21, 2012
Introduced by:	Rep. Stevens	**Prepared by:**	Susan Sitze
Analysis of:	Third Edition		Committee Counsel

SUMMARY: ***This bill would amend statutes relating to claims referred to the Innocence Inquiry Commission, and to the preservation of physical and biological evidence.***

BILL ANALYSIS:

Section 1: Clarifies that all evidence, regardless of when it was collected, is subject to preservation laws.

Section 2: Provides that a custodial agency shall provide a defendant an inventory of the evidence it possesses, and if the evidence was destroyed by court order or directive, a copy of the same shall be provided.

Section 3: Amends the list of conditions which must be met for an evidence custodian to dispose of evidence to include a determination that there is no duty to maintain the evidence under the Innocence Inquiry Commission statute, and that the district attorney has not provided notification that the evidence is needed for a Commission proceeding.

Section 4: Defines the term "claimant" as used in the Innocence Inquiry Commission proceedings.

Section 5: Amends the law which provides who may refer a claim of factual innocence to the Commission. Current law allows any court, person, or agency to do so. The amendment provides that any court, State or local law enforcement agency, claimant, or claimant's counsel. The change would require an organization working on behalf of a claimant to have either the claimant or the claimant's counsel submit the referral.

Section 6: Removes the Commission's authority to close the proceedings to the victim.

Section 7: Provides in uncodified language that the Commission must include in its rules the holding of a prehearing conference at least 10 days prior to full Commission proceedings. The conference attendees are limited to the DA where the claimant was convicted, the claimant's counsel, the Chair of the Commission, the Executive Director of the Commission, and any Commission staff designated by the Director. The DA shall be allowed an opportunity to inspect any new evidence and any information that they deem relevant to the proceedings. Prior to any Commission proceedings, the DA may provide a written statement to the Commission, which shall be included in the record of the Commission's proceedings.

Section 8: In cases of prosecutorial misconduct, changes the appointment authority for a special prosecutor before three-judge panel from the Director of the Administrative Office of the Courts to the Attorney General.

The threshold for the appointment of a special prosecutor is changed from "allegation of or evidence of" prosecutorial misconduct to a conclusion of "credible evidence" of prosecutorial misconduct by the Commission.

An attorney who prosecuted or assisted with the prosecution in the trial of the convicted person, or is a prosecuting attorney in the district where the convicted person was tried, would be ineligible for appointment.

Limits evidence in the hearing before the three-judge panel to only credible, verifiable evidence that is relevant to the case.

Section 9: Makes a conforming change by repealing a subsection of a statute that authorized the Director of the Administrative Office of the Courts to appoint a special prosecutor.

Section 10: Provides procedures for the preservation of evidence while a claim is pending before the Innocence Inquiry Commission

- The State must preserve evidence upon receipt of a notice from the Commission until notified that the inquiry is complete.
- The Commission has the right to copies of all records and to access and inspect all physical evidence.
- Upon notice, the State must transfer physical evidence to the Commission for forensic and DNA testing; the Commission must preserve evidence in a manner reasonably calculated to prevent contamination or degradation of any biological evidence.
- If testing complies with FBI requirements and the data meets NDIS criteria, profiles obtained from the testing will be searched and uploaded to CODIS."

Section 11: Amends the prerequisite for applying for compensation for imprisonment, based on a finding of Innocence by the three-judge panel, to require that the person pled not guilty or nolo contendere.

EFFECTIVE DATE: This act is effective when it becomes law and applies to any pending claims on the effective date or claims filed on or after the effective date.

Research Division *O. Walker Reagan, Director* *(919) 733-2578*

HOUSE BILL 597
Committee Substitute Favorable 5/16/11

Short Title: UI/Fix Aggrieved Party Definition. (Public)

Sponsors:

Referred to:

April 5, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN INDIVIDUAL WHO HAS BEEN AWARDED UNEMPLOYMENT INSURANCE BENEFITS BY THE EMPLOYMENT SECURITY COMMISSION, BUT DOES NOT RECEIVE THOSE BENEFITS AS THE RESULT OF AN ACT OR OMISSION OF THE COMMISSION, IS DEEMED AN AGGRIEVED PARTY FOR THE PURPOSES OF JUDICIAL REVIEW WITHOUT THE REQUIREMENT TO EXHAUST ADMINISTRATIVE REMEDIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-12(b)(1) reads as rewritten:

"(b) (1) a. Repealed by Session Laws 1977, c. 727, s. 52.

b. An individual who is totally unemployed shall be paid the individual's weekly benefit amount. The weekly benefit amount for an individual is the amount of the high-quarter wages paid to the individual in the individual's base period, divided by 26 and, if the quotient is not a whole dollar, rounded to the next lower whole dollar. If this amount is less than fifteen dollars ($15.00), the individual is not eligible for benefits.

c. Repealed by Session Laws 1981, c. 160, s. 17.

d. In any case where an individual has applied for weekly benefits and has been awarded benefits but fails to receive those benefits as the result of an act or omission on the part of the Commission, the Commission shall rectify the error and shall pay the benefits immediately. Any failure of the Commission to rectify and pay as required by this subdivision renders the individual an aggrieved party for the purposes of G.S. 96-15(h) who is not required to exhaust administrative remedies and who may obtain injunctive and other relief, including an order to compel the Commission to pay the benefits."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 3

HOUSE BILL 690
Committee Substitute Favorable 5/18/11
Third Edition Engrossed 5/19/11

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 knowingly 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.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 690
Committee Substitute Favorable 5/18/11
Third Edition Engrossed 5/19/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H690-CSLH-10 [v.3]

5/23/2012 3:20:17 PM

Short Title: Amend Evidence & Expunction Laws. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING DISPOSITION OF BLOOD EVIDENCE, ADMISSIBILITY OF REPORTS AFTER NOTICE AND DEMAND, AND EXPUNCTION OF DNA SAMPLES TAKEN UPON ARREST.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-139.1 is amended by adding a new section to read:

"(h) Disposition of Blood Evidence – Notwithstanding any other provision of law, any blood or urine sample subject to chemical analysis for the presence of alcohol, a controlled substance or its metabolite, or any impairing substance pursuant to this section may be destroyed by the analyzing agency 12 months after the issuance date of the report of all examinations conducted, without further notice to the parties. However, if a Motion to Preserve the evidence has been filed by either party, the evidence shall remain in the custody of the analyzing agency or the agency that collected the sample until dispositive order of a court of competent jurisdiction is entered."

SECTION 2. G.S. 8-58.20(f) reads as rewritten:

"(f) If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection with the court to the use of the laboratory report and affidavit within the time allowed by this section, then the laboratory report and affidavit ~~may~~ shall be admitted in evidence in any proceeding without the testimony of the analyst subject to the presiding judge ruling otherwise at the proceeding when offered. If, however, a written objection is filed, this section does not apply and the admissibility of the evidence shall be determined and governed by the appropriate rules of evidence."

SECTION 3. G.S. 8-58.20(g)(5) reads as rewritten:

"(5) If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file the written objection as provided in this subsection, then the statement ~~may~~ shall be admitted into evidence without the necessity of a personal appearance by the person signing the statement."

SECTION 4. G.S. 20-139.1(c1) reads as rewritten:

"(c1) Admissibility. – The results of a chemical analysis of blood or urine reported by the North Carolina State Crime Laboratory, the Charlotte, North Carolina, Police Department Laboratory, or any other laboratory approved for chemical analysis by the Department of Health and Human Services, are admissible as evidence in all administrative hearings, and in

any court, without further authentication and without the testimony of the analyst. The results shall be certified by the person who performed the analysis. The provisions of this subsection may be utilized in any administrative hearing, but can only be utilized in cases tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court, if:

(1) The State notifies the defendant at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding at which the report would be used that the defendant objects to the introduction of the report into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the report ~~may~~ shall be admitted into evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

The report containing the results of any blood or urine test may be transmitted electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall be admissible in any court or administrative hearing without further authentication. A copy of the report shall be sent to the charging officer, the clerk of superior court in the county in which the criminal charges are pending, the Division of Motor Vehicles, and the Department of Health and Human Services.

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

SECTION 5. G.S. 20-139.1(c3) reads as rewritten:

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

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

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

(3) The provisions of this subsection may be utilized in any administrative hearing, but can only be utilized in cases tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court, if:

a. The State notifies the defendant at least 15 business days before the proceeding at which the statement would be used of its intention to introduce the statement into evidence under this subsection and provides a copy of the statement to the defendant, and

b. The defendant fails to file a written notification with the court, with a copy to the State, at least five business days before the proceeding at which the statement would be used that the defendant objects to the introduction of the statement into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the statement ~~may~~ shall be admitted into evidence without the necessity of a personal appearance by the person signing the statement. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

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

SECTION 6. G.S. 20-139.1(e1) reads as rewritten:

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

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

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

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

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

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

The Department of Health and Human Services shall develop a form for use by chemical analysts in making this affidavit."

SECTION 7. G.S. 90-95(g) reads as rewritten:

"(g) Whenever matter is submitted to the North Carolina State Crime Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication and without the testimony of the analyst in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, the provisions of this subsection may be utilized by the State only if:

(1) The State notifies the defendant at least 15 business days before the proceeding at which the report would be used of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding that the defendant objects to the introduction of the report into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the report ~~may~~ shall be admitted into

evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

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

SECTION 8. G.S. 90-95(g1) reads as rewritten:

"(g1) Procedure for establishing chain of custody without calling unnecessary witnesses. –

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

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

(3) The provisions of this subsection may be utilized by the State only if:

a. The State notifies the defendant at least 15 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and

b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the statement shall be admitted into evidence without the necessity of a personal appearance by the person signing the statement. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

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

SECTION 9. G.S. 15A-266.3A(k) reads as rewritten:

"(k) Within ~~30~~ 90 days of receipt of the verification form, the SBI shall:

(1) Determine whether the requirement of subdivision (2) of subsection (h) of this section has been met.

(2) If the requirement has been met, remove the defendant's DNA record and samples as required by subsection (h) of this section.

(3) Mail to the defendant, at the address specified in the verification form, a notice either:

a. Documenting expunction of the DNA record and destruction of the DNA sample, or

b. Notifying the defendant that the DNA record and sample do not qualify for expunction pursuant to subsection (h) of this section."

SECTION 10. This act becomes effective December 1, 2012. Sections 2, 3, 4, 5, 6, 7, and 8 of this act apply to proceedings that occur on or after December 1, 2012.

HOUSE BILL 690:
Amend Evidence & Expunction Laws

2011-2012 General Assembly

Committee:	Senate Ref to Judiciary I. If fav, re-ref to Finance	**Date:**	May 23, 2012
Introduced by:	Reps. Stevens, Jordan, T. Moore	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to Third Edition H690-CSLH-10		

SUMMARY: ***The Proposed Committee Substitute for House Bill 690 would amend the laws regarding disposition of blood evidence, the admissibility of analyst statements, and the expunction of DNA samples taken upon arrest.***

BILL ANALYSIS:

Section 1 would authorize the destruction of blood or urine samples, taken upon arrest for an implied consent offense, for chemical analysis for the presence of alcohol, a controlled substance or its metabolite, or any impairing substance 12 months after the issuance of the report, without further notice to the parties. If a motion to preserve evidence has been filed by a party, the evidence shall be retained until a court issues a dispositive order.

Sections 2, 3, 4, 5, 6, 7 & 8 would amend various statutes relating to the admissibility of an analyst's report or a chain of custody report without the testimony of the analyst or the persons in the chain of custody to provide that after notice by the district attorney of the intent to submit the report as evidence, if the defendant or the defendant's attorney does not file written objection, the report shall be admissible as evidence without the personal appearance of the analyst or persons in the chain of custody.

Section 9 would allow the SBI 90 days, instead of the current 30 days, after receipt of a verification form to determine whether a DNA sample that was taken upon arrest of a defendant is eligible for expunction, remove the sample from the database if it is eligible for expunction, and mail notice to the defendant.

EFFECTIVE DATE: This act becomes effective December 1, 2012. Sections 2, 3, 4, 5, 6, 7, and 8 of this act apply to proceedings that occur on or after December 1, 2012.

PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027

DATE: 5-24 **TIME:** 9AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Janie (SADIE LELAND) Leland	Tarboro	Jenkins
2 Caleb Sanders	Morganton	Daniel
3 Rachel McManimen (McMANIMEN)	Harrisburg	Hartsell
4 Courtney Beals (BEALS)	State Road	East
5 Alex (ALEX) Jones	Fletcher	Apodoca
6 Nic (NIC GASPARRO) Gasparro	Matthews	Rucho
7 John (John Ettinger) Ettinger	Mayodan	Berger
8 Ben Stockdale	Tryon	Apodaca
9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

VISITOR REGISTRATION SHEET

Judiciary I — 05-24-2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jason Doans	Jason Doans Assoc.
David Ferrell	VB
Kim Wilson	NCAJ
Dick Taylor	NCAE
BRUCE THOMPSON	FARMER POE
Lisa Piercy	Pagedale Liggett

VISITOR REGISTRATION SHEET

Judiciary I — 05-24-2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
SHARON STELLATO	INNOCENCE COMM
Leesa Poag	Innocence COMM.
Sharon Johnston	NC Dept of Commerce, DES
Tom Hodges JR	N.C Dept of Commerce, DES.
Lockhart Taylor	Commerce - DET

SENATE JUDICIARY I COMMITTEE
Thursday, May 31, 2012 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on May 31, 2012, in Room 1027 of the Legislative Building. 15 members of the committee were present. Senator Brunstetter, presided.

The meeting adjourned at 10:20 AM.

H.B. 707-Deeds of Trust/Modernize Procedures-Bill Patterson from research was recognized to explain the bill and changed language. Senator Rouzer moved for a favorable report as to the PCS, but unfavorable as to the original bill. The motion carried.

H.B. 843-Modernize NC Emergency Management Act-Brad Krehely was recognized to explain the bill summary and language changes. The bill would rewrite and recodify existing statutes. Language was inserted into section 4 to repeal the automatic ban on lawfully-possessed weapons and ammunition in the event of an emergency declaration in compliance with *Bateman v. Perdue*. Senator Brown moved for a favorable report as to the PCS, but unfavorable as to the original bill. The motion carried.

Senator Peter Brunstetter, Presiding

Michael Lewis, Committee Clerk

Senate Judiciary I Committee
Thursday, May 31, 2012, 10:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

Remove	HB 149	Terrorism/State Offense.	Representative Torbett Representative Killian
Remove	HB 597	UI/Fix Aggrieved Party Definition.	Representative Murry
	HB 707	Deeds of Trust/Modernize Procedures.	Representative Rhyne, Jr.
Remove	HB 843	Modernize NC Emergency Management Act.	Representative Martin

Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Peter S. Brunstetter, Chair

Monday. June 04, 2012

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **707** Deeds of Trust/Modernize Procedures.

Draft Number:	PCS 90247
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Senator Brown will present the bill.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 707
Committee Substitute Favorable 6/3/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H707-CSTG-44 [v.7]

5/30/2012 8:08:06 PM

Short Title: Register of Deeds/Directed Trustees/Estates. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE OBSOLETE REGISTER OF DEEDS PROVISIONS FROM THE GENERAL STATUTES, TO AMEND LOCAL AGENCY CHARGES FOR VITAL RECORDS SEARCHES, TO CLARIFY THE LAW GOVERNING PERSONS HOLDING THE POWER TO DIRECT TRUSTEES, TRUST PROTECTORS, AND DIRECTED TRUSTEES AND OTHER FIDUCIARIES, TO MAKE TECHNICAL CHANGES IN THE LAW GOVERNING TRUSTS AND DECEDENTS' ESTATES, AND TO AUTHORIZE THE REVISOR OF STATUTES TO PRINT OFFICIAL COMMENTS TO THE UNIFORM TRUST CODE.

The General Assembly of North Carolina enacts:

PART I: OBSOLETE REGISTER OF DEEDS PROVISIONS

SECTION 1.1. 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 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. They~~ The list shall be 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 list shall be kept under lock and key, but shall be available for public inspection during regular office hours. The ~~register of deeds~~clerk of court may elect to store an electronic copy of the jury list for the county."

SECTION 1.2. G.S. 45-16 is repealed.

SECTION 1.3. G.S. 45-21.17A(b) reads as rewritten:

"**§ 45-21.17A. Requests for copies of notice.**

...

(b) Register of Deeds' Duties. – Upon the filing for record of such request, the register of deeds shall index in the general index of grantors the names of the trustors (mortgagors) recited therein, and the names of the persons requesting copies, with a reference in the index of the book and page of the recorded security instrument to which the request refers.~~refers; or upon the filing for record of such request, the register of deeds may, instead of indexing such request on the general index of grantors, stamp upon the face of the security instrument referred to in the request the book and page of each request for notice thereunder.~~"

SECTION 1.4. G.S. 47-14(e) reads as rewritten:

"**§ 47-14. Register of deeds to verify the presence of proof or acknowledgement and register instruments and electronic documents; order by judge; instruments to which register of deeds is a party.**

...

(e) Register of Deeds as Party. – Any instrument required or permitted by law to be registered in which the register of deeds of the county of registration is a party may be proved or acknowledged before any magistrate or any notary public. ~~The clerk of superior court of the county of registration shall examine any instrument presented for registration. If it appears that the execution and acknowledgment are in due form, the clerk shall so certify and the instrument shall then be recorded in the office of the register of deeds.~~"

SECTION 1.5. G.S. 47C-2-101(a) reads as rewritten:

"**§ 47C-2-101. Execution and recordation of declaration.**

(a) A declaration creating a condominium shall be executed in the same manner as a deed, shall be recorded in every county in which any portion of the condominium is located.~~located, and shall be indexed in the Grantee index in the name of the condominium and in the Grantor index in the name of each person executing the declaration.~~"

SECTION 1.6. G.S. 47C-2-109(a) reads as rewritten:

"**§ 47C-2-109. Plats and plans.**

(a) The declarant shall file with the register of deeds in each county where the condominium is located the condominium's plat or plan prepared in accordance with this section. The plat or plan shall be considered a part of the declaration but shall be recorded separately, and the declaration shall refer by number to the file where such plat or plan is recorded. ~~Each plat or plan shall be kept by the register of deeds in a separate file, indexed in the same manner as a conveyance entitled to be recorded, numbered serially in the order of receipt, and designated "Condominium" with the name of the building, if any, and shall contain a reference to the book and page numbers and date of the recording of the declaration.~~ Each plat or plan must contain a certification by an architect licensed under the provisions of Chapter 83A of the General Statutes or an engineer registered under the provisions of Chapter 89C of the General Statutes that it contains all of the information required by this section."

SECTION 1.7. G.S. 47F-2-101 reads as rewritten:

"**§ 47F-2-101. Creation of the planned community.**

A declaration creating a planned community shall be executed in the same manner as a ~~deed,~~deed and shall be recorded in every county in which any portion of the planned community is located.~~located, and shall be indexed in the Grantee index in the name of the planned community and the association and in the Grantor index in the name of each person executing the declaration.~~"

SECTION 1.8. G.S. 47F-2-117(c) reads as rewritten:

"**§ 47F-2-117. Amendment of declaration.**

...

(c) Every amendment to the declaration shall be recorded in every county in which any portion of the planned community is located and is effective only upon recordation. ~~An amendment shall be indexed in the Grantee index in the name of the planned community and the association and in the Grantor index in the name of each person executing the amendment.~~"

SECTION 1.9. G.S. 58-72-50 reads as rewritten:

"**§ 58-72-50. Approval, acknowledgment and custody of bonds.**

The approval of all official bonds taken or renewed by the board of commissioners shall be recorded by the clerk to the board. Every such bond shall be acknowledged by the parties thereto or proved by a subscribing witness, before the chairman of the board of commissioners, or before the clerk of the superior court, ~~registered in the register's office in a separate book to be kept for the registration of official bonds,~~ and the original bond, with the approval of the

commissioners endorsed thereon and certified by their chairman; shall be deposited with the clerk of the superior court for safekeeping. Provided that an official bond executed as surety by a surety company authorized to do business in this State need not be acknowledged upon behalf of the surety when such bond is executed under seal in the name of the surety by an agent or attorney-in-fact by authority of a power of attorney duly recorded in the office of the register of deeds of such county.~~county and such bond may be recorded by the register of deeds without an order of probate entered by the clerk of the superior court.~~"

SECTION 1.10. G.S. 68-18.1 reads as rewritten:

"**§ 68-18.1. Notice when owner not known.**

If the owner of the impounded livestock is not known or cannot be found, the impounder shall inform the ~~register of deeds that he has impounded the livestock and provide the register of deeds with a description of the livestock. The register of deeds shall record the information in a book kept for that purpose, and shall charge the impounder a fee of ten dollars ($10.00). The register of deeds shall immediately publish a notice of the impoundment of the animal by posting a notice on the courthouse door. The notice on the courthouse door shall be posted for 30 days, and shall contain~~ sheriff of the county in which the livestock was found of the impoundment, giving a full description of the livestock impounded, including all marks or brands on the livestock, and shall state when and where the animal was taken up.~~The impounder shall publish once, in some newspaper published and distributed in the county, a notice containing the same information as the notice posted by the register of deeds. The fees for publishing the notice shall be paid by the impounder.~~"

SECTION 1.11. G.S. 80-16 reads as rewritten:

"**§ 80-16. How adopted, registered and published.**

Every such dealer desiring to adopt a trademark may do so pursuant to the provisions of Article 1, Chapter 80 of the General Statutes. Nothing in this section invalidates or otherwise alters the legal effect of any timber mark registered according to the law in effect at the time of registration. ~~by the execution of a writing in form and effect as follows:~~

~~Notice is hereby given that I (or we, etc., as the case may be) have adopted the following trademark, to be used in my (or our, etc.) business as timber dealer (or dealers), to wit: (Here insert the words, letters, figures, etc., constituting the trademark, or if it be any device other than words, letters or figures, insert a facsimile thereof).~~

~~Dated this ____ day of ____, ____ A ____B ____~~

~~Such writing shall be acknowledged or proved for record in the same manner as deeds are acknowledged or proved, and shall be registered in the office of the register of deeds of the county in which the principal office or place of business of such timber dealer may be, in a book to be kept for that purpose marked Registry of Timber Marks, also in office of Secretary of State, and a copy thereof shall be published at least once in each week for four successive weeks in some newspaper printed in such county, or if there be no such newspaper printed therein, then in some newspaper of general circulation in such county.~~"

SECTION 1.12. G.S. 80-33 through G.S. 80-37 are repealed.

SECTION 1.13. G.S. 80-38 reads as rewritten:

"**§ 80-38. When transfer of farm carries name.**

When any owner of a farm, the name of which has been recorded in the office of the register of deeds of the county in which the farm is located according to the law in effect at the time of recording, ~~as provided in this Article,~~ transfers by deed or otherwise the whole of such farm, such transfer may include the registered name thereof; but if the owner shall transfer only a portion of such farm, then, in the event, the registered name thereof shall not be transferred to the purchaser unless so stated in the deed or conveyance."

SECTION 1.14. G.S. 80-39 reads as rewritten:

"**§ 80-39. Cancellation of registry; fee.**

When any owner of a ~~registered~~ farm name that has been registered in the office of the register of deeds of the county in which the farm is located desires to cancel the registered name thereof, such owner may record a duly signed and acknowledged instrument to that effect in the register of deeds real estate records.~~he shall state on the margin of the record of the register of such name the following: "This name is canceled and I hereby release all rights thereunder," which shall be signed by the person canceling such name, and attested by the register of deeds. For such latter service the register of deeds shall charge a fee of twenty five cents (25¢), which shall be paid to the county treasurer as other fees are paid to the county treasurer by him.~~"

SECTION 1.15. G.S. 87-110(d) reads as rewritten:

"**§ 87-110. Recording requirements for utility owners.**

...

(d) ~~Upon receipt of the documents recorded pursuant to subsections (a), (b), or (c) of this section, the Register of Deeds shall place the documents in the Grantor's Index under the heading "Underground Utilities".~~ The registration fee imposed by Chapter 161 of the General Statutes shall apply to these documents."

SECTION 1.16. G.S. 104-7(c) reads as rewritten:

"**§ 104-7. Acquisition of lands by the United States for customhouses, courthouses, post offices, forts, arsenals, or armories; cession of jurisdiction; exemption from taxation.**

...

(c) The jurisdiction ceded shall not vest until the United States has acquired title to the land by purchase, condemnation, or otherwise; accepted the cession of jurisdiction in writing; and filed a certified copy of the acceptance in the office of the register of deeds in the county or counties in which the land is located. ~~The acceptance of jurisdiction shall be made by an authorized official of the United States and shall include a precise description of the land involved and a statement of the extent to which cession of jurisdiction is accepted. The register of deeds shall record the acceptance of jurisdiction and index it in both the grantor and the grantee index under the name of the United States and, if title to the land over which jurisdiction is ceded is vested in any entity other than the United States, then the register of deeds shall also index the acceptance of jurisdiction in both the grantor and the grantee index under the name of that entity.~~"

SECTION 1.17. G.S. 130A-301 reads as rewritten:

"**§ 130A-301. Recordation of permits for disposal of waste on land and Notice of Open Dump.**

(a) Whenever the Department approves a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land, the owner of the facility shall be granted both an original permit and a copy certified by the Secretary. The permit shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance.

(b) The owner of a facility granted a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land shall file the certified copy of the permit in the office of the register of deeds in the county or counties in which the land is located.

~~(c) The register of deeds shall record the certified copy of the permit and index it in the grantor index under the name of the owner of the land.~~

(d) The permit shall not be effective unless the certified copy is filed as required under subsection (b) of this section.

(e) When a sanitary landfill or a facility for the disposal of hazardous waste on land is sold, leased, conveyed or transferred, the deed or other instrument of transfer shall contain in the description section in no smaller type than that used in the body of the deed or instrument a statement that the property has been used as a sanitary landfill or a disposal site for hazardous waste and a reference by book and page to the recordation of the permit.

(f) When the Department determines that an open dump exists, the Department shall notify the owner or operator of the open dump of applicable requirements to take remedial action at the site of the open dump to protect public health and the environment. If the owner or operator fails to take remedial action, the Department may record a Notice of Open Dump in the office of the register of deeds in the county or counties where the open dump is located. Not less than 30 days before recording the Notice of Open Dump, the Department shall notify the owner or operator of its intention to file a Notice of Open Dump. The Department may notify the owner or operator of its intention to file a Notice of Open Dump at the time it notifies the owner or operator of applicable requirements to take remedial action. An owner or operator may challenge a decision of the Department to file a Notice of Open Dump by filing a contested case under Article 3 of Chapter 150B of the General Statutes. If an owner or operator challenges a decision of the Department to file a Notice of Open Dump, the Department shall not file the Notice of Open Dump until the contested case is resolved, but may file a notice of pending litigation under Article 11 of Chapter 1 of the General Statutes. This power is additional and supplemental to any other power granted to the Department. This subsection does not repeal or supersede any statute or rule requiring or authorizing record notice by the owner.

(1) The Department shall file the Notice of Open Dump in the office of the register of deeds in substantially the following form:

"**NOTICE OF OPEN DUMP**

The Division of Waste Management of the North Carolina Department of Environment and Natural Resources has determined that an open dump exists on the property described below. The Department provides the following information regarding this open dump as a public service. This Notice is filed pursuant to G.S. 130A-301(f).

Name(s) of the record owner(s): _____

Description of the real property: _____

Description of the particular area where the open dump is located: ____

Any person who has questions regarding this Notice should contact the Division of Waste Management of the North Carolina Department of Environment and Natural Resources. The contact person for this Notice is: _____ who may be reached by telephone at _____ or by mail at _____. Requests for inspection and copying of public records regarding this open dump may be directed to _____ who may be reached by telephone at _____ or by mail at _____.

_____

Secretary of Environment and Natural Resources by _____

Date: _____."

(2) The description of the particular area where the open dump is located shall be based on the best information available to the Department but need not be a survey plat that meets the requirements of G.S. 47-30 unless a survey plat that meets those requirements and that is approved by the Department is furnished by the owner or operator.

~~(3) The register of deeds shall record the Notice of Open Dump and index it in the grantor index under the name of the record owner or owners. After recording the Notice of Open Dump, the register of deeds shall return the Notice of Open Dump to the Department in care of the person listed as the contact person in the Notice of Open Dump.~~

(4) When the owner removes all solid waste from the open dump site to the satisfaction of the Department, the Department shall file a Cancellation of the Notice of Open Dump. The Cancellation shall be in a form similar to the original Notice of Open Dump and shall state that all the solid waste that constituted the open dump has been removed to the satisfaction of the Department. ~~The Cancellation shall be filed and indexed in the same manner as the original Notice of Open Dump.~~"

SECTION 1.18. G.S. 130A-310.8 reads as rewritten:

"**§ 130A-310.8. Recordation of inactive hazardous substance or waste disposal sites.**

(a) After determination by the Department of the existence and location of an inactive hazardous substance or waste disposal site, the owner of the real property on which the site is located, within 180 days after official notice to the owner to do so, shall submit to the Department a survey plat of areas designated by the Department that has been prepared and certified by a professional land surveyor, and entitled "NOTICE OF INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE". Where an inactive hazardous substance or waste disposal site is located on more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded. The Notice shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance, shall meet the requirements of G.S. 47-30 for maps and plats, and shall identify:

(1) The location and dimensions of the disposal areas and areas of potential environmental concern with respect to permanently surveyed benchmarks.

(2) The type, location, and quantity of hazardous substances known by the owner of the site to exist on the site.

(3) Any restrictions approved by the Department on the current or future use of the site.

(b) After the Department approves and certifies the Notice, the owner of the site shall file the certified copy of the Notice in the register of deeds' office in the county or counties in which the land is located within 15 days of the date on which the owner receives approval of the Notice from the Department.

~~(c) The register of deeds shall record the certified copy of the Notice and index it in the grantor index under the names of the owners of the lands.~~

(d) In the event that the owner of the site fails to submit and file the Notice required by this section within the time specified, the Secretary may prepare and file such Notice. The costs thereof may be recovered by the Secretary from any responsible party. In the event that an owner of a site who is not a responsible party submits and files the Notice required by this section, he may recover the reasonable costs thereof from any responsible party.

(e) When an inactive hazardous substance or waste disposal site is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the property has been used as a hazardous substance or waste disposal site and a reference by book and page to the recordation of the Notice.

(f) A Notice of Inactive Hazardous Substance or Waste Disposal Site filed pursuant to this section may, at the request of the owner of the land, be cancelled by the Secretary after the hazards have been eliminated. If requested in writing by the owner of the land and if the Secretary concurs with the request, the Secretary shall send to the register of deeds of each county where the Notice is recorded a statement that the hazards have been eliminated and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the owners of the land as shown in the Notice and reference the plat book and page where the Notice is recorded. ~~The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the names of the owners of the land as shown in the Notice and on the grantee index in the name "Secretary of Environment and Natural~~

~~Resources". The register of deeds shall make a marginal entry on the Notice showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register of deeds shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.~~

(g) Recordation under this section is not required for any inactive hazardous substance or waste disposal site that is undergoing voluntary remedial action pursuant to this Part unless the Secretary determines that either:

(1) A concentration of a hazardous substance or hazardous waste that poses a danger to public health or the environment will remain following implementation of the voluntary remedial action program.

(2) The voluntary remedial action program is not being implemented in a manner satisfactory to the Secretary and in compliance with the agreement between the Secretary and the owner, operator, or other responsible party.

(h) The Secretary may waive recordation under this section with respect to any residential real property that is contaminated solely because a hazardous substance or hazardous waste migrated to the property from other property by means of groundwater flow if disclosure of the contamination is required under Chapter 47E of the General Statutes. An owner of residential real property whose recordation requirement is waived by the Secretary under this subsection and who fails to disclose contamination as required by Chapter 47E of the General Statutes is subject to both the penalties and remedies under this Chapter applicable to a person who fails to comply with the recordation requirements of this section as though those requirements had not been waived and to the remedies available under Chapter 47E of the General Statutes."

SECTION 1.19. G.S. 130A-310.35 reads as rewritten:

"**§ 130A-310.35. Notice of Brownfields Property; land-use restrictions in deed.**

(a) In order to reduce or eliminate the danger to public health or the environment posed by a brownfields property being addressed under this Part, a prospective developer who desires to enter into a brownfields agreement with the Department shall submit to the Department a proposed Notice of Brownfields Property. A Notice of Brownfields Property shall be entitled "Notice of Brownfields Property", shall include a survey plat of areas designated by the Department that has been prepared and certified by a professional land surveyor and that meets the requirements of G.S. 47-30, shall include a legal description of the brownfields property that would be sufficient as a description of the property in an instrument of conveyance, and shall identify all of the following:

(1) The location and dimensions of the areas of potential environmental concern with respect to permanently surveyed benchmarks.

(2) The type, location, and quantity of regulated substances and contaminants known to exist on the brownfields property.

(3) Any restrictions on the current or future use of the brownfields property or, with the owner's permission, other property that are necessary or useful to maintain the level of protection appropriate for the designated current or future use of the brownfields property and that are designated in the brownfields agreement. These land-use restrictions may apply to activities on, over, or under the land, including, but not limited to, use of groundwater, building, filling, grading, excavating, and mining. Where a brownfields property encompasses more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded.

(b) After the Department approves and certifies the Notice of Brownfields Property under subsection (a) of this section, a prospective developer who enters into a brownfields agreement with the Department shall file a certified copy of the Notice of Brownfields Property

in the register of deeds' office in the county or counties in which the land is located. The prospective developer shall file the Notice of Brownfields Property within 15 days of the prospective developer's receipt of the Department's approval of the notice or the prospective developer's entry into the brownfields agreement, whichever is later.

~~(c) The register of deeds shall record the certified copy of the notice and index it in the grantor index under the names of the owners of the land, and, if different, also under the name of the prospective developer conducting the redevelopment of the brownfields property.~~

(d) When a brownfields property is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the brownfields property has been classified and, if appropriate, cleaned up as a brownfields property under this Part.

(e) A Notice of Brownfields Property filed pursuant to this section may, at the request of the owner of the land, be cancelled by the Secretary after the hazards have been eliminated. If requested in writing by the owner of the land and if the Secretary concurs with the request, the Secretary shall send to the register of deeds of each county where the notice is recorded a statement that the hazards have been eliminated and request that the notice be cancelled of record. The Secretary's statement shall contain the names of the owners of the land as shown in the notice and reference the plat book and page where the notice is recorded. ~~The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the names of the owners of the land as shown in the Notice of Brownfields Property and on the grantee index in the name "Secretary of Environment and Natural Resources". The register of deeds shall make a marginal entry on the Notice of Brownfields Property showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register of deeds shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.~~

(f) Any land-use restriction filed pursuant to this section shall be enforced by any owner of the land. Any land-use restriction may also be enforced by the Department through the remedies provided in Part 2 of Article 1 of this Chapter or by means of a civil action. The Department may enforce any land-use restriction without first having exhausted any available administrative remedies. A land-use restriction may also be enforced by any unit of local government having jurisdiction over any part of the brownfields property by means of a civil action without the unit of local government having first exhausted any available administrative remedy. A land-use restriction may also be enforced by any person eligible for liability protection under this Part who will lose liability protection if the land-use restriction is violated. A land-use restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this section shall abide by the land-use restriction.

(g) This section shall apply in lieu of the provisions of G.S. 130A-310.8 for brownfields properties remediated under this Part."

SECTION 1.20. G.S. 143-215.85A reads as rewritten:

"**§ 143-215.85A. Recordation of oil or hazardous substance discharge sites.**

(a) The owner of the real property on which a site is located that is subject to current or future use restrictions approved as provided in G.S. 143-215.84(f) shall submit to the Department a survey plat as required by this section within 180 days after the owner is notified to do so. The survey plat shall identify areas designated by the Department, shall be prepared and certified by a professional land surveyor, and shall be entitled "NOTICE OF OIL OR HAZARDOUS SUBSTANCE DISCHARGE SITE". Where an oil or hazardous substance discharge site is located on more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded. The Notice shall include a legal description of

the site that would be sufficient as a description in an instrument of conveyance, shall meet the requirements of G.S. 47-30 for maps and plats, and shall identify:

(1) The location and dimensions of the disposal areas and areas of potential environmental concern with respect to permanently surveyed benchmarks.

(2) The type, location, and quantity of oil or hazardous substances known to the owner of the site to exist on the site.

(3) Any restrictions approved by the Department on the current or future use of the site.

(b) After the Department approves and certifies the Notice, the owner of the site shall file the certified copy of the Notice in the register of deeds office in the county or counties in which the land is located within 15 days of the date on which the owner receives approval of the Notice from the Department.

~~(c) The register of deeds shall record the certified copy of the Notice and index it in the grantor index under the names of the owners of the lands.~~

(d) In the event that the owner of the site fails to submit and file the Notice required by this section within the time specified, the Secretary may prepare and file the Notice. The costs thereof may be recovered by the Secretary from any responsible party. In the event that an owner of a site who is not a responsible party submits and files the Notice required by this section, he may recover the reasonable costs thereof from any responsible party.

(e) When an oil or hazardous substance discharge site that is subject to current or future land-use restrictions under this section is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the property has been used as an oil or hazardous substance discharge site and a reference by book and page to the recordation of the Notice.

(f) A Notice of Oil or Hazardous Substance Discharge Site filed pursuant to this section may, at the request of the owner of the land, be cancelled by the Secretary after the hazards have been eliminated. If requested in writing by the owner of the land and if the Secretary concurs with the request, the Secretary shall send to the register of deeds of each county where the Notice is recorded a statement that the hazards have been eliminated and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the owners of the land as shown in the Notice and reference the plat book and page where the Notice is recorded. ~~The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the names of the owners of the land as shown in the Notice and on the grantee index in the name "Secretary of Environment and Natural Resources". The register of deeds shall make a marginal entry on the Notice showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register of deeds shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.~~"

SECTION 1.21. G.S. 143-215.104M reads as rewritten:

"**§ 143-215.104M. (Expires January 1, 2022 – see notes) Notice of Dry-Cleaning Solvent Remediation; land-use restrictions in deeds.**

(a) Land-Use Restriction. – In order to reduce or eliminate the danger to public health or the environment posed by a dry-cleaning solvent contamination site, the owner of property upon which dry-cleaning solvent contamination has been discovered may file a Notice of Dry-Cleaning Solvent Remediation approved by the Commission identifying the site on which the contamination has been discovered and providing for current or future restrictions on the use of the property. If a petitioner requests that a contamination site be remediated to standards that require land-use restrictions, the owner of the property must file a Notice of Dry-Cleaning Solvent Remediation for the remediation agreement to become effective.

(b) Notice of Restriction. – A Notice of Dry-Cleaning Solvent Remediation shall include:

(1) A survey plat of the contamination site that has been prepared and certified by a professional land surveyor and that meets the requirements of G.S. 47-30.

(2) A legal description of the property that would be sufficient as a description in an instrument of conveyance.

(3) A description of the location and dimensions of the areas of potential environmental concern with respect to permanently surveyed benchmarks.

(4) The type, location, and quantity of dry-cleaning solvent contamination known to exist on the property.

(5) Any restrictions on the current or future use of the property or other property that are necessary to assure adequate protection of public health and the environment as provided in rules adopted pursuant to G.S. 143-215.104D(b)(3). These land-use restrictions may apply to activities on, over, or under the land, including, but not limited to, use of groundwater, building, filling, grading, excavating, and mining. Where a contamination site encompasses more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded.

(c) Recordation of Notice. – After the Commission approves and certifies the Notice of Dry-Cleaning Solvent Remediation under subsection (a) of this section, a certified copy of a Notice of Dry-Cleaning Solvent Remediation shall be filed in the office of the register of deeds of the county or counties in which the property described is located. The owner of the property shall file the Notice of Dry-Cleaning Solvent Remediation within 15 days of the property owner's receipt of the Commission's approval of the notice or the effective date of the dry-cleaning solvent remediation agreement, whichever is later. ~~The register of deeds shall record the certified copy of the Notice of Dry-Cleaning Solvent Remediation and index it in the grantor index under the names of the owners of the land~~.

(d) Notice of Transfer. – When property for which a Notice of Dry-Cleaning Solvent Remediation has been filed is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the property has been contaminated with dry-cleaning solvent and, if appropriate, cleaned up under this Part.

(e) Cancellation of Notice. – A Notice of Dry-Cleaning Solvent Remediation filed pursuant to this Part may, at the request of the owner of the property subject to the Notice of Dry-Cleaning Solvent Remediation, be canceled by the Secretary after the risk to public health and the environment associated with the dry-cleaning solvent contamination and any other contaminants included in the dry-cleaning solvent remediation agreement has been eliminated as a result of remediation of the property. The Secretary shall forward notice of cancellation to the register of deeds of the county or counties where the Notice of Dry-Cleaning Solvent Remediation is recorded and request that the Notice of Dry-Cleaning Solvent Remediation be canceled. The notice of cancellation shall contain the names of the landowners as shown in the Notice of Dry-Cleaning Solvent Remediation. ~~The register of deeds shall record the notice of cancellation in the deed books and index it on the grantor index in the name of the landowner as shown in the Notice of Dry-Cleaning Solvent Remediation and on the grantee index in the name "Secretary of Environment and Natural Resources". The register of deeds shall make a marginal entry on the Notice of Dry-Cleaning Solvent Remediation showing the date of cancellation and the book and page where the notice of cancellation is recorded, and the register of deeds shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.~~

(f) Enforcement. – Any restriction on the current or future use of property subject to a Notice of Dry-Cleaning Solvent Remediation filed pursuant to this section shall be enforced by any owner of the property or by any other potentially responsible party. Any land-use restriction may also be enforced by the Commission through the remedies provided in this Part or by means of a civil action in the superior court. The Commission may enforce any land-use restriction without first having exhausted any available administrative remedies. Restrictions also may be enforced by any unit of local government having jurisdiction over any part of the property by means of a civil action without the unit of local government having first exhausted any available administrative remedy. A land-use restriction may also be enforced by any person eligible for liability protection under this Part who will lose liability protection if the land-use restriction is violated. A restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of privity of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this section shall abide by the land-use restriction. Failure to submit an annual certification that land-use restrictions are properly recorded and followed shall result in a notice from the Commission to the property owner. The notice shall inform the person of the actions that need to be taken in order for the person to come into compliance and specify a date by which the person must comply, which shall not be less than 30 calendar days from the date the notice is mailed. Any person who fails to comply within the time specified shall then be subject to enforcement procedures as provided in this Part.

(g) Relation to Brownfields Notice. – Unless the Commission decertifies a previously certified facility or a previously certified abandoned site, this section shall apply in lieu of the provisions of Article 9 of Chapter 130A of the General Statutes and Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes for properties remediated under this Part."

SECTION 1.22. G.S. 143B-279.10 reads as rewritten:

"**§ 143B-279.10. Recordation of contaminated sites.**

(a) The owner of the real property on which a site is located that is subject to current or future use restrictions approved as provided in G.S. 143B-279.9(a) shall submit to the Department a survey plat as required by this section within 180 days after the owner is notified to do so. The survey plat shall identify areas designated by the Department, shall be prepared and certified by a professional land surveyor, and shall be entitled "NOTICE OF CONTAMINATED SITE". Where a contaminated site is located on more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded. The Notice shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance, shall meet the requirements of G.S. 47-30 for maps and plats, and shall identify:

(1) The location and dimensions of any disposal areas and areas of potential environmental concern with respect to permanently surveyed benchmarks.

(2) The type, location, and quantity of contamination known to the owner of the site to exist on the site.

(3) Any restriction approved by the Department on the current or future use of the site.

(b) The Department shall review the proposed Notice to determine whether the Notice meets the requirements of this section and rules adopted to implement this section, and shall provide the owner of the site with a notarized copy of the approved Notice. After the Department approves the Notice, the owner of the site shall file a notarized copy of the approved Notice in the register of deeds office in the county or counties in which the land is located within 15 days of the date on which the owner receives approval of the Notice from the Department.

~~(c) The register of deeds shall record the notarized copy of the approved Notice and index it in the grantor index under the names of the owners of the land.~~

(d) In the event that the owner of the site fails to submit and file the Notice required by this section within the time specified, the Secretary may prepare and file the Notice. The costs thereof may be recovered by the Secretary from any responsible party. In the event that an owner of a site who is not a responsible party submits and files the Notice required by this section, the owner may recover the reasonable costs thereof from any responsible party.

(e) When a contaminated site that is subject to current or future land-use restrictions is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the property is a contaminated site and a reference by book and page to the recordation of the Notice.

(f) A Notice of Contaminated Site filed pursuant to this section shall, at the request of the owner of the land, be cancelled by the Secretary after the contamination has been eliminated or remediated to unrestricted use standards. If requested in writing by the owner of the land and if the Secretary concurs with the request, the Secretary shall send to the register of deeds of each county where the Notice is recorded a statement that the contamination has been eliminated, or that the contamination has been remediated to unrestricted use standards, and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the owners of the land as shown in the Notice and reference the plat book and page where the Notice is recorded. ~~The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the names of the owners of the land as shown in the Notice and on the grantee index in the name "Secretary of Environment and Natural Resources". The register of deeds shall make a marginal entry on the Notice showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register of deeds shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.~~

(g) This section does not apply to the cleanup pursuant to a remedial action plan that addresses environmental damage resulting from a discharge or release of petroleum from an underground storage tank pursuant to Part 2A of Article 21A of Chapter 143 of the General Statutes.

(h) The definitions set out in G.S. 143B-279.9 apply to this section."

SECTION 1.23. G.S. 143B-279.11 reads as rewritten:

"**§ 143B-279.11. Recordation of residual petroleum from an underground storage tank.**

(a) The definitions set out in G.S. 143-215.94A and G.S. 143B-279.9 apply to this section. This section applies only to a cleanup pursuant to a remedial action plan that addresses environmental damage resulting from a discharge or release of petroleum from an underground storage tank pursuant to Part 2A of Article 21A of Chapter 143 of the General Statutes.

(b) The owner, operator, or other person responsible for a discharge or release of petroleum from an underground storage tank shall prepare and submit to the Department a proposed Notice that meets the requirements of this section. The proposed Notice shall be submitted to the Department (i) before the property is conveyed, or (ii) when the owner, operator, or other person responsible for the discharge or release requests that the Department issue a determination that no further action is required under the remedial action plan, whichever first occurs. The Notice shall be entitled "NOTICE OF RESIDUAL PETROLEUM". The Notice shall include a description that would be sufficient as a description in an instrument of conveyance of the (i) real property on which the source of contamination is located and (ii) any real property on which contamination is located at the time the remedial action plan is approved and that was owned or controlled by any owner or operator of the underground storage tank or other responsible party at the time the discharge or release of petroleum is discovered or reported or at any time thereafter. The Notice shall identify the location of any residual petroleum known to exist on the real property at the time the Notice is prepared. The

Notice shall also identify the location of any residual petroleum known, at the time the Notice is prepared, to exist on other real property that is a result of the discharge or release. The Notice shall set out any restrictions on the current or future use of the real property that are imposed by the Secretary pursuant to G.S. 143B-279.9(b) to protect public health, the environment, or users of the property.

(c) If the contamination is located on more than one parcel or tract of land, the Department may require that the owner, operator, or other person responsible for the discharge or release prepare a composite map or plat that shows all parcels or tracts. If the contamination is located on one parcel or tract of land, the owner, operator, or other person responsible for the discharge or release may prepare a map or plat that shows the parcel but is not required to do so. A map or plat shall be prepared and certified by a professional land surveyor, shall meet the requirements of G.S. 47-30, and shall be submitted to the Department for approval. When the Department has approved a map or plat, it shall be recorded in the office of the register of deeds and shall be incorporated into the Notice by reference.

(d) The Department shall review the proposed Notice to determine whether the Notice meets the requirements of this section and rules adopted to implement this section and shall provide the owner, operator, or other person responsible for the discharge or release of petroleum from an underground storage tank with a notarized copy of the approved Notice. After the Department approves the Notice, the owner, operator, or other person responsible for the discharge or release of petroleum from an underground storage tank shall file a notarized copy of the approved Notice in the register of deeds office in the county or counties in which the real property is located (i) before the property is conveyed or (ii) within 30 days after the owner, operator, or other person responsible for the discharge or release receives notice from the Department that no further action is required under the remedial action plan, whichever first occurs. If the owner, operator, or other person responsible for the discharge or release fails to file the Notice as required by this section, any determination by the Department that no further action is required is void. The owner, operator, or other person responsible for the discharge or release, may record the Notice required by this section without the agreement of the owner of the real property. The owner, operator, or other person responsible for the discharge or release shall submit a certified copy of the Notice as filed in the register of deeds office to the Department.

~~(e) The register of deeds shall record the notarized copy of the approved Notice and index it in the grantor index under the names of the owners of the real property.~~

(f) In the event that the owner, operator, or other person responsible for the discharge or release fails to submit and file the Notice required by this section within the time specified, the Secretary may prepare and file the Notice. The costs thereof may be recovered by the Secretary from any responsible party. In the event that an owner of the real property who is not a responsible party submits and files the Notice required by this section, the owner may recover the reasonable costs thereof from any responsible party.

(g) A Notice filed pursuant to this section shall, at the request of the owner of the real property, be cancelled by the Secretary after the residual petroleum has been eliminated or remediated to unrestricted use standards. If requested in writing by the owner of the land, the Secretary shall send to the register of deeds of each county where the Notice is recorded a statement that the residual petroleum has been eliminated, or that the residual petroleum has been remediated to unrestricted use standards, and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the owners of the land as shown in the Notice and reference the plat book and page where the Notice is recorded. ~~The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the names of the owners of the real property as shown in the Notice and on the grantee index in the name "Secretary of Environment and Natural Resources". The register of deeds shall make a marginal entry on the Notice showing the date of cancellation and the book and page~~

~~where the Secretary's statement is recorded, and the register of deeds shall sign the entry. If a marginal entry is impracticable because of the method used to record, the register of deeds shall not be required to make a marginal entry.~~"

SECTION 1.24. G.S. 160A-400.6 reads as rewritten:

"**§ 160A-400.6. Required landmark designation procedures.**

As a guide for the identification and evaluation of landmarks, the commission shall undertake, at the earliest possible time and consistent with the resources available to it, an inventory of properties of historical, architectural, prehistorical, and cultural significance within its jurisdiction. Such inventories and any additions or revisions thereof shall be submitted as expeditiously as possible to the Office of Archives and History. No ordinance designating a historic building, structure, site, area or object as a landmark nor any amendment thereto may be adopted, nor may any property be accepted or acquired by a preservation commission or the governing board of a municipality, until all of the following procedural steps have been taken:

...

(6) Upon adoption of the ordinance, the owners and occupants of each designated landmark shall be given written notification of such designation insofar as reasonable diligence permits. One copy of the ordinance and all amendments thereto shall be filed by the preservation commission in the office of the register of deeds of the county in which the landmark or landmarks are located. ~~Each designated landmark shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the register of deeds office, and the preservation commission shall pay a reasonable fee for filing and indexing.~~ In the case of any landmark property lying within the zoning jurisdiction of a city, a second copy of the ordinance and all amendments thereto shall be kept on file in the office of the city or town clerk and be made available for public inspection at any reasonable time. A third copy of the ordinance and all amendments thereto shall be given to the city or county building inspector. The fact that a building, structure, site, area or object has been designated a landmark shall be clearly indicated on all tax maps maintained by the county or city for such period as the designation remains in effect.

..."

PART II. LOCAL AGENCY CHARGES FOR VITAL RECORDS SEARCHES

SECTION 2.1. G.S. 130A-93.1(a)(1) reads as rewritten:

"**§ 130A-93.1. Fees for vital records copies or search; automation fund.**

(a) The State Registrar shall collect, process, and utilize fees for services as follows:

(1) A fee not to exceed twenty-four dollars ($24.00) shall be charged for issuing a first copy of a vital record or for conducting a routine search of the files for the record when no copy is made. A fee of fifteen dollars ($15.00) shall be charged for each additional certificate copy requested from the same search. When certificates are issued or searches conducted for statewide issuance by local agencies using databases maintained by the State Registrar, the local agency shall charge ~~these fees and shall retain ten dollars ($10.00) of these fees to cover local administrative costs~~ and forward ~~the remaining fees~~ to the State Registrar for the purposes established in subsection (b) of this ~~section.~~section fourteen dollars ($14.00) and shall charge and retain ten dollars ($10.00) if a copy of the record is made. Provided, however, that a local agency may waive the ten dollars ($10.00) charge for its retention when the copy is issued to a person over the age of 62 years."

SECTION 2.2. G.S. 161-10(8a) is repealed.

PART III. CHANGES TO THE LAWS GOVERNING TRUSTS AND DECEDENTS' ESTATES

SUBPART A. UNIFORM TRUST CODE AMENDMENTS RELATING TO PERSONS HOLDING THE POWER TO DIRECT TRUSTEES, TRUST PROTECTORS, DIRECTED TRUSTEES AND OTHER FIDUCIARIES

SECTION 3.1. G.S. 36C-8-808 reads as rewritten:

"**§ 36C-8-808. Powers ~~to direct.~~of a settlor to take certain actions with respect to the trust.**

~~(a)~~ While a trust is revocable, the settlor of a revocable trust has, at all times, the power to direct or consent to the actions of the trustee whether or not the power is conferred upon the settlor by the terms of the trust. The duty and liability of the trustee subject to the direction and consent of the settlor is as follows:

(1) The trustee may follow a direction of the settlor that is not authorized by or is contrary to the terms of the trust, even if by doing so (i) the trustee exceeds the authority granted to the trustee under the terms of the trust, or (ii) the trustee would otherwise violate a duty the trustee owes under the trust.

(2) The trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with the direction. If the settlor requires the settlor's consent to certain actions of the trustee, and the settlor does not provide consent within a reasonable time after the trustee has made a timely request for the settlor's consent, the trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the trustee's failure to take any action that required the settlor's consent.

~~(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee must act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust, or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.~~

~~(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.~~

~~(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.~~"

SECTION 3.2. G.S. 36C-7-703 is amended by adding the following new subsection to read:

"**§ 36C-7-703. Cotrustees.**

...

(e1) If the terms of a trust confer upon a cotrustee, to the exclusion of another cotrustee, the power to take certain actions with respect to the trust, including the power to direct or prevent certain actions of the trustees, the following apply:

(1) The duty and liability of the excluded trustee is as follows:

a. If the terms of a trust confer upon the cotrustee the power to direct certain actions of the excluded trustee, the excluded trustee must act in accordance with the direction and is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with the direction unless compliance with the direction constitutes intentional misconduct on the part of the directed cotrustee.

b. If the terms of the trust confer upon the cotrustee any other power, the excluded trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the action taken by the cotrustee.

c. The excluded trustee has no duty to monitor the conduct of the cotrustee, provide advice to the cotrustee, or consult with or request directions from the cotrustee. The excluded trustee is not required to give notice to any beneficiary of any action taken or not taken by the cotrustee whether or not the excluded trustee agrees with the result. Administrative actions taken by the excluded trustee for the purpose of implementing directions of the cotrustee, including confirming that the directions of the cotrustee have been carried out, do not constitute monitoring of the cotrustee nor do they constitute participation in decisions within the scope of the cotrustee's authority.

(2) Except as otherwise provided in sub-subdivision a. of subdivision (1) of this subsection, the cotrustee holding the power to take certain actions with respect to the trust shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustee were not in office and has the exclusive obligation to account to the beneficiaries and defend any action brought by the beneficiaries with respect to the exercise of the power."

SECTION 3.3. G.S. 32-72(d) reads as rewritten:

"**§ 32-72. Terms of creating instrument.**

...

(d) The following provisions apply to an instrument creating a fiduciary relationship other than a trust instrument to which Chapter 36C of the General Statutes applies and to a fiduciary other than a trustee:

(1) The terms of the instrument may confer upon a person the power to direct or consent to certain actions of the fiduciary with respect to the following:

a. Investments, including retention, purchase, sale, exchange, or other transaction affecting the ownership of investments with respect to all or any one or more assets.

b. Any other administrative matter.

(2) When the terms of the instrument confer upon a person the power to direct or consent to certain actions of the fiduciary, the duty and liability of the fiduciary are as follows:

a. If the terms of the instrument confer upon the person the power to direct certain actions of the fiduciary, the fiduciary must act in accordance with the direction and is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with the direction unless compliance with the direction constitutes intentional misconduct on the part of the fiduciary.

b. If the terms of the instrument confer upon a person the power to consent to certain actions of the fiduciary, and the power holder does not provide consent within a reasonable time after the fiduciary has made a timely request for the power holder's consent, the fiduciary is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the fiduciary's failure to take any action that required the power holder's consent.

c. The fiduciary has no duty to monitor the conduct of the power holder, provide advice to the power holder, or consult with the power holder. The fiduciary is not required to give notice to any beneficiary of any action taken or not taken by the power holder whether or not the fiduciary agrees with the result. Administrative actions taken by the fiduciary for the purpose of implementing directions of the power holder, including confirming that the directions of the power holder have been carried out, do not constitute monitoring of the power

holder or other participation in decisions within the scope of the power holder's authority.

(3) A person who holds a power to direct or consent is a fiduciary who, as such, is required to act in good faith with regard to the purposes of the estate, or other relationship between the fiduciary and beneficiaries, and the interests of the beneficiaries, except that if a beneficiary is a person with a power to direct or consent, the beneficiary is not a fiduciary with respect to the following:

a. A power that constitutes a power of appointment.

b. A power the exercise or nonexercise of which affects only the interests of the beneficiary holding the power and no other beneficiary.

The holder of the power to direct or consent is liable for any loss that results from breach of a fiduciary duty occurring as a result of the exercise or nonexercise of the power.

~~Whenever an instrument reserves to the settlor or vests in any person, including an advisory or investment committee or one or more co-fiduciaries, the authority to direct the making or retention of any investment to the exclusion of the fiduciary or to the exclusion of one or more of several co-fiduciaries, the excluded fiduciary or co-fiduciary who has no discretion in selecting the person authorized to make or retain investments is not liable to the beneficiaries or to the trust for the decisions or actions of the settlor or other person authorized to direct the making or retention of investments. As used in this subsection, the term "person" includes an individual, a corporation, or any legal or commercial entity authorized to hold property or do business in the State.~~"

SECTION 3.4. Chapter 36C of the General Statutes is amended by adding a new Article to read:

"Article 8A

"Powers, Duties and Liability of a Power Holder other than a Trustee; Duty and Liability of a Trustee with respect to Power Holder's Actions.

"**§ 36C-8A-801. Definition.**

For purposes of this Article, the term "power holder" means a person who under the terms of a trust has the power to take certain actions with respect to a trust and who is not a trustee or a settlor with a power to direct or consent pursuant to G.S. 36C-8-808.

"**§ 36C-8A-802. Powers of a power holder.**

(a) The terms of a trust may confer upon a power holder a power to direct or consent to a duty that would normally be required of a trustee, including, but not limited to, a power to direct or consent to the following:

(1) Investments, including any action relating to investment of all or any one or more of the trust assets that a trustee is authorized to take under this Chapter.

(2) Discretionary distributions of trust assets, including distributions to one or more beneficiaries, distribution of one of more trust assets, and termination of the trust by distribution of all of the trust assets.

(3) Any other matter regarding trust administration, including the transfer of the principal place of administration of the trust.

(b) The terms of a trust may also confer upon the power holder any other power, including, but not limited to, the power to:

(1) Modify or amend the trust to do any of the following:

a. Achieve favorable tax status under applicable law.

b. Take advantage of laws governing restraints on alienation or other State laws restricting the terms of the trust, distribution of trust property, or the administration of the trust.

(2) Remove and appoint trustees and power holders.
(3) Increase or decrease the interests of any beneficiary.
(4) Grant a power of appointment to one or more beneficiaries of the trust or modify the terms of or terminate a power of appointment granted to a beneficiary by the governing instrument, except that a grant or modification of a power of appointment may not grant a beneficial interest to any of the following:
a. Any individual or class of individuals not specifically provided for in the trust instrument.
b. The person having the power to grant, modify, or terminate the power of appointment.
c. The estate and creditors of the person having the power to grant, modify, or terminate the power of appointment.
(5) Change the governing law of the trust.

"**§ 36C-8A-803. Duty and liability of power holder.**

(a) A power holder is a fiduciary with respect to the powers conferred upon the power holder who, as such, is required to act in good faith and in accordance with the purposes and terms of a trust and the interests of the beneficiaries, except a power holder is not a fiduciary with respect to the following:
(1) A power to remove and appoint a trustee or power holder.
(2) A power that constitutes a power of appointment held by a beneficiary of a trust.
(3) A power the exercise or non-exercise of which may affect only the interests of the power holder and no other beneficiary.

(b) A power holder is liable for any loss that results from breach of fiduciary duty occurring as a result of the exercise or nonexercise of the power.

(c) The following provisions applicable to a trustee shall also be applicable to a power holder with respect to powers conferred upon the power holder as a fiduciary:
(1) The provisions of G.S. 36C-8-814 regarding discretionary powers and tax savings.
(2) The provisions of G.S. 36C-10-1001 through G.S. 36C-10-1012 regarding liability of trustees and rights of third persons dealing with trustees.
(3) The provisions of Article 9 of this Chapter regarding the uniform prudent investor rule.

"**§ 36C-8A-804. Duty and liability of trustee.**

(a) If the terms of a trust confer upon a power holder the power to direct certain actions of the trustee, the trustee must act in accordance with the direction and is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with the direction unless compliance with the direction constitutes intentional misconduct on the part of the trustee.

(b) If the terms of a trust confer upon the power holder the power to consent to certain actions of the trustee, and the power holder does not provide consent within a reasonable time after the trustee has made a timely request for the power holder's consent, the trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the trustee's failure to take any action that required the power holder's consent.

(c) If the terms of a trust confer upon the person a power other than the power to direct or consent to actions of the trustee, the trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the exercise or non-exercise of the power.

