2013

SENATE
JUDICIARY I

MINUTES

NORTH CAROLINA GENERAL ASSEMBLY

Judiciary I Committee
2013 – 2014 SESSION



Sen. Thom Goolsby
Co-Chair



Sen. Buck Newton
Co-Chair



Sen. Peter Brunstetter
Vice Chair



Sen. Tom Apodaca



Sen. Tamara Barringer



Sen. Dan Blue



Sen. Harry Brown



Sen. Daniel Clodfelter



Sen. Kathy Harrington



Sen. Clark Jenkins



Sen. Martin Nesbitt



Sen. Earline Parmon



Sen. Bob Rucho



Sen. Norman Sanderson



Sen. Dan Soucek



Sen. Josh Stein



Sen. Jerry Tillman



Sen. Trudy Wade

NORTH CAROLINA GENERAL ASSEMBLY

Judiciary I Committee

2011-2012 SESSION

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NORTH CAROLINA GENERAL ASSEMBLY

Judiciary I Committee

2011-2012 SESSION

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North Carolina Ge[illegible]ssembly
Through Senate Committee on
Judiciary I

2013-2014 Biennium
Leg. Day: H-104/S-104

Date: 08/21/2013
Time: 10:54:39 AM

Bill	Introducer	Short Title		Latest Action	Date In	Date Out
H 8	McGrady	Eminent Domain.	S	Re-ref Com On Judiciary I	04/10/2013	
H 17	Burr	Gun Permits/Confidentiality.	*S	Judiciary I	03/27/2013	
H 29	Horn	Methamphetamine/Offense/Penalties.	R	Ch. SL 2013-124	02/21/2013	06/06/2013
H 31	Hurley	Amend Habitual DWI.	S	Re-ref Com On Judiciary I	04/30/2013	
H 40	Jackson	Amend Habitual DWI.	S	Re-ref Com On Judiciary I	04/30/2013	
H 88	Hurley	Lien Agents/Technical Corrections.	*R	Ch. SL 2013-117	04/16/2013	05/30/2013
H 122	Glazier	Amend Interlocutory Appeals/Family Law.	*H	Pres. To Gov. 7/29/2013	03/05/2013	06/06/2013
H 122	Glazier	Amend Interlocutory Appeals/Family Law.	*H	Pres. To Gov. 7/29/2013	06/10/2013	06/13/2013
H 125	Conrad	Public Agency Computer Code Not Public Record.	R	Ch. SL 2013-96	03/20/2013	06/04/2013
H 139	Glazier	Adopt Uniform Deployed Parent Cust/Visit. Act.	*R	Ch. SL 2013-27	03/04/2013	04/02/2013
H 147	Jordan	Amend Adoption Laws.	*R	Ch. SL 2013-236	03/11/2013	06/13/2013
H 168	Murry	Divison of Atty's Fees in Workers' Comp.	*R	Ch. SL 2013-278	06/24/2013	06/25/2013
H 180	Stevens	Mechanics Liens/Technical Corrections.	*R	Ch. SL 2013-16	03/07/2013	03/12/2013
H 203	Stam	Revisions/Homeowner/Homebuyer Protection Act.	*S	Ref To Com On Judiciary I	04/22/2013	
H 243	Stevens	Liens/Self-Service Storage Facilities.	*R	Ch. SL 2013-239	04/04/2013	04/30/2013
H 278	Ross	HOAs/Voluntary Prelitigation Mediation.	*R	Ch. SL 2013-127	06/04/2013	06/06/2013
H 293	Szoka	Mortgages/S.A.F.E. Act.	*H	Pres. To Gov. 7/26/2013	04/30/2013	07/19/2013
H 311	Alexander, Jr.	Repeal Literacy Test.	*S	Ref To Com On Judiciary I	05/15/2013	
H 332	Bryan, III	Notary Act/Satisfaction of Security Interests.	*R	Ch. SL 2013-204	04/23/2013	06/06/2013

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H 343	Turner	Courts/Procedure and Fee Amendments.-AB	*R	Ch. SL 2013-225	05/15/2013	05/30/2013
H 361	Faircloth, Jr.	Justice Reinvestment Technical Corrections.-AB	*R	Ch. SL 2013-101	05/07/2013	06/04/2013
H 369	Waddell	Increased Penalty/Seed Law Violations.-AB	*S	Re-ref Com On Judiciary I	06/04/2013	
H 384	Davis, Jr.	Amend Definitions/Property Classif./Equ. Dist.	*R	Ch. SL 2013-103	04/08/2013	06/04/2013
H 388	Jackson	Assigned Counsel/Amend and Clarify.-AB	R	Ch. SL 2013-41	04/09/2013	04/23/2013
H 392	Arp, Jr.	Warrant Status/Drug Screen Public Assist.	*H	Vetoed 08/15/2013	05/30/2013	06/18/2013
H 407	Turner	Trustee-Atty Fee/Foreclosures/Clerk Approval.	*R	Ch. SL 2013-104	04/15/2013	06/04/2013
H 433	Bell	Land Use Surrounding Military Installations.	*R	Ch. SL 2013-206	04/23/2013	05/09/2013
H 466	McNeill	Amend Private Protective Services Act/Fees.	S	Ref to Judiciary I. If fav, re-ref to Finance	04/29/2013	
H 482	Moore	Mediation Amendments.	S	Ref To Com On Judiciary I	04/16/2013	
H 515	Bell	Amend Credit Union Laws.	R	Ch. SL 2013-132	05/30/2013	06/06/2013
H 522	Avila	Foreign Laws/Protect Constitutional Rights.	*H	Pres. To Gov. 7/26/2013	06/24/2013	07/18/2013
H 543	Jones, Jr.	Guardianship Roles of MHDDSA Providers.	*R	Ch. SL 2013-258	06/05/2013	06/13/2013
H 652	Davis, Jr.	Modify Judicial Discipline.	*H	Pres. To Gov. 7/29/2013	04/23/2013	07/18/2013
H 663	Ramsey	Commodities Producer Protection.	*S	Ref To Com On Judiciary I	05/20/2013	
H 683	Brown	Commonsense Consumption Act.	*R	Ch. SL 2013-309	06/20/2013	06/27/2013
H 686	Tine	NC Seafood Park/Name Change.	*R	Ch. SL 2013-211	06/11/2013	06/18/2013
H 695	Whitmire	Family, Faith, and Freedom Protection Act.	*H	Re-ref Com On House Select Committee on Ways and Means	06/25/2013	07/02/2013
H 756	McGrady	Reform Recreational Use Statute.	*S	Ref To Com On Judiciary I	04/29/2013	
H 763	Goodman	Allow Alimony/Post Sep Supp During Marriage.	*R	Ch. SL 2013-140	05/01/2013	06/06/2013

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H 765	Dixon	Jury Instructions for School Budget Dispute.	*R	Ch. SL 2013-141	05/14/2013	06/06/2013
H 828	Fulghum, III M.D.	Update Physical Therapy Practice Act.	*R	Ch. SL 2013-312	06/24/2013	06/27/2013
H 855	Schaffer	Human Trafficking.	*S	Ref To Com On Judiciary I	05/16/2013	
H 870	Dixon	Duplin County Boards of Comms. and Educ.	*R	Ch. SL 2013-320	05/13/2013	07/15/2013
H 937	Schaffer	Amend Various Firearms Laws.	*R	Ch. SL 2013-369	06/10/2013	06/11/2013
H 982	Burr	Modify Medicaid Subrogation Statute.	*R	Ch. SL 2013-274	06/03/2013	06/25/2013
S 36	Hartsell	APA Technical/Clarifying Chges.	*R	Ch. SL 2013-143	02/04/2013	02/21/2013
S 45	Randleman	Incapacity to Proceed Amendments.	*R	Ch. SL 2013-18	02/05/2013	03/05/2013
S 72	Hartsell	Amend UCC Article 4A/Funds Transfers.	R	Ch. SL 2013-14	02/11/2013	02/21/2013
S 99	Brunstetter	North Carolina Benefit Corporation Act.	S	Ref To Com On Judiciary I	02/20/2013	
S 100	Gunn	EMS Immunity From Civil Liability.	S	Ref To Com On Judiciary I	02/20/2013	
S 107	Goolsby	Decriminalize Direct Entry Midwifery.	*S	Re-ref Com On Health Care	02/20/2013	05/09/2013
S 122	Goolsby	Sex Trafficking/Sex Offender Registration.	*R	Ch. SL 2013-33	02/21/2013	02/28/2013
S 124	Brunstetter	Shoot Gun Inside/To Incite Fear.	*R	Ch. SL 2013-144	02/25/2013	04/09/2013
S 125	Goolsby	Public Meeting/Records Law Violations.	S	Ref To Com On Judiciary I	02/25/2013	
S 135	Brunstetter	Modify Habitual Impaired Driving Statute.	S	Ref To Com On Judiciary I	02/27/2013	
S 140	Bingham	Financial Exploitation of Older Adults.	*R	Ch. SL 2013-337	03/21/2013	04/04/2013
S 146	Bingham	Private Schools/Firearms Amendments.	S	Ref To Com On Judiciary I	02/28/2013	
S 182	Brunstetter	Limit Appeals to Superior Court.	*S	Pres. To Gov. 07/29/2013	03/06/2013	05/14/2013
S 200	Bingham	Extend Time For Forensic Accreditation.	*R	Ch. SL 2013-338	03/06/2013	03/19/2013
S 201	Randleman	Allow Hunting With Suppressors.	*H	Re-ref Com On Judiciary Subcommittee A	04/09/2013	04/18/2013
S 210	Parmon	Authorize Chief Magistrates.	R	Ch. SL 2013-89	03/07/2013	05/14/2013
S 213	Apodaca	Parole Commission Voting.	S	Ref To Com On Judiciary I	03/07/2013	

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Through Senate [illegible]ittee on
Judiciary I

S 225	Newton	Adopt Uniform Deployed Parent Cust/Visit. Act.	S	Re-ref Com On Judiciary I	03/11/2013	
S 239	Clodfelter	Amend NC Business Corporation Act.	*R	Ch. SL 2013-153	03/11/2013	04/16/2013
S 253	Davis	LEO May Inspect Pharmaceutical Records.	S	Re-ref Com On Judiciary II	03/12/2013	04/10/2013
S 264	Brown	Abate Nuisances/Drug Sales From Stores.	*R	Ch. SL 2013-229	03/13/2013	05/07/2013
S 279	Hartsell	Estates/Trusts/Guardianship Amendments.	*R	Ch. SL 2013-91	03/13/2013	04/30/2013
S 284	Hise	OSC/Gov't Data Analytics/State Data Sharing.	*S	Re-ref Com On Judiciary I	04/30/2013	
S 285	Davis	DWI Cases/No ILAC Required.	*R	Ch. SL 2013-194	03/14/2013	04/11/2013
S 295	Parmon	Public Agency Computer Code Not Public Record.	S	Ref To Com On Judiciary I	03/14/2013	
S 306	Goolsby	Capital Punishment/Amendments.	*R	Ch. SL 2013-154	03/14/2013	03/27/2013
S 323	Davis	Pitt Co. Bd. of Ed.	S	Ref To Com On Judiciary I	03/14/2013	
S 331	Goolsby	Sunshine Amendment.	S	Ref To Com On Judiciary I	03/19/2013	
S 332	Goolsby	Government Transparency Act.	S	Ref To Com On Judiciary I	03/19/2013	
S 358	Meredith	Guaranteed Asset Protection Waivers.	*R	Ch. SL 2013-193	03/20/2013	04/02/2013
S 385	Randleman	Courts/Procedure and Fee Amendments.-AB	S	Ref to Judiciary I. If fav, re-ref to Finance	03/21/2013	
S 393	Clodfelter	Constructive Fraud/Limitations Period.	*H	Conf Com Appointed	03/25/2013	05/09/2013
S 411	Rabon	Ethics Requirements for MPOs/RPOs.	*R	Ch. SL 2013-156	03/27/2013	04/09/2013
S 429	Brown	Limit Successor Asbestos-Related Liability.	S	Ref To Com On Judiciary I	03/27/2013	
S 434	Rabon	Ignition Interlock Req'd / All DWIs.	S	Re-ref to Judiciary I. If fav, re-ref to Finance. If fav, re-ref to Appropriations/Base Budget	04/30/2013	
S 439	Clodfelter	Amend & Restate NC Limited Liability Co. Act.	*R	Ch. SL 2013-157	03/27/2013	04/24/2013

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North Carolina G Assembly
Through Senate Committee on
Judiciary I

S 472	Blue	Court Improvem't Project Juv Law Changes.-AB	S	Ref To Com On Judiciary I	03/28/2013	
S 494	Apodaca	Community Service/Post-Release Supervision.	*R	Ch. SL 2013-196	03/28/2013	05/13/2013
S 509	Jackson	NC Agriculture and Forestry Act.	*S	Re-ref Com On Judiciary I	04/23/2013	
S 528	Goolsby	Clarify Petit Juror Oath.	*R	Ch. SL 2013-164	04/01/2013	04/09/2013
S 530	Goolsby	Prohibit E-Cigarette Sales to Minors.	*R	Ch. SL 2013-165	05/02/2013	05/07/2013
S 539	Clodfelter	Jury List/Date of Birth Information.	*R	Ch. SL 2013-166	04/01/2013	04/18/2013
S 549	Tucker	Gun Privacy.	S	Ref To Com On Judiciary I	04/01/2013	
S 582	Tucker	Privacy/Protect Law Officer Personal Info.	S	Ref To Com On Judiciary I	04/03/2013	
S 584	Tucker	Amend False Liens Law.	R	Ch. SL 2013-170	04/03/2013	05/14/2013
S 591	Allran	Amend Eligibility/Conditional Discharge.	S	Ref To Com On Judiciary I	04/03/2013	
S 593	Davis	Civil Litigation Costs Reform Act of 2013.	S	Ref To Com On Judiciary I	04/03/2013	
S 617	Tucker	Public Records/Minimal Cost Recovery.	S	Ref To Com On Judiciary I	04/03/2013	
S 625	McKissick	Limit Confidentiality Agreements.	S	Re-ref Com On Judiciary I	04/24/2013	
S 630	Newton	Evidence & DNA Expunction Laws.-AB	*R	Ch. SL 2013-171	04/03/2013	05/09/2013
S 632	Newton	Assigned Counsel/Amend and Clarify.-AB	S	Ref To Com On Judiciary I	04/03/2013	
S 636	Newton	Wildlife Resources Comm. Penalty Changes.	*S	Re-ref Com On Judiciary I	07/16/2013	
S 648	Jackson	NC Commerce Protection Act of 2013.	*S	Re-ref Com On Rules and Operations of the Senate	05/07/2013	05/13/2013
S 649	Jackson	Commodities Producer Protection.	S	Ref To Com On Judiciary I	04/03/2013	
S 681	Davis	Admissibility of Forensic Evidence.	S	Ref To Com On Judiciary I	04/03/2013	
S 683	Goolsby	Safe Harbor/Victims of Human Trafficking.	*R	Ch. SL 2013-368	04/03/2013	05/09/2013
S 687	Parmon	Involuntary Commitment Custody Orders.	*S	Re-ref Com On Judiciary I	04/17/2013	

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North Carolina Ge Assembly
Through Senate Committee on
Judiciary I

S 705	Clark	Local Condemnors Accountability Act.	S	Ref To Com On Judiciary I	04/03/2013
S 723	Clark	Local Accountability Act.	S	Ref To Com On Judiciary I	04/03/2013

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Senate Committee on Judiciary I
Thursday, February 21, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 36	APA Technical/Clarifying Chges.	Senator Hartsell
SB 72	Amend UCC Article 4A/Funds Transfers.	Senator Hartsell

Presentations

Other Business

Adjournment

Senate Committee on Judiciary I
Thursday, February 21, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on February 21, 2013 in Room 1027/1128 of the Legislative Building. Ten members were present.

Senator E. S. (Buck) Newton, Chair, presided.

Sen. Newton recognized Senator Thom Goolsby to speak on Senate Bill 36. Sen. Goolsby thanked Sen. Newton and asked staff to brief the committee on SB 36. Susan Sitze from the Research Division was recognized to explain the bill.

Hearing no further questions or comment from the committee, Sen. Newton accepted a motion from Senator Jerry Tillman for a favorable report on SB 36. The motion passed.

Sen. Newton recognized Sen. Goolsby again to introduce Senate Bill 72. Sen. Goolsby asked Bill Patterson from the Research Division to explain the bill.

Hearing no further questions or comment from the committee, Sen. Newton accepted a motion from Senator Dan Clodfelter for a favorable report on SB 72. The motion passed.

The meeting adjourned at 10:07 a.m.

Senator E. S. (Buck) Newton, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Thursday, February 21, 2013

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

FAVORABLE

SB **36** APA Technical/Clarifying Chges.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

SB **72** Amend UCC Article 4A Funds Transfers.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Senator Fletcher Hartsell will handle SB 36
Senator Fletcher Hartsell will handle SB 72

CMR46-V-1

SENATE BILL 36*

Short Title:	APA Technical/Clarifying Chges.	(Public)
Sponsors:	Senators Hartsell (Primary Sponsor); and Goolsby.	
Referred to:	Judiciary I.	

February 4, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN TECHNICAL, CLARIFYING, AND CONFORMING CHANGES TO THE ADMINISTRATIVE PROCEDURE ACT, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 150B-21.2(c) reads as rewritten:

"(c) Notice of Text. – A notice of the proposed text of a rule must include all of the following:

(1) The text of the proposed rule.

(2) A short explanation of the reason for the proposed ~~rule and a link to the agency's Web site containing the information required by G.S. 150B-19.1(c).~~ rule.

(2a) A link to the agency's Web site containing the information required by G.S. 150B-19.1(c).

(3) A citation to the law that gives the agency the authority to adopt the rule.

(4) The proposed effective date of the rule.

(5) The date, time, and place of any public hearing scheduled on the rule.

(6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.

(7) The period of time during which and the person within the agency to whom written comments may be submitted on the proposed rule.

(8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.

~~(9) The procedure by which a person can object to a proposed rule and the requirements for subjecting a proposed rule to the legislative review process.~~"

SECTION 2. G.S. 150B-21.7 reads as rewritten:

"**§ 150B-21.7. Effect of transfer of duties or termination of agency on rules.**

(a) When a law that authorizes an agency to adopt a rule is repealed and another law gives the same or another agency substantially the same authority to adopt a rule, the rule remains in effect until the agency with authority over the rule amends or repeals the rule. When a law that authorizes an agency to adopt a rule is repealed and another law does not give the same or another agency substantially the same authority to adopt a rule, a rule adopted under

the repealed law is repealed as of the date the law is repealed. The agency that adopted the rule shall notify the Codifier of Rules that the rule is repealed pursuant to this subsection.

(b) When an executive order abolishes part or all of an agency and transfers a function of that agency to another agency, a rule concerning the transferred function remains in effect until the agency to which the function is transferred amends or repeals the rule. When an executive order abolishes part or all of an agency and does not transfer a function of that agency to another agency, a rule concerning a function abolished by the executive order is repealed as of the effective date of the executive order. The agency that adopted the rule shall notify the Codifier of Rules that the rule is repealed pursuant to this subsection.

(c) ~~The Director of Fiscal Research of the General Assembly must notify the Codifier of Rules when a rule is repealed under this section~~ When notified of a rule repealed under this section, the Codifier of Rules must enter the repeal of the rule in the North Carolina Administrative Code."

SECTION 3. G.S. 150B-21.20(a) reads as rewritten:

"(a) Authority. – After consulting with the agency that adopted the rule, the Codifier of Rules may revise the form of a rule submitted for inclusion in the North Carolina Administrative Code ~~within 10 business days after the rule is submitted~~ to do one or more of the following:

(1) Rearrange the order of the rule in the Code or the order of the subsections, subdivisions, or other subparts of the rule.

(2) Provide a catch line or heading for the rule or revise the catch line or heading of the rule.

(3) Reletter or renumber the rule or the subparts of the rule in accordance with a uniform system.

(4) Rearrange definitions and lists.

(5) Make other changes in arrangement or in form that do not change the substance of the rule and are necessary or desirable for a clear and orderly arrangement of the rule.

(6) Omit from the published rule a map, a diagram, an illustration, a chart, or other graphic material, if the Codifier of Rules determines that the Office of Administrative Hearings does not have the capability to publish the material or that publication of the material is not practicable. When the Codifier of Rules omits graphic material from the published rule, the Codifier must insert a reference to the omitted material and information on how to obtain a copy of the omitted material."

SECTION 4. G.S. 150B-45(a) reads as rewritten:

"(a) Procedure. – To obtain judicial review of a final decision under this Article, the person seeking review must file a petition within 30 days after the person is served with a written copy of the decision. The petition must be filed as follows:

(1) Contested tax cases. – A petition for review of a final decision in a contested tax case arising under G.S. 105-241.15 must be filed in the Superior Court of Wake County.

(2) Other final decisions. – A petition for review of any other final decision under this Article must be filed in the Superior Court of Wake County or in the superior court of the county where the ~~person~~ party who commenced the contested case resides."

SECTION 5. This act is effective when it becomes law.

SENATE BILL 36:
APA Technical/Clarifying Chges

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	February 21, 2013
Introduced by:	Sen. Hartsell	**Prepared by:**	Susan Sitze
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 36 makes several technical, clarifying, and conforming changes to the Administrative Procedure Act as recommended by the Joint Legislative Administrative Procedure Oversight Committee.***

BILL ANALYSIS: Senate Bill 36 makes the following changes to the Administrative Procedure Act:

Section 1 amends the Notice of Text provision by separating two distinct items of information that must be contained in the notice. This section also deletes an unnecessary requirement that the agency include the procedure for seeking legislative review of a rule. This procedure is already included in the Register by the Office of Administrative Hearings (OAH).

Section 2 clarifies language concerning rules that are repealed as a result of the repeal of an agency's authority to adopt the rule. This provision deletes a requirement that the Director of the Fiscal Research Division of the North Carolina General Assembly notify the Codifier of Rules when a rule is repealed under this section and instead requires the agency that adopted the rule to notify the Codifier of Rules.

Section 3 allows the Codifier of Rules to make certain formatting changes to certain rules more than 10 days after the rule has been submitted.

Section 4 amends the provision relating to appropriate venue for seeking judicial review of a final decision in a contested case. Currently, a petition for judicial review can be filed in Wake County or in the county where the person resides. This language was not changed when OAH was given final decision-making authority. Prior to that change, an agency could not seek judicial review of its own final decision. This amendment clarifies that the "person" in the current law refers to the party that commenced the original contested case.

EFFECTIVE DATE: This act is effective when it becomes law.

**Chris Saunders, Staff Attorney, contributed substantially to this summary.*

O. Walker Reagan
Director

Research Division
(919) 733-2578

SENATE BILL 72*

Short Title:	Amend UCC Article 4A/Funds Transfers.	(Public)
Sponsors:	Senator Hartsell (Primary Sponsor).	
Referred to:	Judiciary I.	

February 11, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND UNIFORM COMMERCIAL CODE ARTICLE 4A, FUNDS TRANSFERS, TO CONTINUE THE APPLICABILITY OF THAT ARTICLE TO REMITTANCE TRANSFERS THAT ARE NOT ELECTRONIC FUND TRANSFERS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 25-4A-108 reads as rewritten:

"**§ 25-4A-108. ~~Exclusion of consumer transactions governed by federal law.~~Relationship to Electronic Fund Transfer Act.**

(a) Except as provided in subsection (b) of this section, this~~This~~ Article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 ~~(Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. § 1693 et seq.)~~(Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. § 1693, et seq.), as amended from time to time.

(b) This Article applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. § 1693o-1), as amended from time to time, unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. § 1693a), as amended from time to time.

(c) In a funds transfer to which this Article applies, in the event of an inconsistency between an applicable provision of this Article and an applicable provision of the Electronic Fund Transfer Act, the provision of the Electronic Fund Transfer Act governs to the extent of the inconsistency."

SECTION 2. The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Comment to the 2012 Amendment to Section 4A-108 of the Uniform Commercial Code as the Revisor may deem appropriate.

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

SENATE BILL 72:
Amend UCC Article 4A Funds Transfers

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	February 18, 2013
Introduced by:	Sen. Hartsell	**Prepared by:**	Bill Patterson
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 72 amends Article 4A of the Uniform Commercial Code so that it will continue to apply to "remittance transfers" that are not also "electronic fund transfers," as those terms are defined by the Electronic Fund Transfer Act.***

[As introduced, this bill was identical to H78, as introduced by Rep. Blust, which is currently in House Judiciary Subcommittee A.]

CURRENT LAW: Article 4A of the Uniform Commercial Code allocates rights and responsibilities among financial institutions participating in "funds transfers" as defined under the UCC.[1] However, G.S. 25-4A-108 exempts a funds transfer from Article 4A if any part of it is governed under federal law by the Electronic Fund Transfer Act of 1978 (EFTA).[2]

A "remittance transfer," as defined in EFTA, is a transfer of funds by a consumer in any state to a person located in a foreign country. Until 2010, EFTA did not govern remittance transfers that were not "electronic fund transfers," as defined in EFTA,[3] and so Article 4A applied to these transfers.[4]

As a result of 2010 amendments to EFTA,[5] EFTA will govern all remittance transfers, including those that are not electronic fund transfers. When the federal regulations implementing the 2010 amendments take effect in 2013, the rights and responsibilities of financial institutions participating in remittance transfers that are not electronic fund transfers will no longer be allocated pursuant to Article 4A.

BILL ANALYSIS: Senate Bill 72 implements a General Statutes Commission recommendation to amend G.S. 25A-4A-108 to provide that Article 4A applies to a remittance transfer that is not an electronic fund transfer, as an exception to the general rule exempting from Article 4A funds transfers that are governed by EFTA. In addition, the bill provides that if a funds transfer is subject to both Article 4A and EFTA, the applicable EFTA provision will govern to the extent of any inconsistency between it and the applicable Article 4A provision.

The bill also authorizes the Revisor of Statutes to print the official comments to this amendment as annotations to the General Statutes.

EFFECTIVE DATE: This act is effective when it becomes law.

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[1] The UCC defines a funds transfer as "a series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order." G.S. 25-4A-104(a).

[2] 15 U.S.C. 1693 *et seq.*

[3] EFTA defines an electronic fund transfer as "any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account." 15 U.S.C.A. § 1693a.

[4] Examples of remittance transfers that are not electronic fund transfers include cash-based remittance transfers sent through money transmitters like Western Union, as well as consumer wire transfers and international ACH (automated clearing house) transactions. 77 FR 6194-01, at p. 6207 (February 7, 2012).

[5] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376, s.1073 (2010).

O. Walker Reagan
Director

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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
February 13, 2013

TO: Senate Judiciary I Committee
FROM: General Statutes Commission
RE: SB 72 (Amend UCC Article 4A/Funds Transfers)

This bill amends Article 4A (Funds Transfers) of the Uniform Commercial Code (Article 4A) to continue the application of that Article to funds transfers that are remittance transfers as defined in the federal Electronic Fund Transfer Act (EFTA) as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) but are not electronic fund transfers as defined in the EFTA. The bill is based on amendments to Section 4A-108 of the Uniform Commercial Code approved in 2012 by the Uniform Law Commission and the American Law Institute and also supported by the American Bankers Association.

Article 4A primarily governs the rights and responsibilities among commercial parties to funds transfers (also commonly referred to as wholesale wire transfers). These typically involve very large amounts of money in which several transactions involving several financial institutions may be needed to complete the transfers. Currently, G.S. 25-4A-108 limits the scope of Article 4A by excluding a funds transfer any part of which is governed by the EFTA.

Dodd-Frank extended the EFTA to apply to remittance transfers, defined as transfers of funds by consumers in the United States to recipients in foreign countries, whether or not the transfers were also electronic fund transfers (the original core definition in the EFTA). Dodd-Frank also established new protections for those consumers. As a result, when the EFTA's new implementing rules take effect in 2013, funds transfers that are also remittance transfers will be governed by the EFTA and Article 4A will no longer apply to them. If multiple financial institutions are involved in completing the transfer, these institutions will lose Article 4A's well-established legal framework that sets the rights, responsibilities, and liabilities of financial institutions participating in funds transfers vis à vis each other. The EFTA as amended does not provide for these.

The bill addresses this problem by altering the exclusion in G.S. 25-4A-108. The bill amends G.S. 25-4A-108 to designate the existing language as subsection (a) and amends subsection (a) to take into account the addition of two new subsections, (b) and (c). New subsection (b) provides that Article 4A applies to a remittance transfer as defined in the EFTA unless that remittance transfer is also an electronic fund transfer as defined in the EFTA. New subsection (c) provides that the EFTA applies in the event of an inconsistency between Article 4A and the EFTA. The bill also updates the catchline of G.S. 25-4A-108.

The bill authorizes the printing of official comments and is effective when it becomes law. The earliest possible effective date is necessary because of the planned 2013 effective date of the amendments to Regulation E that implement the remittance transfer provisions of the EFTA as amended.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee

2-21-2013

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	SOS
Claire Anderson	NCBOP
Patrick Brown	NC BOP
	BEGINNINGS
Molly Masich	OAH
Julian Mann	OAH
Jason Fishkin	Sen. Stein
Kay Emanuel	School of Government
Adam Prideaux	NCASA
Mike Lancetta	Dept of the Day
Nathan Baffs	NCBA
Chris Agner	DOJ
John Delgiorno	Brubaker + Assoc.
Susanna Davis	WM

Senate Committee on Judiciary I
Thursday, February 28, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 45	Incapacity to Proceed Amendments. Discussion Only	Senator Randleman
SB 122	Sex Trafficking/Sex Offender Registration.	Senator Goolsby Senator Bingham Senator Newton

Adjournment

Senate Committee on Judiciary I
Thursday, February 28, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on February 28, 2013 in Room 1027/1128 of the Legislative Building. Fourteen members were present.

Senator E. S. (Buck) Newton, Chair, presided.

Sen. Newton recognized Senator Shirley Randleman to speak on behalf of Senate Bill 45. Sen. Randleman explained the bill and Sen. Newton reminded members the bill is in committee for discussion only. He recognized Sen. Goolsby to discuss the bill.

Next, Sen. Newton recognized Senator Martin Nesbitt to speak on the bill. Sen. Nesbitt asked Susan Sitze from the Research Division to review details of Section 1 of SB 45. Ms. Sitze reviewed all sections for the committee.

Sen. Newton ended discussion of SB 45 in the interest of time.

Sen. Newton asked for a motion to take up a Proposed Committee Substitute for Senate Bill 122. Senator Dan Soucek made the motion, it passed and Sen. Goolsby explained the PCS.

Sen. Goolsby asked Ms. Sitze to detail the bill further. Sen. Soucek, Senator Dan Blue and Sen. Nesbitt commented on the bill. Senator Josh Stein arrived late and asked for clarification about sections of the bill. Senator Norm Sanderson asked for more detail about who the bill applies to.

Tami Fitzgerald from the North Carolina Values Coalition addressed the committee in support of the bill. Senator Trudy Wade made a motion for a favorable report to the PCS, unfavorable to the original bill, and the motion passed by a voice vote.

The meeting adjourned at 10:42 a.m.

Senator E. S. (Buck) Newton, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

CORRECTED REPORT

Thursday, February 28, 2013

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

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

SB **122** Sex Trafficking/Sex Offender Registration.

Draft Number:	S122-PCS75093-SA-2
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Thomas Goolsby will handle SB 122



SENATE BILL 45*

Short Title:	Incapacity to Proceed Amendments.	(Public)
Sponsors:	Senator Randleman (Primary Sponsor).	
Referred to:	Judiciary I.	

February 5, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING INCAPACITY TO PROCEED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1002 reads as rewritten:

"**§ 15A-1002. Determination of incapacity to proceed; evidence; temporary commitment; temporary orders.**

(a) The question of the capacity of the defendant to proceed may be raised at any time on motion by the prosecutor, the defendant, the defense counsel, or the court. The motion shall detail the specific conduct that leads the moving party to question the defendant's capacity to proceed.

(b) When the capacity of the defendant to proceed is questioned, the court shall hold a hearing to determine the defendant's capacity to proceed. If an examination is ordered pursuant to subdivision (1) or (2) of this subsection, the hearing shall be held after the examination. Reasonable notice shall be given to the defendant and prosecutor, and the State and the defendant may introduce evidence. ~~The court:~~

(1) ~~May~~In the case of a defendant charged with a misdemeanor or felony, the court may appoint one or more impartial medical experts, including forensic evaluators approved under rules of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, to examine the defendant and return a written report describing the present state of the defendant's mental ~~health; reports~~health. Reports so prepared are admissible at the ~~hearing and the~~hearing. The court may call any expert so appointed to testify at the ~~hearing; any expert so appointed may be called to testify at the hearing by the court at~~hearing, with or without the request of either ~~party; or~~party.

(2) ~~In the case of a defendant charged with a misdemeanor only after the examination pursuant to subsection (b)(1) of this section or at~~At any time in the case of a defendant charged with a felony, the court may order the defendant to a State facility for the mentally ill for observation and treatment for the period, not to exceed 60 days, necessary to determine the defendant's capacity to ~~proceed; in the case of a defendant charged with a felony, if~~proceed. If a defendant is ordered to a State facility without first having an examination pursuant to subsection (b)(1) of this section, the judge shall make a finding that an examination pursuant to this subsection would be more appropriate to determine the defendant's ~~capacity; the~~capacity. The sheriff shall return the defendant to the county when notified that the

evaluation has been ~~completed; the~~completed. The director of the facility shall direct his report on defendant's condition to the defense attorney and to the clerk of superior court, who shall bring it to the attention of the ~~court; the~~court. The report is admissible at the hearing.

(3) Repealed by Session Laws 1989, c. 486, s. 1.

(4) A presiding district or superior court judge of this State who orders an examination pursuant to subdivision (1) or (2) of this subsection shall order the release of relevant confidential information to the examiner, including, but not limited to, the warrant or indictment, arrest records, the law enforcement incident report, the defendant's criminal record, jail records, any prior medical and mental health records of the defendant, and any school records of the defendant, after providing the defendant with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary to the hearing of the matter before the court and unavailable from any other source. This subdivision shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law before ordering the release of any private medical or mental health information or records related to substance abuse or HIV status or treatment. The records may be surrendered to the court, for in camera review, if surrender is necessary to make the required determinations. The records shall be withheld from public inspection and, except as provided in this subdivision, may be examined only by order of the court.

(b1) ~~If the report pursuant to subdivision (1) or (2) of subsection (b) of this section indicates~~ The order of the court shall contain findings of fact to support its determination of the defendant's capacity to proceed. The parties may stipulate that the defendant is capable of proceeding but shall not be allowed to stipulate that the defendant lacks capacity to proceed. If the court concludes that the defendant lacks capacity to proceed, proceedings for involuntary civil commitment under Chapter 122C of the General Statutes may be instituted on the basis of the report in either the county where the criminal proceedings are pending or, if the defendant is hospitalized, in the county in which the defendant is hospitalized.

(b2) Reports made to the court pursuant to this section shall be completed and provided to the court as follows:

(1) The report in a case of a defendant charged with a misdemeanor shall be completed and provided to the court no later than 10 days following the completion of the examination for a defendant who was in custody at the time the examination order was entered, and no later than 20 days following the completion of the examination for a defendant who was not in custody at the time the examination order was entered.

(2) The report in the case of a defendant charged with a felony shall be completed and provided to the court no later than 30 days following the completion of the examination.

(3) In cases where the defendant challenges the determination made by the court-ordered examiner or the State facility and the court orders an independent psychiatric examination, that examination and report to the court must be completed within 60 days of the entry of the order by the court.

The court may, for good cause shown, extend the time for the provision of the report to the court for up to 30 additional days. The court may renew an extension of time for an additional 30 days upon request of the State or the defendant prior to the expiration of the previous

extension. In no case shall the court grant extensions totaling more than 120 days beyond the time periods otherwise provided in this subsection.

(c) The court may make appropriate temporary orders for the confinement or security of the defendant pending the hearing or ruling of the court on the question of the capacity of the defendant to proceed.

(d) Any report made to the court pursuant to this section shall be forwarded to the clerk of superior court in a sealed envelope addressed to the attention of a presiding judge, with a covering statement to the clerk of the fact of the examination of the defendant and any conclusion as to whether the defendant has or lacks capacity to proceed. If the defendant is being held in the custody of the sheriff, the clerk shall send a copy of the covering statement to the sheriff. The sheriff, and any persons employed by the sheriff, shall maintain the copy of the covering statement as a confidential record. A copy of the full report shall be forwarded to defense counsel, or to the defendant if he is not represented by ~~counsel provided, if~~counsel. If the question of the defendant's capacity to proceed is raised at any time, a copy of the full report must be forwarded to the district ~~attorney.~~attorney, as provided in G.S. 122C-54(b). Until such report becomes a public record, the full report to the court shall be kept under such conditions as are directed by the court, and its contents shall not be revealed except as directed by the court. Any report made to the court pursuant to this section shall not be a public record unless introduced into evidence."

SECTION 2. G.S. 15A-1004(c) reads as rewritten:

"(c) If the defendant is placed in the custody of a hospital or other institution in a proceeding for involuntary civil commitment, the orders must provide for reporting to the clerk if the defendant is to be released from the custody of the hospital or institution. The original or supplemental orders may make provisions as in subsection (b) in the event that the defendant is released. The court shall also order that the defendant shall be examined to determine whether the defendant has the capacity to proceed prior to release from custody. A report of the examination shall be provided pursuant to G.S. 15A-1002. If the defendant was charged with a violent crime, including a crime involving assault with a deadly weapon, and that charge has not been dismissed, the order must require that if the defendant is to be released from the custody of the hospital or other institution, he is to be released only to the custody of a specified law enforcement agency. If the original or supplemental orders do not specify to whom the respondent shall be released, the hospital or other institution may release the defendant to whomever it thinks appropriate."

SECTION 3. G.S. 15A-1006 reads as rewritten:

"**§ 15A-1006. Return of defendant for trial upon gaining capacity.**

If a defendant who has been determined to be incapable of proceeding, and who is in the custody of an institution or an individual, ~~gains~~ has been determined by the institution or individual having custody to have gained capacity to proceed, the individual or institution ~~must notify~~shall provide written notification to the clerk in the county in which the criminal proceeding is pending. The clerk ~~must notify the sheriff to~~ shall provide written notification to the district attorney, the defendant's attorney, and the sheriff. The sheriff shall return the defendant to the county for supplemental hearing pursuant to G.S. 15A-1007, if conducted, and ~~trial,~~trial and ~~to~~ hold ~~him~~ the defendant for supplemental hearing and trial, subject to the orders of the court entered pursuant to G.S. 15A-1004."

SECTION 4. G.S. 15A-1007 reads as rewritten:

"**§ 15A-1007. Supplemental hearings.**

(a) When it has been reported to the court that a defendant has gained capacity to proceed, or when the defendant has been determined by the individual or institution having custody of him to have gained capacity and has been returned for ~~trial, the~~trial, in accordance with G.S. 15A-1004(e) and G.S. 15A-1006, the clerk shall notify the district attorney. Upon receiving the notification, the district attorney shall calendar the matter for hearing at the next

available term of court, but no later than 30 days after receiving the notification. The court may hold a supplemental hearing to determine whether the defendant has capacity to proceed. The court may take any action at the supplemental hearing that it could have taken at an original hearing to determine the capacity of the defendant to proceed.

(b) The court may hold a supplemental hearing any time upon its own determination that a hearing is appropriate or necessary to inquire into the condition of the defendant.

(c) The court must hold a supplemental hearing if it appears that any of the conditions for dismissal of the charges have been met.

(d) If the court determines in a supplemental hearing that a defendant has gained the capacity to proceed, the case shall be calendared for trial at the earliest practicable time. Continuances that extend beyond 60 days after initial calendaring of the trial shall be granted only in extraordinary circumstances when necessary for the proper administration of justice, and the court shall issue a written order stating the grounds for granting the continuance."

SECTION 5. G.S. 15A-1008 reads as rewritten:

"**§ 15A-1008. Dismissal of charges.**

(a) When a defendant lacks capacity to proceed, the court ~~may~~ shall dismiss the ~~charges:~~charges upon the earliest of the following occurrences:

(1) When it appears to the satisfaction of the court that the defendant will not gain capacity to ~~proceed; or~~proceed.

(2) When the defendant has been substantially deprived of his liberty for a period of time equal to or in excess of the ~~maximum permissible period of confinement for the crime or crimes charged; or~~maximum term of imprisonment permissible for prior record level VI for felonies or prior conviction level III for misdemeanors for the most serious offense charged.

(3) Upon the expiration of a period of five years from the date of determination of incapacity to proceed in the case of misdemeanor charges and a period of 10 years in the case of felony charges.

(b) A dismissal entered pursuant to subdivision (2) of subsection (a) of this section shall be without leave.

(c) A dismissal entered pursuant to subdivision (1) or (3) of subsection (a) of this section shall be issued without prejudice to the refiling of the charges. Upon the defendant becoming capable of proceeding, the prosecutor may reinstitute proceeding dismissed pursuant to subdivision (1) or (3) of subsection (a) of this section by filing written notice with the clerk, with the defendant, and with the defendant's attorney of record.

(d) Dismissal of criminal charges pursuant to this section shall be upon motion of the prosecutor or the defendant, or upon the court's own motion."

SECTION 6. G.S. 15A-1009 is repealed.

SECTION 7. G.S. 122C-54(b) reads as rewritten:

"(b) If an individual is a defendant in a criminal case and a mental examination of the defendant has been ordered by the court as provided in G.S. 15A-1002, the facility shall send the results or the report of the mental examination to the clerk of court, to the district attorney or prosecuting officer, and to the attorney of record for the defendant as provided in G.S. 15A-1002(d). The report shall contain a treatment recommendation, if any, and any opinion as to whether there is a likelihood that the defendant will gain the capacity to proceed."

SECTION 8. Part 7 of Article 5 of Chapter 122C is amended by adding a new section to read:

"**§ 122C-278. Reexamination for capacity to proceed prior to discharge.**

Whenever a respondent has been committed to either inpatient or outpatient treatment pursuant to this Chapter after having been found incapable of proceeding and referred by the court for civil commitment proceedings, the respondent shall not be discharged from the custody of the hospital or institution, or the outpatient commitment case terminated, until the

respondent has been examined for capacity to proceed and a report filed with the clerk of court pursuant to G.S. 15A-1002."

SECTION 9. The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall develop and adopt rules by December 1, 2013, to require forensic evaluators appointed pursuant to G.S. 15A-1002(b) to meet the following requirements:

(1) Complete all training requirements necessary to be credentialed as a certified forensic evaluator.

(2) Attend annual continuing education seminars that provide continuing education and training in conducting forensic evaluations and screening examinations of defendants to determine capacity to proceed and preparation of written reports required by law.

SECTION 10. The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall, by December 1, 2013, adopt guidelines for treatment of individuals who are involuntarily committed following a determination of incapacity to proceed and a referral pursuant to G.S. 15A-1003. The guidelines shall require a treatment plan that uses best practices in an effort to restore the individual's capacity to proceed in the criminal matter.

SECTION 11. Sections 1 through 8 of this act become effective December 1, 2013, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 45:
Incapacity to Proceed Amendments

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	February 27, 2013
Introduced by:	Sen. Randleman	**Prepared by:**	Susan Sitze
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 45 would amend the laws governing incapacity to proceed.

[As introduced, this bill was identical to H88, as introduced by Rep. Hurley, which is currently in House Judiciary Subcommittee B.]

CURRENT LAW: In North Carolina a person may not be tried, convicted, sentenced, or punished for a crime when, because of mental illness, he or she is unable to understand the nature of the proceedings, to comprehend his or her own situation in reference to the proceedings, or to assist in his or her own defense.

BILL ANALYSIS:

Section 1 of the bill would amend several subsections of G.S. 15A-1002 which provides for determinations of capacity to proceed, evidence, temporary commitment and temporary orders.

G.S. 15A-1002(b) sets out the requirements for a hearing when the capacity of a defendant to proceed is questioned. The bill would make the following changes to the current law:

- Limits evaluations of misdemeanor defendants to the local level.
- Authorizes the court to call any expert appointed to evaluate the defendant to testify at the capacity hearing with or without the request of either party.
- Requires the court to order the release of relevant confidential information to the person doing the evaluation after providing the defendant reasonable notice and opportunity to be heard and making a determination that the information is relevant and necessary to the hearing of the matter and is unavailable from any other source. The court must conduct hearings and make findings as required by federal law before ordering the release of any private medical or mental health information or substance abuse or HIV status records. The records may be surrendered to the court for an in camera review if necessary. Records shall be withheld from public inspection and may be examined only by order of the court.

G.S. 15A-1002(b1) would be amended to require the court to make findings of fact to support its determination of the defendant's capacity to proceed. Parties would be allowed to stipulate that the defendant is capable to proceed, but would not be allowed to stipulate that the defendant lacks capacity to proceed.

A new subsection (b2) would be added to provide time periods within which the reports of examination must be submitted to the court as follows:

- Reports of evaluation of a misdemeanor defendant shall be submitted within 10 days of completion of the examination if the defendant was in custody at the time the examination order was entered, or 20 days if the defendant was not in custody.

- Reports of evaluation of a felony defendant at the local level shall be submitted within 30 days of completion of the examination.
- If the defendant challenges the determination made by the court ordered examiner or the State facility and the court orders an independent examination, the examination and report must be completed within 60 days of the order for independent examination.
- The court may extend the times for good cause shown for up to 30 additional days and may renew the extension for an additional 30 days upon request of the State or the defendant made prior to the expiration of the previous extension. In no case shall the court grant extensions totaling more than 120 days beyond the original time period provided.

This section would also provide that if the defendant is being held in the custody of the sheriff, upon receipt of the report, the clerk of court shall send a copy of the covering statement attached to the report to the sheriff, who shall maintain it as a confidential record.

Section 2 would amend G.S. 15A-1004(c) to require that when a defendant has been involuntarily committed after a finding of incapacity to proceed, before they can be released from the involuntary commitment, an examination to determine whether they are capable of proceeding must be conducted, and the report provided to the clerk of court.

Section 3 would amend G.S. 15A-1006 to require that if a person found incapable of proceeding is determined to have gained capacity, the institution with custody must provide written notice to the clerk of court, who shall provide written notice to the DA, the defendant's attorney, and the sheriff. The sheriff would then return the defendant to the county for supplemental hearings.

Section 4 would amend G.S. 15A-1007 regarding supplemental hearings after a defendant has gained capacity to require the following:

- The clerk shall notify the DA that the defendant has gained capacity, and the DA shall calendar the matter for hearing at the next available term of court, but no later than 30 days after receiving notification.
- If the court determines in a supplemental hearing that the defendant has gained capacity, the case shall be calendared for trial at the earliest practicable time. Continuances that extend beyond 60 days after initial calendaring shall be granted only in extraordinary circumstances when necessary for the proper administration of justice and must be done by written order stating the grounds for continuance.

Sections 5 and 6 would amend the provisions relating to dismissal of charges when a defendant is incapable of proceeding to provide the following:

- The court must dismiss the charges upon the earliest of the following:
    - When the court determines the defendant will not gain capacity.
    - When the defendant has been confined for a period equal to or in excess of the maximum term of imprisonment permissible for the prior record level VI for felonies or prior conviction level III for misdemeanors for the most serious offense charged.
    - 5 years from the date of determination of incapacity for a misdemeanor, 10 years for a felony.
- Dismissal for confinement as long as possible sentence length shall be without leave.

- Other dismissals shall be issued without prejudice to refiling the charges. Upon the defendant gaining capacity, charges may be reinstituted by the DA by filing written notice with the clerk, the defendant, and the defendant's attorney of record.
- Dismissal may be upon motion of the prosecutor, defendant, or upon the court's own motion.

Section 7 would require any report done on examination of a defendant to determine capacity to proceed to contain a treatment recommendation, if any, and any opinion as to whether there is a likelihood the defendant will gain the capacity to proceed.

Section 8 would add a new statute G.S. 122C-278 to the involuntary commitment statutes. The new statute would require an examination for capacity to proceed prior to discharge of defendants committed to inpatient or outpatient treatment after being found incapable.

Section 9 would direct the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to develop and adopt rules by December 1, 2013 to require forensic evaluators to (1) complete all training requirements necessary to be credentialed as a certified forensic evaluator and (2) attend annual continuing education seminars providing training in conducting forensic evaluations, screening examinations of defendants to determine capacity, and preparation of written reports required by law.

Section 10 would direct the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to adopt guidelines for treatment of individuals who are involuntarily committed following a determination of incapacity and a referral pursuant to G.S. 15A-1003. The guidelines shall require a treatment plan that uses best practices in an effort to restore the individuals capacity to proceed.

EFFECTIVE DATE: Sections 1 through 8 of this act become effective December 1, 2013, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SENATE BILL 122

Short Title:	Sex Trafficking/Sex Offender Registration.	(Public)
Sponsors:	Senators Goolsby, Bingham, Newton (Primary Sponsors); Allran, Apodaca, Barefoot, Brock, Brown, Cook, Curtis, Daniel, D. Davis, J. Davis, Harrington, Hunt, Jackson, Kinnaird, McLaurin, Meredith, Rabin, Randleman, Sanderson, Soucek, Tillman, Tucker, and Woodard.	
Referred to:	Judiciary I.	

February 21, 2013

A BILL TO BE ENTITLED

AN ACT TO ADD THE OFFENSE OF HUMAN TRAFFICKING TO THE LIST OF CRIMINAL CONVICTIONS THAT REQUIRE REGISTRATION UNDER THE SEX OFFENDER AND PUBLIC PROTECTION REGISTRATION PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.6(5) reads as rewritten:

"(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.2A (rape of a child; adult offender), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.4A (sex offense with a child; adult offender), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), former G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-27.7A(a)(statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older), G.S. 14-43.11 (human trafficking) if (i) the offense is committed against a minor who is less than 18 years of age or (ii) the offense is committed against an adult subjected to sexual servitude, G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1)(felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in the prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a)(taking indecent liberties with a student), G.S. 14-318.4(a1)(parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2)(commission or allowing of sexual act upon a juvenile by parent or guardian). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 2. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 122
PROPOSED COMMITTEE SUBSTITUTE S122-CSSA-2 [v.1]

2/27/2013 2:28:41 PM

Short Title: Sex Trafficking/Sex Offender Registration. (Public)

Sponsors:

Referred to:

February 21, 2013

A BILL TO BE ENTITLED

AN ACT TO ADD THE OFFENSE OF HUMAN TRAFFICKING TO THE LIST OF CRIMINAL CONVICTIONS THAT REQUIRE REGISTRATION UNDER THE SEX OFFENDER AND PUBLIC PROTECTION REGISTRATION PROGRAM.

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SECTION 2. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

SENATE BILL 122:
Sex Trafficking/Sex Offender Registration

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	February 27, 2013
Introduced by:	Sens. Goolsby, Bingham, Newton	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition S122-CSSA-2		

SUMMARY: The Proposed Committee Substitute (PCS) for Senate Bill 122 would add the offense of human trafficking to the list of offenses that require registration under the Sex Offender and Public Protection Registration Program.

CURRENT LAW:

§ 14-43.11. Human trafficking.

(a) A person commits the offense of human trafficking when that person knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude.

(b) A person who violates this section is guilty of a Class F felony if the victim of the offense is an adult. A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.

(c) Each violation of this section constitutes a separate offense and shall not merge with any other offense. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this section.

(d) A person who is not a legal resident of North Carolina, and would consequently be ineligible for State public benefits or services, shall be eligible for the public benefits and services of any State agency if the person is otherwise eligible for the public benefit and is a victim of an offense charged under this section. Eligibility for public benefits and services shall terminate at such time as the victim's eligibility to remain in the United States is terminated under federal law.

BILL ANALYSIS: The PCS for SB 122 would add the offense of human trafficking (G.S. 14-43.11) to the list of offenses that require registration as a sex offender if the offense is committed against a minor who is less than 18 years old, or if the offense is committed against any person with the intent that they be held in sexual servitude.

EFFECTIVE DATE: This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee

2/28/13

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Julia Adams	The Arc of NC/NCARF
Sarah Preston	ACLU-NC
Dolly Whitenoe	Indigent Defense Services
Annaliese Dolph	Dolph Law
Jennifer S Johnson	NC Division of Social Services
Amber Barwick	NC Conf. of DAs
Peg Dorer	NC Conf of DAs
Andrew Cagle	NC Sheriffs' Assn.
Johnna Field	NASW-NC
Jeff Hux	NC Values Coalition
Joel Maynard	Gov. Affairs
Jami Fritz	NC Values Coalition
John Rolfsen	NCMEA
Julia White	NC DOJ
Rob Black	NC Friends of Midwives
Rose Hoban	NC Health News
Al Jean Bogle	Clerk of Superior Court Catawba Co.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee

2/28/13

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sally Cameron	NC Psychological Assoc.
Mark Hazelrigg	Central Regional Hospital - DHHS
Laura White	DHHS – Div State Operated Facilities
Tracy Ginn	DHHS - Division of State operated facilities
Russ Fawcett	NC Friends of Midwives
LISA FAWCETT	NCFDM
Rev. Mark Creech	CAL
Pat Gannon	Insider
Kevin Mangum	Star News
Jere Royall	NC Family Policy Council
Alex Badger	CSS
Jason Fishman	Sen. Stein
Stephanie Hawco	WPTF
	nurse

VISITOR REGISTRATION SHEET

_____

(Committee Name)

_____

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susan A. Hicks	Clerk of Superior Ct - Moore
Lorrie Freeman	Clerk of Superior Ct - Wake
John McMillan	NCFJC
Fred Baggett	Bar Assn.

09-21-201

Senate Committee on Judiciary I
Tuesday, March 5, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 45	Incapacity to Proceed Amendments.	Senator Randleman

Adjournment

Senate Committee on Judiciary I
Tuesday, March 5, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on March 5, 2013 in Room 1027/1128 of the Legislative Building. Fourteen members were present.

Senator Thom Goolsby, Chair, presided.

Sen. Goolsby recognized Senator Shirley Randleman to explain Senate Bill 45. Sen. Randleman said the committee heard discussion of this bill last meeting, and she would answer any questions.

Senator Josh Stein asked Susan Sitze from the Research Division to explain the bill again because he was absent at the last committee meeting. Ms. Sitze explained each section of the bill.

Sen. Goolsby asked if there were other comments from the audience. Andrew Cagle from the North Carolina Sheriffs Association was recognized and said his organization supports the bill.

Senator Trudy Wade made a motion for a favorable report, and the committee took a voice vote in unanimous support of the motion.

The meeting adjourned at 10:10 a.m.

Senator Thom Goolsby, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Tuesday, March 05, 2013

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

FAVORABLE

SB **45** Incapacity to Proceed Amendments.

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Shirley Randleman will handle SB 45



SENATE BILL 45*

Short Title:	Incapacity to Proceed Amendments.	(Public)
Sponsors:	Senator Randleman (Primary Sponsor).	
Referred to:	Judiciary I.	

February 5, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING INCAPACITY TO PROCEED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1002 reads as rewritten:

"**§ 15A-1002. Determination of incapacity to proceed; evidence; temporary commitment; temporary orders.**

(a) The question of the capacity of the defendant to proceed may be raised at any time on motion by the prosecutor, the defendant, the defense counsel, or the court. The motion shall detail the specific conduct that leads the moving party to question the defendant's capacity to proceed.

(b) When the capacity of the defendant to proceed is questioned, the court shall hold a hearing to determine the defendant's capacity to proceed. If an examination is ordered pursuant to subdivision (1) or (2) of this subsection, the hearing shall be held after the examination. Reasonable notice shall be given to the defendant and prosecutor, and the State and the defendant may introduce evidence. ~~The court:~~

(1) ~~May~~In the case of a defendant charged with a misdemeanor or felony, the court may appoint one or more impartial medical experts, including forensic evaluators approved under rules of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, to examine the defendant and return a written report describing the present state of the defendant's mental ~~health; reports~~health. Reports so prepared are admissible at the ~~hearing and the~~hearing. The court may call any expert so appointed to testify at the ~~hearing; any expert so appointed may be called to testify at the hearing by the court at~~hearing, with or without the request of either ~~party; or~~party.

(2) ~~In the case of a defendant charged with a misdemeanor only after the examination pursuant to subsection (b)(1) of this section or at~~At any time in the case of a defendant charged with a felony, the court may order the defendant to a State facility for the mentally ill for observation and treatment for the period, not to exceed 60 days, necessary to determine the defendant's capacity to ~~proceed; in the case of a defendant charged with a felony, if~~proceed. If a defendant is ordered to a State facility without first having an examination pursuant to subsection (b)(1) of this section, the judge shall make a finding that an examination pursuant to this subsection would be more appropriate to determine the defendant's ~~capacity; the~~capacity. The sheriff shall return the defendant to the county when notified that the

evaluation has been ~~completed; the~~completed. The director of the facility shall direct his report on defendant's condition to the defense attorney and to the clerk of superior court, who shall bring it to the attention of the ~~court; the~~court. The report is admissible at the hearing.

(3) Repealed by Session Laws 1989, c. 486, s. 1.

(4) A presiding district or superior court judge of this State who orders an examination pursuant to subdivision (1) or (2) of this subsection shall order the release of relevant confidential information to the examiner, including, but not limited to, the warrant or indictment, arrest records, the law enforcement incident report, the defendant's criminal record, jail records, any prior medical and mental health records of the defendant, and any school records of the defendant, after providing the defendant with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary to the hearing of the matter before the court and unavailable from any other source. This subdivision shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law before ordering the release of any private medical or mental health information or records related to substance abuse or HIV status or treatment. The records may be surrendered to the court, for in camera review, if surrender is necessary to make the required determinations. The records shall be withheld from public inspection and, except as provided in this subdivision, may be examined only by order of the court.

(b1) ~~If the report pursuant to subdivision (1) or (2) of subsection (b) of this section indicates~~ The order of the court shall contain findings of fact to support its determination of the defendant's capacity to proceed. The parties may stipulate that the defendant is capable of proceeding but shall not be allowed to stipulate that the defendant lacks capacity to proceed. If the court concludes that the defendant lacks capacity to proceed, proceedings for involuntary civil commitment under Chapter 122C of the General Statutes may be instituted on the basis of the report in either the county where the criminal proceedings are pending or, if the defendant is hospitalized, in the county in which the defendant is hospitalized.

(b2) Reports made to the court pursuant to this section shall be completed and provided to the court as follows:

(1) The report in a case of a defendant charged with a misdemeanor shall be completed and provided to the court no later than 10 days following the completion of the examination for a defendant who was in custody at the time the examination order was entered, and no later than 20 days following the completion of the examination for a defendant who was not in custody at the time the examination order was entered.

(2) The report in the case of a defendant charged with a felony shall be completed and provided to the court no later than 30 days following the completion of the examination.

(3) In cases where the defendant challenges the determination made by the court-ordered examiner or the State facility and the court orders an independent psychiatric examination, that examination and report to the court must be completed within 60 days of the entry of the order by the court.

The court may, for good cause shown, extend the time for the provision of the report to the court for up to 30 additional days. The court may renew an extension of time for an additional 30 days upon request of the State or the defendant prior to the expiration of the previous

extension. In no case shall the court grant extensions totaling more than 120 days beyond the time periods otherwise provided in this subsection.

(c) The court may make appropriate temporary orders for the confinement or security of the defendant pending the hearing or ruling of the court on the question of the capacity of the defendant to proceed.

(d) Any report made to the court pursuant to this section shall be forwarded to the clerk of superior court in a sealed envelope addressed to the attention of a presiding judge, with a covering statement to the clerk of the fact of the examination of the defendant and any conclusion as to whether the defendant has or lacks capacity to proceed. If the defendant is being held in the custody of the sheriff, the clerk shall send a copy of the covering statement to the sheriff. The sheriff, and any persons employed by the sheriff, shall maintain the copy of the covering statement as a confidential record. A copy of the full report shall be forwarded to defense counsel, or to the defendant if he is not represented by ~~counsel provided, if~~counsel. If the question of the defendant's capacity to proceed is raised at any time, a copy of the full report must be forwarded to the district ~~attorney.~~attorney, as provided in G.S. 122C-54(b). Until such report becomes a public record, the full report to the court shall be kept under such conditions as are directed by the court, and its contents shall not be revealed except as directed by the court. Any report made to the court pursuant to this section shall not be a public record unless introduced into evidence."

SECTION 2. G.S. 15A-1004(c) reads as rewritten:

"(c) If the defendant is placed in the custody of a hospital or other institution in a proceeding for involuntary civil commitment, the orders must provide for reporting to the clerk if the defendant is to be released from the custody of the hospital or institution. The original or supplemental orders may make provisions as in subsection (b) in the event that the defendant is released. The court shall also order that the defendant shall be examined to determine whether the defendant has the capacity to proceed prior to release from custody. A report of the examination shall be provided pursuant to G.S. 15A-1002. If the defendant was charged with a violent crime, including a crime involving assault with a deadly weapon, and that charge has not been dismissed, the order must require that if the defendant is to be released from the custody of the hospital or other institution, he is to be released only to the custody of a specified law enforcement agency. If the original or supplemental orders do not specify to whom the respondent shall be released, the hospital or other institution may release the defendant to whomever it thinks appropriate."

SECTION 3. G.S. 15A-1006 reads as rewritten:

"**§ 15A-1006. Return of defendant for trial upon gaining capacity.**

If a defendant who has been determined to be incapable of proceeding, and who is in the custody of an institution or an individual, ~~gains~~ has been determined by the institution or individual having custody to have gained capacity to proceed, the individual or institution ~~must notify~~shall provide written notification to the clerk in the county in which the criminal proceeding is pending. The clerk ~~must notify the sheriff to~~ shall provide written notification to the district attorney, the defendant's attorney, and the sheriff. The sheriff shall return the defendant to the county for supplemental hearing pursuant to G.S. 15A-1007, if conducted, and ~~trial,~~trial and ~~to~~ hold ~~him~~ the defendant for supplemental hearing and trial, subject to the orders of the court entered pursuant to G.S. 15A-1004."

SECTION 4. G.S. 15A-1007 reads as rewritten:

"**§ 15A-1007. Supplemental hearings.**

(a) When it has been reported to the court that a defendant has gained capacity to proceed, or when the defendant has been determined by the individual or institution having custody of him to have gained capacity and has been returned for ~~trial, the~~trial, in accordance with G.S. 15A-1004(e) and G.S. 15A-1006, the clerk shall notify the district attorney. Upon receiving the notification, the district attorney shall calendar the matter for hearing at the next

available term of court, but no later than 30 days after receiving the notification. The court may hold a supplemental hearing to determine whether the defendant has capacity to proceed. The court may take any action at the supplemental hearing that it could have taken at an original hearing to determine the capacity of the defendant to proceed.

(b) The court may hold a supplemental hearing any time upon its own determination that a hearing is appropriate or necessary to inquire into the condition of the defendant.

(c) The court must hold a supplemental hearing if it appears that any of the conditions for dismissal of the charges have been met.

(d) If the court determines in a supplemental hearing that a defendant has gained the capacity to proceed, the case shall be calendared for trial at the earliest practicable time. Continuances that extend beyond 60 days after initial calendaring of the trial shall be granted only in extraordinary circumstances when necessary for the proper administration of justice, and the court shall issue a written order stating the grounds for granting the continuance."

SECTION 5. G.S. 15A-1008 reads as rewritten:

"**§ 15A-1008. Dismissal of charges.**

(a) When a defendant lacks capacity to proceed, the court ~~may~~ shall dismiss the ~~charges:~~charges upon the earliest of the following occurrences:

(1) When it appears to the satisfaction of the court that the defendant will not gain capacity to ~~proceed; or~~proceed.

(2) When the defendant has been substantially deprived of his liberty for a period of time equal to or in excess of the ~~maximum permissible period of confinement for the crime or crimes charged; or~~maximum term of imprisonment permissible for prior record level VI for felonies or prior conviction level III for misdemeanors for the most serious offense charged.

(3) Upon the expiration of a period of five years from the date of determination of incapacity to proceed in the case of misdemeanor charges and a period of 10 years in the case of felony charges.

(b) A dismissal entered pursuant to subdivision (2) of subsection (a) of this section shall be without leave.

(c) A dismissal entered pursuant to subdivision (1) or (3) of subsection (a) of this section shall be issued without prejudice to the refiling of the charges. Upon the defendant becoming capable of proceeding, the prosecutor may reinstitute proceeding dismissed pursuant to subdivision (1) or (3) of subsection (a) of this section by filing written notice with the clerk, with the defendant, and with the defendant's attorney of record.

(d) Dismissal of criminal charges pursuant to this section shall be upon motion of the prosecutor or the defendant, or upon the court's own motion."

SECTION 6. G.S. 15A-1009 is repealed.

SECTION 7. G.S. 122C-54(b) reads as rewritten:

"(b) If an individual is a defendant in a criminal case and a mental examination of the defendant has been ordered by the court as provided in G.S. 15A-1002, the facility shall send the results or the report of the mental examination to the clerk of court, to the district attorney or prosecuting officer, and to the attorney of record for the defendant as provided in G.S. 15A-1002(d). The report shall contain a treatment recommendation, if any, and any opinion as to whether there is a likelihood that the defendant will gain the capacity to proceed."

SECTION 8. Part 7 of Article 5 of Chapter 122C is amended by adding a new section to read:

"**§ 122C-278. Reexamination for capacity to proceed prior to discharge.**

Whenever a respondent has been committed to either inpatient or outpatient treatment pursuant to this Chapter after having been found incapable of proceeding and referred by the court for civil commitment proceedings, the respondent shall not be discharged from the custody of the hospital or institution, or the outpatient commitment case terminated, until the

respondent has been examined for capacity to proceed and a report filed with the clerk of court pursuant to G.S. 15A-1002."

SECTION 9. The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall develop and adopt rules by December 1, 2013, to require forensic evaluators appointed pursuant to G.S. 15A-1002(b) to meet the following requirements:

(1) Complete all training requirements necessary to be credentialed as a certified forensic evaluator.

(2) Attend annual continuing education seminars that provide continuing education and training in conducting forensic evaluations and screening examinations of defendants to determine capacity to proceed and preparation of written reports required by law.

SECTION 10. The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall, by December 1, 2013, adopt guidelines for treatment of individuals who are involuntarily committed following a determination of incapacity to proceed and a referral pursuant to G.S. 15A-1003. The guidelines shall require a treatment plan that uses best practices in an effort to restore the individual's capacity to proceed in the criminal matter.

SECTION 11. Sections 1 through 8 of this act become effective December 1, 2013, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 45:
Incapacity to Proceed Amendments

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	February 27, 2013
Introduced by:	Sen. Randleman	**Prepared by:**	Susan Sitze
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 45 would amend the laws governing incapacity to proceed.

[As introduced, this bill was identical to H88, as introduced by Rep. Hurley, which is currently in House Judiciary Subcommittee B.]

CURRENT LAW: In North Carolina a person may not be tried, convicted, sentenced, or punished for a crime when, because of mental illness, he or she is unable to understand the nature of the proceedings, to comprehend his or her own situation in reference to the proceedings, or to assist in his or her own defense.

BILL ANALYSIS:

Section 1 of the bill would amend several subsections of G.S. 15A-1002 which provides for determinations of capacity to proceed, evidence, temporary commitment and temporary orders.

G.S. 15A-1002(b) sets out the requirements for a hearing when the capacity of a defendant to proceed is questioned. The bill would make the following changes to the current law:

- Limits evaluations of misdemeanor defendants to the local level.
- Authorizes the court to call any expert appointed to evaluate the defendant to testify at the capacity hearing with or without the request of either party.
- Requires the court to order the release of relevant confidential information to the person doing the evaluation after providing the defendant reasonable notice and opportunity to be heard and making a determination that the information is relevant and necessary to the hearing of the matter and is unavailable from any other source. The court must conduct hearings and make findings as required by federal law before ordering the release of any private medical or mental health information or substance abuse or HIV status records. The records may be surrendered to the court for an in camera review if necessary. Records shall be withheld from public inspection and may be examined only by order of the court.

G.S. 15A-1002(b1) would be amended to require the court to make findings of fact to support its determination of the defendant's capacity to proceed. Parties would be allowed to stipulate that the defendant is capable to proceed, but would not be allowed to stipulate that the defendant lacks capacity to proceed.

A new subsection (b2) would be added to provide time periods within which the reports of examination must be submitted to the court as follows:

- Reports of evaluation of a misdemeanor defendant shall be submitted within 10 days of completion of the examination if the defendant was in custody at the time the examination order was entered, or 20 days if the defendant was not in custody.

- Reports of evaluation of a felony defendant at the local level shall be submitted within 30 days of completion of the examination.
- If the defendant challenges the determination made by the court ordered examiner or the State facility and the court orders an independent examination, the examination and report must be completed within 60 days of the order for independent examination.
- The court may extend the times for good cause shown for up to 30 additional days and may renew the extension for an additional 30 days upon request of the State or the defendant made prior to the expiration of the previous extension. In no case shall the court grant extensions totaling more than 120 days beyond the original time period provided.

This section would also provide that if the defendant is being held in the custody of the sheriff, upon receipt of the report, the clerk of court shall send a copy of the covering statement attached to the report to the sheriff, who shall maintain it as a confidential record.

Section 2 would amend G.S. 15A-1004(c) to require that when a defendant has been involuntarily committed after a finding of incapacity to proceed, before they can be released from the involuntary commitment, an examination to determine whether they are capable of proceeding must be conducted, and the report provided to the clerk of court.

Section 3 would amend G.S. 15A-1006 to require that if a person found incapable of proceeding is determined to have gained capacity, the institution with custody must provide written notice to the clerk of court, who shall provide written notice to the DA, the defendant's attorney, and the sheriff. The sheriff would then return the defendant to the county for supplemental hearings.

Section 4 would amend G.S. 15A-1007 regarding supplemental hearings after a defendant has gained capacity to require the following:

- The clerk shall notify the DA that the defendant has gained capacity, and the DA shall calendar the matter for hearing at the next available term of court, but no later than 30 days after receiving notification.
- If the court determines in a supplemental hearing that the defendant has gained capacity, the case shall be calendared for trial at the earliest practicable time. Continuances that extend beyond 60 days after initial calendaring shall be granted only in extraordinary circumstances when necessary for the proper administration of justice and must be done by written order stating the grounds for continuance.

Sections 5 and 6 would amend the provisions relating to dismissal of charges when a defendant is incapable of proceeding to provide the following:

- The court must dismiss the charges upon the earliest of the following:
    - When the court determines the defendant will not gain capacity.
    - When the defendant has been confined for a period equal to or in excess of the maximum term of imprisonment permissible for the prior record level VI for felonies or prior conviction level III for misdemeanors for the most serious offense charged.
    - 5 years from the date of determination of incapacity for a misdemeanor, 10 years for a felony.
- Dismissal for confinement as long as possible sentence length shall be without leave.

- Other dismissals shall be issued without prejudice to refiling the charges. Upon the defendant gaining capacity, charges may be reinstituted by the DA by filing written notice with the clerk, the defendant, and the defendant's attorney of record.
- Dismissal may be upon motion of the prosecutor, defendant, or upon the court's own motion.

Section 7 would require any report done on examination of a defendant to determine capacity to proceed to contain a treatment recommendation, if any, and any opinion as to whether there is a likelihood the defendant will gain the capacity to proceed.

Section 8 would add a new statute G.S. 122C-278 to the involuntary commitment statutes. The new statute would require an examination for capacity to proceed prior to discharge of defendants committed to inpatient or outpatient treatment after being found incapable.

Section 9 would direct the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to develop and adopt rules by December 1, 2013 to require forensic evaluators to (1) complete all training requirements necessary to be credentialed as a certified forensic evaluator and (2) attend annual continuing education seminars providing training in conducting forensic evaluations, screening examinations of defendants to determine capacity, and preparation of written reports required by law.

Section 10 would direct the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to adopt guidelines for treatment of individuals who are involuntarily committed following a determination of incapacity and a referral pursuant to G.S. 15A-1003. The guidelines shall require a treatment plan that uses best practices in an effort to restore the individuals capacity to proceed.

EFFECTIVE DATE: Sections 1 through 8 of this act become effective December 1, 2013, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee

3-5-13

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susanna Davis	Williams Mullen
Andrew Cagle	NC Sheriffs' Assn.
Peg Dorer	Conf. of DAs
George Smith	Nexsen Pruet
Kay Parker	NASW-NC
Annaliese Dolph	Rolph Law
Matt Vichl	CW Consult
Sarah Preston	ACLU-NC
LAO Rupert	CJPC
Danielle Musselwhite	Jason Deans & Assoc.
Jason Deans	" "
Chuck Stees	SEANC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee

3/5/13

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Emily Hackeling	UNC Chapel Hill
Candace Howze	UNC Chapel Hill
Chris Killian	Nelson Mullins
Mark Hazelrigg	DHHS - CRH
Laura White	DHHS - Div of St. Operated Healthcare Facilities
Tracy Ginn	DHHS - Div of State operates Healthcare Facilities
Kay Emanuel	School of Government
Dolly Whiteside	Indigent Defense Services
Ramona Branch	NAMI NC
Kelly Dunn	NAMI NC
Joel Maynard	GFMS
Julia Adams	The Arc of NC/NCARF
Adam Sloan	DHHS

Senate Committee on Judiciary I
Thursday, March 7, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 107	Decriminalize Direct Entry Midwifery. Discussion only	Senator Goolsby Senator Clodfelter Senator Bingham
SB 125	Public Meeting/Records Law Violations. Discussion only	Senator Goolsby Senator Apodaca

Adjournment

Senate Committee on Judiciary I
Thursday, March 7, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on March 7, 2013 in Room 1027/1128 of the Legislative Building. Sixteen members were present.

Senator E. S. (Buck) Newton, Chair, presided.

Sen. Newton recognized Senator Thom Goolsby to explain Senate Bill 107. Sen. Goolsby asked Bill Patterson from the Research Division to detail the bill for the committee. Mr. Patterson explained each section of the bill for the committee.

Sen. Goolsby thanked Mr. Patterson and explained his support for the bill. Next, Sen. Newton recognized Senator Jerry Tillman for a question and Sen. Goolsby answered his question.

Senator Tamara Barringer asked a question about the bill and said she supports the bill. Senator Earline Parmon also spoke and said she supports the bill. Senator Pete Brunstetter asked a question about professional liability of certified professional midwives.

Senator Trudy Wade spoke in opposition to the bill. Sen. Newton said he would hear comments from the audience next.

Russ Fawcett, president of the North Carolina Friends of Midwives spoke in support of the bill. Jessica Floyd Milbrooks, representing Smith Anderson law firm and North Carolina OBGYNS, spoke in opposition to the bill. Alex Miller, representing the North Carolina Nurse Midwives, spoke in opposition to the bill. Barbara Hotelling from the NC Friends of Midwives spoke in support of the bill, and Dave Horn, attorney from Smith Anderson law firm representing the North Carolina Medical Society, spoke in opposition to the bill.

Sen. Newton asked Mr. Patterson to clarify parts of the bill discussed by audience members and the committee. Mr. Patterson detailed specific points of the bill for the committee. Sen. Newton said the committee would not vote today because members had other meetings to attend.

The meeting adjourned at 10:38 a.m.

Senator E. S. (Buck) Newton, Chair
Presiding

Joseph Kyzer, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 107

Short Title:	Decriminalize Direct Entry Midwifery.	(Public)
Sponsors:	Senators Goolsby, Clodfelter, Bingham (Primary Sponsors); Cook, Kinnaird, Parmon, and Rabin.	
Referred to:	Judiciary I.	

February 20, 2013

A BILL TO BE ENTITLED

AN ACT ALLOWING PERSONS PRACTICING AS CERTIFIED PROFESSIONAL MIDWIVES IN THIS STATE TO CONTINUE TO PROVIDE MIDWIFERY SERVICES WITHOUT BEING SUBJECT TO CRIMINAL PENALTY.

The General Assembly of North Carolina enacts:

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

"Article 10B.

"Practice of Midwifery by Certified Professional Midwives.

"**§ 90-178.10. Practice of midwifery by certified professional midwife.**

Notwithstanding any other provision of law to the contrary, any person who holds a current ministerial or tocological certification from an organization accredited by the Institute for Credentialing Excellence (ICE) may provide services as described in 42 U.S.C. § 1396r-6(b)(4)(E)(ii)(I)."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 107
PROPOSED COMMITTEE SUBSTITUTE S107-CSTG-8 [v.2]

3/6/2013 4:28:21 PM

Short Title: Decriminalize Direct Entry Midwifery. (Public)

Sponsors:

Referred to:

February 20, 2013

A BILL TO BE ENTITLED

AN ACT ALLOWING CERTIFIED PROFESSIONAL MIDWIVES TO PROVIDE CERTAIN MIDWIFERY SERVICES WITHOUT BEING SUBJECT TO CRIMINAL PENALTY.

The General Assembly of North Carolina enacts:

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

"Article 10B.

"Practice of Midwifery by Certified Professional Midwives.

"**§ 90-178.10. Practice of midwifery by certified professional midwife.**

Notwithstanding any other provision of law to the contrary, any person who is certified as a Certified Professional Midwife by the North American Registry of Midwives may provide prenatal, intrapartum, postpartum, newborn and interconceptional care as defined in G.S. 90-178.2, in accordance with the Standards for Practice of the National Association of Certified Professional Midwives."

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

SENATE BILL 107:
Decriminalize Direct Entry Midwifery

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 6, 2013
Introduced by:	Sens. Goolsby, Clodfelter, Bingham	**Prepared by:**	Bill Patterson
Analysis of:	PCS to First Edition S107-CSTG-8		Committee Counsel

SUMMARY: ***The PCS to Senate Bill 107 would permit any person certified as a Certified Professional Midwife by the North American Registry of Midwives to practice certain midwifery services in accordance with the Standards for Practice of the National Association of Certified Professional Midwives. The PCS substantially rewrote the original bill.***

[As introduced, this bill was identical to H155, as introduced by Reps. Wilkins, Hurley, which is currently in House Health and Human Services, if favorable, Judiciary Subcommittee B.]

CURRENT LAW: Under Article 10A of Chapter 90 of the General Statutes, no person may practice midwifery who is not approved to do so by the Midwifery Joint Committee of the North Carolina Medical Board and the Board of Nursing. To be approved, an applicant must complete an application form, submit evidence of certification by the American College of Nurse-Midwives,[1] submit evidence of arrangements for physician supervision, and pay an application fee. G.S. 90-178.5. Certified Nurse Midwives (CNMs) are licensed as registered nurses in North Carolina and are required to practice under the supervision of a physician who also does obstetrics including obstetricians and family physicians. It is a Class 3 misdemeanor for a person who is not approved pursuant to Article 10A to practice midwifery. G.S. 90-178.7(b).

BILL ANALYSIS: The PCS to House Bill 107 would permit any person certified as a Certified Professional Midwife by the North American Registry of Midwives[2] to provide prenatal, intrapartum, postpartum, newborn and interconceptional care as defined in G.S. 90-178.2[3] in accordance with the Standards for Practice of the National Association of Certified Professional Midwives. The primary difference between the requirements for certification as a professional midwife and as a nurse midwife is that the professional midwife certification does not require licensure as a registered nurse.

EFFECTIVE DATE: This act is effective when it becomes law.

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[1] The American College of Nurse Midwives requires certification of nurse midwives by the American Midwifery Certification Board (AMCB), which certifies both Certified Midwives and Certified Nurse Midwives.

[2] According to their websites, the North American Registry of Midwives and the American Midwifery Certification Board are accredited by the National Commission for Certifying Agencies (NCCA).

[3] G.S. 90-178.2 defines these terms as follows:

"Interconceptional care" includes but is not limited to:
- a. Family planning;
- b. Screening for cancer of the breast and reproductive tract; and
- c. Screening for and management of minor infections of the reproductive organs;

"Intrapartum care" includes but is not limited to:
- a. Attending women in uncomplicated labor;
- b. Assisting with spontaneous delivery of infants in vertex presentation from 37 to 42 weeks gestation;
- c. Performing amniotomy;
- d. Administering local anesthesia;
- e. Performing episiotomy and repair; and

f. Repairing lacerations associated with childbirth.

"Newborn care" includes but is not limited to:

a. Routine assistance to the newborn to establish respiration and maintain thermal stability;
b. Routine physical assessment including APGAR scoring;
c. Vitamin K administration; and
d. Eye prophylaxis for opthalmia neonatorum.

"Postpartum care" includes but is not limited to:

a. Management of the normal third stage of labor;
b. Administration of pitocin and methergine after delivery of the infant when indicated; and
c. Six weeks postpartum evaluation exam and initiation of family planning.

Prenatal care" includes but is not limited to:

a. Historical and physical assessment;
b. Obtaining and assessing the results of routine laboratory tests; and
c. Supervising the use of prenatal vitamins, folic acid, iron, and nonprescription medicines.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 125

Short Title:	Public Meeting/Records Law Violations.	(Public)
Sponsors:	Senators Goolsby, Apodaca (Primary Sponsors); Cook, Harrington, Hise, Jackson, Meredith, Newton, Pate, and Sanderson.	
Referred to:	Judiciary I.	

February 25, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE VIOLATIONS OF THE PUBLIC RECORDS AND OPEN MEETINGS LAWS A CLASS 3 MISDEMEANOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-9 is amended by adding a new subsection to read:

"(a1) It is a Class 3 misdemeanor to deny access to public records for purposes of inspection and examination or to deny copies of public records."

SECTION 2. Article 33C of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-318.18A. Violation of Article.**

Violation of this Article is a Class 3 misdemeanor."

SECTION 3. This act becomes effective December 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 125
PROPOSED COMMITTEE SUBSTITUTE S125-CSSA-6 [v.2]

3/6/2013 4:08:52 PM

Short Title: Public Meeting/Records Law Violations. (Public)

Sponsors:

Referred to:

February 25, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE VIOLATIONS OF THE PUBLIC RECORDS AND OPEN MEETINGS LAWS A CLASS 3 MISDEMEANOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-9 is amended by adding a new subsection to read:

"(a1) It is a Class 3 misdemeanor for any holder of elected or appointed office to deny access to public records for purposes of inspection and examination or to deny copies of public records."

SECTION 2. Article 33C of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-318.18A. Violation of Article.**

Violation of this Article by a member of a public body is a Class 3 misdemeanor."

SECTION 3. This act becomes effective December 1, 2013 and applies to offenses committed on or after that date.

SENATE BILL 125:
Public Meeting/Records Law Violations

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 7, 2013
Introduced by:	Sens. Goolsby, Apodaca	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition S125-CSSA-6		

SUMMARY: ***Senate Bill 125 would make violations of the public records and open meetings laws a Class 3 misdemeanor.***

BILL ANALYSIS:

Section 1 would make it a Class 3 misdemeanor for any holder of elected or appointed office to deny access to public records for purposes of inspection and examination or to deny copies of public records.

Section 2 would make it a Class 3 misdemeanor for a member of a public body to violate the open meetings laws.

EFFECTIVE DATE: This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

O. Walker Reagan
Director

Research Division
(919) 733-2578

VISITOR REGISTRATION SHEET

Judiciary I — 03/07/13

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kara Weishaar	NCSA
John DelGrosso	Brubaker & Assoc.
Emila Sutton	NCHFA
DAVID BARNES	Electrolytes
[illegible]	NCICU
Allen Hardison	CRSWMA
Keith Richardson	City of Charlotte
Pam Meyer	NCLM
Sue Rowland	Town of Cary
[illegible]	NP
George Smith	NP
[illegible]	Jordan Price

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michelle Frazier	MFTS
Butch Gunnells	NC Beverage A
Amy McConkey	NC Beverage Assoc
Leanne Winner	NCSBA
Meg Miller	KLG
Sarah Wolfe	MWC LLC
Judy Rafson	NCNA – Nurse Practitioners of the Day
Jim Harrell	Harrell for 2020
Elizabeth Suttles	NCMB
Jay Joiner	Sound Tracs
Chris Agnew	DOT

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rob Black	NC FOM
Lisa Fawcett	NCFOM
Ross Fawcett	NCFOM
Barbara A. Hotelling	NCFOM
Andrea Reynolds	NCFOM
[illegible]	[illegible]
[illegible]	NC OBGYN Society
Cassandra Skinner	NCACC
[illegible]	NCFOM
Jennifer Faison	
Jon Carr	NC Pediatric Society

Senate Committee on Judiciary I
Tuesday, March 12, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 180	Mechanics Liens/Technical Corrections.	Representative Stevens
SB 125	Public Meeting/Records Law Violations.	Senator Goolsby
	Discussion only	Senator Apodaca

Adjournment

Senate Committee on Judiciary I
Tuesday, March 12, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on March 12, 2013 in Room 1027/1128 of the Legislative Building. Sixteen members were present.

Senator E. S. (Buck) Newton, Chair, presided.

Sen. Newton said the first item is House Bill 180, a mechanics liens technical corrections bill. Senator Jerry Tillman made a motion to hear a Proposed committee Substitute for HB 180 and it passed by a voice vote. Sen. Newton asked Representative Sarah Stevens to explain the PCS, and said there may be an amendment.

Rep. Stevens explained the bill. Senator Pete Brunstetter said he'd like to send forward an amendment and have staff explain it. Sen. Newton recognized Bill Patterson from the Research Division to explain the bill.

Sen. Brunsetter asked to make one correction to the amendment so it reads page 6 on line 1, not page 5. The committee voted on the amendment to the PCS and it passed by a voice vote.

Sen. Newton recognized Senator Dan Clodfelter. Sen. Clodfelter asked a question about supplies and services and Mr. Patterson answered his question. Sen. Newton recognized David Ferrell with the North Carolina Land Title Association. The committee watched a 10 minute video about the new online lien system.

Senator Jerry Tillman made a motion for a favorable report to the PCS as amended, and it passed by a voice vote.

Sen. Newton said the committee would next hear Senate Bill 125 for discussion only. Sen. Tillman made a motion to bring a PCS for SB 125 before the committee, and the motion passed by a voice vote.

Senator Thom Goolsby asked Susan Sitze from the Research Division to explain the bill. Senator Trudy Wade asked three questions about adding willful intent to the language of the bill. Sen. Newton recognized Ms. Sitze to answer Sen. Wade's questions.

Next, Sen. Newton recognized Senator Tamara Barringer. Sen. Barringer asked a question about willful intent. Sen. Goolsby answered her question and took a comment from Sen. Brunstetter. Sen. Brunstetter said he opposed the bill and Senator Harry Brown also commented that he opposed the bill. Sen. Goolsby responded to their comments.

Sen. Newton recognized Senator Clark Jenkins and Sen. Clodfelter for more comments. He then took public comment. John Bussian from the North Carolina Press Association spoke in favor of

SB 125. Paul Meyer from the North Carolina League of Municipalities spoke in opposition to SB 125. LeAnn Winter from the North Carolina School Boards Association spoke in opposition to SB 125.

Sen. Newton said because of time the meeting would adjourn.

The meeting adjourned at 10:52 a.m.

Senator E. S. (Buck) Newton, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Tuesday, March 12, 2013

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

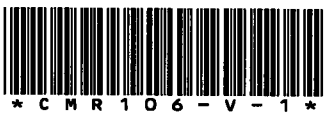
UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

HB **180** **(CS#1)** Mechanics Liens/Technical Corrections.

Draft Number:	H180-PCS80090-TG-13
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Peter Brunstetter will handle HB 180



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 180
Committee Substitute Favorable 3/6/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H180-PCS80090-TG-13

Short Title: Mechanics Liens/Technical Corrections. (Public)

Sponsors:

Referred to:

February 28, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS TECHNICAL CORRECTIONS TO THE LAWS GOVERNING MECHANICS LIENS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44A-11.1 reads as rewritten:

"**§ 44A-11.1. (Effective April 1, 2013) 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 are thirty thousand dollars ($30,000) or more, either at the time that the original building permit is ~~issued, or is thirty thousand dollars $30,000 or more,~~ issued or, in cases in which no building permit is required, at the time the contract for the improvements is entered into with the owner, the owner shall designate a lien agent no later than the time the owner first contracts with any person to improve the real property. Provided, however, that the owner is not required to designate a lien agent for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that is used by the owner as a residence. The owner shall deliver written notice of designation to its designated lien agent by any method authorized in ~~G.S. 44A-11.2(f),~~ G.S. 44A-11.2(g), 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.~~designated, and the owner's contact information. 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 Claim of Lien on Real Property, 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. 58-26-45.

(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. 58-26-45(b).

(d) In the event that the lien agent dies, resigns, is no longer licensed to serve as a 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 from the owner 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).~~G.S. 44A-11.2(f).

(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 in writing 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."

SECTION 2. G.S. 44A-11.2 reads as rewritten:

"**§ 44A-11.2. (Effective April 1, 2013) 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)~~ (g) 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.

(c) A potential lien claimant making a request pursuant to ~~this~~ subsection (b) of this section who did not receive the lien agent contact information pursuant to subsection (d) of this section, and who has not furnished ~~labor~~ labor, materials, rental equipment, or professional design or surveying services at the site of the improvements, or who last furnished labor, materials, rental equipment, or professional design or surveying services at the site of the improvements ~~did so~~ prior to the posting of the contact information for the lien agent pursuant to subsection ~~(d)~~ (e) or ~~(e)~~ (f) 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.

~~(e)~~(d) 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. This notice shall be given pursuant to subsection ~~(f)~~ (g) of this section or may be given by including the lien agent contact information in a written subcontract entered into by, or a written purchase order issued to, the lower-tier subcontractor entitled to the notice required by this subsection. Any contractor or subcontractor who has previously received notice of the lien agent contact information, whether from the building permit, the inspections office, a notice from the owner, contractor, or subcontractor, or by any other means, and who fails to provide the lien agent contact information to the lower-tier subcontractor in the time required under this subsection, shall be liable to the lower-tier subcontractor for any actual damages incurred by the lower-tier subcontractor as a result of the failure to give notice.

~~(d)~~(e) 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)~~(f) 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)~~(g) 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.
(7) Utilizing an Internet Web site approved for such use by the designated lien agent to transmit to the designated lien agent, with delivery receipt, all information required to notify the lien agent of its designation pursuant to G.S. 44A-11.1, to provide a notice to the designated lien agent pursuant to this section, or to deliver a copy of a notice of claim of lien upon funds to the designated lien agent pursuant to G.S. 44A-23(a1)(3) or G.S. 44A-23(b)(5)c.

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)~~(h) When a lien agent is identified in a contract between an owner and a contractor 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,~~residence, the contractor will be deemed to have met the requirement of notice under subsections ~~(l)~~ (m) and ~~(m)~~ (n) of this section on the date of the lien agent's receipt of the owner's notice of ~~designation.~~designation of the lien agent. 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 (3) of subsection ~~(i)~~ (j) of this section, by any method of delivery authorized in ~~G.S. 44A-11.2(f).~~ G.S. 44A-11.2(g). The lien agent shall include the ~~contractor~~contractor's name and address in its response to any persons requesting information relating to persons who have given notice to the lien agent pursuant to this section.

~~(h)~~(i) When a lien agent is not identified in a contract for improvements to real property subject to G.S. 44A-11.1 entered into between an owner and a design professional, the design professional will be deemed to have met the requirement of notice under subsections ~~(l)~~ (m) and ~~(m)~~ (n) of this section on the date of the lien agent's receipt of the owner's designation of the lien agent. The owner shall provide written notice to the lien agent containing the information pertaining to the design professional required in a notice to lien agent pursuant to subdivisions (1) through (3) of subsection ~~(i)~~ (j) of this section, by any method of delivery authorized in subsection ~~(f)~~ (g) of this section. The lien agent shall include the design ~~professional~~professional's name and address in its response to any persons requesting information relating to persons who have given notice to the lien agent pursuant to this section. For purposes of this subsection, the term "design professional" shall mean any architects,

engineers, land surveyors, and landscape architects registered under Chapter 83A, 89A, or 89C of the General Statutes.

~~(i)~~(j) 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"

~~(j)~~(k) 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.~~Chapter or a Claim of Lien on Real Property under Part 1 or Part 2 of Article 2 of this Chapter.

~~(k)~~(l) 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.

~~(l)~~(m) Except as otherwise provided in this section, for any improvement to real property subject to G.S. 44A-11.1, a potential lien claimant may perfect a claim of lien on real property only if ~~any~~ at least one of the following conditions is met:

(1) The lien agent identified in accordance with this section has received a Notice to Lien Agent ~~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~~ a Notice to Lien Agent 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~~ perfected its claim of lien on real property pursuant to ~~G.S. 44A-12~~ G.S. 44A-11 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.

~~(m)~~(n) Except as otherwise provided in this section, for any improvement to real property subject to G.S. 44A-11.1, the claim of lien on real property of a potential lien claimant that is not ~~filed~~ perfected pursuant to G.S. 44A-11 prior to the recordation of any mortgage or deed of trust for the benefit of one who is not an affiliate, relative, or insider of the owner shall be

subordinate to the previously recorded mortgage or deed of trust unless ~~any~~ at least one of the following conditions is met:

(1) The lien agent identified in accordance with this section has received ~~noticea~~ Notice to Lien Agent from the potential lien ~~claimant. claimant within~~ no later than 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~~ a Notice to Lien Agent 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.~~trust.

~~(n)~~(o) ~~With regard to an~~For any 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)~~ (e) or ~~(e)~~ (f) of this section at the time when the potential lien claimant was furnishing ~~labor~~ labor, materials, rental equipment, or professional design or surveying services 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 ~~(l)~~ (m) of this section nor subordinated under subsection ~~(m)~~ (n) of this section.

~~(o)~~(p) Except as provided in subsections ~~(l)~~ (m) and ~~(m)~~ (n) of this section, nothing contained in this section shall affect a claim of lien upon funds pursuant to G.S. 44A-18.

~~(p)~~(q) 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. G.S. 44A-19(e) reads as rewritten:

"**§ 44A-19. Notice of claim of lien upon funds.**

...

(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).

(2) When the notice of claim of lien upon funds or a copy thereof is filed by the obligor for the purpose of discharging the claim of lien upon funds in accordance with G.S. 44A-20(e)."

SECTION 4. G.S. 44A-20(d) reads as rewritten:

"**§ 44A-20. Duties and liability of obligor.**

...

(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.~~satisfaction of those requirements set forth in G.S. 44A-11. 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~~a subcontractor's perfecting its claim of lien on real property in accordance with G.S. 44A-11 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."

SECTION 5. G.S. 44A-23 reads as rewritten:

"**§ 44A-23. (Effective April 1, 2013) Contractor's claim of lien on real property; perfection of subrogation rights of subcontractor.**

(a) First tier subcontractor. – A first tier subcontractor may, to the extent of 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 satisfaction of those requirements set forth in G.S. 44A-11. ~~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.~~

(a1) No action of the contractor shall be effective to prejudice the rights of ~~the~~ a first tier subcontractor without ~~his written consent, upon the occurrence of all of the following:~~its written consent once the first tier subcontractor has perfected its claim of lien on real property in accordance with G.S. 44A-11.

~~(1) The subcontractor has given notice to the lien agent, if any, designated by the owner, pursuant to G.S. 44A-11.2.~~

~~(2) The subcontractor has served a notice of claim of lien upon funds upon the owner pursuant to G.S. 44A-19(d).~~

~~(3) The subcontractor has delivered a copy of the notice of claim of lien upon funds served upon the owner to the lien agent, if any, designated by the owner, by any method authorized in G.S. 44A-11.2(f).~~G.S. 44A-11.2(g).~~

...

(b) Second or third tier subcontractor. –

...

(5) No action of the contractor shall be effective to prejudice the rights of the second or third tier subcontractor without ~~his written consent, upon the occurrence of all of the following:~~its written consent once the second or third tier subcontractor has perfected its claim of lien on real property in accordance with G.S. 44A-11.

~~a. The second or third tier subcontractor has given notice to the lien agent, if any, designated by the owner, pursuant to G.S. 44A-11.2.~~

~~b. The second or third tier subcontractor has served a notice of claim of lien upon funds upon the owner pursuant to G.S. 44A-19(d).~~

~~c. The second or third tier subcontractor has delivered a copy of the notice of claim of lien upon funds served upon the owner to the lien agent, if any, designated by the owner, by any method authorized in G.S. 44A-11.2(f).~~

...

(d) When completing the claim of lien on real property form to perfect the contractor's claim of lien on real property, a first, second, or third tier subcontractor may use as the date upon which labor or materials were first or last furnished on the real property either any date on or after the date of the first furnishing of labor or materials on the real property, or any date on or before the date of the last furnishing of labor or materials on the real property by the subcontractor making the claim, or any date on or after the date of the first furnishing of labor or materials on the real property, or any date on or before the date of the 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."

SECTION 6. G.S. 44A-27(b) reads as rewritten:

"**§ 44A-27. Actions on payment bonds; service of notice.**

...

(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~~ shall, in response to a written request served by any claimant in accordance with the provisions of subsection (c) of this section, send a copy of the payment bond required by this Article to the claimant making the request within seven calendar days after receipt of such request. ~~in response to a written request served by any claimant in accordance with the provisions of subsection (c) of this section.~~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."

SECTION 7. G.S. 58-26-45 reads as rewritten:

"**§ 58-26-45. (Effective April 1, 2013) Registration as a 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:

...

(2) Receive notices to lien agent delivered by potential lien claimants pursuant to ~~G.S. 44A-11.2 and copies of notices of claim of lien upon funds delivered by potential lien claimants pursuant to G.S. 44A-23(a1)(3) or G.S. 44A-23(b)(5)c.~~G.S. 44A-11.2.

...

(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),~~G.S. 44A-11.2(h), 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).~~G.S. 44A-11.2(g).

(6a) Within three business days of receipt of information relating to a design professional provided by the owner pursuant to G.S. 44A-11.2(i), provide a written notice to the design professional acknowledging receipt of this information by any method of delivery authorized in G.S. 44A-11.2(g).

(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),~~G.S. 44A-11.2(h), and relating to any design professional identified by the owner pursuant to G.S. 44A-11.2(i), 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)~~ G.S. 44A-11.2(i)(1) and ~~G.S. 44A-11.2(h)(2)~~G.S. 44A-11.2(i)(2) and, if specifically requested, a copy of each notice to lien ~~claimant~~ agent received by the lien agent.

...

(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~~ shall 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~~shall collect a fee ~~not to exceed~~of 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 8. This act becomes effective April 1, 2013. Sections 1, 2, 4, 5, and 7 apply to improvements to real property affected thereby for which the first furnishing of labor or materials at the site of the improvements is on or after April 1, 2013. Section 3 applies to notices of claims of lien filed on or after April 1, 2013. Section 6 applies to improvements to real property for which the first building permit is obtained on or after April 1, 2013.

HOUSE BILL 180:
Mechanics Liens/Technical Corrections

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 11, 2013
Introduced by:	Rep. Stevens	**Prepared by:**	Bill Patterson
Analysis of:	PCS to Second Edition H180-CSTG-11		Committee Counsel

SUMMARY: ***The PCS to House Bill 180 makes technical, clarifying and conforming changes to Article 2 of Chapter 44A of the General Statutes governing statutory liens for improvements to real property. The PCS corrects an inadvertent error in the earlier version of the bill.***

CURRENT LAW: In 2012, the General Assembly made significant changes to the laws governing liens for improvements to real property under Article 2 of Chapter 44A of the General Statutes[1], including enactment of G.S. 44A-11.1 and G.S. 44A-11.2, which, effective April 1, 2013, will require owners undertaking improvements costing $30,000 or more to appoint a lien agent to whom potential lien claimants must give notice of their involvement in the project in order to preserve their lien rights.

BILL ANALYSIS:

Section 1 amends G.S. 44A-11.1 to:

- clarify the law's application to improvements not requiring a building permit
- require the owner's contact information to be provided to the designated lien agent
- clarify that a lien agent is not an owner's agent for service of a claim of lien on real property
- specify additional circumstances under which a successor lien agent must be appointed
- require requests from closing attorneys to lien agents for copies of notices to be in writing

Section 2 amends G.S. 44A-11.2 to:

- permit owners and potential lien claimants to use an Internet Web site approved for such use by the designated lien agent to transmit statutorily required notices to the lien agent
- clarify that G.S. 44A-11.2(c) does not apply if the potential lien claimant has received the lien agent contact information pursuant to G.S. 44A-11.2(d)
- make other technical, clarifying or conforming changes

Section 3 amends G.S. 44A-19(e) to permit an obligor to file a copy of the notice of claim of lien upon funds when discharging a claim of lien pursuant to G.S. 44A-16 and G.S. 44A-20(e).

Sections 4 through 7 make technical, clarifying or conforming changes to G.S. 44A-20(d), G.S. 44A-23, G.S. 44A-27(b), and G.S. 58-26-45.

EFFECTIVE DATE: This Act becomes effective April 1, 2013. Sections 1, 2, 4, 5 and 7 apply to improvements to real property for which the first furnishing of labor or materials is on or after that date. Section 3 applies to notices of claims of lien filed on or after that date. Section 6 applies to improvements to real property for which the first building permit is obtained on or after April 1, 2013.

[1] S.L. 2012-158, S.L. 2012-175, S.L. 2012-194, s. 65.3.

O. Walker Reagan
Director

Research Division
(919) 733-2578

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 180

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

H180-ATG-4 [v.1]

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

Date _____,2013

Senator _____

moves to amend the bill on page 5, line 50 through page 6, line 2, by rewriting those lines to read:

"requirements set forth in G.S. 44A-11. 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~~a subcontractor's perfecting its claim of lien on real property in accordance with G.S. 44A-11 waives the subcontractor's right to enforce the contractor's claim of lien on"; and

On page 6, lines 24-39, by rewriting those lines to read:

"(a1) No action of the contractor shall be effective to prejudice the rights of ~~the~~ a first tier subcontractor without ~~his written consent, upon the occurrence of all of the following:~~its written consent once the first tier subcontractor has perfected its claim of lien on real property in accordance with G.S. 44A-11.

~~(1) The subcontractor has given notice to the lien agent, if any, designated by the owner, pursuant to G.S. 44A-11.2.~~

~~(2) The subcontractor has served a notice of claim of lien upon funds upon the owner pursuant to G.S. 44A-19(d).~~

~~(3) The subcontractor has delivered a copy of the notice of claim of lien upon funds served upon the owner to the lien agent, if any, designated by the owner, by any method authorized in G.S. 44A-11.2(f).~~G.S. 44A-11.2(g).~~

...

(b) Second or third tier subcontractor. –

...

(5) No action of the contractor shall be effective to prejudice the rights of the second or third tier subcontractor without ~~his written consent, upon the occurrence of all of the following:~~its written consent once the second or third tier subcontractor has perfected its claim of lien on real property in accordance with G.S. 44A-11.

~~a. The second or third tier subcontractor has given notice to the lien agent, if any, designated by the owner, pursuant to G.S. 44A-11.2.~~

~~b. The second or third tier subcontractor has served a notice of claim of lien upon funds upon the owner pursuant to G.S. 44A-19(d).~~

~~c. The second or third tier subcontractor has delivered a copy of the notice of claim of lien upon funds served upon the owner to the lien agent, if any, designated by the owner, by any method authorized in G.S. 44A-11.2(f).~~"; and

On page 7, lines 23-24, by inserting the following between those lines:

"...

(2) Receive notices to lien agent delivered by potential lien claimants pursuant to ~~G.S. 44A-11.2 and copies of notices of claim of lien upon funds delivered by potential lien claimants pursuant to G.S. 44A-23(a1)(3) or G.S. 44A-23(b)(5)c.~~G.S. 44A-11.2.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 180

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

H180-ATG-4 [v.1]

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

Date _____,2013

Senator _____

moves to amend the bill on page 5, line 50 through page 6, line 2, by rewriting those lines to read:

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On page 6, lines 24-39, by rewriting those lines to read:

"(a1) No action of the contractor shall be effective to prejudice the rights of ~~the~~ a first tier subcontractor without ~~his written consent, upon the occurrence of all of the following:~~its written consent once the first tier subcontractor has perfected its claim of lien on real property in accordance with G.S. 44A-11.

~~(1) The subcontractor has given notice to the lien agent, if any, designated by the owner, pursuant to G.S. 44A-11.2.~~

~~(2) The subcontractor has served a notice of claim of lien upon funds upon the owner pursuant to G.S. 44A-19(d).~~

~~(3) The subcontractor has delivered a copy of the notice of claim of lien upon funds served upon the owner to the lien agent, if any, designated by the owner, by any method authorized in G.S. 44A-11.2(f).G.S. 44A-11.2(g).~~

...

(b) Second or third tier subcontractor. –

...

(5) No action of the contractor shall be effective to prejudice the rights of the second or third tier subcontractor without ~~his written consent, upon the occurrence of all of the following:~~its written consent once the second or third tier subcontractor has perfected its claim of lien on real property in accordance with G.S. 44A-11.

~~a. The second or third tier subcontractor has given notice to the lien agent, if any, designated by the owner, pursuant to G.S. 44A-11.2.~~

~~b. The second or third tier subcontractor has served a notice of claim of lien upon funds upon the owner pursuant to G.S. 44A-19(d).~~

~~c. The second or third tier subcontractor has delivered a copy of the notice of claim of lien upon funds served upon the owner to the lien agent, if any, designated by the owner, by any method authorized in G.S. 44A-11.2(f).~~"; and

On page 7, lines 23-24, by inserting the following between those lines:

"...

(2) Receive notices to lien agent delivered by potential lien claimants pursuant to ~~G.S. 44A-11.2 and copies of notices of claim of lien upon funds delivered by potential lien claimants pursuant to G.S. 44A-23(a1)(3) or G.S. 44A-23(b)(5)c.~~G.S. 44A-11.2.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 125
PROPOSED COMMITTEE SUBSTITUTE S125-CSSA-6 [v.2]

3/6/2013 4:08:52 PM

Short Title: Public Meeting/Records Law Violations. (Public)

Sponsors:

Referred to:

February 25, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE VIOLATIONS OF THE PUBLIC RECORDS AND OPEN MEETINGS LAWS A CLASS 3 MISDEMEANOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-9 is amended by adding a new subsection to read:

"(a1) It is a Class 3 misdemeanor for any holder of elected or appointed office to deny access to public records for purposes of inspection and examination or to deny copies of public records."

SECTION 2. Article 33C of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-318.18A. Violation of Article.**

Violation of this Article by a member of a public body is a Class 3 misdemeanor."

SECTION 3. This act becomes effective December 1, 2013 and applies to offenses committed on or after that date.

SENATE BILL 125:
Public Meeting/Records Law Violations

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 7, 2013
Introduced by:	Sens. Goolsby, Apodaca	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition S125-CSSA-6		

SUMMARY: ***Senate Bill 125 would make violations of the public records and open meetings laws a Class 3 misdemeanor.***

BILL ANALYSIS:

Section 1 would make it a Class 3 misdemeanor for any holder of elected or appointed office to deny access to public records for purposes of inspection and examination or to deny copies of public records.

Section 2 would make it a Class 3 misdemeanor for a member of a public body to violate the open meetings laws.

EFFECTIVE DATE: This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

O. Walker Reagan
Director

Research Division
(919) 733-2578

MEMORANDUM

To: Senate Judiciary I Committee — Public Discussion
From: North Carolina Press Association
Re: Senate Bill 125—Criminalizing Violations of Public Records/Open Meetings Laws

Senate Bill 125 would criminalize violations of North Carolina's Public Records and Open Meetings laws, making a violation of those laws a Class 3 Misdemeanor and bringing the enforcement of the State's laws in line with the best "open government" states.

There is substantial precedent for such action, as nearly half the states permit imposition of criminal penalties for violations of public records and/or open meetings laws. In fact, as of 2010:[1]

- **Twenty (20) jurisdictions make criminal penalties available for violations of public records laws.** They are: Arkansas, Colorado, Connecticut, District of Columbia, Florida, Georgia, Iowa, Louisiana, Maryland, Missouri, Nebraska, Nevada, New York, North Dakota, Oklahoma, South Carolina, Texas, Utah, West Virginia and Wyoming.

- **Twenty-one (21) states make criminal penalties available for violations of open meetings laws.** They are: Arkansas, California, Connecticut, Florida, Georgia, Illinois, Michigan, Minnesota, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Vermont, West Virginia and Wyoming.

- **Fourteen (14) states permit imposition of criminal fines for violations of both public records and open meetings laws.** They are: Arkansas, Connecticut, Florida, Georgia, Nebraska, Nevada, North Dakota, Oklahoma, South Carolina, Texas, Utah, Virginia, West Virginia and Wyoming.

- **Sixteen (16) states allow for violators of public records laws to be sent to jail.** They are: Arkansas, Colorado, Connecticut, Florida, Iowa, Louisiana, Missouri, Nebraska, Nevada, New York, North Dakota, Oklahoma, South Carolina, Texas, Utah and West Virginia.

- **Fifteen (15) states allow for violators of open meetings laws to be sent to jail.** They are: Arkansas, California, Connecticut, Florida, Illinois, Michigan, Minnesota, Nebraska, Nevada, North Dakota, Oklahoma, South Carolina, South Dakota, Texas and Utah.

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[1] Source: Daxton R. Stewart, Let the Sunshine In, or Else: An Examination of the "Teeth" of State and Federal Open Meetings and Open Records Laws, 15 Comm. L. & Pol'y 265, 290–295 (2010).

As set forth above, several nearby states are among the jurisdictions that allow for such criminal penalties.

South Carolina:

- Willful violation of South Carolina's Freedom of Information Act (both public records and open meetings laws) is a misdemeanor. A first-time violator can face a fine of up to $100 or 30 days in jail. A second-time violator can face a fine of up to $200 or 60 days in jail. A third-time violator can face a fine of up to $300 or 90 days in jail. *See* S.C. Code Ann. § 30-4-110.

Georgia:

- Willful violation of either Georgia's public records or open meetings law is a misdemeanor. A first-time violator can face a fine of up to $1000. Each additional violation within a 12-month period can carry a fine of up to $2500. *See* Ga. Code Ann. § 50-18-74 (public records); Ga. Code Ann. § 50-14-6 (open meetings).

West Virginia:

- Willful violation of West Virginia's public records law is a misdemeanor. A violator can face a fine of between $200 and $1000, or 20 days in jail, or both a fine and jail time. *See* W. Va. Code § 29B-1-6.

- Willful violation of West Virginia's open meetings law is a misdemeanor. A first-time violator can face a fine of up to $500. A second-time violator can face a fine of between $100 and $1000. *See* W. Va. Code § 6-9A-7.

* * * * *

VISITOR REGISTRATION SHEET

Judiciary I — 3/12/13

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Allison Cooper	NACM
Chris Killian	Nelson Mullins
Matt Violl	CW Consult
Adam Prideaux	NCATSA
[illegible]	DOS
William Myers	Jordan Price
Henry Jones	Jordan Price
Brian Schoolman	Sofran Law Offices
Molly Faulkner	Stol Allens
Ken Crook	NCTBA
Will Parry-Hill	NCHFA

VISITOR REGISTRATION SHEET

Senate Transportation
(Committee Name)

March 6, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mac Bordey	NCAA
Jay Stein	NCAA
Chip Wallace	Nelson Mullins
John Bussian	NC Press Assn
David McGowan	NCAR
Cindy Thomas	"
Jackson Cozart	NSI
Carl Jernigan	City of Roanoke Rapids Lobbyist

09-21-201

VISITOR REGISTRATION SHEET

Judiciary I — 3/12/13

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JK Powell	AOC
Tim Nelson	Brooks Pierce
Bobby D White	NC Dental Boards
Donna Kolbacklw	NC Board of Nursing
Amy Hughes	NC Board of Nursing
John Marcus	Poyner Spruill
Angela Hight	Civitas
Emily Sutton	NC HFA
Lauren Whaley	NCCUL
Jen Willis	UNC-CH
M Jillian DeLong	Poyner Spruill
Jack Gort	NSS

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Lindsay	
TJ Bugbee	Nexsen Pruet
T Beasley	Town of Garner

Senate Committee on Judiciary I
Tuesday, March 19, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 200	Extend Time For Forensic Certification.	Senator Bingham Senator Goolsby Senator Newton
SB 135	Modify Habitual Impaired Driving Statute. Discussion Only	Senator Brunstetter

Adjournment

Senate Committee on Judiciary I
Tuesday, March 19, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on March 19, 2013 in Room 1027/1128 of the Legislative Building. Twelve members were present.

Senator Thom Goolsby, Chair, presided.

Sen. Goolsby recognized Senator Stan Bingham to explain Senate Bill 200. Sen. Bingham asked Susan Sitze from the Research Division to explain the bill. Ms. Sitze explained the changes made by a Proposed Committee Substitute.

Sen. Bingham spoke on the bill again and asked the chair to recognize Sam Pennica, Director of the Wake County Crime Lab. Mr. Pennica spoke in support of the bill.

Judge Joe John, director of the State Crime Lab, also spoke in support of the bill. Kristine Leggitt from the Fiscal Research Division detailed the financial requirements of ILAC accreditation for the committee.

Ms. Sitze clarified some sections of the bill based on the public comment. Senator Josh Stein asked Judge John a question about the value of accreditation. Judge John answered his question about the importance of crime lab accreditation.

Sen. Stein asked if the time period extension could be shortened to two years. Senator Dan Blue agreed with that suggestion. Sen. Goolsby and Senator Jerry Tillman disagreed and said the bill should pass as is, with a seven year extension.

Sen. Tillman made a motion for a favorable report to the PCS, unfavorable to the original and the motion passed by a voice vote.

The meeting adjourned at 10:28 a.m.

Senator Thom Goolsby, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Tuesday, March 19, 2013

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

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

SB **200** Extend Time For Forensic Certification.

Draft Number:	S200-PCS85102-SA-7
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Stan Bingham will handle SB 200



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 135

Short Title:	Modify Habitual Impaired Driving Statute.	(Public)
Sponsors:	Senators Brunstetter (Primary Sponsor); Bingham and Hise.	
Referred to:	Judiciary I.	

February 27, 2013

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE HABITUAL IMPAIRED DRIVING STATUTE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-138.5(a) reads as rewritten:

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

SECTION 2. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

SENATE BILL 135:
Modify Habitual Impaired Driving Statute

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 19, 2013
Introduced by:	Sen. Brunstetter	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 135 would modify the offense of habitual impaired driving by removing the 10 year limitation on prior convictions.

CURRENT LAW: A person is guilty of habitual impaired driving if they commit the offense of impaired driving and have 3 or more prior convictions of impaired driving within 10 years of the new offense. Habitual impaired driving is punishable as a Class F felony and requires a minimum 12 month active sentence. A conviction under this statute also results in a permanent license revocation.

BILL ANALYSIS: Senate Bill 135 would remove the 10 year limitation within which the prior 3 offenses must occur for habitual impaired driving to be charged. A 4th or subsequent impaired driving conviction would result in a habitual impaired driving charge, regardless of the length of time over which the first 3 convictions occurred.

EFFECTIVE DATE: This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

O. Walker Reagan
Director

S135-SMSA-16 E1 -V1

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 200
PROPOSED COMMITTEE SUBSTITUTE S200-CSSA-7 [v.1]

3/18/2013 2:32:05 PM

Short Title: Extend Time For Forensic Accreditation. (Public)

Sponsors:

Referred to:

March 6, 2013

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE TIME FOR LOCAL FORENSIC SCIENCE LABS TO OBTAIN ACCREDITATION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 11 of S.L. 2011-19, as amended by Section 9 of S.L. 2011-307 and by Section 6 of S.L. 2012-168, reads as rewritten:

"**SECTION 11.** Sections 1 through 5 and Sections 9 through 11 are effective when this act becomes law, and Section 6 becomes effective July 1, 2011. Sections 7 and 8 of this act are effective when they become ~~law,~~ law; however, until ~~July 1, 2013,~~ July 1, 2020, the provisions of those sections shall apply only to the North Carolina State Crime Laboratory, and on or after ~~July 1, 2013,~~ July 1, 2020, the provisions of Sections 7 and 8 shall apply to all laboratories conducting forensic or chemical analysis for admission in the courts of this State. 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."

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

SENATE BILL 200:
Extend Time For Forensic Accreditation

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 19, 2013
Introduced by:	Sens. Bingham, Goolsby, Newton	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition S200-CSSA-7		

SUMMARY: ***The PCS to Senate Bill 200 would extend the time for local forensic science labs to obtain accreditation.***

[The PCS makes technical changes to the short and long title to remove incorrect references to certification of forensic scientists.]

CURRENT LAW: In S.L. 2011-19, the General Assembly enacted "The Forensic Sciences Act of 2011", which, among other changes, modified the statutes relating to the admissibility of forensic analysis and chemical analysis to require that, in order to be admissible, the analysis must be performed by a lab 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.

This requirement applies to any analysis of forensic evidence, including DNA samples of offenders, DNA evidence found on physical evidence, blood or urine samples analyzed for the presence of drugs or alcohol, and drug chemistry (i.e. determining if that bag of white powder is really cocaine).

As initially enacted, this requirement became effective March 31, 2011 for all labs.

In June of 2011, the General Assembly enacted S.L. 2011-307, which modified the effective date of the lab accreditation requirements to apply the accreditation requirement only to analyses performed by the North Carolina State Crime Laboratory (State Crime Lab) until October 1, 2012. This had the effect of giving all other labs until October 1, 2012 to obtain accreditation in order for their analyses to continue to be admissible in court.

In July of 2012, the General Assembly enacted S.L. 2012-168, which further modified the effective date to extend the time to obtain accreditation, for all labs except the State Crime Lab, until July 1, 2013.

As the law currently stands, any forensic analysis or chemical analysis performed by a lab that has not been accredited to the ILAC standard by July 1, 2013, will not be admissible in court in North Carolina.

BILL ANALYSIS: The PCS to Senate Bill 200 would extend the time period allowing forensic and chemical analyses performed by labs not accredited to the ILAC standard to be admissible in North Carolina courts until July 1, 2020.

EFFECTIVE DATE: This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Judiciary I — 3/19/13

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Philip Isley	BMCD
Mark Sorensen	Private
Jason Fishlock	Sen Stein
Kay Emanuel	School of Government
TJ Brybee	Nexsen Pruet
Herman Huckaff	N.C.B.A.
David Boone II	ISAAC
John Valentine	NCAHOA

VISITOR REGISTRATION SHEET

Judiciary I — 3/19/13

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Agnew	DOJ
Joe John	State Crime Lab
Sam Pennica	Raleigh/Wake Crime Lab
Troy Hamlin	Raleigh/Wake Crime Lab
[illegible]	FWW
Todd Barlow	NC Advocates for Justice
McNeil Clements	for the Comm. Bles

Senate Committee on Judiciary I
Tuesday, March 26, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 107	Decriminalize Direct Entry Midwifery.	Senator Goolsby Senator Clodfelter Senator Bingham
SB 306	Capital Punishment/Amendments.	Senator Goolsby

Adjournment

Senate Committee on Judiciary I
Tuesday, March 26, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on March 26, 2013 in Room 1027/1128 of the Legislative Building. Fourteen members were present.

Senator E. S. (Buck) Newton, Chair, presided.

Sen. Newton recognized Senator Thom Goolsby to explain Senate Bill 306. Sen. Goolsby asked Susan Sitze from the Research Division to explain the bill in detail. Ms. Sitze reviewed the bill for the committee.

Sen. Newton recognized Senator Earline Parmon for comment. Sen. Parmon spoke in opposition of the bill. Sen. Goolsby responded to her comments. Senator Dan Clodfelter spoke in opposition to the bill and Sen. Goolsby responded to his comments.

Ms. Sitze clarified sections of the bill discussed by the committee. Senator Jerry Tillman spoke in favor of the bill and Senator Josh Stein spoke in opposition to the bill. Sen. Stein also asked Ms. Sitze a clarifying question and Ms. Sitze responded.

Sen. Newton said the committee would take public comment on SB 306. Marsha Howell, a member of the public, spoke in support of SB 306. Darryl Hunt, a member of the public, spoke in opposition to SB 306. Locke Bell, the district attorney from Gaston County, spoke in favor of SB 306. Chris Simes, a member of the public, spoke in opposition to SB 306. Gary Frank, the district attorney from Davidson and Davie counties, spoke in favor of SB 306. Duane Beck, a member of the public, spoke in opposition to SB 306.

Sen. Parmon asked Sen. Goolsby if he would amend the bill by removing the section that reforms the Racial Justice Act. Sen. Goolsby said he would not. Sen. Tillman made a motion for a favorable report. Sen. Parmon asked for a vote count and the motion passed 7-4.

The meeting adjourned at 10:42 a.m.

Senator E. S. (Buck) Newton, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Wednesday, March 27, 2013

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

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

SB **306** Capital Punishment/Amendments.

Draft Number:	S306-PCS85131-RK-13
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Thomas Goolsby will handle SB 306



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 306
PROPOSED COMMITTEE SUBSTITUTE S306-CSRK-13 [v.4]
3/25/2013 4:46:22 PM

Short Title: Capital Punishment/Amendments. (Public)

Sponsors:

Referred to:

March 14, 2013

A BILL TO BE ENTITLED

AN ACT TO EXCLUDE THE ADMINISTRATION OF A LETHAL INJECTION FROM THE PRACTICE OF MEDICINE; TO CODIFY THE LAW THAT PROHIBITS REGULATORY BOARDS FROM SANCTIONING HEALTH CARE PROFESSIONALS FOR ASSISTING IN THE EXECUTION PROCESS; TO AMEND THE LAW ON THE ADMINISTRATION OF A LETHAL INJECTION; TO REQUIRE THE SETTING OF AN EXECUTION DATE IF ANY OF THE EVENTS WHICH ARE PROVIDED BY STATUTE HAVE OCCURRED; TO ELIMINATE THE PROCESS BY WHICH A DEFENDANT MAY USE STATISTICS TO HAVE A SENTENCE OF DEATH REDUCED TO LIFE IN PRISON WITHOUT PAROLE; TO REQUIRE PERIODIC REPORTS ON THE TRAINING AND AVAILABILITY OF PERSONNEL TO CARRY OUT A DEATH SENTENCE; AND TO REQUIRE PERIODIC REPORTS ON THE STATUS OF PENDING POSTCONVICTION CAPITAL CASES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 19 of Chapter 15 of the General Statutes is amended by adding a new section to read:

"**§ 15-188.1. Health care professional assistance.**

(a) Any assistance rendered with an execution under this Article by any licensed health care professional, including, but not limited to, physicians, nurses, and pharmacists shall not be cause for any disciplinary or corrective measures by any board, commission, or other authority created by the State or governed by State law which oversees or regulates the practice of health care professionals, including, but not limited to, the North Carolina Medical Board, the North Carolina Board of Nursing, and the North Carolina Board of Pharmacy.

(b) The infliction of the punishment of death by administration of the required lethal substances under this Article shall not be construed to be the practice of medicine."

SECTION 1.(b) G.S. 90-1.1(5) reads as rewritten:

"(5) The practice of medicine or surgery. – ~~The~~ Except as otherwise provided by this subdivision, the practice of medicine or surgery, for purposes of this Article, includes any of the following acts:

a. Advertising, holding out to the public, or representing in any manner that the individual is authorized to practice medicine in this State.

b. Offering or undertaking to prescribe, order, give, or administer any drug or medicine for the use of any other individual.

c. 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.

d. Offering or undertaking to perform any surgical operation on any individual.

e. 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.

f. The performance of any act, within or without this State, described in this subdivision by use of any electronic or other means, including the Internet or telephone.

The administration of required lethal substances or any assistance whatsoever rendered with an execution under Article 19 of Chapter 15 of the General Statutes does not constitute the practice of medicine or surgery."

SECTION 1.(c) G.S. 90-85.38(b) reads as rewritten:

"(b) The Board, in accordance with Chapter 150B of the General Statutes, may suspend, revoke, or refuse to grant or renew any permit for the same conduct as stated in subsection (a). The administration of required lethal substances or any assistance whatsoever rendered with an execution under Article 19 of Chapter 15 of the General Statutes does not constitute the practice of pharmacy under this Article, and any assistance rendered with an execution under Article 19 of Chapter 15 of the General Statutes shall not be the cause for disciplinary action under this Article."

SECTION 1.(d) G.S. 90-171.20(4) reads as rewritten:

"(4) "Nursing" is a dynamic discipline which includes the assessing, caring, counseling, teaching, referring and implementing of prescribed treatment in the maintenance of health, prevention and management of illness, injury, disability or the achievement of a dignified death. It is ministering to; assisting; and sustained, vigilant, and continuous care of those acutely or chronically ill; supervising patients during convalescence and rehabilitation; the supportive and restorative care given to maintain the optimum health level of individuals, groups, and communities; the supervision, teaching, and evaluation of those who perform or are preparing to perform these functions; and the administration of nursing programs and nursing services. For purposes of this Article, the administration of required lethal substances or any assistance whatsoever rendered with an execution under Article 19 of Chapter 15 of the General Statutes does not constitute nursing."

SECTION 2. G.S. 15-194 reads as rewritten:

"**§ 15-194. Time for execution.**

(a) In sentencing a capital defendant to a death sentence pursuant to G.S. 15A-2000(b), the sentencing judge need not specify the date and time the execution is to be carried out by the Division of Adult Correction of the Department of Public Safety. ~~The Secretary of Public Safety shall immediately schedule a date for the execution of the original death sentence not less than 30 days nor more than 60 days from the date of receiving written notification from the Attorney General of North Carolina or the district attorney who prosecuted the case of any one of the following:~~ The Attorney General of North Carolina shall provide written notification to

the Secretary of the Department of Public Safety of the occurrence of any of the following not more than 60 days from that occurrence:

(1) The United States Supreme Court has filed an opinion upholding the sentence of death following completion of the initial State and federal postconviction proceedings, if any;

(2) The mandate issued by the Supreme Court of North Carolina on direct appeal pursuant to N.C.R. App. P. 32(b) affirming the capital defendant's death sentence and the time for filing a petition for writ of certiorari to the United States Supreme Court has expired without a petition being filed;

(3) The capital defendant, if indigent, failed to timely seek the appointment of counsel pursuant to G.S. 7A-451(c), or failed to file a timely motion for appropriate relief as required by G.S. 15A-1415(a);

(4) The superior court denied the capital defendant's motion for appropriate relief, but the capital defendant failed to file a timely petition for writ of certiorari to the Supreme Court of North Carolina pursuant to N.C.R. App. P. 21(f);

(5) The Supreme Court of North Carolina denied the capital defendant's petition for writ of certiorari pursuant to N.C.R. App. P. 21(f), or, if certiorari was granted, upheld the capital defendant's death sentence, but the capital defendant failed to file a timely petition for writ of certiorari to the United States Supreme Court; or

(6) Following State postconviction proceedings, if any, the capital defendant failed to file a timely petition for writ of habeas corpus in the appropriate federal district court, or failed to timely appeal or petition an adverse habeas corpus decision to the United States Court of Appeals for the Fourth Circuit or the United States Supreme Court.

The Secretary of the Department of Public Safety shall immediately schedule a date for the execution of the original death sentence not less than 30 days or more than 60 days from the date of receiving written notification from the Attorney General under this section.

The Secretary shall send a certified copy of the document fixing the date to the clerk of superior court of the county in which the case was tried or, if venue was changed, in which the defendant was indicted. The certified copy shall be recorded in the minutes of the court. The Secretary shall also send certified copies to the capital defendant, the capital defendant's attorney, the district attorney who prosecuted the case, and the Attorney General of North Carolina.

(b) The Attorney General shall submit a written report to the Joint Legislative Oversight Committee on Justice and Public Safety by April 1, 2013, and thereafter on October 1 of each year, on the status of all pending postconviction capital cases. Alternatively, the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety may direct that the reports required under this subsection be made on other dates consistent with the Committee's schedule."

SECTION 3.(a) G.S. 15-188 reads as rewritten:

"**§ 15-188. Manner and place of execution.**

In accordance with G.S. 15-187, the mode of executing a death sentence must in every case be by administering to the convict or felon ~~a lethal quantity of an ultrashort-acting barbiturate in combination with a chemical paralytic agent until the convict or felon is dead;~~ an intravenous injection of a substance or substances in a lethal quantity sufficient to cause death and until the person is dead, and that procedure shall be determined by the Secretary of the Department of Public Safety, who shall ensure compliance with the federal and State constitutions; and when any person, convict or felon shall be sentenced by any court of the State having competent jurisdiction to be so executed, the punishment shall only be inflicted within a permanent death

chamber which the superintendent of the State penitentiary is hereby authorized and directed to provide within the walls of the North Carolina penitentiary at Raleigh, North Carolina. The superintendent of the State penitentiary shall also cause to be provided, in conformity with this Article, the necessary appliances for the infliction of the punishment of death and qualified personnel to set up and prepare the injection, administer the preinjections, insert the IV catheter, and to perform other tasks required for this procedure in accordance with the requirements of this Article."

SECTION 3.(b) Procedures and substances utilized to carry out a death sentence in place before the effective date of this act are not abated or affected by this act; however, it shall be within the discretion of the Secretary whether to continue, change, or modify such procedures or substances as authorized by law.

SECTION 4. G.S. 15-190 reads as rewritten:

"**§ 15-190. Person or persons to be designated by warden to execute sentence; supervision of execution; who shall be present.**

(a) Some guard or guards or other reliable person or persons to be named and designated by the warden from time to time shall cause the person, convict or felon against whom the death sentence has been so pronounced to be executed as provided by this Article and all amendments thereto. The execution shall be under the general supervision and control of the warden of the penitentiary, who shall from time to time, in writing, name and designate the guard or guards or other reliable person or persons who shall cause the person, convict or felon against whom the death sentence has been pronounced to be executed as provided by this Article and all amendments thereto. At such execution there shall be present the warden or deputy warden or some person designated by the warden in the warden's place, and the surgeon or physician of the penitentiary. Four respectable citizens, two members of the victim's family, the counsel and any relatives of such person, convict or felon and a minister or member of the clergy or religious leader of the person's choosing may be present if they so desire. The identities, including the names, residential addresses, residential telephone numbers, and social security numbers, of witnesses or persons designated to carry out the execution shall be confidential and exempted from Chapter 132 of the General Statutes and are not subject to discovery or introduction as evidence in any proceeding. The Senior Resident Superior Court Judge for Wake County may order disclosure of names made confidential by this section after making findings that support a conclusion that disclosure is necessary to a proper administration of justice.

(b) The warden shall report to the Joint Legislative Oversight Committee on Justice and Public Safety by April 1, 2013, and thereafter on October 1 of each year, on the status of the persons required by subsection (a) of this section to be named and designated by the warden to execute death sentences under this Article. The report shall confirm that the required persons are properly trained and ready to serve as an execution team. Alternatively, the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety may direct that the reports required under this subsection be made on other dates consistent with the Committee's schedule."

SECTION 5.(a) Article 101 of Chapter 15A of the General Statutes is repealed.

SECTION 5.(b) The intent and purpose of this section, and its sole effect, is to remove the use of statistics to prove purposeful discrimination in a specific case. Upon repeal of Article 101 of Chapter 15A of the General Statutes, a capital defendant retains all of the rights which the State and federal constitutions provide to ensure that the prosecutors who selected a jury and who sought a capital conviction did not do so on the basis of race, that the jury that hears his or her case is impartial, and that the trial was free from prejudicial error of any kind. These rights are protected through multiple avenues of appeal, including direct appeal to the North Carolina Supreme Court, and discretionary review to the United States Supreme Court; a postconviction right to file a motion for appropriate relief at the trial court level where

claims of racial discrimination may be heard; and again at the federal level through a petition of habeas corpus. A capital defendant prior to the passage of Article 101 of Chapter 15A of the General Statutes had the right to raise the issue of whether a prosecutor sought the death penalty on the basis of race, whether the jury was selected on the basis of race, or any other matter which evidenced discrimination on the basis of race. All these same rights, existing prior to the enactment of Article 101 of Chapter 15A of the General Statutes, remain the law of this State after its repeal.

SECTION 5.(c) Upon request of a district attorney, the Attorney General shall assume primary responsibility on behalf of that district attorney for the litigation in superior court or an appellate court of any claims or issues resulting from a petition for relief that has been or may be filed under the provisions of Article 101 of Chapter 15A of the General Statutes or any issues or matters relating to the repeal of Article 101 of Chapter 15A of the General Statutes, as provided in this act.

SECTION 5.(d) Except as otherwise provided in this subsection, this section is retroactive and applies to any motion for appropriate relief filed pursuant to Article 101 of Chapter 15A of the General Statutes prior to the effective date of this act. All motions filed pursuant to Article 101 of Chapter 15A of the General Statutes prior to the effective date of this act are void. This section does not apply to a court order resentencing a petitioner to life imprisonment without parole pursuant to the provisions of Article 101 of Chapter 15A of the General Statutes prior to the effective date of this act if the order is affirmed upon appellate review and becomes a final Order issued by a court of competent jurisdiction. This section is applicable in any case where a court resentenced a petitioner to life imprisonment without parole pursuant to the provisions of Article 101 of Chapter 15A of the General Statutes prior to the effective date of this act, and the order is vacated upon appellate review by a court of competent jurisdiction.

SECTION 6. This act is effective when it becomes law.

SENATE BILL 306:
Capital Punishment/Amendments

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 25, 2013
Introduced by:	Sen. Goolsby	**Prepared by:**	Susan Sitze
Analysis of:	PCS to First Edition S306-CSRK-13		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute to Senate Bill 306 would make changes to the administration of a sentence of capital punishment.***

BILL ANALYSIS:

Section 1(a) prohibits disciplinary or corrective action being taken against any health care professional for any assistance rendered with an execution and provides that the administration of lethal substances in inflicting the punishment of death is not the practice of medicine.

Section 1(b) amends the definition of the practice of medicine or surgery to exclude the administration of required lethal substances or any assistance rendered with an execution.

Section 1(c) amends the pharmacy statutes to provide that the administration of lethal substances or any assistance with an execution is not the practice of pharmacy, and to prohibit the Board of Pharmacy from disciplining anyone with a license to practice pharmacy for assistance rendered with an execution.

Section 1(d) amends the nursing statutes to provide that the administration of lethal substances or any assistance with an execution does not constitute nursing.

Section 2 amends G.S. 15-194, which requires the Secretary of the Department of Public Safety to immediately set an execution date for not less than 30 days nor more than 60 days from the date of receiving written notification of certain triggering events, to specifically require that the Attorney General provide written notice of the occurrence of one of the triggering events to the Secretary and that they do so no more than 60 days after the occurrence of the event.

This section also requires the Attorney General to submit an annual report to the Joint Legislative Oversight Committee on Justice and Public Safety on the status of all pending postconviction capital cases.

Section 3(a) amends G.S. 15-188 regarding the manner of execution to provide that death shall be by the an intravenous injection of a substance or substances in a lethal quantity sufficient to cause death and until the person is dead, and that the Secretary of the Department of Public Safety shall determine procedure and ensure compliance with federal and State constitutions.

Section 3(b) provides that procedures and substances in place to carry out a death sentence before this act are not abated or affected by this act, and the Secretary has discretion to determine whether to continue, change, or modify the procedures or substances.

Section 4 amends G.S. 15-190 to require the warden of Central Prison to submit an annual report tot eh Joint Legislative Oversight Committee on Justice and Public Safety on the status of persons required to be present at an execution and shall confirm that the required persons are properly trained and ready to serve as an execution team.

Section 5(a) repeals Article 101 of Chapter 15A of the General Statutes, the North Carolina Racial Justice Act.

Section 5(b) states that the intent of this section is to remove the use of statistics to prove purposeful discrimination in a specific case.

Section 5(c) requires the Attorney General, upon request of a district attorney, to assume primary responsibility for the litigation in superior court or an appellate court of any claims or issues resulting from a petition for relief that has been or may be filed under the Racial Justice Act or any issues or matters relating to the repeal of the Act.

Section 5(d) provides that the repeal of the Racial Justice Act is retroactive and applies to any motion for appropriate relief filed pursuant to that Act prior to the effective date of this act. All motions filed pursuant to the Act are void. The repeal does not apply to a court ordered resentencing a petitioner to life imprisonment without parole pursuant to the Act if the order was entered prior to the effective date of this act and it is affirmed upon appellate review and becomes a final Order issued by a court of competent jurisdiction. The repeal does apply to any order resentencing a petitioner to life imprisonment without parole pursuant to the Act if the order is vacated upon appellate review by a court of competent jurisdiction, even if the order was issued prior to the effective date of this act.

EFFECTIVE DATE: This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 107
PROPOSED COMMITTEE SUBSTITUTE S107-CSTG-8 [v.2]

3/6/2013 4:28:21 PM

Short Title: Decriminalize Direct Entry Midwifery. (Public)

Sponsors:

Referred to:

February 20, 2013

A BILL TO BE ENTITLED

AN ACT ALLOWING CERTIFIED PROFESSIONAL MIDWIVES TO PROVIDE CERTAIN MIDWIFERY SERVICES WITHOUT BEING SUBJECT TO CRIMINAL PENALTY.

The General Assembly of North Carolina enacts:

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

"Article 10B.

"Practice of Midwifery by Certified Professional Midwives.

"**§ 90-178.10. Practice of midwifery by certified professional midwife.**

Notwithstanding any other provision of law to the contrary, any person who is certified as a Certified Professional Midwife by the North American Registry of Midwives may provide prenatal, intrapartum, postpartum, newborn and interconceptional care as defined in G.S. 90-178.2, in accordance with the Standards for Practice of the National Association of Certified Professional Midwives."

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

SENATE BILL 107:
Decriminalize Direct Entry Midwifery

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 6, 2013
Introduced by:	Sens. Goolsby, Clodfelter, Bingham	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to First Edition S107-CSTG-8		

SUMMARY: ***The PCS to Senate Bill 107 would permit any person certified as a Certified Professional Midwife by the North American Registry of Midwives to practice certain midwifery services in accordance with the Standards for Practice of the National Association of Certified Professional Midwives. The PCS substantially rewrote the original bill.***

[As introduced, this bill was identical to H155, as introduced by Reps. Wilkins, Hurley, which is currently in House Health and Human Services, if favorable, Judiciary Subcommittee B.]

CURRENT LAW: Under Article 10A of Chapter 90 of the General Statutes, no person may practice midwifery who is not approved to do so by the Midwifery Joint Committee of the North Carolina Medical Board and the Board of Nursing. To be approved, an applicant must complete an application form, submit evidence of certification by the American College of Nurse-Midwives,[1] submit evidence of arrangements for physician supervision, and pay an application fee. G.S. 90-178.5. Certified Nurse Midwives (CNMs) are licensed as registered nurses in North Carolina and are required to practice under the supervision of a physician who also does obstetrics including obstetricians and family physicians. It is a Class 3 misdemeanor for a person who is not approved pursuant to Article 10A to practice midwifery. G.S. 90-178.7(b).

BILL ANALYSIS: The PCS to House Bill 107 would permit any person certified as a Certified Professional Midwife by the North American Registry of Midwives[2] to provide prenatal, intrapartum, postpartum, newborn and interconceptional care as defined in G.S. 90-178.2[3] in accordance with the Standards for Practice of the National Association of Certified Professional Midwives. The primary difference between the requirements for certification as a professional midwife and as a nurse midwife is that the professional midwife certification does not require licensure as a registered nurse.

EFFECTIVE DATE: This act is effective when it becomes law.

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[1] The American College of Nurse Midwives requires certification of nurse midwives by the American Midwifery Certification Board (AMCB), which certifies both Certified Midwives and Certified Nurse Midwives.

[2] According to their websites, the North American Registry of Midwives and the American Midwifery Certification Board are accredited by the National Commission for Certifying Agencies (NCCA).

[3] G.S. 90-178.2 defines these terms as follows:

"Interconceptional care" includes but is not limited to:
- a. Family planning;
- b. Screening for cancer of the breast and reproductive tract; and
- c. Screening for and management of minor infections of the reproductive organs;

"Intrapartum care" includes but is not limited to:
- a. Attending women in uncomplicated labor;
- b. Assisting with spontaneous delivery of infants in vertex presentation from 37 to 42 weeks gestation;
- c. Performing amniotomy;
- d. Administering local anesthesia;
- e. Performing episiotomy and repair; and

f. Repairing lacerations associated with childbirth.

"Newborn care" includes but is not limited to:

a. Routine assistance to the newborn to establish respiration and maintain thermal stability;
b. Routine physical assessment including APGAR scoring;
c. Vitamin K administration; and
d. Eye prophylaxis for opthalmia neonatorum.

"Postpartum care" includes but is not limited to:

a. Management of the normal third stage of labor;
b. Administration of pitocin and methergine after delivery of the infant when indicated; and
c. Six weeks postpartum evaluation exam and initiation of family planning.

Prenatal care" includes but is not limited to:

a. Historical and physical assessment;
b. Obtaining and assessing the results of routine laboratory tests; and
c. Supervising the use of prenatal vitamins, folic acid, iron, and nonprescription medicines.

VISITOR REGISTRATION SHEET

JP-I — Name of Committee

03-20-13 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
FORD PORTER	NRSBITT
Danielle Carman	IDS
Thomas Maher	IRS
Mary Pollard	NCPLS
Chris Agner	DOT
CHRIS SIMMES	CITIZEN
Scott Bass	MVFR, Raleigh
Marcelle Clowes	MVFR Raleigh
Duane Beck	Raleigh Mennonite Church, 728 N. Blount Raleigh
Amanda Lattanzio	PFADP 110 W. Main St., Ste. 2G, Carrboro, NC 27510
Lao Rubert	CYPC
George Hausen	LANC
Stephanie Gibbs	NCBA
Charles Montgomery	NCBA

VISITOR REGISTRATION SHEET

JP I
Name of Committee

08-26-18
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
James Andrews	NC State AFL-CIO
Locke Bell	DA 22A
Peg Dorer	Couns. of DAs
Kimberly Overton	Conf of DAs
Jason Fishkin	Sen. Stein
PAIGE WORSHAM	NC Center for Public Policy Research
Julia White	NC DOJ
Rebecca Smithermen	NCBA
Kim Couch	NCBA
Tony Crumpler	Family Friend on Lowry's
Rickey Lowry	Family of Sgt. Edward Lowry
AL Lowry	Brother of Sgt Edward Lowry
JIM DAVIS	BROTHER IN LAW. ED LOWRY
Marsha Howell	Civitas
Tonzie Howell	Civitas

VISITOR REGISTRATION SHEET

JP-T — Name of Committee

03-26-13 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kenneth Schorr	Legal Services of Southern Piedmont
Todd Stillerman	"
Amber Smith	North Carolina Bar Association
Tim M	Family
Henry Jones	Jordan Price et.

VISITOR REGISTRATION SHEET

JP-I — 3/26/13

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Emily Mather	n/a
Malcolm Hunter	CDPL
Nikki McDougald	CJPC
Alan Duncan	North Carolina Bar Association
Rev. William HALEY	
Kay Paksay	NASW-NC
Doc Daughtridge	~~NCDA~~
Barry Craige	NCAJ
Brad Bannon	NCAJ & NCBA
Tarah Callahan	NCCM
Gunda Stein	CDPL
Joel Mayward	GPNC / Action
Jane Gledhill	NCACNM

VISITOR REGISTRATION SHEET

JP-I — Name of Committee

03/26/13 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Darryl Hunt	UNDP
Katherine Ferguson	UNC - CH
Jordan Paschal	Intern - Rep. Hamilton
Sarah Preston	ACLU-NC
Becki Gray	John Locke Foundation
R.A. Reams	Victim Advocate
Victoria Wakefield	Civitas Institute
Angela Hight	Civitas Institute
Jamie Phillips	NC NAACP
[illegible]	[illegible]
Clayton Morgan	Duke Energy - Raleigh
Allan Head	N.C. Bar Assoc
David Dassett	Dassett Shuler Law - [illegible]
Pamela Suggs	NCAJ
PL-1 Isley	NCAJ

VISITOR REGISTRATION SHEET

JP-1 — 3/28/17

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Leslie Pegram	NCBA - Cary, NC
Brad Williams	NCBA - Cary NC
Joe Kenny	LSSP - Charlotte NC
Brittney Coleman	LSSP - Charlotte NC
Leah Wilson-Hartgrove	ORJP Durham, NC
	NCNS
	S.A.
	NP
DAVID BARNES	Electric Cities
Todd Barlow	NC Advocates for Justice

VISITOR REGISTRATION SHEET

JD-I — 03-26-13

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Alex Badger	CSS
Steven Webb	NCHSA
Bill Rustin	AHP

Senate Committee on Judiciary I
Tuesday, April 2, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 358	Guaranteed Asset Protection Waivers.	Senator Meredith Senator Newton Senator Ford
HB 139	Adopt Uniform Deployed Parent Cust/Visit. Act.	Representative Glazier Representative Stevens Representative Davis Representative D. Ross

Adjournment

Senate Committee on Judiciary I
Tuesday, April 2, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on April 2, 2013 in Room 1027/1128 of the Legislative Building. Ten members were present.

Senator Thom Goolsby, Chair, presided.

Sen. Goolsby took a motion from Senator Dan Soucek to hear the Proposed Committee Substitute for Senate Bill 358. Sen. Goolsby recognized Senator Wesley Meredith to explain SB 358. Sen. Meredith explained the bill for the committee.

Sen. Goolsby asked Susan Sitze from the Research Division to detail the bill further. Ms. Sitze said she had nothing to add but could take questions from the committee. Sen. Goolsby recognized Senator Dan Blue to ask Sen. Meredith a question. Sen. Meredith responded to Sen. Blue's questions.

Senator Jerry Tillman spoke in favor of the bill and motioned for a favorable report to the PCS, unfavorable to the original bill. Sen. Goolsby accepted the motion and the motion passed by a voice vote.

Sen. Goolsby said the committee would consider Senate Bill 139 next and recognized Representative Rick Glazier to explain the bill. Rep. Glazier explained the bill and Representative Sarah Stevens also spoke in favor of the bill.

Senator Dan Clodfelter submitted an amendment to SB 139 that revised the effective date in Section 6 to October 1, 2013. The committee voted in favor of the amendment by voice vote. Sen. Blue motioned for a favorable report and the bill, as amended, passed by a voice vote.

The meeting adjourned at 10:10 a.m.

Senator Thom Goolsby, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Tuesday, April 02, 2013

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

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

SB **358** Guaranteed Asset Protection Waivers.

Draft Number:	S358-PCS35296-SA-10
Sequential Referral:	Commerce
Recommended Referral:	None
Long Title Amended:	No

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

HB **139** Adopt Uniform Deployed Parent Cust/Visit. Act.

Draft Number:	H139-PCS30278-SA-12
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Wesley Meredith will handle SB 358
Senator E.S. Newton will handle HB 139

CMR200-V-1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 358
PROPOSED COMMITTEE SUBSTITUTE S358-CSSA-10 [v.1]
4/1/2013 3:52:36 PM

Short Title: Guaranteed Asset Protection Waivers. (Public)

Sponsors:

Referred to:

March 20, 2013

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE GUARANTEED ASSET PROTECTION WAIVERS TO BE AUTHORIZED IN THIS STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 46.
"Guaranteed Asset Protection Waivers.

"**§ 66-440. Definitions.**

The following definitions apply in this Article:

(1) Administrator. – A person that performs administrative or operational functions with respect to guaranteed asset protection waivers.

(2) Borrower. – A debtor, retail buyer, or lessee under a vehicle finance agreement.

(3) Creditor. – Any of the following:

a. A lender in a loan or credit transaction.

b. A lessor in a lease transaction.

c. A vehicle dealer, including a motor vehicle dealer as that term is defined in G.S. 20-286(11), that provides credit to a purchaser of a vehicle.

d. A seller in a commercial retail installment transaction.

e. An assignee of any of the foregoing to whom the credit obligation is payable.

(4) Free look period. – The period of time from the effective date of a guaranteed asset protection waiver until the date the borrower may cancel the contract without penalty, fees, or costs to the borrower.

(5) Guaranteed asset protection waiver. – A contractual agreement in which a creditor agrees for a separate charge to cancel or waive all or part of amounts due on a borrower's vehicle finance agreement in the event of a total physical damage loss or unrecovered theft of the vehicle, which agreement shall be part of, or a separate addendum to, the vehicle finance agreement.

(6) Insurer. – An insurance company licensed, registered, or otherwise authorized to do business under Chapter 58 of the General Statutes.

(7) Vehicle. – A motor vehicle, as that term is defined in G.S. 20-286(10), as well as self-propelled or towed vehicles designed for personal or commercial use, including, but not limited to, automobiles, trucks, motorcycles,

recreational vehicles, all terrain vehicles, snowmobiles, campers, boats, personal watercraft, and trailers for motorcycles, boats, campers, and personal watercraft.

(8) Vehicle finance agreement. – A loan, lease, or retail installment sales contract for the purchase or lease of a vehicle.

"**§ 66-441. Scope of Article.**

(a) Complete Exemptions. – This Article shall not apply to any of the following:

(1) An insurance policy offered by an insurer under Chapter 58 of the General Statutes, except as provided in G.S. 66-443.

(2) A debt cancellation or debt suspension contract being offered pursuant to 12 C.F.R. Part 37, 12 C.F.R. Part 721, or any other federal law.

(b) Partial Exemption for Commercial Transactions. – G.S. 66-444, 66-446(c), and 66-447 are not applicable to a guaranteed asset protection waiver offered in connection with a lease or retail installment sale associated with a commercial transaction.

"**§ 66-442. Guaranteed asset protection waivers not subject to insurance laws.**

Guaranteed asset protection waivers are not insurance and are exempt from the provisions of Chapter 58 of the General Statutes, as are persons administering, marketing, selling, or offering to sell guaranteed asset protection waivers to borrowers.

"**§ 66-443. Insurance of guaranteed asset protection waivers.**

(a) Insurance for Creditors. – Creditors may insure guaranteed asset protection waiver obligations under a contractual liability policy or other similar policy issued by an insurer but shall not be required to do so.

(b) Required Terms. – Contractual liability or other insurance policies insuring guaranteed asset protection waivers shall include terms that do all of the following:

(1) Obligate the insurer to reimburse or pay to the creditor any sums the creditor is legally obligated to waive under guaranteed asset protection waivers issued by the creditor and purchased or held by the borrower.

(2) Provide that the policy covers any subsequent assignee upon the assignment, sale, or transfer of the vehicle finance agreement.

(3) Provide that the policy remains in effect unless cancelled or terminated in compliance with applicable insurance laws of this State.

(4) Provide that the cancellation or termination of policy shall not reduce the insurer's responsibility for guaranteed asset protection waivers issued by the creditor prior to the date of cancellation or termination and for which premiums have been received by the insurer.

(c) Administrators May Procure Insurance. – An insurance policy obtained pursuant to this section may be directly obtained by a creditor or may be procured by an administrator to cover the creditor's obligations.

"**§ 66-444. Mandatory terms.**

A guaranteed asset protection waiver shall include all of the following written terms in clear, easily understandable language:

(1) The name and address of the initial creditor and the borrower at the time of sale and the identity of any administrator if different from the creditor.

(2) The purchase price and the terms of the guaranteed asset protection waiver, including without limitation, the requirements for protection, conditions, or exclusions associated with the guaranteed asset protection waiver.