(d) The trustee has no duty to monitor the conduct of the power holder, provide advice to the power holder, or consult with the power holder. The trustee is not required to give notice to any beneficiary of any action taken or not taken by the power holder whether or not

the trustee agrees with the result. Administrative actions taken by the trustee for the purpose of implementing directions of the power holder, including confirming that the directions of the power holder have been carried out, do not constitute monitoring of the power holder nor do they constitute participation in decisions within the scope of the power holder's authority.

"**§ 36C-8A-805. Compensation and reimbursement of expenses of power holder.**

A power holder as a fiduciary is entitled to compensation and reimbursement of expenses as provided in G.S. 32-59.

"**§ 36C-8A-806. Jurisdiction over power holder.**

(a) By accepting appointment to serve as a power holder with respect to a trust having its principal place of business in this State, or by moving the principal place of administration to this State, the power holder submits personally to the jurisdiction of the courts of this State regarding any matter involving action or inaction of the power holder.

(b) This section does not preclude other methods of obtaining jurisdiction over a power holder.

"**§ 36C-8A-807. Accepting or declining the appointment as power holder.**

(a) A person designated as a power holder accepts the appointment to serve as a power holder:

(1) By substantially complying with a method of acceptance provided in the terms of a trust; or

(2) If the terms of a trust do not provide a method or the method provided in the terms of a trust is not expressly made exclusive, by exercising powers or performing duties as a power holder or otherwise indicating acceptance of the appointment to serve as a power holder.

(b) A person designated as a power holder may reject the appointment to serve as a power holder. A trustee may give written notice to a power holder requesting acceptance of the appointment as power holder. A power holder who does not accept such appointment within 120 days after receipt of such notice is considered to have rejected the appointment to serve as a power holder.

"**§ 36C-8A-808. Powers of trustee in the absence of a power holder.**

The trustee shall be vested with any fiduciary power or duty conferred upon a power holder by the terms of a trust that are described in G.S. 36C-8A-802(a) during the time when no power holder is available to exercise such power or perform such duty because of absence, illness or other cause.

"**§ 36C-8A-809. More than one power holder.**

When there is more than one power holder authorized to act, and they are unable to reach a unanimous decision, they may act by majority decision. Unanimity is required when only two are authorized to act.

"**§ 36C-8A-810. Resignation of power holder.**

(a) A power holder may resign:

(1) Upon at least 30 days' notice in writing to the qualified beneficiaries, the settlor, if living, and all trustees; or

(2) With the approval of the court.

(b) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

"**§ 36C-8A-811. Removal of power holder.**

(a) For the reasons set forth in subsection (b) of this section, the settlor of an irrevocable trust, a trustee of an irrevocable trust, or a beneficiary of an irrevocable trust may request the court to remove a powerholder, or a power holder may be removed by the court on its own initiative.

(b) The court may remove a power holder if:

(1) The power holder has committed a serious breach of trust;

(2) Lack of cooperation with the trustee substantially impairs the administration of the trust;

(3) Because of unfitness, unwillingness, or a persistent failure of the power holder to exercise the duties and powers conferred upon the power holder effectively, the court determines that removal of the power holder best serves the interests of the beneficiaries; or

(4) There has been a substantial change of circumstances, the court finds that removal of the power holder best serves the interests of all of the beneficiaries and is consistent with a material purpose of the trust, and a suitable successor power holder is available.

(c) Pending a final decision on a request to remove a power holder, or in lieu of or in addition to removing a power holder, the court may order appropriate relief under G.S. 36C-10-1001(b) as may be necessary to protect the trust property or the interests of the beneficiaries."

SUBPART B. TECHNICAL CORRECTIONS TO LAWS GOVERNING TRUSTS AND DECEDENTS' ESTATES

SECTION 3.5. G.S. 36C-7-707(b) reads as rewritten:

"**§ 36C-7-707. Delivery of property by former trustee.**

...

(b) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it. A former trustee shall execute those documents ~~transferring~~ acknowledging the transfer of title to trust property as may be ~~appropriate~~ reasonably requested by the cotrustee, successor trustee, or other person entitled to it to facilitate administration of the trust, and in the event that the former trustee fails to do so, the clerk of superior court may order the former trustee to execute those ~~documents, or the clerk of superior court may transfer title.~~documents."

SECTION 3.6. G.S. 108A-70.5(c) reads as rewritten:

"**§ 108A-70.5. Medicaid Estate Recovery Plan.**

...

(c) The amount the Department recovers from the estate of any recipient shall not exceed the amount of medical assistance made on behalf of the recipient and shall be recoverable only for medical care services prescribed in subsection (b) of this section. The Department is a ~~fifth-class~~sixth-class creditor, as prescribed in G.S. 28A-19-6, for purposes of determining the order of claims against an estate; provided, however, that judgments in favor of other ~~fifth-class~~sixth-class creditors docketed and in force before the Department seeks recovery for medical assistance shall be paid prior to recovery by the Department."

SECTION 3.7. G.S. 28A-13-3 reads as rewritten:

"**§ 28A-13-3. Powers of a personal representative or fiduciary.**

...

~~(b) Any question arising out of the powers conferred by subsections (a), (a1), and (a2) of this section shall be determined in accordance with the provisions of Article 18 of this Chapter.~~

...

(d) The personal representative ~~shall have~~has the power to institute ~~an estate~~a proceeding pursuant to Article 2 of this Chapter to enforce the rights set forth in this ~~subsection [section].~~ section. The clerk of superior court may enter orders necessary to enforce the rights set forth in this ~~subsection [section].~~section. If the person occupying the real property is a tenant or lessee of the property, the personal representative may seek ejectment of the tenant or lessee only pursuant to the provisions of Article 3 of Chapter 42 of the General Statutes."

SECTION 3.8. G.S. 28A-21-6 reads as rewritten:

"**§ 28A-21-6. Permissive notice of final accounts.**

The personal representative or collector may, but is not required to, give written notice of a proposed final account pursuant to G.S. 1A-1, Rule 4, to all devisees of the estate in the case of testacy, and to all heirs of the estate in the case of intestacy, of the date and place of filing of such account. In giving written notice, the personal representative shall attach a copy of the proposed final accounting with exhibits made a part thereof, but is not required to include copies of vouchers, account statements, or other supporting evidence submitted to the clerk. If the personal representative or collector elects to provide this notice, the personal representative or collector shall file with the clerk of superior court a certificate indicating that this notice has been given to all devisees and heirs. Notwithstanding any right to appeal an order or judgment under G.S. 1-301.3, any payment, distribution, action, or other matter disclosed on such account or any annual account for the estate ~~filed by the personal representative or collector~~attached to the written notice must be objected to by a devisee or heir within 30 days after the receipt of the written notice or will be deemed to be accepted by the devisee or heir."

SECTION 3.9. G.S. 28A-25-1.1(a) reads as rewritten:

"**§ 28A-25-1.1. Collection of property by affidavit when decedent dies testate.**

(a) When a decedent dies testate leaving personal property, less liens and encumbrances thereon, not exceeding twenty thousand dollars ($20,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, a person named or designated as executor in the will, devisee, heir or creditor, of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir, the person named or designated as executor in the will of the decedent, the creditor, the public administrator, or the devisee, stating:

(1) The name and address of the affiant and the fact that the affiant is the public administrator, a person named or designated as executor in the will, devisee, heir or creditor, of the decedent;
(2) The name of the decedent and the decedent's residence at time of death;
(3) The date and place of death of the decedent;
(4) That 30 days have elapsed since the death of the decedent;
(5) That the decedent died testate leaving personal property, less liens and encumbrances thereon, not exceeding twenty thousand dollars ($20,000) in value;
(6) That the decedent's will has been admitted to probate in the court of the proper county and a duly certified copy of the will has been recorded in each county in which is located any real property owned by the decedent at the time of the decedent's death;
(7) That a certified copy of the decedent's will is attached to the affidavit;
(8) That no application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction;
(9) The names and addresses of those persons who are entitled, under the provisions of the will, or if applicable, of the Intestate Succession Act, to the property of the decedent; and their relationship, if any, to the decedent; and
(10) A description sufficient to identify each tract of real property owned by the decedent at the time of the decedent's death.

In those cases in which the affiant is the surviving spouse, is entitled to all of the property of the decedent, and is not disqualified under G.S. 28A-4-2, the property described in this

subsection that may be collected pursuant to this section may exceed twenty thousand dollars ($20,000) in value but shall not exceed thirty thousand dollars ($30,000) in ~~value.~~ value, after reduction for any spousal allowance paid to the surviving spouse pursuant to G.S. 30-15. In such cases, the affidavit shall state: (i) the name and address of the affiant and the fact that the affiant is the surviving spouse and is entitled, under the provisions of the decedent's will, or if applicable, of the Intestate Succession Act, to all of the property of the decedent; (ii) that the decedent died testate leaving personal property, less liens and encumbrances thereon, not exceeding thirty thousand dollars ($30,000); and (iii) the information required under subdivisions (2), (3), (4), (6), (7), (8), and (10) of this subsection."

SECTION 3.10. G.S. 30-31 reads as rewritten:

"**§ 30-31. Amount of allowance.**

The clerk of superior court may assign to the petitioner a value sufficient for the support of petitioner according to the estate and condition of the decedent and without regard to the limitations set forth in this Chapter; but the value allowed shall be fixed with due consideration for other persons entitled to allowances for year's support from the decedent's estate; and the total value of all allowances shall not in any case exceed the one half of the average annual net income of the deceased for three years next preceding the deceased's death. ~~This report shall be returned by the magistrate to the court.~~"

SECTION 3.11. Section 14 of Session Law 2011-344 reads as rewritten:

"**SECTION 14.** ~~This~~ Except as provided below, this act becomes effective January 1, 2012, and applies to estates of decedents dying on or after that ~~date.~~ date:

(1) Subject to subdivision (3) of this section, Section 10 of this act becomes effective January 1, 2012 and applies to health care powers of attorney executed before, on or after that date.

(2) Subject to subdivision (3) of this section, Sections 11, 12, and 13 of this act become effective January 1, 2012, and apply to trust proceedings commenced before, on or after that date.

(3) Notwithstanding the provisions of subdivisions (1) and (2) of this section:

a. In any proceeding pending before the effective date of this act, the provisions in Sections 10, 11, 12, and 13 of this act shall not apply retroactively, and shall not apply prospectively if the court finds that application of a newly effective provision would substantially interfere with the effective conduct of a judicial proceeding or prejudice the rights of the parties.

b. An act done before the date of enactment of this act is not affected by this act, and a right that was acquired, extinguished, barred or commenced to run prior to the date of this act is not affected by this act."

SECTION 4. The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Comments to the North Carolina Uniform Trust Code and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

SECTION 5. Sections 1.1 through 1.24 and Sections 2.1 and 2.2 of this act become effective July 1, 2012. The remaining sections of this act are effective when it becomes law.

HOUSE BILL 707
Committee Substitute Favorable 6/3/11

Short Title: Deeds of Trust/Modernize Procedures. (Public)

Sponsors:

Referred to:

April 7, 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(e),~~ 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:

...

(1a) 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.

(1b) 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. Fluctuation 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.

HOUSE BILL 707:
Register of Deeds/Directed Trustees/Estates

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 30, 2012
Introduced by:	Rep. Rhyne	**Prepared by:**	Bill Patterson
Analysis of:	PCS to Second Edition H707-CSTG-44		Committee Counsel

SUMMARY: ***The PCS to House Bill 707 deletes obsolete references in statutes relating to the duties of Registers of Deeds, makes technical corrections to the laws governing trustees and decedents' estates, clarifies and limits the liability of trustees and other fiduciaries required by the governing instruments to take directions from others, modifies the amount local agencies charge for copies of vital records, and authorizes the Revisor of Statutes to publish explanatory comments of drafters of the amendments to the North Carolina Uniform Trust Code. The PCS replaces the original version of the bill in its entirety.***

BILL ANALYSIS:

Part I of the PCS to HB707 (**Sections 1.1 through 1.24**) contains a number of technical amendments relating to the duties of the Registers of Deeds to eliminate redundant requirements and conform to current indexing standards resulting from advances in computer technology.

Part II of the PCS amends G.S. 130A-93.1 to modify the fee that local agencies charge when using databases maintained by the State Registrar.

Current Law: A local agency is authorized to charge a fee not to exceed $24 for issuing the first copy of a vital record or for conducting a routine search of the files for the record when no copy is made, and $15 for each additional copy requested from the same search, and is permitted to retain $10 of this fee to cover local administrative costs, forwarding the balance to the State Registrar.

The PCS makes the following changes:

- **Section 2.1** permits the local agency to charge $14, and to retain $10 if a copy is made. It also permits the $10 charge to be waived if the requesting person is over age 62.
- **Section 2.2** repeals G.S. 161-10(8a), thereby eliminating the $2.00 fee that Registers of Deeds are currently required to collect for any search requiring access to the Vital Records Computer Network.

Part III, Subpart A of the PCS (**Sections 3.1 - 3.4**) amends the North Carolina Uniform Trust Code and makes conforming changes to the law generally applicable to fiduciaries.

Part III, Subpart B (**Sections 3.5 – 3.11**) makes technical corrections to other statutes governing trustees and decedents' estates.

Current Law:

- The duties and powers of trustees are set forth in Article 8 of Chapter 36C of the General Statutes.
- G.S. 36C-8-808(b) provides that a trustee must follow the direction of a person other than the settlor of a revocable trust who is empowered to direct the actions of the trustee under the terms of the trust, unless the exercise of that power would be contrary to the terms of the trust or would breach a fiduciary duty owed by the power holder to the trust beneficiaries.

- G.S. 36C-8-808(d) provides that a person other than a beneficiary who holds a power to direct is presumptively a fiduciary of the beneficiaries of the trust who is liable for losses caused by breach of a fiduciary duty.
- G.S. 32-72 provides that when a fiduciary responsible for making investments is required by the terms of an instrument to follow the investment directions of the settlor or some other person in whose selection the fiduciary had no discretion, the fiduciary is not liable to the beneficiaries or to the trust for the decisions of the settlor or other person whose direction the fiduciary follows.

Section 3.1 amends G.S. 36C-8-808(a) to provide that:

- a settlor of a revocable trust has the power to direct or consent to the actions of the trustee regardless of whether the power is conveyed by the terms of the trust, and
- the trustee is not liable for any loss resulting from compliance with the settlor's direction, or from the settlor not responding to a trustee's request for consent to the trustee's actions within a reasonable time after receiving the request

Section 3.2 adds a new subdivision (e1) to G.S. 36C-7-703 setting forth the duties and liabilities that arise when one or more cotrustees are given, to the exclusion of another cotrustee, the power to take certain actions with respect to the trust, including the power to direct or prevent certain actions of the trustees.

Section 3.3 amends G.S. 32-72(d) to set forth the duties and liabilities of fiduciaries responsible for investments who are directed by others, in the same way that the duties and liabilities of trustees are set forth by the amendments to G.S. 36C-8-808 made in Section 3.1 of the PCS.

Section 3.4 enacts a new Article 8A to Chapter 36C, to:

- Define a "power holder" as a person other than a trustee with power to take certain actions concerning a trust (new G.S. 36C-8A-801)
- Set forth the powers of a power holder (new G.S. 36C-8A-802)
- Establish the fiduciary duty and liability of a power holder (new G.S. 36C-8A-803)
- Limit the liability of a directed trustee to intentional wrongdoing and absolving the directed trustee from liability for failure to act when a power holder fails to grant a request for consent that is required for the directed trustee to act (new G.S. 36C-8A-804)
- Establish procedures governing compensation and expense reimbursement of power holders, jurisdiction over power holders, appointment of a power holder, how multiple power holders make decisions, and resignation and removal of power holders (new G.S. 36C-8A-805 through 36C-8A-811)

Section 3.5 is a technical amendment to G.S. 36C-7-707(b), to eliminate language obligating a former trustee to execute documents transferring title to trust property to the successor trustee. Because the successor trustee is immediately vested with title under G.S. 36C-7-704(f) (added by S.L. 2011-339, s.3), there is no need to execute documents to transfer title. This section also adds a requirement that a former trustee must comply with a reasonable request for execution of documents acknowledging the transfer of title, to facilitate estate administration.

Section 3.6 amends G.S. 108A-70.5(c) relating to the priority of the State's Medicaid reimbursement claim against a decedent's estate, to conform to the change in this priority made by Session Law 2009-288's amendment of G.S. 28A-19-6.

Section 3.7 makes technical corrections and clarifications to G.S. 28A-13-3 relating to the powers of a decedent's personal representative.

Section 3.8 makes a technical correction to G.S. 28A-21-6 on notice of final accounts to clarify that a copy of an accounting must be attached to a written notice given to devisees or heirs by a decedent's personal representative, in order to bar a person from objecting to the accounting more than 30 days after receipt of the notice.

Section 3.9 makes a technical correction to conform G.S. 28A-25-1.1, which governs the use of an affidavit of collection for testate estates, to the corresponding provisions of G.S. 28A-25-1 used for intestate estates.

Section 3.10 amends G.S. 30-31 to delete a reference to involvement of a magistrate in returning a report relating to a surviving spouse's year's allowance, to conform to Session Law 2011-344, which eliminate the magistrate's involvement in this procedure.

Section 3.11 modifies the effective date of Session Law 2011-344, to correct a problem resulting from application of the effective date applicable to decedents' estates to matters unrelated to decedents' estates.

Section 4 authorizes the Revisor of Statutes to publish explanatory comments of the drafters of the act as the Revisor deems appropriate.

EFFECTIVE DATE: The changes made in Parts I and II of the act become effective July 1, 2012. The remaining sections of the act are effective when it becomes law.

H707-SMTG-76(CSTG-44) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 149
Committee Substitute Favorable 4/5/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H149-CSSA-77 [v.4]

6/4/2012 4:56:08 PM

Short Title: Terrorism/State Offense. (Public)

Sponsors:

Referred to:

February 22, 2011

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF TERRORISM.

Whereas, closed community compounds are located across the United States and near the borders of this State; and

Whereas, these compounds have limited public access and are reputed to be bound together by a common purpose or ideology; and

Whereas, there have been reports of weapons fire and military-type training occurring at some of these compounds; and

Whereas, a defendant who was convicted of the attempted murder of nine students at the University of North Carolina at Chapel Hill as an act of revenge for enemy casualties of war was not charged under federal domestic terrorism laws; and

Whereas, the current State criminal statutes do not sufficiently recognize the increased danger to the public and do not sanction appropriately acts of terrorism; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 3A.
"Terrorism.

"**§ 14-10.1. Terrorism.**

(a) As used in this section, the term 'act of violence' means: a violation of G.S. 14-17; a felony punishable pursuant to G.S. 14-18; any felony offense in this Chapter that includes an assault, or use of violence or force against a person; any felony offense that includes either the threat or use of any explosive or incendiary device; or any offense that includes the threat or use of a nuclear, biological, or chemical weapon of mass destruction.

(b) A person is guilty of the separate offense of terrorism if the person commits an act of violence with the intent to do either of the following:

(1) Intimidate the civilian population at large, or an identifiable group of the civilian population.

(2) Influence, through intimidation, the conduct or activities of the government of the United States, a state, or any unit of local government.

(c) A violation of this section is a felony that is one class higher than the offense which is the underlying act of violence, except that a violation is a Class B1 felony if the underlying

act of violence is a Class A or Class B1 felony offense. A violation of this section is a separate offense from the underlying offense and shall not merge with other offenses.

(d) All real and personal property of every kind used or intended for use in the course of, derived from, or realized through an offense punishable pursuant to this Article shall be subject to lawful seizure and forfeiture to the State as set forth in G.S. 14-2.3 and G.S. 14-7.20. However, the forfeiture of any real or personal property shall be subordinate to any security interest in the property taken by a lender in good faith as collateral for the extension of credit and recorded as provided by law, and no real or personal property shall be forfeited under this section against an owner who made a bona fide purchase of the property, or a person with rightful possession of the property, without knowledge of a violation of this Article."

SECTION 2. G.S. 14-7.20 reads as rewritten:

§ 14-7.20. Continuing criminal enterprise.

(a) ~~Any~~ Except as otherwise provided in subsection (a1) of this section, any person who engages in a continuing criminal enterprise shall be punished as a Class H felon and in addition shall be subject to the forfeiture prescribed in subsection (b) of this section.

(a1) Any person who engages in a continuing criminal enterprise where the felony violation required by subdivision (c)(1) of this section is a violation of G.S. 14-10.1, shall be punished as a Class D felon and in addition shall be subject to the forfeiture prescribed in subsection (b) of this section.

(b) Any person who is convicted under subsection (a) or (a1) of this section of engaging in a continuing criminal enterprise shall forfeit to the State of North Carolina:

(1) The profits obtained by the person in the enterprise, and

(2) Any of the person's interest in, claim against, or property or contractual rights of any kind affording a source of influence over, such enterprise.

(c) For purposes of this section, a person is engaged in a continuing criminal enterprise if:

(1) The person violates any provision of this Chapter, the punishment of which is a felony; and

(2) The violation is a part of a continuing series of violations of this Chapter:

a. Which are undertaken by the person in concert with five or more other persons with respect to whom the person occupies a position of organizer, a supervisory position, or any other position of management; and

b. From which the person obtains substantial income or resources."

SECTION 3. This act becomes effective December 1, 2012, and applies to offenses committed on or after that date.

HOUSE BILL 149
Committee Substitute Favorable 4/5/11

Short Title: Terrorism/State Offense. (Public)

Sponsors:

Referred to:

February 22, 2011

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF TERRORISM.

Whereas, closed community compounds are located across the United States and near the borders of this State; and

Whereas, these compounds have limited public access and are reputed to be bound together by a common purpose or ideology; and

Whereas, there have been reports of weapons fire and military-type training occurring at some of these compounds; and

Whereas, a defendant who was convicted of the attempted murder of nine students at the University of North Carolina at Chapel Hill as an act of revenge for enemy casualties of war was not charged under federal domestic terrorism laws; and

Whereas, the current State criminal statutes do not sufficiently recognize the increased danger to the public and do not sanction appropriately acts of terrorism; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 2D.
"Terrorism.

"**§ 14-50.2. Terrorism.**

(a) The following definitions shall apply in this section:

(1) Act of violence. – A violation of G.S. 14-17 or G.S. 14-18; any felony offense in Chapter 14 of the General Statutes that includes an assault, or use of violence or force against a person; any felony offense that includes either the threat or use of any explosive or incendiary device; or any offense that includes the threat or use of a nuclear, biological, or chemical weapon of mass destruction.

(2) Continuing criminal enterprise. – As defined in G.S. 14-7.20(c).

(b) A person is guilty of the separate offense of terrorism if the person commits an act of violence or is engaged in a continuing criminal enterprise with the intent to do either of the following:

(1) Intimidate the civilian population at large, or an identifiable group of the civilian population.

(2) Influence, through intimidation, the conduct or activities of the government of the United States, a state, or any unit of local government.

(c) A violation of this section is a felony that is:

(1) One class higher than the offense which is the underlying act of violence, except that a violation is a Class B1 felony if the underlying act of violence is a Class B1 or Class A felony offense. A violation of this section is a separate offense from the underlying offense and shall not merge with other offenses.

(2) A Class D felony if the violation is based upon a violation of G.S. 14-7.20.

(d) Any person who solicits, invites, recruits, encourages, or otherwise causes or attempts to cause another to participate in an act, or acts, of terrorism is guilty of a Class D felony.

(e) All real and personal property of every kind used or intended for use in the course of, derived from, or realized through a violation of this Article shall be subject to lawful seizure and forfeiture to the State as set forth in G.S. 14-2.3 and G.S. 14-7.20. However, the forfeiture of any real or personal property shall be subordinate to any security interest in the property taken by a lender in good faith as collateral for the extension of credit and recorded as provided by law, and no real or personal property shall be forfeited under this section against an owner who made a bona fide purchase of the property without knowledge of a violation of this Article."

SECTION 2. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

HOUSE BILL 149:
Terrorism/State Offense

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 5, 2012
Introduced by:	Reps. Killian, Torbett	**Prepared by:**	Susan Sitze
Analysis of:	PCS to Second Edition H149-CSSA-77		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for H149 would create the State offense of terrorism and provide an increased penalty for continuing criminal enterprise in commission of the offense of terrorism.***

CURRENT LAW: Under federal law, a person engages in domestic terrorism if they do an act within the territorial jurisdiction of the United States that is "dangerous to human life" that is a violation of the criminal laws of a state or the United States, if the act appears to be intended to:

- Intimidate or coerce a civilian population;
- Influence the policy of a government by intimidation or coercion; or
- Affect the conduct of a government by mass destruction, assassination or kidnapping.

BILL ANALYSIS:

Section 1 of the PCS would create a State offense of "terrorism" if the defendant commits one of the described "acts of violence" with the intent to do either of the following:

(1) Intimidate the civilian population at large.
(2) Influence, through intimidation, the conduct or activities of the government of the United States, a state, or any unit of local government.

A violation would be classified at one offense level higher than the underlying offense. If the underlying offense is a Class A or Class B1 felony, then the terrorism offense is a Class B1 felony.

Real or personal property used in connection with a violation of the act is subject to seizure and forfeiture. Forfeiture is subject to prior security interests taken by a lender in good faith, and bona fide purchasers are protected from forfeiture.

Section 2 of the PCS would amend G.S. 14-7.20 to provide that participation in a continuing criminal enterprise while in violation of the terrorism statute is punishable as a Class D felony, rather than the Class H punishment for all other continuing criminal enterprises.

EFFECTIVE DATE: This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

HOUSE BILL 597
Committee Substitute Favorable 5/16/11

Short Title: UI/Fix Aggrieved Party Definition. (Public)

Sponsors:

Referred to:

April 5, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN INDIVIDUAL WHO HAS BEEN AWARDED UNEMPLOYMENT INSURANCE BENEFITS BY THE EMPLOYMENT SECURITY COMMISSION, BUT DOES NOT RECEIVE THOSE BENEFITS AS THE RESULT OF AN ACT OR OMISSION OF THE COMMISSION, IS DEEMED AN AGGRIEVED PARTY FOR THE PURPOSES OF JUDICIAL REVIEW WITHOUT THE REQUIREMENT TO EXHAUST ADMINISTRATIVE REMEDIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-12(b)(1) reads as rewritten:

"(b) (1) a. Repealed by Session Laws 1977, c. 727, s. 52.

b. An individual who is totally unemployed shall be paid the individual's weekly benefit amount. The weekly benefit amount for an individual is the amount of the high-quarter wages paid to the individual in the individual's base period, divided by 26 and, if the quotient is not a whole dollar, rounded to the next lower whole dollar. If this amount is less than fifteen dollars ($15.00), the individual is not eligible for benefits.

c. Repealed by Session Laws 1981, c. 160, s. 17.

d. In any case where an individual has applied for weekly benefits and has been awarded benefits but fails to receive those benefits as the result of an act or omission on the part of the Commission, the Commission shall rectify the error and shall pay the benefits immediately. Any failure of the Commission to rectify and pay as required by this subdivision renders the individual an aggrieved party for the purposes of G.S. 96-15(h) who is not required to exhaust administrative remedies and who may obtain injunctive and other relief, including an order to compel the Commission to pay the benefits."

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

HOUSE BILL 597:
UI/Fix Aggrieved Party Definition

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 24, 2012
Introduced by:	Rep. Murry	**Prepared by:**	Brad Krehely
Analysis of:	PCS to Second Edition H597-CSRN-42		Committee Counsel

SUMMARY: ***House Bill 597 provides that an individual who is awarded unemployment insurance benefits, but does not receive them as a result of an act or omission of the Division of Employment Security, is deemed an aggrieved party for judicial review and is not required to exhaust administrative remedies. The Proposed Committee Substitute makes technical changes only (removing references to the "Commission" and "the Employment Security Commission" and substituting "Division" and "Division of Employment Security").***

CURRENT LAW: Article 2 of Chapter 96 of the General Statutes governs the administration of unemployment benefits by the Division of Employment Security.

G.S. 96-15(h) provides that judicial review of a Division decision is only after a party exhausts administrative remedies under Chapter 96.

BILL ANALYSIS: House Bill 597 amends G.S. 96-12(b)(1) to provide both of the following:

- In any case where an individual has applied for and been awarded weekly unemployment benefits, but has failed to receive them as the result of an act or omission of the Division of Employment Security, the Division shall rectify the error and pay the benefits immediately.
- Any failure of the Division to rectify and pay as required renders the individual an aggrieved party who is not required to exhaust administrative remedies, and who may obtain injunctive and other relief including an order to compel the Division to pay the benefits.

EFFECTIVE DATE: This act is effective when it becomes law.

H597-SMRN-81(CSRN-42) v1

**Giles Perry, Counsel to House Judiciary Subcommittee A, contributed substantially to the drafting of this summary.*

HOUSE BILL 843
Second Edition Engrossed 5/24/11

Short Title:	Modernize NC Emergency Management Act.	(Public)
Sponsors:	Representative Martin (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 MODERNIZE THE NORTH CAROLINA EMERGENCY MANAGEMENT ACT AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

I. CHANGES TO CHAPTER 166A OF THE GENERAL STATUTES

SECTION 1.(a) G.S. 166A-6.1 is recodified as G.S. 166A-29 and the remainder of Article 1 of Chapter 166A is repealed.

SECTION 1.(b) Chapter 166A of the General Statutes is amended by adding a new Article to read:

"Article 1A.

"North Carolina Emergency Management Act.

"Part 1. General Provisions.

"**§ 166A-19. Short title.**

This Article may be cited as 'North Carolina Emergency Management Act.'

"**§ 166A-19.1. Purposes.**

The purposes of this Article are to set forth the authority and responsibility of the Governor, State agencies, and local governments in prevention of, preparation for, response to, and recovery from natural or man-made emergencies or hostile military or paramilitary action and to do the following:

(1) Reduce vulnerability of people and property of this State to damage, injury, and loss of life and property;

(2) Prepare for prompt and efficient rescue, care, and treatment of threatened or affected persons;

(3) Provide for the rapid and orderly rehabilitation of persons and restoration of property; and

(4) Provide for cooperation and coordination of activities relating to emergency mitigation, preparedness, response, and recovery among agencies and officials of this State and with similar agencies and officials of other states, with local and federal governments, with interstate organizations, and with other private and quasi-official organizations.

"**§ 166A-19.2. Limitations.**

Nothing in this Article shall be construed 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.

(2) Limit, modify, or abridge the authority of the Governor to declare martial law or exercise any other powers vested in the Governor under the North Carolina Constitution, statutes, or common law of this State independent of, or in conjunction with, any provisions of this Article.

"**§ 166A-19.3. Definitions.**

The following definitions apply in this Article:

(1) Account. – The State Emergency Response Account established in G.S. 166A-19.42.

(2) Chairman of the board of county commissioners. – The chairman of the board of county commissioners or, in case of the chairman's absence or disability, the person authorized to act in the chairman's stead. Unless the governing body of the county has specified who is to act in lieu of the chairman with respect to a particular power or duty set out in this Article, this term shall mean the person generally authorized to act in lieu of the chairman.

(3) Division. – The Division of Emergency Management established in Part 8 of Article 11 of Chapter 143B of the General Statutes.

(4) Eligible entity. – Any political subdivision. The term also includes an owner or operator of a private nonprofit utility that meets the eligibility criteria set out in this Article.

(5) Emergency. – An occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military, paramilitary, weather-related, or riot-related cause. For purposes of this Article, the term 'disaster' is synonymous with this term.

(6) Emergency area. – The geographical area covered by a state of emergency.

(7) Emergency management. – Those measures taken by the populace and governments at federal, State, and local levels to minimize the adverse effect of any type emergency, which includes the never-ending preparedness cycle of planning, prevention, mitigation, warning, movement, shelter, emergency assistance, and recovery.

(8) Emergency management agency. – A State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction.

(9) Hazard risk management. – The systematic application of policies, practices, and resources to the identification, assessment, and control of risk associated with hazards affecting human health and safety and property. Hazard, risk, and cost-benefit analysis are used to support development of risk reduction options, program objectives, and prioritization of issues and resources.

(10) Mayor. – The mayor or other chief executive official of a municipality or, in case of the mayor's absence or disability, the person authorized to act in the mayor's stead. Unless the governing body of the municipality has specified who is to act in lieu of the mayor with respect to a particular power or duty set out in this Article, the term shall mean the person generally authorized to act in lieu of the mayor.

(11) Political subdivision. – Counties and incorporated cities, towns, and villages.

(12) Preliminary damage assessment. – The (initial estimate prepared) process used by State, local, or federal emergency management workers to determine the severity and magnitude of damage caused by an emergency.

(13) Private nonprofit utility. – A utility that would be eligible for federal public assistance disaster funds pursuant to 44 C.F.R. Part 206.

(14) Secretary. – The Secretary of the Department of Crime Control and Public Safety.

(15) Stafford Act. – The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288, 88 Stat. 143, codified generally at 42 U.S.C. § 5121, et seq., as amended.

(16) State Acquisition and Relocation Fund. – State funding for supplemental grants to homeowners participating in a Hazard Mitigation Grant Program Acquisition and Relocation Program. These grants are used to acquire safe, decent, and sanitary housing by paying the difference between the cost of the home acquired under the Hazard Mitigation Grant Program Acquisition and Relocation Program and the cost of a comparable home located outside the 100-year floodplain.

(17) State of emergency. – A finding and declaration by any of the following authorities that an emergency exists:

a. The Governor, acting under the authority of G.S. 166A-19.20.

b. The General Assembly, acting under the authority of G.S. 166A-19.20.

c. The governing body of a municipality or the mayor of a municipality, acting under the authority of G.S. 166A-19.21.

d. The governing body of a county or the chairman of the board of commissioners of a county, acting under the authority of G.S. 166A-19.21.

"Part 2. State Emergency Management.

"**§ 166A-19.10. Powers of the Governor.**

(a) State Emergency Management Program. – The State Emergency Management Program includes all aspects of preparations for, response to, and recovery from war or peacetime emergencies.

(b) Powers of the Governor. – The Governor is authorized and empowered to do the following:

(1) To exercise general direction and control of the State Emergency Management Program and to be responsible for carrying out the provisions of this Article, other than those provisions that confer powers and duties exclusively on local governments.

(2) To make, amend, or rescind the necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor herein, with due consideration of the policies of the federal government.

(3) To delegate any authority vested in the Governor under this Article and to provide for the subdelegation of any such authority.

(4) To cooperate and coordinate with the President and the heads of the departments and agencies of the federal government, and with other appropriate federal officers and agencies, and with the officers and agencies of other states and local units of government in matters pertaining to the emergency management of the State and nation.

(5) To enter into agreements with the American National Red Cross, Salvation Army, Mennonite Disaster Service, and other disaster relief organizations.

(6) To make, amend, or rescind mutual aid agreements in accordance with G.S. 166A-19.72.

(7) To utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the State and of the political subdivisions thereof. The officers and personnel of all such departments, offices, and agencies are required to cooperate with and extend such services and facilities to the Governor upon request. This authority shall extend to a state of emergency declared pursuant to G.S. 166A-19.20, to the imminent threat of an emergency that will likely require an emergency to be declared pursuant to G.S. 166A-19.20, or to emergency management planning and training purposes.

(8) To agree, when required to obtain federal assistance in debris removal, that the State will indemnify the federal government against any claim arising from the removal of the debris.

(9) To sell, lend, lease, give, transfer, or deliver materials or perform services for emergency purposes on such terms and conditions as may be prescribed by any existing law, and to account to the State Treasurer for any funds received for such property.

(10) In an emergency, or when requested by the governing body of a political subdivision in the State, to assume operational control over all or any part of the emergency management functions within this State.

"**§ 166A-19.11. Powers of the Secretary of Crime Control and Public Safety.**

The Secretary shall be responsible to the Governor for State emergency management activities. The Secretary shall have the following powers and duties as delegated by the Governor:

(1) To activate the State and local plans applicable to the areas in question and to authorize and direct the deployment and use of any personnel and forces to which the plan or plans apply, and the use or distribution of any supplies, equipment, materials, and facilities available pursuant to this Article or any other provision of law.

(2) To adopt the rules to implement those provisions of this Article that deal with matters other than those that are exclusively local.

(3) To develop a system of damage assessment through which the Secretary will recommend the appropriate level of emergency declaration to the Governor. The system shall, at a minimum, consider whether the damage involved and its effects are of such a severity and magnitude as to be beyond the response capabilities of the local government or political subdivision.

(4) Additional authority, duties, and responsibilities as may be prescribed by the Governor. The Secretary may subdelegate his authority to the appropriate member of the Secretary's department.

"**§ 166A-19.12. Powers of the Division of Emergency Management.**

The Division of Emergency Management shall have the following powers and duties as delegated by the Governor and Secretary of Crime Control and Public Safety:

(1) Coordination of the activities of all State agencies for emergency management within the State, including planning, organizing, staffing, equipping, training, testing, and the activation of emergency management programs.

(2) Preparation and maintenance of State plans for emergencies. The State plans or any parts thereof may be incorporated into department regulations and into executive orders of the Governor.

(3) 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:
a. The epidemiologic investigation of a known or suspected threat caused by nuclear, biological, or chemical agents.
b. The examination and testing of persons and animals that may have been exposed to a nuclear, biological, or chemical agent.
c. The procurement and allocation of immunizing agents and prophylactic antibiotics.
d. The allocation of the National Pharmaceutical Stockpile.
e. The appropriate conditions for quarantine and isolation in order to prevent further transmission of disease.
f. Immunization procedures.
g. The issuance of guidelines for prophylaxis and treatment of exposed and affected persons.

(4) Establishment of a voluntary model registry for use by political subdivisions in identifying functionally and medically fragile persons in need of assistance during an emergency. All records, data, information, correspondence, and communications relating to the registration of persons with special needs or of functionally and medically fragile persons obtained pursuant to this subdivision are confidential and are not a public record pursuant to G.S. 132-1 or any other applicable statute, except that this information shall be available to emergency response agencies, as determined by the local emergency management director. This information shall be used only for the purposes set forth in this subdivision.

(5) Promulgation of standards and requirements for local plans and programs consistent with federal and State laws and regulations, determination of eligibility for State financial assistance provided for in G.S. 166A-19.15 and provision of technical assistance to local governments. Standards and requirements for local plans and programs promulgated under this subdivision shall be reviewed by the Division at least biennially and updated as necessary.

(6) Development and presentation of training programs, including the Emergency Management Certification Program established under Article 5 of this Chapter, and public information programs to insure the furnishing of adequately trained personnel and an informed public in time of need.

(7) Making of such studies and surveys of the resources in this State as may be necessary to ascertain the capabilities of the State for emergency management, maintaining data on these resources, and planning for the most efficient use thereof.

(8) Coordination of the use of any private facilities, services, and property.

(9) Preparation for issuance by the Governor of executive orders, declarations, and regulations as necessary or appropriate.

(10) Cooperation and maintenance of liaison with the other states, the federal government, and any public or private agency or entity in achieving any purpose of this Article and in implementing programs for emergency or war prevention, preparation, response, and recovery.

(11) Making recommendations, as appropriate, for zoning, building, and other land-use controls, and safety measures for securing mobile homes or other nonpermanent or semipermanent works designed to protect against or mitigate the effects of an emergency.

(12) Coordination of the use of existing means of communications and supplementing communications resources and integrating them into a comprehensive State or State-federal telecommunications or other communications system or network.

(13) Administration of federal and State grant funds provided for emergency management purposes, including those funds provided for planning and preparedness activities by emergency management agencies.

(14) Serving as the lead State agency for the coordination of information and resources for hazard risk management, which shall include the following responsibilities:

a. Coordinating with other State agencies and county governments in conducting hazard risk analysis. To the extent another State agency has primary responsibility for the adoption of hazard mitigation standards, those standards shall be applied in conducting a hazard risk analysis.

b. Establishing and maintaining a hazard risk management information system and tools to display natural hazards and vulnerabilities and conducting risk assessment.

c. Acquiring and leveraging all natural hazard data generated or maintained by State agencies and county governments.

d. Acquiring and leveraging all vulnerability data generated or maintained by State agencies and county governments.

e. Maintaining a clearinghouse for methodologies and metrics for calculating and communicating hazard probability and loss estimation.

(15) Utilizing and maintaining technology that enables efficient and effective communication and management of resources between political subdivisions, State agencies, and other governmental entities involved in emergency management activities.

"Part 3. Local Emergency Management.

"**§ 166A-19.15. County and municipal emergency management.**

(a) Governing Body of Counties Responsible for Emergency Management. – The governing body of each county is responsible for emergency management within the geographical limits of such county. All emergency management efforts within the county will be coordinated by the county, including activities of the municipalities within the county.

(b) Counties May Establish and Maintain Emergency Management Agencies. – The governing body of each county is hereby authorized to establish and maintain an emergency management agency for the purposes contained in G.S. 166A-19.1. The governing body of each county which establishes an emergency management agency pursuant to this authorization shall appoint a coordinator who will have a direct responsibility for the organization, administration, and operation of the county program and will be subject to the direction and guidance of such governing body. In the event that any county fails to establish an emergency management agency, and the Governor, in the Governor's discretion, determines that a need exists for such an emergency management agency, then the Governor is hereby empowered to establish an emergency management agency within that county.

(c) Municipalities May Establish and Maintain Emergency Management Agencies. – All incorporated municipalities are authorized to establish and maintain emergency management agencies subject to coordination by the county.

(d) Joint Agencies Authorized. – Counties and incorporated municipalities are authorized to form joint emergency management agencies composed of a county and one or

more municipalities within the county's borders, between two or more counties, or between two or more counties and one or more municipalities within the borders of those counties.

(e) Local Appropriations Authorized. – Each county and incorporated municipality in this State is authorized to make appropriations for the purposes of this Article and to fund them by levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues, whose use is not otherwise restricted by law.

(f) Additional Powers. – In carrying out the provisions of this Article each political subdivision is authorized to do the following:

(1) To appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for emergency management purposes and to provide for the health and safety of persons and property, including emergency assistance, consistent with this Article.

(2) To direct and coordinate the development of emergency management plans and programs in accordance with the policies and standards set by the Division, consistent with federal and State laws and regulations.

(3) To assign and make available all available resources for emergency management purposes for service within or outside of the physical limits of the subdivision.

(4) To delegate powers in a local state of emergency declared pursuant to G.S. 166A-19.21.

(5) To coordinate the voluntary registration of functionally and medically fragile persons in need of assistance during an emergency either through a registry established by this subdivision or by the State. All records, data, information, correspondence, and communications relating to the registration of persons with special needs or of functionally and medically fragile persons obtained pursuant to this subdivision are confidential and are not a public record pursuant to G.S. 132-1 or any other applicable statute, except that this information shall be available to emergency response agencies, as determined by the local emergency management director. This information shall be used only for the purposes set forth in this subdivision.

(g) County Eligibility for State and Federal Financial Assistance. – Each county which establishes an emergency management agency pursuant to State standards and which meets requirements for local plans and programs may be eligible to receive State and federal financial assistance, including State and federal funding appropriated for emergency management planning and preparedness, and for the maintenance and operation of a county emergency management program. Such financial assistance is subject to an appropriation being made for this purpose. Where the appropriation does not allocate appropriated funds among counties, the amount allocated to each county shall be determined annually by the Division. The size of this allocation shall be based in part on the degree to which local plans and programs meet State standards and requirements promulgated by the Division, including those relating to professional competencies of local emergency management personnel. However, in making an allocation determination, the Division shall, where appropriate, take into account the fact that a particular county may lack sufficient resources to meet the standards and requirements promulgated by the Division.

"Part 4. Declarations of State of Emergency.

"**§ 166A-19.20. Gubernatorial or legislative declaration of state of emergency.**

(a) Declaration. – A state of emergency may be declared by the Governor, or by a resolution of the General Assembly, if either of these finds that an emergency exists. A Type L emergency may only be declared by the Governor.

(b) Preliminary Damage Assessment. – When a state of emergency other than a Type L emergency is declared pursuant to this section, the Secretary shall provide the Governor and the

General Assembly with a preliminary damage assessment as soon as the assessment is available.

(c) Declaration of Emergency Area and Emergency Type. – Upon receipt of a preliminary damage assessment, the Governor shall issue a declaration defining the emergency area and declaring the state of emergency to be one of the types defined in subsection (d) of this section. If the Governor declares the state of emergency to be a Type L emergency, then no preliminary damage assessment is required for that declaration and the declaration of type shall be made at the same time as the emergency is declared.

(d) Types of Emergency. –

(1) Type I Disaster. – A Type I disaster may be declared 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, if all of the following criteria are met:

a. A local state of emergency has been declared pursuant to G.S. 166A-19.21 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-19.41(b)(2)a.

c. A major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared.

(2) Type II Disaster. – 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.

(3) Type III Disaster. – 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 either of the following is true:

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.

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 emergency.

(4) Type L Emergency. – A Type L emergency may be declared if the Governor determines that an emergency exists in any part of North Carolina and further finds that local control of the emergency is insufficient to assure adequate protection for lives and property. Local control shall be deemed insufficient only if the Governor finds that at least one of the following is true: (i) needed control cannot be imposed locally because local authorities responsible for preservation of the public peace have not enacted appropriate ordinances or issued appropriate declarations as authorized by G.S. 166A-19.31; (ii) local authorities have not taken implementing steps under such ordinances or declarations, if enacted or declared, for effectual control of the emergency that has arisen; (iii) the area in which the emergency exists has spread across local jurisdictional boundaries and the legal control measures of the jurisdictions are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will

be, severely hampered; or (iv) the scale of the emergency is so great that it exceeds the capability of local authorities to cope with it.

(e) Expiration of States of Emergency. –

(1) Expiration of Type I disaster declarations. – A Type I disaster declaration shall expire 30 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) Expiration of Type II disaster declarations. – A Type II disaster declaration shall expire six 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 exceed a total of 12 months 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 II disaster declaration.

(3) Expiration of Type III disaster declarations. – A Type III disaster declaration shall expire 12 months after its issuance unless renewed by the General Assembly.

(4) Expiration of Type L emergency declarations. – A Type L emergency declaration shall expire 10 days after its issuance unless renewed by the Governor one or more times. Renewals expire 10 days after issuance.

(5) Expiration of disaster declarations declared prior to July 1, 2001. – Any state of disaster declared or proclaimed before July 1, 2001, irrespective of type, shall terminate by a declaration of the Governor or resolution of the General Assembly. A declaration 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, the Secretary of State, and the clerks of superior court in the area to which it applies.

(f) Relation of Type L Emergency to Other Types of Emergency. – The declaration of a Type L emergency shall not preclude a simultaneous or subsequent declaration of a Type I, II, or III disaster in the same emergency area.

(g) Exercise of Powers Not Contingent on Declaration of Disaster Type. – Once a state of emergency has been declared pursuant to subsection (a) of this section, the fact that a declaration of disaster type has not yet been issued shall not preclude the exercise of powers that are otherwise conferred during a state of emergency.

"**§ 166A-19.21. Municipal or county declaration of state of emergency.**

(a) Declaration. – A state of emergency may be declared by the governing body of a municipality or county if either of these finds that an emergency exists. Authority to declare a state of emergency under this section may also be delegated by ordinance to the mayor of a municipality or to the chairman of the board of county commissioners of a county.

(b) Emergency Area. – The emergency area of a state of emergency declared pursuant to this section, or pursuant to an ordinance authorized by this section, shall be determined in accordance with the following:

(1) Unless another subdivision of this subsection is applicable, the emergency area shall not exceed the area over which the municipality or county has jurisdiction to enact general police-power ordinances, and unless the governing body declaring the state of emergency provides otherwise, the

emergency area includes this entire jurisdiction, subject to the limitations contained in the other subdivisions in this subsection.

(2) The emergency area of a state of emergency declared by a county shall not include any area within the corporate limits of any municipality, or within any area of the county over which a municipality has jurisdiction to enact general police-power ordinances, unless the municipality by resolution consents to the state of emergency's application. Such an extension may be with respect to one or more of the prohibitions and restrictions imposed in that county pursuant to the authority granted in G.S. 166A-19.31 and need not be with respect to all prohibitions and restrictions authorized by that section.

(3) The chairman of the board of commissioners of any county who has been requested to do so by a mayor may by declaration extend the emergency area of a state of emergency declared by a municipality to any area within the county in which the chairman determines it to be necessary to assist in the controlling of the emergency within the municipality. The extension may be with respect to one or more of the prohibitions and restrictions imposed in that mayor's municipality pursuant to the authority granted in G.S. 166A-19.31 and need not be with respect to all prohibitions and restrictions authorized by that section. Extension of the emergency area pursuant to this subdivision shall be subject to the following additional limitations:

a. The extension of the emergency area shall not include any area within the corporate limits of a municipality, or within any area of the county over which a municipality has jurisdiction to enact general police-power ordinances, unless that other municipality consents to its application.

b. A chairman of a board of county commissioners extending the emergency area under the authority of this subdivision shall take reasonable steps to give notice of its terms to those likely to be affected.

c. The chairman of the board of commissioners shall declare the termination of any prohibitions and restrictions extended pursuant to this subdivision upon the earlier of:

1. The chairman's determination that they are no longer necessary.

2. The determination of the board of county commissioners that they are no longer necessary.

3. The termination of the prohibitions and restrictions within the municipality.

d. The powers authorized under this subdivision may be exercised whether or not the county has enacted ordinances under the authority of G.S. 166A-19.31. Exercise of this authority shall not preclude the imposition of prohibitions and restrictions under any ordinances enacted by the county under the authority of G.S. 166A-19.31.

(c) Expiration of States of Emergency. – Unless an ordinance adopted pursuant to G.S. 166A-19.31 provides otherwise, a state of emergency declared pursuant to this section shall expire when it is terminated by the official or governing body that declared it.

(d) Effect of Declaration. – The declaration of a state of emergency pursuant to this section shall activate the local ordinances authorized in G.S. 166A-19.31 and any and all

applicable local plans, mutual assistance compacts and agreements and shall also authorize the furnishing of assistance thereunder.

"Part 5. Additional Powers During States of Emergency.

"**§ 166A-19.30. Additional powers of the Governor during state of emergency.**

(a) In addition to any other powers conferred upon the Governor by law, during a gubernatorially or legislatively declared state of emergency, other than a Type L emergency, the Governor shall have the following powers:

(1) To utilize all available State resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services.

(2) To take such action and give such directions to State and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article and with the orders, rules, and regulations made pursuant thereto.

(3) To take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety.

(4) Subject to the provisions of the State Constitution to relieve any public official having administrative responsibilities under this Article of such responsibilities for willful failure to obey an order, rule, or regulation adopted pursuant to this Article.

(b) During a gubernatorially or legislatively declared state of emergency other than a Type L emergency, with the concurrence of the Council of State, the Governor has the following powers:

(1) To direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State, to prescribe routes, modes of transportation, and destinations in connection with evacuation; and to control ingress and egress of an emergency area, the movement of persons within the area, and the occupancy of premises therein.

(2) To establish a system of economic controls over all resources, materials, and services to include food, clothing, shelter, fuel, rents, and wages, including the administration and enforcement of any rationing, price freezing, or similar federal order or regulation.

(3) To regulate and control the flow of vehicular and pedestrian traffic, the congregation of persons in public places or buildings, lights and noises of all kinds, and the maintenance, extension, and operation of public utility and transportation services and facilities.

(4) To waive a provision of any regulation or ordinance of a State agency or a political subdivision which restricts the immediate relief of human suffering.

(5) To perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population.

(6) To appoint or remove an executive head of any State agency or institution the executive head of which is regularly selected by a State board or commission.

a. Such an acting executive head will serve during the following:

1. The physical or mental incapacity of the regular office holder, as determined by the Governor after such inquiry as the Governor deems appropriate.

2. The continued absence of the regular holder of the office.
3. A vacancy in the office pending selection of a new executive head.

b. An acting executive head of a State agency or institution appointed in accordance with this subdivision may perform any act and exercise any power which a regularly selected holder of such office could lawfully perform and exercise.

c. All powers granted to an acting executive head of a State agency or institution under this section shall expire immediately:

1. Upon the termination of the incapacity as determined by the Governor of the officer in whose stead he acts;
2. Upon the return of the officer in whose stead he acts; or
3. Upon the selection and qualification of a person to serve for the unexpired term, or the selection of an acting executive head of the agency or institution by the board or commission authorized to make such selection, and his qualification.

(7) To procure, by purchase, condemnation, seizure, or by other means to construct, lease, transport, store, maintain, renovate, or distribute materials and facilities for emergency management without regard to the limitation of any existing law.

(c) In addition to any other powers conferred upon the Governor by law, during a Type L emergency the Governor shall have the following powers:

(1) To impose by declaration prohibitions and restrictions in the emergency area. These prohibitions and restrictions may, in the Governor's discretion, as appropriate to deal with the emergency, impose any of the types of prohibitions and restrictions enumerated in G.S. 166A-19.31(b), and may amend or rescind any prohibitions and restrictions imposed by local authorities. Prohibitions and restrictions imposed pursuant to this subdivision shall take effect in accordance with the provisions of G.S. 166A-19.31(d) and shall expire upon the earliest occurrence of either of the following: (i) the prohibition or restriction is terminated by the Governor or (ii) the state of emergency is terminated.

(2) Give to all participating State and local agencies and officers such directions as may be necessary to assure coordination among them. These directions may include the designation of the officer or agency responsible for directing and controlling the participation of all public agencies and officers in the emergency. The Governor may make this designation in any manner which, in the Governor's discretion, seems most likely to be effective. Any law enforcement officer participating in the control of a state of emergency in which the Governor is exercising control under this section shall have the same power and authority as a sheriff throughout the territory to which the law enforcement officer is assigned.

(d) Violation. – Any person who violates any provision of a declaration or executive order issued pursuant to this section shall be guilty of a Class 2 misdemeanor in accordance with G.S. 14-288.20A.

"**§ 166A-19.31. Power of municipalities and counties to enact ordinances to deal with states of emergency.**

(a) Authority to Enact Prohibitions and Restrictions. – The governing body of any municipality or county may enact ordinances designed to permit the imposition of prohibitions and restrictions within the emergency area during a state of emergency declared pursuant to G.S. 166A-19.21. Authority to impose by declaration prohibitions and restrictions under this

section, and to impose those prohibitions and restrictions at a particular time as appropriate, may be delegated by ordinance to the mayor of a municipality or to the chairman of the board of county commissioners of a county.

(b) Type of Prohibitions and Restrictions Authorized. – 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 an emergency 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 the possession, transportation, sale, purchase, storage, and use of dangerous weapons and substances, and gasoline. As used in this subdivision, the term 'dangerous weapon and substance' has the same meaning as it does under G.S. 14-288.1.

(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 authorized by this section need not require or provide for the imposition of all of the types of prohibitions or restrictions, or any particular prohibition or restriction, authorized by this section during an emergency but may instead authorize the official or officials who impose those prohibitions or restrictions to determine and impose the prohibitions or restrictions deemed necessary or suitable to a particular state of emergency.

(c) When Ordinances Take Effect. – Notwithstanding any other provision of law, whether general or special, relating to the promulgation or publication of ordinances by any municipality or county, upon the declaration of a state of emergency by the mayor or chairman of the board of county commissioners within the municipality or the county, any ordinance enacted under the authority of this section shall take effect immediately unless the ordinance sets a later time. If the effect of this section is to cause an ordinance to go into effect sooner than it otherwise could under the law applicable to the municipality or county, the mayor or chairman of the board of county commissioners, as the case may be, shall take steps to cause reports of the substance of the ordinance to be disseminated in a fashion that its substance will likely be communicated to the public in general, or to those who may be particularly affected by the ordinance if it does not affect the public generally. As soon as practicable thereafter, appropriate distribution or publication of the full text of any such ordinance shall be made.

(d) When Prohibitions and Restrictions Take Effect. – All prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under this section shall take effect in the emergency area immediately upon publication of the declaration unless the declaration sets a later time. For the purpose of requiring compliance, publication may consist of reports of the substance of the prohibitions and restrictions in the mass communications media serving the emergency area or other effective methods of disseminating the necessary information quickly. As soon as practicable, however, appropriate distribution of the full text of any declaration shall be made. This subsection shall not be governed by the provisions of G.S. 1-597.

(e) Expiration of Prohibitions and Restrictions. – Prohibitions and restrictions imposed pursuant to this section shall expire upon the earliest occurrence of any of the following:

(1) The prohibition or restriction is terminated by the governing body of the county or municipality.

(2) The state of emergency terminates.

(f) Intent to Supplement Other Authority. – This section is intended to supplement and confirm the powers conferred by G.S. 153A-121(a), G.S. 160A-174(a), and all other general and local laws authorizing municipalities and counties to enact ordinances for the protection of the public health and safety in times of riot or other grave civil disturbance or emergency.

(g) Previously Enacted Ordinances Remain in Effect. – Any ordinance of a type authorized by this section promulgated prior to [Date Bill Becomes Law], 2011, shall, if otherwise valid, continue in full force and effect without reenactment.

(h) Violation. – Any person who violates any provision of an ordinance or a declaration enacted or declared pursuant to this section shall be guilty of a Class 2 misdemeanor in accordance with G.S. 14-288.20A.

"Part 6. Funding of Emergency Preparedness and Response.

"**§ 166A-19.40. Use of contingency and emergency funds.**

(a) Use of Funds for Relief and Assistance. –The Governor may use contingency and emergency funds as necessary and appropriate to provide relief and assistance from the effects of an emergency and may reallocate such other funds as may reasonably be available within the appropriations of the various departments when the severity and magnitude of the emergency so requires and the contingency and emergency funds are insufficient or inappropriate.

(b) Use of Funds for National Guard Training. – In preparation for a state of emergency, with the concurrence of the Council of State, the Governor may use contingency and emergency funds as necessary and appropriate for National Guard training in preparation for emergencies.

"**§ 166A-19.41. State emergency assistance funds.**

(a) Governor May Make Funds Available for Emergency Assistance. – In the event of a gubernatorially or legislatively declared state of emergency, the Governor may make State funds available for emergency assistance as authorized by this section. Any State funds made available by the Governor for emergency assistance may be administered through State emergency assistance programs which may be established by the Governor upon the declaration of a state of emergency. It is the intent of the General Assembly in authorizing the Governor to make State funds available for emergency assistance and in authorizing the Governor to establish State emergency assistance programs to provide State assistance for recovery from those emergencies for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the emergency area.

(b) Emergency Assistance in a Type I Disaster. – In the event that a Type I disaster is declared, the Governor may make State funds available for emergency assistance in the emergency area in the form of individual assistance and public assistance as provided in this subsection.

(1) Individual assistance. – State emergency assistance in the form of grants to individuals and families may be made available when damage meets or exceeds the criteria set out in 13 C.F.R. Part 123 for the Small Business Administration Disaster Loan Program. Individual assistance grants shall include benefits comparable to those provided by the Stafford Act and may be provided for the following:

a. Provision of temporary housing and rental assistance.

b. Repair or replacement of dwellings. Grants for repair or replacement of housing may include amounts necessary to locate the individual or family in safe, decent, and sanitary housing.

c. Replacement of personal property (including clothing, tools, and equipment).

d. Repair or replacement of privately owned vehicles.

e. Medical or dental expenses.
f. Funeral or burial expenses resulting from the emergency.
g. Funding for the cost of the first year's flood insurance premium to meet the requirements of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. § 4001, et seq.

(2) Public assistance. – State emergency assistance in the form of public assistance grants may be made available to eligible entities located within the emergency area on the following terms and conditions:
a. Eligible entities shall meet the following qualifications:
1. The eligible entity suffers a minimum of ten thousand dollars ($10,000) in uninsurable losses;
2. The eligible entity suffers uninsurable losses in an amount equal to or exceeding one percent (1%) of the annual operating budget;
3. For a state of emergency declared pursuant to G.S. 166A-19.20(a) after the deadline established by the Federal Emergency Management Agency pursuant to the Disaster Mitigation Act of 2002, P.L. 106-390, the eligible entity shall have a hazard mitigation plan approved pursuant to the Stafford Act; and
4. For a state of emergency declared pursuant to G.S. 166A-19.20(a), other than a Type L emergency, after August 1, 2002, the eligible entity shall be participating in the National Flood Insurance Program in order to receive public assistance for flooding damage.
b. Eligible entities shall be required to provide non-State matching funds equal to twenty-five percent (25%) of the eligible costs of the public assistance grant.
c. An eligible entity that receives a public assistance grant pursuant to this subsection may use the grant for the following purposes only:
1. Debris clearance.
2. Emergency protective measures.
3. Roads and bridges.
4. Crisis counseling.
5. Assistance with public transportation needs.

(c) Emergency Assistance in a Type II Disaster. – If a Type II disaster is declared, the Governor may make State funds available for emergency assistance in the emergency area in the form of the following types of grants:
(1) State Acquisition and Relocation Funds.
(2) Supplemental repair and replacement housing grants available to individuals or families in an amount necessary to locate the individual or family in safe, decent, and sanitary housing not to exceed twenty-five thousand dollars ($25,000) per family.

(d) Emergency Assistance in a Type III Disaster. – If a Type III disaster is declared, the Governor may make State funds available for emergency assistance in the emergency area in the form of the following types of grants:
(1) State Acquisition and Relocation Funds.
(2) Supplemental repair and replacement housing grants available to individuals or families in an amount necessary to locate the individual or family in safe, decent, and sanitary housing not to exceed twenty-five thousand dollars ($25,000) per family.

(3) Any programs authorized by the General Assembly.

"**§ 166A-19.42. State Emergency Response Account.**

(a) Account Established. – There is established a State Emergency Response Account as a reserve in the General Fund. Any funds appropriated to the Account shall remain available for expenditure as provided by this section, unless directed otherwise by the General Assembly.

(b) Use of Funds. – The Governor may spend funds from the Account for the following purposes:

(1) To cover the start-up costs of State Emergency Response Team operations for an emergency that poses an imminent threat of a Type I, Type II, or Type III disaster.

(2) To cover the cost of first responders to a Type I, Type II, or Type III disaster and any related supplies and equipment needed by first responders that are not provided for under subdivision (1) of this subsection.

All other types of emergency assistance authorized by this Part shall continue to be financed by the funds made available under G.S. 166A-19.41.

(c) Reporting Requirement. – The Governor shall report to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Appropriations Committees of the Senate and House of Representatives on any expenditures from the State Emergency Response Account no later than 30 days after making the expenditure. The report shall include a description of the emergency and type of action taken.

"Part 7. Immunity and Liability.

"**§ 166A-19.60. Immunity and exemption.**

(a) Generally. – All functions hereunder and all other activities relating to emergency management as provided for in this Chapter or elsewhere in the General Statutes are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence, or bad faith, any emergency management worker, firm, partnership, association, or corporation complying with or reasonably attempting to comply with this Article or any order, rule, or regulation promulgated pursuant to the provisions of this Article or pursuant to any ordinance relating to any emergency management measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity.

(b) Immunity. – The immunity provided to firms, partnerships, associations, or corporations, under subsection (a) of this section, is subject to all of the following conditions:

(1) The immunity applies only when the firm, partnership, association, or corporation is acting without compensation or with compensation limited to no more than actual expenses and one of the following applies:

a. Emergency management services are provided at any place in this State during a state of emergency declared by the Governor or General Assembly pursuant to this Article, and the services are provided under the direction and control of the Secretary pursuant to G.S. 166A-19.10, 166A-19.11, 166A-19.12, 166A-19.20, 166A-19.30, and 143B-476, or the Governor.

b. Emergency management services are provided during a state of emergency declared pursuant to G.S. 166A-19.21, and the services are provided under the direction and control of the governing body of a municipality or county under G.S. 166A-19.31, or the chair of a board of county commissioners under G.S. 166A-19.21(b)(3).

c. The firm, partnership, association, or corporation is engaged in planning, preparation, training, or exercises with the Division, the Division of Public Health, or the governing body of each county or

municipality under G.S. 166A-19.15 related to the performance of emergency management services or measures.

(2) The immunity shall not apply to any firm, partnership, association, or corporation, or to any employee or agent thereof, whose act or omission caused in whole or in part the actual or imminent emergency or whose act or omission necessitated emergency management measures.

(3) To the extent that any firm, partnership, association, or corporation has liability insurance, that firm, partnership, association, or corporation shall be deemed to have waived the immunity to the extent of the indemnification by insurance for its negligence. An insurer shall not under a contract of insurance exclude from liability coverage the acts or omissions of a firm, partnership, association, or corporation for which the firm, partnership, association, or corporation would only be liable to the extent indemnified by insurance as provided by this subdivision.

(c) No Effect on Benefits. – The rights of any person to receive benefits to which the person would otherwise be entitled under this Article or under the Workers' Compensation Law or under any pension law and the right of any such person to receive any benefits or compensation under any act of Congress shall not be affected by performance of emergency management functions.

(d) License Requirements Suspended. – Any requirement for a license to practice any professional, mechanical, or other skill shall not apply to any authorized emergency management worker who shall, in the course of performing the worker's duties as such, practice such professional, mechanical, or other skill during a state of emergency.

(e) Definition of Emergency Management Worker. – As used in this section, the term 'emergency management worker' shall include any full- or part-time paid, volunteer, or auxiliary employee of this State or other states, territories, possessions, or the District of Columbia, of the federal government or any neighboring country or of any political subdivision thereof, or of any agency or organization performing emergency management services at any place in this State, subject to the order or control of or pursuant to a request of the State government or any political subdivision thereof. The term 'emergency management worker' under this section shall also include any health care worker performing health care services as a member of a hospital-based or county-based State Medical Assistance Team designated by the North Carolina Office of Emergency Medical Services and any person performing emergency health care services under G.S. 90-12.2.

(f) Powers of Individuals Operating Pursuant to Mutual Aid Agreements. – Any emergency management worker, as defined in this section, performing emergency management services at any place in this State pursuant to agreements, compacts, or arrangements for mutual aid and assistance to which the State or a political subdivision thereof is a party, shall possess the same powers, duties, immunities, and privileges the person would ordinarily possess if performing duties in the State, or political subdivision thereof, in which normally employed or rendering services.

"**§ 166A-19.61. No private liability.**

Any person, firm, or corporation 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, 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.

"**§ 166A-19.62. Civil liability of persons who willfully ignore a warning in a disaster.**

In an emergency, a person who willfully ignores a warning regarding personal safety issued by a federal, State, or local law enforcement agency, emergency management agency, or other governmental agency responsible for emergency management under this Article is civilly liable for the cost of a rescue effort to any governmental agency or nonprofit agency cooperating with a governmental agency conducting a rescue on the endangered person's behalf if all of the following are true:

(1) The person ignores the warning and (i) engages in an activity or course of action that a reasonable person would not pursue or (ii) fails to take a course of action that a reasonable person would pursue.

(2) As a result of ignoring the warning the person places himself or herself or another in danger.

(3) A governmental rescue effort is undertaken on the endangered person's behalf.

"Part 8. Miscellaneous Provisions.

"**§ 166A-19.70. Ensuring availability of emergency supplies and utility services.**

(a) Executive Order. – In addition to any other powers conferred on the Governor by law, whenever a curfew has been imposed, the Governor may declare by executive order that the health, safety, or economic well-being of persons or property in this State require that persons transporting essentials in commerce to the curfew area, or assisting in ensuring their availability, and persons assisting in restoring utility services, be allowed to enter or remain in areas from which they would otherwise be excluded for the limited purpose of delivering the essentials, assisting in ensuring their availability, or assisting in restoring utility services.

(b) Maximum Hours of Service Waiver. – As part of an executive order issued pursuant to subsection (a) of this section, or independently of such an order, the Governor may declare by executive order that the health, safety, or economic well-being of persons or property in this State require that the maximum hours of service prescribed by the Department of Crime Control and Public Safety pursuant to G.S. 20-381 and similar rules be waived for persons transporting essentials or assisting in the restoration of utility services.

(c) Certification System. – The Secretary of Crime Control and Public Safety shall develop a system pursuant to which a person who transports essentials in commerce, or assists in ensuring their availability, and persons who assist in the restoring of utility services can be certified as such. The certification system shall allow for both preemergency declaration and postemergency declaration certification and may include an annually renewable precertification. The Secretary shall only allow those who routinely transport or distribute essentials or assist in the restoring of utility services to be certified. A certification of the employer shall constitute a certification of the employer's employees. The Secretary shall create an easily recognizable indicium of certification in order to assist local officials' efforts to determine which persons have received certification by the system established under this subsection.

(d) Presence in Curfew Area Permitted. – Notwithstanding the existence of any curfew, a person who is certified pursuant to the system established under subsection (c) of this section shall be allowed to enter or remain in the curfew area for the limited purpose of delivering or assisting in the distribution of essentials or assisting in the restoration of utility services and shall be allowed to provide service that exceeds otherwise applicable hours of service maximums, to the extent authorized by an executive order executed pursuant to subsection (a) of this section. Nothing in this section prohibits law enforcement or other local officials from specifying the permissible route of ingress or egress for persons with certifications.

(e) Abnormal Market Disruptions with Respect to Petroleum. – If the Governor declares the existence of an abnormal market disruption with respect to petroleum pursuant to, G.S. 75-38(f), the Governor shall contemporaneously seek all applicable waivers under the federal Clean Air Act, 42 U.S.C. § 7401, et seq., and any other applicable federal law to

facilitate the transportation of fuel within this State in order to address or prevent a fuel supply emergency in this State. Waiver requests shall be directed to the appropriate federal agencies and shall seek waivers of the following:

(1) The Reformulated Gasoline requirements throughout the State.

(2) The Federal and State Implementation Plan summertime gasoline requirements (low RVP) throughout the State.

(3) Any other waiver that will, if obtained, facilitate the transportation of fuel within this State.

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

(1) Curfew. – Any restriction on ingress and egress to the emergency area of a state of emergency or any restriction on the movement of persons within such an area.

(2) Curfew area. – The area that is subject to a curfew.

(3) Essentials. – Any goods that are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being of persons or their property. The Secretary shall determine what goods constitute essentials for purposes of this section.

"**§ 166A-19.71. Accept services, gifts, grants, and loans.**

Whenever the federal government or any agency or officer thereof or of any person, firm, or corporation shall offer to the State, or through the State to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for emergency management purposes, the State acting through the Governor, or such political subdivision, acting with the consent of the Governor and through its governing body, may accept such offer. Upon such acceptance the Governor of the State or governing body of such political subdivision may authorize any officer of the State or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the State or of such political subdivision, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

"**§ 166A-19.72. Establishment of mutual aid agreements.**

(a) Governor Authorized to Enter Agreements with Other States and Federal Government. – The Governor may establish mutual aid agreements with other states and with the federal government provided that any special agreements so negotiated are within the Governor's authority.

(b) Governor Authorized to Enter Agreements with Political Subdivisions. – The Governor may establish mutual aid agreements with political subdivisions in the State with the concurrence of the subdivision's governing body.

(c) Political Subdivisions Authorized to Enter Agreements with Other Political Subdivisions. – The chief executive of each political subdivision, with the concurrence of the subdivision's governing body, may develop mutual aid agreements for reciprocal emergency management aid and assistance. Such agreements shall be consistent with the State emergency management program and plans.

(d) Political Subdivisions Authorized to Enter Agreements with Political Subdivisions in Other States. – The chief executive officer of each political subdivision, with the concurrence of the governing body and subject to the approval of the Governor, may enter into mutual aid agreements with local chief executive officers in other states for reciprocal emergency management aid and assistance. These agreements shall be consistent with the State emergency management program and plans.

(e) Terms of Agreements. – Mutual aid agreements may include, but are not limited to, the furnishing or exchange of such supplies, equipment, facilities, personnel, and services as

may be needed; the reimbursement of costs and expenses for equipment, supplies, personnel, and similar items; and on such terms and conditions as deemed necessary.

"**§ 166A-19.73. Compensation.**

(a) Extent of Compensation. – Compensation for services or for the taking or use of property shall be only to the extent that legal obligations of individual citizens are exceeded in a particular case and then only to the extent that the claimant has not been deemed to have volunteered his services or property without compensation.

(b) Limitation; Basis of Compensation. – Compensation for property shall be only if the property was commandeered, seized, taken, condemned, or otherwise used in coping with an emergency and this action was ordered by the Governor. The State shall make compensation for the property so seized, taken, or condemned on the following basis:

(1) In case property is taken for temporary use, the Governor, within 30 days of the taking, shall fix the amount of compensation to be paid for such damage or failure to return. Whenever the Governor shall deem it advisable for the State to take title to property taken under this section, the Governor shall forthwith cause the owner of such property to be notified thereof in writing by registered mail, postage prepaid, or by the best means available, and forthwith cause to be filed a copy of said notice with the Secretary of State.

(2) If the person entitled to receive the amounts so determined by the Governor as just compensation is unwilling to accept the same as full and complete compensation for such property or the use thereof, the person shall be paid seventy-five percent (75%) of such amount and shall be entitled to recover from the State of North Carolina in an action brought in the superior court in the county of residence of claimant, or in Wake County, in the same manner as other condemnation claims are brought, within three years after the date of the Governor's award.

"**§ 166A-19.74. Nondiscrimination in emergency management.**

State and local governmental bodies and other organizations and personnel who carry out emergency management functions under the provisions of this Article are required to do so in an equitable and impartial manner. Such State and local governmental bodies, organizations, and personnel shall not discriminate on the grounds of race, color, religion, nationality, sex, age, or economic status in the distribution of supplies, the processing of applications, and other relief and assistance activities.

"**§ 166A-19.75. Emergency management personnel.**

(a) Limitation. – No person shall be employed or associated in any capacity in any emergency management agency established under this Article if that person does or has done any of the following:

(1) Advocates or has advocated a change by force or violence in the constitutional form of the Government of the United States or in this State.

(2) Advocates or has advocated the overthrow of any government in the United States by force or violence.

(3) Has been convicted of any subversive act against the United States.

(4) Is under indictment or information charging any subversive act against the United States.

(5) Has ever been a member of the Communist Party.

(b) Oath. – Each person who is appointed to serve in any emergency management agency shall, before entering upon the person's duties, take a written oath before a person authorized to administer oaths in this State, which oath shall be substantially as follows:

'I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of North Carolina, against all enemies, foreign and domestic; and that I will bear true faith and allegiance to the same; that I take this

obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter. And I do further swear (or affirm) that I do not advocate, nor am I, nor have I ever knowingly been, a member of any political party or organization that advocates the overthrow of the Government of the United States or of this State by force or violence; and that during such time as I am a member of the State Emergency Management Agency I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States or of this State by force or violence, so help me God.'

(c) No Violation of Dual Office Holding Prohibition. – No position created by or pursuant to this Article shall be deemed an office within the meaning of Section 9 of Article 6 of the North Carolina Constitution.

"**§ 166A-19.76. Leave options for voluntary firefighters, rescue squad workers, and emergency medical service personnel called into service.**

(a) Leave Without Pay. – A member of a volunteer fire department, rescue squad, or emergency medical services agency called into service of the State after a declaration of a state of emergency by the Governor or by the General Assembly, or upon the activation of the State Emergency Response Team in response to an emergency, shall have the right to take leave without pay from his or her civilian employment. No member of a volunteer fire department, rescue squad, or emergency medical services agency shall be forced to use or exhaust his or her vacation or other accrued leave from his or her civilian employment for a period of active service. The choice of leave shall be solely within the discretion of the member.

(b) Request in Writing Required. – For the volunteer member to be entitled to take leave without pay pursuant to this section, his or her services shall be requested in writing by the Director of the Division or by the head of a local emergency management agency. The request shall be directed to the Chief of the member's volunteer fire department, rescue squad, or emergency medical services agency and a copy shall be provided to the member's employer. This section shall not apply to those members whose services have been certified by their employer to the Director of the Division, or to the head of a local emergency management agency, as essential to the employer's own ongoing emergency relief activities.

(c) Definition of an Emergency Requiring Activation of the State Emergency Response Team. – For purposes of this section, an emergency requiring the activation of the State Emergency Response Team means an emergency at Activation Level 2 or greater according to the North Carolina State Emergency Operations Plan of November 2002. Activation Level 2 requires the State Emergency Operations Center to be fully activated with 24-hour staffing from all State Emergency Response Team members.

(d) Enforcement. – The Commissioner of Labor shall enforce the provisions of this section pursuant to Chapter 95 of the General Statutes.

"**§ 166A-19.77. Division of Forest Resources designated as emergency response agency.**

The Division of Forest Resources of the Department of Environment and Natural Resources is designated an emergency response agency of the State of North Carolina for purposes of the following:

(1) Supporting the Division of Emergency Management of the Department of Crime Control and Public Safety in responding to all-risk incidents.
(2) Receipt of any applicable State or federal funding.
(3) Training of other State and local agencies in emergency management.
(4) Any other emergency response roles for which the Division has special training or qualifications.

"**§ 166A-19.78. Governor's power to order evacuation of public building.**

When it is determined by the Governor that a great public crisis, disaster, riot, catastrophe, or any other similar public emergency exists, or the occurrence of any such condition is imminent, and, in the Governor's opinion it is necessary to evacuate any building owned or

controlled by any department, agency, institution, school, college, board, division, commission, or subdivision of the State in order to maintain public order and safety or to afford adequate protection for lives or property, the Governor is hereby authorized to issue an order of evacuation directing all persons within the building to leave the building and its premises forthwith. The order shall be delivered to any law enforcement officer or officer of the National Guard, and such officer shall, by a suitable public address system, read the order to the occupants of the building and demand that the occupants forthwith evacuate said building within the time specified in the Governor's order.

"**§ 166A-19.79. Severability.**

If any provision of this Article or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable."

SECTION 1.(c) The title of Article 36A of Chapter 14 of the General Statutes reads as rewritten:

"Article 36A.

~~Riots and Civil Disorders.~~Riots, Civil Disorders, and Emergencies."

SECTION 1.(d) Article 36A of Chapter 14 is amended by adding a new section to read:

"**§ 14-288.20A. Violation of emergency prohibitions and restrictions.**

Any person who does any of the following is guilty of a Class 2 misdemeanor:

(1) Violates any provision of an ordinance or a declaration enacted or declared pursuant to G.S. 166A-19.31.

(2) Violates any provision of a declaration or executive order issued pursuant to G.S. 166A-19.30

(3) Willfully refuses to leave the building as directed in a Governor's order issued pursuant to G.S. 166A-19.78."

II. CONFORMING CHANGES

SECTION 2.(a) G.S. 14-288.1 reads as rewritten:

"**§ 14-288.1. Definitions.**

Unless the context clearly requires otherwise, the ~~definitions in this section apply throughout this Article:~~ following definitions apply in this Article:

(1) ~~"Chairman of the board of county commissioners":~~Chairman of the board of county commissioners. – The chairman of the board of county commissioners or, in case of his absence or disability, the person authorized to act in his stead. Unless the governing body of the county has specified who is to act in lieu of the chairman with respect to a particular power or duty set out in this Article, the term "chairman of the board of county commissioners" shall apply to the person generally authorized to act in lieu of the chairman.

(2) ~~"Dangerous weapon or substance":~~Dangerous weapon or substance. – Any deadly weapon, ammunition, explosive, incendiary device, radioactive material or device, as defined in G.S. 14-288.8(c)(5), or any instrument or substance designed for a use that carries a threat of serious bodily injury or destruction of property; or any instrument or substance that is capable of being used to inflict serious bodily injury, when the circumstances indicate a probability that such instrument or substance will be so used; or any part or ingredient in any instrument or substance included above, when the

circumstances indicate a probability that such part or ingredient will be so used.

(3) ~~"Declared state of emergency":~~Declared state of emergency. – A state of emergency as that term is defined in G.S. 166A-19.3 or a state of emergency found and ~~proclaimed by the Governor under the authority of G.S. 14-288.15, by any mayor or other municipal official or officials under the authority of G.S. 14-288.12, by any chairman of the board of commissioners of any county or other county official or officials under the authority of G.S. 14-288.13, by any chairman of the board of county commissioners acting under the authority of G.S. 14-288.14, by~~ declared by any chief executive official or acting chief executive official of any county or municipality acting under the authority of any other applicable statute or provision of the common law to preserve the public peace in a state of emergency, or by any executive official or military commanding officer of the United States or the State of North Carolina who becomes primarily responsible under applicable law for the preservation of the public peace within any part of North Carolina.

(4) ~~"Disorderly conduct":~~Disorderly conduct. – As defined in G.S. 14-288.4(a).

(4a) Emergency. – As defined in G.S. 166A-19.3.

(5) ~~"Law enforcement officer":~~Law enforcement officer. – Any officer of the State of North Carolina or any of its political subdivisions authorized to make arrests; any other person authorized under the laws of North Carolina to make arrests and either acting within his territorial jurisdiction or in an area in which he has been lawfully called to duty by the Governor or any mayor or chairman of the board of county commissioners; any member of the armed forces of the United States, the North Carolina National Guard, or the State defense militia called to duty in a state of emergency in North Carolina and made responsible for enforcing the laws of North Carolina or preserving the public peace; or any officer of the United States authorized to make arrests without warrant and assigned to duties that include preserving the public peace in North Carolina.

(6) ~~"Mayor":~~Mayor. – The mayor or other chief executive official of a municipality or, in case of his absence or disability, the person authorized to act in his stead. Unless the governing body of the municipality has specified who is to act in lieu of the mayor with respect to a particular power or duty set out in this Article, the word "mayor" shall apply to the person generally authorized to act in lieu of the mayor.

(7) ~~"Municipality":~~Municipality. – Any active incorporated city or town, but not including any sanitary district or other municipal corporation that is not a city or town. An "active" municipality is one which has conducted the most recent election required by its charter or the general law, whichever is applicable, and which has the authority to enact general police-power ordinances.

(8) ~~"Public disturbance":~~Public disturbance. – Any annoying, disturbing, or alarming act or condition exceeding the bounds of social toleration normal for the time and place in question which occurs in a public place or which occurs in, affects persons in, or is likely to affect persons in a place to which the public or a substantial group has access. The places covered by this definition shall include, but not be limited to, highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

(9) ~~"Riot":~~Riot. – As defined in G.S. 14-288.2(a).

~~(10) "State of emergency": The condition that exists whenever, during times of public crisis, disaster, rioting, catastrophe, or similar public emergency, public safety authorities are unable to maintain public order or afford adequate protection for lives or property, or whenever the occurrence of any such condition is imminent.~~"

SECTION 2.(c) G.S. 14-288.4(a)(4)c. reads as rewritten:

"(a) Disorderly conduct is a public disturbance intentionally caused by any person who does any of the following:

...

(4) Refuses to vacate any building or facility of any public or private educational institution in obedience to any of the following:

...

c. If ~~a state of~~ an emergency is occurring or is imminent within the institution, an order given by any law-enforcement officer acting within the scope of the officer's authority."

SECTION 2.(c) G.S. 14-288.7 is amended by adding a new subsection to read:

"(d) For purposes of this section, the term 'declared state of emergency' does not include a legislatively or gubernatorially declared state of emergency, other than a Type L emergency, as that term is defined in G.S. 166A-19.20."

SECTION 2.(d) G.S. 14-288.11 reads as rewritten:

"**§ 14-288.11. Warrants to inspect vehicles in riot areas or approaching municipalities during emergencies.**

(a) Notwithstanding the provisions of Article 4 of Chapter 15, any law-enforcement officer may, under the conditions specified in this section, obtain a warrant authorizing inspection of vehicles under the conditions and for the purpose specified in subsection (b).

(b) The inspection shall be for the purpose of discovering any dangerous weapon or substance likely to be used by one who is or may become unlawfully involved in a riot. The warrant may be sought to inspect:

(1) All vehicles entering or approaching a municipality in which ~~a state of~~ an emergency exists; or

(2) All vehicles which might reasonably be regarded as being within or approaching the immediate vicinity of an existing riot.

(c) The warrant may be issued by any judge or justice of the General Court of Justice.

(d) The issuing official shall issue the warrant only when he has determined that the one seeking the warrant has been specifically authorized to do so by the head of the law-enforcement agency of which the affiant is a member, and:

(1) If the warrant is being sought for the inspection of vehicles entering or approaching a municipality, that ~~a state of~~ an emergency exists within the municipality; or

(2) If the warrant being sought is for the inspection of vehicles within or approaching the immediate vicinity of a riot, that a riot is occurring within that area.

Facts indicating the basis of these determinations must be stated in an affidavit and signed by the affiant under oath or affirmation.

(e) The warrant must be signed by the issuing official and must bear the hour and date of its issuance.

(f) The warrant must indicate whether it is for the inspection of vehicles entering or approaching a municipality or whether it is for the inspection of vehicles within or approaching the immediate vicinity of a riot. In either case, it must also specify with reasonable precision the area within which it may be exercised.

(g) The warrant shall become invalid 24 hours following its issuance and must bear a notation to that effect.

(h) Warrants authorized under this section shall not be regarded as search warrants for the purposes of application of Article 4 of Chapter 15.

(i) Nothing in this section is intended to prevent warrantless frisks, searches, and inspections to the extent that they may be constitutional and consistent with common law and governing statutes."

SECTION 2.(e) G.S. 14-288.12 through G.S. 14-288.17 and G.S. 14-288.19 are repealed.

SECTION 2.(f) G.S. 14-288.18 reads as rewritten:

"**§ 14-288.18. Injunction to cope with emergencies at public and private educational institutions.**

(a) The chief administrative officer, or his authorized representative, of any public or private educational institution may apply to any superior court judge for injunctive relief if ~~a state of~~ an emergency exists ~~or is imminent~~ within his institution. For the purposes of this section, the superintendent of any city or county administrative school unit shall be deemed the chief administrative officer of any public elementary or secondary school within his unit.

(b) Upon a finding by a superior court judge, to whom application has been made under the provisions of this section, that ~~a state of~~ an emergency exists ~~or is imminent~~ within a public or private educational institution by reason of riot, disorderly conduct by three or more persons, or the imminent threat of riot, the judge may issue an injunction containing provisions appropriate to cope with the emergency then occurring or threatening. The injunction may be addressed to named persons or named or described groups of persons as to whom there is satisfactory cause for believing that they are contributing to the ~~existing or imminent state of~~ emergency, and ordering such persons or groups of persons to take or refrain or desist from taking such various actions as the judge finds it appropriate to include in his order."

SECTION 2.(g) G.S. 20-118.4(a) reads as rewritten:

"**§ 20-118.4. Firefighting equipment exempt from size and weight restrictions while transporting or moving heavy equipment in an emergency; permits.**

(a) Exemption From Weight and Size Restrictions During Emergency Response. – Any overweight or oversize vehicle owned and operated by a State or local government or cooperating federal agency is exempt from the weight and size restrictions of this Chapter and implementing rules while it is actively engaged in (i) a response to a fire under the authority of a forest ranger pursuant to G.S. 113-55(a); (ii) a county request for forest protection assistance pursuant to G.S. 113-59; (iii) a request for assistance under a state of emergency declared pursuant to G.S. 14-288.12, 14-288.13, 14-288.14, 14-288.15, and any other applicable statutes and provisions of common law; (iv) a request for assistance under a disaster declared pursuant to ~~G.S 166A-6 or G.S. 166A-8,~~ G.S. 166A-19.20 or G.S. 166A-19.21, when the vehicle meets the following conditions:

...."

SECTION 2.(h) G.S. 42A-36 reads as rewritten:

"**§ 42A-36. Mandatory evacuations.**

If State or local authorities, acting pursuant to ~~Article 36A of Chapter 14 or Article 1 of Chapter 166A~~ Article 1A of Chapter 166A of the General Statutes, order a mandatory evacuation of an area that includes the residential property subject to a vacation rental, the tenant under the vacation rental agreement, whether in possession of the property or not, shall comply with the evacuation order. Upon compliance, the tenant shall be entitled to a refund from the landlord of the rent, taxes, and any other payments made by the tenant pursuant to the vacation rental agreement as a condition of the tenant's right to occupy the property prorated for each night that the tenant is unable to occupy the property because of the mandatory evacuation order. The tenant shall not be entitled to a refund if: (i) prior to the tenant taking possession of

the property, the tenant refused insurance offered by the landlord or real estate broker that would have compensated the tenant for losses or damages resulting from loss of use of the property due to a mandatory evacuation order; or (ii) the tenant purchased insurance offered by the landlord or real estate broker. The insurance offered shall be provided by an insurance company duly authorized by the North Carolina Department of Insurance, and the cost of the insurance shall not exceed eight percent (8%) of the total amount charged for the vacation rental to the tenant less the amount paid by the tenant for a security deposit."

SECTION 2.(i) G.S. 58-2-46 reads as rewritten:

"**§ 58-2-46. State of disaster; automatic stay of proof of loss requirements; premium and debt deferrals; loss adjustments for separate windstorm policies.**

Whenever a state of disaster is proclaimed for the State or for an area within the State under ~~G.S. 166A-6~~ G.S. 166A-19.20 or whenever the President of the United States has issued a major disaster declaration for the State or for an area within the State under the Stafford Act, 42 U.S.C. § 5121, et seq., as amended:

...."

SECTION 2.(j) G.S. 58-2-47 reads as rewritten:

"**§ 58-2-47. Incident affecting operations of the Department; stay of deadlines and deemer provisions.**

Regardless of whether a state of disaster has been proclaimed under ~~G.S. 166A-6~~ G.S. 166A-19.20 or declared under the Stafford Act, whenever an incident beyond the Department's reasonable control, including an act of God, insurrection, strike, fire, power outage, or systematic technological failure, substantially affects the daily business operations of the Department, the Commissioner may issue an order, effective immediately, to stay the application of any deadlines and deemer provisions imposed by law or rule upon the Commissioner or Department or upon persons subject to the Commissioner's jurisdiction, which deadlines and deemer provisions would otherwise operate during the time period for which the operations of the Department have been substantially affected. The order shall remain in effect for a period not exceeding 30 days. The order may be renewed by the Commissioner for successive periods not exceeding 30 days each for as long as the operations of the Department remain substantially affected, up to a period of one year from the effective date of the initial order."

SECTION 2.(k) G.S. 58-3-228(b)(2) reads as rewritten:

"(2) The covered person requesting coverage of the refill or replacement prescription resides in a county that:

a. Is covered under a proclamation of state of disaster issued by the Governor or by a resolution of the General Assembly under ~~G.S. 166A-6,~~ G.S. 166A-19.20, or a declaration of major disaster issued by the President of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as amended; or

b. Is declared to be under a state of emergency in a proclamation issued by the Governor under G.S. 14-288.15."

SECTION 2.(l) G.S. 58-33-70(e) reads as rewritten:

"(e) The Commissioner may permit an experienced adjuster, who regularly adjusts in another state and who is licensed in the other state (if that state requires a license), to act as an adjuster in this State without a North Carolina license only for an insurance company authorized to do business in this State, for emergency insurance adjustment work, for a period to be determined by the Commissioner, done for an employer who is an adjuster licensed by this State or who is a regular employer of one or more adjusters licensed by this State; provided that the employer shall furnish to the Commissioner a notice in writing immediately upon the beginning of any such emergency insurance adjustment work. As used in this subsection,

"emergency insurance adjustment work" includes, but is not limited to, (i) adjusting of a single loss or losses arising out of an event or catastrophe common to all of those losses or (ii) adjusting losses in any area declared to be a state of disaster by the Governor under ~~G.S. 166A-6~~ G.S. 166A-19.20 or by the President of the United States under applicable federal law."

SECTION 2.(m) G.S. 58-44-70(a) reads as rewritten:

"(a) This Part provides for a nonadversarial alternative dispute resolution procedure for a facilitated claim resolution conference prompted by the critical need for effective, fair, and timely handling of insurance claims arising out of damages to residential property as the result of an event for which there is a state of disaster declared within 60 days of the event. This Part applies only (i) if a state of disaster has been proclaimed for the State or for an area within the State by the Governor or by a resolution of the General Assembly under ~~G.S. 166A-6;~~ G.S. 166A-19.20; or (ii) if the President of the United States has issued a major disaster declaration for the State or for an area within the State under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as amended; and (iii) if the Commissioner issues an order establishing the mediation procedure authorized by this Part."

SECTION 2.(n) G.S. 58-44-75(2) reads as rewritten:

"**§ 58-44-75. Definitions.**

As used in this Part:

...

(2) Disaster. ~~As defined in G.S. 166A-4(1).~~As the term 'emergency' is defined in G.S. 166A-19.3(5)."

SECTION 2.(o) G.S. 75-38(d) reads as rewritten:

"(d) A "triggering event" means the declaration of a state of emergency ~~pursuant to G.S. 166A-8 or Article 36A of Chapter 14 of the General Statutes, the proclamation of a state of disaster pursuant to G.S. 166A-6,~~ pursuant to Article 1A of Chapter 166A of the General Statutes or a finding of abnormal market disruption pursuant to G.S. 75-38(e)."

SECTION 2.(p) G.S. 83A-13.1(a) reads as rewritten:

"(a) A professional architect who voluntarily, without compensation, provides structural, electrical, mechanical, or other architectural services at the scene of a declared disaster or emergency, declared under federal law or in accordance with the provisions of ~~Article 1 of Chapter 166A of the General Statutes or Article 36A of Chapter 14 of the General Statutes,~~ Article 1A of Chapter 166A of the General Statutes, at the request of a public official, law enforcement official, public safety official, or building inspection official, acting in an official capacity, shall not be liable for any personal injury, wrongful death, property damage, or other loss caused by the professional architect's acts or omissions in the performance of the architectural services."

SECTION 2.(q) G.S. 89C-19.1(a) reads as rewritten:

"(a) A professional engineer who voluntarily, without compensation, provides structural, electrical, mechanical, or other engineering services at the scene of a declared disaster or emergency, declared under federal law or in accordance with the provisions of ~~Article 1 of Chapter 166A of the General Statutes or Article 36A of Chapter 14 of the General Statutes,~~ Article 1A of Chapter 166A of the General Statutes, at the request of a public official, law enforcement official, public safety official, or building inspection official, acting in an official capacity, shall not be liable for any personal injury, wrongful death, property damage, or other loss caused by the professional engineer's acts or omissions in the performance of the engineering services."

SECTION 2.(r) G.S. 122C-409 reads as rewritten:

"**§ 122C-409. Community of Butner comprehensive emergency management plan.**

The Department of Crime Control and Public Safety shall establish an emergency management agency as defined in ~~G.S. 166A-4(2)~~ G.S. 166A-19.3(8) for the Camp Butner Reservation, and the Town of Butner."

SECTION 2.(s) G.S. 131D-7 reads as rewritten:

"**§ 131D-7. Waiver of rules for certain adult care homes providing shelter or services during disaster or emergency.**

(a) The Division of Health Service Regulation may temporarily waive, during disasters or emergencies declared in accordance with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes, any rules of the Commission pertaining to adult care homes to the extent necessary to allow the adult care home to provide temporary shelter and temporary services requested by the emergency management agency. The Division may identify, in advance of a declared disaster or emergency, rules that may be waived, and the extent the rules may be waived, upon a disaster or emergency being declared in accordance with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the adult care home. The emergency management agency requesting temporary shelter or temporary services shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(b) As used in this section, "emergency management agency" is as defined in ~~G.S. 166A-4(2).~~G.S. 166A-19.3."

SECTION 2.(t) G.S. 131E-84 reads as rewritten:

"**§ 131E-84. Waiver of rules for hospitals that provide temporary shelter or temporary services during a disaster or emergency.**

(a) The Division of Health Service Regulation may temporarily waive, during disasters or emergencies declared in accordance with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes, any rules of the Commission pertaining to a hospital to the extent necessary to allow the hospital to provide temporary shelter and temporary services requested by the emergency management agency. The Division may identify, in advance of a declared disaster or emergency, rules that may be waived, and the extent to which the rules may be waived, upon a declaration of disaster or emergency in accordance with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the hospital. The emergency management agency requesting temporary shelter or temporary services shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(b) As used in this section, "emergency management agency" is as defined in ~~G.S. 166A-4.~~G.S. 166A-19.3."

SECTION 2.(u) G.S. 131E-112 reads as rewritten:

"**§ 131E-112. Waiver of rules for health care facilities that provide temporary shelter or temporary services during a disaster or emergency.**

(a) The Division of Health Service Regulation may temporarily waive, during disasters or emergencies declared in accordance with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes, any rules of the Commission pertaining to facilities or home care agencies to the extent necessary to allow the facility or home care agency to provide temporary shelter and temporary services requested by the emergency management agency. The Division may identify, in advance of a declared disaster or emergency, rules that may be waived, and the extent the rules may be waived, upon a disaster or emergency being declared in accordance

with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the facility. The emergency management agency requesting temporary shelter or temporary services shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(b) As used in this section, "emergency management agency" is as defined in ~~G.S. 166A-4(2).~~G.S. 166A-19.3."

SECTION 2.(v) G.S. 143C-4-4(b) reads as rewritten:

"(b) Authorized Uses. – Notwithstanding any other provision of law, funds appropriated to the Contingency and Emergency Fund may be used only for expenditures required: (i) by a court or Industrial Commission order, (ii) to respond to events as authorized under ~~G.S. 166A-5(1)a.9.~~ G.S. 166A-19.40(a) of the North Carolina Emergency Management Act, or (iii) for other statutorily authorized purposes or other contingencies and emergencies."

SECTION 2.(w) G.S. 143C-5-2 reads as rewritten:

"**§ 143C-5-2. Order of appropriations bills.**

Each house of the General Assembly shall first pass its version of the Current Operations Appropriations Act on third reading and order it sent to the other chamber before placing any other appropriations bill on the calendar for second reading. This section does not apply to the following bills:

(1) An appropriations bill to respond to ~~a disaster as defined by G.S. 166A-4(1).~~an emergency as defined by G.S. 166A-19.3.

(2) An appropriations bill making adjustments to the current year budget.

(3) An appropriations bill authorizing continued operations at current funding levels."

SECTION 2.(x) G.S. 143C-6-4(b)(2) reads as rewritten:

"(b) Adjustments to the Certified Budget. – Notwithstanding the provisions of G.S. 143C-6-1, a State agency may, with approval of the Director of the Budget, spend more than was authorized in the certified budget for all of the following:

...

(2) A purpose or program if the overexpenditure of the purpose or program is:

a. Required by a court or Industrial Commission order;

b. Authorized under ~~G.S. 166A-5(1)a.9.~~ G.S. 166A-19.40(a) of the North Carolina Emergency Management Act; or

c. Required to call out the National Guard."

SECTION 2.(y) G.S. 166A-24 read as rewritten:

"**§ 166A-24. Immunity of Regional Response Team Personnel.**

Members of a regional response team shall be protected from liability under the provisions of ~~G.S. 166A-14(a)~~ G.S. 166A-19.60(a) while responding to a hazardous materials or terrorist incident pursuant to authorization from the Division of Emergency Management."

SECTION 2.(z) G.S. 14-409.40(f) reads as rewritten:

"(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 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, 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 declared under ~~Article 36A of this Chapter.~~Article 1A of Chapter 166A of the General Statutes."

SECTION 2.(aa) G.S. 14-415.4(e)(6) reads as rewritten:

"(e) Disqualifiers Requiring Denial of Petition. – The court shall deny the petition to restore the firearms rights of any petitioner if the court finds any of the following:

...

(6) The petitioner 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 a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or 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, 14-277.3, 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,~~ 14-288.20A, 14-318.2, 14-415.21(b), or 14-415.26(d), or a substantially similar out-of-state or federal offense."

SECTION 2.(bb) G.S. 14-415.12(b)(8) reads as rewritten:

"(b) The sheriff shall deny a permit to an applicant who:

...

(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,~~ 14-288.20A, 14-318.2, 14-415.21(b), 14-415.26(d), or former G.S. 14-277.3."

SECTION 2.(cc) G.S. 18B-110 reads as rewritten:

"**§ 18B-110. Emergency.**

When the Governor finds that ~~a "state of emergency," as defined in G.S. 14-288.1,~~ an emergency, as that term is defined in G.S. 166A-19.3, exists anywhere in this State, he may

(1) Order the closing of all ABC stores, and

(2) Order the cessation of all sales, transportation, manufacture, and bottling of alcoholic beverages.

The Governor's order shall apply in those portions of the State designated in the order, for the duration of the state of emergency. Any order by the Governor under this section shall be directed to the Chairman of the Commission and to the Secretary of Crime Control and Public Safety."

SECTION 2.(dd) G.S. 70-13.1(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears upon an applicant's fitness to conduct archaeological investigations under G.S. 70-13. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers and Court Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article

19C, Financial Identity Fraud; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(ee) G.S. 74F-18(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice locksmithing. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(ff) G.S. 90-12.5 reads as rewritten:

"**§ 90-12.5. Disasters and emergencies.**

In the event of an occurrence which the Governor of the State of North Carolina has declared ~~a disaster or when the Governor has declared~~ a state of emergency, or in the event of an occurrence for which a county or municipality has enacted an ordinance to deal with states of emergency under ~~G.S. 14-288.12, 14-288.13, or 14-288.14,~~ G.S. 166A-19.31, or to protect the public health, safety, or welfare of its citizens under Article 22 of Chapter 130A of the General Statutes, G.S. 160A-174(a) or G.S. 153A-121(a), as applicable, the Board may waive the requirements of this Article in order to permit the provision of emergency health services to the public."

SECTION 2.(gg) G.S. 90-85.25(a) reads as rewritten:

"**§ 90-85.25. Disasters and emergencies.**

(a) In the event of an occurrence which the Governor of the State of North Carolina has declared ~~a disaster or when the Governor has declared~~ a state of emergency, or in the event of an occurrence for which a county or municipality has enacted an ordinance to deal with states of emergency under ~~G.S. 14-288.12, 14-288.13, or 14-288.14,~~ G.S. 166A-19.31, or to protect the public health, safety, or welfare of its citizens under G.S. 160A-174(a) or G.S. 153A-121(a), as applicable, the Board may waive the requirements of this Article in order to permit the provision of drugs, devices, and professional services to the public."

SECTION 2.(hh) G.S. 90-113.31A(14) reads as rewritten:

"(14) Criminal history. – A history of conviction of a State crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice substance abuse professional services. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(ii) G.S. 90-171.48(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a State crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice nursing. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article

26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(jj) G.S. 90-270.63(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a State or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice marriage and family therapy. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(kk) G.S. 90-288.01(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure as a nursing home administrator. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings;

Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(ll) G.S. 90-345(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a State or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice professional counseling. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(mm) G.S. 93E-2-11(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for registration to act as a real estate appraisal management company. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative

Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(nn) G.S. 114-19.6(a)(2) reads as rewritten:

"(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(oo) G.S. 114-19.12(a)(2) reads as rewritten:

"(2) Criminal history. – A State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for holding a paid or volunteer position with a fire department. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(pp) G.S. 114-19.23(a)(2) reads as rewritten:

"(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Public Instruction. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of

G.S. 18B-302, or driving while impaired violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(qq) G.S. 115C-238.29K(a)(1) reads as rewritten:

"(1) "Criminal history" means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates an individual (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel. These crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(rr) G.S. 115C-332(a)(1) reads as rewritten:

"(1) "Criminal history" means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as public school personnel. Such crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; and Article 60,

Computer-Related Crime. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subparagraph, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(ss) G.S. 121-25.1(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears upon an applicant's fitness to conduct activities related to the surveillance, protection, preservation, and archaeological recovery of property subject to the exclusive dominion and control of the State under G.S. 121-22. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers and Court Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 19C, Financial Identity Fraud; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(tt) G.S. 122C-80(e) reads as rewritten:

"(e) Relevant Offense. – As used in this section, "relevant offense" means a county, state, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of persons needing mental health, developmental disabilities, or substance abuse services. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses

Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(uu) G.S. 131D-40(d) reads as rewritten:

"(d) Relevant Offense. – As used in this section, "relevant offense" means a county, state, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of aged or disabled persons. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(vv) G.S. 143-143.10A(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure under this Part. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots,

Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(ww) G.S. 143-215.94II reads as rewritten:

"**§ 143-215.94II. Emergency proclamation; Governor's powers.**

(a) Whenever any emergency exists or appears imminent, arising from the discharge of oil or other pollutants within the marine environment, the Governor shall by proclamation declare ~~the fact and that~~ a state of emergency ~~exists~~ in the appropriate sections of the State. Upon such proclamation, the Governor shall have all powers enumerated in ~~G.S. 14-288.15,~~ G.S. 166A-19.30(c) subject to the ~~provisions of G.S. 14-288.16.~~limitations contained in that subsection.

(b) If the Governor is unavailable, the Lieutenant Governor shall, by proclamation, declare the fact and ~~that a~~ shall declare a state of emergency ~~exists~~ in the appropriate sections of the State.

(c) In performing his duties under this section, the Governor is authorized and directed to cooperate with all departments and agencies of the federal government, the offices and agencies of other states and foreign countries and the political subdivisions thereof, and private agencies in all matters pertaining to an emergency described herein.

(d) In addition to the powers enumerated in ~~G.S. 14-288.15,~~ G.S. 166A-19.30(c), in the case of such an emergency described in subsection (a) of this section, the Governor is further authorized and empowered to transfer any funds available to him by statute for emergency use into the Oil or Other Hazardous Substances Pollution Protection Fund created pursuant to G.S. 143-215.87, to be utilized for the purposes specified therein."

SECTION 2.(xx) G.S. 143B-146.16(a)(1) reads as rewritten:

"(1) "Criminal history" means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel. Such crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; and Article 60,

Computer-Related Crime. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(yy) G.S. 153A-129 reads as rewritten:

"**§ 153A-129. Firearms.**

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.~~Article 1A of Chapter 166A of the General Statutes."

SECTION 2.(zz) G.S. 160A-189 reads as rewritten:

"**§ 160A-189. Firearms.**

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.~~Article 1A of Chapter 166A of the General Statutes."

EFFECTIVE DATE

SECTION 3. This act becomes effective October 1, 2011.

HOUSE BILL 843:
Modernize NC Emergency Management Act

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 17, 2012
Introduced by:	Rep. Martin	**Prepared by:**	Brad Krehely
Analysis of:	PCS to Second Edition H843-CSMD-22		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 843 is a rewriting/recodification of the existing statutes dealing with emergency management, primarily Article 1 of Chapter 166A (North Carolina Emergency Management Act) and Article 36A of Chapter 14 (Riots and Civil Disorders). The bill centralizes the major provisions of the statutes dealing with emergencies and disasters, provides for uniform terminology throughout, and harmonizes the emergency management laws across the levels of government. The PCS puts into the law specific powers and duties which are currently handled by the Division, makes additional clarifying changes, corrects terminology, and corrects the effective date.***

CURRENT LAW: 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. Article 1 also provides that local states of emergency may be declared pursuant to Article 36A of Chapter 14 of the General Statutes.

Article 14 of Chapter 36A deals with riots, civil disorders, possession of weapons of mass destruction, looting, and assaults on emergency personnel. It also provides local governments authority to enact ordinances to deal with states of emergency. Such ordinances may restrict movement of people in public places, evacuations, possession of alcoholic beverages, weapons, and gasoline, and other activities to maintain order and protect lives and property during a state of emergency. The ordinances may also delegate to the mayor the authority to proclaim a state of emergency and impose the restrictions authorized. The chair of the county commissioners may extend the prohibitions contained in a mayor's declaration to parts of the county if requested by a mayor. The Governor is also authorized to impose restrictions in situations where local control has been deemed insufficient, such as where local authorities have not enacted appropriate ordinances, have failed to take steps to control the emergency, or the scope of the emergency exceeds the capacity of the locals to cope.

BILL ANALYSIS: House Bill 843 is divided into 2 sections. The first part is the rewrite of the North Carolina Emergency Management Act as new Article 1A of Chapter 166A of the General Statutes. The second section of the bill contains conforming changes required by the rewrite.

Section 1.(a) of the bill recodifies the provisions of G.S. 166A-6.1 dealing with the fees paid by nuclear power facilities to the Department of Crime Control and Public Safety as G.S. 166A-29.

Section 1.(b) of the bill adds a new Article 1A to Chapter 166A of the General Statutes as follows:

Article 1A, Part 1. General Provisions.

G.S. 166A-19. The section sets out the title of the act: the North Carolina Emergency Management Act. It is a recodification of G.S. 166A-1.

G.S. 166A-19.1. This section sets out the general purposes of the act. It is a recodification of G.S. 166A-2.

G.S. 166A-19.2. Recodifies G.S. 166A-3 providing that the act shall not be construed to interfere with dissemination of news or comment on public affairs or modify or abridge the Governor's authority to proclaim martial law or exercise any other powers vested in the Governor.

G.S. 166A-19. Recodifies G.S. 166A-4, Definitions. Adds definitions from G.S. 14-288.1 for "chairman of the board of county commissioners" and "mayor". These terms include the person authorized to act in his or her stead when the chair or mayor is absent or disabled. Defines the term "emergency". The term has the same meaning as "disaster" under the old law but includes "weather-related" and "riot-related" causes. Also provides the term "emergency" is synonymous with the term "disaster". Adds a definition for "state of emergency" to include a declaration by the Governor , General Assembly, municipalities, or counties.

Article 1A, Part 2. State Emergency Management.

Part 2 rewrites the provisions G.S. 166A-5 and organizes them according to the entity (person) exercising the particular power.

G.S. 166A-19.10. Powers of the Governor. This section essentially recodifies (and rewrites stylistically) the provisions in G.S. 166A-5 dealing with the Governor's authority to exercise general direction and control of the State emergency management program. The new section adds that the Governor's powers do not extend to those powers and duties to carry out the provisions of Article 1A that are conferred exclusively on local governments.

G.S. 166A-19.11. Powers of the Secretary of Crime Control and Public Safety. This section rewrites the provisions of G.S. 166A-5 dealing with the Secretary. As with the Governor's powers, the Secretary is limited in rulemaking on matters that are exclusively local.

G.S. 166A-19.12. Powers of the Division of Emergency Management. This section rewrites the provisions of G.S. 166A-5 that deal with the Division of Emergency Management. The old law described the "functions" of the Division. G.S. 166A-19.12 refers to the "powers and duties" of the Division "as delegated by the Governor and the Secretary of Public Safety." Finally, this section puts into the law following powers and duties which are currently handled by the Division: (1) establishing a 24 hour Operations Center, (2) developing plans to emergencies at nuclear power facilities, (3) maintaining the State Emergency Operations Center to house the SERT, and (4) serving as the agency managing intrastate and interstate mutual aid planning.

Article 1A, Part 3. Local Emergency Management.

G.S. 166A-19.15 recodifies G.S. 166A-7. There are some stylistic changes such as the addition of subsection captions. These provisions deal with the authority of counties and cities to establish, fund, and maintain local emergency management agencies

Article 1A, Part 4. Declarations of State of Emergency.

Part 4 deals with declarations of State of Emergency.

G.S. 166A-19.20. Gubernatorial or legislative declarations of state of emergency. The language of this section is a rewrite of G.S. 166A-6. The provisions regarding the declaration of a Type I, II, or III disaster remain the same.

The PCS removes references to "Type L" disasters to eliminate confusion. Part 4 of the PCS also differs from the prior edition of House Bill 842 because it makes a distinction between a "state of

emergency declaration" (the thing that triggers the issuing authority's emergency powers) and a "disaster declaration" (which quantifies the severity of an emergency and facilitates the process of getting federal aid dollars).

Article 1A, Part 5. Additional Powers of the Governor During a State of Emergency.

Part 5 deals with other powers of the Governor during a state of emergency such as the use of all available State resources, evacuations, and economic controls. Part 5 also deals with municipal and county ordinances that impose restrictions and prohibitions on movement of people, possession of weapons and alcohol and control of other activities.

G.S. 166A-19.30. Additional Powers of the Governor. This section recodifies G.S. 166A-6(b) and (c). The PCS removes references to "Type L" emergencies.

G.S. 166A-19.30(d) adds a new provision that makes violation of a provision of a declaration or executive order issued pursuant to this section a Class 2 misdemeanor. Violation of a gubernatorial proclamation in a local state of emergency is a Class 2 misdemeanor under existing law, however, violations of declarations or executive orders under Article 1 of Chapter 166A is not a criminal offense.

G.S. 166A-19.31. Power of Municipalities and Counties to Enact Ordinances to Deal with States of Emergency. This section recodifies/rewrites portions of G.S. 14-288.12, 13, 16, and 17 dealing with the authority to adopt ordinances to prohibit and restrict activities during a state of emergency, when such ordinances take effect and when they expire. New language provides that officials need not impose all the restrictions or prohibitions allowed by the ordinances, but may impose only those deemed necessary to control a particular state of emergency. Violation of an emergency ordinance is a Class 2 misdemeanor, raised from a Class 3 misdemeanor under existing law.

Article 1, Part 6. Funding of Emergency Preparedness and Response.

G.S. 166A-19.40, Use of Contingency and Emergency Funds and G.S. 166A-19.41, State Emergency Assistance Funds. These sections recodify provisions in existing law including G.S. 166A-5(1)a.(9), G.S. 166A-6(d), G.S. 166A-6.01, and G.S. 166A-6.02.

Article 1A, Part 7. Immunity and Liability.

G.S. 166A-19.60. Immunity and Exemption. This section is a recodification of G.S. 166A-14. Adds subsection captions and updates internal citations.

G.S. 166A-19.61. No Private Liability. Recodifies G.S. 166A-15.

G.S. 166A-19.62. Civil Liability of Persons Who Willfully Ignore a Warning. Recodifies G.S. 166A-15.1.

Article 1A, Part 8, Miscellaneous Provisions.

G.S. 166A-19.70 recodifies G.S. 166A-6.03 regarding ensuring the availability of emergency supplies and utility services.

G.S. 166A-19.71 recodifies G.S. 166A-9 allowing the State to accept offers of services, equipment, supplies, and funds either as grants, gifts or loans, for the purpose of emergency management.

G.S. 166A-19.72 recodifies G.S. 166A-10 providing for mutual aid agreements.

G.S. 166A-19.73 recodifies G.S. 166A-11 providing for compensation services or for property used or taken during a state of emergency.

G.S. 166A-19.74 recodifies G.S. 166A-12 nondiscrimination in emergency management.

G.S. 166A-19.75 recodifies G.S. 166A-13 regarding employment of emergency management personnel and the taking of a written oath.

G.S. 166A-19.76 recodifies G.S. 166A-17 providing for leave options for voluntary firefighters, rescue squad workers and emergency medical service personnel called into service.

G.S. 166A-19.77 recodifies G.S. 166A-18 designating the Division of Forest Resources as an emergency response agency.

G.S. 166A-19.78 recodifies G.S. 14-288.19(a) regarding the Governor's authority to evacuate a public building.

G.S. 166A-19.79 recodifies G.S. 166A-16, the severability clause.

Section 1.(c) of the bill amends the title of Article 36A of Chapter 14 of the General Statutes.

Section 1.(d) of the bill provides that it is a Class 2 misdemeanor for violating (1) an ordinance or declaration issued by the Governor, local governments, or for willfully refusing to leave a building as directed by the Governor when an evacuation is ordered.

Section 2 of the bill makes conforming changes to the General Statutes to reflect new Article 1A of Chapter 166A. **Section 2(c)** of the bill removes language making it unlawful to transport or possess a dangerous weapon or substance in an area where a declared state of emergency exists.

EFFECTIVE DATE: This act becomes effective October 1, 2012.

H843-SMRN-78(CSMD-22) v4

**Barbara Riley, Counsel to House Judiciary Subcommittee A, and Ben Stanley, attorney from the Bill Drafting Division, contributed substantially to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 843
Second Edition Engrossed 5/24/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H843-CSMD-24 [v.3]

5/30/2012 12:43:46 PM

Short Title: Modernize NC Emergency Management Act. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE NORTH CAROLINA EMERGENCY MANAGEMENT ACT AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

I. CHANGES TO CHAPTER 166A OF THE GENERAL STATUTES

SECTION 1.(a) G.S. 166A-6.1 is recodified as G.S. 166A-29 and the remainder of Article 1 of Chapter 166A is repealed.

SECTION 1.(b) Chapter 166A of the General Statutes is amended by adding a new Article to read:

"Article 1A.
"North Carolina Emergency Management Act.
"Part 1. General Provisions.

"**§ 166A-19. Short title.**

This Article may be cited as 'North Carolina Emergency Management Act.'

"**§ 166A-19.1. Purposes.**

The purposes of this Article are to set forth the authority and responsibility of the Governor, State agencies, and local governments in prevention of, preparation for, response to, and recovery from natural or man-made emergencies or hostile military or paramilitary action and to do the following:

(1) Reduce vulnerability of people and property of this State to damage, injury, and loss of life and property;
(2) Prepare for prompt and efficient rescue, care, and treatment of threatened or affected persons;
(3) Provide for the rapid and orderly rehabilitation of persons and restoration of property; and
(4) Provide for cooperation and coordination of activities relating to emergency mitigation, preparedness, response, and recovery among agencies and officials of this State and with similar agencies and officials of other states,

with local and federal governments, with interstate organizations, and with other private and quasi-official organizations.

"**§ 166A-19.2. Limitations.**

Nothing in this Article shall be construed 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.

(2) Limit, modify, or abridge the authority of the Governor to declare martial law or exercise any other powers vested in the Governor under the North Carolina Constitution, statutes, or common law of this State independent of, or in conjunction with, any provisions of this Article.

"**§ 166A-19.3. Definitions.**

The following definitions apply in this Article:

(1) Account. – The State Emergency Response Account established in G.S. 166A-19.42.

(2) Chairman of the board of county commissioners. – The chairman of the board of county commissioners or, in case of the chairman's absence or disability, the person authorized to act in the chairman's stead. Unless the governing body of the county has specified who is to act in lieu of the chairman with respect to a particular power or duty set out in this Article, this term shall mean the person generally authorized to act in lieu of the chairman.

(3) Disaster declaration. – A gubernatorial declaration that the impact or anticipated impact of an emergency constitutes a disaster of one of the types enumerated in G.S. 166A-19.21(b).

(4) Division. – The Division of Emergency Management established in Subpart A of Part 5 of Article 13 of Chapter 143B of the General Statutes.

(5) Eligible entity. – Any political subdivision. The term also includes an owner or operator of a private nonprofit utility that meets the eligibility criteria set out in this Article.

(6) Emergency. – An occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military, paramilitary, weather-related, or riot-related cause.

(7) Emergency area. – The geographical area covered by a state of emergency.

(8) Emergency management. – Those measures taken by the populace and governments at federal, State, and local levels to minimize the adverse effect of any type emergency, which includes the never-ending preparedness cycle of planning, prevention, mitigation, warning, movement, shelter, emergency assistance, and recovery.

(9) Emergency management agency. – A State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction.

(10) Hazard risk management. – The systematic application of policies, practices, and resources to the identification, assessment, and control of risk associated with hazards affecting human health and safety and property. Hazard, risk, and cost-benefit analysis are used to support development of risk reduction options, program objectives, and prioritization of issues and resources.

(11) Mayor. – The mayor or other chief executive official of a municipality or, in case of that person's absence or disability, the person authorized to act in that person's stead. Unless the governing body of the municipality has specified who is to act in lieu of the mayor with respect to a particular power or duty set out in this Article, the term shall mean the person generally authorized to act in lieu of the mayor.

(12) Political subdivision. – Counties and incorporated cities, towns, and villages.

(13) Preliminary damage assessment. – The initial estimate prepared by State, local, or federal emergency management workers used to determine the severity and magnitude of damage caused by an emergency.

(14) Private nonprofit utility. – A utility that would be eligible for federal public assistance disaster funds pursuant to 44 C.F.R. Part 206.

(15) Secretary. – The Secretary of the Department of Public Safety.

(16) Stafford Act. – The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288, 88 Stat. 143, codified generally at 42 U.S.C. § 5121, et seq., as amended.

(17) State Acquisition and Relocation Fund. – State funding for supplemental grants to homeowners participating in a federal Hazard Mitigation Grant Program Acquisition and Relocation Program. These grants are used to acquire safe, decent, and sanitary housing by paying the difference between the cost of the home acquired under the federal Hazard Mitigation Grant Program Acquisition and Relocation Program and the cost of a comparable home located outside the 100-year floodplain.

(18) State of emergency. – A finding and declaration by any of the following authorities that an emergency exists:

a. The Governor, acting under the authority of G.S. 166A-19.20.

b. The General Assembly, acting under the authority of G.S. 166A-19.20.

c. The governing body of a municipality or the mayor of a municipality, acting under the authority of G.S. 166A-19.22.

d. The governing body of a county or the chairman of the board of commissioners of a county, acting under the authority of G.S. 166A-19.22.

"Part 2. State Emergency Management.

"**§ 166A-19.10. Powers of the Governor.**

(a) State Emergency Management Program. – The State Emergency Management Program includes all aspects of preparations for, response to, recovery from, and mitigation against war or peacetime emergencies.

(b) Powers of the Governor. – The Governor is authorized and empowered to do the following:

(1) To exercise general direction and control of the State Emergency Management Program and to be responsible for carrying out the provisions of this Article, other than those provisions that confer powers and duties exclusively on local governments.

(2) To make, amend, or rescind the necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor herein, with due consideration of the policies of the federal government.

(3) To delegate any authority vested in the Governor under this Article and to provide for the subdelegation of any such authority.

(4) To cooperate and coordinate with the President and the heads of the departments and agencies of the federal government, and with other appropriate federal officers and agencies, and with the officers and agencies of other states and local units of government in matters pertaining to the emergency management of the State and nation.

(5) To enter into agreements with the American National Red Cross, Salvation Army, Mennonite Disaster Service, and other disaster relief organizations.

(6) To make, amend, or rescind mutual aid agreements in accordance with G.S. 166A-19.72.

(7) To utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the State and of the political subdivisions thereof. The officers and personnel of all such departments, offices, and agencies are required to cooperate with and extend such services and facilities to the Governor upon request. This authority shall extend to a state of emergency declared pursuant to G.S. 166A-19.20, to the imminent threat of an emergency that will likely require an emergency to be declared pursuant to G.S. 166A-19.20, or to emergency management planning and training purposes.

(8) To agree, when required to obtain federal assistance in debris removal, that the State will indemnify the federal government against any claim arising from the removal of the debris.

(9) To sell, lend, lease, give, transfer, or deliver materials or perform services for emergency purposes on such terms and conditions as may be prescribed by any existing law, and to account to the State Treasurer for any funds received for such property.

(10) In an emergency, or when requested by the governing body of a political subdivision in the State, to assume operational control over all or any part of the emergency management functions within this State.

"**§ 166A-19.11. Powers of the Secretary of Public Safety.**

The Secretary shall be responsible to the Governor for State emergency management activities. The Secretary shall have the following powers and duties as delegated by the Governor:

(1) To activate the State and local plans applicable to the areas in question and to authorize and direct the deployment and use of any personnel and forces to which the plan or plans apply, and the use or distribution of any supplies, equipment, materials, and facilities available pursuant to this Article or any other provision of law.

(2) To adopt the rules to implement those provisions of this Article that deal with matters other than those that are exclusively local.

(3) To develop a system to produce a preliminary damage assessment from which the Secretary will recommend the appropriate level of disaster declaration to the Governor. The system shall, at a minimum, consider whether the damage involved and its effects are of such a severity and magnitude as to be beyond the response capabilities of the local government or political subdivision.

(4) Additional authority, duties, and responsibilities as may be prescribed by the Governor. The Secretary may subdelegate his authority to the appropriate member of the Secretary's department.

"**§ 166A-19.12. Powers of the Division of Emergency Management.**

The Division of Emergency Management shall have the following powers and duties as delegated by the Governor and Secretary of Public Safety:

(1) Coordination of the activities of all State agencies for emergency management within the State, including planning, organizing, staffing, equipping, training, testing, and activating emergency management programs.

(2) Preparation and maintenance of State plans for emergencies. The State plans or any parts thereof may be incorporated into department regulations and into executive orders of the Governor.