(3) The length of the free look period, which shall be at least 30 days, and the procedure by which a borrower may exercise the borrower's rights during that period.

(4) The terms required by G.S. 66-445.

(5) The methodology for calculating any refund of the unearned purchase price of the guaranteed asset protection waiver due in the event of cancellation of the guaranteed asset protection waiver or early termination of the vehicle finance agreement.

(6) The procedure the borrower must follow, if any, to obtain guaranteed asset protection waiver benefits under the terms and conditions of the waiver, including a telephone number and address where the borrower may apply for waiver benefits.

(7) A statement that neither the extension of credit, the terms of the credit, nor the terms of the related vehicle sale or lease may be conditioned upon the purchase of the guaranteed asset protection waiver.

"**§ 66-445. Cancellation.**

(a) Cancellation During Free Look Period. – A guaranteed asset protection waiver shall include a term stating that if a borrower cancels the waiver within the free look period, the borrower will be entitled to a full refund so long as no benefits have been provided under the guaranteed asset protection waiver.

(b) Cancellation After the Free Look Period. – A guaranteed asset protection waiver may be either cancellable or noncancellable after the free look period. A guaranteed asset protection waiver shall include the following terms regarding cancellation after the free look period:

(1) A statement of whether or not the guaranteed asset protection waiver is cancellable or noncancellable after the expiration of the free look period.

(2) If the waiver is cancellable, all of the following terms:

a. A statement that in the event of a borrower's cancellation of the guaranteed asset protection waiver or early termination of the vehicle finance agreement, the borrower may be entitled to a refund of any unearned portion of the purchase price of the waiver unless the waiver provides otherwise.

b. The procedures by which a borrower may cancel the waiver. This term shall include a requirement that in the event the underlying vehicle finance agreement is terminated, cancellation shall be made by providing a written request to the creditor, administrator, or other party within 90 days of the event terminating the vehicle finance agreement.

(c) Cancellation in the Event of Default. – Any cancellation refund under subsections (a) and (b) of this section may be applied by the creditor as a reduction of the amount owed under the vehicle finance agreement unless the borrower can show that the vehicle finance agreement has been paid in full. A guaranteed asset protection waiver shall include a term stating that notwithstanding subsections (a) and (b) of this section, if cancellation of the waiver occurs as a result of a default under the vehicle finance agreement or the repossession of the vehicle associated with the vehicle finance agreement or any other termination of the vehicle finance agreement, any refund due may be paid directly to the creditor or administrator and applied as set forth in this subsection.

"**§ 66-446. Miscellaneous provisions.**

(a) Article Controls. – The offering and sale of guaranteed asset protection waivers in this State shall be subject to the provisions of this Article.

(b) Manner of Payment. – Guaranteed asset protection waivers may, at the option of the creditor, be sold for a single payment or may be offered with a monthly or periodic payment option.

(c) Compliance with Truth in Lending Act. – Notwithstanding any other provision of law, any cost to the borrower for a guaranteed asset protection waiver subject to the Truth in

Lending Act (15 U.S.C. § 1601, et seq.) and its implementing regulations, as they may be amended from time to time, shall be separately stated and is not to be considered a finance charge or interest.

(d) Preservation Upon Transfer. – A guaranteed asset protection waiver shall remain a part of the vehicle finance agreement upon its assignment, sale, or transfer by a creditor.

(e) Cannot Be Required. – Neither the extension of credit, the term of credit, nor the term of a related vehicle sale or lease may be conditioned upon the purchase of a guaranteed asset protection waiver.

(f) Forwarding of Proceeds. – A creditor that offers a guaranteed asset protection waiver shall report the sale of, and forward funds received on all such waivers to the designated party, if any, as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents.

(g) Fiduciary Duty. – Funds received or held by a creditor or administrator and belonging to an insurer, creditor, or administrator, pursuant to the terms of a written agreement, shall be held by the creditor or administrator in a fiduciary capacity.

"**§ 66-447. Enforcement.**

The Attorney General may take action which is necessary or appropriate to enforce the provisions of this Article and to protect guaranteed asset protection waiver holders in this State. After proper notice and opportunity for hearing, the Attorney General may:

(1) Order a creditor, administrator, or any other person not in compliance with this Article to cease and desist from further guaranteed asset protection waiver-related operations which are in violation of this Article.

(2) Impose a penalty of not more than five hundred dollars ($500.00) per violation and no more than ten thousand dollars ($10,000) in the aggregate for all violations of a similar nature. For purposes of this Article, violations are of a similar nature if the violation consists of the same or similar course of conduct, action, or practice, irrespective of the number of times the conduct or practice that is determined to be a violation of the Article occurred.

"**§ 66-448. Severability.**

If any provision of this Article or the application of the provision to any person or circumstances is held invalid, the remainder of the Article and the application of the provision to persons or circumstances other than those as to which it is held invalid shall not be affected."

SECTION 2. This act becomes effective October 1, 2013.

SENATE BILL 358:
Guaranteed Asset Protection Waivers

2013-2014 General Assembly

Committee:	Senate Ref to Judiciary I. If fav, re-ref to Commerce	**Date:**	April 2, 2013
Introduced by:	Sens. Meredith, Newton, Ford	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition S358-CSSA-10		

SUMMARY: ***Senate Bill 358 would regulate the issuance of guaranteed asset protection (GAP) waivers in North Carolina***

CURRENT LAW: Guaranteed asset protection (GAP) waivers are offered to persons financing the purchase of a vehicle for an additional fee. They are designed to cover the "gap" between what the person's insurance will pay if damage to the vehicle is a total loss and what the person may still owe to a creditor.

GAP waivers are currently issued in North Carolina, but are not regulated.

BILL ANALYSIS:

Senate Bill 358 would enact a new Article 46 in Chapter 66 of the General Statutes to regulate GAP waivers.

Included in the regulations are:

- Required disclosures to the borrower
- A "free look period" during which the borrower can cancel the GAP waiver without penalty or cost.
- Provisions governing cancellation of the GAP waiver and the processing of any refund.
- Enforcement by the Attorney General and fines for violations.

EFFECTIVE DATE: This act becomes effective October 1, 2013.

O. Walker Reagan
Director

S358-SMSA-24 CSSA-10 -V1

Research Division
(919) 733-2578

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 139

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

H139-ASA-10 [v.1]

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

Date _____,2013

Senator Clodfelter

moves to amend the bill on page 9, line 44
by rewriting that line to read:
"**SECTION 6.** This act becomes effective October 1, 2013."

SIGNED _____
Amendment Sponsor

SIGNED _____
- Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOUSE BILL 139

Short Title:	Adopt Uniform Deployed Parent Cust/Visit. Act.	(Public)
Sponsors:	Representatives Glazier, Stevens, Davis, and D. Ross (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary Subcommittee C.	

February 21, 2013

A BILL TO BE ENTITLED

AN ACT TO ADOPT THE UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT.

The General Assembly of North Carolina enacts:

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

"**§ 50-13.2. Who entitled to custody; terms of custody; visitation rights of grandparents; taking child out of ~~State.~~State; consideration of parent's military service.**

(a) An order for custody of a minor child entered pursuant to this section shall award the custody of such child to such person, agency, organization or institution as will best promote the interest and welfare of the child. In making the determination, the court shall consider all relevant factors including acts of domestic violence between the parties, the safety of the child, and the safety of either party from domestic violence by the other party and shall make findings accordingly. An order for custody must include findings of fact which support the determination of what is in the best interest of the child. Between the mother and father, whether natural or adoptive, no presumption shall apply as to who will better promote the interest and welfare of the child. Joint custody to the parents shall be considered upon the request of either parent.

(b) An order for custody of a minor child may grant joint custody to the parents, exclusive custody to one person, agency, organization, or institution, or grant custody to two or more persons, agencies, organizations, or institutions. Any order for custody shall include such terms, including visitation, as will best promote the interest and welfare of the child. If the court finds that domestic violence has occurred, the court shall enter such orders that best protect the children and party who were the victims of domestic violence, in accordance with the provisions of G.S. 50B-3(a1)(1), (2), and (3). If a party is absent or relocates with or without the children because of an act of domestic violence, the absence or relocation shall not be a factor that weighs against the party in determining custody or visitation. Absent an order of the court to the contrary, each parent shall have equal access to the records of the minor child involving the health, education, and welfare of the child.

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

(b2) Any order for custody, including visitation, may, as a condition of such custody or visitation, require either or both parents, or any other person seeking custody or visitation, to abstain from consuming alcohol and may require submission to a continuous alcohol monitoring system, of a type approved by the Division of Adult Correction of the Department of Public Safety, to verify compliance with this condition of custody or visitation. Any order pursuant to this subsection shall include an order to the monitoring provider to report any violation of the order to the court and each party to the action. Failure to comply with this condition shall be grounds for civil or criminal contempt.

(c) An order for custody of a minor child may provide for such child to be taken outside of the State, but if the order contemplates the return of the child to this State, the judge may require the person, agency, organization or institution having custody out of this State to give bond or other security conditioned upon the return of the child to this State in accordance with the order of the court.

(d) If, within a reasonable time, one parent fails to consent to adoption pursuant to Chapter 48 of the General Statutes or parental rights have not been terminated, the consent of the other consenting parent shall not be effective in an action for custody of the child.

(e) An order for custody of a minor child may provide for visitation rights by electronic communication. In granting visitation by electronic communication, the court shall consider the following:

(1) Whether electronic communication is in the best interest of the minor child.

(2) Whether equipment to communicate by electronic means is available, accessible, and affordable to the parents of the minor child.

(3) Any other factor the court deems appropriate in determining whether to grant visitation by electronic communication.

The court may set guidelines for electronic communication, including the hours in which the communication may be made, the allocation of costs between the parents in implementing electronic communication with the child, and the furnishing of access information between parents necessary to facilitate electronic communication. Electronic communication with a minor child may be used to supplement visitation with the child. Electronic communication may not be used as a replacement or substitution for custody or visitation. The amount of time electronic communication is used shall not be a factor in calculating child support or be used to justify or support relocation by the custodial parent out of the immediate area or the State. Electronic communication between the minor child and the parent may be subject to supervision as ordered by the court. As used in this subsection, "electronic communication" means contact, other than face-to-face contact, facilitated by electronic means, such as by telephone, electronic mail, instant messaging, video teleconferencing, wired or wireless technologies by Internet, or other medium of communication.

(f) In a proceeding for custody of a minor child of a service member, a court may not consider a parent's past deployment or possible future deployment as the only basis in determining the best interest of the child. The court may consider any significant impact on the best interest of the child regarding the parent's past or possible future deployment."

SECTION 2. G.S. 50-13.7A is repealed.

SECTION 3. Chapter 50A of the General Statutes is amended by adding the following new Article to read:

"Article 3.

"Uniform Deployed Parents Custody and Visitation Act.

"Part 1. General Provisions.

"**§ 50A-350. Short title.**

This Article may be cited as the "Uniform Deployed Parents Custody and Visitation Act."

"**§ 50A-351. Definitions.**

The following definitions apply in this Article:

(1) Adult. – An individual who is at least 18 years of age or an emancipated minor.

(2) Caretaking authority. – The right to live with and care for a child on a day-to-day basis, including physical custody, parenting time, right to access, and visitation.

(3) Child. – An (i) unemancipated individual who has not attained 18 years of age or (ii) adult son or daughter by birth or adoption who is the subject of an existing court order concerning custodial responsibility.

(4) Close and substantial relationship. – A relationship in which a significant bond exists between a child and a nonparent.

(5) Court. – An entity authorized under the laws of this State to establish, enforce, or modify a decision regarding custodial responsibility.

(6) Custodial responsibility. – A comprehensive term that includes any and all powers and duties relating to caretaking authority and decision-making authority for a child. The term includes custody, physical custody, legal custody, parenting time, right to access, visitation, and the authority to designate limited contact with a child.

(7) Decision-making authority. – The power to make important decisions regarding a child, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel. The term does not include day-to-day decisions that necessarily accompany a grant of caretaking authority.

(8) Deploying parent. – A service member, who is deployed or has been notified of impending deployment, and is (i) a parent of a child or (ii) an individual other than a parent who has custodial responsibility of a child.

(9) Deployment. – The movement or mobilization of a service member to a location for more than 90 days, but less than 18 months, pursuant to an official order that (i) is designated as unaccompanied; (ii) does not authorize dependent travel; or (iii) otherwise does not permit the movement of family members to that location.

(10) Family member. – A sibling, aunt, uncle, cousin, stepparent, or grandparent of a child, and an individual recognized to be in a familial relationship with a child.

(11) Limited contact. – The opportunity for a nonparent to visit with a child for a limited period of time. The term includes authority to take the child to a place other than the residence of the child.

(12) Nonparent. – An individual other than a deploying parent or other parent.

(13) Other parent. – An individual who, in common with a deploying parent, is (i) the parent of a child or (ii) an individual other than a parent with custodial responsibility of a child.

(14) Record. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) Return from deployment. – The conclusion of a service member's deployment as specified in uniformed service orders.

(16) Service member. – A member of a uniformed service.

(17) State. – A state of the United States, the District of Columbia, Puerto Rico, and the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(18) Uniformed service. – Service which includes (i) the active and reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States; (ii) 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; or (iii) the National Guard.

"**§ 50A-352. Remedies for noncompliance.**

In addition to other relief provided under the laws of this State, if a court finds that a party to a proceeding under this Article has acted in bad faith or intentionally failed to comply with the requirements of this Article or a court order issued under this Article, the court may assess reasonable attorneys' fees and costs against the opposing party and order other appropriate relief.

"**§ 50A-353. Jurisdiction.**

(a) A court may issue an order regarding custodial responsibility under this Article only if the court has jurisdiction pursuant to Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) under Article 2 of this Chapter. If the court has issued a temporary order regarding custodial responsibility pursuant to Part 3 of this Article, for purposes of the UCCJEA, the residence of the deploying parent is not changed by reason of the deployment during the deployment.

(b) If a court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order temporarily by agreement pursuant to Part 2 of this Article, for purposes of the UCCJEA, the residence of the deploying parent is not changed by reason of the deployment.

(c) If a court in another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment, for purposes of the UCCJEA, the residence of the deploying parent is not changed by reason of the deployment.

(d) This section does not prohibit the exercise of temporary emergency jurisdiction by a court under the UCCJEA.

"**§ 50A-354. Notice required of deploying parent.**

(a) Except as provided in subsections (c) and (d) of this section, a deploying parent shall, in a record, notify the other parent of a pending deployment not later than seven days after receiving notice of deployment unless the deploying parent is reasonably prevented from notifying the other parent by the circumstances of service. If the circumstances of service prevent notification within seven days, the notification shall be made as soon as reasonably possible thereafter.

(b) Except as provided in subsections (c) and (d) of this section, each parent shall, in a record, provide the other parent with a plan for fulfilling that parent's share of custodial responsibility during deployment as soon as reasonably possible after receiving notice of deployment under subsection (a) of this section.

(c) If an existing court order prohibits disclosure of the address or contact information of the other parent, a notification of deployment under subsection (a) of this section, or notification of a plan for custodial responsibility during deployment under subsection (b) of this section, may be made only to the issuing court. If the address of the other parent is available to the issuing court, the court shall forward the notification to the other parent. The court shall keep confidential the address or contact information of the other parent.

(d) Notice in a record is not required if the parents are living in the same residence and there is actual notice of the deployment or plan.

(e) In a proceeding regarding custodial responsibility between parents, a court may consider the reasonableness of a parent's efforts to comply with this section.

"**§ 50A-355. Notification required for change of address.**

(a) Except as otherwise provided in subsection (b) of this section, an individual to whom custodial responsibility has been assigned or granted during deployment under Part 2 or Part 3 of this Article shall notify the deploying parent and any other individual with custodial responsibility of any change of mailing address or residence until the assignment or grant is

terminated. The individual shall provide the notice to any court that has issued an existing custody or child support order concerning the child.

(b) If an existing court order prohibits disclosure of the address or contact information of an individual to whom custodial responsibility has been assigned or granted, a notification of change of mailing address or residence under subsection (a) of this section may be made only to the court that issued the order. The court shall keep confidential the mailing address or residence of the individual to whom custodial responsibility has been assigned or granted.

"Part 2. Agreement Addressing Custodial Responsibility During Deployment.

"**§ 50A-356. Form of agreement.**

(a) The parents of a child may enter into a temporary agreement granting custodial responsibility during deployment.

(b) An agreement under subsection (a) of this section shall be (i) in writing and (ii) signed by both parents or any nonparent to whom custodial responsibility is granted.

(c) An agreement under subsection (a) of this section may include the following:

(1) To the extent feasible, identify the destination, duration, and conditions of the deployment that is the basis for the agreement.

(2) Specify the allocation of caretaking authority among the deploying parent, the other parent, and any nonparent, if applicable.

(3) Specify any decision-making authority that accompanies a grant of caretaking authority.

(4) Specify any grant of limited contact to a nonparent.

(5) If the agreement shares custodial responsibility between the other parent and a nonparent, or between two nonparents, provide a process to resolve any dispute that may arise.

(6) Specify (i) the frequency, duration, and means, including electronic means, by which the deploying parent will have contact with the child; (ii) any role to be played by the other parent in facilitating the contact; and (iii) the allocation of any costs of communications.

(7) Specify the contact between the deploying parent and child during the time the deploying parent is on leave or is otherwise available.

(8) Acknowledge that any party's existing child-support obligation cannot be modified by the agreement, and that changing the terms of the obligation during deployment requires modification in the appropriate court.

(9) Provide that the agreement terminates following the deploying parent's return from deployment according to the procedures under Part 4 of this Article.

(10) If the agreement must be filed pursuant to G.S. 50A-360, specify which parent shall file the agreement.

"**§ 50A-357. Nature of authority created by agreement.**

(a) An agreement under this Part is temporary and terminates pursuant to Part 4 of this Article following the return from deployment of the deployed parent, unless the agreement has been terminated before that time by court order or modification of the agreement under G.S. 50A-358. The agreement derives from the parents' custodial responsibility and does not create an independent, continuing right to caretaking authority, decision-making authority, or limited contact in an individual to whom custodial responsibility is given.

(b) A nonparent given caretaking authority, decision-making authority, or limited contact by an agreement under this Part has standing to enforce the agreement until it has been modified pursuant to an agreement of the parents under G.S. 50A-358 or terminated under Part 4 of this Article or by court order.

"**§ 50A-358. Modification of agreement.**

The parents may by mutual consent modify an agreement regarding custodial responsibility made pursuant to this Part. If an agreement made under this subsection is modified before deployment of a deploying parent, the modification shall be in writing and signed by both parents and any nonparent who will exercise custodial responsibility under the modified agreement. If an agreement made under this section is modified during deployment of a deploying parent, the modification shall be agreed to, in a record, by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

"**§ 50A-359. Power of attorney.**

If no other parent possesses custodial responsibility or if an existing court order prohibits contact between the child and the other parent, a deploying parent, by power of attorney, may delegate all or part of custodial responsibility to an adult nonparent for the period of deployment. The power of attorney is revocable by the deploying parent through a revocation of the power of attorney signed by the deploying parent.

"**§ 50A-360. Filing agreement or power of attorney with court.**

An agreement or power of attorney created pursuant to this Part shall be filed within a reasonable period of time with any court that has entered an existing order on custodial responsibility or child support concerning the child. The case number and heading of the existing case concerning custodial responsibility or child support shall be provided to the court with the agreement or power of attorney.

"Part 3. Judicial Procedure for Granting Custodial Responsibility During Deployment.

"**§ 50A-361. Proceeding for temporary custody order.**

(a) After a deploying parent receives notice of deployment and during the deployment, a court may issue a temporary order granting custodial responsibility unless prohibited by the Servicemembers Civil Relief Act, 50 U.S.C. §§ 521-522. A court may not issue a permanent order granting custodial responsibility in the absence of the deploying parent without the consent of the deploying parent.

(b) At any time after a deploying parent receives notice of deployment, either parent may file a motion regarding custodial responsibility of a child during deployment. The motion shall be filed in an existing proceeding for custodial responsibility of the child with jurisdiction under Part 1 of this Article or, if there is no existing proceeding in a court with jurisdiction under Part 1 of this Article, in a new action for granting custodial responsibility during deployment.

"**§ 50A-362. Expedited hearing.**

The court shall conduct an expedited hearing if a motion to grant custodial responsibility is filed before a deploying parent deploys.

"**§ 50A-363. Testimony by electronic means.**

In a proceeding brought under this Part, a party or witness who is not reasonably available to appear personally may appear and provide testimony and present evidence by electronic means unless the court finds good cause to require a personal appearance.

"**§ 50A-364. Effect of prior judicial decree or agreement.**

In a proceeding for a grant of custodial responsibility pursuant to this Part, the following shall apply:

(1) A prior judicial order designating custodial responsibility of a child in the event of deployment is binding on the court unless the circumstances require modifying a judicial order regarding custodial responsibility.

(2) The court shall enforce a prior written agreement between the parents for designating custodial responsibility of a child in the event of deployment, including a prior written agreement executed under Part 2 of this Article, unless the court finds the agreement contrary to the best interest of the child.

"**§ 50A-365. Grant of caretaking or decision-making authority to nonparent.**

(a) In accordance with the laws of this State and on the motion of a deploying parent, a court may grant caretaking authority of a child to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship if it is in the best interest of the child.

(b) Unless the grant of caretaking authority to a nonparent under subsection (a) of this section is agreed to by the other parent, the grant is limited to an amount of time not greater than (i) the time granted to the deploying parent in an existing permanent custody order, except that the court may add unusual travel time necessary to transport the child or (ii) in the absence of an existing permanent custody order, the amount of time that the deploying parent habitually cared for the child before being notified of deployment, except that the court may add unusual travel time necessary to transport the child.

(c) A court may grant part of the deploying parent's decision-making authority for a child to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship if the deploying parent is unable to exercise that authority. When a court grants the authority to a nonparent, the court shall specify the decision-making powers that will and will not be granted, including applicable health, educational, and religious decisions.

(d) Any nonparent to whom caretaking authority or decision-making authority is granted shall be made a party to the action until the grant of caretaking authority or decision-making authority is terminated.

"**§ 50A-366. Grant of limited contact.**

(a) In accordance with laws of this State and on motion of a deploying parent, a court shall grant limited contact with a child to a nonparent who is either a family member of the child or an individual with whom the child has a close and substantial relationship, unless the court finds that the contact would be contrary to the best interest of the child.

(b) Any nonparent who is granted limited contact shall be made a party to the action until the grant of limited contact is terminated.

"**§ 50A-367. Nature of authority created by order.**

(a) A grant made pursuant to this Part is temporary and terminates pursuant to Part 4 of this Article following the return from deployment of the deployed parent, unless the grant has been terminated before that time by court order. The grant does not create an independent, continuing right to caretaking authority, decision-making authority, or limited contact in an individual to whom it is granted.

(b) A nonparent granted caretaking authority, decision-making authority, or limited contact under this Part has standing to enforce the grant until it is terminated under Part 4 of this Article or by court order.

(c) Any nonparent made a party because of a grant of caretaking authority, decision-making authority, or limited contact shall have no continuing right to party status after the grant of caretaking authority, decision-making authority, or limited contact is terminated pursuant to Part 4 of this Article or by court order.

"**§ 50A-368. Content of temporary custody order.**

(a) An order granting custodial responsibility under this Part shall (i) designate the order as temporary and (ii) identify to the extent feasible the destination, duration, and conditions of the deployment.

(b) If applicable, a temporary order for custodial responsibility shall comply with each of the following:

(1) Specify the allocation of caretaking authority, decision-making authority, or limited contact among the deploying parent, the other parent, and any nonparent.

(2) If the order divides caretaking or decision-making authority between individuals, or grants caretaking authority to one individual and limited

contact to another, provide a process to resolve any significant dispute that may arise.

(3) Provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless contrary to the best interest of the child, and allocate any costs of communications.

(4) Provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or is otherwise available, unless contrary to the best interest of the child.

(5) Provide for reasonable contact between the deploying parent and the child following return from deployment until the temporary order is terminated, which may include more time than the deploying parent spent with the child before entry of the temporary order.

(6) Provide that the order will terminate following return from deployment according to the procedures under Part 4 of this Article.

"**§ 50A-369. Order for child support.**

If a court has issued an order providing for grant of caretaking authority under this Part, or an agreement granting caretaking authority has been executed under Part 2 of this Article, the court may enter a temporary order for child support consistent with the laws of this State regarding child support if the court has jurisdiction under the Uniform Interstate Family Support Act under Chapter 52C of the General Statutes.

"**§ 50A-370. Modifying or terminating assignment or grant of custodial responsibility to nonparent.**

(a) Except for an order in accordance with G.S. 50A-364 or as otherwise provided in subsection (b) of this section, and consistent with the Servicemembers Civil Relief Act, 50 U.S.C. §§ 521-522, on motion of a deploying or other parent or any nonparent to whom caretaking authority, decision-making authority, or limited contact has been granted, the court may modify or terminate a grant of caretaking authority, decision-making authority, or limited contact made pursuant to this Article if the modification or termination is consistent with this Part and the court finds it is in the best interest of the child. Any modification shall be temporary and terminates following the conclusion of deployment of the deployed parent according to the procedures under Part 4 of this Article, unless the grant has been terminated before that time by court order.

(b) On motion of a deploying parent, the court shall terminate a grant of limited contact.

"Part 4. Return From Deployment.

"**§ 50A-371. Procedure for terminating temporary grant of custodial responsibility established by agreement.**

(a) At any time following return from deployment, a temporary agreement granting custodial responsibility under Part 2 of this Article may be terminated by an agreement to terminate signed by the deploying parent and the other parent.

(b) The temporary agreement granting custodial responsibility terminates if (i) the agreement to terminate specifies a date for termination or (ii) the agreement to terminate does not specify a date, on the date the agreement to terminate is signed by both parents.

(c) In the absence of an agreement to terminate, the temporary agreement granting custodial responsibility terminates 60 days from the date of one of the following:

(1) The date the deploying parent gives notice to the other parent that the deploying parent has returned from deployment.

(2) The date stated in an order terminating the temporary grant of custodial responsibility.

(3) The death of the deploying parent.

(d) If the temporary agreement granting custodial responsibility was filed with a court pursuant to G.S. 50A-360, an agreement to terminate the temporary agreement shall also be filed with that court within a reasonable period of time after the signing of the agreement. The case number and heading of the existing custodial responsibility or child support case shall be provided to the court with the agreement to terminate.

"**§ 50A-372. Consent procedure for terminating temporary grant of custodial responsibility established by court order.**

At any time following return from deployment, the deploying parent and the other parent may file with the court an agreement to terminate a temporary order for custodial responsibility issued under Part 3 of this Article. After an agreement has been filed, the court shall issue an order terminating the temporary order on the date specified in the agreement. If no date is specified, the court shall issue the order immediately.

"**§ 50A-373. Visitation before termination of temporary grant of custodial responsibility.**

After a deploying parent returns from deployment and until a temporary agreement or order for custodial responsibility established under Part 2 or Part 3 of this Article is terminated, the court shall enter a temporary order granting the deploying parent reasonable contact with the child unless it is contrary to the best interest of the child. The court shall enter a temporary order granting contact under this section even if the time exceeds the time the deploying parent spent with the child before deployment.

"**§ 50A-374. Termination by operation of law of temporary grant of custodial responsibility established by court order.**

(a) A temporary order for custodial responsibility issued under Part 3 of this Article shall terminate, if no agreement between the parties to terminate a temporary order for custodial responsibility has been filed, 60 days from (i) the date the deploying parent gives notice of having returned from deployment to the other parent or any nonparent granted custodial responsibility or (ii) the death of the deploying parent.

(b) Any proceedings seeking to terminate or prevent termination of a temporary order for custodial responsibility are governed by laws of this State.

"Part 5. Miscellaneous Provisions.

"**§ 50A-375. Uniformity of application and construction.**

In applying and construing this Article, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

"**§ 50A-376. 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 4. Nothing in Article 3 of Chapter 50A of the General Statutes, enacted in Section 3 of this act, shall affect the validity of a temporary court order concerning custodial responsibility during deployment entered before the effective date of this act.

SECTION 5. The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Comment to the Uniform Deployed Parents Custody and Visitation Act as the Revisor may deem appropriate.

SECTION 6. This act is effective when it becomes law.

HOUSE BILL 139:
Adopt Uniform Deployed Parent Cust/Visit. Act

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 2, 2013
Introduced by:	Reps. Glazier, Stevens, Davis, D. Ross	**Prepared by:**	Susan Sitze*
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***This act adopts an act designed to provide procedural guidelines to the courts in determining temporary custody and visitation rights when a parent receives notice of deployment for military service or is on a deployment, and also modifies current law to prohibit a court's consideration of the fact of a parent's past deployment or possible future deployment as the only basis in determining the best interest of the child. This act is effective when it becomes law.***

[As introduced, this bill was identical to S225, as introduced by Sen. Newton, which is currently in Senate Judiciary I.]

CURRENT LAW: General Statute 50-13.7A provides a process to resolve custody and visitation matters when a parent receives temporary duty, deployment, or mobilization orders from the military.

BACKGROUND: The Uniform Law Commission (ULC) is a non-profit unincorporated association that has, as a stated goal, the improvement of state laws by drafting uniform state laws on subjects where uniformity is desirable and practicable. It is comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico and the U.S. Virgin Islands. The ULC is in its 119th year, and is the oldest state governmental association. It is the source of more than 300 uniform acts which, according to its website, "seek[s] to secure uniformity of state laws where diversity obstructs the interests of all the citizens of the United States."

BILL ANALYSIS:

The act amends current law, and enacts a new Article to provide a more expansive coverage of the issues surrounding the custody and visitation procedures when a parent is deployed or has been notified of an upcoming deployment.

Section 1 – Amends the custody determination procedure to provide that a court may not consider a parent's past deployment or possible future deployment as the only basis in determining the child's best interests. A court may consider any significant impact on the best interest of the child regarding past or possible future deployments.

Section 2 – Repeals the current statute that provides the procedure for custody and visitation upon military temporary duty, deployment, or mobilization.

Section 3 – Creates a new Article, "Uniform Deployed Parents Custody and Visitation Act," in Chapter 50A of the General Statutes. The attached chart (without the column reflecting the statute numbers which are contained in the bill), was provided by the Family Law Section of the North Carolina Bar. The chart provides a summary of the provisions in the Uniform Act, the corresponding provisions in House Bill 139, and reflects the current provisions covered under G.S. 50-13.7A, which is repealed by the act.

EFFECTIVE DATE: This act is effective when it becomes law.

**This summary was originally written by Hal Pell, Staff Attorney*

O. Walker Reagan
Director

H139-SMSA-23 E1 -V1

Research Division
(919) 733-2578

North Carolina Bar Association, Family Law Section
[Note: "House Bill 139" column added to the chart by the Research Division, NCGA]

UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT

Provisions Compared to N.C. Gen. Stat. § 50-13.7A
And House Bill 139

Act	House Bill 139	Summary	NC Law	Comparison
Article 1		**General Provisions**		
Sec. 101	50A-350	Short Title		
Sec. 102	50A-351	Definitions (e.g., "adult," "caretaking authority," "close and substantial relationship," "deployment," "service member" and "uniformed services")	GS 50-13.7A (b)	Law defines deployment, mobilization and temporary duty
Sec. 103	50A-352	Remedies for Noncompliance: This includes attorney fees and costs		
Sec. 104	50A-353	Jurisdiction: The residence of the deploying parent is not changed by reason of deployment for the purposes of UCCJEA's exclusive continuing jurisdiction		
Sec. 105	50A-354	Notice Required of Deploying Parent: The deploying parent must give at least 7 days' notice of deployment (in gen'l); exchange of proposed parenting plans is required; reasonableness of a parent's efforts to comply may be considered in custody determination		
Sec. 106	50A-355	Duty to Notify of Change of Address: Non-deploying parent must give address-change info to the deploying parent and the court; exception if an existing order prohibits this disclosure (e.g., domestic violence case)		
Sec. 107	50-132(f)	Gen'l Considerations in Custody Proceeding of a Parent's Mil. Service: Past and possible future deployments may not be considered in determining the best interest of the child, but court may consider "any significant impact" on child of such deployments	GS 50-13.7A (c)(2)	Military absence and the temporary disruption to the child's schedule shall not be a factor in a determination of change of circumstances if a motion is filed to transfer custody from the service member.
Article 2		**Agreement Addressing Custodial Responsibility During Deployment**		
Sec. 201	50A-356	Form of Agreement: Temporary agreement must be in writing, signed by parents and by any nonparent to whom custody duties are given. It may… - Identify (to extent feasible) the destination, duration and conditions of the deployment - Specify the allocation of caretaking authority among deploying parent, other parent and any nonparent - Specify any decision-making authority that		

Act	House Bill 139	Summary	NC Law	Comparison
		accompanies caretaking - Specify any grant of limited contact to a nonparent - Provide for dispute resolution when agreement shares custodial responsibility between parent and nonparent, or between two nonparents - Specify the frequency, duration and means of contact between deployed parent and child, role of other parent in facilitating contact, and allocation of cost - Specify contact between deploying parent and child during any period of leave - Acknowledge that can only be changed during deployment by the appropriate court, not by the agreement obligation during deployment - Provide for termination upon return from deployment under Article 4 procedures - If agreement must be filed under Section 205, state which parent shall do so		
Sec. 202	50A-357	Nature of Authority Created by Agreement: Agreement is temporary and ends upon return from deployment; it does not create independent rights or authority in persons to whom responsibility is given; nonparent given authority or contact rights has standing to enforce agreement		
Sec. 203	50A-358	Modification of Agreement: Agreement may be modified by mutual consent of both parents and any nonparent who will exercise custodial responsibility under the agreement		
Sec. 204	50A-359	Power of Attorney: Deploying parent may delegate all or part of custodial responsibility to a nonparent through power of atty. for the period of deployment where no other parent has custodial rights to child		
Sec. 205	50A-360	Filing Agreement or Power of Atty. with Court: Requires filing of agreement and/or power of atty. with court or agency in some circumstances within reasonable period of time		
Article 3		**Judicial Procedure for Granting Custodial Responsibility During Deployment**		
Sec. 301	50A-361	Proceeding for Temporary Custody Order: Court may issue temp. custody order unless barred by Servicemembers Civil Relief Act, 50 U.S.C. Appx. 521-522; no permanent custody order except with consent of deploying parent		
Sec. 302	50A-362	Expedited Hearing: Court shall conduct expedited hearing upon motion for same before deployment	GS 50-13.7A (e)	Upon motion of a parent who has received military temporary duty, deployment, or mobilization orders, the court shall, for good cause shown, hold an expedited hearing in custody and visitation matters instituted under this section when the

Act	House Bill 139	Summary	NC Law	Comparison
				military duties of the parent have a material effect on the parent's ability, or anticipated ability, to appear in person at a regularly scheduled hearing.
Sec. 303	50A-363	Testimony by Electronic Means: A party or witness who is not reasonably available may testify and present evidence by electronic means unless good cause for personal appearance.	GS 50-13.7A (f)	Upon motion of a parent who has received military temporary duty, deployment, or mobilization orders, the court shall, upon reasonable advance notice and for good cause shown, allow the parent to present testimony and evidence by electronic means in custody and visitation matters instituted under this section when the military duties of the parent have a material effect on the parent's ability to appear in person at a regularly scheduled hearing. The phrase "electronic means" includes communication by telephone, video teleconference, or the Internet.
Sec. 304	50A-364	Effect of Prior Judicial Decree or Agreement: Prior order for custodial responsibility in case of deployment is binding unless changed circumstances justify modification; court shall enforce agreement of parties for custodial responsibility unless contrary to best interest of child.		
Sec. 305	50A-365	Grant of Caretaking or Decision-Making Authority to Nonparent: Upon motion of deploying parent, court may grant caretaking authority to nonparent who is adult family member, or who has close and substantial relationship with child, if in child's best interest. Absent agreement by other parent, caretaking time is limited to… - Ordinary visitation time of deploying parent in existing order (plus unusual travel time, if necessary) - If no existing order, the time that deploying parent cared for child prior to notice of deployment (plus unusual travel time, if necessary). Court may grant part of decision-making authority for	GS 50-13.7A (d)	If the parent with visitation rights receives military temporary duty, deployment, or mobilization orders that involve moving a substantial distance from the parent's residence or otherwise have a material effect on the parent's ability to exercise visitation rights, the court may delegate the parent's visitation rights, or a

Act	House Bill 139	Summary	NC Law	Comparison
		a child to said nonparent, and order shall specify areas of decision-making, including health, education and religion		portion thereof, to a family member with a close and substantial relationship to the minor child for the duration of the parent's absence, if delegating visitation rights is in the child's best interest.
Sec. 306	50A-366	Grant of Limited Contact: Upon motion of deploying parent, court shall grant caretaking authority to nonparent who is adult family member, or who has close and substantial relationship with child, unless court finds this not in child's best interest.	(see above)	(see above)
Sec. 307	50A-367	Nature of Authority Granted by Order: Grant of authority is temporary, ends upon return from deployment; it does not create independent rights or authority in persons to whom responsibility is given; nonparent granted authority or contact rights has standing to enforce the grant		
Sec. 308	50A-368	Content of Temporary Custody Order: Order granting custodial responsibility must... - designate order as temporary - Identify (to extent feasible) the destination, duration and conditions of the deployment If applicable, temp. order for custodial responsibility must... - Specify the allocation of caretaking authority among deploying parent, other parent and any nonparent - Provide for dispute resolution when agreement shares custodial responsibility between parent and nonparent, or between two nonparents - Provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless contrary to the best interest of the child, and allocate any costs of communications - Provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or is otherwise available, unless contrary to the best interest of the child - Provide for reasonable contact between deploying parent and child following return from deployment until the temporary order is terminated, which may include more time than the deploying parent spent with the child before entry of the temporary order - Specify any decision-making authority that accompanies caretaking - Specify any grant of limited contact to a nonparent - Provide for termination upon return from deployment under Article 4 procedures		
Sec. 309	50A-369	Order for Child Support: If caretaking order issued or		

Act	House Bill 139	Summary	NC Law	Comparison
		agreement executed, court may order temporary child support if UIFSA jurisdiction		
Sec. 310	50A-370	Modifying or Terminating Assignment or Grant of Custodial Responsibility to Nonparent: Court may modify or terminate an order providing for caretaking, decision-making or limited contact. Any modification is temporary and ends upon return from deployment, unless earlier terminated. On motion of deploying parent, court shall end order of limited contact.		
Article 4		**Return from Deployment**		
Sec. 401	50A-371	Procedure for Terminating Temporary Grant of Custodial Responsibility Established by Agreement: At any time after return from deployment, temp. custodial responsibility agreement may be terminated upon signatures of both parents. Otherwise it ends upon date which is set out in it for termination. If no date in it or written agreement to terminate, then it ends 60 days from date the deploying parent gives notice to other parent of return from deployment. If temp. agreement was files with court/agency under Sec. 205, then agreement to terminate must also be filed within reas. period of time after signing. Case number and heading must be provided.		
Sec. 402	50A-372	Consent Procedure for Terminating Temporary Grant of Custodial Responsibility Established by Court Order: At any time after return from deployment, both parents may file with court an agreement to terminate custodial responsibility order. After agreement is filed, court shall issue order ending the temp. order on date set out in agreement. If no date set out, then order is issued immediately.		
Sec. 403	50A-373	Visitation before Termination of Temporary Grant of Custodial Responsibility: After return from deployment and until order or agreement is terminated, court shall enter temporary order granting deploying parent reas. contact with child (unless contrary to best interest of child), even though time may exceed that spent with child before deployment.		
Sec. 404	50A-374	Termination by Operation of Law of Temporary Grant of Custodial Responsibility Established by Court Order: If no agreement to end temporary order for custodial responsibility, then it ends 60 days from date the deploying parent gives notice of return from deployment to other parent and any nonparent given custodial responsibility. Any proceeding to prevent term. of temp. custodial responsibility order is governed by other provisions of state law.	GS 50-13.7A (c)(1)	Temporary custody order ends no later than 10 days after the parent returns, but court has discretion to conduct a hearing for emergency custody upon return of the parent and within 10 days of the filing of a verified motion for emergency custody alleging an immediate danger of irreparable harm to the child
Article 5		**Miscellaneous Provisions**		

Act	House Bill 139	Summary	NC Law	Comparison
Sec. 501	50A-375	Uniformity of Application and Construction: Court should consider need for uniformity.		
Sec. 502	50A-376	Relation to Electronic Signatures in Global and National Commerce Act: This Act 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).		
Sec. 503	Section 4	Transition Provision: Act does not affect validity of temp. order re custodial responsibility during deployment that was entered before the effective date of Act.		
Sec. 504	Section 6	Effective Date: This Act takes effect....		

VISITOR REGISTRATION SHEET

(Committee Name)

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kim Crouch	NCBA
Mark E. Sullivan	SULLIVAN + TANNER, P.A. RALEIGH, NC
Emily Hackeling	UNC Chapel Hill
Sisanna Davis	Williams Mullen
PAIGE WORSHAM	NC Center for Public Policy Research
Rose Williams	NCDOJ
Robert Kaufman	Kaufman Law Firm
Jason Fishkin	Sen Stein
Floyd Lewis	General Statutes Commission
Mona Clement	For the Common Rights
John Bode	BCS
Chip Burpee	J/J Family Enterprises
TK Kostarzewa	CR
Angel Sims	CR

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lauren Whaley	NCCUL
Dustin Hale	Sen Brown
Gavin Brown	Mayor of Waynesville
Mitchell Young	Lake Junaluska Assembly
Marcy Onieal	Town Mgr., Waynesville NC
Chip Killian	Nelson Mullins
Carol Barker	NC American Legion
Jim Mayhew	NC American Legion
GREG GRAY	NC AMERICAN LEGION
ROBERT GARCIA	NC Auto Dealers

Senate Committee on Judiciary I
Thursday, April 4, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 124	Shoot Gun From Inside/To Harm or Incite Fear. Discussion Only	Senator Brunstetter
SB 140	Financial Exploitation of Older Adults.	Senator Bingham

Adjournment

Senate Committee on Judiciary I
Thursday, April 4, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on April 4, 2013 in Room 1027/1128 of the Legislative Building. Twelve members were present.

Senator E. S. (Buck) Newton, Chair, presided.

Sen. Newton said the first bill for discussion only is Senate Bill 124. Senator Jerry Tillman made a motion to bring a Proposed Committee Substitute up for the bill and the motion passed by a voice vote. Senator Pete Brunstetter was recognized to explain the bill.

Senator Dan Blue asked Sen. Brunstetter a question about the Castle Doctrine and self-defense. Sen. Brunstetter responded and Sen. Newton clarified under which circumstances the Castle Doctrine applies. Sen. Newton recognized Susan Sitze from the Research Division to clarify portions of the bill under discussion.

Ms. Sitze explained to the committee how the bill would apply in various circumstances. Sen. Newton said since the bill is on the agenda for discussion only, the committee would not vote on the bill.

Sen. Newton recognized Senator Stan Bingham to explain Senate Bill 140. Senator Trudy Wade made a motion to hear a Proposed Committee Substitute for SB 140. The motion passed by a voice vote. Sen. Bingham explained the history and details of the bill for the committee. Ms. Sitze clarified specific sections of the bill.

Peg Dorer, Director of the North Carolina Conference of District Attorneys, spoke in favor of the bill. Senator Kathy Harrington asked if there was any opposition to the bill and Sen. Bingham said he did not know of any.

Nathan Batts from the North Carolina Banking Association spoke in favor of the bill. Sen. Harrington made a motion for a favorable report to the PCS, unfavorable to the original bill. The motion passed by a voice vote.

The meeting adjourned at 10:38 a.m.

Senator E. S. (Buck) Newton, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Thursday, April 04, 2013

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

SB **140** **(CS#1)** Financial Exploitation of Older Adults.

Draft Number:	S140-PCS35310-TG-18
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Stan Bingham will handle SB 140

CMR233-V-1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 140*
Health Care Committee Substitute Adopted 3/21/13
PROPOSED COMMITTEE SUBSTITUTE S140-CSTG-18 [v.9]

4/3/2013 3:25:18 PM

Short Title: Financial Exploitation of Older Adults. (Public)

Sponsors:

Referred to:

February 28, 2013

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE RECOGNITION, REPORTING, AND PROSECUTION OF THOSE WHO WOULD DEFRAUD OR FINANCIALLY EXPLOIT DISABLED OR OLDER ADULTS AND TO CONTINUE THE TASK FORCE ON FRAUD AGAINST OLDER ADULTS, AS RECOMMENDED BY THE TASK FORCE ON FRAUD AGAINST OLDER ADULTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-112.2 reads as rewritten:

"**§ 14-112.2. Exploitation of an ~~elder~~ older adult or disabled adult.**

(a) The following definitions apply in this section:

(1) Disabled adult. – A person 18 years of age or older or a lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated as defined in G.S. 108A-101(d).

(2) ~~Elder~~ Older adult. – A person 60 years of age or ~~older who is not able to provide for the social, medical, psychiatric, psychological, financial, or legal services necessary to safeguard the person's rights and resources and to maintain the person's physical and mental well-being.~~older.

(b) It is unlawful for a person: (i) who stands in a position of trust and confidence with an ~~elder~~ older adult or disabled adult, or (ii) who has a business relationship with an ~~elder~~ older adult or disabled adult to knowingly, by deception or intimidation, obtain or use, or endeavor to obtain or use, an ~~elder~~ older adult's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the ~~elder~~ older adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the ~~elder~~ older adult or disabled adult.

(c) It is unlawful for a ~~person, who knows or reasonably should know that an elder adult or disabled adult lacks the capacity to consent,~~person to knowingly, by deception or intimidation, obtain or use, endeavor to obtain or use, or conspire with another to obtain or use an ~~elder~~ older adult's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the ~~elder~~ older adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or benefit someone other than the ~~elder~~ older adult or disabled adult. This subsection shall not apply to a person acting within the scope of that person's lawful authority as the agent for the ~~elder~~ older adult or disabled adult.

(d) A violation of subsection (b) of this section is punishable as follows:

(1) If the funds, assets, or property involved in the exploitation of the ~~elderly person~~ older adult or disabled adult is valued at one hundred thousand dollars ($100,000) or more, then the offense is a Class F felony.

(2) If the funds, assets, or property involved in the exploitation of the ~~elderly person~~ older adult or disabled adult is valued at twenty thousand dollars ($20,000) or more but less than one hundred thousand dollars ($100,000), then the offense is a Class G felony.

(3) If the funds, assets, or property involved in the exploitation of the ~~elderly person~~ older adult or disabled adult is valued at less than twenty thousand dollars ($20,000), then the offense is a Class H felony.

(e) A violation of subsection (c) of this section is punishable as follows:

(1) If the funds, assets, or property involved in the exploitation of the ~~elderly person~~ older adult or disabled adult is valued at one hundred thousand dollars ($100,000) or more, then the offense is a Class G felony.

(2) If the funds, assets, or property involved in the exploitation of the ~~elderly person~~ older adult or disabled adult is valued at twenty thousand dollars ($20,000) or more but less than one hundred thousand dollars ($100,000), then the offense is a Class H felony.

(3) If the funds, assets, or property involved in the exploitation of the ~~elderly person~~ older adult or disabled adult is valued at less than twenty thousand dollars ($20,000), then the offense is a Class I felony."

SECTION 2.(a) G.S. 53B-4 is amended by adding a new subdivision to read as follows:

"**§ 53B-4. Access to financial records.**

Notwithstanding any other provision of law, no government authority may have access to a customer's financial record held by a financial institution unless the financial record is described with reasonable specificity and access is sought pursuant to any of the following:

...

(13) A written notice of investigation of suspected financial exploitation of an adult delivered to the financial institution pursuant to G.S. 108A-116 by (i) a county department of social services director investigating a credible report of financial exploitation of a disabled adult or (ii) a law enforcement agency investigating a credible report of financial exploitation of a disabled adult or older adult. Delivery of the written notice may be effected by hand, via certified mail, return receipt requested, or through a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) and may be addressed to the financial institution's local branch or office vice president, its local branch or office manager or assistant branch or office manager, or the agent for service of process listed by the financial institution with the North Carolina Secretary of State."

SECTION 2.(b) G.S. 53B-9 reads as rewritten:

"**§ 53B-9. Duty of financial institutions; fee; limitation of liability.**

(a) Upon receipt of a notice pursuant to G.S. 53B-4(13) or upon service of a subpoena or court order pursuant to G.S. 53B-4(1), (3), (9), or (11) and receipt of certification pursuant to G.S. 53B-5(5), a financial institution shall locate the financial records requested and prepare to make them available to the government authority seeking access to them. Upon receipt of notice that a customer has challenged the notice of investigation, court ~~order~~order, or subpoena, the financial institution may suspend its efforts to make the records available until after final disposition of the challenge.

(b) Upon receipt of access to financial records pursuant to G.S. 53B-4(1), (3), (9), ~~or (11),~~(11) or (13), a government authority shall pay the financial institution that provided the

financial records a fee for costs directly incurred in assembling and delivering the financial records. The fee shall be at the rate established pursuant to the Right to Financial Privacy Act § 1115(a), 12 U.S.C. § 3415, and ~~12 C.F.R. 219.~~ 12 C.F.R. 219, unless waived, in whole or in part, by the financial institution.

(c) A financial institution that discloses a financial record pursuant to this Chapter in good faith reliance upon certification by a government authority pursuant to G.S. 53B-5(5) is not liable for damages resulting from the disclosure.

SECTION 3. G.S. 108A-14(a) is amended by adding a new subdivision to read as follows:

"**§ 108A-14. Duties and responsibilities.**

(a) The director of social services shall have the following duties and responsibilities:

...

(14) To receive and evaluate reports of abuse, neglect, or exploitation of disabled adults and to take appropriate action as required by the Protection of the Abused, Neglected, or Exploited Disabled Adults Act, Article 6 of this Chapter, to protect these adults.

(15) To receive and evaluate reports of financial exploitation of disabled adults, to investigate credible reports of financial exploitation under Article 6A of this Chapter, and to take appropriate action to protect these adults."

SECTION 4. Chapter 108A of the General Statutes is amended by adding a new Article to read as follows:

"Article 6A.

"Protection of Disabled and Older Adults From Financial Exploitation.

"**§ 108A-112. Legislative intent and purpose.**

Determined to fight the growing problem of fraud and financial exploitation targeting disabled and older adults in North Carolina, the General Assembly enacts this Article to facilitate the collection of records needed to investigate and prosecute such incidents.

"**§ 108A-113. Definitions.**

As used in this Article, the following definitions apply:

(1) Customer. – A person who has transacted business with a financial institution or has used the services offered by a financial institution.

(2) Disabled adult. – An individual 18 years of age or older or a lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated as defined in G.S. 108A-101(d).

(3) Financial exploitation. – The illegal or improper use of a disabled adult's or older adult's financial resources for another's profit or pecuniary advantage.

(4) Financial institution. – A banking corporation, trust company, savings and loan association, credit union, or other entity principally engaged in lending money or receiving or soliciting money on deposit.

(5) Financial record. – An original of, a copy of, or information derived from a record held by a financial institution pertaining to a customer's relationship with the financial institution and identified with or identifiable with the customer.

(6) Law enforcement agency. – Any duly accredited State or local government agency possessing authority to enforce the criminal statutes of North Carolina.

(7) Investigating entity. – A law enforcement agency investigating alleged financial exploitation of a disabled adult or an older adult, or a county department of social services investigating alleged financial exploitation of a disabled adult.

(8) Older adult. – An individual 60 years of age or older.

(9) Promptly. – As soon as practicable, with reasonable allowance to be made for the time required to retrieve older data or records that are not readily or immediately retrievable due to their current storage media.

"**§ 108A-114. Financial institutions encouraged to maintain list of contacts in case of financial exploitation.**

All financial institutions are encouraged, but not required, to offer to its disabled adult and older adult customers the opportunity to submit, and periodically update, a list of persons that the disabled adult or older adult would like the financial institution to contact in case of suspected financial exploitation of the disabled adult or older adult.

"**§ 108A-115. Duty to report suspected fraud; content of report; immunity for reporting.**

(a) Any financial institution, or officer or employee thereof, having reasonable cause to believe that a disabled adult or older adult is the victim or target of financial exploitation shall report such information to the following:

(1) Persons on the list provided by the customer under G.S. 108A-114, if such a list has been provided by the customer. The financial institution may choose not to contact persons on the provided list if the financial institution suspects that those persons are financially exploiting the disabled adult or older adult.

(2) The appropriate local law enforcement agency.

(3) The appropriate county department of social services, if the customer is a disabled adult.

(b) The report may be made orally or in writing. The report shall include the name and address of the disabled adult or older adult, the nature of the suspected financial exploitation, and any other pertinent information.

(c) No financial institution, or officer or employee thereof, who makes a report under this section may be held liable in any action if they acted in good faith.

"**§ 108A-116. Production of customers' financial records upon request in cases of suspected financial exploitation; immunity; records may not be used against account owner.**

(a) A financial institution shall promptly provide to the head of an investigating entity, or his or her designated agent, the financial records of a disabled adult or older adult customer provided that the head of a investigating entity or his or her designated agent provides to the financial institution a signed, written notice of investigation on the investigating entity's letterhead identifying the disabled adult or older adult customer, providing the investigating entity's investigative file number on the matter, and specifying all of the following:

(1) The investigating entity is investigating, pursuant to the investigating entity's statutory authority, a credible report that the disabled adult or older adult is being or has been financially exploited.

(2) The disabled adult's or older adult's financial records are needed in order to substantiate or evaluate the report.

(3) Time is of the essence in order to prevent further exploitation of that disabled adult or older adult.

(b) All produced copies of the disabled adult's or older adult's financial records, as well as any information obtained pursuant to the duty to report found in G.S. 108A-115, shall be kept confidential by the investigating entity unless required by court rules to be disclosed to a party to a court proceeding, or introduced and admitted into evidence in an open court proceeding.

(c) No financial institution or investigating entity, or officer or employee thereof, who provides, seeks, or obtains financial records or any other information in accordance with this section, or provides testimony in any judicial proceeding based upon the contents thereof, may be held liable in any action if they acted in good faith.

(d) No customer may be subject to indictment, criminal prosecution, criminal punishment, or criminal penalty by reason of or on account of anything disclosed by a financial institution pursuant to this section, nor may any information obtained through such disclosure be used as evidence against the customer in any criminal or civil proceeding. Notwithstanding the foregoing, information obtained may be used against a person who is a joint account owner accused of financial exploitation of a disabled adult or older adult joint account holder, but solely for criminal or civil proceedings directly related to the alleged financial exploitation of the disabled adult or older adult joint account holder.

"**§ 108A-117. Notice to customer; delayed notice.**

(a) Within 180 days after an investigating entity obtains access to the financial records of a disabled adult or older adult customer pursuant to the authority contained in G.S. 108A-116, it shall provide the customer with written notice of its action by first-class mail to the customer's last known address, unless an order for delayed notice is obtained pursuant to this section. The notice shall be sufficient to inform the customer of the name of the investigating entity that accessed the records, the financial records accessed, and the purpose of the investigation.

(b) Upon application of an investigating entity, a customer notice pursuant to this section may be delayed by order of an appropriate court if the judge finds all of the following:

(1) The investigating entity is investigating a credible report that the adult is being or has been financially exploited.

(2) There is reason to believe that the notice will result in at least one of the following:

a. Endangering the life or physical safety of any person.

b. Flight from prosecution.

c. Destruction of or tampering with evidence.

d. Intimidation of potential witnesses.

e. Serious jeopardy to an investigation or official proceeding.

f. Undue delay of a trial or official proceeding.

(c) An application for delay under subsection (b) of this section must be made with reasonable specificity.

(d) If the court makes the findings required in subsection (b) this section, it shall enter an ex parte order granting the requested delay for a period not to exceed 180 days and an order prohibiting the financial institution from disclosing that records have been obtained. If the court finds that there is reason to believe that the notice may endanger the life or physical safety of any person, the court may specify that the delay be indefinite.

(e) Further extensions of the delay of notice of up to 90 days each may be granted by the court upon application by the investigating entity.

(f) Upon expiration of the period of delay of notification under this section, including any extensions thereof, the customer shall be served with a copy of the notice required by subsection (a) of this section."

SECTION 5.(a) Section 1(c) of S.L. 2011-189 reads as rewritten:

"**SECTION 1.(c)** The Task Force shall make ~~an interim~~ a report to the North Carolina Study Commission on Aging on or before November 1, 2011, and a ~~final~~ report including findings, recommendations, and draft legislation to the Joint Legislative Oversight Committee on Health and Human Services on or before ~~October 1, 2012.~~February 1, 2013. The Task Force shall report to the Joint Legislative Oversight Committee on Health and Human Services prior to the 2014 Regular Session on the efficacy of any of the Task Force's recommendations that are adopted. The Task Force shall terminate on May 1, 2015, or upon the filing of its final report, whichever occurs first."

SECTION 5.(b) The Consumer Protection Division, Department of Justice, shall add the following to its list of approved associations represented on the Task Force:

(1) The North Carolina Credit Union League.

(2) An association representing nondepository financial institutions.

SECTION 6. Section 1 becomes effective December 1, 2013, and applies to offenses committed on or after that date. Sections 2, 3, and 4 of this act become effective October 1, 2013. The remainder of this act is effective when it becomes law.

SENATE BILL 140:
Financial Exploitation of Older Adults

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 3, 2013
Introduced by:	Sen. Bingham	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to Second Edition S140-CSTG-18		

SUMMARY: ***Senate Bill 140, based on recommendations of the Task Force on Fraud against Older Adults[1], would:***

- ***allow county departments of social services (DSS) and law enforcement agencies to obtain financial records needed to investigate alleged financial exploitation of older and disabled adults***
- ***exempt financial institutions and requesting entities from liability when acting in good faith to provide, seek, or obtain financial records in such situations***
- ***allow financial institutions to maintain lists of authorized customer contacts to report a suspected case of financial exploitation.***
- ***require financial institutions to report suspected fraud to designated customer contacts, law enforcement agencies, and county departments of social services***
- ***extend the Task Force on Fraud Against Older Adults.***

The PCS to Senate Bill 140 makes the following changes to the bill:

- ***consolidates formerly separate sections of the bill involving disabled adults and older adults***
- ***permits financial institutions to charge a fee for providing requested financial records***
- ***requires an investigating entity to give the customer written notice of its access to the customer's financial records within 180 days of receiving access, unless a delayed notice is authorized by court order***

BILL ANALYSIS:

Section 1 of SB 140 amends G.S. 14-112.2(a), which makes it a crime to financially exploit an "elder adult" or disabled person, by changing "elder" to "older" and by eliminating reference in the definition of "older adult" to diminished capacity. As amended, "older adult" will mean a person 60 years of age or older. Section 1 of the bill also amends G.S. 14-112.2(c) to make it unlawful for a person to "knowingly, by deception or intimidation," obtain or use, or endeavor or conspire to obtain or use, the funds, assets, or property of an older adult or disabled adult with the intent to temporarily or permanently deprive that person of the use, benefit, or possession of the funds, assets, or property.

Section 2

Section 2.(a) amends G.S. 53B-4 to require financial institutions to provide access to a customer's financial records to county DSS directors and law enforcement agencies investigating alleged financial

[1] The Task Force was created by S.L. 2011-189 (SB 449).

exploitation involving a disabled adult or older adult customer, upon written request for such records delivered by hand, certified mail, return receipt requested, or a delivery service authorized by 26 U.S.C. Section 7502(f)(2), sent to the vice-president, manager, or assistant manager of the financial institution's local branch or office, or to its registered agent for service of process.

Section 2.(b) makes conforming changes to G.S. 53B-9, and requires the requesting investigating entity to pay a fee for the costs directly incurred by the financial institution in complying with the request at a rate established under federal law,[2] unless waived in whole or in part by the financial institution.

Section 3 amends G.S. 108A-14(a) to require the county DSS director to receive, evaluate and investigate reports of financial exploitation of disabled adults and to take action to protect such adults.

Section 4 amends Chapter 108A to add a new Article 6A entitled "Protection of Older Adults from Financial Exploitation." G.S. 108A-112 establishes the legislative intent behind the act and G.S. 108A-113 sets out definitions for terms used in Article 6A. In addition, Section 4:

- encourages financial institutions to maintain a list of customer contacts (G.S. 108A-114)
- requires financial institutions to report suspected fraud (G.S. 108A-115)
- requires financial institutions to provide financial records upon request by a law enforcement agency or county department of social services investigating alleged financial exploitation of a disabled adult or older adult (G.S. 108A-116)
- requires an investigating entity to provide written notice by first-class mail to any customer whose financial records it has obtained, within 180 days of obtaining those records, unless the investigating entity obtains a court order permitting a delayed notice (G.S. 108A-117)

Section 5 amends Section 1(c) of S.L. 2011-189, to extend the Task Force on Fraud against Older Adults to allow a report to the Joint Legislative Oversight Committee on Health and Human Services prior to the 2014 Regular Session. The Task Force will terminate May 1, 2015, or upon filing its final report, whichever comes first. This section of the bill also requires the NC Credit Union League and an association representing non-depository financial institutions to be added to the Task Force.

EFFECTIVE DATE: Section 1 of the act becomes effective December 1, 2013, and applies to offenses committed on or after that date. Sections 2, 3 and 4 of the act become effective on October, 1, 2013, and the rest of the act is effective when it becomes law.

Theresa Matula, committee staff to Senate Health Care Committee, substantially contributed to this summary.

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[2] The current approved fees are as follows:

Photocopy, per page	0.25
Paper copies of microfiche, per frame	0.25
Duplicate Microfiche, per microfiche	0.50
Storage media	Actual cost
Search and Processing:	
Clerical/Technical, hourly rate	22.00
Computer Support Specialist, hourly rate	30.00
Manager/Supervisory, hourly rate	30.00

12 CFR § 219.3, APP. A.

Financial institutions are currently authorized to charge these fees when responding to requests made by a government authority pursuant to a customer authorization for the purpose of determining eligibility for public assistance, pursuant to a search warrant, subpoena or court order in conjunction with a grand jury proceeding, or pursuant to other court order or administrative or judicial subpoena. G.S. 53B-9(a).

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 124
PROPOSED COMMITTEE SUBSTITUTE S124-CSSA-8 [v.2]

4/3/2013 3:44:53 PM

Short Title: Shoot Gun Inside/To Incite Fear. (Public)

Sponsors:

Referred to:

February 25, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIMINAL OFFENSE TO DISCHARGE A FIREARM WITHIN AN ENCLOSURE WITH THE INTENT TO INCITE FEAR.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-34.10. Discharge firearm within enclosure to incite fear.**

Unless covered under some other provision of law providing greater punishment, any person who willfully or wantonly discharges or attempts to discharge a firearm within any occupied building, structure, motor vehicle, or other conveyance, erection, or enclosure with the intent to incite fear in another shall be punished as a Class E felon."

SECTION 2. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

SENATE BILL 124:
Shoot Gun From Inside/To Harm or Incite Fear

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 4, 2013
Introduced by:	Sen. Brunstetter	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition S124-CSSA-8		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 124 would create a Class E felony for discharging a firearm within an enclosure with the intent to incite fear.***

BILL ANALYSIS: The PCS for Senate Bill 124 would create a new G.S. 14-34.10, which would provide for a Class E felony for willfully or wantonly discharging, or attempting to discharge, a firearm within any occupied building, structure, motor vehicle, or other conveyance, erection, or enclosure with the intent to incite fear in another.

A Class E felony is punishable by a an absolute minimum of 15 months to an absolute maximum of 88 months depending on the defendant's prior record level and the presence of any aggravating or mitigating factors.

EFFECTIVE DATE: This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

O. Walker Reagan
Director

S124-SMSA-28 CSSA-8 -V1

Research Division
(919) 733-2578

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
AKSANDER DUDA	NCCPPR
Paul Iadonisi	GRNC
Kerri Bunce	NWC
Mary Bethel	AARP-NC
MARY EDWARDS	DAAS
Helen Savage	AARP-NC
PAIGE WORSHAM	NC Center for Public Policy Research
Ran Cobb	" " " " " "
Chris Agnew	DOJ
Peg Dowe	Conference of DAs
Andrew Cagle	NC Sheriffs' Assn.
Stephanie Bias	NC Dept of Insurance/HELP Cn Consumer Fraud Task Force

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nathan Batts	NCBA
DAN Mosca	4221 NC Hwy 150, Brown Summit NC 27214
Rick Techin	Williams, Mullen
Colleen Kochanek	KLG
Rob BLACK	NC FOM

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Conklin	self
Laurie Orrino	FSP
David Farmer	NCCTA
Lou Ann Harris	LHTA
Liz Regan	NCRGEA

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chip Killian	Nelson Mullins
John Palumbo	NCMBA
[illegible]	[illegible]
Lauren Whaley	NCCCU
Doug Heron	Williams Mullen
[illegible]	SCS
Jason Fishkin	Sen. Stein
Gene Ainsworth	A & A
Fred Bone	Bone & Assoc.
Ha Nguyen	NCCOB
[illegible]	R. Chris & Assoc.

Senate Committee on Judiciary I
Tuesday, April 9, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 124	Shoot Gun From Inside/To Harm or Incite Fear.	Senator Brunstetter
SB 411	Ethics Requirements for MPOs/RPOs.	Senator Rabon Senator Harrington
SB 528	Clarify Petit Juror Oath.	Senator Goolsby

Adjournment

Senate Committee on Judiciary I
Tuesday, April 9, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on April 9, 2013 in Room 1027/1128 of the Legislative Building. Eleven members were present.

Senator Thom Goolsby, Chair, presided.

Sen. Goolsby said Senate Bill 124 is first on the agenda. He recognized Senator Pete Brunstetter to explain the bill, who said the committee had a long discussion about the legislation last week. He said he would answer more questions and asked for the committee's support.

Senator Buck Newton motioned for a favorable report to the Proposed Committee Substitute for SB 124, unfavorable to the original bill. The motion passed by a voice vote.

Sen. Goolsby said the next item on the agenda is Senate Bill 411. Sen. Newton made a motion to consider the PCS for SB 411 and the motion passed. Senator Kathy Harrington was recognized to explain the PCS. Senator Clark Jenkins motioned for a favorable report to the PCS, unfavorable to the original bill. The motion passed by a voice vote.

Sen. Newton alternated to the presiding chair so Sen. Goolsby could explain Senate Bill 528. Senator Pete Brunstetter motioned to take up a PCS, and the motion passed by a voice vote. Sen. Goolsby explained the bill to the committee. Senator Josh Stein asked a question about the juror oath and Sen. Goolsby clarified why he introduced the bill to change the petit juror oath.

Susan Sitze from the Research Division explained Section 2 of SB 528. Sen. Stein moved for a favorable report to the PCS, unfavorable to the original bill, and the motion passed by a voice vote.

The meeting adjourned at 10:10 a.m.

Senator Thom Goolsby, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Tuesday, April 09, 2013

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

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

SB **124** Shoot Gun From Inside/To Harm or Incite Fear.
- Draft Number: S124-PCS85203-SA-8
- Sequential Referral: None
- Recommended Referral: None
- Long Title Amended: Yes

SB **411** Ethics Requirements for MPOs/RPOs.
- Draft Number: S411-PCS15233-ST-20
- Sequential Referral: None
- Recommended Referral: None
- Long Title Amended: Yes

SB **528** Clarify Petit Juror Oath.
- Draft Number: S528-PCS85204-SA-15
- Sequential Referral: None
- Recommended Referral: None
- Long Title Amended: No

TOTAL REPORTED: 3

Senator Peter Brunstetter will handle SB 124
Senator Kathryn Harrington will handle SB 411
Senator Thomas Goolsby will handle SB 528



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 124
PROPOSED COMMITTEE SUBSTITUTE S124-CSSA-8 [v.2]

4/3/2013 3:44:53 PM

Short Title: Shoot Gun Inside/To Incite Fear. (Public)

Sponsors:

Referred to:

February 25, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIMINAL OFFENSE TO DISCHARGE A FIREARM WITHIN AN ENCLOSURE WITH THE INTENT TO INCITE FEAR.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-34.10. Discharge firearm within enclosure to incite fear.**

Unless covered under some other provision of law providing greater punishment, any person who willfully or wantonly discharges or attempts to discharge a firearm within any occupied building, structure, motor vehicle, or other conveyance, erection, or enclosure with the intent to incite fear in another shall be punished as a Class E felon."

SECTION 2. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

SENATE BILL 124:
Shoot Gun From Inside/To Harm or Incite Fear

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 4, 2013
Introduced by:	Sen. Brunstetter	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition S124-CSSA-8		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 124 would create a Class E felony for discharging a firearm within an enclosure with the intent to incite fear.***

BILL ANALYSIS: The PCS for Senate Bill 124 would create a new G.S. 14-34.10, which would provide for a Class E felony for willfully or wantonly discharging, or attempting to discharge, a firearm within any occupied building, structure, motor vehicle, or other conveyance, erection, or enclosure with the intent to incite fear in another.

A Class E felony is punishable by a an absolute minimum of 15 months to an absolute maximum of 88 months depending on the defendant's prior record level and the presence of any aggravating or mitigating factors.

EFFECTIVE DATE: This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 411
PROPOSED COMMITTEE SUBSTITUTE S411-CSST-20 [v.3]

4/8/2013 1:50:56 PM

Short Title: Ethics Requirements for MPOs/RPOs. (Public)

Sponsors:

Referred to:

March 26, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE TRANSPORTATION ADVISORY COMMITTEES OF METROPOLITAN PLANNING ORGANIZATIONS AND RURAL TRANSPORTATION PLANNING ORGANIZATIONS ARE SUBJECT TO STANDARD ETHICS PROVISIONS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 136-202(e) is repealed.

SECTION 1.(b) G.S. 136-200.2 is amended by adding new subsections to read:

"(g) Ethics Provisions. – All individuals with voting authority serving on a metropolitan planning organization, who are not members of the Board of Transportation, shall do all of the following:

(1) Except as permitted under this subdivision, no MPO member acting in that capacity shall participate in an action if the member knows the member, the member's extended family, or any business with which the member is associated may incur a reasonably foreseeable financial benefit from the matter under consideration, which financial benefit would impair the MPO member's independence of judgment or from which it could reasonably be inferred that the financial benefit would influence the member's participation in the action. An MPO member may participate in an action of the MPO under any of the following circumstances:

a. When action is ministerial only and does not require the exercise of discretion.

b. When the committee records in its minutes that it cannot obtain a quorum in order to take the action because the MPO member is disqualified from acting, the MPO member may be counted for purposes of a quorum but shall otherwise abstain from taking any further action.

(2) An MPO member shall have an affirmative duty to promptly disclose in writing to the MPO any conflict of interest or potential conflict of interest under subdivision (1) of this subsection. All written disclosures shall be a public record under Chapter 132 of the General Statutes, and attached to the minutes of the meeting in which any discussion or vote was taken by the MPO related to that disclosure.

(3) File a statement of economic interest with the State Ethics Commission in accordance with Article 3 of Chapter 138A of the General Statutes, for which the State Ethics Commission shall prepare a written evaluation

relative to conflicts of interest and potential conflicts of interest and provide a copy of that evaluation to the MPO member. All statements of economic interest and all written evaluations by the Commission of those statements are public records as provided in G.S. 138A-23. The penalties for failure to file shall be as set forth in G.S. 138A-25(a) and (b).

(4) File, with and in the same manner as the statement of economic interested filed under subdivision (3) of this subsection, an additional disclosure of list of all real estate owned wholly or in part by the MPO member, the MPO member's extended family or a business with which the MPO member is associated within the jurisdiction of the MPO on which the MPO member is serving. All additional disclosures of real estate filed by MPO members are public records under Chapter 132 of the General Statutes.

(h) Confidential Information. – An MPO member shall not use or disclose any nonpublic information gained in the course of or by reason of serving as a member of the MPO in a way that would affect a personal financial interest of the MPO member, the MPO member's extended family, or a business with which the MPO member is associated.

(i) Definitions. – For purposes of this section, "extended family" shall have the same meaning as in G.S. 138A-3(13), "business with which associated" shall have the same meaning as in G.S. 138A-3(3), and "financial benefit" shall mean a direct pecuniary gain or loss, or a direct pecuniary loss to a business competitor.

(j) Violations. – A violation of subdivision (1) of subsection (g) shall be a Class 1 misdemeanor. An MPO member who knowingly conceals or knowingly fails to disclose information that is required to be disclosed on a required filing under subdivisions (3) or (4) of subsection (g) of this section shall be guilty of a Class 1 misdemeanor. An MPO member who provides false information on a required filing under subdivisions (3) or (4) of subsection (g) of this section knowing that the information is false is guilty of a Class H felony.

(k) All individuals with voting authority serving on an MPO who are members of the Board of Transportation shall comply with Chapter 138A of the General Statutes and G.S. 143A-350 while serving on the MPO."

SECTION 2.(a) G.S. 136-211(e) is repealed.

SECTION 2.(b) G.S. 136-211 is amended by adding new subsections to read:

"(f) Ethics Provisions. – All individuals with voting authority serving on a rural transportation planning organization, who are not members of the Board of Transportation, shall do all of the following:

(1) Except as permitted under this subdivision, no rural transportation planning organization member acting in that capacity shall participate in an action of the rural transportation planning organization if the rural transportation planning organization member knows the rural transportation planning organization member, the rural transportation planning organization member's extended family, or any business with which the rural transportation planning organization member is associated may incur a reasonably foreseeable financial benefit from the matter under consideration, which financial benefit would impair the rural transportation planning organization member's independence of judgment or from which it could reasonably be inferred that the financial benefit would influence the rural transportation planning organization member's participation in the action of the rural transportation planning organization.

a. When action is ministerial only and does not require the exercise of discretion.

b. When the committee records in its minutes that it cannot obtain a quorum in order to take the action because the rural transportation

planning organization member is disqualified from acting, the rural transportation planning organization member may be counted for purposes of a quorum but shall otherwise abstain from taking any further action.

(2) A rural transportation planning organization member shall have an affirmative duty to promptly disclose in writing to the rural transportation planning organization any conflict of interest or potential conflict of interest under subdivision (1) of this subsection. All written disclosures shall be a public record under Chapter 132 of the General Statutes, and attached to the minutes of the meeting in which any discussion or vote was taken by the rural transporation planning organization related to that disclosure.

(3) File a statement of economic interest with the State Ethics Commission in accordance with Article 3 of Chapter 138A of the General Statutes, for which the State Ethics Commission shall prepare a written evaluation relative to conflicts of interest and potential conflicts of interest and provide a copy of that evaluation to the rural transportation planning organization member. All statements of economic interest and all written evaluations by the Commission of those statements are public records as provided in G.S. 138A-23. The penalties for failure to file shall be as set forth in G.S. 138A-25(a) and (b).

(4) File, with and in the same manner as the statement of economic interested filed under subdivision (3) of this subsection, an additional disclosure of list of all real estate owned wholly or in part by the rural transportation planning organization member, the rural transportation planning organization member's extended family or a business with which the rural transportation planning organization member is associated within the jurisdiction of the rural transportation planning organization on which the rural transportation planning organization member is serving. All additional disclosures of real estate filed by members are public records under Chapter 132 of the General Statutes.

(g) Confidential Information. – A rural transportation planning organization member shall not use or disclose any nonpublic information gained in the course of or by reason of serving as a member of the rural transportation planning organization in a way that would affect a personal financial interest of the rural transportation planning organization member, the rural transportation planning organization member's extended family, or a business with which the rural transportation planning organization member is associated.

(i) Definitions. – For purposes of this section, "extended family" shall have the same meaning as in G.S. 138A-3(13), "business with which associated" shall have the same meaning as in G.S. 138A-3(3), and "financial benefit" shall mean a direct pecuniary gain or loss, or a direct pecuniary loss to a business competitor.

(j) Violations. – A violation of subdivisions (1) of subsection (f) shall be a Class 1 misdemeanor. A rural transportation planning organization member who knowingly conceals or knowingly fails to disclose information that is required to be disclosed on a required filing under subdivisions (3) or (4) of subsection (f) of this section shall be guilty of a Class 1 misdemeanor. A rural transportation planning organization member who provides false information on a required filing under subdivisions (3) or (4) of subsection (f) of this section knowing that the information is false is guilty of a Class H felony.

(k) All individuals with voting authority serving on a rural transportation planning organization who are members of the Board of Transportation shall comply with Chapter 138A of the General Statutes and G.S. 143A-350 while serving on the rural transportation planning organization."

SECTION 3. This act is effective when it becomes law. All individuals with voting authority serving on a metropolitan planning organization or a rural transportation planning organization shall file statements of economic interest and additional real estate lists with the State Ethics Commission no later than April 15, 2013. Any member of a metropolitan planning organization or a rural transportation planning organization that filed a statement of economic interest in compliance with G.S. 136-202(e) or G.S. 136-211(e) shall not be required to file again, and the State Ethics Commission shall prepare the evaluation under G.S. 136-200.2(g) or G.S. 136-211(f) of that filing.

SENATE BILL 411:
Ethics Requirements for MPOs/RPOs

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 5, 2013
Introduced by:	Sens. Rabon, Harrington	**Prepared by:**	R. Erika Churchill
Analysis of:	PCS to First Edition S411-CSST-20		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 411 would remove Metropolitan Planning Organizations(MPOs) and Rural Transportation Planning Organizations (RPOs) from the general application of the State Government Ethics Act and require specific ethics requirements of members serving on a transportation advisory committee of either organization.***

The proposed committee substitute makes technical and clarifying changes.

CURRENT LAW: Metropolitan Planning Organizations (MPOs) and Rural Transportation Planning Organizations (RPOs) work with the Department of Transportation in developing transportation plans.

Membership is determined by memorandum of understanding between the RPO or MPO and the Secretary of Transportation and generally includes local elected officials, Board of Transportation area representative, Department of Transportation, Federal Highway Administration, tribal governments, transit providers, and other agencies. Typically, an MPO or RPO is broken down into two subsets – a transportation advisory committee (TAC) and a technical coordinating committee (TCC). Generally, elected officials serve on the TAC; local government employees and staff on the TCC.

Effective January 1st of this year, all members of MPOs and RPOs are currently covered under the State Government Ethics Act due to their service on the MPO or RPO' regardless of whether that member serves on the TAC or TCC. Pursuant to an opinion of the State Ethics Commission, all members are to file statements of economic interest on or before April 15th of each year. (AO-E-12-002) All members of the MPOs and RPOs are to attend ethics training within six months of coming under the State Government Ethics Act. All members are comply with the code of conduct, which includes the gift ban, conflict of interest provisions, and inappropriate use of public position.

The State Government Ethics Act applies in whole, or in part, to certain public servants, certain judicial officials, all legislators, and legislative employees. For public servants, the Council of State, certain listed employees of the State, and members of non-advisory boards and commissions created by the State are covered. Generally, the State Government Ethics Act does not apply to local officials, unless the local official is also an appointed public servant.

BILL ANALYSIS: The pcs would remove the application of the State Government Ethics Act to MPOs and RPOs and substitute ethics requirements pertinent to the function of the MPOs and RPOs . All members with voting authority of each MPO and RPO would need to do the following:

1. Not participate in any action if the member knows that the member, the member's extended family, or business with which the member is associated may incur a reasonably foreseeable financial benefit that would impair the member's independence of judgment or from which it could reasonably be inferred that the financial benefit would influence the member's action

2. Promptly disclose, in writing, any conflict of interest or potential conflict of interest.
3. File a Statement of Economic Interest (SEI) with the State Ethics Commission, that will be evaluated for conflicts and potential conflicts.
4. File with the State Ethics Commission a list of all real estate owned wholly or in part by the member, the member's extended family, and any business with which the member is associated located in the jurisdiction of the MPO/RPO on which the member is serving.
5. Not use or disclose nonpublic information gained through the MPO/RPO service in a way that would affect a personal financial interest of the member, the member's extended family, or a business with which the member is associated.

Violations of the conflict of interest provision would be Class 1 misdemeanor. Knowingly concealing information on the SEI or real estate disclosure would also be a Class 1 misdemeanor. Providing false information on those two statements would be a Class H felony.

Any Board of Transportation member serving on a TAC of an MPO or RPO would be required to adhere to the ethics provisions applicable to the Board of Transportation while serving on the MPO or RPO.

EFFECTIVE DATE: Effective when it becomes law. Any individual serving on an MPO or RPO that has already filed a SEI will not be required to refile.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 528
PROPOSED COMMITTEE SUBSTITUTE S528-CSSA-15 [v.1]

4/8/2013 3:21:19 PM

Short Title: Clarify Petit Juror Oath. (Public)

Sponsors:

Referred to:

April 1, 2013

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT PETIT JURORS ARE REQUIRED TO TAKE THE OATH SET FORTH IN THE NORTH CAROLINA CONSTITUTION AND TO PROVIDE CONSISTENCY BETWEEN THE STATUTES SETTING FORTH THE OATHS TO BE TAKEN BY PETIT JURORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-14 reads as rewritten:

"**§ 9-14. Jury sworn; judge decides competency.**

The clerk shall, at the beginning of court, swear all jurors who have not been selected as grand jurors. Each juror shall ~~swear or affirm that he will~~ take (i) the oath required by Article VI, Section 7 of the Constitution of North Carolina, by swearing or affirming to support and maintain the Constitution of the United States, and the Constitution and laws of the United States not inconsistent therewith, and (ii) the oath required under G.S. 11-11, by swearing or affirming to truthfully and without prejudice or partiality try all issues in criminal or civil actions that come before ~~him~~ the juror and ~~render~~ give true verdicts according to the evidence. Nothing herein shall be construed to disallow the usual challenges in law to the whole jury so sworn or to any juror; and if by reason of such challenge any juror is withdrawn from a jury being selected to try a case, his place on that jury shall be taken by another qualified juror. The presiding judge shall decide all questions as to the competency of jurors."

SECTION 2. 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, in all cases after taking the separate oath required by Article VI, Section 7 of the Constitution of North Carolina:

...

Oath for Petit Juror

You do solemnly swear (affirm) that you will truthfully and without prejudice or partiality try all issues in civil or criminal actions that come before you and give true verdicts according to the evidence, so help you, God.

...."

SECTION 2. This act becomes effective October 1, 2013 and applies to oaths taken on or after that date.

SENATE BILL 528:
Clarify Petit Juror Oath

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 9, 2013
Introduced by:	Sen. Goolsby	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition S528-CSSA-15		

SUMMARY: ***The Proposed Committee Substitute (PCS) to Senate Bill 528 would clarify that petit jurors are required to take the oath set forth in the North Carolina Constitution and would make the statutes setting forth the oaths for petit jurors consistent with one another.***

The PCS changes the effective date to a date certain.

CURRENT LAW: A "petit juror" is a juror seated on a jury for a civil or criminal trial.

BILL ANALYSIS:

The PCS for Senate Bill 528 would amend G.S. 9-14 and G.S. 11-11, to clarify that petit jurors are required to take the oath required by Article VI, Section 7 of the Constitution of North Carolina in addition to the oath required by G.S. 11-11.

EFFECTIVE DATE: This act becomes effective October 1, 2013 and applies to oaths taken on or after that date.

O. Walker Reagan
Director

S528-SMSA-29 CSSA-15 -V1

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 528

Short Title:	Clarify Petit Juror Oath.	(Public)
Sponsors:	Senator Goolsby (Primary Sponsor).	
Referred to:	Judiciary I.	

April 1, 2013

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT PETIT JURORS ARE REQUIRED TO TAKE THE OATH SET FORTH IN THE NORTH CAROLINA CONSTITUTION AND TO PROVIDE CONSISTENCY BETWEEN THE STATUTES SETTING FORTH THE OATHS TO BE TAKEN BY PETIT JURORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-14 reads as rewritten:

"**§ 9-14. Jury sworn; judge decides competency.**

The clerk shall, at the beginning of court, swear all jurors who have not been selected as grand jurors. Each juror shall ~~swear or affirm that he will~~ take (i) the oath required by Article VI, Section 7 of the Constitution of North Carolina, by swearing or affirming to support and maintain the Constitution of the United States, and the Constitution and laws of the United States not inconsistent therewith, and (ii) the oath required under G.S. 11-11, by swearing or affirming to truthfully and without prejudice or partiality try all issues in criminal or civil actions that come before ~~him~~ the juror and ~~render~~ give true verdicts according to the evidence. Nothing herein shall be construed to disallow the usual challenges in law to the whole jury so sworn or to any juror; and if by reason of such challenge any juror is withdrawn from a jury being selected to try a case, his place on that jury shall be taken by another qualified juror. The presiding judge shall decide all questions as to the competency of jurors."

SECTION 2. 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, in all cases after taking the separate oath required by Article VI, Section 7 of the Constitution of North Carolina:

...

Oath for Petit Juror

You do solemnly swear (affirm) that you will truthfully and without prejudice or partiality try all issues in civil or criminal actions that come before you and give true verdicts according to the evidence, so help you, God.

...."

SECTION 2. This act is effective when it becomes law and applies to oaths taken on or after that date.

SENATE BILL 411

Short Title:	Ethics Requirements for MPOs/RPOs.	(Public)
Sponsors:	Senators Rabon, Harrington (Primary Sponsors); Daniel and J. Davis.	
Referred to:	Transportation.	

March 26, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT METROPOLITAN PLANNING ORGANIZATIONS AND RURAL TRANSPORTATION PLANNING ORGANIZATIONS ARE SUBJECT TO ETHICS PROVISIONS OF STATE GOVERNMENT, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 136-202(e) is repealed.

SECTION 1.(b) G.S. 136-200.2 is amended by adding new subsections to read:

"(g) Ethics Provisions. – All individuals with voting authority serving on a metropolitan planning organization board shall do all of the following:

(1) Except as permitted under this subdivision, no MPO member acting in that capacity shall participate in an action if the member knows the member, the member's extended family, or any business with which the member is associated may incur a reasonably foreseeable financial benefit from the matter under consideration, which financial benefit would impair the member's independence of judgment or from which it could reasonably be inferred that the financial benefit would influence the member's participation in the official action. A member may participate in an action of the MPO under any of the following circumstances:

a. When action is ministerial only and does not require the exercise of discretion.

b. When the committee records in its minutes that it cannot obtain a quorum in order to take the action because the member is disqualified from acting, the member may be counted for purposes of a quorum but shall otherwise abstain from taking any further action.

(2) A member shall have an affirmative duty to promptly disclose in writing to the MPO any conflict of interest or potential conflict of interest under subdivision (1) of this subsection. All written disclosures shall be a public record under Chapter 132 of the General Statutes, and attached to the minutes of the meeting in which any discussion or vote was taken by the MPO related to that disclosure.

(3) File a statement of economic interest with the State Ethics Commission in accordance with Article 3 of Chapter 138A of the General Statutes, for which the State Ethics Commission shall prepare a written evaluation relative to conflicts of interest and potential conflicts of interest and provide a copy of that evaluation to the member. All statements of economic interest

and all written evaluations by the Commission of those statements are public records as provided in G.S. 138A-23. The penalties for failure to file shall be as set forth in G.S. 138A-25(a) and (b).

(4) File with the State Ethics Commission an additional list of all real estate owned wholly or in part by a member's extended family or a business with which the member is associated within the jurisdiction of the MPO on which the member is serving. All additional lists of real estate filed by members are public records under Chapter 132 of the General Statutes.

(h) Confidential Information. – A member of any MPO shall not use or disclose any nonpublic information gained in the course of or by reason of serving as a member of the MPO in a way that would affect a personal financial interest of the member, the member's extended family, or a business with which the member is associated.

(i) Definitions. – For purposes of this section, "extended family" shall have the same meaning as in G.S. 138A-3(13), "business with which associated" shall have the same meaning as in G.S. 138A-3(3), and "financial benefit" shall mean a direct pecuniary gain or loss, or a direct pecuniary loss to a business competitor.

(j) Violations. – A violation of subdivision (1) of subsection (g) shall be a Class 1 misdemeanor. A member who knowingly conceals or knowingly fails to disclose information that is required to be disclosed on a required filing under subdivisions (3) or (4) of subsection (g) of this section shall be guilty of a Class 1 misdemeanor. A member who provides false information on a required filing under subdivisions (3) or (4) of subsection (g) of this section knowing that the information is false is guilty of a Class H felony."

SECTION 2.(a) G.S. 136-211(e) is repealed.

SECTION 2.(b) G.S. 136-211 is amended by adding new subsections to read:

"(f) Ethics Provisions. – All individuals with voting authority serving on a rural transportation planning organization shall do all of the following:

(1) Except as permitted under this subdivision, no rural transportation planning organization member acting in that capacity shall participate in an action if the member knows the member, the member's extended family, or any business with which the member is associated may incur a reasonably foreseeable financial benefit from the matter under consideration, which financial benefit would impair the member's independence of judgment or from which it could reasonably be inferred that the financial benefit would influence the member's participation in the official action.

a. When action is ministerial only and does not require the exercise of discretion.

b. When the committee records in its minutes that it cannot obtain a quorum in order to take the action because the member is disqualified from acting, the member may be counted for purposes of a quorum but shall otherwise abstain from taking any further action.

(2) A member shall have an affirmative duty to promptly disclose in writing to the rural transportation planning organization any conflict of interest or potential conflict of interest under subdivision (1) of this subsection. All written disclosures shall be a public record under Chapter 132 of the General Statutes, and attached to the minutes of the meeting in which any discussion or vote was taken by the rural transporation planning organization related to that disclosure.

(3) File a statement of economic interest with the State Ethics Commission in accordance with Article 3 of Chapter 138A of the General Statutes, for which the State Ethics Commission shall prepare a written evaluation relative to conflicts of interest and potential conflicts of interest and provide

a copy of that evaluation to the member. All statements of economic interest and all written evaluations by the Commission of those statements are public records as provided in G.S. 138A-23. The penalties for failure to file shall be as set forth in G.S. 138A-25(a) and (b).

(4) File with the State Ethics Commission an additional list of all real estate owned wholly or in part by a member's extended family or a business with which the member is associated within the jurisdiction of the rural transportation planning organization on which the member is serving. All additional lists of real estate filed by members are public records under Chapter 132 of the General Statutes.

(g) Confidential Information. – A member of any rural transportation planning organization shall not use or disclose any nonpublic information gained in the course of or by reason of serving as a member of the rural transportation planning organization in a way that would affect a personal financial interest of the member, the member's extended family, or a business with which the member is associated.

(i) Definitions. – For purposes of this section, "extended family" shall have the same meaning as in G.S. 138A-3(13), "business with which associated" shall have the same meaning as in G.S. 138A-3(3), and "financial benefit" shall mean a direct pecuniary gain or loss, or a direct pecuniary loss to a business competitor.

(j) Violations. – A violation of subdivisions (1) of subsection (e) shall be a Class 1 misdemeanor. A member who knowingly conceals or knowingly fails to disclose information that is required to be disclosed on a required filing under subdivisions (3) or (4) of subsection (e) of this section shall be guilty of a Class 1 misdemeanor. A member who provides false information on a required filing under subdivisions (3) or (4) of subsection (e) of this section knowing that the information is false is guilty of a Class H felony."

SECTION 3. This act is effective when it becomes law. All individuals with voting authority serving on a metropolitan planning organization or a rural transportation planning organization shall file statements of economic interest and additional real estate lists with the State Ethics Commission no later than April 15, 2013. Any member of a metropolitan planning organization or a rural transportation planning organization that filed a statement of economic interest in compliance with G.S. 136-202(e) and G.S. 136-211(e) shall not be required to file again, and the State Ethics Commission shall prepare the evaluation under G.S. 136-200.2(i) or G.S. 136-211(h) of that filing.

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Thom Moore	FWC
[illegible]	NCACC
John Poland	NCADA
Henry Hatcliff	N.C.B.A.
Nathan Batts	NCBA
Allison Kinney	TD Bank
Erin Wynia	NCLM
Amanda Horaite	Troutman Sanders
Angela Hight	Civitas
Philip Ezzell	BMCG
Dennis Allen	NC Rifle + Pistol Assoc.

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
J GOODMAN	NC CHAMBER
J Cashion	NC Chamber
TJ Brighee	NP
Will Grantham	MWC
My Mack Asbill	SELC
Brook Rainey Pierron	SELC
PRESTON HOWARD	NCMA
Kay Emanuel	School of Government
Dustin Hale	Sen Harry Brown
Kathryn Trogdon	Metro Mayors
Julie White	NCMMC

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mike Mazza	NCPPA

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Candace Howe	UNC-CH student
Kathleen Edwards	State Ethics Comm'n
[signature]	" " "
Teresa Pell	" " "
Mark Black	NCBAA

Senate Committee on Judiciary I
Tuesday, April 16, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 239	Amend NC Business Corporation Act.	Senator Clodfelter Senator Barringer Senator Brunstetter
SB 439	Amend & Restate NC Limited Liability Co. Act.	Senator Clodfelter Senator Barringer Senator Brunstetter

Adjournment

Senate Committee on Judiciary I
Tuesday, April 16, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on April 16, 2013 in Room 1027/1128 of the Legislative Building. Thirteen members were present.

Senator E. S. (Buck) Newton, Chair, presided.

Sen. Newton recognized Senator Tamara Barringer to explain Senate Bill 439. Sen. Barringer detailed the bill and requested Warren Kean from the North Carolina Bar Association answer questions from the committee.

Sen. Newton recognized Mr. Kean. Mr. Kean summarized the bill for the committee. Senator Dan Clodfelter asked Mr. Kean a question about existing law. Ms. Sitze clarified sections of the bill related to his question and Sen. Clodfelter asked a follow-up question.

Sen. Newton asked Mr. Kean a question and discussed specific sections of the bill with Sen. Barringer. Sen. Barringer agreed to hold SB 439 for votes until another committee hearing, pending further changes to the bill. Mr. Kean said he hopes this legislation will eliminate some of the confusion discussed by the committee, and he is happy to work further on the bill. Sen. Brunstetter commented he would assist the bill sponsors with further revisions to the legislation.

Sen. Newton said the committee would put the bill aside and move to Senate Bill 239.

Senator Pete Brunstetter made a motion to bring the PCS before the committee and the motion passed by a voice vote. Bill Patterson from the Research Division explained the PCS and Sen. Newton asked Sen. Barringer to speak further on the bill. Dave Clemente from the Smith Anderson law firm also explained sections of the bill and spoke in favor of it.

Senator Clodfelter asked Mr. Clemente two questions and Senator Dan Blue also asked a clarifying question about the bill. Hearing no more comments, Sen. Newton took a motion from Sen. Brunstetter for a favorable report to the PCS, unfavorable to the original bill, and the motion passed by a voice vote.

The meeting adjourned at 10:32 a.m.

Senator E. S. (Buck) Newton, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Tuesday, April 16, 2013

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

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

SB **239** Amend NC Business Corporation Act.

Draft Number:	S239-PCS35313-TG-22
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Tamara Barringer will handle SB 239



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 239
PROPOSED COMMITTEE SUBSTITUTE S239-CSTG-22 [v.1]
4/15/2013 2:22:50 PM

Short Title: Amend NC Business Corporation Act. (Public)

Sponsors:

Referred to:

March 11, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS REVISIONS TO THE NORTH CAROLINA BUSINESS CORPORATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55-6-21(a) reads as rewritten:

"(a) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation. Unless the articles of incorporation or bylaws provide otherwise, the powers granted in this section to the board of directors may be delegated, within limits prescribed by the board of directors, to one or more officers of the corporation who are designated by the board of directors."

SECTION 2. G.S. 55-6-24(a) reads as rewritten:

"(a) A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of ~~directors~~directors, or officers of the corporation who are designated by the board of directors pursuant to G.S. 55-6-21(a), shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued."

SECTION 3. G.S. 55-7-05(a) reads as rewritten:

"(a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than 10 nor more than 60 days before the meeting date. If the board of directors has authorized participation by means of remote communication pursuant to G.S. 55-7-09 for any class or series of shareholders, the notice to such class or series of shareholders shall describe the means of remote communication to be used. Unless this Chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting."

SECTION 4. G.S. 55-7-08 is repealed.

SECTION 5. Article 7 of Chapter 55 is amended by adding a new section to read:

"**§ 55-7-09. Remote participation in meetings.**

(a) To the extent authorized by a corporation's board of directors, shareholders of any class or series designated by the board of directors may participate in any meeting of shareholders by means of remote communication. Participation by means of remote communication shall be subject to such guidelines and procedures as the board of directors adopts and shall be in conformity with subsection (b) of this section.

(b) Shareholders participating in a shareholders' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures to do all of the following:

(1) Verify that each person participating remotely is a shareholder.

(2) Provide each shareholder participating remotely a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate and read or hear the proceedings of the meeting, substantially concurrently with such proceedings."

SECTION 6. G.S. 55-7-20(c) reads as rewritten:

"(c) The corporation shall make the shareholders' list available at the meeting, and any shareholder, personally or by or with his representative, is entitled to inspect the list at any time during the meeting or any adjournment. The corporation is not required to make the list available through electronic or other means of remote communication to a shareholder or proxy attending the meeting by remote communication pursuant to ~~G.S. 55-7-08.~~G.S. 55-7-09."

SECTION 7. Article 8 of Chapter 55 is amended by adding a new section to read:

"**§ 55-8-26. Submission of matters for shareholder vote.**

A corporation may agree to submit a matter to a vote of its shareholders even if, after approving the matter, the board of directors determines it no longer recommends the matter."

SECTION 8. G.S. 55-10-03 reads as rewritten:

"**§ 55-10-03. Amendment by board of directors and shareholders.**

...

(b) Except as provided in G.S. 55-10-02, 55-10-07, and 55-14A-01, after adopting the proposed amendment the board of directors ~~must~~shall submit the amendment to the shareholders for their approval. The board of directors ~~must~~shall also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless (i) the board of directors determines that, because of conflict of interest or other special circumstances, it should not make ~~such~~ a ~~recommendation, in which event~~recommendation that the shareholders approve the amendment or (ii) G.S. 55-8-26 applies. If either clause (i) or (ii) of this subsection applies, the board of directors ~~must~~shall communicate the basis for ~~that determination~~not recommending approval of the amendment to the shareholders ~~with the amendment.~~at the time it submits the amendment to the shareholders.

...

(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:~~by all of the following:

(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 appraisal ~~rights; and~~rights.

(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 9. G.S. 55-11-03 reads as rewritten:

"**§ 55-11-03. Action on plan.**

(a) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger (except as provided in subsection (g)) or share exchange for approval by its shareholders.

(b) ~~For~~The following requirements shall be met for a plan of merger or share exchange to be approved:

(1) The board of directors ~~must~~shall recommend to the shareholders that the plan of merger or share exchange ~~to the shareholders,~~be approved, unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should not make ~~no recommendation, in which event~~a recommendation that the shareholders approve the plan of merger or

share exchange or (ii) G.S. 55-8-26 applies. If either clause (i) or (ii) of this subdivision applies, the board of directors ~~must~~shall communicate the basis for ~~its lack of a recommendation~~not recommending approval of the plan of merger or share exchange to the shareholders ~~with the plan; and~~at the time it submits the plan of merger or share exchange to the shareholders.

(2) The shareholders entitled to vote must approve the ~~plan.~~plan of merger or share exchange.

...

(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, the plan of merger or share exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group and, for the purpose of Article 9 or any provision in the articles of incorporation or bylaws adopted prior to July 1, 1990, a merger shall be deemed to include a share exchange. If any shareholder of a merging corporation has or will have personal liability for any existing or future obligation of the surviving corporation in the merger solely as a result of owning one or more shares in the surviving corporation, then, in addition to the requirements of this subsection, authorization of the plan of merger by the merging corporation shall require the affirmative vote or written consent of that shareholder.

(f) Separate voting by voting groups is ~~required:~~required for the following:

(1) On a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under G.S. 55-10-04, except where the consideration to be received in exchange for the shares of that group consists solely of ~~cash;~~cash.

(2) On a plan of share exchange by each class or series of shares to be acquired in the exchange, with each class or series constituting a separate voting group.

...."

SECTION 10. G.S. 55-11-04 reads as rewritten:

"**§ 55-11-04. Merger ~~with subsidiary.~~between parent and subsidiary or between subsidiaries.**

(a) Subject to Article 9, a parent corporation owning shares of a domestic or foreign subsidiary corporation that carry at least ninety percent (90%) of the ~~outstanding shares~~voting power of each class and series of ~~a~~the outstanding shares of the subsidiary corporation that have the current power to vote in the election of directors may merge the subsidiary into itself or into another such subsidiary without approval of the shareholders of the parent corporation unless the articles of incorporation of the parent corporation require approval of the shareholders or the plan of merger contains one or more amendments to the articles of incorporation of the parent corporation for which shareholder approval is required by G.S. 55-10-03, and without approval of the board of directors or shareholders of the subsidiary corporation unless the articles of incorporation of the subsidiary corporation require approval of the shareholders of the subsidiary ~~corporation.~~corporation, or if the subsidiary is a foreign corporation, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized. Subject to Article 9, a parent corporation owning shares of a domestic or foreign subsidiary corporation that carry at least ninety percent (90%) of the ~~outstanding shares~~voting power of each class and series of ~~a~~the outstanding shares of the subsidiary corporation that have the current power to vote in the election of directors may merge itself into the subsidiary corporation without approval of the board of directors or shareholders of the subsidiary corporation unless the articles of incorporation of the subsidiary corporation provide ~~otherwise or~~otherwise, the plan of merger contains one or more

amendments to the articles of incorporation of the subsidiary corporation for which shareholder approval is required by ~~G.S. 55-10-03.~~G.S. 55-10-03, or, if the subsidiary is a foreign corporation, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized. Except as otherwise provided in this subsection, the provisions of G.S. 55-11-01 and G.S. 55-11-03 apply to any merger described in this subsection.

(b) If a merger is consummated without approval of the subsidiary corporation's shareholders, the surviving corporation shall, within 10 days after the effective date of the merger, notify each shareholder of the subsidiary corporation as of the effective date of the merger, that the merger has become effective.

(c) Repealed by Session Laws 2005, c. 268, s. 21.

(d) Repealed by Session Laws 2005, c. 268, s. 21.

(e) Repealed by Session Laws 2005, c. 268, s. 21.

(f) The provisions of ~~G.S. 55-13-02(c)~~G.S. 55-13-02(b) do not apply to subsidiary corporations that are parties to mergers consummated under this section."

SECTION 11. G.S. 55-11A-11 reads as rewritten:

"**§ 55-11A-11. Plan of conversion.**

(a) The converting domestic corporation shall approve a written plan of conversion ~~containing:~~containing all of the following:

(1) The name of the converting domestic ~~corporation;~~corporation.

(2) The name of the resulting business entity into which the domestic corporation shall convert, its type of business entity, and the state or country whose laws govern its organization and internal ~~affairs;~~affairs.

(3) The terms and conditions of the ~~conversion; and~~conversion.

(4) The manner and basis for converting the shares of the domestic corporation into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the converting domestic corporation or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the converting domestic corporation is a party, or any other agreement or document.

(b) ~~For~~The following requirements shall be met for a plan of conversion to be approved:

(1) The board of directors shall recommend to the shareholders that the plan of conversion ~~to the shareholders,~~be approved, unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should not make ~~no recommendation, in which event~~a recommendation that the shareholders approve the plan of conversion or (ii) G.S. 55-8-26 applies. If either clause (i) or (ii) of this subdivision applies, the board of directors shall communicate the basis for ~~its lack of a recommendation~~not recommending approval of the plan of conversion to the shareholders ~~with the plan; and~~at the time it submits the plan of conversion to the shareholders.

(2) The shareholders entitled to vote shall approve the ~~plan.~~plan of conversion.

...."

SECTION 12. G.S. 55-12-01 reads as rewritten:

"**§ 55-12-01. ~~Sale~~Disposition of assets ~~in regular course of business~~not requiring shareholder approval and mortgage of assets.**

(a) A mortgage of or other security interest in all or any part of the property of a corporation may be made by authority of the board of directors without approval of the shareholders, unless otherwise provided in the articles of incorporation or in bylaws adopted by the shareholders.

(b) Unless otherwise provided in the articles of incorporation or in bylaws adopted by the shareholders, a corporation may, on the terms and conditions and for the consideration determined by the board of directors, and without approval by the ~~shareholders:~~shareholders, do any of the following:

(1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of ~~business; or~~business.

(2) Transfer any or all of its property to a corporation or an unincorporated entity all the shares or ownership interests of which are owned by the corporation.

(3) Sell, lease, exchange, or otherwise dispose of any of its property, not in the usual and regular course of business, if the sale, lease, exchange, or other disposition is of less than all, or substantially all, of the corporation's property. If the sale, lease, exchange, or other disposition would leave the corporation with a continuing business activity that represented at least twenty-five percent (25%) of total assets at the end of the most recently completed fiscal year and at least twenty-five percent (25%) of either (i) income from continuing operations before taxes or (ii) revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis, the sale, lease, exchange, or other disposition will conclusively be deemed to be of less than all, or substantially all, of the corporation's property."

SECTION 13. G.S. 55-12-02 reads as rewritten:

"**§ 55-12-02. ~~Sale~~Disposition of assets ~~other than in regular course of business.~~requiring shareholder approval.**

...

(b) ~~For~~The following requirements shall be met for a transaction to be authorized:

(1) The board of directors ~~must~~shall recommend to the shareholders that the proposed transaction ~~to the shareholders~~be approved unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should not make ~~no recommendation, in which event~~a recommendation that the shareholders approve the proposed transaction or (ii) G.S. 55-8-26 applies. If either clause (i) or (ii) of this subdivision applies, the board of directors ~~must~~shall communicate the basis for ~~its lack of a recommendation~~not recommending approval of the proposed transaction to the shareholders ~~with the submission of the proposed transaction; and~~at the time it submits the proposed transaction to the shareholders.

(2) The shareholders entitled to vote must approve the ~~transaction.~~proposed transaction.

...."

SECTION 14. G.S. 55-14-02(b) reads as rewritten:

"(b) ~~For~~The following requirements shall be met for a proposal to dissolve to be adopted:

(1) The board of directors ~~must~~shall recommend ~~dissolution to the shareholders~~to the shareholders that the proposal to dissolve be approved unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should not make ~~no recommendation, in which event~~a recommendation that the shareholders approve the proposal to dissolve or (ii) G.S. 55-8-26 applies. If either clause (i) or (ii) of this subdivision applies, the board of directors ~~must~~shall communicate the ~~proposal and the~~ basis for ~~its lack of a recommendation to the shareholders; and~~not recommending approval of the proposal to dissolve to the shareholders at the time it submits the proposal to dissolve to the shareholders.

(2) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e)."

SECTION 15. The Revisor of Statutes may cause to be printed all relevant portions of the Official Comments to the Model Business Corporation Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 16. This act becomes effective October 1, 2013.

SENATE BILL 239:
Amend NC Business Corporation Act

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 15, 2013
Introduced by:	Sens. Clodfelter, Barringer, Brunstetter	**Prepared by:**	Bill Patterson
Analysis of:	PCS to First Edition S239-CSTG-22		Committee Counsel

SUMMARY: ***The PCS to Senate Bill 239 would revise the Business Corporation Act (BCA) to incorporate changes made to the American Bar Association's Model Corporation Act, as recommended by the Business Organizations Committee of the Business Law Section of the North Carolina Bar Association.*** ***The PCS makes a technical correction in Section 9 of the bill.***

BILL ANALYSIS:

Section 1 of the bill amends G.S. 55-6-21(a) to provide that, unless otherwise provided in the articles of incorporation or bylaws, the board may delegate its power to issue shares to one or more corporate officers within limits prescribed by the board.

Section 2 amends G.S. 55-6-24(a), which authorizes the board to determine the terms under which share options are issued, by extending this authority to officers designated by the board pursuant to G.S. 55-6-21(a).

Section 3, 4, 5, and 6 incorporate provisions in the Model Act governing the participation in shareholder meetings by remote communication, by repealing G.S. 55-7-08 (Section 4), replacing it with more the detailed provisions in new G.S. 55-7-09 (Section 5), and by making conforming changes to G.S. 55-7-05(a) (Section 3) and G.S. 55-7-20(c) (Section 6).

Section 7, 8, 9, 11, 13, and 14 amend various sections of the BCA to provide that "force the vote" provisions in merger agreements and other agreements – which require a specified matter to be submitted for approval by the shareholders even if the board later determines that it can no longer recommend shareholder approval of the matter – are effective.

Section 10 amends G.S. 55-11-04 to simplify the procedure by which sister subsidiaries of a parent owning at least 90% of each subsidiary may merge with each other, by requiring only the approval of the board of directors of the common parent corporation.

Section 12 amends G.S. 55-12-01 to provide that shareholder approval is not required for a sale of less than all or substantially all of the corporation's assets outside the usual and regular course of business, and to provide that that a sale is conclusively deemed to be of less than all or substantially all of the corporation's assets, thus not requiring shareholder approval, if the corporation retains a continuing business that, for the corporation and its subsidiaries, accounts for 25% of total assets and 25% of income from continuing operations before taxes or revenues from continuing operations.

Section 15 authorizes the Revisor of Statutes to print all relevant portions of the Official Comments to the Model Business Corporation Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.
EFFECTIVE DATE: This act becomes effective October 1, 2013.

BACKGROUND: The North Carolina Business Corporation Act is based upon the Model Business Corporation Act ("Model Act"). Periodically, a committee of the American Bar Association adopts revisions to the Model Act. The Business Organizations Committee (the "Committee") of the Business Law Section of the North Carolina Bar Association periodically reviews these revisions to the Model Act to recommend whether conforming changes are appropriate for the North Carolina Business Corporation Act. Senate Bill 239 represents the changes recommended by the Committee in response to the Model Act amendments.

SENATE BILL 439

Short Title:	Amend & Restate NC Limited Liability Co. Act.	(Public)
Sponsors:	Senators Clodfelter, Barringer, and Brunstetter (Primary Sponsors).	
Referred to:	Judiciary I.	

March 27, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND AND RESTATE THE NORTH CAROLINA LIMITED LIABILITY COMPANY ACT AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 57C of the General Statutes is repealed.

SECTION 2. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 57D.**

"**North Carolina Limited Liability Company Act.**

"Article 1.

"General Provisions.

"Part 1. Short title; Reservation of Power; Definitions.

"**§ 57D-1-01. Short title.**

This Chapter is the "North Carolina Limited Liability Company Act" and may be cited by that name.

"**§ 57D-1-02. Governing law; jurisdiction of the superior courts; intent; reservation of power to amend or repeal.**

(a) This Chapter and any other applicable laws of this State govern (i) the internal affairs of every LLC, including the interpretation, construction, and enforcement of operating agreements and determining the rights and duties of interest owners, managers, and other company officials, and (ii) any liability that interest owners or managers or other company officials may have for the liabilities of the LLC.

(b) The superior courts of this State have jurisdiction to enforce the provisions of this Chapter.

(c) The General Assembly may amend or repeal all or any part of this Chapter at any time, and all LLCs and the rights and duties of interest owners, managers, and other company officials subject to this Chapter will be subject to any such amendment or repeal. Except as otherwise provided in this Chapter, all amendments of this Chapter apply to all LLCs, foreign LLCs, interest owners, and managers and other company officials, including those LLCs and foreign LLCs in existence, or person having such interests and status, at the time of the enactment of any such amendment.

(d) Each provision of this Chapter is severable, such that if any provision, including any clause of any provision, of this Chapter or application thereof to any person or in a particular context is held to be invalid, such invalidity will not affect other provisions or applications of this Chapter that can be given effect without the invalid provision or application.

"**§ 57D-1-03. Definitions.**

Unless otherwise specifically provided, the following definitions apply in this Chapter:

(1) Approve. – With respect to a manager or other company official, member, or organizer and a decision or other action to be taken by the managers or other applicable company officials, members, or organizers, as the case may be, (i) the affirmative vote of that person at a meeting of the managers or other applicable company officials, members, or organizers, as applicable, or (ii) any other expression of assent to the action to be taken that is made in the manner or form required to establish the assent of the members to amendments of the operating agreement.

(2) Articles of organization. – The document filed under G.S. 57D-2-20 (or former G.S. 57C-2-20 for LLCs formed before January 1, 2014) for the purpose of forming an LLC, as amended or restated.

(3) Business. – Any lawful trade, investment, or other purpose or activity, whether or not conducted or undertaken for profit, except that the term "business," as used in Article 7 of this Chapter, or to which reference is otherwise made in this Chapter to a foreign LLC "transacting business" (or is authorized or required to be authorized to "transact business") in this State, has the same meaning in that context as applied in Article 15 of Chapter 55 of the General Statutes.

(4) Capital interest. – An interest owner's interest in or share of the owners' equity of the LLC, which may be based on the method of accounting consistently applied under which the LLC maintains its financial records to be made available to the members under G.S. 57D-3-04(a)(2).

(5) Company official. – Any person exercising any management authority over the limited liability company, whether the person is a manager or referred to as a manager, director, or officer or given any other title.

(6) Contribution amount. – The fair market value, net of liabilities assumed (or to which any property contributed to the LLC is subject, but not in excess of the fair market value of the property that is subject to the liability) or other consideration paid by the LLC, of contributions in any form described in G.S. 57D-4-01 made in respect of an economic interest, determined as of the time the contribution is made, reduced by any money or other property or services promised to be transferred or rendered to or on behalf of the LLC in respect of the economic interest that are discharged without performance.

(7) Corporation. – A domestic corporation or a foreign corporation, as those terms are defined in G.S. 55-1-40.

(8) Debtor in bankruptcy – A person who is the subject of either of the following:

a. An order for relief under Title 11 of the United States Code or a successor statute of general application.

b. A comparable order under federal, state, or foreign law governing insolvency.

(9) Distribution. – Except as provided in the last sentence of this definition of distribution with respect to G.S. 57D-4-05, 57D-4-06, and 57D-6-12, the direct or indirect transfer of money or other property to, or incurrence of indebtedness by, an LLC for the benefit of an interest owner in respect of the interest owner's ownership interest. The amount of a distribution is the fair market value of the property distributed net of liabilities assumed or other consideration paid by the interest owner (or to which any property distributed to the interest owner is subject, but not in excess of the fair market value of the property that is subject to the liability), determined as of the time the distribution is made. As used in G.S. 57D-4-05, 57D-4-06, and

57D-6-12, "distribution" does not include payments made to, or an account of, an interest owner that constitute compensation for services and does not include payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

(10) Economic interest. – The proprietary interest of an interest owner in the capital, income, losses, credits, and other economic rights and interests of a limited liability company, including the right of the owner of the interest to receive distributions from the limited liability company.

(11) Economic interest owner. – A person who owns an economic interest but is not a member.

(12) Entity. – A corporation, limited liability company, partnership (including a limited partnership), unincorporated association, trust, estate, government or governmental agency, instrumentality, or other entity.

(13) Foreign LLC. – An unincorporated entity organized under the law of (i) a state other than this State that is denominated thereunder as a limited liability company or (ii) a foreign jurisdiction other than a state, and the statute under which it is organized is substantially similar to the limited liability company statute of any state and is not more appropriately characterized as a corporation, partnership, or trust.

(14) Individual. – A human being.

(15) Interest owner. – A member or an economic interest owner.

(16) LLC. – An entity formed under this Chapter (or former Chapter 57C of the General Statutes) that has not become another entity or form of entity by merger, conversion, or other means.

(17) Liabilities, debts, and obligations. – Have the same meaning and are used interchangeably throughout this Chapter. Reference to "liabilities," "debts," or "obligations," whether individually or in any combination, means all liabilities, debts, and obligations, whether arising in contract, tort, or other applicable law.

(18) Limited liability company. – An LLC or foreign LLC.

(19) Limited partnership. – A domestic limited partnership or a foreign limited partnership as those terms are defined in G.S. 59-102.

(20) Manager. – Has the following meanings: (i) with respect to an LLC, any person designated as a manager as provided in the operating agreement or, if applicable, in G.S. 57D-3-20(d) and (ii) with respect to a foreign LLC, any person designated as a manager under the law of the jurisdiction in which the foreign LLC is organized.

(21) Member. – A person who has been admitted as a member of the LLC as provided in the operating agreement or G.S. 57D-3-01 or who was a member of the LLC immediately before the repeal of Chapter 57C of the General Statutes until the person ceases to be a member as provided in the operating agreement or G.S. 57D-3-02 or, with respect to a foreign LLC, a person who has been admitted as a member of the foreign LLC under the law of the jurisdiction in which the foreign LLC is organized until the person ceases to be a member under that law.

(22) Nonprofit corporation. – A domestic corporation or a foreign corporation as those terms are defined in G.S. 55A-1-40.

(23) Operating agreement. – Any agreement concerning the LLC or any ownership interest in the LLC to which each interest owner is a party or is otherwise bound as an interest owner. Subject to other controlling law, the operating agreement may be in any form, including written, oral, or implied,

or any combination thereof. The operating agreement may specify the form that the operating agreement must take, in which case any purported amendment to the operating agreement or other agreement expressed in a nonconforming manner will not be deemed to be part of the operating agreement and will not be enforceable to the extent it would be part of the operating agreement if it were in proper form. Subject to G.S. 57D-2-21 and the other provisions of this Chapter governing articles of organization, the articles of organization are to be deemed to be, or be part of, the operating agreement. If the LLC has only one interest owner and no operating agreement to which another person is a party, then any document or record intended by the interest owner to serve as the operating agreement will be the operating agreement.

(24) Organizer. – A person who executes the articles of organization in the capacity of an organizer.

(25) Ownership interest. – All of an interest owner's rights and obligations as an interest owner in an LLC, including (i) any economic interest, (ii) any right to participate in the management, or approve actions proposed by persons responsible for the management of the LLC, (iii) any right to bring a derivative action, and (iv) any right to inspect the books and records of or receive information from the LLC.

(26) Person. – An individual or an entity.

(27) Principal office. – The principal executive office of the limited liability company as stated in its most recent annual report filed by the Secretary of State or, if the limited liability company has never filed an annual report, in its articles of organization or application for a certificate of authority.

(28) Proceeding. – Any civil or criminal proceeding or other action pending before any court of law or other governmental body or agency or any arbitration proceeding.

(29) Professional service. – Has the meaning provided in G.S. 55B-2.

(30) Professional limited liability company. – A limited liability company subject to G.S. 57D-2-02.

(31) Record. – When used as a noun, information that is inscribed on a tangible medium or that is stated in an electronic or other medium and is retrievable in readable form.

(32) Secretary of State. – The Secretary of State of North Carolina.

(33) State. – A state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, and "this State" refers to the State of North Carolina.

(34) Transfer. – As a noun, the transfer of legal, equitable, or beneficial ownership by sale, exchange, assignment, gift, donation, grant, or other conveyance or disposition of any kind, whether voluntary or involuntary, including transfers by operation of law or legal process and includes, with respect to the ownership interest of an interest owner for purposes of G.S. 57D-3-02(a)(3), any (i) appointment of a receiver, trustee, liquidator, custodian, or other similar official for that interest owner or all or any part of the property of that interest owner under any law of bankruptcy or insolvency; (ii) gift, donation, transfer by will or intestacy, or other similar type of transfer or disposition, whether during one's life or because of death; (iii) appointment of a personal or other legal representative or other person serving in a similar capacity of a deceased interest owner; (iv) appointment of a guardian or other person serving in a similar capacity of an interest

owner who has been adjudicated to be incompetent by a court of competent jurisdiction; and (v) other transfer or disposition to a spouse or former spouse (including by reason of a separation agreement or divorce, equitable, community or marital property distribution, judicial decree, or other court order concerning the division or partition of property between spouses or former spouses or other persons); and, as a verb, the act of making any transfer.

"**§§ 57D-1-04 through 57D-1-19: Reserved for future codification purposes.**

"Part 2. Filing Documents.

"**§ 57D-1-20. Filing requirements.**

(a) A document required or permitted by this Chapter to be filed by the Secretary of State must be filed as provided in Chapter 55D of the General Statutes.

(b) A document submitted on behalf of a limited liability company must be executed by one of the following:

(1) A manager or other company official.

(2) If the document is the articles of organization, a person acting in the capacity of an organizer or a member as provided in G.S. 57D-2-21(a)(2).

(3) If the LLC has never had any members, an organizer.

(4) If the LLC is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

"**§ 57D-1-21. Forms.**

(a) The Secretary of State may promulgate and furnish on request forms for the following:

(1) An application for a certificate of existence.

(2) A foreign LLC's application for a certificate of authority to transact business in this State.

(3) A foreign LLC's application for a certificate of withdrawal.

(b) If the Secretary of State so requires, use of the forms listed in subsection (a) of this section is mandatory.

(c) The Secretary of State may promulgate and furnish on request forms for other documents required or permitted to be filed by this Chapter but their use is not mandatory.

"**§ 57D-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

Document	Fee
(1) Articles of organization	$125.00
(2) Application for reserved name	10.00
(3) Notice of transfer of reserved name	10.00
(4) Application for registered name	10.00
(5) Application for renewal of registered name	10.00
(6) Limited liability company's statement of change of registered agent or registered office or both	5.00
(7) Agent's statement of change of registered office for each affected limited liability company	5.00
(8) Agent's statement of resignation	No fee
(9) Designation of registered agent or registered office or both	5.00
(10) Amendment of articles of organization	50.00
(11) Restated articles of organization without amendment of articles	10.00
(12) Restated articles of organization with amendment of articles	50.00
(13) Articles of conversion (other than articles of conversion included as part of another document)	50.00

(14) Articles of merger	50.00
(15) Articles of dissolution	30.00
(16) Cancellation of articles of dissolution	10.00
(17) Certificate of administrative dissolution	No fee
(18) Application for reinstatement following administrative dissolution	100.00
(19) Certificate of reinstatement	No fee
(20) Certificate of judicial dissolution	No fee
(21) Application for certificate of authority	250.00
(22) Application for amended certificate of authority	50.00
(23) Application for certificate of withdrawal	10.00
(24) Certificate of revocation of authority to transact business	No fee
(25) Articles of correction	10.00
(26) Application for certificate of existence or authorization (paper)	15.00
(27) Application for certificate of existence or authorization (electronic)	10.00
(28) Annual report	200.00
(29) Any other document required or permitted to be filed by this Chapter	10.00

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of State under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying and certifying a copy of any filed document relating to a limited liability company:

(1) One dollar ($1.00) a page for copying.

(2) Fifteen dollars ($15.00) for a paper certificate.

(3) Ten dollars ($10.00) for an electronic certificate.

"**§ 57D-1-23. Execution by judicial act.**

Any person who is adversely affected by the failure or refusal of any person to execute and deliver to the Secretary of State for filing any document to be filed under this Chapter may petition the superior court in the county where the limited liability company's principal office or, if none in this State, its registered office is or was last located or, if there is no such office, in the County of Wake to direct the execution and delivery to the Secretary of State for filing of the document. If the court finds that it is proper for the document to be executed and delivered to the Secretary of State for filing and there has been failure or refusal by the applicable company officials to do so, it shall order the Secretary of State to make the filing.

"**§ 57D-1-24. Certificate of existence; certificate of authorization.**

(a) Anyone may apply to the Secretary of State for a certificate of existence for an LLC or a certificate of authorization for a foreign LLC.

(b) A certificate of existence or authorization sets forth the following:

(1) The limited liability company's name and, in the case of a foreign LLC, any different name that the foreign LLC is authorized under Article 3 of Chapter 55D of the General Statutes to use to transact business in this State, as provided in the foreign LLC's certificate of authority.

(2) That (i) the articles of organization for the LLC have been filed and are in effect and the date on which the filed articles of organization became effective or (ii) a certificate of authority has been issued to the foreign LLC and is in effect and the date on which the certificate of authority became effective.

(3) That the articles of organization of an LLC or the certificate of authority of a foreign LLC are not suspended under G.S. 57D-1-32(a) (or for limited liability companies formed before January 1, 2014, former G.S. 57C-1-32(a)) for failure to answer interrogatories propounded by the

Secretary of State or under G.S.105-230 for failure to pay a tax or fee or file a report or return.

(4) That the LLC has not been administratively dissolved under G.S. 57D-6-06 (or for limited liability companies formed before January 1, 2014, former G.S. 57C-6-03) and no decree of judicial dissolution has been filed under G.S. 57D-6-05 (or, for limited liability companies formed before January 1, 2014, former G.S. 57C-6-02) or, with respect to a foreign LLC, no application for a certificate of withdrawal or a certificate of revocation has been filed under Article 7 of this Chapter (or, for limited liability companies formed before January 1, 2014, former Article 7 of Chapter 57C of the General Statutes).

(5) That, in the case of an LLC, articles of dissolution have not been filed nor have articles of merger or conversion been filed causing it to merge or convert into another entity or form of entity.

(6) Other facts of record in the Office of the Secretary of State pertaining to the limited liability company that may be requested by the applicant.

(c) A certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence as to the accuracy of its contents.

"**§§ 57D-1-25 through 57D-1-29: Reserved for future codification purposes.**

"Part 3. Secretary of State.

"**§ 57D-1-30. Powers of the Secretary of State.**

The Secretary of State has the power necessary to perform the duties required by this Chapter.

"**§ 57D-1-31. Interrogatories by Secretary of State.**

The Secretary of State may propound to any limited liability company that the Secretary of State has reason to believe is subject to the provisions of this Chapter, and to any manager or other company official thereof, such written interrogatories as may be necessary and proper to enable the Secretary of State to ascertain whether the limited liability company has complied with all of the provisions of this Chapter applicable to it. Subject to applicable jurisdictional requirements, the interrogatories must be answered within 30 days after the mailing thereof, or within such additional time as the Secretary of State may fix, and the answers thereto must be full and complete and made in writing and under oath. If the interrogatories are directed to an individual, they must be answered by the individual, and if directed to a limited liability company, they must be answered by a manager or other company official thereof. The Secretary of State shall certify to the Attorney General for such action all interrogatories and answers thereto that disclose a violation of any of the provisions of this Chapter requiring or permitting action by the Attorney General.

"**§ 57D-1-32. Penalties imposed on limited liability companies for failure to answer interrogatories.**

(a) In addition to the recourse that the Secretary of State may have under G.S. 57D-6-06 and Part 3 of Article 7 of this Chapter to administratively dissolve an LLC or revoke the certificate of authority of the foreign LLC, if a limited liability company knowingly fails or refuses to answer truthfully and fully within the time prescribed in this Chapter interrogatories propounded by the Secretary of State in accordance with the provisions of this Chapter, the Secretary of State may suspend its articles of organization or its certificate of authority to do business in this State. The Secretary of State shall immediately notify by mail the limited liability company of its suspension. The powers, privileges, and franchises conferred on the limited liability company by the articles of organization or the certificate of authority terminate upon their suspension. Any act performed or attempted to be performed during the period of suspension is invalid and of no effect unless and to the extent the Secretary of State reinstates the limited liability company.

(b) The Secretary of State shall reinstate a limited liability company upon the limited liability company fully complying with its obligations under G.S. 57D-1-31, paying all state taxes, fees, and penalties due from it (which total amount due may be computed, for years before and after the suspension, in the same manner as if the suspension had not taken place), and paying to the Secretary of State twenty-five dollars ($25.00) to cover the cost of reinstatement. Upon reinstatement of an LLC's articles of organization or a foreign LLC's certificate of authority by the Secretary of State, (i) the limited liability company may again exercise its rights, privileges, and franchises in this State and (ii) the Secretary of State shall make the appropriate entry thereof on the records of the Secretary of State. The entry of reinstatement in the records of the Secretary of State relates back to and takes effect as of the date of the suspension by the Secretary of State, and the limited liability company may resume conducting its business as if the suspension had never occurred, subject to the rights of any person who relied, to that person's prejudice, on the suspension. The Secretary of State shall immediately notify by mail the limited liability company of the reinstatement.

(c) When the articles of organization or certificate of authority of a limited liability company have or has been suspended by the Secretary of State under subsection (a) of this section and the limited liability company has ceased to operate as a going concern, if there remains property held in the name of the limited liability company that is not disposed at the time of the suspension, or there remain future interests that may accrue to the limited liability company, its successor, or its interest owners, then any interested party may apply to the superior court for the appointment of a receiver. Application for the receiver may be made in a civil action to which all interest owners are made parties. The applicant may serve persons whom the applicant either is unable to locate or are unknown by publication made in the same manner as the publication of notice under G.S. 57D-6-11. A guardian ad litem may be appointed for any interest owners who are infants or incompetent. The receiver shall enter into a bond if the court requires one and shall give notice to creditors by publication or otherwise as the court may prescribe. Any creditor who fails to file a claim with the receiver within the time set will be barred of the right to participate in the distribution of the assets. The receiver may (i) sell the property interests of the limited liability company on such terms and in such manner as the court may order, (ii) apply the proceeds to the payments of any debt of the limited liability company, and (iii) distribute the remainder among the interest owners in accordance with the manner in which liquidating distributions are to be made by the limited liability company. Amounts due to any interest owner who is unknown or whose whereabouts are unknown are to be paid to the office of the clerk of the superior court and disbursed according to law. If the records of the limited liability company are lost or do not reflect the owners of the property interests, the court shall determine the owners from the best evidence available, and the receiver will be protected in acting in accordance with the court's finding. This proceeding is authorized for the sole purpose of providing a procedure for disposing of the assets of the limited liability company by payment of its debts and by the transfer to its interest owners, or their representatives, of their shares of the limited liability company's remaining assets.

(d) Each manager or other company official of a limited liability company who fails or refuses within the time prescribed by this Chapter to answer truthfully and fully interrogatories propounded to the manager or other company official by the Secretary of State in accordance with the provisions of this Chapter shall be guilty of a Class 1 misdemeanor.

"**§ 57D-1-33. Information disclosed by interrogatories.**

Interrogatories propounded by the Secretary of State and the answers thereto will not be open to public inspection nor shall the Secretary of State disclose any facts or information obtained therefrom, except to the extent applicable law requires the Secretary of State to make the information public or the interrogatories or the answers thereto are required for evidence in any proceedings by this State.

"Article 2.

"Purposes, Powers, Formation, Annual Report, Name, Registered Office, and Agent.

"Part 1. Purposes and Powers.

"**§ 57D-2-01. Nature, purposes, duration, existence.**

(a) An LLC is an entity distinct from its interest owners.

(b) An LLC has perpetual duration.

(c) Subject to subsection (d) of this section, an LLC may engage in any lawful business.

(d) A limited liability company engaging in a business that is subject to regulation under another statute of this State may be formed or authorized to transact business under this Chapter if not precluded by the other statute and is otherwise subject to the application of the other statute, which in the case of a limited liability company rendering a professional service requires giving effect to G.S. 57D-2-02.

(e) After the dissolution of an LLC, the LLC continues its existence but shall wind up pursuant to G.S. 57D-6-07.

"**§ 57D-2-02. Professional limited liability companies.**

(a) Except as set forth in this subsection, a limited liability company may engage in rendering professional services only to the extent that it would be able to render those services were it a corporation, including, as applicable, complying with Chapter 55B of the General Statutes and the statutes referenced in the definition of "professional service" in G.S. 55B-2(6). Chapter 55B of the General Statutes and each statute referenced therein are deemed amended, and to apply with such changes as are necessary to cause them to be applicable to limited liability companies in the same degree as for corporations but subject to any provisions contained herein pursuant to which limited liability companies, or their members, managers, and other company officials, are treated differently from corporations, or their shareholders, directors, and officers.

For purposes of applying the provisions, conditions, and limitations of Chapter 55B of the General Statutes and the statutes referenced therein to limited liability companies that engage in rendering professional services, unless the context specifically requires otherwise, the following rules of construction shall apply:

(1) References to Chapter 55 of the General Statutes are treated as references to this Chapter, and references to a "corporation" or "foreign corporation" are treated as references to an LLC or foreign LLC, respectively.

(2) References to "articles of incorporation" are treated as references to articles of organization.

(3) The persons executing the articles of organization of an LLC are treated in the same manner as the incorporators of a professional corporation.

(4) References to "directors" are treated as references to company officials having equal or greater authority in the management of a limited liability company as directors of a domestic corporation or foreign corporation, as the case may be.

(5) References to "officers" are treated as references to company officials whose authority to manage the limited liability company is equal to or greater than that exercised by officers of a domestic corporation.

(6) A professional limited liability company is not required to have more than one company official who would be treated as a director, officer, or both under Chapter 55B of the General Statutes.

(7) A manager or other company official who has the authority of both a director and an officer were the limited liability company or a corporation is to be treated as holding both positions for purposes of applying Chapter 55B of the General Statutes to the limited liability company.

(8) References to "shares" of a shareholder are treated as references to the ownership interest of an interest owner and, where the context so indicates or requires, a portion of an interest owner's ownership interest.

(9) References to "shareholders" are treated as references to interest owners.

(10) The name of a limited liability company that is to render a professional service and is subject to this section shall comply with Article 3 of Chapter 55D of the General Statutes and, in addition, shall contain the word "Professional" or the abbreviation "P.L.L.C." or "PLLC".

(b) Nothing in this Chapter abolishes, modifies, restricts, limits, or alters the law in this State applicable to the professional relationship and liabilities between the individual furnishing the professional services and the person receiving the professional services, the standards of professional conduct applicable to the rendering of the services, or any responsibilities, obligations, or sanctions imposed under applicable licensing statutes. A member or manager or other company official of a professional limited liability company is not individually liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for debts, obligations, and liabilities of, or chargeable to, the professional limited liability company that arise from errors, omissions, negligence, malpractice, incompetence, or malfeasance committed by another member, manager or other company official, employee, agent, or other representative of the professional limited liability company, except nothing in this Chapter affects the liability of a member or manager or other company official of a professional limited liability company for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services.

"**§ 57D-2-03. Powers of the LLC.**

Unless this Chapter provides otherwise or the powers of the LLC are limited under the operating agreement, an LLC has the same powers as an individual or a domestic corporation to do all things necessary or convenient to carry out its business.

"**§§ 57C-2-04 through 57C-2-19: Reserved for future codification purposes.**

"Part 2. Formation; Articles of Organization; Amendment of Articles; Annual Report.

"**§ 57D-2-20. Formation.**

(a) One or more persons may cause an LLC to be formed by delivering executed articles of organization to the Secretary of State for filing in accordance with this Chapter and Chapter 55D of the General Statutes. An LLC may also be formed through the conversion of another eligible entity into an LLC pursuant to Part 2 of Article 9 of this Chapter.

(b) An LLC is formed at the time the articles of organization filed by the Secretary of State become effective. Filing of the articles of organization by the Secretary of State is conclusive proof that all conditions to the formation of the LLC have been satisfied except in a proceeding by the State to cancel or revoke the articles of organization or involuntarily dissolve the LLC.

(c) If initial members are not identified in the articles of organization of an LLC in the manner provided in G.S. 57D-3-01(a)(1), the organizer or organizers shall either identify the initial members of the LLC or dissolve the LLC. Unless otherwise provided in the articles of organization, all decisions to be made by the organizers require the approval of a majority of the organizers.

"**§ 57D-2-21. Articles of organization.**

(a) The articles of organization must include the following information:

(1) A name of the LLC that satisfies the provisions of G.S. 55D-20 and G.S. 55D-21.

(2) The name and address of each person executing the articles of organization and whether the person is executing the articles of organization in the capacity of a member or an organizer.

(3) The street address, and the mailing address if different from the street address, of the LLC's initial registered office, the county in which the initial registered office is located, and the name of the LLC's initial registered agent at that address.

(4) The street address, and the mailing address if different from the street address, of the LLC's principal office, if any, and the county in which the principal office, if any, is located.

(5) If the LLC is to render professional services and is subject to G.S. 57D-2-02 as a professional limited liability company, the professional services to be rendered by the LLC.

(b) The articles of organization may include any other provision that is or may be included in an operating agreement.

"**§ 57D-2-22. Amendment of articles of organization.**

(a) An LLC may amend its articles of organization to add or change a provision that is required or permitted in the articles of organization or to delete a provision that is not required to be included in the articles of organization. Whether a provision is required or permitted in the articles of organization is determined as of the effective date of the amendment. The LLC shall amend or otherwise correct its articles of organization when (i) there is a change in the name of the LLC or (ii) they contain an inaccurate statement.

(b) Any amendment to the articles of organization must be approved by either of the following:

(1) All of the members.

(2) If no member of the LLC has been identified in the manner provided in this Chapter, a majority of the organizers.

"**§ 57D-2-23. Restated articles of organization.**

(a) An LLC may restate its articles of organization at any time.

(b) The restated articles of organization may include one or more amendments to the articles of organization. The restated articles of organization shall include a statement of the address of the current registered office and the name of the current registered agent of the LLC.

(c) An LLC restating its articles of organization must deliver to the Secretary of State for filing articles of restatement that include the following:

(1) The name of the LLC.

(2) Attached as an exhibit thereto, the text of the restated articles of organization.

(3) A statement that the restated articles of organization do not contain an amendment or, if the articles of organization do contain an amendment, a statement that there is an amendment that was duly adopted by the LLC.

(d) Restated articles of organization supersede the original articles of organization as theretofore amended.

(e) The Secretary of State may certify restated articles of organization as the articles of organization currently in effect without including the other information required by subsection (c) of this section.

"**§ 57D-2-24. Annual report for Secretary of State.**

(a) Excluding professional limited liability companies governed by G.S. 57D-2-02, each LLC and each foreign LLC authorized to transact business in this State must deliver to the Secretary of State for filing annual reports on a form prescribed by, and in the manner required by, the Secretary of State and as otherwise provided in subsection (b) of this section. Each annual report must specify the year for which the report applies and provide the information required by this subsection. The information must be current as of the date the limited liability company completes the report. If the information in the limited liability company's most recent

annual report has not changed, the limited liability company may certify in its annual report that the information has not changed in lieu of restating the information.

The following information must be included in each annual report:

(1) The name of the limited liability company and, in the case of a foreign LLC, any different name that the foreign LLC is authorized under Article 3 of Chapter 55D of the General Statutes to use to transact business in this State, as provided in the foreign LLC's certificate of authority.

(2) In the case of a foreign LLC, the name of the jurisdiction under whose law the foreign LLC is organized.

(3) The street address, and the mailing address if different from the street address, of the limited liability company's registered office in the State, the county in which the registered office is located, the name of its registered agent at that office, and a statement of any change of the registered office or registered agent.

(4) The address and telephone number of its principal office.

(5) The names, titles, and business addresses of the limited liability company's principal company officials.

(6) A brief description of the nature of its business.

(b) The Secretary of State must notify limited liability companies of the annual report filing requirement. The first annual report of a limited liability company is due to be delivered to the Secretary of State by April 15 of the year following (i) in the case of an LLC, the calendar year in which the LLC's articles of organization or articles of organization and conversion filed by the Secretary of State become effective or (ii) in the case of a foreign LLC, the calendar year in which the Secretary of State issues to the foreign LLC a certificate of authority to transact business in this State.

The limited liability company shall deliver an annual report by April 15 of each subsequent year until (i) in the case of an LLC, the effective date of its articles of dissolution filed by the Secretary of State or the effective date of either a certificate of dissolution for an LLC that is not reinstated under G.S. 57D-6-06(c) or a decree of dissolution that is filed by the Secretary of State as provided in G.S. 57D-6-05; (ii) in the case of a foreign LLC, the foreign LLC receives a certificate of withdrawal from the Secretary of State or the Secretary of State revokes the foreign LLC's certificate of authority under Part 3 of Article 7 of this Chapter; or (iii) in the case of either an LLC or foreign LLC, the effective date of a merger or conversion under Article 9 of this Chapter in which the limited liability company is a merging entity or a converting entity but not the surviving entity.

(c) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting limited liability company in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely delivered.

(d) Amendments to any previously filed annual report may be delivered for filing by the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report.

"**§§ 57D-2-25 through 57D-2-29: Reserved for future codification purposes.**

"Part 3. Operating Agreement.

"**§ 57D-2-30. Scope, function, and limitations of operating agreements.**

(a) The operating agreement governs the internal affairs of an LLC and the rights, duties, and obligations of (i) the interest owners, and the rights of any other persons to become interest owners, in relation to each other, the LLC, and their ownership interests or rights to acquire ownership interests and (ii) the company officials in relation to each other, the LLC, and the interest owners. Subject to the limitations of subsections (b) and (c) of this section, the

provisions of this Chapter and common law will apply only to the extent contrary or inconsistent provisions are not made in, or are not otherwise supplanted, varied, disclaimed, or nullified by, the operating agreement. The provisions of the operating agreement are severable and each will apply to the extent it is valid and enforceable.

(b) The operating agreement may not supplant, vary, disclaim, or nullify the provisions of this Chapter or their application to the extent the provisions do any of the following:

(1) Concern the functions of, including the filings and payments to be made, and the manner in which they are to be made by or to, the Secretary of State, the Attorney General, the courts, or any other governmental official, agency, or authority, including Article 1 of this Chapter, G.S. 57D-2-21(a), 57D-2-22(a), 57D-2-23, 57D-2-24, 57D-2-40, 57D-6-02(1), 57D-6-03(a)-(c), 57D-6-04, 57D-6-05, 57D-6-06, the last sentence of G.S. 57D-6-07(c), 57D-6-09, and 57D-10-01; except, the operating agreement may provide the forum in which disputes concerning the LLC or the rights and duties of interest owners and other parties to the operating agreement are to be resolved.

(2) Apply to persons who are not parties to, or otherwise bound by, the operating agreement, including the extent to which G.S. 57D-5-03 may be applicable to such persons or for which they may be entitled to recovery or other relief thereunder, or the extent to which G.S. 57D-1-02, 57D-6-08(1), 57D-6-10, 57D-6-11, 57D-6-12, and 57D-6-13 are applicable to creditors or such persons.

(3) Diminish the rights and protections of the LLC under G.S. 57D-4-05 and G.S. 57D-4-06.

(4) Diminish the rights and protections of members under G.S. 57D-3-04(a), except as permitted by and otherwise subject to subsections (b) through (f) of G.S. 57D-3-04.

(5) Eliminate the right of a member to bring a derivative action under Article 8 of this Chapter unless the operating agreement provides an alternative remedy, which may include the right to bring a direct action in lieu of a derivative action or modifying the procedures provided in Article 8 of this Chapter governing derivative actions.

(6) Eliminate the right of a member to bring an action to have the LLC judicially dissolved under clause (i) in G.S. 57D-6-02(2) unless the operating agreement provides an alternative remedy.

(7) Are set forth in this section, G.S. 57D-1-01, 57D-2-01(d), 57D-2-02, 57D-2-03, 57D-2-20, 57D-3-23, 57D-5-01, 57D-6-01, clause (ii) of 57D-6-02(2), 57D-6-07(b) and (f), and all sections and subsections of Article 9 of this Chapter other than G.S. 57D-9-21(b), (c) and (e), 57D-9-22(b), 57D-9-23(b), 57D-9-31(b)-(e), 57D-9-41(b), (d) and (f), and 57D-9-42(b).

(c) Except as provided in or permitted by this Chapter or other applicable law, the laws of agency and contract, including the implied contractual covenant of good faith and fair dealing and the requirement that the terms of an operating agreement not be unconscionable at the time they are made, govern the administration and enforcement of operating agreements.

"**§ 57D-2-31. Parties to, and other persons subject to or having rights under, the operating agreement.**

(a) The LLC is deemed to be a party to the operating agreement and, therefore, is bound by and may enforce the provisions thereunder applicable to the LLC.

(b) A person who becomes an interest owner is deemed to assent to, and is bound by, and, subject to Article 5 of this Chapter, is entitled to the rights applicable to the interest

owner's ownership interest provided under, and is otherwise deemed to be a party to, the operating agreement.

(c) A person need not be an interest owner to be a party to the operating agreement.

(d) An operating agreement may require amendments to the operating agreement be approved by persons who are not interest owners and may provide rights to persons who are not interest owners and not otherwise parties to the operating agreement.

(e) Any person bound by the operating agreement is bound by any amendment adopted, as provided in the operating agreement.

"**§ 57D-2-32. Remedies for breach of operating agreement or occurrence of identified events; reliance on operating agreement.**

(a) An operating agreement may subject interest owners and other persons who are parties to or otherwise bound by the operating agreement to specified remedies for breach of the operating agreement or the occurrence of a specified event. Such remedies may include the recovery of reasonable attorney fees, the assessment of interest without the assessment being subject to the laws of usury, and the imposition of penalties that would otherwise be unenforceable as stipulated or liquidated damages.

(b) Unless otherwise provided in the operating agreement, an interest owner or other person who is a party to or bound by the operating agreement will not be liable to the LLC or an interest owner or other person who is a party to the operating agreement for that person's reliance on the provisions of the operating agreement.

"Part 4. Registered Office and Registered Agent.

"**§ 57D-2-40. Registered office and registered agent.**

Each LLC must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article.

"**§§ 57D-2-41 through 57D-2-49: Reserved for future codification purposes.**

"Article 3.

"Membership and Management.

"Part 1. Membership.

"**§ 57D-3-01. Admission of members; economic interest owners.**

(a) A person becomes a member through the following:

(1) In the case of a person executing the articles of organization in the capacity of a member as provided in G.S. 57D-2-21(a)(2), or otherwise being named in the articles of organization as a member, at the time the articles of organization become effective under G.S. 55D-13.

(2) In the case of a person acquiring an ownership interest from the LLC, (i) upon being identified as a member by the organizers as provided in G.S. 57D-2-20(c) or (ii) upon the unanimous approval of the members as provided in G.S. 57D-3-03(2).

(3) In the case of an economic interest owner, in the manner provided in G.S. 57D-5-04(a) or G.S. 57D-6-01(3).

(4) In the case of an eligible entity converting or merging into the LLC, as provided in the plan of conversion or plan of merger upon such plan becoming effective as provided in G.S. 57D-9-23(a)(5) or G.S. 57D-9-43(a)(6).

(b) A person becomes an economic interest owner through the following:

(1) In the case of a person acquiring an economic interest from the LLC, upon the unanimous approval of the members.

(2) In the case of a person acquiring an economic interest, or portion thereof, from an interest owner, as provided in G.S. 57D-5-02.

(3) In the case of an eligible entity converting or merging into the LLC, as provided in the plan of conversion or plan of merger upon such plan becoming effective as provided in G.S. 57D-9-23(a)(5) or G.S. 57D-9-43(a)(6).

(c) To be a member, a person need not make, or have the obligation to make, any contributions to the LLC or share in any profits or losses of, or distributions from, the LLC or otherwise own an economic interest in the LLC.

"**§ 57D-3-02. Cessation of membership.**

(a) A person ceases to be a member upon the occurrence of any of the following events:

(1) The person does any of the following:

a. Becomes a debtor in bankruptcy.

b. Executes an assignment for the benefit of creditors, including the execution of a deed of trust or deed of assignment for the benefit of creditors causing all debts of the person to become due and payable under G.S. 23-1.

c. Petitions for, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or all or substantially all of the person's property.

(2) In the case of an individual, the person's death or being adjudicated by a court of competent jurisdiction as incompetent to manage his or her person or property.

(3) In the case of a member with an economic interest, the transfer or abandonment of the person's entire economic interest, excluding the liquidation of a member's economic interest in connection with the dissolution and winding up of the LLC under G.S. 57D-6-08(2), regardless of whether the transferee is or becomes a member.

(4) The person abandoning all of the rights of his ownership interest except his economic interest, or any portion thereof.

(b) Upon the occurrence of any of the events described in subdivisions (1) and (2) of subsection (a) of this section with respect to a member, that person or that person's estate, as applicable, will automatically become an economic interest owner entitled only to the economic interest attributable to the person's ownership interest, but that person or that person's estate, as applicable, and any other person who ceases to be a member shall remain liable to the LLC for any obligation the person may have under G.S. 57D-4-02, 57D-4-06, and 57D-6-12(a)(2).

"**§ 57D-3-03. Approval of members.**

The approval of all members is required to do any of the following:

(1) Adopt or amend an operating agreement.

(2) Admit any person as a member.

(3) Other than in the ordinary course of business, transfer in one transaction or a series of related transactions all or substantially all of the assets of the LLC prior to the dissolution of the LLC.

(4) Dissolve the LLC under circumstances other than those for which the LLC may be dissolved under Article 6 of this Chapter.

(5) Convert the LLC into a different eligible entity under Article 9 of this Chapter.

(6) Merge the LLC with or into another eligible entity under Article 9 of this Chapter.

"**§ 57D-3-04. Information Rights.**

(a) Subject to the other provisions of this section, each member may inspect and copy or otherwise obtain from the LLC any of the following:

(1) A copy of the articles of organization and any other writing constituting all or part of the operating agreement, including any executed power of attorney under which all or any part of the operating agreement was adopted, that are in effect or were in effect at any time during any of the LLC's preceding four fiscal years.

(2) Either, as the LLC may elect, (i) a copy of any federal, state, or local income tax returns of the LLC, including any amendments and supplements made to those returns, filed with taxing authorities that pertain to any of the LLC's preceding four fiscal years or (ii) financial statements of the LLC of the type described in subsections (a) and (b) of G.S. 55-16-20 that pertain to any of the LLC's preceding four fiscal years.

(3) A list of the names and last known business, residence, or mailing addresses of the LLC's current interest owners, their status as members or economic interest owners, the date on which each became an interest owner, and, if applicable, the dates on which a person's status as a member changed to that of an economic interest owner or the person's status as an economic interest owner changed to that of a member.

(4) Information, the type and detail of which may be prescribed by the operating agreement, from which (i) the member's capital interest may be ascertained and (ii) unless and to the extent the operating agreement does not provide otherwise, each of the other interest owners' capital interests may be ascertained, including the amount of money and a description and statement of the agreed value of any other property or services that each person who has been an interest owner has paid or otherwise transferred or has agreed to pay or otherwise transfer, and the extent to which that agreement by the interest owner has been fulfilled, to or for the benefit of the LLC in exchange for a capital interest.

(5) Information from which the status of the business and the financial condition of the LLC may be ascertained.

(b) Inspection rights and rights to copy LLC records may be exercised through a member's agent.

(c) In connection with any member or manager or other company official exercising management or other control rights or performing that person's duties to the LLC or the members, the LLC shall provide that person with, or access to, all information related to the applicable matter that is known by the LLC and is material to the proper exercise and performance of those rights and duties.

(d) To exercise inspection and other information rights, a member must sign and deliver written notice of exercise to the LLC at least seven days before the date on which the inspection is to take place. That notice must state (i) the records or other information to be inspected and copied or otherwise provided by the LLC and (ii) the purpose for, and intended use of, the information. Within the period provided in the exercise notice, the LLC shall either comply with the member's demand or deliver written notice to the member of the extent to which the LLC declines to make available any of the demanded information and the reasons for that decision.

(e) The exercise of a member's rights to inspect and copy the LLC's records is to take place at the LLC's principal office, or other location or locations selected by the LLC, during the LLC's regular hours of operation unless the LLC directs otherwise. The LLC may require a member to pay the labor, material, and other costs it incurs or would otherwise incur to comply with the member's demand to inspect and copy the LLC's records.

(f) The LLC (i) need not disclose to any member or any agent or representative of a member any information related to any other interest owner, except to the extent required by

subdivision (3) of subsection (a) of this section, but subject to the restrictions that may be imposed under clauses (ii) and (iii) of this subsection, or is not otherwise related to the member's ownership interest; (ii) may impose conditions, restrictions, limitations, and standards on the exercise of a member's inspection and other information rights, including redacting names and other confidential information, providing summaries of documents, or requiring the member to enter an agreement to not disclose and otherwise maintain the confidentiality of the information provided; and (iii) need not disclose, or otherwise make available, to a member, manager, or other company official trade secrets or other confidential information of a nature that its disclosure could adversely affect the LLC, to the extent that the managers or other applicable company officials determine the information cannot be adequately safeguarded by other means, until either there no longer is a risk that its disclosure will adversely affect the LLC or the LLC becomes able to protect itself in some other way.

"**§§ 57D-3-05 through 57D-3-19: Reserved for future codification purposes.**

"Part 2. Managers.

"**§ 57D-3-20. Management; managers.**

(a) The management of an LLC and its business is vested in the managers.

(b) Each manager has equal rights to participate in the management of the LLC and its business. Management decisions approved by a majority of the managers are controlling. The managers may make management decisions without a meeting and without notice.

(c) Subject to the direction and control of a majority of the managers as provided in G.S. 57D-3-20(b), each manager may act on behalf of the LLC in the ordinary course of the LLC's business.

(d) All members by virtue of their status as members are managers of the LLC, together with any other person or persons who may be designated as a manager in, or in the manner provided in, the operating agreement. If the operating agreement provides or otherwise contemplates that members are not necessarily managers by virtue of their status as members, then those persons designated as managers in, or in the manner provided in, the operating agreement will be managers. The operating agreement may provide that the LLC is to be managed by one or more company officials who are not designated as managers. All members will be managers for any period during which the LLC would otherwise not have any managers or other company officials.

(e) A person shall continue to serve as a manager until the earliest of the following occurs: (i) the person's resignation as a manager; (ii) any event described in G.S. 57D-3-02(a) with respect to the person, substituting therein the term "manager" in lieu of the term "member" for purposes of this subsection; or (iii) that person, or the member or all of a class or group of less than all of the members who appointed the person to be a manager, ceases to be a member.

"**§ 57D-3-21. Duties of company officials; standards of conduct.**

(a) The managers shall manage the LLC and conduct the LLC's business in accordance with the operating agreement.

(b) Each manager shall discharge that person's duties (i) in good faith; (ii) with the care an ordinary prudent person in a like position would exercise under similar circumstances; and (iii) subject to the operating agreement, in a manner the manager believes to be in the best interests of the LLC. In discharging such duties, a manager is entitled to rely on information, opinions, reports, or statements, including financial statements or other financial data, if prepared or presented by any person or group of persons the manager believes to be reliable and competent in such matters and the manager does not have actual knowledge concerning the matter in question that makes such reliance unwarranted.

(c) A manager is not liable to the LLC for any act or omission as a manager if the manager acts in compliance with this section.

"**§ 57D-3-22. Delegation of authority of managers and other company officials.**

The managers having general power to manage the LLC may delegate authority to act on behalf of the LLC to persons other than managers. The delegation of authority may be general or limited to specific matters. No such delegation of authority will cause any manager to cease to be a manager or cause the person to whom authority is so delegated to be a manager. Any duties of the managers will apply with respect to their delegation to, and direction and control of, any person to whom they delegate any of their responsibilities.

"§ 57D-3-23 Application to company officials.

G.S. 57D-3-20(e), 57D-3-21, and 57D-3-22 shall apply to company officials who are not managers by substituting the term "company official" in lieu of the term "manager" in each place where the term appears in those provisions.

"Part 3. Liability.

"§ 57D-3-30. Liability of members, managers, and other company officials to third parties.

A person who is an interest owner, manager, or other company official is not liable for the obligations of the LLC solely by reason of being an interest owner, manager, or other company official.

"§ 57D-3-31. Indemnification.

(a) An LLC shall indemnify a person who is wholly successful, on the merits or otherwise, in the defense of any proceeding to which the person was a party because the person is or was a member or a manager or other company official if the person also is or was an interest owner at the time to which the claim relates, acting within the person's scope of authority as a manager, member, or other company official against expenses incurred by the person in connection with the proceeding.

(b) An LLC shall reimburse a person who is or was a member for any payment made, and indemnify the person for any obligation, including any judgment, settlement, penalty, fine, or other cost, incurred or borne in the authorized conduct of the LLC's business or preservation of the LLC's business or property, whether acting in the capacity of a manager, member, or other company official, if, in making the payment or incurring the obligation, the person complied with the duties and standards of conduct (i) under G.S. 57D-3-21, as modified or eliminated by the operating agreement, or (ii) otherwise imposed by this Chapter or other applicable law.

"Article 4.

"Contributions and Distributions.

"§ 57D-4-01. Form of contributions.

An interest owner may make contributions to the LLC in any form, including (i) money or other property, services rendered, or any other direct or indirect benefit to the LLC and (ii) promissory notes or other obligations to transfer money or other property, perform services, or provide any other direct or indirect benefits to the LLC.

"§ 57D-4-02. Liability for contributions.

If an interest owner has contributed a promissory note or other obligation to transfer money or other property or to perform services or provide other benefits to the LLC and the interest owner would, but for this section, be excused from the performance of that obligation by reason of the interest owner's death or disability or other supervening impossibility or impracticability of performance under contract or other applicable law, the LLC may require the interest owner to pay to the LLC an amount of money equal to the value of the unperformed portion of the promised performance or exercise remedies available under other applicable law.

"§ 57D-4-03. Interim distributions.

Distributions to interest owners before the dissolution and winding up of the LLC, or, as provided in G.S. 57D-6-08(2), after the dissolution of the LLC, may be made at such times and in such amounts as determined by the LLC, in proportion to the ratios that the aggregate

contribution amounts of the interest owners bear to one another, determined immediately before the time that the distributions are to be made.

"**§ 57D-4-04. Distribution in kind.**

An LLC may distribute property other than money if the interest owners receive interests of identical character in, or units of identical character of, such property in the same proportions as if the distribution were being made in money equal to the net value of the property being distributed.

"**§ 57D-4-05. Restrictions on making distributions.**

(a) No distribution may be made by an LLC if, after giving effect to the distribution, either of the following would occur:

(1) The LLC would not be able to pay its debts as they become due in the ordinary course of business.

(2) The LLC's total liabilities would exceed the value of the LLC's assets.

(b) For purposes of subsection (a) of this section, the following applies:

(1) An LLC may determine the value of its assets, the amount of its liabilities, and the time payments of its liabilities are to be made using accounting practices and principles that are reasonable under the circumstances.

(2) The amount of a liability for which the creditor's recourse is limited to specific collateral will not exceed the value of the collateral.

(c) Except as provided in subsection (e) of this section, the effect of a distribution under subsection (a) of this section is measured (i) in the case of any distribution of indebtedness, as of the date the indebtedness is distributed and (ii) in all other cases, either as of the date the distribution is authorized if the distribution occurs within 120 days after the date authorization is made or as of the date the distribution is made if payment occurs more than 120 days after the date authorization is made.

(d) Except as provided in subsection (e) of this section, an LLC's indebtedness issued as a distribution made in accordance with this section is a liability of the LLC to be paid under the law applicable to debtors and creditors.

(e) An LLC's indebtedness issued as a distribution is not a liability of the LLC for purposes of subsection (a) of this section if its terms provide that payment of principal and interest are to be made only to the extent that at the time of such payment a distribution to interest owners could then be made under this section. Subsection (a) of this section applies to each payment of principal or interest made under any indebtedness described in the preceding sentence and not to the issuance of the indebtedness.

"**§ 57D-4-06. Liability for wrongful distributions.**

(a) If a distribution is made in violation of G.S. 57D-4-05, then each manager or other company official who alone or with other company officials had the authority to and did approve the distribution is personally liable to the LLC, but not any other person, for the amount of the distribution that exceeds the amount that could have been distributed without violating G.S. 57D-4-05 only if it is established that the company official did not act in compliance with G.S. 57D-3-21, without regard to any modification or elimination of such duties and standards of conduct under the operating agreement. Except as otherwise provided in G.S. 57D-11-03(d), a proceeding under this subsection is barred unless it is commenced within two years after the distribution.

(b) Each manager or other company official held liable under subsection (a) of this section for a wrongful distribution is entitled to the following:

(1) Contribution from each other manager or other company official who could be held liable under subsection (a) of this section for the wrongful distribution.

(2) Reimbursement from each interest owner for the amount the interest owner received knowing that the distribution was made in violation of G.S. 57D-4-05.

"**§ 57D-4-07. Right to distribution.**

An interest owner who is entitled to receive a distribution has the status of, and is entitled to all remedies available to, a creditor of the LLC with respect to the distribution.

"Article 5.

"Transfer of Ownership Interests; Withdrawal.

"**§ 57D-5-01. Nature of ownership interest.**

An ownership interest is personal property.

"**§ 57D-5-02. Transfer of economic interests.**

An economic interest is transferable in whole or in part. The transfer of an economic interest, or portion thereof, does not entitle the transferee to become or exercise any rights of a member other than to receive the economic interest or the portion thereof assigned to the transferee.

"**§ 57D-5-03. Rights of judgment creditor.**

(a) On application to a court of competent jurisdiction by any judgment creditor of an interest owner, the court may charge the economic interest of an interest owner with the payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the right to receive the distributions that otherwise would be paid to the interest owner with respect to the economic interest.

(b) A charging order is a lien on the judgment debtor's economic interest to the extent provided in this section.

(c) This Chapter does not deprive any interest owner of a right, including any benefit, of any exemption law applicable to the interest owner's ownership interest.

(d) The entry of a charging order is the exclusive remedy by which a judgment creditor of an interest owner may satisfy the judgment from or with the judgment debtor's ownership interest.

"**§ 57D-5-04. Certain rights and liabilities of economic interest owners and transferors of ownership interests.**

(a) An economic interest owner may become a member only with that person's approval and through any of the following:

(1) As provided in the operating agreement.

(2) By the approval of the members as provided in G.S. 57D-3-03(2).

(3) In the manner permitted under G.S. 57D-6-01(3) if the LLC ceases to have any members.

(b) Except as provided in the following sentence of this subsection, a transferee of an ownership interest, or portion thereof, who is or becomes a member has, to the extent transferred to the transferee, (i) the rights and powers and is subject to the restrictions and liabilities of a member under the operating agreement and this Chapter with respect to the transferred ownership interest and (ii) is liable for any obligations of the transferor to make contributions under G.S. 57D-4-02 with respect to the transferred ownership interest. A transferee of an ownership interest, or portion thereof, is not liable for obligations of the transferor under G.S. 57D-4-06 or obligations that are unknown to the transferee at the time the transferee became a member.

(c) Whether or not a transferee of an ownership interest, or portion thereof, is or becomes a member, (i) the transferor is not released from liability that the transferor may have under G.S. 57D-4-02, G.S. 57D-4-06, or under the operating agreement and (ii) the transferee takes the ownership interest subject to those liabilities.

"**§ 57D-5-05. No right to voluntarily withdraw capital or terminate obligations.**

Except as otherwise required by this Chapter or other applicable law, an interest owner may not (i) withdraw, or compel the company to purchase or otherwise liquidate, all or any portion of the equity owner's capital interest or (ii) extinguish, abandon, or otherwise diminish the interest owner's obligations in respect of the interest owner's ownership interest.

"Article 6.

"Dissolution.

"**§ 57D-6-01. Dissolution.**

An LLC is dissolved upon the occurrence of any of the following:

(1) An event causing the LLC to dissolve under the operating agreement.

(2) If the LLC never had a member, as approved by the organizers under G.S. 57D-2-20(c).

(3) If the LLC ever had a member, the 90th day after the day on which the LLC ceases to have any members, unless within that 90-day period, one or more persons are admitted as a member or members by the person, including the former member, owning or otherwise controlling the ownership interest of the last member.

(4) Entry of a decree of judicial dissolution under G.S. 57D-6-05.

(5) Subject to G.S. 57D-6-06(c), the filing by the Secretary of State of a certificate of dissolution under G.S. 57D-6-06.

"**§ 57D-6-02. Grounds for judicial dissolution.**

The superior court may dissolve an LLC in a proceeding brought by either of the following:

(1) The Attorney General, if it is established that (i) the LLC obtained its articles of organization through fraud or (ii) the LLC continued to exceed or abuse the authority conferred on it by law 20 or more days after the date the Attorney General delivered to the LLC written notice of the LLC's unauthorized acts.

(2) A member, if it is established that (i) it is not practicable to conduct the LLC's business in conformance with the operating agreement and this Chapter or (ii) liquidation of the LLC is necessary to protect the rights and interests of the member.

"**§ 57D-6-03. Procedure for judicial dissolution.**

(a) A proceeding under G.S. 57D-6-02 to dissolve an LLC is to be brought against the LLC. The party bringing the dissolution proceeding may not join an interest owner or company official as a party to the proceeding unless, and to the extent, relief is sought against the interest owner or company official for that person's own actions.

(b) Venue for a proceeding brought under G.S. 57D-6-02 to dissolve an LLC lies in (i) the county in this State where the LLC's principal office is located, which the party bringing the dissolution proceeding may assume to be the principal place of business disclosed in the LLC's most recent annual report or, if no annual report for the LLC has ever been filed by the Secretary of State, as provided in the LLC's articles of organization or (ii) if the LLC has no principal office in this State, and the most recent filings of the Secretary of State do not state that the LLC's principal office is located in this State, the county in this State where those filings state the LLC's registered office is or was last located.

(c) In connection with a proceeding brought under G.S. 57D-6-02 to dissolve an LLC, the court may issue injunctions, appoint one or more persons to serve as receiver with powers and duties the court may grant under G.S. 57D-6-04, or take other action required to manage the LLC and its assets.

(d) In any proceeding brought by a member under clause (ii) of G.S. 57D-6-02(2) in which the court determines that dissolution is necessary, the court will not order dissolution if, after the court's decision, the LLC or one or more other members elect to purchase the

ownership interest of the complaining member at its fair value in accordance with any procedures the court may provide.

"**§ 57D-6-04. Receivership.**

(a) The court in a proceeding brought under G.S. 57D-6-02 to dissolve an LLC, or in a proceeding brought under G.S. 57D-6-07(c), may appoint one or more persons to serve as a receiver to manage the business of the LLC pending the court's decision on dissolution and, if dissolution is decreed by the court, to wind up the LLC. Before appointing a person to serve as a receiver of an LLC, the court shall hold a hearing on the subject after delivering notice, or causing the party who brought the dissolution proceeding to deliver notice, of the hearing to all parties and any other interested persons designated by the court.

(b) The court may require the receiver to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver in its appointing order, which the court from time to time may amend. The powers may include the authority to do any of the following:

(1) Dispose of all or any portion of the assets of the LLC wherever located, at a public or private sale.

(2) Sue and defend in the receiver's own name as receiver of the LLC.

(3) Exercise all of the powers of the LLC to the extent necessary to manage the business of the LLC or wind up the LLC following dissolution.

(d) The court may order the LLC to compensate the receiver and reimburse the receiver's expenses, including the fees and expenses of attorneys and other professionals retained by the receiver.

"**§ 57D-6-05. Decree of judicial dissolution.**

(a) If, after a hearing, the court determines that one or more grounds for judicial dissolution described in G.S. 57D-6-02 exist and the alternative to judicial dissolution under G.S. 57D-6-03(d) is not applicable, it may enter a decree dissolving the LLC, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State for filing.

(b) After entering the decree of dissolution, the court shall direct the winding up of the LLC in accordance with G.S. 57D-6-07 and G.S. 57D-6-08 and may direct notification of claimants in accordance with G.S. 57D-6-10, 57D-6-11, and 57D-6-13.

"**§ 57D-6-06. Administrative dissolution.**

(a) The Secretary of State may administratively dissolve an LLC if the Secretary of State determines that the LLC has done any of the following:

(1) The LLC has not paid within 60 days after they are due any penalties, fees, or other payments due under this Chapter.

(2) The LLC does not deliver its annual report to the Secretary of State on or before the 60th day after it is due.

(3) The LLC has been without a registered agent or registered office in this State for 60 days or more.

(4) The LLC has not notified the Secretary of State within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

(5) The LLC knowingly fails or refuses to answer completely and accurately within the time prescribed in this Chapter interrogatories propounded by the Secretary of State in accordance with the provisions of this Chapter.

(b) If the Secretary of State determines that one or more grounds exist under subsection (a) of this section for dissolving an LLC, the Secretary of State shall mail the LLC notice of that determination. If, within 60 days after the notice is mailed, the LLC does not correct each ground for dissolution or demonstrate to the satisfaction of the Secretary of State that each ground does not exist, the Secretary of State shall administratively dissolve the LLC by signing

a certificate of dissolution that recites the ground or grounds for dissolution and the effective date of the dissolution. The Secretary of State shall file the original certificate of dissolution and mail a copy to the LLC.

(c) An LLC administratively dissolved under this section may apply to the Secretary of State for reinstatement. The procedures for reinstatement and for the appeal of any denial of the LLC's application for reinstatement are the same as those applicable to a domestic corporation under G.S. 55-14-22, 55-14-23, and 55-14-24. If, at the time the LLC applies for reinstatement, the name of the LLC is not distinguishable from the name of another entity authorized to be used under G.S. 55D-21, then the LLC must change its name to a name that is distinguishable on the records of the Secretary of State from the name of the other entity before the Secretary of State may prepare a certificate of reinstatement. The effect of reinstatement of an LLC is the same as for a domestic corporation under G.S. 55-14-22.

"**§ 57D-6-07. Winding up.**

(a) After its dissolution, an LLC shall wind up. The winding up may include continuing the business of the LLC for a period of time.

(b) Subject to subsection (c) of this section, the managers or other applicable company officials shall wind up the LLC after its dissolution. If the dissolved LLC has no managers or other applicable company officials, the person, including a former member, owning or otherwise controlling the ownership interest of the person who was the last member of the LLC may serve, or appoint one or more persons to serve, as manager to wind up the LLC.

(c) On application of the person, including a former member, owning or otherwise controlling the ownership interest of the last member, the superior court may wind up the LLC, or appoint a receiver under G.S. 57D-6-04 to wind up the LLC. Venue for a proceeding on such application lies in (i) the county in this State where the LLC's principal office is located, which the person bringing the dissolution proceeding may assume to be the principal place of business disclosed in the LLC's most recent annual report or, if no annual report has ever been filed for the LLC by the Secretary of State, as provided in the LLC's articles of organization, or (ii) if the LLC has no principal office in this State and the most recent filings of the Secretary of State do not state that the LLC's principal office is located in this State, the county in this State where those filings state the LLC's registered office is or was last located. The court shall order notice of the proceeding be given by the person making the application to all interested persons designated by the court.

(d) The person or persons charged with winding up the LLC shall collect the LLC's assets, dispose of the LLC's properties that will not be distributed in kind, discharge or make provision for discharging the LLC's liabilities, and distribute the LLC's remaining assets as provided in G.S. 57D-6-08(2).

(e) The dissolution of the LLC does not transfer title to the LLC's assets, prevent transfer of ownership interests, or subject its managers or other company officials to standards of conduct different from those prescribed in Article 3 of this Chapter.

(f) The dissolution of the LLC does not prevent commencement of a proceeding by or against the LLC in its own name, abate or suspend a proceeding by or against the LLC, or terminate the authority of the registered agent of the LLC.

"**§ 57D-6-08. Marshalling of assets.**

During the winding up of an LLC, the LLC's assets are to be applied as follows:

(1) First, to creditors, including interest owners, managers, and other company officials who are creditors, in satisfaction, whether by payment or making provision for payment, of all liabilities of the LLC.

(2) The balance to the interest owners as distributions made in the manner provided in G.S. 57D-4-03.

"**§ 57D-6-09. Articles of dissolution.**

Upon dissolution of an LLC, the LLC shall deliver articles of dissolution to the Secretary of State for filing. The articles of dissolution must provide the following information:

(1) The name of the LLC.

(2) The effective date of the dissolution.

(3) Any other information the LLC elects to provide.

"**§ 57D-6-10. Known claims against dissolved LLC.**

(a) A dissolved LLC for which articles of dissolution, a certificate of dissolution, or a decree of dissolution filed by the Secretary of State has become effective may dispose of known claims against it by notifying claimants in writing of the dissolution. The notice must do the following:

(1) Describe information that must be included in a claim.

(2) Provide an address where claims may be sent.

(3) State the deadline, which may not be fewer than 120 days from the date of the notice, by which the dissolved LLC must receive the claim.

(4) State that the claim will be barred if not received by the deadline.

(b) A claim against the dissolved LLC is barred if either of the following occurs:

(1) The LLC does not receive the claim by the deadline from a claimant who received notice under subsection (a) of this section.

(2) A claimant whose claim was rejected by written notice from the dissolved LLC does not commence a proceeding in a proper forum to enforce the claim within 90 days from the date of receipt of the rejection notice.

(c) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after dissolution.

"**§ 57D-6-11. Unknown and certain other claims against dissolved LLC.**

(a) A dissolved LLC for which articles of dissolution, a certificate of dissolution, or a decree of dissolution filed by the Secretary of State has become effective may publish notice of its dissolution and request that persons with claims against the LLC present them in accordance with the notice. The notice must meet the following requirements:

(1) Be published one time in a newspaper of general circulation in the county in this State where the LLC's principal office is or was last located, or, if the LLC never had a principal office in this State, the county in this State where the LLC's registered office is or was last located.

(2) Describe the information that must be included in a claim and provide an address where the claim may be sent.

(3) State that a claim against the LLC will be barred unless a proceeding to enforce the claim is commenced in a proper forum within five years after the publication of the notice.

(b) If the dissolved LLC publishes a newspaper notice in accordance with subsection (a) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding in a proper forum to enforce the claim against the dissolved LLC within five years after the publication date of the newspaper notice:

(1) A claimant who did not receive written notice under G.S. 57D-6-10.

(2) A claimant whose claim was timely sent to the dissolved LLC but not acted on.

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of the filing by the Secretary of State of the articles of dissolution.

"**§ 57D-6-12. Enforcement of claims.**

(a) A claim against a dissolved LLC under G.S. 57D-6-10 or G.S. 57D-6-11 may be enforced against either of the following:

(1) Against the dissolved LLC to the extent of its undistributed assets, including coverage under any insurance policy.

(2) Except as provided in G.S. 57D-6-13(d), against the interest owners of the dissolved LLC in proportion to but not in excess of the distributions, if any, made to each interest owner following the LLC's dissolution.

(b) G.S. 57D-6-10 and G.S. 57D-6-11 do not extend any applicable period of limitation.

"**§ 57D-6-13. Court proceedings for contingent claims.**

(a) A dissolved LLC that has published a notice under G.S. 57D-6-11 may file an application with the superior court of the county in this State where the LLC's principal office is or was last located or, if the LLC never had a principal office in this State, the county in this State where the LLC's registered office is or was last located, for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved LLC or that are based on an event occurring after dissolution but that, based on the facts known to the dissolved LLC, are estimated to arise after dissolution. Provisions need not be made for any claim that is or is anticipated to be barred under G.S. 57D-6-11(b).

(b) Within 10 days after the filing of the application, the dissolved LLC shall deliver notice of the proceeding to each claimant holding a claim described in subsection (a) of this section whose contingent claim is shown on the records of the dissolved LLC.

(c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The dissolved LLC shall pay the fees and expenses of the guardian, including expert witness fees.

(d) Provision by the dissolved LLC for security in the amount and the form ordered by the court under subsection (a) of this section satisfies the dissolved LLC's obligations with respect to claims described in subsection (a) of this section, and the claims may not be enforced against an interest owner who receives assets in liquidation of the LLC.

"Article 7.

"Foreign LLCs.

"Part 1. Certificate of Authority.

"**§ 57D-7-01. Authority to transact business.**

(a) A foreign LLC may not transact business in this State until it obtains a certificate of authority from the Secretary of State.

(b) Without excluding other activities that may not constitute transacting business in this State, a foreign LLC is not considered to be transacting business in this State for the purposes of this Chapter by reason of conducting in this State any one or more of the following activities:

(1) Maintaining or defending any proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

(2) Holding meetings of its members, managers, or other company officials or carrying on other activities concerning its internal affairs.

(3) Maintaining bank accounts or borrowing money in this State, with or without providing security for repayment or other performance and without regard to the frequency of such transactions.

(5) Maintaining offices or agencies for the exchange or other transfer and registration of all or any class or portion of its membership or other equity or beneficial ownership interests or securities, or appointing and maintaining trustees or depositories with relation to its membership or other equity or beneficial ownership interests or securities.

(6) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance to be made outside of the territory of this State to become binding contracts.

(7) Making or investing in loans with or without security, including servicing of mortgages or deeds of trust through independent agencies within the territory of this State, conducting foreclosure proceedings and selling or acquiring property in foreclosure sales, and managing or renting property acquired in foreclosure sales in connection with, and in furtherance of, efforts to sell and otherwise liquidate such property, provided no office or agency of the foreign LLC is maintained in this State.

(8) Taking security for or collecting debts due the foreign LLC or enforcing any rights the foreign LLC may have in property subject to or otherwise providing security with respect to the repayment or other performance of the debt obligations.

(9) Transacting business in interstate commerce.

(10) Conducting an isolated transaction completed within a period of six months but not repeated transactions of a similar nature.

(11) Selling property or services through independent contractors.

(12) Owning real or personal property.

"**§ 57D-7-02. Consequences of transacting business without authority.**

(a) No foreign LLC transacting business in this State without permission obtained through a certificate of authority may maintain any proceeding in any court of this State unless the foreign LLC has obtained a certificate of authority prior to trial. An issue arising under this subsection must be raised by motion and determined by the trial judge prior to trial.

(b) A foreign LLC failing to obtain a certificate of authority as required by this Chapter is liable to this State for the years, including any partial year, during which it transacted business in this State without a certificate of authority in an amount equal to all fees and taxes that would have been imposed by law on the foreign LLC had it duly applied for and received such permission, plus interest and all penalties imposed by law for failure to pay such fees and taxes. In addition, the foreign LLC is liable for a civil penalty of ten dollars ($10.00) for each day, but not to exceed a total of one thousand dollars ($1,000) for each year, including any partial year, it transacts business in this State without a certificate of authority. The Attorney General may bring actions to recover all amounts due this State under the provisions of this subsection. The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(c) Notwithstanding subsection (a) of this section, the failure of a foreign LLC to obtain a certificate of authority does not impair the validity of its acts or prevent it from defending any proceeding in this State.

(d) The Secretary of State shall require every foreign LLC transacting business in this State to comply with the provisions of this Chapter. The Secretary of State may conduct such investigations as may be necessary to ascertain compliance by foreign LLCs with this Chapter.

"**§ 57D-7-03. Application for certificate of authority.**

(a) A foreign LLC may apply for a certificate of authority to transact business in this State by delivering an application to the Secretary of State for filing. The application must provide the following information:

(1) The name of the foreign LLC and, if different, a name that satisfies the requirements of Article 3 of Chapter 55D of the General Statutes.

(2) The name of the jurisdiction under whose law it is organized.

(3) The street address, and the mailing address if different from the street address, of its principal office, if any, and the county in which the principal office, if any, is located.

(4) The street address, and the mailing address if different from the street address, of its registered office in this State and the name of its registered agent at that office.

(5) The names, titles, and business addresses of the foreign LLC's principal company officials.

(b) A foreign LLC shall deliver with the completed application for the certificate of authority a certificate of existence, or a document of similar import, duly authenticated by the secretary of state or other official having custody of limited liability company records in the jurisdiction under whose law it is organized.

(c) If the Secretary of State finds that the application conforms to law, the Secretary of State, when all taxes, fees, and other payments have been tendered as prescribed in this Chapter, shall do the following:

(1) File the application and the certificate of existence, or a document of similar import as described in subsection (b) of this section, as provided in G.S. 55D-15.

(2) Issue a certificate of authority to transact business in this State to which the Secretary of State shall affix the exact or conformed copy of the application.

(3) Send to the foreign LLC or its representative the certificate of authority, together with the exact or conformed copy of the application affixed thereto.

"**§ 57D-7-04. Amended certificate of authority.**

(a) A foreign LLC authorized to transact business in this State shall obtain an amended certificate of authority from the Secretary of State if it changes either of the following:

(1) Its name.

(2) The jurisdiction of its organization.

(b) A foreign LLC may apply for an amended certificate of authority by delivering an application to the Secretary of State for filing that sets forth the following:

(1) The name of the foreign LLC and, if different, the name provided in the foreign LLC's certificate of authority that the foreign LLC is authorized to use to transact business in this State.

(2) The name of the jurisdiction under whose law it is organized.

(3) The date it was originally authorized to transact business in this State.

(4) A statement of the change or changes being made.

(c) Except for the content of the application, the requirements of G.S. 57D-7-03 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

"**§ 57D-7-05. Effect of certificate of authority.**

(a) A certificate of authority authorizes the foreign LLC to which it is issued to transact business in this State subject to the right of the State to revoke the certificate as provided in this Chapter. A foreign LLC may qualify in this State as executor, administrator, or guardian, or as trustee under the will of any person domiciled in this State at the time of that person's death only in accordance with applicable provisions of Article 24 of Chapter 53 of the General Statutes.

(b) A foreign LLC qualifying as testamentary trustee or executor under the provisions of this section shall appoint a process agent and file such appointment with the court as required by G.S. 28A-4-2(4).

(c) Except as otherwise provided by this Chapter, a foreign LLC with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, an LLC of like character.

"**§ 57D-7-06. Registered office and registered agent of foreign LLC.**

Each foreign LLC authorized to transact business in this State must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article.

"**§§ 57D-7-07 through 57D-7-19: Reserved for future codification purposes.**

"Part 2. Withdrawal.

"**§ 57D-7-20. Withdrawal of foreign LLC.**

(a) A foreign LLC authorized to transact business in this State may not withdraw from this State until it obtains a certificate of withdrawal from the Secretary of State.

(b) A foreign LLC authorized to transact business in this State may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must state the following:

(1) The name of the foreign LLC and, if different, the name provided in the foreign LLC's certificate of authority that the foreign LLC is authorized to use to transact business in this State.

(2) The name of the jurisdiction under whose law it is organized.

(3) That the foreign LLC is not transacting business in this State and that it surrenders its authority to transact business in this State.

(4) That the foreign LLC revokes the authority of its registered agent to accept service of process and consents to service of process in any proceeding based on any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign LLC was authorized to transact business in this State, being made on such foreign LLC by service thereof on the Secretary of State.

(5) A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under subdivision (4) of this subsection.

(6) A commitment to deliver to the Secretary of State for filing a statement of any subsequent change in its mailing address.

(c) If the Secretary of State finds that the application conforms to law, the Secretary of State shall do the following:

(1) File the application for the certificate of withdrawal as provided in G.S. 55D-15.

(2) Issue a certificate of withdrawal to which the Secretary of State shall affix the exact or conformed copy of the application.

(3) Send to the foreign LLC or its representative the certificate of withdrawal together with the exact or conformed copy of the application affixed thereto.

(d) After the withdrawal of the foreign LLC is effective, service of process on the Secretary of State in accordance with subsection (b) of this section may be made by delivering to the Secretary of State, or to any clerk authorized by the Secretary of State to accept service of process, duplicate copies of that process and the fee required by G.S. 57D-1-22(b). Upon receipt of process in the manner provided in this subsection, the Secretary of State shall mail a copy of the process by registered or certified mail, return receipt requested, to the foreign LLC at the mailing address designated pursuant to subsection (b) of this section.

"**§ 57D-7-21. Withdrawal of foreign LLC by reason of a merger, consolidation, or conversion; qualification of successor.**

(a) Whenever a foreign LLC authorized to transact business in this State ceases its separate existence as a result of a statutory merger, consolidation, or other reorganization permitted by the law of the jurisdiction under which it is organized, or converts into another type of entity as permitted by that law, the surviving or resulting entity shall apply for a certificate of withdrawal for the foreign LLC by delivering to the Secretary of State for filing a copy of the articles of merger, consolidation, or other reorganization or conversion or a certificate reciting the facts of the merger, consolidation, or other reorganization or conversion, duly authenticated by the Secretary of State or other official having custody of limited liability company records in the jurisdiction under the law of which the foreign LLC was organized. If the surviving or resulting entity is not authorized to transact business in this State, the

application for the certificate of withdrawal must state, and therefore modify the information described below that otherwise is required to be provided under G.S. 57D-7-20(b) to the extent of conflict, the following:

(1) The name of the foreign LLC and, if different, the name provided in the foreign LLC's certificate of authority that the foreign LLC is authorized to use to transact business in this State.

(2) The name of the jurisdiction under whose law it is organized.

(3) The type of entity and name of the surviving or resulting entity.

(4) That the surviving or resulting entity is not transacting business in this State and the foreign LLC surrenders its authority to transact business in this State.

(5) That the surviving or resulting entity revokes the authority of the foreign LLC's registered agent to accept service of process and consents to service of process in any proceeding based on any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign LLC was authorized to transact business in this State, being made on the surviving or resulting entity by service thereof on the Secretary of State.

(6) A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under subdivision (5) of this subsection.

(7) A commitment to deliver to the Secretary of State for filing a statement of any subsequent change in the surviving or resulting entity's mailing address.

(b) If the Secretary of State finds that the articles or certificate described in subsection (a) of this section relating to the merger, consolidation, or other reorganization or conversion and the application for the certificate of withdrawal conform to law, the Secretary of State shall do the following:

(1) File the articles or certificate and the application for the certificate of withdrawal as provided in G.S. 55D-15.

(2) Issue a certificate of withdrawal.

(3) Send to the surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto.

(c) After the withdrawal of the foreign LLC is effective, service of process on the Secretary of State in accordance with subsection (a) of this section is to be made by delivering to the Secretary of State, or to any clerk authorized by the Secretary of State to accept service of process, duplicate copies of process and the fee required by G.S. 57D-1-22(b). Upon receipt of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving or resulting entity at the mailing address designated pursuant to subsection (a) of this section.

"**§ 57D-7-22. Authority of Attorney General.**

The Attorney General may maintain an action to restrain a foreign LLC from transacting business in this State in violation of this Article.

"**§§ 57C-7-23 through 57C-7-29: Reserved for future codification purposes.**

"Part 3. Revocation of Certificate of Authority.

"**§ 57D-7-30. Grounds for revocation.**

(a) The Secretary of State may commence a proceeding under G.S. 57D-7-31 to revoke the certificate of authority of a foreign LLC authorized to transact business in this State if any of the following occurs:

(1) The foreign LLC is delinquent in delivering its annual report.

(2) The foreign LLC does not pay within 60 days after they are due any penalties, fees, or other payments due under this Chapter.
(3) The foreign LLC is without a registered agent or registered office in this State for 60 days or more.
(4) The foreign LLC does not inform the Secretary of State under G.S. 55D-31 or G.S. 55D-32 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance.
(5) A company official or agent of the foreign LLC signed a document that the company official or agent knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing.
(6) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of the records of the limited liability companies in the state or country under whose law the foreign LLC is organized stating that it has been dissolved or merged into another entity.
(7) The foreign LLC is exceeding the authority conferred upon it by this Chapter.
(8) The foreign LLC knowingly fails or refuses to answer truthfully and fully within the time prescribed in this Chapter interrogatories propounded by the Secretary of State in accordance with the provisions of this Chapter.

(b) Nothing herein repeals or modifies any provision of the Revenue Act relating to the suspension of the certificate of authority of foreign LLCs for failure to comply with the provisions thereof.

"**§ 57D-7-31. Procedure for and effect of revocation.**

(a) If the Secretary of State determines that one or more grounds exist under G.S. 57D-7-30 for revocation of a certificate of authority, the Secretary of State shall mail to the foreign LLC written notice of that determination.

(b) If the foreign LLC does not correct each ground for revocation or demonstrate to the satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within 60 days after notice is mailed, the Secretary of State may revoke the foreign LLC's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and mail a copy to the foreign LLC.

(c) The authority of a foreign LLC to transact business in this State ceases on the date shown on the certificate revoking its certificate of authority.

(d) The Secretary of State's revocation of a foreign LLC's certificate of authority appoints the Secretary of State as the foreign LLC's agent for service of process in any proceeding based on a cause of action arising in this State or arising out of business transacted in this State during the time the foreign LLC was authorized to transact business in this State. The Secretary of State shall then proceed in accordance with G.S. 55D-33.

(e) Revocation of a foreign LLC's certificate of authority does not terminate the authority of the registered agent of the foreign LLC.

(f) The foreign LLC will not be granted a new certificate of authority until each ground for revocation has been substantially corrected to the satisfaction of the Secretary of State.

"**§ 57D-7-32. Appeal from revocation.**

(a) A foreign LLC may appeal the Secretary of State's revocation of its certificate of authority to the Superior Court of Wake County within 30 days after the certificate of revocation is mailed to the foreign LLC by the Secretary of State. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to set aside the revocation. Copies of the foreign LLC's certificate of authority and the Secretary of State's

certificate of revocation are to be attached to the petition. No service of process on the Secretary of State is required except for the filing of the petition as set forth in this subsection. The appeal to the superior court will be determined by a judge of the superior court upon such further evidence, notice, and opportunity to be heard, if any, as the court may deem appropriate under the circumstances. The foreign LLC will have the burden of establishing that it is entitled to have the revocation set aside.

(b) Upon consideration of the petition and any response made by the Secretary of State, the court may, prior to entering final judgment, order the Secretary of State to set aside the revocation or may take any other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

"**§ 57D-7-33. Inapplicability of Administrative Procedure Act.**

The Administrative Procedure Act shall not apply to any proceeding or appeal provided for in G.S. 57D-7-30 through G.S. 57D-7-32.

"Article 8.

"Derivative Actions.

"**§ 57D-8-01. Member derivative actions.**

(a) Subject to the provisions of G.S. 57D-8-02 and G.S. 57D-8-03, a member may bring a derivative action if the following conditions are met:

(1) Either (i) the member was a member of the LLC at the time of the act or omission for which the proceeding is brought or (ii) all or any portion of the member's ownership interest devolves by operation of law from an ownership interest that was owned by a member at that time.

(2) The member made written demand on the LLC to take suitable action, and either (i) the LLC notified the member that the member's demand was rejected, (ii) 90 days have expired from the date the demand was made, or (iii) irreparable injury to the LLC would result by waiting for the expiration of the 90-day period.

(b) For purposes of this Article, a "derivative action" or a "derivative proceeding" is a proceeding brought in the superior court of this State in the right of an LLC or, to the extent provided in G.S. 57D-8-06, in the right of a foreign LLC, to recover a judgment in favor of the LLC or, if applicable, the foreign LLC.

"**§ 57D-8-02. Stay of proceedings.**

If the LLC commences an inquiry into the allegations set forth in the demand or complaint, the court may stay a derivative proceeding.

"**§57D-8-03. Dismissal.**

(a) The court shall dismiss a derivative proceeding on motion of the LLC if one of the groups specified in subsection (b) or (f) of this section determines after conducting an inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interest of the LLC.

(b) The inquiry and determination with respect to the demanded action is to be made either (i) pursuant to subsection (f) of this section or (ii) by either of the following:

(1) A majority vote or other approval of those persons who have the authority, individually or collectively, to cause the LLC to bring an action in the superior court of this State for the recovery or other remedy sought in the derivative action and are independent.

(2) A majority vote of a committee composed of two or more independent persons appointed by a majority vote or other approval of those persons described in subdivision (b)(1) of this section.

(c) For purposes of this section, none of the following factors by itself will necessarily preclude a person from being considered to be independent:

(1) The nomination or election of the person by persons who are defendants in the derivative proceeding or against whom action is demanded.

(2) The naming of the person as a defendant in the derivative proceeding or as a person against whom action is demanded.

(3) The approval by the person of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the person.

(d) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a member, the complaint must allege particular facts that if proved would preclude the court from dismissing the derivative proceeding under subsection (a) of this section. Defendants may make a motion to dismiss a complaint under subsection (a) of this section for failure to comply with this subsection. Prior to the court's ruling on such a motion to dismiss, the plaintiff may engage in discovery only to the extent it is germane and necessary to develop facts that establish that the dismissal of the derivative proceeding under subsection (a) of this section is unwarranted.

(e) If a majority of the persons having the authority to cause the LLC to bring a proceeding in the superior court of this State for the recovery or other remedy sought in the derivative action are independent, then the plaintiff will have the burden of proving that the requirements of subsection (a) of this section have not been met, but if a majority of such persons are not independent, then the LLC has the burden of proving that the requirements of subsection (a) of this section have been met.

(f) The court may appoint a panel composed of one or more independent persons on motion of the LLC to make a determination whether the maintenance of the derivative proceeding is in the best interest of the LLC. The plaintiff has the burden of proving that the requirements of subsection (a) of this section have not been met.

"**§ 57D-8-04. Discontinuance or settlement.**

(a) A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the LLC's members, the court shall direct that notice be given to the members who would be affected.

(b) The court shall determine the manner and form of the notice and the manner in which costs of the notice will be borne.

"**§ 57D-8-05. Payment of expenses.**

On termination of the derivative proceeding, the court may do any of the following:

(1) Order the LLC to pay the plaintiff's expenses, including attorneys' fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the LLC.

(2) Order the plaintiff to pay any defendant's expenses, including attorneys' fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without cause or for an improper purpose.

(3) Order a party to pay an opposing party's expenses, including attorneys' fees, incurred as a result of the filing of a pleading, motion, or other paper, if the court, after inquiry, finds that the pleading, motion, or other paper was not well grounded in fact or was not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it was interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

"**§ 57D-8-06. Applicability to foreign LLCs.**

In any derivative proceeding in the right of a foreign LLC, the matters covered by this Article will be governed by the law of the jurisdiction of the foreign LLC's organization except for the matters governed by G.S. 57D-8-02, 57D-8-04, and 57D-8-05.

"**§ 57D-8-07. Privileged communications.**

In any derivative proceeding, no member is entitled to obtain or have access to any communication within the scope of the LLC's attorney-client privilege that could not be obtained by, or would not be accessible to, a party in a proceeding other than on behalf of the LLC.

"Article 9.

"Conversion and Merger.

"Part 1. Definitions.

"§ 57D-9-01. Definitions.

Unless otherwise specifically provided, the following definitions apply in this Article:

(1) Articles of organization and conversion. – The document filed by the Secretary of State under G.S. 57D-9-22 for the purpose of converting an eligible entity into an LLC.

(2) Converting entity. – An eligible entity that converts into another eligible entity pursuant to Part 2 or Part 3 of this Article 9.

(3) Converting LLC. – A converting entity that is an LLC.

(4) Eligible entity. – A corporation, including a professional corporation as defined in G.S. 55B-2 and a foreign professional corporation defined in G.S. 55B-16, a domestic or foreign nonprofit corporation, a limited liability company, a domestic or foreign limited partnership, a registered limited liability partnership or foreign limited liability partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this State.

(5) Merging entity. – An eligible entity that is a party to a merger.

(6) Merging LLC. – A merging entity that is an LLC.

(7) Surviving entity. – The eligible entity into which a converting entity converts or into which an eligible entity is merged.

"Part 2. Conversion to an LLC.

"§ 57D-9-20. Conversion.

An eligible entity other than an LLC may convert to an LLC if both of the following requirements are met:

(1) The conversion is permitted by the law governing the organization and internal affairs of the converting entity.

(2) The converting entity complies with the requirements of this Part and, to the extent applicable, the law governing its organization and internal affairs immediately before the conversion.

"§ 57D-9-21. Plan of conversion.

(a) The converting entity must approve a written plan of conversion containing the following:

(1) The name, type of entity, and jurisdiction whose law governs the organization and internal affairs of the converting entity immediately before the conversion.

(2) A statement that the converting entity will deliver to the Secretary of State for filing articles of organization and conversion for the purpose of converting the eligible entity into an LLC.

(3) The name the entity will have when the conversion becomes effective.

(4) The terms and conditions of the conversion.

(5) The manner and basis for converting the interests in the converting entity into ownership interests, obligations, or securities of the surviving entity or into cash or other property or any combination thereof.

(b) The plan of conversion may contain other provisions relating to the conversion.

(c) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion provides the manner in which the facts will operate on the affected provisions. The facts may include, for example, any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the converting entity or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the converting entity is a party or any other agreement or document.

(d) The plan of conversion must be approved in accordance with the law governing the organization and internal affairs of the converting entity immediately before the conversion.

(e) After a plan of conversion has been approved as provided in subsection (d) of this section, but before articles of conversion become effective, the plan of conversion may be amended or abandoned to the extent permitted by the law that governs the organization and internal affairs of the converting entity.

"**§ 57D-9-22. Filing of articles of organization and conversion by the converting entity.**

(a) After a plan of conversion has been approved by the converting entity as provided in G.S. 57D-9-21, the converting entity shall deliver articles of organization and conversion to the Secretary of State for filing. The articles of organization and conversion must contain (i) the information required by G.S. 57D-2-21 and (ii) the following information:

(1) The name, type of entity, and jurisdiction whose law governs the organization and internal affairs of the converting entity immediately before the conversion.

(2) A statement that the articles of organization and conversion are being submitted for the purpose of converting the eligible entity into an LLC.

(3) The name the entity will have when the conversion becomes effective.

(4) The mailing address of the converting entity immediately before the conversion and, if different, the mailing address it will have when the conversion becomes effective.

(5) A statement that a plan of conversion has been approved by the converting entity as required by law.

(b) If the plan of conversion is abandoned after the articles of organization and conversion have been delivered to the Secretary of State but before the articles of organization and conversion become effective, the converting entity must deliver to the Secretary of State for filing prior to the time the articles of organization and conversion become effective an amendment withdrawing such articles.

(c) Certificates of conversion must be registered as provided in G.S. 47-18.1.

"**§ 57D-9-23. Effective date; Effects of conversion.**

(a) The conversion takes effect when the articles of organization and conversion of the converting entity filed by the Secretary of State become effective, at which time the following shall occur:

(1) The converting entity ceases its prior form of organization and continues in existence as the surviving entity.

(2) The title to all real estate and other property owned by the converting entity continues to be vested in the surviving entity without reversion or impairment.

(3) All liabilities of the converting entity continue as liabilities of the surviving entity.

(4) A proceeding pending by or against the converting entity remains pending by or against the surviving entity as if the conversion did not occur.

(5) The equity or beneficial ownership interests in the converting entity that are to be converted into ownership interests, obligations, or securities of the surviving entity or into the right to receive cash or other property are thereupon so converted, and the former holders of equity or beneficial ownership interests in the converting entity are entitled only to the rights provided, including by reference, in the plan of conversion and the surviving entity's operating agreement.

(b) The conversion does not affect the liability or absence of liability of an equity or beneficial owner of the converting entity for any acts, omissions, or obligations of the converting entity made or incurred prior to the effectiveness of the conversion. A conversion under this Part does not constitute a dissolution or termination of the converting entity.

"**§§ 57D-9-24 through 57D-9-29: Reserved for future codification purposes.**

"Part 3. Conversion of an LLC.

"**§ 57D-9-30. Conversion.**

An LLC may convert to a different eligible entity if both of the following requirements are met:

(1) The conversion is permitted by the law that will govern the organization and internal affairs of the surviving entity.

(2) The converting LLC complies with the requirements of this Part and, to the extent applicable, the law that will govern the organization and internal affairs of the surviving entity.

"**§ 57D-9-31. Plan of conversion.**

(a) The converting LLC must approve a written plan of conversion containing the following:

(1) The name of the converting LLC immediately before the conversion.

(2) The name the surviving entity will have, the type of entity it will be, and the jurisdiction whose law will govern its organization and internal affairs when the conversion becomes effective.

(3) The terms and conditions of the conversion.

(4) The manner and basis for converting the ownership interests in the converting LLC into interests, obligations, or securities of the surviving entity or into cash or other property or any combination thereof.

(b) The plan of conversion may contain other provisions pertaining to the conversion.

(c) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion provides the manner in which the facts will operate on the affected provisions. The facts may include, for example, any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the converting LLC or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the converting LLC is a party or any other agreement or document.

(d) The converting LLC shall provide a copy of the plan of conversion to each member of the converting LLC prior to its approval. Under G.S. 57D-3-03(5), all of the members of the converting LLC must approve the plan of conversion. In addition, any economic interest owner of the converting LLC who because of the conversion will become personally liable upon the

conversion for liabilities of the surviving entity, whether arising before or after the conversion, must approve the plan of conversion.

(e) After a plan of conversion has been approved by the converting LLC as provided in subsection (d) of this section, but before the articles of conversion become effective, the plan of conversion may be amended or abandoned as follows:

(1) The plan of conversion may be amended as provided in the plan of conversion or, if not so provided, as approved by the converting LLC in the manner provided in subsection (d) of this section.

(2) The plan of conversion may be abandoned, subject to any contractual rights, as provided in the plan of conversion or, if not so provided, as approved by the converting LLC in the manner provided in subsection (d) of this section.

"**§ 57D-9-32. Articles of conversion.**

(a) After a plan of conversion has been approved by the converting LLC as provided in G.S. 57D-9-31, the converting LLC shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion must contain the following information:

(1) The name of the converting LLC immediately before the conversion.

(2) The name the surviving entity will have, the type of entity it will be, and the jurisdiction whose law will govern its organization and internal affairs upon the conversion becoming effective.

(3) The mailing address of the converting LLC immediately before the conversion and, if different, the mailing address the surviving entity will have when the conversion becomes effective.

(4) A statement that a plan of conversion has been approved by the converting LLC as required by law.

(5) If the surviving entity is not authorized to transact business in this State, a statement that the surviving entity (i) consents to service of process in any proceeding based on any cause of action arising in respect of the converting LLC being made on the surviving entity by service on the Secretary of State and (ii) commits to deliver to the Secretary of State for filing a statement of any change in the surviving entity's mailing address to which the Secretary of State may mail a copy of process served on the Secretary of State.

(b) If the converting LLC is converting to an eligible entity whose formation, or whose status as a registered limited liability partnership as defined in G.S. 59-32, requires the filing of a document by the Secretary of State, then notwithstanding subsection (a) of this section, that document must be delivered to and filed by the Secretary of State with the articles of conversion.

(c) If the plan of conversion is abandoned after the articles of conversion have been filed by the Secretary of State but before the articles of conversion become effective, the converting LLC must deliver to the Secretary of State for filing prior to the time the articles of conversion become effective an amendment of the articles of conversion withdrawing the articles of conversion.

(d) The conversion takes effect in accordance with the law that will govern the organization and internal affairs of the surviving entity.

(e) Certificates of conversion must be registered as provided in G.S. 47-18.1.

"**§ 57D-9-33. Effects of conversion.**

(a) When the conversion takes effect, the following shall occur:

(1) The converting LLC ceases its prior form of organization and continues in existence as the surviving entity.

(2) The title to all real estate and other property owned by the converting LLC continues to be vested in the surviving entity without reversion or impairment.

(3) All liabilities of the converting LLC continue as liabilities of the surviving entity.

(4) A proceeding pending by or against the converting LLC remains pending by or against the surviving entity as if the conversion did not occur.

(5) The ownership interests in the converting LLC that are to be converted into equity or beneficial ownership interests, obligations, or securities of the surviving entity or into the right to receive cash or other property are thereupon so converted, and the former holders of ownership interests in the converting LLC are entitled only to the rights provided, including, by reference, in the plan of conversion.

(b) The conversion does not affect the liability or absence of liability of any interest owner of the converting LLC for any acts, omissions, or obligations of the converting LLC made or incurred prior to the effectiveness of the conversion. A conversion under this Part does not constitute a dissolution or termination of the converting LLC.

(c) If the surviving entity is not a domestic corporation or a domestic limited partnership, at the time the conversion takes effect, the surviving entity is deemed to consent to each of the following:

(1) That it may be served with process in this State in any proceeding to enforce any obligation of (i) the converting LLC, if before the conversion the converting LLC was subject to suit in this State on the obligation or (ii) the surviving entity arising from the conversion.

(2) That it has appointed the Secretary of State as its agent for service of process in any such proceeding. Service of process on the Secretary of State must be made by delivering to the Secretary of State, or to 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. 57D-1-22(b). Upon receipt of service of process on behalf of a surviving entity 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 entity. If the surviving entity is authorized to transact business in this State, the address for mailing will be its principal office designated in the latest document filed by 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 entity is not authorized to transact business in this State, the address for mailing will be the mailing address of the surviving entity provided under G.S. 57D-9-32(a)(3).

"**§§ 57D-9-34 through 57D-9-29: Reserved for future codification purposes.**

"Part 4. Merger.

"**§ 57D-9-40. Merger.**

An LLC may merge with one or more other eligible entities if both of the following requirements are met:

(1) The merger is permitted by the law governing the organization and internal affairs of each other merging entity.

(2) Each merging entity complies with the requirements of this Part and, to the extent applicable, the law other than this Part governing the organization and internal affairs of each merging entity.

"**§ 57D-9-41. Plan of merger.**

(a) Each merging entity must approve a written plan of merger containing the following:

(1) The name, type of entity, and jurisdiction whose law governs the organization and internal affairs of each merging entity immediately before the merger.
(2) The name of the surviving entity.
(3) The terms and conditions of the merger.
(4) The manner and basis for converting the interests in each merging entity into interests, obligations, or securities of the surviving entity or into cash or other property or any combination thereof.
(5) If the surviving entity is an LLC, any amendments to its articles of organization that are to be made in connection with the merger.

(b) The plan of merger may contain other provisions pertaining to the merger.

(c) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger provides the manner in which the facts will operate on the affected provisions. The facts may include, for example, any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
(2) A determination or action by the merging LLC or by any other person, group, or body.
(3) The terms of, or actions taken under, an agreement to which the merging LLC is a party, or any other agreement or document.

(d) A merging LLC shall provide a copy of the plan of merger to each member of the merging LLC prior to its approval. Under G.S. 57D-3-03(6), all of the members of the merging LLC must approve the plan of merger. In addition, any economic interest owner of the merging LLC who because of the merger will become personally liable upon the merger for liabilities of the merging LLC, any other merging entity, or the surviving entity, whether arising before or after the merger, must approve the plan of merger.

(e) The plan of merger must be approved in accordance with the law governing the organization and internal affairs of each merging entity.

(f) After a plan of merger has been approved but before the articles of merger become effective, the plan of merger may be amended or abandoned as follows:

(1) The plan of merger may be amended as provided in the plan of merger or, if not so provided, in the manner provided in subsections (d) and (e) of this section.
(2) The plan of merger may be abandoned, subject to any contractual rights, as provided in the plan of merger or, if not so provided, in the manner provided in subsections (d) and (e) of this section.

"**§ 57D-9-42. Articles of merger.**

(a) After a plan of merger has been approved by each merging entity as provided in G.S. 57D-9-41, the surviving entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall state the following:

(1) The name, type of entity, and jurisdiction whose law governs the organization and internal affairs of each merging entity immediately before the merger.
(2) The name of the surviving entity.
(3) The mailing address of each merging entity immediately before the merger and the mailing address the surviving entity will have when the merger becomes effective.

(4) If the surviving entity is an LLC, any amendment to its articles of organization as provided in the plan of merger.

(5) A statement that the plan of merger has been approved by each merging entity in the manner required by law.

(6) If the surviving entity is not authorized to transact business in this State, a statement that the surviving entity (i) consents to service of process in any proceeding based on any cause of action arising in respect of a merging LLC being made on the surviving entity by service on the Secretary of State and (ii) commits to deliver to the Secretary of State for filing a statement of any change in the surviving entity's mailing address to which the Secretary of State may mail a copy of process served on the Secretary of State.

(b) If the plan of merger is amended after the articles of merger have been filed but before the articles of merger become effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger stating that they have been abandoned.

(c) A merger takes effect when the articles of merger become effective, which in the case of a merging LLC is when the articles of merger filed by the Secretary of State become effective.

(d) Certificates of merger must be registered as provided in G.S. 47-18.1.

"**§ 57D-9-43. Effects of merger.**

(a) When the merger takes effect, the following shall occur:

(1) Each merging entity other than the surviving entity merges into the surviving entity, and the separate existence of each merging entity other than the surviving entity ceases.

(2) The title to all real estate and other property owned by each merging entity is vested in the surviving entity without reversion or impairment.

(3) The surviving entity has all liabilities of each merging entity.

(4) A proceeding pending by or against any merging entity remains pending by or against such merging entity as if the merger did not occur or the surviving entity may be substituted in the proceeding for a merging entity whose separate existence ceases in the merger.

(5) If an LLC is the surviving entity, its articles of organization will be amended to the extent provided in the articles of merger.

(6) The equity or beneficial ownership interests in, and the obligations and securities of, each merging entity that are to be converted into interests, obligations, or securities of the surviving entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the equity and beneficial ownership interests are entitled only to the rights provided to them in the plan of merger or, in the case of former holders of shares in a domestic corporation, any rights they may have under Article 13 of Chapter 55 of the General Statutes.

(7) If the surviving entity is not a domestic corporation, the surviving entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging entity that is a domestic corporation 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 of Chapter 55 of the General Statutes as if it were a domestic corporation.

(b) The merger does not affect the liability or absence of liability of any holder of an interest in a merging entity for any acts, omissions, or obligations of any merging entity made or incurred prior to the effectiveness of the merger. The cessation of the separate existence of a merging entity in the merger does not constitute a dissolution or termination of the merging entity.

(c) If the surviving entity is not a domestic eligible entity when the merger takes effect, the surviving entity is deemed to consent to each of the following:

(1) That it may be served with process in this State in any proceeding to enforce (i) any obligation of a domestic merging entity if before the merger the domestic merging entity was subject to suit in this State on the obligation, (ii) the 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 entity arising from the merger.

(2) That it has appointed the Secretary of State as its agent for service of process in any such proceeding. Service of process on the Secretary of State is made by delivering to the Secretary of State, or to any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process and the fee required by G.S. 57C-1-22(b). Upon receipt of service of process on behalf of a surviving entity 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 entity. If the surviving entity is authorized to transact business in this State, the address for mailing will be its principal office designated in the latest document filed by 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 entity is not authorized to transact business in this State, the address for mailing will be the mailing address of the surviving entity provided under G.S. 57D-9-42(a).

"**§§ 57D-9-44 through 57D-9-49: Reserved for future codification purposes.**

"Article 10.

"Miscellaneous.

"**§ 57D-10-01. Purpose; public policy.**

(a) This Chapter is to be applied to promote its purposes and policies.

(b) The purpose of this Chapter is to provide a flexible framework under which one or more persons may organize and manage one or more businesses as they determine to be appropriate with minimum prescribed formalities or constraints.

(c) It is the policy of this Chapter to give the maximum effect to the principle of freedom of contract and the enforceability of operating agreements.

"**§ 57D-10-02. Rules of construction; coordination with other law.**

(a) Unless displaced by this Chapter, the rules of law and equity supplement this Chapter.

(b) The rule that statutes in derogation of the common law are to be strictly construed does not apply to this Chapter.

(c) This Chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Section 7003(b).

(d) G.S. 25-9-406 and G.S. 25-9-408 do not apply to any ownership interest or any portion thereof, including any economic interest. To the extent of any conflict or inconsistency between this subsection and G.S. 25-9-406 and G.S. 25-9-408, this subsection prevails. Accordingly, neither G.S. 25-9-406 nor G.S. 25-9-408 will render invalid, unenforceable, or ineffective any contrary or inconsistent provision contained in an operating agreement.

(e) In this Chapter, unless otherwise specified or indicated by the context, including as may otherwise be provided in the operating agreement under Part 3 of Article 2 of this Chapter, without the need for repetitious use of qualifiers, further statement, or clarification in the text of any provision of this Chapter, the following rules of construction shall apply:

(1) The provisions of this Chapter are to be applied in a manner that is reasonable under the circumstances.

(2) References to "members," "interest owners," "managers," "company officials," "operating agreement," "articles of organization," and other terms that relate to limited liability companies are deemed to refer to an LLC or foreign LLC as the context indicates.

(3) The words "this Chapter," "hereof," "hereby," "hereunder," and "herein," and words of similar impact are to be read to refer to Chapter 57D of the General Statutes as a whole and not to any particular provision of this Chapter.

(4) The word "including" is to be read as if it is followed by the words "without limitation" and, therefore, denotes examples that are only illustrative and does not narrow or limit the scope of the standard, concept, or other applicable subject being described or illustrated.

(5) The words "or" and "any" are not exclusive.

(6) The captions and headings of provisions of this Chapter are for convenience of reference only and are not to be construed as part of this Chapter or serve to limit or expand the scope of the provisions.

(f) Action validly taken pursuant to one provision of this Chapter is not rendered invalid solely because it is substantively the same or similar to an action that could be taken pursuant to some other provision of this Chapter but fails to satisfy one or more requirements prescribed by that other provision.

(g) An operating agreement that provides for the application of the law of this State is governed by and will be construed under the laws of this State in accordance with its terms.

"**§§ 57D-10-04 through 57D-10-09: Reserved for future codification purposes.**

"Article 11.

"Transition Provisions.

"**§ 57D-11-01. Applicability of act.**

The provisions of this Chapter apply to every LLC, whether formed on, before, or after January 1, 2014, and the interest owners of every LLC, except to the extent expressly excepted by this Chapter.

"**§ 57D-11-02. Application to qualified foreign LLCs.**

A foreign LLC authorized to transact business in this State immediately before the repeal of Chapter 57C of the General Statutes is subject to this Chapter but is not required to obtain a new certificate of authority to transact business under this Chapter. The certificate of authority of such a foreign LLC issued under former Chapter 57C of the General Statutes before its repeal is to be deemed to have been issued under this Chapter.

"**§ 57D-11-03. Saving provisions.**

(a) The existence of LLCs formed before January 1, 2014, shall not be impaired by the repeal of Chapter 57C of the General Statutes or the enactment of this Chapter, by any change made by this Chapter in the requirements for the formation of LLCs, nor by any amendment or repeal by this Chapter of the laws under which they were formed or created, and, except as otherwise expressly provided in this Chapter, the repeal of former Chapter 57C of the General

Statutes shall not affect any liability or penalty incurred under the provisions of that chapter prior to its repeal.

(b) Any proceeding commenced before January 1, 2014, may be completed in accordance with the law then in effect.

(c) An LLC dissolved before January 1, 2014, may wind up or complete its winding up, as the case may be, pursuant to Article 6 and other applicable provisions of this Chapter.

(d) A proceeding under G.S. 57D-4-06(a) in respect of an LLC formed before January 1, 2014, will not be barred if it is commenced no later than (i) two years after the distribution or (ii) the earlier of January 1, 2016, or three years after the distribution.

(e) References in the articles of organization or operating agreements of an LLC made before January 1, 2014, to provisions of Chapter 57C of the General Statutes are to be deemed, to the extent applicable or the context does not clearly indicate otherwise, to be made to the corresponding provisions of this Chapter."

SECTION 3. G.S. 55-1-40 reads as rewritten:

"**§ 55-1-40. Chapter definitions.**

In this Chapter unless otherwise specifically provided:

...

(6b) "Domestic limited liability company" has the same meaning as the term "LLC" in ~~G.S. 57C-1-03.~~G.S. 57D-1-03.

...

(10a) "Foreign limited liability company" has the same meaning as the term "foreign LLC" in ~~G.S. 57C-1-03.~~G.S. 57D-1-03.

...."

SECTION 4. G.S. 55A-1-40 reads as rewritten:

"**§ 55A-1-40. Chapter definitions.**

In this Chapter unless otherwise specifically provided:

...

(8a) "Domestic limited liability company" has the same meaning as the term "LLC" in ~~G.S. 57C-1-03.~~G.S. 57D-1-03.

...

(11a) "Foreign limited liability company" has the same meaning as the term "foreign LLC" in ~~G.S. 57C-1-03.~~G.S. 57D-1-03.

...."

SECTION 5. G.S. 55A-11-02(a) reads as rewritten:

"(a) Without the prior approval of the superior court in a proceeding in which the Attorney General has been given written notice, a charitable or religious corporation may merge only ~~with:~~with any of the following:

(1) A charitable or religious ~~corporation;~~corporation.

(2) A foreign corporation that would qualify under this Chapter as a charitable or religious ~~corporation;~~corporation.

(3) A wholly owned foreign or domestic corporation (business or nonprofit) which is not a charitable or religious corporation, or an unincorporated entity, provided the charitable or religious corporation is the survivor in the merger and continues to be a charitable or religious corporation after the ~~merger; or~~merger.

(4) A business or nonprofit corporation (foreign or domestic) other than a charitable or religious corporation, or an unincorporated entity, provided that: (i) on or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets (including goodwill) of the charitable or religious corporation or the fair market value of the charitable or religious corporation if it were to be

operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under G.S. 55A-14-03(a)(1) and (2) had it dissolved; (ii) it shall return, transfer or convey any assets held by it upon condition requiring return, transfer or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and (iii) the merger is approved by a majority of directors of the charitable or religious corporation who are not and will not become members, as "member" is defined in G.S. 55A-1-40(16) or ~~G.S. 57C-1-03,~~G.S. 57D-1-03, partners, limited partners, or shareholders in or directors, managers, officers, employees, agents, or consultants of the survivor in the merger.

...."

SECTION 6. G.S. 55D-1 reads as rewritten:

"**§ 55D-1. Applicable definitions.**

The following definitions apply in this Chapter:

...

(5) "Foreign limited liability company" ~~is defined in G.S. 57C-1-03(8).~~has the same meaning as the term "foreign LLC" in G.S. 57D-1-03.

...

(10) "Limited liability company" or "domestic limited liability company" ~~is defined in G.S. 57C-1-03(11).~~has the same meaning as the term "LLC" in G.S. 57D-1-03.

...."

SECTION 7. 55D-10 reads as rewritten:

"**§ 55D-10. Filing requirements.**

(a) To be entitled to filing by the Secretary of State under Chapter 55, 55A, 55B, ~~57C,~~57D, or 59 of the General Statutes, a document must satisfy the requirements of this section, and of any other section of the General Statutes that adds to or varies these requirements.

(b) The document must meet all of the following requirements:

(1) The document must be one that is required or permitted by Chapter 55, 55A, 55B, ~~57C,~~57D, or 59 of the General Statutes to be filed in the office of the Secretary of State.

(2) The document must contain the information required by Chapter 55, 55A, 55B, ~~57C,~~57D, or 59 of the General Statutes for that document. It may contain other information as well.

(3) The document must be typewritten, printed, or in an electronic form acceptable to the Secretary of State.

(4) The document must be in the English language. A name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of ~~existence~~existence, or a document of similar import, required of foreign corporations, foreign nonprofit corporations, foreign limited liability companies, and foreign limited liability partnerships need not be in English if accompanied by a reasonably authenticated English translation.

(5) A document submitted by an entity must be executed by a person authorized to execute documents (i) under G.S. 55-1-20 if the entity is a domestic or foreign corporation, (ii) under G.S. 55A-1-20 if the entity is a domestic or foreign nonprofit corporation, (iii) under ~~G.S. 57C-1-20~~G.S. 57D-1-20 if the entity is a domestic or foreign limited liability company, (iv) under G.S. 59-204 if the entity is a domestic or foreign limited partnership, or (v) under G.S. 59-35.1 if the entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of the State.

...."

SECTION 8. G.S. 55D-13(c) reads as rewritten:

"(c) Except as provided in G.S. 55-2-03(b), 55A-2-03(b), and ~~57C-2-20(b),~~57D-2-20(b), the fact that a document has become effective under this section does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document."

SECTION 9. G.S. 55D-15 reads as rewritten:

"**§ 55D-15. Filing duty of Secretary of State.**

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of this Chapter and of Chapter 55, 55A, 55B, ~~57C,~~57D, or 59 of the General Statutes, the Secretary of State shall file it. Documents filed with the Secretary of State under this Chapter may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Chapter, or under any predecessor law, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of those documents reproduced.

...

(d) The Secretary of State's duty is to review and file documents that satisfy the requirements of this Chapter and of Chapter 55, 55A, 55B, ~~57C,~~57D, or 59 of the General Statutes. The Secretary of State's filing or refusing to file a document does not do any of the following:

(1) Except as provided in G.S. 55-2-03(b), 55A-2-03(b), or ~~57C-2-20(b),~~57D-2-20(b), affect the validity or invalidity of the document in whole or part.

(2) Relate to the correctness or incorrectness of information contained in the document.

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect."

SECTION 10. G.S. 55D-17 reads as rewritten:

"**§ 55D-17. Evidentiary effect of copy of filed document.**

A certificate attached to a copy of a document filed by the Secretary of State, bearing the Secretary of State's signature and the seal of office (both of which may be in facsimile or in any electronic form approved by the Secretary of State) and certifying that the copy is a true copy of the document, is conclusive evidence that the original document is on file with the Secretary of State. A photographic, microfilm, optical disk media, or other reproduced copy of a document filed under this Chapter, Chapter 55, 55A, 55B, ~~57C,~~57D, or 59 of the General Statutes, or any predecessor law, when certified by the Secretary, shall be considered an original for all purposes and is admissible in evidence in like manner as an original."

SECTION 11. G.S. 55D-20 reads as rewritten:

"**§ 55D-20. Name requirements.**

(a) In addition to the requirements of any other applicable section of the General Statutes:

(1) The name of a corporation must contain the word "corporation", "incorporated", "company", or "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.".

(2) The name of a limited liability company must contain the words "limited liability company" or the abbreviation "L.L.C." or "LLC", or the combination "ltd. liability co.", "limited liability co.", or "ltd. liability company". Notwithstanding the prior sentence, any limited liability company whose name contained the words "low-profit limited liability company" or the abbreviation "L3C" pursuant to subdivision (6) of this subsection prior to its repeal on January 1, 2014, may continue to use that

name unless the limited liability company amends its articles of organization to change its name.

(3) The name of a limited partnership that is not a limited liability limited partnership must contain the words "limited partnership", the abbreviation "L.P." or "LP", or the combination "ltd. partnership".

(4) The name of a limited liability limited partnership must contain the words "registered limited liability limited partnership" or "limited liability limited partnership" or the abbreviation "L.L.L.P.", "R.L.L.L.P.", "LLLP", or "RLLLP".

(5) A registered limited liability partnership's name must contain the words "registered limited liability partnership" or "limited liability partnership" or the abbreviation "L.L.P.", "R.L.L.P.", "LLP" or "RLLP".

~~(6) The name of a low-profit limited liability company must contain the words "low-profit limited liability company" or the abbreviation "L3C".~~

(b) In addition to the requirements of subsection (a) of this section, the name of a limited partnership shall not contain the name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a corporate general partner, or (ii) the business of the limited partnership has been carried on under that name before the admission of that limited partner.

(c) The name of a corporation, nonprofit corporation, or limited liability company shall not contain language stating or implying that the entity is organized for a purpose other than that permitted by G.S. 55-3-01, 55A-3-01, or ~~57C-2-01~~57D-2-01 and by its articles of incorporation or organization.

(d) The use of assumed names or fictitious names, as provided for in Chapter 66, is not affected by this Chapter or by Chapter 55, 55A, ~~57C,~~57D, or 59 of the General Statutes.

(e) The filing of any document, the reservation or registration of any name under this Chapter or under Chapter 55, 55A, 55B, ~~57C,~~57D, or 59 of the General Statutes, or the issuance of a certificate of authority to transact business or conduct affairs or a statement of foreign registration does not authorize the use in this State of a name in violation of the rights of any third party under the federal trademark act, the trademark act of this State, or other statutory or common law, and is not a defense to an action for violation of any of those rights."

SECTION 12. G.S. 55D-21(d) reads as rewritten:

"(d) Except as otherwise provided in this subsection, the name of a corporation dissolved under Article 14 of Chapter 55 of the General Statutes, of a nonprofit corporation dissolved under Article 14 of Chapter 55A of the General Statutes, of a limited liability company dissolved under Article 6 of Chapter ~~57C~~57D of the General Statutes, of a limited partnership dissolved under Part 8 of Article 5 of Chapter 59 of the General Statutes, or of a limited liability partnership whose registration as a limited liability partnership has been cancelled under G.S. 59-84.2 or revoked under G.S. 59-84.4, may not be used by another entity until one of the following occurs:

...."

SECTION 13. G.S. 55D-22(b) reads as rewritten:

"(b) If a foreign corporation, foreign nonprofit corporation, foreign limited liability company, or foreign limited partnership authorized to transact business or conduct affairs in this State, or a foreign limited liability partnership maintaining a statement of foreign registration, changes its name to one that does not satisfy the requirements of this Article, it may not transact business or conduct affairs in this State under the changed name until it adopts a name satisfying the requirements of this Article and obtains an amended certificate of authority or statement of foreign registration under G.S. 55-15-04, 55A-15-04, ~~57C-7-05,~~57D-7-04, 59-91, or 59-905, as applicable."

SECTION 14. G.S. 55D-31(c) reads as rewritten:

"(c) A domestic corporation, limited liability company, limited liability limited partnership, registered limited liability partnership, foreign corporation, foreign limited liability company, or foreign limited liability partnership may change its registered office or registered agent by including in its annual report required by G.S. 55-16-22, ~~57C-2-23~~,57D-2-24, 59-84.4, or 59-210 the information and any written consent required by subsection (a) of this section."

SECTION 15. G.S. 59-32 reads as rewritten:

"**§ 59-32. Definition of terms.**

As used in this Chapter, except as otherwise defined in Article 5 of this Chapter for purposes of that Article, unless the context otherwise requires:

...

(4b) "Domestic limited liability company" has the same meaning as ~~in G.S. 57C-1-03.~~the term "LLC" in G.S. 57D-1-03.

...

(4f) "Foreign limited liability company" has the same meaning as ~~in G.S. 57C-1-03.~~the term "foreign LLC" in G.S. 57D-1-03.

...."

SECTION 16. G.S. 59-102 reads as rewritten:

"**§ 59-102. Definitions.**

As used in this Article, unless the context otherwise requires:

...

(3b) "Domestic limited liability company" has the same meaning as ~~in G.S. 57C-1-03.~~the term "LLC" in G.S. 57D-1-03.

...

(4b) "Foreign limited liability company" has the same meaning as ~~in G.S. 57C-1-03.~~the term "foreign LLC" in G.S. 57D-1-03.

...."

SECTION 17. G.S. 66-260(11)n. reads as rewritten:

"(11) "Telephonic seller" or "seller" means a person who, directly or through salespersons, causes a telephone solicitation or attempted telephone solicitation to occur. "Telephonic seller" and "seller" do not include any of the following:

...

n. A foreign corporation, limited liability company, or limited partnership that has obtained and maintained a certificate of authority to transact business or conduct affairs in this State pursuant to Chapter 55, 55A, or ~~57C~~57D or Article 5 of Chapter 59 of the General Statutes and that only transacts business or conducts affairs in this State using the name set forth in the certificate of authority.

...."

SECTION 18. G.S. 66-352(a) reads as rewritten:

"(a) Notice of Franchise. – A person who intends to provide cable service over a cable system in an area must file a notice of franchise with the Secretary before providing the service. A person who files a notice of franchise must pay a fee in the amount set in ~~G.S. 57C-1-22~~G.S. 57D-1-22 for filing articles of organization."

SECTION 19. G.S. 66-353 reads as rewritten:

"**§ 66-353. Annual service report.**

A holder of a State-issued franchise must file an annual service report with the Secretary. The report must be filed on or before July 31 of each year. The report must be accompanied by a fee in the amount set in ~~G.S. 57C-1-22~~G.S. 57D-1-22 for filing an annual report. The report must include all of the following:

...."

SECTION 20. G.S. 87-10.1 reads as rewritten:

"**§ 87-10.1. Licensing of nonresidents.**

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

(1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(2) Foreign corporation. – Defined in G.S. 55-1-40.

(3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.

(4) Foreign limited liability company. – ~~Defined in G.S. 57C-1-03.~~Has the same meaning as the term "foreign LLC" in G.S. 57D-1-03.

(5) Foreign partnership. – Either of the following that does not have a permanent place of business in this State:

a. A foreign limited partnership as defined in G.S. 59-102.

b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. – The Board shall not issue a certificate of license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a certificate of license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter ~~57C~~57D of the General Statutes.

...."

SECTION 21. G.S. 87-22.2 reads as rewritten:

"**§ 87-22.2. Licensing of nonresidents.**

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

(1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(2) Foreign corporation. – Defined in G.S. 55-1-40.

(3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.

(4) Foreign limited liability company. – ~~Defined in G.S. 57C-1-03.~~Has the same meaning as the term "foreign LLC" in G.S. 57D-1-03.

(5) Foreign partnership. – Either of the following that does not have a permanent place of business in this State:

a. A foreign limited partnership as defined in G.S. 59-102.

b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. – The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter ~~57C~~57D of the General Statutes.

...."

SECTION 22. G.S. 87-44.2 reads as rewritten:

"**§ 87-44.2. Licensing of nonresidents.**

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

(1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(2) Foreign corporation. – Defined in G.S. 55-1-40.
(3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.
(4) Foreign limited liability company. – ~~Defined in G.S. 57C-1-03.~~Has the same meaning as the term "foreign LLC" in G.S. 57D-1-03.
(5) Foreign partnership. – Either of the following that does not have a permanent place of business in this State:
a. A foreign limited partnership as defined in G.S. 59-102.
b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. – The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter ~~57C~~57D of the General Statutes.
...."

SECTION 23. G.S. 89C-18.1 reads as rewritten:
"**§ 89C-18.1. Licensing of nonresidents.**
(a) Definitions. – The following definitions apply in this section:
(1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
(2) Foreign corporation. – Defined in G.S. 55-1-40.
(3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.
(4) Foreign limited liability company. – ~~Defined in G.S. 57C-1-03.~~Has the same meaning as the term "foreign LLC" in G.S. 57D-1-03.
(5) Foreign partnership. – Either of the following that does not have a permanent place of business in this State:
a. A foreign limited partnership as defined in G.S. 59-102.
b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. – The Board shall not renew a certificate of licensure for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not renew a certificate of licensure for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter ~~57C~~57D of the General Statutes.
...."

SECTION 24. G.S. 89F-6 reads as rewritten:
"**§ 89F-6. Corporate, limited liability company, partnership, or sole proprietorship practice of soil science.**
A corporation organized under Chapter 55B of the General Statutes, a limited liability company organized under Chapter ~~57C~~57D of the General Statutes, a partnership, or a sole proprietorship may engage in the practice of soil science in this State. A licensed soil scientist shall be in responsible charge of all practice of soil science by the corporation, limited liability company, partnership, or sole proprietorship."

SECTION 25. G.S. 105-114.1(a)(4) reads as rewritten:
"(a) Definitions. – The following definitions apply in this section:
...

(4) Governing law. – ~~A limited liability company's governing law is determined under G.S. 57C-6-05 or G.S. 57C-7-01, as applicable.~~The law under which a limited liability company is organized.

...."

SECTION 26. G.S. 105-122.1 reads as rewritten:

"**§ 105-122.1. Credit for additional annual report fees paid by limited liability companies subject to franchise tax.**

A limited liability company subject to tax under this Article is allowed a credit against the tax imposed by this Article equal to the difference between the annual report fee for corporations under G.S. 55-1-22(a)(23) and the annual report fee for limited liability companies under ~~G.S. 57C-1-22(a).~~G.S. 57D-1-22. The credit allowed by this section may not exceed the amount of tax imposed by this Article for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer."

SECTION 27. G.S. 105-130.2(11) reads as rewritten:

"(11) Limited liability company. – Either a domestic limited liability company organized under Chapter ~~57C~~57D of the General Statutes or a foreign limited liability company authorized by that Chapter to transact business in this State that is classified for federal income tax purposes as a corporation. As applied to a limited liability company that is a corporation under this Part, the term "shareholder" means a member of the limited liability company and the term "corporate officer" means a member or manager of the limited liability company."

SECTION 28. G.S. 105-134.1(7a) reads as rewritten:

"(7a) Limited liability company. – Either a domestic limited liability company organized under Chapter ~~57C~~57D of the General Statutes or a foreign limited liability company authorized by that Chapter to transact business in this State that is classified for federal income tax purposes as a partnership. As applied to a limited liability company that is a partnership under this Part, the term "partner" means a member of the limited liability company."

SECTION 29. G.S. 105-163.1(8) reads as rewritten:

"(8) Nonresident entity. – Any of the following:

a. A foreign limited liability company, ~~as defined in G.S. 57C-1-03,~~defined using the same definition for the term "foreign LLC" in G.S. 57D-1-03, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter ~~57C~~57D of the General Statutes.

b. A foreign limited partnership as defined in G.S. 59-102 or a general partnership formed under the laws of any jurisdiction other than this State, unless the partnership maintains a permanent place of business in this State.

c. A foreign corporation, as defined in G.S. 55-1-40, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes."

SECTION 30. G.S. 117-18.1(a)(4) reads as rewritten:

"(a) Electric membership corporations may form, organize, acquire, hold, dispose of, and operate any interest up to and including full controlling interest in separate business entities that provide energy services and products, telecommunications services and products, water, and wastewater collection and treatment, so long as those other business entities meet all of the following conditions:

...

(4) They are organized and operated pursuant to Chapter 55 or Chapter ~~57C~~57D of the General Statutes.

...."

SECTION 31. G.S. 25-9-406(i) reads as rewritten:

"(i) Inapplicability. – This section does not apply to an assignment of a health-care-insurance ~~receivable.~~receivable or an interest in a partnership or limited liability company. 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:

(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 32. G.S. 25-9-408(f) reads as rewritten:

"(f) Inapplicability. – This section does not apply to an assignment of an interest in a partnership or limited liability company. 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:

(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 33. The Revisor of Statutes may cause to be printed all relevant portions of the explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 34. Except as otherwise provided, this act becomes effective January 1, 2014.

SENATE BILL 439:
Amend & Restate NC Limited Liability Co. Act

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 15, 2013
Introduced by:	Sens. Clodfelter, Barringer, Brunstetter	**Prepared by:**	Bill Patterson
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 439 rewrites the North Carolina Limited Liability Company Act.

CURRENT LAW: The North Carolina Limited Liability Company Act, codified as Chapter 57C of the General Statutes, governs the creation, operation, and dissolution of limited liability companies.

BILL ANALYSIS: Section 1 of the bill repeals Chapter 57C in its entirety, and Section 2 reenacts it as Chapter 57D, with substantial revisions, including:

- Operating agreements would not have to be in writing; they could be established in the same ways as any contract: written, oral, or implied assent among the parties to the contract
- Rights and duties of parties as set forth in the Act could be freely modified, waived, or nullified by agreement
- New defined terms are added to provide a more detailed framework for carrying out the ownership and management of LLCs
- Provisions relating to low-profit LLCs are deleted
- Provisions are added to clarify matters that may be agreed upon by members, including:
    - Management duties
    - Exculpation and indemnification
    - Penalties
    - Alternative dispute resolution
    - Information access rights
- Provisions governing foreign LLCs would be harmonized with their counterparts under the Business Corporations Act
- Various provisions of the Act would be clarified and coordinated with relevant State and federal law

Sections 3 through 30 make various conforming changes to other statutory provisions.

Sections 31 and 32 exempt ownership interests in LLCs from UCC Article 9 provisions that might result in encumbrances to a member's economic interest in breach of the operating agreement, which could adversely affect the interest of the other members

EFFECTIVE DATE: This act becomes effective January 1, 2014, except as otherwise provided in new Chapter 57D, Article 11 (Transition Provisions).

BACKGROUND: Senate Bill 439 is the product of four years of work by the LLC Act Revisions Task Force of the North Carolina Bar Association's Business Law Section.

O. Walker Reagan
Director



Research Division
(919) 733-2578

Summary of Proposed
Overhaul of the North Carolina
Limited Liability Company Act

1. **Affirmation of Contractual Underpinnings of the North Carolina Limited Liability Company Act.** The public policy underlying the North Carolina Limited Liability Company Act (the "Act") is stated in G.S. § 57C-10-03(e): "[I]t is the policy of [the Act] to give maximum effect to the principle of freedom of contract and to the enforceability of operating agreements." The revisions to the Act are proposed to more clearly, concisely, and effectively achieve and implement that stated public policy objective.

(a) No writing requirement. The revised Act would eliminate all requirements that any part of a North Carolina limited liability company's operating agreement be in writing. The revisions, however, do not go as far as the Delaware Limited Liability Company Act, which makes the "statute of frauds" inapplicable to Delaware limited liability company agreements. Under the revised Act, the operating agreement may be established in the same ways as any contract; i.e., by written, oral, or implied assent among the parties to the contract. As under the current Act, however, the parties may require that all of the components of the operating agreement be in a signed, written document or in any other prescribed form.

(b) Supplemental Nature of the Act. In furtherance of the foregoing, the revised Act would establish that its provisions concerning the internal affairs of North Carolina limited liability companies are intended to apply only if, and to the extent, other provision is not made in the operating agreement. Accordingly, parties are free to modify, waive, and nullify the rules of the Act that would otherwise govern their respective rights and duties. The limited extent to which that freedom of contract is restricted is set forth in Part 3 of Article 2 of the revised Act.

(c) Objective of the Revised Act. The objective of the proposed revisions is to provide certainty and a more detailed framework and structure to allow members of a North Carolina limited liability company to be confident that their management and ownership arrangements will be accommodated by and enforced under the Act. This flexibility is partially achieved through the introduction of certain new defined terms: (a) those relating to the management of the limited liability company: "company officials," (which may but need not be "managers"); (b) those relating to the two different types of owners of limited liability companies: "economic interest owners" (referred to under the current Act as "assignees") and "members," and in reference to either economic interest owners or members or both, "interest owners," and the interest held by either being referred to as an "ownership interest" instead of a "membership interest"; and (c) those relating to the economic interest of an owner: "contribution amount," "capital interest," and "economic interest."

(d) Clarification of Matters that May be Agreed Upon by the Members. In addition to the members being able to require the operating agreement to be in writing or other prescribed form, the revised Act would make it clear that the members' freedom of contract extends to decisions concerning the following matters:

(i) *Management Duties.* The duties of those responsible for the management of the company, including the scope or elimination of fiduciary and

other duties, except nonwaivable contractual duties, including the implied contractual covenant of good faith and fair dealing and the requirement that the terms of the contract not be unconscionable at the time they are made;

(ii) *Exculpation and Indemnification.* The liabilities and other consequences to those managing the company for any breach or failure in the performance of their duties;

(iii) *Penalties.* The imposition of penalties and other remedies for breach of the operating agreement or the occurrence of proscribed events;

(iv) *ADR.* The right of the parties to select the manner in which they are to resolve their disputes, including having such dispute resolution procedures supplant the right to bring derivative actions or actions to cause the company to be judicially dissolved; and

(v) *Information Rights.* The right to establish certain rules and procedures concerning access that owners may have to certain information, while specifying the type of information that can not be denied members who comply with prescribed rules and procedures.

2. Foreign Limited Liability Companies.

The revised Act would harmonize, where appropriate, the rules under the LLC Act with their counterparts under the BCA. One such set of rules where this would be accomplished are those relative to foreign limited liability companies.

3. Clarifying, Modernizing, and Coordinating Provisions of the Act.

The remaining revisions are more in the nature of clarifying (i.e., removing ambiguities), simplifying, and modernizing the Act and coordinating its provisions to accommodate the new concepts and features described above. These revisions include those described in the following non-exhaustive list:

(i) coordinating the terms relating to bankruptcy with the current United States Bankruptcy Code;

(ii) clarifying that the flexibility of the Act accommodates entities and arrangements such as low profit limited liability companies without the need to adopt separate sets of provisions such as those found in G.S. § 57C-2-03;

(iii) providing that organizers may act by majority consent;

(iv) removing the requirement that the articles of organization state whether the LLC is "member-managed" or "manager-managed";

(v) clarifying that an LLC need not have any managers, instead management may be vested in persons having different titles and different powers and duties as may be provided in the operating agreement;

(vi) allowing managers to delegate responsibilities to other persons without the approval by the members unless the operating agreement provides otherwise;

(vii) providing that the term of a limited liability company is presumed to be perpetual unless other provision is made in the operating agreement (instead of in the articles of organization);

(viii) adopting rules of construction to eliminate repetition of phrases and qualifiers to make the Act easier to read and more user friendly;

(ix) clarifying and modernizing the default rules relating to capital contributions and excuses from performances and basing distributions on the proportional contributions (of services as well as capital) of the owners (including promises to make contributions in the future);

(x) conforming the default rules and procedures relative to derivative actions with those in the BCA; and

(xi) the elimination of redundant and otherwise superfluous provisions, including (A) G.S. § 57C-10-03(b) and (c) (concerning the law of estoppel and agency when § 57C-10-05 broadly provides that rules of equity and law supplement those under the Act) and (B) § 57C-2-02(l)-(16) (illustrating the type of powers a limited liability company may exercise when the breath of the statement in that section that there are no limitations or restrictions to such power other than not engaging in illegal activities makes doing so unnecessary).

4. **Other Changes of Note.**

(a) Override of UCC §§ 9-406 and 9-408. Because the application of UCC §§ 9-406 and 9-408, as currently in effect, may allow a member to encumber his or her economic interest in breach of the operating agreement [which may result in the foreclosure of that interest under circumstances that may result in adverse tax consequences to the other members, the transfer of ownership of the economic interest to a corporation or other ineligible shareholder of an S corporation, for those LLCs that elect to be taxed as S corporations, or a technical termination under I.R.C. § 708(b)(1)(B)], the revised Act adopts the approach taken in states such as Delaware and Virginia (among other states, including those states that have recently restated their LLC Acts: Texas, Mississippi, and New Hampshire) to not have UCC §§ 9-406 and 9-408 apply to LLC ownership interests.

(b) Certificate of Existence. An example of the type of clean up undertaken by the revised LLC Act concerns the certificates of existence issued by the Secretary of State. While the current LLC Act provides that one may conclusively rely on a certificate of existence as to the existence of an LLC, one does so at his or her peril. This is because, as contrasted from a corporation under the BCA, the filing of articles of dissolution is not the event that causes an LLC to dissolve. Thus, the Secretary of State is not in a position to certify as to whether the LLC has dissolved. All she can do is certify as to the status of the LLC's filings made in her office, which certification will be conclusive evidence as to the accuracy of its contents.

(c) Deletion of Low Profit Limited Liability Company (L3C) Provisions. As under current law, the flexibility of the restated Limited Liability Company Act accommodates the organization of limited liability companies that qualify for "program related investments" under I.R.C. § 4944(c) by private foundations without the need for any additional or special provisions under Chapter 57C.

5. Concepts the Committee Elected to Not Recommend.

(a) Series or Cell Limited Liability Companies. The committee carefully reviewed and considered the merits of adopting an elaborate set of provisions that have been adopted in 10 other states, allowing limited liability companies to create internally segmented liability "cells" or "series." Under those provisions, not only are the members of the limited liability company shielded from personal liability for the debts and obligations of the limited liability company itself, but separately identified groups of assets of the company may be shielded from liabilities attributable to other groups of the company's assets. No uniform set of provisions have been adopted by the states allowing for "series" or "cell" limited liability companies. The committee concluded that the confusion and potential abuse associated with such entities, together with the public policy of North Carolina against excessive fragmentation of an incorporated enterprise, outweigh the potential benefits that may be derived from Chapter 57C adopting a set of provisions to allow for such structures. The committee will continue to monitor developments in this area.

(b) Contractual Appraisal Rights. The committee reviewed the contractual appraisal rights provisions of the Delaware Limited Liability Company Act and concluded that the flexibility of Chapter 57C accommodates the inclusion of such rights in an LLC's operating agreement without the need for any additional or special provisions under Chapter 57C.

(c) Statute of Frauds. Chapter 22 of the North Carolina General Statutes does not require agreements that cannot be performed within one year to be in writing, which was the subject of the Delaware Chancery Court decision in *Olson v. Halvorsen*, C.A. No. 1884-VCL (De. Ch. Ct. 2008). Thus, the committee determined that a counterpart to section 18-101(7), excluding operating agreements from the application of the "statute of frauds," was not necessary or appropriate. Other than to expressly acknowledge the intention of the General Assembly to promote the freedom of the parties to an operating agreement to arrange their business affairs (including their respective rights and duties) as they may agree and the other rules of construction and statements of public policy in G.S. 57C-10-01 (including sanctioning the assessment of penalites under LLC's operating agreement, G.S, 57C-2-32(a)), the Act does not provide additional or special rules for resolving situations in which overlapping or conflicting laws may apply. Instead, such situations are to be resolved under the rules applicable to statutory construction and conflict of laws.

SUMMARY OF PROPOSED BILL TO AMEND CHAPTER 55 TO MAKE UPDATING CHANGES

The North Carolina Business Corporation Act, Chapter 55 of the General Statutes (the "NCBCA"), is based upon the Model Business Corporation Act (the "Model Act"). Periodically, a committee of the American Bar Association adopts revisions to the Model Act. The Business Organizations Committee (the "Committee") of the Business Law Section of the North Carolina Bar Association periodically reviews these revisions to the Model Act to recommend whether conforming changes are appropriate for the NCBCA. The Committee has recommended certain changes, summarized below, in response to Model Act amendments. The bill drafted by the Committee would:

- ***permit a corporation's board of directors to delegate to officers the authority to issue rights, options, warrants and shares.*** The bill (i) clarifies the authority of a board of directors to authorize one or more officers to designate recipients of equity compensation awards and determine, within limits established by the board (or, if applicable, by the shareholders), of such awards and the terms thereof, provided that the designated officers may not make awards to themselves or to any other persons specified by the board, and (ii) restores to the NCBCA language clarifying that a board of directors may delegate to officers the authority to authorize the issuance of shares within prescribed limits. Changes with respect to the authority to grant equity compensation awards would permit North Carolina corporations the same flexibility as Delaware corporations—the changes effected by this section of the bill are conceptually identical to Section 157(c) of the Delaware General Corporation Law, which has been included in Delaware's statutes for some time. Prior to 2005 amendments, the NCBCA included language specifically sanctioning the delegation by the board of directors to an officer of the ability to authorize the issuance of shares within limits prescribed by the board. The removal of that language was an unintended consequence of a 2005 amendment intended to increase the ability of the board to delegate authority. (Sections 1 and 2.)

- ***conform provisions of the NCBCA to the Model Act regarding the holding of shareholders meetings by means of electronic remote communication.*** Although North Carolina amended the NCBCA in 2001 to allow shareholders, to the extent authorized by the board of directors, to attend meetings of North Carolina corporations "by electronic or other means of remote communication," amendments to include that concept in the Model Act in 2010 contain additional features and provide more comprehensive guidance that would be useful for North Carolina corporations, including (i) allowing the board of directors to limit participation by remote communication to certain classes or series of shareholders, (ii) imposing an obligation on the corporation to implement reasonable security measures to (A) verify that each person participating via remote communication is a shareholder and (B) provide a reasonable opportunity to shareholders to participate in such a meeting. If the board of directors has authorized participation by remote communication, the notice of a shareholder meeting must include a description of the means of remote communication to be used. The added provisions do not eliminate the requirement that corporations hold meetings at a physical location—they merely enable remote participation by shareholders to the extent authorized by the board of directors. (Sections 3, 4, 5 and 6.)

- ***clarify that "force-the-vote" provisions in merger agreements, and other agreements providing for a corporate transaction requiring shareholder approval, are effective.*** "Force the vote" provisions—provisions included in an agreement for a transaction requiring shareholder approval that obligate the corporation to submit the matter for shareholder approval even if the board later determines that it can no longer recommend that the shareholders approve the matter—have become standard in merger agreements for publicly traded corporations. It is uncertain whether such provisions are effective against a North Carolina corporation. Clarity would avoid unnecessary, expensive litigation and unintended consequences. Force-the-vote provisions are typically seen as potentially beneficial to both sides of a merger agreement and permit the target's shareholders the opportunity to take the bird in the hand. (Sections 7, 8, 9, 11, 13 and 14.)

- ***permit "short form" mergers among 90% owned subsidiaries.*** Under the NCBCA, where a parent corporation holds 90% of each class of outstanding stock of a subsidiary corporation, the parent and subsidiary corporations may merge without a vote of the board of directors or shareholders of the subsidiary and, where the parent is the surviving corporation of the merger and its articles of incorporation are not being amended in connection with the merger, without a vote of the shareholders of the parent corporation. This simplified merger approval process for 90% owned subsidiaries is commonly referred to as a "short form" merger. The bill adopts Model Act provisions that permit 90% owned subsidiaries (sister corporations) to merge with each other under the short-form process (that is, with the only required approval being of the board of directors of the common parent corporation). Under the current NCBCA, the same transaction could effectively be completed under the short-form process if the parent interposed a shell intermediate holding company between it and the 90% owned subsidiaries and the subsidiaries then merged with the shell holding company. The change effected by the bill would allow that transaction to be effected directly and more efficiently. (Section 10.)

- ***create a bright-line safe harbor for asset sales not requiring shareholder approval.*** Under the NCBCA, shareholder approval is required of sales of assets outside the usual and regular course of business, when the assets sold constitute "all or substantially all" of the assets of the corporation. The term "substantially all" is not defined in the NCBCA and leads to uncertainty as to whether certain significant asset sales are required to be approved by shareholders. The consequences of failing to obtain shareholder approval, if such approval were ultimately determined to be required, leads corporations to apply an overly conservative definition of "all or substantially all," resulting in inefficiency and unnecessary expense in connection with significant asset sales. Moreover, where the delay of obtaining shareholder approval is unacceptable to the purchaser of significant corporate assets, this uncertainty may prevent the completion of an advantageous corporate transaction. The bill, which adopts the substance of a Model Act amendment, provides that a sale in which the corporation retains a continuing business that accounts for 25% of total assets and 25% of income from continuing operations before taxes or revenues from continuing operations, in each case of the corporation and its subsidiaries on a consolidated basis, is conclusively deemed be a sale of less than "all or substantially all" of the assets and thus would not require shareholder approval. (Section 12.)

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee

4/16/13

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	SOS
[signature]	SOS
David Heinen	NC Center for Nonprofits
Lisa Gillespie	Bill Drafting
Nathan Batts	NCBA
Charlotte Mitchell	Sykes, Kennedy, Mitchell

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee

4/16/13
Date

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NAME	FIRM OR AGENCY AND ADDRESS
Amanda Honaker	Troutman Sanders
Will Parry-Hill	NCHFA
John DelGrano	Brickbaker + Assoc.
Floyd Lewis	General Statutes Commission
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Connie Wilson	EE NC
Matt Vibbert	CW Consult
Bob Kaylor	Kaylor Law
LC Ramsey	CSS
[illegible]	NFPA
[illegible]	NCCJA
Morgan Beam	Gov. Office
DAVID BARNES	Electricities
Jason Downs	JDH

Senate Committee on Judiciary I
Thursday, April 18, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 201	Allow Hunting With Suppressors.	Senator Randleman
SB 539	Jury List/Date of Birth Information.	Senator Clodfelter Senator Tarte

Adjournment

Senate Committee on Judiciary I
Thursday, April 18, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on April 18, 2013 in Room 1027/1128 of the Legislative Building. Nine members were present.

Senator Thom Goolsby, Chair, presided.

Sen. Goolsby welcomed the committee and recognized Senator Shirley Randleman to explain Senate Bill 201. Sen. Randleman explained the bill and the current process for acquiring permits to hunt with a suppressor.

Sen. Goolsby recognized Senator Jerry Tillman for a question and Sen. Randleman responded. Chris Dillon from the North Carolina Wildlife Resources Commission and Joseph McClees from the North Carolina Firearms Dealers Group spoke in favor of the bill. Sen. Tillman made a motion for a favorable report to the original bill.

Senator Josh Stein asked Sen. Randleman a question and spoke in opposition to the bill. Sen. Goolsby took Sen. Tillman's motion and SB 201 passed by voice vote.

Sen. Goolsby took a motion to bring forward the PCS from Sen. Tillman and recognized Senator Jeff Tarte to explain Senate Bill 539. Sen. Tarte explained the bill. Senator Dan Clodfelter made a motion for a favorable report to the PCS, unfavorable to the original bill. Ms. Sitze clarified that the PCS only clarifies that date of birth shall remain confidential for jurors. Hearing no further discussion or debate, the committee took a voice vote and the motion passed.

The meeting adjourned at 10:14 a.m.

Senator Thom Goolsby, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Thursday, April 18, 2013

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

FAVORABLE

SB **201** **(CS#1)** Allow Hunting With Suppressors.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

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

SB **539** Jury List/Date of Birth Information.
Draft Number: S539-PCS15253-SA-22
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Senator Shirley Randleman will handle SB 201
Senator Jeffery Tarte will handle SB 539



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 2

SENATE BILL 201
Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/9/13

Short Title: Allow Hunting With Suppressors. (Public)

Sponsors:

Referred to:

March 6, 2013

A BILL TO BE ENTITLED

AN ACT TO ALLOW HUNTING WITH A SUPPRESSOR OR OTHER DEVICE DESIGNED TO MUFFLE OR MINIMIZE THE REPORT OF A FIREARM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-291.1(c) reads as rewritten:

"(c) It is a Class 1 misdemeanor for any person taking wildlife to have in his possession any:

~~(1) Firearm equipped with a silencer or any device designed to silence, muffle, or minimize the report of the firearm. The firearm is considered equipped with the silencer or device whether it is attached to the firearm or separate but reasonably accessible for attachment during the taking of the wildlife.~~

(2) Weapon of mass death and destruction as defined in ~~G.S. 14-288.8.~~G.S. 14-288.8, other than a suppressor or other device designed to muffle or minimize the report of a firearm that is lawfully possessed by a person in compliance with 26 U.S.C. Chapter 53 §§ 5801-5871.

The Wildlife Resources Commission may prohibit individuals training dogs or taking particular species from carrying axes, saws, tree-climbing equipment, and other implements that may facilitate the unlawful taking of wildlife, except tree-climbing equipment may be carried and used by persons lawfully taking raccoons and opossums during open season."

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

SENATE BILL 201:
Allow Hunting With Suppressors

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 18, 2013
Introduced by:	Sen. Randleman	**Prepared by:**	Susan Sitze*
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 201 would amend G.S. 113-291.1(c) to allow hunting with a firearm equipped with a silencer or other device designed to silence, muffle, or minimize the report of the firearm.***

CURRENT LAW: Under G.S. 113-291.1(c), it is a Class 1 misdemeanor to hunt wildlife while in possession of a firearm equipped with a silencer or other device designed to silence, muffle, or minimized the report of the firearm. The firearm is considered equipped with the silencer even if it is not attached but is reasonably accessible for attachment during the taking of the wildlife.

A sound suppressor or silencer is defined as a weapon of mass death and destruction under State law, G.S. 14-288.8(c)(3), and unlawful possession of a silencer is a Class F felony. The statute, however, provides a number of exceptions under which a person may lawfully possess a silencer or other such weapons. G.S. 14-288.8(b)(5) provides an exception for those persons that possess or own such weapons in compliance with 26 U.S.C. Chapter 53 §§ 5801-5871.

BILL ANALYSIS: Senate Bill 201 would amend G.S. 113-291.1(c)(1) to eliminate the Class 1 misdemeanor penalty for hunting with a silencer or device designed to silence, muffle, or minimize the report of a firearm.

The bill would also amend G.S. 113-291.1(c)(2) to clarify that there is no Class 1 misdemeanor penalty for hunting with a silencer, suppressor or other sound-muffling device authorized in accordance with federal law. G.S. 113-291.1(c)(2) would still prohibit hunting with silencers or devices owned not in compliance with federal law, or with any other weapon of mass death and destruction.

EFFECTIVE DATE: This act is effective when it becomes law.

BACKGROUND: The State law provision allowing the possession of a silencer was established by S.L. 2011-268. Compliance with the federal law for individuals includes filing ATF Form 4 and ATF Form 5330.20, paying a transfer tax, and submitting to a criminal history check.

**Chris Saunders, Staff Attorney, contributed substantially to this summary.*

O. Walker Reagan
Director

* S 2 0 1 - S M S A - 3 9 E 2 - V 1 *

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 539
PROPOSED COMMITTEE SUBSTITUTE S539-CSSA-22 [v.1]

4/17/2013 11:33:29 AM

Short Title: Jury List/Date of Birth Information. (Public)

Sponsors:

Referred to:

April 1, 2013

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ADMINISTRATIVE OFFICE OF THE COURTS TO OBTAIN ACCESS TO DATE OF BIRTH INFORMATION FOR PURPOSES OF ADDING A UNIQUE IDENTIFIER THAT CAN BE USED TO REMOVE DUPLICATE JUROR RECORDS WHEN PREPARING THE MASTER JURY LIST.

The General Assembly of North Carolina enacts:

SECTION 1. 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.

(5) When requested by the Administrative Office of the Courts for purposes of preparing the master jury list in judicial districts.

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 2. G.S. 9-4(b) reads as rewritten:

"(b) Public access to juror information shall be limited to the alphabetized list of the names. The addresses and dates of birth of prospective jurors are confidential and not subject to disclosure without an order of the court. "

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

SENATE BILL 539:
Jury List/Date of Birth Information

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 18, 2013
Introduced by:	Sens. Clodfelter, Tarte	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition S539-CSSA-22		

SUMMARY: ***The proposed committee substitute (PCS) for Senate Bill 539 would authorize the Administrative Office of the Courts (AOC) to obtain date of birth information from boards of elections to be used to prepare a master jury list.***

BILL ANALYSIS:

Section 1 of the PCS would authorize the boards of elections to release date of birth information to AOC for purposes of preparing a master jury list in judicial districts.

Section 2 of the PCS would ensure that the dates of birth remain confidential and are not made available to the public.

EFFECTIVE DATE: This act is effective when it becomes law.

O. Walker Reagan
Director

S539-SMSA-38 CSSA-22 -V1

Research Division
(919) 733-2578

VISITOR REGISTRATION SHEET

J - 1 [redacted] Rm 1027

(Committee Name)

4/18/2013

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
CHRIS DIXON	NCAOC
DAVID A. BROWN	UNC School of Gov't
CRAIG BYRD	Thomasville, NC
Alanna DAVIS	UNC-CH, Student
[signature]	
Mildred Spearman	NCAOC

09-21-201

VISITOR REGISTRATION SHEET

Senate JL RM 1027

(Committee Name)

4-18-13

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe McClees	McClew Consulting
Amy Whited	NCHS
Patricia Yancey	APPANC
Peg Dorer	Conf. of DAs
Durham	VS

09-21-201

2013

SENATE
JUDICIARY I

MINUTES

Senate Committee on Judiciary I
Tuesday, April 23, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 439	Amend & Restate NC Limited Liability Co. Act.	Senator Clodfelter Senator Barringer Senator Brunstetter
HB 388	Assigned Counsel/Amend and Clarify.-AB	Representative Jackson Representative Glazier

Adjournment

Senate Committee on Judiciary I
Tuesday, April 23, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on April 23, 2013 in Room 1027/1128 of the Legislative Building. Twelve members were present.

Senator E. S. (Buck) Newton, Chair, presided.

Sen. Newton took a motion from Senator Dan Clodfelter to take up a Proposed Committee Substitute for Senate Bill 439 and the motion passed by a voice vote. Senator Tamara Barringer was recognized to explain the PCS and she noted there was an amendment.

Sen. Clodfelter sent forth an amendment and Bill Patterson from the Research Division explained the amendment. Sen. Newton took a vote on the amendment and it was adopted by a voice vote.

Senator Tom Apodaca made a motion for a favorable report to the PCS as amended, unfavorable to the original bill. The motion passed by a voice vote.

Sen. Newton recognized Representative Darren Jackson to explain House Bill 388. Rep. Jackson detailed the bill for the committee. Senator Jerry Tillman made a motion for a favorable report to the original bill and the motion passed by a voice vote.

The meeting adjourned at 10:10 a.m.

Senator E. S. (Buck) Newton, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Tuesday, April 23, 2013

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

FAVORABLE

HB **388** Assigned Counsel/Amend and Clarify.-AB

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator E.S. Newton will handle HB 388



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Wednesday, April 24, 2013

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

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

SB **439** Amend & Restate NC Limited Liability Co. Act.

Draft Number:	S439-PCS15254-TG-27
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Tamara Barringer will handle SB 439



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 439
PROPOSED COMMITTEE SUBSTITUTE S439-CSTG-27 [v.1]
4/22/2013 5:34:34 PM

Short Title: Amend & Restate NC Limited Liability Co. Act. (Public)

Sponsors:

Referred to:

March 27, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND AND RESTATE THE NORTH CAROLINA LIMITED LIABILITY COMPANY ACT AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 57C of the General Statutes is repealed.

SECTION 2. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 57D.**

"**North Carolina Limited Liability Company Act.**

"Article 1.

"General Provisions.

"Part 1. Short title; Reservation of Power; Definitions.

"**§ 57D-1-01. Short title.**

This Chapter is the "North Carolina Limited Liability Company Act" and may be cited by that name.

"**§ 57D-1-02. Governing law; jurisdiction of the superior courts; intent; reservation of power to amend or repeal.**

(a) This Chapter and any other applicable laws of this State govern (i) the internal affairs of every LLC, including the interpretation, construction, and enforcement of operating agreements and determining the rights and duties of interest owners, managers, and other company officials, and (ii) any liability that interest owners or managers or other company officials may have for the liabilities of the LLC.

(b) The superior courts of this State have jurisdiction to enforce the provisions of this Chapter.

(c) The General Assembly may amend or repeal all or any part of this Chapter at any time, and all LLCs and the rights and duties of interest owners, managers, and other company officials subject to this Chapter will be subject to any such amendment or repeal. Except as otherwise provided in this Chapter, all amendments of this Chapter apply to all LLCs, foreign LLCs, interest owners, and managers and other company officials, including those LLCs and foreign LLCs in existence, or person having such interests and status, at the time of the enactment of any such amendment.

(d) Each provision of this Chapter is severable, such that if any provision, including any clause of any provision, of this Chapter or application thereof to any person or in a particular context is held to be invalid, such invalidity will not affect other provisions or applications of this Chapter that can be given effect without the invalid provision or application.

"**§ 57D-1-03. Definitions.**

Unless otherwise specifically provided, the following definitions apply in this Chapter:

(1) Approve. – With respect to a manager or other company official, member, or organizer and a decision or other action to be taken by the managers or other applicable company officials, members, or organizers, as the case may be, (i) the affirmative vote of that person at a meeting of the managers or other applicable company officials, members, or organizers, as applicable, or (ii) any other expression of assent to the action to be taken that is made in the manner or form required to establish the assent of the members to amendments of the operating agreement.

(2) Articles of organization. – The document filed under G.S. 57D-2-20 (or former G.S. 57C-2-20 for LLCs formed before January 1, 2014) for the purpose of forming an LLC, as amended or restated.

(3) Business. – Any lawful trade, investment, or other purpose or activity, whether or not conducted or undertaken for profit, except that the term "business," as used in Article 7 of this Chapter, or to which reference is otherwise made in this Chapter to a foreign LLC "transacting business" (or is authorized or required to be authorized to "transact business") in this State, has the same meaning in that context as applied in Article 15 of Chapter 55 of the General Statutes.

(4) Capital interest. – An interest owner's interest in or share of the owners' equity of the LLC, which may be based on the method of accounting consistently applied under which the LLC maintains its financial records to be made available to the members under G.S. 57D-3-04(a)(2).

(5) Company official. – Any person exercising any management authority over the limited liability company, whether the person is a manager or referred to as a manager, director, or officer or given any other title.

(6) Contribution amount. – The fair market value, net of liabilities assumed (or to which any property contributed to the LLC is subject, but not in excess of the fair market value of the property that is subject to the liability) or other consideration paid by the LLC, of contributions in any form described in G.S. 57D-4-01 made in respect of an economic interest, determined as of the time the contribution is made, reduced by any money or other property or services promised to be transferred or rendered to or on behalf of the LLC in respect of the economic interest that are discharged without performance.

(7) Corporation. – A domestic corporation or a foreign corporation, as those terms are defined in G.S. 55-1-40.

(8) Debtor in bankruptcy – A person who is the subject of either of the following:

a. An order for relief under Title 11 of the United States Code or a successor statute of general application.

b. A comparable order under federal, state, or foreign law governing insolvency.

(9) Distribution. – Except as provided in the last sentence of this definition of distribution with respect to G.S. 57D-4-05, 57D-4-06, and 57D-6-12, the direct or indirect transfer of money or other property to, or incurrence of indebtedness by, an LLC for the benefit of an interest owner in respect of the interest owner's ownership interest. The amount of a distribution is the fair market value of the property distributed net of liabilities assumed or other consideration paid by the interest owner (or to which any property distributed to the interest owner is subject, but not in excess of the fair market value of the property that is subject to the liability), determined as of the time the distribution is made. As used in G.S. 57D-4-05, 57D-4-06, and

57D-6-12, "distribution" does not include payments made to, or an account of, an interest owner that constitute compensation for services and does not include payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

(10) Economic interest. – The proprietary interest of an interest owner in the capital, income, losses, credits, and other economic rights and interests of a limited liability company, including the right of the owner of the interest to receive distributions from the limited liability company.

(11) Economic interest owner. – A person who owns an economic interest but is not a member.

(12) Entity. – A corporation, limited liability company, partnership (including a limited partnership), unincorporated association, trust, estate, government or governmental agency, instrumentality, or other entity.

(13) Foreign LLC. – An unincorporated entity organized under the law of (i) a state other than this State that is denominated thereunder as a limited liability company or (ii) a foreign jurisdiction other than a state, and the statute under which it is organized is substantially similar to the limited liability company statute of any state and is not more appropriately characterized as a corporation, partnership, or trust.

(14) Individual. – A human being.

(15) Interest owner. – A member or an economic interest owner.

(16) LLC. – An entity formed under this Chapter (or former Chapter 57C of the General Statutes) that has not become another entity or form of entity by merger, conversion, or other means.

(17) Liabilities, debts, and obligations. – Have the same meaning and are used interchangeably throughout this Chapter. Reference to "liabilities," "debts," or "obligations," whether individually or in any combination, means all liabilities, debts, and obligations, whether arising in contract, tort, or other applicable law.

(18) Limited liability company. – An LLC or foreign LLC.

(19) Limited partnership. – A domestic limited partnership or a foreign limited partnership as those terms are defined in G.S. 59-102.

(20) Manager. – Has the following meanings: (i) with respect to an LLC, any person designated as a manager as provided in the operating agreement or, if applicable, in G.S. 57D-3-20(d) and (ii) with respect to a foreign LLC, any person designated as a manager under the law of the jurisdiction in which the foreign LLC is organized.

(21) Member. – A person who has been admitted as a member of the LLC as provided in the operating agreement or G.S. 57D-3-01 or who was a member of the LLC immediately before the repeal of Chapter 57C of the General Statutes until the person ceases to be a member as provided in the operating agreement or G.S. 57D-3-02 or, with respect to a foreign LLC, a person who has been admitted as a member of the foreign LLC under the law of the jurisdiction in which the foreign LLC is organized until the person ceases to be a member under that law.

(22) Nonprofit corporation. – A domestic corporation or a foreign corporation as those terms are defined in G.S. 55A-1-40.

(23) Operating agreement. – Any agreement concerning the LLC or any ownership interest in the LLC to which each interest owner is a party or is otherwise bound as an interest owner. Subject to other controlling law, the operating agreement may be in any form, including written, oral, or implied,

or any combination thereof. The operating agreement may specify the form that the operating agreement must take, in which case any purported amendment to the operating agreement or other agreement expressed in a nonconforming manner will not be deemed to be part of the operating agreement and will not be enforceable to the extent it would be part of the operating agreement if it were in proper form. Subject to G.S. 57D-2-21 and the other provisions of this Chapter governing articles of organization, the articles of organization are to be deemed to be, or be part of, the operating agreement. If the LLC has only one interest owner and no operating agreement to which another person is a party, then any document or record intended by the interest owner to serve as the operating agreement will be the operating agreement.

(24) Organizer. – A person who executes the articles of organization in the capacity of an organizer.

(25) Ownership interest. – All of an interest owner's rights and obligations as an interest owner in an LLC, including (i) any economic interest, (ii) any right to participate in the management, or approve actions proposed by persons responsible for the management of the LLC, (iii) any right to bring a derivative action, and (iv) any right to inspect the books and records of or receive information from the LLC.

(26) Person. – An individual or an entity.

(27) Principal office. – The principal executive office of the limited liability company as stated in its most recent annual report filed by the Secretary of State or, if the limited liability company has never filed an annual report, in its articles of organization or application for a certificate of authority.

(28) Proceeding. – Any civil or criminal proceeding or other action pending before any court of law or other governmental body or agency or any arbitration proceeding.

(29) Professional service. – Has the meaning provided in G.S. 55B-2.

(30) Professional limited liability company. – A limited liability company subject to G.S. 57D-2-02.

(31) Record. – When used as a noun, information that is inscribed on a tangible medium or that is stated in an electronic or other medium and is retrievable in readable form.

(32) Secretary of State. – The Secretary of State of North Carolina.

(33) State. – A state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, and "this State" refers to the State of North Carolina.

(34) Transfer. – As a noun, the transfer of legal, equitable, or beneficial ownership by sale, exchange, assignment, gift, donation, grant, or other conveyance or disposition of any kind, whether voluntary or involuntary, including transfers by operation of law or legal process and includes, with respect to the ownership interest of an interest owner for purposes of G.S. 57D-3-02(a)(3), any (i) appointment of a receiver, trustee, liquidator, custodian, or other similar official for that interest owner or all or any part of the property of that interest owner under any law of bankruptcy or insolvency; (ii) gift, donation, transfer by will or intestacy, or other similar type of transfer or disposition, whether during one's life or because of death; (iii) appointment of a personal or other legal representative or other person serving in a similar capacity of a deceased interest owner; (iv) appointment of a guardian or other person serving in a similar capacity of an interest

owner who has been adjudicated to be incompetent by a court of competent jurisdiction; and (v) other transfer or disposition to a spouse or former spouse (including by reason of a separation agreement or divorce, equitable, community or marital property distribution, judicial decree, or other court order concerning the division or partition of property between spouses or former spouses or other persons); and, as a verb, the act of making any transfer.

"**§§ 57D-1-04 through 57D-1-19: Reserved for future codification purposes.**

"Part 2. Filing Documents.

"**§ 57D-1-20. Filing requirements.**

(a) A document required or permitted by this Chapter to be filed by the Secretary of State must be filed as provided in Chapter 55D of the General Statutes.

(b) A document submitted on behalf of a limited liability company must be executed by one of the following:

(1) A manager or other company official.

(2) If the document is the articles of organization, a person acting in the capacity of an organizer or a member as provided in G.S. 57D-2-21(a)(2).

(3) If the LLC has never had any members, an organizer.

(4) If the LLC is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

"**§ 57D-1-21. Forms.**

(a) The Secretary of State may promulgate and furnish on request forms for the following:

(1) An application for a certificate of existence.

(2) A foreign LLC's application for a certificate of authority to transact business in this State.

(3) A foreign LLC's application for a certificate of withdrawal.

(b) If the Secretary of State so requires, use of the forms listed in subsection (a) of this section is mandatory.

(c) The Secretary of State may promulgate and furnish on request forms for other documents required or permitted to be filed by this Chapter but their use is not mandatory.

"**§ 57D-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

	Document	Fee
(1)	Articles of organization	$125.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected limited liability company	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of organization	50.00
(11)	Restated articles of organization without amendment of articles	10.00
(12)	Restated articles of organization with amendment of articles	50.00
(13)	Articles of conversion (other than articles of conversion included as part of another document)	50.00

(14) Articles of merger	50.00
(15) Articles of dissolution	30.00
(16) Cancellation of articles of dissolution	10.00
(17) Certificate of administrative dissolution	No fee
(18) Application for reinstatement following administrative dissolution	100.00
(19) Certificate of reinstatement	No fee
(20) Certificate of judicial dissolution	No fee
(21) Application for certificate of authority	250.00
(22) Application for amended certificate of authority	50.00
(23) Application for certificate of withdrawal	10.00
(24) Certificate of revocation of authority to transact business	No fee
(25) Articles of correction	10.00
(26) Application for certificate of existence or authorization (paper)	15.00
(27) Application for certificate of existence or authorization (electronic)	10.00
(28) Annual report	200.00
(29) Any other document required or permitted to be filed by this Chapter	10.00

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of State under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying and certifying a copy of any filed document relating to a limited liability company:

(1) One dollar ($1.00) a page for copying.

(2) Fifteen dollars ($15.00) for a paper certificate.

(3) Ten dollars ($10.00) for an electronic certificate.

"**§ 57D-1-23. Execution by judicial act.**

Any person who is adversely affected by the failure or refusal of any person to execute and deliver to the Secretary of State for filing any document to be filed under this Chapter may petition the superior court in the county where the limited liability company's principal office or, if none in this State, its registered office is or was last located or, if there is no such office, in the County of Wake to direct the execution and delivery to the Secretary of State for filing of the document. If the court finds that it is proper for the document to be executed and delivered to the Secretary of State for filing and there has been failure or refusal by the applicable company officials to do so, it shall order the Secretary of State to make the filing.

"**§ 57D-1-24. Certificate of existence; certificate of authorization.**

(a) Anyone may apply to the Secretary of State for a certificate of existence for an LLC or a certificate of authorization for a foreign LLC.

(b) A certificate of existence or authorization sets forth the following:

(1) The limited liability company's name and, in the case of a foreign LLC, any different name that the foreign LLC is authorized under Article 3 of Chapter 55D of the General Statutes to use to transact business in this State, as provided in the foreign LLC's certificate of authority.

(2) That (i) the articles of organization for the LLC have been filed and are in effect and the date on which the filed articles of organization became effective or (ii) a certificate of authority has been issued to the foreign LLC and is in effect and the date on which the certificate of authority became effective.

(3) That the articles of organization of an LLC or the certificate of authority of a foreign LLC are not suspended under G.S. 57D-1-32(a) (or for limited liability companies formed before January 1, 2014, former G.S. 57C-1-32(a)) for failure to answer interrogatories propounded by the

Secretary of State or under G.S.105-230 for failure to pay a tax or fee or file a report or return.

(4) That the LLC has not been administratively dissolved under G.S. 57D-6-06 (or for limited liability companies formed before January 1, 2014, former G.S. 57C-6-03) and no decree of judicial dissolution has been filed under G.S. 57D-6-05 (or, for limited liability companies formed before January 1, 2014, former G.S. 57C-6-02) or, with respect to a foreign LLC, no application for a certificate of withdrawal or a certificate of revocation has been filed under Article 7 of this Chapter (or, for limited liability companies formed before January 1, 2014, former Article 7 of Chapter 57C of the General Statutes).

(5) That, in the case of an LLC, articles of dissolution have not been filed nor have articles of merger or conversion been filed causing it to merge or convert into another entity or form of entity.

(6) Other facts of record in the Office of the Secretary of State pertaining to the limited liability company that may be requested by the applicant.

(c) A certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence as to the accuracy of its contents.

"**§§ 57D-1-25 through 57D-1-29: Reserved for future codification purposes.**

"Part 3. Secretary of State.

"**§ 57D-1-30. Powers of the Secretary of State.**

The Secretary of State has the power necessary to perform the duties required by this Chapter.

"**§ 57D-1-31. Interrogatories by Secretary of State.**

The Secretary of State may propound to any limited liability company that the Secretary of State has reason to believe is subject to the provisions of this Chapter, and to any manager or other company official thereof, such written interrogatories as may be necessary and proper to enable the Secretary of State to ascertain whether the limited liability company has complied with all of the provisions of this Chapter applicable to it. Subject to applicable jurisdictional requirements, the interrogatories must be answered within 30 days after the mailing thereof, or within such additional time as the Secretary of State may fix, and the answers thereto must be full and complete and made in writing and under oath. If the interrogatories are directed to an individual, they must be answered by the individual, and if directed to a limited liability company, they must be answered by a manager or other company official thereof. The Secretary of State shall certify to the Attorney General for such action all interrogatories and answers thereto that disclose a violation of any of the provisions of this Chapter requiring or permitting action by the Attorney General.

"**§ 57D-1-32. Penalties imposed on limited liability companies for failure to answer interrogatories.**

(a) In addition to the recourse that the Secretary of State may have under G.S. 57D-6-06 and Part 3 of Article 7 of this Chapter to administratively dissolve an LLC or revoke the certificate of authority of the foreign LLC, if a limited liability company knowingly fails or refuses to answer truthfully and fully within the time prescribed in this Chapter interrogatories propounded by the Secretary of State in accordance with the provisions of this Chapter, the Secretary of State may suspend its articles of organization or its certificate of authority to do business in this State. The Secretary of State shall immediately notify by mail the limited liability company of its suspension. The powers, privileges, and franchises conferred on the limited liability company by the articles of organization or the certificate of authority terminate upon their suspension. Any act performed or attempted to be performed during the period of suspension is invalid and of no effect unless and to the extent the Secretary of State reinstates the limited liability company.

(b) The Secretary of State shall reinstate a limited liability company upon the limited liability company fully complying with its obligations under G.S. 57D-1-31, paying all state taxes, fees, and penalties due from it (which total amount due may be computed, for years before and after the suspension, in the same manner as if the suspension had not taken place), and paying to the Secretary of State twenty-five dollars ($25.00) to cover the cost of reinstatement. Upon reinstatement of an LLC's articles of organization or a foreign LLC's certificate of authority by the Secretary of State, (i) the limited liability company may again exercise its rights, privileges, and franchises in this State and (ii) the Secretary of State shall make the appropriate entry thereof on the records of the Secretary of State. The entry of reinstatement in the records of the Secretary of State relates back to and takes effect as of the date of the suspension by the Secretary of State, and the limited liability company may resume conducting its business as if the suspension had never occurred, subject to the rights of any person who relied, to that person's prejudice, on the suspension. The Secretary of State shall immediately notify by mail the limited liability company of the reinstatement.

(c) When the articles of organization or certificate of authority of a limited liability company have or has been suspended by the Secretary of State under subsection (a) of this section and the limited liability company has ceased to operate as a going concern, if there remains property held in the name of the limited liability company that is not disposed at the time of the suspension, or there remain future interests that may accrue to the limited liability company, its successor, or its interest owners, then any interested party may apply to the superior court for the appointment of a receiver. Application for the receiver may be made in a civil action to which all interest owners are made parties. The applicant may serve persons whom the applicant either is unable to locate or are unknown by publication made in the same manner as the publication of notice under G.S. 57D-6-11. A guardian ad litem may be appointed for any interest owners who are infants or incompetent. The receiver shall enter into a bond if the court requires one and shall give notice to creditors by publication or otherwise as the court may prescribe. Any creditor who fails to file a claim with the receiver within the time set will be barred of the right to participate in the distribution of the assets. The receiver may (i) sell the property interests of the limited liability company on such terms and in such manner as the court may order, (ii) apply the proceeds to the payments of any debt of the limited liability company, and (iii) distribute the remainder among the interest owners in accordance with the manner in which liquidating distributions are to be made by the limited liability company. Amounts due to any interest owner who is unknown or whose whereabouts are unknown are to be paid to the office of the clerk of the superior court and disbursed according to law. If the records of the limited liability company are lost or do not reflect the owners of the property interests, the court shall determine the owners from the best evidence available, and the receiver will be protected in acting in accordance with the court's finding. This proceeding is authorized for the sole purpose of providing a procedure for disposing of the assets of the limited liability company by payment of its debts and by the transfer to its interest owners, or their representatives, of their shares of the limited liability company's remaining assets.

(d) Each manager or other company official of a limited liability company who fails or refuses within the time prescribed by this Chapter to answer truthfully and fully interrogatories propounded to the manager or other company official by the Secretary of State in accordance with the provisions of this Chapter shall be guilty of a Class 1 misdemeanor.

"**§ 57D-1-33. Information disclosed by interrogatories.**

Interrogatories propounded by the Secretary of State and the answers thereto will not be open to public inspection nor shall the Secretary of State disclose any facts or information obtained therefrom, except to the extent applicable law requires the Secretary of State to make the information public or the interrogatories or the answers thereto are required for evidence in any proceedings by this State.

"Article 2.

"Purposes, Powers, Formation, Annual Report, Name, Registered Office, and Agent.

"Part 1. Purposes and Powers.

"**§ 57D-2-01. Nature, purposes, duration, existence.**

(a) An LLC is an entity distinct from its interest owners.

(b) An LLC has perpetual duration.

(c) Subject to subsection (d) of this section, an LLC may engage in any lawful business.

(d) A limited liability company engaging in a business that is subject to regulation under another statute of this State may be formed or authorized to transact business under this Chapter if not precluded by the other statute and is otherwise subject to the application of the other statute, which in the case of a limited liability company rendering a professional service requires giving effect to G.S. 57D-2-02.

(e) After the dissolution of an LLC, the LLC continues its existence but shall wind up pursuant to G.S. 57D-6-07.

"**§ 57D-2-02. Professional limited liability companies.**

(a) Except as set forth in this subsection, a limited liability company may engage in rendering professional services only to the extent that it would be able to render those services were it a corporation, including, as applicable, complying with Chapter 55B of the General Statutes and the statutes referenced in the definition of "professional service" in G.S. 55B-2(6). Chapter 55B of the General Statutes and each statute referenced therein are deemed amended, and to apply with such changes as are necessary to cause them to be applicable to limited liability companies in the same degree as for corporations but subject to any provisions contained herein pursuant to which limited liability companies, or their members, managers, and other company officials, are treated differently from corporations, or their shareholders, directors, and officers.

For purposes of applying the provisions, conditions, and limitations of Chapter 55B of the General Statutes and the statutes referenced therein to limited liability companies that engage in rendering professional services, unless the context specifically requires otherwise, the following rules of construction shall apply:

(1) References to Chapter 55 of the General Statutes are treated as references to this Chapter, and references to a "corporation" or "foreign corporation" are treated as references to an LLC or foreign LLC, respectively.

(2) References to "articles of incorporation" are treated as references to articles of organization.

(3) The persons executing the articles of organization of an LLC are treated in the same manner as the incorporators of a professional corporation.

(4) References to "directors" are treated as references to company officials having equal or greater authority in the management of a limited liability company as directors of a domestic corporation or foreign corporation, as the case may be.

(5) References to "officers" are treated as references to company officials whose authority to manage the limited liability company is equal to or greater than that exercised by officers of a domestic corporation.

(6) A professional limited liability company is not required to have more than one company official who would be treated as a director, officer, or both under Chapter 55B of the General Statutes.

(7) A manager or other company official who has the authority of both a director and an officer were the limited liability company or a corporation is to be treated as holding both positions for purposes of applying Chapter 55B of the General Statutes to the limited liability company.

(8) References to "shares" of a shareholder are treated as references to the ownership interest of an interest owner and, where the context so indicates or requires, a portion of an interest owner's ownership interest.

(9) References to "shareholders" are treated as references to interest owners.

(10) The name of a limited liability company that is to render a professional service and is subject to this section shall comply with Article 3 of Chapter 55D of the General Statutes and, in addition, shall contain the word "Professional" or the abbreviation "P.L.L.C." or "PLLC".

(b) Nothing in this Chapter abolishes, modifies, restricts, limits, or alters the law in this State applicable to the professional relationship and liabilities between the individual furnishing the professional services and the person receiving the professional services, the standards of professional conduct applicable to the rendering of the services, or any responsibilities, obligations, or sanctions imposed under applicable licensing statutes. A member or manager or other company official of a professional limited liability company is not individually liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for debts, obligations, and liabilities of, or chargeable to, the professional limited liability company that arise from errors, omissions, negligence, malpractice, incompetence, or malfeasance committed by another member, manager or other company official, employee, agent, or other representative of the professional limited liability company, except nothing in this Chapter affects the liability of a member or manager or other company official of a professional limited liability company for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services.

"**§ 57D-2-03. Powers of the LLC.**

Unless this Chapter provides otherwise or the powers of the LLC are limited under the operating agreement, an LLC has the same powers as an individual or a domestic corporation to do all things necessary or convenient to carry out its business.

"**§§ 57C-2-04 through 57C-2-19: Reserved for future codification purposes.**

"Part 2. Formation; Articles of Organization; Amendment of Articles; Annual Report.

"**§ 57D-2-20. Formation.**

(a) One or more persons may cause an LLC to be formed by delivering executed articles of organization to the Secretary of State for filing in accordance with this Chapter and Chapter 55D of the General Statutes. An LLC may also be formed through the conversion of another eligible entity into an LLC pursuant to Part 2 of Article 9 of this Chapter.

(b) An LLC is formed at the time the articles of organization filed by the Secretary of State become effective. Filing of the articles of organization by the Secretary of State is conclusive proof that all conditions to the formation of the LLC have been satisfied except in a proceeding by the State to cancel or revoke the articles of organization or involuntarily dissolve the LLC.

(c) If initial members are not identified in the articles of organization of an LLC in the manner provided in G.S. 57D-3-01(a)(1), the organizer or organizers shall either identify the initial members of the LLC or dissolve the LLC. Unless otherwise provided in the articles of organization, all decisions to be made by the organizers require the approval of a majority of the organizers.

"**§ 57D-2-21. Articles of organization.**

(a) The articles of organization must include the following information:

(1) A name of the LLC that satisfies the provisions of G.S. 55D-20 and G.S. 55D-21.

(2) The name and address of each person executing the articles of organization and whether the person is executing the articles of organization in the capacity of a member or an organizer.

(3) The street address, and the mailing address if different from the street address, of the LLC's initial registered office, the county in which the initial registered office is located, and the name of the LLC's initial registered agent at that address.

(4) The street address, and the mailing address if different from the street address, of the LLC's principal office, if any, and the county in which the principal office, if any, is located.

(5) If the LLC is to render professional services and is subject to G.S. 57D-2-02 as a professional limited liability company, the professional services to be rendered by the LLC.

(b) The articles of organization may include any other provision that is or may be included in an operating agreement.

"**§ 57D-2-22. Amendment of articles of organization.**

(a) An LLC may amend its articles of organization to add or change a provision that is required or permitted in the articles of organization or to delete a provision that is not required to be included in the articles of organization. Whether a provision is required or permitted in the articles of organization is determined as of the effective date of the amendment. The LLC shall amend or otherwise correct its articles of organization when (i) there is a change in the name of the LLC or (ii) they contain an inaccurate statement.

(b) Any amendment to the articles of organization must be approved by either of the following:

(1) All of the members.

(2) If no member of the LLC has been identified in the manner provided in this Chapter, a majority of the organizers.

"**§ 57D-2-23. Restated articles of organization.**

(a) An LLC may restate its articles of organization at any time.

(b) The restated articles of organization may include one or more amendments to the articles of organization. The restated articles of organization shall include a statement of the address of the current registered office and the name of the current registered agent of the LLC.

(c) An LLC restating its articles of organization must deliver to the Secretary of State for filing articles of restatement that include the following:

(1) The name of the LLC.

(2) Attached as an exhibit thereto, the text of the restated articles of organization.

(3) A statement that the restated articles of organization do not contain an amendment or, if the articles of organization do contain an amendment, a statement that there is an amendment that was duly adopted by the LLC.

(d) Restated articles of organization supersede the original articles of organization as theretofore amended.

(e) The Secretary of State may certify restated articles of organization as the articles of organization currently in effect without including the other information required by subsection (c) of this section.

"**§ 57D-2-24. Annual report for Secretary of State.**

(a) Excluding professional limited liability companies governed by G.S. 57D-2-02, each LLC and each foreign LLC authorized to transact business in this State must deliver to the Secretary of State for filing annual reports on a form prescribed by, and in the manner required by, the Secretary of State and as otherwise provided in subsection (b) of this section. Each annual report must specify the year for which the report applies and provide the information required by this subsection. The information must be current as of the date the limited liability company completes the report. If the information in the limited liability company's most recent

annual report has not changed, the limited liability company may certify in its annual report that the information has not changed in lieu of restating the information.

The following information must be included in each annual report:

(1) The name of the limited liability company and, in the case of a foreign LLC, any different name that the foreign LLC is authorized under Article 3 of Chapter 55D of the General Statutes to use to transact business in this State, as provided in the foreign LLC's certificate of authority.

(2) In the case of a foreign LLC, the name of the jurisdiction under whose law the foreign LLC is organized.

(3) The street address, and the mailing address if different from the street address, of the limited liability company's registered office in the State, the county in which the registered office is located, the name of its registered agent at that office, and a statement of any change of the registered office or registered agent.

(4) The address and telephone number of its principal office.

(5) The names, titles, and business addresses of the limited liability company's principal company officials.

(6) A brief description of the nature of its business.

(b) The Secretary of State must notify limited liability companies of the annual report filing requirement. The first annual report of a limited liability company is due to be delivered to the Secretary of State by April 15 of the year following (i) in the case of an LLC, the calendar year in which the LLC's articles of organization or articles of organization and conversion filed by the Secretary of State become effective or (ii) in the case of a foreign LLC, the calendar year in which the Secretary of State issues to the foreign LLC a certificate of authority to transact business in this State.

The limited liability company shall deliver an annual report by April 15 of each subsequent year until (i) in the case of an LLC, the effective date of its articles of dissolution filed by the Secretary of State or the effective date of either a certificate of dissolution for an LLC that is not reinstated under G.S. 57D-6-06(c) or a decree of dissolution that is filed by the Secretary of State as provided in G.S. 57D-6-05; (ii) in the case of a foreign LLC, the foreign LLC receives a certificate of withdrawal from the Secretary of State or the Secretary of State revokes the foreign LLC's certificate of authority under Part 3 of Article 7 of this Chapter; or (iii) in the case of either an LLC or foreign LLC, the effective date of a merger or conversion under Article 9 of this Chapter in which the limited liability company is a merging entity or a converting entity but not the surviving entity.

(c) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting limited liability company in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely delivered.

(d) Amendments to any previously filed annual report may be delivered for filing by the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report.

"**§§ 57D-2-25 through 57D-2-29: Reserved for future codification purposes.**

"Part 3. Operating Agreement.

"**§ 57D-2-30. Scope, function, and limitations of operating agreements.**

(a) The operating agreement governs the internal affairs of an LLC and the rights, duties, and obligations of (i) the interest owners, and the rights of any other persons to become interest owners, in relation to each other, the LLC, and their ownership interests or rights to acquire ownership interests and (ii) the company officials in relation to each other, the LLC, and the interest owners. Subject to the limitations set forth in subsections (b), (c), (d) and (e) of

this section, the provisions of this Chapter and common law will apply only to the extent contrary or inconsistent provisions are not made in, or are not otherwise supplanted, varied, disclaimed, or nullified by, the operating agreement. The provisions of the operating agreement are severable and each will apply to the extent it is valid and enforceable.

(b) The operating agreement may not supplant, vary, disclaim, or nullify the provisions of this Chapter or their application to the extent the provisions do any of the following:

(1) Concern the functions of, including the filings and payments to be made, and the manner in which they are to be made by or to, the Secretary of State, the Attorney General, the courts, or any other governmental official, agency, or authority, including Article 1 of this Chapter, G.S. 57D-2-21(a), 57D-2-22(a), 57D-2-23, 57D-2-24, 57D-2-40, 57D-6-02(1), 57D-6-03(a)-(c), 57D-6-04, 57D-6-05, 57D-6-06, the last sentence of G.S. 57D-6-07(c), 57D-6-09, and 57D-10-01; except, the operating agreement may provide the forum in which disputes concerning the LLC or the rights and duties of interest owners and other parties to the operating agreement are to be resolved.

(2) Apply to persons who are not parties to, or otherwise bound by, the operating agreement, including the extent to which G.S. 57D-5-03 may be applicable to such persons or for which they may be entitled to recovery or other relief thereunder, or the extent to which G.S. 57D-1-02, 57D-6-08(1), 57D-6-10, 57D-6-11, 57D-6-12, and 57D-6-13 are applicable to creditors or such persons.

(3) Diminish the rights and protections of the LLC under G.S. 57D-4-05 and G.S. 57D-4-06.

(4) Diminish the rights and protections of members under G.S. 57D-3-04(a), except as permitted by and otherwise subject to subsections (b) through (f) of G.S. 57D-3-04.

(5) Eliminate the right of a member to bring a derivative action under Article 8 of this Chapter unless the operating agreement provides an alternative remedy, which may include the right to bring a direct action in lieu of a derivative action or modifying the procedures provided in Article 8 of this Chapter governing derivative actions.

(6) Eliminate the right of a member to bring an action to have the LLC judicially dissolved under clause (i) in G.S. 57D-6-02(2) unless the operating agreement provides an alternative remedy.

(7) Are set forth in this section, G.S. 57D-1-01, 57D-2-01(d), 57D-2-02, 57D-2-03, 57D-2-20, 57D-3-23, 57D-5-01, 57D-6-01, clause (ii) of 57D-6-02(2), 57D-6-07(b) and (f), and all sections and subsections of Article 9 of this Chapter other than G.S. 57D-9-21(b), (c) and (e), 57D-9-22(b), 57D-9-23(b), 57D-9-31(b)-(e), 57D-9-41(b), (d) and (f), and 57D-9-42(b).

(c) Oral or implied provisions in the operating agreement may not supplant, vary, disclaim, or nullify any contrary or inconsistent written provisions in the operating agreement to the detriment of the rights of persons who are not parties to or otherwise bound by the operating agreement.

(d) In the event of a conflict between the operating agreement and a provision in any document filed by the LLC with the Secretary of State:

(1) The operating agreement shall prevail as to members, managers and company officials.

(2) The document filed by the LLC with the Secretary of State shall prevail as to persons who are not parties to or otherwise bound by the operating

agreement to the extent that they reasonably rely on the document filed by the LLC with the Secretary of State.

(e) Except as provided in or permitted by this Chapter or other applicable law, the laws of agency and contract, including the implied contractual covenant of good faith and fair dealing and the requirement that the terms of an operating agreement not be unconscionable at the time they are made, govern the administration and enforcement of operating agreements.

"**§ 57D-2-31. Parties to, and other persons subject to or having rights under, the operating agreement.**

(a) The LLC is deemed to be a party to the operating agreement and, therefore, is bound by and may enforce the provisions thereunder applicable to the LLC.

(b) A person who becomes an interest owner is deemed to assent to, and is bound by, and, subject to Article 5 of this Chapter, is entitled to the rights applicable to the interest owner's ownership interest provided under, and is otherwise deemed to be a party to, the operating agreement.

(c) A person need not be an interest owner to be a party to the operating agreement.

(d) An operating agreement may require amendments to the operating agreement be approved by persons who are not interest owners and may provide rights to persons who are not interest owners and not otherwise parties to the operating agreement.

(e) Any person bound by the operating agreement is bound by any amendment adopted, as provided in the operating agreement.

"**§ 57D-2-32. Remedies for breach of operating agreement or occurrence of identified events; reliance on operating agreement.**

(a) An operating agreement may subject interest owners and other persons who are parties to or otherwise bound by the operating agreement to specified remedies for breach of the operating agreement or the occurrence of a specified event. Such remedies may include the recovery of reasonable attorney fees, the assessment of interest without the assessment being subject to the laws of usury, and the imposition of penalties that would otherwise be unenforceable as stipulated or liquidated damages.

(b) Unless otherwise provided in the operating agreement, an interest owner or other person who is a party to or bound by the operating agreement will not be liable to the LLC or an interest owner or other person who is a party to the operating agreement for that person's reliance on the provisions of the operating agreement.

"Part 4. Registered Office and Registered Agent.

"**§ 57D-2-40. Registered office and registered agent.**

Each LLC must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article.

"**§§ 57D-2-41 through 57D-2-49: Reserved for future codification purposes.**

"Article 3.

"Membership and Management.

"Part 1. Membership.

"**§ 57D-3-01. Admission of members; economic interest owners.**

(a) A person becomes a member through the following:

(1) In the case of a person executing the articles of organization in the capacity of a member as provided in G.S. 57D-2-21(a)(2), or otherwise being named in the articles of organization as a member, at the time the articles of organization become effective under G.S. 55D-13.

(2) In the case of a person acquiring an ownership interest from the LLC, (i) upon being identified as a member by the organizers as provided in G.S. 57D-2-20(c) or (ii) upon the unanimous approval of the members as provided in G.S. 57D-3-03(2).

(3) In the case of an economic interest owner, in the manner provided in G.S. 57D-5-04(a) or G.S. 57D-6-01(3).

(4) In the case of an eligible entity converting or merging into the LLC, as provided in the plan of conversion or plan of merger upon such plan becoming effective as provided in G.S. 57D-9-23(a)(5) or G.S. 57D-9-43(a)(6).

(b) A person becomes an economic interest owner through the following:

(1) In the case of a person acquiring an economic interest from the LLC, upon the unanimous approval of the members.

(2) In the case of a person acquiring an economic interest, or portion thereof, from an interest owner, as provided in G.S. 57D-5-02.

(3) In the case of an eligible entity converting or merging into the LLC, as provided in the plan of conversion or plan of merger upon such plan becoming effective as provided in G.S. 57D-9-23(a)(5) or G.S. 57D-9-43(a)(6).

(c) To be a member, a person need not make, or have the obligation to make, any contributions to the LLC or share in any profits or losses of, or distributions from, the LLC or otherwise own an economic interest in the LLC.

"**§ 57D-3-02. Cessation of membership.**

(a) A person ceases to be a member upon the occurrence of any of the following events:

(1) The person does any of the following:

a. Becomes a debtor in bankruptcy.

b. Executes an assignment for the benefit of creditors, including the execution of a deed of trust or deed of assignment for the benefit of creditors causing all debts of the person to become due and payable under G.S. 23-1.

c. Petitions for, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or all or substantially all of the person's property.

(2) In the case of an individual, the person's death or being adjudicated by a court of competent jurisdiction as incompetent to manage his or her person or property.

(3) In the case of a member with an economic interest, the transfer or abandonment of the person's entire economic interest, excluding the liquidation of a member's economic interest in connection with the dissolution and winding up of the LLC under G.S. 57D-6-08(2), regardless of whether the transferee is or becomes a member.

(4) The person abandoning all of the rights of his ownership interest except his economic interest, or any portion thereof.

(b) Upon the occurrence of any of the events described in subdivisions (1) and (2) of subsection (a) of this section with respect to a member, that person or that person's estate, as applicable, will automatically become an economic interest owner entitled only to the economic interest attributable to the person's ownership interest, but that person or that person's estate, as applicable, and any other person who ceases to be a member shall remain liable to the LLC for any obligation the person may have under G.S. 57D-4-02, 57D-4-06, and 57D-6-12(a)(2).

"**§ 57D-3-03. Approval of members.**

The approval of all members is required to do any of the following:

(1) Adopt or amend an operating agreement.

(2) Admit any person as a member.

(3) Other than in the ordinary course of business, transfer in one transaction or a series of related transactions all or substantially all of the assets of the LLC prior to the dissolution of the LLC.

(4) Dissolve the LLC under circumstances other than those for which the LLC may be dissolved under Article 6 of this Chapter.

(5) Convert the LLC into a different eligible entity under Article 9 of this Chapter.

(6) Merge the LLC with or into another eligible entity under Article 9 of this Chapter.

"**§ 57D-3-04. Information Rights.**

(a) Subject to the other provisions of this section, each member may inspect and copy or otherwise obtain from the LLC any of the following:

(1) A copy of the articles of organization and any other writing constituting all or part of the operating agreement, including any executed power of attorney under which all or any part of the operating agreement was adopted, that are in effect or were in effect at any time during any of the LLC's preceding four fiscal years.

(2) Either, as the LLC may elect, (i) a copy of any federal, state, or local income tax returns of the LLC, including any amendments and supplements made to those returns, filed with taxing authorities that pertain to any of the LLC's preceding four fiscal years or (ii) financial statements of the LLC of the type described in subsections (a) and (b) of G.S. 55-16-20 that pertain to any of the LLC's preceding four fiscal years.

(3) A list of the names and last known business, residence, or mailing addresses of the LLC's current interest owners, their status as members or economic interest owners, the date on which each became an interest owner, and, if applicable, the dates on which a person's status as a member changed to that of an economic interest owner or the person's status as an economic interest owner changed to that of a member.

(4) Information, the type and detail of which may be prescribed by the operating agreement, from which (i) the member's capital interest may be ascertained and (ii) unless and to the extent the operating agreement does not provide otherwise, each of the other interest owners' capital interests may be ascertained, including the amount of money and a description and statement of the agreed value of any other property or services that each person who has been an interest owner has paid or otherwise transferred or has agreed to pay or otherwise transfer, and the extent to which that agreement by the interest owner has been fulfilled, to or for the benefit of the LLC in exchange for a capital interest.

(5) Information from which the status of the business and the financial condition of the LLC may be ascertained.

(b) Inspection rights and rights to copy LLC records may be exercised through a member's agent.

(c) In connection with any member or manager or other company official exercising management or other control rights or performing that person's duties to the LLC or the members, the LLC shall provide that person with, or access to, all information related to the applicable matter that is known by the LLC and is material to the proper exercise and performance of those rights and duties.

(d) To exercise inspection and other information rights, a member must sign and deliver written notice of exercise to the LLC at least seven days before the date on which the inspection is to take place. That notice must state (i) the records or other information to be

inspected and copied or otherwise provided by the LLC and (ii) the purpose for, and intended use of, the information. Within the period provided in the exercise notice, the LLC shall either comply with the member's demand or deliver written notice to the member of the extent to which the LLC declines to make available any of the demanded information and the reasons for that decision.

(e) The exercise of a member's rights to inspect and copy the LLC's records is to take place at the LLC's principal office, or other location or locations selected by the LLC, during the LLC's regular hours of operation unless the LLC directs otherwise. The LLC may require a member to pay the labor, material, and other costs it incurs or would otherwise incur to comply with the member's demand to inspect and copy the LLC's records.

(f) The LLC (i) need not disclose to any member or any agent or representative of a member any information related to any other interest owner, except to the extent required by subdivision (3) of subsection (a) of this section, but subject to the restrictions that may be imposed under clauses (ii) and (iii) of this subsection, or is not otherwise related to the member's ownership interest; (ii) may impose conditions, restrictions, limitations, and standards on the exercise of a member's inspection and other information rights, including redacting names and other confidential information, providing summaries of documents, or requiring the member to enter an agreement to not disclose and otherwise maintain the confidentiality of the information provided; and (iii) need not disclose, or otherwise make available, to a member, manager, or other company official trade secrets or other confidential information of a nature that its disclosure could adversely affect the LLC, to the extent that the managers or other applicable company officials determine the information cannot be adequately safeguarded by other means, until either there no longer is a risk that its disclosure will adversely affect the LLC or the LLC becomes able to protect itself in some other way.

"**§§ 57D-3-05 through 57D-3-19: Reserved for future codification purposes.**

"Part 2. Managers.

"**§ 57D-3-20. Management; managers.**

(a) The management of an LLC and its business is vested in the managers.

(b) Each manager has equal rights to participate in the management of the LLC and its business. Management decisions approved by a majority of the managers are controlling. The managers may make management decisions without a meeting and without notice.

(c) Subject to the direction and control of a majority of the managers as provided in G.S. 57D-3-20(b), each manager may act on behalf of the LLC in the ordinary course of the LLC's business.