(3) 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:

a. The epidemiologic investigation of a known or suspected threat caused by nuclear, biological, or chemical agents.

b. The examination and testing of persons and animals that may have been exposed to a nuclear, biological, or chemical agent.

c. The procurement and allocation of immunizing agents and prophylactic antibiotics.

d. The allocation of the Strategic National Stockpile.

e. The appropriate conditions for quarantine and isolation in order to prevent further transmission of disease.

f. Immunization procedures.

g. The issuance of guidelines for prophylaxis and treatment of exposed and affected persons.

(4) Establishment of a voluntary model registry for use by political subdivisions in identifying functionally and medically fragile persons in need of assistance during an emergency. All records, data, information, correspondence, and communications relating to the registration of persons with special needs or of functionally and medically fragile persons obtained pursuant to this subdivision are confidential and are not a public record pursuant to G.S. 132-1 or any other applicable statute, except that this information shall be available to emergency response agencies, as determined by the local emergency management director. This information shall be used only for the purposes set forth in this subdivision.

(5) Promulgation of standards and requirements for local plans and programs consistent with federal and State laws and regulations, determination of eligibility for State financial assistance provided for in G.S. 166A-19.15 and provision of technical assistance to local governments. Standards and requirements for local plans and programs promulgated under this subdivision shall be reviewed by the Division at least biennially and updated as necessary.

(6) Development and presentation of training programs, including the Emergency Management Certification Program established under Article 5 of this Chapter, and public information programs to insure the furnishing of adequately trained personnel and an informed public in time of need.

(7) Making of such studies and surveys of the resources in this State as may be necessary to ascertain the capabilities of the State for emergency management, maintaining data on these resources, and planning for the most efficient use thereof.

(8) Coordination of the use of any private facilities, services, and property.

(9) Preparation for issuance by the Governor of executive orders, declarations, and regulations as necessary or appropriate.

(10) Cooperation and maintenance of liaison with the other states, the federal government, and any public or private agency or entity in achieving any purpose of this Article and in implementing programs for emergency or war prevention, preparation, response, and recovery.

(11) Making recommendations, as appropriate, for zoning, building, and other land-use controls, and safety measures for securing mobile homes or other nonpermanent or semipermanent works designed to protect against or mitigate the effects of an emergency.

(12) Coordination of the use of existing means of communications and supplementing communications resources and integrating them into a comprehensive State or State-federal telecommunications or other communications system or network.

(13) Administration of federal and State grant funds provided for emergency management purposes, including those funds provided for planning and preparedness activities by emergency management agencies.

(14) Serving as the lead State agency for the coordination of information and resources for hazard risk management, which shall include the following responsibilities:

a. Coordinating with other State agencies and county governments in conducting hazard risk analysis. To the extent another State agency has primary responsibility for the adoption of hazard mitigation standards, those standards shall be applied in conducting a hazard risk analysis.

b. Establishing and maintaining a hazard risk management information system and tools to display natural hazards and vulnerabilities and conducting risk assessment.

c. Acquiring and leveraging all natural hazard data generated or maintained by State agencies and county governments.

d. Acquiring and leveraging all vulnerability data generated or maintained by State agencies and county governments.

e. Maintaining a clearinghouse for methodologies and metrics for calculating and communicating hazard probability and loss estimation.

(15) Utilizing and maintaining technology that enables efficient and effective communication and management of resources between political subdivisions, State agencies, and other governmental entities involved in emergency management activities.

(16) Establishing and operating a 24 hour Operations Center to serve as a single point of contact for local governments to report the occurrence of emergency and disaster events, and to coordinate local and state response assets.

(17) Developing, maintaining, and implementing plans for response to any emergency occurring at a fixed nuclear power generating facility located in or near the borders of the State of North Carolina.

(18) Maintaining the State Emergency Operations Center as the facility to house the State Emergency Response Team whenever it is activated for disaster response.

(19) Serving as the agency responsible for the management of intrastate and interstate mutual aid planning, implementation, and resource procurement necessary for supporting emergency response and recovery.

"Part 3. Local Emergency Management.

"**§ 166A-19.15. County and municipal emergency management.**

(a) Governing Body of Counties Responsible for Emergency Management. – The governing body of each county is responsible for emergency management within the geographical limits of such county. All emergency management efforts within the county will be coordinated by the county, including activities of the municipalities within the county.

(b) Counties May Establish and Maintain Emergency Management Agencies. – The governing body of each county is hereby authorized to establish and maintain an emergency management agency for the purposes contained in G.S. 166A-19.1. The governing body of each county which establishes an emergency management agency pursuant to this authorization shall appoint a coordinator who will have a direct responsibility for the organization, administration, and operation of the county program and will be subject to the direction and guidance of such governing body. In the event that any county fails to establish an emergency management agency, and the Governor, in the Governor's discretion, determines that a need exists for such an emergency management agency, then the Governor is hereby empowered to establish an emergency management agency within that county.

(c) Municipalities May Establish and Maintain Emergency Management Agencies. – All incorporated municipalities are authorized to establish and maintain emergency management agencies subject to coordination by the county.

(d) Joint Agencies Authorized. – Counties and incorporated municipalities are authorized to form joint emergency management agencies composed of a county and one or more municipalities within the county's borders, between two or more counties, or between two or more counties and one or more municipalities within the borders of those counties.

(e) Local Appropriations Authorized. – Each county and incorporated municipality in this State is authorized to make appropriations for the purposes of this Article and to fund them by levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues, whose use is not otherwise restricted by law.

(f) Additional Powers. – In carrying out the provisions of this Article each political subdivision is authorized to do the following:

(1) To appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for emergency management purposes and to provide for the health and safety of persons and property, including emergency assistance, consistent with this Article.

(2) To direct and coordinate the development of emergency management plans and programs in accordance with the policies and standards set by the Division, consistent with federal and State laws and regulations.

(3) To assign and make available all available resources for emergency management purposes for service within or outside of the physical limits of the subdivision.

(4) To delegate powers in a local state of emergency declared pursuant to G.S. 166A-19.22.

(5) To coordinate the voluntary registration of functionally and medically fragile persons in need of assistance during an emergency either through a registry established by this subdivision or by the State. All records, data, information, correspondence, and communications relating to the registration of persons with special needs or of functionally and medically fragile persons obtained pursuant to this subdivision are confidential and are

not a public record pursuant to G.S. 132-1 or any other applicable statute, except that this information shall be available to emergency response agencies, as determined by the local emergency management director. This information shall be used only for the purposes set forth in this subdivision.

(g) County Eligibility for State and Federal Financial Assistance. – Each county which establishes an emergency management agency pursuant to State standards and which meets requirements for local plans and programs may be eligible to receive State and federal financial assistance, including State and federal funding appropriated for emergency management planning and preparedness, and for the maintenance and operation of a county emergency management program. Such financial assistance is subject to an appropriation being made for this purpose. Where the appropriation does not allocate appropriated funds among counties, the amount allocated to each county shall be determined annually by the Division. The size of this allocation shall be based in part on the degree to which local plans and programs meet State standards and requirements promulgated by the Division, including those relating to professional competencies of local emergency management personnel. However, in making an allocation determination, the Division shall, where appropriate, take into account the fact that a particular county may lack sufficient resources to meet the standards and requirements promulgated by the Division.

"Part 4. Declarations of State of Emergency.

"**§ 166A-19.20. Gubernatorial or legislative declaration of state of emergency.**

(a) Declaration. – A state of emergency may be declared by the Governor, or by a resolution of the General Assembly, if either of these finds that an emergency exists.

(b) Emergency Area. – An executive order or resolution declaring a state of emergency shall include a definition of the area constituting the emergency area.

(c) Expiration of States of Emergency. – A state of emergency declared pursuant to this section shall expire when it is rescinded by the authority that issued it.

(d) Exercise of Powers Not Contingent on Declaration of Disaster Type. – Once a state of emergency has been declared pursuant to this section, the fact that a declaration of disaster type has not been issued shall not preclude the exercise of powers otherwise conferred during a state of emergency.

"**§ 166A-19.21. Gubernatorial disaster declaration.**

(a) Preliminary Damage Assessment. – When a state of emergency is declared pursuant to G.S. 166A-19.20, the Secretary shall provide the Governor and the General Assembly with a preliminary damage assessment as soon as the assessment is available.

(b) Declaration of Disaster. – Upon receipt of a preliminary damage assessment, the Governor is authorized to issue a disaster declaration declaring the impact or anticipated impact of the emergency to constitute a disaster of one of the following types:

(1) Type I Disaster. – A Type I disaster may be declared 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, if all of the following criteria are met:

a. A local state of emergency has been declared pursuant to G.S. 166A-19.22 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-19.41(b)(2)a.

c. A major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared.

(2) Type II Disaster. – 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.

(3) Type III Disaster. – 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 either of the following is true:

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.

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, businesses, or political subdivisions affected by the emergency.

(c) Expiration of Disaster Declarations. –

(1) Expiration of Type I Disaster Declarations. – A Type I disaster declaration shall expire 30 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) Expiration of Type II Disaster Declarations. – A Type II disaster declaration shall expire six 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 exceed a total of 12 months 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 II disaster declaration.

(3) Expiration of Type III Disaster Declarations. – A Type III disaster declaration shall expire 12 months after its issuance unless renewed by the General Assembly.

(4) Expiration of Disaster Declarations Declared Prior to July 1, 2001. – Any state of disaster declared or proclaimed before July 1, 2001, irrespective of type, shall terminate by a declaration of the Governor or resolution of the General Assembly. A declaration 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, the Secretary of State, and the clerks of superior court in the area to which it applies.

"**§ 166A-19.22. Municipal or county declaration of state of emergency.**

(a) Declaration. – A state of emergency may be declared by the governing body of a municipality or county if either of these finds that an emergency exists. Authority to declare a state of emergency under this section may also be delegated by ordinance to the mayor of a municipality or to the chairman of the board of county commissioners of a county.

(b) Emergency Area. – The emergency area shall be determined in accordance with the following:

(1) Unless another subdivision of this subsection is applicable, the emergency area shall not exceed the area over which the municipality or county has

jurisdiction to enact general police-power ordinances. The governing body declaring the state of emergency may declare that the emergency area includes part or all of the governing body's jurisdiction. Unless the governing body declaring the state of emergency provides otherwise, the emergency area includes this entire jurisdiction, subject to the limitations contained in the other subdivisions in this subsection.

(2) The emergency area of a state of emergency declared by a county shall not include any area within the corporate limits of any municipality, or within any area of the county over which a municipality has jurisdiction to enact general police-power ordinances, unless the municipality's governing body or mayor consents to or requests the state of emergency's application. Such an extension may be with respect to one or more of the prohibitions and restrictions imposed in that county pursuant to the authority granted in G.S. 166A-19.31 and need not be with respect to all prohibitions and restrictions authorized by that section.

(3) The board of commissioners or chairman of the board of commissioners of any county who has been requested to do so by a mayor may by declaration extend the emergency area of a state of emergency declared by a municipality to any area within the county in which the board or chairman determines it to be necessary to assist in the controlling of the emergency within the municipality. The extension may be with respect to one or more of the prohibitions and restrictions imposed in that mayor's municipality pursuant to the authority granted in G.S. 166A-19.31 and need not be with respect to all prohibitions and restrictions authorized by that section. Extension of the emergency area pursuant to this subdivision shall be subject to the following additional limitations:

a. The extension of the emergency area shall not include any area within the corporate limits of a municipality, or within any area of the county over which a municipality has jurisdiction to enact general police-power ordinances, unless the mayor or governing body of that other municipality consents to its application.

b. A chairman of a board of county commissioners extending the emergency area under the authority of this subdivision shall take reasonable steps to give notice of its terms to those likely to be affected.

c. The chairman of the board of commissioners shall declare the termination of any prohibitions and restrictions extended pursuant to this subdivision upon the earlier of:

1. The chairman's determination that they are no longer necessary.
2. The determination of the board of county commissioners that they are no longer necessary.
3. The termination of the prohibitions and restrictions within the municipality.

d. The powers authorized under this subdivision may be exercised whether or not the county has enacted ordinances under the authority of G.S. 166A-19.31. Exercise of this authority shall not preclude the imposition of prohibitions and restrictions under any ordinances enacted by the county under the authority of G.S. 166A-19.31.

(c) Expiration of States of Emergency. – Unless an ordinance adopted pursuant to G.S. 166A-19.31 provides otherwise, a state of emergency declared pursuant to this section shall expire when it is terminated by the official or governing body that declared it.

(d) Effect of Declaration. – The declaration of a state of emergency pursuant to this section shall activate the local ordinances authorized in G.S. 166A-19.31 and any and all applicable local plans, mutual assistance compacts and agreements and shall also authorize the furnishing of assistance thereunder.

"**§ 166A-19.23. Excessive pricing prohibitions.**

A declaration issued pursuant to this Article shall trigger the prohibitions against excessive pricing during states of disaster, states of emergency, or abnormal market disruptions pursuant to G.S. 75-37 and 75-38.

"Part 5. Additional Powers During States of Emergency.

"**§ 166A-19.30. Additional powers of the Governor during state of emergency.**

(a) In addition to any other powers conferred upon the Governor by law, during a gubernatorially or legislatively declared state of emergency, the Governor shall have the following powers:

(1) To utilize all available State resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services.

(2) To take such action and give such directions to State and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article and with the orders, rules, and regulations made pursuant thereto.

(3) To take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety.

(4) Subject to the provisions of the State Constitution to relieve any public official having administrative responsibilities under this Article of such responsibilities for willful failure to obey an order, rule, or regulation adopted pursuant to this Article.

(b) During a gubernatorially or legislatively declared state of emergency, with the concurrence of the Council of State, the Governor has the following powers:

(1) To direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State, to prescribe routes, modes of transportation, and destinations in connection with evacuation; and to control ingress and egress of an emergency area, the movement of persons within the area, and the occupancy of premises therein.

(2) To establish a system of economic controls over all resources, materials, and services to include food, clothing, shelter, fuel, rents, and wages, including the administration and enforcement of any rationing, price freezing, or similar federal order or regulation.

(3) To regulate and control the flow of vehicular and pedestrian traffic, the congregation of persons in public places or buildings, lights and noises of all kinds, and the maintenance, extension, and operation of public utility and transportation services and facilities.

(4) To waive a provision of any regulation or ordinance of a State agency or a political subdivision which restricts the immediate relief of human suffering.

(5) To perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population.

(6) To appoint or remove an executive head of any State agency or institution the executive head of which is regularly selected by a State board or commission.

a. Such an acting executive head will serve during the following:

1. The physical or mental incapacity of the regular office holder, as determined by the Governor after such inquiry as the Governor deems appropriate.

2. The continued absence of the regular holder of the office.

3. A vacancy in the office pending selection of a new executive head.

b. An acting executive head of a State agency or institution appointed in accordance with this subdivision may perform any act and exercise any power which a regularly selected holder of such office could lawfully perform and exercise.

c. All powers granted to an acting executive head of a State agency or institution under this section shall expire immediately:

1. Upon the termination of the incapacity as determined by the Governor of the officer in whose stead the Governor acts;

2. Upon the return of the officer in whose stead the Governor acts; or

3. Upon the selection and qualification of a person to serve for the unexpired term, or the selection of an acting executive head of the agency or institution by the board or commission authorized to make such selection, and the person's qualification.

(7) To procure, by purchase, condemnation, seizure, or by other means to construct, lease, transport, store, maintain, renovate, or distribute materials and facilities for emergency management without regard to the limitation of any existing law.

(c) In addition to any other powers conferred upon the Governor by law, during a gubernatorially or legislatively declared state of emergency, if the Governor determines that local control of the emergency is insufficient to assure adequate protection for lives and property because (i) needed control cannot be imposed locally because local authorities responsible for preservation of the public peace have not enacted appropriate ordinances or issued appropriate declarations as authorized by G.S. 166A-19.31; (ii) local authorities have not taken implementing steps under such ordinances or declarations, if enacted or declared, for effectual control of the emergency that has arisen; (iii) the area in which the emergency exists has spread across local jurisdictional boundaries and the legal control measures of the jurisdictions are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will be, severely hampered; or (iv) the scale of the emergency is so great that it exceeds the capability of local authorities to cope with it, the Governor has the following powers:

(1) To impose by declaration prohibitions and restrictions in the emergency area. These prohibitions and restrictions may, in the Governor's discretion, as appropriate to deal with the emergency, impose any of the types of prohibitions and restrictions enumerated in G.S. 166A-19.31(b), and may amend or rescind any prohibitions and restrictions imposed by local

authorities. Prohibitions and restrictions imposed pursuant to this subdivision shall take effect in accordance with the provisions of G.S. 166A-19.31(d) and shall expire upon the earliest occurrence of either of the following: (i) the prohibition or restriction is terminated by the Governor or (ii) the state of emergency is terminated.

(2) Give to all participating State and local agencies and officers such directions as may be necessary to assure coordination among them. These directions may include the designation of the officer or agency responsible for directing and controlling the participation of all public agencies and officers in the emergency. The Governor may make this designation in any manner which, in the Governor's discretion, seems most likely to be effective. Any law enforcement officer participating in the control of a state of emergency in which the Governor is exercising control under this section shall have the same power and authority as a sheriff throughout the territory to which the law enforcement officer is assigned.

(d) Violation. – Any person who violates any provision of a declaration or executive order issued pursuant to this section shall be guilty of a Class 2 misdemeanor in accordance with G.S. 14-288.20A.

"**§ 166A-19.31. Power of municipalities and counties to enact ordinances to deal with states of emergency.**

(a) Authority to Enact Prohibitions and Restrictions. – The governing body of any municipality or county may enact ordinances designed to permit the imposition of prohibitions and restrictions within the emergency area during a state of emergency declared pursuant to G.S. 166A-19.22. Authority to impose by declaration prohibitions and restrictions under this section, and to impose those prohibitions and restrictions at a particular time as appropriate, may be delegated by ordinance to the mayor of a municipality or to the chairman of the board of county commissioners of a county.

(b) Type of Prohibitions and Restrictions Authorized. – The ordinances authorized by this section may permit prohibitions and restrictions:

(1) Of movements of people in public places, including imposing a curfew; directing and compelling the voluntary or mandatory evacuation of all or part of the population from any stricken or threatened area within the governing body's jurisdiction; prescribing routes, modes of transportation, and destinations in connection with evacuation; and controlling ingress and egress of an emergency 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 the possession, transportation, sale, purchase, storage, and use of gasoline, and dangerous weapons and substances, except that this subdivision does not authorize prohibitions or restrictions on lawfully possessed firearms or ammunition. As used in this subdivision, the term 'dangerous weapon and substance' has the same meaning as it does under G.S. 14-288.1. As used in this subdivision, the term 'firearm' has the same meaning as it does under G.S. 14-409.39(2).

(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 authorized by this section need not require or provide for the imposition of all of the types of prohibitions or restrictions, or any particular prohibition or restriction, authorized by this section during an emergency but may instead authorize the official or officials who impose those prohibitions or restrictions to determine and impose the prohibitions or restrictions deemed necessary or suitable to a particular state of emergency.

(c) When Ordinances Take Effect. – Notwithstanding any other provision of law, whether general or special, relating to the promulgation or publication of ordinances by any municipality or county, upon the declaration of a state of emergency by the mayor or chairman of the board of county commissioners within the municipality or the county, any ordinance enacted under the authority of this section shall take effect immediately unless the ordinance sets a later time. If the effect of this section is to cause an ordinance to go into effect sooner than it otherwise could under the law applicable to the municipality or county, the mayor or chairman of the board of county commissioners, as the case may be, shall take steps to cause reports of the substance of the ordinance to be disseminated in a fashion that its substance will likely be communicated to the public in general, or to those who may be particularly affected by the ordinance if it does not affect the public generally. As soon as practicable thereafter, appropriate distribution or publication of the full text of any such ordinance shall be made.

(d) When Prohibitions and Restrictions Take Effect. – All prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under this section shall take effect in the emergency area immediately upon publication of the declaration unless the declaration sets a later time. For the purpose of requiring compliance, publication may consist of reports of the substance of the prohibitions and restrictions in the mass communications media serving the emergency area or other effective methods of disseminating the necessary information quickly. As soon as practicable, however, appropriate distribution of the full text of any declaration shall be made. This subsection shall not be governed by the provisions of G.S. 1-597.

(e) Expiration of Prohibitions and Restrictions. – Prohibitions and restrictions imposed pursuant to this section shall expire upon the earliest occurrence of any of the following:

(1) The prohibition or restriction is terminated by the official or entity that imposed the prohibition or restriction.

(2) The state of emergency terminates.

(f) Intent to Supplement Other Authority. – This section is intended to supplement and confirm the powers conferred by G.S. 153A-121(a), G.S. 160A-174(a), and all other general and local laws authorizing municipalities and counties to enact ordinances for the protection of the public health and safety in times of riot or other grave civil disturbance or emergency.

(g) Previously Enacted Ordinances Remain in Effect. – Any ordinance of a type authorized by this section promulgated prior to October 1, 2012, if otherwise valid, continue in full force and effect without reenactment.

(h) Violation. – Any person who violates any provision of an ordinance or a declaration enacted or declared pursuant to this section shall be guilty of a Class 2 misdemeanor in accordance with G.S. 14-288.20A.

"Part 6. Funding of Emergency Preparedness and Response.

"**§ 166A-19.40. Use of contingency and emergency funds.**

(a) Use of Funds for Relief and Assistance. –The Governor may use contingency and emergency funds as necessary and appropriate to provide relief and assistance from the effects of an emergency and may reallocate such other funds as may reasonably be available within the appropriations of the various departments when the severity and magnitude of the emergency so requires and the contingency and emergency funds are insufficient or inappropriate.

(b) Use of Funds for National Guard Training. – In preparation for a state of emergency, with the concurrence of the Council of State, the Governor may use contingency

and emergency funds as necessary and appropriate for National Guard training in preparation for emergencies.

"**§ 166A-19.41. State emergency assistance funds.**

(a) Governor May Make Funds Available for Emergency Assistance. – In the event of a gubernatorially or legislatively declared state of emergency, the Governor may make State funds available for emergency assistance as authorized by this section. Any State funds made available by the Governor for emergency assistance may be administered through State emergency assistance programs which may be established by the Governor upon the declaration of a state of emergency. It is the intent of the General Assembly in authorizing the Governor to make State funds available for emergency assistance and in authorizing the Governor to establish State emergency assistance programs to provide State assistance for recovery from those emergencies for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the emergency area.

(b) Emergency Assistance in a Type I Disaster. – In the event that a Type I disaster is declared, the Governor may make State funds available for emergency assistance in the emergency area in the form of individual assistance and public assistance as provided in this subsection.

(1) Individual assistance. – State emergency assistance in the form of grants to individuals and families may be made available when damage meets or exceeds the criteria set out in 13 C.F.R. Part 123 for the Small Business Administration Disaster Loan Program. Individual assistance grants shall include benefits comparable to those provided by the Stafford Act and may be provided for the following:

a. Provision of temporary housing and rental assistance.

b. Repair or replacement of dwellings. Grants for repair or replacement of housing may include amounts necessary to locate the individual or family in safe, decent, and sanitary housing.

c. Replacement of personal property (including clothing, tools, and equipment).

d. Repair or replacement of privately owned vehicles.

e. Medical or dental expenses.

f. Funeral or burial expenses resulting from the emergency.

g. Funding for the cost of the first year's flood insurance premium to meet the requirements of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. § 4001, et seq.

(2) Public assistance. – State emergency assistance in the form of public assistance grants may be made available to eligible entities located within the emergency area on the following terms and conditions:

a. Eligible entities shall meet the following qualifications:

1. The eligible entity suffers a minimum of ten thousand dollars ($10,000) in uninsurable losses;

2. The eligible entity suffers uninsurable losses in an amount equal to or exceeding one percent (1%) of the annual operating budget;

3. For a state of emergency declared pursuant to G.S. 166A-19.20(a) after the deadline established by the Federal Emergency Management Agency pursuant to the Disaster Mitigation Act of 2002, P.L. 106-390, the eligible

entity shall have a hazard mitigation plan approved pursuant to the Stafford Act; and

4. For a state of emergency declared pursuant to G.S. 166A-19.20(a), after August 1, 2002, the eligible entity shall be participating in the National Flood Insurance Program in order to receive public assistance for flooding damage.

b. Eligible entities shall be required to provide non-State matching funds equal to twenty-five percent (25%) of the eligible costs of the public assistance grant.

c. An eligible entity that receives a public assistance grant pursuant to this subsection may use the grant for the following purposes only:

1. Debris clearance.
2. Emergency protective measures.
3. Roads and bridges.
4. Crisis counseling.
5. Assistance with public transportation needs.

(c) Emergency Assistance in a Type II Disaster. – If a Type II disaster is declared, the Governor may make State funds available for emergency assistance in the emergency area in the form of the following types of grants:

(1) State Acquisition and Relocation Funds.

(2) Supplemental repair and replacement housing grants available to individuals or families in an amount necessary to locate the individual or family in safe, decent, and sanitary housing not to exceed twenty-five thousand dollars ($25,000) per family.

(d) Emergency Assistance in a Type III Disaster. – If a Type III disaster is declared, the Governor may make State funds available for emergency assistance in the emergency area in the form of the following types of grants:

(1) State Acquisition and Relocation Funds.

(2) Supplemental repair and replacement housing grants available to individuals or families in an amount necessary to locate the individual or family in safe, decent, and sanitary housing not to exceed twenty-five thousand dollars ($25,000) per family.

(3) Any programs authorized by the General Assembly.

"**§ 166A-19.42. State Emergency Response Account.**

(a) Account Established. – There is established a State Emergency Response Account as a reserve in the General Fund. Any funds appropriated to the Account shall remain available for expenditure as provided by this section, unless directed otherwise by the General Assembly.

(b) Use of Funds. – The Governor may spend funds from the Account for the following purposes:

(1) To cover the start-up costs of State Emergency Response Team operations for an emergency that poses an imminent threat of a Type I, Type II, or Type III disaster.

(2) To cover the cost of first responders to a Type I, Type II, or Type III disaster and any related supplies and equipment needed by first responders that are not provided for under subdivision (1) of this subsection.

All other types of emergency assistance authorized by this Part shall continue to be financed by the funds made available under G.S. 166A-19.41.

(c) Reporting Requirement. – The Governor shall report to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Appropriations Committees

of the Senate and House of Representatives on any expenditures from the State Emergency Response Account no later than 30 days after making the expenditure. The report shall include a description of the emergency and type of action taken.

"Part 7. Immunity and Liability.

"**§ 166A-19.60. Immunity and exemption.**

(a) Generally. – All functions hereunder and all other activities relating to emergency management as provided for in this Chapter or elsewhere in the General Statutes are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence, or bad faith, any emergency management worker, firm, partnership, association, or corporation complying with or reasonably attempting to comply with this Article or any order, rule, or regulation promulgated pursuant to the provisions of this Article or pursuant to any ordinance relating to any emergency management measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity.

(b) Immunity. – The immunity provided to firms, partnerships, associations, or corporations, under subsection (a) of this section, is subject to all of the following conditions:

(1) The immunity applies only when the firm, partnership, association, or corporation is acting without compensation or with compensation limited to no more than actual expenses and one of the following applies:

a. Emergency management services are provided at any place in this State during a state of emergency declared by the Governor or General Assembly pursuant to this Article, and the services are provided under the direction and control of the Secretary pursuant to G.S. 166A-19.10, 166A-19.11, 166A-19.12, 166A-19.20, 166A-19.30, and 143B-602, or the Governor.

b. Emergency management services are provided during a state of emergency declared pursuant to G.S. 166A-19.22, and the services are provided under the direction and control of the governing body of a municipality or county under G.S. 166A-19.31, or the chair of a board of county commissioners under G.S. 166A-19.22(b)(3).

c. The firm, partnership, association, or corporation is engaged in planning, preparation, training, or exercises with the Division, the Division of Public Health, or the governing body of each county or municipality under G.S. 166A-19.15 related to the performance of emergency management services or measures.

(2) The immunity shall not apply to any firm, partnership, association, or corporation, or to any employee or agent thereof, whose act or omission caused in whole or in part the actual or imminent emergency or whose act or omission necessitated emergency management measures.

(3) To the extent that any firm, partnership, association, or corporation has liability insurance, that firm, partnership, association, or corporation shall be deemed to have waived the immunity to the extent of the indemnification by insurance for its negligence. An insurer shall not under a contract of insurance exclude from liability coverage the acts or omissions of a firm, partnership, association, or corporation for which the firm, partnership, association, or corporation would only be liable to the extent indemnified by insurance as provided by this subdivision.

(c) No Effect on Benefits. – The rights of any person to receive benefits to which the person would otherwise be entitled under this Article or under the Workers' Compensation Law

or under any pension law and the right of any such person to receive any benefits or compensation under any act of Congress shall not be affected by performance of emergency management functions.

(d) License Requirements Suspended. – Any requirement for a license to practice any professional, mechanical, or other skill shall not apply to any authorized emergency management worker who shall, in the course of performing the worker's duties as such, practice such professional, mechanical, or other skill during a state of emergency.

(e) Definition of Emergency Management Worker. – As used in this section, the term 'emergency management worker' shall include any full- or part-time paid, volunteer, or auxiliary employee of this State or other states, territories, possessions, or the District of Columbia, of the federal government or any neighboring country or of any political subdivision thereof, or of any agency or organization performing emergency management services at any place in this State, subject to the order or control of or pursuant to a request of the State government or any political subdivision thereof. The term 'emergency management worker' under this section shall also include any health care worker performing health care services as a member of a hospital-based or county-based State Medical Assistance Team designated by the North Carolina Office of Emergency Medical Services and any person performing emergency health care services under G.S. 90-12.2.

(f) Powers of Individuals Operating Pursuant to Mutual Aid Agreements. – Any emergency management worker, as defined in this section, performing emergency management services at any place in this State pursuant to agreements, compacts, or arrangements for mutual aid and assistance to which the State or a political subdivision thereof is a party, shall possess the same powers, duties, immunities, and privileges the person would ordinarily possess if performing duties in the State, or political subdivision thereof, in which normally employed or rendering services.

"**§ 166A-19.61. No private liability.**

Any person, firm, or corporation 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, 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.

"**§ 166A-19.62. Civil liability of persons who willfully ignore a warning in an emergency.**

In an emergency, a person who willfully ignores a warning regarding personal safety issued by a federal, State, or local law enforcement agency, emergency management agency, or other governmental agency responsible for emergency management under this Article is civilly liable for the cost of a rescue effort to any governmental agency or nonprofit agency cooperating with a governmental agency conducting a rescue on the endangered person's behalf if all of the following are true:

(1) The person ignores the warning and (i) engages in an activity or course of action that a reasonable person would not pursue or (ii) fails to take a course of action that a reasonable person would pursue.

(2) As a result of ignoring the warning the person places himself or herself or another in danger.

(3) A governmental rescue effort is undertaken on the endangered person's behalf.

"Part 8. Miscellaneous Provisions.

"**§ 166A-19.70. Ensuring availability of emergency supplies and utility services.**

(a) Executive Order. – In addition to any other powers conferred on the Governor by law, whenever a curfew has been imposed, the Governor may declare by executive order that the health, safety, or economic well-being of persons or property in this State require that persons transporting essentials in commerce to the curfew area, or assisting in ensuring their availability, and persons assisting in restoring utility services, be allowed to enter or remain in areas from which they would otherwise be excluded for the limited purpose of delivering the essentials, assisting in ensuring their availability, or assisting in restoring utility services.

(b) Maximum Hours of Service Waiver. – As part of an executive order issued pursuant to subsection (a) of this section, or independently of such an order, the Governor may declare by executive order that the health, safety, or economic well-being of persons or property in this State require that the maximum hours of service prescribed by the Department of Public Safety pursuant to G.S. 20-381 and similar rules be waived for persons transporting essentials or assisting in the restoration of utility services.

(c) Certification System. – The Secretary shall develop a system pursuant to which a person who transports essentials in commerce, or assists in ensuring their availability, and persons who assist in the restoring of utility services can be certified as such. The certification system shall allow for both preemergency declaration and postemergency declaration certification and may include an annually renewable precertification. The Secretary shall only allow those who routinely transport or distribute essentials or assist in the restoring of utility services to be certified. A certification of the employer shall constitute a certification of the employer's employees. The Secretary shall create an easily recognizable indicium of certification in order to assist local officials' efforts to determine which persons have received certification by the system established under this subsection.

(d) Presence in Curfew Area Permitted. – Notwithstanding the existence of any curfew, a person who is certified pursuant to the system established under subsection (c) of this section shall be allowed to enter or remain in the curfew area for the limited purpose of delivering or assisting in the distribution of essentials or assisting in the restoration of utility services and shall be allowed to provide service that exceeds otherwise applicable hours of service maximums, to the extent authorized by an executive order executed pursuant to subsection (a) of this section. Nothing in this section prohibits law enforcement or other local officials from specifying the permissible route of ingress or egress for persons with certifications.

(e) Abnormal Market Disruptions with Respect to Petroleum. – If the Governor declares the existence of an abnormal market disruption with respect to petroleum pursuant to, G.S. 75-38(f), the Governor shall contemporaneously seek all applicable waivers under the federal Clean Air Act, 42 U.S.C. § 7401, et seq., and any other applicable federal law to facilitate the transportation of fuel within this State in order to address or prevent a fuel supply emergency in this State. Waiver requests shall be directed to the appropriate federal agencies and shall seek waivers of the following:

(1) The Reformulated Gasoline requirements throughout the State.

(2) The Federal and State Implementation Plan summertime gasoline requirements (low RVP) throughout the State.

(3) Any other waiver that will, if obtained, facilitate the transportation of fuel within this State.

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

(1) Curfew. – Any restriction on ingress and egress to the emergency area of a state of emergency or any restriction on the movement of persons within such an area.

(2) Curfew area. – The area that is subject to a curfew.

(3) Essentials. – Any goods that are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain

life, health, safety, or economic well-being of persons or their property. The Secretary shall determine what goods constitute essentials for purposes of this section.

"**§ 166A-19.71. Accept services, gifts, grants, and loans.**

Whenever the federal government or any agency or officer thereof or of any person, firm, or corporation shall offer to the State, or through the State to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for emergency management purposes, the State acting through the Governor, or such political subdivision, acting with the consent of the Governor and through its governing body, may accept such offer. Upon such acceptance the Governor of the State or governing body of such political subdivision may authorize any officer of the State or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the State or of such political subdivision, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

"**§ 166A-19.72. Establishment of mutual aid agreements.**

(a) Governor Authorized to Enter Agreements with Other States and Federal Government. – The Governor may establish mutual aid agreements with other states and with the federal government provided that any special agreements so negotiated are within the Governor's authority.

(b) Governor Authorized to Enter Agreements with Political Subdivisions. – The Governor may establish mutual aid agreements with political subdivisions in the State with the concurrence of the subdivision's governing body.

(c) Political Subdivisions Authorized to Enter Agreements with Other Political Subdivisions. – The chief executive of each political subdivision, with the concurrence of the subdivision's governing body, may develop mutual aid agreements for reciprocal emergency management aid and assistance. Such agreements shall be consistent with the State emergency management program and plans.

(d) Political Subdivisions Authorized to Enter Agreements with Political Subdivisions in Other States. – The chief executive officer of each political subdivision, with the concurrence of the governing body and subject to the approval of the Governor, may enter into mutual aid agreements with local chief executive officers in other states for reciprocal emergency management aid and assistance. These agreements shall be consistent with the State emergency management program and plans.

(e) Terms of Agreements. – Mutual aid agreements may include, but are not limited to, the furnishing or exchange of such supplies, equipment, facilities, personnel, and services as may be needed; the reimbursement of costs and expenses for equipment, supplies, personnel, and similar items; and on such terms and conditions as deemed necessary.

"**§ 166A-19.73. Compensation.**

(a) Extent of Compensation. – Compensation for services or for the taking or use of property shall be only to the extent that legal obligations of individual citizens are exceeded in a particular case and then only to the extent that the claimant has not been deemed to have volunteered his services or property without compensation.

(b) Limitation; Basis of Compensation. – Compensation for property shall be only if the property was commandeered, seized, taken, condemned, or otherwise used in coping with an emergency and this action was ordered by the Governor. The State shall make compensation for the property so seized, taken, or condemned on the following basis:

(1) In case property is taken for temporary use, the Governor, within 30 days of the taking, shall fix the amount of compensation to be paid for such damage or failure to return. Whenever the Governor shall deem it advisable for the State to take title to property taken under this section, the Governor shall

forthwith cause the owner of such property to be notified thereof in writing by registered mail, postage prepaid, or by the best means available, and forthwith cause to be filed a copy of said notice with the Secretary of State.

(2) If the person entitled to receive the amounts so determined by the Governor as just compensation is unwilling to accept the same as full and complete compensation for such property or the use thereof, the person shall be paid seventy-five percent (75%) of such amount and shall be entitled to recover from the State of North Carolina in an action brought in the superior court in the county of residence of claimant, or in Wake County, in the same manner as other condemnation claims are brought, within three years after the date of the Governor's award.

"**§ 166A-19.74. Nondiscrimination in emergency management.**

State and local governmental bodies and other organizations and personnel who carry out emergency management functions under the provisions of this Article are required to do so in an equitable and impartial manner. Such State and local governmental bodies, organizations, and personnel shall not discriminate on the grounds of race, color, religion, nationality, sex, age, or economic status in the distribution of supplies, the processing of applications, and other relief and assistance activities.

"**§ 166A-19.75. Emergency management personnel.**

(a) Limitation. – No person shall be employed or associated in any capacity in any emergency management agency established under this Article if that person does or has done any of the following:

(1) Advocates or has advocated a change by force or violence in the constitutional form of the Government of the United States or in this State.

(2) Advocates or has advocated the overthrow of any government in the United States by force or violence.

(3) Has been convicted of any subversive act against the United States.

(4) Is under indictment or information charging any subversive act against the United States.

(5) Has ever been a member of the Communist Party.

(b) Oath. – Each person who is appointed to serve in any emergency management agency shall, before entering upon the person's duties, take a written oath before a person authorized to administer oaths in this State, which oath shall be substantially as follows:

'I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of North Carolina, against all enemies, foreign and domestic; and that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter. And I do further swear (or affirm) that I do not advocate, nor am I, nor have I ever knowingly been, a member of any political party or organization that advocates the overthrow of the Government of the United States or of this State by force or violence; and that during such time as I am a member of the State Emergency Management Agency I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States or of this State by force or violence, so help me God.'

(c) No Violation of Dual Office Holding Prohibition. – No position created by or pursuant to this Article shall be deemed an office within the meaning of Section 9 of Article 6 of the North Carolina Constitution.

"**§ 166A-19.76. Leave options for voluntary firefighters, rescue squad workers, and emergency medical service personnel called into service.**

(a) Leave Without Pay. – A member of a volunteer fire department, rescue squad, or emergency medical services agency called into service of the State after a declaration of a state of emergency by the Governor or by the General Assembly, or upon the activation of the State Emergency Response Team in response to an emergency, shall have the right to take leave without pay from his or her civilian employment. No member of a volunteer fire department, rescue squad, or emergency medical services agency shall be forced to use or exhaust his or her vacation or other accrued leave from his or her civilian employment for a period of active service. The choice of leave shall be solely within the discretion of the member.

(b) Request in Writing Required. – For the volunteer member to be entitled to take leave without pay pursuant to this section, his or her services shall be requested in writing by the Director of the Division or by the head of a local emergency management agency. The request shall be directed to the Chief of the member's volunteer fire department, rescue squad, or emergency medical services agency and a copy shall be provided to the member's employer. This section shall not apply to those members whose services have been certified by their employer to the Director of the Division, or to the head of a local emergency management agency, as essential to the employer's own ongoing emergency relief activities.

(c) Definition of an Emergency Requiring Activation of the State Emergency Response Team. – For purposes of this section, an emergency requiring the activation of the State Emergency Response Team means an emergency at Activation Level 2 or greater according to the North Carolina State Emergency Operations Plan of November 2002. Activation Level 2 requires the State Emergency Operations Center to be fully activated with 24-hour staffing from all State Emergency Response Team members.

(d) Enforcement. – The Commissioner of Labor shall enforce the provisions of this section pursuant to Chapter 95 of the General Statutes.

"**§ 166A-19.77. Division of Forest Resources designated as emergency response agency.**

The Division of Forest Resources of the Department of Agriculture and Consumer Services is designated an emergency response agency of the State of North Carolina for purposes of the following:

(1) Supporting the Division in responding to all-risk incidents.
(2) Receipt of any applicable State or federal funding.
(3) Training of other State and local agencies in emergency management.
(4) Any other emergency response roles for which the Division has special training or qualifications.

"**§ 166A-19.78. Governor's power to order evacuation of public building.**

When it is determined by the Governor that a great public crisis, disaster, riot, catastrophe, or any other similar public emergency exists, or the occurrence of any such condition is imminent, and, in the Governor's opinion it is necessary to evacuate any building owned or controlled by any department, agency, institution, school, college, board, division, commission, or subdivision of the State in order to maintain public order and safety or to afford adequate protection for lives or property, the Governor is hereby authorized to issue an order of evacuation directing all persons within the building to leave the building and its premises forthwith. The order shall be delivered to any law enforcement officer or officer of the National Guard, and such officer shall, by a suitable public address system, read the order to the occupants of the building and demand that the occupants forthwith evacuate said building within the time specified in the Governor's order.

"**§ 166A-19.79. Severability.**

If any provision of this Article or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable."

SECTION 1.(c) The title of Article 36A of Chapter 14 of the General Statutes reads as rewritten:

"Article 36A.

~~Riots and Civil Disorders.~~Riots, Civil Disorders, and Emergencies."

SECTION 1.(d) Article 36A of Chapter 14 is amended by adding a new section to read:

"**§ 14-288.20A. Violation of emergency prohibitions and restrictions.**

Any person who does any of the following is guilty of a Class 2 misdemeanor:

(1) Violates any provision of an ordinance or a declaration enacted or declared pursuant to G.S. 166A-19.31.

(2) Violates any provision of a declaration or executive order issued pursuant to G.S. 166A-19.30

(3) Willfully refuses to leave the building as directed in a Governor's order issued pursuant to G.S. 166A-19.78."

II. CONFORMING CHANGES

SECTION 2.(a) G.S. 14-288.1 reads as rewritten:

"**§ 14-288.1. Definitions.**

Unless the context clearly requires otherwise, the ~~definitions in this section apply throughout this Article:~~ following definitions apply in this Article:

(1) ~~"Chairman of the board of county commissioners":~~Chairman of the board of county commissioners. – The chairman of the board of county commissioners or, in case of the chairman's absence or disability, the person authorized to act in the chairman's stead. Unless the governing body of the county has specified who is to act in lieu of the chairman with respect to a particular power or duty set out in this Article, the term "chairman of the board of county commissioners" shall apply to the person generally authorized to act in lieu of the chairman.

(2) ~~"Dangerous weapon or substance":~~Dangerous weapon or substance. – Any deadly weapon, ammunition, explosive, incendiary device, radioactive material or device, as defined in G.S. 14-288.8(c)(5), or any instrument or substance designed for a use that carries a threat of serious bodily injury or destruction of property; or any instrument or substance that is capable of being used to inflict serious bodily injury, when the circumstances indicate a probability that such instrument or substance will be so used; or any part or ingredient in any instrument or substance included above, when the circumstances indicate a probability that such part or ingredient will be so used.

(3) ~~"Declared state of emergency":~~Declared state of emergency. – A state of emergency as that term is defined in G.S. 166A-19.3 or a state of emergency found and ~~proclaimed by the Governor under the authority of G.S. 14-288.15, by any mayor or other municipal official or officials under the authority of G.S. 14-288.12, by any chairman of the board of commissioners of any county or other county official or officials under the authority of G.S. 14-288.13, by any chairman of the board of county commissioners acting under the authority of G.S. 14-288.14, by~~ declared by any chief executive official or acting chief executive official of any county or municipality acting under the authority of any other applicable statute or provision of the common law to preserve the public peace in a state of

emergency, or by any executive official or military commanding officer of the United States or the State of North Carolina who becomes primarily responsible under applicable law for the preservation of the public peace within any part of North Carolina.

(4) ~~"Disorderly conduct":~~Disorderly conduct. – As defined in G.S. 14-288.4(a).

(4a) Emergency. – As defined in G.S. 166A-19.3.

(5) ~~"Law enforcement officer":~~Law enforcement officer. – Any officer of the State of North Carolina or any of its political subdivisions authorized to make arrests; any other person authorized under the laws of North Carolina to make arrests and either acting within that person's territorial jurisdiction or in an area in which that person has been lawfully called to duty by the Governor or any mayor or chairman of the board of county commissioners; any member of the Armed Forces of the United States, the North Carolina National Guard, or the North Carolina State Defense Militia called to duty in a state of emergency in North Carolina and made responsible for enforcing the laws of North Carolina or preserving the public peace; or any officer of the United States authorized to make arrests without warrant and assigned to duties that include preserving the public peace in North Carolina.

(6) ~~"Mayor":~~Mayor. – The mayor or other chief executive official of a municipality or, in case of that person's absence or disability, the person authorized to act in that person's stead. Unless the governing body of the municipality has specified who is to act in lieu of the mayor with respect to a particular power or duty set out in this Article, the word "mayor" shall apply to the person generally authorized to act in lieu of the mayor.

(7) ~~"Municipality":~~Municipality. – Any active incorporated city or town, but not including any sanitary district or other municipal corporation that is not a city or town. An "active" municipality is one which has conducted the most recent election required by its charter or the general law, whichever is applicable, and which has the authority to enact general police-power ordinances.

(8) ~~"Public disturbance":~~Public disturbance. – Any annoying, disturbing, or alarming act or condition exceeding the bounds of social toleration normal for the time and place in question which occurs in a public place or which occurs in, affects persons in, or is likely to affect persons in a place to which the public or a substantial group has access. The places covered by this definition shall include, but not be limited to, highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

(9) ~~"Riot":~~Riot. – As defined in G.S. 14-288.2(a).

~~(10) "State of emergency": The condition that exists whenever, during times of public crisis, disaster, rioting, catastrophe, or similar public emergency, public safety authorities are unable to maintain public order or afford adequate protection for lives or property, or whenever the occurrence of any such condition is imminent.~~"

SECTION 2.(b) G.S. 14-288.4(a)(4)c. reads as rewritten:

"(a) Disorderly conduct is a public disturbance intentionally caused by any person who does any of the following:

...

(4) Refuses to vacate any building or facility of any public or private educational institution in obedience to any of the following:

...

c. If ~~a state of~~ an emergency is occurring or is imminent within the institution, an order given by any law-enforcement officer acting within the scope of the officer's authority."

SECTION 2.(c) G.S. 14-288.7 is repealed.

SECTION 2.(d) G.S. 14-288.11 reads as rewritten:

"**§ 14-288.11. Warrants to inspect vehicles in riot areas or approaching municipalities during emergencies.**

(a) Notwithstanding the provisions of Article 4 of Chapter 15, any law-enforcement officer may, under the conditions specified in this section, obtain a warrant authorizing inspection of vehicles under the conditions and for the purpose specified in subsection (b).

(b) The inspection shall be for the purpose of discovering any dangerous weapon or substance likely to be used by one who is or may become unlawfully involved in a riot. The warrant may be sought to inspect:

(1) All vehicles entering or approaching a municipality in which ~~a state of~~ an emergency exists; or

(2) All vehicles which might reasonably be regarded as being within or approaching the immediate vicinity of an existing riot.

(c) The warrant may be issued by any judge or justice of the General Court of Justice.

(d) The issuing official shall issue the warrant only when he has determined that the one seeking the warrant has been specifically authorized to do so by the head of the law-enforcement agency of which the affiant is a member, and:

(1) If the warrant is being sought for the inspection of vehicles entering or approaching a municipality, that ~~a state of~~ an emergency exists within the municipality; or

(2) If the warrant being sought is for the inspection of vehicles within or approaching the immediate vicinity of a riot, that a riot is occurring within that area.

Facts indicating the basis of these determinations must be stated in an affidavit and signed by the affiant under oath or affirmation.

(e) The warrant must be signed by the issuing official and must bear the hour and date of its issuance.

(f) The warrant must indicate whether it is for the inspection of vehicles entering or approaching a municipality or whether it is for the inspection of vehicles within or approaching the immediate vicinity of a riot. In either case, it must also specify with reasonable precision the area within which it may be exercised.

(g) The warrant shall become invalid 24 hours following its issuance and must bear a notation to that effect.

(h) Warrants authorized under this section shall not be regarded as search warrants for the purposes of application of Article 4 of Chapter 15.

(i) Nothing in this section is intended to prevent warrantless frisks, searches, and inspections to the extent that they may be constitutional and consistent with common law and governing statutes."

SECTION 2.(e) G.S. 14-288.12 through G.S. 14-288.17 and G.S. 14-288.19 are repealed.

SECTION 2.(f) G.S. 14-288.18 reads as rewritten:

"**§ 14-288.18. Injunction to cope with emergencies at public and private educational institutions.**

(a) The chief administrative officer, or his authorized representative, of any public or private educational institution may apply to any superior court judge for injunctive relief if ~~a~~

~~state of~~ an emergency exists ~~or is imminent~~ within his institution. For the purposes of this section, the superintendent of any city or county administrative school unit shall be deemed the chief administrative officer of any public elementary or secondary school within his unit.

(b) Upon a finding by a superior court judge, to whom application has been made under the provisions of this section, that ~~a state of~~ an emergency exists ~~or is imminent~~ within a public or private educational institution by reason of riot, disorderly conduct by three or more persons, or the imminent threat of riot, the judge may issue an injunction containing provisions appropriate to cope with the emergency then occurring or threatening. The injunction may be addressed to named persons or named or described groups of persons as to whom there is satisfactory cause for believing that they are contributing to the ~~existing or imminent state of~~ emergency, and ordering such persons or groups of persons to take or refrain or desist from taking such various actions as the judge finds it appropriate to include in his order."

SECTION 2.(g) G.S. 20-118.4(a) reads as rewritten:

"**§ 20-118.4. Firefighting equipment exempt from size and weight restrictions while transporting or moving heavy equipment in an emergency; permits.**

(a) Exemption From Weight and Size Restrictions During Emergency Response. – Any overweight or oversize vehicle owned and operated by a State or local government or cooperating federal agency is exempt from the weight and size restrictions of this Chapter and implementing rules while it is actively engaged in (i) a response to a fire under the authority of a forest ranger pursuant to G.S. 113-55(a); (ii) a county request for forest protection assistance pursuant to G.S. 113-59; (iii) a request for assistance under a state of emergency declared pursuant to ~~G.S. 14-288.12, 14-288.13, 14-288.14, 14-288.15,~~G.S. 166A-19.20 or G.S. 166A-19.22, and any other applicable statutes and provisions of common law; (iv) a request for assistance under a disaster declared pursuant to ~~G.S. 166A-6 or G.S. 166A-8,~~ G.S. 166A-19.21 when the vehicle meets the following conditions:

...."

SECTION 2.(h) G.S. 42A-36 reads as rewritten:

"**§ 42A-36. Mandatory evacuations.**

If State or local authorities, acting pursuant to ~~Article 36A of Chapter 14 or Article 1 of Chapter 166A~~ Article 1A of Chapter 166A of the General Statutes, order a mandatory evacuation of an area that includes the residential property subject to a vacation rental, the tenant under the vacation rental agreement, whether in possession of the property or not, shall comply with the evacuation order. Upon compliance, the tenant shall be entitled to a refund from the landlord of the rent, taxes, and any other payments made by the tenant pursuant to the vacation rental agreement as a condition of the tenant's right to occupy the property prorated for each night that the tenant is unable to occupy the property because of the mandatory evacuation order. The tenant shall not be entitled to a refund if: (i) prior to the tenant taking possession of the property, the tenant refused insurance offered by the landlord or real estate broker that would have compensated the tenant for losses or damages resulting from loss of use of the property due to a mandatory evacuation order; or (ii) the tenant purchased insurance offered by the landlord or real estate broker. The insurance offered shall be provided by an insurance company duly authorized by the North Carolina Department of Insurance, and the cost of the insurance shall not exceed eight percent (8%) of the total amount charged for the vacation rental to the tenant less the amount paid by the tenant for a security deposit."

SECTION 2.(i) G.S. 58-2-46 reads as rewritten:

"**§ 58-2-46. State of ~~disaster;~~emergency automatic stay of proof of loss requirements; premium and debt deferrals; loss adjustments for separate windstorm policies.**

Whenever a state of ~~disaster~~ emergency is proclaimed for the State or for an area within the State under ~~G.S. 166A-6~~ G.S. 166A-19.20 or whenever the President of the United States has

issued a major disaster declaration for the State or for an area within the State under the Stafford Act, 42 U.S.C. § 5121, et seq., as amended:

...."

SECTION 2.(j) G.S. 58-2-47 reads as rewritten:

"**§ 58-2-47. Incident affecting operations of the Department; stay of deadlines and deemer provisions.**

Regardless of whether a state of ~~disaster~~ emergency has been proclaimed under ~~G.S. 166A-6~~ G.S. 166A-19.20 or declared under the Stafford Act, whenever an incident beyond the Department's reasonable control, including an act of God, insurrection, strike, fire, power outage, or systematic technological failure, substantially affects the daily business operations of the Department, the Commissioner may issue an order, effective immediately, to stay the application of any deadlines and deemer provisions imposed by law or rule upon the Commissioner or Department or upon persons subject to the Commissioner's jurisdiction, which deadlines and deemer provisions would otherwise operate during the time period for which the operations of the Department have been substantially affected. The order shall remain in effect for a period not exceeding 30 days. The order may be renewed by the Commissioner for successive periods not exceeding 30 days each for as long as the operations of the Department remain substantially affected, up to a period of one year from the effective date of the initial order."

SECTION 2.(k) G.S. 58-3-228(b)(2) reads as rewritten:

"(2) The covered person requesting coverage of the refill or replacement prescription resides in a county that:

a. Is covered under a ~~proclamation of state of disaster~~state of emergency issued by the Governor or ~~by a resolution of the~~ General Assembly under ~~G.S. 166A-6,~~ G.S. 166A-19.20, or a declaration of major disaster issued by the President of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as amended; or

~~b. Is declared to be under a state of emergency in a proclamation issued by the Governor under G.S. 14-288.15.~~"

SECTION 2.(l) G.S. 58-33-70(e) reads as rewritten:

"(e) The Commissioner may permit an experienced adjuster, who regularly adjusts in another state and who is licensed in the other state (if that state requires a license), to act as an adjuster in this State without a North Carolina license only for an insurance company authorized to do business in this State, for emergency insurance adjustment work, for a period to be determined by the Commissioner, done for an employer who is an adjuster licensed by this State or who is a regular employer of one or more adjusters licensed by this State; provided that the employer shall furnish to the Commissioner a notice in writing immediately upon the beginning of any such emergency insurance adjustment work. As used in this subsection, "emergency insurance adjustment work" includes, but is not limited to, (i) adjusting of a single loss or losses arising out of an event or catastrophe common to all of those losses or (ii) adjusting losses in any area declared to be a state of ~~disaster~~ emergency by the Governor under ~~G.S. 166A-6~~ G.S. 166A-19.20 or by the President of the United States under applicable federal law."

SECTION 2.(m) G.S. 58-44-70(a) reads as rewritten:

"(a) This Part provides for a nonadversarial alternative dispute resolution procedure for a facilitated claim resolution conference prompted by the critical need for effective, fair, and timely handling of insurance claims arising out of damages to residential property as the result of an event for which there is a state of ~~disaster~~ emergency declared within 60 days of the event. This Part applies only (i) if a state of ~~disaster~~ emergency has been proclaimed for the

State or for an area within the State by the Governor or by a resolution of the General Assembly under ~~G.S. 166A-6;~~ G.S. 166A-19.20; or (ii) if the President of the United States has issued a major disaster declaration for the State or for an area within the State under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as amended; and (iii) if the Commissioner issues an order establishing the mediation procedure authorized by this Part."

SECTION 2.(n) G.S. 58-44-75(2) reads as rewritten:

"**§ 58-44-75. Definitions.**

As used in this Part:

...

(2) Disaster. ~~As defined in G.S. 166A-4(1).~~As the term 'emergency' is defined in G.S. 166A-19.3(6)."

SECTION 2.(o) G.S. 75-38(d) reads as rewritten:

"(d) A "triggering event" means the declaration of a state of emergency ~~pursuant to G.S. 166A-8 or Article 36A of Chapter 14 of the General Statutes, the proclamation of a state of disaster pursuant to G.S. 166A-6,~~ pursuant to Article 1A of Chapter 166A of the General Statutes or a finding of abnormal market disruption pursuant to G.S. 75-38(e)."

SECTION 2.(p) G.S. 83A-13.1(a) reads as rewritten:

"(a) A professional architect who voluntarily, without compensation, provides structural, electrical, mechanical, or other architectural services at the scene of a declared disaster or emergency, declared under federal law or in accordance with the provisions of ~~Article 1 of Chapter 166A of the General Statutes or Article 36A of Chapter 14 of the General Statutes,~~ Article 1A of Chapter 166A of the General Statutes, at the request of a public official, law enforcement official, public safety official, or building inspection official, acting in an official capacity, shall not be liable for any personal injury, wrongful death, property damage, or other loss caused by the professional architect's acts or omissions in the performance of the architectural services."

SECTION 2.(q) G.S. 89C-19.1(a) reads as rewritten:

"(a) A professional engineer who voluntarily, without compensation, provides structural, electrical, mechanical, or other engineering services at the scene of a declared disaster or emergency, declared under federal law or in accordance with the provisions of ~~Article 1 of Chapter 166A of the General Statutes or Article 36A of Chapter 14 of the General Statutes,~~ Article 1A of Chapter 166A of the General Statutes, at the request of a public official, law enforcement official, public safety official, or building inspection official, acting in an official capacity, shall not be liable for any personal injury, wrongful death, property damage, or other loss caused by the professional engineer's acts or omissions in the performance of the engineering services."

SECTION 2.(r) G.S. 122C-409 reads as rewritten:

"**§ 122C-409. Community of Butner comprehensive emergency management plan.**

The Department of Public Safety shall establish an emergency management agency as defined in ~~G.S. 166A-4(2)~~ G.S. 166A-19.3(9) for the Camp Butner Reservation, and the Town of Butner."

SECTION 2.(s) G.S. 131D-7 reads as rewritten:

"**§ 131D-7. Waiver of rules for certain adult care homes providing shelter or services during disaster or emergency.**

(a) The Division of Health Service Regulation may temporarily waive, during disasters or emergencies declared in accordance with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes, any rules of the Commission pertaining to adult care homes to the extent necessary to allow the adult care home to provide temporary shelter and temporary services requested by the emergency management agency. The Division may identify, in advance of a

declared disaster or emergency, rules that may be waived, and the extent the rules may be waived, upon a disaster or emergency being declared in accordance with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the adult care home. The emergency management agency requesting temporary shelter or temporary services shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(b) As used in this section, "emergency management agency" is as defined in ~~G.S. 166A-4(2).~~G.S. 166A-19.3."

SECTION 2.(t) G.S. 131E-84 reads as rewritten:

"**§ 131E-84. Waiver of rules for hospitals that provide temporary shelter or temporary services during a disaster or emergency.**

(a) The Division of Health Service Regulation may temporarily waive, during disasters or emergencies declared in accordance with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes, any rules of the Commission pertaining to a hospital to the extent necessary to allow the hospital to provide temporary shelter and temporary services requested by the emergency management agency. The Division may identify, in advance of a declared disaster or emergency, rules that may be waived, and the extent to which the rules may be waived, upon a declaration of disaster or emergency in accordance with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the hospital. The emergency management agency requesting temporary shelter or temporary services shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(b) As used in this section, "emergency management agency" is as defined in ~~G.S. 166A-4.~~G.S. 166A-19.3."

SECTION 2.(u) G.S. 131E-112 reads as rewritten:

"**§ 131E-112. Waiver of rules for health care facilities that provide temporary shelter or temporary services during a disaster or emergency.**

(a) The Division of Health Service Regulation may temporarily waive, during disasters or emergencies declared in accordance with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes, any rules of the Commission pertaining to facilities or home care agencies to the extent necessary to allow the facility or home care agency to provide temporary shelter and temporary services requested by the emergency management agency. The Division may identify, in advance of a declared disaster or emergency, rules that may be waived, and the extent the rules may be waived, upon a disaster or emergency being declared in accordance with ~~Article 1~~ Article 1A of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the facility. The emergency management agency requesting temporary shelter or temporary services shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(b) As used in this section, "emergency management agency" is as defined in ~~G.S. 166A-4(2).~~G.S. 166A-19.3."

SECTION 2.(v) G.S. 143C-4-4(b) reads as rewritten:

"(b) Authorized Uses. – Notwithstanding any other provision of law, funds appropriated to the Contingency and Emergency Fund may be used only for expenditures required: (i) by a court or Industrial Commission order, (ii) to respond to events as authorized under ~~G.S. 166A-5(1)a.9.~~ G.S. 166A-19.40(a) of the North Carolina Emergency Management Act, or (iii) for other statutorily authorized purposes or other contingencies and emergencies."

SECTION 2.(w) G.S. 143C-5-2 reads as rewritten:

"**§ 143C-5-2. Order of appropriations bills.**

Each house of the General Assembly shall first pass its version of the Current Operations Appropriations Act on third reading and order it sent to the other chamber before placing any other appropriations bill on the calendar for second reading. This section does not apply to the following bills:

(1) An appropriations bill to respond to ~~a disaster as defined by G.S. 166A-4(1).~~an emergency as defined by G.S. 166A-19.3.

(2) An appropriations bill making adjustments to the current year budget.

(3) An appropriations bill authorizing continued operations at current funding levels."

SECTION 2.(x) G.S. 143C-6-4(b)(2) reads as rewritten:

"(b) Adjustments to the Certified Budget. – Notwithstanding the provisions of G.S. 143C-6-1, a State agency may, with approval of the Director of the Budget, spend more than was authorized in the certified budget for all of the following:

...