(d) All members by virtue of their status as members are managers of the LLC, together with any other person or persons who may be designated as a manager in, or in the manner provided in, the operating agreement. If the operating agreement provides or otherwise contemplates that members are not necessarily managers by virtue of their status as members, then those persons designated as managers in, or in the manner provided in, the operating agreement will be managers. The operating agreement may provide that the LLC is to be managed by one or more company officials who are not designated as managers. All members will be managers for any period during which the LLC would otherwise not have any managers or other company officials.

(e) A person shall continue to serve as a manager until the earliest of the following occurs: (i) the person's resignation as a manager; (ii) any event described in G.S. 57D-3-02(a) with respect to the person, substituting therein the term "manager" in lieu of the term "member" for purposes of this subsection; or (iii) that person, or the member or all of a class or group of less than all of the members who appointed the person to be a manager, ceases to be a member.

"**§ 57D-3-21. Duties of company officials; standards of conduct.**

(a) The managers shall manage the LLC and conduct the LLC's business in accordance with the operating agreement.

(b) Each manager shall discharge that person's duties (i) in good faith; (ii) with the care an ordinary prudent person in a like position would exercise under similar circumstances; and (iii) subject to the operating agreement, in a manner the manager believes to be in the best interests of the LLC. In discharging such duties, a manager is entitled to rely on information, opinions, reports, or statements, including financial statements or other financial data, if prepared or presented by any person or group of persons the manager believes to be reliable and competent in such matters and the manager does not have actual knowledge concerning the matter in question that makes such reliance unwarranted.

(c) A manager is not liable to the LLC for any act or omission as a manager if the manager acts in compliance with this section.

"**§ 57D-3-22. Delegation of authority of managers and other company officials.**

The managers having general power to manage the LLC may delegate authority to act on behalf of the LLC to persons other than managers. The delegation of authority may be general or limited to specific matters. No such delegation of authority will cause any manager to cease to be a manager or cause the person to whom authority is so delegated to be a manager. Any duties of the managers will apply with respect to their delegation to, and direction and control of, any person to whom they delegate any of their responsibilities.

"**§ 57D-3-23 Application to company officials.**

G.S. 57D-3-20(e), 57D-3-21, and 57D-3-22 shall apply to company officials who are not managers by substituting the term "company official" in lieu of the term "manager" in each place where the term appears in those provisions.

"Part 3. Liability.

"**§ 57D-3-30. Liability of members, managers, and other company officials to third parties.**

A person who is an interest owner, manager, or other company official is not liable for the obligations of the LLC solely by reason of being an interest owner, manager, or other company official.

"**§ 57D-3-31. Indemnification.**

(a) An LLC shall indemnify a person who is wholly successful, on the merits or otherwise, in the defense of any proceeding to which the person was a party because the person is or was a member or a manager or other company official if the person also is or was an interest owner at the time to which the claim relates, acting within the person's scope of authority as a manager, member, or other company official against expenses incurred by the person in connection with the proceeding.

(b) An LLC shall reimburse a person who is or was a member for any payment made, and indemnify the person for any obligation, including any judgment, settlement, penalty, fine, or other cost, incurred or borne in the authorized conduct of the LLC's business or preservation of the LLC's business or property, whether acting in the capacity of a manager, member, or other company official, if, in making the payment or incurring the obligation, the person complied with the duties and standards of conduct (i) under G.S. 57D-3-21, as modified or eliminated by the operating agreement, or (ii) otherwise imposed by this Chapter or other applicable law.

"Article 4.

"Contributions and Distributions.

"**§ 57D-4-01. Form of contributions.**

An interest owner may make contributions to the LLC in any form, including (i) money or other property, services rendered, or any other direct or indirect benefit to the LLC and (ii) promissory notes or other obligations to transfer money or other property, perform services, or provide any other direct or indirect benefits to the LLC.

"**§ 57D-4-02. Liability for contributions.**

If an interest owner has contributed a promissory note or other obligation to transfer money or other property or to perform services or provide other benefits to the LLC and the interest owner would, but for this section, be excused from the performance of that obligation by reason of the interest owner's death or disability or other supervening impossibility or impracticability of performance under contract or other applicable law, the LLC may require the interest owner to pay to the LLC an amount of money equal to the value of the unperformed portion of the promised performance or exercise remedies available under other applicable law.

"**§ 57D-4-03. Interim distributions.**

Distributions to interest owners before the dissolution and winding up of the LLC, or, as provided in G.S. 57D-6-08(2), after the dissolution of the LLC, may be made at such times and in such amounts as determined by the LLC, in proportion to the ratios that the aggregate contribution amounts of the interest owners bear to one another, determined immediately before the time that the distributions are to be made.

"**§ 57D-4-04. Distribution in kind.**

An LLC may distribute property other than money if the interest owners receive interests of identical character in, or units of identical character of, such property in the same proportions as if the distribution were being made in money equal to the net value of the property being distributed.

"**§ 57D-4-05. Restrictions on making distributions.**

(a) No distribution may be made by an LLC if, after giving effect to the distribution, either of the following would occur:

(1) The LLC would not be able to pay its debts as they become due in the ordinary course of business.

(2) The LLC's total liabilities would exceed the value of the LLC's assets.

(b) For purposes of subsection (a) of this section, the following applies:

(1) An LLC may determine the value of its assets, the amount of its liabilities, and the time payments of its liabilities are to be made using accounting practices and principles that are reasonable under the circumstances.

(2) The amount of a liability for which the creditor's recourse is limited to specific collateral will not exceed the value of the collateral.

(c) Except as provided in subsection (e) of this section, the effect of a distribution under subsection (a) of this section is measured (i) in the case of any distribution of indebtedness, as of the date the indebtedness is distributed and (ii) in all other cases, either as of the date the distribution is authorized if the distribution occurs within 120 days after the date authorization is made or as of the date the distribution is made if payment occurs more than 120 days after the date authorization is made.

(d) Except as provided in subsection (e) of this section, an LLC's indebtedness issued as a distribution made in accordance with this section is a liability of the LLC to be paid under the law applicable to debtors and creditors.

(e) An LLC's indebtedness issued as a distribution is not a liability of the LLC for purposes of subsection (a) of this section if its terms provide that payment of principal and interest are to be made only to the extent that at the time of such payment a distribution to interest owners could then be made under this section. Subsection (a) of this section applies to each payment of principal or interest made under any indebtedness described in the preceding sentence and not to the issuance of the indebtedness.

"**§ 57D-4-06. Liability for wrongful distributions.**

(a) If a distribution is made in violation of G.S. 57D-4-05, then each manager or other company official who alone or with other company officials had the authority to and did approve the distribution is personally liable to the LLC, but not any other person, for the amount of the distribution that exceeds the amount that could have been distributed without violating G.S. 57D-4-05 only if it is established that the company official did not act in

compliance with G.S. 57D-3-21, without regard to any modification or elimination of such duties and standards of conduct under the operating agreement. Except as otherwise provided in G.S. 57D-11-03(d), a proceeding under this subsection is barred unless it is commenced within two years after the distribution.

(b) Each manager or other company official held liable under subsection (a) of this section for a wrongful distribution is entitled to the following:

(1) Contribution from each other manager or other company official who could be held liable under subsection (a) of this section for the wrongful distribution.

(2) Reimbursement from each interest owner for the amount the interest owner received knowing that the distribution was made in violation of G.S. 57D-4-05.

"**§ 57D-4-07. Right to distribution.**

An interest owner who is entitled to receive a distribution has the status of, and is entitled to all remedies available to, a creditor of the LLC with respect to the distribution.

"Article 5.

"Transfer of Ownership Interests; Withdrawal.

"**§ 57D-5-01. Nature of ownership interest.**

An ownership interest is personal property.

"**§ 57D-5-02. Transfer of economic interests.**

An economic interest is transferable in whole or in part. The transfer of an economic interest, or portion thereof, does not entitle the transferee to become or exercise any rights of a member other than to receive the economic interest or the portion thereof assigned to the transferee.

"**§ 57D-5-03. Rights of judgment creditor.**

(a) On application to a court of competent jurisdiction by any judgment creditor of an interest owner, the court may charge the economic interest of an interest owner with the payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the right to receive the distributions that otherwise would be paid to the interest owner with respect to the economic interest.

(b) A charging order is a lien on the judgment debtor's economic interest to the extent provided in this section from the time that such charging order is served upon the LLC in accordance with Rule 4(j)(8) of the Rules of Civil Procedure. If more than one charging order is properly served upon the LLC with respect to the same member's economic interest, the liens shall have priority in the order in which the charging orders were served, except that a charging order in favor of a judgment creditor that has previously delivered to the LLC garnishment process relating to the same member's economic interest pursuant to G.S. 1-440.25 shall relate back to the date of service of the garnishment process.

(c) This Chapter does not deprive any interest owner of a right, including any benefit, of any exemption law applicable to the interest owner's ownership interest.

(d) The entry of a charging order is the exclusive remedy by which a judgment creditor of an interest owner may satisfy the judgment from or with the judgment debtor's ownership interest.

"**§ 57D-5-04. Certain rights and liabilities of economic interest owners and transferors of ownership interests.**

(a) An economic interest owner may become a member only with that person's approval and through any of the following:

(1) As provided in the operating agreement.

(2) By the approval of the members as provided in G.S. 57D-3-03(2).

(3) In the manner permitted under G.S. 57D-6-01(3) if the LLC ceases to have any members.

(b) Except as provided in the following sentence of this subsection, a transferee of an ownership interest, or portion thereof, who is or becomes a member has, to the extent transferred to the transferee, (i) the rights and powers and is subject to the restrictions and liabilities of a member under the operating agreement and this Chapter with respect to the transferred ownership interest and (ii) is liable for any obligations of the transferor to make contributions under G.S. 57D-4-02 with respect to the transferred ownership interest. A transferee of an ownership interest, or portion thereof, is not liable for obligations of the transferor under G.S. 57D-4-06 or obligations that are unknown to the transferee at the time the transferee became a member.

(c) Whether or not a transferee of an ownership interest, or portion thereof, is or becomes a member, (i) the transferor is not released from liability that the transferor may have under G.S. 57D-4-02, G.S. 57D-4-06, or under the operating agreement and (ii) the transferee takes the ownership interest subject to those liabilities.

"**§ 57D-5-05. No right to voluntarily withdraw capital or terminate obligations.**

Except as otherwise required by this Chapter or other applicable law, an interest owner may not (i) withdraw, or compel the company to purchase or otherwise liquidate, all or any portion of the equity owner's capital interest or (ii) extinguish, abandon, or otherwise diminish the interest owner's obligations in respect of the interest owner's ownership interest.

"Article 6.

"Dissolution.

"**§ 57D-6-01. Dissolution.**

An LLC is dissolved upon the occurrence of any of the following:

(1) An event causing the LLC to dissolve under the operating agreement.

(2) If the LLC never had a member, as approved by the organizers under G.S. 57D-2-20(c).

(3) If the LLC ever had a member, the 90th day after the day on which the LLC ceases to have any members, unless within that 90-day period, one or more persons are admitted as a member or members by the person, including the former member, owning or otherwise controlling the ownership interest of the last member.

(4) Entry of a decree of judicial dissolution under G.S. 57D-6-05.

(5) Subject to G.S. 57D-6-06(c), the filing by the Secretary of State of a certificate of dissolution under G.S. 57D-6-06.

"**§ 57D-6-02. Grounds for judicial dissolution.**

The superior court may dissolve an LLC in a proceeding brought by either of the following:

(1) The Attorney General, if it is established that (i) the LLC obtained its articles of organization through fraud or (ii) the LLC continued to exceed or abuse the authority conferred on it by law 20 or more days after the date the Attorney General delivered to the LLC written notice of the LLC's unauthorized acts.

(2) A member, if it is established that (i) it is not practicable to conduct the LLC's business in conformance with the operating agreement and this Chapter or (ii) liquidation of the LLC is necessary to protect the rights and interests of the member.

"**§ 57D-6-03. Procedure for judicial dissolution.**

(a) A proceeding under G.S. 57D-6-02 to dissolve an LLC is to be brought against the LLC. The party bringing the dissolution proceeding may not join an interest owner or company official as a party to the proceeding unless, and to the extent, relief is sought against the interest owner or company official for that person's own actions.

(b) Venue for a proceeding brought under G.S. 57D-6-02 to dissolve an LLC lies in (i) the county in this State where the LLC's principal office is located, which the party bringing the

dissolution proceeding may assume to be the principal place of business disclosed in the LLC's most recent annual report or, if no annual report for the LLC has ever been filed by the Secretary of State, as provided in the LLC's articles of organization or (ii) if the LLC has no principal office in this State, and the most recent filings of the Secretary of State do not state that the LLC's principal office is located in this State, the county in this State where those filings state the LLC's registered office is or was last located.

(c) In connection with a proceeding brought under G.S. 57D-6-02 to dissolve an LLC, the court may issue injunctions, appoint one or more persons to serve as receiver with powers and duties the court may grant under G.S. 57D-6-04, or take other action required to manage the LLC and its assets.

(d) In any proceeding brought by a member under clause (ii) of G.S. 57D-6-02(2) in which the court determines that dissolution is necessary, the court will not order dissolution if, after the court's decision, the LLC or one or more other members elect to purchase the ownership interest of the complaining member at its fair value in accordance with any procedures the court may provide.

"**§ 57D-6-04. Receivership.**

(a) The court in a proceeding brought under G.S. 57D-6-02 to dissolve an LLC, or in a proceeding brought under G.S. 57D-6-07(c), may appoint one or more persons to serve as a receiver to manage the business of the LLC pending the court's decision on dissolution and, if dissolution is decreed by the court, to wind up the LLC. Before appointing a person to serve as a receiver of an LLC, the court shall hold a hearing on the subject after delivering notice, or causing the party who brought the dissolution proceeding to deliver notice, of the hearing to all parties and any other interested persons designated by the court.

(b) The court may require the receiver to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver in its appointing order, which the court from time to time may amend. The powers may include the authority to do any of the following:

(1) Dispose of all or any portion of the assets of the LLC wherever located, at a public or private sale.

(2) Sue and defend in the receiver's own name as receiver of the LLC.

(3) Exercise all of the powers of the LLC to the extent necessary to manage the business of the LLC or wind up the LLC following dissolution.

(d) The court may order the LLC to compensate the receiver and reimburse the receiver's expenses, including the fees and expenses of attorneys and other professionals retained by the receiver.

"**§ 57D-6-05. Decree of judicial dissolution.**

(a) If, after a hearing, the court determines that one or more grounds for judicial dissolution described in G.S. 57D-6-02 exist and the alternative to judicial dissolution under G.S. 57D-6-03(d) is not applicable, it may enter a decree dissolving the LLC, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State for filing.

(b) After entering the decree of dissolution, the court shall direct the winding up of the LLC in accordance with G.S. 57D-6-07 and G.S. 57D-6-08 and may direct notification of claimants in accordance with G.S. 57D-6-10, 57D-6-11, and 57D-6-13.

"**§ 57D-6-06. Administrative dissolution.**

(a) The Secretary of State may administratively dissolve an LLC if the Secretary of State determines that the LLC has done any of the following:

(1) The LLC has not paid within 60 days after they are due any penalties, fees, or other payments due under this Chapter.

(2) The LLC does not deliver its annual report to the Secretary of State on or before the 60th day after it is due.

(3) The LLC has been without a registered agent or registered office in this State for 60 days or more.

(4) The LLC has not notified the Secretary of State within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

(5) The LLC knowingly fails or refuses to answer completely and accurately within the time prescribed in this Chapter interrogatories propounded by the Secretary of State in accordance with the provisions of this Chapter.

(b) If the Secretary of State determines that one or more grounds exist under subsection (a) of this section for dissolving an LLC, the Secretary of State shall mail the LLC notice of that determination. If, within 60 days after the notice is mailed, the LLC does not correct each ground for dissolution or demonstrate to the satisfaction of the Secretary of State that each ground does not exist, the Secretary of State shall administratively dissolve the LLC by signing a certificate of dissolution that recites the ground or grounds for dissolution and the effective date of the dissolution. The Secretary of State shall file the original certificate of dissolution and mail a copy to the LLC.

(c) An LLC administratively dissolved under this section may apply to the Secretary of State for reinstatement. The procedures for reinstatement and for the appeal of any denial of the LLC's application for reinstatement are the same as those applicable to a domestic corporation under G.S. 55-14-22, 55-14-23, and 55-14-24. If, at the time the LLC applies for reinstatement, the name of the LLC is not distinguishable from the name of another entity authorized to be used under G.S. 55D-21, then the LLC must change its name to a name that is distinguishable on the records of the Secretary of State from the name of the other entity before the Secretary of State may prepare a certificate of reinstatement. The effect of reinstatement of an LLC is the same as for a domestic corporation under G.S. 55-14-22.

"**§ 57D-6-07. Winding up.**

(a) After its dissolution, an LLC shall wind up. The winding up may include continuing the business of the LLC for a period of time.

(b) Subject to subsection (c) of this section, the managers or other applicable company officials shall wind up the LLC after its dissolution. If the dissolved LLC has no managers or other applicable company officials, the person, including a former member, owning or otherwise controlling the ownership interest of the person who was the last member of the LLC may serve, or appoint one or more persons to serve, as manager to wind up the LLC.

(c) On application of the person, including a former member, owning or otherwise controlling the ownership interest of the last member, the superior court may wind up the LLC, or appoint a receiver under G.S. 57D-6-04 to wind up the LLC. Venue for a proceeding on such application lies in (i) the county in this State where the LLC's principal office is located, which the person bringing the dissolution proceeding may assume to be the principal place of business disclosed in the LLC's most recent annual report or, if no annual report has ever been filed for the LLC by the Secretary of State, as provided in the LLC's articles of organization, or (ii) if the LLC has no principal office in this State and the most recent filings of the Secretary of State do not state that the LLC's principal office is located in this State, the county in this State where those filings state the LLC's registered office is or was last located. The court shall order notice of the proceeding be given by the person making the application to all interested persons designated by the court.

(d) The person or persons charged with winding up the LLC shall collect the LLC's assets, dispose of the LLC's properties that will not be distributed in kind, discharge or make provision for discharging the LLC's liabilities, and distribute the LLC's remaining assets as provided in G.S. 57D-6-08(2).

(e) The dissolution of the LLC does not transfer title to the LLC's assets, prevent transfer of ownership interests, or subject its managers or other company officials to standards of conduct different from those prescribed in Article 3 of this Chapter.

(f) The dissolution of the LLC does not prevent commencement of a proceeding by or against the LLC in its own name, abate or suspend a proceeding by or against the LLC, or terminate the authority of the registered agent of the LLC.

"**§ 57D-6-08. Marshalling of assets.**

During the winding up of an LLC, the LLC's assets are to be applied as follows:

(1) First, to creditors, including interest owners, managers, and other company officials who are creditors, in satisfaction, whether by payment or making provision for payment, of all liabilities of the LLC.

(2) The balance to the interest owners as distributions made in the manner provided in G.S. 57D-4-03.

"**§ 57D-6-09. Articles of dissolution.**

Upon dissolution of an LLC, the LLC shall deliver articles of dissolution to the Secretary of State for filing. The articles of dissolution must provide the following information:

(1) The name of the LLC.

(2) The effective date of the dissolution.

(3) Any other information the LLC elects to provide.

"**§ 57D-6-10. Known claims against dissolved LLC.**

(a) A dissolved LLC for which articles of dissolution, a certificate of dissolution, or a decree of dissolution filed by the Secretary of State has become effective may dispose of known claims against it by notifying claimants in writing of the dissolution. The notice must do the following:

(1) Describe information that must be included in a claim.

(2) Provide an address where claims may be sent.

(3) State the deadline, which may not be fewer than 120 days from the date of the notice, by which the dissolved LLC must receive the claim.

(4) State that the claim will be barred if not received by the deadline.

(b) A claim against the dissolved LLC is barred if either of the following occurs:

(1) The LLC does not receive the claim by the deadline from a claimant who received notice under subsection (a) of this section.

(2) A claimant whose claim was rejected by written notice from the dissolved LLC does not commence a proceeding in a proper forum to enforce the claim within 90 days from the date of receipt of the rejection notice.

(c) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after dissolution.

"**§ 57D-6-11. Unknown and certain other claims against dissolved LLC.**

(a) A dissolved LLC for which articles of dissolution, a certificate of dissolution, or a decree of dissolution filed by the Secretary of State has become effective may publish notice of its dissolution and request that persons with claims against the LLC present them in accordance with the notice. The notice must meet the following requirements:

(1) Be published one time in a newspaper of general circulation in the county in this State where the LLC's principal office is or was last located, or, if the LLC never had a principal office in this State, the county in this State where the LLC's registered office is or was last located.

(2) Describe the information that must be included in a claim and provide an address where the claim may be sent.

(3) State that a claim against the LLC will be barred unless a proceeding to enforce the claim is commenced in a proper forum within five years after the publication of the notice.

(b) If the dissolved LLC publishes a newspaper notice in accordance with subsection (a) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding in a proper forum to enforce the claim against the dissolved LLC within five years after the publication date of the newspaper notice:

(1) A claimant who did not receive written notice under G.S. 57D-6-10.

(2) A claimant whose claim was timely sent to the dissolved LLC but not acted on.

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of the filing by the Secretary of State of the articles of dissolution.

"**§ 57D-6-12. Enforcement of claims.**

(a) A claim against a dissolved LLC under G.S. 57D-6-10 or G.S. 57D-6-11 may be enforced against either of the following:

(1) Against the dissolved LLC to the extent of its undistributed assets, including coverage under any insurance policy.

(2) Except as provided in G.S. 57D-6-13(d), against the interest owners of the dissolved LLC in proportion to but not in excess of the distributions, if any, made to each interest owner following the LLC's dissolution.

(b) G.S. 57D-6-10 and G.S. 57D-6-11 do not extend any applicable period of limitation.

"**§ 57D-6-13. Court proceedings for contingent claims.**

(a) A dissolved LLC that has published a notice under G.S. 57D-6-11 may file an application with the superior court of the county in this State where the LLC's principal office is or was last located or, if the LLC never had a principal office in this State, the county in this State where the LLC's registered office is or was last located, for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved LLC or that are based on an event occurring after dissolution but that, based on the facts known to the dissolved LLC, are estimated to arise after dissolution. Provisions need not be made for any claim that is or is anticipated to be barred under G.S. 57D-6-11(b).

(b) Within 10 days after the filing of the application, the dissolved LLC shall deliver notice of the proceeding to each claimant holding a claim described in subsection (a) of this section whose contingent claim is shown on the records of the dissolved LLC.

(c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The dissolved LLC shall pay the fees and expenses of the guardian, including expert witness fees.

(d) Provision by the dissolved LLC for security in the amount and the form ordered by the court under subsection (a) of this section satisfies the dissolved LLC's obligations with respect to claims described in subsection (a) of this section, and the claims may not be enforced against an interest owner who receives assets in liquidation of the LLC.

"Article 7.

"Foreign LLCs.

"Part 1. Certificate of Authority.

"**§ 57D-7-01. Authority to transact business.**

(a) A foreign LLC may not transact business in this State until it obtains a certificate of authority from the Secretary of State.

(b) Without excluding other activities that may not constitute transacting business in this State, a foreign LLC is not considered to be transacting business in this State for the purposes of this Chapter by reason of conducting in this State any one or more of the following activities:

(1) Maintaining or defending any proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

(2) Holding meetings of its members, managers, or other company officials or carrying on other activities concerning its internal affairs.

(3) Maintaining bank accounts or borrowing money in this State, with or without providing security for repayment or other performance and without regard to the frequency of such transactions.

(5) Maintaining offices or agencies for the exchange or other transfer and registration of all or any class or portion of its membership or other equity or beneficial ownership interests or securities, or appointing and maintaining trustees or depositories with relation to its membership or other equity or beneficial ownership interests or securities.

(6) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance to be made outside of the territory of this State to become binding contracts.

(7) Making or investing in loans with or without security, including servicing of mortgages or deeds of trust through independent agencies within the territory of this State, conducting foreclosure proceedings and selling or acquiring property in foreclosure sales, and managing or renting property acquired in foreclosure sales in connection with, and in furtherance of, efforts to sell and otherwise liquidate such property, provided no office or agency of the foreign LLC is maintained in this State.

(8) Taking security for or collecting debts due the foreign LLC or enforcing any rights the foreign LLC may have in property subject to or otherwise providing security with respect to the repayment or other performance of the debt obligations.

(9) Transacting business in interstate commerce.

(10) Conducting an isolated transaction completed within a period of six months but not repeated transactions of a similar nature.

(11) Selling property or services through independent contractors.

(12) Owning real or personal property.

"**§ 57D-7-02. Consequences of transacting business without authority.**

(a) No foreign LLC transacting business in this State without permission obtained through a certificate of authority may maintain any proceeding in any court of this State unless the foreign LLC has obtained a certificate of authority prior to trial. An issue arising under this subsection must be raised by motion and determined by the trial judge prior to trial.

(b) A foreign LLC failing to obtain a certificate of authority as required by this Chapter is liable to this State for the years, including any partial year, during which it transacted business in this State without a certificate of authority in an amount equal to all fees and taxes that would have been imposed by law on the foreign LLC had it duly applied for and received such permission, plus interest and all penalties imposed by law for failure to pay such fees and taxes. In addition, the foreign LLC is liable for a civil penalty of ten dollars ($10.00) for each day, but not to exceed a total of one thousand dollars ($1,000) for each year, including any partial year, it transacts business in this State without a certificate of authority. The Attorney General may bring actions to recover all amounts due this State under the provisions of this subsection. The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(c) Notwithstanding subsection (a) of this section, the failure of a foreign LLC to obtain a certificate of authority does not impair the validity of its acts or prevent it from defending any proceeding in this State.

(d) The Secretary of State shall require every foreign LLC transacting business in this State to comply with the provisions of this Chapter. The Secretary of State may conduct such investigations as may be necessary to ascertain compliance by foreign LLCs with this Chapter.

"§ 57D-7-03. Application for certificate of authority.

(a) A foreign LLC may apply for a certificate of authority to transact business in this State by delivering an application to the Secretary of State for filing. The application must provide the following information:

(1) The name of the foreign LLC and, if different, a name that satisfies the requirements of Article 3 of Chapter 55D of the General Statutes.

(2) The name of the jurisdiction under whose law it is organized.

(3) The street address, and the mailing address if different from the street address, of its principal office, if any, and the county in which the principal office, if any, is located.

(4) The street address, and the mailing address if different from the street address, of its registered office in this State and the name of its registered agent at that office.

(5) The names, titles, and business addresses of the foreign LLC's principal company officials.

(b) A foreign LLC shall deliver with the completed application for the certificate of authority a certificate of existence, or a document of similar import, duly authenticated by the secretary of state or other official having custody of limited liability company records in the jurisdiction under whose law it is organized.

(c) If the Secretary of State finds that the application conforms to law, the Secretary of State, when all taxes, fees, and other payments have been tendered as prescribed in this Chapter, shall do the following:

(1) File the application and the certificate of existence, or a document of similar import as described in subsection (b) of this section, as provided in G.S. 55D-15.

(2) Issue a certificate of authority to transact business in this State to which the Secretary of State shall affix the exact or conformed copy of the application.

(3) Send to the foreign LLC or its representative the certificate of authority, together with the exact or conformed copy of the application affixed thereto.

"§ 57D-7-04. Amended certificate of authority.

(a) A foreign LLC authorized to transact business in this State shall obtain an amended certificate of authority from the Secretary of State if it changes either of the following:

(1) Its name.

(2) The jurisdiction of its organization.

(b) A foreign LLC may apply for an amended certificate of authority by delivering an application to the Secretary of State for filing that sets forth the following:

(1) The name of the foreign LLC and, if different, the name provided in the foreign LLC's certificate of authority that the foreign LLC is authorized to use to transact business in this State.

(2) The name of the jurisdiction under whose law it is organized.

(3) The date it was originally authorized to transact business in this State.

(4) A statement of the change or changes being made.

(c) Except for the content of the application, the requirements of G.S. 57D-7-03 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

"§ 57D-7-05. Effect of certificate of authority.

(a) A certificate of authority authorizes the foreign LLC to which it is issued to transact business in this State subject to the right of the State to revoke the certificate as provided in this Chapter. A foreign LLC may qualify in this State as executor, administrator, or guardian, or as trustee under the will of any person domiciled in this State at the time of that person's death

only in accordance with applicable provisions of Article 24 of Chapter 53 of the General Statutes.

(b) A foreign LLC qualifying as testamentary trustee or executor under the provisions of this section shall appoint a process agent and file such appointment with the court as required by G.S. 28A-4-2(4).

(c) Except as otherwise provided by this Chapter, a foreign LLC with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, an LLC of like character.

"**§ 57D-7-06. Registered office and registered agent of foreign LLC.**

Each foreign LLC authorized to transact business in this State must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article.

"**§§ 57D-7-07 through 57D-7-19: Reserved for future codification purposes.**

"Part 2. Withdrawal.

"**§ 57D-7-20. Withdrawal of foreign LLC.**

(a) A foreign LLC authorized to transact business in this State may not withdraw from this State until it obtains a certificate of withdrawal from the Secretary of State.

(b) A foreign LLC authorized to transact business in this State may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must state the following:

(1) The name of the foreign LLC and, if different, the name provided in the foreign LLC's certificate of authority that the foreign LLC is authorized to use to transact business in this State.

(2) The name of the jurisdiction under whose law it is organized.

(3) That the foreign LLC is not transacting business in this State and that it surrenders its authority to transact business in this State.

(4) That the foreign LLC revokes the authority of its registered agent to accept service of process and consents to service of process in any proceeding based on any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign LLC was authorized to transact business in this State, being made on such foreign LLC by service thereof on the Secretary of State.

(5) A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under subdivision (4) of this subsection.

(6) A commitment to deliver to the Secretary of State for filing a statement of any subsequent change in its mailing address.

(c) If the Secretary of State finds that the application conforms to law, the Secretary of State shall do the following:

(1) File the application for the certificate of withdrawal as provided in G.S. 55D-15.

(2) Issue a certificate of withdrawal to which the Secretary of State shall affix the exact or conformed copy of the application.

(3) Send to the foreign LLC or its representative the certificate of withdrawal together with the exact or conformed copy of the application affixed thereto.

(d) After the withdrawal of the foreign LLC is effective, service of process on the Secretary of State in accordance with subsection (b) of this section may be made by delivering to the Secretary of State, or to any clerk authorized by the Secretary of State to accept service of process, duplicate copies of that process and the fee required by G.S. 57D-1-22(b). Upon receipt of process in the manner provided in this subsection, the Secretary of State shall mail a

copy of the process by registered or certified mail, return receipt requested, to the foreign LLC at the mailing address designated pursuant to subsection (b) of this section.

"**§ 57D-7-21. Withdrawal of foreign LLC by reason of a merger, consolidation, or conversion; qualification of successor.**

(a) Whenever a foreign LLC authorized to transact business in this State ceases its separate existence as a result of a statutory merger, consolidation, or other reorganization permitted by the law of the jurisdiction under which it is organized, or converts into another type of entity as permitted by that law, the surviving or resulting entity shall apply for a certificate of withdrawal for the foreign LLC by delivering to the Secretary of State for filing a copy of the articles of merger, consolidation, or other reorganization or conversion or a certificate reciting the facts of the merger, consolidation, or other reorganization or conversion, duly authenticated by the Secretary of State or other official having custody of limited liability company records in the jurisdiction under the law of which the foreign LLC was organized. If the surviving or resulting entity is not authorized to transact business in this State, the application for the certificate of withdrawal must state, and therefore modify the information described below that otherwise is required to be provided under G.S. 57D-7-20(b) to the extent of conflict, the following:

(1) The name of the foreign LLC and, if different, the name provided in the foreign LLC's certificate of authority that the foreign LLC is authorized to use to transact business in this State.

(2) The name of the jurisdiction under whose law it is organized.

(3) The type of entity and name of the surviving or resulting entity.

(4) That the surviving or resulting entity is not transacting business in this State and the foreign LLC surrenders its authority to transact business in this State.

(5) That the surviving or resulting entity revokes the authority of the foreign LLC's registered agent to accept service of process and consents to service of process in any proceeding based on any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign LLC was authorized to transact business in this State, being made on the surviving or resulting entity by service thereof on the Secretary of State.

(6) A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under subdivision (5) of this subsection.

(7) A commitment to deliver to the Secretary of State for filing a statement of any subsequent change in the surviving or resulting entity's mailing address.

(b) If the Secretary of State finds that the articles or certificate described in subsection (a) of this section relating to the merger, consolidation, or other reorganization or conversion and the application for the certificate of withdrawal conform to law, the Secretary of State shall do the following:

(1) File the articles or certificate and the application for the certificate of withdrawal as provided in G.S. 55D-15.

(2) Issue a certificate of withdrawal.

(3) Send to the surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto.

(c) After the withdrawal of the foreign LLC is effective, service of process on the Secretary of State in accordance with subsection (a) of this section is to be made by delivering to the Secretary of State, or to any clerk authorized by the Secretary of State to accept service of process, duplicate copies of process and the fee required by G.S. 57D-1-22(b). Upon receipt of process in the manner provided in this subsection, the Secretary of State shall immediately

mail a copy of the process by registered or certified mail, return receipt requested, to the surviving or resulting entity at the mailing address designated pursuant to subsection (a) of this section.

"**§ 57D-7-22. Authority of Attorney General.**

The Attorney General may maintain an action to restrain a foreign LLC from transacting business in this State in violation of this Article.

"**§§ 57C-7-23 through 57C-7-29: Reserved for future codification purposes.**

"Part 3. Revocation of Certificate of Authority.

"**§ 57D-7-30. Grounds for revocation.**

(a) The Secretary of State may commence a proceeding under G.S. 57D-7-31 to revoke the certificate of authority of a foreign LLC authorized to transact business in this State if any of the following occurs:

(1) The foreign LLC is delinquent in delivering its annual report.

(2) The foreign LLC does not pay within 60 days after they are due any penalties, fees, or other payments due under this Chapter.

(3) The foreign LLC is without a registered agent or registered office in this State for 60 days or more.

(4) The foreign LLC does not inform the Secretary of State under G.S. 55D-31 or G.S. 55D-32 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance.

(5) A company official or agent of the foreign LLC signed a document that the company official or agent knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(6) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of the records of the limited liability companies in the state or country under whose law the foreign LLC is organized stating that it has been dissolved or merged into another entity.

(7) The foreign LLC is exceeding the authority conferred upon it by this Chapter.

(8) The foreign LLC knowingly fails or refuses to answer truthfully and fully within the time prescribed in this Chapter interrogatories propounded by the Secretary of State in accordance with the provisions of this Chapter.

(b) Nothing herein repeals or modifies any provision of the Revenue Act relating to the suspension of the certificate of authority of foreign LLCs for failure to comply with the provisions thereof.

"**§ 57D-7-31. Procedure for and effect of revocation.**

(a) If the Secretary of State determines that one or more grounds exist under G.S. 57D-7-30 for revocation of a certificate of authority, the Secretary of State shall mail to the foreign LLC written notice of that determination.

(b) If the foreign LLC does not correct each ground for revocation or demonstrate to the satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within 60 days after notice is mailed, the Secretary of State may revoke the foreign LLC's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and mail a copy to the foreign LLC.

(c) The authority of a foreign LLC to transact business in this State ceases on the date shown on the certificate revoking its certificate of authority.

(d) The Secretary of State's revocation of a foreign LLC's certificate of authority appoints the Secretary of State as the foreign LLC's agent for service of process in any

proceeding based on a cause of action arising in this State or arising out of business transacted in this State during the time the foreign LLC was authorized to transact business in this State. The Secretary of State shall then proceed in accordance with G.S. 55D-33.

(e) Revocation of a foreign LLC's certificate of authority does not terminate the authority of the registered agent of the foreign LLC.

(f) The foreign LLC will not be granted a new certificate of authority until each ground for revocation has been substantially corrected to the satisfaction of the Secretary of State.

"**§ 57D-7-32. Appeal from revocation.**

(a) A foreign LLC may appeal the Secretary of State's revocation of its certificate of authority to the Superior Court of Wake County within 30 days after the certificate of revocation is mailed to the foreign LLC by the Secretary of State. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to set aside the revocation. Copies of the foreign LLC's certificate of authority and the Secretary of State's certificate of revocation are to be attached to the petition. No service of process on the Secretary of State is required except for the filing of the petition as set forth in this subsection. The appeal to the superior court will be determined by a judge of the superior court upon such further evidence, notice, and opportunity to be heard, if any, as the court may deem appropriate under the circumstances. The foreign LLC will have the burden of establishing that it is entitled to have the revocation set aside.

(b) Upon consideration of the petition and any response made by the Secretary of State, the court may, prior to entering final judgment, order the Secretary of State to set aside the revocation or may take any other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

"**§ 57D-7-33. Inapplicability of Administrative Procedure Act.**

The Administrative Procedure Act shall not apply to any proceeding or appeal provided for in G.S. 57D-7-30 through G.S. 57D-7-32.

"Article 8.

"Derivative Actions.

"**§ 57D-8-01. Member derivative actions.**

(a) Subject to the provisions of G.S. 57D-8-02 and G.S. 57D-8-03, a member may bring a derivative action if the following conditions are met:

(1) Either (i) the member was a member of the LLC at the time of the act or omission for which the proceeding is brought or (ii) all or any portion of the member's ownership interest devolves by operation of law from an ownership interest that was owned by a member at that time.

(2) The member made written demand on the LLC to take suitable action, and either (i) the LLC notified the member that the member's demand was rejected, (ii) 90 days have expired from the date the demand was made, or (iii) irreparable injury to the LLC would result by waiting for the expiration of the 90-day period.

(b) For purposes of this Article, a "derivative action" or a "derivative proceeding" is a proceeding brought in the superior court of this State in the right of an LLC or, to the extent provided in G.S. 57D-8-06, in the right of a foreign LLC, to recover a judgment in favor of the LLC or, if applicable, the foreign LLC.

"**§ 57D-8-02. Stay of proceedings.**

If the LLC commences an inquiry into the allegations set forth in the demand or complaint, the court may stay a derivative proceeding.

"**§57D-8-03. Dismissal.**

(a) The court shall dismiss a derivative proceeding on motion of the LLC if one of the groups specified in subsection (b) or (f) of this section determines after conducting an inquiry

upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interest of the LLC.

(b) The inquiry and determination with respect to the demanded action is to be made either (i) pursuant to subsection (f) of this section or (ii) by either of the following:

(1) A majority vote or other approval of those persons who have the authority, individually or collectively, to cause the LLC to bring an action in the superior court of this State for the recovery or other remedy sought in the derivative action and are independent.

(2) A majority vote of a committee composed of two or more independent persons appointed by a majority vote or other approval of those persons described in subdivision (b)(1) of this section.

(c) For purposes of this section, none of the following factors by itself will necessarily preclude a person from being considered to be independent:

(1) The nomination or election of the person by persons who are defendants in the derivative proceeding or against whom action is demanded.

(2) The naming of the person as a defendant in the derivative proceeding or as a person against whom action is demanded.

(3) The approval by the person of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the person.

(d) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a member, the complaint must allege particular facts that if proved would preclude the court from dismissing the derivative proceeding under subsection (a) of this section. Defendants may make a motion to dismiss a complaint under subsection (a) of this section for failure to comply with this subsection. Prior to the court's ruling on such a motion to dismiss, the plaintiff may engage in discovery only to the extent it is germane and necessary to develop facts that establish that the dismissal of the derivative proceeding under subsection (a) of this section is unwarranted.

(e) If a majority of the persons having the authority to cause the LLC to bring a proceeding in the superior court of this State for the recovery or other remedy sought in the derivative action are independent, then the plaintiff will have the burden of proving that the requirements of subsection (a) of this section have not been met, but if a majority of such persons are not independent, then the LLC has the burden of proving that the requirements of subsection (a) of this section have been met.

(f) The court may appoint a panel composed of one or more independent persons on motion of the LLC to make a determination whether the maintenance of the derivative proceeding is in the best interest of the LLC. The plaintiff has the burden of proving that the requirements of subsection (a) of this section have not been met.

"**§ 57D-8-04. Discontinuance or settlement.**

(a) A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the LLC's members, the court shall direct that notice be given to the members who would be affected.

(b) The court shall determine the manner and form of the notice and the manner in which costs of the notice will be borne.

"**§ 57D-8-05. Payment of expenses.**

On termination of the derivative proceeding, the court may do any of the following:

(1) Order the LLC to pay the plaintiff's expenses, including attorneys' fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the LLC.

(2) Order the plaintiff to pay any defendant's expenses, including attorneys' fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without cause or for an improper purpose.

(3) Order a party to pay an opposing party's expenses, including attorneys' fees, incurred as a result of the filing of a pleading, motion, or other paper, if the court, after inquiry, finds that the pleading, motion, or other paper was not well grounded in fact or was not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it was interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

"**§ 57D-8-06. Applicability to foreign LLCs.**

In any derivative proceeding in the right of a foreign LLC, the matters covered by this Article will be governed by the law of the jurisdiction of the foreign LLC's organization except for the matters governed by G.S. 57D-8-02, 57D-8-04, and 57D-8-05.

"**§ 57D-8-07. Privileged communications.**

In any derivative proceeding, no member is entitled to obtain or have access to any communication within the scope of the LLC's attorney-client privilege that could not be obtained by, or would not be accessible to, a party in a proceeding other than on behalf of the LLC.

"Article 9.

"Conversion and Merger.

"Part 1. Definitions.

"**§ 57D-9-01. Definitions.**

Unless otherwise specifically provided, the following definitions apply in this Article:

(1) Articles of organization and conversion. – The document filed by the Secretary of State under G.S. 57D-9-22 for the purpose of converting an eligible entity into an LLC.

(2) Converting entity. – An eligible entity that converts into another eligible entity pursuant to Part 2 or Part 3 of this Article 9.

(3) Converting LLC. – A converting entity that is an LLC.

(4) Eligible entity. – A corporation, including a professional corporation as defined in G.S. 55B-2 and a foreign professional corporation defined in G.S. 55B-16, a domestic or foreign nonprofit corporation, a limited liability company, a domestic or foreign limited partnership, a registered limited liability partnership or foreign limited liability partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this State.

(5) Merging entity. – An eligible entity that is a party to a merger.

(6) Merging LLC. – A merging entity that is an LLC.

(7) Surviving entity. – The eligible entity into which a converting entity converts or into which an eligible entity is merged.

"Part 2. Conversion to an LLC.

"**§ 57D-9-20. Conversion.**

An eligible entity other than an LLC may convert to an LLC if both of the following requirements are met:

(1) The conversion is permitted by the law governing the organization and internal affairs of the converting entity.

(2) The converting entity complies with the requirements of this Part and, to the extent applicable, the law governing its organization and internal affairs immediately before the conversion.

"**§ 57D-9-21. Plan of conversion.**

(a) The converting entity must approve a written plan of conversion containing the following:

(1) The name, type of entity, and jurisdiction whose law governs the organization and internal affairs of the converting entity immediately before the conversion.

(2) A statement that the converting entity will deliver to the Secretary of State for filing articles of organization and conversion for the purpose of converting the eligible entity into an LLC.

(3) The name the entity will have when the conversion becomes effective.

(4) The terms and conditions of the conversion.

(5) The manner and basis for converting the interests in the converting entity into ownership interests, obligations, or securities of the surviving entity or into cash or other property or any combination thereof.

(b) The plan of conversion may contain other provisions relating to the conversion.

(c) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion provides the manner in which the facts will operate on the affected provisions. The facts may include, for example, any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the converting entity or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the converting entity is a party or any other agreement or document.

(d) The plan of conversion must be approved in accordance with the law governing the organization and internal affairs of the converting entity immediately before the conversion.

(e) After a plan of conversion has been approved as provided in subsection (d) of this section, but before articles of conversion become effective, the plan of conversion may be amended or abandoned to the extent permitted by the law that governs the organization and internal affairs of the converting entity.

"**§ 57D-9-22. Filing of articles of organization and conversion by the converting entity.**

(a) After a plan of conversion has been approved by the converting entity as provided in G.S. 57D-9-21, the converting entity shall deliver articles of organization and conversion to the Secretary of State for filing. The articles of organization and conversion must contain (i) the information required by G.S. 57D-2-21 and (ii) the following information:

(1) The name, type of entity, and jurisdiction whose law governs the organization and internal affairs of the converting entity immediately before the conversion.

(2) A statement that the articles of organization and conversion are being submitted for the purpose of converting the eligible entity into an LLC.

(3) The name the entity will have when the conversion becomes effective.

(4) The mailing address of the converting entity immediately before the conversion and, if different, the mailing address it will have when the conversion becomes effective.

(5) A statement that a plan of conversion has been approved by the converting entity as required by law.

(b) If the plan of conversion is abandoned after the articles of organization and conversion have been delivered to the Secretary of State but before the articles of organization and conversion become effective, the converting entity must deliver to the Secretary of State

for filing prior to the time the articles of organization and conversion become effective an amendment withdrawing such articles.

(c) Certificates of conversion must be registered as provided in G.S. 47-18.1.

"**§ 57D-9-23. Effective date; Effects of conversion.**

(a) The conversion takes effect when the articles of organization and conversion of the converting entity filed by the Secretary of State become effective, at which time the following shall occur:

(1) The converting entity ceases its prior form of organization and continues in existence as the surviving entity.

(2) The title to all real estate and other property owned by the converting entity continues to be vested in the surviving entity without reversion or impairment.

(3) All liabilities of the converting entity continue as liabilities of the surviving entity.

(4) A proceeding pending by or against the converting entity remains pending by or against the surviving entity as if the conversion did not occur.

(5) The equity or beneficial ownership interests in the converting entity that are to be converted into ownership interests, obligations, or securities of the surviving entity or into the right to receive cash or other property are thereupon so converted, and the former holders of equity or beneficial ownership interests in the converting entity are entitled only to the rights provided, including by reference, in the plan of conversion and the surviving entity's operating agreement.

(b) The conversion does not affect the liability or absence of liability of an equity or beneficial owner of the converting entity for any acts, omissions, or obligations of the converting entity made or incurred prior to the effectiveness of the conversion. A conversion under this Part does not constitute a dissolution or termination of the converting entity.

"**§§ 57D-9-24 through 57D-9-29: Reserved for future codification purposes.**

"Part 3. Conversion of an LLC.

"**§ 57D-9-30. Conversion.**

An LLC may convert to a different eligible entity if both of the following requirements are met:

(1) The conversion is permitted by the law that will govern the organization and internal affairs of the surviving entity.

(2) The converting LLC complies with the requirements of this Part and, to the extent applicable, the law that will govern the organization and internal affairs of the surviving entity.

"**§ 57D-9-31. Plan of conversion.**

(a) The converting LLC must approve a written plan of conversion containing the following:

(1) The name of the converting LLC immediately before the conversion.

(2) The name the surviving entity will have, the type of entity it will be, and the jurisdiction whose law will govern its organization and internal affairs when the conversion becomes effective.

(3) The terms and conditions of the conversion.

(4) The manner and basis for converting the ownership interests in the converting LLC into interests, obligations, or securities of the surviving entity or into cash or other property or any combination thereof.

(b) The plan of conversion may contain other provisions pertaining to the conversion.

(c) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts

objectively ascertainable outside the plan of conversion if the plan of conversion provides the manner in which the facts will operate on the affected provisions. The facts may include, for example, any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the converting LLC or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the converting LLC is a party or any other agreement or document.

(d) The converting LLC shall provide a copy of the plan of conversion to each member of the converting LLC prior to its approval. Under G.S. 57D-3-03(5), all of the members of the converting LLC must approve the plan of conversion. In addition, any economic interest owner of the converting LLC who because of the conversion will become personally liable upon the conversion for liabilities of the surviving entity, whether arising before or after the conversion, must approve the plan of conversion.

(e) After a plan of conversion has been approved by the converting LLC as provided in subsection (d) of this section, but before the articles of conversion become effective, the plan of conversion may be amended or abandoned as follows:

(1) The plan of conversion may be amended as provided in the plan of conversion or, if not so provided, as approved by the converting LLC in the manner provided in subsection (d) of this section.

(2) The plan of conversion may be abandoned, subject to any contractual rights, as provided in the plan of conversion or, if not so provided, as approved by the converting LLC in the manner provided in subsection (d) of this section.

"**§ 57D-9-32. Articles of conversion.**

(a) After a plan of conversion has been approved by the converting LLC as provided in G.S. 57D-9-31, the converting LLC shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion must contain the following information:

(1) The name of the converting LLC immediately before the conversion.

(2) The name the surviving entity will have, the type of entity it will be, and the jurisdiction whose law will govern its organization and internal affairs upon the conversion becoming effective.

(3) The mailing address of the converting LLC immediately before the conversion and, if different, the mailing address the surviving entity will have when the conversion becomes effective.

(4) A statement that a plan of conversion has been approved by the converting LLC as required by law.

(5) If the surviving entity is not authorized to transact business in this State, a statement that the surviving entity (i) consents to service of process in any proceeding based on any cause of action arising in respect of the converting LLC being made on the surviving entity by service on the Secretary of State and (ii) commits to deliver to the Secretary of State for filing a statement of any change in the surviving entity's mailing address to which the Secretary of State may mail a copy of process served on the Secretary of State.

(b) If the converting LLC is converting to an eligible entity whose formation, or whose status as a registered limited liability partnership as defined in G.S. 59-32, requires the filing of a document by the Secretary of State, then notwithstanding subsection (a) of this section, that document must be delivered to and filed by the Secretary of State with the articles of conversion.

(c) If the plan of conversion is abandoned after the articles of conversion have been filed by the Secretary of State but before the articles of conversion become effective, the converting LLC must deliver to the Secretary of State for filing prior to the time the articles of conversion become effective an amendment of the articles of conversion withdrawing the articles of conversion.

(d) The conversion takes effect in accordance with the law that will govern the organization and internal affairs of the surviving entity.

(e) Certificates of conversion must be registered as provided in G.S. 47-18.1.

"**§ 57D-9-33. Effects of conversion.**

(a) When the conversion takes effect, the following shall occur:

(1) The converting LLC ceases its prior form of organization and continues in existence as the surviving entity.

(2) The title to all real estate and other property owned by the converting LLC continues to be vested in the surviving entity without reversion or impairment.

(3) All liabilities of the converting LLC continue as liabilities of the surviving entity.

(4) A proceeding pending by or against the converting LLC remains pending by or against the surviving entity as if the conversion did not occur.

(5) The ownership interests in the converting LLC that are to be converted into equity or beneficial ownership interests, obligations, or securities of the surviving entity or into the right to receive cash or other property are thereupon so converted, and the former holders of ownership interests in the converting LLC are entitled only to the rights provided, including, by reference, in the plan of conversion.

(b) The conversion does not affect the liability or absence of liability of any interest owner of the converting LLC for any acts, omissions, or obligations of the converting LLC made or incurred prior to the effectiveness of the conversion. A conversion under this Part does not constitute a dissolution or termination of the converting LLC.

(c) If the surviving entity is not a domestic corporation or a domestic limited partnership, at the time the conversion takes effect, the surviving entity is deemed to consent to each of the following:

(1) That it may be served with process in this State in any proceeding to enforce any obligation of (i) the converting LLC, if before the conversion the converting LLC was subject to suit in this State on the obligation or (ii) the surviving entity arising from the conversion.

(2) That it has appointed the Secretary of State as its agent for service of process in any such proceeding. Service of process on the Secretary of State must be made by delivering to the Secretary of State, or to 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. 57D-1-22(b). Upon receipt of service of process on behalf of a surviving entity 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 entity. If the surviving entity is authorized to transact business in this State, the address for mailing will be its principal office designated in the latest document filed by 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 entity is not authorized to transact business in this State, the address for mailing will be the mailing address of the surviving entity provided under G.S. 57D-9-32(a)(3).

"**§§ 57D-9-34 through 57D-9-29: Reserved for future codification purposes.**

"Part 4. Merger.

"**§ 57D-9-40. Merger.**

An LLC may merge with one or more other eligible entities if both of the following requirements are met:

(1) The merger is permitted by the law governing the organization and internal affairs of each other merging entity.

(2) Each merging entity complies with the requirements of this Part and, to the extent applicable, the law other than this Part governing the organization and internal affairs of each merging entity.

"**§ 57D-9-41. Plan of merger.**

(a) Each merging entity must approve a written plan of merger containing the following:

(1) The name, type of entity, and jurisdiction whose law governs the organization and internal affairs of each merging entity immediately before the merger.

(2) The name of the surviving entity.

(3) The terms and conditions of the merger.

(4) The manner and basis for converting the interests in each merging entity into interests, obligations, or securities of the surviving entity or into cash or other property or any combination thereof.

(5) If the surviving entity is an LLC, any amendments to its articles of organization that are to be made in connection with the merger.

(b) The plan of merger may contain other provisions pertaining to the merger.

(c) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger provides the manner in which the facts will operate on the affected provisions. The facts may include, for example, any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the merging LLC or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the merging LLC is a party, or any other agreement or document.

(d) A merging LLC shall provide a copy of the plan of merger to each member of the merging LLC prior to its approval. Under G.S. 57D-3-03(6), all of the members of the merging LLC must approve the plan of merger. In addition, any economic interest owner of the merging LLC who because of the merger will become personally liable upon the merger for liabilities of the merging LLC, any other merging entity, or the surviving entity, whether arising before or after the merger, must approve the plan of merger.

(e) The plan of merger must be approved in accordance with the law governing the organization and internal affairs of each merging entity.

(f) After a plan of merger has been approved but before the articles of merger become effective, the plan of merger may be amended or abandoned as follows:

(1) The plan of merger may be amended as provided in the plan of merger or, if not so provided, in the manner provided in subsections (d) and (e) of this section.

(2) The plan of merger may be abandoned, subject to any contractual rights, as provided in the plan of merger or, if not so provided, in the manner provided in subsections (d) and (e) of this section.

"**§ 57D-9-42. Articles of merger.**

(a) After a plan of merger has been approved by each merging entity as provided in G.S. 57D-9-41, the surviving entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall state the following:

(1) The name, type of entity, and jurisdiction whose law governs the organization and internal affairs of each merging entity immediately before the merger.

(2) The name of the surviving entity.

(3) The mailing address of each merging entity immediately before the merger and the mailing address the surviving entity will have when the merger becomes effective.

(4) If the surviving entity is an LLC, any amendment to its articles of organization as provided in the plan of merger.

(5) A statement that the plan of merger has been approved by each merging entity in the manner required by law.

(6) If the surviving entity is not authorized to transact business in this State, a statement that the surviving entity (i) consents to service of process in any proceeding based on any cause of action arising in respect of a merging LLC being made on the surviving entity by service on the Secretary of State and (ii) commits to deliver to the Secretary of State for filing a statement of any change in the surviving entity's mailing address to which the Secretary of State may mail a copy of process served on the Secretary of State.

(b) If the plan of merger is amended after the articles of merger have been filed but before the articles of merger become effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger stating that they have been abandoned.

(c) A merger takes effect when the articles of merger become effective, which in the case of a merging LLC is when the articles of merger filed by the Secretary of State become effective.

(d) Certificates of merger must be registered as provided in G.S. 47-18.1.

"**§ 57D-9-43. Effects of merger.**

(a) When the merger takes effect, the following shall occur:

(1) Each merging entity other than the surviving entity merges into the surviving entity, and the separate existence of each merging entity other than the surviving entity ceases.

(2) The title to all real estate and other property owned by each merging entity is vested in the surviving entity without reversion or impairment.

(3) The surviving entity has all liabilities of each merging entity.

(4) A proceeding pending by or against any merging entity remains pending by or against such merging entity as if the merger did not occur or the surviving entity may be substituted in the proceeding for a merging entity whose separate existence ceases in the merger.

(5) If an LLC is the surviving entity, its articles of organization will be amended to the extent provided in the articles of merger.

(6) The equity or beneficial ownership interests in, and the obligations and securities of, each merging entity that are to be converted into interests, obligations, or securities of the surviving entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the equity and beneficial ownership interests are entitled only to the rights provided to them in the plan of merger or, in the case of former holders of shares in a domestic corporation, any rights they may have under Article 13 of Chapter 55 of the General Statutes.

(7) If the surviving entity is not a domestic corporation, the surviving entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging entity that is a domestic corporation 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 of Chapter 55 of the General Statutes as if it were a domestic corporation.

(b) The merger does not affect the liability or absence of liability of any holder of an interest in a merging entity for any acts, omissions, or obligations of any merging entity made or incurred prior to the effectiveness of the merger. The cessation of the separate existence of a merging entity in the merger does not constitute a dissolution or termination of the merging entity.

(c) If the surviving entity is not a domestic eligible entity when the merger takes effect, the surviving entity is deemed to consent to each of the following:

(1) That it may be served with process in this State in any proceeding to enforce (i) any obligation of a domestic merging entity if before the merger the domestic merging entity was subject to suit in this State on the obligation, (ii) the 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 entity arising from the merger.

(2) That it has appointed the Secretary of State as its agent for service of process in any such proceeding. Service of process on the Secretary of State is made by delivering to the Secretary of State, or to any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process and the fee required by G.S. 57C-1-22(b). Upon receipt of service of process on behalf of a surviving entity 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 entity. If the surviving entity is authorized to transact business in this State, the address for mailing will be its principal office designated in the latest document filed by 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 entity is not authorized to transact business in this State, the address for mailing will be the mailing address of the surviving entity provided under G.S. 57D-9-42(a).

"**§§ 57D-9-44 through 57D-9-49: Reserved for future codification purposes.**

"Article 10.

"Miscellaneous.

"**§ 57D-10-01. Purpose; public policy.**

(a) This Chapter is to be applied to promote its purposes and policies.

(b) The purpose of this Chapter is to provide a flexible framework under which one or more persons may organize and manage one or more businesses as they determine to be appropriate with minimum prescribed formalities or constraints.

(c) It is the policy of this Chapter to give the maximum effect to the principle of freedom of contract and the enforceability of operating agreements.

"**§ 57D-10-02. Rules of construction; coordination with other law.**

(a) Unless displaced by this Chapter, the rules of law and equity supplement this Chapter.

(b) The rule that statutes in derogation of the common law are to be strictly construed does not apply to this Chapter.

(c) This Chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Section 7003(b).

(d) G.S. 25-9-406 and G.S. 25-9-408 do not apply to any ownership interest or any portion thereof, including any economic interest. To the extent of any conflict or inconsistency between this subsection and G.S. 25-9-406 and G.S. 25-9-408, this subsection prevails. Accordingly, neither G.S. 25-9-406 nor G.S. 25-9-408 will render invalid, unenforceable, or ineffective any contrary or inconsistent provision contained in an operating agreement.

(e) In this Chapter, unless otherwise specified or indicated by the context, including as may otherwise be provided in the operating agreement under Part 3 of Article 2 of this Chapter, without the need for repetitious use of qualifiers, further statement, or clarification in the text of any provision of this Chapter, the following rules of construction shall apply:

(1) The provisions of this Chapter are to be applied in a manner that is reasonable under the circumstances.

(2) References to "members," "interest owners," "managers," "company officials," "operating agreement," "articles of organization," and other terms that relate to limited liability companies are deemed to refer to an LLC or foreign LLC as the context indicates.

(3) The words "this Chapter," "hereof," "hereby," "hereunder," and "herein," and words of similar impact are to be read to refer to Chapter 57D of the General Statutes as a whole and not to any particular provision of this Chapter.

(4) The word "including" is to be read as if it is followed by the words "without limitation" and, therefore, denotes examples that are only illustrative and does not narrow or limit the scope of the standard, concept, or other applicable subject being described or illustrated.

(5) The words "or" and "any" are not exclusive.

(6) The captions and headings of provisions of this Chapter are for convenience of reference only and are not to be construed as part of this Chapter or serve to limit or expand the scope of the provisions.

(f) Action validly taken pursuant to one provision of this Chapter is not rendered invalid solely because it is substantively the same or similar to an action that could be taken pursuant to some other provision of this Chapter but fails to satisfy one or more requirements prescribed by that other provision.

(g) An operating agreement that provides for the application of the law of this State is governed by and will be construed under the laws of this State in accordance with its terms.

"**§§ 57D-10-04 through 57D-10-09: Reserved for future codification purposes.**

"Article 11.

"Transition Provisions.

"**§ 57D-11-01. Applicability of act.**

The provisions of this Chapter apply to every LLC, whether formed on, before, or after January 1, 2014, and the interest owners of every LLC, except to the extent expressly excepted by this Chapter.

"**§ 57D-11-02. Application to qualified foreign LLCs.**

A foreign LLC authorized to transact business in this State immediately before the repeal of Chapter 57C of the General Statutes is subject to this Chapter but is not required to obtain a new certificate of authority to transact business under this Chapter. The certificate of authority of such a foreign LLC issued under former Chapter 57C of the General Statutes before its repeal is to be deemed to have been issued under this Chapter.

"**§ 57D-11-03. Saving provisions.**

(a) The existence of LLCs formed before January 1, 2014, shall not be impaired by the repeal of Chapter 57C of the General Statutes or the enactment of this Chapter, by any change made by this Chapter in the requirements for the formation of LLCs, nor by any amendment or repeal by this Chapter of the laws under which they were formed or created, and, except as otherwise expressly provided in this Chapter, the repeal of former Chapter 57C of the General Statutes shall not affect any liability or penalty incurred under the provisions of that chapter prior to its repeal.

(b) Any proceeding commenced before January 1, 2014, may be completed in accordance with the law then in effect.

(c) An LLC dissolved before January 1, 2014, may wind up or complete its winding up, as the case may be, pursuant to Article 6 and other applicable provisions of this Chapter.

(d) A proceeding under G.S. 57D-4-06(a) in respect of an LLC formed before January 1, 2014, will not be barred if it is commenced no later than (i) two years after the distribution or (ii) the earlier of January 1, 2016, or three years after the distribution.

(e) References in the articles of organization or operating agreements of an LLC made before January 1, 2014, to provisions of Chapter 57C of the General Statutes are to be deemed, to the extent applicable or the context does not clearly indicate otherwise, to be made to the corresponding provisions of this Chapter."

SECTION 3. G.S. 55-1-40 reads as rewritten:

"**§ 55-1-40. Chapter definitions.**

In this Chapter unless otherwise specifically provided:

...

(6b) "Domestic limited liability company" has the same meaning as the term "LLC" in ~~G.S. 57C-1-03.~~G.S. 57D-1-03.

...

(10a) "Foreign limited liability company" has the same meaning as the term "foreign LLC" in ~~G.S. 57C-1-03.~~G.S. 57D-1-03.

...."

SECTION 4. G.S. 55A-1-40 reads as rewritten:

"**§ 55A-1-40. Chapter definitions.**

In this Chapter unless otherwise specifically provided:

...

(8a) "Domestic limited liability company" has the same meaning as the term "LLC" in ~~G.S. 57C-1-03.~~G.S. 57D-1-03.

...

(11a) "Foreign limited liability company" has the same meaning as the term "foreign LLC" in ~~G.S. 57C-1-03.~~G.S. 57D-1-03.

...."

SECTION 5. G.S. 55A-11-02(a) reads as rewritten:

"(a) Without the prior approval of the superior court in a proceeding in which the Attorney General has been given written notice, a charitable or religious corporation may merge only ~~with:~~with any of the following:

(1) A charitable or religious ~~corporation;~~corporation.

(2) A foreign corporation that would qualify under this Chapter as a charitable or religious ~~corporation;~~corporation.

(3) A wholly owned foreign or domestic corporation (business or nonprofit) which is not a charitable or religious corporation, or an unincorporated entity, provided the charitable or religious corporation is the survivor in the merger and continues to be a charitable or religious corporation after the ~~merger; or~~merger.

(4) A business or nonprofit corporation (foreign or domestic) other than a charitable or religious corporation, or an unincorporated entity, provided that: (i) on or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets (including goodwill) of the charitable or religious corporation or the fair market value of the charitable or religious corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under G.S. 55A-14-03(a)(1) and (2) had it dissolved; (ii) it shall return, transfer or convey any assets held by it upon condition requiring return, transfer or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and (iii) the merger is approved by a majority of directors of the charitable or religious corporation who are not and will not become members, as "member" is defined in G.S. 55A-1-40(16) or ~~G.S. 57C-1-03,~~G.S. 57D-1-03, partners, limited partners, or shareholders in or directors, managers, officers, employees, agents, or consultants of the survivor in the merger.

...."

SECTION 6. G.S. 55D-1 reads as rewritten:

"**§ 55D-1. Applicable definitions.**

The following definitions apply in this Chapter:

...

(5) "Foreign limited liability company" ~~is defined in G.S. 57C-1-03(8).~~has the same meaning as the term "foreign LLC" in G.S. 57D-1-03.

...

(10) "Limited liability company" or "domestic limited liability company" ~~is defined in G.S. 57C-1-03(11).~~has the same meaning as the term "LLC" in G.S. 57D-1-03.

...."

SECTION 7. 55D-10 reads as rewritten:

"**§ 55D-10. Filing requirements.**

(a) To be entitled to filing by the Secretary of State under Chapter 55, 55A, 55B, ~~57C,~~57D, or 59 of the General Statutes, a document must satisfy the requirements of this section, and of any other section of the General Statutes that adds to or varies these requirements.

(b) The document must meet all of the following requirements:

(1) The document must be one that is required or permitted by Chapter 55, 55A, 55B, ~~57C,~~57D, or 59 of the General Statutes to be filed in the office of the Secretary of State.

(2) The document must contain the information required by Chapter 55, 55A, 55B, ~~57C,~~57D, or 59 of the General Statutes for that document. It may contain other information as well.

(3) The document must be typewritten, printed, or in an electronic form acceptable to the Secretary of State.

(4) The document must be in the English language. A name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of ~~existence~~existence, or a document of similar import, required of foreign corporations, foreign nonprofit corporations, foreign limited liability companies, and foreign limited liability partnerships need not be in English if accompanied by a reasonably authenticated English translation.

(5) A document submitted by an entity must be executed by a person authorized to execute documents (i) under G.S. 55-1-20 if the entity is a domestic or foreign corporation, (ii) under G.S. 55A-1-20 if the entity is a domestic or foreign nonprofit corporation, (iii) under ~~G.S. 57C-1-20~~G.S. 57D-1-20 if the entity is a domestic or foreign limited liability company, (iv) under G.S. 59-204 if the entity is a domestic or foreign limited partnership, or (v) under G.S. 59-35.1 if the entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of the State.

...."

SECTION 8. G.S. 55D-13(c) reads as rewritten:

"(c) Except as provided in G.S. 55-2-03(b), 55A-2-03(b), and ~~57C-2-20(b),~~57D-2-20(b), the fact that a document has become effective under this section does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document."

SECTION 9. G.S. 55D-15 reads as rewritten:

"**§ 55D-15. Filing duty of Secretary of State.**

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of this Chapter and of Chapter 55, 55A, 55B, ~~57C,~~57D, or 59 of the General Statutes, the Secretary of State shall file it. Documents filed with the Secretary of State under this Chapter may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Chapter, or under any predecessor law, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of those documents reproduced.

...

(d) The Secretary of State's duty is to review and file documents that satisfy the requirements of this Chapter and of Chapter 55, 55A, 55B, ~~57C,~~57D, or 59 of the General Statutes. The Secretary of State's filing or refusing to file a document does not do any of the following:

(1) Except as provided in G.S. 55-2-03(b), 55A-2-03(b), or ~~57C-2-20(b),~~57D-2-20(b), affect the validity or invalidity of the document in whole or part.

(2) Relate to the correctness or incorrectness of information contained in the document.

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect."

SECTION 10. G.S. 55D-17 reads as rewritten:

"**§ 55D-17. Evidentiary effect of copy of filed document.**

A certificate attached to a copy of a document filed by the Secretary of State, bearing the Secretary of State's signature and the seal of office (both of which may be in facsimile or in any electronic form approved by the Secretary of State) and certifying that the copy is a true copy

of the document, is conclusive evidence that the original document is on file with the Secretary of State. A photographic, microfilm, optical disk media, or other reproduced copy of a document filed under this Chapter, Chapter 55, 55A, 55B, ~~57C,~~57D, or 59 of the General Statutes, or any predecessor law, when certified by the Secretary, shall be considered an original for all purposes and is admissible in evidence in like manner as an original."

SECTION 11. G.S. 55D-20 reads as rewritten:

"**§ 55D-20. Name requirements.**

(a) In addition to the requirements of any other applicable section of the General Statutes:

(1) The name of a corporation must contain the word "corporation", "incorporated", "company", or "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.".

(2) The name of a limited liability company must contain the words "limited liability company" or the abbreviation "L.L.C." or "LLC", or the combination "ltd. liability co.", "limited liability co.", or "ltd. liability company". Notwithstanding the prior sentence, any limited liability company whose name contained the words "low-profit limited liability company" or the abbreviation "L3C" pursuant to subdivision (6) of this subsection prior to its repeal on January 1, 2014, may continue to use that name unless the limited liability company amends its articles of organization to change its name.

(3) The name of a limited partnership that is not a limited liability limited partnership must contain the words "limited partnership", the abbreviation "L.P." or "LP", or the combination "ltd. partnership".

(4) The name of a limited liability limited partnership must contain the words "registered limited liability limited partnership" or "limited liability limited partnership" or the abbreviation "L.L.L.P.", "R.L.L.L.P.", "LLLP", or "RLLLP".

(5) A registered limited liability partnership's name must contain the words "registered limited liability partnership" or "limited liability partnership" or the abbreviation "L.L.P.", "R.L.L.P.", "LLP" or "RLLP".

~~(6) The name of a low-profit limited liability company must contain the words "low-profit limited liability company" or the abbreviation "L3C".~~

(b) In addition to the requirements of subsection (a) of this section, the name of a limited partnership shall not contain the name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a corporate general partner, or (ii) the business of the limited partnership has been carried on under that name before the admission of that limited partner.

(c) The name of a corporation, nonprofit corporation, or limited liability company shall not contain language stating or implying that the entity is organized for a purpose other than that permitted by G.S. 55-3-01, 55A-3-01, or ~~57C-2-01~~57D-2-01 and by its articles of incorporation or organization.

(d) The use of assumed names or fictitious names, as provided for in Chapter 66, is not affected by this Chapter or by Chapter 55, 55A, ~~57C,~~57D, or 59 of the General Statutes.

(e) The filing of any document, the reservation or registration of any name under this Chapter or under Chapter 55, 55A, 55B, ~~57C,~~57D, or 59 of the General Statutes, or the issuance of a certificate of authority to transact business or conduct affairs or a statement of foreign registration does not authorize the use in this State of a name in violation of the rights of any third party under the federal trademark act, the trademark act of this State, or other statutory or common law, and is not a defense to an action for violation of any of those rights."

SECTION 12. G.S. 55D-21(d) reads as rewritten:

"(d) Except as otherwise provided in this subsection, the name of a corporation dissolved under Article 14 of Chapter 55 of the General Statutes, of a nonprofit corporation dissolved under Article 14 of Chapter 55A of the General Statutes, of a limited liability company dissolved under Article 6 of Chapter ~~57C~~57D of the General Statutes, of a limited partnership dissolved under Part 8 of Article 5 of Chapter 59 of the General Statutes, or of a limited liability partnership whose registration as a limited liability partnership has been cancelled under G.S. 59-84.2 or revoked under G.S. 59-84.4, may not be used by another entity until one of the following occurs:

...."

SECTION 13. G.S. 55D-22(b) reads as rewritten:

"(b) If a foreign corporation, foreign nonprofit corporation, foreign limited liability company, or foreign limited partnership authorized to transact business or conduct affairs in this State, or a foreign limited liability partnership maintaining a statement of foreign registration, changes its name to one that does not satisfy the requirements of this Article, it may not transact business or conduct affairs in this State under the changed name until it adopts a name satisfying the requirements of this Article and obtains an amended certificate of authority or statement of foreign registration under G.S. 55-15-04, 55A-15-04, ~~57C-7-05,~~57D-7-04, 59-91, or 59-905, as applicable."

SECTION 14. G.S. 55D-31(c) reads as rewritten:

"(c) A domestic corporation, limited liability company, limited liability limited partnership, registered limited liability partnership, foreign corporation, foreign limited liability company, or foreign limited liability partnership may change its registered office or registered agent by including in its annual report required by G.S. 55-16-22, ~~57C-2-23,~~57D-2-24, 59-84.4, or 59-210 the information and any written consent required by subsection (a) of this section."

SECTION 15. G.S. 59-32 reads as rewritten:

"**§ 59-32. Definition of terms.**

As used in this Chapter, except as otherwise defined in Article 5 of this Chapter for purposes of that Article, unless the context otherwise requires:

...

(4b) "Domestic limited liability company" has the same meaning as ~~in G.S. 57C-1-03.~~the term "LLC" in G.S. 57D-1-03.

...

(4f) "Foreign limited liability company" has the same meaning as ~~in G.S. 57C-1-03.~~the term "foreign LLC" in G.S. 57D-1-03.

...."

SECTION 16. G.S. 59-102 reads as rewritten:

"**§ 59-102. Definitions.**

As used in this Article, unless the context otherwise requires:

...

(3b) "Domestic limited liability company" has the same meaning as ~~in G.S. 57C-1-03.~~the term "LLC" in G.S. 57D-1-03.

...

(4b) "Foreign limited liability company" has the same meaning as ~~in G.S. 57C-1-03.~~the term "foreign LLC" in G.S. 57D-1-03.

...."

SECTION 17. G.S. 66-260(11)n. reads as rewritten:

"(11) "Telephonic seller" or "seller" means a person who, directly or through salespersons, causes a telephone solicitation or attempted telephone solicitation to occur. "Telephonic seller" and "seller" do not include any of the following:

...

n. A foreign corporation, limited liability company, or limited partnership that has obtained and maintained a certificate of authority to transact business or conduct affairs in this State pursuant to Chapter 55, 55A, or ~~57C~~57D or Article 5 of Chapter 59 of the General Statutes and that only transacts business or conducts affairs in this State using the name set forth in the certificate of authority.

...."

SECTION 18. G.S. 66-352(a) reads as rewritten:

"(a) Notice of Franchise. – A person who intends to provide cable service over a cable system in an area must file a notice of franchise with the Secretary before providing the service. A person who files a notice of franchise must pay a fee in the amount set in ~~G.S. 57C-1-22~~G.S. 57D-1-22 for filing articles of organization."

SECTION 19. G.S. 66-353 reads as rewritten:

"**§ 66-353. Annual service report.**

A holder of a State-issued franchise must file an annual service report with the Secretary. The report must be filed on or before July 31 of each year. The report must be accompanied by a fee in the amount set in ~~G.S. 57C-1-22~~G.S. 57D-1-22 for filing an annual report. The report must include all of the following:

...."

SECTION 20. G.S. 87-10.1 reads as rewritten:

"**§ 87-10.1. Licensing of nonresidents.**

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

(1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(2) Foreign corporation. – Defined in G.S. 55-1-40.

(3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.

(4) Foreign limited liability company. – ~~Defined in G.S. 57C-1-03.~~Has the same meaning as the term "foreign LLC" in G.S. 57D-1-03.

(5) Foreign partnership. – Either of the following that does not have a permanent place of business in this State:

a. A foreign limited partnership as defined in G.S. 59-102.

b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. – The Board shall not issue a certificate of license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a certificate of license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter ~~57C~~57D of the General Statutes.

...."

SECTION 21. G.S. 87-22.2 reads as rewritten:

"**§ 87-22.2. Licensing of nonresidents.**

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

(1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(2) Foreign corporation. – Defined in G.S. 55-1-40.

(3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.

(4) Foreign limited liability company. – ~~Defined in G.S. 57C-1-03.~~Has the same meaning as the term "foreign LLC" in G.S. 57D-1-03.

(5) Foreign partnership. – Either of the following that does not have a permanent place of business in this State:

a. A foreign limited partnership as defined in G.S. 59-102.

b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. – The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter ~~57C~~57D of the General Statutes.

...."

SECTION 22. G.S. 87-44.2 reads as rewritten:

"**§ 87-44.2. Licensing of nonresidents.**

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

(1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(2) Foreign corporation. – Defined in G.S. 55-1-40.

(3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.

(4) Foreign limited liability company. – ~~Defined in G.S. 57C-1-03.~~Has the same meaning as the term "foreign LLC" in G.S. 57D-1-03.

(5) Foreign partnership. – Either of the following that does not have a permanent place of business in this State:

a. A foreign limited partnership as defined in G.S. 59-102.

b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. – The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter ~~57C~~57D of the General Statutes.

...."

SECTION 23. G.S. 89C-18.1 reads as rewritten:

"**§ 89C-18.1. Licensing of nonresidents.**

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

(1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(2) Foreign corporation. – Defined in G.S. 55-1-40.

(3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.

(4) Foreign limited liability company. – ~~Defined in G.S. 57C-1-03.~~Has the same meaning as the term "foreign LLC" in G.S. 57D-1-03.

(5) Foreign partnership. – Either of the following that does not have a permanent place of business in this State:

a. A foreign limited partnership as defined in G.S. 59-102.

b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. – The Board shall not renew a certificate of licensure for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not renew a certificate of licensure for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter ~~57C~~57D of the General Statutes.

...."

SECTION 24. G.S. 89F-6 reads as rewritten:

"**§ 89F-6. Corporate, limited liability company, partnership, or sole proprietorship practice of soil science.**

A corporation organized under Chapter 55B of the General Statutes, a limited liability company organized under Chapter ~~57C~~57D of the General Statutes, a partnership, or a sole proprietorship may engage in the practice of soil science in this State. A licensed soil scientist shall be in responsible charge of all practice of soil science by the corporation, limited liability company, partnership, or sole proprietorship."

SECTION 25. G.S. 105-114.1(a)(4) reads as rewritten:

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

...

(4) Governing law. – ~~A limited liability company's governing law is determined under G.S. 57C-6-05 or G.S. 57C-7-01, as applicable.~~The law under which a limited liability company is organized.

...."

SECTION 26. G.S. 105-122.1 reads as rewritten:

"**§ 105-122.1. Credit for additional annual report fees paid by limited liability companies subject to franchise tax.**

A limited liability company subject to tax under this Article is allowed a credit against the tax imposed by this Article equal to the difference between the annual report fee for corporations under G.S. 55-1-22(a)(23) and the annual report fee for limited liability companies under ~~G.S. 57C-1-22(a).~~G.S. 57D-1-22. The credit allowed by this section may not exceed the amount of tax imposed by this Article for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer."

SECTION 27. G.S. 105-130.2(11) reads as rewritten:

"(11) Limited liability company. – Either a domestic limited liability company organized under Chapter ~~57C~~57D of the General Statutes or a foreign limited liability company authorized by that Chapter to transact business in this State that is classified for federal income tax purposes as a corporation. As applied to a limited liability company that is a corporation under this Part, the term "shareholder" means a member of the limited liability company and the term "corporate officer" means a member or manager of the limited liability company."

SECTION 28. G.S. 105-134.1(7a) reads as rewritten:

"(7a) Limited liability company. – Either a domestic limited liability company organized under Chapter ~~57C~~57D of the General Statutes or a foreign limited liability company authorized by that Chapter to transact business in this State that is classified for federal income tax purposes as a partnership. As applied to a limited liability company that is a partnership under this Part, the term "partner" means a member of the limited liability company."

SECTION 29. G.S. 105-163.1(8) reads as rewritten:

"(8) Nonresident entity. – Any of the following:

a. A foreign limited liability company, ~~as defined in G.S. 57C-1-03,~~defined using the same definition for the term

"foreign LLC" in G.S. 57D-1-03, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter ~~57C~~57D of the General Statutes.

b. A foreign limited partnership as defined in G.S. 59-102 or a general partnership formed under the laws of any jurisdiction other than this State, unless the partnership maintains a permanent place of business in this State.

c. A foreign corporation, as defined in G.S. 55-1-40, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes."

SECTION 30. G.S. 117-18.1(a)(4) reads as rewritten:

"(a) Electric membership corporations may form, organize, acquire, hold, dispose of, and operate any interest up to and including full controlling interest in separate business entities that provide energy services and products, telecommunications services and products, water, and wastewater collection and treatment, so long as those other business entities meet all of the following conditions:

...

(4) They are organized and operated pursuant to Chapter 55 or Chapter ~~57C~~57D of the General Statutes.

...."

SECTION 31. G.S. 25-9-406(i) reads as rewritten:

"(i) Inapplicability. – This section does not apply to an assignment of a health-care-insurance ~~receivable.~~receivable or an interest in a partnership or limited liability company. 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:

(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 32. G.S. 25-9-408(f) reads as rewritten:

"(f) Inapplicability. – This section does not apply to an assignment of an interest in a partnership or limited liability company. 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:

(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 33. The Revisor of Statutes may cause to be printed all relevant portions of the explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 34. Except as otherwise provided, this act becomes effective January 1, 2014.

SENATE BILL 439:
Amend & Restate NC Limited Liability Co. Act

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 19, 2013
Introduced by:	Sens. Clodfelter, Barringer, Brunstetter	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to First Edition S439-CSTG-26		

SUMMARY: ***The PCS to Senate Bill 439 rewrites the North Carolina Limited Liability Company Act. The PCS adds rules governing priority of multiple charging orders and conflicts between different provisions in the LLC's governing agreements.***

CURRENT LAW: The North Carolina Limited Liability Company Act, codified as Chapter 57C of the General Statutes, governs the creation, operation, and dissolution of limited liability companies.

BILL ANALYSIS: Section 1 of the PCS repeals Chapter 57C in its entirety, and Section 2 reenacts it as Chapter 57D, with substantial revisions, including:

- Operating agreements would not have to be in writing; they could be established in the same ways as any contract: written, oral, or implied assent among the parties to the contract
- Rights and duties of parties as set forth in the Act could be freely modified, waived, or nullified by agreement
- Unwritten provisions in the operating agreement would not be permitted to vary or nullify any inconsistent or contrary provision in the operating agreement to the detriment of non-parties to the operating agreement, and in the event of a conflict between the operating agreement and any document filed by the LLC with the Secretary of State, the operating agreement would prevail as to members, managers and company officials, and the document filed with the Secretary of State would prevail as to non-parties to the operating agreement to the extent of their reasonable reliance upon the filed document **(added by the PCS)**
- The priority among multiple charging orders would be determined by the date of service of the charging order upon the LLC, except that a charging order would relate back to the date of service of garnishment process previously issued in the same proceeding as the charging order **(added by the PCS)**
- New defined terms are added to provide a more detailed framework for carrying out the ownership and management of LLCs
- Provisions relating to low-profit LLCs are deleted
- Provisions are added to clarify matters that may be agreed upon by members, including:
    - Management duties
    - Exculpation and indemnification
    - Penalties
    - Alternative dispute resolution
    - Information access rights
- Provisions governing foreign LLCs would be harmonized with their counterparts under the Business Corporations Act
- Various provisions of the Act would be clarified and coordinated with relevant State and federal law

Sections 3 through 30 make various conforming changes to other statutory provisions.

Sections 31 and 32 exempt ownership interests in LLCs from UCC Article 9 provisions that might result in encumbrances to a member's economic interest in breach of the operating agreement, which could adversely affect the interest of the other members

EFFECTIVE DATE: This act becomes effective January 1, 2014, except as otherwise provided in new Chapter 57D, Article 11 (Transition Provisions).

BACKGROUND: Senate Bill 439 is the product of four years of work by the LLC Act Revisions Task Force of the North Carolina Bar Association's Business Law Section.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 439

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

S439-ATG-10 [v.2]

Page 1 of 1

Comm. Sub. [~~NO~~ YES]
Amends Title [NO]
~~First Edition~~ S439-CSTB-27

Date _____,2013

Senator _____

moves to amend the bill on page 13, line 41 through page 14, line 2, by rewriting those lines to read:

"(c) Oral or implied provisions in the operating agreement may not supplant, vary, disclaim, or nullify any contrary or inconsistent written provisions in the operating agreement to the detriment of the rights of persons who are not parties to the operating agreement.

(d) In the event of a conflict between the operating agreement and a provision in any document of an LLC filed by the Secretary of State:

(1) The operating agreement shall prevail as to parties to the operating agreement and company officials.

(2) The document filed by the Secretary of State shall prevail as to persons who are not parties to the operating agreement to the extent that they reasonably rely on the document filed by the Secretary of State.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 439

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

S439-ATG-10 [v.2]

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

Date _____,2013

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SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NCBA Summary of Senate Bill 439

Summary of Proposed
Overhaul of the North Carolina
Limited Liability Company Act

1. **Affirmation of Contractual Underpinnings of the North Carolina Limited Liability Company Act.** The public policy underlying the North Carolina Limited Liability Company Act (the "Act") is stated in G.S. § 57C-10-03(e): "[I]t is the policy of [the Act] to give maximum effect to the principle of freedom of contract and to the enforceability of operating agreements." The revisions to the Act are proposed to more clearly, concisely, and effectively achieve and implement that stated public policy objective.

(a) No writing requirement. The revised Act would eliminate all requirements that any part of a North Carolina limited liability company's operating agreement be in writing. The revisions, however, do not go as far as the Delaware Limited Liability Company Act, which makes the "statute of frauds" inapplicable to Delaware limited liability company agreements. Under the revised Act, the operating agreement may be established in the same ways as any contract; i.e., by written, oral, or implied assent among the parties to the contract. As under the current Act, however, the parties may require that all of the components of the operating agreement be in a signed, written document or in any other prescribed form.

(b) Supplemental Nature of the Act. In furtherance of the foregoing, the revised Act would establish that its provisions concerning the internal affairs of North Carolina limited liability companies are intended to apply only if, and to the extent, other provision is not made in the operating agreement. Accordingly, parties are free to modify, waive, and nullify the rules of the Act that would otherwise govern their respective rights and duties. The limited extent to which that freedom of contract is restricted is set forth in Part 3 of Article 2 of the revised Act.

(c) Objective of the Revised Act. The objective of the proposed revisions is to provide certainty and a more detailed framework and structure to allow members of a North Carolina limited liability company to be confident that their management and ownership arrangements will be accommodated by and enforced under the Act. This flexibility is partially achieved through the introduction of certain new defined terms: (a) those relating to the management of the limited liability company: "company officials," (which may but need not be "managers"); (b) those relating to the two different types of owners of limited liability companies: "economic interest owners" (referred to under the current Act as "assignees") and "members," and in reference to either economic interest owners or members or both, "interest owners," and the interest held by either being referred to as an "ownership interest" instead of a "membership interest"; and (c) those relating to the economic interest of an owner: "contribution amount," "capital interest," and "economic interest."

(d) Clarification of Matters that May be Agreed Upon by the Members. In addition to the members being able to require the operating agreement to be in writing or other prescribed form, the revised Act would make it clear that the members' freedom of contract extends to decisions concerning the following matters:

(i) *Management Duties.* The duties of those responsible for the management of the company, including the scope or elimination of fiduciary and

other duties, except nonwaivable contractual duties, including the implied contractual covenant of good faith and fair dealing and the requirement that the terms of the contract not be unconscionable at the time they are made;

(ii) *Exculpation and Indemnification*. The liabilities and other consequences to those managing the company for any breach or failure in the performance of their duties;

(iii) *Penalties*. The imposition of penalties and other remedies for breach of the operating agreement or the occurrence of proscribed events;

(iv) *ADR*. The right of the parties to select the manner in which they are to resolve their disputes, including having such dispute resolution procedures supplant the right to bring derivative actions or actions to cause the company to be judicially dissolved; and

(v) *Information Rights*. The right to establish certain rules and procedures concerning access that owners may have to certain information, while specifying the type of information that can not be denied members who comply with prescribed rules and procedures.

2. Foreign Limited Liability Companies.

The revised Act would harmonize, where appropriate, the rules under the LLC Act with their counterparts under the BCA. One such set of rules where this would be accomplished are those relative to foreign limited liability companies.

3. Clarifying, Modernizing, and Coordinating Provisions of the Act.

The remaining revisions are more in the nature of clarifying (i.e., removing ambiguities), simplifying, and modernizing the Act and coordinating its provisions to accommodate the new concepts and features described above. These revisions include those described in the following non-exhaustive list:

(i) coordinating the terms relating to bankruptcy with the current United States Bankruptcy Code;

(ii) clarifying that the flexibility of the Act accommodates entities and arrangements such as low profit limited liability companies without the need to adopt separate sets of provisions such as those found in G.S. § 57C-2-03;

(iii) providing that organizers may act by majority consent;

(iv) removing the requirement that the articles of organization state whether the LLC is "member-managed" or "manager-managed";

(v) clarifying that an LLC need not have any managers, instead management may be vested in persons having different titles and different powers and duties as may be provided in the operating agreement;

(vi) allowing managers to delegate responsibilities to other persons without the approval by the members unless the operating agreement provides otherwise;

(vii) providing that the term of a limited liability company is presumed to be perpetual unless other provision is made in the operating agreement (instead of in the articles of organization);

(viii) adopting rules of construction to eliminate repetition of phrases and qualifiers to make the Act easier to read and more user friendly;

(ix) clarifying and modernizing the default rules relating to capital contributions and excuses from performances and basing distributions on the proportional contributions (of services as well as capital) of the owners (including promises to make contributions in the future);

(x) conforming the default rules and procedures relative to derivative actions with those in the BCA; and

(xi) the elimination of redundant and otherwise superfluous provisions, including (A) G.S. § 57C-10-03(b) and (c) (concerning the law of estoppel and agency when § 57C-10-05 broadly provides that rules of equity and law supplement those under the Act) and (B) § 57C-2-02(l)-(16) (illustrating the type of powers a limited liability company may exercise when the breath of the statement in that section that there are no limitations or restrictions to such power other than not engaging in illegal activities makes doing so unnecessary).

4. Other Changes of Note.

(a) Override of UCC §§ 9-406 and 9-408. Because the application of UCC §§ 9-406 and 9-408, as currently in effect, may allow a member to encumber his or her economic interest in breach of the operating agreement [which may result in the foreclosure of that interest under circumstances that may result in adverse tax consequences to the other members, the transfer of ownership of the economic interest to a corporation or other ineligible shareholder of an S corporation, for those LLCs that elect to be taxed as S corporations, or a technical termination under I.R.C. § 708(b)(1)(B)], the revised Act adopts the approach taken in states such as Delaware and Virginia (among other states, including those states that have recently restated their LLC Acts: Texas, Mississippi, and New Hampshire) to not have UCC §§ 9-406 and 9-408 apply to LLC ownership interests.

(b) Certificate of Existence. An example of the type of clean up undertaken by the revised LLC Act concerns the certificates of existence issued by the Secretary of State. While the current LLC Act provides that one may conclusively rely on a certificate of existence as to the existence of an LLC, one does so at his or her peril. This is because, as contrasted from a corporation under the BCA, the filing of articles of dissolution is not the event that causes an LLC to dissolve. Thus, the Secretary of State is not in a position to certify as to whether the LLC has dissolved. All she can do is certify as to the status of the LLC's filings made in her office, which certification will be conclusive evidence as to the accuracy of its contents.

(c) Deletion of Low Profit Limited Liability Company (L3C) Provisions. As under current law, the flexibility of the restated Limited Liability Company Act accommodates the organization of limited liability companies that qualify for "program related investments" under I.R.C. § 4944(c) by private foundations without the need for any additional or special provisions under Chapter 57C.

5. Concepts the Committee Elected to Not Recommend.

(a) Series or Cell Limited Liability Companies. The committee carefully reviewed and considered the merits of adopting an elaborate set of provisions that have been adopted in 10 other states, allowing limited liability companies to create internally segmented liability "cells" or "series." Under those provisions, not only are the members of the limited liability company shielded from personal liability for the debts and obligations of the limited liability company itself, but separately identified groups of assets of the company may be shielded from liabilities attributable to other groups of the company's assets. No uniform set of provisions have been adopted by the states allowing for "series" or "cell" limited liability companies. The committee concluded that the confusion and potential abuse associated with such entities, together with the public policy of North Carolina against excessive fragmentation of an incorporated enterprise, outweigh the potential benefits that may be derived from Chapter 57C adopting a set of provisions to allow for such structures. The committee will continue to monitor developments in this area.

(b) Contractual Appraisal Rights. The committee reviewed the contractual appraisal rights provisions of the Delaware Limited Liability Company Act and concluded that the flexibility of Chapter 57C accommodates the inclusion of such rights in an LLC's operating agreement without the need for any additional or special provisions under Chapter 57C.

(c) Statute of Frauds. Chapter 22 of the North Carolina General Statutes does not require agreements that cannot be performed within one year to be in writing, which was the subject of the Delaware Chancery Court decision in *Olson v. Halvorsen*, C.A. No. 1884-VCL (De. Ch. Ct. 2008). Thus, the committee determined that a counterpart to section 18-101(7), excluding operating agreements from the application of the "statute of frauds," was not necessary or appropriate. Other than to expressly acknowledge the intention of the General Assembly to promote the freedom of the parties to an operating agreement to arrange their business affairs (including their respective rights and duties) as they may agree and the other rules of construction and statements of public policy in G.S. 57C-10-01 (including sanctioning the assessment of penalites under LLC's operating agreement, G.S, 57C-2-32(a)), the Act does not provide additional or special rules for resolving situations in which overlapping or conflicting laws may apply. Instead, such situations are to be resolved under the rules applicable to statutory construction and conflict of laws.

HOUSE BILL 388

Short Title:	Assigned Counsel/Amend and Clarify.-AB	(Public)
Sponsors:	Representatives Jackson and Glazier (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary Subcommittee B.	

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING ASSIGNED COUNSEL IN CASES OF PARTIAL INDIGENCY TO AUTHORIZE JUDGMENTS FOR ATTORNEYS' FEES TO BE DOCKETED UPON THE EXPIRATION OF PROBATION AND TO CLARIFY THE REQUIREMENT FOR A SOCIAL SECURITY NUMBER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-455 reads as rewritten:

"**§ 7A-455. Partial indigency; liens; acquittals.**

(a) If, in the opinion of the court, an indigent person is financially able to pay a portion, but not all, of the value of the legal services rendered for that person by assigned counsel, the public defender, or the appellate defender, and other necessary expenses of representation, the court shall order the partially indigent person to pay such portion to the clerk of superior court for transmission to the State treasury.

(b) In all cases the court shall direct that a judgment be entered in the office of the clerk of superior court for the money value of services rendered by assigned counsel, the public defender, or the appellate defender, plus any sums allowed for other necessary expenses of representing the indigent person, including any fees and expenses that may have been allowed prior to final determination of the action to assigned counsel pursuant to G.S. 7A-458, which shall constitute a lien as prescribed by the general law of the State applicable to judgments. Any reimbursement to the State as provided in subsection (a) of this section or any funds collected by reason of such judgment shall be deposited in the State treasury and credited against the judgment. The value of services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. The money value of services rendered by the public defender and the appellate defender shall be based upon the factors normally involved in fixing the fees of private attorneys, such as the nature of the case, the time, effort, and responsibility involved, and the fee usually charged in similar cases. A district court judge shall direct entry of judgment for actions or proceedings finally determined in the district court and a superior court judge shall direct entry of judgment for actions or proceedings originating in, heard on appeal in, or appealed from the superior court. Even if the trial, appeal, hearing, or other proceeding is never held, preparation therefor is nevertheless compensable.

(b1) In every case in which the State is entitled to a lien pursuant to this section, the public defender shall at the time of sentencing or other conclusion of the proceedings petition the court to enter judgment for the value of the legal services rendered by the public defender, and the appellate defender shall upon completion of the appeal petition or request the trial court to enter judgment for the value of the legal services rendered by the appellate defender.

(c) No order for partial payment under subsection (a) of this section and no judgment under subsection (b) of this section shall be entered unless the indigent person is convicted. If the indigent person is convicted, the order or judgment shall become effective and the judgment shall be docketed and indexed pursuant to G.S. 1-233 et seq., in the amount then owing, upon the later of (i) the date upon which the conviction becomes final if the indigent person is not ordered, as a condition of probation, to pay the State of North Carolina for the costs of his representation in the case or (ii) the date upon which the indigent person's probation is ~~terminated or revoked~~ terminated, is revoked, or expires if the indigent person is so ordered. No order for partial payment under subsection (a) of this section and no judgment under subsection (b) of this section shall be entered for the value of legal services rendered to perfect an appeal to the Appellate Division or in postconviction proceedings, if all of the matters that the person raised in the proceeding are vacated, reversed, or remanded for a new trial or resentencing.

(d) In all cases in which the entry of a judgment is authorized under G.S. 7A-450.1 through G.S. 7A-450.4 or under this section, the attorney, guardian ad litem, public defender, or appellate defender who rendered the services or incurred the expenses for which the judgment is to be entered shall make reasonable efforts to obtain the social security number, if any, of each person against whom judgment is to be entered. This number, ~~or a certificate~~ a certification that the person has no social security number, or a certification that the social security number cannot be obtained with reasonable efforts shall be included in each fee application submitted by an assigned attorney, guardian ad litem, public defender, or appellate defender, and no order for payment entered upon an application which does not include the required social security number or certification shall be valid to authorize payment to the applicant from the Indigent Persons' Attorney Fee Fund. Each judgment docketed against any person under this section or under G.S. 7A-450.3 shall include the social security number, if any, of the judgment debtor."

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

HOUSE BILL 388:
Assigned Counsel/Amend and Clarify.-AB

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 22, 2013
Introduced by:	Reps. Jackson, Glazier	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 388 would amend the law governing payment of costs for legal assistance by partially indigent persons to authorize the docketing of judgments for attorneys' fees upon expiration of the person's probation. The bill would also modify the requirement that the provider of legal services obtain and include in the provider's fee application the person's social security number.

[As introduced, this bill was identical to S632, as introduced by Sen. Newton, which is currently in Senate Judiciary I.]

CURRENT LAW: G.S. 7A-455 requires that the court order the payment of certain costs by a "partially indigent" person who is financially able to pay a portion, but not all, of the value of the legal services rendered for that person by assigned counsel, the public defender, or the appellate defender, along with other necessary expenses of representation. In such cases, judgment is entered in the office of the clerk of superior court for the money value of services rendered by counsel and any other necessary expenses of representation, and constitutes a lien on the property of the person against whom the judgment is entered. If the person is convicted, the order or judgment becomes effective on the date the order becomes final or the date the person's probation is terminated or revoked, whichever is later.

When the entry of judgment is authorized, the public defender or the appellate defender who rendered the services is required to obtain the defendant's social security number and include it, or a certificate that the person has no social security number, in the fee application. Unless the order for payment includes the social security number of the partially indigent person or certification that the person has no social security number, payment of the fee from the Indigent Persons' Attorney Fee Fund is not authorized.

BILL ANALYSIS: House Bill 388 would amend the law pertaining to the docketing and indexing of a judgment against a partially indigent person to add the probation expiration date as an alternate determining date upon which the order or judgment will become effective.

The bill would also require the assigned attorney, guardian ad litem, public defender, or appellate defender who provided the legal services to *make reasonable efforts to obtain* the person's social security number, and would permit the provider of legal services to state, as a reason for not including the social security number in the fee application, that it cannot be obtained with reasonable efforts.

EFFECTIVE DATE: This bill will be effective when it becomes law.

Brenda Carter, counsel to House Judiciary Subcommittee B, substantially authored this summary.

VISITOR REGISTRATION SHEET

Judiciary 1 — 4/23/2013

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John McMillan	NCFOR
Christine Wunsche	SOG Daily Bulletin
Michael Smallwood	SOG Daily Bulletin
Phillip Reboy	BMCG
Hearne Hustead	Coca Cola
Nathan Batts	NCBA
P. Bay Hall	Assistant Revisor of Statutes
Lisa Gillmeister	Bill Drafting
Kelli Kukura	Duke Energy
[illegible]	[illegible]
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

Judiciary 1
Name of Committee

4/23/13
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Thomas Maher	JDS
Kim Crouch	NCBA
Haley Haynes	SOS
Mike Carpenter	JNR+HBA
Lisa Martin	
Will Crowther	MWC
Tim KENT	NC Beer & Wine
Lauren Whaley	NCCUL
Emily Sutton	NCHFA
David Heaven	NC Center for Nonprofits
Paul Hogeman	Inspire

VISITOR REGISTRATION SHEET

Judiciary 1 — 4/23/13

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Peg Dorer	Conf. of DAs

Senate Committee on Judiciary I
Thursday, April 25, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 264	Abate Nuisances/Drug Sales From Stores.	Senator Brown

Adjournment

Senate Committee on Judiciary I
Thursday, April 25, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on April 25, 2013 in Room 1027/1128 of the Legislative Building. Twelve members were present.

Senator Thom Goolsby, Chair, presided.

Sen. Goolsby took a motion from Senator Buck Newton to adopt a PCS for Senate Bill 264. Senator Harry Brown was recognized and explained the bill to the committee. Susan Sitze from the Research Division clarified sections of the bill and Sen. Brown spoke again on the process and background of writing the legislation.

Senator Dan Blue was recognized for a question and Sen. Goolsby clarified which section of the bill he was discussing. Ms. Sitze explained the changes made by the PCS and discussed the intent of its provisions. Sen. Goolsby, Sen. Blue and Sen. Newton discussed procedures of implementing the bill with respect to confiscation of property by the state.

Ms. Sitze made clarifying comments about confiscation of property by the state and Senator Norm Sanderson asked a question about its application in his district. Senator Jerry Tillman commented that he opposed those sections of the bill.

Sen. Brown responded to the committee discussion and Sen. Newton commented that the bill must be fair to all parties. Senator Trudy Wade commented that she also agreed with Sen. Brown and the bill.

Karl Knapp with the North Carolina League of Municipalities spoke in support of the bill. Fred Baggett, counsel to the North Carolina Association of Chiefs of Police, commented in support of the bill.

Sen. Blue commented that the bill should not be voted on at this meeting because of all the issues raised by the committee. Sen. Newton asked Sen. Blue if he would be willing to serve in the process of improving the bill. Sen. Blue responded that he would. Sen. Goolsby appointed a subcommittee to revise the bill consisting of Sen. Blue, Sen. Newton and Senator Tamara Barringer.

The meeting adjourned at 10:40 a.m.

Senator Thom Goolsby, Chair
Presiding

Joseph Kyzer, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 264
PROPOSED COMMITTEE SUBSTITUTE S264-CSSA-26 [v.1]

4/24/2013 4:16:48 PM

Short Title: Abate Nuisances/Drug Sales From Stores. (Public)

Sponsors:

Referred to:

March 13, 2013

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE NUISANCE LAWS TO CLOSE DOWN BUSINESSES THAT REPEATEDLY SELL CONTROLLED SUBSTANCES AND TO AMEND THE CRIMINAL LAWS TO PREVENT THE USE OF A BUSINESS FRONT TO SELL CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 19-1 reads as rewritten:

"**§ 19-1. What are nuisances under this Chapter.**

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance. The activity sought to be abated need not be the sole purpose of the building or place in order for it to constitute a nuisance under this Chapter.

(b) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated acts which create and constitute a breach of the peace shall constitute a nuisance.

(b1) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated activities or conditions which violate a local ordinance regulating sexually oriented businesses so as to contribute to adverse secondary impacts shall constitute a nuisance.

(b2) The erection, establishment, continuance, maintenance, use, ownership, or leasing of any building or place for the purpose of carrying on, conducting, or engaging in any activities in violation of G.S. 14-72.7.

(c) The building, place, vehicle, or the ground itself, in or upon which a nuisance as defined in subsection (a), (b), or (b1) of this section is carried on, and the furniture, fixtures, and contents, are also declared a nuisance, and shall be enjoined and abated as hereinafter provided.

(d) No nuisance action under this Article may be brought against a place or business which is subject to regulation under Chapter 18B of the General Statutes when the basis for the action constitutes a violation of laws or regulations under that Chapter pertaining to the possession or sale of alcoholic beverages."

SECTION 2. G.S. 90-112 reads as rewritten:

"**§ 90-112. Forfeitures.**

(a) The following shall be subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of the provisions of this Article;

(1a) Real property, including things growing on, affixed to, and found in land, used or intended to be used in any manner or part to commit or to facilitate the commission of a violation of this Chapter, except that:

a. No real property used by any person shall be forfeited under the provisions of this section unless it shall appear that the owner was a consenting party or privy to a violation of this Chapter.

b. No real property shall be forfeited under the provisions of this section by reason of any act or omission committed or omitted while such real property was unlawfully in the possession of a person other than the owner in violation of federal or State criminal laws.

c. No real property shall be forfeited unless the violation involved is a felony under this Chapter.

d. A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party who had no knowledge of, or consented to, the act that is the basis for the forfeiture.

The court, in imposing sentence on a person convicted of a felony violation of this Chapter, shall order, in addition to any other sentence imposed, that the person forfeit to the State of North Carolina all property used or intended to be used in any manner or part to commit or to facilitate the violation.

...

(d) Whenever property is forfeited under this Article, the law-enforcement agency having custody of it may:

(1) Retain the property for official use; or

(2) Sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, provided that the proceeds be disposed of for payment of all proper expenses of the proceedings for forfeiture and sale including expense of seizure, maintenance of custody, advertising, and court costs; or

(3) Transfer any conveyance including vehicles, vessels, or aircraft which are forfeited under the provisions of this Article to the North Carolina Department of Justice when, in the discretion of the presiding judge and upon application of the North Carolina Department of Justice, said conveyance may be of official use to the North Carolina Department of Justice;

(4) Upon determination by the director of any law-enforcement agency that a vehicle, vessel or aircraft transferred pursuant to the provisions of this Article is of no further use to said agency for use in official investigations, such vehicle, vessel or aircraft may be sold as surplus property in the same manner as other vehicles owned by the law-enforcement agency and the proceeds from such sale after deducting the cost of sale shall be paid to the treasurer or proper officer authorized to receive fines and forfeitures to be used for the school fund of the county in the county in which said vehicle, vessel or aircraft was seized; provided, that any vehicle transferred to any law-enforcement agency under the provisions of this Article which has been modified to increase speed shall be used in the performance of official duties only and not for resale, transfer or disposition other than as junk.

(d1) Notwithstanding the provisions of subsection (d), the law-enforcement agency having custody of money that is forfeited pursuant to this section shall pay it to the treasurer or

proper officer authorized to receive fines and forfeitures to be used for the school fund of the county in which the money was seized.

(d2) Notwithstanding the provisions of subsection (d), the following procedures apply to a forfeiture of real property pursuant to subdivision (1a) of subsection (a) of this section:

(1) Third-party transfer. – All right, title, and interest in property described in subdivision (1a) of subsection (a) of this section vests in the State upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the State, unless the transferee establishes in a hearing pursuant to subdivision (8) of this subsection that the transferee is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(2) Protective orders. – Upon application of the State, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subdivision (1a) of subsection (a) of this section for forfeiture under this section. The application may be made upon the filing of an indictment or information charging a violation of this Chapter for which criminal forfeiture of real property may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section.

(3) Execution. – Upon entry of an order of forfeiture under this section, the court shall authorize the State to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the State, enter such appropriate restraining orders or injunctions; require the execution of satisfactory performance bonds; appoint receivers, conservators, appraisers, accountants, or trustees; or take any other action to protect the interest of the State in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law or which are necessary to protect the interests of the State or third parties.

(4) Disposition of property. – Following the seizure of property ordered forfeited under this section, the State shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by or transferable for value to the State shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with the defendant or on the defendant's behalf be eligible to purchase forfeited property at any sale held by the State. Upon application of a person, other than the defendant or a person acting in concert with the defendant or on the defendant's behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to the applicant.

(5) Authority of the Attorney General. – With respect to property ordered forfeited under this section, the Attorney General is authorized to take any of the following actions:

a. Grant petitions for mitigation or remission of forfeiture or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section.

b. Compromise claims arising under this section.

c. Direct the disposition by the State of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons.

d. Take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

e. Pay from the net proceeds all liens or security interests, according to their priorities, which are established by intervention or otherwise at the hearing provided in this subsection, or in other proceeding brought for said purpose as being bona fide security interests. The balance of the proceeds are to be paid to the proper officer of the county who receives fines and forfeitures to be used for the school fund of the county.

(6) Applicability of civil forfeiture provisions. – Except to the extent that they are inconsistent with the provisions of this subsection, the other provisions of this section shall apply to a forfeiture under this subsection.

(7) Bar on intervention. – Except as provided in subdivision (8) of this subsection, no party claiming an interest in property subject to forfeiture under this section may do either of the following:

a. Intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section.

b. Commence an action at law or equity against the State concerning the validity of the party's alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(8) Third-party interests; petitions and hearing. – The following procedures apply to third-party interests in forfeited real property:

a. Following the entry of an order of forfeiture under this section, the State shall publish notice of the order and of its intent to dispose of the property with a description thereof, in some newspaper published in the city or county where taken or, if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure. The State may also to the extent practicable provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

b. Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the State pursuant to this section may, within 30 days of the final publication of notice or the person's receipt of notice under sub-subdivision a. of this subdivision, whichever is earlier, petition the court for a hearing to

adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

c. The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property; the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property; any additional facts supporting the petitioner's claim; and the relief sought.

d. The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within 30 days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

e. At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf and cross-examine witnesses who appear at the hearing. The State may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

f. If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that:

1. The petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

2. The petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

then the court shall amend the order of forfeiture in accordance with its determination.

g. Following the court's disposition of all petitions filed under this subdivision, or if no such petitions are filed following the expiration of the period provided in sub-subdivision b. of this subdivision for the filing of such petitions, the State shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(9) Construction. – The provisions of this subsection shall be liberally construed to effectuate its remedial purposes.

...."

SECTION 3. G.S. 15A-533 reads as rewritten:

"**§ 15A-533. Right to pretrial release in capital and noncapital cases.**

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Health and Human Services, and whose commitment is

determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.

(b) A defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with G.S. 15A-534.

(c) A judge may determine in his discretion whether a defendant charged with a capital offense may be released before trial. If he determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.

(d) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds the following:

(1) There is reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;

(2) The drug trafficking offense was committed while the person was on pretrial release for another offense; and

(3) The person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later.

(e) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds the following:

(1) There is reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal street gang, as defined in G.S. 14-50.16;

(2) The offense described in subdivision (1) of this subsection was committed while the person was on pretrial release for another offense; and

(3) The person has been previously convicted of an offense described in G.S. 14-50.16 through G.S. 14-50.20, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

(f) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds that the person has been charged with a violation of G.S. 90-95(a)(1), the person is the owner or person who has operational control of a place or business, the controlled substance which is the basis for the charge was located at the place of business and finds either of the following:

(1) The person has been previously arrested for a violation of G.S. 90-95(a)(1) and the controlled substance which was the basis for the previous charge was located at a place of business owned by or under the operational control of the person, and the person had been released on bail for the previous arrest at the time of the arrest for the current charge.

(2) The person has a prior conviction for a violation of G.S. 90-95(a)(1), and the controlled substance which was the basis of the prior conviction was located at a place of business owned by or under the operational control of the person.

For purposes of this subsection, a "place of business" is any location where a member of the general public may purchase, lease, or utilize goods, services, or other things of value.

(g) Persons who are considered for bond under the provisions of subsections ~~(d) and (e)~~(d), (e), and (f) of this section may only be released by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community."

SECTION 4. Section 1 of this act is effective when the act becomes law and applies to nuisance actions filed on or after that date. Sections 2 and 3 of this act become effective December 1, 2013, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 264:
Abate Nuisances/Drug Sales From Stores

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 25, 2013
Introduced by:	Sen. Brown	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition S264-CSSA-26		

SUMMARY: ***The proposed committee substitute (PCS) for Senate Bill 264 amends the nuisance laws to clarify the purpose requirement, authorizes the forfeiture of real property in drug offenses, and modifies the bail law for certain drug offenses.***

The PCS amends Section 3 to place the language within a different General Statute.

BILL ANALYSIS:

Section 1 would amend the nuisance statute to clarify that the nuisance activity need not be the sole purpose of the building or place in order for it to be a nuisance. This section also provides that no nuisance action may be brought against a place that is subject to the alcohol regulations in Chapter 18B when the basis for the nuisance action is related to violation of laws or regulations under that Chapter pertaining to possession or sale of alcoholic beverages.

Section 2 would authorize the forfeiture of real property for drug offenses and establish procedures and processes for the forfeiture and handling and disposal of the property after forfeiture.

Section 3 would amend the pretrial release statute to create a rebuttable presumption that no condition of pretrial release will reasonably assure the person's appearance and the community's safety if the person is charged with manufacture, sell or deliver, or possession with intent to manufacture, sell or deliver a controlled substance and all of the following are found:

- The person is the owner or person in control of a place or business
- The controlled substance which is the basis for the charge was located at the place or business
- The person was out on pretrial release for a previous charge of, or has a previous conviction of, the same offense also for a controlled substance at a place or business of which the person is the owner or has control.

EFFECTIVE DATE: Section 1 of this act is effective when it becomes law and applies to nuisance actions filed on or after that date. Sections 2 and 3 of this act become effective December 1, 2013, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Judiciary I — 4/25/13

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Sheria Reid	School-Point (LRS)
Chris Agner	DOT
Fred Baggett	NCACP
Jen Kelly	NMRS
Chris Killian	nelson mullins
[illegible]	NZ
Karl Knapp	NCLM
Rose Hodgson	NCAN
[illegible]	NC NAI

VISITOR REGISTRATION SHEET

Judiciary I — 4/25/13

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Cwente	Staff
Andy Elle	NCRMA
Kirk Gould	NCBA
Mulney Christensen	NCRLA
Chuck Stone	SEANC
Dustin Hall	Sen Brown
DAVID WARD	LOWE'S
	NCRMA
Ryan Combs	DPS
Ellis Boyle	DPS

Senate Committee on Judiciary I
Tuesday, April 30, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 243	Liens/Self-Service Storage Facilities.	Representative Stevens
SB 279	Estates/Trusts/Guardianship Amendments.	Senator Hartsell Senator Barringer

Adjournment

Senate Committee on Judiciary I
Tuesday, April 30, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on April 30, 2013 in Room 1027/1128 of the Legislative Building. Eleven members were present.

Senator E. S. (Buck) Newton, Chair, presided.

Sen. Newton took a motion from Senator Trudy Wade to take up a Proposed Committee Substitute for Senate Bill 279. The motion passed by a voice vote. Senator Tamara Barringer explained the PCS to Senate Bill 279.

Knox Proctor from the North Carolina Bar Association was recognized to explain the bill in further detail. Senator Dan Blue asked Mr. Proctor a question and they discussed the impacts of the bill on out-of-state entities.

Sen. Newton commented and asked Mr. Proctor why the bill was good policy with relation to spouses and distribution of property. Sen. Newton asked Mr. Proctor more questions about the timeline of the bill and said he opposed sections related to spouses and distribution of property.

Sen. Barringer responded to Sen. Newton's questions, and Senator Trudy Wade asked Mr. Proctor clarifying questions about the bill. Sen. Wade and Sen. Newton discussed how the bill would change current law with respect to family law and distribution of property.

Senator Josh Stein made a motion for a favorable report to the PCS, unfavorable to the original bill and the motion passed by a voice vote.

Senator Jerry Tillman made a motion to take up a PCS for House Bill 243 and the motion passed by a voice vote. Representative Sarah Stevens was recognized to explain the PCS. Sen. Tillman, Sen. Stein, Senator Dan Blue asked Rep. Stevens questions and she responded to each question.

Bill Patterson from the Research Division reviewed details of HB 243 for the committee and clarified sections for committee members. Senator Norm Sanderson asked Rep. Stevens a question and she responded. Mr. Patterson also responded to Sen. Sanderson's question.

Sen. Tillman made a motion for a favorable report to the PCS, unfavorable to the original bill and the motion passed by a voice vote. The meeting adjourned at 10:39 a.m.

Senator E. S. (Buck) Newton, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Tuesday, April 30, 2013

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

HB **243** **(CS#1)** Liens/Self-Service Storage Facilities.

Draft Number:	H243-PCS30496-TG-28
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Harry Brown will handle HB 243



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Tuesday, April 30, 2013

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

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

SB **279** Estates/Trusts/Guardianship Amendments.

Draft Number:	S279-PCS75293-TG-29
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Tamara Barringer will handle SB 279



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 243
Committee Substitute Favorable 3/20/13
Third Edition Engrossed 3/26/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H243-CSTG-28 [v.5]
4/29/2013 3:40:54 PM

Short Title: Liens/Self-Service Storage Facilities. (Public)

Sponsors:

Referred to:

March 7, 2013

A BILL TO BE ENTITLED

AN ACT AUTHORIZING AN OWNER OF A SELF-STORAGE FACILITY WHO HAS A LIEN UPON PERSONAL PROPERTY TO DELIVER NOTICE OF THE PUBLIC SALE OF THE PROPERTY TO THE OCCUPANT BY CERTIFIED MAIL OR BY VERIFIED ELECTRONIC MAIL, TO PUBLISH NOTICE IN ANY COMMERCIALLY REASONABLE MANNER, TO CONDUCT THE SALE THROUGH AN ONLINE, PUBLICLY ACCESSIBLE AUCTION WEB SITE, AND TO INCREASE THE MINIMUM LATE FEES FOR SELF-STORAGE FACILITY RENTAL CONTRACTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44A-40 reads as rewritten:

"**§ 44A-40. Definitions.**

As used in this Article, unless the context clearly requires otherwise:

(1) "Last known address" means that mailing address or e-mail address provided by the occupant in the latest rental agreement or the address provided by the occupant in a subsequent written notice of a change of address.

...

(5) "Personal property" means movable property not affixed to land and includes, but is not limited to, goods, merchandise, ~~and household items.~~household items, and watercraft.

...

(8) "E-mail" or "electronic mail" means an electronic message or an executable program or computer file that contains an image of a message that is transmitted between two or more computers or electronic terminals. The term includes electronic messages that are transmitted within or between computer networks.

(9) "Independent bidder" means a person who is not related to the lienor, within the meaning of G.S. 25-9-102(62), in the case of a lienor who is an individual, or G.S. 25-9-102(63), in the case of a lienor that is an organization.

(10) "Verified electronic mail" means electronic mail that is transmitted to an e-mail address that the sender has verified by any reasonable means as being a working electronic mail address."

SECTION 2. G.S. 44A-43 reads as rewritten:

"**§ 44A-43. Enforcement of self-service storage facility lien.**

...

(b) Notice and Hearing:

...

(1a) If the property upon which the lien is claimed is a motor ~~vehicle~~ vehicle, watercraft, or trailer, and rent and other charges related to the property remain unpaid or unsatisfied for 60 days following the maturity of the obligation to pay rent, the lienor may have the property towed. If a motor vehicle is towed as authorized in this subdivision, the lienor shall not be liable for the motor vehicle or any damages to the motor vehicle once the tower takes possession of the property.

(2) If the property upon which the lien is claimed is other than a motor ~~vehicle,~~vehicle, watercraft, or trailer, the lienor following the expiration of the 15-day period provided by subsection (a) shall issue notice to the person having a security or other interest in the property, if reasonably ascertainable, and to the occupant, if different, at his 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.~~Service, or when it is sent by verified electronic mail to the occupant's last known address, if the occupant has made an election in the rental agreement to receive notice by electronic mail.

...

(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 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.~~address by certified mail or by verified electronic mail if the occupant has made an election in the rental agreement to receive notice by electronic mail. Notice given by certified mail 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. Notice given by verified electronic mail pursuant to this subdivision shall be presumed delivered when it is transmitted.

b. Repealed by Session Laws 2009-201, s. 1, effective October 1, 2009.

(1a) Not less than five days prior to sale by public sale, the lienor shall publish notice of sale either (i) in a newspaper of general circulation in the county where the sale is to be ~~held. If there is no newspaper of general circulation in the county where the sale is to be held, notice of sale shall be published in any publication that accepts classified advertisements and has a general circulation in the county where the sale is to be held.~~held or (ii) in any other commercially reasonable manner. The manner of advertisement shall be deemed commercially reasonable if at least three independent bidders attend the sale at the time and place advertised and the sale is otherwise consistent with the definition set out in G.S. 25-9-627.

~~(2) The sale must be held on a day other than Sunday and between the hours of 9:00 A.M. and 4:00 P.M.:~~

~~a. At the self-service storage facility or at the nearest suitable place to where the property is held or stored; or~~

~~b. In the county where the obligation secured by the lien was contracted for.~~

(2a) The sale shall be conducted in a commercially reasonable manner, as defined in G.S. 25-9-627, including offering property to an audience of bidders through an online, publicly accessible auction Web site.

a. If the sale is a live auction conducted at the facility, the nearest suitable place where the property is held or stored, or in the county where the obligation secured by the lien was contracted for, the sale must be held on a day other than Sunday and between the hours of 9:00 A.M. and 4:00 P.M.

b. A lienor may purchase at public sale.

~~(3) A lienor may purchase at public sale.~~

~~(d) Notice of Sale. The notice of sale shall include:~~

~~(1) The name and address of the lienor;~~

~~(2) A statement to the effect that various items of personal property are being sold pursuant to the assertion of a lien for rental at the self-service storage facility;~~

~~(3) The place, date, and time of the sale.~~"

SECTION 3. G.S. 66-306 reads as rewritten:

"**§ 66-306. Late fees.**

(a) In all rental contracts in which a definite time for the payment of the rent is fixed, the late fee for each rental unit shall not exceed fifteen dollars ($15.00) or fifteen percent (15%) of the rental ~~payment~~ payment, whichever is greater, and shall not be imposed by the self-service storage business until the rental payment for that rental unit is five days or more late.

...."

SECTION 4. This act becomes effective October 1, 2013. Section 3 applies only to contracts entered into on or after the effective date.

HOUSE BILL 243:
Liens/Self-Service Storage Facilities

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 29, 2013
Introduced by:	Rep. Stevens	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to Third Edition H243-CSTG-28		

SUMMARY: ***The PCS to House Bill 243 would amend Article 4 of G.S. Chapter 44A, "Self-Service Storage Facilities," to allow the owner of a self-storage facility having a lien on personal property to tow stored watercraft and trailers from the facility, to deliver notice of the public sale of personal property by certified mail or by verified electronic mail, to publish notice of the sale in any commercially reasonable manner, to conduct the sale through an online, publicly accessible auction website, and to charge a late fee of at least $15.00 for self-service storage rental units. The PCS adds definitions for "independent bidder" and "verified electronic mail" and makes other technical corrections to the bill.***

[As introduced, this bill was identical to S263, as introduced by Sen. Brown, which is currently in Senate Ref to Commerce. If fav, re-ref to Finance.]

CURRENT LAW:

Article 4 of Chapter 44A gives the owner of a self-service storage facility a lien on all personal property stored at the facility for any unpaid rent and expenses needed to preserve and, if necessary, sell or otherwise dispose of the personal property.[1] The lien covers goods, merchandise, and household items, among other moveable property, including motor vehicles, stored at the facility.[2] The stored property can be sold to enforce the lien if the rent and other charges are at least 15 days past due, and a stored motor vehicle can be towed from the facility once the rent is 60 days past due.[3] Before a public sale of the property, the occupant and any secured parties must be served by certified mail at least 20 days before the sale, and the lienor must also publish notice of the sale in a general circulation newspaper in the county where the sale is to be held, or if there is no such newspaper, in any general circulation publication in that county that accepts classified ads. A public sale must be held between 9:00 a.m. and 4:00 p.m. on a day other than Sunday at the storage facility or the next nearest suitable place, or in the county where the rental contract was made.[4] The notice of sale is required to include the name and address of the lienor, a statement that the sale is for a lien for a self-storage facility rental, and the place, date, and time of the sale.[5] In rental contracts that provide a definite time for payment of rent, G.S. 66-306(a) limits the late fee to no more than 15% of the rental payment.

BILL ANALYSIS:

Section 1 of the bill amends G.S. 44A-40's existing definitions to conform to changes in Section 2 of the bill, and defines additional terms used in the act.

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[1] G.S. 44A-41. The lien attaches as of the date the personal property is placed in storage, and takes priority over security interests not perfected at the time the personal property is stored at the facility.
[2] G.S. 44A-40(5).
[3] G.S. 44A-43(a), (b)(1a).
[4] G.S. 44A-43(c).
[5] G.S. 44A-43(d).

Section 2 amends G.S. 44A-43 as follows:

- Allows the lienor to tow stored trailers and watercraft away from the facility
- Permits the lienor to give the occupant notice of the right to a hearing and notice of the public sale of stored property using electronic mail, rather than certified mail, if the occupant has elected to receive such notice in the rental agreement
- Permits lienors to advertise sales either in a newspaper or in any other "commercially reasonable manner" as defined in the Uniform Commercial Code[6]
- Requires that sales must be conducted in a commercially reasonable manner, as defined in the Uniform Commercial Code, including conducting an auction through an online, publicly accessible website, and prescribing the days and times when a sale by live auction can be held
- Eliminates the specifications for the contents of the notice of sale

Section 3 amends G.S. 66-306 in the Article entitled "Self-Service Storage Rental Contracts," to provide for the assessment of a late fee for each rental unit not to exceed $15.00 or 15% of the rental payment, whichever is greater.

EFFECTIVE DATE: This act becomes effective October 1, 2013. Section 3 applies to contracts entered on or after that date.

Jan Paul, counsel to House Judiciary Subcommittee C, substantially contributed to this summary.

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[6] The bill incorporates the following provisions from the UCC:

§ 25-9-627. Determination of whether conduct was commercially reasonable.

(a) Greater amount obtainable under other circumstances; no preclusion of commercial reasonableness. – The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(b) Dispositions that are commercially reasonable. – A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(1) In the usual manner on any recognized market;
(2) At the price current in any recognized market at the time of the disposition; or
(3) Otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) Approval by court or on behalf of creditors. – A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

(1) In a judicial proceeding;
(2) By a bona fide creditors' committee;
(3) By a representative of creditors; or
(4) By an assignee for the benefit of creditors.

(d) Approval under subsection (c) of this section not necessary; absence of approval has no effect. – Approval under subsection (c) of this section need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 279
PROPOSED COMMITTEE SUBSTITUTE S279-CSTG-29 [v.4]
4/29/2013 9:47:20 PM

Short Title: Estates/Trusts/Guardianship Amendments. (Public)

Sponsors:

Referred to:

March 13, 2013

A BILL TO BE ENTITLED

AN ACT TO UPDATE AND CLARIFY PROVISIONS OF THE LAWS GOVERNING ESTATES, TRUSTS, GUARDIANSHIPS, POWERS OF ATTORNEY, AND OTHER FIDUCIARIES.

The General Assembly of North Carolina enacts:

PART I. UPDATE AND CLARIFY LAWS GOVERNING WILLS AND ESTATES

CLARIFY WRONGFUL DEATH STATUTE

SECTION 1.(a) G.S. 28A-18-2(a) reads as rewritten:

"**§ 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 the injured person to an action for damages therefor, the person or corporation that would have been so liable, and ~~or her~~ the personal representatives or 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 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. 135-45.1.~~G.S. 135-48.37. All claims filed for ~~such services shall be approved by~~ burial expenses of the decedent and reasonable hospital and medical expenses shall be subject to the approval of 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."

CLARIFY NOTICE TO CREDITORS/LIMITED PERSONAL REPRESENTATIVES

SECTION 1.(b) G.S. 28A-29-1 reads as rewritten:

"**§ 28A-29-1. Notice to creditors without estate administration.**

When (i) a decedent dies testate or intestate leaving no personal property subject to ~~probate,~~ probate and no real property devised to the personal representative; (ii) a decedent's estate is being administered by collection by affidavit pursuant to Article 25 of this Chapter; (iii) a decedent's estate is being administered under the summary administration provisions of Article 28 of this Chapter; (iv) a decedent's estate consists solely of a motor vehicle that can be transferred by the procedure authorized by G.S. 20-77(b); or (v) a decedent has left assets that may be treated as assets of an estate for limited purposes as described in G.S. 28A-15-10, and no application or petition for appointment of a personal representative is pending or has been granted in this State, 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 1.(c) G.S. 28A-29-2(a) reads as rewritten:

"(a) The application for appointment as limited personal representative shall be in the form of an affidavit sworn to before an officer authorized to administer oaths, signed by the applicant or 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 all of the following facts:

(1) The name and domicile of the decedent at the time of death.

(2) The date and place of death of the decedent.

(3) That, so far as is known or can with reasonable diligence be ascertained, ~~the decedent's property is not subject to probate.~~ (i) the decedent left no personal property subject to probate and no real property devised to the personal representative; (ii) the decedent's estate is being administered by collection by affidavit pursuant to Article 25 of this Chapter; (iii) the decedent's estate is being administered under the summary administration provisions of Article 28 of this Chapter; (iv) the decedent's estate consists solely of a motor vehicle that can be transferred by the procedure authorized by G.S. 20-77(b); or (v) the decedent left assets that may be treated as assets of an estate for limited purposes as described in G.S. 28A-15-10.

(4) That no application or petition for appointment of a personal representative is pending or has been granted in this State."

ELECTIVE SHARE CHANGE

SECTION 1.(d) G.S. 30-3.1 reads as rewritten:

"**§ 30-3.1. Right of elective share.**

(a) Elective Share. – The surviving spouse of a decedent who dies domiciled in this State has a right to claim an "elective share", which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(4), less (ii) the value of Net Property Passing to Surviving Spouse, as defined in G.S. 30-3.2(2c). The applicable share of the Total Net Assets is as follows:

(1) If the surviving spouse was married to the decedent ~~is not survived by any lineal descendants, one-half~~ for less than five years, fifteen percent (15%) of the Total Net Assets.

(2) If the surviving spouse was married to the decedent ~~is survived by one child, or lineal descendants of one deceased child, one half~~ for at least five years but less than 10 years, twenty-five percent (25%) of the Total Net Assets.

(3) If the surviving spouse was married to the decedent ~~is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one third~~ for at least 10 years but less than 15 years, thirty-three percent (33%) of the Total Net Assets.

(4) If the surviving spouse was married to the decedent for 15 years or more, fifty percent (50%) of the Total Net Assets.

~~(b) Reduction of Applicable Share. In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants surviving who are not lineal descendants of the decedent's marriage to the surviving spouse but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one half.~~"

ATTORNEY'S FEES ON YEAR'S ALLOWANCE

SECTION 1.(e) 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. Attorneys' fees and costs awarded the petitioner under G.S. 6-21 shall be paid as an administrative expense of the estate."

OUT-OF-STATE WILL PROBATE AND MILITARY WILLS

SECTION 1.(f) G.S. 31-11.6 reads as rewritten:

"**§ 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:~~ form, or in a similar form showing the same intent:

"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.

(d) Any will executed in another state and shown by the propounder to have been made self-proved under the laws of that state shall be considered as self-proved.

(e) A military testamentary instrument executed in accordance with the provisions of 10 U.S.C. § 1044d(d) or any successor or replacement statute shall be considered as self-proved."

SECTION 1.(g) G.S. 31-46 reads as rewritten:

"**§ 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.~~testator, or if (i) its execution complies with the law of the place where it is executed at the time of execution; (ii) its execution complies with the law of the place where the testator is domiciled at the time of execution or at the time of death; or (iii) it is a military testamentary instrument executed in accordance with the provisions of 10 U.S.C. § 1044d or any successor or replacement statute."

SECTION 1.(h) G.S. 28A-2A-17 reads as rewritten:

"**§ 28A-2A-17. Certified copy of will of nonresident recorded.**

(a) Subject to the provisions of 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 either at the time of its execution or at the time of the death of the testator, or as otherwise recognized as valid under the provisions of G.S. 31-46, 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 either at the time of its execution or at the time of the death of the testator, or as otherwise recognized as valid under the provisions of G.S. 31-46, does not appear as required by subsection (b) of this section, the clerk before whom the copy is exhibited shall have power to take proof as prescribed in 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."

PART II. UPDATE TO AND CLARIFICATIONS OF LAWS GOVERNING TRUSTS

INSURABLE INTEREST OF TRUSTEE

SECTION 2.(a) Article 1 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36C-1-114. Insurable Interest of Trustee.**

(a) As used in this section, the term "settlor" means a person that executes a trust instrument. The term includes a person for whom a fiduciary or agent is acting.

(b) A trustee of a trust has an insurable interest in the life of an individual insured under a life insurance policy that is trust property if, as of the date the policy is issued:

(1) The insured is either of the following:

a. A settlor of the trust.

b. An individual in whom a settlor of the trust has, or would have had if living at the time the policy was issued, an insurable interest.

(2) The life insurance proceeds are primarily for the benefit of one or more trust beneficiaries that have an insurable interest in the life of the insured.

(c) This section does not limit or abridge any insurable interest or right to insure now existing at common law or by statute and shall be construed liberally to sustain insurable interests, whether as a declaration of existing law or as an extension of or addition to existing law."

UNIFORM TRUST CODE CLARIFICATION AS TO SETTLOR'S SPOUSE

SECTION 2.(b) G.S. 36C-5-505(c) reads as rewritten:

"(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.~~appointment, and the "settlor's spouse" refers to the person to whom the settlor was married at the time the irrevocable intervivos trust was created, notwithstanding a subsequent dissolution of the marriage."

TRUSTEE POWERS CLARIFICATION

SECTION 2.(c) G.S. 36C-8-816(16) reads as rewritten:

"**§ 36C-8-816. Specific powers of trustee.**

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

...

(16) Exercise elections with respect to federal, state, and local ~~taxes;~~taxes including, but not limited to, considering discretionary distributions to a beneficiary as being made from capital gains realized during the year;

...."

DECANTING STATUTE IMPROVEMENTS

SECTION 2.(d) G.S. 36C-8-816.1(c) and (e) read as rewritten:

"**§ 36C-8-816.1. Trustee's special power to appoint to a second trust.**

...

(c) The terms of the second trust shall be subject to all of the following:

...

(3) The terms of the second trust may not reduce any fixed income, annuity, or unitrust interest of a beneficiary in the assets of the original ~~trust.~~ trust if that interest has come into effect with respect to the beneficiary.

...

(8) The second trust may confer a power of appointment upon a beneficiary of the original trust to whom or for the benefit of whom the trustee has the power to distribute principal or income of the original trust. The permissible appointees of the power of appointment conferred upon a beneficiary may include persons who are not beneficiaries of the original or second trust. The power of appointment conferred upon a beneficiary shall be subject to the provisions of G.S. 41-23 ~~covering the time at which the permissible period of the rule against perpetuities and suspension of power of alienation begins and the law that determines the permissible period of the rule against perpetuities and suspension of power of alienation of the original trust.~~ specifying the permissible period allowed for the suspension of the power of alienation of the original trust and the time from which that permissible period is computed.

...

(e) The exercise of the power to appoint principal or income under subsection (b) of this section:

(1) Shall be considered the exercise of a power of appointment, other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate; and

(2) Shall be subject to the provisions of G.S. 41-23 ~~covering the time at which the permissible period of the rule against perpetuities and suspension of power of alienation begins and the law that determines the permissible period of the rule against perpetuities and suspension of power of alienation of the original trust;~~specifying the permissible period allowed for the suspension of the power of alienation of the original trust and the time from which that permissible period is computed; and

(3) Is not prohibited by a spendthrift provision or by a provision in the original trust instrument that prohibits amendment or revocation of the trust.

...."

PART III. MISCELLANEOUS UPDATES AND CLARIFICATIONS

CLARIFY INHERITED IRA CREDITOR EXEMPTION

SECTION 3.(a) G.S. 1C-1601(a) reads as rewritten:

"(a) Exempt property. – Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of creditors:

...

(9) Individual retirement plans as defined in the Internal Revenue Code and any plan treated in the same manner as an individual retirement plan under the Internal Revenue Code, including individual retirement accounts and Roth retirement accounts as described in section 408(a) and section 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code. Any money or other assets or any interest in any such plan remains exempt after an individual's death if held by one or more subsequent beneficiaries by reason of a direct transfer or eligible rollover that is excluded from gross

income under the Internal Revenue Code, including, but not limited to, a direct transfer or eligible rollover to an inherited individual retirement account as defined in section 408(d)(3) of the Internal Revenue Code.

...."

CLARIFICATION AS TO DIRECTED FIDUCIARIES

SECTION 3.(b) G.S. 32-72(d) reads as rewritten:

"(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~~ certain powers with respect to the actions of a fiduciary, including, but not limited 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,~~ any power with respect to the actions of a 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.

b1. If the terms of the instrument confer upon a person a power other than the power to direct or consent to actions of the fiduciary, the fiduciary is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the exercise or nonexercise of the power.

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~~ with respect to the actions of a fiduciary 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 such a power~~to direct or consent,~~ with respect to the actions of a fiduciary, the beneficiary is not a fiduciary with respect to the following:

a. A power that constitutes a power of ~~appointment.~~appointment held by a beneficiary under the instrument.

b. A power the exercise or nonexercise of which affects only the interests of the beneficiary holding the power and no other beneficiary.

c. A power to remove and appoint a fiduciary.

The holder of the power ~~to direct or consent~~with respect to the actions of a fiduciary 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."

GUARDIANSHIP GIFTING

SECTION 3.(c) 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:

(1) After making the gifts and paying federal and State income taxes, the remaining income of the incompetent will be reasonable and adequate to provide for the support, maintenance, comfort, and welfare of the incompetent and those legally entitled to support from the incompetent in order to maintain the incompetent and those dependents in the manner to which the incompetent and those dependents are accustomed and in keeping with their station in life;

(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 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 devisee or beneficiary designated in the paper-writing or revocable trust or both; or

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 estate, if the incompetent died contemporaneously with the signing of the order of the approval of the gifts; or

c. The donee is the spouse, parent, descendent 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.~~the gift qualifies either for the federal annual gift tax exclusion under Internal Revenue Code, section 2503(b), or is a qualified transfer for tuition or medical expenses under Internal Revenue Code, section 2503(e).

The judge may order that the gifts be made in cash or in specific assets and may order that the gifts be made outright, in trust, under the North Carolina Uniform Transfers to Minors Act,

under the North Carolina Uniform Custodial Trust Act, or otherwise. The judge may also order that the gifts be treated as an advancement of some or all of the amount the donee would otherwise receive at the incompetent's death."

SECTION 3.(d) 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:

(1) Making the gifts will not leave the incompetent's remaining principal estate insufficient to provide reasonable and adequate income for the support, maintenance, comfort, and welfare of the incompetent in order to maintain the incompetent and any dependents legally entitled to support from the incompetent in the manner to which the incompetent and those dependents are accustomed and in keeping with their station in life.

(2) The making of the gifts will not jeopardize the rights of any existing creditor of the incompetent.

(3) It is improbable that the incompetent will recover competency during his or her lifetime.

(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 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 devisee or beneficiary designated in the paper-writing or revocable trust or both.

3. The making of the gifts will not jeopardize any specific 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.~~the gift qualifies either for the federal annual gift tax exclusion under Internal Revenue Code, section 2503(b), or is a qualified transfer for tuition or medical expenses under Internal Revenue Code, section 2503(e).

(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

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.

(6) If 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, 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 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.

(7) If the gift for which approval is sought is of a nonprobate asset, all persons who would share in that nonprobate asset 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. This notice requirement shall be in addition to the notice requirements contained in G.S. 35A-1341.1(5) and (6) above.

The judge may order that the gifts be made in cash or in specific assets and may order that the gifts be made outright, in trust, under the North Carolina Uniform Transfers to Minors Act, under the North Carolina Uniform Custodial Trust Act, or otherwise. The judge may also order that the gifts be treated as an advancement of some or all of the amount the donee would otherwise receive at the incompetent's death."

SECTION 3.(e) G.S. 35A-1251 reads as rewritten:

"**§ 35A-1251. Guardian's powers in administering incompetent ward's estate.**

In the case of an incompetent ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

...

(24) To petition the court for approval of the exercise of any of the following powers with respect to a revocable trust that the ward, if competent, could exercise as settlor of the revocable trust:

a. Revocation of the trust.
b. Amendment of the trust.
c. Additions to the trust.
d. Direction to dispose of property of the trust.
e. The creation of the trust, notwithstanding the provisions of G.S. 36C-4-402(a)(1) and (2).

The exercise of the powers described in this subdivision (i) shall not alter the designation of beneficiaries to receive property on the ward's death under that ward's existing estate ~~plan;~~ plan, but may incorporate tax planning or public benefits planning into the ward's existing estate plan, which may

include leaving beneficial interests in trust rather than outright, and (ii) shall be subject to the provisions of Articles 17, 18, and 19 of this Chapter concerning gifts."

UPDATE NORTH CAROLINA INVESTMENT ADVISERS ACT

SECTION 3.(f) G.S. 78C-2(1)k. reads as rewritten:

"**§ 78C-2. Definitions.**

When used in this Chapter, the definitions of G.S. 78A-2 shall apply along with the following, unless the context otherwise requires:

(1) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as a part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment adviser" does not include:

...

k. Any person excepted from the definition of investment adviser under the Investment Advisers Act of 1940 or any rule or regulation promulgated under that act.~~Repealed by Session Laws 2003-413, s. 16, effective August 14, 2003.~~

...."

SECTION 3.(g) G.S. 78C-8(d) reads as rewritten:

"**§ 78C-8. Advisory activities.**

...

(c) Except as may be permitted by rule or order of the Administrator, it is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:

(1) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client (unless otherwise provided by subsection (d) or (f) below);

...

(d) Subdivision (c)(1) does not apply to any person who is exempt from registration under ~~the Investment Advisers Act of 1940 by operation of Section 203(b)(3) of said act or by operation of any rule or regulation promulgated by the United States Securities and Exchange Commission under or related to said Section 203(b)(3) provided that any reference in this subsection (d) to any statute, rule or regulation shall be deemed to incorporate said statute, rule or regulation (and any statute, rule or regulation referenced therein) as in effect on June 1, 1988.~~ G.S. 78C-16(a)(4) or to the performance, renewal or extension of any advisory contract entered into by an investment advisor at a time when such investment advisor was exempt from registration under G.S. 78C-16(a)(4). Subdivision (c)(1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment," as used in subdivision (c)(2), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the

investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business."

SECTION 3.(h) G.S. 78C-16(a)(4) reads as rewritten:

"§ 78C-16. Registration and notice filing requirement.

(a) It is unlawful for any person to transact business in this State as an investment adviser unless:

...

(4) The person, during the course of the preceding twelve months, has had fewer than fifteen clients, and neither holds himself or herself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under the Investment Company Act of 1940, or a company that has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940. ~~The person is exempt from registration under the Investment Advisers Act of 1940 by operation of section 203(b)(3) of that act or by operation of any rule or regulation promulgated by the United States Securities and Exchange Commission under or related to section 203(b)(3) provided that any reference in this subsection to any statute, rule, or regulation shall be deemed to incorporate the statute, rule, or regulation (and any statute, rule, or regulation referenced therein) as in effect June 1, 1988.~~

...."

PART IV. DIRECTIVES TO REVISOR OF STATUTES

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.

PART V. EFFECTIVE DATE

SECTION 5. Section 1(d) of this act becomes effective October 1, 2013, and applies to estates of decedents dying on or after that date. The remainder of this act is effective when it becomes law. Section 3(a) of this act applies to all inherited individual retirement accounts without regard to the date an account was created.

SENATE BILL 279: Estates/Trusts/Guardianship Amendments

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 29, 2013
Introduced by:	Sens. Hartsell, Barringer	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to First Edition S279-CSTG-29		

SUMMARY: ***The PCS to Senate Bill 279 makes various updates and clarifications to the laws governing wills and estates, trusts, and guardianship. The PCS deletes Part I of the original bill relating to protection of rights to digital assets, makes technical corrections to G.S. 28A-18-2 in Section 1.(a), clarifies trustee powers in Section 2.(c), and updates the NC Investment Advisers Act in Section 3.(f)-(h).***

BILL ANALYSIS:

Section 1.(a) makes technical corrections to the wrongful death statute as recommended by the General Statutes Commission.

Section 1.(b) and 1.(c) clarify that the procedure for providing a notice to creditors without opening a full estate administration is available if the decedent died owning only real property and did not devise the property to the estate's Personal Representative, and permit this type of notice to be used in more situations.

Section 1.(d) revises the formula used to determine a surviving spouse's elective share, which is the minimum amount a surviving spouse is entitled to receive from the estate of the deceased spouse. Under the new formula, the spouse's elective share will vary in proportion to the length of the marriage, whereas under current law, it is based on the number of children the decedent had and is reduced by half if the surviving spouse was not the first spouse of the decedent and the decedent had children, but not with the surviving spouse.

Section 1.(e) provides when a surviving spouse who applies for a year's allowance for maintenance and support under G.S. 30-31 is awarded costs, including reasonable attorney's fees, under G.S. 6-21(1), these fees may be charged as an administrative expense of the estate.

Sections 1.(f), 1.(g) and 1.(h) eliminates the current requirement that out-of-state wills be substantially in the form required by North Carolina law to be admitted to probate, even if they are notarized and certified in order to be "self-proving;" instead, the bill would admit them to probate if they are executed in compliance with NC law or with the law of the place where the will was executed or where the testator was domiciled when the will was executed. In addition, the bill clarifies that a self-proved military will that meets federal requirements must be admitted to probate in North Carolina.

Section 2.(a) adopts provisions in the Uniform Laws Commission Model Act's "Insurable Interest Amendments to the Uniform Trust Code" to make it clear that a trust has an insurable interest in the life of the settlor who created the trust.

Section 2.(b) clarifies that if a settlor creates a trust for the benefit of the settlor's spouse and makes it irrevocable even in the event of divorce, the term "settlor's spouse" as used in the trust refers to the

person to whom the settlor was married at the time the trust was created, even if that marriage is subsequently dissolved.

Section 2.(c) authorizes a trustee to treat discretionary distributions made to the beneficiary as having been made from capital gains realized during the year.

Section 2.(d) clarifies that limitations on a trustee's power to distribute property from one trust to another if the distribution would reduce a beneficiary's interest in the original trust apply only if that interest has come into effect.

Section 3.(a) clarifies that inherited IRA assets are exempt from creditors' claims.

Section 3.(b) amends G.S. 32-72 to adapt the provisions in the Uniform Trust Code provisions relating to directed trustees in a manner appropriate for fiduciaries other than trustees under G.S. 32-72.

Sections 3.(c) – 3.(e) expand the power of a guardian for an incompetent ward to make gifts of principal and to modify the ward's estate plan to incorporate tax and public benefits planning.

Sections 3.(f) – 3.(h) amend the North Carolina Investment Advisers Act to continue some exemptions from registration requirements for offices maintained by high net worth families under the "private advisor" exemption for fewer than 15 clients to changes in federal law governing investment advisers, as recommended by the NC Bar Association's Business Law Section and the Securities Division of the Secretary of State's office.

Section 4 authorizes the Revisor of Statutes to include comments of the drafters of this act and all relevant portions of the Official Comments to the North Carolina Uniform Trust Code.

EFFECTIVE DATE:

BACKGROUND:

VISITOR REGISTRATION SHEET

Senate Judiciary I — 4/30/13

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Harry Payne	NCJC
Elizabeth Bisor	Brooks Pierce
Robert O'Connell	Triangle Family Services
Cedric Johnson	BTC
Peg Dorer	Conf. of DAs
Floyd Lewis	General Statutes Commission
CS Hollis	TSS
Stephen Kouba	compass
Laura Bone	Bone + Assoc. LLC
P. Bly Hall	General Statutes Commission
Ha Nguyen	NCCOSR

VISITOR REGISTRATION SHEET

Senate Judiciary I — 4/30/13

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Townes Maxwell	PSG
ZEB ALLEY	NMRS
Doug Miskew	PSG
Kay Emanuel	School of Government
LEAH KANE	LSSP
Heman Hutaff	Coca-Cola
	MWC
SUSAN LUPTON	CRL
	AOC
Lorrin Freeman	Wake CSC
Barbara Mona	Conf. of Clerks of Sup Ct

VISITOR REGISTRATION SHEET

Senate Judiciary I — Name of Committee

4-30-13 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Will Morgan	TWC
JAN NICHOLS	1618 FAIRVIEW Rd MONCURE NC 27559
Suijin Li	10835 Pendragon Pl Raleigh NC 27614
Lucy Martinez	2901 Gladstone Dr Raleigh NC 27610
Willie Hartzell	NC Justice Center
Jack Holtzmen	2736 Dogwood Rd Durham NC 27705
Nancy Pierce	CLT Bus Journal
Shane Murray	RLNC
[illegible]	World Acceptance
Helen Savage	AARP
MIKE REED	SCFS

VISITOR REGISTRATION SHEET

Senate Judiciary I — 4/30/13

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Chris McClure	Brooks Pierce
Nathan Batts	NCBA
Lauren Whaley	NCCUL
McNeil Chestnut	Fed Comm. Banks
[signature]	NC Press Assn
Laura Collins Britton	UNC School of Law
Stephanie Ceccato	Legal Services of Southern Piedmont
Kerri Blanco	NLWC
Heather Barnett	W&S
Bo Heath	McGuire Woods
[signature]	NCBA

Senate Committee on Judiciary I
Tuesday, May 7, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 264	Abate Nuisances/Drug Sales From Stores.	Senator Brown
SB 393	Constructive Fraud/Limitations Period.	Senator Clodfelter
SB 530	Prohibit E-Cigarette Sales to Minors.	Senator Goolsby
SB 630	Evidence & DNA Expunction Laws.-AB	Senator Newton
SB 683	Safe Harbor/Victims of Human Trafficking.	Senator Goolsby Senator Barringer Senator Kinnaird

Presentations

Other Business

Adjournment

Senate Committee on Judiciary I
Tuesday, May 7, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on May 7, 2013 in Room 1027/1128 of the Legislative Building. Thirteen members were present.

Senator E. S. (Buck) Newton, Chair, presided.

Sen. Newton took a motion from Senator Trudy Wade to bring forth a Proposed Committee Substitute for Senate Bill 264 and the motion passed by a voice vote. Senator Harry Brown explained the PCS and reminded the committee the bill was discussed at the last meeting.

Senator Jerry Tillman made a motion for a favorable report to the PCS, unfavorable to the original bill and the motion passed by a voice vote.

Senator Kathy Harrington made a motion to bring a PCS before the committee for Senate Bill 683 and the motion passed by a voice vote. Senator Thom Goolsby was recognized to speak on the bill. Susan Sitze from the Research Division reviewed each section of the PCS for the committee.

Senator Dan Clodfelter and Senator Dan Blue asked Sen. Goolsby questions about the fiscal note for the PCS, and Sen. Goolsby responded he would follow-up with them and Ms. Sitze after the committee.

Senator Earline Parmon spoke in favor of the bill and Ms. Sitze clarified other sections of the bill in reference to Sen. Parmon's comments. Senator Tamara Barringer also spoke in support of the bill. Senator Kathy Harrington asked Ms. Sitze a question and Ms. Sitze responded. They discussed the classification of minors as victims of human trafficking.

Sen. Goolsby responded to comments about impoundment of property. Senator Josh Stein asked if the bill was similar to or different from existing statutes with regards to expunctions. Sen. Harrington made more comments about expunctions and impoundment of property.

Senator Trudy Wade asked the last question and Sen. Goolsby responded. Lindsey Roberson, an assistant district attorney in Wilmington, spoke in favor of the bill. Anna Beard, a former victim of human trafficking and current victims advocate also spoke in favor of the bill. Pam Strickland from Partners Against Human Trafficking spoke in favor of the bill.