(2) A purpose or program if the overexpenditure of the purpose or program is:

a. Required by a court or Industrial Commission order;

b. Authorized under ~~G.S. 166A-5(1)a.9.~~ G.S. 166A-19.40(a) of the North Carolina Emergency Management Act; or

c. Required to call out the National Guard."

SECTION 2.(y) G.S. 166A-24 read as rewritten:

"**§ 166A-24. Immunity of Regional Response Team Personnel.**

Members of a regional response team shall be protected from liability under the provisions of ~~G.S. 166A-14(a)~~ G.S. 166A-19.60(a) while responding to a hazardous materials or terrorist incident pursuant to authorization from the Division of Emergency Management."

SECTION 2.(z) G.S. 14-409.40(f) reads as rewritten:

"(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 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, 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 declared under ~~Article 36A of this Chapter.~~Article 1A of Chapter 166A of the General Statutes."

SECTION 2.(aa) G.S. 14-415.4(e)(6) reads as rewritten:

"(e) Disqualifiers Requiring Denial of Petition. – The court shall deny the petition to restore the firearms rights of any petitioner if the court finds any of the following:

...

(6) The petitioner 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 a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or 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, 14-277.3, 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,~~ 14-288.20A, 14-318.2, 14-415.21(b), or 14-415.26(d), or a substantially similar out-of-state or federal offense."

SECTION 2.(bb) G.S. 14-415.12(b)(8) reads as rewritten:

"(b) The sheriff shall deny a permit to an applicant who:

...

(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,~~ 14-288.20A, 14-318.2, 14-415.21(b), 14-415.26(d), or former G.S. 14-277.3."

SECTION 2.(cc) G.S. 18B-110 reads as rewritten:

"**§ 18B-110. Emergency.**

When the Governor finds that ~~a "state of emergency," as defined in G.S. 14-288.1,~~ an emergency, as that term is defined in G.S. 166A-19.3, exists anywhere in this State, ~~he~~the Governor may

(1) Order the closing of all ABC stores, and

(2) Order the cessation of all sales, transportation, manufacture, and bottling of alcoholic beverages.

The Governor's order shall apply in those portions of the State designated in the order, for the duration of the state of emergency. Any order by the Governor under this section shall be directed to the Chairman of the Commission and to the Secretary of Public Safety."

SECTION 2.(dd) G.S. 70-13.1(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears upon an applicant's fitness to conduct archaeological investigaions under G.S. 70-13. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers and Court Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 19C, Financial Identity Fraud; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of

drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(ee) G.S. 74F-18(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice locksmithing. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(ff) G.S. 90-12.5 reads as rewritten:

"**§ 90-12.5. Disasters and emergencies.**

In the event of an occurrence which the Governor of the State of North Carolina has declared ~~a disaster or when the Governor has declared~~ a state of emergency, or in the event of an occurrence for which a county or municipality has enacted an ordinance to deal with states of emergency under ~~G.S. 14-288.12, 14-288.13, or 14-288.14,~~ G.S. 166A-19.31, or to protect the public health, safety, or welfare of its citizens under Article 22 of Chapter 130A of the General Statutes, G.S. 160A-174(a) or G.S. 153A-121(a), as applicable, the Board may waive the requirements of this Article in order to permit the provision of emergency health services to the public."

SECTION 2.(gg) G.S. 90-85.25(a) reads as rewritten:

"**§ 90-85.25. Disasters and emergencies.**

(a) In the event of an occurrence which the Governor of the State of North Carolina has declared ~~a disaster or when the Governor has declared~~ a state of emergency, or in the event of an occurrence for which a county or municipality has enacted an ordinance to deal with states of emergency under ~~G.S. 14-288.12, 14-288.13, or 14-288.14,~~ G.S. 166A-19.31, or to protect the public health, safety, or welfare of its citizens under G.S. 160A-174(a) or

G.S. 153A-121(a), as applicable, the Board may waive the requirements of this Article in order to permit the provision of drugs, devices, and professional services to the public."

SECTION 2.(hh) G.S. 90-113.31A(14) reads as rewritten:

"(14) Criminal history. – A history of conviction of a State crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice substance abuse professional services. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(ii) G.S. 90-171.48(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a State crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice nursing. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60,

Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(jj) G.S. 90-270.63(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a State or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice marriage and family therapy. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(kk) G.S. 90-288.01(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure as a nursing home administrator. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article

26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(ll) G.S. 90-345(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a State or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice professional counseling. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(mm) G.S. 93E-2-11(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for registration to act as a real estate appraisal management company. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson

and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(nn) G.S. 114-19.6(a)(2) reads as rewritten:

"(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Health and Human Services or the Division of Juvenile Justice of the Department of Public Safety. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(oo) G.S. 114-19.12(a)(2) reads as rewritten:

"(2) Criminal history. – A State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for holding a paid or volunteer position with a fire department. The crimes

include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(pp) G.S. 114-19.23(a)(2) reads as rewritten:

"(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Public Instruction. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(qq) G.S. 115C-238.29K(a)(1) reads as rewritten:

"(1) "Criminal history" means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates an individual (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel. These crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(rr) G.S. 115C-332(a)(1) reads as rewritten:

"(1) "Criminal history" means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as public school personnel. Such crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. Such crimes also include possession or sale of

drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subparagraph, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(ss) G.S. 121-25.1(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears upon an applicant's fitness to conduct activities related to the surveillance, protection, preservation, and archaeological recovery of property subject to the exclusive dominion and control of the State under G.S. 121-22. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers and Court Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 19C, Financial Identity Fraud; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(tt) G.S. 122C-80(e) reads as rewritten:

"(e) Relevant Offense. – As used in this section, "relevant offense" means a county, state, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of persons needing mental health, developmental disabilities, or substance abuse services. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses

Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(uu) G.S. 131D-40(d) reads as rewritten:

"(d) Relevant Offense. – As used in this section, "relevant offense" means a county, state, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of aged or disabled persons. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

SECTION 2.(vv) G.S. 143-143.10A(a)(2) reads as rewritten:

"(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure under this Part. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses

Against the Public Peace; Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(ww) G.S. 143-215.94II reads as rewritten:

"**§ 143-215.94II. Emergency proclamation; Governor's powers.**

(a) Whenever any emergency exists or appears imminent, arising from the discharge of oil or other pollutants within the marine environment, the Governor shall by proclamation declare ~~the fact and that~~ a state of emergency ~~exists~~ in the appropriate sections of the State. Upon such proclamation, the Governor shall have all powers enumerated in ~~G.S. 14-288.15,~~ G.S. 166A-19.30(c) subject to the ~~provisions of G.S. 14-288.16.~~limitations contained in that subsection.

(b) If the Governor is unavailable, the Lieutenant Governor shall, by proclamation, ~~declare the fact and that a~~ declare a state of emergency ~~exists~~ in the appropriate sections of the State.

(c) In performing his duties under this section, the Governor is authorized and directed to cooperate with all departments and agencies of the federal government, the offices and agencies of other states and foreign countries and the political subdivisions thereof, and private agencies in all matters pertaining to an emergency described herein.

(d) In addition to the powers enumerated in ~~G.S. 14-288.15,~~ G.S. 166A-19.30(c), in the case of such an emergency described in subsection (a) of this section, the Governor is further authorized and empowered to transfer any funds available to him by statute for emergency use into the Oil or Other Hazardous Substances Pollution Protection Fund created pursuant to G.S. 143-215.87, to be utilized for the purposes specified therein."

SECTION 2.(xx) G.S. 143B-146.16(a)(1) reads as rewritten:

"(1) "Criminal history" means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel. Such crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace;

Article 36A, ~~Riots and Civil Disorders;~~ Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states."

SECTION 2.(yy) G.S. 153A-129 reads as rewritten:

"**§ 153A-129. Firearms.**

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.~~Article 1A of Chapter 166A of the General Statutes."

SECTION 2.(zz) G.S. 160A-189 reads as rewritten:

"**§ 160A-189. Firearms.**

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.~~Article 1A of Chapter 166A of the General Statutes."

EFFECTIVE DATE

SECTION 3. This act becomes effective October 1, 2012.

VISITOR REGISTRATION SHEET

Judiciary I Senate

(Committee Name)

5-31-2012

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joyce Green	State Farm
Dixon	NCDHHS
Rick Zechini	Progress Energy
Saisanna Davis	Gov Office
Elizabeth Bise	Brooks Pierce
David Farrell	NCLTA
MARY JENNINGS	NCDPS
Bo Heath	MWC
Lauren Whaley	NCCCC
Ben Schaumberg	NCSBA
David Elmore	Moore & Van Allen

VISITOR REGISTRATION SHEET

Judiciary I Senate

(Committee Name)

5-31-2012

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ashleigh Thornton	MWC
Doug Hoell	NCEM - NCDPS
Will Polk	NCDPS
Kathy Hawkins	Duke Energy
Laura Omara	DHHS
Elisa Quick	Troutman Sanders
Matt Meinig	NCLM
Paul Meyer	NCLM
[illegible]	AOC
Rebecca Smitherman	NC Bar Assn
Tom Crouch	NCBA
Jarvis Freeman	WAKE CSC
[illegible]	[illegible]
Josette Chmiel	GRNC
Ben Miles	GRNC
John Lamparth	GRNC
Kim Hargrove	NCAAP
Chip Killian	Nelson Mullins

09-21-201

VISITOR REGISTRATION SHEET

Judiciary I Senate
(Committee Name)

5-31-2012
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Liz Percy	Ragsdale Liggett
Alissa Willett	NCAJ

SENATE JUDICIARY I COMMITTEE
Tuesday, June 5, 2012 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on June 5, 2012, in Room 1027 of the Legislative Building. 11 members of the committee were present. Senator Brunstetter, presided.

HB 149-TERRORISM AS A STATE OFFENSE- Senator Goolsby moved that the bill come before committee for the purpose of consideration. Representative Killian was recognized to explain the bill. Susan Sitze was recognized to explain the changes in the PCS. The bill would make terrorism a crime in North Carolina. Senator Tillman moved for an unfavorable report as to the original bill, favorable as to the PCS and the motion carried.

SB 908-MATCHING FUNDS REPEAL-Senator Goolsby was recognized to chair the committee. Senator Brunstetter was recognized to explain the bill. This bill would remove the matching funds provision from the Public Campaign Act and the Voter-Owned Elections Act. Senator Clodfelter moved for a favorable report and the motion carried.

The meeting adjourned at 10:06AM .

Senator Brunstetter, Presiding

Michael Lewis, Committee Clerk

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 5, 2012	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 149	Terrorism/State Offense.	Representative Torbett Representative Killian
SB 908	Matching Funds Repeal.	Senator Brunstetter

Senator Peter S. Brunstetter, Chair

NORTH CAROLINA GENERAL ASSEMBLY

SENATE

JUDICIARY I COMMITTEE REPORT

Senator Peter S. Brunstetter, Chair

Tuesday. June 05, 2012

Senator BRUNSTETTER,

submits the following with recommendations as to passage:

FAVORABLE

S.B. **908** Matching Funds Repeal.

Sequential Referral: None

Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

Senator Peter S. Brunstetter will present the bill.

NORTH CAROLINA GENERAL ASSEMBLY

SENATE

JUDICIARY I COMMITTEE REPORT

Senator Peter S. Brunstetter, Chair

Tuesday, June 05, 2012

Senator BRUNSTETTER,

submits the following with recommendations as to passage:

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

H.B. **149** Terrorism/State Offense.

Draft Number:	90248
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Senator Thom Goolsby will present the bill.

HOUSE BILL 149
Committee Substitute Favorable 4/5/11

Short Title: Terrorism/State Offense. (Public)

Sponsors:

Referred to:

February 22, 2011

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF TERRORISM.

Whereas, closed community compounds are located across the United States and near the borders of this State; and

Whereas, these compounds have limited public access and are reputed to be bound together by a common purpose or ideology; and

Whereas, there have been reports of weapons fire and military-type training occurring at some of these compounds; and

Whereas, a defendant who was convicted of the attempted murder of nine students at the University of North Carolina at Chapel Hill as an act of revenge for enemy casualties of war was not charged under federal domestic terrorism laws; and

Whereas, the current State criminal statutes do not sufficiently recognize the increased danger to the public and do not sanction appropriately acts of terrorism; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 2D.
"Terrorism.

"**§ 14-50.2. Terrorism.**

(a) The following definitions shall apply in this section:

(1) Act of violence. – A violation of G.S. 14-17 or G.S. 14-18; any felony offense in Chapter 14 of the General Statutes that includes an assault, or use of violence or force against a person; any felony offense that includes either the threat or use of any explosive or incendiary device; or any offense that includes the threat or use of a nuclear, biological, or chemical weapon of mass destruction.

(2) Continuing criminal enterprise. – As defined in G.S. 14-7.20(c).

(b) A person is guilty of the separate offense of terrorism if the person commits an act of violence or is engaged in a continuing criminal enterprise with the intent to do either of the following:

(1) Intimidate the civilian population at large, or an identifiable group of the civilian population.

(2) Influence, through intimidation, the conduct or activities of the government of the United States, a state, or any unit of local government.

(c) A violation of this section is a felony that is:

(1) One class higher than the offense which is the underlying act of violence, except that a violation is a Class B1 felony if the underlying act of violence is a Class B1 or Class A felony offense. A violation of this section is a separate offense from the underlying offense and shall not merge with other offenses.

(2) A Class D felony if the violation is based upon a violation of G.S. 14-7.20.

(d) Any person who solicits, invites, recruits, encourages, or otherwise causes or attempts to cause another to participate in an act, or acts, of terrorism is guilty of a Class D felony.

(e) All real and personal property of every kind used or intended for use in the course of, derived from, or realized through a violation of this Article shall be subject to lawful seizure and forfeiture to the State as set forth in G.S. 14-2.3 and G.S. 14-7.20. However, the forfeiture of any real or personal property shall be subordinate to any security interest in the property taken by a lender in good faith as collateral for the extension of credit and recorded as provided by law, and no real or personal property shall be forfeited under this section against an owner who made a bona fide purchase of the property without knowledge of a violation of this Article."

SECTION 2. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2012-38
HOUSE BILL 149

AN ACT TO CREATE THE CRIMINAL OFFENSE OF TERRORISM.

Whereas, closed community compounds are located across the United States and near the borders of this State; and

Whereas, these compounds have limited public access and are reputed to be bound together by a common purpose or ideology; and

Whereas, there have been reports of weapons fire and military-type training occurring at some of these compounds; and

Whereas, a defendant who was convicted of the attempted murder of nine students at the University of North Carolina at Chapel Hill as an act of revenge for enemy casualties of war was not charged under federal domestic terrorism laws; and

Whereas, the current State criminal statutes do not sufficiently recognize the increased danger to the public and do not sanction appropriately acts of terrorism; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 3A.
"Terrorism.

"**§ 14-10.1. Terrorism.**

(a) As used in this section, the term "act of violence" means a violation of G.S. 14-17; a felony punishable pursuant to G.S. 14-18; any felony offense in this Chapter that includes an assault, or use of violence or force against a person; any felony offense that includes either the threat or use of any explosive or incendiary device; or any offense that includes the threat or use of a nuclear, biological, or chemical weapon of mass destruction.

(b) A person is guilty of the separate offense of terrorism if the person commits an act of violence with the intent to do either of the following:

(1) Intimidate the civilian population at large, or an identifiable group of the civilian population.

(2) Influence, through intimidation, the conduct or activities of the government of the United States, a state, or any unit of local government.

(c) A violation of this section is a felony that is one class higher than the offense which is the underlying act of violence, except that a violation is a Class B1 felony if the underlying act of violence is a Class A or Class B1 felony offense. A violation of this section is a separate offense from the underlying offense and shall not merge with other offenses.

(d) All real and personal property of every kind used or intended for use in the course of, derived from, or realized through an offense punishable pursuant to this Article shall be subject to lawful seizure and forfeiture to the State as set forth in G.S. 14-2.3 and G.S. 14-7.20. However, the forfeiture of any real or personal property shall be subordinate to any security interest in the property taken by a lender in good faith as collateral for the extension of credit and recorded as provided by law, and no real or personal property shall be forfeited under this section against an owner who made a bona fide purchase of the property, or a person with rightful possession of the property, without knowledge of a violation of this Article."

SECTION 2. G.S. 14-7.20 reads as rewritten:

"**§ 14-7.20. Continuing criminal enterprise.**

(a) ~~Any~~ Except as otherwise provided in subsection (a1) of this section, any person who engages in a continuing criminal enterprise shall be punished as a Class H felon and in addition shall be subject to the forfeiture prescribed in subsection (b) of this section.

(a1) Any person who engages in a continuing criminal enterprise where the felony violation required by subdivision (c)(1) of this section is a violation of G.S. 14-10.1 shall be punished as a Class D felon and, in addition, shall be subject to the forfeiture prescribed in subsection (b) of this section.

(b) Any person who is convicted under subsection (a) or (a1) of this section of engaging in a continuing criminal enterprise shall forfeit to the State of North Carolina:

(1) The profits obtained by the person in the enterprise, and

(2) Any of the person's interest in, claim against, or property or contractual rights of any kind affording a source of influence over, such enterprise.

(c) For purposes of this section, a person is engaged in a continuing criminal enterprise if:

(1) The person violates any provision of this Chapter, the punishment of which is a felony; and

(2) The violation is a part of a continuing series of violations of this Chapter:

a. Which are undertaken by the person in concert with five or more other persons with respect to whom the person occupies a position of organizer, a supervisory position, or any other position of management; and

b. From which the person obtains substantial income or resources."

SECTION 3. This act becomes effective December 1, 2012, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 12th day of June, 2012.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 11:30 a.m. this 20th day of June, 2012

HOUSE BILL 149:
Terrorism/State Offense

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 5, 2012
Introduced by:	Reps. Killian, Torbett	**Prepared by:**	Susan Sitze
Analysis of:	PCS to Second Edition H149-CSSA-77		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for H149 would create the State offense of terrorism and provide an increased penalty for continuing criminal enterprise in commission of the offense of terrorism.***

CURRENT LAW: Under federal law, a person engages in domestic terrorism if they do an act within the territorial jurisdiction of the United States that is "dangerous to human life" that is a violation of the criminal laws of a state or the United States, if the act appears to be intended to:

- Intimidate or coerce a civilian population;
- Influence the policy of a government by intimidation or coercion; or
- Affect the conduct of a government by mass destruction, assassination or kidnapping.

BILL ANALYSIS:

Section 1 of the PCS would create a State offense of "terrorism" if the defendant commits one of the described "acts of violence" with the intent to do either of the following:

(1) Intimidate the civilian population at large.
(2) Influence, through intimidation, the conduct or activities of the government of the United States, a state, or any unit of local government.

A violation would be classified at one offense level higher than the underlying offense. If the underlying offense is a Class A or Class B1 felony, then the terrorism offense is a Class B1 felony.

Real or personal property used in connection with a violation of the act is subject to seizure and forfeiture. Forfeiture is subject to prior security interests taken by a lender in good faith, and bona fide purchasers are protected from forfeiture.

Section 2 of the PCS would amend G.S. 14-7.20 to provide that participation in a continuing criminal enterprise while in violation of the terrorism statute is punishable as a Class D felony, rather than the Class H punishment for all other continuing criminal enterprises.

EFFECTIVE DATE: This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 908

Short Title:	Matching Funds Repeal.	(Public)
Sponsors:	Senators Brunstetter (Primary Sponsor); and Brock.	
Referred to:	Judiciary I.	

May 30, 2012

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE MATCHING FUNDS PROVISIONS OF THE PUBLIC CAMPAIGN ACT AND THE VOTER-OWNED ELECTION ACT AND TO MAKE CONFORMING AND RELATED CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.62(18) is repealed.

SECTION 2. G.S. 163-278.66 is repealed.

SECTION 3. G.S. 163-278.67 is repealed.

SECTION 4. G.S. 163-278.64(d)(2) reads as rewritten:

"(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate may accept only qualifying contributions, contributions under ten dollars ($10.00) from North Carolina voters, and personal and family contributions permitted under subdivision (4) of this subsection. The total contributions the candidate may accept during this period shall not exceed the maximum qualifying contributions for that candidate. In addition to these contributions, the candidate may only expend during this period the remaining money raised pursuant to subdivision (1) of this ~~subsection and possible matching funds received pursuant to G.S. 163-278.67.~~subsection. Except for personal and family contributions permitted under subdivision (4) of this subsection, multiple contributions from the same contributor to the same candidate shall not exceed five hundred dollars ($500.00)."

SECTION 5. G.S. 163-278.64A(a) reads as rewritten:

"(a) Participation Provisions Modified. – Candidates involved in elections described in G.S. 163-329 may participate in the Fund subject to the provisions of G.S. 163-278.64 as modified by this section. The Board shall adapt other provisions of this ~~Article, including G.S. 163-278.67,~~ Article to those elections."

SECTION 6. G.S. 163-278:65(b)(2) reads as rewritten:

"(2) Contested primaries. – No funds shall be ~~distributed except as provided in G.S. 163-278.67.~~distributed."

SECTION 7. G.S. 163-278.68(d) reads as rewritten:

"(d) Board to Adopt Rules and Issue Opinions. – The Board shall adopt rules and issue opinions to ensure effective administration of this Article. Such rules and opinions shall include, but not be limited to, procedures for obtaining qualifying contributions, certification of candidates, addressing circumstances involving special elections, vacancies, recounts, withdrawals, or replacements, collection of revenues for the Fund, distribution of Fund revenue to certified candidates, return of unspent Fund disbursements, and compliance with this Article.

~~The Board shall adopt procedures for the distribution of matching money that further the purpose and avoid the subversion of G.S. 163-278.67.~~ For races involving special elections, recounts, vacancies, withdrawals, or replacement candidates, the Board shall establish procedures for qualification, certification, disbursement of Fund revenues, and return of unspent Fund revenues. The Board shall fulfill each of these duties in consultation with the Advisory Council on the Public Campaign Fund."

SECTION 8. G.S. 163-278.96(17) is repealed.

SECTION 9. G.S. 163-278.99A is repealed.

SECTION 10. G.S. 163-278.99B is repealed.

SECTION 11. G.S. 163-278.98(e)(2) reads as rewritten:

"(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate may accept only qualifying contributions, contributions under ten dollars ($10.00) from North Carolina voters, in-kind party contributions as permitted in subdivision (4) of this subsection, and personal and family contributions permitted under subdivision (4a) of this subsection. The total contributions the candidate may accept during this period shall not exceed the maximum qualifying contributions for that candidate. In addition to these contributions, the candidate may only expend during this period the remaining money raised pursuant to subdivision (1) of this ~~subsection and possible matching funds received pursuant to G.S. 163-278.99B~~ subsection. If the candidate has any remaining money that was raised as contributions before August 1 of the year before the election, the candidate may not expend that money after filing the declaration of intent, except for purposes permitted under subdivision (2), (3), (6), (7), or (8) of G.S. 163-278.16B(a)."

SECTION 12. G.S. 163-278.98(e)(3) reads as rewritten:

"(3) After the qualifying period and through the date of the general election, the candidate shall cease campaign-related fund-raising activities and shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163-278.99(b) plus any funds remaining from the qualifying ~~period and possible matching funds.~~period."

SECTION 13. G.S. 163-278.99(b)(2) reads as rewritten:

"(2) Contested primaries. – No funds shall be ~~distributed except as provided in G.S. 163-278.99B.~~distributed."

SECTION 14. G.S. 163-278.13(e4) is repealed.

SECTION 15. This act is effective when it becomes law.

SENATE BILL 908:
Matching Funds Repeal

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 4, 2012
Introduced by:	Sen. Brunstetter	**Prepared by:**	R. Erika Churchill
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 908 would repeal the matching funds provisions in both the judicial and council of state public funding for campaigns programs.***

CURRENT LAW: North Carolina currently provides two separate programs for public financing of elections – one for appellate judicial races and one for 3 of the 10 Council of State races (Auditor, Superintendent of Public Instruction, and Commissioner of Insurance).

To participate, the candidate must file a declaration of intent with the State Board of Elections BEFORE collecting any qualifying contributions. The declaration of intent has to be filed before or during the "qualifying period," which is September 1 of the year before the election until the day of the primary. After filing the declaration of intent, the candidate must collect qualifying contributions from a certain number of registered voters during the qualifying period. The State Board of Elections must then "certify" that the candidate has filed a declaration of intent, collected the appropriate contributions, and filed a notice of candidacy. Once certified, the candidate is entitled to receive distributions from the public financing fund. Distributions are as follows: none for an uncontested primary or general election; an initial distribution within 5 business days of certification by the State Board for a candidate in a contested general election; and matching funds, upon trigger.

If participating candidates are faced with "funds in opposition to a certified candidate or in support of an opponent to that candidate" exceed the trigger amount, the public financing programs provide for "matching funds" to be released to those participating certified candidates. In the case of a primary, the trigger amount equals the maximum qualifying contributions for participating candidates. In the case of a contested general election, the trigger amount equals the base level of funding available for the contested election for that office.

The opposition spending is subject to 24-hour expedited reporting so the matching fund provision can be administered. Matching funds are available in amounts matching the opposition spending, up to twice the trigger amount.

BILL ANALYSIS: The bill would repeal all of the matching funds provisions in the judicial public financing program (Sections 1-7 of the bill) and the council of state public financing program (Sections 8-14 of the bill), while making necessary corresponding conforming changes.

EFFECTIVE DATE: When it becomes law.

BACKGROUND: The United States Supreme Court found, in Arizona Free Enterprise Club's Freedom Club PAC, v. Bennett (2011), that a similar matching funds program was an unconstitutional restriction on free speech. Subsequent to that case, a lawsuit was filed in the 4th Circuit to declare the matching funds provisions in North Carolina law unconstitutional. The court found that the North Carolina matching funds statute is unduly burdensome and not sufficiently justified to survive First Amendment Scrutiny. NC Right to Life v Leake, May 21, 2012.

SENATE PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027GB

DATE: 6-5 **TIME:** 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Rebecca Harris	Charlotte	Bob Rucho
2 Taylor Parrish	Angier	Rouzer
3 Davis McKinney	Spruce Pine	Ralph Hise
4 Brock McKinney	Arden	Tom Apodaca
5 Charles. Keen	Raleigh	~~Bob~~ Phil Berger
6 Peter Ojo	Fayetteville	Eric Mansfeild
7 Julia Chavis	Raleigh	~~Senator~~ Dan Blue
8 Ruth Jackson	Harrisburg	Hartsell
9 Kate Finlayson	~~Preston~~ NewBern	Preston
10 Ryan Williams	Laurinburg	Purcell

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

VISITOR REGISTRATION SHEET

Judiciary I — 06/05/12

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
K Bestman	TSS
Zan Pope	Gov office
Matt Willoughby	Civitas
David Lagos	NC Sentencing & Policy Advisory Comm'n
Dick Taylor	NCAJ
Kim Wilson	NCAJ
William Wooten	Gov. Office
Susana Dinis	Gov Office
Michelle Frazier	MFOS
Gary O. Bartlett	SBE
David Ferrell	NCLTA

VISITOR REGISTRATION SHEET

Judiciary I — 06/05/12

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	Misc
	School of Gov.
	NCCVE

VISITOR REGISTRATION SHEET

Judiciary I — 06/05/12

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Johnson	BSA
Chip Killian	Nelson Mullins
Bill Rowe	NC Justice Center

SENATE JUDICIARY I COMMITTEE
Thursday, June 7, 2012 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on June 7, 2012, in Room 1027 of the Legislative Building. 15 members of the committee were present. Senator Brunstetter, presided.

The meeting adjourned at 10:35 AM.

HB 483-DNA SAMPLES/ADD'L FELONIES-Representative Burr was recognized to explain the PCS. The legislation would add to the list of offenses which require the taking of a DNA sample upon the arrest and appropriate funds to facilitate that expansion. Director of the state crime lab recognized to explain collections, hits and expunctions. Senator Brock moved for an unfavorable report as to original bill, but favorable as to the PCS, with referral to appropriations. The motion carried.

HB 614-VOLUNTEER HEALTH SVCS ACT- Senator Goolsby was recognized to speak on the bill and to present the PCS. The bill would permit health care professionals licensed in other states to provide free health care services in North Carolina without being subject to additional licensure requirements. The PCS would also limit the tort liability of volunteer health care services providers for injuries or death to acts or omissions constituting gross negligence, wanton conduct or intentional wrongdoing. Senator Goolsby moved for an unfavorable report as to the original bill, but favorable as to PCS and the motion carried.

HB 690-AMEND EVIDENCE & DNA EXPUNCTION LAWS- Representative Stevens recognized to explain PCS. The bill would amend the statutes regarding the disposition of blood evidence, the admissibility of analyst statements, and the expunction of DNA samples taken upon arrest. Senator Stevens moved for a favorable report and the motion carried.

SB 881-TRANSFER EVIDENCE WAREHOUSE TO DPS- Senator Goolsby was recognized to explain the bill. The bill would transfer responsibility for the evidence warehouse operated by the Law Enforcement Support Services Division of the Department of Crime Control and Public Safety prior to January 1, 2012 to the Office of External Affairs in the Department of Public Safety. The bill also amends Article 13 of Chapter 143B, establishing the Department of Public Safety, to add the provision of central storage and management of evidence to the duties of the Department. The bill was recommended by the Joint Legislative Oversight Committee on Justice and Public Safety. Senator Mansfield moved for favorable report and the motion carried.

HB 1066-PASSING TITLE BY WILL-Representative Blust was recognized to explain the bill. The bill separates and puts into a more logical order the provisions applicable to where and when a will may be submitted for probate and the provisions applicable to the effect of probating a will

upon the property of a decedent. Senator Stevens moved for a favorable report and the motion carried.

HB 1067- CO-OWNERS/UNEQUAL SHARES/SIMULTANEOUS DEATH-Representative Blust was recognized to explain the bill. The bill amends G.S. 28A-24-3 to conform to the 2009 amendments to G.S. 41-2 with respect to the holding of unequal shares in a joint tenancy with right of survivorship. Senator Stevens moved for a favorable report and the motion carried.

HB 1069-INTESTATE PROPERTY/ CHILD'S YEAR'S ALLOWANCE- Representative Blust was recognized to explain the bill. The bill increases the amounts of intestate property that passes to a spouse and the amount payable as a child's year's allowance from a decedent's estate. The bill also reinserts references to a child's "next friend" in the statutes relating to the child's year's allowance to prevent the need of appointing a guardian of the estate for every child entitled to the allowance. Senator Stevens motioned for a favorable report and the motion carried.

Senator Peter S. Brunstetter, Presiding

Michael Lewis , Committee Clerk

Senate Judiciary I Committee
Thursday, June 7, 2012, 10:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 483	DNA Samples/Additional Felonies.	Representative Ingle Representative Pridgen Representative Burr
HB 614	DMA Post Public Notices of Change on Website.	Representative Dollar Representative Murry Representative Brisson
HB 690	RE Closing Interest/Civil Penalty UPL.	Representative Jordan Representative Stevens Representative Moore
SB 881	Transfer Evidence Warehouse to DPS.	Senator Goolsby
HB 1066	Passing Title by Will.	Representative Ross Representative Blust
HB 1067	Co-owners/Unequal Shares/Simultaneous Death.	Representative Ross Representative Blust
HB 1069	Intestate Property/Child's Year's Allowance.	Representative Ross Representative Blust

Presentations

Other Business

Adjournment

SENATE

JUDICIARY I COMMITTEE REPORT
NORTH CAROLINA GENERAL ASSEMBLY

Senator Peter S. Brunstetter, Chair

Thursday, June 07, 2012

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

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

H.B. **483** DNA Samples/Additional Felonies.

Draft Number:	PCS70304
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **614** DMA Post Public Notices of Change on Website.

Draft Number:	PCS80386
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **690** RE Closing Interest/Civil Penalty UPL.

Draft Number:	PCS70306
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:
Senator Brunstetter will handle H483; H690;H614

NORTH CAROLINA GENERAL ASSEMBLY

SENATE

JUDICIARY I COMMITTEE REPORT

Senator Peter S. Brunstetter, Chair

Thursday, June 07, 2012

Senator BRUNSTETTER,

submits the following with recommendations as to passage:

FAVORABLE

S.B. **881** Transfer Evidence Warehouse to DPS.

Sequential Referral: None

Recommended Referral: None

H.B. **1066** Passing Title by Will.

Sequential Referral: None

Recommended Referral: None

H.B. **1067** Co-owners/Unequal Shares/Simultaneous Death.

Sequential Referral: None

Recommended Referral: None

H.B. **1069** Intestate Property/Child's Year's Allowance.

Sequential Referral: None

Recommended Referral: None

TOTAL REPORTED: 4

Committee Clerk Comments:

Senator Fletcher Hartsell will present HB 1066, HB 1067 and HB 1069

Senator Thom Goolsby will present SB 881

HOUSE BILL 483
Second Edition Engrossed 5/9/11

Short Title:	DNA Samples/Additional Felonies.	(Public)
Sponsors:	Representatives Burr, Pridgen, and Ingle (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee B.	

March 29, 2011

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE LIST OF FELONIES FOR WHICH A DNA SAMPLE SHALL BE TAKEN UPON ARREST AND TO APPROPRIATE FUNDS TO FACILITATE THE EXPANSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-266.3A(f) reads as rewritten:

"(f) This section shall apply to a person arrested for violating any one of the following offenses in Chapter 14 of the General Statutes:

(1) G.S. 14-17, First and Second Degree Murder.

(2) G.S. 14-18, Manslaughter.

(3) Any offense in Article 7A, Rape and Other Sex Offenses.

(4) G.S. 14-32, Felonious assault with deadly weapon with intent to kill or inflicting serious injury; G.S. 14-32.1(e), Assault on handicapped person; G.S. 14-32.2, Patient abuse and neglect; G.S. 14-32.4(a), Assault inflicting serious bodily injury; G.S. 14-34.1, Discharging certain barreled weapons or a firearm into occupied property; G.S. 14-34.2, Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers; G.S. 14-34.4, Adulterated or misbranded food, drugs, or cosmetics; intent to cause serious injury or death; intent to extort; G.S. 14-34.5, Assault with a firearm on a law enforcement, probation, or parole officer or on a person employed at a State or local detention facility; G.S. 14-34.6, Assault or affray on a firefighter, an emergency medical technician, medical responder, emergency department nurse, or emergency department physician; and G.S. 14-34.7, Assault inflicting serious injury on a law enforcement, probation, or parole officer or on a person employed at a State or local detention ~~facility.~~facility; G.S. 14-34.9, Discharging a weapon from within an enclosure.

(5) Any offense in Article 10, Kidnapping and Abduction, or Article 10A, Human Trafficking.

(5a) Any offense in Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material.

(5b) G.S. 14-50.18, Soliciting; encouraging participation of minor.

(6) G.S. 14-51, First and second degree burglary; G.S. 14-53, Breaking out of dwelling house burglary; G.S. 14-54.1, Breaking or entering a place of religious worship; and G.S. 14-57, Burglary with explosives.

(7) Any offense in Article 15, Arson.
(8) G.S. 14-87, Armed ~~robbery.~~robbery; G.S. 14-87.1, Punishment for common law robbery.
(8a) G.S. 14-190.7, Dissemination to minors under the age of 16 years; G.S. 14-190.8, Dissemination to minors under the age of 13 years.
(9) Any offense which would require the person to register under the provisions of Article 27A of Chapter 14 of the General Statutes, Sex Offender and Public Protection Registration Programs.
(10) G.S. 14-196.3, Cyberstalking.
(10a) G.S. 14-208.44(a) and (b), Failure to enroll in a satellite-based monitoring program; tampering with device.
(11) G.S. 14-277.3A, Stalking.
(12) G.S. 14-315(a1), Selling or giving weapons (handguns) to minors.
(13) G.S. 14-318.4, Child abuse a felony.
(14) G.S. 14-320.1, Transporting child outside the State with intent to violate custody order.
(15) Any felony offense under G.S. 14-321.1, Prohibit babysitting service by sex offender or in the home of a sex offender.
(16) G.S. 14-322.1, Abandonment of child or children for six months.
(17) G.S. 90-95(h), Trafficking in a controlled substance."

SECTION 2. There is appropriated from the General Fund to the Department of Justice the sum of sixty-nine thousand nine hundred thirty-four dollars ($69,934) for fiscal year 2011-2012, and the sum of one hundred twenty-three thousand five hundred forty-three dollars ($123,543) for fiscal year 2012-2013 to be allocated to the State Bureau of Investigation for testing and analysis of the DNA samples required by this act. There is appropriated from the General Fund to the Judicial Department the sum of forty-four thousand seven hundred sixty dollars ($44,760) for fiscal year 2012-2013 to be allocated to the Administrative Office of the Courts for the administration of the provisions of this act.

SECTION 3. Section 1 of this act becomes effective December 1, 2011, and applies to offenses committed on or after that date. The remainder of this act becomes effective July 1, 2011.

HOUSE BILL 483:
DNA Samples/Additional Felonies

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 7, 2012
Introduced by:	Reps. Burr, Pridgen, Ingle	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to Second Edition H483-CSSA-72		

SUMMARY: The PCS for H483 would add offenses to the list of offenses which require the taking of a DNA sample upon the arrest and appropriate funds to facilitate that expansion.

BACKGROUND: During the 2009-2010 Regular Session, the legislature passed the "DNA Database Act of 2010." The act made two significant changes to the State's laws on DNA sampling: DNA samples (for specified offenses) would be taken from persons upon arrest, and the general method of sampling would be changed from blood sample to cheek swab for all DNA sampling. Previously, any person convicted of a felony offense, assault on a handicapped person, stalking, or sexual battery had to provide a DNA blood sample.

DNA samples are analyzed and the DNA profile is entered into the State DNA Database. The sample is then searchable through the Combined DNA Index System (CODIS), a DNA database funded by the United States Federal Bureau of Investigation. The DNA profiles are searched against all other profiles in the system, which includes suspect samples, and samples taken from both solved and unsolved crime scenes. If a "hit" is obtained between a sample and an unsolved forensic unknown, a confirmation process is initiated, and a report is issued.

~~BILL ANALYSIS:~~

Section 1 of the PCS would add certain felony offenses to the list of offenses which require a DNA sample upon arrest.

Section 2 of the PCS would appropriate $69,934 to the Department of Justice for FY 2012-2013 to be allocated to the State Bureau of Investigation for testing and analysis of the DNA samples required by this PCS.

Section 3 of the PCS would limit the State Crime Laboratory to accreditation by a single accrediting body and prohibit the expenditure of State funds on a duplicative or unnecessary accreditation.

EFFECTIVE DATE: Section 1 of this act becomes effective December 1, 2012, and applies to offenses committed on or after that date. Section 2 of this act becomes effective July 1, 2012. The remainder of this act is effective when it becomes law.

HOUSE BILL 614
Committee Substitute Favorable 4/12/11

Short Title: DMA Post Public Notices of Change on Website. (Public)

Sponsors:

Referred to:

April 5, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO PUBLISH ON ITS WEB SITE PUBLIC NOTICES OF CHANGES IN STATEWIDE METHODS AND STANDARDS FOR SETTING MEDICAID PAYMENT RATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 108A-55(c) reads as rewritten:

"(c) The Department shall reimburse providers of services, equipment, or supplies under the Medical Assistance Program in the following amounts:

(1) The amount approved by the ~~Health Care Financing Administration~~ Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services, if that Administration approves an exact reimbursement amount;

(2) The amount determined by application of a method approved by the ~~Health Care Financing Administration~~ Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services, if that Administration approves the method by which a reimbursement amount is determined, and not the exact amount.

The Department shall establish the methods by which reimbursement amounts are determined in accordance with Chapter 150B of the General Statutes. A change in a reimbursement amount becomes effective as of the date for which the change is approved by the ~~Health Care Financing Administration~~ Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services. For any public notice of change required pursuant to the provisions of 42 C.F.R. § 447.205, the Department shall, no later than seven business days after the date of publication, publish the same notice on its Web site on the same Web page as it publishes State Plan amendments, and the notice shall remain on the Web site continuously for 90 days. The Department shall report to the Fiscal Research ~~Division of the Legislative Services Office~~ Division, ~~and to~~ the Senate Appropriations Committee on ~~Human Resources~~ Health and Human Services, and the House of Representatives ~~Appropriations Subcommittee on Human Resources or the Joint Legislative Commission on Health Care Oversight~~ Appropriations Subcommittee on Health and Human Services on any change in a reimbursement amount at the same time as it sends out public notice of this change prior to presentation to the ~~Health Care Financing Administration~~ Centers for Medicare and Medicaid Services."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 690
Committee Substitute Favorable 5/18/11
Third Edition Engrossed 5/19/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H690-CSSA-81 [v.3]

6/6/2012 1:56:34 PM

Short Title: Amend Evidence & DNA Expunction Laws. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING DISPOSITION OF BLOOD EVIDENCE, ADMISSIBILITY OF REPORTS AFTER NOTICE AND DEMAND, AND EXPUNCTION OF DNA SAMPLES TAKEN UPON ARREST, AND TO CHANGE THE METHOD FOR DETERMINING THE SENIOR RESIDENT SUPERIOR COURT JUDGE FOR A DISTRICT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-139.1 is amended by adding a new section to read:

"(h) Disposition of Blood Evidence – Notwithstanding any other provision of law, any blood or urine sample subject to chemical analysis for the presence of alcohol, a controlled substance or its metabolite, or any impairing substance pursuant to this section may be destroyed by the analyzing agency 12 months after the issuance date of the report of all examinations conducted, without further notice to the parties. However, if a Motion to Preserve the evidence has been filed by either party, the evidence shall remain in the custody of the analyzing agency or the agency that collected the sample until dispositive order of a court of competent jurisdiction is entered."

SECTION 2. G.S. 8-58.20(f) reads as rewritten:

"(f) If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection with the court to the use of the laboratory report and affidavit within the time allowed by this section, then the laboratory report and affidavit ~~may~~ shall be admitted in evidence in any proceeding without the testimony of the analyst subject to the presiding judge ruling otherwise at the proceeding when offered. If, however, a written objection is filed, this section does not apply and the admissibility of the evidence shall be determined and governed by the appropriate rules of evidence."

SECTION 3. G.S. 8-58.20(g)(5) reads as rewritten:

"(5) If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file the written objection as provided in this subsection, then the statement ~~may~~ shall be admitted into evidence without the necessity of a personal appearance by the person signing the statement."

SECTION 4. G.S. 20-139.1(c1) reads as rewritten:

"(c1) Admissibility. – The results of a chemical analysis of blood or urine reported by the North Carolina State Crime Laboratory, the Charlotte, North Carolina, Police Department

Laboratory, or any other laboratory approved for chemical analysis by the Department of Health and Human Services, are admissible as evidence in all administrative hearings, and in any court, without further authentication and without the testimony of the analyst. The results shall be certified by the person who performed the analysis. The provisions of this subsection may be utilized in any administrative hearing, but can only be utilized in cases tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court, if:

(1) The State notifies the defendant at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding at which the report would be used that the defendant objects to the introduction of the report into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the report ~~may~~ shall be admitted into evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

The report containing the results of any blood or urine test may be transmitted electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall be admissible in any court or administrative hearing without further authentication. A copy of the report shall be sent to the charging officer, the clerk of superior court in the county in which the criminal charges are pending, the Division of Motor Vehicles, and the Department of Health and Human Services.

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

SECTION 5. G.S. 20-139.1(c3) reads as rewritten:

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

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

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

(3) The provisions of this subsection may be utilized in any administrative hearing, but can only be utilized in cases tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court, if:

a. The State notifies the defendant at least 15 business days before the proceeding at which the statement would be used of its intention to introduce the statement into evidence under this subsection and provides a copy of the statement to the defendant, and

b. The defendant fails to file a written notification with the court, with a copy to the State, at least five business days before the proceeding at

which the statement would be used that the defendant objects to the introduction of the statement into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the statement ~~may~~ shall be admitted into evidence without the necessity of a personal appearance by the person signing the statement. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

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

SECTION 6. G.S. 20-139.1(e1) reads as rewritten:

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

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

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

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

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

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

The Department of Health and Human Services shall develop a form for use by chemical analysts in making this affidavit."

SECTION 7. G.S. 90-95(g) reads as rewritten:

"(g) Whenever matter is submitted to the North Carolina State Crime Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication and without the testimony of the analyst in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, the provisions of this subsection may be utilized by the State only if:

(1) The State notifies the defendant at least 15 business days before the proceeding at which the report would be used of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding that the defendant objects to the introduction of the report into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the report ~~may~~ shall be admitted into evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

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

SECTION 8. G.S. 90-95(g1) reads as rewritten:

"(g1) Procedure for establishing chain of custody without calling unnecessary witnesses. –

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

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

(3) The provisions of this subsection may be utilized by the State only if:

a. The State notifies the defendant at least 15 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and

b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the statement shall be admitted into evidence without the necessity of a personal appearance by the person signing the statement. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

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

SECTION 9. G.S. 15A-266.3A reads as rewritten:

"§ 15A-266.3A. DNA sample required for DNA analysis upon arrest for certain offenses.

...

(i) ~~Prior to June 1, 2012, upon~~Upon the occurrence of one of the events in ~~sub-subdivision d. or e. of~~ subdivision (1) of subsection (h) of this section, the defendant or the defendant's counsel shall provide the prosecuting district attorney with a signed request form, promulgated by the Administrative Office of the Courts, requesting that the defendant's DNA record be expunged from the DNA Database and that any biological samples in the DNA Databank be destroyed. ~~On or after June 1, 2012, upon the occurrence of one of the events in sub-subdivision d. or e. of subdivision (1) of subsection (h) of this section, no request form shall be required and the prosecuting district attorney shall initiate the procedure provided in subsection (j) of this section.~~

(j) ~~Prior to June 1, 2012, within~~Within 30 days of the receipt of the form required by subsection (i) of this ~~section or the occurrence of one of the events in sub-subdivision a., b., or c. of subdivision (1) of subsection (h) of this section; and on or after June 1, 2012, within 30 days of the occurrence of one of the events in subdivision (1) of subsection (h) of this~~ section, the prosecuting district attorney shall determine if a DNA sample was taken pursuant to this section, and if so, shall:

(1) Verify and indicate the facts of the qualifying event on a verification form promulgated by the Administrative Office of the Courts.

(2) Include the last known address of the defendant, as reflected in the court files, on the verification form.

(3) Sign the verification form or, if the defendant was acquitted or the charges were dismissed by the court, obtain the signature of a judge.

(4) Transmit the verification form to the SBI.

(k) Within ~~30~~ 90 days of receipt of the verification form, the SBI shall:

(1) Determine whether the requirement of subdivision (2) of subsection (h) of this section has been met.

(2) If the requirement has been met, remove the defendant's DNA record and samples as required by subsection (h) of this section.

(3) Mail to the defendant, at the address specified in the verification form, a notice either:

a. Documenting expunction of the DNA record and destruction of the DNA sample, or

b. Notifying the defendant that the DNA record and sample do not qualify for expunction pursuant to subsection (h) of this section.

..."

SECTION 10. This act becomes effective December 1, 2012. Sections 2, 3, 4, 5, 6, 7, and 8 of this act apply to proceedings that occur on or after December 1, 2012.

HOUSE BILL 690:
Amend Evidence & Expunction Laws

2011-2012 General Assembly

Committee:	Senate Ref to Judiciary I. If fav, re-ref to Finance	**Date:**	May 23, 2012
Introduced by:	Reps. Stevens, Jordan, T. Moore	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to Third Edition H690-CSLH-10		

SUMMARY: ***The Proposed Committee Substitute for House Bill 690 would amend the laws regarding disposition of blood evidence, the admissibility of analyst statements, and the expunction of DNA samples taken upon arrest.***

BILL ANALYSIS:

Section 1 would authorize the destruction of blood or urine samples, taken upon arrest for an implied consent offense, for chemical analysis for the presence of alcohol, a controlled substance or its metabolite, or any impairing substance 12 months after the issuance of the report, without further notice to the parties. If a motion to preserve evidence has been filed by a party, the evidence shall be retained until a court issues a dispositive order.

Sections 2, 3, 4, 5, 6, 7 & 8 would amend various statutes relating to the admissibility of an analyst's report or a chain of custody report without the testimony of the analyst or the persons in the chain of custody to provide that after notice by the district attorney of the intent to submit the report as evidence, if the defendant or the defendant's attorney does not file written objection, the report shall be admissible as evidence without the personal appearance of the analyst or persons in the chain of custody.

Section 9 would allow the SBI 90 days, instead of the current 30 days, after receipt of a verification form to determine whether a DNA sample that was taken upon arrest of a defendant is eligible for expunction, remove the sample from the database if it is eligible for expunction, and mail notice to the defendant.

EFFECTIVE DATE: This act becomes effective December 1, 2012. Sections 2, 3, 4, 5, 6, 7, and 8 of this act apply to proceedings that occur on or after December 1, 2012.

SENATE BILL 881

Short Title:	Transfer Evidence Warehouse to DPS.	(Public)
Sponsors:	Senators Goolsby; Brown and Newton.	
Referred to:	Judiciary I.	

May 24, 2012

A BILL TO BE ENTITLED

AN ACT TO TRANSFER THE WAREHOUSE FORMERLY OPERATED BY THE LAW ENFORCEMENT SUPPORT SERVICES DIVISION AND ITS CONTENTS FROM THE DEPARTMENT OF JUSTICE TO THE DEPARTMENT OF PUBLIC SAFETY AND TO ASSIGN THE RESPONSIBILITIES FOR THE STORAGE AND MANAGEMENT OF EVIDENCE HOUSED IN THE WAREHOUSE TO THE DEPARTMENT OF PUBLIC SAFETY, AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON JUSTICE AND PUBLIC SAFETY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 19.1(cc) of S.L. 2011-145 is repealed.

SECTION 2. The evidence warehouse that was operated by the Law Enforcement Support Services Division of the Department of Crime Control and Public Safety prior to January 1, 2012, is transferred to the Office of External Affairs in the Department of Public Safety. All State-owned personal property located in or associated with the warehouse and all evidence of any type, including rape kits, located in the warehouse are reallocated to the Office of External Affairs in the Department of Public Safety. The warehouse shall be known as the "Victim Services Warehouse." The Department of Public Safety shall assume any lease to which the warehouse is subject at the time this section becomes effective.

SECTION 3. G.S. 143B-600(a)(7) reads as rewritten:

"(7) The Office of External Affairs, which shall be responsible for federal and State liaison activities, victim services, the Victim Services Warehouse and the storage and management of evidence and other contents housed in the warehouse, and public affairs."

SECTION 4. G.S. 143B-601 is amended by adding the following new subdivisions to read:

"(12) To provide central storage and management of evidence according to the provisions of Article 13 of Chapter 15A of the General Statutes and create and maintain a databank of statewide storage locations of postconviction evidence or other similar programs.

(13) To provide central storage and management of rape kits according to the federal Violence Against Women and Department of Justice Reauthorization Act of 2005 with specific protections against release of names of victims providing anonymous or "Jane Doe" rape kits without victim consent.

(14) To provide for the storage and management of evidence."

SECTION 5. This act is effective when it becomes law.

SENATE BILL 881:
Transfer Evidence Warehouse to DPS

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 7, 2012
Introduced by:	Sen. Goolsby	**Prepared by:**	Susan Sitze
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 881 transfers responsibility for the evidence warehouse operated by the Law Enforcement Support Services Division of the Department of Crime Control and Public Safety prior to January 1, 2012, to the Office of External Affairs in the Department of Public Safety. The bill also amends Article 13 of Chapter 143B, establishing the Department of Public Safety, to add the provision of central storage and management of evidence to the duties of the Department. The bill was recommended by the Joint Legislative Oversight Committee on Justice and Public Safety.

[As introduced, this bill was identical to H968, as introduced by Reps. Randleman, Boles, which is currently in Unknown.]

CURRENT LAW: G.S. 143B-600 provides for 6 divisions within the Department of Public Safety including the Office of External Affairs (OEA). OEA is currently charged with responsibility for federal and State liaison activities, victim services, and public affairs.

BILL ANALYSIS: Section 1 repeals Section 19.1(cc) of S.L. 2011-145 which reallocated the evidence warehouse that was operated by the Law Enforcement Support Services Division of the Division of Crime Control and Public Safety to the NC State Crime Lab of the Department of Justice.

Section 2 transfers the evidence warehouse to the Office of External Affairs (OEA) in the Department of Public Safety. All State-owned personal property located in or associated with the warehouse is reallocated to the OEA. The warehouse is to be known as the Victim Services Warehouse. The Department of Public Safety shall assume any lease on the warehouse as of the effective date of the bill.

Section 3 amends G.S. 143B-600 to add the evidence warehouse and the storage and management of evidence and other contents housed therein to the responsibilities of the OEA.

Section 4 amends the powers and duties of the Department of Public Safety set out in G.S. 143B-601 to include:

- Provision of central storage and management of evidence according to the DNA Database and Databank Act of 1993 (Article 13 of Chapter 15A) and creation and maintenance of a databank of statewide storage locations of postconviction evidence or other similar program.
- Provision of central storage and management of rape kits according to the federal Violence Against Women and Department of Justice Reauthorization Act of 2005 with specific protections against release of names of victims providing anonymous rape kits without victim consent.
- Provision for the storage and management of evidence.

EFFECTIVE DATE: The act is effective when it becomes law.

HOUSE BILL 1066*
Second Edition Engrossed 5/31/12

Short Title:	Passing Title by Will.	(Public)
Sponsors:	Representatives Blust and Ross (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee A.	

May 23, 2012

A BILL TO BE ENTITLED

AN ACT TO CLARIFY, MODIFY, AND CONSOLIDATE THE LAW APPLICABLE TO THE PASSING OF TITLE TO INTERESTS IN REAL AND PERSONAL PROPERTY DEVISED BY A WILL AND THE RIGHTS OF LIEN CREDITORS AND PURCHASERS FOR VALUE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 28A-2A-1 reads as rewritten:

"**§ 28A-2A-1. Executor may apply for probate.**

Any executor named in a will may, at any time after the death of the testator, apply to the clerk of the superior court, having jurisdiction, to have the ~~same~~ will admitted to probate. ~~Such will shall not be valid or effective to pass real estate or personal property as against innocent purchasers for value and without notice, unless it is probated or offered for probate within two years after the death of the testator or devisor or prior to the time of approval of the final account of a duly appointed administrator of the estate of the deceased, whichever time is earlier. If such will is fraudulently suppressed, stolen or destroyed, or has been lost, and an action or proceeding shall be commenced within two years from the death of the testator or devisor to obtain said will or establish the same as provided by law, then the limitation herein set out shall only begin to run from the termination of said action or proceeding, but not otherwise.~~"

SECTION 2. G.S. 31-39 reads as rewritten:

"**§ 31-39. Probate necessary to pass title; rights of lien creditors and purchasers; recordation in county where ~~land lies; rights of innocent purchasers.~~real property lies.**

~~No will shall be effectual to pass real or personal estate unless it shall have been duly proved and allowed in the probate court of the proper county, and a duly certified copy thereof shall be recorded in the office of the superior court clerk of the county wherein the land is situate, and the probate of a will devising real estate shall be conclusive as to the execution thereof against the heirs and devisees of the testator, whenever the probate thereof under the like circumstances, would be conclusive against the next of kin and legatees of the testator: Provided, that the probate and registration of any will shall not affect the rights of innocent purchasers for value from the heirs at law of the testator when such purchase is made more than two years after the death of such testator or when such purchase is made after the filing of the final account by the duly authorized administrator of the decedent and the approval thereof by the clerk of the superior court having jurisdiction of the estate. Such conveyances, if made~~

~~before the expiration of the time required by this section to have elapsed in order for same to be valid against the heirs and devisees of the testator, shall, upon the expiration of such time, become good and valid to the same effect as if made after the expiration of such time, unless in the meantime a proceeding shall have been instituted in the proper court to probate the will of the testator.~~

(a) A duly probated will is effective to pass title to real and personal property.

(b) A will is not effective to pass title to real or personal property as against lien creditors or purchasers for valuable consideration from the intestate heirs at law of a decedent, unless the will is probated or offered for probate before the earlier of (i) the date of the approval by the clerk of the superior court having jurisdiction of the decedent's estate of the final account filed by the personal representative of the decedent's estate, or (ii) the date that is two years from the date of death of the decedent. If the will is fraudulently suppressed, stolen, or destroyed, or is lost, and an action or proceeding is instituted within the time limitation set forth in this subsection to obtain that will or establish that will as provided by law, the time limitation under this subsection begins to run from the termination of that action or proceeding.

(c) A will duly probated in one county of this State is not effective to pass title to an interest in real property located in any other county of this State as against lien creditors or purchasers for valuable consideration from the intestate heirs at law of a decedent unless a certified copy of the will is filed in the office of the clerk of superior court in the county where the real property lies within the time limitation set forth in subsection (b) of this section.

(d) A conveyance made by the intestate heirs at law of a decedent before the expiration of the time limitation set forth in subsection (b) of this section shall, upon the expiration of that time, become effective to the same extent as if the conveyance were made after the expiration of that time, unless before the expiration of that time, a proceeding is instituted in the proper court to probate a will of the decedent."

SECTION 3. This act is effective October 1, 2012, and applies to estates of decedents dying on or after that date.

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

Floyd M. Lewis
Revisor of Statutes

P. Bly Hall
Assistant Revisor of Statutes

MEMORANDUM
June 5, 2012

TO: Senate Judiciary I Committee
FROM: General Statutes Commission
RE: HB 1066 (Passing Title by Will)

General Comments

This bill separates and puts into a more logical order the provisions applicable to where and when a will may be submitted for probate (in Chapter 28A of the General Statutes, entitled "Administration of Decedents' Estates") and the provisions applicable to the effect of probating a will upon the property of a decedent (in Chapter 31 of the General Statutes, entitled "Wills"). In addition, the bill consolidates in one section, G.S. 31-39, the provisions applicable to the effect of probate upon the rights of lien creditors and purchasers for value of a decedent's real property from the decedent's heirs at law, both for wills probated in the county where the decedent's real property is located and for wills initially probated in another county. The revisions to G.S. 31-39 eliminate from that section certain language that was confusing, archaic and vague. They also clarify the extent of the protections given lien creditors and purchasers for value from a decedent's heirs. When these protections apply, they are extended to all lien creditors and purchasers for value rather than just "innocent" purchasers for value, making these protections consistent with the current protections given to lien creditors and purchasers for value under the law governing the recording of deeds (as provided under G.S. 47-18).

Specific Comments

Section 1 deletes from **G.S. 28A-2A-1** the following provisions which are modified and relocated to G.S. 31-39 by Section 2 of the bill:

- A will is ineffective to pass real or personal property as against innocent purchasers for value and without notice, unless the will is probated or offered for probate within two years after the death of the testator or before the approval of the final account of a duly appointed administrator, whichever time is earlier.

- If a will is fraudulently suppressed, stolen, or destroyed, or has been lost, and an action or proceeding has been commenced within two years of the death of the testator to obtain or establish the will, the two-year time limitation set out above begins to run from the termination of the action or proceeding.

Section 2 amends **G.S. 31-39** to clarify, modernize, modify, and consolidate the law applicable to the passing of title to property devised by a will and the rights of lien creditors and purchasers for value.

Subsection (a) continues current law in providing that a duly probated will is effective to pass real and personal property.

Subsection (b) contains the substance of the provisions deleted from current G.S. 28A-2A-1 by Section 1 of the bill and the similar provisions of current G.S. 31-39. The language has been updated. In addition, the current phrase "innocent purchasers for value" has been replaced with the phrase "lien creditors or purchasers for valuable consideration." This change makes the protections given to lien creditors and purchasers for value from the decedent's heirs consistent with those under the statutes on the recording of deeds, specifically G.S. 47-18. Except for that change, no substantive change is intended.

Subsection (c) clarifies that a will duly probated in one county is ineffective to pass title to real property located in any other county as against lien creditors or purchasers for valuable consideration from a decedent's intestate heirs at law, unless a certified copy of the will is filed in the office of the clerk of superior court in the county where the real property lies within the time limit under subsection (b).

Subsection (d) restates and continues current law in providing that a conveyance made by a decedent's heirs before the expiration of the time limit under subsection (b) becomes just as effective, once that time limit has passed, as if it had been made after that time. This provision applies unless someone brings a proceeding to probate the decedent's will before that time expires.

Section 3 provides for the amendments to become effective October 1, 2012, and to apply to estates of decedents dying on or after that date.

HOUSE BILL 1067*
Second Edition Engrossed 5/31/12

Short Title:	Co-owners/Unequal Shares/Simultaneous Death.	(Public)
Sponsors:	Representatives Blust and Ross (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee A.	

May 23, 2012

A BILL TO BE ENTITLED

AN ACT TO CONFORM THE LAW GOVERNING CO-OWNERS WITH RIGHT OF SURVIVORSHIP UNDER THE SIMULTANEOUS DEATH ACT TO THE LAW GOVERNING THE HOLDING OF UNEQUAL SHARES IN A JOINT TENANCY WITH RIGHT OF SURVIVORSHIP, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 28A-24-3 reads as rewritten:

"**§ 28A-24-3. Co-owners with right of survivorship; requirement of survival by 120 hours.**

~~Except as otherwise provided in this Article, (i) if it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by at least 120 hours, one-half of the property passes as if one had survived by at least 120 hours and one half as if the other had survived by at least 120 hours and (ii) if there are more than two co-owners with right of survivorship and it is not established by clear and convincing evidence that at least one of them survived the others by at least 120 hours, the property passes to the estates of each of the co-owners in the proportion that one bears to the whole number of co-owners.~~

Except as otherwise provided in this Article:

(1) If there are two or more co-owners with right of survivorship and it is not established by clear and convincing evidence that at least one of them survived the other or others by at least 120 hours, then, unless the governing instrument provides otherwise, each co-owner's pro rata interest in the property passes as if that co-owner had survived all other co-owners by at least 120 hours.

(2) If there are two or more co-owners with right of survivorship and it is established by clear and convincing evidence that at least one of them survived the other or others by at least 120 hours, then, unless the governing instrument provides otherwise, the pro rata interest or interests of the deceased owner or owners who are not established by clear and convincing evidence to have survived by at least 120 hours passes to (i) the remaining owner if only one or (ii) if more than one, then to those remaining owners according to the pro rata interest of each."

SECTION 2. G.S. 41-2(b) reads as rewritten:

"(b) The interests of the grantees holding property in joint tenancy with right of survivorship shall be deemed to be equal unless otherwise specified in the conveyance. Any

joint tenancy interest held by a husband and wife, unless otherwise specified, shall be deemed to be held as a single tenancy by the entirety, which shall be treated as a single party when determining interests in the joint tenancy with right of survivorship. ~~If joint~~Joint tenancy interests among ~~three~~ two or more joint tenants holding property in joint tenancy with right of survivorship are ~~held in unequal shares, upon the death of one joint tenant, the share of the deceased joint tenant shall be divided among the surviving joint tenants according to their respective pro rata interest and not equally, unless the creating instrument provides otherwise.~~subject to the provisions of G.S. 28A-24-3 upon the death of one or more of the joint tenants.

This subsection shall apply to any conveyance of an interest in property created at any time that explicitly sought to create unequal ownership interests in a joint tenancy with right of survivorship. Distributions made prior to the enactment of this subsection that were made in equal amounts from a joint tenancy with the right of survivorship that sought to create unequal ownership shares shall remain valid and shall not be subject to modification on the basis of this subsection."

SECTION 3. This act is effective October 1, 2012.

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

Floyd M. Lewis
Revisor of Statutes

P. Bly Hall
Assistant Revisor of Statutes

MEMORANDUM
June 5, 2012

TO: Senate Judiciary I Committee
FROM: General Statutes Commission
RE: HB 1067 (Co-owners/Unequal Shares/Simultaneous Death)

General Comments

This bill amends G.S. 28A-24-3 to conform to the 2009 amendments to G.S. 41-2 with respect to the holding of unequal shares in a joint tenancy with right of survivorship.

G.S. 28A-24-3 is part of the Revised Uniform Simultaneous Death Act. G.S. 28A-24-3 requires a co-owner of property with right of survivorship, e.g., joint tenants in a joint tenancy with right of survivorship, to survive the other co-owner or co-owners by at least 120 hours in order to inherit from the other co-owners. Otherwise, if there are two co-owners and neither survives the other by that amount of time, one-half of the property passes as if one had survived by 120 hours and one-half as if the other had survived by 120 hours. If there are more than two co-owners, the property passes in the proportion that one co-owner bears to the whole number of co-owners. This provision assumes that the co-owners have equal shares in the property.

G.S. 41-2, the basic statute dealing with the features of a joint tenancy, was amended in 2009 to clarify that interests in a joint tenancy with right of survivorship may be held in unequal shares. No conforming change was made at that time to G.S. 28A-24-3 to account for co-owners whose shares are not equal.

Specific Comments

Section 1 rewrites G.S. 28A-24-3 to conform to G.S. 41-2, which was amended by Session Law 2009-268 to clarify that interests in a joint tenancy with a right of survivorship may be held in unequal shares.

Section 2 amends G.S. 41-2(b) to provide that joint tenancy interests among two or more joint tenants holding property in joint tenancy with right of survivorship are subject to G.S. 28A-24-3 upon the death of one or more of the joint tenants. This provision replaces the current provision governing the division of joint tenancy interests upon the death of one joint tenant.

Section 3 provides for the amendments to become effective October 1, 2012.

HOUSE BILL 1069*

Short Title:	Intestate Property/Child's Year's Allowance.	(Public)
Sponsors:	Representatives Blust and Ross (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee A.	

May 23, 2012

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE MINIMUM AMOUNT OF INTESTATE PERSONAL PROPERTY PASSING TO THE SURVIVING SPOUSE AND THE AMOUNT OF THE YEAR'S ALLOWANCE FROM A DECEDENT'S ESTATE FOR A SURVIVING CHILD, TO REINSERT ERRONEOUSLY REMOVED REFERENCES TO A CHILD'S "NEXT FRIEND" IN THE STATUTES RELATING TO A CHILD'S YEAR'S ALLOWANCE, AND TO SPECIFY THAT THE CHILD'S YEAR'S ALLOWANCE MAY BE PAID TO A WIDOWER ON THE CHILD'S BEHALF AS WELL AS TO A WIDOW, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 29-14(b) reads as rewritten:

"(b) Personal Property. – The share of the surviving spouse in the personal property is:

(1) If the intestate is survived by only one child or by any lineal descendant of only one deceased child, and the net personal property does not exceed ~~thirty thousand dollars ($30,000)~~sixty thousand dollars ($60,000) in value, all of the personal property; if the net personal property exceeds ~~thirty thousand dollars ($30,000)~~sixty thousand dollars ($60,000) in value, the sum of ~~thirty thousand dollars ($30,000)~~sixty thousand dollars ($60,000) plus one half of the balance of the personal property;

(2) If the intestate is survived by two or more children, or by one child and any lineal descendant of one or more deceased children, or by lineal descendants of two or more deceased children, and the net personal property does not exceed ~~thirty thousand dollars ($30,000)~~sixty thousand dollars ($60,000) in value, all of the personal property; if the net personal property exceeds ~~thirty thousand dollars ($30,000)~~sixty thousand dollars ($60,000) in value, the sum of ~~thirty thousand dollars ($30,000)~~sixty thousand dollars ($60,000) plus one third of the balance of the personal property;

(3) If the intestate is not survived by a child, children, or any lineal descendant of a deceased child or children, but is survived by one or more parents, and the net personal property does not exceed ~~fifty thousand dollars ($50,000)~~one hundred thousand dollars ($100,000) in value, all of the personal property; if the net personal property exceeds ~~fifty thousand dollars ($50,000)~~one hundred thousand dollars ($100,000) in value, the sum of ~~fifty thousand dollars ($50,000)~~one hundred thousand dollars ($100,000) plus one half of the balance of the personal property;

(4) If the intestate is not survived by a child, children, or any lineal descendant of a deceased child or children, or by a parent, all of the personal property."

SECTION 2.(a) G.S. 30-17 reads as rewritten:

"**§ 30-17. When children entitled to an allowance.**

Whenever any parent dies survived by any child under the age of 18 years, including an adopted child or a child with whom the widow may be pregnant at the death of her husband, or a child who is less than 22 years of age and is a full-time student in any educational institution, or a child under 21 years of age who has been declared mentally incompetent, or a child under 21 years of age who is totally disabled, or any other person under the age of 18 years residing with the deceased parent at the time of death to whom the deceased parent or the surviving parent stood in loco parentis, every such child shall be entitled to receive an allowance of two thousand dollars ($2,000) for the child's support for the year next ensuing the death of ~~such~~ the parent. ~~Such~~ The allowance shall be in addition to the child's share of the deceased parent's estate and shall be exempt from any lien by judgment or execution against the property of ~~such~~ the deceased parent. The personal representative of the deceased parent shall, within one year after the parent's death, assign to every such child the allowance herein provided for; but if there is no personal representative or if the personal representative fails or refuses to act within 10 days after written ~~request~~ application by a guardian or next friend on behalf of ~~such~~ the child, the allowance may be assigned by a magistrate or clerk of court upon ~~application of said guardian.~~ application.

If the child resides with the ~~widow~~ surviving spouse of the deceased parent at the time ~~such~~ the allowance is paid, the allowance shall be paid to ~~said widow~~the surviving spouse for the benefit of ~~said~~ the child. If the child resides with its surviving parent who is other than the ~~widow~~ surviving spouse of the deceased parent, ~~such~~ the allowance shall be paid to ~~said~~ the surviving parent for the use and benefit of ~~such child, regardless of whether the deceased died testate or intestate or whether the widow dissented from the will.~~the child. The payment shall be made regardless of whether the deceased died testate or intestate or whether the surviving spouse petitioned for an elective share under Article 1A of Chapter 30 of the General Statutes. Provided, however, the allowance shall not be available to an illegitimate child of a deceased father, unless ~~such~~ the deceased father ~~shall have~~has recognized the paternity of ~~such~~ the illegitimate child by deed, ~~will~~ will, or other paper-writing. If the child does not reside with a surviving spouse or a surviving parent when the allowance is paid, the allowance shall be paid to the child's general guardian, if any, and if none, to the clerk of the superior court who shall receive and disburse ~~same~~ the allowance for the benefit of ~~such~~ the child."

SECTION 2.(b) G.S. 30-20 reads as rewritten:

"**§ 30-20. Procedure for assignment.**

Upon the application of the surviving spouse, a child by the child's ~~guardian,~~guardian or next friend, or the personal representative of the deceased, the clerk of superior court of the county in which the deceased resided may assign the inquiry to a magistrate of the county. The clerk of court, or magistrate upon assignment, shall ascertain the person or persons entitled to an allowance according to the provisions of this Article, and determine the money or other personal property of the estate, and pay over to or assign to the surviving spouse and to the children, if any, so much thereof as they shall be entitled to as provided in this Article. Any deficiencies shall be made up from any of the personal property of the deceased, and if the personal property of the estate shall be insufficient to satisfy ~~such~~ the allowance, the clerk of the superior court shall enter judgment against the personal representative for the amount of ~~such~~ the deficiency, to be paid when a sufficiency of such assets shall come into the personal representative's hands."

SECTION 2.(c) G.S. 30-21 reads as rewritten:

"**§ 30-21. Report of clerk or magistrate.**

The clerk of court, or magistrate upon assignment, shall make and sign three lists of the money or other personal property assigned to each person, stating their quantity and value, and the deficiency to be paid by the personal representative. Where the allowance is to the surviving spouse, one of these lists shall be delivered to the surviving spouse. Where the allowance is to a child, one of these lists shall be delivered to the surviving parent with whom the child is living; or to the child's guardian or next friend if the child is not living with ~~said~~ the surviving parent; or to the child if ~~said~~ the child is not living with the surviving parent and has no ~~guardian.~~guardian or next friend. One list shall be delivered to the personal representative. One list shall be returned by the magistrate or clerk, within 20 days after the assignment, to the superior court of the county in which administration was granted or the will probated, and the clerk shall file and record the ~~same,~~list, together with any judgment entered pursuant to G.S. 30-20."

SECTION 2.(d) G.S. 30-23 reads as rewritten:

"**§ 30-23. Right of appeal.**

The personal representative, or the surviving spouse, or child by a the child's ~~guardian,~~guardian or next friend, or any creditor, devisee, or heir of the deceased, may appeal from the finding of the magistrate or clerk of court to the superior court of the county, by filing a copy of the assignment and a notice of appeal within 10 days after the assignment, and the appeal shall be heard as provided in G.S. 1-301.2, provided that the hearing on the appeal shall be at the next available session of superior court."

SECTION 2.(e) G.S. 30-27 reads as rewritten:

"**§ 30-27. Surviving spouse or child may apply to superior court.**

In addition to any support otherwise assigned to the surviving spouse or child ~~as above prescribed,~~under this Article, without application to the personal representative, the surviving spouse, or the child through the child's guardian or next friend may, after the date specified in the general notice to creditors as provided for in G.S. 28A-14-1(a), and within one year after the decedent's death, apply to the superior court of the county in which administration was granted or the will probated to have a year's support assigned at an amount other than prescribed in G.S. 30-15 and G.S. 30-17."

SECTION 3. G.S. 30-17, as amended by Section 2(a) of this act, reads as rewritten:

"**§ 30-17. When children entitled to an allowance.**

Whenever any parent dies survived by any child under the age of 18 years, including an adopted child or a child with whom the widow may be pregnant at the death of her husband, or a child who is less than 22 years of age and is a full-time student in any educational institution, or a child under 21 years of age who has been declared mentally incompetent, or a child under 21 years of age who is totally disabled, or any other person under the age of 18 years residing with the deceased parent at the time of death to whom the deceased parent or the surviving parent stood in loco parentis, every such child shall be entitled to receive an allowance of ~~two thousand dollars ($2,000)~~ five thousand dollars ($5,000) for the child's support for the year next ensuing the death of the parent. The allowance shall be in addition to the child's share of the deceased parent's estate and shall be exempt from any lien by judgment or execution against the property of the deceased parent. The personal representative of the deceased parent shall, within one year after the parent's death, assign to every such child the allowance herein provided for; but if there is no personal representative or if the personal representative fails or refuses to act within 10 days after written application by a guardian or next friend on behalf of the child, the allowance may be assigned by a magistrate or clerk of court upon application.

If the child resides with the surviving spouse of the deceased parent at the time the allowance is paid, the allowance shall be paid to the surviving spouse for the benefit of the child. If the child resides with its surviving parent who is other than the surviving spouse of the deceased parent, the allowance shall be paid to the surviving parent for the use and benefit of

the child. The payment shall be made regardless of whether the deceased died testate or intestate or whether the surviving spouse petitioned for an elective share under Article 1A of Chapter 30 of the General Statutes. Provided, however, the allowance shall not be available to an illegitimate child of a deceased father, unless the deceased father has recognized the paternity of the illegitimate child by deed, will, or other paper-writing. If the child does not reside with a surviving spouse or a surviving parent when the allowance is paid, the allowance shall be paid to the child's general guardian, if any, and if none, to the clerk of the superior court who shall receive and disburse the allowance for the benefit of the child."

SECTION 4. Section 2 of this act is effective when this act becomes law. The remainder of this act becomes effective January 1, 2013, and applies to estates of persons dying on or after that date.

GENERAL STATUTES COMMISSION
300 N. Salisbury Street, Suite 545
Raleigh, NC 27603-5925
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Floyd M. Lewis
Revisor of Statutes

P. Bly Hall
Assistant Revisor of Statutes

MEMORANDUM
June 5, 2012

TO: Senate Judiciary I Committee
FROM: General Statutes Commission
RE: HB 1069 (Intestate Property/Child's Year's Allowance)

General Comments

This bill increases the amounts of intestate personal property that pass to a spouse and the amount payable as a child's year's allowance from a decedent's estate. These amounts have not been increased since 1995. The bill also reinserts references to a child's "next friend" in the statutes relating to the child's year's allowance to prevent the need of appointing a guardian of the estate for every child entitled to the allowance; the term "next friend" was deleted throughout the statutes last year but had unintended consequences for these particular statutes.

Specific Comments

Section 1 amends **G.S. 29-14(b)** to increase the amount of personal property passing to a surviving spouse under the intestacy statutes. Currently, when a person dies intestate and has descendants, the surviving spouse inherits the first $30,000 of personal property and a percentage of the amount over that figure. If the decedent had no descendants but did have surviving parents, a surviving spouse inherits the first $50,000 of personal property and one-half of the remainder. The amendment in this section doubles those amounts to $60,000 and $100,000, respectively.

The last time these amounts were increased was in Chapter 262 of the 1995 Session Laws, which similarly doubled amounts previously set by Chapter 69 of the 1981 Session Laws.

Subsections 2.(a) through (e) amend **G.S. 30-17, 30-20, 30-21, 30-23, and 30-27** primarily to reinsert references to a child's "next friend."

Meaning of "next friend": The term "next friend" refers to someone who acts for the benefit of a minor or incompetent person without having been appointed a guardian; it is also an archaic term for a guardian ad litem.

Last year's deletion of term throughout the statutes: The term "next friend" was deleted throughout the statutes last year in S.L. 2011-344 as part of a larger overhaul of estate law because, for the most part, it is an outdated term that is no longer needed.

Problem created: The removal of the term "next friend" from the statutes relating to the child's year's allowance leaves a guardian as the only person expressly authorized to apply for the allowance on the child's behalf.

The child's year's allowance is an amount of money payable on behalf of a minor child and certain other children up to the age of 21 or 22 from a deceased parent's personal property.

The allowance is intended to provide money for the child's support for the year following the deceased parent's death. Currently, the allowance is $2,000 per child.

Before last year's legislation, either a guardian or a "next friend" could apply to the deceased parent's personal representative (or to the clerk of court, as applicable) for payment of the child's year's allowance. The inclusion of "next friend" allowed, for example, the surviving parent to apply on the child's behalf rather than going through a separate legal proceeding to be appointed as the child's guardian of the estate. The statute can now be read as requiring a guardian of the estate to be appointed in every case where a child is entitled to the year's allowance unless a general guardian or guardian of the estate has already been appointed.

This bill restores the term "next friend" to avoid the need for this extra procedure.

Subsection 2.(a) makes an additional amendment to **G.S. 30-17** to allow the child's year's allowance to be paid on the child's behalf to a widower as well as a widow if the child is living with that person.

Subsections 2.(a), (b), (c), and (e) also make stylistic changes to modernize the language.

Section 3 further amends **G.S. 30-17** to increase the amount of the child's year's allowance from $2,000 to $5,000. This amount has not been increased since 1995, when it was doubled from the earlier figure by Chapter 262 of the 1995 Session Laws.

Section 4 provides effective dates for the bill. Section 2 is effective on becoming law. The remainder of the bill is effective January 1, 2013, and applies to estate of persons dying on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 483
Second Edition Engrossed 5/9/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H483-CSSA-72 [v.4]

6/6/2012 4:13:26 PM

Short Title: DNA Samples/Additional Felonies. (Public)

Sponsors:

Referred to:

March 29, 2011

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE LIST OF FELONIES FOR WHICH A DNA SAMPLE SHALL BE TAKEN UPON ARREST, TO APPROPRIATE FUNDS TO FACILITATE THE EXPANSION, AND TO RESTRICT THE EXPENDITURE OF STATE FUNDS ON ACCREDITATION OF THE STATE CRIME LABORATORY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-266.3A(f) reads as rewritten:

"(f) This section shall apply to a person arrested for violating any one of the following offenses in Chapter 14 of the General Statutes:

(1) G.S. 14-17, First and Second Degree Murder.

(2) G.S. 14-18, Manslaughter.

(3) Any offense in Article 7A, Rape and Other Sex Offenses.

(4) G.S. 14-32, Felonious assault with deadly weapon with intent to kill or inflicting serious injury; G.S. 14-32.1(e), Assault on handicapped person; G.S. 14-32.2, Patient abuse and neglect; G.S. 14-32.4(a), Assault inflicting serious bodily injury; G.S. 14-34.1, Discharging certain barreled weapons or a firearm into occupied property; G.S. 14-34.2, Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers; G.S. 14-34.4, Adulterated or misbranded food, drugs, or cosmetics; intent to cause serious injury or death; intent to extort; G.S. 14-34.5, Assault with a firearm on a law enforcement, probation, or parole officer or on a person employed at a State or local detention facility; G.S. 14-34.6, Assault or affray on a firefighter, an emergency medical technician, medical responder, emergency department nurse, or emergency department physician; and G.S. 14-34.7, Assault inflicting serious injury on a law enforcement, probation, or parole officer or on a person employed at a State or local detention ~~facility.~~facility; G.S. 14-34.9, Discharging a weapon from within an enclosure.

(5) Any offense in Article 10, Kidnapping and Abduction, or Article 10A, Human Trafficking.

(5a) Any offense in Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material.

(5b) G.S. 14-50.18, Soliciting; encouraging participation of minor.

(6) G.S. 14-51, First and second degree burglary; G.S. 14-53, Breaking out of dwelling house burglary; G.S. 14-54.1, Breaking or entering a place of religious worship; and G.S. 14-57, Burglary with explosives.
(7) Any offense in Article 15, Arson.
(8) G.S. 14-87, Armed ~~robbery.~~robbery; G.S. 14-87.1, Punishment for common law robbery.
(8a) G.S. 14-190.7, Dissemination to minors under the age of 16 years; G.S. 14-190.8, Dissemination to minors under the age of 13 years.
(9) Any offense which would require the person to register under the provisions of Article 27A of Chapter 14 of the General Statutes, Sex Offender and Public Protection Registration Programs.
(10) G.S. 14-196.3, Cyberstalking.
(10a) G.S. 14-208.44(a) and (b), Failure to enroll in a satellite-based monitoring program; tampering with device.
(11) G.S. 14-277.3A, Stalking.
(12) G.S. 14-315(a1), Selling or giving weapons (handguns) to minors.
(13) G.S. 14-318.4, Child abuse a felony.
(14) G.S. 14-320.1, Transporting child outside the State with intent to violate custody order.
(15) Any felony offense under G.S. 14-321.1, Prohibit babysitting service by sex offender or in the home of a sex offender.
(16) G.S. 14-322.1, Abandonment of child or children for six months.
(17) G.S. 90-95(h), Trafficking in a controlled substance."

SECTION 2. There is appropriated from the General Fund to the Department of Justice the sum of sixty-nine thousand nine hundred thirty-four dollars ($69,934) for fiscal year 2012-2013 to be allocated to the State Bureau of Investigation for testing and analysis of the DNA samples required by this act.

SECTION 3. The State Crime Laboratory shall seek the accreditation required by G.S. 8-58.20 and G.S. 20-139.1 from a single accrediting body. No State funds shall be spent for fiscal year 2011-2012 or fiscal year 2012-2013 to obtain a second accreditation of the State Crime Laboratory that is duplicative or unnecessary.

SECTION 3. Section 1 of this act becomes effective December 1, 2012, and applies to offenses committed on or after that date. Section 2 of this act becomes effective July 1, 2012. The remainder of this act is effective when it becomes law.

PAGES ATTENDING

COMMITTEE: Judiciary I **ROOM:** 1027

DATE: 6-7 **TIME:** 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Rebecca Harris	charlotte	Bob Rucho
2 taylor Parrish	Cramerton	Rouzer
3 Lakell Williams	Clayton	Rouzer
4 Davis McKinney	Spruce Pine	Hise
5 Brack McKinney	Arden	Tom Apodaca
6 Richard Wheelan	High point	Vaughn
7 Ryan Williams	Laurinburg	Purcell
8 McKinnon Martin	Rutherfordton	Newbitt
9 Peter Ojo	Fayetteville	Mansfield
10 Allyson Wilson	Burlington	Gunn

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

VISITOR REGISTRATION SHEET

Senate J-1
(Committee Name)

6/712
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Julie Casani	NC DHHS - DPH
Sarah Preston	ACLU-NC
DZK Taylor	NCAJ
Kim Wilson	NCAJ
Sarah Wolfe	MWC
Michael R Thompson	Dominion NC Power
Penny Huff	School of Gov.
Clay Pittman	NC Dem Party
Jennifer Epperson	NC DOJ
Angie Maier	NCPC
MARY JENNINGS	NCDPS
George Smith	Williams Mullen
J BUSSIAN	NCPA
	BCBSNC
M O'Connor	BCBSNC
Angel Sams	NSS
Elizabeth Boer	Brooks Rene

09-21-2011

VISITOR REGISTRATION SHEET

Senate J-1 D
(Committee Name)

6/712
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Floyd Lewis	General Statutes Commission
Jim McLaughlin	Trusts Drafting Committee
[signature]	AOC
Joe John	State Crime Lab
[signature]	Conf of DA's
Nicole King	intern rep stevens
[signature]	NCBA
Brent Davis	Brooks Pierce / NC Bankers Assoc.
[signature]	CapStar
[signature]	WRTF
Amy White	NCMS
[signature]	NCMS
Chris Munroe	NCCAI
John Tallent	Progress NC
[signature]	General Statutes Commission
David Ferrell	NCCTA
J. Stanley Atwell	Trusts Drafting Comm. Hse

09-21-2011

VISITOR REGISTRATION SHEET

Senate J-1
(Committee Name)

6/7/12
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jesse Goodman	DHHS

09-21-2011

VISITOR REGISTRATION SHEET

Senate J-1
(Committee Name)

6/712
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS

09-21-2011

SENATE JUDICIARY I COMMITTEE
Tuesday, June 19, 2012 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on June 19, 2012, in Room 1027 of the Legislative Building. 10 members of the committee were present. Senator Thom Goolsby, presided.

The meeting adjourned at 10:11 AM.

HB 971-ACTIVE DUTY DEATH/LEASE TERMINATION-Representative Blust was recognized to explain the bill. This bill authorizes an immediate family member of a deceased armed services member, or a representative of the service member's estate, to terminate the service member's rental agreement if he or she dies while on active duty. Senator Brown moved for a favorable report and the motion carried.

HB 1068-AMEND UCC ARTICLE 9/SECURED TRANSACTIONS-Representative Blust was recognized to explain the bill. The bill was recommended by the General Statutes Commission. The legislation would codify the amendments recommended in 2010 for enactment in all states by the Uniform Law Commission and the American Law Institute. Generally speaking, the amendments address filing issues and other matters that have arisen in practice since the Article was last revised in 1998. Floyd Lewis and Bly Hall were present to recommend passage on behalf of the General Statutes Commission. Senator Tillman moved for a favorable report and the motion carried.

Senator Thom Goolsby, Presiding

Michael Lewis, Committee Clerk

Senate Judiciary I Committee
Tuesday, June 19, 2012, 10:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 971	Active Duty Death/Lease Termination.	Representative Shepard Representative Cook
HB 1068	Amend UCC Article 9/Secured Transactions.	Representative Ross Representative Blust

Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY

SENATE

JUDICIARY I COMMITTEE REPORT

Senator Peter S. Brunstetter, Chair

CORRECTED REPORT

Tuesday, June 19, 2012

Senator BRUNSTETTER,

submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) **971** Active Duty Death/Lease Termination.

Sequential Referral: None

Recommended Referral: None

H.B. **1068** Amend UCC Article 9/Secured Transactions.

Sequential Referral: None

Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

Senator Brunstetter will present HB 971 and HB 1068

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 2

HOUSE BILL 971
Committee Substitute Favorable 6/13/12

Short Title: Active Duty Death/Lease Termination. (Public)

Sponsors:

Referred to:

May 17, 2012

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE LEASE TERMINATION FOR A SERVICE MEMBER WHO DIES WHILE ON ACTIVE DUTY, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON MILITARY AFFAIRS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-45 reads as rewritten:

"**§ 42-45. Early termination of rental agreement by military ~~personnel.~~personnel, surviving family members, or lawful representative.**

(a) Any member of the Armed Forces of the United States who (i) is required to move pursuant to permanent change of station orders to depart 50 miles or more from the location of the dwelling unit, or (ii) is prematurely or involuntarily discharged or released from active duty with the Armed Forces of the United States, may terminate the member's rental agreement for a dwelling unit by providing the landlord with a written notice of termination to be effective on a date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the member's commanding officer.

(a1) Any member of the Armed Forces of the United States who is deployed with a military unit for a period of not less than 90 days may terminate the member's rental agreement for a dwelling unit by providing the landlord with a written notice of termination. The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the member's commanding officer. Termination of a lease pursuant to this subsection is effective 30 days after the first date on which the next rental payment is due or 45 days after the landlord's receipt of the notice, whichever is shorter, and payable after the date on which the notice of termination is delivered.

(a2) Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at such time as would have otherwise been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due to the early termination of the tenancy except the liquidated damages provided in subsection (b) of this section. If a member terminates the rental agreement pursuant to this section 14 or more days prior to occupancy, no damages or penalties of any kind shall be due.

(a3) If a member of the Armed Forces of the United States dies while on active duty, then an immediate family member, or a lawful representative of the member's estate, may terminate the member's rental agreement for a dwelling unit by providing the landlord with a written notice of termination to be effective on the date described in subsection (a1) of this section. A copy of the death certificate, official military personnel casualty report, or letter

from the commanding officer verifying the member's death must accompany the notice for this subsection to be effective. Termination of the member's lease obligations under this subsection shall also terminate the lease obligations of any cotenants who are immediate family members. If the member was a cotenant with a person who is not an immediate family member, then the termination shall relate only to the obligation of the member under the rental agreement. The prorated charges in subsection (a2) of this section and the liquidated damages provisions of subsection (b) of this section shall apply to any claims against the member's estate.

(b) In consideration of early termination of the rental agreement, the tenant is liable to the landlord for liquidated damages provided the tenant has completed less than nine months of the tenancy and the landlord has suffered actual damages due to loss of the tenancy. The liquidated damages shall be in an amount no greater than one month's rent if the tenant has completed less than six months of the tenancy as of the effective date of termination, or one-half of one month's rent if the tenant has completed at least six but less than nine months of the tenancy as of the effective date of termination.

(c) The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances. Nothing in this section shall affect the rights established by G.S. 42-3."

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

HOUSE BILL 971:
Active Duty Death/Lease Termination

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 18, 2012
Introduced by:	Reps. Shepard, Cook	**Prepared by:**	Shelly DeAdder
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 971 authorizes an immediate family member of a deceased armed services member, or a representative of the service member's estate, to terminate the service member's rental agreement if he or she dies while on active duty.

CURRENT LAW: G.S. 42-45 currently provides that a service member may terminate his or her rental agreement in certain circumstances. There is currently no provision pertaining to termination of a rental agreement after the death of a service member.

BILL ANALYSIS: House Bill 971 adds subsection (a3) to G.S. 42-45. Pursuant to this subsection, if a service member dies while on active duty then an immediate family member or a representative of the service member's estate may terminate the deceased service member's rental agreement.

The individual terminating the rental agreement must provide a copy of the service member's death certificate, personnel casualty report, or a letter from the commanding officer verifying the service member's death.

The termination of the rental agreement is effective 30 days after the first date on which the next rental payment is due or 45 days after the landlord receives notice, whichever is shorter. The estate of the deceased service member is responsible for any liquidated damages and/or prorated rent that may be owed to the landlord.

Termination of the service member's rental agreement also terminates the lease obligations of any cotenants who are also immediate family members. If the service member was a cotenant with a person who is not an immediate family member, then the obligations of the cotenant are not affected by the rental agreement termination.

EFFECTIVE DATE: This act is effective when it becomes law.

H971-SMTO-0(e2) v1

HOUSE BILL 1068*

Short Title:	Amend UCC Article 9/Secured Transactions.	(Public)
Sponsors:	Representatives Blust and Ross (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee A.	

May 23, 2012

A BILL TO BE ENTITLED

AN ACT TO AMEND ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE RELATING TO SECURED TRANSACTIONS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. 2010 UCC ARTICLE 9 AMENDMENTS.

SECTION 1. G.S. 25-9-102(a) reads as rewritten:

"**§ 25-9-102. Definitions and index of definitions.**

(a) Article 9 definitions. – In this Article:

...

(7) "Authenticate" means:

a. To sign; or

b. ~~To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.~~With present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

...

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

...

(50) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

...

(70a) "Public organic record" means a record that is available to the public for inspection and is:

a. A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;

b. An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

c. A record consisting of legislation enacted by the legislature of a state or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States which amends or restates the name of the organization.

...

(73) "Registered organization" means an organization formed or organized solely under the law of a single state or the United States ~~and as to which the state or the United States must maintain a public record showing the organization to have been organized.~~by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.

...."

SECTION 2. G.S. 25-9-105 reads as rewritten:

"**§ 25-9-105. Control of electronic chattel paper.**

(a) General Rule: Control of Electronic Chattel Paper. – A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(b) Specific Facts Giving Control. – A system satisfies subsection (a) of this section if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the record or records exists which is unique, ~~identifiable~~ identifiable, and, except as otherwise provided in subdivisions (4), (5), and (6) of this section, unalterable;

(2) The authoritative copy identifies the secured party as the assignee of the record or records;

(3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) Copies or ~~revisions~~ amendments that add or change an identified assignee of the authoritative copy can be made only with the ~~participation~~ consent of the secured party;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any ~~revision~~ amendment of the authoritative copy is readily identifiable as ~~an authorized or unauthorized revision.~~authorized or unauthorized."

SECTION 3. G.S. 25-9-307(f) reads as rewritten:

"(f) Location of registered organization organized under federal law; bank branches and agencies. – Except as otherwise provided in subsection (i) of this section, a registered

organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) In the state that the law of the United States designates, if the law designates a state of location;

(2) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of ~~location;~~ location, including by designating its main office, home office, or other comparable office; or

(3) In the District of Columbia, if neither subdivision (1) nor subdivision (2) of this subsection applies."

SECTION 4. G.S. 25-9-311(a) reads as rewritten:

"(a) Security interest subject to other law. – Except as otherwise provided in subsection (d) of this section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt G.S. 25-9-310(a);

(2) A ~~certificate of title~~ statute of this State covering automobiles or other goods that provides for a security interest to be indicated on ~~the~~ a certificate of title as a condition to or result of perfection of the security interest, including G.S. 20-58 and G.S. 75A-41; or

(3) A ~~certificate of title~~ statute of another jurisdiction which provides for a security interest to be indicated on ~~the~~ a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property."

SECTION 5.(a) The catch line of G.S. 25-9-316 reads as rewritten:

"**§ 25-9-316. ~~Continued perfection of security interest following~~Effect of change in governing law."**

SECTION 5.(b) G.S. 25-9-316 is amended by adding two new subsections to read:

"(h) Effect on Filed Financing Statement of Change in Governing Law. – The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:

(1) A financing statement filed before the change pursuant to the law of the jurisdiction designated in G.S. 25-9-301(1) or G.S. 25-9-305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.

(2) If a security interest perfected by a financing statement that is effective under subdivision (1) of this subsection becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in G.S. 25-9-301(1) or G.S. 25-9-305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(i) Effect of Change in Governing Law on Financing Statement Filed Against Original Debtor. – If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in G.S. 25-9-301(1) or G.S. 25-9-305(c) and the new debtor is located in another jurisdiction, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under G.S. 25-9-203(d), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

(2) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in G.S. 25-9-301(1) or G.S. 25-9-305(c) or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value."

SECTION 6. G.S. 25-9-317 reads as rewritten:

"**§ 25-9-317. Interests that take priority over or take free of security interest or agricultural lien.**

(a) Conflicting security interests and rights of lien creditors. – A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under G.S. 25-9-322; and

(2) Except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time:

a. The security interest or agricultural lien is perfected; or

b. One of the conditions specified in G.S. 25-9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Buyers that receive delivery. – Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a ~~security certificate~~certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Lessees that receive delivery. – Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) Licensees and buyers of certain collateral. – A licensee of a general intangible or a buyer, other than a secured party, of ~~accounts, electronic chattel paper, electronic documents, general intangibles, or investment property~~collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Purchase-money security interest. – Except as otherwise provided in G.S. 25-9-320 and G.S. 25-9-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing."

SECTION 7. G.S. 25-9-326 reads as rewritten:

"**§ 25-9-326. Priority of security interests created by new debtor.**

(a) Subordination of security interest created by new debtor. – Subject to subsection (b) of this section, a security interest that is created by a new debtor ~~which is~~in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement that ~~is effective solely under G.S. 25-9-508 in collateral in which a new debtor has or acquires~~

~~rights~~would be ineffective to perfect the security interest but for the application of G.S. 25-9-316(i)(1) or G.S. 25-9-508 is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing ~~statement that is effective solely under G.S. 25-9-508.~~statement.

(b) Priority under other provisions; multiple original debtors. – The other provisions of this Part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements ~~that are effective solely under G.S. 25-9-508.~~described in subsection (a) of this section. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound."

SECTION 8. G.S. 25-9-406 reads as rewritten:

"**§ 25-9-406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.**

(a) Discharge of account debtor; effect of notification. – Subject to subsections (b) through (i) of this section, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) When notification ineffective. – Subject to subsection (h) of this section, notification is ineffective under subsection (a) of this section:

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this Article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

a. Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

b. A portion has been assigned to another assignee; or

c. The account debtor knows that the assignment to that assignee is limited.

(c) Proof of assignment. – Subject to subsection (h) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) of this section.

(d) Term restricting assignment generally ineffective. – Except as otherwise provided in subsection (e) of this section and G.S. 25-2A-303 and ~~G.S. 25-9-407~~G.S. 25-9-407, and subject to subsection (h) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default,

breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Inapplicability of subsection (d) to certain sales. – Subsection (d) of this section does not apply to the sale of a payment intangible or promissory ~~note.~~note, other than a sale pursuant to a disposition under G.S. 25-9-610 or an acceptance of collateral under G.S. 25-9-620.

(f) Legal restrictions on assignment generally ineffective. – Except as otherwise provided in G.S. 25-2A-303 and G.S. 25-9-407 and subject to subsections (h) and (i) of this section, a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subdivision (b)(3) not waivable. – Subject to subsection (h) of this section, an account debtor may not waive or vary its option under subdivision (b)(3) of this section.

(h) Rule for individual under other law. – This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) Inapplicability. – This section does not apply to an assignment of a health-care-insurance receivable. Subsection (f) of this section does not apply to an assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes to the extent that the statute is inconsistent with subsection (f) of this section: ~~North Carolina Structured Settlement Act (Article 44B of Chapter 1 of the General Statutes); North Carolina Crime Victims Compensation Act (Chapter 15B of the General Statutes); North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes); North Carolina Firemen's and Rescue Squad Workers' Pension Fund (Article 86 of Chapter 58 of the General Statutes); Employment Security Law (Chapter 96 of the General Statutes); North Carolina Workers' Compensation Act (Article 1 of Chapter 97 of the General Statutes); and Programs of Public Assistance (Article 2 of Chapter 108A of the General Statutes).~~

(1) North Carolina Structured Settlement Act (Article 44B of Chapter 1 of the General Statutes).

(2) North Carolina Crime Victims Compensation Act (Chapter 15B of the General Statutes).

(3) North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes).

(4) North Carolina Firemen's and Rescue Squad Workers' Pension Fund (Article 86 of Chapter 58 of the General Statutes).

(5) Employment Security Law (Chapter 96 of the General Statutes).

(6) North Carolina Workers' Compensation Fund Act (Article 1 of Chapter 97 of the General Statutes).

(7) Programs of Public Assistance (Article 2 of Chapter 108A of the General Statutes).

(8) North Carolina State Lottery Act (Chapter 18C of the General Statutes).

(j) Section prevails over inconsistent law. – Except to the extent otherwise provided in subsection (i) of this section, this section prevails over any inconsistent provision of an existing or future statute, rule, or regulation of this State unless the provision is contained in a statute of this State, refers expressly to this section, and states that the provision prevails over this section."

SECTION 9. G.S. 25-9-408 reads as rewritten:

"**§ 25-9-408. Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.**

(a) Term restricting assignment generally ineffective. – Except as otherwise provided in subsection (b) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) Applicability of subsection (a) to sales of certain rights to payment. – Subsection (a) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory ~~note.~~note, other than a sale pursuant to a disposition under G.S. 25-9-610 or an acceptance of collateral under G.S. 25-9-620.

(c) Legal restrictions on assignment generally ineffective. – A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) Limitation on ineffectiveness under subsections (a) and (c). – To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) of this section would be effective under law other than this Article but is ineffective under subsection (a) or (c) of this section, the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;
(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;
(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;
(5) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and
(6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) Section prevails over inconsistent law. – Except to the extent otherwise provided in subsection (f) of this section, this section prevails over any inconsistent provision of an existing or future statute, rule, or regulation of this State unless the provision is contained in a statute of this State, refers expressly to this section, and states that the provision prevails over this section.

(f) Inapplicability. – Subsection (c) of this section does not apply to an assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes to the extent that the statute is inconsistent with subsection (c) of this section: ~~North Carolina Structured Settlement Act (Article 44B of Chapter 1 of the General Statutes); North Carolina Crime Victims Compensation Act (Chapter 15B of the General Statutes); North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes); North Carolina Firemen's and Rescue Squad Workers' Pension Fund (Article 86 of Chapter 58 of the General Statutes); Employment Security Law (Chapter 96 of the General Statutes); North Carolina Workers' Compensation Act (Article 1 of Chapter 97 of the General Statutes); and Programs of Public Assistance (Article 2 of Chapter 108A of the General Statutes).~~

(1) North Carolina Structured Settlement Act (Article 44B of Chapter 1 of the General Statutes).
(2) North Carolina Crime Victims Compensation Act (Chapter 15B of the General Statutes).
(3) North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes).
(4) North Carolina Firemen's and Rescue Squad Workers' Pension Fund (Article 86 of Chapter 58 of the General Statutes).
(5) Employment Security Law (Chapter 96 of the General Statutes).
(6) North Carolina Workers' Compensation Fund Act (Article 1 of Chapter 97 of the General Statutes).
(7) Programs of Public Assistance (Article 2 of Chapter 108A of the General Statutes).
(8) North Carolina State Lottery Act (Chapter 18C of the General Statutes)."

SECTION 10. G.S. 25-9-502(c) reads as rewritten:

"(c) Record of mortgage as financing statement. – A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) The record indicates the goods or accounts that it covers;

(2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) The record satisfies the requirements for a financing statement in this ~~section~~ section, but:

a. The record need not indicate ~~other than an indication~~ that it is to be filed in the real property records; and

b. The record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom G.S. 25-9-503(a)(4) applies; and

(4) The record is duly recorded."

SECTION 11. G.S. 25-9-503 reads as rewritten:

"**§ 25-9-503. Name of debtor and secured party.**

(a) Sufficiency of debtor's name. – A financing statement sufficiently provides the name of the debtor:

(1) Except as otherwise provided in subdivision (3) of this subsection, ~~If~~ if the debtor is a registered ~~organization,~~organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name ~~of the debtor indicated~~that is stated to be the registered organization's name on the public organic record ~~of~~ most recently filed with or issued or enacted by the ~~debtor's~~ registered organization's jurisdiction of organization which ~~shows the debtor to have been organized;~~purports to state, amend, or restate the registered organization's name;

(2) Subject to subsection (f) of this section, ~~If~~ if the ~~debtor is a decedent's estate,~~collateral is being administered by the personal representative of a decedent, only if the financing statement ~~provides~~ provides, as the name of the debtor, the name of the decedent ~~and~~ and, in a separate part of the financing statement, indicates that the ~~debtor is an estate;~~collateral is being administered by a personal representative;

(3) ~~If the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:~~

~~a. Provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and~~

~~b. Indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and~~

If the collateral is held in a trust that is not a registered organization, only if the financing statement:

a. Provides, as the name of the debtor:

1. If the organic record of the trust specifies a name for the trust, the name specified; or

2. If the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

b. In a separate part of the financing statement:

1. If the name is provided in accordance with sub-subdivision a.1. of this subdivision, indicates that the collateral is held in a trust; or

2. If the name is provided in accordance with sub-subdivision a.2. of this subdivision, provides additional information

sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

(4) Subject to subsection (g) of this section, if the debtor is an individual to whom this State has issued a drivers license or special identification card that has not expired, only if the financing statement provides the name of the individual which is indicated on the drivers license or special identification card;

(5) If the debtor is an individual to whom subdivision (a)(4) of this section does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor; and

~~(4)~~(6) In other cases:

a. If the debtor has a name, only if ~~it~~ the financing statement provides the ~~individual or~~ organizational name of the debtor; and

b. If the debtor does not have a name, only if ~~it~~ the financing statement provides the names of the partners, members, associates, or other persons comprising the ~~debtor.~~debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

(b) Additional debtor-related information. – A financing statement that provides the name of the debtor in accordance with subsection (a) of this section is not rendered ineffective by the absence of:

(1) A trade name or other name of the debtor; or

(2) Unless required under ~~sub-subdivision (a)(4)b.~~sub-subdivision (a)(6)b. of this section, names of partners, members, associates, or other persons comprising the debtor.

(c) Debtor's trade name insufficient. – A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Representative capacity. – Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) Multiple debtors and secured parties. – A financing statement may provide the name of more than one debtor and the name of more than one secured party.

(f) Name of Decedent. – The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under subdivision (a)(2) of this section.

(g) Multiple Drivers Licenses or Special Identification Cards. – If this State has issued to an individual more than one drivers license or special identification card of a kind described in subdivision (a)(4) of this section, the one that was issued most recently is the one to which subdivision (a)(4) of this section refers.

(h) Definition. – In this section, the "name of the settlor or testator" means:

(1) If the settlor is a registered organization, the name that is stated to be the settlor's name on the public organic record most recently filed with or issued or enacted by the settlor's jurisdiction of organization which purports to state, amend, or restate the settlor's name; or

(2) In other cases, the name of the settlor or testator indicated in the trust's organic record."

SECTION 12. G.S. 25-9-507(c) reads as rewritten:

"(c) Change in debtor's name. – If ~~a debtor so changes its~~the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under

G.S. 25-9-503(a) so that the financing statement becomes seriously misleading under G.S. 25-9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the ~~change;~~filed financing statement becomes seriously misleading; and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the ~~change,~~filed financing statement becomes seriously misleading, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after ~~the change.~~the financing statement became seriously misleading."

SECTION 13. G.S. 25-9-515(f) reads as rewritten:

"(f) Transmitting utility financing statement. – If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed."

SECTION 14. G.S. 25-9-516(b) reads as rewritten:

"(b) Refusal to accept record; filing does not occur. – Filing does not occur with respect to a record that a filing office refuses to accept because:

...

(3) The filing office is unable to index the record because:

a. In the case of an initial financing statement, the record does not provide a name for the debtor;

b. In the case of an amendment or ~~correction~~ information statement, the record:

1. Does not identify the initial financing statement as required by G.S. 25-9-512 or G.S. 25-9-518, as applicable; or

2. Identifies an initial financing statement whose effectiveness has lapsed under G.S. 25-9-515;

c. In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's ~~last name;~~surname; or

d. In the case of a record filed in the filing office described in G.S. 25-9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

...

(5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

a. Provide a mailing address for the debtor; or

b. Indicate whether the name provided as the name of the debtor is the name of an individual or an organization; ~~or~~

~~c. If the financing statement indicates that the debtor is an organization, provide:~~

~~1. A type of organization for the debtor;~~

~~2. A jurisdiction of organization for the debtor; or~~

~~3. An organizational identification number for the debtor or indicate that the debtor has none;~~

...

(7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by G.S. 25-9-515(d); or

(8) In the case of a record presented for filing at the Department of the Secretary of State, the Secretary of State determines that the record is not created pursuant to this Chapter or is otherwise intended for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person."

SECTION 15. G.S. 25-9-518 reads as rewritten:

"**§ 25-9-518. Claim concerning inaccurate or wrongfully filed record.**

(a) ~~Correction statement.~~Statement With Respect to Record Indexed Under Person's Name. – A person may file in the filing office ~~a correction~~an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) ~~Sufficiency~~ Contents of ~~correction statement.~~Statement Under Subsection (a). – ~~A correction~~An information statement under subsection (a) of this section must:

(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) Indicate that it is ~~a correction~~an information statement; and

(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed. ~~A correction~~An information statement that is subject to the provisions of subsection (b1) of this section shall include a written certification, under oath, by the person that the contents of the ~~correction~~ information statement are true and accurate to the best of the person's knowledge.

(b1) In the case of ~~a correction~~an information statement alleging that a previously filed record was wrongfully filed and that it should have been rejected under G.S. 25-9-516(b)(8), the Secretary of State shall, without undue delay, determine whether the contested record was wrongfully filed and should have been rejected. In order to determine whether the record was wrongfully filed, the Secretary of State may require the person filing the ~~correction~~ information statement and the secured party to provide any additional relevant information requested by the Secretary of State, including an original or a copy of any security agreement that is related to the record. If the Secretary of State finds that the record was wrongfully filed and should have been rejected under G.S. 25-9-516(b)(8), the Secretary of State shall cancel the record and it shall be void and of no effect.

(b2) Statement by Secured Party of Record. – A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under G.S. 25-9-509(d).

(b3) Contents of Statement Under Subsection (b2). – An information statement under subsection (b2) of this section must:

(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) Indicate that it is an information statement; and

(3) Provide the basis for the person's belief that the person that filed the record was not entitled to do so under G.S. 25-9-509(d).

(c) Record not affected by ~~correction~~ information statement. – The filing of ~~a correction~~an information statement does not affect the effectiveness of an initial financing statement or other filed record."

SECTION 16. G.S. 25-9-521 is rewritten to read:

"**§ 25-9-521. Uniform form of written financing statement and amendment.**

(a) Initial financing statement form. – A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in G.S. 25-9-516(b):

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name). If any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

1c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name). If any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

2c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

3c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

4. COLLATERAL: This financing statement covers the following collateral:

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

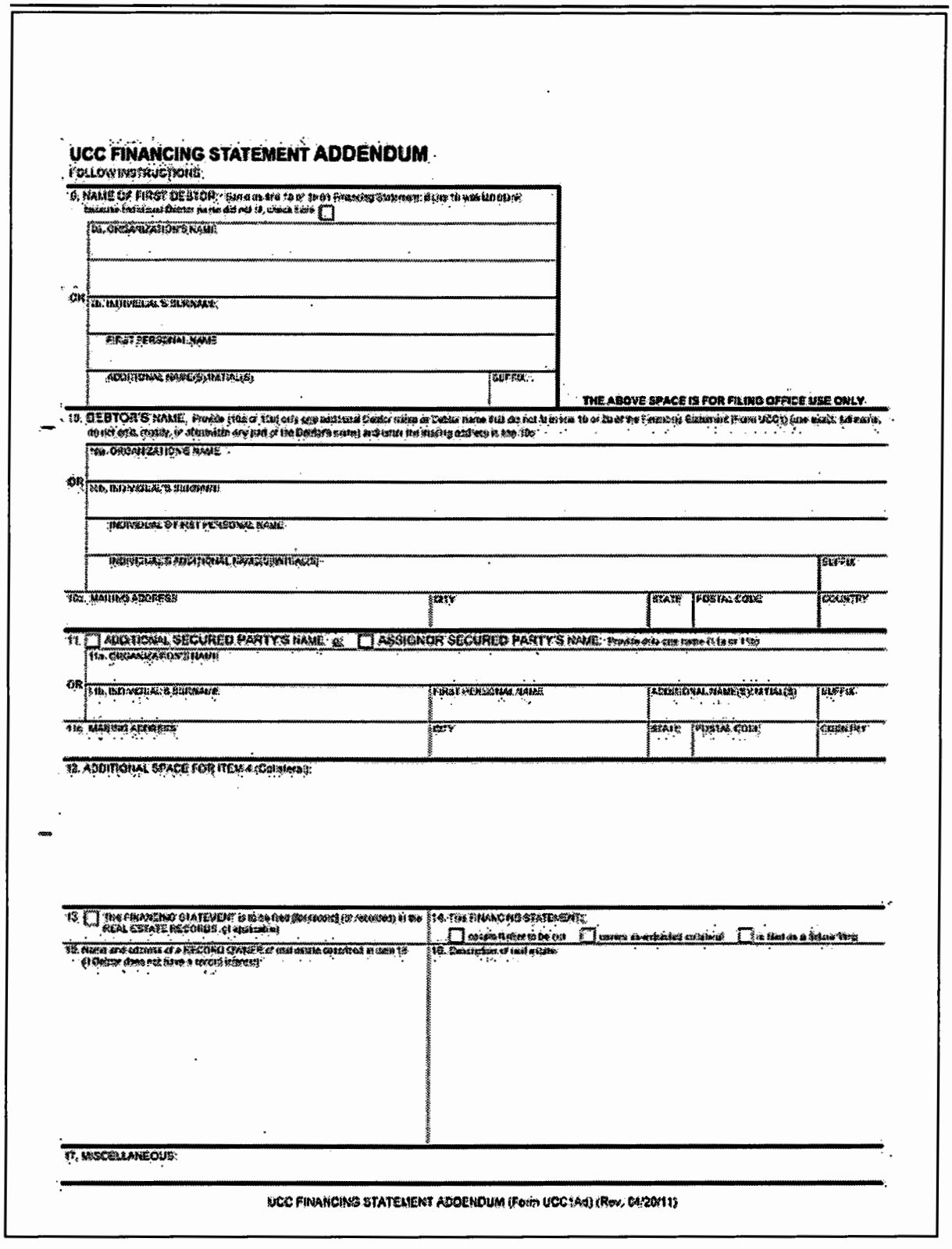
6a. Check only if applicable and check only one box: ☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box: ☐ Agricultural Lien ☐ Non-UCC Filing

7. Alternative designation (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

UCC FINANCING STATEMENT (Form UCC1) (Rev. 04/20/11)



UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because individual Debtor name did not fit, check here ☐

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME

OR

10b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

10c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

11. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

11c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral):

13. ☐ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. (if applicable)

14. This FINANCING STATEMENT:
☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

16. Description of real estate:

17. MISCELLANEOUS:

UCC FINANCING STATEMENT ADDENDUM (Form UCC1Ad) (Rev. 04/20/11)

(b) Amendment form. – A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in G.S. 25-9-516(b):

[redacted]

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER

1b. ☐ This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS

2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. ☐ ASSIGNMENT (full or partial): Provide the name of Assignee in item 7a or 7b, and address of Assignee in item 7c, and name of Assignor in item 9

For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. ☐ PARTY INFORMATION CHANGE:

Check one of these two boxes:

This Change affects ☐ Debtor or ☐ Secured Party of record

AND Check one of these three boxes to:

☐ CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c

☐ ADD name: Complete item 7a or 7b, and item 7c

☐ DELETE name: Give record name to be deleted in item 6a or 6b

6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b)

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

7c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

8. ☐ COLLATERAL CHANGE: Also check one of these four boxes: ☐ ADD collateral ☐ DELETE collateral ☐ RESTATE covered collateral ☐ ASSIGN collateral

Indicate collateral:

9. NAME OF SECURED PARTY of RECORD AUTHORIZING THIS AMENDMENT: Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)

If this is an Amendment authorized by a DEBTOR, check here ☐ and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME

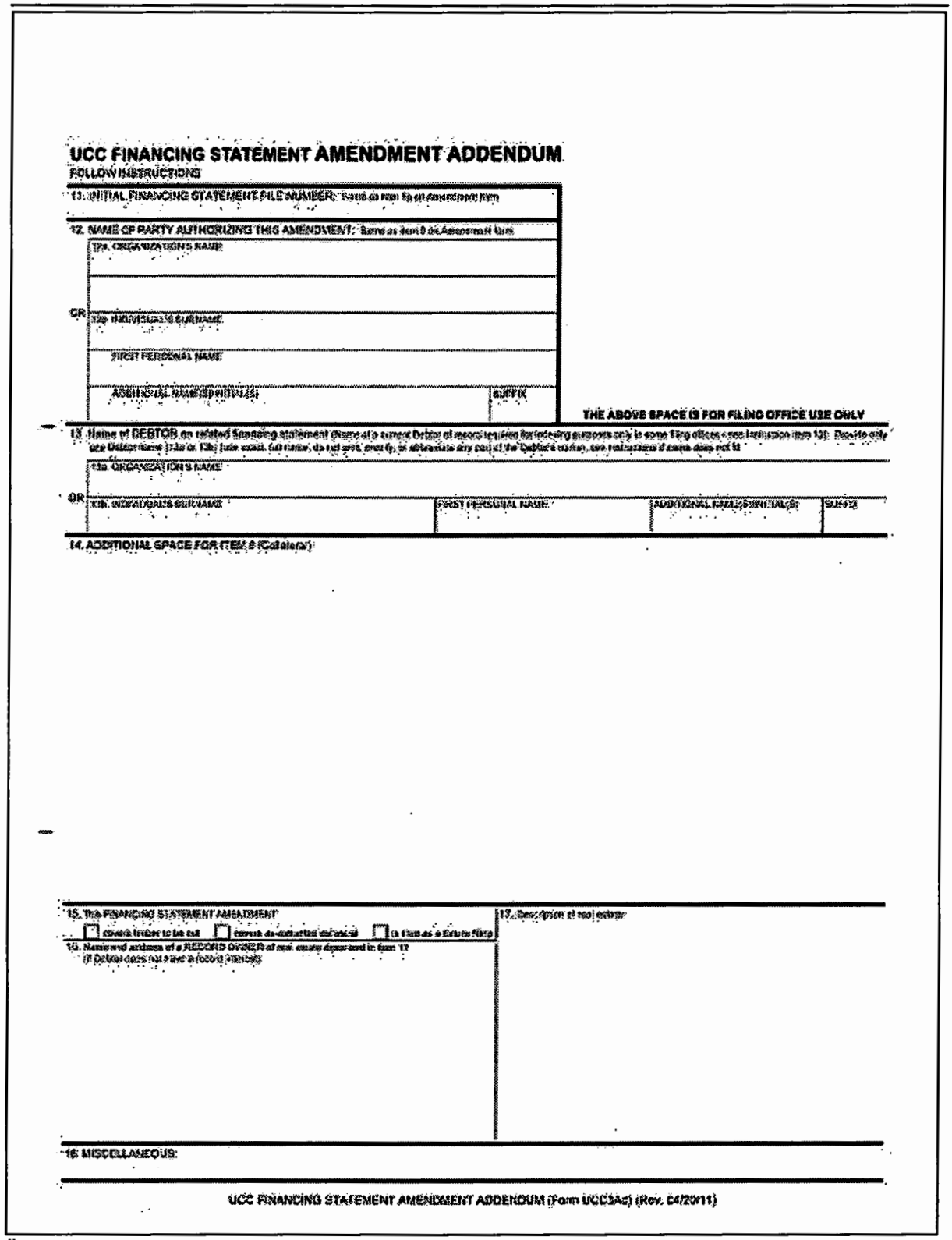
OR

9b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

10. OPTIONAL FILER REFERENCE DATA:

UCC FINANCING STATEMENT AMENDMENT (Form UCC3) (Rev. 04/20/11)

1
2



UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS

13. INITIAL FINANCING STATEMENT FILE NUMBER: Same as item 1a on Amendment form

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT: Same as item 2a or 2b on Amendment form

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction item 13): Provide only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); see Instructions if name does not fit

13a. ORGANIZATION'S NAME

OR

13b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral)

15. This FINANCING STATEMENT AMENDMENT

☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing

16. Name and address of a RECORD OWNER of real estate described in item 17

(if Debtor does not have a record interest)

17. Description of real estate

18. MISCELLANEOUS:

UCC FINANCING STATEMENT AMENDMENT ADDENDUM (Form UCC3Ad) (Rev. 04/20/11)

"

SECTION 17. G.S. 25-9-607(b) reads as rewritten:

"(b) Nonjudicial enforcement of mortgage. – If necessary to enable a secured party to exercise under subdivision (a)(3) of this section the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) The secured party's sworn affidavit in recordable form stating that:
a. A default has ~~occurred;~~occurred with respect to the obligation secured by the mortgage; and
b. The secured party is entitled to enforce the mortgage nonjudicially."

SECTION 18. G.S. 25-9-625(c) reads as rewritten:

"(c) Persons entitled to recover damages; statutory damages ~~in consumer goods transaction.~~if collateral is consumer goods. – Except as otherwise provided in G.S. 25-9-628:
(1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) of this section for its loss; and
(2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this Part may recover for that failure in any event an amount not less than the credit service charge plus ten percent (10%) of the principal amount of the obligation or the time-price differential plus ten percent (10%) of the cash price."

PART II. TRANSITION PROVISIONS.

SECURITY INTEREST PERFECTED BEFORE EFFECTIVE DATE.

SECTION 19.(a) Continuing Perfection: Perfection Requirements Satisfied. – A security interest that is a perfected security interest immediately before the effective date of this act is a perfected security interest under Article 9 of Chapter 25 of the General Statutes as amended by this act if, when this act becomes effective, the applicable requirements for attachment and perfection under Article 9 of Chapter 25 of the General Statutes as amended by this act are satisfied without further action.

SECTION 19.(b) Continuing Perfection: Perfection Requirements Not Satisfied. – Except as otherwise provided in Section 21 of this act, if, immediately before this act becomes effective, a security interest is a perfected security interest, but the applicable requirements for perfection under Article 9 of Chapter 25 of the General Statutes as amended by this act are not satisfied when this act becomes effective, the security interest remains perfected thereafter only if the applicable requirements for perfection under Article 9 of Chapter 25 of the General Statutes as amended by this act are satisfied within one year after this act becomes effective.

SECURITY INTEREST UNPERFECTED BEFORE EFFECTIVE DATE.

SECTION 20. Security Interest Unperfected Before Effective Date. – A security interest that is an unperfected security interest immediately before this act becomes effective becomes a perfected security interest:
(1) Without further action, when this act becomes effective if the applicable requirements for perfection under Article 9 of Chapter 25 of the General Statutes as amended by this act are satisfied before or at that time; or
(2) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

EFFECTIVENESS OF ACTION TAKEN BEFORE EFFECTIVE DATE.

SECTION 21.(a) Pre-Effective-Date Filing Effective. – The filing of a financing statement before this act becomes effective is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under Article 9 of Chapter 25 of the General Statutes as amended by this act.

SECTION 21.(b) When Pre-Effective-Date Filing Becomes Ineffective. – This act does not render ineffective an effective financing statement that, before this act becomes effective, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in Article 9 of Chapter 25 of the General Statutes as it existed before amendment. However, except as otherwise provided in subsections (c) and (d) of this section and Section 22 of this act, the financing statement ceases to be effective:

(1) If the financing statement is filed in this State, at the time the financing statement would have ceased to be effective had this act not become effective; or

(2) If the financing statement is filed in another jurisdiction, at the earlier of:

a. The time the financing statement would have ceased to be effective under the law of that jurisdiction; or

b. June 30, 2018.

SECTION 21.(c) Continuation Statement. – The filing of a continuation statement after this act becomes effective does not continue the effectiveness of a financing statement filed before this act becomes effective. However, upon the timely filing of a continuation statement after this act becomes effective and in accordance with the law of the jurisdiction governing perfection as provided in Article 9 of Chapter 25 of the General Statutes as amended by this act, the effectiveness of a financing statement filed in the same office in that jurisdiction before this act becomes effective continues for the period provided by the law of that jurisdiction.

SECTION 21.(d) Application of Sub-Subdivision (b)(2)b. to Transmitting Utility Financing Statement. – Sub-subdivision (b)(2)b. of this section applies to a financing statement that, before this act becomes effective, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in Article 9 of Chapter 25 of the General Statutes as it existed before amendment, only to the extent that Article 9 of Chapter 25 of the General Statutes as amended by this act provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

SECTION 21.(e) Application of Part 5 of Article 9 of Chapter 25 of the General Statutes. – A financing statement that includes a financing statement filed before this act becomes effective and a continuation statement filed after this act becomes effective is effective only to the extent that it satisfies the requirements of Part 5 of Article 9 of Chapter 25 of the General Statutes as amended by this act for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of G.S. 25-9-503(a)(2) as amended by this act. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of G.S. 25-9-503(a)(3) as amended by this act.