Senator Jerry Tillman made a motion to bring forward a PCS for Senate Bill 530 and the motion passed by a voice vote. Sen. Goolsby explained the bill and Sen. Tillman made a motion for a favorable report.

Senator Josh Stein spoke in favor of the bill and offered an amendment. Sen. Goolsby said he opposed the amendment and did not think it was necessary. Sen. Newton asked for further discussion of the amendment, and hearing none held a voice vote on the amendment. The vote failed and the amendment was voted down.

Senator Trudy Wade asked Sen. Goolsby a question and he responded. Sen. Newton held a voice vote that passed favorable to the PCS, unfavorable to the original bill.

The meeting adjourned at 10:48 a.m.

Senator E. S. (Buck) Newton, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Tuesday, May 07, 2013

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

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

SB **264** Abate Nuisances/Drug Sales From Stores.
Draft Number: S264-PCS15263-SA-37
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

SB **530** **(CS#1)** Prohibit E-Cigarette Sales to Minors.
Draft Number: S530-PCS15261-TG-33
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Senator Harry Brown will handle SB 264
Senator Thomas Goolsby will handle SB 530



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 264
PROPOSED COMMITTEE SUBSTITUTE S264-CSSA-37 [v.2]
5/1/2013 12:44:51 PM

Short Title: Abate Nuisances/Drug Sales From Stores. (Public)

Sponsors:

Referred to:

March 13, 2013

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE NUISANCE LAWS TO CLOSE DOWN BUSINESSES THAT REPEATEDLY SELL CONTROLLED SUBSTANCES AND TO CREATE A REBUTTABLE PRESUMPTION ON PRETRIAL RELEASE FOR REPEAT OFFENDERS WHO SELL DRUGS AT A PLACE OF BUSINESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 19-1 reads as rewritten:

"**§ 19-1. What are nuisances under this Chapter.**

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance. The activity sought to be abated need not be the sole purpose of the building or place in order for it to constitute a nuisance under this Chapter.

(b) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated acts which create and constitute a breach of the peace shall constitute a nuisance.

(b1) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated activities or conditions which violate a local ordinance regulating sexually oriented businesses so as to contribute to adverse secondary impacts shall constitute a nuisance.

(b2) The erection, establishment, continuance, maintenance, use, ownership, or leasing of any building or place for the purpose of carrying on, conducting, or engaging in any activities in violation of G.S. 14-72.7.

(c) The building, place, vehicle, or the ground itself, in or upon which a nuisance as defined in subsection (a), (b), or (b1) of this section is carried on, and the furniture, fixtures, and contents, are also declared a nuisance, and shall be enjoined and abated as hereinafter provided.

(d) No nuisance action under this Article may be brought against a place or business which is subject to regulation under Chapter 18B of the General Statutes when the basis for the action constitutes a violation of laws or regulations under that Chapter pertaining to the possession or sale of alcoholic beverages."

SECTION 2. G.S. 15A-533 reads as rewritten:

"**§ 15A-533. Right to pretrial release in capital and noncapital cases.**

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Health and Human Services, and whose commitment is determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.

(b) A defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with G.S. 15A-534.

(c) A judge may determine in his discretion whether a defendant charged with a capital offense may be released before trial. If he determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.

(d) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds the following:

(1) There is reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;

(2) The drug trafficking offense was committed while the person was on pretrial release for another offense; and

(3) The person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later.

(e) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds the following:

(1) There is reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal street gang, as defined in G.S. 14-50.16;

(2) The offense described in subdivision (1) of this subsection was committed while the person was on pretrial release for another offense; and

(3) The person has been previously convicted of an offense described in G.S. 14-50.16 through G.S. 14-50.20, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

(f) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds that the person has been charged with a violation of G.S. 90-95(a)(1), the person is the owner or person who has operational control of a place of business, the controlled substance which is the basis for the charge was located at the place of business and finds either of the following:

(1) The person has been previously arrested for a violation of G.S. 90-95(a)(1) and the controlled substance which was the basis for the previous charge was located at a place of business owned by or under the operational control of the person, and the person had been released on bail for the previous arrest at the time of the arrest for the current charge.

(2) The person has a prior conviction for a violation of G.S. 90-95(a)(1), and the controlled substance which was the basis of the prior conviction was located

at a place of business owned by or under the operational control of the person.

For purposes of this subsection, a "place of business" is any location where a member of the general public may purchase, lease, or utilize goods, services, or other things of value.

(g) Persons who are considered for bond under the provisions of subsections ~~(d) and (e)~~(d), (e), and (f) of this section may only be released by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community."

SECTION 3. Section 1 of this act is effective when the act becomes law and applies to nuisance actions filed on or after that date. Section 2 of this act becomes effective December 1, 2013, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 264:
Abate Nuisances/Drug Sales From Stores

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 7, 2013
Introduced by:	Sen. Brown	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition S264-CSSA-37		

SUMMARY: ***The proposed committee substitute (PCS) for Senate Bill 264 amends the nuisance laws to clarify the purpose requirement and modifies the bail law for certain drug offenses.***

The PCS removes the previous Section 2, which authorized forfeiture of real property in drug cases.

BILL ANALYSIS:

Section 1 would amend the nuisance statute to clarify that the nuisance activity need not be the sole purpose of the building or place in order for it to be a nuisance. This section also provides that no nuisance action may be brought against a place that is subject to the alcohol regulations in Chapter 18B when the basis for the nuisance action is related to violation of laws or regulations under that Chapter pertaining to possession or sale of alcoholic beverages.

Section 2 would amend the pretrial release statute to create a rebuttable presumption that no condition of pretrial release will reasonably assure the person's appearance and the community's safety if the person is charged with manufacture, sell or deliver, or possession with intent to manufacture, sell or deliver a controlled substance and all of the following are found:

- The person is the owner or person in control of a place or business
- The controlled substance which is the basis for the charge was located at the place or business
- The person was out on pretrial release for a previous charge of, or has a previous conviction of, the same offense also for a controlled substance at a place or business of which the person is the owner or has control.

EFFECTIVE DATE: Section 1 of this act is effective when it becomes law and applies to nuisance actions filed on or after that date. Section 2 of this act becomes effective December 1, 2013, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 393

Short Title:	Constructive Fraud/Limitations Period.	(Public)
Sponsors:	Senator Clodfelter (Primary Sponsor).	
Referred to:	Judiciary I.	

March 25, 2013

A BILL TO BE ENTITLED

AN ACT RELATING TO THE LIMITATIONS PERIOD FOR ACTIONS ON THE GROUND OF CONSTRUCTIVE FRAUD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-52(9) reads as rewritten:

"**§ 1-52. Three years.**

Within three years an action -

...

(9) For relief on the ground of ~~fraud or mistake;~~ fraud, either actual or constructive, or mistake, except where a different period of limitations is applicable in case of claims alleging constructive fraud brought under Article 3A of Chapter 39 of the General Statutes or claims alleging actual or constructive fraud under G.S. 75-1.1; further provided that the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the actual or constructive fraud or the mistake."

SECTION 2. This act is effective when it becomes law and applies to claims arising on or after that date.

SENATE BILL 393:
Constructive Fraud/Limitations Period

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 1, 2013
Introduced by:	Sen. Clodfelter	**Prepared by:**	Bill Patterson
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 393 establishes a three year statute of limitations for claims alleging constructive fraud other than claims seeking relief against a fraudulent transfer or an unfair and deceptive trade practice.***

CURRENT LAW: A statute of limitations establishes the period of time within which a civil action must be commenced. Under G.S. 1-52(9), a claim for relief based on fraud or mistake is subject to a three year limitations period, which begins to run when the aggrieved party discovers the facts constituting the fraud or mistake, or when, in the exercise of reasonable diligence, such facts should have been discovered.[1]

The limitations period for a claim based on constructive fraud[2] has been held to be subject to the ten year statute of limitations under G.S. 1-56 applicable to all actions for which a limitations period has not been provided elsewhere.[3]

BILL ANALYSIS: Senate Bill 393 would amend G.S. 1-52(9) to make constructive fraud claims subject to the three year limitations period applicable to claims based on actual fraud, except for claims alleging constructive fraud that seek relief against an unfair and deceptive trade practice[4] or a fraudulent transfer.[5]

The bill also clarifies that a claim alleging actual fraud under G.S. 75-1.1 is not subject to the three-year limitations period under G.S. 1-52(9).[6]

As with claims based on actual fraud or mistake, the bill would provide that the limitations period for a claim based on constructive fraud does not begin to run until the discovery by the aggrieved party of the facts constituting the constructive fraud.

EFFECTIVE DATE: This act is effective when it becomes law and applies to claims arising on or after that date.

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[1] G.S. 1-52(9); Vail v. Vail, 233 N.C. 109, 116, 63 S.E.2d 202, 207 (1951) (citations omitted).

[2] Constructive fraud is committed when a person having a fiduciary relationship with another takes advantage of his or her position of trust for his or her own gain to the detriment of the other. State ex rel. Long v. Petree Stockton, L.L.P., 129 N.C. App. 432, 445, 499 S.E.2d 790, 798 (1998).

[3] NationsBank of N. Carolina, N.A. v. Parker, 140 N.C. App. 106, 113, 535 S.E.2d 597, 602 (2000).

[4] G.S. 75-1.1 makes it unlawful to engage in "unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce."

[5] Article 3A of Chapter 39 of the General Statutes provides relief to creditors against a debtor's transfer of assets under specified circumstances, including transfers made with the intent to hinder, delay or defraud any creditor of the debtor.

[6] A civil action brought under Chapter 75 must be brought within four years after the cause of action accrues. G.S. 75-16.2.

O. Walker Reagan
Director

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 530
Health Care Committee Substitute Adopted 5/2/13
PROPOSED COMMITTEE SUBSTITUTE S530-CSTG-33 [v.1]
5/6/2013 4:05:24 PM

Short Title: Prohibit E-Cigarette Sales to Minors. (Public)

Sponsors:

Referred to:

April 1, 2013

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DISTRIBUTION OF TOBACCO-DERIVED PRODUCTS AND VAPOR PRODUCTS TO MINORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-313 reads as rewritten:

"Article 39.

"Protection of Minors.

"**§ 14-313. Youth access to tobacco ~~products.~~products, tobacco-derived products, vapor products, and cigarette wrapping papers.**

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

(1) Distribute. – To sell, furnish, give, or provide tobacco products, tobacco-derived products, or vapor products, including ~~tobacco product~~samples, or cigarette wrapping papers to the ultimate consumer.

(2) Proof of age. – A drivers license or other photographic identification that includes the bearer's date of birth that purports to establish that the person is 18 years of age or older.

(3) Sample. – A tobacco ~~product~~ product, tobacco-derived product, or vapor product distributed to members of the general public at no cost for the purpose of promoting the product.

(3a) Tobacco-derived product. – Any noncombustible product derived from tobacco that contains nicotine and is intended for human consumption, whether chewed, absorbed, dissolved, ingested, or by other means. This term does not include a vapor product or any product regulated by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act.

(4) Tobacco product. – Any product that contains tobacco and is intended for human consumption. The term does not include a tobacco-derived product or a vapor product.

(5) Vapor product. – Any noncombustible product that employs a mechanical heating element, battery, or electronic circuit, regardless of shape or size and that can be used to heat a liquid nicotine solution contained in a vapor cartridge. The term includes an electronic cigarette, electronic cigar, electronic cigarillo, and electronic pipe. The term does not include any product regulated by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act.

(b) Sale or distribution to persons under the age of 18 years. – If any person shall distribute, or aid, assist, or abet any other person in distributing tobacco ~~products~~ products, tobacco-derived products, vapor products, components of vapor products, or cigarette wrapping papers to any person under the age of 18 years, or if any person shall purchase tobacco ~~products~~ products, tobacco-derived products, vapor products, components of vapor products, or cigarette wrapping papers on behalf of a ~~person, less than~~person under the age of 18 years, the person shall be guilty of a Class 2 misdemeanor; provided, however, that it shall not be unlawful to distribute tobacco ~~products~~ products, tobacco-derived products, vapor products, components of vapor products, or cigarette wrapping papers to an employee when required in the performance of the employee's duties. Retail distributors of tobacco ~~products~~ products, tobacco-derived products, vapor products, components of vapor products, or cigarette wrapping papers shall prominently display near the point of sale a sign in letters at least five-eighths of an inch high which states the following:

N.C. LAW STRICTLY PROHIBITS

THE PURCHASE OF TOBACCO ~~PRODUCTS~~PRODUCTS, TOBACCO-DERIVED PRODUCTS, VAPOR PRODUCTS, AND CIGARETTE WRAPPING PAPERS.

BY PERSONS UNDER THE AGE OF 18.

PROOF OF AGE REQUIRED.

Failure to post the required sign shall be an infraction punishable by a fine of twenty-five dollars ($25.00) for the first offense and seventy-five dollars ($75.00) for each succeeding offense.

A person engaged in the sale of tobacco ~~products~~ products, tobacco-derived products, vapor products, components of vapor products, or cigarette wrapping papers shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor if in fact the prospective purchaser is under 18 years of age. Retail distributors of tobacco ~~products~~ products, tobacco-derived products, vapor products, components of vapor products, or cigarette wrapping papers shall train their sales employees in the requirements of this law. Proof of any of the following shall be a defense to any action brought under this subsection:

(1) The defendant demanded, was shown, and reasonably relied upon proof of age in the case of a retailer, or any other documentary or written evidence of age in the case of a nonretailer.

(2) The defendant relied on the electronic system established and operated by the Division of Motor Vehicles pursuant to G.S. 20-37.02.

(3) The defendant relied on a biometric identification system that demonstrated (i) the purchaser's age to be at least the required age for the purchase and (ii) the purchaser had previously registered with the seller or seller's agent a drivers license, a special identification card issued under G.S. 20-377.7, a military identification card, or a passport showing the purchaser's date of birth and bearing a physical description of the person named on the card.

(b1) ~~Vending machines.~~Distribution of tobacco products, tobacco-derived products, or vapor products. – Tobacco ~~products~~ products, tobacco-derived products, vapor products, or components of vapor products shall not be distributed in vending machines; provided, however, vending machines distributing tobacco ~~products~~ products, tobacco-derived products, vapor products, or components of vapor products are permitted (i) in any establishment which is open

only to persons 18 years of age and older; or (ii) in any establishment if the vending machine is under the continuous control of the owner or licensee of the premises or an employee thereof and can be operated only upon activation by the owner, licensee, or employee prior to each purchase and the vending machine is not accessible to the public when the establishment is closed. The owner, licensee, or employee shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor if in fact the prospective purchaser is under 18 years of age. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to any action brought under this subsection. Vending machines distributing tobacco products in establishments not meeting the above conditions shall be removed prior to December 1, 1997. Vending machines distributing tobacco-derived products, vapor products, or components of vapor products in establishments not meeting the above conditions shall be removed prior to December 1, 2013. Any person distributing tobacco ~~products~~ products, tobacco-derived products, vapor products, or components of vapor products through vending machines in violation of this subsection shall be guilty of a Class 2 misdemeanor.

(b2) Internet distribution of tobacco products, tobacco-derived products, or vapor products. – A person engaged in the distribution of tobacco products, tobacco-derived products, vapor products, or components of vapor products through the Internet or other remote sales methods shall perform an age verification through an independent, third-party age verification service that compares information available from public records to the personal information entered by the individual during the ordering process to establish that the individual ordering the tobacco products, tobacco-derived products, vapor products, or components of vapor products is 18 years of age or older.

(c) Purchase by persons under the age of 18 years. – If any person under the age of 18 years purchases or accepts receipt, or attempts to purchase or accept receipt, of tobacco ~~products~~ products, tobacco-derived products, vapor products, components of vapor products, or cigarette wrapping papers, or presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco ~~product~~ products, tobacco-derived products, vapor products, components of vapor products, or cigarette wrapping papers, the person shall be guilty of a Class 2 ~~misdemeanor.~~misdemeanor; provided, however, that it shall not be unlawful for an employee to purchase or accept receipt of tobacco products, tobacco-derived products, vapor products, components of vapor products, or cigarette wrapping papers when required in the performance of the employee's duties.

(d) ~~Send or assist~~Sending or assisting person less than 18 years to purchase or receive tobacco ~~product.~~products, tobacco-derived products, vapor products, or cigarette wrapping papers. – If any person shall send a person less than 18 years of age to purchase, acquire, receive, or attempt to purchase, acquire, or receive tobacco ~~products~~ products, tobacco-derived products, vapor products, components of vapor products, or cigarette wrapping papers, or if any person shall aid or abet a person who is less than 18 years of age in purchasing, acquiring, or receiving or attempting to purchase, acquire, or receive tobacco ~~products~~ products, tobacco-derived products, vapor products, components of vapor products, or cigarette wrapping papers, the person shall be guilty of a Class 2 misdemeanor; provided, however, persons under the age of 18 may be enlisted by police or local sheriffs' departments to test compliance if the testing is under the direct supervision of that law enforcement department and written parental consent is provided; provided further, that the Department of Health and Human Services shall have the authority, pursuant to a written plan prepared by the Secretary of Health and Human Services, to use persons under 18 years of age in annual, random, unannounced inspections, provided that prior written parental consent is given for the involvement of these persons and that the inspections are conducted for the sole purpose of preparing a scientifically and

methodologically valid statistical study of the extent of success the State has achieved in reducing the availability of tobacco products to persons under the age of 18, and preparing any report to the extent required by section 1926 of the federal Public Health Service Act (42 USC § 300x-26).

(e) Statewide uniformity. – It is the intent of the General Assembly to prescribe this uniform system for the regulation of tobacco ~~products~~ products, tobacco-derived products, vapor products, and cigarette wrapping papers to ensure the eligibility for and receipt of any federal funds or grants that the State now receives or may receive relating to the provisions of G.S. 14-313. To ensure uniformity, no political subdivisions, boards, or agencies of the State nor any county, city, municipality, municipal corporation, town, township, village, nor any department or agency thereof, may enact ordinances, rules or regulations concerning the sale, distribution, display or promotion of (i) tobacco products or cigarette wrapping papers on or after September 1, ~~1995.~~1995, or (ii) tobacco-derived products or vapor products on or after December 1, 2013. This subsection does not apply to the regulation of vending machines, nor does it prohibit the Secretary of Revenue from adopting rules with respect to the administration of the tobacco products taxes levied under Article 2A of Chapter 105 of the General Statutes.

(f) Deferred prosecution. – Notwithstanding G.S. 15A-1341(a1), any person charged with a misdemeanor under this section shall be qualified for deferred prosecution pursuant to Article 82 of Chapter 15A of the General Statutes provided the defendant has not previously been placed on probation for a violation of this section and so states under oath."

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 applications, and to this end the provisions of this act are severable.

SECTION 3. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

SENATE BILL 530:
Prohibit E-Cigarette Sales to Minors

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 6, 2013
Introduced by:	Sen. Goolsby	**Prepared by:**	Bill Patterson
Analysis of:	PCS to Second Edition S530-CSTG-33		Committee Counsel

SUMMARY: ***Senate Bill 530 adds tobacco-derived products and vapor products to the criminal statutes prohibiting access to tobacco products by individuals under the age of 18 years. The PCS makes technical corrections to the bill.***

[As introduced, this bill was identical to H864, as introduced by Rep. Fulghum, which is currently in House Judiciary Subcommittee B.]

CURRENT LAW: G.S. 14-313 prohibits the distribution of a "tobacco product" to persons younger than 18 years old. "Tobacco product" is defined as "any product that contains tobacco and is intended for human consumption." "Distribution" includes giving tobacco product samples or cigarette wrapping papers to the ultimate consumer. G.S. 14-313(a).

It is a Class 2 misdemeanor for any person to distribute (or aid, assist, or abet another in distributing) tobacco products or cigarette wrapping papers to any person under the age of 18, or for any to purchase tobacco products or cigarette wrapping papers on behalf of a person who is under the age of 18. Retailers are required to prominently display a specified sign near the point of sale indicating the purchase of tobacco products by persons under the age of 18 is prohibited by State law and proof of age will be required. Failure to display the sign is an infraction punishable by a fine of 25 dollars for the first offense and 75 dollars for each succeeding offense. G.S. 14-313(b).

A person selling tobacco products is required to ask for proof of age from a prospective purchaser if there are reasonable grounds to believe that purchaser is under the age of 18. Failure to demand proof of age is a Class 2 misdemeanor if the purchaser is under age 18. Retailers are required to train their staff on the law, and the statute provides a defense to the criminal charge under specified circumstances.

G.S. 14-313(b1) regulates the distribution of tobacco products in vending machines. Tobacco products are not to be distributed in vending machines unless the vending machines are located on premises that are only open to individuals 18 years or older; or the vending machine is under the continuous control of, and can be operated only upon activation by, the owner or licensee of the premise, or an employee. The owner, licensee, or employee is also required to demand proof of age when the owner, licensee, or employee has reasonable grounds to believe the purchaser is under 18. A violation of G.S. 14-313(b1) is a Class 2 misdemeanor.

G.S. 14-313(c) provides that any person under the age of 18 who purchases, accepts receipt of, or attempts to purchase or accept receipt of, tobacco products or cigarette wrapping papers is guilty of a Class 2 misdemeanor. Presenting or offering any purported proof of age that is false or fraudulent for the purposes of purchasing tobacco is also a Class 2 misdemeanor.

G.S. 14-313 (d) provides that sending a person younger than 18 years old to purchase, or attempt to purchase, tobacco products is a Class 2 misdemeanor. Adding or abetting a person under the age of 18 in purchasing, acquiring, or receiving, or attempting to purchase, acquire, or receive, is also a Class 2

misdemeanor. There are exceptions for persons under 18 who are enlisted by law enforcement or the Department of Health and Human Services to verify compliance with the law by participating in random inspections of establishments distributing tobacco products or other such tests of compliance.

G.S. 14-313(e) states the intent of the General Assembly is to have a uniform system for the regulation of tobacco products. No political subdivisions, boards, or agencies of the State, nor any county, city, municipality, municipal corporation, town, township, village, may enact ordinances, rules, or regulations, concerning the sale, distribution, display, or promotion of tobacco products.

BILL ANALYSIS:

Senate Bill 530 creates two new definitions under G.S. 14-313(a).

- Tobacco-derived products: Any noncombustible product derived from tobacco that contains nicotine and is intended for human consumption, whether chewed, absorbed, dissolved, ingested, or by other means.
- Vapor product: Any noncombustible product that employees a mechanical heating element, battery, or electronic circuit, regardless of shape or size, and that can be used to heat a liquid nicotine solution contained in a vapor cartridge. This term includes an electronic cigarette, electronic cigar, electronic cigarillo, and electronic pipe.

Senate Bill 530 expands the existing prohibition against distributing tobacco products to persons under 18 years of age to include the distribution of tobacco-derived products, vapor products, components of vapor products, or cigarette wrapping papers.

The bill also requires anyone distributing tobacco products, tobacco-derived products, vapor products, or components of vapor products through the Internet, or through other remote distribution methods, to verify the age of the customer through an independent, third-party age verification service that compares information available from public records to the personal information entered by the customer during the ordering process to establish that individual is 18 years of age or older.

The bill contains a severability clause stating that if any provision of the act or its application is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provisions or application.

EFFECTIVE DATE: This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

Amy Jo Johnson, counsel to Senate Health Care Committee, substantially contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 530

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

S530-ATG-15 [v.1]

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

Date _____,2013

Senator Stein

moves to amend the bill on page 1, lines 26-28, by rewriting those lines to read:

"(4) Tobacco product. – Any product that contains tobacco and is intended for human consumption. The term includes a tobacco-derived product and a vapor product."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED X TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 530

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

S530-ATG-15 [v.1]

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

Date _____ ,2013

Senator Stein

moves to amend the bill on page 1, lines 26-28, by rewriting those lines to read:

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SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 630

Short Title:	Evidence & DNA Expunction Laws.-AB	(Public)
Sponsors:	Senators Newton (Primary Sponsor); and Goolsby.	
Referred to:	Judiciary I.	

April 4, 2013

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:~~doing either of the following:

a. Documenting expunction of the DNA record and destruction of the DNA ~~sample, or~~sample.

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, 2013. Sections 2, 3, 4, 5, 6, 7, and 8 of this act apply to proceedings that occur on or after December 1, 2013.

SENATE BILL 630:
Evidence & DNA Expunction Laws.-AB

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 7, 2013
Introduced by:	Sen. Newton	**Prepared by:**	Susan Sitze*
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***This act provides for a retention period for chemical analyses for the presence of alcohol in bodily fluids; provides that laboratory reports and affidavits shall be admissible into evidence without the testimony of the laboratory technician unless specifically requested; and enlarges the period of time for the SBI to notify a person of the disposition of DNA results following a request for expunction.***

[As introduced, this bill was identical to H386, as introduced by Rep. Stevens, which is currently in Rules and Operations of the Senate.]

BACKGROUND and CURRENT LAW: In the Melendez-Diaz case, the United States Supreme Court, held, based upon the Sixth Amendment's confrontation clause, that if the State intended to submit the results of a laboratory test into evidence, then the laboratory analyst who performed the test was required to testify. However, the Court held that if the defendant failed to object after being provided notice of the State's intent, then the report was admissible without the analyst's testimony.

BILL ANALYSIS: This act:

- Provides that any blood or urine sample subject to chemical analysis for an impairing substance may be destroyed 12 months after the issuance date of the report of all examinations conducted. If a motion to preserve the evidence has been filed by either party, the evidence must remain in the custody of the analyzing agency or the agency that collected the sample until a court order disposing of the sample is issued.
- Absent an objection after notice by the State to the defendant that it intends to offer a laboratory report into evidence, current law allows a judge to enter a laboratory report into evidence without the testimony of the laboratory analyst. The act removes the court's discretion and provides that the evidence shall be admitted.
- Currently, following the receipt of a form from a defendant seeking the expunction of a DNA sample, the SBI has 30 days to notify the defendant that the DNA sample has been destroyed, or that the defendant is not eligible for an expunction. The act changes the response period from 30 days to 90 days.

EFFECTIVE DATE: The portions of the act that apply to destruction of samples and the response period for the SBI to notify a defendant of DNA expunction become effective December 1, 2013. The provisions relating to the requirement that laboratory reports be admitted if there is no objection raised by the defendant applies to proceedings that occur on or after December 1, 2013.

**Hal Pell, Staff Attorney, contributed substantially to this summary.*

O. Walker Reagan
Director

S630-SMSA-49 E1 -V2

Research Division
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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 683
PROPOSED COMMITTEE SUBSTITUTE S683-CSSA-38 [v.5]

5/6/2013 6:11:22 PM

Short Title: Safe Harbor/Victims of Human Trafficking. (Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO CREATE A SAFE HARBOR FOR VICTIMS OF HUMAN TRAFFICKING AND FOR PROSTITUTED MINORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-43.11 reads as rewritten:

"**§ 14-43.11. Human trafficking.**

(a) A person commits the offense of human trafficking when that ~~person~~ person (i) knowingly or in reckless disregard of the fact recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual ~~servitude.~~servitude or (ii) knowingly or in reckless disregard of the fact causes a minor to be held in involuntary servitude or sexual servitude.

(b) A person who violates this section is guilty of a ~~Class F~~ Class E felony if the victim of the offense is an adult. A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.

(c) Each violation of this section constitutes a separate offense and shall not merge with any other offense. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this section.

(c1) Mistake of age is not a defense to prosecution under this section. Consent of a minor is not a defense to prosecution under this section.

(d) A person who is not a legal resident of North Carolina, and would consequently be ineligible for State public benefits or services, shall be eligible for the public benefits and services of any State agency if the person is otherwise eligible for the public benefit and is a victim of an offense charged under this section. Eligibility for public benefits and services shall terminate at such time as the victim's eligibility to remain in the United States is terminated under federal law."

SECTION 2. G.S. 14-43.12 reads as rewritten:

"**§ 14-43.12. Involuntary servitude.**

(a) A person commits the offense of involuntary servitude when that person knowingly and willfully or in reckless disregard holds another in involuntary servitude.

(b) A person who violates this section is guilty of a ~~Class F~~ Class E felony if the victim of the offense is an adult. A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.

(c) Each violation of this section constitutes a separate offense and shall not merge with any other offense. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this section.

(c1) Mistake of age is not a defense to prosecution under this section. Consent of a minor is not a defense to prosecution under this section.

(d) Nothing in this section shall be construed to affect the laws governing the relationship between an unemancipated minor and his or her parents or legal guardian.

(e) If any person reports a violation of this section, which violation arises out of any contract for labor, to any party to the contract, the party shall immediately report the violation to the sheriff of the county in which the violation is alleged to have occurred for appropriate action. A person violating this subsection shall be guilty of a Class 1 misdemeanor."

SECTION 3. G.S. 14-43.13 reads as rewritten:

"**§ 14-43.13. Sexual servitude.**

(a) A person commits the offense of sexual servitude when that person knowingly or in reckless disregard subjects or maintains another in sexual servitude.

(b) A person who violates this section is guilty of a ~~Class F~~ Class E felony if the victim of the offense is an adult. A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.

(b1) Mistake of age is not a defense to prosecution under this section. Consent of a minor is not a defense to prosecution under this section.

(c) Each violation of this section constitutes a separate offense and shall not merge with any other offense. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this section."

SECTION 4.(a) The following statutes are repealed: G.S. 14-190.18, 14-190.19, 14-203, 14-204, 14-204.1, 14-205, 14-207, and 14-208.

SECTION 4.(b) G.S. 14-206 is recodified as G.S. 14-203.9.

SECTION 5. Article 27 is amended by adding the following new sections to read:

"**§ 14-203.1. Definitions.**

The following definitions apply in this Article:

(1) Advance prostitution. – The term includes all of the following:

a. Soliciting for a prostitute by performing any of the following acts when acting other than a prostitute or a patron of a prostitute:

1. Soliciting another for the purpose of prostitution.
2. Arranging or offering to arrange a meeting of persons for the purpose of prostitution.
3. Directing another to a place knowing the direction is for the purpose of prostitution.
4. Using the Internet, including any social media website, to solicit another for the purpose of prostitution.

b. Keeping a place of prostitution by controlling or exercising control over the use of any place that could offer seclusion or shelter for the practice of prostitution and performing any of the following acts when acting other than a prostitute or a patron of a prostitute:

1. Knowingly granting or permitting the use of the place for the purpose of prostitution.
2. Granting or permitting the use of the place under circumstances from which the person could reasonably know that the place is used or is to be used for purposes of prostitution.
3. Permitting the continued use of the place after becoming aware of facts or circumstances from which the person should know that the place is being used for the purpose of prostitution.

(2) Minor. – Any person who is less than 18 years of age.

(3) Profit from prostitution. – When acting other than a prostitute, to receive anything of value for personally rendered prostitution services or to receive anything of value from a prostitute, if the thing received is not for lawful consideration and the person knows it was earned in whole or in part from the practice of prostitution.

(4) Prostitute. – A person who engages in prostitution.

(5) Prostitution. – The performance of, offer of, or agreement to perform vaginal intercourse, any sexual act as defined in G.S. 14-27.1(4), or any sexual contact as defined in G.S. 14-27.1(5) for the purpose of sexual arousal or gratification, for any money, property, token, object, or article, or anything of value.

"**§ 14-203.2. Prostitution.**

(a) Offense. – Any person who knowingly engages in prostitution is guilty of a Class 1 misdemeanor.

(b) First offender; deferred prosecution. –

(1) Whenever any person who has not previously been convicted of or placed on probation for violation of this section pleads guilty to or is found guilty of a violation of this section, the court, without entering a judgment and with the consent of such person, shall sentence the person to probation pursuant to this subsection.

(2) When a person is placed on probation, the court shall enter an order specifying a period of probation of 12 months and shall defer further proceedings in the case until the conclusion of the period or until the filing of a petition alleging violation of a term or condition of probation.

(3) The conditions of probation shall be that the person (i) not violate any criminal statute of any jurisdiction, (ii) refrain from possessing a firearm or other dangerous weapon, (iii) submit to periodic drug testing at a time and in a manner as ordered by the court, but no less than three times during the period of the probation, with the cost of the testing to be paid by the probationer, (iv) obtain a vocational assessment administered by a program approved by the court, and (v) attend no fewer than ten counseling sessions administered by a program approved by the court.

(4) The court may, in addition to other conditions, require that the person do any of the following:

a. Make a report to and appear in person before or participate with the court or such courts, person, or social service agency as directed by the court in the order of probation.

b. Pay a fine and costs.

c. Attend or reside in a facility established for the instruction or residence of defendants on probation.

d. Support the person's dependents.

e. Refrain from having in the person's body the presence of any illicit drug prohibited by the North Carolina Controlled Substances Act, unless prescribed by a physician, and submit samples of the person's blood or urine or both for tests to determine the presence of any illicit drug.

(5) Upon violation of a term or condition of probation, the court may enter a judgment on its original finding of guilt and proceed as otherwise provided.

(6) Upon fulfillment of the terms and conditions of probation, the court shall discharge the person and dismiss the proceedings against the person. Upon the discharge of the person and dismissal of the proceedings against the

person under this subsection, the person is eligible to apply for expunction of records pursuant to G.S. 15A-145.6.

(7) Discharge and dismissal under this subsection shall not be deemed a conviction for purposes of structured sentencing or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

(8) There may be only one discharge and dismissal under this section.

(c) Immunity from prosecution for minors. – Notwithstanding any other provision of this section, if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this section is a minor, that person shall be immune from prosecution under this section, and instead shall be taken into temporary protective custody as an undisciplined juvenile pursuant to Article 19 of Chapter 7B of the General Statutes. Pursuant to the provisions of G.S. 7B-301, a law enforcement officer who takes a minor into custody under this section shall immediately report an allegation of a violation of G.S. 14-43.11 and G.S. 14-43.13 to the director of the department of social services in the county where the minor resides or is found, as appropriate, which shall commence an initial investigation into child abuse or child neglect within 24 hours pursuant to G.S. 7B-301 and G.S. 7B-302."

"**§14-203.3. Solicitation of prostitution.**

Except as otherwise provided in this section, any person who solicits another for the purpose of prostitution is guilty of a Class F felony. Any person who solicits a minor or a person who is severely or profoundly mentally disabled for the purpose of prostitution is guilty of a Class C felony.

"**§ 14-203.4. Promoting prostitution.**

(a) Any person who knowingly performs any of the following acts commits promoting prostitution:

(1) Advances prostitution as defined in G.S. 14-203.1.

(2) Profits from prostitution by doing any of the following:

a. Compelling a person to become a prostitute.

b. Arranging or offering to arrange a situation in which a person may practice prostitution.

c. Any means other than those described in sub-subdivisions a. and b. of this subdivision, including from a person who patronizes a prostitute. This sub-subdivision does not apply to a person engaged in prostitution who is a minor. A person cannot be convicted of promoting prostitution under this sub-subdivision if the practice of prostitution underlying the offense consists exclusively of the accused's own acts of prostitution under G.S 14-203.2.

(b) Except as otherwise provided in this subsection, a violation of this section is a Class F felony. A violation of this section within 1,000 feet of real property comprising a school is a Class C felony. A violation of this section by a person with a prior conviction for a violation of this section or a violation of G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of prostitution), G.S. 14-203.5 (promoting prostitution of a minor or mentally disabled person), G.S. 14-203.6 (patronizing a prostitute), or G.S. 14-203.7 (patronizing a minor or mentally disabled person engaged in prostitution) is a Class C felony.

"**§ 14-203.5. Promoting prostitution of a minor or mentally disabled person.**

(a) Any person who knowingly performs any of the following acts commits promoting prostitution of a minor or mentally disabled person:

(1) Advances prostitution as defined in G.S. 14-203.1, where a minor or severely or profoundly mentally disabled person engaged in prostitution, or any person engaged in prostitution in the place of prostitution is a minor or is severely or profoundly mentally disabled at the time of the offense.

(2) Profits from prostitution by any means where the prostitute is a minor or is severely or profoundly mentally disabled at the time of the offense.

(3) Confines a minor or a severely or profoundly mentally disabled person against the person's will by the infliction or threat of imminent infliction of great bodily harm, permanent disability, or disfigurement or by administering to the minor or severely or profoundly mentally disabled person, without the person's consent or by threat or deception and for other than medical purposes, any alcoholic intoxicant or a drug as defined in Article 5 of Chapter 90 of the General Statutes (North Carolina Controlled Substances Act) and does any of the following:

a. Compels the minor or severely or profoundly mentally disabled person to engage in prostitution.

b. Arranges a situation in which the minor or severely or profoundly mentally disabled person may practice prostitution.

c. Profits from prostitution by the minor or severely or profoundly mentally disabled person.

(b) For purposes of this section, administering drugs, as described in subdivision (3) of subsection (a) of this section, or an alcoholic intoxicant to a minor or a severely or profoundly mentally disabled person shall be deemed to be without consent if the administering is done without the consent of the parents or legal guardian or if the administering is performed or permitted by the parents or legal guardian for other than medical purposes.

(c) Except as otherwise provided in this subsection, a violation of subdivisions (1) or (2) of subsection (a) of this section is a Class B2 felony. A violation of subdivision (3) of subsection (a) of this section is a Class B1 felony. A violation of this section within 1,000 feet of real property comprising a school is a Class B1 felony. A violation of this section by a person with a prior conviction for a violation of this section or a violation of G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of prostitution), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.6 (patronizing a prostitute), or G.S. 14-203.7 (patronizing a minor or mentally disabled person engaged in prostitution) is a Class B1 felony.

(d) Any person convicted of a violation of this section that involves promoting prostitution of a minor or mentally disabled person by keeping a place of prostitution with minors or severely or profoundly mentally disabled person as prostitutes or convicted of a violation of subdivision (3) of subsection (a) of this section is subject to the property forfeiture provisions set forth in G.S. 14-2.3.

"**§ 14-203.6. Patronizing a prostitute.**

(a) Any person who knowingly performs any of the following acts with a person not his or her spouse commits patronizing a prostitute:

(1) Engages in vaginal intercourse, any sexual act as defined in G.S. 14-27.1(4), or any sexual contact as defined in G.S. 14-27.1(5) for the purpose of sexual arousal or gratification, with a prostitute.

(2) Enters or remains in a place of prostitution with intent to engage in vaginal intercourse, any sexual act as defined in G.S. 14-27.1(4), or any sexual contact as defined in G.S. 14-27.1(5) for the purpose of sexual arousal or gratification.

(b) Except as otherwise provided in this subsection, a violation of this section is a Class F felony. A violation of this section within 1,000 feet of real property comprising a school is a Class C felony. A violation of this section by a person with a prior conviction for a violation of this section or a violation of G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of prostitution), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.5 (promoting prostitution of a minor or mentally disabled person), or G.S. 14-203.7 (patronizing a minor or mentally disabled person engaged in prostitution) is a Class C felony.

"**§ 14-203.7. Patronizing a minor or mentally disabled person engaged in prostitution.**

(a) Any person who engages in vaginal intercourse, any sexual act as defined in G.S. 14-27.1(4), or any sexual contact as defined in G.S. 14-27.1(5) for the purpose of sexual arousal or gratification, with a prostitute that is a minor or is a severely or profoundly mentally disabled person, commits the offense of patronizing a minor or mentally disabled person engaged in prostitution.

(b) It is an affirmative defense to the charge of patronizing a minor or mentally disabled person engaged in prostitution that the accused reasonably believed that the person was of the age of 18 years or over or was not a severely or profoundly mentally disabled person at the time of the act giving rise to the charge.

(c) Except as otherwise provided in this subsection, a violation of this section is a Class C felony. A violation of this section within 1,000 feet of real property comprising a school is a Class B2 felony. A violation of this section by a person with a prior conviction for a violation of this section or a violation of G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of prostitution), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.5 (promoting prostitution of a minor or mentally disabled person), or G.S. 14-203.6 (patronizing a prostitute) is a Class B2 felony."

"**§ 14-203.10. Certain probation conditions.**

(a) If a person convicted of a crime under this Article receives a sentence which includes probation, and that person is infected with a venereal disease, the period of probation may commence only upon such terms and conditions as shall insure medical treatment therefor and prevent the spread thereof, and the court may order any convicted defendant to be examined for venereal disease.

(b) No female who is convicted under this Article shall be placed on probation in the care or charge of any person except a female probation officer."

SECTION 6. Article 27 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-203.15. Vehicle impoundment.**

(a) In addition to any other penalty provided by law, a law enforcement officer who arrests a person for a violation under this Article may tow and impound any vehicle used by the person in the commission of the offense. The person arrested for the violation shall be charged a fee of one thousand dollars ($1,000) to recover the vehicle. The local law enforcement agency that has jurisdiction where the arrest was made shall collect the fee. The person may recover the vehicle from the impound after a minimum of two hours after arrest upon payment of the fee.

(b) Five hundred dollars ($500.00) of the fee shall be distributed to the unit of government whose law enforcement officers made the arrest, for the costs incurred by the unit of government to tow and impound the vehicle. Upon the defendant's conviction of one or more of the offenses in connection with which the vehicle was impounded and the fee imposed under this section, the remaining five hundred dollars ($500) of the fee shall be deposited into the Crime Victims Compensation Fund established in G.S. 15B-23 and shall be used to provide services for persons encountered during the course of an investigation into any violation of Article 27 of Chapter 14 of the General Statutes, G.S. 14-43.11, and G.S. 14-43.13, provided such persons constitute prostituted persons or other victims of human trafficking.

(c) Upon the presentation by the defendant of a signed court order showing that the defendant has been acquitted of all of the offenses in connection with which a vehicle was impounded and a fee imposed under this section, or that the charges against the defendant for those offenses have been dismissed, the unit of government shall refund the fee of one thousand dollars ($1,000) to the defendant."

SECTION 7. G.S. 15A-290(c)(1) reads as rewritten:

"(c) Orders authorizing or approving the interception of wire, oral, or electronic communications may be granted, subject to the provisions of this Article and Chapter 119 of the United States Code, when the interception may provide, or has provided, evidence of any of the following offenses, or any conspiracy to commit these offenses, or when the interception may expedite the apprehension of persons indicted for the commission of these offenses:

(1) Any felony offense against a minor, including any violation of G.S. 14-27.7 (Intercourse and sexual offenses with certain victims; consent no defense), G.S. 14-41 (Abduction of children), G.S. 14-43.11 (Human trafficking), G.S. 14-43.12 (Involuntary servitude), G.S. 14-43.13 (Sexual servitude), G.S. 14-190.16 (First degree sexual exploitation of a minor), G.S. 14-190.17 (Second degree sexual exploitation of a minor), ~~G.S. 14-190.18 (Promoting prostitution of a minor), G.S. 14-190.19 (Participating in prostitution of a minor),~~ G.S. 14-203.5 (Promoting prostitution of a minor or mentally disabled person), G.S. 14-203.7 (Patronizing a minor or mentally disabled person engaged in prostitution) or G.S. 14-202.1 (Taking indecent liberties with children).

...."

SECTION 8. G.S. 15A-1341 is amended by adding a new subsection to read:

"(a3) Deferred Prosecution for Prostitution. – A defendant whose prosecution is deferred pursuant to G.S. 14-203.2(b), may be placed on probation as provided in this Article."

SECTION 9. G.S. 15A-1342(a1) reads as rewritten:

"(a1) Supervision of Defendants on Deferred Prosecution. – The Section of Community Corrections of the Division of Adult Correction of the Department of Public Safety may be ordered by the court to supervise an offender's compliance with the terms of a deferred prosecution agreement entered into under ~~G.S. 15A-1341(a1).~~G.S. 15A-1341(a1) or (a3). Violations of the terms of the agreement shall be reported to the court as provided in this Article and to the district attorney in the district in which the agreement was entered."

SECTION 10. G.S. 15A-1415(b) is amended by adding a new subdivision to read:

"(10) The defendant was convicted of a first offense of prostitution under G.S. 14-203.2 and prosecution of the offense was not deferred pursuant to G.S. 14-203.2(b); the defendant's participation in the offense was a result of having been a victim of human trafficking under G.S. 14-43.11, sexual servitude under G.S. 14-43.13, or the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)); and the defendant seeks to have the conviction vacated."

SECTION 11. Article 89 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1416.1. Motion by the defendant to vacate prostitution conviction for sex trafficking victim.**

(a) The Court of Appeals has jurisdiction to hear a motion for appropriate relief filed on the grounds set out in G.S. 15A-1415(b)(10). A motion to vacate a conviction for prostitution may be filed at any time following the entry of a verdict or finding of guilty under G.S. 14-203.2. Any motion for appropriate relief filed under this section shall state why the facts giving rise to this motion were not presented to the trial court and shall be made with due diligence after the defendant has ceased to be a victim of such trafficking or has sought services for victims of such offenses, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking that may be jeopardized by the bringing of such motion or for other reasons consistent with the purpose of this section. Reasonable notice of the motion shall be served upon the State.

(b) The court may grant the motion if, in the discretion of the court, the violation was a result of the defendant having been a victim of human trafficking. Evidence of such may

include any of the following documents listed in subdivisions (1) through (3) of this subsection; alternatively, the court may consider such other evidence as it deems of sufficient credibility and probative value in determining whether the defendant is a trafficking victim:

(1) Certified records of federal or State court proceedings which demonstrate that the defendant was a victim of a trafficker charged with a trafficking offense under G.S. 14-43.11, G.S. 14-43.13, or under 22 U.S.C. Chapter 78.

(2) Certified records of "approval notices" or "enforcement certifications" generated from federal immigration proceedings available to such victims.

(3) A sworn statement from a trained professional staff of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the defendant has sought assistance in addressing the trauma associated with being trafficked.

(c) If the court grants a motion under this section, the court must vacate the conviction and may take such additional action as is appropriate in the circumstances."

SECTION 12. Article 5 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 15A-145.6. Expunctions for certain defendants convicted of prostitution.**

(a) The following definitions apply in this section:

(1) Prostitution offense – A conviction for (i) violation G.S. 14-203.2, or (ii) engaging in prostitution in violation of G.S. 14-204(7) for an offense that occurred prior to December 1, 2013.

(2) Violent felony or violent misdemeanor – A Class A through G felony or a Class A1 misdemeanor or an offense that includes assault as an essential element of the offense.

(b) A person who has been convicted of a prostitution offense may file a petition in the court where the person was convicted for expunction of the prostitution offense from the person's criminal record provided that all the following criteria are met:

(1) The person has not previously been convicted of any violent felony or violent misdemeanor under the laws of the United States or the laws of this State or any other state.

(2) The person satisfies any one of the following criteria:

a. The person's participation in the prostitution offense was a result of having been a trafficking victim under G.S. 14-43.11 (human trafficking) or G.S. 14-43.13 (sexual servitude) or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)).

b. The person has no prior convictions for a prostitution offense.

c. The person was sentenced under the deferred prosecution provisions in G.S. 14-203.2 and is eligible to apply for an expunction under G.S. 14-203.2(c).

(c) The petition shall not be filed earlier than three years after the person has served the full sentence imposed on the person. The petition shall contain all of the following:

(1) An affidavit by the petitioner that the petitioner (i) has no prior conviction of a violent felony or violent misdemeanor, (ii) has been of good moral character since the date of conviction of the prostitution offense in question, and (iii) has not been convicted of any felony or misdemeanor under the laws of the United States or the laws of this State or any other state since the date of the conviction of the prostitution offense in question.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation

of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing (i) a State and national criminal history record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual; (ii) a search by the Department of Justice for any outstanding warrants or pending criminal cases; and (iii) a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

(d) The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

(e) The court in which the petition was filed shall take the following steps and shall consider the following issues in rendering a decision upon a petition for expunction of records of a prostitution offense under this section:

(1) Call upon a probation officer for additional investigation or verification of the petitioner's conduct during the period since the date of conviction of the prostitution offense in question.

(2) Review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers and district attorneys.

(f) The court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

(1) The criteria set out in subsection (b) of this section are satisfied.

(2) The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic violation, for three years from the date of conviction of the prostitution offense in question.

(3) The petitioner has no outstanding warrants or pending criminal cases.

(4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

(5) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction, other than an expunction for a prostitution offense.

(g) No person as to whom an order has been entered pursuant to subsection (f) of this section shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. Persons pursuing certification under the provisions of Chapter 17C or 17E of the General Statutes, however, shall disclose any and all

prostitution convictions to the certifying Commission regardless of whether or not the prostitution convictions were expunged pursuant to the provisions of this section.

Persons required by State law to obtain a criminal history record check on a prospective employee shall not be deemed to have knowledge of any convictions expunged under this section.

(h) The court shall also order that the conviction of the prostitution offense be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(i) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(j) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the prostitution offense which is to be expunged under this section."

SECTION 13. G.S. 15A-1340.16(d) is amended by adding the following subdivisions to read:

"(19a) The offense is a violation of G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) and involved multiple victims.

(19b) The offense is a violation of G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) and the victim suffered serious injury as a result of the offense."

SECTION 14. G.S. 15B-2(2) reads as rewritten:

"**§ 15B-2. Definitions.**

As used in this Article, the following definitions apply, unless the context requires otherwise:

...

(2) Claimant. – Any of the following persons who claims an award of compensation under this Article:

a. A victim;

b. A dependent of a deceased victim;

c. A third person who is not a collateral source and who provided benefit to the victim or his family other than in the course or scope of his employment, business, or profession;

d. A person who is authorized to act on behalf of a victim, a dependent, or a third person described in ~~subdivision c.~~sub-subdivision c.;

e. A person who was convicted of a first offense under G.S. 14-203.2 and whose participation in the offense was a result of having been a trafficking victim under G.S. 14-43.11 or G.S. 14-43.13 or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)).

The claimant, however, may not be the offender or an accomplice of the offender who committed the criminally injurious ~~conduct.~~conduct, except as provided in sub-subdivision e. of this subdivision.

...."

SECTION 15. G.S. 7B-101(1) reads as rewritten:

"**§ 7B-101. Definitions.**

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Abused juveniles. – Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;

c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;

d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; rape of a child by an adult offender, as provided in G.S. 14-27.2A; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in G.S. 14-27.4; sexual offense with a child by an adult offender, as provided in G.S. 14-27.4A; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; unlawful sale, surrender, or purchase of a minor, as provided in G.S. 14-43.14; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; ~~promoting the prostitution of the juvenile as provided in G.S. 14-190.18;~~promoting prostitution of a minor or mentally disabled person as provided in G.S. 14-203.5; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1;

e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; ~~or~~

f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the ~~juvenile.~~juvenile; ~~or~~

g. Commits or allows to be committed an offense under G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude against the child).

...."

SECTION 16. Article 10A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-43.20. Mandatory restitution; victim services; forfeiture.**

(a) Definition. – For purposes of this section, a "victim" is a person subjected to the practices set forth in G.S. 14-43.11, 14-43.12, or 14-43.13.

(b) Restitution. – Restitution for a victim is mandatory under this Article. In addition to any other amount of loss identified, the court shall order restitution including the greater of (i) the gross income or value to the defendant of the victim's labor or services or (ii) the value of the victim's labor as guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act (FLSA) or the Minimum Wage Law, whichever is greater.

(c) Trafficking victim services. – Subject to the availability of funds, the Department of Health and Human Services may provide or fund emergency services and assistance to individuals who are victims of one or more offenses under G.S. 14-43.11, 14-43.12, or 14-43.13.

(d) Certification. – The Attorney General, a district attorney, or any law enforcement official shall certify in writing to the United States Department of Justice or other federal agency, such as the United States Department of Homeland Security, that an investigation or prosecution under this Article for a violation of G.S. 14-43.11, 14-43.12, or 14-43.13. has begun and the individual who is a likely victim of one of those crimes is willing to cooperate or is cooperating with the investigation to enable the individual, if eligible under federal law, to qualify for an appropriate special immigrant visa and to access available federal benefits. Cooperation with law enforcement shall not be required of victims who are under 18 years of age. This certification shall be made available to the victim and the victim's designated legal representative.

(e) A person who commits a violation of G.S. 14-43.11, 14-43.12, or 14-43.13 is subject to the property forfeiture provisions set forth in G.S. 14-2.3."

SECTION 17. The introductory language in G.S. 14-190.13 reads as rewritten:

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

The following definitions apply to G.S. 14-190.14, displaying material harmful to minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or performances; G.S. 14-190.16, first degree sexual exploitation of a minor; G.S. 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third degree sexual exploitation of a ~~minor; G.S. 14-190.18, promoting prostitution of a minor; G.S. 14-190.19, participating in prostitution of a minor.~~minor."

SECTION 18. G.S. 14-208.6(5) reads as rewritten:

"(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.2A (rape of a child; adult offender), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.4A (sex offense with a child; adult offender), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), former G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-27.7A(a)(statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older), G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1)(felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), ~~G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in the prostitution of a minor),~~ G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a)(taking indecent liberties with a student), G.S. 14-203.5 (promoting prostitution of a minor or mentally disabled person), G.S. 14-203.7 (patronizing a minor or mentally

disabled person engaged in prostitution); G.S. 14-318.4(a1)(parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2)(commission or allowing of sexual act upon a juvenile by parent or guardian). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 19. G.S. 15A-830(a)(7) reads as rewritten:

"(7) Victim. – A person against whom there is probable cause to believe one of the following crimes was committed:

a. A Class A, B1, B2, C, D, or E felony.

b. A Class F felony if it is a violation of one of the following: G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.3; 14-43.11; 14-190.17; ~~14-190.19;~~ 14-202.1; 14-203.7; 14-277.3A; 14-288.9; 20-138.5; or former G.S. 14-277.3.

c. A Class G felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; or 20-141.4.

d. A Class H felony if it is a violation of one of the following: G.S. 14-32.3(a); 14-32.3(c); 14-33.2; 14-277.3A; or former G.S. 14-277.3.

e. A Class I felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-34.6(b); or 14-190.17A.

f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.

g. Any of the following misdemeanor offenses when the offense is committed between persons who have a personal relationship as defined in G.S. 50B-1(b): G.S. 14-33(c)(1); 14-33(c)(2); 14-33(a); 14-34; 14-134.3; 14-277.3A; or former G.S. 14-277.3.

h. Any violation of a valid protective order under G.S. 50B-4.1."

SECTION 20. G.S. 90-210.25B(b) reads as rewritten:

"(b) For purposes of this Article, the term "sexual offense against a minor" means a conviction of any of the following offenses: G.S. 14-27.4A(a) (sex offense with a child; adult offender), G.S. 14-27.7A (statutory rape or sexual offense of person who is 13, 14, or 15 years old where the defendant is at least six years older), G.S. 14-190.16 (first-degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), ~~G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in prostitution of a minor),~~ G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-203.5 (promoting prostitution of a minor or mentally disabled person); G.S. 14-203.7 (patronizing a minor or mentally disabled person engaged in prostitution); G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term shall also include a conviction of the following: any attempt, solicitation, or conspiracy to commit any of these offenses or any aiding and abetting any of these offenses. The term shall also include a conviction in another jurisdiction for an offense which if committed in this State has the same or substantially similar elements to an offense against a minor as defined by this section."

SECTION 21. G.S. 114-15(b1) reads as rewritten:

"(b1) The State Bureau of Investigation is further authorized, upon request of the Governor or Attorney General, to investigate the solicitation, commission, or attempted

commission, by means of a computer, computer network, computer system, electronic mail service provider, or the Internet, of the crimes defined in the following statutes:

(1) G.S. 14-190.6;
(2) G.S. 14-190.7;
(3) G.S. 14-190.8;
(4) G.S. 14-190.14;
(5) G.S. 14-190.15;
(6) G.S. 14-190.16;
(7) G.S. 14-190.17;
(8) G.S. 14-190.17A;
~~(9) G.S. 14-190.18;~~
~~(10) G.S. 14-190.19;~~
(11) G.S. 14-202.3;
(12) G.S. 14-203.5;
(13) G.S. 14-203.7.

Upon determining the location of the criminal violation, the State Bureau of Investigation shall promptly notify the sheriff and local law enforcement of its investigation."

SECTION 22. G.S. 115C-296(d)(2) reads as rewritten:

"(2) The State Board shall automatically revoke the license of a teacher or school administrator without the right to a hearing upon receiving verification of the identity of the teacher or school administrator together with a certified copy of a criminal record showing that the teacher or school administrator has entered a plea of guilty or nolo contendere to or has been finally convicted of any of the following crimes: Murder in the first or second degree, G.S. 14-17; Conspiracy or solicitation to commit murder, G.S. 14-18.1; Rape or sexual offense as defined in Article 7A of Chapter 14 of the General Statutes. Felonious assault with deadly weapon with intent to kill or inflicting serious injury, G.S. 14-32; Kidnapping, G.S. 14-39; Abduction of children, G.S. 14-41; Crime against nature, G.S. 14-177; Incest, G.S. 14-178 or G.S. 14-179; Employing or permitting minor to assist in offense against public morality and decency, G.S. 14-190.6; Dissemination to minors under the age of 16 years, G.S. 14-190.7; Dissemination to minors under the age of 13 years, G.S. 14-190.8; Displaying material harmful to minors, G.S. 14-190.14; Disseminating harmful material to minors, G.S. 14-190.15; First degree sexual exploitation of a minor, G.S. 14-190.16; Second degree sexual exploitation of a minor, G.S. 14-190.17; Third degree sexual exploitation of a minor, G.S. 14-190.17A; ~~Promoting prostitution of a minor, G.S. 14-190.18; Participating in prostitution of a minor, G.S. 14-190.19;~~Taking indecent liberties with children, G.S. 14-202.1; Solicitation of child by computer to commit an unlawful sex act, G.S. 14-202.3; Taking indecent liberties with a student, G.S. 14-202.4; ~~Prostitution, G.S. 14-204;~~ Prostitution, G.S. 14-203.2; Promoting prostitution of a minor or mentally disabled person, G.S. 14-203.5; Patronizing a minor or mentally disabled person engaged in prostitution, G.S. 14-203.7; and child abuse under G.S. 14-318.4. The Board shall mail notice of its intent to act pursuant to this subdivision by certified mail, return receipt requested, directed to the teacher or school administrator at their last known address. The notice shall inform the teacher or school administrator that it will revoke the person's license unless the teacher or school administrator notifies the Board in writing within 10 days after receipt of the notice that the defendant identified in the criminal record is not the same

person as the teacher or school administrator. If the teacher or school administrator provides this written notice to the Board, the Board shall not revoke the license unless it can establish as a fact that the defendant and the teacher or school administrator are the same person."

SECTION 23. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

SENATE BILL 683:
Safe Harbor/Victims of Human Trafficking

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 7, 2013
Introduced by:	Sens. Goolsby, Barringer, Kinnaird	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition S683-CSSA-38		

SUMMARY: The proposed committee substitute for Senate Bill 683 would increase the penalties for human trafficking, involuntary servitude, and sexual servitude.

CURRENT LAW: Human trafficking and related offenses are prohibited under Article 10A of Chapter 14 of the General Statutes. Violations are a Class F felony if committed against an adult, a Class C felony if committed against a minor.

- Pursuant to G.S. 14-43.11, a person commits the offense of human trafficking when that person knowingly recruits, entices, harbors, transports, provides, or obtains another person by any means with the intent that the other person be held in involuntary servitude or sexual servitude.
- Pursuant to G.S. 14-43.12, a person commits the offense of involuntary servitude when that person knowingly and willfully holds another in involuntary servitude.
- Pursuant to G.S. 14-43.13, a person commits the offense of sexual servitude when that person knowingly subjects or maintains another in sexual servitude.

Prostitution is prohibited under Article 27 of Chapter 14 of the General Statutes, and punishable as a Class 1 misdemeanor. Pursuant to G.S. 14-190.18, promoting prostitution of a minor is a Class C felony. Participating in prostitution of a minor by "patronizing a minor prostitute" is a Class F felony under G.S. 14-190.19, and mistake of age is not a defense.

BILL ANALYSIS:

Sections 1-3 of the bill would redefine the offenses of human trafficking, involuntary servitude, and sexual servitude to provide punishment for persons who act *in reckless disregard* or with actual knowledge of what is occurring. The offenses are all currently punishable as a Class F felony if the victim is an adult; a Class C felony if the victim is a minor. The bill would increase the punishment for offenses against adult victims, making the offenses punishable as Class E felonies. Mistake of age or consent of a minor would not be a defense to prosecution.

Section 4(a) of the bill would repeal existing statutes pertaining to prostitution and promoting/participating in prostitution of a minor. **Section 4(b)** would recodify an existing statute pertaining to the admissibility of evidence concerning a person's reputation and any prior convictions in a trial on prostitution.

Section 5 of the bill rewrites Article 27 of Chapter 14 of the General Statutes pertaining to the criminal offense of prostitution.

Prostitution is defined in the new statute as "the performance of, offer of, or agreement to perform vaginal intercourse, any sexual act as defined in G.S. 14-27.1(4) (see background), or any sexual contact

Def of minor

as defined in G.S. 14-27.1(5) (see background) for the purpose of sexual arousal or gratification, for any money, property, token object, or article, or anything of value.

Prostitution -- A person who knowingly engages in prostitution would be guilty of a Class 1 misdemeanor. A first time offender would automatically receive deferred prosecution and probation for a period of 12 months, during which time the person must not violate any criminal laws, refrain from possessing any firearm or dangerous weapon, submit to at least 3 drug tests at his or her own expense, obtain a vocational assessment, and attend at least 10 counseling sessions. The person could also be required to pay a fine and costs, attend or reside in a facility, provide family support, and refrain from the use of controlled substances. Upon successful completion of probation, the court would discharge the person and dismiss the proceedings against the person; the person would then be eligible to apply for expunction of the criminal record. Minors would be immune from prosecution for prostitution, but they would be subject to the temporary custody provisions of the Juvenile Code. The officer taking the minor into custody would be required to report an allegation of human trafficking and sexual servitude to the county director of social services. Social services would then be required to begin an investigation into child abuse or child neglect within 24 hours of the notification

Solicitation of Prostitution – Any person who solicits another for the purpose of prostitution would be guilty of a Class F felony; solicitation of a minor or a person who is severely or profoundly mentally disabled would be a Class C felony.

Promoting Prostitution – This offense would occur when a person:

- Advances prostitution by soliciting others for the purpose of prostitution or keeping a place of prostitution.
- Profits from prostitution by compelling a person to become a prostitute or arranging or offering to arrange a situation in which a person may practice prostitution.

A person who commits this offense would be guilty of a Class F felony generally. A violation within 1,000 feet of a school would be a Class C felony. A violation by a person with a prior conviction for this offense or another offense in this Article would be a Class C felony.

Promoting Prostitution of a Minor or Mentally Disabled Person – This offense would occur when a person:

- Advances or profits from prostitution involving a minor or severely or profoundly mentally disabled person engaged in prostitution. A violation would generally be a Class B2 felony.
- Confines a minor or a severely or profoundly mentally disabled person against that person's will by the infliction or threat of great bodily harm, or by administering drugs or alcohol and then compels the person to engage in prostitution, arranges a situation in which the person may practice prostitution, or profits from prostitution by the person. A violation would generally be a Class B1 felony.

A violation within 1,000 feet of a school would be a Class B1 felony. A violation by a person with a prior conviction for this offense or another offense in this Article would be a Class B1 felony. The bill would provide for the forfeiture of gain acquired through the criminal activity of any person convicted of keeping a place of minor prostitution or confining a minor for purposes of prostitution.

Patronizing a Prostitute – A first offense would generally be a Class F felony. Any person who has a prior conviction for this offense or another offense in this Article would be punished as a Class C felon. An offense occurring within 1,000 of a school would also be a Class C felony.

Patronizing a Minor or Mentally Disabled Person Engaged in Prostitution -- A first offense would generally be a Class C felony. Any person who has a prior conviction for this offense or another offense in this Article would be punished as a Class B2 felon. An offense occurring within 1,000 of a school would also be a Class B2 felony. A defendant may assert as an affirmative defense his or her reasonable belief that the person engaged in prostitution was of the age of 18 years or older or was not severely or profoundly mentally disabled at the time of the act giving rise to the charge.

Probation Conditions – The court would have authority to order any convicted defendant to be examined for venereal disease. If a person convicted of a prostitution-related offense receives a sentence with probation, and the person has a venereal disease, the period of probation will begin upon such terms and conditions as will insure medical treatment and prevent the spread of the disease. Any female convicted of a prostitution-related offense would be assigned to a female probation officer.

Section 6 of the bill would allow the towing and impoundment of any vehicle used in the commission of a prostitution-related offense by a person arrested for the offense. The person would be required to pay $1,000 to recover the vehicle. Half of the fee would go to the unit of local government whose officers made the arrest to cover any costs of towing and impounding the vehicle. If the defendant is convicted the remaining $500 would be deposited into the State's Crime Victims Compensation Fund to provide services for prostituted persons or other victims of human trafficking. If acquitted of all offenses in connection with the vehicle, the local government unit would refund the full amount of the $1,000 fee to the defendant.

Section 7 of the bill would amend the law pertaining to orders for electronic surveillance to provide that such orders may be granted when the interception of wire, oral, or electronic communications may expedite the apprehension of persons indicted for human trafficking, involuntary servitude, and sexual servitude.

Sections 8 and 9 of the bill would amend the probation statutes to authorize a probation officer to supervise a person placed on probation under a deferred prosecution agreement for prostitution.

Section 10 of the bill would amend the grounds for appropriate relief which may be asserted by a defendant more than 10 days after entry of judgment, to provide that the defendant may assert that he or she was convicted of a first offense of misdemeanor prostitution and prosecution was not deferred, that defendant's participation in the offense was a result of having been a victim of human trafficking, and that defendant seeks to have the conviction vacated. **Section 11** of the bill would provide for the NC Court of Appeals to have jurisdiction to hear a motion for appropriate relief filed by a defendant who was a victim of human trafficking. The bill specifies evidence that may be considered by the court in determining whether the motion should be granted.

Section 12 of the bill would provide for the expunction of the criminal records of a conviction of misdemeanor prostitution if the person has no prior conviction for a violent felony or misdemeanor, and the person was a victim of human trafficking or sexual servitude, the person has no prior convictions for a prostitution offense, or the person was sentenced under deferred prosecution and is eligible to apply for expunction as a result of discharge and dismissal upon completion of probation.

Section 13 of the bill would amend the list of aggravating factors present in an offense that make an aggravated sentence appropriate, to include the fact that the offense was human trafficking, involuntary servitude, or sexual servitude that involved multiple victims or that caused a victim to suffer serious injury as a result of the offense.

Section 14 of the bill would amend the Crime Victims Compensation Act to recognize as a claimant a person who was convicted of a first offense of misdemeanor prostitution and whose participation in the

offense was a result of having been a victim of human trafficking under North Carolina law or federal law.

Section 15 of the bill would amend the Juvenile Code to include within the definition of abused juveniles any juvenile under age 18 whose parent, guardian, custodian, or caretaker commits or allows to be committed an offense of human trafficking, involuntary servitude, or sexual servitude against the child.

Section 16 of the bill would provide for the mandatory payment of restitution to victims of human trafficking, involuntary servitude, or sexual servitude by a defendant convicted of the offense. The defendant would be required to pay the greater of the gross income or value to the defendant of the victim's labor or services, or the value of the victim's labor under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act. Subject to the availability of funds, the Department of Health and Human Services would be authorized to provide or fund emergency services and assistance to victims. The Attorney General, a district attorney, or any law enforcement official would be required to certify to the appropriate federal authorities a victim's cooperation or willingness to cooperate in a criminal investigation in order to enable the victim, if eligible, to qualify for a special immigrant visa and to access any available federal benefits. Cooperation would not be required for victims under the age of 18.

Sections 17-22 of the bill would amend existing statutes to make conforming changes made necessary by other provisions of this bill.

EFFECTIVE DATE: The bill would become effective December 1, 2013 and apply to offenses committed on or after that date.

BACKGROUND:

G.S. 14-27.1(4) and (5)....

(4) "Sexual act" means cunnilingus, fellatio, analingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person's body: provided that it shall be an affirmative defense that the penetration was for accepted medical purposes.

(5) "Sexual contact" means (i) touching the sexual organ, anus, breast, groin, or buttocks of any person, (ii) a person touching another person with their own sexual organ, anus, breast, groin, or buttocks, or (iii) a person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person.

BILL NUMBER: SB 683, 1st edition

SHORT TITLE: Safe Harbor/Victims of Human Trafficking

SPONSOR(S): Senators Goolsby, Barringer, Kinnaird (Primary Sponsors)

FISCAL IMPACT: Yes; partial costs estimated, may be significant

SUMMARY OF COST: Significant impact anticipated due to elevated and new high-level felony offenses; one-time costs to modify court technology resources and forms

BILL SUMMARY & ANALYSIS: a summary and analysis of potential impact is provided below for each section in numerical order.

Section 1: Summary

Section 1 amends existing G.S. 14-43.11, Human trafficking, by expanding the potential pool of defendants by (i) expanding the state of mind under which the defendant may be convicted of the offense to include "reckless disregard" in addition to the current state of "knowingly" trafficking (which is legally ambiguous; see Technical Considerations); and (ii) creating a new variation of the offense against a minor victim, which apparently is redundant to the existing "servitude" crimes in G.S. 14-43.12 and 14-43.13.

This section also raises the offense of human trafficking involving an adult from the current Class F felony to a Class E felony. The Class C felony offense for a violation involving a minor is unchanged.

New (c1) removes two possible defenses to prosecution (mistake of age and consent of a minor).

See also "Technical Considerations."

Section 1: Impact Analysis

By expanding the scope of the existing offense in the amendment to the required state of mind of the defendant, there is a possibility that there may be an increase in charges under this bill. However, in the way in which the amendments regarding trafficking against a minor victim are worded, this part now appears to be redundant to the existing servitude offense (see "Technical Considerations"), which may result in neither a net increase nor decrease in the total number of charges between the two offenses from this perspective.

The reduction in the possible defenses to prosecution is unlikely to impact the number of charges, but it may impact the number of actual convictions for this offense.

NCAOC data show that in FY 2012 there were no defendants charged with the existing Class F felony offense (increased to Class E felony in this section) of human trafficking; there were

three defendants charged with the existing Class C felony offense (charge class remains unchanged) of human trafficking involving a child victim.

The cost for the average workload of the difference between a Class F felony and a Class E felony charge, for those positions typically involved in these ceases (superior court judge, assistant district attorney, deputy clerk, court reporter, and victim witness/legal assistant) is $706 per case.

Section 2: Summary

Section 2 amends existing G.S. 14-43.12, Involuntary servitude, by expanding the potential pool of defendants by expanding the state of mind under which the defendant may be convicted of the offense to include "reckless disregard" in addition to the current state of "knowingly."

This section also raises the offense of involuntary servitude involving an adult from the current Class F felony to a Class E felony. The Class C felony offense for a violation involving a minor is unchanged.

New (c1) removes two possible defenses to prosecution (mistake of age and consent of a minor).

See also "Technical Considerations."

Section 2: Impact Analysis

By expanding the scope of the existing offense in the amendment to the required state of mind of the defendant, there is a possibility that there may be an increase in charges under this bill.

The reduction in the possible defenses to prosecution is unlikely to impact the number of charges, but it may impact the number of actual convictions for this offense.

NCAOC data show that in FY 2012 there were no defendants charged with the existing Class F felony offense (increased to Class E felony in this section) of involuntary servitude; there were no defendants charged with the existing Class C felony offense (charge class remains unchanged) of involuntary servitude involving a child victim.

The cost for the average workload of the difference between a Class F felony and a Class E felony charge, for those positions typically involved in these ceases (superior court judge, assistant district attorney, deputy clerk, court reporter, and victim witness/legal assistant) is $706 per case.

Section 3: Summary

Section 2 amends existing G.S. 14-43.13, Sexual servitude, by expanding the potential pool of defendants by expanding the state of mind under which the defendant may be convicted of the offense to include "reckless disregard" in addition to the current state of "knowingly."

This section also raises the offense of sexual servitude involving an adult from the current Class F felony to a Class E felony. The Class C felony offense for a violation involving a minor is unchanged.

New (b1) removes two possible defenses to prosecution (mistake of age and consent of a minor).

See also "Technical Considerations."

Section 3: Impact Analysis

By expanding the scope of the existing offense in the amendment to the required state of mind of the defendant, there is a possibility that there may be an increase in charges under this bill.

The reduction in the possible defenses to prosecution is unlikely to impact the number of charges, but it may impact the number of actual convictions for this offense.

NCAOC data show that in FY 2012 there were three defendants charged with the existing Class F felony offense (increased to Class E felony in this section) of sexual servitude; there were eleven defendants charged with the existing Class C felony offense (charge class remains unchanged) of sexual servitude involving a child victim.

The cost for the average workload of the difference between a Class F felony and a Class E felony charge, for those positions typically involved in these ceases (superior court judge, assistant district attorney, deputy clerk, court reporter, and victim witness/legal assistant) is $706 per case. If there are three defendants charged with this offense each year that will be a cost to the court system of $2,118 annually.

Section 4: Summary

Section 4 repeals eight statutes from Chapter 14 containing criminal offenses, most of which are replaced in Section 5 of this bill. There is no clear one-to-one relationship between any existing offense and the proposed new offenses, so it is possible that the sponsors intended that all repealed offenses would otherwise be covered by new offense statutes; if so, the proposed offenses may need some additional clarification. But as Edition 1 is written, offenses under the following provisions would appear to be repealed entirely, with no clear analogues in the remainder of SB 683:

- G.S. 14-204(3): The variation of this offense that makes it a crime to "receive, or to offer or agree to receive any person into any place ... for the purpose of prostitution" appears to have no clear replacement in SB 683. (The variation of "permitting" a person to remain in a place of prostitution would appear to constitute "advancing" prostitution under the proposed G.S. 14-203.4 or 14-203.5.)

- G.S. 14-204(4): The variation of this offense that makes it a crime to "take, or transport, or to offer or agree to take or transport, any person to any place ... with knowledge or reasonable cause to know that the purpose ... is prostitution" appears to have no clear

replacement in SB 683, unless the additional element of doing so for compensation is present, in which case the transport might constitute "promoting" prostitution under the "profiting" theory of the proposed G.S. 14-203.4 or 14-203.5. (The variation for "directing" a person to a place of prostitution would appear to constitute "advancing" prostitution under the proposed G.S. 14-203.4 or 14-203.5.)

- G.S. 14-204(6): When committed by a prostitute, the offense of residing, entering or remaining in a place of conveyance for the purpose of prostitution appears to have no clear analogue in SB 683. Further, some acts currently prosecutable under this provision (*e.g.*, a patron "entering or remaining in a place for the purpose of prostitution") will have no clear analogue in SB 683, unless the offense is committed "with a person not his or her spouse" (an element not required by the current offense), in which case it would be "patronizing a prostitute" under the proposed G.S. 14-203.6.

Section 4: Impact Analysis

The repeal of the statutes listed in Section 4 will require conforming changes to NCAOC's automated systems and offense codes, as well as changes to some forms used for reportable sex offenses. NCAOC is unable to provide an estimate for the costs associated with this section alone (see "Section 5: Impact Analysis").

Section 5: Summary

Section 5 creates multiple new sections within Chapter 14, Article 27, which replace most (but not all) of the provisions repealed in Section 4 and creates a few new criminal offenses. This section also creates certain probation conditions (new G.S. 14-203.10).

The new provisions contained in Section 5 are not clear one-to-one replacements of the statutes repealed in Section 4. Some of the conduct currently prohibited by a single provision in the current Chapter 14, Article 27, might be eligible for prosecution under different provisions in the proposed new statutes, but with vastly different offense classes (see the NC Sentencing and Policy Advisory Commission's analysis on this bill for details on these new offenses). Many of the existing prostitution-related offenses are currently punished as Class 1 misdemeanors, while many of the offenses created in this section are of a significantly higher offense classification:

1. G.S. 14-203.2, Prostitution
    a. Class 1 misdemeanor

2. G.S. 14-203.3, Solicitation of a sex act
    a. Class F felony;
    b. Class C felony if from minor

3. G.S. 14-203.4, Promoting prostitution
    a. Class F felony;
    b. Class C felony if within 1,000 feet of school;
    c. Class C felony for second or subsequent violation;

d. Class C felony for violations in combination with other certain convictions

4. G.S. 14-203.5, Promoting prostitution of a minor
   a. Class B2 felony for violations of (a)(1);
   b. Class B1 felony if within 1,000 feet of school;
   c. Class B2 felony for violation of (a)(2);
   d. Class B1 felony for violation of (a)(3)
   e. Class B1 felony for second or subsequent violation;
   f. Class B1 felony for violations in combination with other certain convictions

5. G.S. 14-203.6, Patronizing a prostitute
   a. Class F felony;
   b. Class C felony if within 1,000 feet of school;
   c. Class C felony for second or subsequent violation;
   d. Class C felony for violations in combination with other certain convictions

6. G.S. 14-203.7, Patronizing a minor engaged in prostitution
   a. Class C felony;
   b. Class B2 felony if within 1,000 feet of school;
   c. Class B2 felony for second or subsequent violation;
   d. Class B2 felony for violations in combination with other certain convictions

Section 5: Impact Analysis

Most current offenses related to prostitution (except those identified for Section 4 that appear to have no analogous replacements in Section 5) would increase significantly in severity, and likewise would increase in cost to the court system for each disposition. The new offenses created by Section 5 would be new, additional costs to the court system as well. Because these offenses do not precisely mirror existing offenses for which NCAOC may have charge codes, the number of potential charges for these new offenses are unable to be estimated, however, the cost associated with each case could be significant. The table below shows the average cost for a disposition for each charge class associated with the changes in this bill.

Charge Class	Cost per Disposition
Class B1 Felony	$11,762
Class B2 Felony	$8,730
Class C Felony	$4,240
Class F Felony	$912
Class 1 Misdemeanor	$165

The changes to the statutes in Section 5 will require conforming changes to NCAOC's automated systems and offense codes, as well as to the systems that produce criminal processes (*i.e.* NCAWARE). NCAOC is unable to provide an estimate for the costs associated with this section alone, however, when considered in tandem with the changed required by Sections 4 and 17, the one-time total cost may be moderate.

NCAOC will also need to make changes to multiple criminal forms, including changes to the forms used for reportable sex offenses and the creation of a new form for the new proposed conditional discharge for first-time prostitution offenders. The expense associated with modifying these forms is not anticipated to be significant.

Section 6: Summary

Section 6 creates new G.S. 14-203.15, Vehicle impoundment, which provides for the discretionary impoundment of vehicles "used ... in the commission of" an offense under Chapter 14, Article 27, as amended. See also "Technical Considerations."

Section 6: Impact Analysis

NCAOC would likely need to create a new "order of acquittal" form to comply with proposed subsection (c). These proceedings would come before district or superior court judges to enter the order in cases to which it apples. This would impact court workload; however, each instance is not likely to require a significant amount of time. There may be costs associated with providing copies of the order to acquitted defendants (if it must be provided free of charge, pursuant to G.S. 7A-308(b)).

Section 7: Summary

Section 7 amends existing 15A-209, Offenses for which orders of electronic surveillance may be granted, subdivision (c)(1) by expanding the list of offenses where the interception of wire, oral, or electronic communication may be granted.

Section 7: Impact Analysis

NCAOC does not anticipate any significant impact on the court system related to Section 7. There may be some increase in applications by the Attorney General's office to judicial review panels under G.S. 15A-291 for orders to intercept communications for the list of offenses expanded in (c1), however, any additional workload on the courts created by the changes proposed in this section is not anticipated to be significant.

Section 8: Summary

Section 8 amends existing G.S. 15A-1415(b)(10), Grounds for appropriate relief which may be asserted by defendant after verdict; limitation as to time, and creates a new ground for a motion for appropriate relief (MAR), which can be asserted at any time after conviction of certain offenses against a minor.

Section 8: Impact Analysis

The new grounds for an MAR may create additional motions, which will impact the workload of superior court (namely superior court judge, assistant district attorney, deputy clerk, court reporter, and victim witness/legal assistant), however, the number of additional motions is anticipated to be small because the proposed change encompasses an extremely limited class of offenders.

See also "Technical Considerations."

Section 9: Summary

Section 9 creates new G.S. 15A-1416.1, Motion by the defendant to vacate prostitution conviction for sex trafficking victim, which provides a procedure for hearing the MARs allowed under Section 8 (G.S. 15A-1415(b)(10)). These motions would be brought before the Court of Appeals.

Section 9: Impact Analysis

Similarly to Section 8, because the proposed change encompasses an extremely limited class of offenders the additional workload on the Court of Appeals is not anticipated to be significant.

See "Technical Considerations" for additional comments on this section.

Section 10: Summary

Section 10 creates new G.S. 15A-145.6, Expunctions for certain defendants convicted of prostitution, which provides for a new type of expunction proceeding for misdemeanor convictions for prostitution under the proposed G.S. 14-203.2.

Section 10: Impact Analysis

NCAOC will need to create a new petition form, instruction sheet, and documentation for the new expunction proceeding proposed in this section. The confidential automated system that maintains an index of expunctions granted would need to be modified to contain the new expunction. NCAOC is unable to provide an estimate for the costs associated with this section alone (see 'Section 5: Impact Analysis").

There would be an impact on NCAOC personnel time to process the petitions and granted orders, as well as an impact on court personnel (namely superior court judge, assistant district attorney, deputy clerk, court reporter) for the hearings and related processes (processing petitions, scheduling hearings, carrying out granted orders by expunging records and notifying relevant agencies). These in-court proceedings may require a more protracted proceeding than other expunctions because of the mandatory delay for a probation officer's investigation under subdivision (e)(1). However, the number of defendants to which this new expunction option may apply is not anticipated to be significant.

See alos "Technical Considerations."

Section 11: Summary

Section 11 amends creates new G.S. 15A-1340.16(d)(19a) and (19b) (within Aggravated and mitigated sentences) by creating two new aggravating factors for felony sentencing for violations of the human trafficking, involuntary servitude, and sexual servitude statutes, for (i) cases involving multiple victims or (ii) if the victim suffers serious injury as a result of the offense.

Section 11: Impact Analysis

Because the finding of one or both of these aggravating factors carries the possibility of a more severe sentence (up to 25% longer) and defendants might put forth a more vigorous defense, NCAOC anticipates additional trial court proceedings to prove the two new factors in applicable cases. The number of defendants for whom these aggravating factors may be sought is unknown and thus, any additional costs incurred from these longer proceedings cannot be estimated.

The changes proposed in this section will require the modification of two existing forms used in cases with aggravating factor issues. The expense associated with modifying these forms is not anticipated to be significant.

Section 12: Impact Analysis

NCAOC does not anticipate an impact on the court system associated with this section (the courts do not administer the Crime Victims Compensation Fund).

Section 13: Summary

Section 13 amends existing G.S. 7B-101, Definitions, to modify the definition of an "abused juvenile" under Chapter 7B, Subchapter I, to replace the reference to G.S. 14-190.18 (repealed in Section 4) with its corresponding G.S. 14-204.5 (created in Section 5). It also adds to the list of offenses committed by a parent, guardian, etc., that render a child "abused" in subdivision (g), which covers the human trafficking/servitude offenses.

Section 13: Impact Analysis

NCAOC anticipates a possibility for an increase in juvenile abuse/neglect/dependency petitions and related proceedings, but only to the extent that the persons prosecuted for these newly-created offenses may have custody or control over juveniles that were involved in the offenses. The number of criminal defendants to whom this situation may apply is unknown, and thus, any additional costs to the court system cannot be estimated.

See also "Technical Considerations."

Section 14: Summary

Section 14 creates new G.S. 14-43.20, Mandatory restitution; victim services; forfeiture, who provides a customized restitution provision for victims of the trafficking/servitude offenses in Chapter 14, Article 10A.

Section 14: Impact Analysis

NCAOC does not anticipate significant impact on the court system overall, however, district attorney office staff may be required to carry out the certification duties referenced in subsection (d) for these offenses.

Section 15: Impact Analysis

NCAOC does not anticipate an impact on the court system associated with this section.

Section 16: Summary

Section 16 amends exiting G.S. 14-208.6, Definitions, in subsection (5), to replace G.S. 14-190.18 and 14-190.19 (repealed in Section 4) with the corresponding offenses of G.S. 14-203.5 and 14-203.7 (created in Section 5).

Section 16: Impact Analysis

NCAOC will have to make modifications to forms used for reportable sex offenses. The expense associated with modifying these forms is not anticipated to be significant.

See also "Technical Considerations."

Section 17: Summary

Section 17 amends existing G.S. 15A-380, Definitions, in subdivision (a)(5), which contains the list of offenses for which a person is a "victim" within the meaning of the Victim Rights Act, Chapter 15A, Article 46, to replace G.S. 14-190.19 (repealed by Section 4) with G.S. 14-203.7 (created by Section 5).

Section 17: Impact Analysis

NCAOC does not anticipate any additional impact from this section, since the technology modifications that will need to be made to match the changes proposed in Sections 4 and 5 of this bill will incorporate these changes as well.

Section 18: Impact Analysis

NCAOC does not anticipate an impact on the court system associated with this section.

See also "Technical Considerations."

Section 19: Impact Analysis

NCAOC does not anticipate an impact on the court system associated with this section.

Section 20: Impact Analysis

NCAOC does not anticipate an impact on the court system associated with this section.

See also "Technical Considerations."

Effective Date

This bill has an effective date of December 1, 2013, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

NCAOC does not anticipate any issues making the necessary technology modifications by the effective dates listed in this bill.

The National Center for State Courts has developed workload standards for North Carolina's court personnel after extensive studies. Based on workload formulas applied to FY 2011-12 filing data and projected through FY 2014-15, the court system shortages statewide for the following groups of court personnel:

District Court Judges:	40
Deputy and Assistant Clerks:	332
Assistant District Attorneys:	104
Other District Attorney office staff:	82
Judicial support staff:	32
Magistrates:	119

Therefore, any increase in workload could not be absorbed by existing staff.

Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

TECHNICAL CONSIDERATIONS:

A. **Section 1.**

1. Expanded "trafficking" offense.

The insertion of "reckless disregard of the fact" as an alternate state of mind by which a person can commit human trafficking (as opposed to "knowingly") is ambiguous.

It's not clear what "fact" the defendant must disregard recklessly. If it refers to the actions in the phrase that follows ("recruits, entices," etc.), it's unclear: how does one "recklessly recruit?"

If "fact" instead refers to the object of the offense (that the victim be held in servitude), then it is contrary to the nature of the offense as a specific intent crime. The trafficking offense is committed only when the offender intends that the victim be held in servitude. A person cannot negligently commit a specific intent crime; he either specifically intends the consequence of the criminal act, or he does not.

2. New variation of "trafficking" against a minor victim.

The changes in Section 1 would create the following alternate offense in G.S. 14-43.11 (internal numbering omitted): "A person commits the offense of human trafficking when that person ... knowingly or in reckless disregard of the fact causes the minor to be held in involuntary servitude or sexual servitude."

This would be almost identical to the existing "servitude" crimes in G.S. 14-43.12 and 14-43.13 (as amended by SB 683), with the exceptions that:

a. the "knowingly" state of mind under the trafficking variation is instead "knowingly and willfully" for involuntary servitude under 14-43.12; and
b. the proposed new variation of "trafficking" would apply when a person "causes" a minor to be held in servitude, as opposed to "holds" (involuntary servitude) or "subjects or maintains" (sexual servitude).

It is unclear whether or not the "knowingly and willfully" state of mind for the existing offense under 14-43.12 is a meaningful difference that would keep it legally distinct from the proposed amendment to 14-43.11 in Section 1. "Willful" means an act done without lawful justification or excuse, or purposefully and deliberately in violation of the law. Because the involuntary servitude offense of 14-43.12 already contains an exception for otherwise lawful relations between a parent and an unemancipated child, "knowingly" versus "knowingly and willfully" may be a distinction without a difference for these two offenses. (There's no "willfully" in 14-43.13, sexual servitude, presumably because there's no otherwise lawful behavior that could be covered by the offense.)

"Causes" in the new variation of trafficking of a minor suggests an indirect means of committing the offense (*e.g.*; by enabling others to commit the offense), but it is unclear whether or not that is more expansive than "subjects" in 14-43.13 (sexual servitude). It may be more expansive that the direct "holds" for involuntary servitude, G.S. 14-43.12, but it does not appear to create a separate offense that could be charged *in addition to* the existing servitude offense.

Because the proposed new variation of "trafficking" (which doesn't actually involve trafficking) appears to be redundant to the existing servitude offenses, it would appear to cause neither a net increase nor decrease in prosecutions; it would just give the State two functionally similar offenses from which to choose. Therefore any prosecutions for this new variation of "trafficking" a minor likely would draw from existing prosecutions (in the same offense class) for either of the two existing "servitude" offenses involving a minor.

B. **Section 2.**

Like Section 1, Section 2 introduces the state of mind of "reckless disregard" as a potential state of mind by which a defendant could commit the offense of involuntary servitude.

Unlike Section 1, the offense modified in Section 2 is not a specific intent crime, so the "reckless disregard" standard is not internally contradictory to the existing offense, but it is ambiguous: reckless disregard of *what*? Other criminal offenses that impose culpability based on a standard of reckless disregard generally are more specific about the duty disregarded. *See, e.g.*, G.S. 14-32.2 (patient abuse: reckless

disregard "of human life"); G.S. 14-43.14 (sale of a minor: reckless disregard "for the life or safety of a minor"); G.S. 14-318.4 (felony child abuse: reckless disregard "for human life").

C. **Section 3.** Section 3 has the same issue as Section 2.

D. **Section 4.** No technical concerns.

E. **Section 5.**

1. G.S. 14-203.1. Definitions.

   a. In the proposed 14-203.1(1)a., p. 2, line 32, should there be an "as" after "acting" or after "than?" *E.g.*, "... when acting as other than a prostitute or a patron...".

   b. In the same statute, p. 3, line 4, should there be an "as" after "acting" or "than?" *E.g.*, "When acting as other than a prostitute ..."

   c. In the definition of "minor," p. 3, line 3, should it account for married or judicially emancipated minors? Compare G.S. 14-190.13(3).

2. G.S. 14-203.2. Prostitution.

   a. In subsection (c), p. 3, line 16, the reference to "deferred prosecution" should be "conditional discharge." Describing the process in the proposed statute as "deferred prosecution" is inconsistent with the terminology in existing statutes for deferred criminal proceedings. Deferred prosecution is a pre-conviction voluntary agreement between the defendant and DA. The post-conviction proceeding set out in the proposed statute is instead functionally identical to a "conditional discharge" under G.S. 90-96 and similar statutes, which is imposed by the court after a verdict of guilt, rather than via a voluntary agreement with the DA before the verdict.

   b. In subdivision (c)(1), p. 3, line 20: recommended change: "sentence the person to probation" to "place the person on probation." A sentence is a feature of a judgment of conviction; by its own terms, the proposed procedure is without the entry of judgment. Compare the corresponding text in G.S. 90-96(a).

   c. In subdivision (c)(2), p. 3, line 23: it is unclear if the sponsors intend that the period of probation be *exactly* 12 months, no more, or no less. Probation under a conditional discharge normally is governed by the usual probation statutes, for which G.S. 15A-1343.2 sets the default durations and sets out the court's authority to deviate from them. For a similar conditional discharge provision setting a minimum probation duration (but still giving the court discretion to

impose a longer term, if necessary), see G.S. 90-96(a1) ("probation, if imposed, shall be for *not less than* one year").

d. Subdivisions (c)(3) and (c)(4), p. 3, lines 26 – 47: Unless the sponsors are trying to create an entirely new sort of probation, outside of Article 82 of Chapter 15A, subdivisions (3) and (4) are problematic. Much of subdivision (3) already is covered by the regular conditions of probation in G.S. 15A-1343(b), which are automatically part of any probation imposed pursuant to a conditional discharge. *See* State v. Burns, 171 N.C. App. 759, 615 S.E.2d 347 (2005) (absent a specific statutory provision to the contrary, "probation" under a conditional discharge works just like "probation" pursuant to a judgment of conviction, so all the normal conditions and procedures apply).

In addition, subdivision (4) is permissive ("may"), so its sub-subdivisions do not add anything to the statute. All of them are covered either by existing regular or special conditions of probation under G.S. 15A-1343. More to the point, item b. (pay a fine and costs) suggests that, to the extent the court is granted the authority in subdivision (4) to impose that as a condition, it could be interpreted to prohibit the court from imposing other monetary obligations like attorney fees for appointed counsel. *I.e.*, by setting out a specific list of permissible conditions, the holding in Burns would suggest that they constitute an exception to the general probation statutes and therefore constitute an exclusive list of conditions that may be imposed.

The only unique features of subdivisions (3) and (4) are sub-items (iv) and (v) under (3), and the minimum number of drug tests in (iii). If the sponsors want those to be mandatory conditions of probation imposed for a conditional discharge under the proposed 14-203.2, then they could be set out in subdivision (2) in the same manner than 90-96(a1) does for drug education school. *E.g.*:

> "(2) When a person is placed on probation pursuant to this section, the court shall specify a period of probation of *[at least? no more than? exactly?]* 12 months and shall defer further proceedings in the case until the conclusion of the period or until the filing of a petition alleging violation of a term or condition of probation. The court shall impose as special conditions of probation that the person:
>
> > "a. submit to testing for the possible presence of prohibited drugs pursuant to G.S. 15A-1343(b)(16) at a time and in a manner as ordered by the court, but no less than three times during the period of the probation, with the cost of the testing [or "of any positive test," if the intent is to comport with the text of the existing condition of probation] to be paid by the probationer;
> > b. obtain a vocational assessment administered by a program approved by the court; and

c. attend no fewer than ten counseling sessions administered by a program approved by the court."

And then subdivisions (3) and (4) could be deleted.

e. Subsection (c)(6), p. 4, line 3: perhaps the cite at the end of the line was intended to be G.S. 15A-145.*6*, created by Section 10 of the bill? The cite in Edition 1 (15A-145.2(a)) is an expunction provision specific to drug offenses.

f. Subdivision (c)(8), p. 4, line 9. The proposed subdivision (8) requires a conforming change in G.S. 15A-150 to report all successful discharges and dismissals under 14-203.2 to the AOC, so that AOC will have records of the prior discharges. Without a conforming change, there will be no way to give effect to subdivision (8), because some prior discharges will be expunged. For those cases, only the AOC will have a record from which to inform the court that a defendant had a prior discharge.

g. Subsection (d), p. 4, lines 10-19: the criminal/juvenile nature of subsection (d) is confusing.

1) First, (d) provides that a "minor" (defined as "less than 18 years of age" in the preceding statute is "immune from prosecution" under the section.

That definition nullifies one of the three alternative avenues to expunction under the proposed 15A-145.6 in Section 10.

The expunction provision, 15A-145.6, would allow expunction of a conviction for a person who was "less than 18 years old at the time that the person committed the offense." G.S. 15A-145.6(b)(2)b., p. 8, line 45-46. That expunction provision is limited to offenses under 14-203.2, the statute proposed in Section 5. If a minor is immune to prosecution for the offense, then there will never be a conviction under that statute that needs expunging for an offender under 18.

2) Second, it is not clear what the sponsors intend with the references to delinquency provisions in Chapter 7B.

The cited statutes, 7B-1900, -1901 and -1905, concern only delinquency and undisciplined proceedings. A "minor" under the proposed statutes in Section 5 would be anyone under 18, but a juvenile delinquent is only a person under 16 at the time of the offense. Does the bill's reference to the three statutes in the 7B-1900s mean that the "temporary custody" is only for an undisciplined proceeding? Further, G.S. 7B-1901 requires the drawing of a juvenile petition for delinquency or undisciplined status if the officer does not immediately release the child to a parent, guardian, custodian or school,

so if the intent of subsection (d) is to initiate an undisciplined proceeding instead of a criminal proceeding, it could be clearer.

3. G.S. 14-203.3. P. 4, line 27: After a quick search, the phrase "severely or profoundly mentally disabled" does not seem to appear anywhere in the general statutes, including grammatical variations thereof (*e.g.*, "profound mental disability"). This appears to be a standard copied from another state's statutes on this subject, but unless there is a clear definition in N.C., the ambiguity will result in disparate application among N.C. courts. As noted below, this concern reappears in several of the statutes proposed in Section 5.

4. G.S. 14-203.4.

   a. P. 4, lines 32-35: The point of the two variant elements in a. and b. is unclear. By definition, a person who "profits" from prostitution would be (according to the definition in the proposed G.S. 14-203.1(3)), any person other than a prostitute who receives anything of value for prostitution services. Because sub-subdivision (a)(2)c. satisfies the requirement to "profit" by the catch-all of "any means other than" those described in a. and b., but c. does not require any additional elements, it appears that the "profits from prostitution" variant of the offense in (a)(2) is satisfied merely by satisfying the definition in 14-203.1(3) (receiving something of value derived from prostitution services). The only apparent purpose for the State to plead (or expend the effort and resources to prove) the "compelling" or "arranging" elements of a. or b. would be their apparent penalty-increasing effect under subsection (b), but as noted below, the "combination of convictions" provision, itself, is unclear.

   b. P. 4, line 47: "combination of convictions" is unclear. That phrase appears nowhere in any other sentencing provision in North Carolina, but it appears in several the substantive offenses in SB 683. Does it mean multiple convictions arising from the same sentencing episode, with all of them sentenced at the stated offense class? Or does it mean a conviction for any of the offenses listed, after a prior conviction for any of the offenses listed? This provision (in all of the proposed statutes in which it appears throughout the bill) probably needs to be clarified, or many years (and great expense) may be spent in appellate proceedings (and probably re-sentencings at the trial level) figuring it out.

5. G.S. 14-203.5. This section has the same ambiguous phrases of "severely or profoundly mentally disabled" as 14-203.3 and for a "combination of convictions" as 14-203.4.

6. G.S. 14-203.6. This section has the same ambiguous phrase concerning a "combination of convictions" as 14-203.4.

7. G.S. 14-203.7. P. 6, lines 22-27: This might be more of a policy question than a technical one, but is there a reason why the proposed offense of 14-203.7 (patronizing a minor prostitute) does not include the offense variation of subdivision (a)(2) of the immediately preceding 14-203.6 (patronizing a prostitute), for entering or remaining in a place of prostitution with the intent to engage in a sexual act [with a minor]? In particular, 14-203.7(b) would provide that it is an affirmative defense that the defendant reasonably believed the intended prostitute was not a minor or was not disabled. If that is a defense, is it a defense to conviction, entirely, or does it merely drop the offense down to the lesser-included (?) offense of 14-203.6? If the latter, then there will be a disconnect between the two offenses, because there is no way to prosecute the "enter and remain" variation under 14-203.7 and then drop down to the lesser-included upon a successful defense of the defendant's ignorance of the prostitute's age or mental state, because that variation does not exist in 14-203.7 to charge.

8. G.S. 14-203.10.

a. First, there is no 14-203.8 or -203.9. This statute follows immediately after 14-203.7. Were the two missing sections deleted from a prior draft without renumbering, or were they supposed to be reserved for future codification?

b. P. 6, lines 39-44: The proposed 14-203.10 for prostitution probationers with venereal diseases has a couple of issues.

1) First, it is a bit circular. The proposed statute appears to require that the court Impose as a condition of probation that a defendant convicted under the Article will get medical treatment for the condition and (somehow) prevent its spread, but the court will not necessarily know that fact until the court has ordered the defendant examined.

2) Confidentiality. Imposition of the condition of probation to obtain treatment and prevent the spread of a venereal disease probably requires that the court seal the judgment from public disclosure, which is unusual for a criminal judgment of conviction. If any report of a defendant's disease or condition is returned to the court, that probably also will have to be kept under seal.

G.S. 130A-143 requires that any record, "whether publicly or privately maintained," that identifies a person with "a disease or condition required to be reported pursuant to the provisions of this Article shall be strictly confidential." Most of the sexually-transmitted diseases must be reported. See G.S. 130A-134 and 10A NCAC 41A .0101, at http://reports.oah.state.nc.us/ncac/title%2010a%20-%20health%20and%20human%20services/chapter%2041%20-

%20epidemiology%20health/subchapter%20a/10a%20ncac%2041a%20.0101.html. None of the exceptions to confidentiality under G.S. 130A-143 applies to a criminal judgment. Subdivision (6) appears to cover only evidence received in a pending proceeding, not information about a reportable disease included in a court's judgment.

Further, this provision may prove unworkable for the courts as a practical matter, because the category of medical conditions in question is undefined. "Venereal disease" is no longer a defined term in N.C. statutes. Chapter 130A, Article 6, Part 3 was repealed in 1991, so it's not clear what diseases are covered by the proposed 14-203.10 (and the existing 14-208). Only some of the conditions under the common understanding of "venereal diseases" are on the list of reportable diseases under 10A NCAC 41A .0101. Others are not, *e.g.*, genital herpes. So the proposed 14-203.10, read in concert with G.S. 130A-143, would require confidentiality of criminal judgments for defendants with some "venereal diseases" but not others, and the lack of a definition means that judges will interpret the term differently, sealing some judgments but not others, even for defendants who have the exact same disease.

F. **Section 6.** Vehicle impoundment.

1. The seizure ("impoundment") of a vehicle would be triggered only by an "arrest" for an offense under Chapter 14, Article 27, as opposed to an actual "charge" for that offense. In cases of arrest without a warrant under G.S. 15A-401, was it intended that a person arrested must pay $1,000.00 to retrieve the vehicle even when a judicial official does not find probable cause to charge the person with the offense for which he or she was arrested?

2. The seizure appears to be within a law enforcement officer's discretion ("may" tow and impound). The statute provides no guidance for (or limitations on) the exercise of that discretion, which may lead to disparate treatment of otherwise similarly-situated defendants.

3. To what offenses would the seizure apply?

   A vehicle is subject to seizure only if used "in the commission of" an offense under Article 27. Unlike the current prostitution statutes of Article 27, several of which contemplate the prohibited conduct occurring in a "conveyance" (*i.e.*, vehicle), the proposed statutes in SB 683 do not mention a vehicle or conveyance. Several of the statutes refer to a "place of prostitution," *e.g.*, the "advancing" theories of promoting prostitution under G.S. 14-203.4 and 14-203.5 (given the definition of "advancing" in G.S. 14-203.1(1)b.), but "place of prostitution" is not defined in Article 27 (currently or as proposed).

4. The procedures for towing and storage of the vehicle are unclear. Compare the level of detail in G.S. 20-28.3, particularly subsections (b) through (d).

5. The procedures for the recovery fee in subsection (a) are unclear. *E.g.*:

   a. Can someone other than the arrestee (*e.g.*, the actual owner) recover the car? As written, they can not. If the bill is amended to provide that an owner can pay the fee, will they be entitled to restitution from the defendant? What about a lienholder?

   b. The receiving agency is unclear. The fee is paid to "the local law enforcement agency that has jurisdiction where the arrest was made." If the arrest occurred within city limits, [at least] two local law enforcement agencies may have jurisdiction: the local police department and the Sheriff. Some counties also may have a city-county agency with local jurisdiction.

   c. What if towing and storage costs exceed $500? That is all the local "unit of government" gets from the fee "for the costs incurred by the unit ... to tow and impound the vehicle."

   d. The disbursement of the fee is unclear. The second sentence of subsection (b) provides that the Crime Victims Compensation Fund gets $500 of the fee "upon the defendant's conviction" of a relevant offense. The first $500 of the fee for the local government unit is disbursed in the first sentence, so does that occur prior to conviction?

   e. What happens to the vehicle if the arrestee never pays the recovery fee?

   f. The defendant gets a refund of the fee if "acquitted of all of the offenses in connection with which a vehicle was impounded." What if the defendant is convicted of a lesser-included offense or other, substituted offense that is not in Article 27? Must the fee be refunded?

   g. Courts normally do not "order" acquittal as contemplated in subsection (c); that disposition merely is recorded in the minutes of the court and the court's records. Must the defendant be provided a copy of this order free of charge, or would the certified copy fees of G.S. 7A-308 apply?

   h. Subsection (c) also provides for refund of the fee if "the charges against the defendant for those [Article 27] offenses are dismissed."

      1) Will a certified copy of the DA's dismissal also suffice to obtain the refund, or does the court also need to enter some sort of "order" that merely states that the State has taken a dismissal?

2) What if the district attorney dismisses the original charges as contained on a warrant but then indicts the defendant for the same charges before the grand jury (at some later, undetermined time)? Is the $1,000 fee refunded and then re-charged upon indictment? If re-charged and not paid within some undetermined period of time, must the court order re-seizure of the vehicle pending trial?

G. **Section 7.** No technical concerns.

H. **Section 8.** P. 7, line 39-40: To correspond to the suggested change to G.S. 14-203.2 (replacing terminology for "deferred prosecution" with the more appropriate "conditional discharge"), perhaps the phrase can be changed to:

"prosecution of the offense was not deferred"

to

"the court did not discharge the defendant and dismiss the charge"

I. **Section 9.** The proposed MAR procedure in 15A-1416.1 is unclear.

1. First, it is unclear whether or not the procedure before the Court of Appeals was intended to be the exclusive forum for this sub-set of MARs. If so, the statute needs to specify that. Normally, jurisdiction over MARs lies in the trial division. G.S. 15A-1413. The appellate division generally has exclusive jurisdiction over MARs only when an appeal is otherwise pending in that division. G.S. 15A-1418.

2. Second, both as a technical issue and one of impact, the proposed G.S. 15A-1416.1 places an evidentiary hearing before the Court of Appeals. The appellate division normally does not review issues of fact, particularly if the "sworn statement" in subdivision (b)(3) includes the giving of oral testimony by a witness, with an opportunity for the State to cross-examine or rebut the testimony of the defendant's witness. Is there a reason why the procedure for this sole ground for an MAR would not follow the normal division of MAR review between the trial and appellate divisions in Chapter 15A, Article 89?

3. Third, the proposed criteria in subsection (b) may need clarification. P. 8, line 9 refers to the defendant having been a victim of "human trafficking," while the proposed MAR procedure in G.S. 15A-1415(b)(10) would apply to victims of human trafficking and sexual servitude. Subdivision (b)(1) refers to a victim of a "trafficking offense under ... G.S. 14-43.13 [sexual servitude]," so a conforming reference on line 9 might be helpful.

J. **Section 10.**

1. P. 8, lines 30-32: The proposed definition of a "violent" offense for the expunction statute is significantly different from the increasingly-divergent definitions of "violent" offenses in the General Statutes. In particular, was it intended to exclude (and therefore permit expunction for defendants who have) assaults in felony Class H (*e.g.*, by strangulation, G.S. 13-32.4) and misdemeanor classes below A1? Contrast G.S. 15A-145.5(a)(2).

2. P. 8, lines 36-38. In effect, this criterion will disqualify a petitioner only for an offense
that occurred in North Carolina, because (i) the federal courts and other states do not use our letter-based system of offense classification (on which the "violent" criterion depends for this statute), and (ii) the statute's definition of a "violent" offense does not provide for "substantially similar" offenses from other jurisdictions. *See, e.g.*, G.S. 15A-1340.14(e).

3. P. 8, lines 45-46: As noted above in the technical considerations for 14-203.2 under
Section 5, this eligibility criterion for expunction is a nullity, because persons under 18 are immune from prosecution under that statute.

4. P. 8, lines 47-49: As noted earlier, a "deferred prosecution" is a pre-conviction mechanism. In keeping with earlier suggested changes to the terminology of "conditional discharge," a recommended change is to rephrasing sub-subdivision (b)(2)c. as:

   "c. Judgment was deferred under the provisions of G.S. 14-203.2(c), and the court dismissed the charge and discharged the defendant pursuant to that statute." Compare the opening phrase of G.S. 15A-145.2(a).

5. P. 9, 26-30: Subsection (d) appears to be copied from other expunction provisions, but it is incongruous in this context. The petitioner apparently is the person convicted of <u>being</u> a prostitute, so what "victim" do the sponsors want the State notify under this subsection?

6. P. 9, lines 44-47: The 'clean record' criterion of subdivision (f)(2) requires a finding of different content from the petitioner's affidavit in subdivision (c)(1). Must the petitioner be entirely conviction-free, or only for three years since conviction of the offense to be expunged?

7. P. 9, lines 49-50: Must the petitioner have no outstanding orders for restitution only in the prostitution case to be expunged, or in <u>any</u> case? This is a recurring problem in several expunction statutes for which the General Assembly has never provided any clarification, thereby allowing different judges to interpret

and apply the provision in a disparate manner to otherwise similarly-situated petitioners.

8. P. 10, lines 5-14: Subsection (g) requires a conforming change to G.S. 15A-151, so the AOC can disclose to law enforcement agencies and their certification commissions whether or not an applicant has a prior expunction under G.S. 15A-145.6. Otherwise, the agencies and commissions will just have to take the petitioner's word for it.

K. **Section 11.** No technical considerations.

L. **Section 12.** No technical considerations.

M. **Section 13.** P. 12, line 3: Should the closing parenthesis appear after "servitude" rather than after "child?" *I.e.*, "(sexual servitude) against the child." As written, a child will be deemed abused if the parent, guardian, etc., commits either of the first two offenses against anyone, but sexual servitude only if committed against the child.

N. **Section 14.** No technical considerations.

O. **Section 15.** No technical considerations.

P. **Section 16.** Rather than delete the references to G.S. 14-190.18 and 14-190.19, should they instead be retained with "former" inserted before them? Compare the provision for "former G.S. 14-27.6" earlier in the subdivision.

Although Section 21 provides a non-abatement clause for offenses committed prior to Dec. 1, 2013, the non-abatement provision applies only to the "prosecutions" for those acts, arguably saving only the criminal proceedings. Sex offender registration and monitoring are civil remedies that might not be preserved by that phrase. *I.e.*, the deletion of the two repealed offenses from G.S. 14-208.6(5) arguably entitles offenders under those two statutes to removal from the sex offender registry and satellite-based monitoring (if imposed). Even if this would not be the effect of their deletion, the courts could expect some court impact as this issue is litigated up through the appellate division.

Q. **Section 17.** No technical considerations.

R. **Section 18.** Although it is of no concern to the courts, for the same reason as in Section 16, should the two offenses deleted on p. 13, lines 44-45 instead be retained, with "former" inserted before them?

S. **Section 19.** No technical considerations.

T. **Section 20.** Although it is of no concern to the courts, for the same reason as in Section 16, should the two offenses deleted on p. 14, lines 45-47 instead be retained, with "former" inserted before them?

U. **Section 21.** No technical considerations, except those noted above for Sections 16, 18 and 20.

DATA SOURCES & ASSUMPTIONS: Costs to process cases are based on current practices and resource constraints, not on objective best practices for case disposition. The workload averages used to calculate the monetary value of court personnel resources include all modes of disposition (trials, pleas, dismissals etc.) at their current proportions for each offense, offense class, or case type. For most bills, the analysis assumes that new or elevated cases will be handled by existing personnel. However, based on workload formulas, the courts are currently in need of additional positions to process the existing caseload in a timely manner. Therefore, any additional workload will require new positions or will further delay the disposition of cases.

There are substantial variances in the resources required to process different types of cases within each offense class; therefore offense class time and cost estimates provide only a general guide to the magnitude of the impact of an increase in the offense class for a particular crime or the creation of a new criminal offense.

Data sources include Administrative Office of the Courts FY 2012-13 position costs, and survey, interview, and workload data, including the results of workload studies by the National Center for State Courts. All cost estimates provided in this analysis are shown without an inflation factor and do not include expenses incurred by the Office of Indigent Defense Services.

NORTH CAROLINA
SENTENCING AND POLICY ADVISORY COMMISSION

CONFIDENTIAL FISCAL NOTE
April 25, 2013

BILL NUMBER: Senate Bill 683

SHORT TITLE: Safe Harbor/Victims of Human Trafficking [v.1]

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

SECTION 1. This Section amends G.S. 14-43.11, Human trafficking.

1. It reclassifies the existing offense involving an adult victim from Class F to Class E.
2. It expands the existing offense to add a person who, in reckless disregard of the fact, recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude. Violation would be a Class E felony if the victim is an adult. It remains a Class C felony if the victim is a minor.
3. It adds a new offense if a person knowingly or in reckless disregard of the fact causes a minor to be held in involuntary servitude or sexual servitude. Presumably, this would be a Class C felony since the victim is a minor.

In FY 2011/12, there were no convictions for human trafficking involving an adult victim (a Class F felony) or for human trafficking involving a minor victim (a Class C felony).

Impact on the prison population will occur if Class F convictions become Class E convictions under the proposed statute because of the higher rate of active sentences (53% for Class F compared to 57% for Class E) and longer average estimated time served (17 months for Class F compared to 28 months for Class E). If, for example, there were two Class F felony convictions that were reclassified as Class E felony convictions, active sentences would result in the need for no additional prison beds the first year and one additional prison bed the second year. No additional prison beds would be needed in year one because average estimated time served for both Class F and Class E felonies is greater than 12 months. However, impact could occur in year one, depending on the number of convictions that would be reclassified, due to the difference in active rates. In addition, there would be an impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary) as a result of the longer period of Post-Release Supervision for Class E felons (12 months) compared to Class F felons (9 months). Due to the lack of historical data under JRA, it is not possible to determine this impact.

It is not known how many additional Class E convictions may result from the proposed broadening of the current statute. Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 57% of Class E convictions will result in active sentences, with an

average estimated time served of 28 months. If, for example, there were two additional Class E convictions per year as a result of the proposed broadening of the current statute, active sentences would result in the need for one additional prison bed the first year and three additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since twelve months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class E felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

It is not known how many additional Class C convictions may result from the proposed broadening of the current statute. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class C offense was 81 months. If, for example, there was one additional Class C conviction per year as a result of the proposed broadening of the current statute, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class C felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class C offense was 81 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

SECTION 2. This Section amends G.S. 14-43.12, Involuntary servitude.

1. It reclassifies the existing offense involving an adult victim from Class F to Class E.
2. It expands the existing offense to add a person who, in reckless disregard, holds another in involuntary servitude.

In FY 2011/12, there were no convictions for involuntary servitude involving an adult victim (a Class F felony) or for involuntary servitude involving a minor victim (a Class C felony).

Impact on the prison population will occur if Class F convictions become Class E convictions under the proposed statute because of the higher rate of active sentences (53% for Class F compared to 57% for Class E) and longer average estimated time served (17 months for Class F compared to 28 months for Class E). If, for example, there were two Class F felony convictions that were

reclassified as Class E felony convictions, active sentences would result in the need for no additional prison beds the first year and one additional prison bed the second year. No additional prison beds would be needed in year one because average estimated time served for both Class F and Class E felonies is greater than 12 months. However, impact could occur in year one, depending on the number of convictions that would be reclassified, due to the difference in active rates. In addition, there would be an impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary) as a result of the longer period of Post-Release Supervision for Class E felons (12 months) compared to Class F felons (9 months). Due to the lack of historical data under JRA, it is not possible to determine this impact.

It is not known how many additional Class E convictions may result from the proposed broadening of the current statute. Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 57% of Class E convictions will result in active sentences, with an average estimated time served of 28 months. If, for example, there were two additional Class E convictions per year as a result of the proposed broadening of the current statute, active sentences would result in the need for one additional prison bed the first year and three additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since twelve months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class E felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

It is not known how many additional Class C convictions may result from the proposed broadening of the current statute. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class C offense was 81 months. If, for example, there was one additional Class C conviction per year as a result of the proposed broadening of the current statute, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class C felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

SECTION 3. This Section amends G.S. 14-43.13, Sexual servitude.

1. It reclassifies the existing offense involving an adult victim from Class F to Class E.
2. It expands the existing offense to add a person who, in reckless disregard, subjects or maintains another in sexual servitude.

In FY 2011/12, there were no convictions for sexual servitude involving an adult victim (a Class F felony) or one conviction for sexual servitude involving a minor victim (a Class C felony).

Impact on the prison population will occur if Class F convictions become Class E convictions under the proposed statute because of the higher rate of active sentences (53% for Class F compared to 57% for Class E) and longer average estimated time served (17 months for Class F compared to 28 months for Class E). If, for example, there were two Class F felony convictions that were reclassified as Class E felony convictions, active sentences would result in the need for no

additional prison beds the first year and one additional prison bed the second year. No additional prison beds would be needed in year one because average estimated time served for both Class F and Class E felonies is greater than 12 months. However, impact could occur in year one, depending on the number of convictions that would be reclassified, due to the difference in active rates. In addition, there would be an impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary) as a result of the longer period of Post-Release Supervision for Class E felons (12 months) compared to Class F felons (9 months). Due to the lack of historical data under JRA, it is not possible to determine this impact.

It is not known how many additional Class E convictions may result from the proposed broadening of the current statute. Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 57% of Class E convictions will result in active sentences, with an average estimated time served of 28 months. If, for example, there were two additional Class E convictions per year as a result of the proposed broadening of the current statute, active sentences would result in the need for one additional prison bed the first year and three additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since twelve months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class E felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

It is not known how many additional Class C convictions may result from the proposed broadening of the current statute. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class C offense was 81 months. If, for example, there was one additional Class C conviction per year as a result of the proposed broadening of the current statute, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class C felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

SECTION 4. This Section repeals eight statutes from Chapter 14 of the General Statutes.
G.S. 14-190.18. Promoting prostitution of a minor.
G.S. 14-190.19. Participating in prostitution of a minor.
G.S. 14-203. Definition of terms.
G.S. 14-204. Prostitution and various acts abetting prostitution unlawful.
G.S. 14-204.1. Loitering for the purpose of engaging in prostitution offense.
G.S. 14-205. Prosecution; in what courts.
G.S. 14-207. Degree of guilt.
G.S. 14-208. Punishment; probation; parole.

The Administrative Office of the Courts (AOC) currently does not have specific offense codes for violations of G.S. 14-190.18 and G.S. 14-190.19. The lack of AOC offense codes is some indication that these offenses are infrequently charged and/or infrequently result in convictions.

In FY 2011/12, there were a total of 232 convictions under G.S. 14-204 – 4 convictions for maintaining a place for prostitution under subsection (1), 2 convictions for transporting for prostitution under subsection (4), 178 convictions for soliciting prostitution under subsection (5), 46 convictions for engaging in prostitution under subsection (7), and 2 convictions for aiding and abetting prostitution under subsection (7). The AOC currently does not have specific offense codes for the remaining subsections. There were 51 convictions for loitering for prostitution under G.S. 14-204.1. Violation of these statutes is a Class 1 misdemeanor offense.

Most of the conduct covered in the statutes that are being repealed is covered in the new statutes that are enacted in Section 5 of the proposed bill. However, loitering for prostitution (G.S. 14-204.1) does not appear to be covered by the new offenses created in Section 5. As noted above, there were 51 convictions for loitering for prostitution. Since most misdemeanor sentences are served in local jails, the repeal of these statutes is not expected to result in prison bed savings. The repeal could result in jail bed savings; however, the savings would be minimal due to the small number of convictions involved.

SECTION 5. This Section enacts six new statutes related to prostitution.

§ 14-203.2. Prostitution

This statute makes it illegal for any person to knowingly perform, offer, or agree to perform any sexual act for any money, property, token, object, or article or anything of value or any touching or fondling of the sex organs of one person by another person, for anything of value, for the purpose of sexual arousal or gratification. This statute broadens the conduct covered by the existing offense to include any sexual act and any touching or fondling of the sex organs of one person by another person. Violation is a Class 1 misdemeanor. Some of this conduct is currently covered by subsection (7) of G.S. 14-204. Prostitution. If the offender has not previously been convicted of or placed on probation for misdemeanor prostitution, the court must place him or her on probation without conviction (conditional discharge). (There is no conditional discharge requirement in the current statute, some districts may offer some form of it in their discretion.) If the offender is a minor, he or she is immune from prosecution. (There is no immunity for minors in the current statute.)

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. As noted above, while some of the conduct covered under the new offense is currently covered by the existing offense for engaging in prostitution (for which there were 46 convictions in FY 2011/12), the new statute expands the conduct covered for this offense. It is not known how many additional convictions may result from the proposed broadening of the conduct covered. At the same time, the new statute limits potential convictions by requiring conditional discharge for offenders who have not previously been convicted of or placed on probation for misdemeanor prostitution and by requiring immunity from prosecution for minor offenders. It is not known how many fewer convictions may result from these requirements. As a result, the impact cannot be determined.

In FY 2011/12, 26% of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 39 days. Structured Sentencing misdemeanants who receive an active sentence of 180 days or less are housed in either the Statewide Misdemeanant Confinement Program (91-180 days) or in county jails (90 days or less). Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population.

The impact on the Statewide Misdemeanant Confinement Program and local jail populations is not known.

Technical Note: "Sexual act" is defined as "cunnilingus, fellatio, analingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person's body: provided, that it shall be an affirmative defense that the penetration was for accepted medical purposes." (G.S. 14-27.1) "Prostitution" is currently defined as "the offering or receiving of the body for sexual intercourse for hire, and shall also be construed to include the offering or receiving of the body for indiscriminate sexual intercourse without hire." (G.S. 14-203) The new definition of prostitution would exclude vaginal intercourse. For purposes of this analysis, it is assumed that the new definition of prostitution includes vaginal intercourse.

§ 14-203.3. Solicitation of a sexual act.

This statute makes it illegal for a person to offer another person not his or her spouse any money, property, token, object, or article or anything of value for that person or any other person not his or her spouse to perform any sexual act, or any touching or fondling of the sex organs of one person by another person for the purpose of sexual arousal or gratification.

Violation is a Class F felony. Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 53% of Class F convictions will result in active sentences, with an average estimated time served of 17 months. If, for example, there were two Class F convictions for this proposed offense per year, active sentences would result in the need for one additional prison bed the first year and two additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class F felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Some of this conduct is currently covered by subsection (5) of G.S. 14-204. Prostitution. In FY 2011/12, there were 178 convictions for soliciting for prostitution, a Class 1 misdemeanor. Because the existing offense covered a broad range of conduct, it is not known how many of these convictions would become Class F felonies under the proposed statute. The SAS® Simulation Studio prison projection model typically cannot be used to project the impact of misdemeanor to felony reclassifications. Using threshold data, if all of these 178 Class 1 misdemeanor convictions would be reclassified as Class F felonies under the proposed bill, this would result in the need for 94 additional prison beds the first year and 133 additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class F felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical

data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Violation is a Class C felony if the act is solicited from a minor or a person who is severely or profoundly mentally disabled. Some of this conduct is currently covered by G.S. 14-190.19. Participating in prostitution of a minor. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-190.19. The lack of AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class C offense was 81 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

§ 14-203.4. Promoting prostitution.

This statute makes it illegal for a person to knowingly promote prostitution by any of the means listed in the statute or otherwise.

Violation is a Class F felony. Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 53% of Class F convictions will result in active sentences, with an average estimated time served of 17 months. If, for example, there were two Class F convictions for this proposed offense per year, active sentences would result in the need for one additional prison bed the first year and two additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class F felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Some of this conduct is currently covered by subsections (1), (2), (3), (4), and (7) of G.S. 14-204. Prostitution. In FY 2011/12, there were 2 convictions for aiding and abetting prostitution, 4 convictions for maintaining a place for prostitution, and 2 convictions for transporting for prostitution. These are currently Class 1 misdemeanor offenses. The SAS® Simulation Studio prison projection model typically cannot be used to project the impact of misdemeanor to felony

reclassifications. Using threshold data, if these 8 Class 1 misdemeanor convictions would be reclassified as Class F felonies under the proposed bill, this would result in the need for 5 additional prison beds the first year and 6 additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class F felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Violation within 1,000 feet of real property comprising a school [not defined in statute] is a Class C felony. It is not known how many offenders would qualify for conviction as Class C felons based on the criteria for this offense. Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class C offense was 81 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

A second or subsequent violation of G.S. 14-203.4(a)(1) or (a)(2)c is a Class C felony. It is not known how many offenders would qualify for conviction under the proposed statute. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class C offense was 81 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS

A violation in combination with convictions under G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of a sexual act), G.S. 14-203.5 (promoting prostitution of a minor), G.S. 14-203.6 (patronizing a prostitute), or G.S. 14-203.7 (patronizing a minor engaged in prostitution) is a Class C felony. It is not clear how many convictions are necessary for a combination or whether the additional convictions must be prior convictions. It is assumed that the offender must have one prior conviction for one of the other offenses. It is not known how many offenders would qualify for conviction as Class C felons based on the combination of convictions. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a

Class C offense was 81 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

§ 14-203.5. Promoting prostitution of a minor.

This statute makes it illegal for a person to knowingly promote prostitution of a minor or a person who is severely or profoundly mentally disabled at the time of the offense by any of the means listed in the statute.

Violation of subdivision (a)(1) is a Class B2 felony. Some of this conduct is currently covered by G.S. 14-190.18. Promoting prostitution of a minor. This statute does not address a person who is severely or profoundly mentally disabled. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-190.18. The lack of AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B2 offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class B2 offense was 183 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Violation within 1,000 feet of real property comprising a school [not defined in statute] is a Class B1 felony. It is not known how many offenders would qualify for conviction as Class B1 felons based on the criteria for this offense. Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B1 offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class B1 offense was 235 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Violation of subdivision (a)(2) is a Class B2 felony. Some of this conduct is currently covered by G.S. 14-190.18. Promoting prostitution of a minor. This statute does not address a person who is severely or profoundly mentally disabled. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-190.18. The lack of AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B2 offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class B2 offense was 183 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Violation of subdivision (a)(3) is a Class B1 felony. Some of this conduct is currently covered by G.S. 14-190.18. Promoting prostitution of a minor. This statute does not address a person who is severely or profoundly mentally disabled. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-190.18. The lack of AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B1 offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class B1 offense was 235 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

A second or subsequent violation of any of the subdivisions is a Class B1 felony. It is not known how many offenders may be repeat offenders under the proposed statute. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B1 offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class B1 offense was 235 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison

bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

A violation of subdivisions (a)(1), (2), or (3), in combination with convictions under G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of a sexual act), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.6 (patronizing a prostitute), or G.S. 14-203.7 (patronizing a minor engaged in prostitution) is a Class B1 felony. It is not clear how many convictions are necessary for a combination or whether they must be prior convictions. It is assumed that the offender must have one prior conviction for one of the other offenses. It is not known how many offenders would qualify for conviction as Class B1 felons based on the combination of convictions. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B1 offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class B1 offense was 235 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

§ 14-203.6. Patronizing a prostitute.

This statute makes it illegal for a person to knowingly perform any of the following acts with a person not his or her spouse:

(1) Engage in a sexual act with a prostitute.

(2) Enter or remain in a place of prostitution with intent to engage in a sexual act.

(3) Engage in any touching or fondling with a prostitute of the sex organs of one person by the other person, with the intent to achieve sexual arousal or gratification.

Violation is a Class F felony. Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Based on FY 2011/12 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 53% of Class F convictions will result in active sentences, with an average estimated time served of 17 months. If, for example, there were two Class F convictions for this proposed offense per year, active sentences would result in the need for one additional prison bed the first year and two additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class F felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Some of this conduct is currently covered by subsection (2), (6), and (7) of G.S. 14-204. Prostitution. In FY 2011/12, there were 46 convictions for engaging in prostitution. The SAS® Simulation Studio prison projection model typically cannot be used to project the impact of misdemeanor to felony reclassifications. Using threshold data, if all of these 46 Class 1 misdemeanor convictions would be reclassified as Class F felonies under the proposed bill, this would result in the need for 25 additional prison beds the first year and 35 additional prison beds the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class F felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Violation within 1,000 feet of real property comprising a school [not defined in statute] is a Class C felony. It is not known how many offenders would qualify for conviction as Class C felons based on the criteria for this offense. Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class C offense was 81 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

A second or subsequent violation is a Class C felony. It is not known how many offenders may be repeat offenders under the proposed statute. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class C offense was 81 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

A violation in combination with convictions under G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of a sexual act), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.5 (promoting prostitution of a minor), or G.S. 14-203.7 (patronizing a minor engaged in prostitution) is a Class C felony. It is not clear how many convictions are necessary for a combination or whether the additional convictions must be prior convictions. It is assumed that the offender must have one prior conviction for one of the other offenses. It is not known how many offenders would qualify for conviction as Class C felons based on the combination of convictions. Under Structured Sentencing,

with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class C offense was 81 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

§ 14-203.7. Patronizing a minor engaged in prostitution.

This statute makes it illegal for a person to do any of the following:

(1) Engage in a sexual act with a person engaged in prostitution that is a minor or is a severely or profoundly mentally disabled person.

(2) Engage in any touching or fondling, with a person engaged in prostitution that is either a minor or is a severely or profoundly mentally disabled person, of the sex organs of one person by the other person, with the intent to achieve sexual arousal or gratification.

Violation is a Class C felony. Some of this conduct is currently covered by G.S. 14-190.19. Participating in prostitution of a minor. This statute does not address a person who is severely or profoundly mentally disabled. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-190.19. The lack of AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class C offense was 81 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Violation within 1,000 feet of real property comprising a school [not defined in statute] is a Class B2 felony. It is not known how many offenders would qualify for conviction as Class B2 felons based on the criteria for this offense. Since the proposed statute creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B2 offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class B2 offense was 183 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows

release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

A second or subsequent violation is a Class B2 felony. It is not known how many offenders may be repeat offenders under the proposed statute. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B2 offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class B2 offense was 183 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

A violation in combination with convictions under G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of a sexual act), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.5 (promoting prostitution of a minor), or G.S. 14-203.6 (patronizing a prostitute) is a Class B2 felony. It is not clear how many convictions are necessary for a combination or whether the additional convictions must be prior convictions. It is assumed that the offender must have one prior conviction for one of the other offenses. It is not known how many offenders would qualify for conviction as Class B2 felons based on the combination of convictions. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B2 offenders are required to receive an active sentence. In FY 2011/12 the average estimated time served for an offender convicted of a Class B2 offense was 183 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

SECTION 11. This Section enacts two new aggravating factors.

G.S. 15A-1340.16(d)(19a) The offense is a violation of G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) and involved multiple victims.

G.S. 15A-1340.16(d) (19b) The offense is a violation of G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) and the victim suffered serious injury as a result of the offense.

It is not known how many sentences might be aggravated if this conduct is added as aggravating factors. Therefore, it is not possible to determine the impact this proposal would have on the state prison population. The aggravated sentence range allows the judge to impose a sentence that is up to 25% longer than the longest sentence in the presumptive sentence range. During FY 2011/12, 5% (n=517) of all felony convictions receiving an active sentence fell in the aggravated sentence range. The Administrative Office of the Courts' Automated Criminal Infractions System does not contain

data on the application of aggravating or mitigating factors. The aggravating factors in the proposed bill could be applied to convictions for Class C and Class E offenses under the applicable statutes. The impact of aggravated sentences varies considerably by offense class (*e.g.*, little impact for low-level felonies with increasing impact as one moves up the grid to having a substantial impact for Class B1 felonies). For illustrative purposes, the table below shows minimum sentence lengths for each sentencing range for Class C and Class E felons.

Class C and Class E Minimum Sentence Lengths

Offense Class	Prior Record Level						
	I 0-1 Pt	II 2-5 Pts	III 6-9 Pts	IV 10-13 Pts	V 14-17 Pts	VI 18+ Pts	
C	A	A	A	A	A	A	**Disposition**
	73 – 92	*83 – 104*	*96 – 120*	*110 – 138*	*127 – 159*	*146 – 182*	*Aggravated Range*
	58 – 73	**67 – 83**	**77 – 96**	**88 – 110**	**101 – 127**	**117 – 146**	**Presumptive Range**
	44 – 58	*50 – 67*	*58 – 77*	*66 – 88*	*76 – 101*	*87 – 117*	*Mitigated Range*
E	I/A	I/A	A	A	A	A	**Disposition**
	25 – 31	*29 – 36*	*33 – 41*	*38 – 48*	*44 – 55*	*50 – 63*	*Aggravated Range*
	20 – 25	**23 – 29**	**26 – 33**	**30 – 38**	**35 – 44**	**40 – 50**	**Presumptive Range**
	15 – 20	*17 – 23*	*20 – 26*	*23 – 30*	*26 – 35*	*30 – 40*	*Mitigated Range*

Source: Felony Punishment Chart, Effective for Offenses Committed on or after 12/1/2011

Effective December 1, 2013, and applies to offenses committed on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2011/12 Structured Sentencing Simulation Data

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 683 (First Edition)

SHORT TITLE: Safe Harbor/Victims of Human Trafficking.

SPONSOR(S): Senators Goolsby, Barringer, and Kinnaird

☑ Yes ☐ No ☑ No Estimate Available

State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	**Likely budget cost. See Assumptions & Methodology section for additional details.**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Administrative Office of the Courts, Indigent Defense Services, Department of Public Safety

EFFECTIVE DATE: December 1, 2013, and applies to offenses committed on or after that date.

TECHNICAL CONSIDERATIONS:
None

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address new and expanded chargeable offenses being enforced, adjudicated and having penalties applied to those convicted of the new and expanded offenses. However, given there is no historical data on these offenses, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of these crimes:

- Administrative Office of the Courts: Savings of $165 – Cost of $7,818 per disposition
- Indigent Defense Services: Savings of $166 – Cost of $552 in district court
  $59 - $1,001 in superior court without a trial
  Savings of $132 – Cost of $4,551 in superior court with a trial
- Prison Section: $11.23 per inmate per day
- Community Corrections: $365 - $3,594

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Section 1 of this bill amends G.S. 14-43.11, Human trafficking, by reclassifying the existing offense involving an adult victim from Class F to Class E. It also expands the existing offense to add a person who, in reckless disregard of the fact, recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude. Violation would be a Class E felony if the victim is an adult. It remains a Class C felony if the victim is a minor. The bill also adds a new offense if a person knowingly or in reckless disregard of the facts causes a minor to be held in involuntary servitude or sexual servitude. Presumably, this would be a Class C felony since the victim is a minor.

Section 2 of the bill amends G.S. 14-43.12, Involuntary Servitude, reclassifying the existing offense involving an adult victim from Class F to Class E. It also expands the existing offense to add a person who, in reckless disregard, holds another in involuntary servitude.

Section 3 of this bill amends G.S. 14-43.13, Sexual Servitude, by reclassifying the existing offense involving an adult victim from Class F to Class E. It also expands the existing offense to add a person who, in reckless disregard, subjects or maintains another in sexual servitude.

Section 4 of this bill repeals eight statutes from Chapter 14 of the General Statutes.

Section 5 of this bill enacts six new statutes related to prostitution. G.S. 14-203.2, Prostitution, makes it illegal for any person to knowingly perform, offer, or agree to perform any sexual act for any money, property, token, object, article, or anything of value. This statute broadens the conduct covered by the existing offense to include any sexual act and any touching or fondling of the sex organs of one person by another. Violation is a Class 1 misdemeanor. Some of this conduct is currently covered by subsection (7) of G.S. 14-204 (repealed in Section 4). If the offender has not previously been convicted of or placed on probation for misdemeanor prostitution, the court must place him or her on probation without conviction (conditional discharge). If the offender is a minor, he or she is immune from prosecution. (There is no immunity for minors in the current statute.)

G.S. 14-203.3, Solicitation of a sexual act, makes it illegal for a person to offer another person who is not his or her spouse, any money, property, token, object, or article or anything of value for that person to perform any sexual act, or any touching or fondling of the sex organs of one person by another person for the purpose of sexual arousal or gratification. Violation is a Class F felony or a Class C felony if the act is solicited from a minor or a person who is severely or profoundly mentally disabled. Some of this conduct is currently covered by G.S. 14-190.19 (repealed in Section 4), Participating in prostitution of a minor.

G.S. 14-203.4, Promoting prostitution, makes it illegal for a person to knowingly promote prostitution by any of the means listed in the statute or otherwise. Violation is a Class F felony. Some of this conduct is currently covered by subsections (1), (2), (3), (4), and (7) of G.S. 14-204, Prostitution. Violation within 1,000 feet of real property comprising a school is a Class C felony. In addition, a second or subsequent violation of G.S. 14-203.4(a)(1) or (a)(2)(c) is a Class C felony. A violation in combination with convictions under G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of a sexual act), G.S. 14-203.5 (promoting prostitution of a minor), G.S. 14-203.6 (patronizing a prostitute), or G.S. 14-203.7 (patronizing a minor engaged in prostitution) is a Class C felony.

G.S. 14-203.5, Promoting prostitution of a minor, makes it illegal for a person to knowingly promote prostitution of a minor or a person who is severely or profoundly mentally disabled at the time of the offense by any of the means listed in the statute. Violation of subdivision (a)(1) or (a)(2) is a B2 felony. Some of this conduct is currently covered by G.S. 14-190.18, Promoting prostitution of a minor (repealed in

Section 4). Violation within 1,000 feet of real property comprising a school is a Class B1 felony. Violation of subdivision (a)(3) is a Class B1 felony. In addition a second or subsequent violation of any of the subdivisions is a Class B1 felony. A violation of subdivisions (a)(1), (2), or (3), in combination with convictions under G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of a sexual act), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.6 (patronizing a prostitute), or G.S. 14-203.7 (patronizing a minor engaged in prostitution) is a Class B1 felony.

G.S. 14-203.6, Patronizing a prostitute, makes it illegal for a person to knowingly perform any of the following acts with a person not his or her spouse:

(1) Engage in a sexual act with a prostitute.
(2) Enter or remain in a place of prostitution with intent to engage in a sexual act.
(3) Engage in any touching or fondling with a prostitute of the sex organs of one person by the other person, with the intent to achieve sexual arousal or gratification.

A violation of this subsection is a Class F felony. Some of this conduct is currently covered by subsection (2), (6), and (7) of G.S. 14-204. Prostitution. Violation within 1,000 feet of real property comprising a school is a Class C felony. In addition, a second or subsequent violation is a Class C felony. A violation in combination with convictions under G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of a sexual act), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.5 (promoting prostitution of a minor), or G.S. 14-203.7 (patronizing a minor engaged in prostitution) is a Class C felony.

G.S. 14-203.7, Patronizing a minor engaged in prostitution, makes it illegal for a person to do any of the following:

(1) Engage in a sexual act with a person engaged in prostitution that is a minor or is a severely or profoundly mentally disabled person.
(2) Engage in any touching or fondling, with a person engaged in prostitution that is either a minor or is a severely or profoundly mentally disabled person, of the sex organs of one person by the other person, with the intent to achieve sexual arousal or gratification.

A violation of this subsection is a Class C felony. Some of this conduct is currently covered by G.S. 14-190.19, Participating in prostitution of a minor (repealed in Section 4). Violation within 1,000 feet of real property comprising a school is a Class B2 felony. In addition, a second or subsequent violation is a Class B2 felony. A violation in combination with convictions under G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of a sexual act), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.5 (promoting prostitution of a minor), or G.S. 14-203.6 (patronizing a prostitute) is a Class B2 felony.

Section 8 of this bill amends existing G.S. 15A-1415(b)(10), grounds for appropriate relief which may be asserted by the defendant after the verdict; limitation as to time, and creates a new ground for the motion for appropriate relief (MAR), which can be asserted at any time after conviction of certain offenses against a minor.

Section 9 creates new G.S. 15A-1416.1, Motion by the defendant to vacate prostitution conviction for sex trafficking victim, which provides a procedure for hearing the MARs allowed under Section 8. These motions would be brought before the Court of Appeals.

Section 11 creates new G.S. 15A-1340.16(d)(19a) and (19b) (within Aggravated and mitigated sentences) by creating two new aggravating factors for felony sentencing for violations of the human trafficking, involuntary servitude, and sexual servitude statues, for (i) cases involving multiple victims or (ii) if the victims suffer serious injury as a result of the offense.

Section 13 amends existing G.S. 7B-101, Definitions, to modify the definition of an "abused juvenile" under Chapter 7B, subchapter I, to replace the reference to G.S. 14-190.18 (repealed in Section 4) with its corresponding G.S. 14-204.5 (created in Section 5). It also adds to the list of offenses committed by a

parent, guardian, etc., that render a child "abused" in subdivision (g), which covers the human trafficking/servitude offenses.

This bill is effective December 1, 2013, and applies to offenses committed on or after that date.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision (PRS). The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. All F-I felons are now subject to nine months of PRS, and PRS for all B1-E felonies has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Judicial Branch

The Administrative Office of the Courts 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.

Sections 1, 2, and 3 amend the existing statutes by expanding the potential pool of defendants. These sections also raise the offenses, if they involve adults, from the current Class F felony to a Class E felony. The Class C felony offenses for violations involving minors are unchanged. By expanding the scope of the existing offenses in the amendment to the required state of mind of the defendant, there is a possibility that there may be an increase in charges under this bill. In FY 2011-12, there were no defendants charged with the existing Class F felony offense (increased to Class E felony in Section 1) of human trafficking; there were three defendants charged with the existing Class C felony offense (charge class remains unchanged) of human trafficking involving a child victim. Of those, none were convicted. In FY 2011-12 there were no defendants charged with the existing Class F felony offense (increased to Class E in Section 2 of this bill) of involuntary servitude; there were no defendants charged with the existing Class C felony offense (charge class remains unchanged) of involuntary servitude involving a child victim. In FY 2011-12 there were three defendants charged with the existing Class F felony offense (increased to Class E felony in Section 3 of this bill) of sexual servitude; there were eleven defendants charged with the existing Class C felony offense (charge class remains unchanged) of sexual servitude involving a child victim. Of those, there were no convictions involving an adult victim. There was one conviction involving a minor victim. For every additional person charged with a Class E felony, AOC estimates the average cost to the courts would be $706 ($1,618 for a Class E felony minus $912 for a Class F felony).

Section 5 of this bill enacts six new statutes related to prostitution. Pursuant to G.S. 14-203.2(b), prostitution would remain a Class 1 misdemeanor, which would have no fiscal impact on AOC. However,

new 14-203.2(d) would provide that minors are immune from prosecution for prostitution and instead would be subject to temporary custody provisions found elsewhere in the General Statutes. For every person who would have been charged with prostitution under current law who would not be charged under the proposed bill, AOC will save $165.

The table below shows the average cost to the courts for each new General Statute enacted in Section 5.

General Statute	Offense	Current Class	Proposed Class	Per Case Original Cost	Per Case Proposed Cost	Per Case Cost Increase
G.S. 14-203.3(b)	Solicitation of a sexual act from an adult	Class 1 misdemeanor	Class F felony	$165	$912	$747
G.S. 14-203.3(b)	Solicitation of a sexual act from a minor	Class F felony	Class C felony	$912	$4,240	$3,328
G.S. 14-203.4(b)	Promoting prostitution	Class 1 misdemeanor	Class F felony	$165	$912	$747
G.S. 14-203.4(b)	Promoting prostitution within 1,000 feet of a school	Class 1 misdemeanor	Class C felony	$165	$4,240	$4,075
G.S. 14-203.45(c)	Promoting prostitution of a minor	Class C felony	Class B2 felony	$4,240	$8,730	$4,490
G.S. 14-203.5(c)	Promoting prostitution of a minor within 1,000 feet of a school or second or subsequent offense	Class C felony	Class B1 felony	$4,240	$11,762	$7,522
G.S. 14-203.6(b)	Patronizing a prostitute	Class 1 misdemeanor	Class F felony	$165	$912	$747
G.S. 14-203.6(b)	Patronizing a prostitute within 1,000 feet of a school	Class 1 misdemeanor	Class C felony	$165	$4,240	$4,075
G.S. 14-203.7(c)	Patronizing a minor engaged in prostitution	Class F felony	Class C felony	$912	$4,240	$3,328
G.S. 14-203.7(c)	Patronizing a minor engaged in prostitution within 1,000 feet of a school	Class F felony	Class B2 felony	$912	$8,730	$7,818

Sections 8 and 9 set new grounds for a motion by the defendant. This may create additional motions, which would impact the workload of superior court judges; however, the number of additional motions is anticipated to be small because the proposed change encompasses an extremely limited class of offenders.

Section 11 creates two new aggravating factors. Since the finding of one or both of these aggravating factors carries the possibility of a more severe sentence (up to 25% longer) and defendants might put forth a more vigorous defense, AOC anticipates additional trial court proceedings to prove the two new factors in applicable cases. The number of defendants for whom these aggravating factors may be sought is unknown and thus, any additional costs incurred from these longer proceedings cannot be estimated.

Section 13 amends the existing definition of an abused juvenile. AOC anticipates a possibility for an increase in juvenile abuse/neglect/dependency petitions and related proceedings, but only to the extent that the persons prosecuted for these newly created offenses may have custody or control over juveniles that

were involved in the offenses. The number of criminal defendants to whom this situation may apply is unknown, and thus, any additional costs to the court system cannot be estimated.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. There will be no significant difference in cost to IDS in district court. In superior court, IDS estimates that the cost of the elevated Class E felony in Sections 1, 2, and 3 will result in an increase of $59 per case (the difference between the current Class F felony offense of $593 and the new, elevated Class E felony of $652) for a PAC attorney if the case does not go to trial and a savings of $132 per case (the difference between the current Class F felony offense of $2,046 and the new, elevated Class E felony of $1,914) if it does.

To the extent that additional Class E felony charges are brought under Sections 1, 2, or 3 due to expanded grounds, IDS estimates that the cost of a PAC attorney per case would be $295 in district court. In superior court, IDS estimates that the cost of a PAC attorney per case for a Class E felony would be $652 if the case does not go to trial and $1,914 if it does.

Section 5 enacts new G.S. 14-203(b), which keeps prostitution as a Class 1 misdemeanor. This would not have any fiscal impact on IDS. However, new G.S. 14-203.2(d) would provide that minors are immune from prosecution for prostitution and instead shall be subject to temporary custody provisions found elsewhere in the General Statutes. IDS estimates that by making minors immune to prosecution for prostitution, it would save $295 in district court per case on PAC attorneys. In superior court, IDS estimates the savings would be $321 per case if the case does not go to trial and $847 if it does.

Pursuant to new G.S. 14-203.3(b), solicitation of a sexual act from an adult would be a Class F felony, and solicitation of a sexual act from a minor would be a Class C felony. Under current law, solicitation of a sexual act from an adult is a Class 1 misdemeanor, and solicitation of a sexual act from a minor is a Class F felony. The following chart represents IDS' additional per case costs for each indigent case disposed in district court based on FY 2009-10 data.

	Current Class	**Proposed Class**	**Per Case Original Cost of Private Assigned Counsel**	**Per Case Proposed Cost for Private Assigned Counsel**	**Per Case Cost Increase for PAC**
Adult	Class 1 misdemeanor	Class F felony	$166	$296	$130
Minor	Class F felony	Class C felony	$296	$527	$231

The following chart represents IDS' additional per case costs for each indigent case disposed in superior court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Adult	Class 1 misdemeanor	Class F felony	$321 non-trial $847 trial	$593 non-trial $2,046 trial	$272 non-trial $1,199 trial
Minor	Class F felony	Class C felony	$593 non-trial $2,046 trial	$1,040 non-trial $3,037 trial	$447 non-trial $991 trial

Pursuant to new G.S. 14-203.4(b), promoting prostitution would be a Class F felony, unless the offense occurred within 1,000 feet of a school or this was a second or subsequent violation, which would be a Class C felony. Under current law, promoting prostitution is a Class 1 misdemeanor. The following chart represents IDS' additional per case costs for each indigent case disposed in district court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Promoting	Class 1 misdemeanor	Class F felony	$166	$296	$130
Enhanced Sentence	Class 1 misdemeanor	Class C felony	$166	$527	$361

The following chart represents IDS' additional per case costs for each indigent case disposed in superior court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Promoting	Class 1 misdemeanor	Class F felony	$321 non-trial $847 trial	$593 non-trial $2,046 trial	$272 non-trial $1,199 trial
Enhanced Sentence	Class 1 misdemeanor	Class C felony	$321 non-trial $847 trial	$1,040 non-trial $3,037 trial	$719 non-trial $2,190 trial

Pursuant to new G.S. 14-203.5(c), promoting prostitution of a minor in violation of G.S. 14-203.5(a)(1) would be a Class B2 felony unless the offense occurred within 1,000 feet of a school or this was a second or subsequent violation, which would be a Class B1 felony. Under current law, promoting prostitution of a minor is a Class C felony. The following chart represents IDS' additional per case costs for each indigent case disposed in district court based on FY 2009-10 data. The following chart represents IDS' additional per case costs for each indigent case disposed in district court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Promoting of a Minor	Class C felony	Class B2 felony	$527	$848	$321
Enhanced Sentence	Class C felony	Class B1 felony	$527	$848	$321

The following chart represents IDS' additional per case costs for each indigent case disposed in superior court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Promoting of a Minor	Class C felony	Class B2 felony	$1,040 non-trial $3,037 trial	$1,594 non-trial $6,597 trial	$554 non-trial $3,560 trial
Enhanced Sentence	Class C felony	Class B1 felony	$1,040 non-trial $3,037 trial	$1,594 non-trial $6,597 trial	$554 non-trial $3,560 trial

Pursuant to new G.S. 14-203.6(b), patronizing a prostitute would be a Class F felony, unless the offense occurred within 1,000 feet of a school or this was a second or subsequent violation, which would be a Class C felony. Under current law, patronizing a prostitute is a Class 1 misdemeanor. The following chart represents IDS' additional per case costs for each indigent case disposed in district court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Patronizing	Class 1 misdemeanor	Class F felony	$166	$296	$130
Enhanced Sentence	Class 1 misdemeanor	Class C felony	$166	$527	$361

The following chart represents IDS' additional per case costs for each indigent case disposed in superior court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Patronizing	Class 1 misdemeanor	Class F felony	$321 non-trial $847 trial	$593 non-trial $2,046 trial	$272 non-trial $1,199 trial
Enhanced Sentence	Class 1 misdemeanor	Class C felony	$321 non-trial $847 trial	$1,040 non-trial $3,037 trial	$719 non-trial $2,190 trial

Pursuant to new G.S. 14-203.7(c), patronizing a minor engaged in prostitution would be a Class C felony, unless the offense occurred within 1,000 feet of a school or this was a second or subsequent violation, which would be a Class B2 felony. Under current law, patronizing a minor engaged in prostitution is a Class F felony. The following chart represents IDS' additional per case costs for each indigent case disposed in district court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Patronizing	Class F felony	Class C felony	$296	$527	$231
Enhanced Sentence	Class F felony	Class B2 felony	$296	$1,079	$783

The following chart represents IDS' additional per case costs for each indigent case disposed in superior court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Patronizing	Class F felony	Class C felony	$593 non-trial $2,046 trial	$1,040 non-trial $3,037 trial	$447 non-trial $991 trial
Enhanced Sentence	Class F felony	Class B2 felony	$593 non-trial $2,046 trial	$1,594 non-trial $6,597 trial	$1,001 non-trial $991 trial

Section 10 of Senate Bill 683 would create a right to an expunction for certain defendants who have been convicted of prostitution. Because there is no right to an appointed attorney in an expunction proceeding, this Section would not have any fiscal impact on IDS.

Section 11 of this bill would amend G.S. 15A-1340.16(d) to add two new aggravating factors to the felony sentencing scheme. Although litigating the application of an aggravating factor may cause an increase in the time claimed by appointed counsel, IDS is unable to quantify that impact.

Section 13 of this bill would amend G.S. 7B-101 to create additional grounds for finding a juvenile to be abused. Because IDS provides counsel for parents in abuse/neglect/dependency (A/N/D) cases and the bill expands the grounds for finding a juvenile to be abused, it could result in more A/N/D cases and, thus, greater IDS expenditures. However, IDS is unable to quantify the potential impact.