WHEN INITIAL FINANCING STATEMENT SUFFICES TO CONTINUE EFFECTIVENESS OF FINANCING STATEMENT.

SECTION 22.(a) Initial Financing Statement in Lieu of Continuation Statement. – The filing of an initial financing statement in the office specified in G.S. 25-9-501 continues the effectiveness of a financing statement filed before this act becomes effective if:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under Article 9 of Chapter 25 of the General Statutes as amended by this act;

(2) The pre-effective-date financing statement was filed in an office in another State; and

(3) The initial financing statement satisfies subsection (c) of this section.

SECTION 22.(b) Period of Continued Effectiveness. – The filing of an initial financing statement under subsection (a) of this section continues the effectiveness of the pre-effective-date financing statement:

(1) If the initial financing statement is filed before this act becomes effective, for the period provided in G.S. 25-9-515 as it read prior to the amendment by Section 13 of this act with respect to an initial financing statement; and

(2) If the initial financing statement is filed after this act becomes effective, for the period provided in G.S. 25-9-515 as amended by this act with respect to an initial financing statement.

SECTION 22.(c) Requirements for Initial Financing Statement Under Subsection (a). – To be effective for purposes of subsection (a) of this section, an initial financing statement must:

(1) Satisfy the requirements of Part 5 of Article 9 of Chapter 25 of the General Statutes as amended by this act for an initial financing statement;

(2) Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) Indicate that the pre-effective-date financing statement remains effective. '

AMENDMENT OF PRE-EFFECTIVE-DATE FINANCING STATEMENT.

SECTION 23.(a) "Pre-Effective-Date Financing Statement." – In this section, "pre-effective-date financing statement" means a financing statement filed before this act becomes effective.

SECTION 23.(b) Applicable Law. – After this act becomes effective, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Article 9 of Chapter 25 of the General Statutes as amended by this act. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

SECTION 23.(c) Method of Amending: General Rule. – Except as otherwise provided in subsection (d) of this section, if the law of this State governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this act becomes effective only if:

(1) The pre-effective-date financing statement and an amendment are filed in the office specified in G.S. 25-9-501;

(2) An amendment is filed in the office specified in G.S. 25-9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies subsection (c) of Section 22 of this act; or

(3) An initial financing statement that provides the information as amended and satisfies subsection (c) of Section 22 of this act is filed in the office specified in G.S. 25-9-501.

SECTION 23.(d) Method of Amending: Continuation. – If the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under subsections (c) and (e) of Section 21 of this act or Section 22 of this act.

SECTION 23.(e) Method of Amending: Additional Termination Rule. – Whether or not the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this State may be terminated after this act becomes effective by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies subsection (c) of Section 22 of this act has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Article 9 of Chapter 25 of the General Statutes as amended by this act as the office in which to file a financing statement.

PERSON ENTITLED TO FILE INITIAL FINANCING STATEMENT OR CONTINUATION STATEMENT.

SECTION 24. Person Entitled to File Initial Financing Statement or Continuation Statement. – A person may file an initial financing statement or a continuation statement under this Part if:

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this Part:

a. To continue the effectiveness of a financing statement filed before this act becomes effective; or

b. To perfect or continue the perfection of a security interest.

PRIORITY.

SECTION 25. This act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this act becomes effective, Article 9 of Chapter 25 of the General Statutes as it existed before this act becomes effective determines priority.

PART III. APPLICABILITY, EFFECTIVE DATE, AND OTHER PROVISIONS.

APPLICABILITY.

SECTION 26.(a) Pre-Effective-Date Transactions or Liens. – Except as otherwise provided in Part II of this act, this act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this act becomes effective.

SECTION 26.(b) Pre-Effective-Date Proceedings. – This act does not affect an action, case, or proceeding commenced before this act becomes effective.

AUTHORIZATION FOR PRINTING OF COMMENTS.

SECTION 27. The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Comments to the 2010 Amendments to Article 9 of the Uniform Commercial Code and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

EFFECTIVE DATE.

SECTION 28. This act becomes effective July 1, 2013.

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

Floyd M. Lewis
Revisor of Statutes

P. Bly Hall
Assistant Revisor of Statutes

MEMORANDUM
June 5, 2012

TO: Senate Judiciary I Committee
FROM: General Statutes Commission
RE: HB 1068 (Amend UCC Article 9/Secured Transactions)

General Comments

This bill amends Article 9 of the Uniform Commercial Code, which governs secured transactions in personal property and fixtures in all 50 states. The amendments were recommended in 2010 for enactment in all states by the Uniform Law Commission (ULC) and the American Law Institute (ALI). Generally speaking, the amendments address filing issues and other matters that have arisen in practice since the Article was last revised in 1998.

To summarize, this bill:

- Provides greater guidance as to the name of an individual debtor to be provided on a financing statement (the UCC-1 and the UCC-3). If an individual debtor has a current drivers license or special identification card issued by the State, that name must be used. Otherwise, the name must be the debtor's individual name or the surname and first personal name. This is the single most important item in these amendments.
- Provides greater specificity as to the debtor's name on a financing statement when the debtor is a corporation, limited liability company, or limited partnership and when the collateral is held in a statutory or common law trust or in a decedent's estate. Essentially, the entity's name on the financing statement must be the name on its organizational documents (e.g., corporate charter).
- Provides greater protection for an existing secured party having a security interest in after-acquired property when its debtor relocates to another state or merges with another entity.
- Makes additional minor, clarifying, conforming, and technical changes to Article 9 as described more completely below.
- Includes transition provisions similar to those provided when Article 9 was last revised and includes specific authorization for the printing of official and drafters comments.
- Includes applicability provisions and an effective date of July 1, 2013. The ULC and the ALI have recommended that this date be uniformly adopted so that these amendments will be simultaneously operative in all 50 states.

According to the ULC, these amendments have already been enacted in 25 states and Puerto Rico. A draft of this bill was distributed to interested individuals and groups in this State for review, including the Department of Secretary of State, the Division of Motor Vehicles, the North Carolina Bar Association, the North Carolina Bankers Association, and various creditor and consumer groups. The General Statutes Commission is not aware of any opposition or controversy relating to the amendments.

Specific Comments

Section 1 amends G.S. 25-9-102 to add the definition of "public organic record" and to revise the definitions of "authenticate," "certificate of title," "jurisdiction of organization," and "registered organization."

The definition of "authenticate" in subdivision (a)(7) is conformed to the definition of "sign" in G.S. 25-7-102(a)(11) (dealing with documents of title such as warehouse receipts or bills of lading), which is drawn from the Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and National Commerce Act (E-SIGN).

The definition of "certificate of title" in subdivision (a)(10) is expanded to include an electronic certificate of title (e.g., for an automobile). The amendment takes into account the fact that some state certificate of title systems now permit or require electronic records as an alternative to the issuance of written certificates of title, although North Carolina still issues written certificates of title only.

The definition of "jurisdiction of organization" in subdivision (a)(50) is amended to mean the jurisdiction under whose law a registered organization is either "formed" or organized.

The definition of "public organic record" in subdivision (a)(70a) is added to designate which public record is relevant to determining the name of a debtor that is a "registered organization" under G.S. 25-9-503(a)(1).

The definition of "registered organization" in subdivision (a)(73) is amended to clarify that:

- The term includes an organization that is created without the need for a public filing but that is "formed" only when a public filing has been made. For example, under Delaware law, a statutory trust is created by a governing instrument, but is formed at the time of the filing of the initial certificate of trust in the office of the Secretary of State or at any later date or time specified in the certificate of trust.
- A Massachusetts-type business trust is a "registered organization."

Section 2 amends G.S. 25-9-105 to conform the requirements for control of electronic chattel paper with those in G.S. 25-7-106 for electronic documents of title and in G.S. 66-326 for transferrable records under the Uniform Electronic Transactions Act. New subsection (a) provides a general test for establishing control of electronic chattel paper, and subsection (b), which is based primarily on current law, provides a safe harbor test that, if satisfied, establishes control under the general test in subsection (a).

Section 3 amends G.S. 25-9-307(f)(2) to clarify that the state of location of a registered organization organized under federal law can be its main office, home office, or other comparable office if federal law allows it to so designate.

Section 4 amends G.S. 25-9-311(a) stylistically to reflect the amendment to the definition of "certificate of title" in G.S. 25-9-102(a)(10).

Section 5 amends G.S. 25-9-316 to add new subsections (h) and (i). These new subsections address the effect on a security interest in after-acquired property when a debtor moves to a different state or a new debtor in a different state becomes bound by the security agreement. Subsection (h) provides that the financing statement filed in the original jurisdiction continues to be effective against newly acquired property for up to four months after the debtor's location changes. Subsection (i) provides similar protection for a security interest in after-acquired property if a new debtor, e.g., a successor by merger, becomes bound by the original debtor's security agreement and the new debtor is located in a different jurisdiction than the jurisdiction in which the original debtor was located.

Section 6 amends G.S. 25-9-317 in subsection (d) to expand the list of intangible property that will be taken free of an unperfected security interest by a purchaser for value who had no knowledge of the unperfected security interest. Section 6 also updates "security certificate" to "certificated security."

Section 7 amends G.S. 25-9-326 to make conforming amendments necessitated by new subsections (h) and (i) of G.S. 25-9-316.

Section 8 amends G.S. 25-9-406(e) and (i) and adds a missing comma in subsection (d).

Section 8 amends G.S. 25-9-406(e) to make subsection (d) apply to a sale, after default, of a payment intangible or promissory note held as collateral and to an acceptance of collateral in full or partial satisfaction of the obligation it secures (subsection (d) makes contractual restrictions on the assignment of accounts, chattel paper, payment intangibles and promissory notes ineffective).

Section 8 also amends G.S. 25-9-406(i), which contains a list of statutory provisions to which subsection (f) does not apply (subsection (f) makes legal restrictions on assignments ineffective). The amendments to subsection (i) reformat the subsection and make a conforming amendment adding the "North Carolina State Lottery Act (Chapter 18C of the General Statutes)" to the list of exceptions to subsection (f). That Act was enacted after the enactment of subsection (f); it provides in G.S. 18C-132(h) that "The right of any person to a prize shall not be assignable."

Section 9 makes amendments to G.S. 25-9-408 that are similar to those in Section 8.

Section 10 amends G.S. 25-9-502(c)(3) to provide an exception to the requirements for the name of an individual debtor in a mortgage filed as a financing statement for a fixture filing or to cover as-extracted collateral or timber to be cut. In this case, the individual's name is sufficient if the mortgage provides the debtor's individual name or surname and first personal name.

Section 11 amends G.S. 25-9-503 to provide more guidance on the sufficiency of a debtor's name to be provided on a financing statement. Because financing statements are indexed under the debtor's name, those who wish to find financing statements must know the correct name to search effectively.

Subsection (a) explains what the debtor's name is for purposes of a financing statement if the debtor is an individual, a registered organization (e.g., a corporation, limited partnership, or limited liability company), a decedent's estate, or a trust or trustee acting with respect to property held in a trust.. The amendments to this subsection provide as follows:

- Under subdivision (a)(1), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, the name must be the registered organization's name on the "public organic record" most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend, or restate the registered organization's name (e.g., a corporation's charter, an amendment to the charter, or a restated charter).
- Under subdivision (a)(2), if the collateral is being administered by the personal representative of a decedent, the name provided must be the name of the decedent and a separate part of the financing statement must indicate that the collateral is being administrated by a personal representative. New subsection (f) provides a safe harbor for the name of the decedent (name of decedent is sufficient if it is the name indicated on the order appointing the personal representative).
- Under subdivision (a)(3), if the collateral is held in a trust that is not a registered organization, the name must be the name of the trust if a name is stated in the trust's organic record; otherwise the name must be that of the settlor or testator. The financing statement must also indicate, in a separate part, that the collateral is held in trust and, if the name of the settlor or testator is provided as the name of the debtor, must provide sufficient additional information to distinguish the trust from other trusts having one or more of the same settlors or the same testator. New subsection (h) defines the term "name of the settlor or testator" for purposes of subdivision (a)(3).
- Under subdivision (a)(4), if the debtor is an individual who has an unexpired North Carolina drivers license or a special identification card issued under Article 2B (Special Identification Cards for Nonoperators) of Chapter 20 of the General Statutes, the name must be the name on the drivers license or card. If an individual has been issued more than one drivers license or special identification card, new subsection (g) provides that the one that was issued most recently is the one to which subdivision (a)(4) refers.
- Under subdivision (a)(5), if the debtor does not have an unexpired drivers license or special identification card, the name must be either (i) the individual name of the debtor (as required by current Article 9) or (ii) the surname and first personal name of the debtor.
- Under subdivision (a)(6), the debtor's name in other cases must be the organization's name or, if there is none, the names of the partners, members, associates, or other constituents.

Section 12 amends G.S. 25-9-507(c) to make conforming amendments. The amendments replace a reference to a change of the debtor's name provided on a filed financing statement making the financing statement seriously misleading with a reference to the debtor's name becoming insufficient as the name of the debtor under G.S. 25-9-503(a) so that the financing statement becomes seriously misleading.

Section 13 amends G.S. 25-9-515(f) to provide that a debtor may be designated as a transmitting utility only in an initial financing statement; the designation cannot be made by an amendment to a financing statement. Section 13 makes the transmitting utility provision consistent with the filing provisions for public-finance and manufactured-home transactions under G.S. 25-9-515(b).

Section 14 amends G.S. 25-9-516(b) to make conforming amendments by changing "correction statement" to "information statement" and "last name" to "surname" and to delete as a ground for a filing office to reject a financing statement the failure of the financing statement to provide the debtor's type of organization (e.g., a partnership or corporation), jurisdiction of organization, or organizational identification number or indication that the debtor has none. This ground is deleted because the information is not considered to be sufficiently useful in practice and often adds cost and delay to the filing process.

Section 15 amends G.S. 25-9-518, which permits a debtor to file a "correction statement" to indicate that a financing statement or other filed record is inaccurate or wrongfully filed. The amendments give the filing a new name (an "information statement") and also permit a secured party of record to file an "information statement" (e.g., if someone incorrectly filed a termination statement).

Section 16 amends G.S. 25-9-521 to replace the existing "safe harbor" national financing statement forms with the new forms that were approved, effective April 20, 2011, by the International Association of Commercial Administrators, the organization that prepares financing statement forms for adoption by the states. The forms have been updated to reflect the 2010 amendments to Article 9.

Section 17 amends G.S. 25-9-607(b)(2)a. to clarify that the phrase "a default has occurred" refers to a default with respect to the obligation secured by the mortgage in question.

Section 18 amends G.S. 25-9-625(c) to conform the heading of the subsection to the text of the subsection.

Sections 19 through 25 provide transition provisions that apply only to the amendments and that are modeled upon the transition provisions used in connection with the 1998 revision of Article 9.

Section 26 provides applicability provisions.

Section 27 authorizes the printing of official comments and drafters comments.

Section 28 provides that the amendments become effective July 1, 2013, the uniform effective date adopted by the ULC and the ALI.

VISITOR REGISTRATION SHEET

JI

(Committee Name)

JUNE 19, 2012Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
K. Bestman	TSS
Floyd Lewis	General Statutes Commission
Elizabeth Biser	NC Bankers Assn
Erin Wynia	NCLM
Penn Broyhill	WCSR
David McDowan	NCAR
Ken Couch	NCBA
Colleen Kachorek	KLG
Bill Rowe	NCJC
Randy Ferrell	NCLTA
Clay Pittman	NCDP

09-21-201

VISITOR REGISTRATION SHEET

JT

(Committee Name)

JUNE 19, 2012Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
PAIGE WORSHAM	LEGISLATIVE REPORTING SERVICE
Hadley Haynes	SOS
GAIL P. ROYSTER	DMV
Tracy Buchholtz	DMV
Zan Pope	Gov office
ZALLEY	NMRS
ARMAND PEREZ	NCBA

09-21-201

SENATE JUDICIARY I COMMITTEE
Tuesday, June 26, 2012 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Judiciary I Committee met at 10:00 AM on June 26, 2012, in Room 1027 of the Legislative Building. 18 members of the committee were present. Senator Brunstetter, presided.

The meeting adjourned at 11:54 AM .

HB 1052-MECHANICS LIENS/BOND PAYMENT REFORMS-Senator Goolsby moved that the PCS come before the committee for the purpose of discussion. Representative Stevens was recognized to explain the PCS. Bill Patterson of research was recognized to walk through the bill and explain changes in the PCS. The bill would make a number of changes to the current law governing liens and payment bond claims arising from improvements to real property, including:

- Clarifies when certain lien rights arise to address problems resulting from federal bankruptcy court decisions
- Requires persons working on a public construction project who did not contract directly with the contractor to give the contractor notice of their involvement as a condition to making a payment bond claim
- Clarifies when a former owner of real property is a necessary party to an action to enforce the lien.

Senator Nesbitt expressed concern about the time line for subs to give notice of lien. Several members of the public were recognized to voice their concerns. Senator Brown moved for an unfavorable report as to the original bill, favorable as to the PCS. The motion carried.

SB 42-MECHANICS LIEN/PVT LIEN AGENT-FOR CONCURRENCE-Representative Stevens recognized to explain bill. Bill Patterson recognized to further explain bill. S. 42 requires that persons furnishing labor or materials for improvements to real property costing at least $30,000 must give notice to a lien agent designated by the owner either before recordation of a deed or deed of trust, or within fifteen days of their first furnishing of labor or materials, in order to preserve their lien rights. These changes effective date to April 1, 2013. Senator Stein moved to recommend that the senate do not concur and the motion carried.

Senator Peter Brunstetter, Presiding

Michael Lewis , Committee Clerk

Senate Judiciary I Committee
Tuesday, June 26, 2012, 10:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 156	Lenoir Fox Trapping.	Representative LaRoque
HB 1052	Mechanics Liens/Payment Bond Reforms.	Representative Stevens
SB 42	Mech. Liens/PVT Lien Agent.	Senator Mansfield

Presentations

Other Business

Adjournment

HB 156 amended to be titled "Greene County Elections"

Senate Judiciary I Committee
Tuesday, June 26, 2012, 10:00 AM
1027 LB

Public Comment

HB 1052- MECHANICS LIEN/PAYMENT BOND REFORM

- **Mac Boxley, General Counsel, NC Aggregate**
- **Henry Jones, Electrical & Plumbing Contractors**
- **Catherine Wilkerson, NC Bar Association**
- **Connie Stevens, Ready Mix**
- **David Simpson, Carolinas Associated General Contractors**

SB 42-MECH. LIENS/PVT LIEN AGENT

- **David Ferrell, NC Land & Title Association**
- **Mac Boxley, General Counsel, NC Aggregate**
- **Catherine Wilkerson, NC Bar Association**
- **Henry Jones, Carolinas Electrical Contractors**
- **Dave Crawford, NC American Institute of Architects**
- **Betsy Bailey, NC Council of Engineers**
- **Allison Cooper, Southeastern Association of Credit Managers**
- **Connie Wilson, NC American Association of Contractors**

NORTH CAROLINA GENERAL ASSEMBLY

SENATE

JUDICIARY I COMMITTEE REPORT

Senator Peter S. Brunstetter, Chair

Tuesday, June 26, 2012

Senator BRUNSTETTER,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **1052** Mechanics Liens/Payment Bond Reforms.

Draft Number:	PCS30654
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Senator Brunstetter will present HB 1052

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 1052*
Committee Substitute Favorable 6/13/12
Committee Substitute #2 Favorable 6/20/12
PROPOSED SENATE COMMITTEE SUBSTITUTE H1052-CSTG-54 [v.4]

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Short Title: Mechanics Liens/Payment Bond Reforms. (Public)

Sponsors:

Referred to:

May 23, 2012

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS AMENDMENTS TO NORTH CAROLINA'S MECHANICS LIEN AND PAYMENT BOND LAWS AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S MECHANICS LIENS ON REAL PROPERTY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44A-7 reads as rewritten:

"**§ 44A-7. Definitions.**

Unless the context otherwise ~~requires in this Article:~~requires, the following definitions apply in this Article:

(1) Contractor. – A person who contracts with an owner to improve real property.

(2) First tier subcontractor. – A person who contracts with a contractor to improve real property.

~~(1)~~(3) ~~"Improve" means to~~ Improve. – To build, effect, alter, repair, or demolish any improvement upon, connected with, or on or beneath the surface of any real property, or to excavate, clear, grade, fill or landscape any real property, or to construct driveways and private roadways, or to furnish materials, including trees and shrubbery, for any of such purposes, or to perform any labor upon such improvements, and shall also mean and include any design or other professional or skilled services furnished by architects, engineers, land surveyors and landscape architects registered under Chapter 83A, 89A or 89C of the General Statutes, and rental of equipment directly utilized on the real property in making the improvement.

~~(2)~~(4) ~~"Improvement" means all~~ Improvement. – All or any part of any building, structure, erection, alteration, demolition, excavation, clearing, grading, filling, or landscaping, including trees and shrubbery, driveways, and private roadways, on real property.

(5) Obligor. – An owner, contractor, or subcontractor in any tier who owes money to another as a result of the other's partial or total performance of a contract to improve real property.

~~(3)~~(6) ~~An "owner" is a~~ Owner. – A person who has an interest in the real property improved and for whom an improvement is made and who ordered the improvement to be made. "Owner" includes successors in interest of the owner and agents of the owner acting within their authority.

~~(4)~~(7) ~~"Real property" means the~~ Real property. – The real estate that is improved, including lands, leaseholds, tenements and hereditaments, and improvements placed thereon.

(8) Second tier subcontractor. – A person who contracts with a first tier subcontractor to improve real property.

(9) Third tier subcontractor. – A person who contracts with a second tier subcontractor to improve real property."

SECTION 2. G.S. 44A-11 reads as rewritten:

"**§ 44A-11. Perfecting claim of lien on real property.**

(a) Perfection. – A claim of lien on real property granted by this Article shall be perfected as of the time provided in G.S. 44A-10 upon the ~~filing of the claim of lien on real property under G.S. 44A-12 and may be enforced pursuant to G.S. 44A-13~~occurrence of all of the following:

(1) Service of a copy of the claim of lien on real property upon the record owner of the real property claimed to be subject to the claim of lien, and if the claim of lien on real property is being asserted pursuant to G.S. 44A-23, also upon the contractor through which subrogation is being asserted.

(2) Filing of the claim of lien on real property under G.S. 44A-12.

(b) Method of Service. – Service of the claim of lien on real property pursuant to subsection (a) of this section shall not require proof of actual receipt by the listed recipient and shall be complete upon the occurrence of any of the following:

(1) Personal delivery of a copy of the claim of lien on real property upon the recipient.

(2) Deposit of a copy of the claim of lien on real property in a postpaid, properly addressed wrapper in either of the following:

a. A post office or official depository under the exclusive care and custody of the United States Postal Service.

b. An authorized depository under the exclusive care and custody of a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2).

(c) Service Address. – For purposes of this section, a wrapper addressed to a party required to be served under subdivision (1) of subsection (a) of this section shall be conclusively deemed properly addressed if it uses any of the following addresses:

(1) The address for the party to be served listed on the permit issued for the improvement.

(2) The address for the party to be served listed with the tax rolls for any county in North Carolina.

(3) The address of the registered agent for the party to be served listed with the North Carolina Secretary of State's office."

SECTION 3. G.S. 44A-12(c) reads as rewritten:

"**§ 44A-12. Filing claim of lien on real property.**

...

(c) Contents of Claim of Lien on Real Property to Be Filed. – All claims of lien on real property must be filed using a form substantially as follows:

CLAIM OF LIEN ON REAL PROPERTY

(1) Name and address of the person claiming the claim of lien on real property:
(2) Name and address of the record owner of the real property claimed to be subject to the claim of lien on real property at the time the claim of lien on real property is ~~filed:~~filed, and, if the claim of lien on real property is being asserted pursuant to G.S. 44A-23, the name of the contractor through which subrogation is being asserted:
(3) Description of the real property upon which the claim of lien on real property is claimed: (Street address, tax lot and block number, reference to recorded instrument, or any other description of real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.)
(4) Name and address of the person with whom the claimant contracted for the furnishing of labor or materials:
(5) Date upon which labor or materials were first furnished upon said property by the claimant:
(5a) Date upon which labor or materials were last furnished upon said property by the claimant:
(6) General description of the labor performed or materials furnished and the amount claimed therefor:
(7) I hereby certify that I have served the parties listed in paragraph two above in accordance with the requirements of G.S. 44A-11.

_____
Lien Claimant

Filed this ____ day of ____, ____

_____
Clerk of Superior Court

A general description of the labor performed or materials furnished is sufficient. It is not necessary for lien claimant to file an itemized list of materials or a detailed statement of labor performed.".

SECTION 4. G.S. 44A-13 is amended by adding new subsections to read:

"**§ 44A-13. Action to enforce claim of lien on real property.**

...

(d) Former Owner Not a Necessary Party to Action. – In an action brought under this section, a former owner of the improved property at the time the lien arose, who holds no ownership interest in the property at the time the action is commenced, and against whom the plaintiff seeks no relief, is not a necessary party to the action.

(e) Subsequent Purchaser and Lender Not Necessary or Proper Parties to Action Filed After Claim of Lien is Discharged. – If a claim of lien on real property filed under this Article is discharged pursuant to G.S. 44A-16(5) or G.S. 44A-16(6) prior to the filing of an action to enforce the claim of lien under G.S. 44A-13, then neither a subsequent purchaser of the real property upon which the lien is claimed nor the subsequent purchaser's lender shall be a necessary or proper party to the action. However, nothing herein precludes the lien claimant from asserting any claims against any party that are separate and distinct from enforcement of the lien.

(f) Subsequent Purchaser and Lender No Longer Necessary or Proper Parties Upon Discharge of Claim of Lien After Action Is Filed. – If a an action to enforce a lien under G.S. 44A-13 is commenced before the claim of lien is discharged pursuant to G.S. 44A-16(5) or G.S. 44A-16(6), a subsequent purchaser of the real property upon which the lien is claimed and the subsequent purchaser's lender shall cease to be a necessary or proper party to the action, and any claim for lien enforcement asserted against the subsequent purchaser of the real property upon which the lien is claimed or the subsequent purchaser's lender shall be dismissed upon motion of any party upon a showing that the claim of lien was discharged pursuant to

G.S. 44A-16. However, nothing herein precludes the lien claimant from continuing to pursue any claims against any party that are separate and distinct from enforcement of the lien.

(g) Bonds Prohibited From Requiring Subsequent Purchaser or Lender to Remain Parties to Action After Discharge of Claim of Lien. – The fact that a subsequent purchaser of the real property upon which the lien is claimed or the subsequent purchaser's lender is not a party to an action to enforce a claim of lien on real property subsequent to discharge of that claim of lien by the contractor under G.S. 44A-16 shall not invalidate the claim of lien under this Chapter nor shall it invalidate any bond filed under G.S. 44A-16 to discharge the claim of lien. Further, a bond filed under G.S. 44A-16(a)(6) shall not require that a subsequent purchaser of the real property upon which the lien is claimed or the subsequent purchaser's lender remain a party to an action to enforce a claim of lien after the claim of lien has been discharged pursuant to G.S. 44A-16.

(h) Definition of "Subsequent Purchaser." – For purposes of this section, a "subsequent purchaser" means a party whose record interest is protected under G.S. 47-18, including any beneficiary of a deed of trust or mortgagee of that party, the priority of whose interest is protected under the provisions of G.S. 47-20, and who was not the owner of the real property at the time of the improvements giving rise to the lien claim as defined in G.S. 44A-7(6)."

SECTION 5. G.S. 44A-17 is repealed.

SECTION 6. G.S. 44A-18 reads as rewritten:

"**§ 44A-18. Grant of lien upon funds; subrogation; perfection.**

~~Upon compliance with this Article:~~

~~(1)~~(a) A first tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall ~~be entitled to~~ have a lien upon funds that are owed to the contractor with whom the first tier subcontractor dealt and that arise out of the improvement on which the first tier subcontractor worked or furnished materials.

~~(2)~~(b) A second tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall ~~be entitled to~~have a lien upon funds that are owed to the first tier subcontractor with whom the second tier subcontractor dealt and that arise out of the improvement on which the second tier subcontractor worked or furnished materials. A second tier subcontractor, to the extent of the second tier subcontractor's lien provided in this subdivision, shall also be ~~entitled to be~~ subrogated to the lien upon funds of the first tier subcontractor with whom the second tier contractor dealt provided for in subdivision (1) of this section and shall ~~be entitled to~~ perfect it by service of the notice of claim of lien upon funds to the extent of the claim.

~~(3)~~(c) A third tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall ~~be entitled to~~have a lien upon funds that are owed to the second tier subcontractor with whom the third tier subcontractor dealt and that arise out of the improvement on which the third tier subcontractor worked or furnished materials. A third tier subcontractor, to the extent of the third tier subcontractor's lien upon funds provided in this subdivision, shall also ~~be entitled to~~ be subrogated to the lien upon funds of the second tier subcontractor with whom the third tier contractor dealt and to the lien upon funds of the first tier subcontractor with whom the second tier subcontractor dealt to the extent that the second tier subcontractor is ~~entitled to be~~ subrogated thereto, and in either case shall ~~be entitled to~~ perfect ~~the same~~it by service of the notice of claim of lien upon funds to the extent of the claim.

~~(4)~~(d) Subcontractors more remote than the third tier who furnished labor, materials, or rental equipment at the site of the improvement shall ~~be entitled to~~have a lien upon funds that are owed to the person with whom they dealt and that arise out of the improvement on which they furnished labor, materials, or rental equipment, but such remote tier subcontractor shall not be entitled to subrogation to the rights of other persons.

~~(5)~~(e) The liens upon funds granted under this section shall secure amounts earned by the lien claimant as a result of having furnished labor, materials, or rental equipment at the site of

the improvement under the contract to improve real property, including interest at the legal rate provided in G.S. 24-5, whether or not such amounts are due and whether or not performance or delivery is complete. In the event insufficient funds are retained to satisfy all lien claimants, subcontractor lien claimants may recover the interest due under this subdivision on a pro rata basis, but in no event shall interest due under this subdivision increase the liability of the obligor under G.S. 44A-20.

~~(6)~~(f) A lien upon funds granted under this section arises, attaches, and is ~~perfected~~effective immediately upon the first furnishing of labor, materials, or rental equipment at the site of the improvement by a subcontractor. Any lien upon funds granted under this section is perfected upon the giving of notice of claim of lien upon funds in writing to the obligor as provided in ~~G.S. 44A-19 and shall be effective upon the obligor's receipt of the notice. The subrogation rights of a first, second, or third tier subcontractor to the claim of lien on real property of the contractor created by Part 1 of Article 2 of this Chapter are perfected as provided in G.S. 44A-23.~~ G.S. 44A-19.

(g) Until a lien claimant gives notice of a claim of lien upon funds in writing to the obligor as provided in G.S. 44A-19, any owner, contractor, or subcontractor against whose interest the lien upon funds is claimed may make, receive, use, or collect payments thereon and may use such proceeds in the ordinary course of its business."

SECTION 7. G.S. 44A-19 reads as rewritten:

"**§ 44A-19. Notice of claim of lien upon funds.**

(a) Notice of a claim of lien upon funds shall set forth all of the following information:

(1) The name and address of the person claiming the lien upon funds.

(2) A general description of the real property improved.

(3) The name and address of the person with whom the lien claimant contracted to improve real property.

(4) The name and address of each person against or through whom subrogation rights are claimed.

(5) A general description of the contract and the person against whose interest the lien upon funds is claimed.

(6) The amount of the lien upon funds claimed by the lien claimant under the contract.

(b) All notices of claims of liens upon funds by first, second, or third tier subcontractors must be given using a form substantially as follows:

NOTICE OF CLAIM OF LIEN UPON FUNDS BY FIRST, SECOND, OR THIRD TIER SUBCONTRACTOR

To:

1._____, owner of property involved.
(Name and address)

2._____, ~~general~~ contractor.
(Name and address)

3._____, first tier subcontractor against or through
(Name and address) whom subrogation is claimed, if any.

4._____, second tier subcontractor against or through
(Name and address) whom subrogation is claimed, if any.

General description of real property ~~whereon~~ on which labor performed or material furnished:

_____

_____

_____

General description of undersigned lien claimant's contract including the names of the parties thereto:

_____

_____

The amount of lien upon funds claimed pursuant to the above described contract:

$_____

The undersigned lien claimant gives this notice of claim of lien upon funds pursuant to North Carolina law and claims all rights of subrogation to which he is entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes of North Carolina.

Dated_____

_____, Lien Claimant

_____

(Address)

(c) All notices of claims of liens upon funds by subcontractors more remote than the third tier must be given using a form substantially as follows:

NOTICE OF CLAIM OF LIEN UPON FUNDS BY SUBCONTRACTOR MORE REMOTE THAN THE THIRD TIER

To:

_____, person holding funds against which lien upon funds is claimed.

(Name and Address)

General description of real property ~~whereon~~ on which labor performed or material furnished:_____

_____

_____

General description of undersigned lien claimant's contract including the names of the parties thereto:

_____

_____

The amount of lien upon funds claimed pursuant to the above described contract:

$ _____

The undersigned lien claimant gives this notice of claim of lien upon funds pursuant to North Carolina law and claims all rights to which he or she is entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes of North Carolina.

Dated:_____

_____, Lien Claimant

(Address)

(d) Notices of claims of lien upon funds under this section shall be served upon the obligor by personal delivery or in any manner authorized by Rule 4 of the North Carolina Rules of Civil Procedure. A copy of the notice of claim of lien upon funds shall be attached to any claim of lien on real property filed pursuant to ~~G.S. 44A-20(d) or G.S. 44A-23.~~G.S. 44A-20(d).

(e) Notices of claims of lien upon funds shall not be filed with the clerk of superior court and shall not be indexed, docketed, or recorded in any way as to affect title to any real property, except a notice of a claim of lien upon funds may be filed with the clerk of superior court under either of the following circumstances:

(1) When the notice of claim of lien upon funds is attached to a claim of lien on real property filed pursuant to ~~G.S. 44A-20(d) or G.S. 44A-23.~~G.S. 44A-20(d).

(2) When the notice of claim of lien upon funds is filed by the obligor for the purpose of discharging the claim of lien upon funds in accordance with G.S. 44A-20(e).

(f) Filing a notice of claim of lien upon funds pursuant to subsection (e) of this section is not a violation of G.S. 44A-12.1."

SECTION 8. G.S. 44A-20 reads as rewritten:

"**§ 44A-20. Duties and liability of obligor.**

(a) Upon receipt of the notice of claim of lien upon funds provided for in this Article, the obligor shall be under a duty to retain any funds subject to the lien or liens upon funds under this Article up to the total amount of such liens upon funds as to which notices of claims of lien upon funds have been received.

(b) If, after the receipt of the notice of claim of lien upon funds to the obligor, the obligor makes further payments to a contractor or subcontractor against whose interest the lien or liens upon funds are claimed, the lien upon funds shall continue upon the funds in the hands of the contractor or subcontractor who received the payment, and in addition the obligor shall be personally liable to the person or persons entitled to liens upon funds up to the amount of such wrongful payments, not exceeding the total claims with respect to which the notice of claim of lien upon funds was received prior to payment.

(c) If an obligor makes a payment after receipt of notice of claim of lien on funds and incurs personal liability under subsection (b) of this section, the obligor shall be entitled to reimbursement and indemnification from the party receiving such payment.

(d) If the obligor is an owner of the property being improved, the lien claimant shall be entitled to a claim of lien upon real property upon the interest of the obligor in the real property to the extent of the owner's personal liability under subsection (b) of this section, which claim of lien on real property shall be enforced only in the manner set forth in G.S. 44A-7 through G.S. 44A-16 and which claim of lien on real property shall be entitled to the same priorities and subject to the same filing requirements and periods of limitation applicable to the contractor. The claim of lien on real property is perfected as of the time set forth in G.S. 44A-10 upon the filing of the claim of lien on real property pursuant to G.S. 44A-12. A lien waiver signed by the contractor prior to the commencement of an action to enforce a perfected claim of lien on real property granted under G.S. 44A-23 waives the subcontractor's right to enforce the contractor's claim of lien on real property, but does not affect the subcontractor's right to a claim of lien on funds or the subcontractor's right to a claim of lien on real property allowed under this subsection. The claim of lien on real property as provided under this subsection shall be in the form set out in G.S. 44A-12(c) and shall contain, in addition, a copy of the notice of claim of lien upon funds given pursuant to G.S. 44A-19 as an exhibit together with proof of service thereof by affidavit, and shall state the grounds the lien claimant has to believe that the obligor is personally liable for the debt under subsection (b) of this section.

(e) A notice of claim of lien upon funds under G.S. 44A-19 may be filed by the obligor with the clerk of superior court in each county where the real property upon which the filed notice of claim of lien upon funds is located for the purpose of discharging the notice of claim of lien upon funds by any of the methods described in G.S. 44A-16.

(f) A bond deposited under this section to discharge a filed notice of claim of lien upon funds shall be effective to discharge any claim of lien on real property filed by the same lien claimant pursuant to subsection (d) of this section or G.S. 44A-23 and shall further be effective to discharge any notices of claims of lien upon funds served by lower tier subcontractors or any claims of lien on real property filed by lower tier subcontractors pursuant to subsection (d) of this section or G.S. 44A-23 claiming through or against the contractor or higher tier subcontractors up to the amount of the bond."

SECTION 9. G.S. 44A-23 reads as rewritten:

"**§ 44A-23. Contractor's claim of lien on real property; perfection of subrogation rights of subcontractor.**

(a) First tier subcontractor. – A first tier ~~subcontractor, who gives notice of claim of lien upon funds as provided in this Article,~~subcontractor may, to the extent of ~~this~~ its claim, enforce the claim of lien on real property of the contractor created by Part 1 of this Article. The manner of such enforcement shall be as provided by G.S. 44A-7 through 44A-16. The claim of lien on real property is perfected as of the time set forth in G.S. 44A-10 upon filing of the claim of lien

on real property pursuant to G.S. 44A-12. When completing the claim of lien on real property form, the subcontractor may use as the date upon which labor or materials were first or last furnished on the real property either the date of the first or last furnishing of labor or materials on the real property by the subcontractor making the claim or the date of the first or last furnishing of labor or materials on the real property by the contractor through which the claim of lien on real property is being asserted. Upon the filing of the claim of lien on real ~~property, with the notice of claim of lien upon funds attached,~~ property and the commencement of the action, no action of the contractor shall be effective to prejudice the rights of the subcontractor without his written consent.

(b) Second or third tier subcontractor. –

(1) A second or third tier ~~subcontractor, who gives notice of claim of lien upon funds as provided in this Article,~~subcontractor may, to the extent of his claim, enforce the claim of lien on real property of the contractor created by Part 1 of Article 2 of the Chapter except when:

a. The owner or contractor, within 30 days following the date the ~~building~~ permit is issued for the improvement of the real property ~~involved,~~ involved or within 30 days following the date the contractor is awarded the contract for the improvement of the real property involved, whichever is later, posts on the property in a visible location adjacent to the posted ~~building permit~~ permit, if a permit is required, and files in the office of the clerk of superior court in each county wherein the real property to be improved is located, a completed and signed notice of contract form and the second or third tier subcontractor fails to serve upon the contractor a completed and signed notice of subcontract form by the same means of service as described in G.S. 44A-19(d); or

b. After the posting and filing of a signed notice of contract and the service upon the contractor of a signed notice of subcontract, the contractor serves upon the second or third tier subcontractor, within five days following each subsequent payment, by the same means of service as described in G.S. 44A-19(d), the written notice of payment setting forth the date of payment and the period for which payment is made as requested in the notice of subcontract form set forth herein.

(2) The form of the notice of contract to be so utilized under this section shall be substantially as follows and the fee for filing the same with the clerk of superior court shall be the same as charged for filing a claim of lien on real property:

"NOTICE OF CONTRACT

"(1) Name and address of the Contractor:

"(2) Name and address of the owner of the real property at the time this Notice of Contract is recorded:

"(3) General description of the real property to be improved (street address, tax map lot and block number, reference to recorded instrument, or any other description that reasonably identifies the real property):

"(4) Name and address of the person, firm or corporation filing this Notice of Contract:

"Dated:_____

_____

"Contractor

"Filed this the____day of _____, ____.

_____

Clerk of Superior Court"

(3) The form of the notice of subcontract to be so utilized under this section shall be substantially as follows:

"NOTICE OF SUBCONTRACT

"(1) Name and address of the subcontractor:

"(2) General description of the real property ~~where~~ on which the labor was performed or the material was furnished (street address, tax map lot and block number, reference to recorded instrument, or any description that reasonably identifies the real property):

"(3)

"(i) General description of the subcontractor's contract, including the names of the parties thereto:

"(ii) General description of the labor and material performed and furnished thereunder:

"(4) Request is hereby made by the undersigned subcontractor that he be notified in writing by the contractor of, and within five days following, each subsequent payment by the contractor to the first tier subcontractor for labor performed or material furnished at the improved real property within the above descriptions of such in paragraph (2) and subparagraph (3)(ii), respectively, the date payment was made and the period for which payment is made.

"Dated:_____

_____

Subcontractor"

(4) The manner of such enforcement shall be as provided by G.S. 44A-7 through G.S. 44A-16. The lien is perfected as of the time set forth in G.S. 44A-10 upon the filing of a claim of lien on real property pursuant to G.S. 44A-12. Upon the filing of the claim of lien on real ~~property, with the notice of claim of lien upon funds attached,~~ property and the commencement of the action, no action of the contractor shall be effective to prejudice the rights of the second or third tier subcontractor without his written consent.

(c) A lien waiver signed by the contractor prior to the commencement of an action to enforce a perfected claim of lien on real property granted under this section waives the subcontractor's right to enforce the contractor's claim of lien on real property, but does not affect the subcontractor's right to a claim of lien on funds or the subcontractor's right to a claim of lien on real property allowed under G.S. 44A-20(d)."

SECTION 10. G.S. 44A-24 reads as rewritten:

"**§ 44A-24. False statement a ~~misdemeanor.~~misdemeanor, an unfair and deceptive trade practice, and grounds for disciplinary action against a licensed contractor or qualifying party.**

If any contractor or other person receiving payment from an obligor for an improvement to real property or from a purchaser for a conveyance of real property with improvements subject to this Article or to Article 3 of this Chapter shall knowingly furnish to such obligor, purchaser, or to a lender who obtains a security interest in said real property, or to a title insurance company insuring title to such real property, a false written statement of the sums due or claimed to be due for labor or material furnished at the site of improvements to such real property, then such contractor, subcontractor or other person shall be guilty of a Class 1 ~~misdemeanor.~~ misdemeanor and shall be subject to a claim for violation of G.S. 75-1.1 by any obligor, purchaser, lender who obtains a security interest in such property, title insurance company insuring title to such property, or any person who otherwise would be entitled to a claim of lien on real property under this Article and who suffers actual harm as a result of the misrepresentation. In addition, any person who knowingly signs or directs another person to sign such a written statement shall be guilty of a Class 1 misdemeanor and subject to a claim for violation of G.S. 75-1.1. Upon conviction and in the event the court shall grant any defendant a suspended sentence, the court may in its discretion include as a condition of such

suspension a provision that the defendant shall reimburse the party who suffered loss on such conditions as the court shall determine are proper.

The elements of the offense herein stated are the furnishing of the false written statement with knowledge that it is false and the subsequent or simultaneous receipt of payment from an obligor or ~~purchaser, and in any~~ purchaser by the person signing the document, a person directing another to sign the document, or any person or entity for whom the document was signed. In any criminal prosecution hereunder it shall not be necessary for the State to prove that the obligor, purchaser, lender or title insurance company relied upon the false statement or that any person was injured thereby.

In addition to the criminal sanctions and civil liabilities created by this section, conduct constituting the offense herein stated and causing actual harm to any person by any licensed contractor or qualifying party, as that term is used in Chapter 87 of the General Statutes, shall constitute deceit and misconduct subject to disciplinary action under Chapter 87 of the General Statutes, including revocation, suspension, or restriction of a license or the ability to act as a qualifying party for a license."

SECTION 11. G.S. 44A-27 reads as rewritten:

"**§ 44A-27. Actions on payment bonds; service of notice.**

(a) Subject to the provision of subsection (b) hereof, any claimant who has performed labor or furnished materials in the prosecution of the work required by any contract for which a payment bond has been given pursuant to the provisions of this Article, and who has not been paid in full therefor before the expiration of 90 days after the day on which the claimant performed the last such labor or furnished the last such materials for which he claims payment, may bring an action on such payment bond in his own name, to recover any amount due him for such labor or materials and may prosecute such action to final judgment and have execution on the judgment.

(b) Any claimant who has a direct contractual relationship with any subcontractor but has no contractual relationship, express or implied, with the contractor may bring an action on the payment bond only if he has given written notice of claim on payment bond to the contractor within 120 days from the date on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. The contractor shall furnish a copy of the payment bond required by this Article within seven calendar days in response to a written request served by any claimant in accordance with the provisions of G.S. 44A-27(c). Subject to the exception set forth in subsection (e) of this section, unless the contractor has failed to satisfy its obligation to timely furnish a copy of the payment bond to a claimant upon proper request by the claimant, the claim of such a claimant shall not include labor or materials provided more than 75 days prior to the claimant's service, in accordance with subsections (c) and (d) of this section, of its written notice of public subcontract to the contractor.

(c) The ~~notice~~notices required by and any requests for copy of payment bond referenced by subsection ~~(b),~~(b) of this section, ~~above,~~ shall be served by ~~registered or~~ certified mail, or by signature confirmation as provided by the United States Postal Service, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business or to such agent identified in the contractor's project statement referenced in subdivision (1) of subsection (f) of this section or served in any manner provided by law for the service of summons.

(d) The form of the notice of public subcontract to be served pursuant to subsection (b) of this section shall be substantially as follows:

"NOTICE OF PUBLIC SUBCONTRACT

(1) Name and address of the subcontractor giving notice of public subcontract:

(2) General description of the real property on which the labor was or is to be performed or the material was or is to be furnished (street address, tax map lot and block number, reference to recorded instrument, or any description that reasonably identifies the real property):

(3) General description of the subcontractor's contract, including the names and addresses of the parties thereto:

(4) General description of the labor and material performed and furnished thereunder:

Dated: _____

_____

Subcontractor"

(e) Notwithstanding subsections (b), (c), and (d) of this section, the obligation to provide a notice of public subcontract shall not apply to claims of twenty thousand dollars ($20,000) or less and, for any claim exceeding twenty thousand dollars ($20,000), shall apply only to that portion of the claim in excess of twenty thousand dollars ($20,000).

(f) In connection with any construction contract for which a bond is required by G.S. 44A-26(a):

(1) The contractor shall provide to each subcontractor that it engages to perform labor or furnish materials in the performance of the construction contract a contractor's project statement containing all of the following information:

a. The name of the project.

b. The physical address of the project.

c. The name of the contracting body.

d. The name of the contractor.

e. The name, phone number, and mailing address of an agent authorized by the contractor to accept service of the requests for payment bond, the notice of public subcontract, and the notice of claim on payment bond referenced in subsection (b) of this section.

f. The name and address of the principal place of business of the surety issuing the payment bond required by G.S. 44A-26(a) for the construction contract.

(2) Each subcontractor shall provide each subcontractor that it engages to perform labor or furnish materials in the performance of the construction contract a copy of the contractor's project statement.

(3) No agreement entered into between a contractor and a subcontractor or between a subcontractor and its subcontractor shall be enforceable against the lower tier party until the contractor's project statement has been provided to the lower tier party."

SECTION 12.(a) G.S. 44A-4(b) reads as rewritten:

"**§ 44A-4. Enforcement of lien by sale.**

...

(b) Notice and Hearings. –

(1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the relevant time period provided by subsection (a) shall give notice to the Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars ($10.00). The Division of Motor Vehicles shall issue notice by ~~registered or~~ certified mail, return receipt requested, to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party

and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by ~~registered or~~ certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. The Division shall notify the lienor whether such notice is timely received by the Division. In lieu of the notice by the lienor to the Division and the notices issued by the Division described above, the lienor may issue notice on a form approved by the Division pursuant to the notice requirements above. If notice is issued by the lienor, the recipient shall return the form requesting a hearing to the lienor, and not the Division, within 10 days from the date the recipient receives the notice if a judicial hearing is requested. If the ~~registered or~~ certified mail notice has been returned as undeliverable and the notice of a right to a judicial hearing has been given to the owner of the motor vehicle in accordance with G.S. 20-28.4, no further notice is required. Failure of the recipient to notify the Division or lienor, as specified in the notice, within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division or lienor, as specified in the notice, is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the ~~registered or~~ certified mail notice has been returned as undeliverable, or if the name of the person having legal title to the vehicle cannot reasonably be ascertained and the fair market value of the vehicle is less than eight hundred dollars ($800.00), the lienor may institute a special proceeding in the county where the vehicle is being held, for authorization to sell that vehicle. Market value shall be determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.

In such a proceeding a lienor may include more than one vehicle, but the proceeds of the sale of each shall be subject only to valid claims against that vehicle, and any excess proceeds of the sale shall be paid immediately to the Treasurer for disposition pursuant to Chapter 116B of the General Statutes.

The application to the clerk in such a special proceeding shall contain the notice of sale information set out in subsection (f) hereof. If the application is in proper form the clerk shall enter an order authorizing the sale on a date

not less than 14 days therefrom, and the lienor shall cause the application and order to be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom notice was mailed pursuant to this subsection. Following the authorized sale the lienor shall file with the clerk a report in the form of an affidavit, stating that the lienor has complied with the public or private sale provisions of G.S. 44A-4, the name, address, and bid of the high bidder or person buying at a private sale, and a statement of the disposition of the sale proceeds. The clerk then shall enter an order directing the Division to transfer title accordingly.

If prior to the sale the owner or legal possessor contests the sale or lien in a writing filed with the clerk, the proceeding shall be handled in accordance with G.S. 1-301.2.

(2) If the property upon which the lien is claimed is other than a motor vehicle required to be registered, the lienor following the expiration of the 30-day period provided by subsection (a) shall issue notice to the person having legal title to the property, if reasonably ascertainable, and to the person with whom the lienor dealt if different by ~~registered or~~ certified mail, return receipt requested. Such notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the lienor by ~~registered or~~ certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the lienor that a hearing is desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the lienor that a hearing is desired by the return of such form to the lienor. Failure of the recipient to notify the lienor within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to sale of the property against which the lien is asserted and the lienor may proceed to enforce the lien by public or private sale as provided in this section. If the lienor is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section only pursuant to the order of a court of competent jurisdiction."

SECTION 12.(b) G.S. 44A-24.10 reads as rewritten:

"**§ 44A-24.10. Lien extinguished for lien claimant failing to file suit or answer in pending suit within 30 days after service on owner.**

If a lien claimant fails to file a suit to enforce the lien or fails to file an answer in a pending suit to enforce a lien within 30 days after a properly served written demand of the owner, lienee, or other authorized agent, the lien shall be extinguished. Service of the demand shall be by ~~registered or~~ certified mail, return receipt requested, or by personal service. The claimant shall file proof of properly served written demand with the clerk of the superior court. The provisions of this section shall not extend to any other deadline provided by law for the filing of any pleadings or for the foreclosure of any lien governed by this Part."

SECTION 12.(c) G.S. 44A-43 reads as rewritten:

"**§ 44A-43. Enforcement of self-service storage facility lien.**

...

(b) Notice and Hearing:

(1) If the property upon which the lien is claimed is a motor vehicle, the lienor, following the expiration of the 15-day period provided by subsection (a), shall give notice to the Division of Motor Vehicles that a lien is asserted and that a sale is proposed. The lienor shall remit to the Division a fee of two dollars ($2.00); and shall also furnish the Division with the last known address of the occupant. The Division of Motor Vehicles shall issue notice by ~~registered or~~ certified mail, return receipt requested to the person having legal title to the vehicle, if reasonably ascertainable, and to the occupant, if different, at his last known address. The notice shall:

...

c. State that the legal title holder and the occupant have a period of 10 days from the date of receipt of the notice in which to notify the Division of Motor Vehicles by ~~registered or~~ certified mail, return receipt requested, that a hearing is desired to contest the sale of the vehicle pursuant to the lien.

The person with legal title or the occupant must, within 10 days of receipt of the notice from the Division of Motor Vehicles, notify the Division of his desire to contest the sale of the vehicle pursuant to the lien, and that the Division should so notify lienor.

Failure of the person with legal title or the occupant to notify the Division that a hearing is desired shall be deemed a waiver of the right to a hearing prior to sale of the vehicle against which the lien is asserted. Upon such failure, the Division shall so notify the lienor; the lienor may proceed to enforce the lien by a public sale as provided by this section; and the Division shall transfer title to the property pursuant to such sale.

If the Division is notified within the 10-day period provided in this section that a hearing is desired prior to the sale, the lien may be enforced by a public sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

...

(c) Public Sale. –

(1) Not less than 20 days prior to sale by public sale the lienor:

a. Shall cause notice to be delivered by ~~registered or~~ certified mail to the person having a security interest in the property if reasonably ascertainable, and to the occupant at the occupant's last known address. Notice given pursuant to this subdivision shall be presumed delivered when it is properly addressed, first-class postage prepaid, and deposited with the United States Postal Service.

...."

SECTION 13. Sections 1 through 3 and Sections 5 through 11 of this act become effective January 1, 2013, and apply to improvements to real property for which the first permit required to be obtained is obtained on or after that date or, with respect to projects for which no permit is required, apply to improvement to real property commenced on or after that date. Sections 4, 12, and 13 of this act are effective when this act becomes law.

HOUSE BILL 1052*
Committee Substitute Favorable 6/13/12
Committee Substitute #2 Favorable 6/20/12

Short Title: Mechanics Liens/Payment Bond Reforms. (Public)

Sponsors:

Referred to:

May 23, 2012

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS AMENDMENTS TO NORTH CAROLINA'S MECHANICS LIEN, TAX LIEN, AND PAYMENT BOND LAWS, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S MECHANICS LIENS ON REAL PROPERTY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44A-7 reads as rewritten:

"**§ 44A-7. Definitions.**

Unless the context otherwise ~~requires in this Article:~~requires, the following definitions apply in this Article:

(1) Contractor. – A person who contracts with an owner to improve real property.

(2) First tier subcontractor. – A person who contracts with a contractor to improve real property.

~~(1)~~(3) ~~"Improve" means to~~ Improve. – To build, effect, alter, repair, or demolish any improvement upon, connected with, or on or beneath the surface of any real property, or to excavate, clear, grade, fill or landscape any real property, or to construct driveways and private roadways, or to furnish materials, including trees and shrubbery, for any of such purposes, or to perform any labor upon such improvements, and shall also mean and include any design or other professional or skilled services furnished by architects, engineers, land surveyors and landscape architects registered under Chapter 83A, 89A or 89C of the General Statutes, and rental of equipment directly utilized on the real property in making the improvement.

~~(2)~~(4) ~~"Improvement" means all~~ Improvement. – All or any part of any building, structure, erection, alteration, demolition, excavation, clearing, grading, filling, or landscaping, including trees and shrubbery, driveways, and private roadways, on real property.

(5) Obligor. – An owner, contractor, or subcontractor in any tier who owes money to another as a result of the other's partial or total performance of a contract to improve real property.

~~(3)~~(6) ~~An "owner" is a~~ Owner. – A person who has an interest in the real property improved and for whom an improvement is made and who ordered the improvement to be made. "Owner" includes successors in interest of the owner and agents of the owner acting within their authority.

~~(4)~~(7) ~~"Real property" means the~~ Real property. – The real estate that is improved, including lands, leaseholds, tenements and hereditaments, and improvements placed thereon.

(8) Second tier subcontractor. – A person who contracts with a first tier subcontractor to improve real property.

(9) Third tier subcontractor. – A person who contracts with a second tier subcontractor to improve real property."

SECTION 2. G.S. 44A-11 reads as rewritten:

"§ 44A-11. Perfecting claim of lien on real property.

(a) Perfection. – A claim of lien on real property granted by this Article shall be perfected as of the time provided in G.S. 44A-10 upon the ~~filing of the claim of lien on real property under G.S. 44A-12 and may be enforced pursuant to G.S. 44A-13~~occurrence of all of the following:

(1) Service of a copy of the claim of lien on real property upon the record owner of the real property claimed to be subject to the claim of lien, and if the claim of lien on real property is being asserted pursuant to G.S. 44A-23, also upon the contractor through which subrogation is being asserted.

(2) Filing of the claim of lien on real property under G.S. 44A-12.

(b) Method of Service. – Service of the claim of lien on real property pursuant to subsection (a) of this section shall not require proof of actual receipt by the listed recipient and shall be complete upon the occurrence of any of the following:

(1) Personal delivery of a copy of the claim of lien on real property upon the recipient.

(2) Deposit of a copy of the claim of lien on real property in a postpaid, properly addressed wrapper in either of the following:

a. A post office or official depository under the exclusive care and custody of the United States Postal Service.

b. An authorized depository under the exclusive care and custody of a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2).

(c) Service Address. – For purposes of this section, a wrapper addressed to a party required to be served under subdivision (1) of subsection (a) of this section shall be conclusively deemed properly addressed if it uses any of the following addresses:

(1) The address for the party to be served listed on the permit issued for the improvement.

(2) The address for the party to be served listed with the tax rolls for any county in North Carolina.

(3) The address of the registered agent for the party to be served listed with the North Carolina Secretary of State's office."

SECTION 3. G.S. 44A-12 reads as rewritten:

"§ 44A-12. Filing claim of lien on real property.

(a) Place of Filing. – All claims of lien on real property must be filed in the office of the clerk of superior court in each county where the real property subject to the claim of lien on real property is located. The clerk of superior court shall note the claim of lien on real property on the judgment docket and index the same under the name of the record owner of the real property at the time the claim of lien on real property is filed. An additional copy of the claim of lien on real property may also be filed with any receiver, referee in bankruptcy or assignee for benefit of creditors who obtains legal authority over the real property.

(b) Time of Filing. – Claims of lien on real property may be filed at any time after the maturity of the obligation secured thereby but not later than 120 days after the last furnishing of labor or materials at the site of the improvement by the person claiming the lien.

(c) Contents of Claim of Lien on Real Property to Be Filed. – All claims of lien on real property must be filed using a form substantially as follows:

CLAIM OF LIEN ON REAL PROPERTY

(1) Name and address of the person claiming the claim of lien on real property:
(2) Name and address of the record owner of the real property claimed to be subject to the claim of lien on real property at the time the claim of lien on real property is ~~filed:~~filed, and, if the claim of lien on real property is being asserted pursuant to G.S. 44A-23, the name of the contractor through which subrogation is being asserted:
(3) Description of the real property upon which the claim of lien on real property is claimed: (Street address, tax lot and block number, reference to recorded instrument, or any other description of real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.)
(4) Name and address of the person with whom the claimant contracted for the furnishing of labor or materials:
(5) Date upon which labor or materials were first furnished upon said property by the claimant:
(5a) Date upon which labor or materials were last furnished upon said property by the claimant:
(6) General description of the labor performed or materials furnished and the amount claimed therefor:
(7) I hereby certify that I have served the parties listed in paragraph two above in accordance with the requirements of G.S. 44A-11.

_____
Lien Claimant

Filed this ____ day of ____, ____

_____
Clerk of Superior Court

A general description of the labor performed or materials furnished is sufficient. It is not necessary for lien claimant to file an itemized list of materials or a detailed statement of labor performed.

(d) No Amendment of Claim of Lien on Real Property. – A claim of lien on real property may not be amended. A claim of lien on real property may be cancelled by a claimant or the claimant's authorized agent or attorney and a new claim of lien on real property substituted therefor within the time herein provided for original filing.

(e) Notice of Assignment of Claim of Lien on Real Property. – When a claim of lien on real property has been filed, it may be assigned of record by the lien claimant in a writing filed with the clerk of superior court who shall note the assignment in the margin of the judgment docket containing the claim of lien on real property. Thereafter the assignee becomes the lien claimant of record.

(f) Waiver of Right to File, Serve, or Claim ~~Liens as Consideration for Contract Against Public Policy.~~ Liens. –

(1) An agreement to waive the right to file a claim of lien on real property granted under this Part, or an agreement to waive the right to serve a notice of claim of lien upon funds granted under Part 2 of this Article, which agreement is in anticipation of and in consideration for the awarding of any contract, either expressed or implied, for the making of an improvement upon real property under this Article is against public policy and is

unenforceable. This section does not prohibit subordination or release of a lien granted under this Part or Part 2 of this Article.

(2) Lien waivers denoted as "partial" lien waivers shall not alter or waive the lien claimant's effective date for any lien claim created by this Article. The sole manner of altering or waiving the effective date is by the lien claimant's executing a document expressly denoted as a "final" lien waiver.

(3) Unless expressly stated on the lien waiver form, the lien waiver shall be construed to be conditional upon the lien claimant's actual receipt of the specified funds.

(4) Lien waivers shall be substantially in the forms set forth below. Other forms may be used, but any substantive provisions that represent variations to the statutory forms affecting the lien rights created by this Article shall be unenforceable.

(5) The provisions of this section regarding lien waivers do not apply to lien waivers or subordinations obtained by closing attorneys, lenders, title insurance companies, or those acting on their behalf, as a part of any real estate or financing transactions. Nothing herein shall prevent partial or final lien waivers obtained by closing attorneys, lenders, title insurance companies, or those acting on their behalf, from containing subordination and/or release of lien agreements or from otherwise altering or modifying lien rights if agreed to by the signing parties.

(g) Partial lien waivers shall be in substantially the following form:

PARTIAL LIEN WAIVER

The undersigned lien claimant, in consideration of the sum of $____(insert amount of payment), hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through _____(insert date) to _____(insert the name of your customer) on the job of _____(insert the name of the owner) to the following property:

(insert description of property)

This waiver and release does not cover any labor, services, or materials furnished after the date specified above, nor does it release claims for retention to become due at a later date, nor does it release any other claims expressly identified below:

Claims not released by this waiver:

_____

_____

_____

THIS WAIVER IS/IS NOT CONDITIONAL UPON LIEN CLAIMANT'S FUTURE RECEIPT OF THE FUNDS STATED ABOVE. (If no choice is indicated, this lien waiver shall be deemed to be conditional upon lien claimant's future receipt of the specified funds.) Unless expressly excepted above, this waiver shall likewise apply to any payment bond issued for the benefit of lien claimant for its labor, materials, or services provided to improve the property.