Department of Public Safety –Prison Section

Since the bill creates new offenses and expands existing offenses, 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 new and expanded statutes.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,[1] and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). The cost to add one additional inmate to the prison system is $11.23 per day, which includes the cost of food, clothing, and health care.

Population Projections and Bed Capacity
Five Year Impact

	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Inmates[2]	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
4. Additional Inmates Due to this Bill[3]	**No estimate available**				
5. Additional Beds Required					

Department of Public Safety – Community Correction Section

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. For felony offense classes E through I, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.[4] General supervision of intermediate and community offenders by a probation officer costs $3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

[1] Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

[2] The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2013.

[3] Criminal penalty bills effective December 1, 2013 should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

[4] CCS incurs costs of $1.29 per day for each offender sentenced to the Community Service Work Program.

Sections 1, 2, and 3 expand the potential pool of defendants. These sections also increase the offense classes, if they involve adults, from the current Class F felony to a Class E felony. The Class C felony offenses for violations involving minors are unchanged. In FY 2011-12, 57% of Class E felony offenders received active sentences; 43% received intermediate sentences. All active sentences result in twelve months of post-release supervision (PRS). The cost of twelve months of PRS is $1,325 per offender ($3.63 per day times 365 days).[5] All active Class F sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[5] The average cost to the community corrections for any individual convicted of a Class E felony who receives an active sentence is $365 ($1,345 minus $980). The average length of intermediate punishment imposed for a Class E felony offense was 34 months. The average lengths of intermediate punishment imposed for a Class F felony offense was 33 months. The average cost to community corrections for any individual convicted of a Class E felony who receives an intermediate sentence is $3,344 (the difference between the Class F cost of $3,594 and the Class E cost of $3,703). It is not known how many additional Class E convictions may result from the proposed broadening of the current statute.

Section 1 also creates a new offense if a person knowingly or in reckless disregard of the fact causes a minor to be held in involuntary servitude or sexual servitude. This would be a Class C felony. In addition, Sections 2 and 3 expand the potential pool of defendants who could be convicted of Class C felonies. In FY 2011-12, 100% of Class C felony offenders received active sentences; none received intermediate sentences; and none received community punishments. Regardless of the length of the active sentence, all offenders convicted of this statute are subject to twelve months of post-release supervision (PRS) for this felony class. The cost of twelve months of PRS is $1,325 per offender ($3.63 per day times 365 days).[5] Since the proposed section creates a new offense; it is not known how many offenders might be convicted and sentenced for the proposed offense.

Section 4 repeals eight statutes from Chapter 14 of the General Statutes. The Administrative Office of the Courts (AOC) currently does not have specific offense codes for violations of G.S. 14-190.18 and G.S. 14-190.19. The lack of AOC offense codes is some indication that these offenses are infrequently charged and/or infrequently result in convictions.

In FY 2011-12, there were a total of 232 convictions under G.S. 14-204:4 convictions for maintaining a place for prostitution under subsection (1), 2 convictions for transporting for prostitution under subsection (4), 178 convictions for soliciting prostitution under subsection (5), 46 convictions for engaging in prostitution under subsection (7), and 2 convictions for aiding and abetting prostitution under subsection (7). The AOC currently does not have specific offense codes for the remaining subsections. There were 51 convictions for loitering for prostitution under G.S. 14-204.1. Violation of these statutes is a Class 1 misdemeanor offense. Most of the conduct covered in the statutes that are being repealed is covered in the new statutes that are enacted in Section 5 of this bill.

Section 5 of this bill enacts six new statutes related to prostitution. G.S. 14-203.3, Prostitution, broadens the conduct covered by the existing offense. Violation is a Class 1 misdemeanor. Some of this conduct is currently covered by subsection (7) of G.S. 14-204, Prostitution (repealed in section 4). If the offender has not previously been convicted of or placed on probation for misdemeanor prostitution, the court must place him or her on probation without conviction (conditional discharge). If the offender is a minor, he or she is immune from prosecution. It is not known how many additional convictions may result from the proposed broadening of the conduct covered. In FY 2011-12, 26% of offenders convicted of a Class 1 misdemeanor

[5] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

were sentenced to active sentences for an average length of 39 days; 2% received intermediate sentences; and 72% received community punishments. Only felony offenses result in Post Release Supervision (PRS), therefore there is no additional cost for a misdemeanant sentenced to an active sentence. The average length of intermediate and community punishment imposed for this offense class was 18 and 15 months, respectively. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives an intermediate sentence is $1,960 (540 days times $3.63 per day). Of those convicted to a community sentence, around 40% received supervised sentences. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives community supervision is $1,634 (450 days times $3.63 per day).

G.S. 14-203.2, Solicitation of a sexual act, G.S. 14-203.4, Promoting prostitution, and G.S. 14-203.6, Patronizing a prostitute are all Class F felony offenses. Since the proposed statutes creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. In FY 2011-12, 53% of Class F felony offenders received active sentences; 47% received intermediate sentences. All active Class F sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[5] The average length of intermediate punishment imposed for this offense class was 33 months. The average cost to community corrections for any individual convicted of a Class F felony who receives an intermediate sentence is $3,594 (990 days times $3.63 per day).

G.S. 14-203.2, Solicitation of a sexual act when the act is solicited from a minor or a person who is severely or profoundly mentally disabled, G.S. 14-203.4, Promoting prostitution when the violation occurs within 1,000 feet of real property comprising a school, G.S. 14-203.4(a)(1) or (a)(2)c when a second of subsequent violation has been committed, G.S. 14-203.6, Patronizing a prostitute when the violation occurs within 1,000 feet of real property comprising a school, when there is a second or subsequent violation, when the violation occurs in combination with convictions under G.S. 14-203.2, G.S. 14-203.3, or G.S. 14-203, and G.S. 14-203.7, Patronizing a minor engaged in prostitution, are all Class C felonies. It is not known how many offenders may be convicted under the proposed statutes. In FY 2011-12, 100% of Class C felony offenders received active sentences; none received intermediate sentences; and none received community punishments. Regardless of the length of the active sentence, all offenders convicted of this statute are subject to twelve months of post-release supervision (PRS) for this felony class. The cost of twelve months of PRS is $1,325 per offender ($3.63 per day times 365 days).[6]

G.S. 14-203, Promoting prostitution of a minor, and G.S. 14-203.7, Patronizing a minor engaged in prostitution when the violation occurs within 1,000 feet of real property comprising a school, is the sequent or subsequent violation, or is a combination with convictions under G.S. 14-203.2, G.S. 14-203.3, G.S. 14-203.4, G.S. 14-203.5, or G.S. 14-203.6 is a Class B2 felony. It is not known how many offenders might be convicted and sentenced for the proposed offense. In FY 2011-12, 100% of Class B2 felony offenders received active sentences; none received intermediate sentences; and none received community punishments. Regardless of the length of the active sentence, all offenders convicted of this statute are subject to twelve months of post-release supervision (PRS) for this felony class. The cost of twelve months of PRS is $1,325 per offender ($3.63 per day times 365 days).[6]

G.S. 14-203.5, Promoting prostitution of a minor, when a violation occurs within 1,000 feet of real property comprising a school, is a Class B1 felony. It is not known how many offenders might be convicted and sentenced for the proposed offense. In FY 2011-12, 100% of Class B1 felony offenders received active

[6] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

sentences; none received intermediate sentences; and none received community punishments. Regardless of the length of the active sentence, all offenders convicted of this statute are subject to twelve months of post-release supervision (PRS) for this felony class. The cost of twelve months of PRS is $1325 per offender ($3.63 per day times 365 days).[6]

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS:

AOC has raised the following issues:

1. In Sections 1, 2, and 3 the insertion of "reckless disregard of the fact" as an alternate state of mind by which a person can commit an offense is ambiguous. It's not clear what "fact" the defendant must disregard recklessly.
2. In G.S. 14-203.2, Prostitution, in subsection (c), p. 3, line 16, the reference to deferred prosecution should be "conditional discharge" instead of "deferred prosecution" in order to remain consistent with the terminology in existing statutes for deferred criminal proceedings.
3. In subdivision (c)(2), p. 3, line 2: it is unclear if the sponsors intend that the period of probation be exactly 12 months. Probation under a conditional discharge normally is governed by the usual probation statutes.
4. Subdivision (c)(8), p. 4, line 9, requires a conforming change in G.S. 15A-150 to report all successful discharges and dismissals under 14-203.2 to the AOC, so that AOC will have records of the prior discharges. Without a conforming change, there will be no way to give effect to subdivision (8), because some prior discharges will be expunged. For those cases, only AOC will have a record from which to inform the court that a defendant had a prior discharge.
5. G.S. 14-203.3, pg. 4, line 27, includes those that are "severely or profoundly mentally disabled." The definition for "severely or profoundly mentally disabled" does not appear anywhere in the General Statutes and could result in ambiguity and disparate application among N.C. courts.
6. In Section 6, Vehicle impoundment, the seizure of a vehicle would be triggered only by an "arrest" for an offense under Chapter 14, Article 27, as opposed to an actual charge for that offense. It is unclear if an individual is arrested but not charged if that individual will have to pay $1,000.
    a. The seizure of a vehicle also appears to be within a law enforcement officer's discretion. The statute provides no guidance (or limitations on) the exercise of that discretion.
    b. There is some question as to what offenses the seizure would apply.
    c. The procedures for towing and storage of the vehicle are unclear.
    d. The procedures for the recovery fee in subsection (a) are unclear.
7. The proposed MAR procedure in 15A-1416.1 is unclear.
    a. It is unclear if the procedure before the Court of Appeals is intended to be the exclusive forum for this sub-set of MARs.
    b. The proposed G.S. 15A-1416.1 places an evidentiary hearing before the Court of Appeals. The appellate division normally does not review issues of fact.
8. On pg. 8, lines 30-32, the proposed definition of a "violent" offense for the expunction statute is significantly different from the definitions of "violent" offenses in the General Statutes.

The Sentencing Commission has raised one issue. Under the proposed G.S. 14-203, the new definition of "Prostitution" would exclude vaginal intercourse. For purposes of this analysis, it is assumed that the new definition of prostitution includes vaginal intercourse.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY:

Maggie Morrissey

Kristine Leggett

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

DATE: May 7, 2013



Signed Copy Located in the NCGA Principal Clerk's Offices

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee

5/7/13

Date

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VISITOR REGISTRATION SHEET

Senate Judiciary I Committee

5/7/13
Date

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John Rustin	NCFPC
Laura McGee	NC Values
John Madler	NC Sentencing Commission
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John DelGrosso	Brubaker Assoc.
Will Morgan	TWC
Hannah Gunn	FSP
[illegible]	[illegible]
DAVID BARNES	Electricities
Ken Melton	K. M. A.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee

5/7/13

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[illegible]	FSP
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Kay Emanuel	School of Government
Anna Beard	
Pam Southland	ENC Stop Human Trafficking
Christine Wilson	ACS CAN
Pam Shamans	NC Alliance for Health
[illegible]	IL
Murphie Chapman	NCCASA
Matthew Crisco	NCRLA
DAVID MINER	TRG
Jason Fischer	Senate
[illegible]	MWC
[illegible]	DCC

VISITOR REGISTRATION SHEET

Senate Judiciary 1 Committee — 5/7/13

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Anne Cecere	—
Monika Meillier	—
Betsy Vetter	AHA
Carr McComb	DENR
Lanyka Commings	DENR

Senate Committee on Judiciary I
Thursday, May 9, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 433	Land Use Surrounding Military Installations.	Representative J. Bell Representative Stam Representative McElraft Representative Whitmire
SB 107	Decriminalize Direct Entry Midwifery.	Senator Goolsby Senator Clodfelter Senator Bingham
SB 284	OSC/Gov't Data Analytics/State Data Sharing.	Senator Hise
SB 393	Constructive Fraud/Limitations Period.	Senator Clodfelter
SB 625	Limit Confidentiality Agreements.	Senator McKissick Senator Bingham
SB 630	Evidence & DNA Expunction Laws.-AB	Senator Newton
SB 683	Safe Harbor/Victims of Human Trafficking.	Senator Goolsby Senator Barringer Senator Kinnaird

Presentations

Other Business

Adjournment

Senate Committee on Judiciary I
Thursday, May 9, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on May 9, 2013 in Room 1027/1128 of the Legislative Building. Sixteen members were present.

Senator E. S. (Buck) Newton, Chair, presided.

Sen. Newton heard a motion from Senator Jerry Tillman to consider a Proposed Committee Substitute for House Bill 433. The motion passed and Sen. Newton recognized Representative John Bell to explain the bill. After Rep. Bell explained the bill, Senator Clark Jenkins made a motion for a favorable report to the PCS, unfavorable to the original bill.

Sen. Tillman was recognized for a question and Rep. Bell responded. Sen. Tillman asked a follow-up question and Sen. Newton asked the audience if anyone could answer his question. Lisa Martin from the North Carolina Homebuilders Association was recognized to answer his question.

Senator Norm Sanderson was recognized for a question and Rep. Bell responded. Sen. Sanderson asked a follow-up question and discussed details of the PCS with Rep. Bell. Sen. Newton asked if there were any more questions and, hearing none, held a voice vote on Sen. Jenkin's motion that passed.

Senator Dan Clodfelter made a motion to take up a PCS for Senate Bill 107 that passed by a voice vote. Sen. Newton recognized Senator Thom Goolsby to speak on the bill. Sen. Tillman asked Sen. Goolsby a question and motioned for a favorable report to the PCS, unfavorable to the original bill. Senator Dan Blue asked Sen. Goolsby a question and Sen. Goolsby responded. Senator Bob Rucho asked Sen. Goolsby a question and Sen. Goolsby responded. Senator Earline Parmon asked Sen. Goolsby a question and said she supports the PCS. Sen. Newton held a voice vote on Sen. Tillman's motion that passed.

Sen. Clodfelter was recognized to explain Senate Bill 393. Senator Jerry Tillman made a motion for a favorable report to the original bill. Senator Josh Stein was recognized for a question and Sen. Newton discussed the answer with Sen. Clodfelter. A voice vote was held on Sen. Tillman's motion that passed.

Senator Floyd McKissick was recognized to explain Senate Bill 625. Sen. Stein spoke in favor of the bill and made a motion for a favorable report to the original bill. Sen. Clodfelter was recognized for three questions and Sen. McKissick answered. Senator Trudy Wade was recognized for a question and she discussed the bill with Sen. McKissick. Susan Sitze from the Research Division commented on sections of the bill under discussion. Senator Harry Brown asked Sen. McKissick a question and said he had several other questions about the bill. Sen. Newton said the bill would not be voted on at the meeting, but be brought back at a later time.

Sen. Goolsby became the presiding chair and recognized Sen. Newton to explain Senate Bill 630. Sen. Newton detailed the bill for the committee and recognized Judge Joe John, director of the State Crime Lab. Judge John addressed two sections of the bill. Sen. Stein asked a question and discussed the bill with Judge John. Sen. Stein made a motion for a favorable report to the original bill that passed by a voice vote.

Sen. Newton became the presiding chair and heard a motion from Sen. Tillman to take up a PCS for Senate Bill 683. Sen. Goolsby was recognized to explain the PCS and detailed changes in the bill for the committee. Ms. Sitze was recognized to review each section of the bill for the committee. Sen. Parmon made a motion for a favorable report to the PCS, unfavorable to the original bill. Sen. Stein asked two questions and Sen. Goolsby responded. Sen. Blue asked a question and Sen. Goolsby said he did not know the answer. Ms. Sitze commented on the bill in response to Sen. Blue's question. Sen. Newton asked Ms. Sitze a question and she responded. Senator Kathy Harrington asked a question and Ms. Sitze responded. Sen. Newton commented on Sen. Harrington's question and asked Ms. Sitze a question. Ms. Sitze responded and Sen. Goolsby was recognized for final comments on the bill. The committee held a voice vote on Sen. Parmon's motion that passed by a voice vote.

The meeting adjourned at 10:55 a.m.

Senator E. S. (Buck) Newton, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Thursday, May 09, 2013

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

FAVORABLE

SB **630** Evidence & DNA Expunction Laws.-AB

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator E.S. Newton will handle SB 630



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Thursday, May 09, 2013

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

FAVORABLE

SB **393** Constructive Fraud/Limitations Period.

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Daniel Clodfelter will handle SB 393



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Thursday, May 09, 2013

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

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

SB **107** Decriminalize Direct Entry Midwifery.
- Draft Number: S107-PCS95085-TG-8
- Sequential Referral: None
- Recommended Referral: None
- Long Title Amended: Yes

SB **683** Safe Harbor/Victims of Human Trafficking.
- Draft Number: S683-PCS35339-SA-42
- Sequential Referral: None
- Recommended Referral: None
- Long Title Amended: No

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

HB **433** **(SCS#1)** Land Use Surrounding Military Installations.
- Draft Number: H433-PCS80357-TA-10
- Sequential Referral: Rules and Operations of the Senate
- Recommended Referral: None
- Long Title Amended: No

TOTAL REPORTED: 3

Senator Thomas Goolsby will handle SB 107
Senator Thomas Goolsby will handle SB 683
Senator Harry Brown will handle HB 433



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 107
PROPOSED COMMITTEE SUBSTITUTE S107-CSTG-8 [v.5]

5/8/2013 12:29:21 PM

Short Title: Decriminalize Direct Entry Midwifery. (Public)

Sponsors:

Referred to:

February 20, 2013

A BILL TO BE ENTITLED

AN ACT ALLOWING CERTIFIED PROFESSIONAL MIDWIVES TO PROVIDE CERTAIN MIDWIFERY SERVICES WITHOUT BEING SUBJECT TO CRIMINAL PENALTY.

The General Assembly of North Carolina enacts:

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

"Article 10B.

"Practice of Midwifery by Certified Professional Midwives.

"**§ 90-178.10. Practice of midwifery by certified professional midwife.**

Notwithstanding any other provision of law to the contrary, any person who is certified as a Certified Professional Midwife by the North American Registry of Midwives may provide prenatal, intrapartum, postpartum and newborn care as defined in G.S. 90-178.2, in accordance with the Standards for Practice of the National Association of Certified Professional Midwives."

SECTION 2. This act becomes effective July 1, 2014.

SENATE BILL 107:
Decriminalize Direct Entry Midwifery

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 6, 2013
Introduced by:	Sens. Goolsby, Clodfelter, Bingham	**Prepared by:**	Bill Patterson
Analysis of:	PCS to First Edition S107-CSTG-8		Committee Counsel

SUMMARY: ***The PCS to Senate Bill 107 would permit any person certified as a Certified Professional Midwife by the North American Registry of Midwives to practice certain midwifery services in accordance with the Standards for Practice of the National Association of Certified Professional Midwives. The PCS substantially rewrote the original bill.***

[As introduced, this bill was identical to H155, as introduced by Reps. Wilkins, Hurley, which is currently in House Health and Human Services, if favorable, Judiciary Subcommittee B.]

CURRENT LAW: Under Article 10A of Chapter 90 of the General Statutes, no person may practice midwifery who is not approved to do so by the Midwifery Joint Committee of the North Carolina Medical Board and the Board of Nursing. To be approved, an applicant must complete an application form, submit evidence of certification by the American College of Nurse-Midwives,[1] submit evidence of arrangements for physician supervision, and pay an application fee. G.S. 90-178.5. Certified Nurse Midwives (CNMs) are licensed as registered nurses in North Carolina and are required to practice under the supervision of a physician who also does obstetrics including obstetricians and family physicians. It is a Class 3 misdemeanor for a person who is not approved pursuant to Article 10A to practice midwifery. G.S. 90-178.7(b).

BILL ANALYSIS: The PCS to House Bill 107 would permit any person certified as a Certified Professional Midwife by the North American Registry of Midwives[2] to provide prenatal, intrapartum, postpartum and newborn care as defined in G.S. 90-178.2[3] in accordance with the Standards for Practice of the National Association of Certified Professional Midwives. Unlike nurse midwife certification, professional midwife certification does not require licensure as a registered nurse.

EFFECTIVE DATE: This act is effective July 1, 2014.

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[1] The American College of Nurse Midwives requires certification of nurse midwives by the American Midwifery Certification Board (AMCB), which certifies both Certified Midwives and Certified Nurse Midwives.

[2] According to their websites, the North American Registry of Midwives and the American Midwifery Certification Board are accredited by the National Commission for Certifying Agencies (NCCA).

[3] G.S. 90-178.2 defines these terms as follows:

"Intrapartum care" includes but is not limited to:

a. Attending women in uncomplicated labor;
b. Assisting with spontaneous delivery of infants in vertex presentation from 37 to 42 weeks gestation;
c. Performing amniotomy;
d. Administering local anesthesia;
e. Performing episiotomy and repair; and
f. Repairing lacerations associated with childbirth.

"Newborn care" includes but is not limited to:

a. Routine assistance to the newborn to establish respiration and maintain thermal stability;
b. Routine physical assessment including APGAR scoring;

c. Vitamin K administration; and
d. Eye prophylaxis for opthalmia neonatorum.

"Postpartum care" includes but is not limited to:
a. Management of the normal third stage of labor;
b. Administration of pitocin and methergine after delivery of the infant when indicated; and
c. Six weeks postpartum evaluation exam and initiation of family planning.

Prenatal care" includes but is not limited to:
a. Historical and physical assessment;
b. Obtaining and assessing the results of routine laboratory tests; and
c. Supervising the use of prenatal vitamins, folic acid, iron, and nonprescription medicines.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 2

SENATE BILL 284
Commerce Committee Substitute Adopted 4/30/13

Short Title: OSC/Gov't Data Analytics/State Data Sharing. (Public)

Sponsors:

Referred to:

March 14, 2013

A BILL TO BE ENTITLED

AN ACT TO RENAME THE GOVERNMENT BUSINESS INTELLIGENCE COMPETENCY CENTER IN THE OFFICE OF THE STATE CONTROLLER AS THE GOVERNMENT DATA ANALYTICS CENTER, TO AUGMENT ITS WORK BY CODIFYING ITS MISSION, POWERS, AND DUTIES, AND TO AMEND THE REVENUE AND MOTOR VEHICLE LAWS TO ENHANCE THE DATA SHARING REQUIRED TO INCREASE THE STATE'S BUSINESS INTELLIGENCE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 20-7(b2) reads as rewritten:

"(b2) Disclosure of Social Security Number. – The social security number of an applicant is not a public record. The Division may not disclose an applicant's social security number except as allowed under federal law. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. § 408, and amendments to that law.

In accordance with 42 U.S.C. 405 and 42 U.S.C. 666, and amendments thereto, the Division may disclose a social security number obtained under subsection (b1) of this section only as follows:

(1) For the purpose of administering the driver's license laws.

(2) To the Department of Health and Human Services, Child Support Enforcement Program for the purpose of establishing paternity or child support or enforcing a child support order.

(3) To the Department of Revenue for the purpose of verifying taxpayer identity.

(4) To the Office of Indigent Defense Services of the Judicial Department for the purpose of verifying the identity of a represented client and enforcing a court order to pay for the legal services rendered.

(5) To each county jury commission for the purpose of verifying the identity of deceased persons whose names should be removed from jury lists.

(6) To the Office of the State Controller for the purposes of G.S. 143B-426.38A."

SECTION 1.(b) G.S. 20-43(a) reads as rewritten:

"(a) All records of the Division, other than those declared by law to be confidential for the use of the Division, shall be open to public inspection during office hours in accordance with G.S. 20-43.1. A ~~photographic image or~~ signature recorded in any format by the Division for a drivers license or a special identification card is confidential and shall not be released except for law enforcement purposes. A photographic image recorded in any format by the Division for a drivers license or a special identification card is confidential and shall not be

released except for law enforcement purposes or to the Office of the State Controller for the purposes of G.S. 143B-426.38A."

SECTION 2. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(44) To furnish tax information to the Office of the State Controller under G.S. 143B-426.38A. The use and reporting of individual data may be restricted to only those activities specifically allowed by law when potential fraud or other illegal activity is indicated."

SECTION 3.(a) Part 28 of Article 9 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-426.38A. Government Data Analytics Center; State data-sharing requirements.**

(a) State Government Data Analytics. – The State shall initiate across State agencies, departments, and institutions a data integration and data-sharing initiative that is not intended to replace transactional systems but is instead intended to leverage the data from those systems for enterprise-level State business intelligence.

(1) Creation of initiative. – In carrying out the purposes of this section, the Office of the State Controller shall conduct an ongoing, comprehensive evaluation of State data analytics projects and plans in order to identify data integration and business intelligence opportunities that will generate greater efficiencies in, and improved service delivery by, State agencies, departments, and institutions. The Office of the State Controller may partner with current vendors and providers to assist in the initiative. However, to limit the cost to the State, the Office of the State Controller shall use current licensing agreements wherever feasible.

(2) Application to State government. – The initiative shall include all State agencies, departments, and institutions, including The University of North Carolina.

(3) Governance. – The State Controller shall lead the initiative established pursuant to this section. The Chief Justice of the North Carolina Supreme Court and the Legislative Services Commission each shall designate an officer or agency to advise and assist the State Controller with respect to implementation of the initiative in their respective branches of government. The judicial and legislative branches shall fully cooperate in the initiative mandated by this section in the same manner as is required of State agencies.

(b) Government Data Analytics Center. –

(1) GDAC established. – There is established in the Office of the State Controller the Government Data Analytics Center (GDAC). GDAC shall assume the work, purpose, and resources of the current data integration effort in the Office of the State Controller and shall otherwise advise and assist the State Controller in the management of the initiative. The State Controller shall make any organizational changes necessary to maximize the effectiveness and efficiency of GDAC.

(2) Powers and duties of the GDAC. – The State Controller shall, through the GDAC, do all of the following:

a. Continue and coordinate ongoing enterprise data integration efforts, including:

1. The deployment, support, technology improvements, and expansion for CJLEADS.
2. The pilot and subsequent phase initiative for NC FACTS.
3. Individual-level student data and workforce data from all levels of education and the State workforce.
4. Other capabilities developed as part of the initiative.

b. Identify technologies currently used in North Carolina that have the capability to support the initiative.
c. Identify other technologies, especially those with unique capabilities, that could support the State's business intelligence effort.
d. Compare capabilities and costs across State agencies.
e. Ensure implementation is properly supported across State agencies.
f. Ensure that data integration and sharing is performed in a manner that preserves data privacy and security in transferring, storing, and accessing data, as appropriate.
g. Immediately seek any waivers and enter into any written agreements that may be required by State or federal law to effectuate data sharing and to carry out the purposes of this section.
h. Coordinate data requirements and usage for State business intelligence applications in a manner that (i) limits impacts on participating State agencies as those agencies provide data and business knowledge expertise and (ii) assists in defining business rules so the data can be properly used.
i. Recommend the most cost-effective and reliable long-term hosting solution for enterprise-level State business intelligence as well as data integration, notwithstanding Section 6A.2(f) of S.L. 2011-145.

(c) Implementation of the Enterprise-Level Business Intelligence Initiative. –

(1) Phases of the initiative. – The initiative shall cycle through these phases on an ongoing basis:

a. Phase I requirements. – In the first phase, the State Controller through GDAC shall:

1. Inventory existing State agency business intelligence projects, both completed and under development.
2. Develop a plan of action that does all of the following:
I. Defines the program requirements, objectives, and end state of the initiative.
II. Prioritizes projects and stages of implementation in a detailed plan and benchmarked time line.
III. Includes the effective coordination of all of the State's current data integration initiatives.
IV. Utilizes a common approach that establishes standards for business intelligence initiatives for all State agencies and prevents the development of projects that do not meet the established standards.
V. Determines costs associated with the development efforts and identifies potential sources of funding.
VI. Includes a privacy framework for business intelligence consisting of adequate access controls and end user security requirements.
VII. Estimates expected savings.
3. Inventory existing external data sources that are purchased by State agencies to determine whether consolidation of licenses is appropriate for the enterprise.
4. Determine whether current, ongoing projects support the enterprise-level objectives.
5. Determine whether current applications are scalable or are applicable for multiple State agencies or both.

b. Phase II requirements. – In the second phase, the State Controller through the GDAC shall:
1. Identify redundancies and determine which projects should be discontinued.
2. Determine where gaps exist in current or potential capabilities.

c. Phase III requirements. – In the third phase:
1. The State Controller through GDAC shall incorporate or consolidate existing projects, as appropriate.
2. The State Controller shall, notwithstanding G.S. 147-33.76 or any rules adopted pursuant thereto, eliminate redundant business intelligence projects, applications, software, and licensing.
3. The State Controller through GDAC shall complete all necessary steps to ensure data integration in a manner that adequately protects privacy.

(2) Commencement of projects. – The State Controller may expand existing data integration or business intelligence contracts with current data integration efforts, as appropriate, in order to implement the plan required by this section in accordance with the schedule established and the priorities developed during Phase I of the initiative and may use public-private partnerships as appropriate to implement the plan.

(d) Funding. – The Office of the State Controller, with the support of the Office of State Budget and Management, shall identify and make all efforts to secure any matching funds or other resources to assist in funding this initiative. Savings resulting from the cancellation of projects, software, and licensing, as well as any other savings from the initiative, shall be returned to the General Fund and shall remain unexpended and unencumbered until appropriated by the General Assembly in a subsequent fiscal year. It is the intent of the General Assembly that expansion of the initiative in subsequent fiscal years be funded with these savings and that the General Assembly appropriate funds for projects in accordance with the priorities identified by the Office of the State Controller in Phase I of the initiative.

(e) Reporting. – The Office of the State Controller shall:

(1) Submit and present quarterly reports on the implementation of Phase I of the initiative and the plan developed as part of that phase to the Chairs of the House of Representatives Appropriations and Senate Base Budget/Appropriations Committees, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division of the General Assembly. The State Controller shall submit a report prior to implementing any improvements, expending funding for expansion of existing business intelligence efforts, or establishing other projects as a result of its evaluations, and quarterly thereafter, a written report detailing progress on, and identifying any issues associated with, State business intelligence efforts.

(2) Report the following information as needed:

a. Any failure of a State agency to provide information requested pursuant to this section. The failure shall be reported to the Joint Legislative Committee on Information Technology and to the Chairs of the House of Representatives Appropriations and Senate Base Budget/Appropriations Committees.

b. Any additional information to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Oversight

Committee on Information Technology that is requested by those entities.

(f) Data Sharing. –

(1) General duties of all State agencies. – The head of each State agency, department, and institution shall do all of the following:

a. Grant the Office of the State Controller access to all information required to develop and support State business intelligence applications pursuant to this section. The State Controller and the GDAC shall take all necessary actions and precautions, including training, certifications, background checks, and governance policy and procedure, to ensure the security, integrity, and privacy of the data in accordance with State and federal law and as may be required by contract.

b. Provide complete information on the State agency's information technology, operational, and security requirements.

c. Provide information on all of the State agency's information technology activities relevant to the State business intelligence effort.

d. Forecast the State agency's projected future business intelligence information technology needs and capabilities.

e. Ensure that the State agency's future information technology initiatives coordinate efforts with the GDAC to include planning and development of data interfaces to incorporate data into the initiative and to ensure the ability to leverage analytics capabilities.

f. Provide technical and business resources to participate in the initiative by providing, upon request and in a timely and responsive manner, complete and accurate data, business rules and policies, and support.

g. Identify potential resources for deploying business intelligence in their respective State agencies and as part of the enterprise-level effort.

h. Immediately seek any waivers and enter into any written agreements that may be required by State or federal law to effectuate data sharing and to carry out the purposes of this section, as appropriate.

(2) Specific requirements. – The State Controller and the GDAC shall enhance the State's business intelligence through the collection and analysis of data relating to workers' compensation claims for the purpose of preventing and detecting fraud, as follows:

a. The North Carolina Industrial Commission shall release to GDAC, or otherwise provide electronic access to, all data requested by GDAC relating to workers' compensation insurance coverage, claims, appeals, compliance, and enforcement under Chapter 97 of the General Statutes.

b. The North Carolina Rate Bureau (Bureau) shall release to GDAC, or otherwise provide electronic access to, all data requested by GDAC relating to workers' compensation insurance coverage, claims, business ratings, and premiums under Chapter 58 of the General Statutes. The Bureau shall be immune from civil liability for releasing information pursuant to this subsection, even if the information is erroneous, provided the Bureau acted in good faith and without malicious or willful intent to harm in releasing the information.

c. The Department of Commerce, Division of Employment Security (DES), shall release to GDAC, or otherwise provide access to, all data requested by GDAC relating to unemployment insurance coverage, claims, and business reporting under Chapter 96 of the General Statutes.

d. The Department of Labor shall release to GDAC, or otherwise provide access to, all data requested by GDAC relating to safety inspections, wage and hour complaints, and enforcement activities under Chapter 95 of the General Statutes.

e. The Department of Revenue shall release to GDAC, or otherwise provide access to, all data requested by GDAC relating to the registration and address information of active businesses, business tax reporting, and aggregate federal tax Form 1099 data for comparison with information from DES, the Rate Bureau, and the Department of the Secretary of State for the evaluation of business reporting. Additionally, the Department of Revenue shall furnish to the GDAC, upon request, other tax information, provided that the information furnished does not impair or violate any information-sharing agreements between the Department and the United States Internal Revenue Service. Notwithstanding any other provision of law, a determination of whether furnishing the information requested by GDAC would impair or violate any information-sharing agreements between the Department of Revenue and the United States Internal Revenue Service shall be within the sole discretion of the Secretary of the Department of Revenue. The Department of Revenue and the Office of the State Controller shall work jointly to assure that the evaluation of tax information pursuant to this subdivision is performed in accordance with applicable federal law.

(3) All information shared with GDAC and the State Controller under this subdivision is protected from release and disclosure in the same manner as any other information is protected under this section.

(g) Provisions on Privacy and Confidentiality of Information. –

(1) Status with respect to certain information. – The State Controller and the GDAC shall be deemed to be all of the following for the purposes of this section:

a. With respect to criminal information, and to the extent allowed by federal law, a criminal justice agency (CJA), as defined under Criminal Justice Information Services (CJIS) Security Policy. The State CJIS Systems Agency (CSA) shall ensure that CJLEADS receives access to federal criminal information deemed to be essential in managing CJLEADS to support criminal justice professionals.

b. With respect to health information covered under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and to the extent allowed by federal law:

1. A business associate with access to protected health information acting on behalf of the State's covered entities in support of data integration, analysis, and business intelligence.

2. Authorized to access and view individually identifiable health information, provided that the access is essential to the

enterprise fraud, waste, and improper payment detection program or required for future initiatives having specific definable need for the data.

c. Authorized to access all State and federal data, including revenue and labor information, deemed to be essential to the enterprise fraud, waste, and improper payment detection program or future initiatives having specific definable need for the data.

d. Authorized to develop agreements with the federal government to access data deemed to be essential to the enterprise fraud, waste, and improper payment detection program or future initiatives having specific definable need for such data.

(2) Release of information. – The following limitations apply to (i) the release of information compiled as part of the initiative, (ii) data from State agencies that is incorporated into the initiative, and (iii) data released as part of the implementation of the initiative:

a. Information compiled as part of the initiative. – Notwithstanding the provisions of Chapter 132 of the General Statutes, information compiled by the State Controller and the GDAC related to the initiative may be released as a public record only if the State Controller, in that officer's sole discretion, finds that the release of information is in the best interest of the general public and is not in violation of law or contract.

b. Data from State agencies. – Any data that is not classified as a public record under G.S. 132-1 shall not be deemed a public record when incorporated into the data resources comprising the initiative. To maintain confidentiality requirements attached to the information provided to the State Controller and GDAC, each source agency providing data shall be the sole custodian of the data for the purpose of any request for inspection or copies of the data under Chapter 132 of the General Statutes.

c. Data released as part of implementation. – Information released to persons engaged in implementing the State's business intelligence strategy under this section that is used for purposes other than official State business is not a public record pursuant to Chapter 132 of the General Statutes."

SECTION 3.(b) G.S. 143B-426.39 is amended by adding a new subdivision to read:

"(17) Coordinate data integration and data sharing pursuant to G.S. 143B-426.38A across State agencies, departments, and institutions to support the State's enterprise-level business intelligence initiative."

SECTION 3.(c) The purpose of this section is to codify provisions of Section 6A.7A of S.L. 2012-142, and to the extent that any provision of that section conflicts with G.S. 143B-426.38A, as enacted by this act, then the provisions of the statute shall be construed to prevail over any conflicting noncodified provisions.

SECTION 4.(a) The Revisor of Statutes shall replace the name of the Government Business Intelligence Competency Center with the name Government Data Analytics Center wherever it is used in S.L. 2012-142.

SECTION 4.(b) The Revisor of Statutes shall replace the acronym GBICC with the acronym GDAC wherever it is used in S.L. 2012-142.

SECTION 5. This act is effective when it becomes law.

SENATE BILL 284:
OSC/Gov't Data Analytics/State Data Sharing

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 9, 2013
Introduced by:	Sen. Hise	**Prepared by:**	Susan Sitze
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 284 would codify various provisions of the 2012 Budget and require the State Controller to collect and analyze data relating to workers' compensation claims for the purpose of preventing and detecting fraud.***

CURRENT LAW: Session Law 2012-142, the Current Operations and Capital Improvements Appropriations Act of 2012, created the enterprise-level business intelligence initiative ("initiative") in the Office of the State Controller to support the effective and efficient development of State agency business intelligence capability in a coordinated manner and to reduce unnecessary information silos and technological barriers. The Act also created the Government Business Intelligence Competency Center ("GBICC") in the Office of the State Controller to assist in the management of the initiative. Currently, the State Controller, through the GBICC, is tasked with:

- coordinating enterprise data integration efforts
- identifying technologies that can support the initiative and the State's business intelligence effort
- ensuring proper implementation by State agencies
- ensuring data privacy and security
- seeking waivers of State and federal law to effectuate data sharing
- coordinating data requirements and usage for State business intelligence applications, and recommending the most cost-effective and reliable long-term hosting solution for State business intelligence.

BILL ANALYSIS:

Section 1.(a) would allow the Division of Motor Vehicles to share the social security number of an applicant for a drivers license with the Office of the State Controller.

Section 1.(b) would allow the Division of Motor Vehicles to share a photographic image recorded for a drivers license or special identification card with the Office of the State Controller.

Section 2 would allow the Department of Revenue to share tax information with the Office of the State Controller, and restricts the sharing of individual tax information to activities specifically allowed by law when potential fraud or illegal activity is indicated.

Section 3.(a) would codify Section 6A.7A of S.L. 2012-142 as G.S. 143B-246.38A and make various amendments and technical changes. The section would change the name of the center established in the Office of the State Controller from the Government Business Intelligence Competency Center (GBICC) to the Government Dada Analytics Center (GDAC).

The section would also add subdivision (2) to subsection (f) of G.S. 143B-426.38A. The subdivision would require the State Controller and GDAC to collect and analyze data relating to workers' compensation claims for the purpose of preventing and detecting fraud. Data would be collected from the North Carolina Industrial Commission, the North Carolina Rate Bureau, the Division of Employment Security in the Department of Commerce, the Department of Labor, and the Department of Revenue. This subdivision would require that any information released by the Department of Revenue be performed in accordance with applicable federal law. The subdivision would also provide that the North Carolina Rate Bureau will be immune from civil liability for releasing information pursuant to this requirement. The language of this subdivision was recommended by the final report of the Joint Legislative Committee on Workers' Compensation Insurance Coverage Compliance and Fraud Prevention and Detection.

Section 3.(b) would direct the Office of the State Controller to coordinate data integration and data sharing across State agencies.

Section 3.(c) states that the purpose of the section is to codify the data integration and sharing provisions of S.L. 2012-142, and **Section 4.(a)** and **Section 4.(b)** would direct the Revisor of Statutes to make the necessary changes to S.L. 2012-142 to reflect the new name of the center.

EFFECTIVE DATE: This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 393

Short Title:	Constructive Fraud/Limitations Period.	(Public)
Sponsors:	Senator Clodfelter (Primary Sponsor).	
Referred to:	Judiciary I.	

March 25, 2013

A BILL TO BE ENTITLED

AN ACT RELATING TO THE LIMITATIONS PERIOD FOR ACTIONS ON THE GROUND OF CONSTRUCTIVE FRAUD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-52(9) reads as rewritten:

"**§ 1-52. Three years.**

Within three years an action -

...

(9) For relief on the ground of ~~fraud or mistake;~~ fraud, either actual or constructive, or mistake, except where a different period of limitations is applicable in case of claims alleging constructive fraud brought under Article 3A of Chapter 39 of the General Statutes or claims alleging actual or constructive fraud under G.S. 75-1.1; further provided that the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the actual or constructive fraud or the mistake."

SECTION 2. This act is effective when it becomes law and applies to claims arising on or after that date.

SENATE BILL 393:
Constructive Fraud/Limitations Period

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 1, 2013
Introduced by:	Sen. Clodfelter	**Prepared by:**	Bill Patterson
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 393 establishes a three year statute of limitations for claims alleging constructive fraud other than claims seeking relief against a fraudulent transfer or an unfair and deceptive trade practice.***

CURRENT LAW: A statute of limitations establishes the period of time within which a civil action must be commenced. Under G.S. 1-52(9), a claim for relief based on fraud or mistake is subject to a three year limitations period, which begins to run when the aggrieved party discovers the facts constituting the fraud or mistake, or when, in the exercise of reasonable diligence, such facts should have been discovered.[1]

The limitations period for a claim based on constructive fraud[2] has been held to be subject to the ten year statute of limitations under G.S. 1-56 applicable to all actions for which a limitations period has not been provided elsewhere.[3]

BILL ANALYSIS: Senate Bill 393 would amend G.S. 1-52(9) to make constructive fraud claims subject to the three year limitations period applicable to claims based on actual fraud, except for claims alleging constructive fraud that seek relief against an unfair and deceptive trade practice[4] or a fraudulent transfer.[5]

The bill also clarifies that a claim alleging actual fraud under G.S. 75-1.1 is not subject to the three-year limitations period under G.S. 1-52(9).[6]

As with claims based on actual fraud or mistake, the bill would provide that the limitations period for a claim based on constructive fraud does not begin to run until the discovery by the aggrieved party of the facts constituting the constructive fraud.

EFFECTIVE DATE: This act is effective when it becomes law and applies to claims arising on or after that date.

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[1] G.S. 1-52(9); Vail v. Vail, 233 N.C. 109, 116, 63 S.E.2d 202, 207 (1951) (citations omitted).

[2] Constructive fraud is committed when a person having a fiduciary relationship with another takes advantage of his or her position of trust for his or her own gain to the detriment of the other. State ex rel. Long v. Petree Stockton, L.L.P., 129 N.C. App. 432, 445, 499 S.E.2d 790, 798 (1998).

[3] NationsBank of N. Carolina, N.A. v. Parker, 140 N.C. App. 106, 113, 535 S.E.2d 597, 602 (2000).

[4] G.S. 75-1.1 makes it unlawful to engage in "unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce."

[5] Article 3A of Chapter 39 of the General Statutes provides relief to creditors against a debtor's transfer of assets under specified circumstances, including transfers made with the intent to hinder, delay or defraud any creditor of the debtor.

[6] A civil action brought under Chapter 75 must be brought within four years after the cause of action accrues. G.S. 75-16.2.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 433*
Committee Substitute Favorable 4/10/13
Third Edition Engrossed 4/11/13
Senate Commerce Committee Substitute Adopted 4/23/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H433-CSTA-10 [v.5]
5/8/2013 3:53:28 PM

Short Title: Land Use Surrounding Military Installations. (Public)

Sponsors:

Referred to:

March 27, 2013

A BILL TO BE ENTITLED

AN ACT TO SUPPORT THE ACTIVITIES OF THE ARMED FORCES AND TO MAINTAIN AND ENHANCE THE MILITARY'S PRESENCE IN NORTH CAROLINA BY REGULATING THE HEIGHT OF BUILDINGS AND STRUCTURES LOCATED IN AREAS THAT SURROUND MILITARY INSTALLATIONS IN THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 9G.
"Military Lands Protection.

"**§ 143-151.70. Short title.**

This Article shall be known as the Military Lands Protection Act of 2013.

"**§ 143-151.71. Definitions.**

Within the meaning of this Article:

(1) "Area surrounding major military installations" is the area that extends five miles beyond the boundary of a major military installation and may include incorporated and unincorporated areas of counties and municipalities.

(2) "Building Code Council" means the Council created pursuant to Article 9 of Chapter 143 of the General Statutes.

(3) "Commissioner" means the Commissioner of Insurance.

(4) "Construction" includes reconstruction, alteration, or expansion.

(5) "Major military installation" means Fort Bragg, Pope Army Airfield, Camp Lejeune Marine Corps Air Base, New River Marine Corps Air Station, Cherry Point Marine Corps Air Station, Military Ocean Terminal at Sunny Point, the United States Coast Guard Air Station at Elizabeth City, Naval Support Activity Northwest, Air Route Surveillance Radar (ARSR-4) at Fort Fisher, and Seymour Johnson Air Force Base, in its own right and as the responsible entity for the Dare County Bombing Range, and any facility located within the State that is subject to the installations' oversight and control.

(6) "Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or

private institution, utility, cooperative, interstate body, the State of North Carolina and its agencies and political subdivisions, or other legal entity.

(7) "Tall buildings or structures" means any building, structure, or unit within a multiunit building with a vertical height of more than 200 feet measured from the top of the foundation of the building, structure, or unit and the uppermost point of the building, structure, or unit. "Tall buildings or structures" does not include:

a. Water, radio, telephone, cellular, or television towers or any equipment for the transmission of electricity or communications or both.

b. Slender structures and minor vertical projections of a parent building, including chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires, or windmills. Windmills exempt pursuant to this sub-subdivision shall project no more than 20 vertical feet above the parent building.

c. Buildings and structures listed individually or as contributing resources within a district listed in the National Register of Historic Places.

"**§ 143-151.72. Legislative findings.**

North Carolina has a vested economic interest in preserving, maintaining, and sustaining land uses that are compatible with military activities at major installations. Development located proximate to military installations has been identified as a critical issue impacting the long-term viability of the military in this State. Additional concerns associated with development include loss of access to air space and coastal and marine areas and radio frequency encroachment. The construction of tall buildings or structures in areas surrounding major military installations is of utmost concern to the State as those buildings and structures may interfere with or impede the military's ability to carry out activities that are vital to its function and future presence in North Carolina.

"**§ 143-151.73. Certain buildings and structures prohibited without endorsement.**

(a) No county or city may authorize the construction of, and no person may construct, a tall building or structure in any area surrounding a major military installation in this State unless the county or city is in receipt of either a letter of endorsement issued to the person by the Building Code Council pursuant to G.S. 143-151.75 or proof of the Council's failure to act within the time allowed pursuant to G.S. 143-151.75.

(b) No county or city may authorize the provision of the following utility services to any building or structure constructed in violation of subsection (a) of this section: electricity, telephone, gas, water, sewer, or septic system.

"**§ 143-151.74. Exemption from applicability.**

Wind energy facilities and wind energy facility expansions, as those terms are defined in Chapter 143 of the General Statutes, that are subject to the applicable permit requirements of that Chapter shall be exempt from obtaining the endorsement required by this Article.

"**§ 143-151.75. Endorsement for construction of tall buildings or structures required.**

(a) No person shall undertake construction of a tall building or structure in any area surrounding a major military installation in this State without either first obtaining the endorsement from the Building Code Council or proof of the Council's failure to act within the time allowed.

(b) A person seeking endorsement for the construction of a tall building or structure in any area surrounding a major military installation in this State shall provide written notice of the intent to seek endorsement to the commanders of the installation that is located within five miles of the proposed construction of a tall building or structure and shall provide all of the following to the Building Code Council:

(1) Identification of the major military installation and the base commander of the installation that is located within five miles of the proposed construction of a tall building or structure.

(2) A copy of the written notice sent to the commanders of the installation identified in subdivision (1) of this subsection that is located within five miles of the proposed construction of a tall building or structure.

(3) A written statement from the base commander of the installation identified in subdivision (1) of this subsection that includes both of the following:

a. A determination whether the location of the proposed construction of the tall building or structure is within a protected area that surrounds the installation.

b. A determination whether any activities of the installation may be adversely affected by the proposed construction of the tall building or structure. A detailed description of the potential adverse effects, including frequency disturbances and physical obstructions, shall accompany the determination required by this sub-subdivision.

(4) A written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 Code of Federal Regulations (January 1, 2012 Edition) for the proposed construction of the tall building or structure.

(c) The Building Code Council shall not endorse the construction of a tall building or structure if the Council finds any one or more of the following:

(1) Construction of the proposed tall building or structure would encroach upon or otherwise interfere with the mission, training, or operations of any major military installation in North Carolina and result in a detriment to continued military presence in the State. In its evaluation, the Building Code Council may consider whether the proposed tall building or structure would cause interference with air navigation routes, air traffic control areas, military training routes, or radar based on the written statement received from a commander of a major military installation required pursuant to subdivision (3) of subsection (b) of this section and written comments received by members of affected communities.

(2) The Council is not in receipt of the written "Determination of No Hazard to Air Navigation" issued to the person by the Federal Aviation Administration required pursuant to subdivision (4) of subsection (b) of this section.

(d) The Building Code Council shall make a final decision on the request for endorsement of the construction of a tall building or structure within 60 days of receipt of the items provided by the person pursuant to subsection (b) of this section. If the Council determines that a request for the construction of a tall building or structure fails to meet the requirements for endorsement under this section, the Council shall deny the request. The Council shall notify the person of the denial, and the notice shall include a written statement of the reasons for the denial. If the Council fails to act within any time period set forth in this section, the person may treat the failure to act as a decision to endorse the construction.

(e) The Building Code Council may meet by telephone, video, or Internet conference, so long as consistent with applicable law regarding public meetings, to make a decision on a request for endorsement for the construction of a tall building or structure pursuant to subsection (d) of this section.

"**§ 143-151.76. Application to existing tall buildings and structures.**

G.S. 143-151.73 applies to tall buildings or structures that existed in an area surrounding major military installations upon the effective date of this Article as follows:

(1) No reconstruction, alteration, or expansion may aggravate or intensify a violation by an existing building or structure that did not comply with G.S. 143-151.73 upon its effective date.

(2) No reconstruction, alteration, or expansion may cause or create a violation by an existing building or structure that did comply with G.S. 143-151.73 upon its effective date.

"**§ 143-151.77. Enforcement and penalties.**

In addition to injunctive relief, the Commissioner may assess and collect a civil penalty against any person who violates any of the provisions of this Article or rules adopted pursuant to this Article, as provided in this subsection. The maximum civil penalty for a violation is five thousand dollars ($5,000). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation may constitute a separate violation if the person is not in the process of remedying the violation.

(1) The Commissioner shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment within 30 calendar days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil penalty assessed by the Commissioner within 30 calendar days after it is due, the Commissioner shall request that the Attorney General institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the violation occurred. A civil action must be filed within one year of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

(2) In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully, the prior record of the violator in complying or failing to comply with this Article, and the action of the person to remedy the violation.

(3) The clear proceeds of civil penalties collected by the Commissioner under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 2. G.S. 143-138 is amended by adding a new subsection to read:

"(j2) Pursuant to Article 9G of Chapter 143 of the General Statutes, the Building Code Council is authorized to review and endorse proposals for the construction of tall buildings or structures in areas surrounding major military installations as those terms are defined in G.S. 143-151.71."

SECTION 3. This act becomes effective October 1, 2013.

HOUSE BILL 433:
Land Use Surrounding Military Installations

2013-2014 General Assembly

Committee:	Senate Judiciary I, Then Sequential Referral To Senate Rules and Operations	**Date:**	May 9, 2013
Introduced by:	Reps. J. Bell, Stam, McElraft, Whitmire	**Prepared by:**	Jennifer Mundt Legislative Analyst
Analysis of:	PCS to Fourth Edition H433-CSTA-10		

SUMMARY: ***House Bill 433 would prohibit the construction of tall buildings or structures within a five-mile area surrounding a military installation without first receiving an endorsement from the State Construction Office of the Department of Administration.***

The PCS amends the 4th Edition of the bill to:

- ***Return the endorsement authority to the Building Code Council (was the State Construction Office of the Department of Administration) and make conforming statutory changes.***
- ***Provide that the Council may meet by telephone, video, or Internet conference in order to make a decision on a request for an endorsement.***
- ***Reinstate the Commissioner of Insurance's enforcement and penalties for violations under the Article.***

[As introduced, this bill was identical to S389, as introduced by Sen. Brown, which is currently in Senate Commerce.]

BILL ANALYSIS: House Bill 433 establishes a new Article in Chapter 143 of the General Statutes: The Military Lands Protection Act of 2013. The bill provides definitions for terms used in the Article, including "Major military installation" and "Tall buildings or structures," and provides that:

- A county or city cannot authorize, and no person may construct, the construction of a tall building or structure with a vertical height of more than 200 feet in any area surrounding a major military installation (area that extends five miles beyond the installation boundary), unless the county or city is (1) in receipt of either a letter of endorsement issued to the person by the Building Code Council, or (2) proof of the Council's failure to act within the time allowed by law.
- No utility services may be provided to any building or structure constructed in violation of the provisions of the Article (electricity, telephone, gas, water, sewer, or septic system).
- Wind energy facilities and wind energy facility expansions that are subject to permit requirements of Chapter 143 are exempt from obtaining the endorsement required by the Article.
- A person seeking to construct a tall building or structure in any area surrounding a major military installation must notify the installation of its intent and must obtain an endorsement from the Building Code Council. A person seeking an endorsement must provide the Council with the following:
  - Identification of the major military installation and the base commander of such installation that is located within five miles of the proposed construction of a tall building or structure.
  - A copy of the written notice to the commanders of the installation that is located within five miles of the proposed construction of a tall building or structure.

- A written statement from the base commander of the installation that includes:
  - A determination whether the location of the proposed construction of the tall building or structure is within a protected area that surrounds the installation.
  - A determination whether any activities of the installation may be adversely affected by the proposed construction of the tall building or structure.
- A written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 Code of Federal Regulations (January 1, 2012 Edition) for the proposed construction of the tall building or structure.

- The Building Code Council may not endorse the construction of a tall building or structure if it finds any one of the following:
  - Construction of the proposed tall building or structure would encroach upon or otherwise interfere with the mission, training, or operations of any major military installation in North Carolina and result in a detriment to continued military presence in the State.
  - The Council did not receive a written "Determination of No Hazard to Air Navigation" issued to the applicant by the Federal Aviation Administration.
- The act provides procedures for a decision of endorsement by the Building Code Council upon receipt of all required information, including a deadline for the Council's decision (within 60 days). The act authorizes the Council to meet by telephone, video, or Internet conference to make a decision on a request for endorsement. If the Council fails to act within the time period provided, the person may treat the failure to act as a decision to endorse the construction.
- The Article applies to buildings existing on the effective date, i.e., no reconstruction, alteration or expansion without compliance with the Article.
- The Article allows for injunctive relief, as well as civil penalties assessed by the Commissioner of Insurance.

EFFECTIVE DATE: This act becomes effective October 1, 2013.

Hal Pell, counsel to the House Committee on Homeland Security, Military, and Veterans' Affairs, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 630

Short Title:	Evidence & DNA Expunction Laws.-AB	(Public)
Sponsors:	Senators Newton (Primary Sponsor); and Goolsby.	
Referred to:	Judiciary I.	

April 4, 2013

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:~~doing either of the following:

a. Documenting expunction of the DNA record and destruction of the DNA ~~sample, or~~sample.

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, 2013. Sections 2, 3, 4, 5, 6, 7, and 8 of this act apply to proceedings that occur on or after December 1, 2013.

SENATE BILL 630:
Evidence & DNA Expunction Laws.-AB

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 7, 2013
Introduced by:	Sen. Newton	**Prepared by:**	Susan Sitze*
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***This act provides for a retention period for chemical analyses for the presence of alcohol in bodily fluids; provides that laboratory reports and affidavits shall be admissible into evidence without the testimony of the laboratory technician unless specifically requested; and enlarges the period of time for the SBI to notify a person of the disposition of DNA results following a request for expunction.***

[As introduced, this bill was identical to H386, as introduced by Rep. Stevens, which is currently in Rules and Operations of the Senate.]

BACKGROUND and CURRENT LAW: In the Melendez-Diaz case, the United States Supreme Court, held, based upon the Sixth Amendment's confrontation clause, that if the State intended to submit the results of a laboratory test into evidence, then the laboratory analyst who performed the test was required to testify. However, the Court held that if the defendant failed to object after being provided notice of the State's intent, then the report was admissible without the analyst's testimony.

BILL ANALYSIS: This act:

- Provides that any blood or urine sample subject to chemical analysis for an impairing substance may be destroyed 12 months after the issuance date of the report of all examinations conducted. If a motion to preserve the evidence has been filed by either party, the evidence must remain in the custody of the analyzing agency or the agency that collected the sample until a court order disposing of the sample is issued.
- Absent an objection after notice by the State to the defendant that it intends to offer a laboratory report into evidence, current law allows a judge to enter a laboratory report into evidence without the testimony of the laboratory analyst. The act removes the court's discretion and provides that the evidence shall be admitted.
- Currently, following the receipt of a form from a defendant seeking the expunction of a DNA sample, the SBI has 30 days to notify the defendant that the DNA sample has been destroyed, or that the defendant is not eligible for an expunction. The act changes the response period from 30 days to 90 days.

EFFECTIVE DATE: The portions of the act that apply to destruction of samples and the response period for the SBI to notify a defendant of DNA expunction become effective December 1, 2013. The provisions relating to the requirement that laboratory reports be admitted if there is no objection raised by the defendant applies to proceedings that occur on or after December 1, 2013.

**Hal Pell, Staff Attorney, contributed substantially to this summary.*

O. Walker Reagan
Director

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Research Division
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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 683
PROPOSED COMMITTEE SUBSTITUTE S683-CSSA-42 [v.4]
5/8/2013 3:57:13 PM

Short Title: Safe Harbor/Victims of Human Trafficking. (Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO CREATE A SAFE HARBOR FOR VICTIMS OF HUMAN TRAFFICKING AND FOR PROSTITUTED MINORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-43.11 reads as rewritten:

"**§ 14-43.11. Human trafficking.**

(a) A person commits the offense of human trafficking when that ~~person~~ person (i) knowingly or in reckless disregard of the fact recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual ~~servitude.~~servitude or (ii) knowingly or in reckless disregard of the fact causes a minor to be held in involuntary servitude or sexual servitude.

(b) A person who violates this section is guilty of a ~~Class F~~ Class E felony if the victim of the offense is an adult. A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.

(c) Each violation of this section constitutes a separate offense and shall not merge with any other offense. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this section.

(c1) Mistake of age is not a defense to prosecution under this section. Consent of a minor is not a defense to prosecution under this section.

(d) A person who is not a legal resident of North Carolina, and would consequently be ineligible for State public benefits or services, shall be eligible for the public benefits and services of any State agency if the person is otherwise eligible for the public benefit and is a victim of an offense charged under this section. Eligibility for public benefits and services shall terminate at such time as the victim's eligibility to remain in the United States is terminated under federal law."

SECTION 2. G.S. 14-43.12 reads as rewritten:

"**§ 14-43.12. Involuntary servitude.**

(a) A person commits the offense of involuntary servitude when that person knowingly and willfully or in reckless disregard holds another in involuntary servitude.

(b) A person who violates this section is guilty of a ~~Class F~~ Class E felony if the victim of the offense is an adult. A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.

(c) Each violation of this section constitutes a separate offense and shall not merge with any other offense. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this section.

(c1) Mistake of age is not a defense to prosecution under this section. Consent of a minor is not a defense to prosecution under this section.

(d) Nothing in this section shall be construed to affect the laws governing the relationship between an unemancipated minor and his or her parents or legal guardian.

(e) If any person reports a violation of this section, which violation arises out of any contract for labor, to any party to the contract, the party shall immediately report the violation to the sheriff of the county in which the violation is alleged to have occurred for appropriate action. A person violating this subsection shall be guilty of a Class 1 misdemeanor."

SECTION 3. G.S. 14-43.13 reads as rewritten:

"**§ 14-43.13. Sexual servitude.**

(a) A person commits the offense of sexual servitude when that person knowingly or in reckless disregard subjects or maintains another in sexual servitude.

(b) A person who violates this section is guilty of a ~~Class F~~ Class E felony if the victim of the offense is an adult. A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.

(b1) Mistake of age is not a defense to prosecution under this section. Consent of a minor is not a defense to prosecution under this section.

(c) Each violation of this section constitutes a separate offense and shall not merge with any other offense. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this section."

SECTION 4.(a) The following statutes are repealed: G.S. 14-190.18, 14-190.19, 14-203, 14-204, 14-204.1, 14-205, 14-207, and 14-208.

SECTION 4.(b) G.S. 14-206 is recodified as G.S. 14-203.9.

SECTION 5. Article 27 is amended by adding the following new sections to read:

"**§ 14-203.1. Definitions.**

The following definitions apply in this Article:

(1) Advance prostitution. – The term includes all of the following:

a. Soliciting for a prostitute by performing any of the following acts when acting as other than a prostitute or a patron of a prostitute:

1. Soliciting another for the purpose of prostitution.
2. Arranging or offering to arrange a meeting of persons for the purpose of prostitution.
3. Directing another to a place knowing the direction is for the purpose of prostitution.
4. Using the Internet, including any social media website, to solicit another for the purpose of prostitution.

b. Keeping a place of prostitution by controlling or exercising control over the use of any place that could offer seclusion or shelter for the practice of prostitution and performing any of the following acts when acting as other than a prostitute or a patron of a prostitute:

1. Knowingly granting or permitting the use of the place for the purpose of prostitution.
2. Granting or permitting the use of the place under circumstances from which the person could reasonably know that the place is used or is to be used for purposes of prostitution.
3. Permitting the continued use of the place after becoming aware of facts or circumstances from which the person should know that the place is being used for the purpose of prostitution.

(2) Minor. – Any person who is less than 18 years of age.

(3) Profit from prostitution. – When acting other than a prostitute, to receive anything of value for personally rendered prostitution services or to receive anything of value from a prostitute, if the thing received is not for lawful consideration and the person knows it was earned in whole or in part from the practice of prostitution.

(4) Prostitute. – A person who engages in prostitution.

(5) Prostitution. – The performance of, offer of, or agreement to perform vaginal intercourse, any sexual act as defined in G.S. 14-27.1(4), or any sexual contact as defined in G.S. 14-27.1(5) for the purpose of sexual arousal or gratification, for any money or other consideration.

"**§ 14-203.2. Prostitution.**

(a) Offense. – Any person who knowingly engages in prostitution is guilty of a Class 1 misdemeanor.

(b) First offender; conditional discharge. –

(1) Whenever any person who has not previously been convicted of or placed on probation for violation of this section pleads guilty to or is found guilty of a violation of this section, the court, without entering a judgment and with the consent of such person, shall place the person on probation pursuant to this subsection.

(2) When a person is placed on probation, the court shall enter an order specifying a period of probation of 12 months and shall defer further proceedings in the case until the conclusion of the period or until the filing of a petition alleging violation of a term or condition of probation.

(3) The conditions of probation shall be that the person (i) not violate any criminal statute of any jurisdiction, (ii) refrain from possessing a firearm or other dangerous weapon, (iii) submit to periodic drug testing at a time and in a manner as ordered by the court, but no less than three times during the period of the probation, with the cost of the testing to be paid by the probationer, (iv) obtain a vocational assessment administered by a program approved by the court, and (v) attend no fewer than ten counseling sessions administered by a program approved by the court.

(4) The court may, in addition to other conditions, require that the person do any of the following:

a. Make a report to and appear in person before or participate with the court or such courts, person, or social service agency as directed by the court in the order of probation.

b. Pay a fine and costs.

c. Attend or reside in a facility established for the instruction or residence of defendants on probation.

d. Support the person's dependents.

e. Refrain from having in the person's body the presence of any illicit drug prohibited by the North Carolina Controlled Substances Act, unless prescribed by a physician, and submit samples of the person's blood or urine or both for tests to determine the presence of any illicit drug.

(5) Upon violation of a term or condition of probation, the court may enter a judgment on its original finding of guilt and proceed as otherwise provided.

(6) Upon fulfillment of the terms and conditions of probation, the court shall discharge the person and dismiss the proceedings against the person. Upon the discharge of the person and dismissal of the proceedings against the

person under this subsection, the person is eligible to apply for expunction of records pursuant to G.S. 15A-145.6.

(7) Discharge and dismissal under this subsection shall not be deemed a conviction for purposes of structured sentencing or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

(8) There may be only one discharge and dismissal under this section.

(c) Immunity from prosecution for minors. – Notwithstanding any other provision of this section, if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this section is a minor, that person shall be immune from prosecution under this section, and instead shall be taken into temporary protective custody as an undisciplined juvenile pursuant to Article 19 of Chapter 7B of the General Statutes. Pursuant to the provisions of G.S. 7B-301, a law enforcement officer who takes a minor into custody under this section shall immediately report an allegation of a violation of G.S. 14-43.11 and G.S. 14-43.13 to the director of the department of social services in the county where the minor resides or is found, as appropriate, which shall commence an initial investigation into child abuse or child neglect within 24 hours pursuant to G.S. 7B-301 and G.S. 7B-302."

"**§14-203.3. Solicitation of prostitution.**

Except as otherwise provided in this section, any person who solicits another for the purpose of prostitution is guilty of a Class 1 misdemeanor for a first offense, and a Class I felony for a second or subsequent offense. Any person 18 years of age or older who solicits a minor for the purpose of prostitution is guilty of a Class C felony. Any person who solicits a person who is severely or profoundly mentally disabled for the purpose of prostitution is guilty of a Class C felony.

"**§ 14-203.4. Promoting prostitution.**

(a) Any person who knowingly performs any of the following acts commits promoting prostitution:

(1) Advances prostitution as defined in G.S. 14-203.1.

(2) Profits from prostitution by doing any of the following:

a. Compelling a person to become a prostitute.

b. Arranging or offering to arrange a situation in which a person may practice prostitution.

c. Any means other than those described in sub-subdivisions a. and b. of this subdivision, including from a person who patronizes a prostitute. This sub-subdivision does not apply to a person engaged in prostitution who is a minor. A person cannot be convicted of promoting prostitution under this sub-subdivision if the practice of prostitution underlying the offense consists exclusively of the accused's own acts of prostitution under G.S 14-203.2.

(b) Except as otherwise provided in this subsection, a violation of this section is a Class F felony. A violation of this section within 1,000 feet of real property comprising a school is a Class C felony. A violation of this section by a person with a prior conviction for a violation of this section or a violation of G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of prostitution), G.S. 14-203.5 (promoting prostitution of a minor or mentally disabled person), G.S. 14-203.6 (patronizing a prostitute), or G.S. 14-203.7 (patronizing a minor or mentally disabled person engaged in prostitution) is a Class C felony.

"**§ 14-203.5. Promoting prostitution of a minor or mentally disabled person.**

(a) Any person who knowingly performs any of the following acts commits promoting prostitution of a minor or mentally disabled person:

(1) Advances prostitution as defined in G.S. 14-203.1, where a minor or severely or profoundly mentally disabled person engaged in prostitution, or

any person engaged in prostitution in the place of prostitution is a minor or is severely or profoundly mentally disabled at the time of the offense.

(2) Profits from prostitution by any means where the prostitute is a minor or is severely or profoundly mentally disabled at the time of the offense.

(3) Confines a minor or a severely or profoundly mentally disabled person against the person's will by the infliction or threat of imminent infliction of great bodily harm, permanent disability, or disfigurement or by administering to the minor or severely or profoundly mentally disabled person, without the person's consent or by threat or deception and for other than medical purposes, any alcoholic intoxicant or a drug as defined in Article 5 of Chapter 90 of the General Statutes (North Carolina Controlled Substances Act) and does any of the following:

a. Compels the minor or severely or profoundly mentally disabled person to engage in prostitution.

b. Arranges a situation in which the minor or severely or profoundly mentally disabled person may practice prostitution.

c. Profits from prostitution by the minor or severely or profoundly mentally disabled person.

(b) For purposes of this section, administering drugs, as described in subdivision (3) of subsection (a) of this section, or an alcoholic intoxicant to a minor or a severely or profoundly mentally disabled person shall be deemed to be without consent if the administering is done without the consent of the parents or legal guardian or if the administering is performed or permitted by the parents or legal guardian for other than medical purposes.

(c) Except as otherwise provided in this subsection, a violation of subdivisions (1) or (2) of subsection (a) of this section is a Class B2 felony. A violation of subdivision (3) of subsection (a) of this section is a Class B1 felony. A violation of this section within 1,000 feet of real property comprising a school is a Class B1 felony. A violation of this section by a person with a prior conviction for a violation of this section or a violation of G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of prostitution), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.6 (patronizing a prostitute), or G.S. 14-203.7 (patronizing a minor or mentally disabled person engaged in prostitution) is a Class B1 felony.

(d) Any person convicted of a violation of this section that involves promoting prostitution of a minor or mentally disabled person by keeping a place of prostitution with minors or severely or profoundly mentally disabled person as prostitutes or convicted of a violation of subdivision (3) of subsection (a) of this section is subject to the property forfeiture provisions set forth in G.S. 14-2.3.

"**§ 14-203.6. Patronizing a prostitute.**

(a) Any person who knowingly performs any of the following acts with a person not his or her spouse commits patronizing a prostitute:

(1) Engages in vaginal intercourse, any sexual act as defined in G.S. 14-27.1(4), or any sexual contact as defined in G.S. 14-27.1(5) for the purpose of sexual arousal or gratification, with a prostitute.

(2) Enters or remains in a place of prostitution with intent to engage in vaginal intercourse, any sexual act as defined in G.S. 14-27.1(4), or any sexual contact as defined in G.S. 14-27.1(5) for the purpose of sexual arousal or gratification.

(b) Except as otherwise provided in this subsection, a violation of this section is a Class F felony. A violation of this section within 1,000 feet of real property comprising a school is a Class C felony. A violation of this section by a person with a prior conviction for a violation of this section or a violation of G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of prostitution), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.5 (promoting prostitution of

a minor or mentally disabled person), or G.S. 14-203.7 (patronizing a minor or mentally disabled person engaged in prostitution) is a Class C felony.

"**§ 14-203.7. Patronizing a minor or mentally disabled person engaged in prostitution.**

(a) Any person 18 years of age or older who engages in vaginal intercourse, any sexual act as defined in G.S. 14-27.1(4), or any sexual contact as defined in G.S. 14-27.1(5) for the purpose of sexual arousal or gratification, with a prostitute that is a minor, commits the offense of patronizing a minor engaged in prostitution.

(b) Any person who engages in vaginal intercourse, any sexual act as defined in G.S. 14-27.1(4), or any sexual contact as defined in G.S. 14-27.1(5) for the purpose of sexual arousal or gratification, with a prostitute that is a severely or profoundly mentally disabled person, commits the offense of patronizing a mentally disabled person engaged in prostitution.

(c) It is an affirmative defense to the charge of patronizing a minor or mentally disabled person engaged in prostitution that the accused reasonably believed that the person was of the age of 18 years or over or was not a severely or profoundly mentally disabled person at the time of the act giving rise to the charge.

(d) Except as otherwise provided in this subsection, a violation of this section is a Class C felony. A violation of this section within 1,000 feet of real property comprising a school is a Class B2 felony. A violation of this section by a person with a prior conviction for a violation of this section or a violation of G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of prostitution), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.5 (promoting prostitution of a minor or mentally disabled person), or G.S. 14-203.6 (patronizing a prostitute) is a Class B2 felony."

"**§ 14-203.10. Certain probation conditions.**

(a) If a person convicted of a crime under this Article receives a sentence which includes probation, and that person is infected with a venereal disease, the period of probation may commence only upon such terms and conditions as shall insure medical treatment therefor and prevent the spread thereof, and the court may order any convicted defendant to be examined for venereal disease.

(b) No female who is convicted under this Article shall be placed on probation in the care or charge of any person except a female probation officer."

SECTION 6. G.S. 15A-290(c)(1) reads as rewritten:

"(c) Orders authorizing or approving the interception of wire, oral, or electronic communications may be granted, subject to the provisions of this Article and Chapter 119 of the United States Code, when the interception may provide, or has provided, evidence of any of the following offenses, or any conspiracy to commit these offenses, or when the interception may expedite the apprehension of persons indicted for the commission of these offenses:

(1) Any felony offense against a minor, including any violation of G.S. 14-27.7 (Intercourse and sexual offenses with certain victims; consent no defense), G.S. 14-41 (Abduction of children), G.S. 14-43.11 (Human trafficking), G.S. 14-43.12 (Involuntary servitude), G.S. 14-43.13 (Sexual servitude), G.S. 14-190.16 (First degree sexual exploitation of a minor), G.S. 14-190.17 (Second degree sexual exploitation of a minor), ~~G.S. 14-190.18 (Promoting prostitution of a minor), G.S. 14-190.19 (Participating in prostitution of a minor),~~ G.S. 14-203.5 (Promoting prostitution of a minor or mentally disabled person), G.S. 14-203.7 (Patronizing a minor or mentally disabled person engaged in prostitution) or G.S. 14-202.1 (Taking indecent liberties with children).

...."

SECTION 7. G.S. 15A-1341 is amended by adding a new subsection to read:

"(a3) Deferred Prosecution for Prostitution. – A defendant whose prosecution is deferred pursuant to G.S. 14-203.2(b), may be placed on probation as provided in this Article."

SECTION 8. G.S. 15A-1342(a1) reads as rewritten:

"(a1) Supervision of Defendants on Deferred Prosecution. – The Section of Community Corrections of the Division of Adult Correction of the Department of Public Safety may be ordered by the court to supervise an offender's compliance with the terms of a deferred prosecution agreement entered into under ~~G.S. 15A-1341(a1).~~G.S. 15A-1341(a1) or (a3). Violations of the terms of the agreement shall be reported to the court as provided in this Article and to the district attorney in the district in which the agreement was entered."

SECTION 9. G.S. 15A-1415(b) is amended by adding a new subdivision to read:

"(10) The defendant was convicted of a first offense of prostitution under G.S. 14-203.2 and the court did not discharge the defendant and dismiss the charge pursuant to G.S. 14-203.2(b); the defendant's participation in the offense was a result of having been a victim of human trafficking under G.S. 14-43.11, sexual servitude under G.S. 14-43.13, or the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)); and the defendant seeks to have the conviction vacated."

SECTION 10. Article 89 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1416.1. Motion by the defendant to vacate prostitution conviction for sex trafficking victim.**

(a) The Court of Appeals has jurisdiction to hear a motion for appropriate relief filed on the grounds set out in G.S. 15A-1415(b)(10). A motion to vacate a conviction for prostitution may be filed at any time following the entry of a verdict or finding of guilty under G.S. 14-203.2. Any motion for appropriate relief filed under this section shall state why the facts giving rise to this motion were not presented to the trial court and shall be made with due diligence after the defendant has ceased to be a victim of such trafficking or has sought services for victims of such offenses, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking that may be jeopardized by the bringing of such motion or for other reasons consistent with the purpose of this section. Reasonable notice of the motion shall be served upon the State.

(b) The court may grant the motion if, in the discretion of the court, the violation was a result of the defendant having been a victim of human trafficking or sexual servitude. Evidence of such may include any of the following documents listed in subdivisions (1) through (3) of this subsection; alternatively, the court may consider such other evidence as it deems of sufficient credibility and probative value in determining whether the defendant is a trafficking victim:

(1) Certified records of federal or State court proceedings which demonstrate that the defendant was a victim of a person charged with an offense under G.S. 14-43.11, G.S. 14-43.13, or under 22 U.S.C. Chapter 78.

(2) Certified records of "approval notices" or "enforcement certifications" generated from federal immigration proceedings available to such victims.

(3) A sworn statement from a trained professional staff of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the defendant has sought assistance in addressing the trauma associated with being trafficked.

(c) If the court grants a motion under this section, the court must vacate the conviction and may take such additional action as is appropriate in the circumstances."

SECTION 11. Article 5 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 15A-145.6. Expunctions for certain defendants convicted of prostitution.**

(a) The following definitions apply in this section:

(1) Prostitution offense – A conviction for (i) violation G.S. 14-203.2, or (ii) engaging in prostitution in violation of G.S. 14-204(7) for an offense that occurred prior to December 1, 2013.

(2) Violent felony or violent misdemeanor – A Class A through G felony or a Class A1 misdemeanor or an offense that includes assault as an essential element of the offense.

(b) A person who has been convicted of a prostitution offense may file a petition in the court where the person was convicted for expunction of the prostitution offense from the person's criminal record provided that all the following criteria are met:

(1) The person has not previously been convicted of any violent felony or violent misdemeanor under the laws of the United States or the laws of this State or any other state.

(2) The person satisfies any one of the following criteria:

a. The person's participation in the prostitution offense was a result of having been a trafficking victim under G.S. 14-43.11 (human trafficking) or G.S. 14-43.13 (sexual servitude) or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)).

b. The person has no prior convictions for a prostitution offense and at least three years has passed since the date of conviction or the completion of any active sentence, period of probation, and post-release supervision, whichever occurs later.

c. The person received a conditional discharge pursuant to G.S. 14-203.2(b).

(c) The petition shall contain all of the following:

(1) An affidavit by the petitioner that the petitioner (i) has no prior conviction of a violent felony or violent misdemeanor, (ii) has been of good moral character since the date of conviction of the prostitution offense in question, and (iii) has not been convicted of any felony or misdemeanor under the laws of the United States or the laws of this State or any other state since the date of the conviction of the prostitution offense in question.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing (i) a State and national criminal history record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual; (ii) a search by the Department of Justice for any outstanding warrants or pending criminal cases; and (iii) a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

(d) The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

(e) The court in which the petition was filed shall take the following steps and shall consider the following issues in rendering a decision upon a petition for expunction of records of a prostitution offense under this section:

(1) Call upon a probation officer for additional investigation or verification of the petitioner's conduct during the period since the date of conviction of the prostitution offense in question.

(2) Review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers and district attorneys.

(f) The court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

(1) The criteria set out in subsection (b) of this section are satisfied.

(2) The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic violation, since the date of conviction of the prostitution offense in question.

(3) The petitioner has no outstanding warrants or pending criminal cases.

(4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

(5) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction, other than an expunction for a prostitution offense.

(g) No person as to whom an order has been entered pursuant to subsection (f) of this section shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. Persons pursuing certification under the provisions of Chapter 17C or 17E of the General Statutes, however, shall disclose any and all prostitution convictions to the certifying Commission regardless of whether or not the prostitution convictions were expunged pursuant to the provisions of this section.

Persons required by State law to obtain a criminal history record check on a prospective employee shall not be deemed to have knowledge of any convictions expunged under this section.

(h) The court shall also order that the conviction of the prostitution offense be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(i) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(j) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the prostitution offense which is to be expunged under this section."

SECTION 12. G.S. 15A-150(a) reads as rewritten:

"(a) Notification to AOC. – The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court, file with the Administrative Office of the Courts the names of the following:

(1) Persons granted an expunction under this Article.

(2) Persons granted a conditional discharge under G.S. 14-50.29.

(3) Persons granted a conditional discharge under G.S. 90-96 or G.S. 90-113.14.

(4) Repealed by Session Laws 2010-174, s. 7, effective October 1, 2010.

(5) Persons granted a conditional discharge under G.S. 14-203.2."

SECTION 13. G.S. 15A-151(a) reads as rewritten:

"(a) The Administrative Office of the Courts shall maintain a confidential file containing the names of those people for whom it received a notice under G.S. 15A-150. The information contained in the file may be disclosed only as follows:

(1) To a judge of the General Court of Justice of North Carolina for the purpose of ascertaining whether a person charged with an offense has been previously granted a discharge or an expunction.

(2) To a person requesting confirmation of the person's own discharge or expunction, as provided in G.S. 15A-152.

(3) To the General Court of Justice of North Carolina in response to a subpoena or other court order issued pursuant to a civil action under G.S. 15A-152.

(4) If the criminal record was expunged pursuant to G.S. 15A-145.4 or G.S. 15A-145.5, to State and local law enforcement agencies for employment purposes only.

(5) If the criminal record was expunged pursuant to ~~G.S. 15A-145.4 or G.S. 15A-145.5,~~G.S. 15A-145.4, G.S. 15A-145.5, or G.S. 145.6, to the North Carolina Criminal Justice Education and Training Standards Commission for certification purposes only.

(6) If the criminal record was expunged pursuant to ~~G.S. 15A-145.4 or G.S. 15A-145.5,~~G.S. 15A-145.4, G.S. 15A-145.5, or G.S. 15A-145.6, to the North Carolina Sheriffs' Education and Training Standards Commission for certification purposes only."

SECTION 14. G.S. 15A-1340.16(d) is amended by adding the following subdivisions to read:

"(19a) The offense is a violation of G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) and involved multiple victims.

(19b) The offense is a violation of G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) and the victim suffered serious injury as a result of the offense."

SECTION 15. G.S. 15B-2(2) reads as rewritten:

"**§ 15B-2. Definitions.**

As used in this Article, the following definitions apply, unless the context requires otherwise:

...

(2) Claimant. – Any of the following persons who claims an award of compensation under this Article:

a. A victim;

b. A dependent of a deceased victim;

c. A third person who is not a collateral source and who provided benefit to the victim or his family other than in the course or scope of his employment, business, or profession;

d. A person who is authorized to act on behalf of a victim, a dependent, or a third person described in ~~subdivision c.~~sub-subdivision c.;

e. A person who was convicted of a first offense under G.S. 14-203.2 and whose participation in the offense was a result of having been a trafficking victim under G.S. 14-43.11 or G.S. 14-43.13 or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)).

The claimant, however, may not be the offender or an accomplice of the offender who committed the criminally injurious ~~conduct.~~conduct, except as provided in sub-subdivision e. of this subdivision.

...."

SECTION 16. G.S. 7B-101(1) reads as rewritten:

"**§ 7B-101. Definitions.**

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Abused juveniles. – Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;

c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;

d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; rape of a child by an adult offender, as provided in G.S. 14-27.2A; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in G.S. 14-27.4; sexual offense with a child by an adult offender, as provided in G.S. 14-27.4A; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; unlawful sale, surrender, or purchase of a minor, as provided in G.S. 14-43.14; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; ~~promoting the prostitution of the juvenile as provided in G.S. 14-190.18;~~promoting prostitution of a minor or mentally disabled person as provided in G.S. 14-203.5; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1;

e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; ~~or~~

f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the ~~juvenile.~~juvenile;

g. Commits or allows to be committed an offense under G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) against the child.

...."

SECTION 17. Article 10A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-43.20. Mandatory restitution; victim services; forfeiture.**

(a) Definition. – For purposes of this section, a "victim" is a person subjected to the practices set forth in G.S. 14-43.11, 14-43.12, or 14-43.13.

(b) Restitution. – Restitution for a victim is mandatory under this Article. In addition to any other amount of loss identified, the court shall order restitution including the greater of (i) the gross income or value to the defendant of the victim's labor or services or (ii) the value of the victim's labor as guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act (FLSA) or the Minimum Wage Law, whichever is greater.

(c) Trafficking victim services. – Subject to the availability of funds, the Department of Health and Human Services may provide or fund emergency services and assistance to individuals who are victims of one or more offenses under G.S. 14-43.11, 14-43.12, or 14-43.13.

(d) Certification. – The Attorney General, a district attorney, or any law enforcement official shall certify in writing to the United States Department of Justice or other federal agency, such as the United States Department of Homeland Security, that an investigation or prosecution under this Article for a violation of G.S. 14-43.11, 14-43.12, or 14-43.13, has begun and the individual who is a likely victim of one of those crimes is willing to cooperate or is cooperating with the investigation to enable the individual, if eligible under federal law, to qualify for an appropriate special immigrant visa and to access available federal benefits. Cooperation with law enforcement shall not be required of victims who are under 18 years of age. This certification shall be made available to the victim and the victim's designated legal representative.

(e) A person who commits a violation of G.S. 14-43.11, 14-43.12, or 14-43.13 is subject to the property forfeiture provisions set forth in G.S. 14-2.3."

SECTION 18. The introductory language in G.S. 14-190.13 reads as rewritten:

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

The following definitions apply to G.S. 14-190.14, displaying material harmful to minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or performances; G.S. 14-190.16, first degree sexual exploitation of a minor; G.S. 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third degree sexual exploitation of a ~~minor; G.S. 14-190.18, promoting prostitution of a minor; G.S. 14-190.19, participating in prostitution of a minor.~~minor."

SECTION 19. G.S. 14-208.6(5) reads as rewritten:

"(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.2A (rape of a child; adult offender), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.4A (sex offense with a child; adult offender), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), former G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-27.7A(a)(statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older), G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6

(employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1)(felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), former G.S. 14-190.18 (promoting prostitution of a minor), former G.S. 14-190.19 (participating in the prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a)(taking indecent liberties with a student), G.S. 14-203.5 (promoting prostitution of a minor or mentally disabled person), G.S. 14-203.7 (patronizing a minor or mentally disabled person engaged in prostitution); G.S. 14-318.4(a1)(parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2)(commission or allowing of sexual act upon a juvenile by parent or guardian). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 20. G.S. 15A-830(a)(7) reads as rewritten:

"(7) Victim. – A person against whom there is probable cause to believe one of the following crimes was committed:

a. A Class A, B1, B2, C, D, or E felony.

b. A Class F felony if it is a violation of one of the following: G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.3; 14-43.11; 14-190.17; ~~14-190.19;~~ 14-202.1; 14-203.7; 14-277.3A; 14-288.9; 20-138.5; or former G.S. 14-277.3.

c. A Class G felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; or 20-141.4.

d. A Class H felony if it is a violation of one of the following: G.S. 14-32.3(a); 14-32.3(c); 14-33.2; 14-277.3A; or former G.S. 14-277.3.

e. A Class I felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-34.6(b); or 14-190.17A.

f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.

g. Any of the following misdemeanor offenses when the offense is committed between persons who have a personal relationship as defined in G.S. 50B-1(b): G.S. 14-33(c)(1); 14-33(c)(2); 14-33(a); 14-34; 14-134.3; 14-277.3A; or former G.S. 14-277.3.

h. Any violation of a valid protective order under G.S. 50B-4.1."

SECTION 21. G.S. 90-210.25B(b) reads as rewritten:

"(b) For purposes of this Article, the term "sexual offense against a minor" means a conviction of any of the following offenses: G.S. 14-27.4A(a) (sex offense with a child; adult offender), G.S. 14-27.7A (statutory rape or sexual offense of person who is 13, 14, or 15 years old where the defendant is at least six years older), G.S. 14-190.16 (first-degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), former G.S. 14-190.18 (promoting prostitution of a minor), former G.S. 14-190.19 (participating in prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-203.5 (promoting

prostitution of a minor or mentally disabled person); G.S. 14-203.7 (patronizing a minor or mentally disabled person engaged in prostitution); G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term shall also include a conviction of the following: any attempt, solicitation, or conspiracy to commit any of these offenses or any aiding and abetting any of these offenses. The term shall also include a conviction in another jurisdiction for an offense which if committed in this State has the same or substantially similar elements to an offense against a minor as defined by this section."

SECTION 22. G.S. 114-15(b1) reads as rewritten:

"(b1) The State Bureau of Investigation is further authorized, upon request of the Governor or Attorney General, to investigate the solicitation, commission, or attempted commission, by means of a computer, computer network, computer system, electronic mail service provider, or the Internet, of the crimes defined in the following statutes:

(1) G.S. 14-190.6;
(2) G.S. 14-190.7;
(3) G.S. 14-190.8;
(4) G.S. 14-190.14;
(5) G.S. 14-190.15;
(6) G.S. 14-190.16;
(7) G.S. 14-190.17;
(8) G.S. 14-190.17A;
~~(9) G.S. 14-190.18;~~
~~(10) G.S. 14-190.19;~~
(11) G.S. 14-202.3;
(12) G.S. 14-203.5;
(13) G.S. 14-203.7.

Upon determining the location of the criminal violation, the State Bureau of Investigation shall promptly notify the sheriff and local law enforcement of its investigation."

SECTION 23. G.S. 115C-296(d)(2) reads as rewritten:

"(2) The State Board shall automatically revoke the license of a teacher or school administrator without the right to a hearing upon receiving verification of the identity of the teacher or school administrator together with a certified copy of a criminal record showing that the teacher or school administrator has entered a plea of guilty or nolo contendere to or has been finally convicted of any of the following crimes: Murder in the first or second degree, G.S. 14-17; Conspiracy or solicitation to commit murder, G.S. 14-18.1; Rape or sexual offense as defined in Article 7A of Chapter 14 of the General Statutes. Felonious assault with deadly weapon with intent to kill or inflicting serious injury, G.S. 14-32; Kidnapping, G.S. 14-39; Abduction of children, G.S. 14-41; Crime against nature, G.S. 14-177; Incest, G.S. 14-178 or G.S. 14-179; Employing or permitting minor to assist in offense against public morality and decency, G.S. 14-190.6; Dissemination to minors under the age of 16 years, G.S. 14-190.7; Dissemination to minors under the age of 13 years, G.S. 14-190.8; Displaying material harmful to minors, G.S. 14-190.14; Disseminating harmful material to minors, G.S. 14-190.15; First degree sexual exploitation of a minor, G.S. 14-190.16; Second degree sexual exploitation of a minor, G.S. 14-190.17; Third degree sexual exploitation of a minor, G.S. 14-190.17A; Promoting prostitution of a minor, former G.S. 14-190.18; Participating in prostitution of a minor, former G.S. 14-190.19; Taking indecent liberties with children, G.S. 14-202.1; Solicitation of child by computer to commit an unlawful sex act,

G.S. 14-202.3; Taking indecent liberties with a student, G.S. 14-202.4; Prostitution, former G.S. 14-204; Prostitution, G.S. 14-203.2; Promoting prostitution of a minor or mentally disabled person, G.S. 14-203.5; Patronizing a minor or mentally disabled person engaged in prostitution, G.S. 14-203.7; and child abuse under G.S. 14-318.4. The Board shall mail notice of its intent to act pursuant to this subdivision by certified mail, return receipt requested, directed to the teacher or school administrator at their last known address. The notice shall inform the teacher or school administrator that it will revoke the person's license unless the teacher or school administrator notifies the Board in writing within 10 days after receipt of the notice that the defendant identified in the criminal record is not the same person as the teacher or school administrator. If the teacher or school administrator provides this written notice to the Board, the Board shall not revoke the license unless it can establish as a fact that the defendant and the teacher or school administrator are the same person."

SECTION 24. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

SENATE BILL 683:
Safe Harbor/Victims of Human Trafficking

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 9, 2013
Introduced by:	Sens. Goolsby, Barringer, Kinnaird	**Prepared by:**	Susan Sitze
Analysis of:	PCS to First Edition S683-CSSA-42		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 683 would increase the penalties for human trafficking, involuntary servitude, and sexual servitude.***

The PCS reduces the penalty for solicitation, exempts minors from the increased penalty for soliciting or patronizing a minor prostitute, removes the impoundment of vehicles, and reduces the time before allowing a petition for expunction.

CURRENT LAW: Human trafficking and related offenses are prohibited under Article 10A of Chapter 14 of the General Statutes. Violations are a Class F felony if committed against an adult, a Class C felony if committed against a minor.

- Pursuant to G.S. 14-43.11, a person commits the offense of human trafficking when that person knowingly recruits, entices, harbors, transports, provides, or obtains another person by any means with the intent that the other person be held in involuntary servitude or sexual servitude.
- Pursuant to G.S. 14-43.12, a person commits the offense of involuntary servitude when that person knowingly and willfully holds another in involuntary servitude.
- Pursuant to G.S. 14-43.13, a person commits the offense of sexual servitude when that person knowingly subjects or maintains another in sexual servitude.

Prostitution is prohibited under Article 27 of Chapter 14 of the General Statutes, and punishable as a Class 1 misdemeanor. Pursuant to G.S. 14-190.18, promoting prostitution of a minor is a Class C felony. Participating in prostitution of a minor by "patronizing a minor prostitute" is a Class F felony under G.S. 14-190.19, and mistake of age is not a defense.

BILL ANALYSIS:

Sections 1-3 of the bill would redefine the offenses of human trafficking, involuntary servitude, and sexual servitude to provide punishment for persons who act *in reckless disregard* or with actual knowledge of what is occurring. The offenses are all currently punishable as a Class F felony if the victim is an adult; a Class C felony if the victim is a minor. The bill would increase the punishment for offenses against adult victims, making the offenses punishable as Class E felonies. Mistake of age or consent of a minor would not be a defense to prosecution.

Section 4(a) of the bill would repeal existing statutes pertaining to prostitution and promoting/participating in prostitution of a minor. **Section 4(b)** would recodify an existing statute pertaining to the admissibility of evidence concerning a person's reputation and any prior convictions in a trial on prostitution.

Section 5 of the bill rewrites Article 27 of Chapter 14 of the General Statutes pertaining to the criminal offense of prostitution.

Prostitution is defined in the new statute as "the performance of, offer of, or agreement to perform vaginal intercourse, any sexual act as defined in G.S. 14-27.1(4) (see background), or any sexual contact as defined in G.S. 14-27.1(5) (see background) for the purpose of sexual arousal or gratification, for money or any other consideration.

Prostitution -- A person who knowingly engages in prostitution would be guilty of a Class 1 misdemeanor. A first time offender would automatically receive deferred prosecution and probation for a period of 12 months, during which time the person must not violate any criminal laws, refrain from possessing any firearm or dangerous weapon, submit to at least 3 drug tests at his or her own expense, obtain a vocational assessment, and attend at least 10 counseling sessions. The person could also be required to pay a fine and costs, attend or reside in a facility, provide family support, and refrain from the use of controlled substances. Upon successful completion of probation, the court would discharge the person and dismiss the proceedings against the person; the person would then be eligible to apply for expunction of the criminal record. Minors would be immune from prosecution for prostitution, but they would be subject to the temporary custody provisions of the Juvenile Code. The officer taking the minor into custody would be required to report an allegation of human trafficking and sexual servitude to the county director of social services. Social services would then be required to begin an investigation into child abuse or child neglect within 24 hours of the notification

Solicitation of Prostitution – Any person who solicits another for the purpose of prostitution would be guilty of a Class 1 misdemeanor for a first offense and a Class I felony for a second or subsequent offense; solicitation of a minor or a person who is severely or profoundly mentally disabled would be a Class C felony, except that a person under the age of 18 who solicits a minor will not receive the Class C felony.

Promoting Prostitution – This offense would occur when a person:

- Advances prostitution by soliciting others for the purpose of prostitution or keeping a place of prostitution.
- Profits from prostitution by compelling a person to become a prostitute or arranging or offering to arrange a situation in which a person may practice prostitution.

A person who commits this offense would be guilty of a Class F felony generally. A violation within 1,000 feet of a school would be a Class C felony. A violation by a person with a prior conviction for this offense or another offense in this Article would be a Class C felony.

Promoting Prostitution of a Minor or Mentally Disabled Person – This offense would occur when a person:

- Advances or profits from prostitution involving a minor or severely or profoundly mentally disabled person engaged in prostitution. A violation would generally be a Class B2 felony.
- Confines a minor or a severely or profoundly mentally disabled person against that person's will by the infliction or threat of great bodily harm, or by administering drugs or alcohol and then compels the person to engage in prostitution, arranges a situation in which the person may practice prostitution, or profits from prostitution by the person. A violation would generally be a Class B1 felony.

A violation within 1,000 feet of a school would be a Class B1 felony. A violation by a person with a prior conviction for this offense or another offense in this Article would be a Class B1 felony. The bill would provide for the forfeiture of gain acquired through the criminal activity of any person convicted of keeping a place of minor prostitution or confining a minor for purposes of prostitution.

Patronizing a Prostitute – A first offense would generally be a Class F felony. Any person who has a prior conviction for this offense or another offense in this Article would be punished as a Class C felon. An offense occurring within 1,000 of a school would also be a Class C felony.

Patronizing a Minor or Mentally Disabled Person Engaged in Prostitution -- A first offense would generally be a Class C felony. Any person who has a prior conviction for this offense or another offense in this Article would be punished as a Class B2 felon. An offense occurring within 1,000 of a school would also be a Class B2 felony. A defendant may assert as an affirmative defense his or her reasonable belief that the person engaged in prostitution was of the age of 18 years or older or was not severely or profoundly mentally disabled at the time of the act giving rise to the charge. The offense of patronizing a minor does not apply to a person under the age of 18, but they could still be charged with the offense of patronizing a prostitute or patronizing a mentally disabled person.

Probation Conditions – The court would have authority to order any convicted defendant to be examined for venereal disease. If a person convicted of a prostitution-related offense receives a sentence with probation, and the person has a venereal disease, the period of probation will begin upon such terms and conditions as will insure medical treatment and prevent the spread of the disease. Any female convicted of a prostitution-related offense would be assigned to a female probation officer.

Section 6 of the bill would amend the law pertaining to orders for electronic surveillance to provide that such orders may be granted when the interception of wire, oral, or electronic communications may expedite the apprehension of persons indicted for human trafficking, involuntary servitude, and sexual servitude.

Sections 7 and 8 of the bill would amend the probation statutes to authorize a probation officer to supervise a person placed on probation under a deferred prosecution agreement for prostitution.

Section 9 of the bill would amend the grounds for appropriate relief which may be asserted by a defendant more than 10 days after entry of judgment, to provide that the defendant may assert that he or she was convicted of a first offense of misdemeanor prostitution and prosecution was not deferred, that defendant's participation in the offense was a result of having been a victim of human trafficking, and that defendant seeks to have the conviction vacated. **Section 10** of the bill would provide for the NC Court of Appeals to have jurisdiction to hear a motion for appropriate relief filed by a defendant who was a victim of human trafficking. The bill specifies evidence that may be considered by the court in determining whether the motion should be granted.

Section 11 of the bill would provide for the expunction of the criminal records of a conviction of misdemeanor prostitution if the person has no prior conviction for a violent felony or misdemeanor, and the person was a victim of human trafficking or sexual servitude, the person has no prior convictions for a prostitution offense, or the person was sentenced under deferred prosecution and is eligible to apply for expunction as a result of discharge and dismissal upon completion of probation. **Sections 12 and 13** would make clarifying changes to statutes governing access to expunged records.

Section 14 of the bill would amend the list of aggravating factors present in an offense that make an aggravated sentence appropriate, to include the fact that the offense was human trafficking, involuntary servitude, or sexual servitude that involved multiple victims or that caused a victim to suffer serious injury as a result of the offense.

Section 15 of the bill would amend the Crime Victims Compensation Act to recognize as a claimant a person who was convicted of a first offense of misdemeanor prostitution and whose participation in the offense was a result of having been a victim of human trafficking under North Carolina law or federal law.

Section 16 of the bill would amend the Juvenile Code to include within the definition of abused juveniles any juvenile under age 18 whose parent, guardian, custodian, or caretaker commits or allows to be committed an offense of human trafficking, involuntary servitude, or sexual servitude against the child.

Section 17 of the bill would provide for the mandatory payment of restitution to victims of human trafficking, involuntary servitude, or sexual servitude by a defendant convicted of the offense. The defendant would be required to pay the greater of the gross income or value to the defendant of the victim's labor or services, or the value of the victim's labor under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act. Subject to the availability of funds, the Department of Health and Human Services would be authorized to provide or fund emergency services and assistance to victims. The Attorney General, a district attorney, or any law enforcement official would be required to certify to the appropriate federal authorities a victim's cooperation or willingness to cooperate in a criminal investigation in order to enable the victim, if eligible, to qualify for a special immigrant visa and to access any available federal benefits. Cooperation would not be required for victims under the age of 18.

Sections 18-24 of the bill would amend existing statutes to make conforming changes made necessary by other provisions of this bill.

EFFECTIVE DATE: The bill would become effective December 1, 2013 and apply to offenses committed on or after that date.

BACKGROUND:

G.S. 14-27.1(4) and (5)....

(4) "Sexual act" means cunnilingus, fellatio, analingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person's body: provided that it shall be an affirmative defense that the penetration was for accepted medical purposes.

(5) "Sexual contact" means (i) touching the sexual organ, anus, breast, groin, or buttocks of any person, (ii) a person touching another person with their own sexual organ, anus, breast, groin, or buttocks, or (iii) a person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 683 (First Edition)

SHORT TITLE: Safe Harbor/Victims of Human Trafficking.

SPONSOR(S): Senators Goolsby, Barringer, and Kinnaird

☑ Yes ☐ No ☑ No Estimate Available

State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Administrative Office of the Courts, Indigent Defense Services, Department of Public Safety

EFFECTIVE DATE: December 1, 2013, and applies to offenses committed on or after that date.

TECHNICAL CONSIDERATIONS:
None

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address new and expanded chargeable offenses being enforced, adjudicated and having penalties applied to those convicted of the new and expanded offenses. However, given there is no historical data on these offenses, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of these crimes:

- Administrative Office of the Courts: Savings of $165 – Cost of $7,818 per disposition
- Indigent Defense Services: Savings of $166 – Cost of $552 in district court
  $59 - $1,001 in superior court without a trial
  Savings of $132 – Cost of $4,551 in superior court with a trial
- Prison Section: $11.23 per inmate per day
- Community Corrections: $365 - $3,594

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Section 1 of this bill amends G.S. 14-43.11, Human trafficking, by reclassifying the existing offense involving an adult victim from Class F to Class E. It also expands the existing offense to add a person who, in reckless disregard of the fact, recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude. Violation would be a Class E felony if the victim is an adult. It remains a Class C felony if the victim is a minor. The bill also adds a new offense if a person knowingly or in reckless disregard of the facts causes a minor to be held in involuntary servitude or sexual servitude. Presumably, this would be a Class C felony since the victim is a minor.

Section 2 of the bill amends G.S. 14-43.12, Involuntary Servitude, reclassifying the existing offense involving an adult victim from Class F to Class E. It also expands the existing offense to add a person who, in reckless disregard, holds another in involuntary servitude.

Section 3 of this bill amends G.S. 14-43.13, Sexual Servitude, by reclassifying the existing offense involving an adult victim from Class F to Class E. It also expands the existing offense to add a person who, in reckless disregard, subjects or maintains another in sexual servitude.

Section 4 of this bill repeals eight statutes from Chapter 14 of the General Statutes.

Section 5 of this bill enacts six new statutes related to prostitution. G.S. 14-203.2, Prostitution, makes it illegal for any person to knowingly perform, offer, or agree to perform any sexual act for any money, property, token, object, article, or anything of value. This statute broadens the conduct covered by the existing offense to include any sexual act and any touching or fondling of the sex organs of one person by another. Violation is a Class 1 misdemeanor. Some of this conduct is currently covered by subsection (7) of G.S. 14-204 (repealed in Section 4). If the offender has not previously been convicted of or placed on probation for misdemeanor prostitution, the court must place him or her on probation without conviction (conditional discharge). If the offender is a minor, he or she is immune from prosecution. (There is no immunity for minors in the current statute.)

G.S. 14-203.3, Solicitation of a sexual act, makes it illegal for a person to offer another person who is not his or her spouse, any money, property, token, object, or article or anything of value for that person to perform any sexual act, or any touching or fondling of the sex organs of one person by another person for the purpose of sexual arousal or gratification. Violation is a Class F felony or a Class C felony if the act is solicited from a minor or a person who is severely or profoundly mentally disabled. Some of this conduct is currently covered by G.S. 14-190.19 (repealed in Section 4), Participating in prostitution of a minor.

G.S. 14-203.4, Promoting prostitution, makes it illegal for a person to knowingly promote prostitution by any of the means listed in the statute or otherwise. Violation is a Class F felony. Some of this conduct is currently covered by subsections (1), (2), (3), (4), and (7) of G.S. 14-204, Prostitution. Violation within 1,000 feet of real property comprising a school is a Class C felony. In addition, a second or subsequent violation of G.S. 14-203.4(a)(1) or (a)(2)(c) is a Class C felony. A violation in combination with convictions under G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of a sexual act), G.S. 14-203.5 (promoting prostitution of a minor), G.S. 14-203.6 (patronizing a prostitute), or G.S. 14-203.7 (patronizing a minor engaged in prostitution) is a Class C felony.

G.S. 14-203.5, Promoting prostitution of a minor, makes it illegal for a person to knowingly promote prostitution of a minor or a person who is severely or profoundly mentally disabled at the time of the offense by any of the means listed in the statute. Violation of subdivision (a)(1) or (a)(2) is a B2 felony. Some of this conduct is currently covered by G.S. 14-190.18, Promoting prostitution of a minor (repealed in

Section 4). Violation within 1,000 feet of real property comprising a school is a Class B1 felony. Violation of subdivision (a)(3) is a Class B1 felony. In addition a second or subsequent violation of any of the subdivisions is a Class B1 felony. A violation of subdivisions (a)(1), (2), or (3), in combination with convictions under G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of a sexual act), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.6 (patronizing a prostitute), or G.S. 14-203.7 (patronizing a minor engaged in prostitution) is a Class B1 felony.

G.S. 14-203.6, Patronizing a prostitute, makes it illegal for a person to knowingly perform any of the following acts with a person not his or her spouse:

(1) Engage in a sexual act with a prostitute.
(2) Enter or remain in a place of prostitution with intent to engage in a sexual act.
(3) Engage in any touching or fondling with a prostitute of the sex organs of one person by the other person, with the intent to achieve sexual arousal or gratification.

A violation of this subsection is a Class F felony. Some of this conduct is currently covered by subsection (2), (6), and (7) of G.S. 14-204. Prostitution. Violation within 1,000 feet of real property comprising a school is a Class C felony. In addition, a second or subsequent violation is a Class C felony. A violation in combination with convictions under G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of a sexual act), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.5 (promoting prostitution of a minor), or G.S. 14-203.7 (patronizing a minor engaged in prostitution) is a Class C felony.

G.S. 14-203.7, Patronizing a minor engaged in prostitution, makes it illegal for a person to do any of the following:

(1) Engage in a sexual act with a person engaged in prostitution that is a minor or is a severely or profoundly mentally disabled person.
(2) Engage in any touching or fondling, with a person engaged in prostitution that is either a minor or is a severely or profoundly mentally disabled person, of the sex organs of one person by the other person, with the intent to achieve sexual arousal or gratification.

A violation of this subsection is a Class C felony. Some of this conduct is currently covered by G.S. 14-190.19, Participating in prostitution of a minor (repealed in Section 4). Violation within 1,000 feet of real property comprising a school is a Class B2 felony. In addition, a second or subsequent violation is a Class B2 felony. A violation in combination with convictions under G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of a sexual act), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.5 (promoting prostitution of a minor), or G.S. 14-203.6 (patronizing a prostitute) is a Class B2 felony.

Section 8 of this bill amends existing G.S. 15A-1415(b)(10), grounds for appropriate relief which may be asserted by the defendant after the verdict; limitation as to time, and creates a new ground for the motion for appropriate relief (MAR), which can be asserted at any time after conviction of certain offenses against a minor.

Section 9 creates new G.S. 15A-1416.1, Motion by the defendant to vacate prostitution conviction for sex trafficking victim, which provides a procedure for hearing the MARs allowed under Section 8. These motions would be brought before the Court of Appeals.

Section 11 creates new G.S. 15A-1340.16(d)(19a) and (19b) (within Aggravated and mitigated sentences) by creating two new aggravating factors for felony sentencing for violations of the human trafficking, involuntary servitude, and sexual servitude statues, for (i) cases involving multiple victims or (ii) if the victims suffer serious injury as a result of the offense.

Section 13 amends existing G.S. 7B-101, Definitions, to modify the definition of an "abused juvenile" under Chapter 7B, subchapter I, to replace the reference to G.S. 14-190.18 (repealed in Section 4) with its corresponding G.S. 14-204.5 (created in Section 5). It also adds to the list of offenses committed by a

parent, guardian; etc., that render a child "abused" in subdivision (g), which covers the human trafficking/servitude offenses.

This bill is effective December 1, 2013, and applies to offenses committed on or after that date.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision (PRS). The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. All F-I felons are now subject to nine months of PRS, and PRS for all B1-E felonies has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Judicial Branch

The Administrative Office of the Courts 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.

Sections 1, 2, and 3 amend the existing statutes by expanding the potential pool of defendants. These sections also raise the offenses, if they involve adults, from the current Class F felony to a Class E felony. The Class C felony offenses for violations involving minors are unchanged. By expanding the scope of the existing offenses in the amendment to the required state of mind of the defendant, there is a possibility that there may be an increase in charges under this bill. In FY 2011-12, there were no defendants charged with the existing Class F felony offense (increased to Class E felony in Section 1) of human trafficking; there were three defendants charged with the existing Class C felony offense (charge class remains unchanged) of human trafficking involving a child victim. Of those, none were convicted. In FY 2011-12 there were no defendants charged with the existing Class F felony offense (increased to Class E in Section 2 of this bill) of involuntary servitude; there were no defendants charged with the existing Class C felony offense (charge class remains unchanged) of involuntary servitude involving a child victim. In FY 2011-12 there were three defendants charged with the existing Class F felony offense (increased to Class E felony in Section 3 of this bill) of sexual servitude; there were eleven defendants charged with the existing Class C felony offense (charge class remains unchanged) of sexual servitude involving a child victim. Of those, there were no convictions involving an adult victim. There was one conviction involving a minor victim. For every additional person charged with a Class E felony, AOC estimates the average cost to the courts would be $706 ($1,618 for a Class E felony minus $912 for a Class F felony).

Section 5 of this bill enacts six new statutes related to prostitution. Pursuant to G.S. 14-203.2(b), prostitution would remain a Class 1 misdemeanor, which would have no fiscal impact on AOC. However,

new 14-203.2(d) would provide that minors are immune from prosecution for prostitution and instead would be subject to temporary custody provisions found elsewhere in the General Statutes. For every person who would have been charged with prostitution under current law who would not be charged under the proposed bill, AOC will save $165.

The table below shows the average cost to the courts for each new General Statute enacted in Section 5.

General Statute	Offense	Current Class	Proposed Class	Per Case Original Cost	Per Case Proposed Cost	Per Case Cost Increase
G.S. 14-203.3(b)	Solicitation of a sexual act from an adult	Class 1 misdemeanor	Class F felony	$165	$912	$747
G.S. 14-203.3(b)	Solicitation of a sexual act from a minor	Class F felony	Class C felony	$912	$4,240	$3,328
G.S. 14-203.4(b)	Promoting prostitution	Class 1 misdemeanor	Class F felony	$165	$912	$747
G.S. 14-203.4(b)	Promoting prostitution within 1,000 feet of a school	Class 1 misdemeanor	Class C felony	$165	$4,240	$4,075
G.S. 14-203.45(c)	Promoting prostitution of a minor	Class C felony	Class B2 felony	$4,240	$8,730	$4,490
G.S. 14-203.5(c)	Promoting prostitution of a minor within 1,000 feet of a school or second or subsequent offense	Class C felony	Class B1 felony	$4,240	$11,762	$7,522
G.S. 14-203.6(b)	Patronizing a prostitute	Class 1 misdemeanor	Class F felony	$165	$912	$747
G.S. 14-203.6(b)	Patronizing a prostitute within 1,000 feet of a school	Class 1 misdemeanor	Class C felony	$165	$4,240	$4,075
G.S. 14-203.7(c)	Patronizing a minor engaged in prostitution	Class F felony	Class C felony	$912	$4,240	$3,328
G.S. 14-203.7(c)	Patronizing a minor engaged in prostitution within 1,000 feet of a school	Class F felony	Class B2 felony	$912	$8,730	$7,818

Sections 8 and 9 set new grounds for a motion by the defendant. This may create additional motions, which would impact the workload of superior court judges; however, the number of additional motions is anticipated to be small because the proposed change encompasses an extremely limited class of offenders.

Section 11 creates two new aggravating factors. Since the finding of one or both of these aggravating factors carries the possibility of a more severe sentence (up to 25% longer) and defendants might put forth a more vigorous defense, AOC anticipates additional trial court proceedings to prove the two new factors in applicable cases. The number of defendants for whom these aggravating factors may be sought is unknown and thus, any additional costs incurred from these longer proceedings cannot be estimated.

Section 13 amends the existing definition of an abused juvenile. AOC anticipates a possibility for an increase in juvenile abuse/neglect/dependency petitions and related proceedings, but only to the extent that the persons prosecuted for these newly created offenses may have custody or control over juveniles that

were involved in the offenses. The number of criminal defendants to whom this situation may apply is unknown, and thus, any additional costs to the court system cannot be estimated.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. There will be no significant difference in cost to IDS in district court. In superior court, IDS estimates that the cost of the elevated Class E felony in Sections 1, 2, and 3 will result in an increase of $59 per case (the difference between the current Class F felony offense of $593 and the new, elevated Class E felony of $652) for a PAC attorney if the case does not go to trial and a savings of $132 per case (the difference between the current Class F felony offense of $2,046 and the new, elevated Class E felony of $1,914) if it does.

To the extent that additional Class E felony charges are brought under Sections 1, 2, or 3 due to expanded grounds, IDS estimates that the cost of a PAC attorney per case would be $295 in district court. In superior court, IDS estimates that the cost of a PAC attorney per case for a Class E felony would be $652 if the case does not go to trial and $1,914 if it does.

Section 5 enacts new G.S. 14-203(b), which keeps prostitution as a Class 1 misdemeanor. This would not have any fiscal impact on IDS. However, new G.S. 14-203.2(d) would provide that minors are immune from prosecution for prostitution and instead shall be subject to temporary custody provisions found elsewhere in the General Statutes. IDS estimates that by making minors immune to prosecution for prostitution, it would save $295 in district court per case on PAC attorneys. In superior court, IDS estimates the savings would be $321 per case if the case does not go to trial and $847 if it does.

Pursuant to new G.S. 14-203.3(b), solicitation of a sexual act from an adult would be a Class F felony, and solicitation of a sexual act from a minor would be a Class C felony. Under current law, solicitation of a sexual act from an adult is a Class 1 misdemeanor, and solicitation of a sexual act from a minor is a Class F felony. The following chart represents IDS' additional per case costs for each indigent case disposed in district court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Adult	Class 1 misdemeanor	Class F felony	$166	$296	$130
Minor	Class F felony	Class C felony	$296	$527	$231

The following chart represents IDS' additional per case costs for each indigent case disposed in superior court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Adult	Class 1 misdemeanor	Class F felony	$321 non-trial $847 trial	$593 non-trial $2,046 trial	$272 non-trial $1,199 trial
Minor	Class F felony	Class C felony	$593 non-trial $2,046 trial	$1,040 non-trial $3,037 trial	$447 non-trial $991 trial

Pursuant to new G.S. 14-203.4(b), promoting prostitution would be a Class F felony, unless the offense occurred within 1,000 feet of a school or this was a second or subsequent violation, which would be a Class C felony. Under current law, promoting prostitution is a Class 1 misdemeanor. The following chart represents IDS' additional per case costs for each indigent case disposed in district court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Promoting	Class 1 misdemeanor	Class F felony	$166	$296	$130
Enhanced Sentence	Class 1 misdemeanor	Class C felony	$166	$527	$361

The following chart represents IDS' additional per case costs for each indigent case disposed in superior court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Promoting	Class 1 misdemeanor	Class F felony	$321 non-trial $847 trial	$593 non-trial $2,046 trial	$272 non-trial $1,199 trial
Enhanced Sentence	Class 1 misdemeanor	Class C felony	$321 non-trial $847 trial	$1,040 non-trial $3,037 trial	$719 non-trial $2,190 trial

Pursuant to new G.S. 14-203.5(c), promoting prostitution of a minor in violation of G.S. 14-203.5(a)(1) would be a Class B2 felony unless the offense occurred within 1,000 feet of a school or this was a second or subsequent violation, which would be a Class B1 felony. Under current law, promoting prostitution of a minor is a Class C felony. The following chart represents IDS' additional per case costs for each indigent case disposed in district court based on FY 2009-10 data. The following chart represents IDS' additional per case costs for each indigent case disposed in district court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Promoting of a Minor	Class C felony	Class B2 felony	$527	$848	$321
Enhanced Sentence	Class C felony	Class B1 felony	$527	$848	$321

The following chart represents IDS' additional per case costs for each indigent case disposed in superior court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Promoting of a Minor	Class C felony	Class B2 felony	$1,040 non-trial $3,037 trial	$1,594 non-trial $6,597 trial	$554 non-trial $3,560 trial
Enhanced Sentence	Class C felony	Class B1 felony	$1,040 non-trial $3,037 trial	$1,594 non-trial $6,597 trial	$554 non-trial $3,560 trial

Pursuant to new G.S. 14-203.6(b), patronizing a prostitute would be a Class F felony, unless the offense occurred within 1,000 feet of a school or this was a second or subsequent violation, which would be a Class C felony. Under current law, patronizing a prostitute is a Class 1 misdemeanor. The following chart represents IDS' additional per case costs for each indigent case disposed in district court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Patronizing	Class 1 misdemeanor	Class F felony	$166	$296	$130
Enhanced Sentence	Class 1 misdemeanor	Class C felony	$166	$527	$361

The following chart represents IDS' additional per case costs for each indigent case disposed in superior court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Patronizing	Class 1 misdemeanor	Class F felony	$321 non-trial $847 trial	$593 non-trial $2,046 trial	$272 non-trial $1,199 trial
Enhanced Sentence	Class 1 misdemeanor	Class C felony	$321 non-trial $847 trial	$1,040 non-trial $3,037 trial	$719 non-trial $2,190 trial

Pursuant to new G.S. 14-203.7(c), patronizing a minor engaged in prostitution would be a Class C felony, unless the offense occurred within 1,000 feet of a school or this was a second or subsequent violation, which would be a Class B2 felony. Under current law, patronizing a minor engaged in prostitution is a Class F felony. The following chart represents IDS' additional per case costs for each indigent case disposed in district court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Patronizing	Class F felony	Class C felony	$296	$527	$231
Enhanced Sentence	Class F felony	Class B2 felony	$296	$1,079	$783

The following chart represents IDS' additional per case costs for each indigent case disposed in superior court based on FY 2009-10 data.

	Current Class	Proposed Class	Per Case Original Cost of Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for PAC
Basic Patronizing	Class F felony	Class C felony	$593 non-trial $2,046 trial	$1,040 non-trial $3,037 trial	$447 non-trial $991 trial
Enhanced Sentence	Class F felony	Class B2 felony	$593 non-trial $2,046 trial	$1,594 non-trial $6,597 trial	$1,001 non-trial $991 trial

Section 10 of Senate Bill 683 would create a right to an expunction for certain defendants who have been convicted of prostitution. Because there is no right to an appointed attorney in an expunction proceeding, this Section would not have any fiscal impact on IDS.

Section 11 of this bill would amend G.S. 15A-1340.16(d) to add two new aggravating factors to the felony sentencing scheme. Although litigating the application of an aggravating factor may cause an increase in the time claimed by appointed counsel, IDS is unable to quantify that impact.

Section 13 of this bill would amend G.S. 7B-101 to create additional grounds for finding a juvenile to be abused. Because IDS provides counsel for parents in abuse/neglect/dependency (A/N/D) cases and the bill expands the grounds for finding a juvenile to be abused, it could result in more A/N/D cases and, thus, greater IDS expenditures. However, IDS is unable to quantify the potential impact.

Department of Public Safety –Prison Section

Since the bill creates new offenses and expands existing offenses, 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 new and expanded statutes.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,[1] and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). The cost to add one additional inmate to the prison system is $11.23 per day, which includes the cost of food, clothing, and health care.

Population Projections and Bed Capacity
Five Year Impact

	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Inmates[2]	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
4. Additional Inmates Due to this Bill[3]	**No estimate available**				
5. Additional Beds Required					

Department of Public Safety – Community Correction Section

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. For felony offense classes E through I, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.[4] General supervision of intermediate and community offenders by a probation officer costs $3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

[1] Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

[2] The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2013.

[3] Criminal penalty bills effective December 1, 2013 should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

[4] CCS incurs costs of $1.29 per day for each offender sentenced to the Community Service Work Program.

Sections 1, 2, and 3 expand the potential pool of defendants. These sections also increase the offense classes, if they involve adults, from the current Class F felony to a Class E felony. The Class C felony offenses for violations involving minors are unchanged. In FY 2011-12, 57% of Class E felony offenders received active sentences; 43% received intermediate sentences. All active sentences result in twelve months of post-release supervision (PRS). The cost of twelve months of PRS is $1,325 per offender ($3.63 per day times 365 days).[5] All active Class F sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[5] The average cost to the community corrections for any individual convicted of a Class E felony who receives an active sentence is $365 ($1,345 minus $980). The average length of intermediate punishment imposed for a Class E felony offense was 34 months. The average lengths of intermediate punishment imposed for a Class F felony offense was 33 months. The average cost to community corrections for any individual convicted of a Class E felony who receives an intermediate sentence is $3,344 (the difference between the Class F cost of $3,594 and the Class E cost of $3,703). It is not known how many additional Class E convictions may result from the proposed broadening of the current statute.

Section 1 also creates a new offense if a person knowingly or in reckless disregard of the fact causes a minor to be held in involuntary servitude or sexual servitude. This would be a Class C felony. In addition, Sections 2 and 3 expand the potential pool of defendants who could be convicted of Class C felonies. In FY 2011-12, 100% of Class C felony offenders received active sentences; none received intermediate sentences; and none received community punishments. Regardless of the length of the active sentence, all offenders convicted of this statute are subject to twelve months of post-release supervision (PRS) for this felony class. The cost of twelve months of PRS is $1,325 per offender ($3.63 per day times 365 days).[5] Since the proposed section creates a new offense; it is not known how many offenders might be convicted and sentenced for the proposed offense.

Section 4 repeals eight statutes from Chapter 14 of the General Statutes. The Administrative Office of the Courts (AOC) currently does not have specific offense codes for violations of G.S. 14-190.18 and G.S. 14-190.19. The lack of AOC offense codes is some indication that these offenses are infrequently charged and/or infrequently result in convictions.

In FY 2011-12, there were a total of 232 convictions under G.S. 14-204:4 convictions for maintaining a place for prostitution under subsection (1), 2 convictions for transporting for prostitution under subsection (4), 178 convictions for soliciting prostitution under subsection (5), 46 convictions for engaging in prostitution under subsection (7), and 2 convictions for aiding and abetting prostitution under subsection (7). The AOC currently does not have specific offense codes for the remaining subsections. There were 51 convictions for loitering for prostitution under G.S. 14-204.1. Violation of these statutes is a Class 1 misdemeanor offense. Most of the conduct covered in the statutes that are being repealed is covered in the new statutes that are enacted in Section 5 of this bill.

Section 5 of this bill enacts six new statutes related to prostitution. G.S. 14-203.3, Prostitution, broadens the conduct covered by the existing offense. Violation is a Class 1 misdemeanor. Some of this conduct is currently covered by subsection (7) of G.S. 14-204, Prostitution (repealed in section 4). If the offender has not previously been convicted of or placed on probation for misdemeanor prostitution, the court must place him or her on probation without conviction (conditional discharge). If the offender is a minor, he or she is immune from prosecution. It is not known how many additional convictions may result from the proposed broadening of the conduct covered. In FY 2011-12, 26% of offenders convicted of a Class 1 misdemeanor

[5] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

were sentenced to active sentences for an average length of 39 days; 2% received intermediate sentences; and 72% received community punishments. Only felony offenses result in Post Release Supervision (PRS), therefore there is no additional cost for a misdemeanant sentenced to an active sentence. The average length of intermediate and community punishment imposed for this offense class was 18 and 15 months, respectively. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives an intermediate sentence is $1,960 (540 days times $3.63 per day). Of those convicted to a community sentence, around 40% received supervised sentences. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives community supervision is $1,634 (450 days times $3.63 per day).

G.S. 14-203.2, Solicitation of a sexual act, G.S. 14-203.4, Promoting prostitution, and G.S. 14-203.6, Patronizing a prostitute are all Class F felony offenses. Since the proposed statutes creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. In FY 2011-12, 53% of Class F felony offenders received active sentences; 47% received intermediate sentences. All active Class F sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[5] The average length of intermediate punishment imposed for this offense class was 33 months. The average cost to community corrections for any individual convicted of a Class F felony who receives an intermediate sentence is $3,594 (990 days times $3.63 per day).

G.S. 14-203.2, Solicitation of a sexual act when the act is solicited from a minor or a person who is severely or profoundly mentally disabled, G.S. 14-203.4, Promoting prostitution when the violation occurs within 1,000 feet of real property comprising a school, G.S. 14-203.4(a)(1) or (a)(2)c when a second of subsequent violation has been committed, G.S. 14-203.6, Patronizing a prostitute when the violation occurs within 1,000 feet of real property comprising a school, when there is a second or subsequent violation, when the violation occurs in combination with convictions under G.S. 14-203.2, G.S. 14-203.3, or G.S. 14-203, and G.S. 14-203.7, Patronizing a minor engaged in prostitution, are all Class C felonies. It is not known how many offenders may be convicted under the proposed statutes. In FY 2011-12, 100% of Class C felony offenders received active sentences; none received intermediate sentences; and none received community punishments. Regardless of the length of the active sentence, all offenders convicted of this statute are subject to twelve months of post-release supervision (PRS) for this felony class. The cost of twelve months of PRS is $1,325 per offender ($3.63 per day times 365 days).[6]

G.S. 14-203, Promoting prostitution of a minor, and G.S. 14-203.7, Patronizing a minor engaged in prostitution when the violation occurs within 1,000 feet of real property comprising a school, is the sequent or subsequent violation, or is a combination with convictions under G.S. 14-203.2, G.S. 14-203.3, G.S. 14-203.4, G.S. 14-203.5, or G.S. 14-203.6 is a Class B2 felony. It is not known how many offenders might be convicted and sentenced for the proposed offense. In FY 2011-12, 100% of Class B2 felony offenders received active sentences; none received intermediate sentences; and none received community punishments. Regardless of the length of the active sentence, all offenders convicted of this statute are subject to twelve months of post-release supervision (PRS) for this felony class. The cost of twelve months of PRS is $1,325 per offender ($3.63 per day times 365 days).[6]

G.S. 14-203.5, Promoting prostitution of a minor, when a violation occurs within 1,000 feet of real property comprising a school, is a Class B1 felony. It is not known how many offenders might be convicted and sentenced for the proposed offense. In FY 2011-12, 100% of Class B1 felony offenders received active

[6] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

sentences; none received intermediate sentences; and none received community punishments. Regardless of the length of the active sentence, all offenders convicted of this statute are subject to twelve months of post-release supervision (PRS) for this felony class. The cost of twelve months of PRS is $1325 per offender ($3.63 per day times 365 days).[6]

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS:

AOC has raised the following issues:

1. In Sections 1, 2, and 3 the insertion of "reckless disregard of the fact" as an alternate state of mind by which a person can commit an offense is ambiguous. It's not clear what "fact" the defendant must disregard recklessly.
2. In G.S. 14-203.2, Prostitution, in subsection (c), p. 3, line 16, the reference to deferred prosecution should be "conditional discharge" instead of "deferred prosecution" in order to remain consistent with the terminology in existing statutes for deferred criminal proceedings.
3. In subdivision (c)(2), p. 3, line 2: it is unclear if the sponsors intend that the period of probation be exactly 12 months. Probation under a conditional discharge normally is governed by the usual probation statutes.
4. Subdivision (c)(8), p. 4, line 9, requires a conforming change in G.S. 15A-150 to report all successful discharges and dismissals under 14-203.2 to the AOC, so that AOC will have records of the prior discharges. Without a conforming change, there will be no way to give effect to subdivision (8), because some prior discharges will be expunged. For those cases, only AOC will have a record from which to inform the court that a defendant had a prior discharge.
5. G.S. 14-203.3, pg. 4, line 27, includes those that are "severely or profoundly mentally disabled." The definition for "severely or profoundly mentally disabled" does not appear anywhere in the General Statutes and could result in ambiguity and disparate application among N.C. courts.
6. In Section 6, Vehicle impoundment, the seizure of a vehicle would be triggered only by an "arrest" for an offense under Chapter 14, Article 27, as opposed to an actual charge for that offense. It is unclear if an individual is arrested but not charged if that individual will have to pay $1,000.
    a. The seizure of a vehicle also appears to be within a law enforcement officer's discretion. The statute provides no guidance (or limitations on) the exercise of that discretion.
    b. There is some question as to what offenses the seizure would apply.
    c. The procedures for towing and storage of the vehicle are unclear.
    d. The procedures for the recovery fee in subsection (a) are unclear.
7. The proposed MAR procedure in 15A-1416.1 is unclear.
    a. It is unclear if the procedure before the Court of Appeals is intended to be the exclusive forum for this sub-set of MARs.
    b. The proposed G.S. 15A-1416.1 places an evidentiary hearing before the Court of Appeals. The appellate division normally does not review issues of fact.
8. On pg. 8, lines 30-32, the proposed definition of a "violent" offense for the expunction statute is significantly different from the definitions of "violent" offenses in the General Statutes.

The Sentencing Commission has raised one issue. Under the proposed G.S. 14-203, the new definition of "Prostitution" would exclude vaginal intercourse. For purposes of this analysis, it is assumed that the new definition of prostitution includes vaginal intercourse.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY:

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APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

DATE: May 7, 2013



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Senate Committee on Judiciary I
Tuesday, May 14, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 284	OSC/Gov't Data Analytics/State Data Sharing.	Senator Hise
SB 584	Amend False Liens Law.	Senator Tucker
SB 182	Limit Appeals to Superior Court.	Senator Brunstetter
SB 210	Authorize Chief Magistrates.	Senator Parmon Senator Brunstetter

Presentations

Other Business

Adjournment

Senate Committee on Judiciary I
Tuesday, May 14, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on May 14, 2013 in Room 1027/1128 of the Legislative Building. Fifteen members were present.

Senator E. S. (Buck) Newton, Chair, presided.

Senator Thom Goolsby was recognized and said Senate Bill 284 would not be heard in committee today. Senator Pete Brunstetter was recognized to explain Senate Bill 210. Senator Dan Clodfelter was recognized and said since the senate had already passed the bill, he made a motion for a favorable report. The vote passed by a voice vote.

Senator Tommy Tucker was recognized to explain Senate Bill 584. Sen. Tucker explained the bill and Senator Trudy Wade made a motion for a favorable report. Sen. Clodfelter made a comment and hearing no other questions or comments, the committee passed the motion by a voice vote.

Senator Earline Parmon made a motion to take up a Proposed Committee Substitute for Senate Bill 182 and the motion passed by a voice vote. Sen. Brunstetter was recognized to explain the bill. Sen. Brunstetter submitted an amendment that eliminates Section 4 of the PCS. Sen. Goolsby made a motion to approve the amendment that passed by a voice vote. Sen. Brunstetter was recognized to explain the bill further. Sen. Clodfelter was recognized for a question and Susan Sitze from the Research Division responded. Senator Josh Stein was recognized for a comment.

Next, the chair recognized Dick Taylor from the North Carolina Advocates for Justice to comment on the bill. He did not support or oppose the amendment directly. Sen. Brunstetter responded to his comments. Peg Dorer with the North Carolina Conference of District Attorneys was recognized to comment in support of the bill. Senator Dan Blue asked a question and Sen. Brunstetter responded.

Sen. Goolsby was recognized and said he would submit an amendment. Senator Martin Nesbitt was recognized and said he would oppose the amendment. Sen. Goolsby submitted the amendment to Section 5 of the bill. Sen. Stein was recognized to comment on the amendment. Ms. Sitze responded to Sen. Stein and Sen. Brunstetter was recognized to also comment to Sen. Stein.

Maureen Kruger, the district attorney from Moore County, was recognized to comment on the amendment and the committee discussion. Sen. Clodfelter was recognized to comment and said he opposed the amendment. Ms. Sitze was recognized to comment on the committee discussion. Sen. Newton held a voice vote on Sen. Goolsby's amendment and the amendment was defeated.

Sen. Newton took a motion from Sen. Stein for a favorable report the PCS as amended, unfavorable to the original bill. The motion passed by a voice vote.

The meeting adjourned at 10:35 a.m.

Senator E. S. (Buck) Newton, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Tuesday, May 14, 2013

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

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

SB **182** Limit Appeals to Superior Court.

Draft Number:	S182-PCS35342-SA-45
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Peter Brunstetter will handle SB 182



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Tuesday, May 14, 2013

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

FAVORABLE

SB	**210**	Authorize Chief Magistrates.	
		Draft Number:	None
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No
SB	**584**	Amend False Liens Law.	
		Draft Number:	None
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No

TOTAL REPORTED: 2

Senator Peter Brunstetter will handle SB 210
Senator Tommy Tucker will handle SB 584



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 182
PROPOSED COMMITTEE SUBSTITUTE S182-CSSA-45 [v.2]

5/13/2013 3:42:08 PM

Short Title: Limit Appeals to Superior Court. (Public)

Sponsors:

Referred to:

March 6, 2013

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE APPEALS FOR INFRACTIONS, TO MODIFY APPEALS TO THE SUPERIOR COURT IN PROBATION REVOCATIONS IN WHICH THE DEFENDANT HAS WAIVED A HEARING, TO ALLOW FOR AN UNRESTRICTED RESENTENCING HEARING UPON THE REVERSAL OF A SENTENCE ON APPELLATE REVIEW, TO AMEND THE ADMISSIBILITY OF A SCREENING TEST IN PROBABLE CAUSE HEARINGS FOR DRIVING WHILE IMPAIRED, AND TO RECLASSIFY CERTAIN MISDEMEANORS AS INFRACTIONS, .

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1115 reads as rewritten:

"**§ 15A-1115. ~~Review of disposition by superior court.~~Review of Infractions originally disposed of in superior court.**

~~(a) Appeal of District Court Decision. A person who denies responsibility and is found responsible for an infraction in the district court, within 10 days of the hearing, may appeal the decision to the criminal division of the superior court for a hearing de novo. Upon appeal, the defendant is entitled to a jury trial unless he consents to have the hearing conducted by the judge. The State must prove beyond a reasonable doubt that the person charged is responsible for the infraction unless the person admits responsibility. Unless otherwise provided by law, the procedures applicable to misdemeanors disposed of in the superior court apply to those infraction hearings. In the superior court, a prosecutor must represent the State. Appeal from the judgment in the superior court is as provided for other criminal actions in superior court, and the Attorney General must represent the State in an appeal of such actions.~~

(b) Review of Infractions Originally Disposed of in Superior Court. – If the superior court disposes of an infraction pursuant to its jurisdiction in G.S. 7A-271(d), appeal from that judgment is as provided for criminal actions in the superior court."

SECTION 2. G.S. 15A-1347 reads as rewritten:

"**§ 15A-1347. Appeal from revocation of probation or imposition of special probation upon ~~violation.~~violation; consequences of waiver of hearing.**

(a) ~~When~~ Except as provided in subsection (b) of this section, when a district court judge, as a result of a finding of a violation of probation, activates a sentence or imposes special probation, the defendant may appeal to the superior court for a de novo revocation hearing. At the hearing the probationer has all rights and the court has all authority they have in a revocation hearing held before the superior court in the first instance. Appeals from lower courts to the superior courts from judgments revoking probation may be heard in term or out of term, in the county or out of the county by the resident superior court judge of the district or the superior court judge assigned to hold the courts of the district, or a judge of the superior court

commissioned to hold court in the district, or a special superior court judge residing in the district. When the defendant appeals to the superior court because a district court has found he violated probation and has activated his sentence or imposed special probation, and the superior court, after a de novo revocation hearing, orders that the defendant continue on probation under the same or modified conditions, the superior court is considered the court that originally imposed probation with regard to future revocation proceedings and other purposes of this Article. When a superior court judge, as a result of a finding of a violation of probation, activates a sentence or imposes special probation, either in the first instance or upon a de novo hearing after appeal from a district court, the defendant may appeal under G.S. 7A-27.

(b) If a defendant waives a revocation hearing, the finding of a violation of probation, activation of sentence, or imposition of special probation may not be appealed to the superior court."

SECTION 3. G.S. 15A-1335 is repealed.

SECTION 4. G.S. 20-16.3 is amended by adding a new subsection (e) to read:

"(e) Use of Screening Test Numeric Results; Probable Cause. – The numeric result on a driver's alcohol screening test may be used in determining whether there is probable cause for believing:

(1) That the driver has committed an offense involving impaired driving under G.S. 20-138.1 or G.S. 20-138.2; and

(2) That the driver had consumed alcohol and that the driver had in his or her body previously consumed alcohol. Negative or low results on the alcohol screening test may be used in factually appropriate cases in determining whether a person's alleged impairment is caused by an impairing substance other than alcohol.

If the numeric result on a driver's alcohol screening test is heard by the judge at the probable cause hearing and the offense is subsequently set for trial, the defendant is entitled to trial before a different judge."

SECTION 5. G.S. 20-35 reads as rewritten:

"§ 20-35. Penalties for violating Article; defense to driving without a license.

(a) Penalty. – ~~A~~ Except as otherwise provided in subsection (a1) of this section, a violation of this Article is a Class 2 misdemeanor unless a statute in the Article sets a different punishment for the violation. If a statute in this Article sets a different punishment for a violation of the Article, the different punishment applies.

(a1) A person who does any of the following is responsible for an infraction:

(1) Fails to carry a valid license while driving a motor vehicle, in violation of G.S. 20-7(a).

(2) Operates a motor vehicle with an expired license, in violation of G.S. 20-7(f).

(3) Fails to notify the Division of an address change for a drivers license within 60 days after the change occurs, in violation of G.S. 20-7.1.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 4.

(c) Defenses. – A person may not be ~~convicted of~~found responsible for failing to carry a regular drivers license if, when tried for that offense, the person produces in court a regular drivers license issued to the person that was valid when the person was charged with the offense. A person may not be ~~convicted of~~found responsible for driving a motor vehicle ~~without a regular~~with an expired drivers license if, when tried for that offense, the person shows all the following:

(1) That, at the time of the offense, the person had an expired license.

(2) The person renewed the expired license within 30 days after it expired and now has a drivers license.

(3) The person could not have been charged with driving without a license if the person had the renewed license when charged with the offense."

SECTION 6. G.S. 20-176 reads as rewritten:

"(a) Violation of a provision of Part 9, 10, 10A, or 11 of this Article is an infraction unless the violation is specifically declared by law to be a misdemeanor or felony. ~~Violation~~ Except as otherwise provided in subsection (a1) of this section, violation of the remaining Parts of this Article is a misdemeanor unless the violation is specifically declared by law to be an infraction or a felony.

(a1) A person who does any of the following is responsible for an infraction:

(1) Fails to carry the registration card in the vehicle, in violation of G.S. 20-57(c).

(2) Fails to sign the vehicle registration card, in violation of G.S. 20-57(c).

(3) Fails to notify the Division of an address change for a vehicle registration card within 60 days after the change occurs, in violation of G.S. 20-67.

..."

SECTION 7. G.S. 113-135(a) reads as rewritten:

"(a) Any person who violates any provision of this Subchapter or any rule adopted by the Marine Fisheries Commission or the Wildlife Resources Commission, as appropriate, pursuant to the authority of this Subchapter, is guilty of a misdemeanor except that fishing without a license in violation of G.S. 113-174.1(a) or G.S. 113-270.1B(a) is punishable as an infraction and punishment for violation of the rules of the Wildlife Resources Commission is limited as set forth in G.S. 113-135.1. Unless a different level of punishment is elsewhere set out, anyone convicted of a misdemeanor under this section is punishable as follows:

(1) For a first conviction, as a Class 3 misdemeanor.

(2) For a second or subsequent conviction within three years, as a Class 2 misdemeanor."

SECTION 8. Section 3 of the act becomes effective December 1, 2013, and applies to appeals initiated on or after that date. The remainder of this act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

SENATE BILL 182:
Limit Appeals to Superior Court

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 14, 2013
Introduced by:	Sen. Brunstetter	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition S182-CSSA-45		

SUMMARY: ***The proposed committee substitute for Senate Bill 182 would eliminate appeals for infractions, modify appeals to the superior court in probation revocations in which the defendant has waived a hearing, allow for an unrestricted resentencing hearing upon the reversal of a sentence on appellate review, amend the admissibility of a screening test in probable cause hearings for DWI, and reclassify certain misdemeanors as infractions.***

CURRENT LAW:

An infraction is "a noncriminal violation of the law not punishable by imprisonment" and unless otherwise specified in a particular statute, is punishable by a fine of not more than $100. Original jurisdiction for infractions is solely within the district court except when the infraction is a lesser included offense of or charged in conjunction with an offense properly before the superior court.

BILL ANALYSIS:

Section 1 of the bill would eliminate appeals for findings of responsibility for infractions in the district court.

Section 2 of the bill would eliminate the appeal of a probation revocation from district court to superior court if the defendant waived the revocation hearing. U.S. Supreme Court · remand resentencing

Section 3 of the bill would repeal G.S. 15A-1335, which provides that when a conviction or sentence imposed in superior court has been set aside on direct review or collateral attack, the court may not impose a new sentence for the same offense, or for a different offense based on the same conduct, which is more severe than the prior sentence less the portion of the prior sentence previously served.

Section 4 would amend G.S. 20-16.3 to make the use of the numeric result on a driver's alcohol screening test to be used in determining probable cause for believing (i) that the driver has committed an offense involving impaired driving under G.S. 20-138.1 or G.S. 20-138.2, or (ii) that the driver had consumed alcohol and that the driver had in his or her body previously consumed alcohol.

Sections 5 – 7 would reduce the following offenses from misdemeanors to infractions:

- License not in possession (G.S. 20-7(a))
- Expired operator's license (G.S. 20-7(f))
- Failure to notify DMV of address change for drivers license (G.S. 20-7.1)
- Failure to carry registration card (G.S. 20-57(c))
- Failure to sign registration card (G.S. 20-57(c))
- Failure to notify DMV of address change for registration (G.S. 20-67)

- Fishing without a license (G.S. 113-174.1(a) or G.S. 113-270.1B(a))

EFFECTIVE DATE: Section 3 of the act becomes effective December 1, 2013, and applies to appeals initiated on or after that date. The remainder of this act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 182 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S182-CSSA-45

Rep.) Brunstetter

Sen.)

1 moves to amend the bill on page 2, lines 14-27

2 ( ) WHICH CHANGES THE TITLE

3 by deleting those lines;

4

5 and by renumbering the remaining sections of the

6 bill accordingly.

7

8 and on page 1, lines 6 & 7

9 by rewriting those lines to read:

10 "APPELLATE REVIEW, AND TO"

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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 _____

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

COMMITTEE SUBSTITUTE S182-CSSA-45

Rep.) Goolsby
Sen.)

1 moves to amend the bill on page 2, line 42 through page 3, line 2
2 ( ) WHICH CHANGES THE TITLE
3 by striking through these lines
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 210

Short Title:	Authorize Chief Magistrates.	(Public)
Sponsors:	Senators Parmon, Brunstetter (Primary Sponsors); and Clark.	
Referred to:	Judiciary I.	

March 7, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE APPOINTMENT OF CHIEF MAGISTRATES.

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. This act is effective when it becomes law.

SENATE BILL 210:
Authorize Chief Magistrates

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 13, 2013
Introduced by:	Sens. Parmon, Brunstetter	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 210 would authorize a chief district court judge to designate a full time magistrate to serve as chief magistrate for that county for an indefinite time at the judge's pleasure to carry out certain responsibilities as delegated by the chief district judge.***

CURRENT LAW: Pursuant to G.S. 7A-146, the chief district judge is given administrative supervision and authority over the operation of the district courts and magistrates in the judge's district, including the assignment of matters to magistrates and prescribing the times and places at which magistrates shall be available to perform their duties.

BILL ANALYSIS: Senate Bill 210 would amend Chapter 7A of the General Statutes to authorize the chief district judge to designate 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, if the chief district judge finds that such a designation would be in the interest of justice.

The chief magistrate would have the same administrative authority as the chief district judge to assign matters to magistrates and to prescribe times and places at which the magistrates shall be available for the performance of their duties.

EFFECTIVE DATE: This act is effective when it becomes law.

O. Walker Reagan
Director

S210-SMTG-70 E1 -V1

Research Division
(919) 733-2578

SENATE BILL 284
Commerce Committee Substitute Adopted 4/30/13

Short Title: OSC/Gov't Data Analytics/State Data Sharing. (Public)

Sponsors:

Referred to:

March 14, 2013

A BILL TO BE ENTITLED

AN ACT TO RENAME THE GOVERNMENT BUSINESS INTELLIGENCE COMPETENCY CENTER IN THE OFFICE OF THE STATE CONTROLLER AS THE GOVERNMENT DATA ANALYTICS CENTER, TO AUGMENT ITS WORK BY CODIFYING ITS MISSION, POWERS, AND DUTIES, AND TO AMEND THE REVENUE AND MOTOR VEHICLE LAWS TO ENHANCE THE DATA SHARING REQUIRED TO INCREASE THE STATE'S BUSINESS INTELLIGENCE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 20-7(b2) reads as rewritten:

"(b2) Disclosure of Social Security Number. – The social security number of an applicant is not a public record. The Division may not disclose an applicant's social security number except as allowed under federal law. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. § 408, and amendments to that law.

In accordance with 42 U.S.C. 405 and 42 U.S.C. 666, and amendments thereto, the Division may disclose a social security number obtained under subsection (b1) of this section only as follows:

(1) For the purpose of administering the driver's license laws.

(2) To the Department of Health and Human Services, Child Support Enforcement Program for the purpose of establishing paternity or child support or enforcing a child support order.

(3) To the Department of Revenue for the purpose of verifying taxpayer identity.

(4) To the Office of Indigent Defense Services of the Judicial Department for the purpose of verifying the identity of a represented client and enforcing a court order to pay for the legal services rendered.

(5) To each county jury commission for the purpose of verifying the identity of deceased persons whose names should be removed from jury lists.

(6) To the Office of the State Controller for the purposes of G.S. 143B-426.38A."

SECTION 1.(b) G.S. 20-43(a) reads as rewritten:

"(a) All records of the Division, other than those declared by law to be confidential for the use of the Division, shall be open to public inspection during office hours in accordance with G.S. 20-43.1. A ~~photographic image or~~ signature recorded in any format by the Division for a drivers license or a special identification card is confidential and shall not be released except for law enforcement purposes. A photographic image recorded in any format by the Division for a drivers license or a special identification card is confidential and shall not be

released except for law enforcement purposes or to the Office of the State Controller for the purposes of G.S. 143B-426.38A."

SECTION 2. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(44) To furnish tax information to the Office of the State Controller under G.S. 143B-426.38A. The use and reporting of individual data may be restricted to only those activities specifically allowed by law when potential fraud or other illegal activity is indicated."

SECTION 3.(a) Part 28 of Article 9 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-426.38A. Government Data Analytics Center; State data-sharing requirements.**

(a) State Government Data Analytics. – The State shall initiate across State agencies, departments, and institutions a data integration and data-sharing initiative that is not intended to replace transactional systems but is instead intended to leverage the data from those systems for enterprise-level State business intelligence.

(1) Creation of initiative. – In carrying out the purposes of this section, the Office of the State Controller shall conduct an ongoing, comprehensive evaluation of State data analytics projects and plans in order to identify data integration and business intelligence opportunities that will generate greater efficiencies in, and improved service delivery by, State agencies, departments, and institutions. The Office of the State Controller may partner with current vendors and providers to assist in the initiative. However, to limit the cost to the State, the Office of the State Controller shall use current licensing agreements wherever feasible.

(2) Application to State government. – The initiative shall include all State agencies, departments, and institutions, including The University of North Carolina.

(3) Governance. – The State Controller shall lead the initiative established pursuant to this section. The Chief Justice of the North Carolina Supreme Court and the Legislative Services Commission each shall designate an officer or agency to advise and assist the State Controller with respect to implementation of the initiative in their respective branches of government. The judicial and legislative branches shall fully cooperate in the initiative mandated by this section in the same manner as is required of State agencies.

(b) Government Data Analytics Center. –

(1) GDAC established. – There is established in the Office of the State Controller the Government Data Analytics Center (GDAC). GDAC shall assume the work, purpose, and resources of the current data integration effort in the Office of the State Controller and shall otherwise advise and assist the State Controller in the management of the initiative. The State Controller shall make any organizational changes necessary to maximize the effectiveness and efficiency of GDAC.

(2) Powers and duties of the GDAC. – The State Controller shall, through the GDAC, do all of the following:

a. Continue and coordinate ongoing enterprise data integration efforts, including:

1. The deployment, support, technology improvements, and expansion for CJLEADS.
2. The pilot and subsequent phase initiative for NC FACTS.
3. Individual-level student data and workforce data from all levels of education and the State workforce.
4. Other capabilities developed as part of the initiative.

b. Identify technologies currently used in North Carolina that have the capability to support the initiative.
c. Identify other technologies, especially those with unique capabilities, that could support the State's business intelligence effort.
d. Compare capabilities and costs across State agencies.
e. Ensure implementation is properly supported across State agencies.
f. Ensure that data integration and sharing is performed in a manner that preserves data privacy and security in transferring, storing, and accessing data, as appropriate.
g. Immediately seek any waivers and enter into any written agreements that may be required by State or federal law to effectuate data sharing and to carry out the purposes of this section.
h. Coordinate data requirements and usage for State business intelligence applications in a manner that (i) limits impacts on participating State agencies as those agencies provide data and business knowledge expertise and (ii) assists in defining business rules so the data can be properly used.
i. Recommend the most cost-effective and reliable long-term hosting solution for enterprise-level State business intelligence as well as data integration, notwithstanding Section 6A.2(f) of S.L. 2011-145.

(c) Implementation of the Enterprise-Level Business Intelligence Initiative. –

(1) Phases of the initiative. – The initiative shall cycle through these phases on an ongoing basis:

a. Phase I requirements. – In the first phase, the State Controller through GDAC shall:

1. Inventory existing State agency business intelligence projects, both completed and under development.
2. Develop a plan of action that does all of the following:
   I. Defines the program requirements, objectives, and end state of the initiative.
   II. Prioritizes projects and stages of implementation in a detailed plan and benchmarked time line.
   III. Includes the effective coordination of all of the State's current data integration initiatives.
   IV. Utilizes a common approach that establishes standards for business intelligence initiatives for all State agencies and prevents the development of projects that do not meet the established standards.
   V. Determines costs associated with the development efforts and identifies potential sources of funding.
   VI. Includes a privacy framework for business intelligence consisting of adequate access controls and end user security requirements.
   VII. Estimates expected savings.
3. Inventory existing external data sources that are purchased by State agencies to determine whether consolidation of licenses is appropriate for the enterprise.
4. Determine whether current, ongoing projects support the enterprise-level objectives.
5. Determine whether current applications are scalable or are applicable for multiple State agencies or both.

b. Phase II requirements. – In the second phase, the State Controller through the GDAC shall:
1. Identify redundancies and determine which projects should be discontinued.
2. Determine where gaps exist in current or potential capabilities.

c. Phase III requirements. – In the third phase:
1. The State Controller through GDAC shall incorporate or consolidate existing projects, as appropriate.
2. The State Controller shall, notwithstanding G.S. 147-33.76 or any rules adopted pursuant thereto, eliminate redundant business intelligence projects, applications, software, and licensing.
3. The State Controller through GDAC shall complete all necessary steps to ensure data integration in a manner that adequately protects privacy.

(2) Commencement of projects. – The State Controller may expand existing data integration or business intelligence contracts with current data integration efforts, as appropriate, in order to implement the plan required by this section in accordance with the schedule established and the priorities developed during Phase I of the initiative and may use public-private partnerships as appropriate to implement the plan.

(d) Funding. – The Office of the State Controller, with the support of the Office of State Budget and Management, shall identify and make all efforts to secure any matching funds or other resources to assist in funding this initiative. Savings resulting from the cancellation of projects, software, and licensing, as well as any other savings from the initiative, shall be returned to the General Fund and shall remain unexpended and unencumbered until appropriated by the General Assembly in a subsequent fiscal year. It is the intent of the General Assembly that expansion of the initiative in subsequent fiscal years be funded with these savings and that the General Assembly appropriate funds for projects in accordance with the priorities identified by the Office of the State Controller in Phase I of the initiative.

(e) Reporting. – The Office of the State Controller shall:

(1) Submit and present quarterly reports on the implementation of Phase I of the initiative and the plan developed as part of that phase to the Chairs of the House of Representatives Appropriations and Senate Base Budget/Appropriations Committees, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division of the General Assembly. The State Controller shall submit a report prior to implementing any improvements, expending funding for expansion of existing business intelligence efforts, or establishing other projects as a result of its evaluations, and quarterly thereafter, a written report detailing progress on, and identifying any issues associated with, State business intelligence efforts.

(2) Report the following information as needed:

a. Any failure of a State agency to provide information requested pursuant to this section. The failure shall be reported to the Joint Legislative Committee on Information Technology and to the Chairs of the House of Representatives Appropriations and Senate Base Budget/Appropriations Committees.

b. Any additional information to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Oversight

Committee on Information Technology that is requested by those entities.

(f) Data Sharing. –

(1) General duties of all State agencies. – The head of each State agency, department, and institution shall do all of the following:

a. Grant the Office of the State Controller access to all information required to develop and support State business intelligence applications pursuant to this section. The State Controller and the GDAC shall take all necessary actions and precautions, including training, certifications, background checks, and governance policy and procedure, to ensure the security, integrity, and privacy of the data in accordance with State and federal law and as may be required by contract.

b. Provide complete information on the State agency's information technology, operational, and security requirements.

c. Provide information on all of the State agency's information technology activities relevant to the State business intelligence effort.

d. Forecast the State agency's projected future business intelligence information technology needs and capabilities.

e. Ensure that the State agency's future information technology initiatives coordinate efforts with the GDAC to include planning and development of data interfaces to incorporate data into the initiative and to ensure the ability to leverage analytics capabilities.

f. Provide technical and business resources to participate in the initiative by providing, upon request and in a timely and responsive manner, complete and accurate data, business rules and policies, and support.

g. Identify potential resources for deploying business intelligence in their respective State agencies and as part of the enterprise-level effort.

h. Immediately seek any waivers and enter into any written agreements that may be required by State or federal law to effectuate data sharing and to carry out the purposes of this section, as appropriate.

(2) Specific requirements. – The State Controller and the GDAC shall enhance the State's business intelligence through the collection and analysis of data relating to workers' compensation claims for the purpose of preventing and detecting fraud, as follows:

a. The North Carolina Industrial Commission shall release to GDAC, or otherwise provide electronic access to, all data requested by GDAC relating to workers' compensation insurance coverage, claims, appeals, compliance, and enforcement under Chapter 97 of the General Statutes.

b. The North Carolina Rate Bureau (Bureau) shall release to GDAC, or otherwise provide electronic access to, all data requested by GDAC relating to workers' compensation insurance coverage, claims, business ratings, and premiums under Chapter 58 of the General Statutes. The Bureau shall be immune from civil liability for releasing information pursuant to this subsection, even if the information is erroneous, provided the Bureau acted in good faith and without malicious or willful intent to harm in releasing the information.

c. The Department of Commerce, Division of Employment Security (DES), shall release to GDAC, or otherwise provide access to, all data requested by GDAC relating to unemployment insurance coverage, claims, and business reporting under Chapter 96 of the General Statutes.

d. The Department of Labor shall release to GDAC, or otherwise provide access to, all data requested by GDAC relating to safety inspections, wage and hour complaints, and enforcement activities under Chapter 95 of the General Statutes.

e. The Department of Revenue shall release to GDAC, or otherwise provide access to, all data requested by GDAC relating to the registration and address information of active businesses, business tax reporting, and aggregate federal tax Form 1099 data for comparison with information from DES, the Rate Bureau, and the Department of the Secretary of State for the evaluation of business reporting. Additionally, the Department of Revenue shall furnish to the GDAC, upon request, other tax information, provided that the information furnished does not impair or violate any information-sharing agreements between the Department and the United States Internal Revenue Service. Notwithstanding any other provision of law, a determination of whether furnishing the information requested by GDAC would impair or violate any information-sharing agreements between the Department of Revenue and the United States Internal Revenue Service shall be within the sole discretion of the Secretary of the Department of Revenue. The Department of Revenue and the Office of the State Controller shall work jointly to assure that the evaluation of tax information pursuant to this subdivision is performed in accordance with applicable federal law.

(3) All information shared with GDAC and the State Controller under this subdivision is protected from release and disclosure in the same manner as any other information is protected under this section.

(g) Provisions on Privacy and Confidentiality of Information. –

(1) Status with respect to certain information. – The State Controller and the GDAC shall be deemed to be all of the following for the purposes of this section:

a. With respect to criminal information, and to the extent allowed by federal law, a criminal justice agency (CJA), as defined under Criminal Justice Information Services (CJIS) Security Policy. The State CJIS Systems Agency (CSA) shall ensure that CJLEADS receives access to federal criminal information deemed to be essential in managing CJLEADS to support criminal justice professionals.

b. With respect to health information covered under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and to the extent allowed by federal law:

1. A business associate with access to protected health information acting on behalf of the State's covered entities in support of data integration, analysis, and business intelligence.

2. Authorized to access and view individually identifiable health information, provided that the access is essential to the

enterprise fraud, waste, and improper payment detection program or required for future initiatives having specific definable need for the data.

c. Authorized to access all State and federal data, including revenue and labor information, deemed to be essential to the enterprise fraud, waste, and improper payment detection program or future initiatives having specific definable need for the data.

d. Authorized to develop agreements with the federal government to access data deemed to be essential to the enterprise fraud, waste, and improper payment detection program or future initiatives having specific definable need for such data.

(2) Release of information. – The following limitations apply to (i) the release of information compiled as part of the initiative, (ii) data from State agencies that is incorporated into the initiative, and (iii) data released as part of the implementation of the initiative:

a. Information compiled as part of the initiative. – Notwithstanding the provisions of Chapter 132 of the General Statutes, information compiled by the State Controller and the GDAC related to the initiative may be released as a public record only if the State Controller, in that officer's sole discretion, finds that the release of information is in the best interest of the general public and is not in violation of law or contract.

b. Data from State agencies. – Any data that is not classified as a public record under G.S. 132-1 shall not be deemed a public record when incorporated into the data resources comprising the initiative. To maintain confidentiality requirements attached to the information provided to the State Controller and GDAC, each source agency providing data shall be the sole custodian of the data for the purpose of any request for inspection or copies of the data under Chapter 132 of the General Statutes.

c. Data released as part of implementation. – Information released to persons engaged in implementing the State's business intelligence strategy under this section that is used for purposes other than official State business is not a public record pursuant to Chapter 132 of the General Statutes."

SECTION 3.(b) G.S. 143B-426.39 is amended by adding a new subdivision to read:

"(17) Coordinate data integration and data sharing pursuant to G.S. 143B-426.38A across State agencies, departments, and institutions to support the State's enterprise-level business intelligence initiative."

SECTION 3.(c) The purpose of this section is to codify provisions of Section 6A.7A of S.L. 2012-142, and to the extent that any provision of that section conflicts with G.S. 143B-426.38A, as enacted by this act, then the provisions of the statute shall be construed to prevail over any conflicting noncodified provisions.

SECTION 4.(a) The Revisor of Statutes shall replace the name of the Government Business Intelligence Competency Center with the name Government Data Analytics Center wherever it is used in S.L. 2012-142.

SECTION 4.(b) The Revisor of Statutes shall replace the acronym GBICC with the acronym GDAC wherever it is used in S.L. 2012-142.

SECTION 5. This act is effective when it becomes law.

SENATE BILL 284:
OSC/Gov't Data Analytics/State Data Sharing

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 9, 2013
Introduced by:	Sen. Hise	**Prepared by:**	Susan Sitze
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 284 would codify various provisions of the 2012 Budget and require the State Controller to collect and analyze data relating to workers' compensation claims for the purpose of preventing and detecting fraud.***

CURRENT LAW: Session Law 2012-142, the Current Operations and Capital Improvements Appropriations Act of 2012, created the enterprise-level business intelligence initiative ("initiative") in the Office of the State Controller to support the effective and efficient development of State agency business intelligence capability in a coordinated manner and to reduce unnecessary information silos and technological barriers. The Act also created the Government Business Intelligence Competency Center ("GBICC") in the Office of the State Controller to assist in the management of the initiative. Currently, the State Controller, through the GBICC, is tasked with:

- coordinating enterprise data integration efforts
- identifying technologies that can support the initiative and the State's business intelligence effort
- ensuring proper implementation by State agencies
- ensuring data privacy and security
- seeking waivers of State and federal law to effectuate data sharing
- coordinating data requirements and usage for State business intelligence applications, and recommending the most cost-effective and reliable long-term hosting solution for State business intelligence.

BILL ANALYSIS:

Section 1.(a) would allow the Division of Motor Vehicles to share the social security number of an applicant for a drivers license with the Office of the State Controller.

Section 1.(b) would allow the Division of Motor Vehicles to share a photographic image recorded for a drivers license or special identification card with the Office of the State Controller.

Section 2 would allow the Department of Revenue to share tax information with the Office of the State Controller, and restricts the sharing of individual tax information to activities specifically allowed by law when potential fraud or illegal activity is indicated.

Section 3.(a) would codify Section 6A.7A of S.L. 2012-142 as G.S. 143B-246.38A and make various amendments and technical changes. The section would change the name of the center established in the Office of the State Controller from the Government Business Intelligence Competency Center (GBICC) to the Government Dada Analytics Center (GDAC).

The section would also add subdivision (2) to subsection (f) of G.S. 143B-426.38A. The subdivision would require the State Controller and GDAC to collect and analyze data relating to workers' compensation claims for the purpose of preventing and detecting fraud. Data would be collected from the North Carolina Industrial Commission, the North Carolina Rate Bureau, the Division of Employment Security in the Department of Commerce, the Department of Labor, and the Department of Revenue. This subdivision would require that any information released by the Department of Revenue be performed in accordance with applicable federal law. The subdivision would also provide that the North Carolina Rate Bureau will be immune from civil liability for releasing information pursuant to this requirement. The language of this subdivision was recommended by the final report of the Joint Legislative Committee on Workers' Compensation Insurance Coverage Compliance and Fraud Prevention and Detection.

Section 3.(b) would direct the Office of the State Controller to coordinate data integration and data sharing across State agencies.

Section 3.(c) states that the purpose of the section is to codify the data integration and sharing provisions of S.L. 2012-142, and **Section 4.(a)** and **Section 4.(b)** would direct the Revisor of Statutes to make the necessary changes to S.L. 2012-142 to reflect the new name of the center.

EFFECTIVE DATE: This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 584

Short Title:	Amend False Liens Law.	(Public)
Sponsors:	Senators Tucker (Primary Sponsor); Apodaca and Meredith.	
Referred to:	Judiciary I.	

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE PROTECTION AGAINST FALSE LIENS TO INCLUDE THE IMMEDIATE FAMILY OF A PUBLIC OFFICER OR PUBLIC EMPLOYEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-118.6(a) reads as rewritten:

"(a) It shall be unlawful for any person to present for filing in a public record or a private record generally available to the public a false lien or encumbrance against the real or personal property of a public ~~officer or public employee~~ officer, a public employee, or an immediate family member of the public officer or public employee on account of the performance of the public officer or public employee's official duties, knowing or having reason to know that the lien or encumbrance is false or contains a materially false, fictitious, or fraudulent statement or representation. For purposes of this subsection, the term "immediate family member" means a spouse or a child. Any person who violates this subsection shall be guilty of a Class I felony."

SECTION 2. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

SENATE BILL 584:
Amend False Liens Law

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 9, 2013
Introduced by:	Sen. Tucker	**Prepared by:**	Bill Patterson
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 584 would make it a class I felony to file a false lien against a spouse or a child of a public officer or employee on account of the person's performance of official duties.***

CURRENT LAW: Under G.S.14-118(a), any person who attempts to file a false lien or encumbrance against the real or personal property of a public officer or public employee on account of the performance of the public official or public employee's official duties, knowing or having reason to know that it is false or contains a materially false statement, is guilty of a Class I felony.

BILL ANALYSIS: Senate Bill 584 would amend G.S. 14-118(a) to also make it a class I felony to file a false lien against an immediate family member of a public officer or public employee. For purposes of this section, "immediate family member" would mean the spouse or child of the public officer or public employee.

EFFECTIVE DATE: This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

O. Walker Reagan
Director

S584-SMTG-68 E1 -V1

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 584 (First Edition)

SHORT TITLE: Amend False Liens Law.

SPONSOR(S): Senator Tucker

FISCAL IMPACT
($ in millions)

☑ Yes ☐ No ☑ No Estimate Available

State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Administrative Office of the Courts, Indigent Defense Services, Department of Public Safety

EFFECTIVE DATE: December 1, 2013, and applies to offenses committed on or after that date.

TECHNICAL CONSIDERATIONS:
None

FISCAL IMPACT SUMMARY:

This bill is expected to have a minimal fiscal impact.

The proposed bill may have a fiscal impact to address an expanded chargeable offense being enforced, adjudicated and having penalties applied to those convicted of the broadened offense. However, given there is no historical data on this offense, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of this crime:

- Administrative Office of the Courts: $365 per disposition
- Indigent Defense Services: No estimated cost
- Prison Section: $11.23 per inmate per day
- Community Corrections: Minimum of $980-$2,396

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

This bill amends existing G.S. 14-118.6, Filing false lien or encumbrance, in subsection (a) by expanding the prohibition on filing false liens against real or personal property of a public officer or public employee on account of the performance of the official duties to include an immediate family member, this bill defines as a spouse or child of the public officer or public employee.

This bill has an effective date of December 1, 2013, and applies to offenses committed on or after that date.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision (PRS). The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. All F-I felons are now subject to nine months of PRS, and PRS for all B1-E felonies has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Judicial Branch

The Administrative Office of the Courts 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.

Violations of existing G.S. 14-118(a) are punished as a Class I felony offense. By expanding the scope of the class of potential victims, this bill expands the pool of potential offenders, which may result in an increase in the number of charges for this offense. This Class I felony offense was enacted recently, with an effective date of December 1, 2013. Therefore, AOC does not have historical data on how frequently this charge is being used. Additionally, AOC does not have data on the number of false liens that are currently being filed against immediate family members of public officers or public employees, and, thus, cannot estimate the number of new charges that may arise from the passage of the bill. For every additional person charged with a Class I felony, AOC estimates the average cost to the court would be $365.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. Expanding the definition of an existing offense may increase the number of indigent cases in which IDS has to provide appointed counsel; however, IDS' data does not provide any way to quantify that impact.

Department of Public Safety –Prison Section

Since the bill expands an offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the expanded statute.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,[1] and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). The cost to add one additional inmate to the prison system is $11.23 per day, which includes the cost of food, clothing, and health care.

Population Projections and Bed Capacity
Five Year Impact

	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Inmates[2]	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
4. Additional Inmates Due to this Bill[3]	**No estimate available**				
5. Additional Beds Required					

Department of Public Safety – Community Correction Section

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. For felony offense classes E through I, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.[4] General supervision of intermediate and community offenders by a probation officer costs $3.63 per offender, per day; no cost is

[1] Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

[2] The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2013.

[3] Criminal penalty bills effective December 1, 2013 should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

[4] CCS incurs costs of $1.29 per day for each offender sentenced to the Community Service Work Program.

assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

In FY 2011-12, 18% of Class I felony offenders received active sentences; 33% received intermediate sentences; and 49% received community punishments. All active sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[5] The average length of intermediate and community punishment imposed for this offense class was 26 and 22 months, respectively. The average cost to community corrections for any individual convicted of a Class I felony who receives an intermediate sentence is $2,831 (780 days times $3.63 per day). The average cost to community corrections for any individual convicted of a Class I felony who receives a supervised community sentence is $2,396 (660 days times $3.63 per day). It is not known how many offenders might be convicted and sentenced to intermediate or supervised community sentences under the proposed bill.

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Maggie Morrissey
Kristine Leggett

APPROVED BY: Mark Trogdon, Director
Fiscal Research Division

DATE: May 9, 2013

Official Fiscal Research Division Publication

Signed Copy Located in the NCGA Principal Clerk's Offices

[5] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

VISITOR REGISTRATION SHEET

J-1 — 5/14/13

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
JGOODMAN	NC CHAMBER
Steve Brewer	CTL
Gary Salamido	NC Chamber
Harry Payne	NC Justice Ctr
Steven Webb	NCHBA
[signature]	[illegible]

VISITOR REGISTRATION SHEET

J. 1 — 5-14-13

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Barbara Moore	Conf of Clerks of Sup Ct
Kimberly Overton	Conference of District Attorneys
Melissa Pelfrey	Halifax District Attorney
Maureen Krueger	Moore County District Attorney
Mildred Spearman	NCAOC
Ken Melton	K. M. A.
Julia White	NC DOJ
John Hardin	MFS
John DelGrosso	Brickhouse

VISITOR REGISTRATION SHEET

J1 — 5/14/13

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
DAVID MINER	TRG
Danny LineSorry	DTS
Butch Gunnells	NC Bev
Andy Walsh	SAS
PHIL BERGERON	DA - 17A
Amy McConkey	NC Bev Assn
Pee Dyer	Conf of DAs
Nicole M. Himes	Gov office
Paul Fahrer	Indep
Amanda Honaker	TSS
Penny Hill	School of Gov.

VISITOR REGISTRATION SHEET

J.J. — 5/14/13

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Matthew Babcock	NC Chamber
[illegible]	NCAJ
Todd Barlow	NC Advocates for Justice
Barry Smith	Carolina Journal
McNeil Clutts	For the Lewis Bks.
Mike Carpenter	NCIBSR
Lisa Martin	NCHBA
Phil Berger	NMLDA
Sam	NAO
Chip Killian	Nelson Mullins

Senate Committee on Judiciary I
Thursday, May 30, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 88	Lien Agents/Technical Corrections.	Representative Hurley
HB 343	Courts/Procedure and Fee Amendments.-AB	Representative Turner

Presentations

Other Business

Adjournment

Senate Committee on Judiciary I
Thursday, May 30, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on May 30, 2013 in Room 1027/1128 of the Legislative Building. Six members were present.

Senator E. S. (Buck) Newton, Chair, presided.

Senator Thom Goolsby made a motion to take up a Proposed Committee Substitute for House Bill 88. The motion passed by a voice vote and Representative Jonathan Jordan was recognized to explain the PCS. Sen. Goolsby submitted a technical amendment and Bill Patterson from the Research Division was recognized to explain the amendment. Sen. Sanderson made a motion to approve the amendment and the motion passed by a voice vote.

Sen. Sanderson made a motion for a favorable report to the PCS as amended, unfavorable to the original bill, and the motion passed by a voice vote.

Sen. Goolsby made a motion to take up a PCS for House Bill 343. The motion passed by a voice vote and Representative Rena Turner was recognized to explain the PCS. Sen. Newton commented on the PCS and noted specific sections for committee members. Sen. Goolsby commented on the PCS and said he supports the bill. Susan Sitze from the Research Division commented on the bill and reviewed details for committee members.

Sen. Newton asked Ms. Sitze a question and she responded. Sen. Goolsby asked Rep. Turner a question and she responded. Sen. Sanderson moved for a favorable report to the PCS, unfavorable to the original bill, and the motion passed by a voice vote.

The meeting adjourned at 10:24 a.m.

Senator E. S. (Buck) Newton, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Thursday, May 30, 2013

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

HB **88** **(CS#1)** Lien Agents/Technical Corrections.

Draft Number:	H88-PCS70440-TG-49
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

HB **343** **(CS#1)** Courts/Procedure and Fee Amendments.-AB

Draft Number:	H343-PCS70438-SA-48
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Thomas Goolsby will handle HB 88
Senator Shirley Randleman will handle HB 343



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 88*
Committee Substitute Favorable 4/11/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H88-CSTG-49 [v.7]

5/29/2013 4:38:55 PM

Short Title: Lien Agents/Technical Corrections. (Public)

Sponsors:

Referred to:

February 12, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE LAW PERTAINING TO LIEN AGENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44A-11.1 reads as rewritten:

"**§ 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 are thirty thousand dollars ($30,000) or more, either at the time that the original building permit is issued or, in cases in which no building permit is required, at the time the contract for the improvements is entered into with the owner, the owner shall designate a lien agent no later than the time the owner first contracts with any person to improve the real property. Provided, however, that the owner is not required to designate a lien agent for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that is ~~used~~ occupied by the owner as a ~~residence.~~ residence, or for the addition of an accessory building or accessory structure as defined in the current edition of the North Carolina Uniform Residential Building Code, the use of which is incidental to that residence. The owner shall deliver written notice of designation to its designated lien agent by any method authorized in G.S. 44A-11.2(g), 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, and the owner's contact information. 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 Claim of Lien on Real Property, 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.

...

(d) In the event that the lien agent ~~dies,~~ resigns, is no longer licensed to serve as a 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 from the owner 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(f).

...."

SECTION 2. G.S. 44A-11.2 reads as rewritten:

"**§ 44A-11.2. Identification of lien agent; notice to lien agent; effect of notice.**

...

(d) 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~~ labor, materials, rental equipment, or professional design or surveying services 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. This notice shall be given pursuant to subsection (g) of this section or may be given by including the lien agent contact information in a written subcontract entered into by, or a written purchase order issued to, the lower-tier subcontractor entitled to the notice required by this subsection. Any contractor or subcontractor who has previously received notice of the lien agent contact information, whether from the building permit, the inspections office, a notice from the owner, contractor, or subcontractor, or by any other means, and who fails to provide the lien agent contact information to the lower-tier subcontractor in the time required under this subsection, shall be liable to the lower-tier subcontractor for any actual damages incurred by the lower-tier subcontractor as a result of the failure to give notice.

...

(g) 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:

...

(7) Utilizing an Internet Web site approved for such use by the designated lien agent to transmit to the designated lien agent, with delivery receipt, all information required to notify the lien agent of its designation pursuant to ~~G.S. 44A-11.1,~~G.S. 44A-11.1 or to provide a notice to the designated lien agent pursuant to this ~~section, or to deliver a copy of a notice of claim of lien upon funds to the designated lien agent pursuant to G.S. 44A-23(a1)(3) or G.S. 44A-23(b)(5)c.~~section.

...

(h) For purposes of this subsection, "custom contractor" means a contractor duly licensed as a general contractor pursuant to Article 1 of Chapter 87 of the North Carolina General Statutes who has contracted with an owner who is not an affiliate, relative or insider of the contractor to build a single family residence on the owner's property to be occupied by the owner as a residence. A custom contractor will be deemed to have met the requirement of notice under subsections (m) and (n) of this section on the date of the lien agent's receipt of notice of its designation as lien agent delivered to it by the custom contractor in accordance with this section if, at the time of the lien agent's receipt of the notice, all of the following conditions are met:

(1) The owner has not previously designated a lien agent for the improvements to which the notice of designation of lien agent relates.

(2) The custom contractor is authorized to designate the lien agent on behalf of the owner under the written contract between the owner and custom contractor.

(3) In addition to the information required to be included pursuant to G.S. 44A-11.1(a), the notice of designation of lien agent contains the following information:

a. the custom contractor's name, mailing address, telephone number, fax number (if available), and electronic mailing address (if available).

b. the name of the owner with whom the custom contractor has contracted to improve the real property identified in the notice.

After receiving a notice of its designation from a custom contractor pursuant to this subsection, the designated lien agent shall include the custom contractor's name and contact information in responding to any request for information pursuant to G.S. 58-26-45(b)(7).

~~When a lien agent is identified in a contract between an owner and a contractor for improvements to real property consisting of a single family residence, the contractor will be deemed to have met the requirement of notice under subsections (m) and (n) of this section on the date of the lien agent's receipt of the owner's notice of designation of the lien agent. 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 (3) of subsection (j) of this section, by any method of delivery authorized in G.S. 44A-11.2(g). The lien agent shall include the contractor's name and address in its response to any persons requesting information relating to persons who have given notice to the lien agent pursuant to this section.~~

...."

SECTION 3. G.S. 58-26-45(b) reads as rewritten:

"**§ 58-26-45. Registration as a 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:

...

~~(6) Within three business days of receipt of information relating to the contractor provided by the owner pursuant to G.S. 44A-11.2(h), provide a written notice to the contractor acknowledging receipt of this information, by any method of delivery authorized in G.S. 44A-11.2(g).~~

~~(6a) Within three business days of receipt of information relating to a design professional provided by the owner pursuant to G.S. 44A-11.2(i), provide a written notice to the design professional acknowledging receipt of this information by any method of delivery authorized in G.S. 44A-11.2(g).~~

...."

SECTION 4. G.S. 87-14(a)(3) reads as rewritten:

"**§ 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, other than for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that the ~~applicant uses~~owner occupies as a residence, or for the addition of an accessory building or accessory structure

as defined in the current edition of the North Carolina Uniform Residential Building Code, the use of which is incidental to that residential dwelling unit, 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(d) reads as rewritten:

"**§ 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, other than for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that the ~~applicant uses~~owner occupies as a residence, or for the addition of an accessory building or accessory structure as defined in the current edition of the North Carolina Uniform Residential Building Code, the use of which is incidental to that residential dwelling unit, 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(e) reads as rewritten:

"**§ 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, other than for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that the ~~applicant uses~~owner occupies as a residence, or for the addition of an accessory building or accessory structure as defined in the current edition of the North Carolina Uniform Residential Building Code, the use of which is incidental to that residential dwelling unit, 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 is effective when it becomes law 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.

HOUSE BILL 88:
Lien Agents/Technical Corrections

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 29, 2013
Introduced by:	Rep. Hurley	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to Second Edition H88-CSTG-49		

SUMMARY: ***The PCS to House Bill 88 makes technical corrections to the laws dealing with lien agents enacted as S.L. 2012-158. The PCS clarifies provisions relating to custom contractors and exempts projects consisting of the addition of an accessory structure or accessory building incidental to an exempt owner-occupied single-family dwelling.***

[As introduced, this bill was identical to S45, as introduced by Sen. Randleman, which was enacted as S.L. 2013-18 on April 3, 2013.]

CURRENT LAW: S.L. 2012-158, effective April 1, 2013, as amended by S.L. 2013-16 (House Bill 180), requires the owner to designate a lien agent for improvements to real property costing $30,000 or more, except for improvements to a single-family dwelling "that is used by the owner as a residence."[1] Potential lien claimants are required to give notice to the designated lien agent in order to preserve their lien rights. For certain contracts, however, the contractor or design professional is deemed to have met the notice requirements.[2] In these cases, the owner is required to provide the name of the contractor or design professional to the designated lien agent, and the lien agent is required to provide a written notice to the contractor or design professional acknowledging receipt of this information within three days of receiving it.[3] If a contractor contracts with a lower-tier subcontractor who is not required to "furnish labor at the site of the improvements," the contractor must provide the lower-tier sub with the contact information for the designated lien agent.[4] A building permit for projects subject to G.S. 44A-11.1 must contain the name of the designated lien agent, except for improvements to existing single-family residential dwellings "that the applicant uses as a residence."[5]

BILL ANALYSIS: Section 1 of the PCS clarifies that the exemption for improvements to existing single-family dwellings is for those that are "occupied" rather than "used" by the owner as a residence, and exempts the addition of accessory buildings or structures the use of which is incidental to an exempt residence.

Section 2 of the PCS makes a conforming change to G.S. 44A-11.2(d) by replacing "furnish labor" with "furnish labor, materials, rental equipment, or professional design or surveying services," and deletes a reference in subdivision (g)(7) to a notice requirement that was eliminated in S.L. 2013-16, s. 5. Section 2 also rewrites G.S. 44A-11.2(h) to clarify the circumstances under which a custom contractor building a single-family dwelling will be deemed to have given the required notice to the lien agent.

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[1] G.S. 44A-44A-11.1(a).
[2] G.S. 44A-11.2(h) and (i).
[3] G.S. 58-26-45(b)(6) and (6A).
[4] G.S. 44A-11.2(d).
[5] G.S. 87-14(a)(3), G.S. 160A-417(d), G.S. 153A-357(e).

Section 3 eliminates the requirement that a lien agent notify a contractor or design professional that the owner has provided its contact information pursuant to G.S. 44A-11.2(h) and (i), because this requirement is not needed in view of the fact that the lien rights of these contractors and design professionals are protected under G.S. 44A-11.2 regardless of whether the lien agent receives this information from the owner.

Sections 4, 5 and 6 make conforming changes to the permitting statutes to clarify that the exemption from the requirement in G.S. 44A-11.1(a) that the owner designate a lien agent applies to single-family dwelling units occupied by the owner (rather than by the applicant) as a residence, and to the addition of an accessory building or accessory structure the use of which is incidental to that residential dwelling unit.

EFFECTIVE DATE: This act is effective when it becomes law 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
House Bill 88*

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

H88-ATG-28 [v.1]

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

Date 5/30/13 ,2013

Senator Goolsby

moves to amend the bill on page 1, line 15, and page 4, lines 1, 20, and 41, by deleting the phrase "the current edition of" where it occurs on those lines.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 88*

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

H88-ATG-28 [v.1]

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

Date _____,2013

Senator _____

moves to amend the bill on page 1, line 15, and page 4, lines 1, 20, and 41, by deleting the phrase "the current edition of" where it occurs on those lines.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 343*
Committee Substitute Favorable 4/10/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H343-CSSA-48 [v.1]
5/22/2013 1:37:39 PM

Short Title: Courts/Procedure and Fee Amendments.-AB (Public)

Sponsors:

Referred to:

March 20, 2013

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE ARBITRATION CAPS IN DISTRICT COURT, TO MAKE CLARIFICATIONS TO COURT FEES, TO AMEND THE MOTION FEE EXEMPTION, TO REQUIRE COUNTIES AND MUNICIPALITIES TO ADVANCE FEES, AND TO PROVIDE PRIORITY FOR THE PAYMENT OF CRIMINAL COSTS AND FEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-37.1(c) reads as rewritten:

"(c) This procedure may be employed in civil ~~actions,~~ actions in district court, ~~where claims do not exceed fifteen thousand dollars ($15,000),~~ except that it shall not be employed in actions in which the sole claim is an action on an account, including appeals from magistrates on such actions."

SECTION 2. G.S. 7A-305(a)(2) reads as rewritten:

"(2) For support of the General Court of Justice, the sum of one hundred eighty dollars ($180.00) in the superior ~~court, except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, an additional one thousand dollars ($1,000) shall be paid upon its assignment,~~court and the sum of one hundred thirty dollars ($130.00) in the district court except that if the case is assigned to a magistrate the sum shall be eighty dollars ($80.00). If a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, upon assignment the party filing the notice of designation pursuant to G.S. 7A-45.4 or the motion for complex business designation shall pay an additional one thousand dollars ($1,000) for support of the General Court of Justice; if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3 by a court on its own motion, upon assignment the plaintiff shall pay an additional one thousand dollars ($1,000) for support of the General Court of Justice. Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and fifty cents ($1.50) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

SECTION 3. G.S. 7A-305(a5) reads as rewritten:

"(a5) In every civil action in the superior or district court wherein a party files a pleading containing one or more ~~counterclaims~~ counterclaims, third-party complaints, or cross-claims, except for counterclaim and cross-claim actions brought under Chapter 50B of the General Statutes for which costs are assessed pursuant to subsection (a1) of this section, the following shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of twelve dollars ($12.00) in cases heard before a magistrate, and the sum of sixteen dollars ($16.00) in district and superior court, to be remitted to the municipality providing the facilities in which the judgment is rendered. If a municipality does not provide the facilities in which the judgment is rendered, the sum is to be remitted to the county in which the judgment is rendered. 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.

(2) 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.

(3) For support of the General Court of Justice, the sum of one hundred eighty dollars ($180.00) in the superior court, except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, ~~an additional one thousand dollars ($1,000) shall be paid upon its assignment,~~ filing fees shall be collected and disbursed in accordance with subsection (a) of this section, and the sum of one hundred thirty dollars ($130.00) in the district court, except that if the case is assigned to a magistrate, the sum shall be eighty dollars ($80.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and fifty cents ($1.50) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

SECTION 4.(a) G.S. 7A-305(f) reads as rewritten:

"(f) For the support of the General Court of Justice, the sum of twenty dollars ($20.00) shall accompany any filing ~~containing one or more motions~~of a notice of hearing on a motion not listed in G.S. 7A-308 that is filed with the clerk. No costs shall be assessed to a motion containing as a sole claim for relief the taxing of costs, including attorneys' ~~fees.~~ fees, to a motion filed pursuant to G.S. 1C-1602 or G.S. 1C-1603, or to a motion filed by a child support enforcement agency established pursuant to Title IV, Part D, of the Social Security Act."

SECTION 4.(b) G.S. 7A-306(g) reads as rewritten:

"(g) For the support of the General Court of Justice, the sum of twenty dollars ($20.00) shall accompany any filing ~~containing one or more motions~~of a notice of hearing on a motion not listed in G.S. 7A-308 that is filed with the clerk. No costs shall be assessed to a motion containing as a sole claim for relief the taxing of costs, including attorneys' ~~fees.~~ fees, or to a motion filed pursuant to G.S. 1C-1602 or G.S. 1C-1603."

SECTION 4.(c) G.S. 7A-307(a)(4) reads as rewritten:

"(4) For the support of the General Court of Justice, the sum of twenty dollars ($20.00) shall accompany any filing ~~requiring a notice of hearing and containing one or more motions~~of a notice of hearing on a motion not listed in G.S. 7A-308 that is filed with the clerk. No costs shall be assessed to a motion containing as a sole claim for relief the taxing of costs, including

attorneys' ~~fees.~~ fees, or to a motion filed pursuant to G.S. 1C-1602 or G.S. 1C-1603."

SECTION 4.(d) G.S. 7A-308(a) reads as rewritten:

"(a) The following miscellaneous fees and commissions shall be collected by the clerk of superior court and remitted to the State for the support of the General Court of Justice:

...

(21) In civil matters, except in actions commenced or prosecuted by a child support enforcement agency established pursuant to Title IV, Part D, of the Social Security Act, all alias and pluries summons issued and all endorsements issued on an original summons ..... $15.00."

SECTION 4.(e) Section 66.1 of Session Law 2011-391 is repealed.

SECTION 5. G.S. 7A-317 reads as rewritten:

"**§ 7A-317. Counties and municipalities ~~not~~ required to advance ~~certain fees.~~ costs and fees.**

(a) Counties and municipalities are required to ~~advance~~ pay all costs ~~except for the following:~~ and fees due to the court at the time of filing. The clerk of superior court may consent to allow the county or municipality to pay all costs and fees within 45 days of the date of the filing of any action in lieu of paying costs and fees at the time of filing.

~~(1) The facilities fee.~~

~~(2) The General Court of Justice fee.~~

~~(3) The miscellaneous fees enumerated in G.S. 7A-308 in child support actions, child abuse actions, and other actions filed by the department of social services.~~

~~(4) The civil process fees enumerated in G.S. 7A-311.~~

(b) The clerk of superior court shall withhold all facilities fees due to be remitted to a county or municipality when the county or municipality does not pay costs and fees due to the court within 90 days of the date of filing any action."

SECTION 6. Notwithstanding the effective date provided for by Section 11 of S.L. 2012-146, effective on the date this act becomes law, all amounts assessed or collected in criminal matters shall be disbursed in accordance with G.S. 15A-1343(b), as amended by Section 4 of S.L. 2012-146.

SECTION 7. Section 2 of this act becomes effective January 1, 2014, and applies to all pleadings and motions filed on or after that date. Section 4 of this act becomes effective July 1, 2013, and applies to pleadings filed on or after that date. The remainder of this act is effective when it becomes law and applies to actions filed and to amounts assessed or collected on or after that date.

HOUSE BILL 343:
Courts/Procedure and Fee Amendments.-AB

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 30, 2013
Introduced by:	Rep. Turner	**Prepared by:**	Susan Sitze
Analysis of:	PCS to Second Edition H343-CSSA-48		Committee Counsel

SUMMARY: ***The proposed committee substitute for House Bill 343 would eliminate arbitration caps in district court, make clarifications to court fees, amend the motion fee exemption, require counties and municipalities to advance fees, and provide priority for the payment of criminal costs and fees.***

[As introduced, this bill was identical to S385, as introduced by Sen. Randleman, which is currently in Senate Ref to Judiciary I. If fav, re-ref to Finance.]

BILL ANALYSIS:

Section 1 would amend the statute governing non-binding arbitration in civil actions in district court to allow arbitration on a claim of any amount. Currently, arbitration is only available for claims of $15,000 or less.

Section 2 would amend the statute governing general court costs in civil actions to clarify that the $1,000 for cases designated as complex business cases is to be paid by the party filing the notice of designation or motion for designation as a complex business case, or in the case of referral by the court on its own motion, by the plaintiff.

Section 3 would add third-party complaints to the statute currently requiring fees for counterclaims and cross-claims, and also makes the changes made to the fee in complex business cases in Section 2 by reference to that statute.

Section 4 modifies the General Court of Justice fee of $20 in civil actions, special proceedings and administration of estates to clarify that it is paid only on the filing of a notice of hearing on the motion and exempts motions to exempt property from a judgment from paying the fee. This section also exempts motions filed by a child support enforcement agency from the same fee in civil actions and the $15 fee for alias and pluries summons and endorsements on an original summons. The exemption of the child support enforcement agencies from fees is a codification of uncodified law enacted in 2011, and **subsection (e) of Section 4** repeals that uncodified language.

Section 5 requires counties and municipalities to pay all costs and fees when making a filing with the court. The clerk of superior court may allow 45 days for the costs and fees to be paid. If any costs or fees owed by the county or municipality are not paid within 90 days of the filing of the action, the clerk of superior court shall withhold all facilities fees due to the county or municipality.

Section 6 provides that changes to the disbursement priority of amounts collected in criminal matters that were enacted in 2012 apply to all amounts assessed or collected on or after the date this act becomes law, so that all amounts will be disbursed by the same priority order going forward.

EFFECTIVE DATE: Section 2 of this act becomes effective January 1, 2014, and applies to all pleadings and motions filed on or after that date. Section 4 of this act becomes effective July 1, 2013, and applies to pleadings filed on or after that date. The remainder of this act is effective when it becomes law and applies to actions filed and to amounts assessed or collected on or after that date.

VISITOR REGISTRATION SHEET

Judiciary 1
Name of Committee

5/30/13
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Henry Jones	
Nick Long	NCLTA -
Rev. Mark Creech	CAL

VISITOR REGISTRATION SHEET

Judiciary I — Name of Committee

5-30-2013 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Mildred Spearman	NCAOC
CASANDRA SKINNER	NCACC
MIKE MANN	NCBEA

Senate Committee on Judiciary I
Tuesday, June 4, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 29	Methamphetamine/Offense/Penalties. Discussion Only	Representative Horn Representative Faircloth Representative Tolson Representative Stevens
HB 125	Public Agency Computer Code Not Public Record.	Representative Conrad Representative Hanes Representative Lambeth
HB 361	Justice Reinvestment Technical Corrections.-AB	Representative Faircloth
HB 384	Amend Definitions/Property Classif./Equ. Dist.	Representative Davis Representative Stevens
HB 407	Trustee-Atty Fee/Foreclosures/Clerk Approval.	Representative Turner

Presentations

Other Business

Adjournment

Senate Committee on Judiciary I
Tuesday, June 4, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on June 4, 2013 in Room 1027/1128 of the Legislative Building. Nine members were present.

Senator Thom Goolsby, Chair, presided.

Representative Debra Conrad was recognized to explain House Bill 125. Senator Norm Sanderson moved for a favorable report to the bill and the motion passed by a voice vote.

Representative Rena Turner was recognized to explain House Bill 407. Senator Earline Parmon moved for a favorable report to the bill and the motion passed by a voice vote.

Representative Craig Horn was recognized to explain House Bill 29. Sen. Parmon asked Rep. Horn a question and he responded. Sen. Goolsby commented on the bill and asked Rep. Horn a question. Rep. Horn responded and Sen. Goolsby made more comments about the bill.

Sen. Sanderson asked Rep. Horn a question and Rep. Horn responded. Sen. Sanderson was recognized for a follow-up comment. Senator Trudy Wade was recognized for a question and Rep. Horn responded. Sen. Goolsby made clarifying comments about the committee discussion and said the committee would move to the next bill without a vote.

Representative John Faircloth was recognized to explain House Bill 361. Senator Harry Brown was recognized for a question and Doug Holbrook from the Department of Public Safety responded to his question. Sen. Goolsby asked Mr. Holbrook a question and Mr. Holbrook responded. Sen. Parmon moved for a favorable report of the bill and the motion passed by a voice vote.

Representative Ted Davis was recognized to explain House Bill 384. David Holmes from the law firm Cheshire Parker Schneider & Bryan spoke in favor of the bill and clarified its provisions for the committee. Sen. Stein moved for a favorable report to the bill and the motion passed by a voice vote.

The meeting adjourned at 10:33 a.m.

Senator Thom Goolsby, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Tuesday, June 04, 2013

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

FAVORABLE

HB **384** Amend Definitions/Property Classif./Equ. Dist.

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Thomas Goolsby will handle HB 384



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Tuesday, June 04, 2013

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

FAVORABLE

HB **125** Public Agency Computer Code Not Public Record.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **361** **(CS#1)** Justice Reinvestment Technical Corrections.-AB
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **407** **(CS#1)** Trustee-Atty Fee/Foreclosures/Clerk Approval.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Senator Earline Parmon will handle HB 125
Senator Trudy Wade will handle HB 361
Senator Shirley Randleman will handle HB 407



HOUSE BILL 29

Short Title:	Methamphetamine/Offense/Penalties.	(Public)
Sponsors:	Representatives Horn, Faircloth, Tolson, and Stevens (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary Subcommittee C.	

January 31, 2013

A BILL TO BE ENTITLED

AN ACT TO CREATE THE OFFENSE OF POSSESSION OF PSEUDOEPHEDRINE IF THE DEFENDANT HAS A PRIOR CONVICTION FOR THE POSSESSION OR MANUFACTURE OF METHAMPHETAMINE, AND TO AGGRAVATE THE PENALTY FOR MANUFACTURING METHAMPHETAMINE WHEN CHILDREN, DISABLED, OR ELDERLY ARE PRESENT, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON METHAMPHETAMINE ABUSE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-95(d1)(1) reads as rewritten:

"(d1) (1) Except as authorized by this Article, it is unlawful for any person to:

a. Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

b. Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

c. Possess a pseudoephedrine product if the person has a prior conviction for the possession or manufacture of methamphetamine.

Any person who violates this subsection shall be punished as a Class H felon, unless the immediate precursor is one that can be used to manufacture methamphetamine."

SECTION 2. G.S. 15A-1340.16D reads as rewritten:

"**§ 15A-1340.16D. Manufacturing methamphetamine; enhanced sentence.~~Enhanced sentence if defendant is convicted of manufacture of methamphetamine and the offense resulted in serious injury to a law enforcement officer, probation officer, parole officer, emergency medical services employee, or a firefighter.~~**

(a) If a person is convicted of the offense of manufacture of methamphetamine under G.S. 90-95(b)(1a) and it is found as provided in this section that a law enforcement officer, probation officer, parole officer, emergency medical services employee, or a firefighter suffered serious injury while discharging or attempting to discharge his or her official duties and that the injury was directly caused by one of the hazards associated with the manufacture of methamphetamine, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 24 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 24 months, as specified in G.S. 15A-1340.17(e) and (e1).

(a1) If a person is convicted of the offense of manufacture of methamphetamine under G.S. 90-95(b)(1a) and it is found as provided in this section that:

(1) A minor under 18 years of age resided on the property used for the manufacture of methamphetamine, or was present at a location where methamphetamine was being manufactured, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 24 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 24 months, as specified in G.S. 15A-1340.17(e) and (e1).

(2) A disabled or elder adult resided on the property used for the manufacture of methamphetamine, or was present at a location where methamphetamine was being manufactured, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 24 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 24 months, as specified in G.S. 15A-1340.17(e) and (e1).

(3) A minor and a disabled or elder adult resided on the property, or were present at a location where methamphetamine was being manufactured, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 48 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 48 months, as specified in G.S. 15A-1340.17(e) and (e1).

(a2) For the purposes of this section, the terms "disabled adult" and "elder adult" shall be defined as set forth in G.S. 14-32.3(d).

(a3) The penalties set forth in this section are cumulative. The minimum sentence shall be increased by the sum of the number of months for convictions under subsections (a) and (a1) of this section, and the maximum term of imprisonment shall be the maximum term that corresponds to the total number of months, as specified in G.S. 15A-1340.17(e) and (e1).

(b) An indictment or information for the offense of manufacture of methamphetamine under G.S. 90-95(b)(1a) shall allege in that indictment or information the facts set out in subsection (a) or (a1) of this section. The pleading is sufficient if it alleges any or all of the following:

(1) ~~that the~~ The defendant committed the offense of manufacture of methamphetamine and that as a result of the offense a law enforcement officer, probation officer, parole officer, emergency medical services employee, or firefighter suffered serious injury while discharging or attempting to discharge his or her official duties. ~~One pleading is sufficient for all felonies that are tried at a single trial.~~

(2) The defendant committed the offense of manufacture of methamphetamine and that a minor resided on the property used for manufacturing the methamphetamine, or was present at a location where methamphetamine was being manufactured.

(3) The defendant committed the offense of manufacture of methamphetamine and that a disabled or elder adult resided on the property used for manufacturing the methamphetamine, or was present at a location where methamphetamine was being manufactured.

(4) The defendant committed the offense of manufacture of methamphetamine and that a minor and a disabled or elder adult resided on the property used for manufacturing the methamphetamine, or were present at a location where methamphetamine was being manufactured.

One pleading is sufficient for all felonies that are tried at a single trial.

(c) The State shall prove the issue or issues set out in subsection (b) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the offense of manufacture of methamphetamine unless the defendant pleads guilty or no contest to the issue. If the defendant pleads guilty or no contest to the offense of manufacture of methamphetamine but pleads not guilty to the issue or issues set out in subsection (b) of this section, then a jury shall be impaneled to determine the issue.

(d) This section does not apply if the offense is packaging or repackaging methamphetamine, or labeling or relabeling the methamphetamine container."

SECTION 3. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

HOUSE BILL 29: Methamphetamine/Offense/Penalties

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 4, 2013
Introduced by:	Reps. Horn, Faircloth, Tolson, Stevens	**Prepared by:**	Susan Sitze*
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 29 would create the offense of possession of a pseudoephedrine product by a person previously convicted of the possession or manufacture of methamphetamine and would create an enhanced sentence for manufacturing methamphetamine under certain circumstances.***

BILL ANALYSIS:

Section 1 would create in G.S. 90-95(d1)(1) a new Class H felony offense of possessing a pseudoephedrine product if the defendant has a prior conviction for possessing or manufacturing methamphetamine.

Section 2 would amend G.S. 15A-1340.16D to increase the sentence for a conviction of manufacturing methamphetamine by 24 months if the state proves beyond a reasonable doubt that a minor or a disabled or elder adult resided or was present at a location where the offense was committed, and increased by 48 months if both a minor and a disabled or elder adult resided on the property where the crime occurred.

EFFECTIVE DATE: This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

BACKGROUND: The House Select Committee on Methamphetamine Abuse was established by the Speaker of the House in September 2011. The Committee's report to the 2013 General Assembly can be found at:
http://www.ncleg.net/documentsites/legislativepublications/Study%20Reports%20to%20the%20NC%20General%20Assembly/Study%20Reports%20to%20the%202013%20NCGA/Methamphetamine%20Abuse%20-%20House%20Select%20Committee.pdf

A link to the current Legislative Commission on Methamphetamine Abuse can be found at:
http://ncleg.net/gascripts/Committees/Committees.asp?sAction=ViewCommittee&sActionDetails=Non-Standing_6273

**Janice Paul, Staff Attorney, contributed substantially to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 29 (First Edition)

SHORT TITLE: Methamphetamine Offense Penalties.

SPONSOR(S): Representatives Tolson, Stevens, Faircloth, and Horn

FISCAL IMPACT

($ in millions)

☑ Yes ☐ No ☑ No Estimate Available

State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	**Likely budget cost. See Assumptions & Methodology section for additional details.**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Administrative Office of the Courts (AOC), Indigent Defense Services (IDS), Department of Public Safety (DPS

EFFECTIVE DATE December 1, 2013

TECHNICAL CONSIDERATIONS:
None

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address a new chargeable offense being enforced, adjudicated and having penalties applied to those convicted of the new offense. However, given there is no historical data on this new offense, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of this crime:

- Administrative Office of the Courts: $501 per disposition
- Indigent Defense Services: Minimum $235 for district court case
- Prison Section: No cost (excess bed space projected for at least five years)
- Community Corrections: Minimum of $980 per conviction

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

H.B. 29, Methamphetamine Offense Penalties, creates a new offense of possession of pseudoephedrine if a defendant has certain prior methamphetamine-related convictions and adds aggravating factors to the penalty for manufacturing methamphetamine if children or the elderly reside in the manufacturing facility.

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding, existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. In addition, all F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Section 1 of H.B. 29, Methamphetamine/Offense/Penalties, adds a new statute, G.S. 90-95(d1)(1)(c), to make it a Class H felony for any person to possess a pseudoephedrine product if the person has a prior conviction for the possession or manufacture of methamphetamine. The new statute requires that a person have a prior conviction for "the possession or manufacture of methamphetamine," but it does not cite a statutory reference for the offenses; therefore, it is possible for a person to qualify for the new offense with a prior conviction for any of the offenses listed in the following table.

Offense Text and G.S. Citation	Offense Class	# of Convictions
Manufacture methamphetamine. 90-95(b)(1a)	C	42
Trafficking in methamphetamine.* 90-95(h)(3b)	C, E, F	12
Possess with intent to manufacture, sell, or deliver methamphetamine. 90-95(a)(1)	H	41
Possess with intent to manufacture, sell, or deliver a Schedule II controlled substance. 90-95(a)(1)	H	277
Manufacture a Schedule II controlled substance. 90-95(a)(1)	H	4
Possess methamphetamine. 90-95(a)(3)	I	171
Simple possession of a Schedule II, III, or IV controlled substance. 90-95(d)(2)	I	0
Felony possession Schedule II controlled substance. 90-95(a)(3)	I	399
	Total	**946**

* "Trafficking in methamphetamine" may include selling, manufacturing, delivering, transporting, or possessing.

Source: NC Sentencing and Policy Advisory Commission, FY 2011/12 Preliminary Structured Sentencing Simulation Data

In FY 2011-12, there were a total of 946 felony convictions for the offenses listed. While the 946 convictions occurred during a fiscal year, the new statute does not limit the timeframe to only a year – meaning the prior conviction can occur at any point in the offender's entire criminal history.

Section 2 of H.B. 29 amends G.S. 15A-1340.16D, Manufacturing Methamphetamine, enhanced sentence, to add three new enhancements that would require the court to increase the minimum sentence by 24, 48, or 72 months if, at the time of the offense:

- A minor child resides or is present on the property,
- A disabled or elderly adult resides or is present on the property, or
- Bother a minor child and a disabled or elderly adult reside or are present on the property.

The statute currently has a sentence enhancement if a first responder is injured as a result of the offense. H.B. 29 states that if that occurs in conjunction with one of the new enhancements, the penalties are cumulative. The following table illustrates the effect of the new bill:

Options	Average Minimum Sentence* (Months)	Proposed Enhancement Length (Months)	New Minimum Sentence (Months)
• Minor Present OR Disabled/Elderly Present OR 'Service' Personnel Injured	65	24	89
• Minor Present AND Disabled/Elderly Present • Minor Present AND 'Service' Personnel Injured • Disabled/Elderly Present AND 'Service' Personnel Injured	65	48	113
• Minor Present AND Disabled/Elderly Present AND 'Service' Personnel Injured	65	72	137

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.

Section 1 of the bill creates a new criminal offense, so AOC is unable to estimate the number of new charges that may arise from the passage of this bill. Presently, the AOC estimates a cost of $501 per disposition for a Class H felony.

Section 2 of the bill creates a sentencing enhancement that would increase the minimum sentences for persons found to be manufacturing methamphetamine where children, or disabled or elderly adults lived or were present at the time of the offense, or when first responders were injured as a result of the offense.
The pool of potential offenders would be those charged with manufacturing methamphetamine, G.S. 90-95(b)(1). There were 469 individuals charged with this offense in CY 2012. NCAOC does not track information about the specific nature of these individual offenses (i.e. were there minor children and/or disabled or elder adults on the property or at the location, etc.), thus, there is no data upon which to estimate the number of enhancements that may have been potentially associated with the conviction of these charges.

An increase in the type or severity of a potential sentence is often associated with a more vigorous defense, which can result in fewer pleas and more trials and, thus, an increased cost to the court system. The offense of manufacturing methamphetamine is a Class C felony offense. Because Structured Sentencing dictates that the punishment for this offense is an active sentence (except in cases of extraordinary mitigation), any additional time and costs will be due to the potential for increase in sentence length. AOC does not have any data upon which to estimate the costs associated with this potential increase.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. IDS estimates that the cost of a Class H felony defense is $235 if the case is heard in District court; $446 for a plea in superior court, or $1,180 if the case goes to trial in superior court.

Department of Public Safety –Prison Section

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,[1] and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart demonstrate the impact of the bill.

It is not known how many of the offenders convicted under Section 1 of the bill would possess a pseudoephedrine product. Since the bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the new statute.

Population Projections and Bed Capacity
Five Year Impact

	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Inmates[2]	38,999	39,062	39,091	39,047	39,135
2. Prison Beds (Expanded Capacity)	40,926	40,926	40,926	40,926	40,926
3. Beds Over/(Under) Inmate Population	(1,927)	(1,864)	(1,835)	(1,879)	(1,791)
4. Additional Inmates Due to this Bill[3]			***No estimate available***		
5. Additional Beds Required					

[1] Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

[2] The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2012.

[3] Criminal penalty bills effective December 1, 2013, should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

Section 2 of the bill will not have an immediate impact on the Prison Section. In FY 2011-12, there were 42 Class C convictions for manufacturing methamphetamine. The average minimum sentence imposed was 65 months (median = 60 months). Of the 42 convictions, the minimum sentence imposed ranged from 44 months to 116 months. It is not known how many of these 42 convictions had minor children under 18 years of age and/or disabled or elderly adults residing on the property or present at the location where methamphetamine was being manufactured. It is also not known if the offense caused serious injury to a law enforcement officer, probation officer, parole officer, emergency medical services employee, or a firefighter.

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. Since the punishment type (e.g., active versus non-active) is not expected to change, the impact would result from the additional months added to the minimum sentence length. The impact on prison resources would not occur until after 5 years (based on the average minimum sentence imposed for Class C felonies for manufacturing methamphetamine) and would occur due to these offenders 'stacking up' in prison with the longer prison sentence lengths.

Department of Public Safety – Community Correction Section

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. For felony offense classes E through I, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.[4] General supervision of intermediate and community offenders by a probation officer costs $3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

In FY 2011-12, 39% of Class H offenders received active sentences; 45% received intermediate sentences; and 16% received community punishments. All active sentences result in nine months of post-release supervision (PRS) for this felony class. The average lengths of intermediate and community punishment imposed for this offense class were 30 and 27 months, respectively. Therefore, at a minimum, one conviction resulting from Section 1 of this bill will require at least nine months of PRS. The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[5]

Section 2 of the bill will not have an immediate fiscal impact on CCS.

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

[4] CCS incurs costs of $1.29 per day for each offender sentenced to the Community Service Work Program.

[5] Due to the effective date of December 1, 2012, and the typical lag time between charge and conviction (6 months), little impact is assumed for DCC in FY 2012-13. Though some offenders may come under DCC supervision during this time, this note assumes an even entry over the course of FY 2013-14.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Kristine Leggett

APPROVED BY: Mark Trogdon, Director
Fiscal Research Division

DATE: February 18, 2013



Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 1

HOUSE BILL 125

Short Title:	Public Agency Computer Code Not Public Record.	(Public)
Sponsors:	Representatives Conrad, Hanes, and Lambeth (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary Subcommittee A.	

February 20, 2013

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT CERTAIN TYPES OF PROPRIETARY COMPUTER CODE ARE NOT A PUBLIC RECORD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-1.1 is amended by adding a new subsection to read:

"(g) Public Agency Proprietary Computer Code. – Proprietary computer code written by and for use by an agency of North Carolina government or its subdivisions is not a public record as defined in G.S. 132-1."

SECTION 2. This act is effective when it becomes law and applies to public records existing before, on, or after that date.

HOUSE BILL 125: Public Agency Computer Code Not Public Record

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 3, 2013
Introduced by:	Reps. Conrad, Hanes, Lambeth	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 125 would clarify that any proprietary computer code written by any agency or subdivision of the State is not a public record.

[As introduced, this bill was identical to S295, as introduced by Sens. Parmon, Brunstetter, which is currently in Senate Judiciary I.]

CURRENT LAW: Pursuant to G.S. 132-1(a), "'Public record" or 'public records' shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions."

G.S. 132-1.1 lists certain information that is specifically excluded from the definition of a public record, such as confidential communications by legal counsel and some State tax information.

BILL ANALYSIS: House Bill 125 would add a subsection to G.S. 132-1.1 to exclude proprietary computer code written by any agency or subdivision of the State from the definition of a public record.

A State agency or subdivision will be able to create a computer program/system specific to its needs and can license it if it chooses to do so, but the computer code itself (the binary/program language used to create the system) would not be a public record.

EFFECTIVE DATE: The act is effective when it becomes law and applies to public records existing before, on, or after that date.

Shelly DeAdder, counsel to House Judiciary Subcommittee A, substantially contributed to this summary.

O. Walker Reagan
Director

H125-SMTG-93 E1 -V1

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HOUSE BILL 384
Second Edition Engrossed 4/4/13

Short Title:	Amend Definitions/Property Classif./Equ. Dist.	(Public)
Sponsors:	Representatives Davis and Stevens (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

March 21, 2013

A BILL TO BE ENTITLED

AN ACT AMENDING THE DEFINITION OF MARITAL PROPERTY TO PROVIDE THAT ENTIRETIES PROPERTY IS SUBJECT TO THE SAME BURDEN OF PROOF IN REBUTTING THE PRESUMPTION AS ALL PROPERTY CLASSIFIED AS MARITAL PROPERTY AND AMENDING THE DEFINITION OF DIVISIBLE PROPERTY TO CLARIFY THAT INCREASES AND DECREASES IN MARITAL DEBT MEANS PASSIVE INCREASES AND PASSIVE DECREASES IN MARITAL DEBT UNDER THE LAWS PERTAINING TO EQUITABLE DISTRIBUTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-20(b) reads as rewritten:

"(b) For purposes of this section:

(1) "Marital property" means all real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of the separation of the parties, and presently owned, except property determined to be separate property or divisible property in accordance with subdivision (2) or (4) of this subsection. Marital property includes all vested and nonvested pension, retirement, and other deferred compensation rights, and vested and nonvested military pensions eligible under the federal Uniformed Services Former Spouses' Protection Act. It is presumed that all property acquired after the date of marriage and before the date of separation is marital property except property which is separate property under subdivision (2) of this subsection. It is presumed that all real property creating a tenancy by the entirety acquired after the date of marriage and before the date of separation is marital property. ~~This~~ Either presumption may be rebutted by the greater weight of the evidence.

(2) "Separate property" means all real and personal property acquired by a spouse before marriage or acquired by a spouse by 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.

(3) "Distributive award" means payments that are payable either in a lump sum or over a period of time in fixed amounts, but shall not include alimony payments or other similar payments for support and maintenance which are treated as ordinary income to the recipient under the Internal Revenue Code.

(4) "Divisible property" means all real and personal property as set forth below:

a. All appreciation and diminution in value of marital property and divisible property of the parties occurring after the date of separation and prior to the date of distribution, except that appreciation or diminution in value which is the result of postseparation actions or activities of a spouse shall not be treated as divisible property.

b. All property, property rights, or any portion thereof received after the date of separation but before the date of distribution that was acquired as a result of the efforts of either spouse during the marriage and before the date of separation, including, but not limited to, commissions, bonuses, and contractual rights.

c. Passive income from marital property received after the date of separation, including, but not limited to, interest and dividends.

d. ~~Increases~~ Passive increases and passive decreases in marital debt and financing charges and interest related to marital debt."

SECTION 2. This act becomes effective October 1, 2013.

HOUSE BILL 384:
Amend Definitions/Property Classif./Equ. Dist.

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 3, 2013
Introduced by:	Reps. Davis, Stevens	**Prepared by:**	Bill Patterson
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 384 would amend the North Carolina Equitable Distribution Act to provide that the presumption that the conveyance by one spouse of real property creating a tenancy by the entireties is a gift to the other spouse may be rebutted by the greater weight of the evidence, and would amend the definition of "divisible property" to clarify that "increases and decreases in marital debt" means "passive increases and passive decreases in marital debt."

BILL ANALYSIS: In the case of *McLean v. McLean*, 323 N.C. 543, 374 S.E.2d 376 (1988), the N.C. Supreme Court held, "When a spouse uses separate property in the acquisition of property titled by the entireties, a gift to the marital estate is presumed. This presumption is rebuttable only by clear, cogent and convincing evidence that a gift was not intended."

House Bill 384 would amend the definition of marital property in G.S. 50-20(b)(1) to provide that real property deeded by one spouse to the other during the marriage creating a tenancy by the entireties is considered a gift to the other spouse unless the conveying spouse establishes by the greater weight of the evidence that no gift to the other spouse was intended.

With respect to classification of property, the bill would also amend the definition of "divisible property" in G.S. 50-20(b)(4)(d) to clarify that increases and decreases in marital debt and financing charges and interest related to marital debt means *passive* increases and *passive* decreases in marital debt, financing charges and interest related to marital debt, i.e., an increase or decrease that is not the result of post-separation actions or activities of a spouse.

EFFECTIVE DATE: This act becomes effective October 1, 2013.

BACKGROUND: Under the law of equitable distribution, in distributing marital property, the court must conduct a three-step analysis:

1. *Identification.* The court is required to identify and classify all the parties' property and debt as marital or separate, based upon the evidence presented regarding the nature of the asset or debt.
2. *Valuation.* The court is required to fix the net value of the marital property as of the date of separation, with net value being market value, if any, less the amount of any encumbrances.
3. *Distribution.* The court must distribute the marital property in an equitable manner. An equal division of the marital property is mandatory under the Equitable Distribution Act, unless the court determines in the exercise of its discretion that such a distribution would be inequitable.

Only marital and divisible property, which includes both assets and debts, is to be distributed.

Janice Paul, counsel to House Judiciary Subcommittee C, substantially contributed to this summary.

HOUSE BILL 361
Committee Substitute Favorable 4/4/13

Short Title: Justice Reinvestment Technical Corrections.-AB (Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE JUSTICE REINVESTMENT ACT OF 2011.

The General Assembly of North Carolina enacts:

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

"(b) Regular Conditions. – As regular conditions of probation, a defendant must:

...

(3a) Not ~~to abscond,~~ abscond by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation ~~officer.~~ officer, if the defendant is placed on supervised probation.

...."

SECTION 2. G.S. 15A-1368.4(e)(14) is repealed.

SECTION 3. G.S. 15-205 reads as rewritten:

"**§ 15-205. Duties and powers of the probation officers.**

A probation officer shall investigate all cases referred to him for investigation by the judges of the courts or by the Secretary of Public Safety. Such officer shall keep informed concerning the conduct and condition of each person on probation under his supervision by visiting, requiring reports, and in other ways, and shall report thereon in writing as often as the court or the Secretary of Public Safety may require. Such officer shall use all practicable and suitable methods, not inconsistent with the conditions imposed by the court or the Secretary of Public Safety, to aid and encourage persons on probation to bring about improvement in their conduct and ~~condition, and shall within the first 30 days of a person's probation take such person to a prison unit maintained by the Division of Adult Correction of the Department of Public Safety for a tour thereof so that he may better appreciate the consequences of probation revocation.~~condition. Such officer shall keep detailed records of his work; shall make such reports in writing to the Secretary of Public Safety as he may require; and shall perform such other duties as the Secretary of Public Safety may require. A probation officer shall have, in the execution of his duties, the powers of arrest and, to the extent necessary for the performance of his duties, the same right to execute process as is now given, or that may hereafter be given by law, to the sheriffs of this State."

SECTION 4. G.S. 15A-1344(d2) reads as rewritten:

"(d2) Confinement in Response to Violation. – When a defendant under supervision for a felony conviction 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.~~ period of confinement of 90 consecutive days. The court may not revoke probation unless the defendant has previously received a total of two periods of confinement under this subsection. A

defendant may receive only two periods of confinement under this subsection. If the time remaining on the maximum imposed sentence on a defendant under supervision for a felony conviction is 90 days or less, 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.

When a defendant under supervision for a misdemeanor conviction 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 period of confinement of up to 90 consecutive days. The court may not revoke probation unless the defendant has previously received a total of two periods of confinement under this subsection. A defendant may receive only two periods of confinement under this subsection. Confinement under this section shall be credited pursuant to G.S. 15-196.1.

If a defendant is arrested for violation of a condition of probation and is lawfully confined to await a hearing for the violation, then the judge shall first credit any confinement time spent awaiting the hearing to any confinement imposed under this subsection; any excess time shall be credited to the activated sentence. The period of confinement imposed under this subsection on a defendant who is on probation for multiple offenses shall run concurrently on all cases related to the violation. Confinement shall be immediate unless otherwise specified by the court.

A defendant shall serve any confinement imposed under this subsection in the correctional facility where the defendant would have served an active sentence."

SECTION 5. G.S. 143B-1159 is repealed.

SECTION 6. 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.

15-30	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~~92	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~~116
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~~272	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	328-406	329-407	330-408	331-410	332-411	333-412	334-413
335-414	336-416	337-417	338-418	339-419."			

SECTION 7. Section 6 of this act becomes effective October 1, 2013, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 361:
Justice Reinvestment Technical Corrections.-AB

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 4, 2013
Introduced by:	Rep. Faircloth	**Prepared by:**	Susan Sitze*
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 361 would make a number of technical and clarifying changes to the Justice Reinvestment Act of 2011.***

CURRENT LAW: The Justice Reinvestment Act of 2011 revised State criminal laws, criminal procedure laws, and probation statutes based upon recommendations of the Council of State Governments Justice Center, working in conjunction with various State agencies and officials. The working group received input from 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. The goal of their work was to develop a statewide policy framework to reduce spending on corrections and reinvest in strategies to increase public safety.

BILL ANALYSIS: House Bill 361 would make a number of technical and clarifying changes to the Justice Reinvestment Act of 2011.

Section 1 of the bill would amend the regular conditions of probation by specifying that the defendant's duty to not abscond from probation by willfully avoiding supervision or by willfully making his or her whereabouts unknown to the supervising probation officer applies to defendant's placed on supervised probation.

Section 2 of the bill would repeal a requirement that, as a controlling condition of post-release supervision, a person must submit to supervision by officers assigned to the Intensive Post-Release Supervision Program and abide by the rules adopted for that program.

Section 3 of the bill would rewrite the statute pertaining to the duties and powers of probation officers to eliminate a requirement that probation officers take each new probationer on a tour of a prison unit.

Section 4 of the bill would specify that the 90-day period of confinement that the court is authorized to impose upon a person who violates a condition of probation is 90 **consecutive** days.

Section 5 of the bill would repeal a requirement that the North Carolina Sentencing and Policy Advisory Commission report annually to the General Assembly and the Governor on recidivism rates for offenders on probation, parole, and post release supervision participating in programming funded through the Treatment for Effective Community Supervision Program.

Section 6 of the bill would adjust the maximum sentences by one month for certain minimum terms specified for Class B1 through Class E felonies. The bill would affect maximum terms where the minimum term imposed is 66 months, 86 months, or 216 months.

EFFECTIVE DATE: With the exception of Section 6, which would become effective October 1, 2013 and apply to offenses committed on or after that date, the bill would be effective when it becomes law.

**Brenda Carter, Staff Attorney, contributed substantially to this summary.*

O. Walker Reagan
Director

H361-SMSA-63 E2 -V1

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 361 (First Edition)

SHORT TITLE: Justice Reinvestment Technical Corrections.-AB

SPONSOR(S): Representative Faircloth

FISCAL IMPACT

($ in millions)

☐ Yes ☑ No ☐ No Estimate Available

State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	$0.0	$0.0	$0.0	$0.0	$0.0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
None

EFFECTIVE DATE Section 6 effective October 1, 2013; the remainder of the act is effective when it becomes law

TECHNICAL CONSIDERATIONS:
None

FISCAL IMPACT SUMMARY:

This bill will have no fiscal impact.

BILL SUMMARY:

The proposed legislation amends G.S. 15A-1343(b)(3a), providing that a defendant must not abscond, willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer, if the defendant is placed on supervised probation (previously, no requirement of being on supervised probation).

The proposed bill amends G.S. 15-205, deleting the requirement that a person on probation be taken, within 30 days, to the local prison unit.

The bill also amends G.S. 15A-1344(d2) and 15A-1340.17(e) making clarifying and technical changes.

The proposed legislation repeals G.S. 143B-1159, the North Carolina Sentencing and Policy Advisory Commission Report. Also repeals G.S. 15A-1368.4(e)(14) listing submitting to supervision under the Intensive Post-Release Suspension Program as a controlling condition, the violation of which may have resulted in revocation of post-release supervision.

Section 6 of this act, amending the sentencing grid for B1 through Class E felonies, is effective October 1, 2013, and applies to offenses committed on or after that date. The rest of the act goes into effect when the legislation passes.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision (PRS). The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. All F-I felons are now subject to nine months of PRS, and PRS for all B1-E felonies has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Judicial Branch

The Administrative Office of the Courts 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.

This bill does not contain any changes to existing law that are anticipated to have a fiscal or workload impact on AOC.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. This bill will have no fiscal impact on IDS.

Department of Public Safety –Prison Section

The proposed legislation adds an additional month to three maximum sentences. Custody projections are based on the assumptions used in the Sentencing Policy Advisory Commission's (SPAC) population projection model and custody assignment practice. Since the model assumes inmates will serve their minimum sentence and no changes in earn time policies are anticipated, the Department of Public Safety (DPS) does not expect the proposed changes to have an impact on prison custody needs.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,[1] and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart demonstrate the impact of the bill. As shown, the Sentencing Commission estimates that this specific legislation will add no inmates to the prison system by the end of FY 2014-15.

Population Projections and Bed Capacity
Five Year Impact

	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Inmates[2]	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
4. Additional Inmates Due to this Bill[3]			***No Estimated Impact***		
5. Additional Beds Required					

Department of Public Safety – Community Correction Section

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. For felony offense classes E through I, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

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[1] Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

[2] The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2013.

[3] Criminal penalty bills effective December 1, 2013 should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.[4] General supervision of intermediate and community offenders by a probation officer costs $3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

The Sentencing Policy Advisory Commission estimates that there will be no fiscal impact to the Community Corrections Section (CCS). Section 6 of the bill adds one month to three maximum sentences. This will not impact CCS, since all offenders convicted and sentenced to active sentences are subject to nine or twelve months of post-release supervision (PRS).

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Maggie Morrissey

Lisa Fox

APPROVED BY:
Mark Trogdon, Director
Fiscal Research Division

DATE: April 22, 2013

Official
Fiscal Research Division
Publication

Signed Copy Located in the NCGA Principal Clerk's Offices

[4] CCS incurs costs of $1.29 per day for each offender sentenced to the Community Service Work Program.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 407
Committee Substitute Favorable 4/10/13

Short Title: Trustee-Atty Fee/Foreclosures/Clerk Approval. (Public)

Sponsors:

Referred to:

March 25, 2013

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CLERKS OF SUPERIOR COURT TO DETERMINE THE REASONABLENESS OF COUNSEL FEES PAID TO AN ATTORNEY SERVING AS A TRUSTEE IN A POWER OF SALE FORECLOSURE PROCEEDING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45-21.31 reads as rewritten:

"**§ 45-21.31. Disposition of proceeds of sale; payment of surplus to clerk.**

(a) The proceeds of any sale shall be applied by the person making the sale, in the following order, to the payment of –

(1) Costs and expenses of the sale, including the trustee's commission, if any, and a reasonable auctioneer's fee if such expense has been ~~incurred;~~incurred, and reasonable counsel fees for an attorney serving as a trustee if allowed pursuant to subsection (a1) of this section;

(2) Taxes due and unpaid on the property sold, as provided by G.S. 105-385, unless the notice of sale provided that the property be sold subject to taxes thereon and the property was so sold;

(3) Special assessments, or any installments thereof, against the property sold, which are due and unpaid, as provided by G.S. 105-385, unless the notice of sale provided that the property be sold subject to special assessments thereon and the property was so sold;

(4) The obligation secured by the mortgage, deed of trust or conditional sale contract.

(a1) The clerk of the superior court of the county where the sale was had may exercise discretion to allow reasonable counsel fees to an attorney serving as a trustee (in addition to the compensation allowed to the attorney as a trustee) where the attorney, on behalf of the trustee, renders professional services as an attorney that are different from the services normally performed by a trustee and of a type which would reasonably justify the retention of legal counsel by a trustee who is not licensed to practice law. Counsel fees are presumed reasonable if in compliance with G.S. 6-21.2(1) and (2). Nothing in this section, however, shall preclude the clerk of superior court from deeming a higher fee reasonable.

(b) Any surplus remaining after the application of the proceeds of the sale as set out in subsection (a) shall be paid to the person or persons entitled thereto, if the person who made the sale knows who is entitled thereto. Otherwise, the surplus shall be paid to the clerk of the superior court of the county where the sale was had–

(1) In all cases when the owner of the property sold is dead and there is no qualified and acting personal representative of his estate, and

(2) In all cases when he is unable to locate the persons entitled thereto, and
(3) In all cases when the mortgagee, trustee or vendor is, for any cause, in doubt as to who is entitled to such surplus money, and
(4) In all cases when adverse claims thereto are asserted.

(c) Such payment to the clerk discharges the mortgagee, trustee or vendor from liability to the extent of the amount so paid.

(d) The clerk shall receive such money from the mortgagee, trustee or vendor and shall execute a receipt therefor.

(e) The clerk is liable on his official bond for the safekeeping of money so received until it is paid to the party or parties entitled thereto, or until it is paid out under the order of a court of competent jurisdiction."

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

HOUSE BILL 407:
Trustee-Atty Fee/Foreclosures/Clerk Approval

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 3, 2013
Introduced by:	Rep. Turner	**Prepared by:**	Bill Patterson
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 407 would authorize superior court clerks to determine the reasonableness of counsel fees paid to an attorney serving as a trustee in a proceeding to foreclose under a power of sale, and would presume the fee to be reasonable if it is in compliance with G.S. 6-21.2(1) and (2).

CURRENT LAW: Article 2A of Chapter 45 of the General Statutes requires a trustee conducting a foreclosure pursuant to a power of sale in a deed of trust to pay the costs and expenses of the sale first out of the sale proceeds. G.S. 45-21.31(a)(1). The clerk of superior court is not authorized under Article 2A to inquire into the reasonableness of the payments made for costs and expenses of the sale.[1]

BILL ANALYSIS: House Bill 407 would amend G.S. 45-21.31 to authorize clerks to determine the reasonableness of payments made for counsel fees to an attorney serving as the trustee in a foreclosure under a power of sale.

The bill would permit payment of such fees only upon a finding by the clerk that the professional services rendered are different from those normally performed by a trustee and are of a type that would reasonably justify a decision by a non-attorney trustee to retain legal counsel. Counsel fees would be presumed reasonable if they are in compliance with G.S. 6-21.2(1) and (2),[2] and the bill would authorize the clerk to approve a higher fee if deemed reasonable.

EFFECTIVE DATE: This act is effective when it becomes law.

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[1] G.S. 45-21.33 requires the clerk to conduct an audit of the trustee's final report. However, in carrying out this duty, "the clerk is only authorized to determine whether the entries in the report reflect the actual receipts and disbursements made by the trustee," and does not have the discretionary authority to allow, disallow, or modify the amount of the payments. In re Foreclosure of Deed of Trust from Webber, 148 N.C. App. 158, 161, 557 S.E.2d 645, 647 (2001). Under Article 6 of Chapter 32, clerks are authorized to allow counsel fees to an attorney serving as a fiduciary or trustee upon a finding that "the attorney, on behalf of the trust or fiduciary relationship, renders professional services as an attorney that are different from the services normally performed by a fiduciary or trustee and of a type which would reasonably justify the retention of legal counsel by a fiduciary or trustee who is not licensed to practice law." G.S. 32-61. In 2012, however, the N.C. Supreme Court held that this statute does not grant clerks any authority over payments to an attorney serving as trustee in a foreclosure proceeding, because it applies only to trusts as defined in the North Carolina Uniform Trust Code which, pursuant to G.S. 36C-1-102, expressly excludes from its scope "trusts for the primary purpose of paying debts," and does not grant the clerks any discretionary authority. In re Vogler Realty, Inc., 365 N.C. 389, 393, 722 S.E.2d 459, 462 (2012).

[2] "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, and collectible as part of such debt, if such note, contract or other evidence of indebtedness be collected by or through an attorney at law after maturity, subject to the following provisions:

(1) If such note, conditional sale contract or other evidence of indebtedness provides for attorneys' fees in some specific percentage of the "outstanding balance" as herein defined, such provision and obligation shall be valid and enforceable up to but not in excess of fifteen percent (15%) of said "outstanding balance" owing on said note, contract or other evidence of indebtedness.

(2) If such note, conditional sale contract or other evidence of indebtedness provides for the payment of reasonable attorneys' fees by the debtor, without specifying any specific percentage, such provision shall be construed to mean fifteen percent (15%) of the "outstanding balance" owing on said note, contract or other evidence of indebtedness."

G.S. 6-21.2(1), (2).

O. Walker Reagan
Director

Research Division
(919) 733-2578

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — June 4, 2013

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
William Bronson	DHHS OMH/DD/SAS
[signature]	NCBA
Kim Crouch	NCBA
Jarret Burr	NCDPS
Gabrielle Rhoades	NCDPS
[signature]	NCAOC
Teresa Peel	State Ethics Commission
Johanna Reese	NCACC
Erin Wynia	NCCM
Henry Hultquist	N.C.B.A.
Sara Perdue	Sentencing Comm.

VISITOR REGISTRATION SHEET

Senate E&I Committee — June 4, 2013

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Perry Newson	SEC
Will Grantham	MWC
TJ Bradbee	NR
P Sox	NCAG
David Farrell	NCLTA
Lauren Whaley	NCCUL
Jackson Cozort	NSS
Keeri Mele	Duke Energy
John Poltrack	NCBA
Adam Shaber	DHHS
Sarah Preston	ACLU-NC

Senate Committee on Judiciary I
Thursday, June 6, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 122	Amend Interlocutory Appeals/Family Law.	Representative Glazier Representative Stevens
HB 147	Amend Adoption Laws. Discussion Only	Representative Jordan Representative Stevens Representative Glazier
HB 332	Notary Act/Satisfaction of Security Interests.	Representative Bryan Representative Stam Representative Glazier
HB 515	Amend Credit Union Laws.	Representative J. Bell Representative L. Hall Representative Wells Representative Jordan
HB 652	Inheritance by Illegitimate Child.	Representative Davis Representative Stam
HB 763	Allow Alimony/Post Sep Supp During Marriage.	Representative Goodman Representative Jordan
HB 765	Jury Instructions for School Budget Dispute.	Representative Dixon
HB 278	HOAs/Voluntary Prelitigation Mediation.	Representative D. Ross Representative D. Hall
HB 29	Methamphetamine/Offense/Penalties.	Representative Horn Representative Faircloth Representative Tolson Representative Stevens

Adjournment

Senate Committee on Judiciary I
Thursday, June 6, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on June 6, 2013 in Room 1027/1128 of the Legislative Building. Ten members were present.

Senator Thom Goolsby, Chair, presided.

Senator Harry Brown motioned to take up a Proposed Committee Substitute for House Bill 122 and the motion passed by a voice vote. Representative Rick Glazier was recognized to explain the bill. Judge Sanford Steelman from the North Carolina Superior Court was recognized and he opposed the bill in his comments.

Senator Pete Brunstetter was recognized to ask a question, and Representative Sarah Stevens responded. Sen. Brunstetter then made a motion for a favorable report to the PCS, unfavorable to the original bill that passed by a voice vote.

Representative John Bell was recognized to explain House Bill 515. Senator Harry Brown moved for a favorable report to the bill and the motion passed by a voice vote.

Representative Jonathan Jordan was recognized to explain House Bill 147. Senator Tamara Barringer asked a question about a potential amendment and Sen. Goolsby responded. Jennifer Hoverstad, an attorney with Rik Lovett and Associates, was recognized to comment on the bill. She advocated adding additional language but did not support or oppose the bill. Donnas Kentin, the executive director of Amazing Grace Adoptions, also commented in support of additional language for the bill but not in opposition to or support of the bill itself.

Sen. Goolsby asked Ms. Kentin two questions and she responded. Brinton Wright, partner at the Law Offices of Brinton Wright, spoke in support of the bill and in opposition to comments from Ms. Hoverstad and Ms. Kentin. Rep. Jordan responded to comments from the public.

Senator Tamara Barringer was recognized to comment on the bill and the public discussion. Sen. Goolsby said the committee would move on without voting on HB 147.

Representative Ken Goodman was recognized to explain House Bill 763. Senator Clark Jenkins moved for a favorable report. Susan Sitze from the Research Division was recognized for comment. Rep. Goodman responded to Ms. Sitze and commented further on the bill for the committee. Sen. Goolsby held a vote on Sen. Jenkin's motion and it passed by a voice vote.

Representative Jimmy Dixon was recognized to explain House Bill 765. Sen. Barringer was recognized for a question and Rep. Dixon responded. LeAnn Winter from the North Carolina School Board Association commented in response to Sen. Barringer's question and in support of the bill. Cassandra Skinner from the North Carolina Association of County Commissioners also

spoke in favor of the bill. Senator Kathy Harrington moved for a favorable report to the bill and the motion passed by a voice vote.

Representative Larry Hall was recognized to explain House Bill 278. Senator Trudy Wade moved for a favorable report to the bill. Senator Norm Sanderson was recognized for a question and Rep. Hall responded to his question. Sen. Goolsby held a vote on the motion and it passed by a voice vote.

Representative Craig Horn was recognized to explain House Bill 29. Sen. Barringer motioned for a favorable report to the bill and the motion passed by a voice vote.

Representative Rob Bryan was recognized to explain House Bill 332. Senator Tamara Barringer submitted an amendment and a voice vote on the amendment passed. Rep. Bryan made further comments on the bill. Senator Wade moved for a favorable report of the bill and the motion passed by a voice vote.

The meeting adjourned at 10:52 a.m.

Senator Thom Goolsby, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Thursday, June 06, 2013

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

FAVORABLE

HB **29** Methamphetamine/Offense/Penalties.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **515** Amend Credit Union Laws.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **763** **(CS#1)** Allow Alimony/Post Sep Supp During Marriage.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **765** **(CS#2)** Jury Instructions for School Budget Dispute.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Senator David Curtis will handle HB 29
Senator Harry Brown will handle HB 515
Senator Eugene McLaurin will handle HB 763
Senator Norman Sanderson will handle HB 765



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Thursday, June 06, 2013

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

FAVORABLE

HB **278** **(CS#1)** HOAs/Voluntary Prelitigation Mediation.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

HB **122** **(CS#1)** Amend Interlocutory Appeals/Family Law.
Draft Number: H122-PCS70448-SA-51
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

HB **332** **(CS#1)** Notary Act/Satisfaction of Security Interests.
Draft Number: H332-PCS70449-TG-54
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Senator Tamara Barringer will handle HB 278
Senator Peter Brunstetter will handle HB 122
Senator Tamara Barringer will handle HB 332



HOUSE BILL 29

Short Title:	Methamphetamine/Offense/Penalties.	(Public)
Sponsors:	Representatives Horn, Faircloth, Tolson, and Stevens (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary Subcommittee C.	

January 31, 2013

A BILL TO BE ENTITLED

AN ACT TO CREATE THE OFFENSE OF POSSESSION OF PSEUDOEPHEDRINE IF THE DEFENDANT HAS A PRIOR CONVICTION FOR THE POSSESSION OR MANUFACTURE OF METHAMPHETAMINE, AND TO AGGRAVATE THE PENALTY FOR MANUFACTURING METHAMPHETAMINE WHEN CHILDREN, DISABLED, OR ELDERLY ARE PRESENT, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON METHAMPHETAMINE ABUSE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-95(d1)(1) reads as rewritten:

"(d1) (1) Except as authorized by this Article, it is unlawful for any person to:

a. Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

b. Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

c. Possess a pseudoephedrine product if the person has a prior conviction for the possession or manufacture of methamphetamine.

Any person who violates this subsection shall be punished as a Class H felon, unless the immediate precursor is one that can be used to manufacture methamphetamine."

SECTION 2. G.S. 15A-1340.16D reads as rewritten:

"**§ 15A-1340.16D. Manufacturing methamphetamine; enhanced sentence.~~Enhanced sentence if defendant is convicted of manufacture of methamphetamine and the offense resulted in serious injury to a law enforcement officer, probation officer, parole officer, emergency medical services employee, or a firefighter.~~**

(a) If a person is convicted of the offense of manufacture of methamphetamine under G.S. 90-95(b)(1a) and it is found as provided in this section that a law enforcement officer, probation officer, parole officer, emergency medical services employee, or a firefighter suffered serious injury while discharging or attempting to discharge his or her official duties and that the injury was directly caused by one of the hazards associated with the manufacture of methamphetamine, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 24 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 24 months, as specified in G.S. 15A-1340.17(e) and (e1).

(a1) If a person is convicted of the offense of manufacture of methamphetamine under G.S. 90-95(b)(1a) and it is found as provided in this section that:

(1) A minor under 18 years of age resided on the property used for the manufacture of methamphetamine, or was present at a location where methamphetamine was being manufactured, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 24 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 24 months, as specified in G.S. 15A-1340.17(e) and (e1).

(2) A disabled or elder adult resided on the property used for the manufacture of methamphetamine, or was present at a location where methamphetamine was being manufactured, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 24 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 24 months, as specified in G.S. 15A-1340.17(e) and (e1).

(3) A minor and a disabled or elder adult resided on the property, or were present at a location where methamphetamine was being manufactured, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 48 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 48 months, as specified in G.S. 15A-1340.17(e) and (e1).

(a2) For the purposes of this section, the terms "disabled adult" and "elder adult" shall be defined as set forth in G.S. 14-32.3(d).

(a3) The penalties set forth in this section are cumulative. The minimum sentence shall be increased by the sum of the number of months for convictions under subsections (a) and (a1) of this section, and the maximum term of imprisonment shall be the maximum term that corresponds to the total number of months, as specified in G.S. 15A-1340.17(e) and (e1).

(b) An indictment or information for the offense of manufacture of methamphetamine under G.S. 90-95(b)(1a) shall allege in that indictment or information the facts set out in subsection (a) or (a1) of this section. The pleading is sufficient if it alleges any or all of the following:

(1) ~~that the~~ The defendant committed the offense of manufacture of methamphetamine and that as a result of the offense a law enforcement officer, probation officer, parole officer, emergency medical services employee, or firefighter suffered serious injury while discharging or attempting to discharge his or her official duties. ~~One pleading is sufficient for all felonies that are tried at a single trial.~~

(2) The defendant committed the offense of manufacture of methamphetamine and that a minor resided on the property used for manufacturing the methamphetamine, or was present at a location where methamphetamine was being manufactured.

(3) The defendant committed the offense of manufacture of methamphetamine and that a disabled or elder adult resided on the property used for manufacturing the methamphetamine, or was present at a location where methamphetamine was being manufactured.

(4) The defendant committed the offense of manufacture of methamphetamine and that a minor and a disabled or elder adult resided on the property used for manufacturing the methamphetamine, or were present at a location where methamphetamine was being manufactured.

One pleading is sufficient for all felonies that are tried at a single trial.

(c) The State shall prove the issue or issues set out in subsection (b) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the offense of manufacture of methamphetamine unless the defendant pleads guilty or no contest to the issue. If the defendant pleads guilty or no contest to the offense of manufacture of methamphetamine but pleads not guilty to the issue or issues set out in subsection (b) of this section, then a jury shall be impaneled to determine the issue.

(d) This section does not apply if the offense is packaging or repackaging methamphetamine, or labeling or relabeling the methamphetamine container."

SECTION 3. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

HOUSE BILL 29:
Methamphetamine/Offense/Penalties

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 4, 2013
Introduced by:	Reps. Horn, Faircloth, Tolson, Stevens	**Prepared by:**	Susan Sitze*
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 29 would create the offense of possession of a pseudoephedrine product by a person previously convicted of the possession or manufacture of methamphetamine and would create an enhanced sentence for manufacturing methamphetamine under certain circumstances.

BILL ANALYSIS:

Section 1 would create in G.S. 90-95(d1)(1) a new Class H felony offense of possessing a pseudoephedrine product if the defendant has a prior conviction for possessing or manufacturing methamphetamine.

Section 2 would amend G.S. 15A-1340.16D to increase the sentence for a conviction of manufacturing methamphetamine by 24 months if the state proves beyond a reasonable doubt that a minor or a disabled or elder adult resided or was present at a location where the offense was committed, and increased by 48 months if both a minor and a disabled or elder adult resided on the property where the crime occurred.

EFFECTIVE DATE: This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

BACKGROUND: The House Select Committee on Methamphetamine Abuse was established by the Speaker of the House in September 2011. The Committee's report to the 2013 General Assembly can be found at:
http://www.ncleg.net/documentsites/legislativepublications/Study%20Reports%20to%20the%20NC%20General%20Assembly/Study%20Reports%20to%20the%202013%20NCGA/Methamphetamine%20Abuse%20-%20House%20Select%20Committee.pdf

A link to the current Legislative Commission on Methamphetamine Abuse can be found at:
http://ncleg.net/gascripts/Committees/Committees.asp?sAction=ViewCommittee&sActionDetails=Non-Standing_6273

**Janice Paul, Staff Attorney, contributed substantially to this summary.*

O. Walker Reagan
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GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 29 (First Edition)

SHORT TITLE: Methamphetamine Offense Penalties.

SPONSOR(S): Representatives Tolson, Stevens, Faircloth, and Horn

FISCAL IMPACT

($ in millions)

☑ Yes ☐ No ☑ No Estimate Available

State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Administrative Office of the Courts (AOC), Indigent Defense Services (IDS), Department of Public Safety (DPS

EFFECTIVE DATE December 1, 2013

TECHNICAL CONSIDERATIONS:
None

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address a new chargeable offense being enforced, adjudicated and having penalties applied to those convicted of the new offense. However, given there is no historical data on this new offense, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of this crime:

- Administrative Office of the Courts: $501 per disposition
- Indigent Defense Services: Minimum $235 for district court case
- Prison Section: No cost (excess bed space projected for at least five years)
- Community Corrections: Minimum of $980 per conviction

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

H.B. 29, Methamphetamine Offense Penalties, creates a new offense of possession of pseudoephedrine if a defendant has certain prior methamphetamine-related convictions and adds aggravating factors to the penalty for manufacturing methamphetamine if children or the elderly reside in the manufacturing facility.

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding, existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. In addition, all F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Section 1 of H.B. 29, Methamphetamine/Offense/Penalties, adds a new statute, G.S. 90-95(d1)(1)(c), to make it a Class H felony for any person to possess a pseudoephedrine product if the person has a prior conviction for the possession or manufacture of methamphetamine. The new statute requires that a person have a prior conviction for "the possession or manufacture of methamphetamine," but it does not cite a statutory reference for the offenses; therefore, it is possible for a person to qualify for the new offense with a prior conviction for any of the offenses listed in the following table.

Offense Text and G.S. Citation	Offense Class	# of Convictions
Manufacture methamphetamine. 90-95(b)(1a)	C	42
Trafficking in methamphetamine.* 90-95(h)(3b)	C, E, F	12
Possess with intent to manufacture, sell, or deliver methamphetamine. 90-95(a)(1)	H	41
Possess with intent to manufacture, sell, or deliver a Schedule II controlled substance. 90-95(a)(1)	H	277
Manufacture a Schedule II controlled substance. 90-95(a)(1)	H	4
Possess methamphetamine. 90-95(a)(3)	I	171
Simple possession of a Schedule II, III, or IV controlled substance. 90-95(d)(2)	I	0
Felony possession Schedule II controlled substance. 90-95(a)(3)	I	399
	Total	**946**

* "Trafficking in methamphetamine" may include selling, manufacturing, delivering, transporting, or possessing.

Source: NC Sentencing and Policy Advisory Commission, FY 2011/12 Preliminary Structured Sentencing Simulation Data

In FY 2011-12, there were a total of 946 felony convictions for the offenses listed. While the 946 convictions occurred during a fiscal year, the new statute does not limit the timeframe to only a year – meaning the prior conviction can occur at any point in the offender's entire criminal history.

Section 2 of H.B. 29 amends G.S. 15A-1340.16D, Manufacturing Methamphetamine, enhanced sentence, to add three new enhancements that would require the court to increase the minimum sentence by 24, 48, or 72 months if, at the time of the offense:

- A minor child resides or is present on the property,
- A disabled or elderly adult resides or is present on the property, or
- Bother a minor child and a disabled or elderly adult reside or are present on the property.

The statute currently has a sentence enhancement if a first responder is injured as a result of the offense. H.B. 29 states that if that occurs in conjunction with one of the new enhancements, the penalties are cumulative. The following table illustrates the effect of the new bill:

Options	Average Minimum Sentence* (Months)	Proposed Enhancement Length (Months)	New Minimum Sentence (Months)
• Minor Present OR Disabled/Elderly Present OR 'Service' Personnel Injured	65	24	89
• Minor Present AND Disabled/Elderly Present • Minor Present AND 'Service' Personnel Injured • Disabled/Elderly Present AND 'Service' Personnel Injured	65	48	113
• Minor Present AND Disabled/Elderly Present AND 'Service' Personnel Injured	65	72	137

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.

Section 1 of the bill creates a new criminal offense, so AOC is unable to estimate the number of new charges that may arise from the passage of this bill. Presently, the AOC estimates a cost of $501 per disposition for a Class H felony.

Section 2 of the bill creates a sentencing enhancement that would increase the minimum sentences for persons found to be manufacturing methamphetamine where children, or disabled or elderly adults lived or were present at the time of the offense, or when first responders were injured as a result of the offense.
The pool of potential offenders would be those charged with manufacturing methamphetamine, G.S. 90-95(b)(1). There were 469 individuals charged with this offense in CY 2012. NCAOC does not track information about the specific nature of these individual offenses (i.e. were there minor children and/or disabled or elder adults on the property or at the location, etc.), thus, there is no data upon which to estimate the number of enhancements that may have been potentially associated with the conviction of these charges.

An increase in the type or severity of a potential sentence is often associated with a more vigorous defense, which can result in fewer pleas and more trials and, thus, an increased cost to the court system. The offense of manufacturing methamphetamine is a Class C felony offense. Because Structured Sentencing dictates that the punishment for this offense is an active sentence (except in cases of extraordinary mitigation), any additional time and costs will be due to the potential for increase in sentence length. AOC does not have any data upon which to estimate the costs associated with this potential increase.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. IDS estimates that the cost of a Class H felony defense is $235 if the case is heard in District court; $446 for a plea in superior court, or $1,180 if the case goes to trial in superior court.

Department of Public Safety –Prison Section

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,[1] and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart demonstrate the impact of the bill.

It is not known how many of the offenders convicted under Section 1 of the bill would possess a pseudoephedrine product. Since the bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the new statute.

Population Projections and Bed Capacity
Five Year Impact

	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Inmates[2]	38,999	39,062	39,091	39,047	39,135
2. Prison Beds (Expanded Capacity)	40,926	40,926	40,926	40,926	40,926
3. Beds Over/(Under) Inmate Population	(1,927)	(1,864)	(1,835)	(1,879)	(1,791)
4. Additional Inmates Due to this Bill[3]	***No estimate available***				
5. Additional Beds Required					

[1] Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

[2] The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2012.

[3] Criminal penalty bills effective December 1, 2013, should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

Section 2 of the bill will not have an immediate impact on the Prison Section. In FY 2011-12, there were 42 Class C convictions for manufacturing methamphetamine. The average minimum sentence imposed was 65 months (median = 60 months). Of the 42 convictions, the minimum sentence imposed ranged from 44 months to 116 months. It is not known how many of these 42 convictions had minor children under 18 years of age and/or disabled or elderly adults residing on the property or present at the location where methamphetamine was being manufactured. It is also not known if the offense caused serious injury to a law enforcement officer, probation officer, parole officer, emergency medical services employee, or a firefighter.

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. Since the punishment type (e.g., active versus non-active) is not expected to change, the impact would result from the additional months added to the minimum sentence length. The impact on prison resources would not occur until after 5 years (based on the average minimum sentence imposed for Class C felonies for manufacturing methamphetamine) and would occur due to these offenders 'stacking up' in prison with the longer prison sentence lengths.

Department of Public Safety – Community Correction Section

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. For felony offense classes E through I, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.[4] General supervision of intermediate and community offenders by a probation officer costs $3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

In FY 2011-12, 39% of Class H offenders received active sentences; 45% received intermediate sentences; and 16% received community punishments. All active sentences result in nine months of post-release supervision (PRS) for this felony class. The average lengths of intermediate and community punishment imposed for this offense class were 30 and 27 months, respectively. Therefore, at a minimum, one conviction resulting from Section 1 of this bill will require at least nine months of PRS. The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[5]

Section 2 of the bill will not have an immediate fiscal impact on CCS.

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

[4] CCS incurs costs of $1.29 per day for each offender sentenced to the Community Service Work Program.

[5] Due to the effective date of December 1, 2012, and the typical lag time between charge and conviction (6 months), little impact is assumed for DCC in FY 2012-13. Though some offenders may come under DCC supervision during this time, this note assumes an even entry over the course of FY 2013-14.

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DATE: February 18, 2013

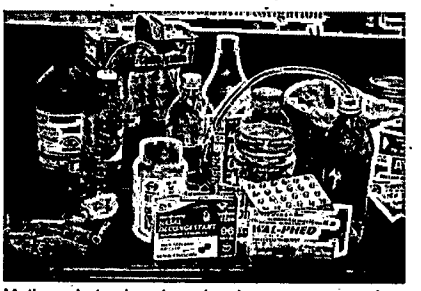


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Meth makers may face harsher penalties

by Kellen Moore

Public safety representatives are praising a state bill that would increase jail time for people convicted of making methamphetamine in the presence of children, the elderly or disabled adults.



Methamphetamine abuse has become common in Watauga County and across the nation, in part because the drug can be created with common household products. Submitted Photo

Originally published: 2013-03-02 17:50:48
Last modified: 2013-03-02 17:52:32

House Bill 29, which passed the House last week and is now in Senate committee, does two main things.

First, the bill makes it illegal for a person previously convicted of meth possession or manufacturing to possess pseudoephedrine, a component of some cold medicines that is used in making the illegal drug.

Second, the bill lengthens the sentences for people convicted of meth manufacturing if it can be proven they "cooked" on a property inhabited by a person younger than 18, certain elderly adults or adults with physical or mental disabilities. The minimum prison term would increase by either two or four years, depending on the circumstances, for a person convicted under this new law.

If enacted, the law would apply to offenses committed on or after Dec. 1, 2013.

Sheriff Len Hagaman said he favored any law that strengthened penalties for misusing pseudoephedrine.

"The sad part is, it's probably like a lot of other drugs," he said. "It has great pharmaceutical benefits for people that have sinus issues and such, and it's definitely got a place if it's used properly."

It may be slightly less likely today that the drug is made in the presence of children, as meth cooks are increasingly using small, mobile meth labs as opposed to large, in-house setups, Hagaman said.

But the problem still exists, he emphasized.

"It's pretty common for folks to have kids around," Hagaman said. "It sounds crazy, but we've had people where they brought their kids to the cook house because they don't have any child care.
"One exposure is too many."

The measure also has the support of N.C. Attorney General Roy Cooper.

"Meth labs threaten our communities with crime, addiction, and even fires, explosions and toxic chemicals," Cooper said. "We're working hard to find and stop these dangerous drug labs, and stronger laws will help us."

Meth lab busts in North Carolina reached a new high in 2012 with 460 meth labs, although Watauga County's totals actually fell.

More than 70 meth lab busts have occurred statewide so far in 2013, according to Cooper's office.
Law enforcement and legislators continue to work on the problem of methamphetamine abuse. For the last two years, Hagaman has been part of a subcommittee that is exploring, among other things, a recommendation to make pseudoephedrine a prescription drug.

"We just keep chipping away at it," Hagaman said.

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 147
Committee Substitute Favorable 3/6/13

Short Title: Amend Adoption Laws. (Public)

Sponsors:

Referred to:

February 25, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS LAWS PERTAINING TO ADOPTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-909 reads as rewritten:

"**§ 7B-909. Review of agency's plan for placement.**

(a) The director of social services or the director of the licensed private child-placing agency shall promptly notify the clerk to calendar the case for review of the department's or agency's plan for the juvenile at a session of court scheduled for the hearing of juvenile ~~matters in any case where:~~matters, to be held within six months of accepting a relinquishment of a juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes, unless one of the following is true:

(1) ~~One parent has surrendered a juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes and the termination of parental rights proceedings have not been instituted against the nonsurrendering parent within six months of the surrender by the other parent, or~~The juvenile has become the subject of a decree of adoption.

(2) ~~Both parents have surrendered a juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes and that juvenile has not been placed for adoption within six months from the date of the more recent parental surrender.~~If only one parent has relinquished for adoption, it appears that the other parent's parental rights are not being terminated, and his or her consent or relinquishment for adoption necessary for the juvenile to be adopted cannot be obtained.

(b) Repealed by 2007-276, s. 6, effective October 1, 2007.

(b1) If the court finds on motion of a department of social services or licensed child-placing agency that a consent or relinquishment for adoption necessary for the juvenile to be adopted cannot be obtained, and that no further steps are being taken to terminate the parental rights of the parent from whom consent or relinquishment has not been obtained, the court may order, upon finding that it is in the juvenile's best interest, that any relinquishment for adoption signed by a parent who has surrendered the child for adoption shall be voided pursuant to G.S. 48-3-707(a)(4). Before voiding any relinquishment under this subsection, the court shall require the county department of social services or licensed child-placing agency to give at least 15 days' notice to the relinquishing parent whose rights will be restored. The relinquishing parent shall have the right to be heard on (i) whether the relinquishment should be voided and (ii) the parent's plan to provide for the juvenile if the relinquishment is voided. If after due diligence the relinquishing parent cannot be located, the notice of hearing shall be

deposited in the United States mail, return receipt requested, and sent to the address of the parent given in the relinquishment. The date of receipt of the notice is deemed the date of delivery or last attempted delivery.

(c) Notification of the court under this section shall be by a petition for review or motion for review, if the court is exercising jurisdiction over the juvenile. ~~The petition shall set forth the circumstances necessitating the review under subsection (a) of this section.~~ The review shall be conducted within 30 days following the filing of the petition for review unless the court shall otherwise direct. The court shall conduct reviews every six months until the juvenile is the subject of a decree of adoption. However, further reviews are not required after the voiding of a relinquishment under subsection (b1) of this section. The initial review and all subsequent ~~reviews~~ reviews, except a review hearing under subsection (b1) of this section, shall be conducted pursuant to G.S. 7B-908. Any individual whose parental rights have been terminated or who has relinquished the juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes shall not be considered a party to the review unless an appeal of the order terminating parental rights is pending, and a court has stayed the order pending the appeal."

SECTION 2. G.S. 48-2-204 reads as rewritten:

"**§ 48-2-204. Death of a joint petitioner or stepparent pending final decree.**

(a) When spouses have petitioned jointly to adopt and one spouse dies before entry of a final decree, the adoption may ~~nevertheless~~ proceed in the names of both spouses. ~~The~~ Upon completion of the adoption, the name of the deceased spouse shall be entered as one of the adoptive parents on the new birth certificate prepared pursuant to Article 9 of this ~~Chapter, and for~~Chapter. For purposes of inheritance, testate or intestate, the adoptee shall be treated as a child of the ~~deceased.~~deceased spouse.

(b) When a stepparent who has petitioned to adopt dies before entry of a final decree, the adoption may proceed in the name of the petitioning stepparent if the court causes to be mailed to any individual who executed a consent to adoption a notice advising that the petitioning stepparent has died and the individual may, within 15 days from the date the individual receives notice, request a hearing on the adoption. Notice is complete when mailed to the individual at the address given in the consent. Upon completion of the adoption, the name of the petitioning stepparent shall be entered as one of the adoptee's parents on the new birth certificate prepared in accordance with Article 9 of this Chapter. For purposes of inheritance, testate or intestate, the adoptee shall be treated as a child of the deceased stepparent."

SECTION 3. G.S. 48-2-207(a) reads as rewritten:

"(a) If any individual who is described in G.S. 48-3-601 or entitled to notice under G.S. 48-2-401(c)(3) is served with notice of the filing of the petition in accordance with G.S. 48-2-402 and fails to respond within the time specified in the notice, the court, upon motion by the petitioner, shall enter an order under G.S. 48-3-603(a)(7) that the individual's consent is not required for the adoption."

SECTION 4. G.S. 48-2-302 reads as rewritten:

"**§ 48-2-302. ~~Time for filing petition.~~Concurrent petitions to adopt and terminate parental rights.**

~~(a)~~ Repealed by Session Laws 2012-16, s. 1, effective October 1, 2012.

~~(b) If a petition is not filed in accordance with subsection (a) of this section, any person may notify the county department of social services for appropriate action.~~

~~(c)~~ A petition for adoption may be filed concurrently with a petition to terminate parental rights."

SECTION 5. G.S. 48-2-305 reads as rewritten:

"**§ 48-2-305. Petition for adoption; additional documents.**

~~At the time the petition is filed, the~~The petitioner shall file or cause to be filed the following documents:

(1) Any required affidavit of parentage executed under G.S. 48-3-206.

(2) Any required consent or relinquishment that has been executed.

(3) A certified copy of any court order terminating the rights and duties of a parent or a guardian of the adoptee.

(4) A certified copy of any court order or pleading in a pending proceeding concerning custody of or visitation with the adoptee.

(5) A copy of any required preplacement assessment certified by the agency that prepared ~~it and any certificate of service required by G.S. 48-3-307~~the assessment or an affidavit from the petitioner stating why the assessment is not available.

(6) A copy of any document containing the information required under G.S. 48-3-205 concerning the health, social, educational, and genetic history of the adoptee and the adoptee's original family which the petitioner received before the placement or at any later time, certified by the person who prepared it, or if this document is not available, an affidavit stating the reason why it is not available.

(7) Any signed copy of the form required by the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, authorizing a minor to come into this State, or any statement required by G.S. 48-2-304(c) describing the circumstances of any noncompliance.

(8) A writing that states the name of any individual whose consent is or may be required, but who has not executed a consent or a relinquishment or whose parental rights have not been legally terminated, and any fact or circumstance that may excuse the lack of consent or relinquishment.

(9) In an adoption pursuant to Article 4 of this Chapter, a copy of any agreement to release past-due child support payments.

(10) Any consent to an agency by a placing parent and adopting parents to release identifying information under G.S. 48-9-109.

(11) A certificate as required by G.S. 48-3-307(c), if the person who placed the minor executes a consent before receiving a copy of the preplacement assessment.

(12) A certified copy of any judgment of conviction of a crime specified under G.S. 48-3-603(a)(9) establishing that an individual's consent to adoption is not required.

Any document required under this section that is available to the petitioner when the petition is filed shall be filed with the petition. Any document required under this section that is not available when the petition is filed shall be filed as the document becomes available. The petitioner may also file any other document necessary or helpful to the court's determination."

SECTION 6. G.S. 48-2-401(c)(3) reads as rewritten:

"(c) In the adoption of a minor, the petitioner shall also serve notice of the filing on each of the following:

...

(3) A man who to the actual knowledge of the petitioner claims to be or is named as the biological or possible biological father of the minor, and any biological or possible biological fathers who are unknown or whose whereabouts are unknown, but notice need not be served upon a man who has executed a consent, a relinquishment, or a notarized statement denying paternity or disclaiming any interest in the minor, a man whose parental rights have been legally terminated or who has been judicially determined

not to be the minor's ~~parent;~~parent, a man whose consent to the adoption is not required under G.S. 48-3-603(a)(9) due to his conviction of a specified crime, or, provided the petition is filed within three months of the birth of the minor, a man whose consent to the adoption has been determined not to be required under G.S. 48-2-206.

...."

SECTION 7. G.S. 48-3-603(a) reads as rewritten:

"**§ 48-3-603. Persons whose consent is not required.**

(a) Consent to an adoption of a minor is not required of a person or entity whose consent is not required under G.S. 48-3-601, ~~or:~~or any of the following:

(1) An individual whose parental rights and duties have been terminated under Article 11 of Chapter 7B of the General Statutes or by a court of competent jurisdiction in another ~~state;~~state.

(2) A man described in G.S. 48-3-601(2), other than an adoptive father, if (i) the man has been judicially determined not to be the father of the minor to be adopted, or (ii) another man has been judicially determined to be the father of the minor to be ~~adopted;~~adopted.

(3) Repealed by Session Laws 1997-215, s. 11(a).

(4) An individual who has relinquished parental rights or guardianship powers, including the right to consent to adoption, to an agency pursuant to Part 7 of this ~~Article;~~Article.

(5) A man who is not married to the minor's birth mother and who, after the conception of the minor, has executed a notarized statement denying paternity or disclaiming any interest in the ~~minor;~~minor.

(6) A deceased parent or the personal representative of a deceased parent's ~~estate; or~~estate.

(7) An individual listed in G.S. 48-3-601 who has not executed a consent or a relinquishment and who fails to respond to a notice of the adoption proceeding within 30 days after the service of the notice.

(8) An individual notified under G.S. 48-2-206 who does not respond in a timely manner or whose consent is not required as determined by the court.

(9) An individual whose actions resulted in a conviction under ~~G.S. 14-27.2~~G.S. 14-27.2, G.S. 14-27.2A, or G.S. 14-27.3 and the conception of the minor to be adopted.

(b) The court may issue an order dispensing with the consent ~~of:~~of the following:

(1) A guardian or an agency that placed the minor upon a finding that the consent is being withheld contrary to the best interest of the ~~minor; or~~minor.

(2) A minor 12 or more years of age upon a finding that it is not in the best interest of the minor to require the consent."

SECTION 8. G.S. 48-3-605(c) reads as rewritten:

"(c) An individual before whom a consent is signed and acknowledged under subsection (a) of this section shall certify in writing that to the best of the individual's knowledge or belief, the parent, guardian, or minor to be adopted executing the ~~consent:~~consent has met each of the following:

(1) Read, or had read to him or her, and understood the ~~consent;~~consent.

(2) Signed the consent ~~voluntarily;~~voluntarily.

(3) ~~Received or was offered a copy of the consent; and~~Been given an original or a copy of his or her fully executed consent.

(4) ~~Was~~ Been advised that ~~counselling~~ counseling services may be available through county departments of social services or licensed child-placing agencies."

SECTION 9. G.S. 48-3-606 reads as rewritten:

"**§ 48-3-606. Content of consent; mandatory provisions.**

A consent required from a minor to be adopted, a parent, or a guardian under G.S. 48-3-601 must be in writing and ~~state:~~state each of the following:

(1) The date and place of the execution of the ~~consent;~~consent.

(2) The name, date of birth, and permanent address of the individual executing the ~~consent;~~consent.

(3) The date of birth or the expected delivery date, the sex, and the name of the minor to be adopted, if ~~known;~~known.

(4) That the individual executing the document is voluntarily consenting to the transfer of legal and physical custody to, and the adoption of the minor to be adopted by, the identified prospective adoptive ~~parent;~~parent.

(5) The name of a person and an address where any notice of revocation may be ~~sent;~~sent.

(6) That the individual executing the document understands that after the consent is signed and acknowledged in accord with the procedures set forth in G.S. 48-3-605, it may be revoked in accord with G.S. 48-3-608, but that it is otherwise final and irrevocable and may not be withdrawn or set aside except under a circumstance set forth in ~~G.S. 48-3-609;~~G.S. 48-3-609.

(7) That the consent shall be valid and binding and is not affected by any oral or separate written agreement between the individual executing the consent and the adoptive ~~parent;~~parent.

(8) That the individual executing the consent has not received or been promised any money or anything of value for the consent, and has not received or been promised any money or anything of value in relation to the adoption of the child except for lawful payments that are itemized on a schedule attached to the ~~consent;~~consent.

(9) That the individual executing the consent understands that when the adoption is final, all rights and obligations of the adoptee's former parents or guardian with respect to the adoptee will be extinguished, and every aspect of the legal relationship between the adoptee and the former parent or guardian will be ~~terminated;~~terminated.

(10) The name and address of the court, if known, in which the petition for adoption has been or will be ~~filed;~~filed.

(11) That the individual executing the consent waives notice of any proceeding for ~~adoption;~~adoption.

(12) If the individual executing the document is the minor to be adopted or the person placing the minor for adoption, a statement that the adoption shall be by a specific named adoptive ~~parent;~~parent.

(13) If the individual executing the document is the person placing the minor for adoption, that the individual executing the consent has provided the prospective adoptive parent, or the prospective adoptive parent's attorney, with the written document required by ~~G.S. 48-3-205; and~~G.S. 48-3-205.

(14) That the person executing the consent has:

~~a. Received or been offered an unsigned copy of the consent;~~

b. Been advised that ~~counselling~~ counseling services may be available through county departments of social services or licensed child-placing agencies; and

c. Been advised of the right to employ independent legal counsel."

SECTION 10. G.S. 48-3-702 reads as rewritten:

"**§ 48-3-702. Procedures for relinquishment.**

(a) A relinquishment executed by a parent or guardian must conform substantially to the requirements in this Part and must be signed and acknowledged under oath before an individual authorized to administer oaths or take acknowledgments.

(b) The provisions of G.S. 48-3-605(b), ~~(c),~~ (e), and (f), also apply to a relinquishment executed under this Part.

(b1) An individual before whom a relinquishment is signed and acknowledged under subsection (a) of this section shall certify in writing that to the best of the individual's knowledge or belief, the parent, guardian, or minor to be adopted executing the relinquishment has met each of the following:

(1) Read, or had read to him or her, and understood the relinquishment.
(2) Signed the relinquishment voluntarily.
(3) Been given an original or copy of his or her fully executed relinquishment.
(4) Been advised that counseling services are available through the agency to which the relinquishment is given.

(c) An agency that accepts a relinquishment shall furnish each parent or guardian who signs the relinquishment a letter or other writing indicating the agency's willingness to accept that person's relinquishment."

SECTION 11. G.S. 48-3-703 reads as rewritten:

"**§ 48-3-703. Content of relinquishment; mandatory provisions.**

~~(a)~~ A relinquishment executed by a parent or guardian under G.S. 48-3-701 must be in writing and ~~state:~~state the following:

(1) The date and place of the execution of the ~~relinquishment;~~relinquishment.
(2) The name, date of birth, and permanent address of the individual executing the ~~relinquishment;~~relinquishment.
(3) The date of birth or the expected delivery date, the sex, and the name of the minor, if ~~known;~~known.
(4) The name and address of the agency to ~~whom~~ which the minor is being ~~relinquished;~~relinquished.
(5) That the individual voluntarily consents to the permanent transfer of legal and physical custody of the minor to the agency for the purposes of adoption, and
    a. The placement of the minor for adoption with a prospective adoptive parent selected by the agency; or
    b. The placement of the minor for adoption with a prospective adoptive parent selected by the agency and agreed upon by the individual executing the ~~relinquishment;~~relinquishment.
(6) That the individual executing the relinquishment understands that after the relinquishment is signed and acknowledged in the manner provided in G.S. 48-3-702, it may be revoked in accord with G.S. 48-3-706 but that it is otherwise final and irrevocable except under the circumstances set forth in ~~G.S. 48-3-707;~~G.S. 48-3-707.
(7) That the relinquishment shall be valid and binding and shall not be affected by any oral or separate written agreement between the individual executing the consent and the ~~agency;~~agency.
(8) That the individual executing the relinquishment understands that when the adoption is final, all rights and duties of the individual executing the relinquishment with respect to the minor will be extinguished and all other aspects of the legal relationship between the minor child and the parent will be ~~terminated;~~terminated.
(9) That the individual executing the relinquishment has not received or been promised any money or anything of value for the relinquishment of the

minor, and has not received or been promised any money or anything of value in relation to the relinquishment or the adoption of the minor except for lawful payments that are itemized on a schedule attached to the ~~relinquishment;~~relinquishment.

(10) That the individual executing the relinquishment waives notice of any proceeding for ~~adoption;~~adoption.

(11) That the individual executing the relinquishment has provided the agency with the written document required by G.S. 48-3-205, or that the individual has provided the agency with signed releases that will permit the agency to compile the information required by ~~G.S. 48-3-205; and~~G.S. 48-3-205.

(12) That the individual executing the relinquishment has:

~~a. Received or been offered an unsigned copy of the relinquishment;~~

b. Been advised that counseling services are available through the agency to which the relinquishment is given; and

c. Been advised of the right to employ independent legal counsel."

SECTION 12. G.S. 48-3-707(a) reads as rewritten:

"(a) A relinquishment shall become void if any of the following occur:

(1) Before the entry of the adoption decree, the individual who executed the relinquishment establishes by clear and convincing evidence that it was obtained by fraud or duress.

(2) Before placement with a prospective adoptive parent occurs, the agency and the person relinquishing the minor agree to rescind the relinquishment.

(3) After placement with a prospective adoptive parent occurs, but before the entry of the adoption decree, the agency, the person relinquishing the minor, and the prospective adoptive parent agree to rescind the relinquishment.

(4) Upon motion of a county department of social services or licensed child-placing agency under G.S. 7B-909, the court orders that the relinquishment shall be voided based on a finding that another consent or relinquishment necessary for an adoption cannot be obtained and that no further steps are being taken to terminate the parental rights of the parent from whom the consent or relinquishment has not been obtained."

SECTION 13. G.S. 50-13.1(a) reads as rewritten:

"(a) Any parent, relative, or other person, agency, organization or institution claiming the right to custody of a minor child may institute an action or proceeding for the custody of such child, as hereinafter provided. Any person whose actions resulted in a conviction under ~~G.S. 14-27.2~~G.S. 14-27.2, G.S. 14-27.2A, or G.S. 14-27.3 and the conception of the minor child may not claim the right to custody of that minor child. Unless a contrary intent is clear, the word "custody" shall be deemed to include custody or visitation or both."

SECTION 14. This act is effective when it becomes law.

HOUSE BILL 147:
Amend Adoption Laws

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 6, 2013
Introduced by:	Reps. Jordan, Stevens, Glazier	**Prepared by:**	Susan Sitze* Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 147 would amend various laws pertaining to adoption.

BILL ANALYSIS:

Section 1 provides that the director of social services or the director of the licensed private child-placing agency must notify the clerk to calendar the case for review of the plan for the juvenile at a session of court to be held within 6 months of accepting a relinquishment of a juvenile for adoption unless one of the following is true:

- The juvenile has become the subject of a decree of adoption.
- If only one parent has relinquished for adoption, and it appears that the other parent's parental rights are not being terminated and his or her consent or relinquishment for adoption necessary for the juvenile to be adopted cannot be obtained.

Section 1 also provides that if a court finds that a consent or relinquishment for adoption cannot be obtained and no further steps are being taken to terminate the parental rights of the parent, the court may order that any relinquishment for adoption signed by a parent who has surrendered the child for adoption shall be voided. The court must find that this is in the juvenile's best interests. Before voiding any relinquishment, the county department of social services or licensed child placing agency must give at least 15 days' notice to the relinquishing parent whose rights will be restored. The relinquishing parent has the right to be heard on (1) whether the relinquishment should be voided and (ii) the parent's plan to provide for the juvenile if the relinquishment is voided. The notice of the hearing is sent by US mail, return receipt requested, to the address of the parent.

Section 2 provides guidelines regarding the death of a stepparent seeking to adopt a juvenile prior to the entry of a final decree. In this instance, the adoption may proceed in the name of the petitioning stepparent if the court mails to any individual who executed a consent to adoption a notice advising that the petitioning stepparent has died and the individual may, within 15 days from the date the individual receives notice, request a hearing on the adoption. Notice is complete when mailed to the individual. Upon completion of the adoption, the name of the petitioning stepparent is entered as one of the adoptee's parents on the new birth certificate. For purposes of inheritance, the adoptee shall be treated as a child of the deceased stepparent.

Section 3 provides that if a person whose consent to adoption is required under G.S. 48-3-601 is served with notice of the filing of the petition and fails to respond within the time specified in the notice, then the court shall enter an order that the individual's consent is not required for the adoption.

Section 4 makes technical and conforming changes.

Section 5 provides that the petitioner for adoption must file the following:

- A certificate of service, as required by G.S. 48-3-307(c), if the person who placed the minor executes a consent before receiving a copy of the preplacement assessment.
- A certified copy of any judgment of conviction of first-degree rape, rape of a child, or second-degree rape establishing that an individual's consent to adoption is not required.

This section also provides that any document that must be filed with a petition for adoption that is available to the petitioner when the petition is filed shall be filed with the petition. Any required document that is not available when the petition is filed shall be filed as the document becomes available. (Current law requires all documents to be filed at the time the petition is filed.)

Section 6 provides that in the adoption of a minor, notice does not need to be served to a man whose consent is not required due to his conviction of first-degree rape, rape of a child, or second-degree rape.

Section 7 provides that consent to an adoption of a minor is not required of any person convicted of rape of a child and whose actions resulted in the conception of the child to be adopted.

Section 8 provides that a person executing a consent document must be given an original or a copy of his or her fully executed consent (was "[r]eceived or was offered a copy of the consent"). This section also makes technical changes.

Section 9 makes technical and conforming changes.

Section 10 adds provisions to the statutes governing relinquishment. It provides that the person before whom a relinquishment is signed and acknowledged (i.e. an individual who is authorized to administer oaths or take acknowledgements) must certify that to the best of his or her belief, the parent, guardian, or minor executing the relinquishment has met each of the following:

- Read, or had read to him or her, and understood the relinquishment.
- Signed the relinquishment voluntarily.
- Been given an original or copy of his or her fully executed relinquishment.
- Been advised that counseling services may be available through county departments of social services or licensed child-placing agencies.

Section 11 makes technical and conforming changes.

Section 12 provides that a relinquishment shall be voided based on a court order finding that another consent or relinquishment necessary for an adoption cannot be obtained and that no further steps are being taken to terminate the parental rights of the parent from whom the consent or relinquishment has not been obtained. A county department of social services or licensed child-placing agency must make this motion to the court.

Section 13 provides that any person who is convicted of rape of a child and whose actions resulted in the conception of a child cannot claim the right of custody of that minor child.

EFFECTIVE DATE: This act is effective when it becomes law.

BACKGROUND: The first edition of House Bill 147 is a recommendation from the Family Law Section of the North Carolina Bar Association.

**Brad Krehely, Staff Attorney, contributed substantially to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 122
Committee Substitute Favorable 2/28/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H122-CSSA-51 [v.3]
6/5/2013 5:34:12 PM

Short Title: Amend Interlocutory Appeals/Family Law. (Public)

Sponsors:

Referred to:

February 20, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS PERTAINING TO INTERLOCUTORY APPEALS AS RELATED TO FAMILY LAW AND TO MODIFY THE LAW REGARDING DISCIPLINE FOR JUDGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-27 reads as rewritten:

"**§ 7A-27. Appeals of right from the courts of the trial divisions.**

(a) Appeal lies of right directly to the Supreme Court in all cases in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of death.

(b) Appeal lies of right directly to the Court of Appeals in any of the following cases:

(1) From any final judgment of a superior court, other than the one described in subsection (a) of this section, or one based on a plea of guilty or nolo contendere, including any final judgment entered upon review of a decision of an administrative agency, except for a final judgment entered upon review of a court-martial under G.S. 127A-62.

(2) From any final judgment of a district court in a civil action.

(3) From any interlocutory order or judgment of a superior court or district court in a civil action or proceeding which does any of the following:

a. Affects a substantial right.

b. In effect determines the action and prevents a judgment from which an appeal might be taken.

c. Discontinues the action.

d. Grants or refuses a new trial.

e. Determines a claim prosecuted under G.S. 50-19.1.

(4) From any other order or judgment of the superior court from which an appeal is authorized by statute.

~~(b) From any final judgment of a superior court, other than the one described in subsection (a) of this section, or one based on a plea of guilty or nolo contendere, including any final judgment entered upon review of a decision of an administrative agency, except for a final judgment entered upon review of a court-martial under G.S. 127A-62, appeal lies of right to the Court of Appeals.~~

~~(c) From any final judgment of a district court in a civil action appeal lies of right directly to the Court of Appeals.~~

~~(d) From any interlocutory order or judgment of a superior court or district court in a civil action or proceeding which~~

~~(1) Affects a substantial right, or~~

~~(2) In effect determines the action and prevents a judgment from which appeal might be taken, or~~

~~(3) Discontinues the action, or~~

~~(4) Grants or refuses a new trial, appeal lies of right directly to the Court of Appeals.~~

~~(e) From any other order or judgment of the superior court from which an appeal is authorized by statute, appeal lies of right directly to the Court of Appeals.~~"

SECTION 2. Article 1 of Chapter 50 of the General Statutes is amended by adding the following new section to read:

"**§ 50-19.1. Maintenance of certain appeals allowed.**

Notwithstanding any other pending claims filed in the same action, a party may appeal from an order or judgment adjudicating a claim for absolute divorce, divorce from bed and board, child custody, child support, alimony, or equitable distribution, if the order or judgment would otherwise be a final order or judgment within the meaning of G.S. 1A-1, Rule 54(b), but for the other pending claims in the same action. A party does not forfeit the right to appeal under this section if the party fails to immediately appeal from an order or judgment described in this section. An appeal from an order or judgment under this section shall not deprive the trial court of jurisdiction over any other claims pending in the same action."

SECTION 3. G.S. 7A-374.2 reads as rewritten:

"**§ 7A-374.2. Definitions.**

Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this Article:

(1) "Censure" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge has willfully engaged in misconduct prejudicial to the administration of justice that brings the judicial office into disrepute, but which does not warrant the suspension of the judge from the judge's judicial duties or the removal of the judge from judicial office. A censure may require that the judge follow a corrective course of action. Unless otherwise ordered by the Supreme Court, the judge shall personally appear in the Supreme Court to receive a censure.

(2) "Commission" means the North Carolina Judicial Standards Commission.

(3) "Incapacity" means any physical, mental, or emotional condition that seriously interferes with the ability of a judge to perform the duties of judicial office.

(4) "Investigation" means the gathering of information with respect to alleged misconduct or disability.

(5) "Judge" means any justice or judge of the General Court of Justice of North Carolina, including any retired justice or judge who is recalled for service as an emergency judge of any division of the General Court of Justice.

(6) "Letter of caution" means a written action of the Commission that cautions a judge not to engage in certain conduct that violates the Code of Judicial Conduct as adopted by the Supreme Court.

(7) "Public reprimand" means a ~~written action of the Commission issued upon a finding~~finding by the Supreme Court, based upon a written recommendation by the Commission that a judge has violated the Code of Judicial Conduct and has engaged in conduct prejudicial to the administration of justice, but that misconduct is ~~minor and does not warrant a recommendation by the Commission that the judge be disciplined by the Supreme Court.~~minor. A

public reprimand may require that the judge follow a corrective course of action.

(8) "Remove" or "removal" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge should be relieved of all duties of the judge's office and disqualified from holding further judicial office.

(9) "Suspend" or "suspension" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge should be relieved of the duties of the judge's office for a period of time, and upon conditions, including those regarding treatment and compensation, as may be specified by the Supreme Court."

SECTION 4. G.S. 7A-376 reads as rewritten:

"**§ 7A-376. Grounds for discipline by Commission; public reprimand, censure, suspension, or removal by the Supreme Court.**

(a) The Commission, upon a determination that any judge has engaged in conduct that violates the North Carolina Code of Judicial Conduct as adopted by the Supreme Court but that is not of such a nature as would warrant a recommendation of public reprimand, censure, suspension, or removal, may issue to the judge a private letter of ~~caution or may issue to the judge a public reprimand.~~caution.

(b) Upon recommendation of the Commission, the Supreme Court may issue a public reprimand, censure, suspend, or remove any judge for willful misconduct in office, willful and persistent failure to perform the judge's duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. A judge who is suspended for any of the foregoing reasons shall receive no compensation during the period of that suspension. A judge who is removed for any of the foregoing reasons shall receive no retirement compensation and is disqualified from holding further judicial office.

(c) Upon recommendation of the Commission, the Supreme Court may suspend, for a period of time the Supreme Court deems necessary, any judge for temporary physical or mental incapacity interfering with the performance of the judge's duties, and may remove any judge for physical or mental incapacity interfering with the performance of the judge's duties which is, or is likely to become, permanent. A judge who is suspended for temporary incapacity shall continue to receive compensation during the period of the suspension. A judge removed for mental or physical incapacity is entitled to retirement compensation if the judge has accumulated the years of creditable service required for incapacity or disability retirement under any provision of State law, but he shall not sit as an emergency justice or judge."

SECTION 5. G.S. 7A-377 reads as rewritten:

"**§ 7A-377. Procedures.**

(a) Any citizen of the State may file a written complaint with the Commission concerning the qualifications or conduct of any justice or judge of the General Court of Justice, and thereupon the Commission shall make such investigation as it deems necessary. The Commission may also make an investigation on its own motion. The Commission may issue process to compel the attendance of witnesses and the production of evidence, to administer oaths, and to punish for contempt. No justice or judge shall be recommended for public reprimand, censure, suspension, or removal unless he has been given a hearing affording due process of law.

(a1) Unless otherwise waived by the justice or judge involved, all papers filed with and proceedings before the Commission, including any investigation that the Commission may make, are confidential, and no person shall disclose information obtained from Commission proceedings or papers filed with or by the Commission, except as provided herein. Those papers are not subject to disclosure under Chapter 132 of the General Statutes.

(a2) Information submitted to the Commission or its staff, and testimony given in any proceeding before the Commission, shall be absolutely privileged, and no civil action predicated upon that information or testimony may be instituted against any complainant, witness, or his or her counsel.

(a3) If, after an investigation is completed, the Commission concludes that a letter of caution is appropriate, it shall issue to the judge a letter of caution in lieu of any further proceeding in the matter. The issuance of a letter of caution is confidential in accordance with subsection (a1) of this section.

~~(a4) If, after an investigation is completed, the Commission concludes that a public reprimand is appropriate, the judge shall be served with a copy of the proposed reprimand and shall be allowed 20 days within which to accept the reprimand or to reject it and demand, in writing, that disciplinary proceedings be instituted in accordance with subsection (a5) of this section. A public reprimand, when issued by the Commission and accepted by the respondent judge, is not confidential.~~

(a5) If, after an investigation is completed, the Commission concludes that disciplinary proceedings should be instituted, the notice and statement of charges filed by the Commission, along with the answer and all other pleadings, ~~are not~~remain confidential. Disciplinary hearings ordered by the Commission are ~~not~~ confidential, and recommendations of the Commission to the Supreme Court, along with the record filed in support of such recommendations are ~~not~~ confidential. Testimony and other evidence presented to the Commission is privileged in any action for defamation. At least five members of the Commission must concur in any recommendation to issue a public reprimand, censure, suspend, or remove any judge. A respondent who is recommended for public reprimand, censure, suspension, or removal is entitled to a copy of the proposed record to be filed with the Supreme Court, and if the respondent has objections to it, to have the record settled by the Commission's chair. The respondent is also entitled to present a brief and to argue the respondent's case, in person and through counsel, to the Supreme Court. A majority of the members of the Supreme Court voting must concur in any order of public reprimand, censure, suspension, or removal. The Supreme Court may approve the recommendation, remand for further proceedings, or reject the recommendation. A justice of the Supreme Court or a member of the Commission who is a judge is disqualified from acting in any case in which he is a respondent.

(a6) Upon issuance of a public reprimand, censure, suspension, or removal by the Supreme Court, the notice and statement of charges filed by the Commission, along with the answer and all other pleadings, and recommendations of the Commission to the Supreme Court, along with the record filed in support of such recommendations are no longer confidential.

(b) Repealed by Session Laws 2006-187, s. 11, effective January 1, 2007.

(c) The Commission may issue advisory opinions to judges, in accordance with rules and procedures adopted by the Commission.

(d) The Commission has the same power as a trial court of the General Court of Justice to punish for contempt, or for refusal to obey lawful orders or process issued by the Commission."

SECTION 6. G.S. 7A-378 reads as rewritten:

"**§ 7A-378. ~~Censure,~~Public reprimand, censure, suspension, or removal of justice of Supreme Court.**

(a) ~~The recommendation of~~If the Judicial Standards Commission determines that a recommendation for public reprimand, censure, suspension, or removal of any justice of the Supreme Court for any grounds provided by G.S. 7A-376 ~~shall be made to, and the record filed with, the Court of Appeals, which shall have and shall proceed under the same authority for censure, suspension, or removal of any justice as is granted to the Supreme Court under G.S. 7A-376 and G.S. 7A-377(a) for censure, suspension, or removal of any judge.~~ should be made,

the Commission shall notify the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives, who shall each appoint one judge to participate in a three judge panel to review the record and determine whether there are sufficient grounds to warrant a recommendation for public reprimand, censure, suspension, or removal to the Supreme Court. The judges appointed to the three judge panel may be from the district court, superior court, or Court of Appeals, and no judge appointed to the three judge panel shall be a member of the Judicial Standards Commission. Upon appointment of the three judge panel, the Commission shall file the record with the panel. If the majority of the three judge panel determines that the recommendation should be made to the Supreme Court, the record shall be filed with the Supreme Court. If the majority of the three judge panel determines that the recommendation for public reprimand, censure, suspension, or removal should not be made to the Supreme Court, the record shall be returned to the Commission and no further proceedings may be conducted on the same record.

(b) ~~The proceeding shall be heard by a panel of the Court of Appeals consisting of the Chief Judge, who shall be the presiding judge of the panel, and six other judges, the senior in service, excluding the judge who is chairman of the Commission. For good cause, a judge may be excused by a majority of the panel. If the Chief Judge is excused, the presiding judge shall be designated by a majority of the panel. The vacancy created by an excused judge shall be filled by the judge of the court who is next senior in service.~~Upon receipt of the recommendation and the record from the three judge panel provided for in subsection (a) of this section, the Supreme Court shall proceed as otherwise provided in this Article."

SECTION 7. This act is effective when it becomes law.

HOUSE BILL 122:
Amend Interlocutory Appeals/Family Law

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 6, 2013
Introduced by:	Reps. Glazier, Stevens	**Prepared by:**	Susan Sitze
Analysis of:	PCS to Second Edition H122-CSSA-51		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 122 would amend the laws pertaining to interlocutory appeals as related to family law and modify the law regarding discipline for judges.***

BILL ANALYSIS:

Sections 1 and 2 would create a new G.S. 50-19.1 allowing appeals from an order or judgment that arise from claims for absolute divorce, divorce from bed and board, child custody, child support, alimony, or equitable distribution, when the order or judgment otherwise would be final under Rule 54(b) of the Rules of Civil Procedure were it not for other pending claims in the same action. A party's right to appeal is not forfeited if not made immediately, and an appeal does not deprive the court of jurisdiction of other claims pending in the same action. The PCS would also add a provision to G.S. 7A-27(d) to provide for an appeal of right directly to the Court of Appeals in actions or proceedings described in the new G.S. 50-19.1.

Sections 3 through 6 would amend the procedure for disciplining judges in the following ways:

- Would remove the power of the Judicial Standards Commission to issue a public reprimand to a judge and place that authority with the Supreme Court.
- Would make all records, investigations, recommendations, and hearings of the Judicial Standards Commission, and hearings by the Supreme Court confidential until the Supreme Court issues a public reprimand, censure, suspension, or removal.
- Would modify the procedure for determining whether a justice of the Supreme Court should receive a public reprimand, censure, suspension, or removal, so that rather than the Court of Appeals making the determination, it would be made as follows:
    - Require the Governor, President Pro Tempore of the Senate, and Speaker of the House of Representatives to appoint a 3 judge panel to review the recommendation and the record of the Judicial Standards Commission.
    - If the three judge panel shall determine whether the Commission's recommendation should be made to the Supreme Court, and if so, the Supreme Court will determine whether a public reprimand, censure, suspension, or removal should be issued.
    - If the three judge panel determines the recommendation should not be made to the Supreme Court, the record would be returned to the Commission and no further proceedings conducted on the same record.

EFFECTIVE DATE: This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 278
Committee Substitute Favorable 4/18/13

Short Title: HOAs/Voluntary Prelitigation Mediation. (Public)

Sponsors:

Referred to:

March 13, 2013

A BILL TO BE ENTITLED

AN ACT ENCOURAGING PARTIES TO A DISPUTE INVOLVING CERTAIN MATTERS RELATED TO REAL ESTATE UNDER THE JURISDICTION OF A HOMEOWNERS ASSOCIATION TO INITIATE MEDIATION TO TRY TO RESOLVE THE DISPUTE PRIOR TO FILING A CIVIL ACTION.

Whereas, homeowners associations in condominium and planned communities serve a vital role in our State by maintaining common areas, providing recreational facilities and neighborhood meeting places, and adopting rules and regulations to help preserve property values; and

Whereas, often disputes arise between homeowners associations and their members, which either do not constitute the basis for a legal cause of action or result in costly litigation; and

Whereas, the State has an interest in encouraging homeowners associations and their members to voluntarily mediate disputes in a manner that will allow both sides to be heard and to reach a mutually satisfactory agreement; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read as follows:

"**§ 7A-38.3F. Prelitigation mediation of condominium and homeowners association disputes.**

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

(1) Association. – An association of unit or lot owners organized as allowed under North Carolina law, including G.S. 47C-3-101 and G.S. 47F-3-101.

(2) Dispute. – Any matter relating to real estate under the jurisdiction of an association about which the member and association cannot agree. The term "dispute" does not include matters expressly exempted in subsection (b) of this section.

(3) Executive board. – The body, regardless of name, designated in the declaration to act on behalf of an association.

(4) Mediator. – A neutral person who acts to encourage and facilitate a resolution of a dispute between an association and a member.

(5) Member. – A person who is a member of an association of unit or lot owners organized as allowed under North Carolina law, including G.S. 47C-3-101 and G.S. 47F-3-101.

(6) Party or parties. – An association or member who is involved in a dispute, as that term is defined in subdivision (2) of this subsection.

(b) Voluntary Prelitigation Mediation. – Prior to filing a civil action, the parties to a dispute arising under Chapter 47C of the General Statutes (North Carolina Condominium Act), Chapter 47F of the General Statutes (North Carolina Planned Community Act), or an association's declaration, bylaws, or rules and regulations are encouraged to initiate mediation pursuant to this section. However, disputes related solely to a member's failure to timely pay an association assessment or any fines or fees associated with the levying or collection of an association assessment are not covered under this section.

(c) Initiation of Mediation. – Either an association or a member may contact the North Carolina Dispute Resolution Commission or the Mediation Network of North Carolina for the name of a mediator or community mediation center. Upon contacting a mediator, either the association or member may supply to the mediator the physical address of the other party, or the party's representative, and the party's telephone number and e-mail address, if known. The mediator shall contact the party, or the party's representative, to notify him or her of the request to mediate. If the parties agree to mediate, they shall request in writing that the mediator schedule the mediation. The mediator shall then notify the parties in writing of the date, time, and location of the mediation, which shall be scheduled not later than 25 days after the mediator receives the written request from the parties.

(d) Mediation Procedure. – The following procedures shall apply to mediation under this section:

(1) Attendance. – The mediator shall determine who may attend mediation. The mediator may require the executive board or a large group of members to designate one or more persons to serve as their representatives in the mediation.

(2) All parties are expected to attend mediation. The mediator may allow a party to participate in mediation by telephone or other electronic means if the mediator determines that the party has a compelling reason to do so.

(3) If the parties cannot reach a final agreement in mediation because to do so would require the approval of the full executive board or the approval of a majority or some other percentage of the members of the association, the mediator may recess the mediation meeting to allow the executive board or members to review and vote on the agreement.

(e) Decline Mediation. – Either party to a dispute may decline mediation under this section. If either party declines mediation after mediation has been initiated under subsection (c) of this section but mediation has not been held, the party declining mediation shall inform the mediator and the other party in writing of his or her decision to decline mediation. No costs shall be assessed to any party if either party declines mediation prior to the occurrence of an initial mediation meeting.

(f) Costs of Mediation. – The costs of mediation, including the mediator's fees, shall be shared equally by the parties unless otherwise agreed to by the parties. Fees shall be due and payable at the end of each mediation meeting. When an attorney represents a party to the mediation, that party shall pay his or her attorneys' fees.

(g) Certification That Mediation Concluded. – Upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and a statement that an agreement was reached or that mediation was attempted but an agreement was not reached. If both parties participate in mediation and a cause of action involving the dispute mediated is later filed, either party may file the certificate with the clerk of court, and the parties shall not be required to mediate again under any provision of law.

(h) Inadmissibility of Evidence. – Evidence of statements made and conduct occurring during mediation under this section shall not be subject to discovery and shall be inadmissible in any proceeding in a civil action arising from the dispute which was the subject of that mediation; except proceedings to enforce or rescind a settlement agreement reached at that

mediation, disciplinary proceedings before the State Bar or Dispute Resolution Commission, or proceedings to enforce laws concerning juvenile or elder abuse. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediation under this section.

No mediator shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediation pursuant to this section in any civil proceeding for any purpose, including proceedings to enforce or rescind the settlement agreement; except in disciplinary hearings before the State Bar or Dispute Resolution Commission and proceedings to enforce laws concerning juvenile or elder abuse, and except in proceedings to enforce or rescind an agreement reached in a mediation under this section, but only to attest to the signing of the agreement.

(i) Time Periods Tolled. – Time periods relating to the filing of a civil action, including any applicable statutes of limitations or statutes of repose, with respect to a dispute described in subsection (a) of this section, shall be tolled upon the initiation of mediation under this section until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification. For purposes of this section, "initiation of mediation" shall be defined as the date upon which both parties have signed the written request to schedule the mediation.

(j) Association Duty to Notify. – Each association shall, in writing, notify the members of the association each year that they may initiate mediation under this section to try to resolve a dispute with the association. The association shall publish the notice required in this subsection on the association's Web site; but if the association does not have a Web site, the association shall publish the notice at the same time and in the same manner as the names and addresses of all officers and board members of the association are published as provided in G.S. 47C-3-103 and G.S. 47F-3-103."

SECTION 2. This act becomes effective July 1, 2013, and applies to all homeowners and condominium association disputes not specifically exempted by this act that occur on or after that date.

HOUSE BILL 278:
HOAs/Voluntary Prelitigation Mediation

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 4, 2013
Introduced by:	Reps. D. Ross, D. Hall	**Prepared by:**	Bill Patterson
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 278 would provide procedures and incentives for voluntary pre-litigation mediation to resolve disputes between an association of owners in a planned community or condominium and its members, other than those involving unpaid association assessments or resulting fines or fees.

CURRENT LAW: Homeowners associations in planned communities, and unit owners associations in condominiums, are nonprofit corporations organized under Chapter 47C (the Condominium Act) or Chapter 47F (the Planned Community Act). In addition to statutory requirements, the rights and responsibilities of the members of the association are established in the declaration that created the community and in the bylaws, rules and regulations of the association, and are enforced by the association's governing board. If a dispute between an association and its member results in litigation in superior court, the case is subject to mandatory mediation.

BILL ANALYSIS: For association-member disputes not arising from unpaid association assessments or related fines or fees, House Bill 278 would establish the following voluntary pre-litigation mediation procedures:

- To request mediation, either party would contact a mediator referred by the North Carolina Dispute Resolution Commission or the Mediation Network of North Carolina.
- The mediator would notify the other party that mediation has been requested.
- If the parties agree to mediate, they must request the mediator in writing to set up the mediation, and the mediator must schedule the mediation within 25 days after receiving the written request.
- Unless otherwise agreed, the parties would share the cost of mediation equally.
- At the mediation's conclusion, the mediator would certify in writing whether or not an agreement was reached.
- If there is no settlement, the parties would not be required to mediate again in any subsequent litigation
- Any applicable time limitations on the filing of the civil action would be tolled from the time the mediation was initiated until 30 days after it was concluded.

The bill would also provide that statements made or conduct occurring during the mediation could not be used as evidence in any court proceeding, except in disciplinary proceedings before the State Bar or Dispute Resolution Commission, or in proceedings to enforce laws concerning juvenile or elder abuse. The bill would also require associations to send their members a yearly notice informing them of the option to mediate disputes.

EFFECTIVE DATE: This act becomes effective July 1, 2013, and applies to all disputes occurring on or after that date.

Shelly DeAdder, counsel to House Judiciary Subcommittee A, and Wendy Graf-Ray, counsel to Senate Commerce, substantially contributed to this summary.

O. Walker Reagan
Director



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HOUSE BILL 332

Committee Substitute Favorable 4/18/13
Third Edition Engrossed 4/22/13

Short Title: Notary Act/Satisfaction of Security Interests. (Public)

Sponsors:

Referred to:

March 19, 2013

A BILL TO BE ENTITLED

AN ACT MAKING CORRECTIONS AND OTHER AMENDMENTS TO THE NOTARY PUBLIC ACT, MAKING OTHER CONFORMING CHANGES, AND PROVIDING FOR AN ALTERNATIVE PROCEDURE FOR SATISFACTION OF SECURITY INSTRUMENTS.

The General Assembly of North Carolina enacts:

PART I. NOTARY PUBLIC ACT

SECTION 1. G.S. 10B-5(b) reads as rewritten:

"(b) A person qualified for a notarial commission shall meet all of the following requirements:

...

~~(9) Obtain the recommendation of one publicly elected official in North Carolina and submit the recommendation with the application. The requirement of this subdivision shall not apply to any applicant who seeks to receive the oath of office from the register of deeds of a county where more than 5,250 active notaries public are on record on January 1 of the year when the application is filed.~~"

SECTION 1.1. G.S. 10B-20 reads as rewritten:

"**§ 10B-20. Powers and limitations.**

...

(c) A notary shall not perform a notarial act if any of the following apply:

...

(5) The notary is a signer of, party to, or beneficiary of the record, that is to be notarized. However, a disqualification under this subdivision shall not apply to a notary who is named in a record solely ~~as~~ as (i) the trustee in a deed of ~~trust,~~trust, (ii) the drafter of the ~~record,~~record, (iii) the person to whom a registered document should be mailed or sent after ~~recording, or~~recording, or (iv) the attorney for a party to the record, so long as the notary is not also a party to the record individually or in some other representative or fiduciary capacity. A notary who is an employee of a party shall not be disqualified under this subdivision solely because of the notary's employment by a party to the record or solely because the notary owns stock in a party to the record.

...."

SECTION 1.2. G.S. 10B-37 reads as rewritten:

"**§ 10B-37. Seal image.**

...

(b) A notary's official seal shall include all of the following elements:

...

(4) The words "North Carolina" or the abbreviation "N.C." or "NC".

...."

SECTION 1.3. G.S. 10B-55 reads as rewritten:

"**§ 10B-55. Disposition of seal; death of notary.**

...

(c) If a notary dies while commissioned or before fulfilling the disposition of seal requirements in this section, the notary's estate shall, as soon as is reasonably practicable and no later than the closing of the estate, notify the Secretary in writing of the notary's death and deliver the notary's seal to the Secretary for destruction. A personal representative who is not a notary does not have to comply with the provisions of this subsection if he or she provides a statement under oath in any enforcement proceeding that he or she was unaware that the decedent was a commissioned notary public at the time of death."

SECTION 1.4. G.S. 10B-60 reads as rewritten:

"**§ 10B-60. Enforcement and penalties.**

...

(l) The Secretary shall notify the North Carolina State Bar (State Bar) of any final decision finding a violation of subsection (a) of this section by a notary who is also an attorney-at-law licensed under Chapter 84 of the General Statutes. The Secretary shall endeavor to provide a copy of any court order rendered under subsection (b), (c), (d), (e), (f), or (j) of this section to the State Bar in cases where the notary is an attorney-at-law licensed under Chapter 84 of the General Statutes. Any referral by the Secretary to the State Bar under this subsection shall be considered a showing of professional unfitness under G.S. 84-28(d), and the State Bar shall administer discipline accordingly."

SECTION 1.5. G.S. 10B-65 reads as rewritten:

"**§ 10B-65. Acts of notaries public in certain instances validated.**

...

(b) All documents bearing a notarial seal and which contain any of the following errors are validated and given the same legal effect as if the errors had not occurred:

...

(5) The date of the acknowledgement, the verification or proof, or the oath or affirmation states the correct day and month but lacks a year or states an incorrect year.

...

(d) All notary acknowledgments performed before ~~January 1, 1953,~~December 1, 2005, bearing a notarial seal are hereby validated.

(e) This section applies to notarial acts performed on or before ~~May 1, 2008.~~April 1, 2013."

SECTION 1.6. G.S. 10B-67 reads as rewritten:

"**§ 10B-67. Erroneous commission expiration date cured.**

An erroneous statement of the date that the notary's commission expires shall not affect the sufficiency, validity, or enforceability of the notarial certificate or the related record if the notary is, in fact, lawfully commissioned at the time of the notarial act. This section applies to notarial acts whenever performed."

SECTION 1.7. G.S. 10B-68 reads as rewritten:

"**§ 10B-68. Technical defects cured.**

(a) Technical defects, errors, or omissions in a notarial certificate shall not affect the sufficiency, validity, or enforceability of the notarial certificate or the related instrument or document. ~~This subsection applies to notarial certificates made on or after December 1, 2005.~~

...