DATED:_____

_____(Lien Claimant)

By:_____

(h) Final lien waivers shall be in substantially the following form:

FINAL LIEN WAIVER

The undersigned lien claimant, in consideration of the final payment in the amount of $_____ hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to _____(insert the name of your customer) on the job of _____(insert the name of the owner) to the following described property:

(description of property)

This waiver and release does not cover any labor, services, or materials furnished after the date of this lien waiver. Lien claimant, however, does hereby release any and all claims of lien for labor, materials, or services provided on or before the date of this waiver, including, but not exclusively, any amounts that may be deemed retainage. This lien waiver further waives the effective date of any lien claim created by this Article. The only claims of lien for previously provided labor, services, or materials which are not hereby released are those claims expressly identified below:

Claims not released by this waiver:

_____

_____

_____

THIS WAIVER IS/IS NOT CONDITIONAL UPON LIEN CLAIMANT'S FUTURE RECEIPT OF THE FUNDS STATED ABOVE. (If no choice is indicated, this lien waiver shall be deemed to be conditional upon lien claimant's future receipt of the specified funds.) Unless expressly excepted above, this waiver shall likewise apply to any payment bond issued for the benefit of lien claimant for its labor, materials, or services provided to improve the property.

DATED:_____

_____(Lien Claimant)

By:_____".

SECTION 4. G.S. 44A-13 is amended by adding new subsections to read:

"**§ 44A-13. Action to enforce claim of lien on real property.**

...

(d) Former Owner Not a Necessary Party to Action. – In an action brought under this section, a former owner of the improved property at the time the lien arose, who holds no ownership interest in the property at the time the action is commenced, and against whom the plaintiff seeks no relief, is not a necessary party to the action.

(e) Subsequent Purchaser and Lender Not Necessary or Proper Parties to Action Filed After Claim of Lien is Discharged. – If a claim of lien on real property filed under this Article is discharged pursuant to G.S. 44A-16(5) or G.S. 44A-16(6) prior to the filing of an action to enforce the claim of lien under G.S. 44A-13, then neither a subsequent purchaser of the real property upon which the lien is claimed nor the subsequent purchaser's lender shall be a necessary or proper party to the action. However, nothing herein precludes the lien claimant

from asserting any claims against any party that are separate and distinct from enforcement of the lien.

(f) Subsequent Purchaser and Lender No Longer Necessary or Proper Parties Upon Discharge of Claim of Lien After Action Is Filed. – If a an action to enforce a lien under G.S. 44A-13 is commenced before the claim of lien is discharged pursuant to G.S. 44A-16(5) or G.S. 44A-16(6), a subsequent purchaser of the real property upon which the lien is claimed and the subsequent purchaser's lender shall cease to be a necessary or proper party to the action, and any claim for lien enforcement asserted against the subsequent purchaser of the real property upon which the lien is claimed or the subsequent purchaser's lender shall be dismissed upon motion of any party upon a showing that the claim of lien was discharged pursuant to G.S. 44A-16. However, nothing herein precludes the lien claimant from continuing to pursue any claims against any party that are separate and distinct from enforcement of the lien.

(g) Bonds Prohibited From Requiring Subsequent Purchaser or Lender to Remain Parties to Action After Discharge of Claim of Lien. – The fact that a subsequent purchaser of the real property upon which the lien is claimed or the subsequent purchaser's lender is not a party to an action to enforce a claim of lien on real property subsequent to discharge of that claim of lien by the contractor under G.S. 44A-16 shall not invalidate the claim of lien under this Chapter nor shall it invalidate any bond filed under G.S. 44A-16 to discharge the claim of lien. Further, a bond filed under G.S. 44A-16(a)(6) shall not require that a subsequent purchaser of the real property upon which the lien is claimed or the subsequent purchaser's lender remain a party to an action to enforce a claim of lien after the claim of lien has been discharged pursuant to G.S. 44A-16.

(h) Definition of "Subsequent Purchaser." – For purposes of this section, a "subsequent purchaser" means a party whose record interest is protected under G.S. 47-18, including any beneficiary of a deed of trust or mortgagee of that party, the priority of whose interest is protected under the provisions of G.S. 47-20, and who was not the owner of the real property at the time of the improvements giving rise to the lien claim as defined in G.S. 44A-7(3)."

SECTION 5. G.S. 44A-17 is repealed.

SECTION 6. G.S. 44A-18 reads as rewritten:

"§ 44A-18. Grant of lien upon funds; subrogation; perfection.

~~Upon compliance with this Article:~~

~~(1)~~(a) A first tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall ~~be entitled to~~ have a lien upon funds that are owed to the contractor with whom the first tier subcontractor dealt and that arise out of the improvement on which the first tier subcontractor worked or furnished materials.

~~(2)~~(b) A second tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall ~~be entitled to~~have a lien upon funds that are owed to the first tier subcontractor with whom the second tier subcontractor dealt and that arise out of the improvement on which the second tier subcontractor worked or furnished materials. A second tier subcontractor, to the extent of the second tier subcontractor's lien provided in this subdivision, shall also be ~~entitled to be~~ subrogated to the lien upon funds of the first tier subcontractor with whom the second tier contractor dealt provided for in subdivision (1) of this section and shall ~~be entitled to~~ perfect it by service of the notice of claim of lien upon funds to the extent of the claim.

~~(3)~~(c) A third tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall ~~be entitled to~~have a lien upon funds that are owed to the second tier subcontractor with whom the third tier subcontractor dealt and that arise out of the improvement on which the third tier subcontractor worked or furnished materials. A third tier subcontractor, to the extent of the third tier subcontractor's lien upon funds provided in this subdivision, shall also ~~be entitled to~~ be subrogated to the lien upon funds of the second tier subcontractor with whom the third tier contractor dealt and to the lien upon funds of the first

tier subcontractor with whom the second tier subcontractor dealt to the extent that the second tier subcontractor is ~~entitled to be~~ subrogated thereto, and in either case shall ~~be entitled to~~ perfect ~~the same~~it by service of the notice of claim of lien upon funds to the extent of the claim.

~~(4)~~(d) Subcontractors more remote than the third tier who furnished labor, materials, or rental equipment at the site of the improvement shall ~~be entitled to~~have a lien upon funds that are owed to the person with whom they dealt and that arise out of the improvement on which they furnished labor, materials, or rental equipment, but such remote tier subcontractor shall not be entitled to subrogation to the rights of other persons.

~~(5)~~(e) The liens upon funds granted under this section shall secure amounts earned by the lien claimant as a result of having furnished labor, materials, or rental equipment at the site of the improvement under the contract to improve real property, including interest at the legal rate provided in G.S. 24-5, whether or not such amounts are due and whether or not performance or delivery is complete. In the event insufficient funds are retained to satisfy all lien claimants, subcontractor lien claimants may recover the interest due under this subdivision on a pro rata basis, but in no event shall interest due under this subdivision increase the liability of the obligor under G.S. 44A-20.

~~(6)~~(f) A lien upon funds granted under this section arises, attaches, and is ~~perfected~~effective immediately upon the first furnishing of labor, materials, or rental equipment at the site of the improvement by a subcontractor. Any lien upon funds granted under this section is perfected upon the giving of notice of claim of lien upon funds in writing to the obligor as provided in ~~G.S. 44A-19 and shall be effective upon the obligor's receipt of the notice. The subrogation rights of a first, second, or third tier subcontractor to the claim of lien on real property of the contractor created by Part 1 of Article 2 of this Chapter are perfected as provided in G.S. 44A-23.~~ G.S. 44A-19.

(g) Until a lien claimant gives notice of a claim of lien upon funds in writing to the obligor as provided in G.S. 44A-19, any owner, contractor, or subcontractor against whose interest the lien upon funds is claimed may make, receive, use, or collect payments thereon and may use such proceeds in the ordinary course of its business."

SECTION 7. G.S. 44A-19 reads as rewritten:

"**§ 44A-19. Notice of claim of lien upon funds.**

(a) Notice of a claim of lien upon funds shall set forth all of the following information:

(1) The name and address of the person claiming the lien upon funds.

(2) A general description of the real property improved.

(3) The name and address of the person with whom the lien claimant contracted to improve real property.

(4) The name and address of each person against or through whom subrogation rights are claimed.

(5) A general description of the contract and the person against whose interest the lien upon funds is claimed.

(6) The amount of the lien upon funds claimed by the lien claimant under the contract.

(b) All notices of claims of liens upon funds by first, second, or third tier subcontractors must be given using a form substantially as follows:

NOTICE OF CLAIM OF LIEN UPON FUNDS BY FIRST, SECOND, OR THIRD TIER SUBCONTRACTOR

To:

1._____, owner of property involved.
(Name and address)

2._____, ~~general~~ contractor.
(Name and address)

3._____, first tier subcontractor against or through

(Name and address) whom subrogation is claimed, if any.
4._____, second tier subcontractor against or through
(Name and address) whom subrogation is claimed, if any.
General description of real property ~~where~~on which labor performed or material furnished:
_____
_____
_____
General description of undersigned lien claimant's contract including the names of the parties thereto:
_____
_____
The amount of lien upon funds claimed pursuant to the above described contract:
$_____
The undersigned lien claimant gives this notice of claim of lien upon funds pursuant to North Carolina law and claims all rights of subrogation to which he is entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes of North Carolina.
Dated_____
_____, Lien Claimant
_____
(Address)

(c) All notices of claims of liens upon funds by subcontractors more remote than the third tier must be given using a form substantially as follows:

NOTICE OF CLAIM OF LIEN UPON FUNDS BY SUBCONTRACTOR MORE REMOTE THAN THE THIRD TIER

To:
_____, person holding funds against which lien upon funds is claimed.
(Name and Address)
General description of real property ~~where~~on which labor performed or material furnished:_____
_____
_____
General description of undersigned lien claimant's contract including the names of the parties thereto:
_____
_____
The amount of lien upon funds claimed pursuant to the above described contract:
$ _____
The undersigned lien claimant gives this notice of claim of lien upon funds pursuant to North Carolina law and claims all rights to which he or she is entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes of North Carolina.
Dated:_____
_____, Lien Claimant
(Address)

(d) Notices of claims of lien upon funds under this section shall be served upon the obligor by personal delivery or in any manner authorized by Rule 4 of the North Carolina Rules of Civil Procedure. A copy of the notice of claim of lien upon funds shall be attached to any claim of lien on real property filed pursuant to ~~G.S. 44A-20(d) or G.S. 44A-23.~~G.S. 44A-20(d).

(e) Notices of claims of lien upon funds shall not be filed with the clerk of superior court and shall not be indexed, docketed, or recorded in any way as to affect title to any real property, except a notice of a claim of lien upon funds may be filed with the clerk of superior court under either of the following circumstances:

(1) When the notice of claim of lien upon funds is attached to a claim of lien on real property filed pursuant to ~~G.S. 44A-20(d) or G.S. 44A-23.~~G.S. 44A-20(d).

(2) When the notice of claim of lien upon funds is filed by the obligor for the purpose of discharging the claim of lien upon funds in accordance with G.S. 44A-20(e).

(f) Filing a notice of claim of lien upon funds pursuant to subsection (e) of this section is not a violation of G.S. 44A-12.1."

SECTION 8. G.S. 44A-20 reads as rewritten:

"**§ 44A-20. Duties and liability of obligor.**

(a) Upon receipt of the notice of claim of lien upon funds provided for in this Article, the obligor shall be under a duty to retain any funds subject to the lien or liens upon funds under this Article up to the total amount of such liens upon funds as to which notices of claims of lien upon funds have been received.

(b) If, after the receipt of the notice of claim of lien upon funds to the obligor, the obligor makes further payments to a contractor or subcontractor against whose interest the lien or liens upon funds are claimed, the lien upon funds shall continue upon the funds in the hands of the contractor or subcontractor who received the payment, and in addition the obligor shall be personally liable to the person or persons entitled to liens upon funds up to the amount of such wrongful payments, not exceeding the total claims with respect to which the notice of claim of lien upon funds was received prior to payment.

(c) If an obligor makes a payment after receipt of notice of claim of lien on funds and incurs personal liability under subsection (b) of this section, the obligor shall be entitled to reimbursement and indemnification from the party receiving such payment.

(d) If the obligor is an owner of the property being improved, the lien claimant shall be entitled to a claim of lien upon real property upon the interest of the obligor in the real property to the extent of the owner's personal liability under subsection (b) of this section, which claim of lien on real property shall be enforced only in the manner set forth in G.S. 44A-7 through G.S. 44A-16 and which claim of lien on real property shall be entitled to the same priorities and subject to the same filing requirements and periods of limitation applicable to the contractor. The claim of lien on real property is perfected as of the time set forth in G.S. 44A-10 upon the filing of the claim of lien on real property pursuant to G.S. 44A-12. A lien waiver signed by the contractor prior to filing of the claim of lien on real property waives the subcontractor's right to a claim of lien on real property but does not affect the subcontractor's rights to a claim of lien on funds under this Article. The claim of lien on real property as provided under this subsection shall be in the form set out in G.S. 44A-12(c) and shall contain, in addition, a copy of the notice of claim of lien upon funds given pursuant to G.S. 44A-19 as an exhibit together with proof of service thereof by affidavit, and shall state the grounds the lien claimant has to believe that the obligor is personally liable for the debt under subsection (b) of this section.

(e) A notice of claim of lien upon funds under G.S. 44A-19 may be filed by the obligor with the clerk of superior court in each county where the real property upon which the filed notice of claim of lien upon funds is located for the purpose of discharging the notice of claim of lien upon funds by any of the methods described in G.S. 44A-16.

(f) A bond deposited under this section to discharge a filed notice of claim of lien upon funds shall be effective to discharge any claim of lien on real property filed by the same lien claimant pursuant to subsection (d) of this section or G.S. 44A-23 and shall further be effective to discharge any notices of claims of lien upon funds served by lower tier subcontractors or any claims of lien on real property filed by lower tier subcontractors pursuant to subsection (d) of this section or G.S. 44A-23 claiming through or against the contractor or higher tier subcontractors up to the amount of the bond."

SECTION 9. G.S. 44A-23 reads as rewritten:

"**§ 44A-23. Contractor's claim of lien on real property; perfection of subrogation rights of subcontractor.**

(a) First tier subcontractor. – A first tier ~~subcontractor, who gives notice of claim of lien upon funds as provided in this Article,~~subcontractor may, to the extent of ~~this~~ its claim, enforce the claim of lien on real property of the contractor created by Part 1 of this Article. The manner of such enforcement shall be as provided by G.S. 44A-7 through 44A-16. The claim of lien on real property is perfected as of the time set forth in G.S. 44A-10 upon filing of the claim of lien on real property pursuant to G.S. 44A-12. When completing the claim of lien on real property form, the subcontractor may use as the date upon which labor or materials were first or last furnished on the real property either the date of the first or last furnishing of labor or materials on the real property by the subcontractor making the claim or the date of the first or last furnishing of labor or materials on the real property by the contractor through which the claim of lien on real property is being asserted. Upon the filing of the claim of lien on real ~~property, with the notice of claim of lien upon funds attached,~~ property and the commencement of the action, no action of the contractor shall be effective to prejudice the rights of the subcontractor without his written consent. A lien waiver signed by the contractor prior to commencement of the action waives the subcontractor's right to a claim of lien on real property but does not affect the subcontractor's rights to a claim of lien on funds under this Article.

(b) Second or third subcontractor. –

(1) A second or third tier ~~subcontractor, who gives notice of claim of lien upon funds as provided in this Article,~~subcontractor may, to the extent of his claim, enforce the claim of lien on real property of the contractor created by Part 1 of Article 2 of the Chapter except when:

a. The owner or contractor, within 30 days following the date the ~~building~~ permit is issued for the improvement of the real property ~~involved,~~ involved or within 30 days following the date the contractor is awarded the contract for the improvement of the real property involved, whichever is later, posts on the property in a visible location adjacent to the posted ~~building permit~~ permit, if a permit is required, and files in the office of the clerk of superior court in each county wherein the real property to be improved is located, a completed and signed notice of contract form and the second or third tier subcontractor fails to serve upon the contractor a completed and signed notice of subcontract form by the same means of service as described in G.S. 44A-19(d); or

b. After the posting and filing of a signed notice of contract and the service upon the contractor of a signed notice of subcontract, the contractor serves upon the second or third tier subcontractor, within five days following each subsequent payment, by the same means of service as described in G.S. 44A-19(d), the written notice of payment setting forth the date of payment and the period for which payment is made as requested in the notice of subcontract form set forth herein.

(2) The form of the notice of contract to be so utilized under this section shall be substantially as follows and the fee for filing the same with the clerk of superior court shall be the same as charged for filing a claim of lien on real property:

"NOTICE OF CONTRACT

"(1) Name and address of the Contractor:

"(2) Name and address of the owner of the real property at the time this Notice of Contract is recorded:

"(3) General description of the real property to be improved (street address, tax map lot and block number, reference to recorded instrument, or any other description that reasonably identifies the real property):

"(4) Name and address of the person, firm or corporation filing this Notice of Contract:

"Dated:_____

_____

"Contractor

"Filed this the____day of _____, ____.

_____

Clerk of Superior Court"

(3) The form of the notice of subcontract to be so utilized under this section shall be substantially as follows:

"NOTICE OF SUBCONTRACT

"(1) Name and address of the subcontractor:

"(2) General description of the real property ~~where~~ on which the labor was performed or the material was furnished (street address, tax map lot and block number, reference to recorded instrument, or any description that reasonably identifies the real property):

"(3)

"(i) General description of the subcontractor's contract, including the names of the parties thereto:

"(ii) General description of the labor and material performed and furnished thereunder:

"(4) Request is hereby made by the undersigned subcontractor that he be notified in writing by the contractor of, and within five days following, each subsequent payment by the contractor to the first tier subcontractor for labor performed or material furnished at the improved real property within the above descriptions of such in paragraph (2) and subparagraph (3)(ii), respectively, the date payment was made and the period for which payment is made.

"Dated:_____

_____

Subcontractor"

(4) The manner of such enforcement shall be as provided by G.S. 44A-7 through G.S. 44A-16. The lien is perfected as of the time set forth in G.S. 44A-10 upon the filing of a claim of lien on real property pursuant to G.S. 44A-12. Upon the filing of the claim of lien on real ~~property, with the notice of claim of lien upon funds attached,~~ property and the commencement of the action, no action of the contractor shall be effective to prejudice the rights of the second or third tier subcontractor without his written consent."

SECTION 10. G.S. 44A-24 reads as rewritten:

"**§ 44A-24. False statement a ~~misdemeanor.~~misdemeanor, an unfair and deceptive trade practice, and grounds for disciplinary action against a licensed contractor or qualifying party.**

If any contractor or other person receiving payment from an obligor for an improvement to real property or from a purchaser for a conveyance of real property with improvements subject to this Article or to Article 3 of this Chapter shall knowingly furnish to such obligor, purchaser, or to a lender who obtains a security interest in said real property, or to a title insurance company insuring title to such real property, a false written statement of the sums due or claimed to be due for labor or material furnished at the site of improvements to such real property, then such contractor, subcontractor or other person shall be guilty of a Class 1 ~~misdemeanor.~~ misdemeanor and shall be subject to a claim for violation of G.S. 75-1.1 by any obligor, purchaser, lender who obtains a security interest in such property, title insurance company insuring title to such property, or any person who otherwise would be entitled to a

claim of lien on real property under this Article and who suffers actual harm as a result of the misrepresentation. In addition, any person who knowingly signs or directs another person to sign such a written statement shall be guilty of a Class 1 misdemeanor and subject to a claim for violation of G.S. 75-1.1. Upon conviction and in the event the court shall grant any defendant a suspended sentence, the court may in its discretion include as a condition of such suspension a provision that the defendant shall reimburse the party who suffered loss on such conditions as the court shall determine are proper.

The elements of the offense herein stated are the furnishing of the false written statement with knowledge that it is false and the subsequent or simultaneous receipt of payment from an obligor or ~~purchaser, and in any~~ purchaser by the person signing the document, a person directing another to sign the document, or any person or entity for whom the document was signed. In any criminal prosecution hereunder it shall not be necessary for the State to prove that the obligor, purchaser, lender or title insurance company relied upon the false statement or that any person was injured thereby.

In addition to the criminal sanctions and civil liabilities created by this section, conduct constituting the offense herein stated and causing actual harm to any person by any licensed contractor or qualifying party, as that term is used in Chapter 87 of the General Statutes, shall constitute deceit and misconduct subject to disciplinary action under Chapter 87 of the General Statutes, including revocation, suspension, or restriction of a license or the ability to act as a qualifying party for a license."

SECTION 11. G.S. 44A-27 reads as rewritten:

"**§ 44A-27. Actions on payment bonds; service of notice.**

(a) Subject to the provision of subsection (b) hereof, any claimant who has performed labor or furnished materials in the prosecution of the work required by any contract for which a payment bond has been given pursuant to the provisions of this Article, and who has not been paid in full therefor before the expiration of 90 days after the day on which the claimant performed the last such labor or furnished the last such materials for which he claims payment, may bring an action on such payment bond in his own name, to recover any amount due him for such labor or materials and may prosecute such action to final judgment and have execution on the judgment.

(b) Any claimant who has a direct contractual relationship with any subcontractor but has no contractual relationship, express or implied, with the contractor may bring an action on the payment bond only if he has given written notice of claim on payment bond to the contractor within 120 days from the date on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. The contractor shall furnish a copy of the payment bond required by this Article within seven calendar days in response to a written request served by any claimant in accordance with the provisions of G.S. 44A-27(c). Subject to the exception set forth in subsection (e) of this section, unless the contractor has failed to satisfy its obligation to timely furnish a copy of the payment bond to a claimant upon proper request by the claimant, the claim of such a claimant shall not include labor or materials provided more than 75 days prior to the claimant's service, in accordance with subsections (c) and (d) of this section, of its written notice of public subcontract to the contractor.

(c) The ~~notice~~notices required by and any requests for copy of payment bond referenced by subsection ~~(b),~~(b) of this section, ~~above,~~ shall be served by ~~registered or~~ certified mail, or by signature confirmation as provided by the United States Postal Service, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business or to such agent identified in the contractor's project statement referenced in subdivision (1) of subsection (f) of this section or served in any manner provided by law for the service of summons.

(d) The form of the notice of public subcontract to be served pursuant to subsection (b) of this section shall be substantially as follows:

"NOTICE OF PUBLIC SUBCONTRACT

(1) Name and address of the subcontractor giving notice of public subcontract:
(2) General description of the real property on which the labor was or is to be performed or the material was or is to be furnished (street address, tax map lot and block number, reference to recorded instrument, or any description that reasonably identifies the real property):
(3) General description of the subcontractor's contract, including the names and addresses of the parties thereto:
(4) General description of the labor and material performed and furnished thereunder:

Dated: _____

_____
Subcontractor"

(e) Notwithstanding subsections (b), (c), and (d) of this section, the obligation to provide a notice of public subcontract shall not apply to claims of twenty thousand dollars ($20,000) or less and, for any claim exceeding twenty thousand dollars ($20,000), shall apply only to that portion of the claim in excess of twenty thousand dollars ($20,000).

(f) In connection with any construction contract for which a bond is required by G.S. 44A-26(a):

(1) The contractor shall provide to each subcontractor that it engages to perform labor or furnish materials in the performance of the construction contract a contractor's project statement containing all of the following information:
a. The name of the project.
b. The physical address of the project.
c. The name of the contracting body.
d. The name of the contractor.
e. The name, phone number, and mailing address of an agent authorized by the contractor to accept service of the requests for payment bond, the notice of public subcontract, and the notice of claim on payment bond referenced in subsection (b) of this section.
f. The name and address of the principal place of business of the surety issuing the payment bond required by G.S. 44A-26(a) for the construction contract.
(2) Each subcontractor shall provide each subcontractor that it engages to perform labor or furnish materials in the performance of the construction contract a copy of the contractor's project statement.
(3) No agreement entered into between a contractor and a subcontractor or between a subcontractor and its subcontractor shall be enforceable against the lower tier party until the contractor's project statement has been provided to the lower tier party."

SECTION 12.(a) G.S. 44A-4(b) reads as rewritten:

"**§ 44A-4. Enforcement of lien by sale.**

...

(b) Notice and Hearings. –

(1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the relevant time period provided by subsection (a) shall give notice to the Division of

Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars ($10.00). The Division of Motor Vehicles shall issue notice by ~~registered or~~ certified mail, return receipt requested, to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by ~~registered or~~ certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. The Division shall notify the lienor whether such notice is timely received by the Division. In lieu of the notice by the lienor to the Division and the notices issued by the Division described above, the lienor may issue notice on a form approved by the Division pursuant to the notice requirements above. If notice is issued by the lienor, the recipient shall return the form requesting a hearing to the lienor, and not the Division, within 10 days from the date the recipient receives the notice if a judicial hearing is requested. If the ~~registered or~~ certified mail notice has been returned as undeliverable and the notice of a right to a judicial hearing has been given to the owner of the motor vehicle in accordance with G.S. 20-28.4, no further notice is required. Failure of the recipient to notify the Division or lienor, as specified in the notice, within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division or lienor, as specified in the notice, is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the ~~registered or~~ certified mail notice has been returned as undeliverable, or if the name of the person having legal title to the vehicle cannot reasonably be ascertained and the fair market value of the vehicle is less than eight hundred dollars ($800.00), the lienor may institute a special proceeding in the county where the vehicle is being held, for authorization to sell that vehicle. Market value shall be determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.

In such a proceeding a lienor may include more than one vehicle, but the proceeds of the sale of each shall be subject only to valid claims against that

vehicle, and any excess proceeds of the sale shall be paid immediately to the Treasurer for disposition pursuant to Chapter 116B of the General Statutes.

The application to the clerk in such a special proceeding shall contain the notice of sale information set out in subsection (f) hereof. If the application is in proper form the clerk shall enter an order authorizing the sale on a date not less than 14 days therefrom, and the lienor shall cause the application and order to be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom notice was mailed pursuant to this subsection. Following the authorized sale the lienor shall file with the clerk a report in the form of an affidavit, stating that the lienor has complied with the public or private sale provisions of G.S. 44A-4, the name, address, and bid of the high bidder or person buying at a private sale, and a statement of the disposition of the sale proceeds. The clerk then shall enter an order directing the Division to transfer title accordingly.

If prior to the sale the owner or legal possessor contests the sale or lien in a writing filed with the clerk, the proceeding shall be handled in accordance with G.S. 1-301.2.

(2) If the property upon which the lien is claimed is other than a motor vehicle required to be registered, the lienor following the expiration of the 30-day period provided by subsection (a) shall issue notice to the person having legal title to the property, if reasonably ascertainable, and to the person with whom the lienor dealt if different by ~~registered or~~ certified mail, return receipt requested. Such notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the lienor by ~~registered or~~ certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the lienor that a hearing is desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the lienor that a hearing is desired by the return of such form to the lienor. Failure of the recipient to notify the lienor within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to sale of the property against which the lien is asserted and the lienor may proceed to enforce the lien by public or private sale as provided in this section. If the lienor is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section only pursuant to the order of a court of competent jurisdiction."

SECTION 12.(b) G.S. 44A-24.10 reads as rewritten:

"**§ 44A-24.10. Lien extinguished for lien claimant failing to file suit or answer in pending suit within 30 days after service on owner.**

If a lien claimant fails to file a suit to enforce the lien or fails to file an answer in a pending suit to enforce a lien within 30 days after a properly served written demand of the owner, lienee, or other authorized agent, the lien shall be extinguished. Service of the demand shall be by ~~registered or~~ certified mail, return receipt requested, or by personal service. The claimant

shall file proof of properly served written demand with the clerk of the superior court. The provisions of this section shall not extend to any other deadline provided by law for the filing of any pleadings or for the foreclosure of any lien governed by this Part."

SECTION 12.(c) G.S. 44A-43 reads as rewritten:

"**§ 44A-43. Enforcement of self-service storage facility lien.**

...

(b) Notice and Hearing:

(1) If the property upon which the lien is claimed is a motor vehicle, the lienor, following the expiration of the 15-day period provided by subsection (a), shall give notice to the Division of Motor Vehicles that a lien is asserted and that a sale is proposed. The lienor shall remit to the Division a fee of two dollars ($2.00); and shall also furnish the Division with the last known address of the occupant. The Division of Motor Vehicles shall issue notice by ~~registered or~~ certified mail, return receipt requested to the person having legal title to the vehicle, if reasonably ascertainable, and to the occupant, if different, at his last known address. The notice shall:

...

c. State that the legal title holder and the occupant have a period of 10 days from the date of receipt of the notice in which to notify the Division of Motor Vehicles by ~~registered or~~ certified mail, return receipt requested, that a hearing is desired to contest the sale of the vehicle pursuant to the lien.

The person with legal title or the occupant must, within 10 days of receipt of the notice from the Division of Motor Vehicles, notify the Division of his desire to contest the sale of the vehicle pursuant to the lien, and that the Division should so notify lienor.

Failure of the person with legal title or the occupant to notify the Division that a hearing is desired shall be deemed a waiver of the right to a hearing prior to sale of the vehicle against which the lien is asserted. Upon such failure, the Division shall so notify the lienor; the lienor may proceed to enforce the lien by a public sale as provided by this section; and the Division shall transfer title to the property pursuant to such sale.

If the Division is notified within the 10-day period provided in this section that a hearing is desired prior to the sale, the lien may be enforced by a public sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

...

(c) Public Sale. –

(1) Not less than 20 days prior to sale by public sale the lienor:

a. Shall cause notice to be delivered by ~~registered or~~ certified mail to the person having a security interest in the property if reasonably ascertainable, and to the occupant at the occupant's last known address. Notice given pursuant to this subdivision shall be presumed delivered when it is properly addressed, first-class postage prepaid, and deposited with the United States Postal Service.

...."

SECTION 13. Sections 1 through 3 and Sections 5 through 11 of this act become effective January 1, 2013, and apply to improvements to real property for which the first permit required to be obtained is obtained on or after that date or, with respect to projects for which no permit is required, apply to improvement to real property commenced on or after that date. Sections 4, 12, and 13 of this act are effective when this act becomes law.

HOUSE BILL 1052:
Mechanics Liens/Payment Bond Reforms

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 25, 2012
Introduced by:	Rep. Stevens	**Prepared by:**	Bill Patterson
Analysis of:	PCS to Third Edition H1052-CSTG-54		Committee Counsel

SUMMARY: The PCS to House Bill 1052 makes a number of technical and substantive changes to the law governing lien and payment bond claims arising from improvements to real property, including the following:

- requires persons working on a public construction project who did not contract directly with the contractor to give the contractor notice of their involvement in the project in order to preserve claims under the payment bond in excess of $20,000
- increases a contractor's liability for making a false written statement of the amounts due for work increase a contractor's liability for making a false written statement of the sums due for improvements to real property
- clarifies when certain subcontractor lien claims arise to prevent loss of subcontractor lien rights under bankruptcy court interpretation of current statutory language
- clarifies the circumstances under which owners or their lenders are not necessary or proper parties to an action to enforce a claim of lien on the improved real property

The PCS makes technical and conforming changes to the bill, and removes provisions in Section 3 that would have added requirements pertaining to lien waiver forms.

[As introduced, this bill was identical to S864, as introduced by Sen. Brunstetter, which is currently in Senate Ref to Judiciary I. If fav, re-ref to Finance.]

CURRENT LAW:

Article 2 of Chapter 44A grants lien rights to contractors (those who contract directly with the owner) and subcontractors (those who contract with someone other than the owner) who improve real property to secure payment of debts owing for labor, professional design or surveying services, or materials or rental equipment furnished to improve the real property.[1]

Contractors are granted a lien on the improved real property to secure payment owed for their work. To preserve the right to enforce the lien, a contractor must file a claim of lien with the clerk of superior court within 120 days from the last date of furnishing of materials or labor to the real property, and must commence an action to enforce the lien within 180 days from the last date of furnishing of labor or materials. After the claim of lien is filed, the lien "relates back" to the date of the contractor's first furnishing of labor or materials for purposes of determining the lien's priority among other liens on the real property.

A subcontractor is granted a lien on any funds owed to the person who owes the subcontractor for labor or materials furnished to improve the real property. To pursue this claim, the subcontractor must deliver a "Notice of Claim of Lien on Funds" to the person owing the funds to the subcontractor's debtor (the

[1] The North Carolina Constitution requires the General Assembly to provide mechanics and laborers with "an adequate lien on the subject-matter of their labor" by "proper legislation." N.C. Const. Art. X, Sec. 3. To fulfill this mandate for persons providing labor and materials for real property improvements, the General Assembly has enacted Article 2 of Chapter 44A of the General Statutes.

"obligor"). If the obligor who receives this notice fails to retain any funds subject to the lien, and instead pays the funds to the person who owes the subcontractor, the obligor becomes personally liable to the subcontractor for the amount owed. Furthermore, if the wrongfully paying obligor is the owner of the improved property, the subcontractor is granted a lien on the real property.

Article 2 also provides a procedure under which first, second, and third-tier subcontractors can enforce the contractor's lien upon the real property of an owner who has not paid the contractor in full. A waiver by the contractor of its lien rights against the owner will destroy the subcontractor's right to enforce the contractor's lien on real property by subrogation, with one exception: if the subcontractor takes the required steps under G.S. 44A-23 to perfect its subrogated lien claim and commences an action to enforce that claim before the contractor executes a lien waiver, the waiver will not impair the subcontractor's lien rights.

Those who furnish labor or materials to improve public property are not entitled to a claim of lien. Instead, Article 3 of Chapter 44A entitles them to file a claim under a payment bond, which the contractor is required to procure for projects meeting the threshold dollar amounts specified in G.S. 44A-26.

A claim under a payment bond may be brought by any claimant who has not been paid in full within 90 days of the last furnishing of labor or materials. G.S. 44A-27(a). Claimants who did not contract directly with the contractor cannot make a claim under the payment bond unless they give the contractor notice of the claim within 120 days of the last date of furnishing, stating the amount claimed and the person for whom the labor or materials were furnished. G.S. 44A-27(b).

BILL ANALYSIS:

Section 1 adds to G.S. 44A-7 all definitions in current 44A-7 (repealed by bill section 5) with no substantive changes.

Section 2 amends G.S. 44A-11 to require a lien claimant to notify the owner and contractor of the claim of lien on real property, and **Section 3** makes conforming changes to the lien claim form prescribed by G.S. 44A-12(c).

Section 4 amends G.S. 44A-13 to provide that an owner of real property at the time a claim of lien arose but who does not own the property when the action to enforce the lien is commenced, is not a necessary party to that action unless the plaintiff is seeking relief against that person. In addition, Section 4 provides that subsequent purchasers of improved property and their lenders are not necessary or proper parties if the claim of lien has been discharged pursuant to G.S. 44A-16, and prohibits bonds from requiring that subsequent purchasers and their lenders remain parties to an action after claim of lien has been discharged.

Section 5 repeals G.S. 44A-17 (with all definitions from the repealed section moved to G.S. 44A-7 by Section 1 of the bill).

Section 6 amends G.S. 44A-18 to make it clear that a subcontractor's lien upon funds arises immediately upon the furnishing of labor, materials or rental equipment at the site of the improvement.

Section 7 amends G.S. 44A-19 to eliminate the requirement of attaching a copy of the notice of claim of lien upon funds to the claim of lien that is filed to enforce the contractor's claim of lien under G.S. 44A-23.

Section 8 and **Section 9** amends G.S. 44A-20 and G.S. 44A-23 to clarify that a contractor's lien waiver signed before a subcontractor commences an action to enforce the contractor's lien rights waives the subcontractor's right to enforce the contractor's claim of lien on real property under G.S. 44A-23, but does not waive the subcontractor's claim of lien on funds or the subcontractor's direct right to a claim of lien on real property under G.S. 44A-20(d). **Section 9** also amends G.S. 44A-23(a) to permit a

subcontractor filing a claim of lien upon real property to use either its own date of first and last furnishing or that of the contractor through which the claim is being asserted.

Section 10 amends G.S. 44A-24 to increase a contractor's liability for making a false written statement of the sums due for work done on a project. The new sanctions will include liability for damages under Chapter 75 and disciplinary action relating to the contractor's license.

Section 11 amends G.S. 44A-27, relating to payment bond claims, to require claimants who did not contract directly with the contractor to give notice of their involvement in the project, and prohibits claims under the payment bond for work or materials provided more than 75 days before the notice is given. These requirements do not apply to claims of $20,000 or less, nor do they apply if the contractor fails to furnish copy of the payment bond within seven days of receiving a request for it from a claimant. Section 11 also requires the contractor to give each subcontractor a project statement with all information necessary to make a claim on the payment bond, and requires each subcontractor to provide a copy of that statement to each lower-tier subcontractor with whom it contracts for work on the project.

Section 12 deletes references to "registered mail" in various notice requirements contained in Chapter 44A.

EFFECTIVE DATE: Sections 4 and 12 of this act are effective when it becomes law. The remaining Sections of this act become effective January 1, 2013, and apply to improvements to real property for which the first permit required to be obtained is obtained on or after that date or, with respect to projects for which no permit is required, apply to improvement to real property commenced on or after that date.

H1052-SMTG-91(CSTG-54) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 4

SENATE BILL 42

Judiciary II Committee Substitute Adopted 3/28/11
House Committee Substitute Favorable 6/20/12
Fourth Edition Engrossed 6/21/12

Short Title: Mech. Liens/Pvt Lien Agent. (Public)

Sponsors:

Referred to:

February 9, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PERSONS FURNISHING LABOR OR MATERIALS IN CONNECTION WITH CERTAIN IMPROVEMENTS TO REAL PROPERTY TO GIVE WRITTEN NOTICE TO THE DESIGNATED LIEN AGENT OF THE OWNER OF THE IMPROVED REAL PROPERTY TO PRESERVE THEIR LIEN RIGHTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44A-7 is amended by adding new subdivisions to read:

"**§ 44A-7. Definitions.**

Unless the context otherwise requires in this Article:

...

(2a) Lien agent. – A title insurance company or title insurance agency designated by an owner pursuant to G.S. 44A-11.1.

...

(4a) Inspection department. – Any city or county building inspection department authorized by Chapter 160A or Chapter 153A of the General Statutes.

...

(6a) Potential lien claimant. – Any person entitled to claim a lien for improvements to real property under this Article who is subject to G.S. 44A-11.1."

SECTION 2. Article 2 of Chapter 44A of the General Statutes is amended by adding new sections to read:

"**§ 44A-11.1. Lien agent; designation and duties.**

(a) With regard to any improvements to real property to which this Article is applicable for which the costs of the undertaking at the time that the original building permit is issued is thirty thousand dollars $30,000 or more, the owner shall designate a lien agent no later than the time the owner first contracts with any person to improve the real property. The owner shall deliver written notice of designation to its designated lien agent by any method authorized in G.S. 44A-11.2(f), and shall include in its notice the street address, tax map lot and block number, reference to recorded instrument, or any other description that reasonably identifies the real property for the improvements to which the lien agent has been designated. Designation of a lien agent pursuant to this section does not make the lien agent an agent of the owner for purposes of receiving a Notice of Claim of Lien upon Funds or for any purpose other than the receipt of notices to the lien agent required under G.S. 44A-11.2.

(b) The lien agent shall be chosen from among the list of registered lien agents maintained by the Department of Insurance pursuant to G.S. 58-26-41.

(c) Upon receipt of written notification of designation by an owner pursuant to subsection (a) of this section, the lien agent shall have the duties as set forth in G.S. 58-26-41(b).

(d) In the event that the lien agent revokes its consent to serve as lien agent or is removed by the owner, or otherwise becomes unable or unwilling to serve before the completion of all improvements to the real property, the owner shall within three business days of notice of such event do all of the following:

(1) Designate a successor lien agent and provide written notice of designation to the successor lien agent pursuant to subsection (a) of this section.

(2) Provide the contact information for the successor lien agent to the inspection department that issued any required building permit and to any persons who requested information relating to the predecessor lien agent.

(3) Display the contact information for the successor lien agent on the building permit or attachment thereto posted on the improved property or, if no building permit was required, on a sign complying with G.S. 44A-11.2(e).

(e) Until such time as the owner has fully complied with subsection (d) of this section, notice transmitted to the predecessor lien agent shall be deemed effective notice, notwithstanding the fact that the lien agent may have resigned or otherwise become unable or unwilling to serve.

(f) Any attorney who, in connection with a transaction involving improved real property subject to this section for which the attorney is serving as the closing attorney, contacts the lien agent and requests copies of the notices received by the lien agent relating to the real property not more than five business days prior to the date of recordation of a deed or deed of trust on the real property, shall be deemed to have fulfilled the attorney's professional obligation as closing attorney to check such notices to lien agent and shall have no further duty to request that the lien agent provide information pertaining to notices received subsequently by the lien agent.

"**§ 44A-11.2. Identification of lien agent; notice to lien agent; effect of notice.**

(a) As used in this section, the term "contact information" shall mean the name, physical and mailing address, telephone number, facsimile number, and electronic mail address of the lien agent designated by the owner pursuant to G.S. 44A-11.1.

(b) Within seven days of receiving a written request by a potential lien claimant by any delivery method specified in subsection (f) of this section, the owner shall provide a notice to the potential lien claimant containing the contact information for the lien agent, by the same delivery method used by the potential lien claimant in making the request. A potential lien claimant making a request pursuant to this subsection who has not furnished labor at the site of the improvements, or who did so prior to the posting of the contact information for the lien agent pursuant to subsection (d) or (e) of this section, shall have no obligation to give notice to the lien agent under this section until the potential lien claimant has received the contact information from the owner.

(c) A contractor or subcontractor for improvements to real property subject to G.S. 44A-11.1 shall, within three business days of contracting with a lower-tier subcontractor who is not required to furnish labor at the site of the improvements, provide the lower-tier subcontractor with a written notice containing the contact information for the lien agent designated by the owner. Noncompliance with the notice requirements of this subsection shall constitute an unfair trade practice subjecting the noncomplying contractor or subcontractor to a claim for violation of G.S. 75-1.1 by any lower-tier subcontractor entitled to the notice who suffers actual harm as a result of the noncompliance.

(d) For any improvement to real property subject to G.S. 44A-11.1, any building permit issued pursuant to G.S. 160A-417(d) or G.S. 153A-357(e) shall be conspicuously and continuously posted on the property for which the permit is issued until the completion of all construction.

(e) For any improvement to real property subject to G.S. 44A-11.1, a sign disclosing the contact information for the lien agent shall be conspicuously and continuously posted on the property until the completion of all construction if the contact information for the lien agent is not contained in a building permit or attachment thereto posted on the property.

(f) In complying with any requirement for written notice pursuant to this section, the notice shall be addressed to the person required to be provided with the notice and shall be delivered by any of the following methods:

(1) Certified mail, return receipt requested.
(2) Signature confirmation as provided by the United States Postal Service.
(3) Physical delivery and obtaining a delivery receipt from the lien agent.
(4) Facsimile with a facsimile confirmation.
(5) Depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2).
(6) Electronic mail, with delivery receipt.

As used in this subsection, "delivery receipt" includes an electronic or facsimile confirmation. A return receipt or other receipt showing delivery of the notice to the addressee or written evidence that such notice was delivered by the postal service or other carrier to but not accepted by the addressee shall be prima facie evidence of receipt.

(g) When a lien agent is identified in a contract for improvements to real property consisting of a single-family residence entered into between an owner and a contractor for the improvements to the property, the contractor will be deemed to have met the requirement of notice under subsections (k) and (l) of this section on the date of the lien agent's receipt of the owner's notice of designation. The owner shall provide written notice to the lien agent containing the information pertaining to the contractor required in a notice to lien agent pursuant to subdivisions (1) through (4) of subsection (h) of this section, by any method of delivery authorized in G.S. 44A-11.2(f). The lien agent shall include the contractor in its response to any persons requesting information relating to persons who have given notice to the lien agent pursuant to this section.

(h) The form of the notice to be given under this section shall be substantially as follows:

"NOTICE TO LIEN AGENT

(1) Potential lien claimant's name, mailing address, telephone number, fax number (if available), and electronic mailing address (if available): _____

(2) Name of the party with whom the potential lien claimant has contracted to improve the real property described below: _____

(3) A description of the real property sufficient to identify the real property, such as the name of the project, if applicable, the physical address as shown on the building permit or notice received from the owner: _____

(4) I give notice of my right subsequently to pursue a claim of lien for improvements to the real property described in this notice.

Dated: _____

_____

Potential Lien Claimant"

(i) The service of the Notice to Lien Agent does not satisfy the service or filing requirements applicable to a Notice of Claim of Lien upon Funds under Part 2 of Article 2 of this Chapter.

(j) The notice to lien agent shall not be filed with the clerk of superior court. An inaccuracy in the description of the improved real property provided in the notice shall not bar a person from claiming a lien under this Article or otherwise perfecting or enforcing a claim of lien as provided in this Article, if the improved real property can otherwise reasonably be identified from the information contained in the notice.

(k) Except as otherwise provided in this section, a potential lien claimant may perfect a claim of lien on real property only if any of the following conditions is met:

(1) The lien agent identified in accordance with this section has received notice from the potential lien claimant no later than 15 days after the first furnishing of labor or materials by the potential lien claimant.

(2) Any of the following conditions is met:

a. The lien agent identified in accordance with this section has received notice from the potential lien claimant prior to the date of recordation of a conveyance of the property interest in the real property to a bona fide purchaser for value protected under G.S. 47-18 who is not an affiliate, relative, or insider of the owner.

b. The potential lien claimant has filed a claim of lien pursuant to G.S. 44A-12 prior to the recordation of a conveyance of the property interest in the real property to a bona fide purchaser for value protected under G.S. 47-18 who is not an affiliate, relative, or insider of the owner.

As used in this subdivision, the terms "affiliate," "relative," and "insider" shall have the meanings as set forth in G.S. 39-23.1.

(l) Except as otherwise provided in this section, the claim of lien on real property of a potential lien claimant that is not filed prior to the recordation of any mortgage or deed of trust shall be subordinate to the previously recorded mortgage or deed of trust unless any of the following conditions is met:

(1) The lien agent identified in accordance with this section has received notice from the potential lien claimant within 15 days after the first furnishing of labor or materials by the potential lien claimant.

(2) The lien agent identified in accordance with this section has received notice from the potential lien claimant prior to the date of recordation of the mortgage or deed of trust for the benefit of one who is not an affiliate, relative, or insider of the owner.

(m) With regard to an improvement to real property subject to G.S. 44A-11.1, a potential lien claimant shall not be required to comply with this section if the lien agent contact information is neither contained in the building permit or attachment thereto or sign posted on the improved property pursuant to subsection (d) or (e) of this section at the time when the potential lien claimant was furnishing labor at the site of the improvements, nor timely provided by the owner in response to a written request by the potential lien claimant made pursuant to subsection (b) of this section. The lien rights of a potential lien claimant who is given erroneous information by the owner regarding the identity of the lien agent will not be extinguished under subsection (k) of this section nor subordinated under subsection (l) of this section.

(n) Except as provided in subsections (k) and (l) of this section, nothing contained in this section shall affect a claim of lien upon funds pursuant to G.S. 44A-18.

(o) A potential lien claimant may provide the notice to lien agent required under this section regardless of whether the improvements for which the potential lien claimant is responsible are contracted, started, in process, or completed at the time of submitting the notice."

SECTION 3. Article 26 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-26-41. Registration as a lien agent.**

(a) A title insurance company or title insurance agency authorized to do business in this State that consents to serve as a lien agent pursuant to G.S. 44A-11.1 shall register with the Department by providing the following information:

(1) Name of the title insurance company or title insurance agency consenting to serve as a lien agent pursuant to G.S. 44A-11.1.

(2) Physical and mailing address, facsimile number and electronic mail address to which notices may be delivered to the lien agent pursuant to G.S. 44A-11.2.

(3) Telephone number of the lien agent.

(b) Upon receipt of the notice of designation by the owner pursuant to G.S. 44A-11.1, a lien agent shall have the duty to do all of the following:

(1) Provide written notice acknowledging its designation as a lien agent to the owner within three business days of receipt of the owner's written notice of designation, by the same method of delivery used by the owner in delivering the notice of designation to the lien agent.

(2) Receive notices to lien agent delivered by potential lien claimants.

(3) Maintain a record of the date and time of delivery and the information contained in each notice to lien agent received.

(4) Within three business days of receipt of a notice to lien agent by a potential lien claimant relating to improvements to real property for which the lien agent has been designated as the lien agent, provide written notice confirming receipt of the notice to the person providing such notice, by the same method used by the potential lien claimant in delivering the notice to lien agent.

(5) Within three business days of receipt of any notice to lien agent by a potential lien claimant relating to improved real property for which the lien agent has not been designated as the lien agent, provide written notice to the potential lien claimant that it is not the designated lien agent for the improved property, by the same method used by the potential lien claimant in delivering the notice to lien agent.

(6) Within three business days of receipt of information relating to the contractor provided by the owner pursuant to G.S. 44A-11.2(g), provide a written notice to the contractor acknowledging receipt of this information, by any method of delivery authorized in G.S. 44A-11.2(f).

(7) Provide written notice of the potential lien claimants having delivered notice to lien agent pursuant to G.S. 44A-11.2, including the information relating to any contractor identified by the owner pursuant to G.S. 44A-11.2(g), within one business day of receiving a request from any of the following persons or their authorized agents:

a. An owner of the improved property.

b. A title insurance company or title insurance agency issuing a policy of title insurance on the improved property.

c. A contracted purchaser of the improved property.

d. A potential lien claimant.

e. A closing attorney, lender, or settlement agent as defined in G.S. 45A-3(15) involved in a transaction involving the improved property.

In responding to a request pursuant to this subdivision, the lien agent shall include the information provided by each potential lien claimant pursuant to G.S. 44A-11.2(h)(1) and G.S. 44A-11.2(h)(2) and, if specifically requested, a copy of each notice to lien claimant received by the lien agent.

(8) Transfer all notices received and other documentation thereof to any successor lien agent designated by the owner upon termination under subsection (d) of this section.

(c) A registered lien agent may revoke its consent and be removed from the list of lien agents by providing written notification of its revocation of consent to the Department of Insurance and to all owners by whom the lien agent has been designated pursuant to G.S. 44A-11.1 at least 30 days in advance of the effective date of its revocation of consent.

(d) For services rendered pursuant to each designation as a lien agent for improvements to real property comprising one- or two-family dwellings, a lien agent may collect a fee of not more than twenty-five dollars ($25.00) from the owner. For services rendered pursuant to each designation as a lien agent for all other improvements to real property, the lien agent may collect a fee not to exceed fifty dollars ($50.00) from the owner.

(e) The Department shall publish on its Web site a current list of lien agents registered pursuant to this section."

SECTION 4. G.S. 87-14(a) is amended by adding a new subdivision to read:

"**§ 87-14. Regulations as to issue of building permits.**

(a) Any person, firm, or corporation, upon making application to the building inspector or such other authority of any incorporated city, town, or county in North Carolina charged with the duty of issuing building or other permits for the construction of any building, highway, sewer, grading, or any improvement or structure where the cost thereof is to be thirty thousand dollars ($30,000) or more, shall, before being entitled to the issuance of a permit, satisfy the following:

...

(3) Any person, firm, or corporation, upon making application to the building inspector or such other authority of any incorporated city, town, or county in North Carolina charged with the duty of issuing building permits pursuant to G.S. 160A-417(a)(1) or G.S. 153A-357(a)(1) for any improvements for which the combined cost is to be thirty thousand dollars ($30,000) or more, shall be required to provide to the building inspector or other authority the name, physical and mailing address, telephone number, facsimile number, and electronic mail address of the lien agent designated by the owner pursuant to G.S. 44A-11.1(a)."

SECTION 5. G.S. 160A-417 is amended by adding a new subsection to read:

"**§ 160A-417. Permits.**

(a) No person shall commence or proceed with any of the following without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building or structure.

...

(d) No permit shall be issued pursuant to subdivision (1) of subsection (a) of this section where the cost of the work is thirty thousand dollars ($30,000) or more unless the name, physical and mailing address, telephone number, facsimile number, and electronic mail address

of the lien agent designated by the owner pursuant to G.S. 44A-11.1(a) is conspicuously set forth in the permit or in an attachment thereto. The building permit may contain the lien agent's electronic mail address. The lien agent information for each permit issued pursuant to this subsection shall be maintained by the inspection department in the same manner and in the same location in which it maintains its record of building permits issued."

SECTION 6. G.S. 153A-357 is amended by adding a new subsection to read:

"**§ 153A-357. Permits.**

(a) No person may commence or proceed with any of the following without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building.

...

(e) No permit shall be issued pursuant to subdivision (1) of subsection (a) of this section where the cost of the work is thirty thousand dollars ($30,000) or more unless the name, physical and mailing address, telephone number, facsimile number, and electronic mail address of the lien agent designated by the owner pursuant to G.S. 44A-11.1(a) is conspicuously set forth in the permit or in an attachment thereto. The building permit may contain the lien agent's electronic mail address. The lien agent information for each permit issued pursuant to this subsection shall be maintained by the inspection department in the same manner and in the same location in which it maintains its record of building permits issued."

SECTION 7. This act becomes effective April 1, 2013, and applies to improvements to real property affected hereby for which the first furnishing of labor or materials at the site of the improvements is on or after that date.

SENATE BILL 42:
Mech. Liens/Pvt Lien Agent

2011-2012 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 25, 2012
Introduced by:	Sen. Mansfield	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	Fourth Edition		

SUMMARY: ***Senate Bill 42 requires that persons furnishing labor or materials for improvements to real property costing at least $30,000 must give notice to a lien agent designated by the owner either before recordation of a deed or deed of trust, or within fifteen (15) days of their first furnishing of labor or materials, in order to preserve their lien claims.***

CURRENT LAW: Article 2 of Chapter 44A grants lien rights to contractors (those who contract directly with the owner) and subcontractors (those who contract with someone other than the owner) who improve real property to secure payment of debts owing for labor, professional design or surveying services, or materials or rental equipment furnished to improve the real property.[1]

Contractors are granted a lien on the improved real property to secure payment owed for their work. To preserve the right to enforce the lien, a contractor must file a claim of lien with the clerk of superior court within 120 days from the last date of furnishing of materials or labor to the real property, and must commence an action to enforce the lien within 180 days from the last date of furnishing of labor or materials. After the claim of lien is filed, the lien "relates back" to the date of the contractor's first furnishing of labor or materials for purposes of determining the lien's priority among other liens on the real property.

A subcontractor is granted a lien on any funds owed to the person who owes the subcontractor for labor or materials furnished to improve the real property. To pursue this claim, the subcontractor must deliver a "Notice of Claim of Lien on Funds" to the person owing the funds to the subcontractor's debtor (the "obligor"). If the obligor who receives this notice fails to retain any funds subject to the lien, and instead pays the funds to the person who owes the subcontractor, the obligor becomes personally liable to the subcontractor for the amount owed. Furthermore, if the wrongfully paying obligor is the owner of the improved property, the subcontractor is granted a lien on the real property.

Article 2 also provides a procedure under which first, second, and third-tier subcontractors can enforce the contractor's lien upon the real property of an owner who has not paid the contractor in full. A waiver by the contractor of its lien rights against the owner will destroy the subcontractor's right to enforce the contractor's lien on real property by subrogation, with one exception: if the subcontractor takes the required steps under G.S. 44A-23 to perfect its subrogated lien claim and commences an action to enforce that claim before the contractor executes a lien waiver, the waiver will not impair the subcontractor's lien rights.

The term "hidden lien" is used to describe a claim of lien to secure payment of money owed to the lien claimant for labor or materials provided prior to the closing date on the real estate transaction, but not filed until after the recordation of the deed or deed of trust. Such liens take priority over the previously

[1] The North Carolina Constitution requires the General Assembly to provide mechanics and laborers with "an adequate lien on the subject-matter of their labor" by "proper legislation." N.C. Const. Art. X, Sec. 3. To fulfill this mandate for persons providing labor and materials for real property improvements, the General Assembly has enacted Article 2 of Chapter 44A of the General Statutes.

recorded deed or deed of trust because they "relate back" to the date of first furnishing of labor or materials by the lien claimant.

BILL ANALYSIS:

Section 1 amends G.S. 44A-7 to define three terms used in the new sections enacted in Section 2 of the bill.

Section 2 enacts two new sections in Part 1 of Article 2 of Chapter 44A to impose requirements on owners and potential lien claimants applicable to improvements to real property costing $30,000 or more as of the date of issuance of the building permit.

- New G.S. 44A-11.1 requires the owner to designate a lien agent from among title insurance insurers or title insurance agencies registered with the Department of Insurance pursuant to new G.S. 58-26-41 under Section 3 of the bill.
- New G.S. 44A-11.2 requires a potential lien claimant to provide a prescribed notice to the designated lien agent either: 1) within fifteen days of the first furnishing of labor or materials; or 2) prior to the date of recordation of the deed or deed of trust.

The required notice includes the potential lien claimant's name and contact information, the name of the person with whom the potential lien claimant contracted, and a description of the improved real property.

The notice can be delivered by any of the following methods:

- Certified mail, return receipt requested
- USPS signature confirmation
- Physical delivery with delivery receipt
- Delivery by designated services such as Federal Express
- Fax
- Email

Under G.S. 44A-11.2(m), the new notice provisions will not apply to a potential lien claimant if:

- the owner does not timely respond to the potential lien claimant's written request for the lien agent contact information and
- the contact information is not posted on the jobsite.

The contact information for the designated lien agent must be included in the building permit and posted on the site of the improvements. G.S. 44A-11.2(d), (e). This information must also be maintained at the inspection department that issued the permit. (Sections 5 and 6 of the bill, summarized below).

If the potential lien claimant fails to give timely notice to the lien agent:

- the lien claimant will lose the right to enforce a claim of lien filed after recordation of a deed conveying the property to a new owner (G.S. 44A-11.2(k)); or
- if there is no change in ownership, a claim of lien filed after recordation of a deed of trust in favor of a lender will be subordinated to the previously recorded deed of trust (G.S. 44A-11.2(l))

Under the act, a closing attorney will have no professional obligation to check with the lien agent for notices by potential claimants less than five days before the deed or deed of trust is recorded. G.S. 44A-11.1(f).

The owner will be required to provide the contact information for the lien agent to within seven days of receiving a written request by a potential lien claimant. If the requesting subcontractor did not provide labor at the site of the improvement or did so prior to the posting of the contact information, then it will not be required to give notice to the lien agent until receipt of the requested contact information. G.S. 44A-11.2(b).

Any contractor or subcontractor who contracts with a lower-tier subcontractor that is not required to provide labor at the site of the improvement would be required to provide the contact information for the lien agent. Non-compliance with this requirement would expose the violator to liability under G.S. 75-1.1 to a subcontractor entitled to this notice who did not receive it, and who suffered actual harm as a result. G.S. 44A-11.2(c).

Section 3 enacts new G.S. 58-26-41 requiring title insurance companies and title insurance agencies consenting to serve as lien agents to register with the Department of Insurance.

Upon being designated by the owner, the lien agent must acknowledge receipt of notices from potential lien claimants within three business days of receipt, and must provide the names of any potential lien claimants who have given notice within one day of receiving a request for this information from any of the following:

- Owner of the improved property
- Title insurer or title insurance agency
- Contracted purchaser of the improved property
- Potential lien claimant
- Closing attorney, lender, or settlement agent involved in a transaction involving the improved property

The fee that a lien agent can charge an owner for serving as a lien agent is limited to:

- $25.00 if the improvements are to a one- or two-family dwelling
- $50.00 if the improvements are to any other type of property

Section 4 amends G.S. 87-14 to require the applicant for any building permit for improvements costing at least $30,000 to provide the contact information for the designated lien agent to the authority issuing the building permit.

Section 5 and **Section 6** amend the statutes governing issuance of building permits by cities and counties to require that the designated lien agent contact information be included in the issued permit or in an attachment to it, and that this information be maintained by the inspection department in the same manner as the record of building permits.

EFFECTIVE DATE: This act becomes effective April 1, 2013, and applies to improvements to real property for which the first furnishing of labor or materials at the site of the improvements is on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 42

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

S42-ATG-208 [v.2]

Comm. Sub. [NO]
Amends Title [NO]
Third Edition

Date _____,2012

Representative Lewis

moves to amend the bill on page 5, lines 4-5, by inserting the following:

"(p) Upon receipt of notice from a potential lien claimant pursuant to this section, no action by a contractor shall be effective to prejudice the rights of the subcontractor without the subcontractor's written consent.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Connie Wilson's proposed Amendment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 2

HOUSE BILL 156
Committee Substitute Favorable 3/30/11

Short Title: Lenoir Fox Trapping. (Local)

Sponsors:

Referred to:

February 22, 2011

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A SEASON FOR THE TRAPPING OF FOXES IN LENOIR COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding any other provision of law, there is an open season for taking foxes with the use of rubber jaw or foothold traps from January 2 through February 28 of each year.

SECTION 2. No season bag limit applies to foxes taken under this act.

SECTION 3. This act applies only to Lenoir County.

SECTION 4. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

JI
(Committee Name)

JUNE 26, 2012
Date

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Hubert Papes	John Locke Foundation
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Nick Long	NC Land Title
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Michelle Frazier	MFS
MB Beren	Comp. of DAs
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Doug Hoffow	WWS
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Connie Wilson	CRMCA
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Katherine Wilberson	NCBA
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Mike Carpenter	NCBA
Cody Thomas	NCAR
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Nancy Ferguson	Chicago Title
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Ben Davis	NC Bankers Assoc
Mac Boxley	NC Aggregates

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CS Hollis	FSS
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Joseph Chesser	John Locke Foundation
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Jean Elliott	FHGE
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