(c) As used in this section, a technical defect includes those cured under G.S. 10B-37(f) and G.S. 10B-67. Other technical defects ~~include~~ include, but are not limited to, the absence of the legible appearance of the notary's name exactly as shown on the notary's commission as required in ~~G.S. 10B-20(b).~~G.S. 10B-20(b), the affixation of the notary's seal near the signature of the principal or subscribing witness rather than near the notary's signature, minor typographical mistakes in the spelling of the principal's name, the failure to acknowledge the principal's name exactly as signed by including or omitting initials, or the failure to specify the principal's title or office, if any. ~~This subsection applies to notarial certificates made on or after December 1, 2005.~~"

SECTION 1.8. G.S. 10B-69 reads as rewritten:

"**§ 10B-69. Official forms cured.**

(a) The notarial certificate contained in a form issued by a State agency prior to ~~October 1, 2006,~~April 1, 2013, is deemed to be a valid certificate provided the certificate complied with the law at the time the form was issued.

...."

SECTION 1.9. G.S. 10B-71 reads as rewritten:

"**§ 10B-71. Certain notarial acts validated when recommissioned notary failed to again take oath.**

Any acknowledgment taken and any instrument notarized by a person who after recommissioning failed to again take the oath as a notary public is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act. This section shall apply to notarial acts performed on or after May 15, 2004, and before ~~July 8, 2009.~~April 1, 2013."

SECTION 1.10. G.S. 10B-99 reads as rewritten:

"**§ 10B-99. Presumption of regularity.**

...

(b) A notarial act performed before October 1, 2006, shall be deemed valid if it complies with the law as it existed on or before December 1, 2005. This section applies to notarial acts whenever performed."

SECTION 1.11. G.S. 41-2 reads as rewritten:

"**§ 41-2. Survivorship in joint tenancy defined; proviso as to partnership; unequal ownership interests.**

...

(a1) Upon conveyance to the trustee of a deed of trust by any or all of the joint tenants holding property in joint tenancy with right of survivorship to secure a loan, the joint tenancy with right of survivorship shall be deemed not to be severed, and upon satisfaction of the deed of trust, legal title to the property subject to the joint tenancy shall revert to the grantors as joint tenants with right of survivorship in the respective shares as owned by the respective grantors at the time of the execution of the deed of trust, unless a contrary intent is expressed in the deed of trust or other instrument recorded subsequent to the deed of trust.

...."

SECTION 1.12. G.S. 47-2.2 reads as rewritten:

"**§ 47-2.2. Notary public of sister state; lack of seal or stamp or expiration date of commission.**

(a) If the proof or acknowledgment of any instrument is had before a notary public of any state other than North Carolina and the instrument does ~~not~~ not (i) show the seal or stamp of the notary ~~public~~ public, (ii) provide evidence pursuant to subsection (b) of this section that a

seal or stamp is not required and the expiration date of the commission of the notary ~~public,~~public, or (iii) state that the notary's commission does not expire or is a lifetime appointment, the certificate of proof or acknowledgment made by such notary public shall be accompanied by the certificate of the county official before whom the notary qualifies for ~~office,~~office or of a state officer authorized to issue certificates regarding notary commission status, stating that such notary public was at the time his certificate bears date an acting notary public of such state, and that such notary's genuine signature is set to his certificate. The certificate of the official herein provided for shall be under his hand and official seal.

(b) A proof or acknowledgement which does not require a seal or stamp of the notary to be effective in the jurisdiction issuing the notary's commission shall include either (i) a statement by the notary within the proof or acknowledgement area of the instrument that the notary is not required to utilize a seal or stamp or (ii) a reference that purports to be the statute of the commissioning state which provides that no seal or stamp is required together with a statement that the notary is not required to utilize a seal or stamp. The register of deeds may rely upon this statement and is not responsible for confirming its validity or the authority of the person making it. A register of deeds may not refuse to accept a record for registration because a notarial seal or stamp is omitted from the proof or acknowledgement if the provisions of this subsection have been complied with in the proof or acknowledgement. The acceptance of a record for registration under this subsection shall give rise to a presumption that the seal or stamp was not required to be affixed by the notary. This presumption is rebuttable and shall apply to all instruments whenever recorded. However, a court order finding the lack of a valid seal shall not affect the rights of a person who (i) records an interest in the real property described in the instrument before the finding of a lack of a valid seal and (ii) would otherwise have an enforceable interest in the real property."

SECTION 1.13. G.S. 47-12.2 reads as rewritten:

"**§ 47-12.2. Subscribing witness incompetent when grantee or beneficiary.**

The execution of an instrument may not be proved for registration by a subscribing witness ~~who~~ who, at the time of the execution of the instrument by the subscribing witness, is the grantee or beneficiary therein nor by proof of his signature as such subscribing witness. Nothing in this section invalidates the registration of any instrument registered prior to April 9, 1935."

SECTION 1.14. G.S. 47-14 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.**

...

(f) Presumption of Notarial Seal. – The acceptance of a record for registration by the register of deeds shall give rise to a presumption that, at the time the record was presented for registration, a clear and legible image of the notary's official seal was affixed or embossed on the record near the notary's official signature. This presumption applies regardless of whether the image is legible or photographically reproduced in the records maintained by the register of ~~deeds.~~deeds and applies to all instruments filed in the records maintained by the register of deeds regardless of when the instrument was presented for registration. A register of deeds may not refuse to accept a record for registration because a notarial seal does not satisfy the requirements of G.S. 10B-37. The presumption under this subsection is rebuttable and shall apply to all instruments whenever recorded. However, a court order finding the lack of a valid seal shall not affect the rights of a person who (i) records an interest in the real property described in the instrument before the finding of a lack of a valid seal and (ii) would otherwise have an enforceable interest in the real property."

SECTION 1.15. G.S. 47-28 reads as rewritten:

"**§ 47-28. Powers of attorney.**

~~Every power of attorney, wherever made or concerning whatsoever matter, may, on acknowledgment or proof of the same before any competent official, be registered in the county wherein the property or estate which it concerns is situate, if such power of attorney relate to the conveyance thereof; if it does not relate to the conveyance of any estate or property, then in the county in which the attorney resides or the business is to be transacted.~~

(a) Recording required for powers of attorney affecting real property:

(1) Before any transfer of real property executed by an attorney-in-fact empowered by a power of attorney governed by Article 1, Article 2, or Article 2A of Chapter 32A of the General Statutes, the power of attorney or a certified copy of the power of attorney shall be registered in the office of the register of deeds of the county in which the principal is domiciled or where the real property lies. If the principal is not a resident of North Carolina, the power of attorney or a certified copy of the power of attorney may be recorded in any county in the State wherein the principal owns real property or has a significant business reason for registering in the county.

(2) If the real property lies in more than one county or in a county other than where the principal is domiciled, the power of attorney or a certified copy of the power of attorney shall be registered in the office of the register of deeds in one of the counties, and the instrument of transfer shall refer to the recordation specifically by reference to the book, page, and county where recorded.

(3) Any instrument subject to the provisions of G.S. 47-17.2, 47-18, or 47-20 and signed by an attorney-in-fact and recorded in a county other than the county where a power of attorney is recorded in this State shall include the recording information, including book, page, and county for the power of attorney.

(4) The failure to comply with the provisions of this subsection shall not affect the sufficiency, validity, or enforceability of the instrument but shall constitute an infraction.

(b) If the instrument of conveyance is recorded prior to the registration of the power of attorney or a certified copy of the power of attorney pursuant to subsection (a) of this section, the power of attorney or a certified copy of the power of attorney may be registered in the office of the register of deeds as provided in subsection (a) of this section thereafter provided that the attorney-in-fact was empowered at the time of the original conveyance. Notwithstanding the provisions of subsection (a) of this section, no conveyance shall be rendered invalid by the recordation of the power of attorney or a certified copy of the power of attorney after the instrument of conveyance, and the registration shall relate back to the date and time of registration of the instrument of conveyance.

(c) The provisions of subsection (a) of this section shall apply to all real property transfers utilizing an authority under any power of attorney whether made on or after April 1, 2013, and the provisions of subsection (b) of this section shall apply to all real property transfers utilizing an authority under any power of attorney whether made before, on, or after April 1, 2013."

SECTION 1.16. G.S. 47-36.1 reads as rewritten:

"**§ 47-36.1. Correction of errors in recorded instruments.**

(a) Notwithstanding G.S. 47-14 and G.S. 47-17, notice of typographical or other minor error in a deed or other instrument recorded with the register of deeds may be given by recording an affidavit. If an affidavit is conspicuously identified as a corrective or scrivener's affidavit in its title, the register of deeds shall index the name of the affiant, the names of the original parties in the instrument, the recording information of the instrument being corrected, and the original parties as they are named in the affidavit. A copy of the previously recorded

instrument to which the affidavit applies may be attached to the affidavit and need not be a certified copy. ~~Notice~~ To the extent the correction is inconsistent with the originally recorded instrument, and only to that extent, notice of the corrective information as provided by the affiant in the corrective affidavit is deemed to have been given as of the time the corrective affidavit is registered. Nothing in this section invalidates or otherwise alters the legal effect of any instrument of correction authorized by statute in effect on the date the instrument was registered.

(b) Nothing in this section requires that an affidavit be attached to an original or certified copy of a previously recorded instrument that is unchanged but rerecorded. Nothing in this section requires that an affidavit be attached to a previously recorded instrument with a copy of a previously recorded instrument that includes identified corrections or an original execution by a party or parties of the corrected instrument after the original recording, with proof or acknowledgment of their execution of the correction of the instrument.

(c) If the corrective affidavit is solely made by a notary public in order to correct a notarial certificate made by that notary public that was attached to an instrument already recorded with the register of deeds, the notary public shall complete the corrective affidavit identifying the correction and may attach a new acknowledgment completed as of the date the original acknowledgment took place, which shall be deemed attached to the original recording, and the instrument's priority shall remain the date and time originally recorded. The provisions of this subsection shall apply to corrective affidavits filed prior to, on, or after April 1, 2013."

SECTION 1.17. G.S. 47-41.2 reads as rewritten:

"**§ 47-41.2. Technical defects.**

(a) Technical defects, including technical defects under G.S. 10B-68, and errors or omissions in a form of probate or other notarial certificate, shall not affect the sufficiency, validity, or enforceability of the form of probate or the notarial certificate or the related instrument or document. A register of deeds may not refuse to accept an instrument or document for registration because of technical defects, errors, or omissions in a form of probate or other notarial certificate. ~~This subsection applies to notarial certificates and forms of probate made on or after December 1, 2005.~~

...."

SECTION 1.18. G.S. 47-48 reads as rewritten:

"**§ 47-48. Clerks' and registers of deeds' certificate failing to pass on all prior certificates.**

When it appears that the clerk of the superior court, register of deeds, or other officer having the power to probate or certify deeds, in passing upon deeds or other instruments, and the certificates thereto, having more than one certificate of the same or a different date, by other officer or officers taking acknowledgment or probating the same, has in his certificate or order mentioned only one or more of the preceding or foregoing certificates or orders, but not all of them, but has admitted the same deed or other instrument to probate or recordation, it shall be conclusively presumed that all the certificates of said deed or instrument necessary to the admission of same to probate or recordation have been passed upon, and the certificate of said clerk, register of deeds, or other probating or certifying officer shall be deemed sufficient and the probate, certification and recordation of said deed or instrument is hereby made and declared valid for all intents and purposes. The provisions of this section shall apply to all instruments recorded in any county of this State prior to ~~April 1, 1980.~~April 1, 2013."

SECTION 1.19. G.S. 47-50 reads as rewritten:

"**§ 47-50. Order of registration omitted.**

In all cases prior to ~~December 31, 1992,~~October 1, 2005, where it appears from the records of the office of the register of deeds of any county in this State that the execution of a deed of conveyance or other instrument by law required or authorized to be registered was duly signed and acknowledged as required by the laws of the State of North Carolina, and the clerk of the superior court of such county or other officer authorized to pass upon acknowledgments and to

order registration of instruments has failed either to adjudge the correctness of the acknowledgment or to order the registration thereof, or both, such registrations are hereby validated and the instrument so appearing in the office of the register of deeds of such county shall be effective to the same extent as if the clerk or other authorized officer had properly adjudged the correctness of the acknowledgment and had ordered the registration of the instrument."

SECTION 1.20. G.S. 47-50.1 reads as rewritten:

"**§ 47-50.1. Register's certificate omitted.**

In all cases prior to ~~October 1, 2004,~~ October 1, 2005, where it appears from the records of the office of the register of deeds of any county in this State that the execution of a deed of conveyance or other instrument by law required or authorized to be registered was duly signed and acknowledged as required by the laws of this State, and the register of deeds has failed to certify the correctness of the acknowledgment as required by G.S. 47-14(a), the registrations are hereby validated and the instrument so appearing in the office of the register of deeds of that county is effective to the same extent as if the register of deeds had properly certified the correctness of the acknowledgment."

SECTION 1.21. G.S. 47-51 reads as rewritten:

"**§ 47-51. Official deeds omitting seals.**

All deeds executed prior to ~~January 1, 1991,~~ April 1, 2013, by any sheriff, commissioner, receiver, executor, executrix, administrator, administratrix, or other officer authorized to execute a deed by virtue of his office or appointment, in which the officer has omitted to affix his seal after his signature, shall not be invalid on account of the omission of such seal."

SECTION 1.22. G.S. 47-53 reads as rewritten:

"**§ 47-53. Probates omitting official seals, etc.**

In all cases where the acknowledgment, private examination, or other proof of the execution of any deed, mortgage, or other instrument authorized or required to be registered has been taken or had by or before any commissioner of affidavits and deeds of this State, or clerk or deputy clerk of a court of record, or notary public of this or any other state, territory, or district, and such deed, mortgage, or other instrument has heretofore been recorded in any county in this State, but such commissioner, clerk, deputy clerk, or notary public has omitted to attach his or her official or notarial seal thereto, or if omitted, to insert his or her name in the body of the certificate, or if omitted, to sign his or her name to such certificate, if the name of such officer appears in the body of said certificate or is signed thereto, or it does not appear of record that such seal was attached to the original deed, mortgage, or other instrument, or such commissioner, clerk, deputy clerk, or notary public has certified the same as under his or her "official seal," or "notarial seal," or words of similar import, and no such seal appears of record or where the officer uses "notarial" in his or her certificate and signature shows that "C.S.C.," or "clerk of superior court," or similar exchange of capacity, and the word "seal" follows the signature, then all such acknowledgments, private examinations or other proofs of such deeds, mortgages, or other instruments, and the registration thereof, are hereby made in all respects valid and binding. The provisions of this section apply to acknowledgments, private examinations, or proofs taken prior to ~~January 1, 1991:~~ April 1, 2013. Provided, this section does not apply to pending litigation."

SECTION 1.23. G.S. 47-53.1 reads as rewritten:

"**§ 47-53.1. Acknowledgment omitting seal of clerk or notary public.**

Where any person has taken an acknowledgment as either a notary public or a clerk of a superior court, deputy clerk of a superior court, or assistant clerk of a superior court and has failed to affix his or her seal and this acknowledgment has been otherwise duly probated and recorded then this acknowledgment is hereby declared to be sufficient and valid. This section applies only to those deeds and other instruments acknowledged prior to ~~January 1, 1991.~~April 1, 2013."

SECTION 1.24. G.S. 47-64 reads as rewritten:

"**§ 47-64. Probates before officers, stockholders or directors of ~~corporations prior to January 1, 1945.~~corporations.**

No acknowledgment or proof of execution, including privy examination of married women, of any deed, mortgage or deed of trust to which instrument a corporation is a ~~party, executed prior to the first day of January, 1945,~~ party shall be held invalid by reason of the fact that the officer taking such acknowledgment, proof or privy examination was an officer, stockholder, or director in said corporation; but such proofs and acknowledgments and the registration thereof, if in all other respects valid, are declared to be valid. Nor shall the registration of any such instrument ordered to be registered be held invalid by reason of the fact that the clerk or deputy clerk ordering the registration was an officer, stockholder or director in any corporation which is a party to any such instrument."

SECTION 1.25. G.S. 47-71.1 reads as rewritten:

"**§ 47-71.1. Corporate seal omitted prior to ~~January 1, 1991.~~January 1, 2000.**

Any corporate deed, or conveyance of land in this State, made prior to ~~January 1, 1991,~~January 1, 2000, which is defective only because the corporate seal is omitted therefrom is hereby declared to be a good and valid conveyance by such corporation for all purposes and shall be sufficient to pass title to the property therein conveyed as fully as if the said conveyance were executed according to the provisions and forms of law in force in this State at the date of the execution of such conveyance."

SECTION 1.26. G.S. 47-72 reads as rewritten:

"**§ 47-72. Corporate name not affixed, but signed otherwise prior to ~~January, 1973.~~April 1, 2013.**

In all cases prior to ~~the first day of January, 1973,~~April 1, 2013, where any deed conveying lands purported to be executed by a corporation, but the corporate name was in fact not affixed to said deed, but same was signed by the president and secretary of said corporation, or by the president and two members of the governing body of said corporation, and said deed has been registered in the county where the land conveyed by said deed is located, said defective execution above described shall be and the same is hereby declared to be in all respects valid, and such deed shall be deemed to be in all respects the deed of said corporation."

SECTION 1.27. G.S. 47-81.2 reads as rewritten:

"**§ 47-81.2. Before United States Army, etc., ~~officers.~~officers, and other service members.**

In all cases where instruments and writings have been proved or acknowledged before any commissioned officer of the United States ~~Army or Marine Corps~~Army, Navy, Air Force, Marine Corps, or Coast Guard ~~having the rank of captain or higher, before any officer of the United States Navy or Coast Guard having the rank of lieutenant, senior grade, or higher,~~ or any officer of the United States 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. All proofs or acknowledgments made by any military personnel authorized by the Congress of the United States are hereby ratified, confirmed, and declared valid and shall not require the affixation of a seal where valid in other respects."

SECTION 1.28. G.S. 47-92 reads as rewritten:

"**§ 47-92. Probates before stockholders and directors of banks.**

No acknowledgment or proof of execution, including privy examination of married women, of any mortgage, or deed of trust executed to secure the payment of any indebtedness to any banking ~~corporation, taken prior to the first day of January, 1923,~~corporation shall be held invalid by reason of the fact that the officer taking such acknowledgment, proof, or privy examination was a stockholder or director in such banking corporation."

SECTION 1.29. G.S. 47-93 reads as rewritten:

"**§ 47-93. Acknowledgments taken by stockholder, officer, or director of bank.**

No acknowledgment or proof of execution, including privy examination of married women, of any mortgage or deed of trust executed to secure the payment of any indebtedness to any banking corporation ~~taken prior to the first day of January, 1924,~~ shall be held invalid by reason of the fact that the officer taking such acknowledgment, proof, or privy examination was a stockholder, officer, or director in such banking corporation."

SECTION 1.30. G.S. 47-94 reads as rewritten:

"**§ 47-94. Acknowledgment and registration by officer or stockholder in building and loan or savings and loan association.**

All acknowledgments and proofs of execution, including privy examination of married women, of any mortgage or deed of trust executed to secure the payment of any indebtedness to any State or federal building and loan or savings and loan association ~~prior to the first day of January, 1955,~~ shall not be, nor held to be, invalid by reason of the fact that the clerk of the superior court, justice of the peace, notary public, or other officer taking such acknowledgment, proof of execution or privy examination, was an officer or stockholder in such building and loan association; but such proofs and acknowledgments of all such instruments, and the registration thereof, if in all other respects valid, are hereby declared to be valid.

Nor shall the registration of any such mortgage or deed of trust ordered to be registered by the clerk of the superior court, or by any deputy or assistant clerk of the superior court, be or held to be invalid by reason of the fact that the clerk of the superior court, or deputy, or assistant clerk of the superior court, ordering such mortgages or deeds of trust to be registered was an officer or stockholder in any State or federal building and loan or savings and loan association, whose indebtedness is secured in and by such mortgage or deed of trust."

SECTION 1.31. G.S. 47-95 reads as rewritten:

"**§ 47-95. Acknowledgments taken by notaries interested as trustee or holding other office.**

In every case where deeds and other instruments have been acknowledged and privy examination of wives had before notaries public, or justices of the peace, prior to ~~January 1, 1975,~~ October 1, 1991, when the notary public or justice of the peace at the time was interested as trustee in said instrument or at the time was also holding some other office, and the deed or other instrument has been duly probated and recorded, such acknowledgment and privy examination taken by such notary public or justice of the peace is hereby declared to be sufficient and valid."

SECTION 1.32. G.S. 47-97 reads as rewritten:

"**§ 47-97. Validation of corporate deed with mistake as to officer's name.**

In all cases where the deed of a corporation executed before ~~the first day of January, 1918,~~ April 1, 2013, is properly executed, properly recorded and there is error in the probate of said corporation's deed as to the name or names of the officers in said probate, said deed shall be construed to be a deed of the same force and effect as if said probate were in every way proper."

SECTION 1.33. G.S. 47-97.1 reads as rewritten:

"**§ 47-97.1. Validation of corporate deeds containing error in acknowledgment or probate.**

In all cases where the deed of a corporation executed and filed for registration prior to ~~the fifteenth day of June, 1947,~~ April 1, 2013, is properly executed and properly recorded and there is error in the acknowledgment or probate of said corporation's deed as to the name or names of the officer or officers named therein and error as to the title or titles of the officer or officers named therein, said deed shall be construed to be a deed of the same force and effect as if said probate or acknowledgment were in every way proper."

SECTION 1.34. G.S. 47-102 reads as rewritten:

"**§ 47-102. Absence of notarial seal.**

Any deed executed prior to ~~the first day of January, 1945,~~ October 1, 2005, and duly acknowledged before a North Carolina notary public, and the probate recites "witness my hand and notarial seal," or words of similar import, and no seal was affixed to the said deed, shall be ordered registered by the clerk of the superior court of the county in which the land lies, upon presentation to him: Provided, the probate is otherwise in due form."

SECTION 1.35. G.S. 47-108.6 reads as rewritten:

"**§ 47-108.6. Validation of certain conveyances of foreign dissolved corporations.**

In all cases when, prior to ~~the first day of January, 1947,~~April 1, 2013, any dissolved foreign corporation has, prior to its dissolution, by deed of conveyance purported to convey real property in this State, and said instrument recites a consideration, is signed by the proper officers in the name of said corporation, sealed with the corporate seal and duly registered in the office of the register of deeds of the county where the land described in said instrument is located, but there is error in the attestation clause and acknowledgment in failing to identify the officers signing said deed and to recite that authority was duly given and that the same was the act of said corporation, said deed shall be construed to be a deed of the same force and effect as if said attestation clause and acknowledgment were in every way proper."

SECTION 1.36. G.S. 47-108.11 reads as rewritten:

"**§ 47-108.11. Validation of recorded instruments where seals have been omitted.**

In all cases of any deed, deed of trust, mortgage, lien or other instrument authorized or required to be registered in the office of the register of deeds of any county in this State where it appears of record or it appears that from said instrument, as recorded in the office of the register of deeds of any county in the State, there has been omitted from said recorded or registered instrument the word "seal," "notarial seal" and that any of said recorded or registered instruments shows or recites that the grantor or grantors "have hereunto fixed or set their hands and seals" and the signature of the grantor or grantors appears without a seal thereafter or on the recorded or registered instrument or in all cases where it appears there is an attesting clause which recites "signed, sealed and delivered in the presence of," and the signature of the grantor or grantors appears on the recorded or registered instrument without any seal appearing thereafter or of record, then all such deeds, mortgages, deeds of trust, liens or other instruments, and the registration of same in the office of the register of deeds, are hereby declared to be in all respects valid and binding and are hereby made in all respects valid and binding to the same extent as if the word "seal" or "notarial seal" had not been omitted, and the registration and recording of such instruments in the office of the register of deeds in any county in this State are hereby declared to be valid, proper, legal and binding registrations.

This section shall not apply in any respect to any instrument recorded or registered subsequent to ~~January 1, 1999~~ April 1, 2013, or to pending litigation or to any such instruments now directly or indirectly involved in pending litigation."

SECTION 1.37. Article 4 of Chapter 47 of the General Statutes is amended by adding the following new sections to read as follows:

"**§ 47-108.18A. Registration of certain instruments containing a notarial acknowledgment.**

A notarial acknowledgment constitutes a jurat in due form for all instruments that have heretofore been accepted for filing and registration under this Chapter or which relate to real estate located within this State.

"**§ 47-108.18B. Registration of certain instruments containing a notarial jurat.**

A notarial jurat constitutes an acknowledgment in due form for all instruments that have heretofore been accepted for filing and registration under this Chapter or which relate to real estate located within this State."

SECTION 1.38. G.S. 47-108.20 reads as rewritten:

"**§ 47-108.20. Validation of certain recorded instruments that were not acknowledged.**

All instruments recorded before ~~June 30, 1986,~~April 1, 2013, that were not reexecuted and reacknowledged and that correct an obvious typographical or other minor error in a recorded instrument that was previously properly executed and acknowledged are declared to be valid instruments."

PART II. SATISFACTION OF SECURITY INTEREST/ALTERNATIVE PROCEDURE

SECTION 2.1. G.S. 45-36.9 reads as rewritten:

"§ 45-36.9. Secured creditor to submit satisfaction or release for recording; liability for failure.

...

(b) Except as otherwise provided in G.S. 45-36.12, a secured creditor that is required to submit a satisfaction of a security instrument or a release for recording pursuant to this section and does not do so by the end of the period specified in subsection (a) or (a1) of this section is liable to the landowner for any actual damages caused by the failure, but not punitive damages.

(c) Except as otherwise provided in subsection (d) of this section and in G.S. 45-36.12, a secured creditor that is required to submit a satisfaction of a security instrument or a release for recording pursuant to this section and does not do so by the end of the period specified in subsection (a) or (a1) of this section is also liable to the landowner for one thousand dollars ($1,000) and any reasonable attorneys' fees and court costs incurred if, after the expiration of the period specified in subsection (a) or (a1) of this section, all of the following occur:

(1) The landowner gives the secured creditor a notification, by any method authorized by G.S. 45-36.5 that provides proof of receipt, demanding that the secured creditor submit a satisfaction or release for recording.

(2) The secured creditor does not submit a satisfaction or release for recording within 30 days after the secured creditor's receipt of the notification.

(3) The security instrument is not satisfied of record by any of the methods provided in G.S. 45-37(a) or the release is not filed within 30 days after the secured creditor's receipt of the notification.

The right to receive the additional one thousand dollars ($1,000) is personal to the landowner who gives the secured creditor notification under this subsection and may not be assigned.

...."

SECTION 2.2. G.S. 45-36.14 reads as rewritten:

"§ 45-36.14. Affidavit of satisfaction: notification to secured creditor.

...

(d) A satisfaction agent does not have to give the notification described in this section if (i) the secured creditor has authorized the satisfaction agent to sign and submit an affidavit of satisfaction; (ii) the satisfaction agent has in his or her possession the instruments described in G.S. 45-36.15(a)(3), (a)(4), or (a)(5); or (iii) after diligent inquiry, the satisfaction agent has been unable to determine the identity of the secured creditor because, for example, the last known secured creditor no longer exists and the satisfaction agent has been unable to identify any successor-in-interest to the last known secured creditor."

SECTION 2.3. G.S. 45-36.15 reads as rewritten:

"§ 45-36.15. Affidavit of satisfaction: authorization to submit for recording.

(a) Subject to subsections (b) and (c) of this section, a satisfaction agent may sign and submit for recording an affidavit of satisfaction of a security instrument complying with G.S. 45-36.16 ~~if:~~if the satisfaction agent has reasonable grounds to believe that the secured creditor has received full payment or performance of the secured obligation and one or more of the following apply:

(1) The secured creditor has not, to the knowledge of the satisfaction agent, submitted for recording a satisfaction of a security instrument or otherwise caused the security instrument to be satisfied of record pursuant to any of the

methods provided in G.S. 45-37(a) within 30 days after the effective date of a notification complying with ~~G.S. 45-36.14(a); or~~G.S. 45-36.14(a).

(2) The secured creditor ~~authorizes~~ has authorized the satisfaction agent to ~~do so.~~sign and submit for recording an affidavit of satisfaction.

(3) The satisfaction agent has in his or her possession the original security instrument and the original bond, note, or other instrument secured thereby, with an endorsement of payment and satisfaction appearing thereon made by one or more of the following: (i) the secured creditor; (ii) the trustee or substitute trustee, if the security instrument is a deed of trust; (iii) an assignee of the secured creditor; or (iv) any bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or any other state or the United States having an office or branch in North Carolina, when so endorsed in the name of the institution by an officer thereof.

(4) The satisfaction agent has in his or her possession the original security instrument intended to secure the payment of money or the performance of any other obligation, together with the original bond, note, or other instrument secured, or the original security instrument alone if the security instrument itself sets forth the obligation secured or other obligation to be performed and does not call for or recite any note, bond, or other instrument secured by it if, at the time the affidavit of satisfaction is to be signed and submitted, all such instruments are more than 10 years old counting from the maturity date of the last obligation secured. If the instrument or instruments secured by the security instrument have an endorsement of partial payment, satisfaction, performance, or discharge within the period of 10 years, the period of 10 years shall be counted from the date of the most recent endorsement.

(5) The satisfaction agent has in his or her possession the original security instrument given to secure the bearer or holder of any negotiable instruments transferable solely by delivery, together with all the evidences of indebtedness secured thereby, marked paid and satisfied in full and signed by the bearer or holder thereof.

(6) After diligent inquiry, the satisfaction agent has been unable to determine the identity of the secured creditor because, for example, the last known secured creditor no longer exists and the satisfaction agent has been unable to identify any successor-in-interest to the last known secured creditor.

...

(c) ~~If~~ Unless the satisfaction agent has in his or her possession the instruments described in subsections (a)(3), (a)(4), or (a)(5) of this section or the satisfaction agent is unable to determine the identity of the secured creditor because, for example, the last known assignee of the security instrument no longer exists and the satisfaction agent has been unable to identify any successor-in-interest to the last known assignee, a satisfaction agent who receives a notification under G.S. 45-36.14(a)(5)c. stating that the security instrument has been ~~assigned, the satisfaction agent~~assigned may not submit for recording an affidavit of satisfaction of the security instrument ~~without:~~without first:

(1) Giving a notification of intent to submit for recording an affidavit of satisfaction to the identified assignee at the identified address; and

(2) Complying with G.S. 45-36.14 with respect to the identified assignee."

SECTION 2.4. G.S. 45-36.16 reads as rewritten:

"**§ 45-36.16. Affidavit of satisfaction: content.**

An affidavit of satisfaction of a security instrument must comply with all of the following:

...

(4a) Reserved.

(4b) Reserved.

(5) State ~~that~~ one or more of the following, as applicable:

a. ~~the~~ The person signing the affidavit, acting with the authority of the owner of the real property described in the security instrument, gave notification to the secured creditor ~~of its~~in the manner prescribed by G.S. 45-36.14 of his or her intention to sign and submit for recording an affidavit of satisfaction. More than 30 days have elapsed since the effective date of that notification, and the person signing the affidavit (i) has no knowledge that the secured creditor has submitted a satisfaction for recording and (ii) has not received a notification that the secured obligation remains unsatisfied.

b. The secured creditor authorized the person signing the affidavit to sign and record an affidavit of satisfaction.

c. The person signing the affidavit has in his or her possession the original security instrument and the original bond, note, or other instrument secured thereby, with an endorsement of payment and satisfaction appearing thereon made by one or more of the following: (i) the secured creditor; (ii) the trustee or substitute trustee, if the security instrument is a deed of trust; (iii) an assignee of the secured creditor; or (iv) a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or any other state or the United States having an office or branch in North Carolina, endorsed in the name of the institution by an officer thereof.

d. The person signing the affidavit has in his or her possession the original security instrument intended to secure the payment of money or the performance of any other obligation together with the original bond, note, or other instrument secured thereby, or the original security instrument alone if the security instrument itself sets forth the obligation secured or other obligation to be performed and does not call for or recite any note, bond, or other instrument secured by it. All such instruments are more than 10 years old counting from the maturity date of the last obligation secured. If the instrument or instruments secured by the security instrument have an endorsement of partial payment, satisfaction, performance, or discharge within the period of 10 years, the period of 10 years has been counted from the date of the most recent endorsement.

e. The person signing the affidavit has in his or her possession the original security instrument given to secure the bearer or holder of any negotiable instruments transferable solely by delivery, together with all the evidences of indebtedness secured thereby, marked paid and satisfied in full and signed by the bearer or holder thereof.

f. After diligent inquiry, the person signing the affidavit has been unable to determine the identity of the secured creditor.

~~(6) Describe the method by which the person signing the affidavit gave notification in compliance with this Article.~~

~~(7) State that:~~

~~a. More than 30 days have elapsed since the effective date of that notification, and the person signing the affidavit has no knowledge~~

~~that the secured creditor has submitted a satisfaction for recording and has not received a notification that the secured obligation remains unsatisfied; or~~

~~b. The secured creditor authorized the person signing the affidavit to sign and record an affidavit of satisfaction.~~

(8) Be signed ~~and~~ and (i) acknowledged as required by law for a conveyance of an interest in real ~~property.~~property or (ii) sworn to or affirmed before an officer authorized to administer oaths and affirmations.

(9) Copies of all or any part or parts of the instruments described in subdivision (5) of this section may be attached to and recorded with the affidavit of satisfaction."

SECTION 2.5. G.S. 45-36.17 reads as rewritten:

"**§ 45-36.17. Affidavit of satisfaction: form.**

No particular phrasing of an affidavit of satisfaction is required. The following form of affidavit, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.16:

"AFFIDAVIT OF SATISFACTION
(G.S. 45-36.16, 45-36.17, 45-36.18)

_____
(Date of Affidavit)

The undersigned hereby states as follows:

1. I am an attorney licensed to practice law in the State of North Carolina.

2. I am signing this Affidavit of Satisfaction to evidence full payment or performance of the obligations secured by real property covered by the following security instrument (the "security ~~instrument")~~ instrument"), which I believe is currently or was most recently held by _____ (the "secured creditor"):

Type of security instrument: _____

~~Original parties to security instrument:~~

Original Grantor(s): _____

~~County and state of recording:~~

Original Secured Party(ies): _____

Recording ~~data for~~Data: The security ~~instrument:~~instrument is recorded in Book _____ at Page _____ or as document number _____ in the Office of the Register of Deeds for _____ County, North Carolina.

3. I have reasonable grounds to believe that the secured creditor has received full payment or performance of the balance of the obligations secured by the security instrument.

4. [Check appropriate box]

[ ] ~~With the~~Acting with authorization ~~of~~ from the owner of the real property described in the security instrument, I gave notification to the secured creditor ~~by method authorized~~ in the manner prescribed by ~~G.S. 45-36.5 that provides proof of receipt that I would~~G.S. 45-36.14 of my intention to sign and record an affidavit of satisfaction of the security instrument if, within 30 days after the effective date of the notification, the secured creditor did not submit a satisfaction of the security interest for recording or give notification that the secured obligation remains unsatisfied. The 30-day period has elapsed. I have no knowledge that the secured creditor has submitted a satisfaction for recording, and I have not received notification that the secured obligation remains unsatisfied.

[ ] I have been authorized by the secured creditor to execute and record this Affidavit of Satisfaction.

[ ] I have in my possession the original security instrument and the original bond, note, or other instrument secured thereby, with an endorsement of payment and satisfaction appearing thereon made by one or more of the following: (i) the secured creditor; (ii) the trustee or substitute trustee, if the security instrument is a deed of trust; (iii) an assignee of the secured creditor; or (iv) a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or any other state or the United States having an office or branch in North Carolina, endorsed in the name of the institution by an officer thereof.

[ ] I have in my possession the original security instrument together with the original bond, note, or other instrument secured thereby, or the original security instrument alone if the security instrument itself sets forth the obligation secured or other obligation to be performed and does not call for or recite any note, bond, or other instrument secured by it. All such instruments are more than 10 years old counting from the maturity date of the last obligation secured. If the instrument or instruments secured by the security instrument have an endorsement of partial payment, satisfaction, or performance or discharge within the period of 10 years, the period of 10 years has been counted from the date of the most recent endorsement.

[ ] I have in my possession the original security instrument given to secure the bearer or holder of any negotiable instruments transferable solely by delivery, together with all the evidences of indebtedness secured thereby, marked paid and satisfied in full and signed by the bearer or holder thereof.

[ ] After diligent inquiry, I have been unable to determine the identity of the secured creditor.

~~5. [Check appropriate box]~~

~~[ ] The 30 day period identified in paragraph 4 has elapsed, I have no knowledge that the secured creditor has submitted a satisfaction for recording, and I have not received notification that the secured obligation remains unsatisfied.~~

~~[ ] The secured creditor responded to the notification in paragraph 4 by authorizing me to execute and record this Affidavit of Satisfaction.~~

6. (If applicable) Attached to and filed with this Affidavit of Satisfaction are copies of all or part(s) of the following instruments: (Describe attached copies)

This Affidavit of Satisfaction constitutes a satisfaction of the security instrument pursuant to G.S. 45-36.18.

_____

(Signature of Satisfaction Agent)

[~~Acknowledgment~~ Acknowledgment, oath, or affirmation before officer authorized to take acknowledgments and administer oaths and affirmations]"

SECTION 2.6. G.S. 45-36.18 reads as rewritten:

"**§ 45-36.18. Affidavit of satisfaction: effect.**

...

(c) The register of deeds may not refuse to accept for recording an affidavit of satisfaction of a security instrument unless:

...

(2) The affidavit is not signed by the satisfaction agent and either (i) acknowledged as required by law for a conveyance of an interest in real ~~property.~~ property or (ii) sworn to or affirmed before an officer authorized to administer oaths and affirmations. The register of deeds shall not be required

to verify or make inquiry concerning (i) the truth of the matters stated in any affidavit of satisfaction, or (ii) the authority of the person executing any affidavit of satisfaction to do so."

SECTION 2.7. G.S. 45-36.19 reads as rewritten:

"**§ 45-36.19. Liability of satisfaction agent.**

...

(b) A satisfaction agent that records or submits for recording an affidavit of satisfaction of a security instrument erroneously is not liable if the agent properly complied with this ~~Article~~Article, gave notification to the secured creditor in the manner prescribed by G.S. 45-36.14, and the secured creditor did not respond in a timely manner to the notification pursuant to G.S. 45-36.14(a)(5).

...."

SECTION 2.8. G.S. 45-36.24 reads as rewritten:

"**§ 45-36.24. Expiration of lien of 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:

...

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 acknowledged as required by law for a conveyance of an interest in real property, whichever is later.~~deeds.

...

(2) If the security instrument was first recorded on or after October 1, 2011:

...

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.~~deeds."

PART III. EFFECTIVE DATE

SECTION 3. Section 1 of this act becomes effective July 1, 2013. The remainder of Part I of this act becomes effective April 1, 2013. Part II of this act is effective when it becomes law. The remainder of this act is effective when it becomes law.

HOUSE BILL 332:
Notary Act/Satisfaction of Security Interests

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 5, 2013
Introduced by:	Reps. Bryan, Stam, Glazier	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***House Bill 332 amends the Notary Public Act and provides for an alternative procedure for satisfaction of security interests.***

BILL ANALYSIS: **Part I of the bill amends the Notary Public Act.**

Section 1 removes the requirement that a notary must be recommended by an elected official in counties with 5,250 or fewer active notaries public.

Section 1.1 clarifies that a notary is not disqualified from performing notarial acts solely because of the notary's employment by a party to the record or because the notary owns stock in a party to the record.

Section 1.2 permits a notarial seal to include the abbreviation "N.C.".

Section 1.3 provides that in any enforcement proceeding for failure of the estate of a commissioned notary to notify the Secretary of State of the notary's death and deliver the notary's seal to the Secretary no later than the closing of the estate, a personal representative who is not a notary is exempt from this requirement if he or she provides a statement under oath that he or she was unaware that the decedent was a commissioned notary at the time of death.

Section 1.4 provides that the Secretary must notify the State Bar of any final decision finding that a notary who is also a licensed attorney has violated Chapter 10B of the General Statutes, which shall be considered a showing of professional unfitness under G.S. 84-28(d) for which the State Bar shall administer discipline accordingly.

Section 1.5 provides that a document bearing a notarial seal is validated and given the same legal effect if the date of acknowledgement, the verification or proof, or the oath or affirmation states the correct day and month, but lacks a year or has an incorrect year. It also validates all notary acknowledgments bearing a notary seal performed before December 1, 2005 (was January 1, 1953).

Sections 1.6 clarifies that the existing statutory validation of notarial acts taken by a lawfully commissioned notary, but involving an erroneous statement of the date that the commission expires, applies regardless of when the notarial acts were performed.

Section 1.7 expands the types of technical defects that are cured automatically and do not affect the validity of the document.

Section 1.8 makes notarial certifications contained in a form issued by a state agency prior to April 1, 2013 (was, October 1, 2006) valid, provided they complied with the law at the time the form was issued.

Section 1.9 provides that certain notarial acts are validated when a recommissioned notary failed to take the oath again. It clarifies that this applies to notarial acts performed on or after May 15, 2004, and before April 1, 2013 (was July 8, 2009).

Section 1.10 amends the statute dealing with the presumption of regularity to notarial acts. It clarifies that it applies to notarial acts whenever performed.

Section 1.11 provides that upon conveyance to the trustee of a deed of trust by any or all of the joint tenants holding property in joint tenancy with right of survivorship to secure a loan, the joint tenancy will not be deemed to be severed. Upon satisfaction of the deed of trust, legal title to the property will revert to the grantors as joint tenants with right of survivorship in the respective shares as owned by respective grantors.

Section 1.12 provides that a proof or acknowledgment that does not require a seal or stamp of the notary must include either (1) a statement by the notary as to such, placed near the proof area or (2) a reference that purports to be the statute of the commissioning state which provides no seal or stamp is required along with a statement. The register of deeds may rely upon this statement and is not responsible for confirming its validity or the authority of the person making it. Such an instrument, when proofed and validated in this way, cannot be refused by a register of deeds. Acceptance of such a letter creates a presumption of the validity of such an instrument and that no seal or stamp was required. This presumption is rebuttable.

Section 1.13 clarifies that to render a subscribing witness incompetent to prove the execution of an instrument for registration because he or she is the grantee or beneficiary of the instrument, the subscribing witness must have been the grantee or beneficiary at the time of execution of the instrument.

Section 1.14 amends the statute providing that the acceptance of records with a notarial seal, even though the seal may be illegible, gives rise to presumption of validity of the seal, to clarify that the statute applies to all instruments filed and maintained by the register of deeds. It also provides that the presumption is rebuttable, and that a court finding otherwise does not affect the rights of a person whose interest in the real property was recorded before the finding and is otherwise enforceable.

Section 1.15 provides that that before any transfers of real property executed by an attorney-in-fact empowered by a power of attorney, the power of attorney must be registered. It sets forth the steps an attorney-in-fact must take depending on the different types of real property transaction taking place, as well as the requirements to record certain powers-of-attorney. This section applies to all real property utilizing powers-of-attorney on or after April 1, 2013.

Section 1.16 provides that when a correction is inconsistent with the original recorded instrument, notice of the correction is deemed to have been given as of the time of registering the corrective affidavit. For corrective affidavits, regardless of when filed, it makes the following changes: (1) limits the need for an affidavit when an instrument is unchanged but re-recorded; and (2) permits a notary public to complete a corrective affidavit identifying the correction and to attach a new acknowledgment with no change in priority occurring.

Sections 1.17-1.26 make clarifying and technical changes, including changes to applicability dates.

Section 1.27 establishes that instruments or writings that have been proved or acknowledged before any commissioned officer of the Army, Navy, Air Force, Marine Corps, Coast Guard, or specified officer of the Merchant Marine (was, only Army or Marine Corps) are ratified, confirmed, and declared valid.

Sections 1.28-1.36 make clarifying and technical changes, including changes to applicability dates.

Section 1.37 provides that a notarial acknowledgment constitutes a jurat in due form, and a notarial jurat constitutes an acknowledgment in due form, for all instruments that have so far been accepted for filing and registration or which relate to real estate in this state.

Section 1.38 provides that all instruments recorded before April 1, 2013 (was June 30, 1986) that were not re-executed and re-acknowledged and that correct an obvious typographical or other minor error in a recorded instrument that was previously properly executed and acknowledged are declared to be valid.

Part II of the bill addresses an alternative procedure for the satisfaction of security interests.

Section 2.1 makes technical and clarifying changes.

Section 2.2 provides that a satisfaction agent does not have to give the notification if (i) the secured creditor has authorized the satisfaction agent to sign and submit an affidavit of satisfaction; (ii) the satisfaction agent has in his or her possession the instruments described in statute; or (iii) after diligent inquiry, the satisfaction agent has been unable to determine the identity of the secured creditor.

Section 2.3 provides that a satisfaction agent may sign and submit for recording an affidavit of satisfaction of a security instrument if the satisfaction agent has reasonable grounds to believe that the secured creditor has received full payment or performance of the secured obligation and one or more of the following apply:

- The satisfaction agent has the original security instrument and the original bond, note, or other instrument with an endorsement of payment and satisfaction made by one or more of the following: (i) the secured creditor; (ii) the trustee or substitute trustee, if the security instrument is a deed of trust; (iii) an assignee of the secured creditor; or (iv) any bank, savings and loan association, savings bank, or credit union chartered in North Carolina or any other state having an office or branch in North Carolina.
- The satisfaction agent has the original security instrument intended to secure the payment of money or the performance of any other obligation, together with the original bond, note, or other instrument secured, or the original security instrument alone if the security instrument itself sets forth the obligation secured or other obligation to be performed and does not call for or recite any note, bond, or other instrument secured by it if, at the time the affidavit of satisfaction is to be signed and submitted, all such instruments are more than 10 years old.
- The satisfaction agent has the original security instrument given to secure the bearer or holder of any negotiable instruments transferable solely by delivery, together with all the evidences of indebtedness secured thereby, marked paid in full and signed by the bearer or holder.
- After diligent inquiry, the satisfaction agent has been unable to determine the identity of the secured creditor.

Section 2.4 adds a number of requirements with which an affidavit of satisfaction of a security instrument must comply.

Section 2.5 makes technical, clarifying, and conforming changes to the affidavit of satisfaction form.

Section 2.6 makes clarifying and technical changes to the statute governing affidavits of satisfaction.

Section 2.7 provides that a satisfaction agent that erroneously records an affidavit of satisfaction of a security interest is not liable if the agent complied with the statutes and gave notification to the secured creditor and the secured creditor did not respond in a timely manner.

Section 2.8 makes technical and clarifying changes.

EFFECTIVE DATE: Section 1 becomes effective July 1, 2013; the remainder of Part I becomes effective April 1, 2013; and the remainder of the act is effective when it becomes law.

BACKGROUND: House Bill 332 was recommended by the Real Property Section of the NC Bar Association and approved by the Bar Association's Board of Governors.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 332

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

H332-ATG-31 [v.3]

Comm. Sub. [NO]
Amends Title [NO]
Third Edition

Date _____,2013

Senator Barringer

moves to amend the bill on page 3, line 31, by rewriting the line to read:
"(b) A notarial act ~~performed before October 1, 2006,~~ shall be deemed valid if it"

and on page 16, lines 38-40, by rewriting those lines to read:
"**SECTION 3.** Section 1 of this act becomes effective July 1, 2013. The remainder of this act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

HOUSE BILL 515

Short Title:	Amend Credit Union Laws.	(Public)
Sponsors:	Representatives J. Bell, L. Hall, Wells, and Jordan (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Banking, if favorable, Judiciary Subcommittee A.	

April 3, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING CREDIT UNIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 54-109.57A is amended by adding a new subsection to read:

"(e) Any payable on death account created under the provisions of G.S. 54-109.57, as it existed prior to October 1, 2011, shall for all purposes be governed by the provisions of this section on and after October 1, 2011, and any reference to G.S. 54-109.57 in any document concerning the account shall be deemed a reference to this section."

SECTION 2. G.S. 54-109.58 reads as rewritten:

"**§ 54-109.58. Joint accounts.**

(a) Shares may be issued to and deposits received from any two or more persons opening or holding an account or accounts, but no joint tenant, unless a member in his own right, shall be permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee. The account and any balance thereof shall be held by them as joint tenants, with or without right of survivorship, as the contract shall provide; the account may also be held pursuant to G.S. 41-2.1 and have the incidents set forth in that section, provided, however, if the account is held pursuant to G.S. 41-2.1 the contract shall set forth that fact as well.

(b) Unless the persons establishing the account have agreed with the credit union that withdrawals require more than one signature, payment by the credit union to, or on the order of, any persons holding an account authorized by this section shall be a total discharge of the credit union's obligations as to the amount so paid.

(c) Funds in a joint account established with right of survivorship shall belong to the surviving joint tenant or tenants upon the death of a joint tenant, and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(3), or as provided in G.S. 41-2.1 if the account is established pursuant to the provisions of that section. Payment by the credit union of funds in the joint account to a surviving joint tenant or tenants shall terminate the personal representative's authority under G.S. 28A-15-10(a)(3) to collect against the credit union for the funds so paid, but the personal representative's authority to collect such funds from the surviving joint tenant or tenants is not terminated.

(d) A pledge of such account by any holder or holders shall, unless otherwise specifically agreed upon, be a valid pledge and transfer of such account, or of the amount so pledged, and shall not operate to sever or terminate the joint ownership of all or any part of the account.

(e) A credit union is not liable to joint tenants for complying in good faith with a writ of execution, garnishment, attachment, levy, or other legal process that appears to have been

issued by a court or other authority of competent jurisdiction and seeks funds held in the name of any one or more of the joint tenants.

(f) Persons establishing an account under this section shall sign a statement showing their election of the right of survivorship in the account, and containing language set forth in a conspicuous manner and substantially similar to the following:

"CREDIT UNION (OR NAME OF INSTITUTION)
JOINT ACCOUNT WITH RIGHT OF SURVIVORSHIP
G.S. 54-109.58

We understand that by establishing a joint account under the provisions of North Carolina General Statute 54-109.58 that:

1. The credit union (or name of institution) may pay the money in the account to, or on the order of, any person named in the account unless we have agreed with the credit union that withdrawals require more than one signature; and
2. Upon the death of one joint owner the money remaining in the account will belong to the surviving joint owners and will not pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner's will.

We DO elect to create the right of survivorship in this account.

_____

_____ "

The language may be on a signature card or in an explanation of the account that is set out in a separate document whose receipt is acknowledged by the person or persons establishing the account.

(g) Any joint tenant may terminate a joint account.

(h) Where a joint account is held by two or more individuals and a joint tenant does not wish for the account to be terminated but requests to be removed from the account, the credit union shall remove the joint tenant from the account. The joint account shall continue in the names of the remaining tenant or tenants. Any joint tenant who requested to be removed from an account remains liable for any debts incurred in connection with the joint account during the period in which the individual was a named joint tenant.

~~(a1)~~(i) This section shall not be deemed exclusive. Deposit ~~accounts,~~accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law as appropriate.

~~(b)~~(j) This section does not repeal or modify any provisions of laws relating to estate taxes. This section regulates and protects the credit union in its relationship with joint owners of accounts.

~~(c)~~(k) No addition to such account, nor any withdrawal or payment shall affect the nature of the account as a joint account, or affect the right of any tenant to terminate the account."

SECTION 3. Article 14F of Chapter 54 of the General Statutes is amended by adding the following sections to read:

"**§ 54-109.60A. Minors.**

(a) A credit union may issue and operate a share or deposit account in the name of (i) a minor or (ii) the names of two or more individuals, one or more of which are minors. A minor who obtains a share or deposit account from a credit union under this subsection, whether individually or together with others, is bound by the terms of the account agreement to the same extent as if the minor were of full age and legal capacity.

(b) If a minor with a share account, other than a joint account with right of survivorship or a payable on death account, dies, a parent or legal guardian of the minor may access and

withdraw the funds on deposit, and the credit union is discharged to the extent of any withdrawal.

(c) This section shall not affect the law governing transactions with minors in cases outside the scope of this section, including transactions that constitute an extension of credit to a minor.

"**§ 54-109.60B. Accounts opened by adults for minors.**

(a) One or more adults may open and maintain a custodial share account for or in the name of a minor and using the minor's taxpayer identification number. Unless otherwise provided in the agreement governing the account, the following terms apply:

(1) Beneficial ownership of the account vests exclusively in the minor. All interest credited to the account shall belong to the minor and shall be reported to the appropriate taxing authorities in the name of the minor using the minor's taxpayer identification number.

(2) Except as otherwise provided, control of the account vests exclusively in the custodian whose name appears on the credit union's records for the account. If there is more than one custodian named on the credit union's account records, each may act independently. Any one or more of the custodians named on the credit union's records may turn over control of the account to the minor at any time, either before or after the minor reaches the age of majority.

(3) If the custodian has not already transferred control, then after the minor beneficiary reaches the age of majority, the beneficiary may instruct the credit union to transfer control to the beneficiary and remove the named custodian.

(4) If the custodian or, if more than one custodian is on the account, the last of the custodians to survive dies before the minor reaches the age of majority, the minor's parent or the minor's legal guardian may act as custodian or name another custodian on the account.

(b) This section shall not be deemed exclusive. Accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes, including Chapter 33A, the North Carolina Uniform Transfers to Minors Act, or the common law, as appropriate.

...

"**§ 54-109.62. Payment of balance of deceased person or person under disability to personal representative or guardian.**

(a) A credit union may pay any balance on deposit to the credit of any deceased individual to the duly qualified personal representative, collector, or public administrator of the decedent who is qualified as such under the laws of any state.

(b) A credit union may pay any balance on deposit to the credit of any individual judicially declared incompetent or otherwise under a legal disability to the duly qualified personal representative, guardian, curator, conservator, or committee of the person declared incompetent or under disability who is qualified as such under the laws of any state.

(c) The presentation of a letter of qualification as personal representative, collector, public administrator, guardian, curator, conservator, or committee of the person issued or certified by the appointing court shall be conclusive proof of the jurisdiction of the court issuing the same and sufficient authority for the payment.

(d) Payment by a credit union in good faith under the authority of this section discharges the liability of the bank to the extent of the payment.

"**§ 54-109.62A. Powers of attorney; notice of revocation; payment after notice.**

(a) Any credit union may continue to recognize any act of an attorney-in-fact or other agent until the credit union receives actual notice of the principal's death or a written notice of revocation signed by the principal who granted the authority or, in the case of a company,

evidence satisfactory to the credit union of the revocation. Payment by the credit union to or at the direction of an attorney-in-fact or other agent before receipt of the notice is a total discharge of the credit union's obligation as to the amount so paid.

(b) Notwithstanding that a credit union has received written notice of revocation of the authority of an attorney-in-fact or other designated agent, a credit union may, until 10 days after receipt of notice, pay any item made, drawn, accepted, or endorsed by the attorney-in-fact or agent prior to the revocation, provided that the item is otherwise properly payable."

SECTION 4. G.S. 54-109.63(a) reads as rewritten:

"(a) A person may open a personal agency account by written contract containing a statement that it is executed pursuant to the provisions of this section. A personal agency account may be a checking account, savings account, time deposit, or any other type of withdrawable account or certificate. The written contract shall name an agent who shall have authority to act on behalf of the depositor in regard to the account as set out in this subsection. The agent shall have the authority to:

(1) Make, sign or execute checks drawn on the account or otherwise make withdrawals from the account;

(2) Endorse checks made payable to the principal for deposit only into the account; and

(3) Deposit cash or negotiable instruments, including instruments endorsed by the principal, into the account.

A person establishing an account under this section shall sign a statement containing language substantially similar to the following in a conspicuous manner:

"CREDIT UNION (OR NAME OF INSTITUTION)
PERSONAL AGENCY ACCOUNT
G.S. 54-109.63

I understand that by establishing a personal agency account under the provisions of North Carolina General Statute 54-109.63 that the agent named in the account may:

1. Sign checks drawn on the account; and
2. Make deposits into the account.

I also understand that upon my death the money remaining in the account will be controlled by my will or inherited by my heirs.

_____"

The language may be on a signature card or in an explanation of the account that is set out in a separate document whose receipt is acknowledged by the person or persons establishing the account."

SECTION 5. G.S. 54-109.82(9) reads as rewritten:

"§ 54-109.82. Investment of funds.

The capital, deposits, undivided profits and reserve fund of the corporation may be invested only in any of the following ways:

...

(9) In any form of investment allowed by law to the State Treasurer under G.S. 147-69.1. In addition, investment in corporate bonds that bear a minimum rating of A+ by at least one nationally recognized rating service is permissible. Credit unions shall monitor overall credit exposure by setting corporate bond investment limits as a percentage of assets.

...."

SECTION 6. This act becomes effective July 1, 2013, and Sections 2 and 4 of this act apply to accounts established as of that date and accounts created on or after that date.

HOUSE BILL 515:
Amend Credit Union Laws

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 5, 2013
Introduced by:	Reps. J. Bell, L. Hall, Wells, Jordan	**Prepared by:**	Bill Patterson
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 515 amends the credit union statutes to conform to changes made to State banking laws in S.L. 2012-56, and permits credit unions to invest in corporate bonds with a minimum rating of A+.***

SECTION 1 – Payable on Death Accounts

CURRENT LAW: S.L. 2011-236 (House Bill 686) repealed G.S. 54-109.57 and replaced it with G.S. 54-109.57A, effective October 1, 2011. Under the new statute, credit unions were permitted to offer customers payable on death accounts (PODs) naming an entity other than a natural person as a beneficiary. PODs created by agreements executed prior to October 1, 2011, remained subject to the laws in effect at the time the parties executed the agreement.

BILL ANALYSIS: Section 1 provides that any POD account created prior to S.L. 2011-236 is governed by the new statute and that any references to the predecessor statute in documents concerning POD accounts are deemed to refer to the new statute.

SECTION 2 – Joint Accounts

CURRENT LAW: Under G.S. 54-109.58, joint accounts can be created with or without the right of survivorship.

BILL ANALYSIS: Section 2 amends G.S. 54-109.58 to:

- divide existing subsection (a) into five subsections (a) through (d) and (f)
- add subsection (e) to provide that the credit union is not liable to joint tenants for complying in good faith with legal processes that appears to have been issued by a court or other authority of competent jurisdiction and that seeks funds held in the name of any one or more of the joint tenants
- provide in subsection (f) that language required to be acknowledged by persons electing to set up a joint account with right of survivorship may be placed on a signature card or in a separate document given to the persons setting up the account
- add new subsections (g) and (h) allowing any joint tenant to terminate a joint account or be removed from the account and providing that a joint tenant removed from the account at the joint tenant's request remains liable for any debts incurred in connection with the joint account while the person was a joint tenant

SECTION 3 – New sections added to Article 14F (Savings Accounts)

G.S. 54-109.60A. Accounts Opened by Minors

ANALYSIS: Provides that credit unions can issue and operate a share or deposit account in the name of a minor and the minor would be bound by the terms of the account agreement as if the minor were of

full age and legal capacity. If a minor has an account that is not a POD or joint account with right of survivorship and the minor dies, the parent or legal guardian of the minor could access funds.

G.S. 54-109.60B. Accounts Opened by Adults for Minors

ANALYSIS: Provides that adults may open and maintain a custodial share account for a minor. Unless otherwise agreed to in the agreement, the following conditions apply: (i) beneficial ownership of the account vests exclusively in the minor; (ii) control of the account vests exclusively in the custodian but the custodian can turn over control to the minor even before the minor reaches the age of majority; (iii) if control has not be transferred before the minor reaches the age of majority, then the minor can instruct the credit union to transfer control once the age of majority is reached and remove the custodian; (iv) if the custodian dies before the minor reaches the age of majority, the minor's parent or legal guardian can act as custodian. The terms in the section are not deemed as exclusive.

G.S. 54-109.62. Payment of Balance of Deceased Person or Person under Disability to Personal Representative or Guardian

ANALYSIS: Provides that credit unions would be allowed to pay balances on deposit to the credit of a deceased individual to a duly qualified personal representative. In addition, credit unions would be allowed to pay balances on deposit to the credit of any individual judicially declared incompetent or under a legal disability to a duly qualified personal representative or guardian. Presentations of letters of qualification issued or certified by the appointing court would be conclusive proof of the jurisdiction of the court issuing the letter and would be sufficient authority for the payment and payment by a credit union in good faith would discharge its liability to the extent of the payment.

G.S. 54-109.62A. Powers of Attorney; Notice of Revocation; Payment after Notice

ANALYSIS: Provides that a credit union would be able to continue to recognize acts of attorneys-in-fact or other agents until the credit union receives actual notice of the principal's death or a written revocation signed by the principal who granted the authority of the revocation. Payments made by the credit union to or at the direction of an attorney-in-fact or other agent before receipt of the notice would be a total discharge of the credit union's obligation to the amount paid. Even if the credit union has received a written notice of revocation of an attorney-in-fact or other designated agent, the credit union may, until 10 days after receipt of the notice, pay any item made, drawn, accepted, or endorsed by the attorney-in-fact or agent prior to the revocation if the item is otherwise properly payable.

SECTION 4 – Personal Agency Accounts

CURRENT LAW: G.S. 54-109.63(a) permits a person to open a personal agency account through a written contract that names an agent who has the authority to act on behalf of the depositor and can execute checks drawn on the account and make withdrawals; endorse checks for deposit; and deposit cash or negotiable instruments into the account. The person establishing the account must sign a statement acknowledging the customer's understanding of the agent's powers and of how money remaining in the account upon the customer's death will be disposed of.

BILL ANALYSIS: Amends G.S. 54-109.63(a) to provide that the required statement may be provided on the signature card or in a separate document given to the person setting up the account.

SECTION 5 – Investment of Funds

CURRENT LAW: Pursuant to G.S. 54-109.82, State chartered credit unions may invest their capital, deposits, undivided profits, and reserve funds in a number of ways, including in any form of investment authorized for General Fund and Highway Fund assets in G.S. 147-69.1. G.S. 147-69.1(c)(10) limits the

Treasurer's investments in corporate bonds to those rated AAA or equivalent by at least one nationally recognized rating service.

BILL ANALYSIS: Amends G.S. 54-109.82 to permit credit unions to invest in corporate bonds bearing a minimum rating of A+ by at least one nationally recognized rating service, and to require credit unions to monitor overall credit exposure by setting corporate bond investment limits as a percentage of assets.

EFFECTIVE DATE: This act becomes effective July 1, 2013, and Sections 2 and 4 will apply to accounts established as of that date and accounts created on or after that date.

Drupti Chauhan, counsel to House Banking Committee, and Wendy Graf Ray, counsel to Senate Commerce Committee, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 763
Committee Substitute Favorable 4/24/13

Short Title: Allow Alimony/Post Sep Supp During Marriage. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS PERTAINING TO CONTRACTS BETWEEN A HUSBAND AND WIFE TO ALLOW A SPOUSE TO WAIVE OR ESTABLISH ALIMONY AND POST SEPARATION SUPPORT DURING THE MARRIAGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 52-10 is amended by adding the following new subsection to read:

"(a1) A contract between a husband and wife made, with or without a valuable consideration, during a period of separation to waive, release, or establish rights and obligations to post separation support, alimony, or spousal support is valid and not inconsistent with public policy. A provision waiving, releasing, or establishing rights and obligations to post separation support, alimony, or spousal support shall remain valid following a period of reconciliation and subsequent separation, if the contract satisfies all of the following requirements:

(1) The contract is in writing.

(2) The provision waiving the rights or obligations is clearly stated in the contract.

(3) The contract was acknowledged by both parties before a certifying officer.

A release made pursuant to this subsection may be pleaded in bar of any action or proceeding for the recovery of the rights released."

SECTION 2. G.S. 50-16.6(b) reads as rewritten:

"(b) Alimony, postseparation support, and counsel fees may be barred by an express provision of a valid separation ~~agreement or premarital agreement~~ agreement, premarital agreement, or marital contract made pursuant to G.S. 52-10(a1) so long as the agreement is performed."

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

HOUSE BILL 763:
Allow Alimony/Post Sep Supp During Marriage

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 6, 2013
Introduced by:	Reps. Goodman, Jordan	**Prepared by:**	Susan Sitze*
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 763 would permit a husband and wife to enter into a valid contract during the marriage to allow a spouse to waive, release, or establish alimony and postseparation support.***

BILL ANALYSIS:

Section 1 of House Bill 763 would add a new G.S. 52-10(a1) to allow a husband and wife to execute a contract, whether or not supported by valuable consideration, to waive, release or establish rights and obligations to postseparation support.

The contract would remain valid following a period of reconciliation and subsequent separation if all of the following conditions are met:

- The contract is in writing.
- The provision waiving releasing or establishing the rights or obligations is clearly stated in the contract.
- The contract was acknowledged before a certifying officer.

Evidence of the release would be allowable in an action or proceeding in which one spouse is seeking recovery of the rights released.

Section 2. G.S. 50-16(b) provides that an express provision in a valid separation agreement may bar claims for alimony, postseparation support, and counsel fees. The bill would add premarital agreements or contracts described in Section 1 to the types of agreements the express provisions of which may result in barring alimony, postseparation support, and counsel fees

EFFECTIVE DATE: This act is effective when it becomes law.

**Janice Paul, Staff Attorney, substantially contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 3

HOUSE BILL 765
Committee Substitute Favorable 4/24/13
Committee Substitute #2 Favorable 5/8/13

Short Title: Jury Instructions for School Budget Dispute. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND CODIFY JURY INSTRUCTIONS FOR A BUDGET DISPUTE BETWEEN BOARD OF EDUCATION AND BOARD OF COUNTY COMMISSIONERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-431(c) reads as rewritten:

"(c) Within five days after an announcement of no agreement by the mediator, the local board of education may file an action in the superior court division of the General Court of Justice. ~~The court shall find the facts as to the amount of money necessary to maintain a system of free public schools, and the amount of money needed from the county to make up this total.~~ Either board has the right to have the issues of fact tried by a jury. When a jury trial is demanded, the cause shall be set for the first succeeding term of the superior court in the county, and shall take precedence over all other business of the court. However, if the judge presiding certifies to the Chief Justice of the Supreme Court, either before or during the term, that because of the accumulation of other business, the public interest will be best served by not trying the cause at the term next succeeding the filing of the action, the Chief Justice shall immediately call a special term of the superior court for the county, to convene as soon as possible, and assign a judge of the superior court or an emergency judge to hold the court, and the cause shall be tried at this special term. ~~The issue submitted to the jury~~The judge shall find, or if the issue is submitted to the jury, the jury shall find ~~shall be what amount of money is needed from sources under the control of the board of county commissioners to maintain a system of free public schools.~~the facts as to the following in order to maintain a system of free public schools as defined by State law and State Board of Education policy: (i) the amount of money legally necessary from all sources and (ii) the amount of money legally necessary from the board of county commissioners. In making the finding, the judge or the jury shall consider the educational goals and policies of the State and the local board of education, the budgetary request of the local board of education, the financial resources of the county and the local board of education, and the fiscal policies of the board of county commissioners and the local board of education.

All findings of fact in the superior court, whether found by the judge or a jury, shall be conclusive. When the facts have been found, the court shall give judgment ordering the board of county commissioners to appropriate a sum certain to the local school administrative unit, and to levy such taxes on property as may be necessary to make up this sum when added to other revenues available for the purpose."

SECTION 2. This act is effective when it becomes law and applies to all actions commenced on or after that date.

HOUSE BILL 765:
Jury Instructions for School Budget Dispute

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 5, 2013
Introduced by:	Rep. Dixon	**Prepared by:**	Bill Patterson
Analysis of:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 765 would amend the instructions that must be given to a jury in a court action on a budget dispute between a local board of education and a board of county commissioners.***

CURRENT LAW: G.S. 115C-431 governs the procedure for resolution of disputes between boards of education and boards of county commissioners for disputes over appropriations to the local current expense fund or capital outlay fund. If the dispute is unresolved after a joint board meeting, the parties must start mediation. If the mediation is unsuccessful, an action may be filed in superior court and will be given precedence over other business of the court. The court must find the facts as to the amount of money necessary to maintain a system of free public schools and the amount of money needed from the county to make up the total. The issues of fact may be tried by a jury and the issue submitted to the jury would be "what amount of money is needed from sources under the control of the board of county commissioners to maintain a system of free public schools." When the facts have been found, the court must enter judgment ordering the board of county commissioners to appropriate a sum to the local school administrative unit and to levy property taxes that may be necessary to make up the sum when added to other available revenues.

BILL ANALYSIS: The bill would require that the court (or jury if the issue is submitted to the jury) make findings as to the amount of money needed from all sources and the amount of money legally needed from the board of county commissioners in order to maintain a system of free public schools. In making these findings, the judge or jury would be required to consider:

- the educational goals and policies of the State and the local board of education
- the budgetary request of the local board of education
- the financial resources of the county and the local board of education
- the fiscal policies of the board of county commissioners and the local board of education

EFFECTIVE DATE: The bill would become effective when it becomes law and applies to all actions commenced on or after that date.

BACKGROUND: In 2009, the NC Supreme Court held in *Beaufort County Bd. Of Educ. v. Beaufort County Bd. Of Com'rs, 363 N.C. 500 (2009)* that the trial court's jury instructions to the jury under G.S. 115C-431 were incorrect in that the definition of money "needed" was too expansive and should have conveyed a more restricted definition of the word "needed". The Court held that the trial court must instruct the jury that G.S. 115C-431 requires the board of county commissioners to provide that "appropriation legally necessary to support a system of free public schools, as defined by Chapter 115C and the policies of the State Board." The Court further held that the trial court must also instruct the jury to "consider the educational goals and policies of the [S]tate, the budgetary request of the local board of education, the financial resources of the county, and the fiscal policies of the board of county commissioners." According to the Court, anything beyond this measure would impermissibly infringe upon the discretionary authority of the board of county commissioners under Article IX, Section 2(2) of the State Constitution and could not be awarded by a jury.

Drupti Chauhan, counsel to House Education Committee, substantially contributed to this summary.

O. Walker Reagan
Director

H765-SMTG-101 E3 -V1

Research Division
(919) 733-2578

JUD I **VISITOR REGISTRATION SHEET** 6/6/13

Senate ~~Finance~~ Committee — ~~February 27, 2013~~

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
	COLPAA
Donnac Kinter	AGA 9203 Baileywick Rd Ste 101 Raleigh 27615
Jennifer Haverstad	4800 Sweetbriar Dr. Ral 27609
Leanne Winner	NCSBA
Henry Jones	Jordan Price
Jami Fitzgerald	NC Values Coalition
Mike Smallwood	SOG Daily Bulletin
Andrew Meehan	Capstrat
Laurie Anorico	FSP
	Dixon LA
Jean Ryall	NC Family Policy Council
Will Gauthier	MWC
Chris Agner	DOT
	NMRS

JUDI

VISITOR REGISTRATION SHEET

6/6/13

Senate ~~Finance~~ Committee
Name of Committee

~~February 27~~, 2013
Date

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NAME	FIRM OR AGENCY AND ADDRESS
Philip Isley	Bunce
Susan Vicki	PSB

JUD I **VISITOR REGISTRATION SHEET** 6/6/13

Senate ~~Finance~~ Committee
Name of Committee

~~February 27, 2013~~
Date

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JONATHAN McGIRT	NCBA
Holly West	NC Health News
Peg Dorer	Conf. of DAs
Todd Barlow	NC Advocates A-J-Fra
Hope Carmichael	Attorney - Policy
Hayden Barcuess	FSP
Alex Bodzo	CSS

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VISITOR REGISTRATION SHEET

6/6/13

Senate ~~Finance~~ Committee
Name of Committee

~~February 27, 2013~~
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

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Anne Hutchins	NC Court of Appeals
Joanna Spruill	NC Court of Appeals
Lauren Whaley	NCCU
Brinton Wright	NC Bar Ass'n
[illegible]	SOS
Hailey Haynes	SOS
Sam Spinner	NCACC
Adam Sholar	DHHS
Patrick Betancourt	DHHS
Andy Chase	KMA
Elizabeth Harrison	NCBA - real property section
Debbie Hyler	KLG
Ron Couch	NCBA
Mikeen Tran	NCACC

Senate Committee on Judiciary I
Tuesday, June 11, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 937	Amend Various Firearms Laws.	Representative Schaffer Representative Burr Representative Faircloth Representative Cleveland

Presentations

Other Business

Adjournment

Senate Committee on Judiciary I
Tuesday, June 11, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on June 11, 2013 in Room 1027/1128 of the Legislative Building. Fourteen members were present.

Senator Thom Goolsby, Chair, presided.

Senator Jerry Tillman moved to take up a Proposed Committee Substitute for House Bill 937 and the motion passed by a voice vote. Representative Jacqueline Michelle Schaffer was recognized to explain the PCS. Senator Buck Newton was recognized next to explain the PCS.

Susan Sitze from the Research Division was recognized to explain each section of the PCS to the committee. Sen. Newton made further comment and said he would take questions. Senator Josh Stein was recognized for a question and Ms. Sitze responded. Sen. Stein was recognized for a follow-up question and Sen. Newton was recognized to respond. Sen. Goolsby said the committee would now take public comment.

Drew Muretz from the University of North Carolina General Administration spoke in opposition to the bill. Michael Mann from the North Carolina Rifle and Pistol Association spoke in support of the bill. Hope Williams with the Association of North Carolina Independent Colleges and Universities spoke in opposition to the bill but in favor of her organization's exemption from the bill. Paul Valone with Grassroots North Carolina spoke in favor of the bill. Gail Neely from North Carolinians Against Gun Violence spoke in opposition to the bill. Brian Reese from Grassroots North Carolina spoke in favor of the bill. Jamie Herring, chief of police at the University of North Carolina at Greensboro spoke in opposition to the bill. Gregg Stahl from the North Carolina Sheriffs Association spoke in favor of the bill but expressed opposition to one section.

Sen. Stein asked a question and Sen. Newton responded. Sen. Stein asked three follow-up questions and Sen. Newton responded. Senator Dan Blue asked a question and Sen. Newton responded. Sen. Goolsby asked Sen. Newton a clarifying question and Sen. Newton responded.

Senator Tom Apodaca moved for a favorable report to the PCS, unfavorable to the original bill, and the motion passed by a voice vote.

The meeting adjourned at 10:34 a.m.

Senator Thom Goolsby, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Tuesday, June 11, 2013

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

HB **937** **(CS#1)** Amend Various Firearms Laws.

Draft Number:	H937-PCS80373-SA-50
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator E.S. Newton will handle HB 937



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 937

Committee Substitute Favorable 4/24/13

PROPOSED SENATE COMMITTEE SUBSTITUTE H937-CSSA-50 [v.4]

6/10/2013 5:07:35 PM

Short Title: Amend Various Firearms Laws. (Public)

Sponsors:

Referred to:

April 15, 2013

A BILL TO BE ENTITLED

AN ACT TO INCREASE PENALTIES FOR CERTAIN CRIMES IN WHICH A FIREARM IS USED, DISPLAYED, OR THERE IS A THREAT TO USE OR DISPLAY A FIREARM; TO MAKE IT A CRIMINAL OFFENSE FOR ANYONE TO PERMIT A CHILD TO HAVE ACCESS TO OR POSSESS A FIREARM WITHOUT SUPERVISION AND PARENTAL CONSENT; TO PROVIDE THAT A PERSON WHO HAS A VALID CONCEALED HANDGUN PERMIT MAY DO ALL OF THE FOLLOWING: HAVE A CONCEALED HANDGUN IN A LOCKED VEHICLE IN A STATE GOVERNMENT PARKING LOT, HAVE A CONCEALED HANDGUN IN A LOCKED COMPARTMENT IN A VEHICLE ON EDUCATIONAL PROPERTY, AND CARRY A HANDGUN INTO AN ASSEMBLY WHERE AN ADMISSION FEE IS CHARGED OR AN ESTABLISHMENT WHERE ALCOHOLIC BEVERAGES ARE SOLD AND CONSUMED, OR AT A PARADE OR FUNERAL PROCESSION, UNLESS THE PERSON IN LEGAL POSSESSION OR CONTROL OF THE PREMISES HAS POSTED A NOTICE PROHIBITING THE CARRYING OF HANDGUNS ON THE PREMISES; TO PROVIDE THAT AN EMPLOYEE OF AN INSTITUTION OF HIGHER EDUCATION WHO LIVES IN A CERTAIN TYPE OF CAMPUS RESIDENCE MAY CARRY A HANDGUN ON THE EMPLOYEE'S RESIDENTIAL PREMISES AND IN SOME INSTANCES ALSO KEEP THE GUN IN THE EMPLOYEE'S LOCKED VEHICLE IN THE PARKING AREA OF THE INSTITUTION OF HIGHER EDUCATION; TO CLARIFY THE LAW ON LOCAL GOVERNMENT AUTHORITY TO PROHIBIT CONCEALED CARRY OF FIREARMS; TO ESTABLISH UNIFORM STATE REQUIREMENTS FOR REPORTING INFORMATION CONCERNING MENTAL HEALTH AND SUBSTANCE ABUSE JUDICIAL DETERMINATIONS OR FINDINGS TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM AND TO MAKE THESE REQUIREMENTS MORE CONSISTENT WITH FEDERAL FIREARMS LAW; TO PROVIDE FOR THE CONFIDENTIALITY OF INFORMATION REGARDING CONCEALED HANDGUN PERMITS AND SALE OF HANDGUNS; TO CLOSE THE LOOPHOLE ON USING PISTOL PERMITS TO AVOID A BACKGROUND CHECK WHEN PURCHASING A HANDGUN; TO REQUIRE REVOCATION OF A CONCEALED HANDGUN PERMIT UPON CONVICTION OF A DISQUALIFYING OFFENSE; TO PROVIDE THAT ANY NORTH CAROLINA DISTRICT OR SUPERIOR COURT JUDGE, MAGISTRATE, CLERK OF COURT, OR REGISTER OF DEEDS WHO HAS A CONCEALED HANDGUN PERMIT THAT IS VALID IN NORTH CAROLINA IS EXEMPT FROM THE GENERAL PROHIBITION

AGAINST CARRYING A CONCEALED WEAPON AND FROM THE PROHIBITIONS AGAINST CARRYING A WEAPON ON CERTAIN PREMISES OR IN CERTAIN CIRCUMSTANCES; TO ALLOW HUNTING WITH A SUPPRESSOR OR OTHER DEVICE DESIGNED TO MUFFLE OR MINIMIZE THE REPORT OF A FIREARM; AND TO MAKE THE DEFINITION OF QUALIFIED RETIRED LAW ENFORCEMENT OFFICER CONSISTENT WITH FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-269 is amended by adding a new subsection to read:

"(a2) This prohibition does not apply to a person who has a concealed handgun permit issued in accordance with Article 54B of this Chapter, has a concealed handgun permit considered valid under G.S. 14-415.24, or is exempt from obtaining a permit pursuant to G.S. 14-415.25, provided the weapon is a handgun, is in a closed compartment or container within the person's locked vehicle, and the vehicle is in a parking area that is owned or leased by State government. A person may unlock the vehicle to enter or exit the vehicle, provided the handgun remains in the closed compartment at all times and the vehicle is locked immediately following the entrance or exit."

SECTION 2. G.S. 14-269.2 is amended by adding the following new subsections to read:

"(i) The provisions of this section shall not apply to an employee of an institution of higher education as defined in G.S. 116-143.1 or a nonpublic post-secondary educational institution who resides on the campus of the institution at which the person is employed when all of the following criteria are met:

(1) The employee's residence is a detached, single-family dwelling in which only the employee and the employee's immediate family reside.

(2) The institution is either:

a. An institution of higher education as defined by G.S. 116-143.1.

b. A nonpublic post-secondary educational institution that has not specifically prohibited the possession of a handgun pursuant to this subsection.

(3) The weapon is a handgun.

(4) The handgun is possessed in one of the following manners as appropriate:

a. If the employee has a concealed handgun permit that is valid under Article 54B of this Chapter, or who is exempt from obtaining a permit pursuant to that Article, the handgun may be on the premises of the employee's residence or in a closed compartment or container within the employee's locked vehicle that is located in a parking area of the educational property of the institution at which the person is employed and resides. Except for direct transfer between the residence and the vehicle, the handgun must remain at all times either on the premises of the employee's residence or in the closed compartment of the employee's locked vehicle. The employee may unlock the vehicle to enter or exit, but must lock the vehicle immediately following the entrance or exit if the handgun is in the vehicle.

b. If the employee is not authorized to carry a concealed handgun pursuant to Article 54B of this Chapter, the handgun may be on the premises of the employee's residence, and may only be in the employee's vehicle when the vehicle is occupied by the employee and the employee is immediately leaving the campus or is driving directly to their residence from off campus. The employee may possess the handgun on the employee's person outside the premises

of the employee's residence when making a direct transfer of the handgun from the residence to the employee's vehicle when the employee is immediately leaving the campus or from the employee's vehicle to the residence when the employee is arriving at the residence from off campus.

(j) The provisions of this section shall not apply to an employee of a public or nonpublic school who resides on the campus of the school at which the person is employed when all of the following criteria are met:

(1) The employee's residence is a detached, single-family dwelling in which only the employee and the employee's immediate family reside.

(2) The school is either:

a. A public school which provides residential housing for enrolled students.

b. A nonpublic school which provides residential housing for enrolled students and has not specifically prohibited the possession of a handgun pursuant to this subsection.

(3) The weapon is a handgun.

(4) The handgun is possessed in one of the following manners as appropriate:

a. If the employee has a concealed handgun permit that is valid under Article 54B of this Chapter, or who is exempt from obtaining a permit pursuant to that Article, the handgun may be on the premises of the employee's residence or in a closed compartment or container within the employee's locked vehicle that is located in a parking area of the educational property of the school at which the person is employed and resides. Except for direct transfer between the residence and the vehicle, the handgun must remain at all times either on the premises of the employee's residence or in the closed compartment of the employee's locked vehicle. The employee may unlock the vehicle to enter or exit, but must lock the vehicle immediately following the entrance or exit if the handgun is in the vehicle.

b. If the employee is not authorized to carry a concealed handgun pursuant to Article 54B of this Chapter, the handgun may be on the premises of the employee's residence, and may only be in the employee's vehicle when the vehicle is occupied by the employee and the employee is immediately leaving the campus or is driving directly to their residence from off campus. The employee may possess the handgun on the employee's person outside the premises of the employee's residence when making a direct transfer of the handgun from the residence to the employee's vehicle when the employee is immediately leaving the campus or from the employee's vehicle to the residence when the employee is arriving at the residence from off campus.

(k) The provisions of this section shall not apply to a person who has a concealed handgun permit that is valid under Article 54B of this Chapter, or who is exempt from obtaining a permit pursuant to that Article, who has a handgun in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle. A person may unlock the vehicle to enter or exit the vehicle provided the firearm remains in the closed compartment at all times and the vehicle is locked immediately following the entrance or exit."

SECTION 3. G.S. 14-269.3(b) reads as rewritten:

"(b) This section shall not apply to any of the following:

(1) A person exempted from the provisions of ~~G.S. 14-269;~~G.S. 14-269.

(2) The owner or lessee of the premises or business ~~establishment;~~establishment.

(3) A person participating in the event, if ~~he~~ the person is carrying a gun, rifle, or pistol with the permission of the owner, lessee, or person or organization sponsoring the ~~event; and~~event.

(4) A person registered or hired as a security guard by the owner, lessee, or person or organization sponsoring the event.

(5) A person carrying a handgun if the person has a valid concealed handgun permit issued in accordance with Article 54B of this Chapter, has a concealed handgun permit considered valid under G.S. 14-415.24, or is exempt from obtaining a permit pursuant to G.S. 14-415.25. This subdivision shall not be construed to permit a person to carry a handgun on any premises where the person in legal possession or control of the premises has posted a conspicuous notice prohibiting the carrying of a concealed handgun on the premises in accordance with G.S. 14-415.11(c)."

SECTION 4. G.S. 14-316 reads as rewritten:

"**§ 14-316. Permitting young children to use dangerous firearms.**

(a) It shall be unlawful for any ~~parent, guardian, or person standing in loco parentis;~~person to knowingly permit ~~his~~ a child under the age of 12 years to have ~~the~~ access to, or possession, custody or use in any manner whatever, of, any gun, pistol or other dangerous firearm, whether such weapon be loaded or unloaded, ~~except when such~~ unless the person has the permission of the child's parent or guardian, and the child is under the supervision of ~~the parent, guardian or person standing in loco parentis. It shall be unlawful for any other person to knowingly furnish such child any weapon enumerated herein.~~an adult. Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

(b) Air rifles, air pistols, and BB guns shall not be deemed "dangerous firearms" within the meaning of subsection (a) of this section except in the following counties: Anson, Caldwell, Caswell, Chowan, Cleveland, Cumberland, Durham, Forsyth, Gaston, Harnett, Haywood, Mecklenburg, Stanly, Stokes, Surry, Union, Vance."

SECTION 5. G.S. 15A-1340.16A reads as rewritten:

"**§ 15A-1340.16A. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony and the defendant used, displayed, or threatened to use or display a firearm or deadly weapon during the commission of the felony.**

(a), (b) Repealed by Session Laws 2003-378, s. 2, effective August 1, 2003.

(c) If a person is convicted of a ~~Class A, B1, B2, C, D, or E~~ felony and it is found as provided in this section that: (i) the person committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and (ii) the person actually possessed the firearm or deadly weapon about his or her person, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased ~~by 60 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 60 months, as specified in G.S. 15A-1340.17(e) and (e1).~~ as follows:

(1) If the felony is a Class A, B1, B2, C, D, or E felony, the minimum term of imprisonment to which the person is sentenced for that felony shall be increased by 72 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 72 months, as specified in G.S. 15A-1340.17(e) and (e1).

(2) If the felony is a Class F or G felony, the minimum term of imprisonment to which the person is sentenced for that felony shall be increased by 36 months. The maximum term of imprisonment shall be the maximum term

that corresponds to the minimum term after it is increased by 36 months, as specified in G.S. 15A-1340.17(d).

(3) If the felony is a Class H or I felony, the minimum term of imprisonment to which the person is sentenced for that felony shall be increased by 12 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 12 months, as specified in G.S. 15A-1340.17(d).

(d) An indictment or information for the ~~Class A, B1, B2, C, D, or E~~ felony shall allege in that indictment or information the facts set out in subsection (c) of this section. The pleading is sufficient if it alleges that the defendant committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and the defendant actually possessed the firearm or deadly weapon about the defendant's person. One pleading is sufficient for all ~~Class A, B1, B2, C, D, or E~~ felonies that are tried at a single trial.

(e) The State shall prove the issues set out in subsection (c) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to the issues. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issues set out in subsection (c) of this section, then a jury shall be impaneled to determine the issues.

(f) Subsection (c) of this section does not apply if the evidence of the use, display, or threatened use or display of the firearm or deadly weapon is needed to prove an element of the felony or if the person is not sentenced to an active term of imprisonment."

SECTION 6. G.S. 14-415.23 reads as rewritten:

"**§ 14-415.23. Statewide uniformity.**

(a) It is the intent of the General Assembly to prescribe a uniform system for the regulation of legally carrying a concealed handgun. To insure uniformity, no political subdivisions, boards, or agencies of the State nor any county, city, municipality, municipal corporation, town, township, village, nor any department or agency thereof, may enact ordinances, rules, or regulations concerning legally carrying a concealed handgun. A unit of local government may adopt an ordinance to permit the posting of a prohibition against carrying a concealed handgun, in accordance with G.S. 14-415.11(c), on local government buildings and their appurtenant premises.

(b) A unit of local government may adopt an ordinance to prohibit, by posting, the carrying of a concealed handgun on municipal and county recreational facilities that are specifically identified by the unit of local government. If a unit of local government adopts such an ordinance with regard to recreational facilities, then the concealed handgun permittee may, nevertheless, secure the handgun in a locked vehicle within the trunk, glove box, or other enclosed compartment or area within or on the motor vehicle.

(c) For purposes of this section, the term "recreational facilities" includes only the following: ~~a playground, an athletic field, a swimming pool, and an athletic facility.~~

(1) An athletic field, including any appurtenant facilities such as restrooms, during an organized athletic event if the field had been scheduled for use with the municipality or county office responsible for operation of the park or recreational area.

(2) A swimming pool, including any appurtenant facilities used for dressing, storage of personal items, or other uses relating to the swimming pool.

(3) A facility used for athletic events, including, but not limited to, a gymnasium.

(d) For the purposes of this section, the term "recreational facilities" does not include any greenway, designated biking or walking path, an area that is customarily used as a walkway or bike path although not specifically designated for such use, open areas or fields where athletic events may occur unless the area qualifies as an "athletic field" pursuant to

subdivision (1) of subsection (c) of this section, and any other area that is not specifically described in subsection (c) of this section."

SECTION 7. G.S. 122C-54(d1) reads as rewritten:

"(d1) ~~After a judicial determination that an individual shall be involuntarily committed for either inpatient or outpatient mental health treatment pursuant to Article 5 of this Chapter, the clerk of superior court in the county where the judicial determination was made shall, as soon as practicable, cause a report of the commitment to be transmitted to the National Instant Criminal Background Check System (NICS). Reporting of an individual involuntarily committed to outpatient mental health treatment under this subsection shall only be reported if the individual is found to be a danger to self or others. The clerk shall also cause to be transmitted to NICS a record where an individual is found not guilty by reason of insanity or found mentally incompetent to proceed to criminal trial. The clerk, upon receipt of documentation that an affected individual has received a relief from disabilities pursuant to G.S. 122C-54.1 or any applicable federal law, shall cause the individual's record in NICS to be updated.~~ Excluding Saturdays, Sundays, and holidays, not later than 48 hours after receiving notice of any of the following judicial determinations or findings, the clerk of superior court in the county where the determination or finding was made shall cause a record of the determination or finding to be transmitted to the National Instant Criminal Background Check System (NICS):

(1) A determination that an individual shall be involuntarily committed to a facility for inpatient mental health treatment upon a finding that the individual is mentally ill and a danger to self or others.

(2) A determination that an individual shall be involuntarily committed to a facility for outpatient mental health treatment upon a finding that the individual is mentally ill and, based on the individual's treatment history, in need of treatment in order to prevent further disability or deterioration that would predictably result in a danger to self or others.

(3) A determination that an individual shall be involuntarily committed to a facility for substance abuse treatment upon a finding that the individual is a substance abuser and a danger to self or others.

(4) A finding that an individual is not guilty by reason of insanity.

(5) A finding that an individual is mentally incompetent to proceed to criminal trial.

(6) A finding that an individual lacks the capacity to manage the individual's own affairs due to marked subnormal intelligence or mental illness, incompetency, condition, or disease.

(7) A determination to grant a petition to an individual for the removal of disabilities pursuant to G.S. 122C-54.1 or any applicable federal law.

The 48-hour period for transmitting a record of a judicial determination or finding to the NICS under this subsection begins upon receipt by the clerk of a copy of the judicial determination or finding."

SECTION 8. The last two sentences of G.S. 122C-54(d1) are recodified as G.S. 122C-54(d2) and read as rewritten:

"(d2) The record of involuntary commitment for inpatient or outpatient mental health treatment or for substance abuse treatment required by subsection (d1) of this section shall be accessible only by an entity having proper access to NICS and shall remain otherwise confidential as provided by this Article. ~~The clerk shall effect the transmissions to NICS required by the subsection according to protocols which shall be established by the Administrative Office of the Courts.~~The Administrative Office of the Courts shall adopt rules to require clerks of court to transmit information to the NICS as required by subsection (d1) of this section in a uniform manner."

SECTION 9. G.S. 122C-54.1 reads as rewritten:

"**§ 122C-54.1. Restoration process to remove mental commitment bar.**

(a) Any individual over the age of 18 may petition for the removal of the ~~mental commitment bar to purchase, possess, or transfer a firearm when the individual no longer suffers from the condition that resulted in the individual's involuntary commitment for either inpatient or outpatient mental health treatment pursuant to Article 5 of this Chapter and no longer poses a danger to self or others for purposes of the purchase, possession, or transfer of firearms pursuant to 18 U.S.C. § 922, G.S. 14-404, and G.S. 14-415.12.~~disabilities pursuant to 18 U.S.C. § 922(d)(4) and (g)(4), G.S. 14-415.3, and G.S. 14-415.12 arising out of a determination or finding required to be transmitted to the National Instant Criminal Background Check System by subdivisions (1) through (6) of subsection (d1) of G.S. 122C-54. The individual may file the petition with a district court judge upon the expiration of any current inpatient or outpatient commitment. ~~No individual who has been found not guilty by reason of insanity may petition a court for restoration under this section.~~

(b) The petition must be filed in the district court of the county where the respondent was the subject of the most recent judicial determination or finding~~that either inpatient or outpatient treatment was appropriate~~ or in the district court of the county of the petitioner's residence. ~~An individual disqualified from firearms possession due to a comparable out-of-State mental commitment shall make application in the county of residence.~~ The clerk of court upon receipt of the petition shall schedule a hearing using the regularly scheduled commitment court time and provide notice of the hearing to the petitioner and the ~~district attorney.~~ attorney who represented the State in the underlying case, or that attorney's successor. Copies of the petition must be served on the director of the relevant inpatient ~~and~~ or outpatient treatment ~~facility, in State or out-of-State,~~facility and the district attorney in the petitioner's current county of residence.

(c) The burden is on the petitioner to establish by a preponderance of the evidence that the petitioner ~~no longer suffers from the condition that resulted in commitment and no longer poses a danger to self or others for purposes of the purchase, possession, or transfer of firearms pursuant to 18 U.S.C. § 922, G.S. 14-404, and G.S. 14-415.12.~~will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. The district attorney shall present any and all relevant information to the contrary. For these purposes, the district attorney may access and use any and all mental health records, juvenile records, and criminal history of the petitioner wherever maintained. The applicant must sign a release for the district attorney to receive any mental health records of the applicant. This hearing shall be closed to the public, unless the court finds that the public interest would be better served by conducting the hearing in public. If the court determines the hearing should be open to the public, upon motion by the petitioner, the court may allow for the in camera inspection of any mental health records. The court may allow the use of the record but shall restrict it from public disclosure, unless it finds that the public interest would be better served by making the record public. The district court shall enter an order that the petitioner ~~does or does not continue to suffer from the condition that resulted in commitment and does or does not continue to pose a danger to self or others for purposes of the purchase, possession, or transfer of firearms pursuant to 18 U.S.C. § 922, G.S. 14-404, and G.S. 14-415.12.~~is or is not likely to act in a manner dangerous to public safety and that the granting of the relief would or would not be contrary to the public interest. The court shall include in its order the specific findings of fact on which it bases its decision. In making its determination, the court shall consider the circumstances regarding the firearm disabilities from which relief is sought, the petitioner's mental health and criminal history records, the petitioner's reputation, developed at a minimum through character witness statements, testimony, or other character evidence, and any changes in the petitioner's condition or circumstances since the original determination or finding relevant to the relief sought. The decision of the district court may be appealed to the

superior court for a hearing de novo. After a denial by the superior court, the applicant must wait a minimum of one year before reapplying. Attorneys designated by the Attorney General shall be available to represent the State, or assist in the representation of the State, in a restoration proceeding when requested to do so by a district attorney and approved by the Attorney General. An attorney so designated shall have all the powers of the district attorney under this section.

(d) Upon a judicial determination to grant a petition under this section, the clerk of superior court in the county where the petition was granted shall forward the order to the National Instant Criminal Background Check System (NICS) for updating of the respondent's record."

SECTION 10. G.S. 14-415.3 is amended by adding a new subsection to read:

"(c) The provisions of this section shall not apply to a person whose rights have been restored pursuant to G.S. 122C-54.1."

SECTION 11. G.S. 14-415.12(c) reads as rewritten:

"(c) An applicant shall not be ineligible to receive a concealed carry permit under subdivision (6) of subsection (b) of this section because of an adjudication of mental incapacity or illness or an involuntary commitment to mental health services if the individual's rights have been restored under G.S. 122C-54.1."

SECTION 12. G.S. 14-415.17 reads as rewritten:

"**§ 14-415.17. Permit; sheriff to retain ~~and make available to law enforcement agencies a~~ list of ~~permittees.~~permittees; confidentiality of list and permit application information; availability to law enforcement agencies.**

(a) The permit shall be in a certificate form, as prescribed by the Administrative Office of the Courts, that is approximately the size of a North Carolina drivers license. It shall bear the signature, name, address, date of birth, and the drivers license identification number used in applying for the permit.

(b) The sheriff shall maintain a listing, including the identifying information, of those persons who are issued a permit. ~~The permit information shall be available upon request to all State and local law enforcement agencies.~~ Within five days of the date a permit is issued, the sheriff shall send a copy of the permit to the State Bureau of Investigation. ~~The State Bureau of Investigation shall make this information available to law enforcement officers and clerks of court on a statewide system.~~

(c) Except as provided otherwise by this subsection, the list of permit holders and the information collected by the sheriff to process an application for a permit are confidential and are not a public record under G.S. 132-1. The sheriff shall make the list of permit holders and the permit information available upon request to all State and local law enforcement agencies. The State Bureau of Investigation shall make the list of permit holders and the information collected by the sheriff to process an application for a permit available to law enforcement officers and clerks of court on a statewide system."

SECTION 13. G.S. 14-406 reads as rewritten:

"**§ 14-406. Dealer to keep record of ~~sales.~~ sales; confidentiality of records.**

(a) Every dealer in pistols and other weapons mentioned in this Article shall keep an accurate record of all sales thereof, including the name, place of residence, date of sale, etc., of each person, firm, or corporation to whom or which such sales are ~~made, which record shall be open to the inspection of any duly constituted State, county or police officer, within this State.~~made. The records maintained by a dealer pursuant to this section are confidential and are not a public record under G.S. 132-1; provided, however, that the dealer shall make the records available upon request to all State and local law enforcement agencies.

(b) Repealed by Session Laws 2011-56, s. 3, effective April 28, 2011."

SECTION 14. G.S. 14-269.4 reads as rewritten:

"**§ 14-269.4. Weapons on certain State property and in courthouses.**

It shall be unlawful for any person to possess, or carry, whether openly or concealed, any deadly weapon, not used solely for instructional or officially sanctioned ceremonial purposes in the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or on the grounds of any of these buildings, and in any building housing any court of the General Court of Justice. If a court is housed in a building containing nonpublic uses in addition to the court, then this prohibition shall apply only to that portion of the building used for court purposes while the building is being used for court purposes.

This section shall not apply to any of the following:

...

(6) A person with a permit issued in accordance with Article 54B of this ~~Chapter or~~Chapter, with a permit considered valid under ~~G.S. 14-415.24~~G.S. 14-415.24, or who is exempt from obtaining a permit pursuant to G.S. 14-415.25, who has a firearm in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle. A person may unlock the vehicle to enter or exit the vehicle provided the firearm remains in the closed compartment at all times and the vehicle is locked immediately following the entrance or exit.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

SECTION 15. G.S. 14-277.2 is amended by adding a new subsection to read:

"(d) The provisions of this section shall not apply to concealed carry of a handgun at a parade or funeral procession by a person with a valid permit issued in accordance with Article 54B of this Chapter, with a permit considered valid under G.S. 14-415.24, or who is exempt from obtaining a permit pursuant to G.S. 14-415.25. This subdivision shall not be construed to permit a person to carry a concealed handgun on any premises where the person in legal possession or control of the premises has posted a conspicuous notice prohibiting the carrying of a concealed handgun on the premises in accordance with G.S. 14-415.11(c)."

SECTION 16. G.S. 14-415.21 reads as rewritten:

"**§ 14-415.21. Violations of this Article punishable as an infraction.**

(a) A person who has been issued a valid permit who is found to be carrying a concealed handgun without the permit in the person's possession or who fails to disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun, as required by G.S. 14-415.11, shall be guilty of an infraction and shall be punished in accordance with G.S. 14-3.1. In lieu of paying a fine the person may surrender the permit.

(a1) A person who has been issued a valid permit who is found to be carrying a concealed handgun in violation of subdivision (c)(8) or subsection (c2) of G.S. 14-415.11 shall be guilty of a Class 1 misdemeanor.

(b) A person who violates the provisions of this Article other than as set forth in subsection (a) or (a1) of this section is guilty of a Class 2 misdemeanor."

SECTION 17. The following statutes are repealed: G.S. 14-402, 14-403, 14-404, 14-405, and 14-407.1.

SECTION 18. G.S. 14-315(b1) reads as rewritten:

"(b1) Defense. – It shall be a defense to a violation of this section if all of the following conditions are met:

~~(1) The person shows that the minor produced an apparently valid permit to receive the weapon, if such a permit would be required under G.S. 14-402 or G.S. 14-409.1 for transfer of the weapon to an adult.~~

(2) The person reasonably believed that the minor was not a minor.

(3) The person either:

a. Shows that the minor produced a drivers license, a special identification card issued under G.S. 20-37.7, a military identification

card, or a passport, showing the minor's age to be at least the required age for purchase and bearing a physical description of the person named on the card reasonably describing the minor; or

b. Produces evidence of other facts that reasonably indicated at the time of sale that the minor was at least the required age. "

SECTION 19. G.S. 20-187.2(a) reads as rewritten:

"(a) Surviving spouses, or in the event such members die unsurvived by a spouse, surviving children of members of North Carolina State, city and county law-enforcement agencies killed in the line of duty or who are members of such agencies at the time of their deaths, and retiring members of such agencies shall receive upon request and at no cost to them, the badge worn or carried by such deceased or retiring member. The governing body of a law-enforcement agency may, in its discretion, also award to a retiring member or surviving relatives as provided herein, upon request, the service side arm of such deceased or retiring members, at a price determined by such governing body, ~~upon securing a permit as required by G.S. 14-402 et seq. or 14-409.1 et seq.,~~ upon determining that the person receiving the weapon is not ineligible to own, possess, or receive a firearm under the provisions of State or federal law, or ~~without such permit provided the weapon shall have~~if the weapon has been rendered incapable of being fired. Governing body shall mean for county and local alcohol beverage control officers, the county or local board of alcoholic control; for all other law-enforcement officers with jurisdiction limited to a municipality or town, the city or town council; for all other law-enforcement officers with countywide jurisdiction, the board of county commissioners; for all State law-enforcement officers, the head of the department."

SECTION 20. G.S. 14-415.18 reads as rewritten:

"**§ 14-415.18. Revocation or suspension of permit.**

(a) The sheriff of the county where the permit was issued or the sheriff of the county where the person resides may revoke a permit subsequent to a hearing for any of the following reasons:

(1) Fraud or intentional and material misrepresentation in the obtaining of a permit.

(2) Misuse of a permit, including lending or giving a permit or a duplicate permit to another person, materially altering a permit, or using a permit with the intent to unlawfully cause harm to a person or property. It shall not be considered misuse of a permit to provide a duplicate of the permit to a vender for record-keeping purposes.

(3) The doing of an act or existence of a condition which would have been grounds for the denial of the permit by the sheriff.

(4) The violation of any of the terms of this Article.

~~(5) The applicant is adjudicated guilty of or receives a prayer for judgment continued for a crime which would have disqualified the applicant from initially receiving a permit.~~

A permittee may appeal the revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the applicant resides. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal.

(a1) The sheriff of the county where the permit was issued or the sheriff of the county where the person resides shall revoke a permit of any permittee who is adjudicated guilty of or receives a prayer for judgment continued for a crime which would have disqualified the permittee from initially receiving a permit. Upon determining that a permit should be revoked pursuant to this subsection, the sheriff shall provide written notice to the permittee, pursuant to the provisions of G.S. 1A-1, Rule 4(j), that the permit is revoked upon the service of the notice. The notice shall provide the permittee with information on the process to appeal the revocation.

Upon receipt of the written notice of revocation, the permittee shall surrender the permit to the sheriff. Any law enforcement officer serving the notice is authorized to take immediate possession of the permit from the permittee. If the notice is served by means other than by a law enforcement officer, the permittee shall surrender the permit to the sheriff no later than 48 hours after service of the notice.

A permittee may appeal the revocation of a permit pursuant to this subsection by petitioning a district court judge of the district in which the permittee resides. The determination by the court, on appeal, shall be limited to whether the permittee was adjudicated guilty of or received a prayer for judgment continued for a crime which would have disqualified the permittee from initially receiving a permit. Revocation of the permit is not stayed pending appeal.

(b) The court may suspend a permit as part of and for the duration of any orders permitted under Chapter 50B of the General Statutes."

SECTION 21. G.S. 14-269(b) is amended by adding the following new subdivisions to read:

"(4d) Any person who is a North Carolina district court judge, North Carolina superior court judge, or a North Carolina magistrate and who has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24; provided that the person shall not carry a concealed weapon at any time while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the person's body. The judge or magistrate shall secure the weapon in a locked compartment when the weapon is not on the person of the judge or magistrate;

(4e) Any person who is elected and serving as a clerk of court or as a register of deeds and who has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24; provided that the person shall not carry a concealed weapon at any time while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the person's body. The clerk of court or register of deeds shall secure the weapon in a locked compartment when the weapon is not on the person of the clerk of court or register of deeds;"

SECTION 22. G.S. 14-415.27 reads as rewritten:

"**§ 14-415.27. Expanded permit scope for ~~district attorneys, assistant district attorneys, and investigators employed by office of the district attorney~~certain persons.**

Notwithstanding G.S. 14-415.11(c), any ~~person who is a district attorney, an assistant district attorney, or an investigator employed by the office of a district attorney and~~ of the following persons who has a concealed handgun permit issued pursuant to this Article or that is considered valid under G.S. 14-415.24 is not subject to the area prohibitions set out in G.S. 14-415.11(c) and may carry a concealed handgun in the areas listed in G.S. 14-415.11(c) unless otherwise prohibited by federal ~~law.~~law:

(1) A district attorney.
(2) An assistant district attorney.
(3) An investigator employed by the office of a district attorney.
(4) A North Carolina district or superior court judge.
(5) A magistrate.
(6) A person who is elected and serving as a clerk of court.
(7) A person who is elected and serving as a register of deeds."

SECTION 23. G.S. 113-291.1(c) reads as rewritten:

"(c) It is a Class 1 misdemeanor for any person taking wildlife to have in ~~his~~ the person's possession any:

~~(1) Firearm equipped with a silencer or any device designed to silence, muffle, or minimize the report of the firearm. The firearm is considered equipped with the silencer or device whether it is attached to the firearm or separate but reasonably accessible for attachment during the taking of the wildlife.~~

(2) Weapon of mass death and destruction as defined in ~~G.S. 14-288.8.~~G.S. 14-288.8, other than a suppressor or other device designed to muffle or minimize the report of a firearm that is lawfully possessed by a person in compliance with 26 U.S.C. Chapter 53 §§ 5801-5871.

The Wildlife Resources Commission may prohibit individuals training dogs or taking particular species from carrying axes, saws, tree-climbing equipment, and other implements that may facilitate the unlawful taking of wildlife, except tree-climbing equipment may be carried and used by persons lawfully taking raccoons and opossums during open season."

SECTION 24. G.S. 14-415.10 reads as rewritten:

"**§ 14-415.10. Definitions.**

The following definitions apply to this Article:

...

(4a) Qualified retired law enforcement officer. – An individual who meets the definition of "qualified retired law enforcement officer" contained in section 926C of Title 18 of the United States Code.~~all of the following qualifications:~~

~~a. Retired in good standing from service with a public agency located in the United States as a law enforcement officer, other than for reasons of mental instability.~~

~~b. Prior to retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of, any person for any violation of law, and had statutory powers of arrest.~~

~~c. Prior to retirement, was regularly employed as a law enforcement officer for a total of 15 years or more, or retired after completing probationary periods of service due to a service-connected disability, as determined by the agency.~~

~~d. Has a vested right to benefits under the retirement plan of the agency.~~

..."

SECTION 25. G.S. 14-269(b) reads as rewritten:

"(b) This prohibition shall not apply to the following persons:

...

(4b) Any person who is a qualified retired law enforcement officer as defined in G.S. 14-415.10 and meets ~~all~~ any one of the following conditions:

~~a. Is a qualified retired law enforcement officer as defined in G.S. 14-415.10.~~

~~b.~~a. Is the holder of a concealed handgun permit in accordance with Article 54B of this Chapter.

b. Is exempt from obtaining a permit pursuant to G.S. 14-415.25.

c. Is certified by the North Carolina Criminal Justice Education and Training Standards Commission pursuant to G.S. 14-415.26;

..."

SECTION 26. Sections 1 through 6, 14 through 18, 21, 23, and 25 of this act become effective October 1, 2013, and apply to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions. The remainder of this act becomes effective October 1, 2013.

HOUSE BILL 937:
Amend Various Firearms Laws

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 11, 2013
Introduced by:	Reps. Schaffer, Burr, Faircloth, Cleveland	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to Second Edition H937-CSSA-50		

SUMMARY: This PCS for H937 makes various changes to the firearms laws.

BILL ANALYSIS:

Section 1 would specifically provide in statute that a person with a concealed carry permit may have a handgun in a closed compartment in a locked vehicle that is in a parking lot owned or leased by State government.

Section 2 would make changes to the statute prohibiting firearms on educational property to allow certain persons to possess a handgun on certain educational property under specific conditions as follows:

- Employees of colleges and universities, and of boarding schools, who reside on campus in a detached, single family dwelling where only they and their immediate family reside, may have a handgun on the premises of their residence. If they have a concealed carry permit, they may also keep a handgun in their locked vehicle. Private schools have the option to specifically prohibit possession pursuant to these provisions.
- Authorizes anyone with a concealed carry permit to have a handgun in a locked vehicle on any educational property.

Section 3 would authorize a person with a concealed carry permit to carry a concealed handgun at assemblies where an admission fee is charged and any establishment that serves alcohol unless the person in control of the premises has posted a notice prohibiting carrying a concealed handgun on the premises.

Section 4 would amend the statute creating a criminal offense for permitting young children to use a firearm. Under current law it is unlawful for anyone other than a parent, guardian, or person standing in loco parentis to permit a child under 12 to use a firearm without supervision by the parent, guardian, or person standing in loco parentis. This section would require parent or guardian permission for any person to allow a child under 12 to have access to, or possess a firearm and would require adult supervision, but the supervision could be provided by any adult with the parent or guardian's permission.

Section 5 would amend the statute that provides for an enhanced sentence when a defendant uses, displays or threatens to use or display a firearm in the commission of a felony. Current law provides an additional 60 month sentence upon conviction of a Class A through E felony. This section would increase the enhancement for an A through E felony to 72 months, and would provide an enhanced sentence of 36 months for an F or G felony, and an enhanced sentence of 12 months for a Class H or I felony.

Section 6 would amend the statute designating the areas in which local governments can regulate the possession of concealed handguns by more specifically defining the term "recreational facilities" and also specifically excluding certain areas from the definition.

Sections 7 and 8 would specify what mental health determinations must be transferred by the clerk of court to the National Instant Criminal Background Check System (NICS) and require the transmission be done within 48 hours, excluding weekends and holidays, of receipt by the clerk of the judicial determination. The Administrative Office of the Courts shall adopt rules to ensure transmission in a uniform manner.

Sections 9 through 11 would make changes to various statutes governing the reinstatement of the right to possess firearms after certain mental health determinations or findings and would create a process that applies to all determinations or findings. These sections make clarifying changes to several statutes.

Sections 12 and 13 would amend the statutes relating to records of concealed carry permits and sale of weapons to provide that they are not public records under the public records law. The records still remain available upon request to all State and local law enforcement agencies.

Section 14 would amend G.S. 14-269.4, which prohibits weapons on specified State property, to clarify that the current exemption for concealed carry permit holders also applies to those who are exempt from obtaining a concealed carry permit by virtue of federal law which authorizes them to carry concealed as current and retired law enforcement officers.

Section 15 would amend G.S. 14-277.2, which prohibits weapons at parades, funeral processions, picket lines, or demonstrations, to provide an exception that allows a person with a concealed carry permit to carry a concealed handgun at parades and funeral processions, so long as the person in legal possession or control of the property on which they are carrying concealed has not posted a notice prohibiting concealed handguns.

Section 16 would amend G.S. 14-415.21, which provides criminal penalties for violating the conditions of a concealed carry permit, to increase the penalty for carrying concealed on property that has a posted notice prohibiting concealed carry and for carrying concealed while consuming alcohol or with any amount of alcohol in the person's system, from a Class 2 misdemeanor to a Class 1 misdemeanor.

Sections 17 through 19 would repeal the requirement that a person have a pistol permit to purchase a handgun or a blank cartridge pistol, and also the statutes relating to issuance of that permit.

Section 20 would require a sheriff to revoke the concealed carry permit of any permittee who is adjudicated guilty of or receives a prayer for judgment continued for a crime which would have disqualified the permittee from initially receiving a permit.

Sections 21 and 22 would provide that any North Carolina district court or superior court judge, magistrate, clerk of court, or register of deeds who has a concealed handgun permit is exempt from the general prohibition against carrying a concealed weapon and from the prohibitions against carrying a weapon on certain premises or in certain circumstances.

Section 23 would allow hunting with a suppressor or other device designed to muffle or minimize the report of a firearm.

Sections 24 and 25 would amend the definition of "qualified retired law enforcement officer" as it applies to carrying a concealed handgun to make it consistent with the definition in federal law for which this definition is used and make clarifying changes.

EFFECTIVE DATE: Sections 1 through 6, 14 through 18, 23, and 25 of this act become effective October 1, 2013, and apply to offenses committed on or after that date. Prosecutions for offenses

committed before the effective date of this act are not abated or affected by this act, and the statues that would be applicable but for this act remain applicable to those prosecution. The remainder of this act becomes effective October 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 937
Committee Substitute Favorable 4/24/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H937-CSSA-50 [v.4]
6/10/2013 5:07:35 PM

Short Title: Amend Various Firearms Laws. (Public)

Sponsors:

Referred to:

April 15, 2013

A BILL TO BE ENTITLED

AN ACT TO INCREASE PENALTIES FOR CERTAIN CRIMES IN WHICH A FIREARM IS USED, DISPLAYED, OR THERE IS A THREAT TO USE OR DISPLAY A FIREARM; TO MAKE IT A CRIMINAL OFFENSE FOR ANYONE TO PERMIT A CHILD TO HAVE ACCESS TO OR POSSESS A FIREARM WITHOUT SUPERVISION AND PARENTAL CONSENT; TO PROVIDE THAT A PERSON WHO HAS A VALID CONCEALED HANDGUN PERMIT MAY DO ALL OF THE FOLLOWING: HAVE A CONCEALED HANDGUN IN A LOCKED VEHICLE IN A STATE GOVERNMENT PARKING LOT, HAVE A CONCEALED HANDGUN IN A LOCKED COMPARTMENT IN A VEHICLE ON EDUCATIONAL PROPERTY, AND CARRY A HANDGUN INTO AN ASSEMBLY WHERE AN ADMISSION FEE IS CHARGED OR AN ESTABLISHMENT WHERE ALCOHOLIC BEVERAGES ARE SOLD AND CONSUMED, OR AT A PARADE OR FUNERAL PROCESSION, UNLESS THE PERSON IN LEGAL POSSESSION OR CONTROL OF THE PREMISES HAS POSTED A NOTICE PROHIBITING THE CARRYING OF HANDGUNS ON THE PREMISES; TO PROVIDE THAT AN EMPLOYEE OF AN INSTITUTION OF HIGHER EDUCATION WHO LIVES IN A CERTAIN TYPE OF CAMPUS RESIDENCE MAY CARRY A HANDGUN ON THE EMPLOYEE'S RESIDENTIAL PREMISES AND IN SOME INSTANCES ALSO KEEP THE GUN IN THE EMPLOYEE'S LOCKED VEHICLE IN THE PARKING AREA OF THE INSTITUTION OF HIGHER EDUCATION; TO CLARIFY THE LAW ON LOCAL GOVERNMENT AUTHORITY TO PROHIBIT CONCEALED CARRY OF FIREARMS; TO ESTABLISH UNIFORM STATE REQUIREMENTS FOR REPORTING INFORMATION CONCERNING MENTAL HEALTH AND SUBSTANCE ABUSE JUDICIAL DETERMINATIONS OR FINDINGS TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM AND TO MAKE THESE REQUIREMENTS MORE CONSISTENT WITH FEDERAL FIREARMS LAW; TO PROVIDE FOR THE CONFIDENTIALITY OF INFORMATION REGARDING CONCEALED HANDGUN PERMITS AND SALE OF HANDGUNS; TO CLOSE THE LOOPHOLE ON USING PISTOL PERMITS TO AVOID A BACKGROUND CHECK WHEN PURCHASING A HANDGUN; TO REQUIRE REVOCATION OF A CONCEALED HANDGUN PERMIT UPON CONVICTION OF A DISQUALIFYING OFFENSE; TO PROVIDE THAT ANY NORTH CAROLINA DISTRICT OR SUPERIOR COURT JUDGE, MAGISTRATE, CLERK OF COURT, OR REGISTER OF DEEDS WHO HAS A CONCEALED HANDGUN PERMIT THAT IS VALID IN NORTH CAROLINA IS EXEMPT FROM THE GENERAL PROHIBITION

AGAINST CARRYING A CONCEALED WEAPON AND FROM THE PROHIBITIONS AGAINST CARRYING A WEAPON ON CERTAIN PREMISES OR IN CERTAIN CIRCUMSTANCES; TO ALLOW HUNTING WITH A SUPPRESSOR OR OTHER DEVICE DESIGNED TO MUFFLE OR MINIMIZE THE REPORT OF A FIREARM; AND TO MAKE THE DEFINITION OF QUALIFIED RETIRED LAW ENFORCEMENT OFFICER CONSISTENT WITH FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-269 is amended by adding a new subsection to read:

"(a2) This prohibition does not apply to a person who has a concealed handgun permit issued in accordance with Article 54B of this Chapter, has a concealed handgun permit considered valid under G.S. 14-415.24, or is exempt from obtaining a permit pursuant to G.S. 14-415.25, provided the weapon is a handgun, is in a closed compartment or container within the person's locked vehicle, and the vehicle is in a parking area that is owned or leased by State government. A person may unlock the vehicle to enter or exit the vehicle, provided the handgun remains in the closed compartment at all times and the vehicle is locked immediately following the entrance or exit."

SECTION 2. G.S. 14-269.2 is amended by adding the following new subsections to read:

"(i) The provisions of this section shall not apply to an employee of an institution of higher education as defined in G.S. 116-143.1 or a nonpublic post-secondary educational institution who resides on the campus of the institution at which the person is employed when all of the following criteria are met:

(1) The employee's residence is a detached, single-family dwelling in which only the employee and the employee's immediate family reside.

(2) The institution is either:

a. An institution of higher education as defined by G.S. 116-143.1.

b. A nonpublic post-secondary educational institution that has not specifically prohibited the possession of a handgun pursuant to this subsection.

(3) The weapon is a handgun.

(4) The handgun is possessed in one of the following manners as appropriate:

a. If the employee has a concealed handgun permit that is valid under Article 54B of this Chapter, or who is exempt from obtaining a permit pursuant to that Article, the handgun may be on the premises of the employee's residence or in a closed compartment or container within the employee's locked vehicle that is located in a parking area of the educational property of the institution at which the person is employed and resides. Except for direct transfer between the residence and the vehicle, the handgun must remain at all times either on the premises of the employee's residence or in the closed compartment of the employee's locked vehicle. The employee may unlock the vehicle to enter or exit, but must lock the vehicle immediately following the entrance or exit if the handgun is in the vehicle.

b. If the employee is not authorized to carry a concealed handgun pursuant to Article 54B of this Chapter, the handgun may be on the premises of the employee's residence, and may only be in the employee's vehicle when the vehicle is occupied by the employee and the employee is immediately leaving the campus or is driving directly to their residence from off campus. The employee may possess the handgun on the employee's person outside the premises

of the employee's residence when making a direct transfer of the handgun from the residence to the employee's vehicle when the employee is immediately leaving the campus or from the employee's vehicle to the residence when the employee is arriving at the residence from off campus.

(j) The provisions of this section shall not apply to an employee of a public or nonpublic school who resides on the campus of the school at which the person is employed when all of the following criteria are met:

(1) The employee's residence is a detached, single-family dwelling in which only the employee and the employee's immediate family reside.

(2) The school is either:

a. A public school which provides residential housing for enrolled students.

b. A nonpublic school which provides residential housing for enrolled students and has not specifically prohibited the possession of a handgun pursuant to this subsection.

(3) The weapon is a handgun.

(4) The handgun is possessed in one of the following manners as appropriate:

a. If the employee has a concealed handgun permit that is valid under Article 54B of this Chapter, or who is exempt from obtaining a permit pursuant to that Article, the handgun may be on the premises of the employee's residence or in a closed compartment or container within the employee's locked vehicle that is located in a parking area of the educational property of the school at which the person is employed and resides. Except for direct transfer between the residence and the vehicle, the handgun must remain at all times either on the premises of the employee's residence or in the closed compartment of the employee's locked vehicle. The employee may unlock the vehicle to enter or exit, but must lock the vehicle immediately following the entrance or exit if the handgun is in the vehicle.

b. If the employee is not authorized to carry a concealed handgun pursuant to Article 54B of this Chapter, the handgun may be on the premises of the employee's residence, and may only be in the employee's vehicle when the vehicle is occupied by the employee and the employee is immediately leaving the campus or is driving directly to their residence from off campus. The employee may possess the handgun on the employee's person outside the premises of the employee's residence when making a direct transfer of the handgun from the residence to the employee's vehicle when the employee is immediately leaving the campus or from the employee's vehicle to the residence when the employee is arriving at the residence from off campus.

(k) The provisions of this section shall not apply to a person who has a concealed handgun permit that is valid under Article 54B of this Chapter, or who is exempt from obtaining a permit pursuant to that Article, who has a handgun in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle. A person may unlock the vehicle to enter or exit the vehicle provided the firearm remains in the closed compartment at all times and the vehicle is locked immediately following the entrance or exit."

SECTION 3. G.S. 14-269.3(b) reads as rewritten:

"(b) This section shall not apply to any of the following:

(1) A person exempted from the provisions of ~~G.S. 14-269;~~G.S. 14-269.

(2) The owner or lessee of the premises or business ~~establishment;~~establishment.

(3) A person participating in the event, if ~~he~~ the person is carrying a gun, rifle, or pistol with the permission of the owner, lessee, or person or organization sponsoring the ~~event; and~~event.

(4) A person registered or hired as a security guard by the owner, lessee, or person or organization sponsoring the event.

(5) A person carrying a handgun if the person has a valid concealed handgun permit issued in accordance with Article 54B of this Chapter, has a concealed handgun permit considered valid under G.S. 14-415.24, or is exempt from obtaining a permit pursuant to G.S. 14-415.25. This subdivision shall not be construed to permit a person to carry a handgun on any premises where the person in legal possession or control of the premises has posted a conspicuous notice prohibiting the carrying of a concealed handgun on the premises in accordance with G.S. 14-415.11(c)."

SECTION 4. G.S. 14-316 reads as rewritten:

"**§ 14-316. Permitting young children to use dangerous firearms.**

(a) It shall be unlawful for any ~~parent, guardian, or person standing in loco parentis;~~person to knowingly permit ~~his~~ a child under the age of 12 years to have ~~the~~ access to, or possession, custody or use in any manner whatever, of, any gun, pistol or other dangerous firearm, whether such weapon be loaded or unloaded, ~~except when such~~ unless the person has the permission of the child's parent or guardian, and the child is under the supervision of ~~the parent, guardian or person standing in loco parentis. It shall be unlawful for any other person to knowingly furnish such child any weapon enumerated herein.~~an adult. Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

(b) Air rifles, air pistols, and BB guns shall not be deemed "dangerous firearms" within the meaning of subsection (a) of this section except in the following counties: Anson, Caldwell, Caswell, Chowan, Cleveland, Cumberland, Durham, Forsyth, Gaston, Harnett, Haywood, Mecklenburg, Stanly, Stokes, Surry, Union, Vance."

SECTION 5. G.S. 15A-1340.16A reads as rewritten:

"**§ 15A-1340.16A. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony and the defendant used, displayed, or threatened to use or display a firearm or deadly weapon during the commission of the felony.**

(a), (b) Repealed by Session Laws 2003-378, s. 2, effective August 1, 2003.

(c) If a person is convicted of a ~~Class A, B1, B2, C, D, or E~~ felony and it is found as provided in this section that: (i) the person committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and (ii) the person actually possessed the firearm or deadly weapon about his or her person, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased ~~by 60 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 60 months, as specified in G.S. 15A-1340.17(e) and (e1).~~ as follows:

(1) If the felony is a Class A, B1, B2, C, D, or E felony, the minimum term of imprisonment to which the person is sentenced for that felony shall be increased by 72 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 72 months, as specified in G.S. 15A-1340.17(e) and (e1).

(2) If the felony is a Class F or G felony, the minimum term of imprisonment to which the person is sentenced for that felony shall be increased by 36 months. The maximum term of imprisonment shall be the maximum term

that corresponds to the minimum term after it is increased by 36 months, as specified in G.S. 15A-1340.17(d).

(3) If the felony is a Class H or I felony, the minimum term of imprisonment to which the person is sentenced for that felony shall be increased by 12 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 12 months, as specified in G.S. 15A-1340.17(d).

(d) An indictment or information for the ~~Class A, B1, B2, C, D, or E~~ felony shall allege in that indictment or information the facts set out in subsection (c) of this section. The pleading is sufficient if it alleges that the defendant committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and the defendant actually possessed the firearm or deadly weapon about the defendant's person. One pleading is sufficient for all ~~Class A, B1, B2, C, D, or E~~ felonies that are tried at a single trial.

(e) The State shall prove the issues set out in subsection (c) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to the issues. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issues set out in subsection (c) of this section, then a jury shall be impaneled to determine the issues.

(f) Subsection (c) of this section does not apply if the evidence of the use, display, or threatened use or display of the firearm or deadly weapon is needed to prove an element of the felony or if the person is not sentenced to an active term of imprisonment."

SECTION 6. G.S. 14-415.23 reads as rewritten:

"**§ 14-415.23. Statewide uniformity.**

(a) It is the intent of the General Assembly to prescribe a uniform system for the regulation of legally carrying a concealed handgun. To insure uniformity, no political subdivisions, boards, or agencies of the State nor any county, city, municipality, municipal corporation, town, township, village, nor any department or agency thereof, may enact ordinances, rules, or regulations concerning legally carrying a concealed handgun. A unit of local government may adopt an ordinance to permit the posting of a prohibition against carrying a concealed handgun, in accordance with G.S. 14-415.11(c), on local government buildings and their appurtenant premises.

(b) A unit of local government may adopt an ordinance to prohibit, by posting, the carrying of a concealed handgun on municipal and county recreational facilities that are specifically identified by the unit of local government. If a unit of local government adopts such an ordinance with regard to recreational facilities, then the concealed handgun permittee may, nevertheless, secure the handgun in a locked vehicle within the trunk, glove box, or other enclosed compartment or area within or on the motor vehicle.

(c) For purposes of this section, the term "recreational facilities" includes only the following: ~~a playground, an athletic field, a swimming pool, and an athletic facility.~~

(1) An athletic field, including any appurtenant facilities such as restrooms, during an organized athletic event if the field had been scheduled for use with the municipality or county office responsible for operation of the park or recreational area.

(2) A swimming pool, including any appurtenant facilities used for dressing, storage of personal items, or other uses relating to the swimming pool.

(3) A facility used for athletic events, including, but not limited to, a gymnasium.

(d) For the purposes of this section, the term "recreational facilities" does not include any greenway, designated biking or walking path, an area that is customarily used as a walkway or bike path although not specifically designated for such use, open areas or fields where athletic events may occur unless the area qualifies as an "athletic field" pursuant to

subdivision (1) of subsection (c) of this section, and any other area that is not specifically described in subsection (c) of this section."

SECTION 7. G.S. 122C-54(d1) reads as rewritten:

"(d1) ~~After a judicial determination that an individual shall be involuntarily committed for either inpatient or outpatient mental health treatment pursuant to Article 5 of this Chapter, the clerk of superior court in the county where the judicial determination was made shall, as soon as practicable, cause a report of the commitment to be transmitted to the National Instant Criminal Background Check System (NICS). Reporting of an individual involuntarily committed to outpatient mental health treatment under this subsection shall only be reported if the individual is found to be a danger to self or others. The clerk shall also cause to be transmitted to NICS a record where an individual is found not guilty by reason of insanity or found mentally incompetent to proceed to criminal trial. The clerk, upon receipt of documentation that an affected individual has received a relief from disabilities pursuant to G.S. 122C-54.1 or any applicable federal law, shall cause the individual's record in NICS to be updated.~~ Excluding Saturdays, Sundays, and holidays, not later than 48 hours after receiving notice of any of the following judicial determinations or findings, the clerk of superior court in the county where the determination or finding was made shall cause a record of the determination or finding to be transmitted to the National Instant Criminal Background Check System (NICS):

(1) A determination that an individual shall be involuntarily committed to a facility for inpatient mental health treatment upon a finding that the individual is mentally ill and a danger to self or others.

(2) A determination that an individual shall be involuntarily committed to a facility for outpatient mental health treatment upon a finding that the individual is mentally ill and, based on the individual's treatment history, in need of treatment in order to prevent further disability or deterioration that would predictably result in a danger to self or others.

(3) A determination that an individual shall be involuntarily committed to a facility for substance abuse treatment upon a finding that the individual is a substance abuser and a danger to self or others.

(4) A finding that an individual is not guilty by reason of insanity.

(5) A finding that an individual is mentally incompetent to proceed to criminal trial.

(6) A finding that an individual lacks the capacity to manage the individual's own affairs due to marked subnormal intelligence or mental illness, incompetency, condition, or disease.

(7) A determination to grant a petition to an individual for the removal of disabilities pursuant to G.S. 122C-54.1 or any applicable federal law.

The 48-hour period for transmitting a record of a judicial determination or finding to the NICS under this subsection begins upon receipt by the clerk of a copy of the judicial determination or finding."

SECTION 8. The last two sentences of G.S. 122C-54(d1) are recodified as G.S. 122C-54(d2) and read as rewritten:

"(d2) The record of involuntary commitment for inpatient or outpatient mental health treatment or for substance abuse treatment required by subsection (d1) of this section shall be accessible only by an entity having proper access to NICS and shall remain otherwise confidential as provided by this Article. ~~The clerk shall effect the transmissions to NICS required by the subsection according to protocols which shall be established by the Administrative Office of the Courts.~~The Administrative Office of the Courts shall adopt rules to require clerks of court to transmit information to the NICS as required by subsection (d1) of this section in a uniform manner."

SECTION 9. G.S. 122C-54.1 reads as rewritten:

"**§ 122C-54.1. Restoration process to remove mental commitment bar.**

(a) Any individual over the age of 18 may petition for the removal of the ~~mental commitment bar to purchase, possess, or transfer a firearm when the individual no longer suffers from the condition that resulted in the individual's involuntary commitment for either inpatient or outpatient mental health treatment pursuant to Article 5 of this Chapter and no longer poses a danger to self or others for purposes of the purchase, possession, or transfer of firearms pursuant to 18 U.S.C. § 922, G.S. 14-404, and G.S. 14-415.12.~~disabilities pursuant to 18 U.S.C. § 922(d)(4) and (g)(4), G.S. 14-415.3, and G.S. 14-415.12 arising out of a determination or finding required to be transmitted to the National Instant Criminal Background Check System by subdivisions (1) through (6) of subsection (d1) of G.S. 122C-54. The individual may file the petition with a district court judge upon the expiration of any current inpatient or outpatient commitment. ~~No individual who has been found not guilty by reason of insanity may petition a court for restoration under this section.~~

(b) The petition must be filed in the district court of the county where the respondent was the subject of the most recent judicial determination or finding~~that either inpatient or outpatient treatment was appropriate~~ or in the district court of the county of the petitioner's residence. ~~An individual disqualified from firearms possession due to a comparable out-of-State mental commitment shall make application in the county of residence.~~ The clerk of court upon receipt of the petition shall schedule a hearing using the regularly scheduled commitment court time and provide notice of the hearing to the petitioner and the ~~district attorney.~~ attorney who represented the State in the underlying case, or that attorney's successor. Copies of the petition must be served on the director of the relevant inpatient ~~and~~ or outpatient treatment ~~facility, in State or out-of-State,~~facility and the district attorney in the petitioner's current county of residence.

(c) The burden is on the petitioner to establish by a preponderance of the evidence that the petitioner ~~no longer suffers from the condition that resulted in commitment and no longer poses a danger to self or others for purposes of the purchase, possession, or transfer of firearms pursuant to 18 U.S.C. § 922, G.S. 14-404, and G.S. 14-415.12.~~will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. The district attorney shall present any and all relevant information to the contrary. For these purposes, the district attorney may access and use any and all mental health records, juvenile records, and criminal history of the petitioner wherever maintained. The applicant must sign a release for the district attorney to receive any mental health records of the applicant. This hearing shall be closed to the public, unless the court finds that the public interest would be better served by conducting the hearing in public. If the court determines the hearing should be open to the public, upon motion by the petitioner, the court may allow for the in camera inspection of any mental health records. The court may allow the use of the record but shall restrict it from public disclosure, unless it finds that the public interest would be better served by making the record public. The district court shall enter an order that the petitioner ~~does or does not continue to suffer from the condition that resulted in commitment and does or does not continue to pose a danger to self or others for purposes of the purchase, possession, or transfer of firearms pursuant to 18 U.S.C. § 922, G.S. 14-404, and G.S. 14-415.12.~~is or is not likely to act in a manner dangerous to public safety and that the granting of the relief would or would not be contrary to the public interest. The court shall include in its order the specific findings of fact on which it bases its decision. In making its determination, the court shall consider the circumstances regarding the firearm disabilities from which relief is sought, the petitioner's mental health and criminal history records, the petitioner's reputation, developed at a minimum through character witness statements, testimony, or other character evidence, and any changes in the petitioner's condition or circumstances since the original determination or finding relevant to the relief sought. The decision of the district court may be appealed to the

superior court for a hearing de novo. After a denial by the superior court, the applicant must wait a minimum of one year before reapplying. Attorneys designated by the Attorney General shall be available to represent the State, or assist in the representation of the State, in a restoration proceeding when requested to do so by a district attorney and approved by the Attorney General. An attorney so designated shall have all the powers of the district attorney under this section.

(d) Upon a judicial determination to grant a petition under this section, the clerk of superior court in the county where the petition was granted shall forward the order to the National Instant Criminal Background Check System (NICS) for updating of the respondent's record."

SECTION 10. G.S. 14-415.3 is amended by adding a new subsection to read:

"(c) The provisions of this section shall not apply to a person whose rights have been restored pursuant to G.S. 122C-54.1."

SECTION 11. G.S. 14-415.12(c) reads as rewritten:

"(c) An applicant shall not be ineligible to receive a concealed carry permit under subdivision (6) of subsection (b) of this section because of an adjudication of mental incapacity or illness or an involuntary commitment to mental health services if the individual's rights have been restored under G.S. 122C-54.1."

SECTION 12. G.S. 14-415.17 reads as rewritten:

"**§ 14-415.17. Permit; sheriff to retain ~~and make available to law enforcement agencies a~~ list of ~~permittees.~~permittees; confidentiality of list and permit application information; availability to law enforcement agencies.**

(a) The permit shall be in a certificate form, as prescribed by the Administrative Office of the Courts, that is approximately the size of a North Carolina drivers license. It shall bear the signature, name, address, date of birth, and the drivers license identification number used in applying for the permit.

(b) The sheriff shall maintain a listing, including the identifying information, of those persons who are issued a permit. ~~The permit information shall be available upon request to all State and local law enforcement agencies.~~ Within five days of the date a permit is issued, the sheriff shall send a copy of the permit to the State Bureau of Investigation. ~~The State Bureau of Investigation shall make this information available to law enforcement officers and clerks of court on a statewide system.~~

(c) Except as provided otherwise by this subsection, the list of permit holders and the information collected by the sheriff to process an application for a permit are confidential and are not a public record under G.S. 132-1. The sheriff shall make the list of permit holders and the permit information available upon request to all State and local law enforcement agencies. The State Bureau of Investigation shall make the list of permit holders and the information collected by the sheriff to process an application for a permit available to law enforcement officers and clerks of court on a statewide system."

SECTION 13. G.S. 14-406 reads as rewritten:

"**§ 14-406. Dealer to keep record of ~~sales.~~ sales; confidentiality of records.**

(a) Every dealer in pistols and other weapons mentioned in this Article shall keep an accurate record of all sales thereof, including the name, place of residence, date of sale, etc., of each person, firm, or corporation to whom or which such sales are ~~made, which record shall be open to the inspection of any duly constituted State, county or police officer, within this State.~~made. The records maintained by a dealer pursuant to this section are confidential and are not a public record under G.S. 132-1; provided, however, that the dealer shall make the records available upon request to all State and local law enforcement agencies.

(b) Repealed by Session Laws 2011-56, s. 3, effective April 28, 2011."

SECTION 14. G.S. 14-269.4 reads as rewritten:

"**§ 14-269.4. Weapons on certain State property and in courthouses.**

It shall be unlawful for any person to possess, or carry, whether openly or concealed, any deadly weapon, not used solely for instructional or officially sanctioned ceremonial purposes in the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or on the grounds of any of these buildings, and in any building housing any court of the General Court of Justice. If a court is housed in a building containing nonpublic uses in addition to the court, then this prohibition shall apply only to that portion of the building used for court purposes while the building is being used for court purposes.

This section shall not apply to any of the following:

...

(6) A person with a permit issued in accordance with Article 54B of this ~~Chapter or~~Chapter, with a permit considered valid under ~~G.S. 14-415.24~~G.S. 14-415.24, or who is exempt from obtaining a permit pursuant to G.S. 14-415.25, who has a firearm in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle. A person may unlock the vehicle to enter or exit the vehicle provided the firearm remains in the closed compartment at all times and the vehicle is locked immediately following the entrance or exit.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

SECTION 15. G.S. 14-277.2 is amended by adding a new subsection to read:

"(d) The provisions of this section shall not apply to concealed carry of a handgun at a parade or funeral procession by a person with a valid permit issued in accordance with Article 54B of this Chapter, with a permit considered valid under G.S. 14-415.24, or who is exempt from obtaining a permit pursuant to G.S. 14-415.25. This subdivision shall not be construed to permit a person to carry a concealed handgun on any premises where the person in legal possession or control of the premises has posted a conspicuous notice prohibiting the carrying of a concealed handgun on the premises in accordance with G.S. 14-415.11(c)."

SECTION 16. G.S. 14-415.21 reads as rewritten:

"**§ 14-415.21. Violations of this Article punishable as an infraction.**

(a) A person who has been issued a valid permit who is found to be carrying a concealed handgun without the permit in the person's possession or who fails to disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun, as required by G.S. 14-415.11, shall be guilty of an infraction and shall be punished in accordance with G.S. 14-3.1. In lieu of paying a fine the person may surrender the permit.

(a1) A person who has been issued a valid permit who is found to be carrying a concealed handgun in violation of subdivision (c)(8) or subsection (c2) of G.S. 14-415.11 shall be guilty of a Class 1 misdemeanor.

(b) A person who violates the provisions of this Article other than as set forth in subsection (a) or (a1) of this section is guilty of a Class 2 misdemeanor."

SECTION 17. The following statutes are repealed: G.S. 14-402, 14-403, 14-404, 14-405, and 14-407.1.

SECTION 18. G.S. 14-315(b1) reads as rewritten:

"(b1) Defense. – It shall be a defense to a violation of this section if all of the following conditions are met:

~~(1) The person shows that the minor produced an apparently valid permit to receive the weapon, if such a permit would be required under G.S. 14-402 or G.S. 14-409.1 for transfer of the weapon to an adult.~~

(2) The person reasonably believed that the minor was not a minor.

(3) The person either:

a. Shows that the minor produced a drivers license, a special identification card issued under G.S. 20-37.7, a military identification

card, or a passport, showing the minor's age to be at least the required age for purchase and bearing a physical description of the person named on the card reasonably describing the minor; or

b. Produces evidence of other facts that reasonably indicated at the time of sale that the minor was at least the required age. "

SECTION 19. G.S. 20-187.2(a) reads as rewritten:

"(a) Surviving spouses, or in the event such members die unsurvived by a spouse, surviving children of members of North Carolina State, city and county law-enforcement agencies killed in the line of duty or who are members of such agencies at the time of their deaths, and retiring members of such agencies shall receive upon request and at no cost to them, the badge worn or carried by such deceased or retiring member. The governing body of a law-enforcement agency may, in its discretion, also award to a retiring member or surviving relatives as provided herein, upon request, the service side arm of such deceased or retiring members, at a price determined by such governing body, ~~upon securing a permit as required by G.S. 14-402 et seq. or 14-409.1 et seq.,~~ upon determining that the person receiving the weapon is not ineligible to own, possess, or receive a firearm under the provisions of State or federal law, or ~~without such permit provided the weapon shall have~~if the weapon has been rendered incapable of being fired. Governing body shall mean for county and local alcohol beverage control officers, the county or local board of alcoholic control; for all other law-enforcement officers with jurisdiction limited to a municipality or town, the city or town council; for all other law-enforcement officers with countywide jurisdiction, the board of county commissioners; for all State law-enforcement officers, the head of the department."

SECTION 20. G.S. 14-415.18 reads as rewritten:

"**§ 14-415.18. Revocation or suspension of permit.**

(a) The sheriff of the county where the permit was issued or the sheriff of the county where the person resides may revoke a permit subsequent to a hearing for any of the following reasons:

(1) Fraud or intentional and material misrepresentation in the obtaining of a permit.

(2) Misuse of a permit, including lending or giving a permit or a duplicate permit to another person, materially altering a permit, or using a permit with the intent to unlawfully cause harm to a person or property. It shall not be considered misuse of a permit to provide a duplicate of the permit to a vender for record-keeping purposes.

(3) The doing of an act or existence of a condition which would have been grounds for the denial of the permit by the sheriff.

(4) The violation of any of the terms of this Article.

~~(5) The applicant is adjudicated guilty of or receives a prayer for judgment continued for a crime which would have disqualified the applicant from initially receiving a permit.~~

A permittee may appeal the revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the applicant resides. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal.

(a1) The sheriff of the county where the permit was issued or the sheriff of the county where the person resides shall revoke a permit of any permittee who is adjudicated guilty of or receives a prayer for judgment continued for a crime which would have disqualified the permittee from initially receiving a permit. Upon determining that a permit should be revoked pursuant to this subsection, the sheriff shall provide written notice to the permittee, pursuant to the provisions of G.S. 1A-1, Rule 4(j), that the permit is revoked upon the service of the notice. The notice shall provide the permittee with information on the process to appeal the revocation.

Upon receipt of the written notice of revocation, the permittee shall surrender the permit to the sheriff. Any law enforcement officer serving the notice is authorized to take immediate possession of the permit from the permittee. If the notice is served by means other than by a law enforcement officer, the permittee shall surrender the permit to the sheriff no later than 48 hours after service of the notice.

A permittee may appeal the revocation of a permit pursuant to this subsection by petitioning a district court judge of the district in which the permittee resides. The determination by the court, on appeal, shall be limited to whether the permittee was adjudicated guilty of or received a prayer for judgment continued for a crime which would have disqualified the permittee from initially receiving a permit. Revocation of the permit is not stayed pending appeal.

(b) The court may suspend a permit as part of and for the duration of any orders permitted under Chapter 50B of the General Statutes."

SECTION 21. G.S. 14-269(b) is amended by adding the following new subdivisions to read:

"(4d) Any person who is a North Carolina district court judge, North Carolina superior court judge, or a North Carolina magistrate and who has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24; provided that the person shall not carry a concealed weapon at any time while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the person's body. The judge or magistrate shall secure the weapon in a locked compartment when the weapon is not on the person of the judge or magistrate;

(4e) Any person who is elected and serving as a clerk of court or as a register of deeds and who has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24; provided that the person shall not carry a concealed weapon at any time while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the person's body. The clerk of court or register of deeds shall secure the weapon in a locked compartment when the weapon is not on the person of the clerk of court or register of deeds;"

SECTION 22. G.S. 14-415.27 reads as rewritten:

"**§ 14-415.27. Expanded permit scope for ~~district attorneys, assistant district attorneys, and investigators employed by office of the district attorney~~certain persons.**

Notwithstanding G.S. 14-415.11(c), any ~~person who is a district attorney, an assistant district attorney, or an investigator employed by the office of a district attorney and~~ of the following persons who has a concealed handgun permit issued pursuant to this Article or that is considered valid under G.S. 14-415.24 is not subject to the area prohibitions set out in G.S. 14-415.11(c) and may carry a concealed handgun in the areas listed in G.S. 14-415.11(c) unless otherwise prohibited by federal ~~law.~~law:

(1) A district attorney.
(2) An assistant district attorney.
(3) An investigator employed by the office of a district attorney.
(4) A North Carolina district or superior court judge.
(5) A magistrate.
(6) A person who is elected and serving as a clerk of court.
(7) A person who is elected and serving as a register of deeds."

SECTION 23. G.S. 113-291.1(c) reads as rewritten:

"(c) It is a Class 1 misdemeanor for any person taking wildlife to have in ~~his~~ the person's possession any:

~~(1) Firearm equipped with a silencer or any device designed to silence, muffle, or minimize the report of the firearm. The firearm is considered equipped with the silencer or device whether it is attached to the firearm or separate but reasonably accessible for attachment during the taking of the wildlife.~~

(2) Weapon of mass death and destruction as defined in ~~G.S. 14-288.8.~~G.S. 14-288.8, other than a suppressor or other device designed to muffle or minimize the report of a firearm that is lawfully possessed by a person in compliance with 26 U.S.C. Chapter 53 §§ 5801-5871.

The Wildlife Resources Commission may prohibit individuals training dogs or taking particular species from carrying axes, saws, tree-climbing equipment, and other implements that may facilitate the unlawful taking of wildlife, except tree-climbing equipment may be carried and used by persons lawfully taking raccoons and opossums during open season."

SECTION 24. G.S. 14-415.10 reads as rewritten:

"**§ 14-415.10. Definitions.**

The following definitions apply to this Article:

...

(4a) Qualified retired law enforcement officer. – An individual who meets the definition of "qualified retired law enforcement officer" contained in section 926C of Title 18 of the United States Code.~~all of the following qualifications:~~

~~a. Retired in good standing from service with a public agency located in the United States as a law enforcement officer, other than for reasons of mental instability.~~

~~b. Prior to retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of, any person for any violation of law, and had statutory powers of arrest.~~

~~c. Prior to retirement, was regularly employed as a law enforcement officer for a total of 15 years or more, or retired after completing probationary periods of service due to a service connected disability, as determined by the agency.~~

~~d. Has a vested right to benefits under the retirement plan of the agency.~~

..."

SECTION 25. G.S. 14-269(b) reads as rewritten:

"(b) This prohibition shall not apply to the following persons:

...

(4b) Any person who is a qualified retired law enforcement officer as defined in G.S. 14-415.10 and meets ~~all~~ any one of the following conditions:

~~a. Is a qualified retired law enforcement officer as defined in G.S. 14-415.10.~~

~~b.~~a. Is the holder of a concealed handgun permit in accordance with Article 54B of this Chapter.

b. Is exempt from obtaining a permit pursuant to G.S. 14-415.25.

c. Is certified by the North Carolina Criminal Justice Education and Training Standards Commission pursuant to G.S. 14-415.26;

..."

SECTION 26. Sections 1 through 6, 14 through 18, 21, 23, and 25 of this act become effective October 1, 2013, and apply to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions. The remainder of this act becomes effective October 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 937 (First Edition)

SHORT TITLE: Amend Various Firearms Laws.

SPONSOR(S): Representatives Schaffer, Burr, Faircloth, and Cleveland

FISCAL IMPACT
($ in millions)

☑ Yes ☐ No ☑ No Estimate Available

State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Administrative Office of the Courts, Indigent Defense Services, Department of Public Safety

EFFECTIVE DATE October 1, 2013

TECHNICAL CONSIDERATIONS:
None

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address changes in existing offenses being enforced, adjudicated and having penalties applied to those convicted of the new offense. However, given there is no historical data on these offenses, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of these crimes:

Sections 1 through 3 and Section 1 of the bill may result in a cost-savings because they narrow the scope of an existing penalty. Sections 4 and 5 may result in a cost because they expand or add enhancements to existing penalties.

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Section 1 of this bill narrows the scope of existing Class I felony and Class 2 misdemeanor offenses. G.S. 14-269 provides in subsection (a1) that it shall be unlawful for any person to carry a concealed weapon except in certain circumstances. This bill narrows the scope of the existing offenses by stating that the Class 2 misdemeanor and Class I felony offenses do not apply to a person who has a valid concealed handgun permit, or who is exempt from obtaining such, provided that the weapon is a handgun, is in a closed compartment or container within the person's locked vehicle, and the vehicle is in a parking area owned or leased by State Government.

Section 2 amends existing G.S. 14-269.2, Weapons on campus or other education property, by adding new subsections (i), (j), and (k), which narrows the scope of several existing criminal penalties. New subsection (i) would exempt from violation employees of a higher education institution who reside on campus and meet certain criteria; (j) would exempt employees of a public or nonpublic school who reside on campus and meet certain criteria; (k) would exempt people who have a concealed handgun permit and have a handgun in a closed compartment within a locked vehicle on the property of a higher education institution.

Section 3 of this bill creates G.S. 14-269.3(b)(5), Carrying weapons into assemblies and establishments where alcoholic beverages are sold and consumed, which narrows the scope of the existing Class 1 misdemeanor by exempting from violation of 14-269.3, a person carrying a handgun if the person has a properly issued, valid concealed handgun permit, or is exempt from obtaining such, but does not permit a person to carry a handgun on any premises where the owner or person in control of the premises has posted a conspicuous notice prohibiting the carrying of a concealed handgun on the premises. Currently, G.S. 14-269.3 provides that it shall be a Class 1 misdemeanor for any person to carry any gun, rifle, or pistol into any assembly where a fee has been charged for admission thereto, or into any establishment in which alcoholic beverages are sold and consumed.

Section 4 of this bill expands the scope of an existing Class 2 misdemeanor. Currently, G.S.14-316, Permitting young children to use dangerous firearms, provides that it shall be a Class 2 misdemeanor for any parent, guardian, or person standing in loco parentis to knowingly permit his child under the age of 12 to have the possession, custody or use in any manner whatever, any gun, pistol, or other dangerous firearm, whether loaded or unloaded, except when the child is under the supervision of the parent, guardian or person standing in loco parentis. This bill amends G.S. 14-316 to provide that it shall be unlawful for any person to permit a child to have access to, or possession, custody or use in any manner whatever, of any gun, pistol or other dangerous weapon, whether loaded or unloaded, unless the person has the permission of the child's parent or guardian, and the child is under the supervision of an adult. Thus, the scope of the Class 2 misdemeanor is expanded to any person, not just a parent, guardian or person standing in loco parentis violating G.S. 14-316, and the acts by which a person may violate G.S. 14-316 are expanded to include allowing access by a child under the age of 12 to a gun.

Section 5 amends existing G.S. 15A-1340.16A, Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony and the defendant used, displayed, or threatened to use or display a firearm or deadly weapon during the commission of the felony raising the minimum term of imprisonment to 72 months to which the person shall be sentenced if the felony is a Class A, B1, B2, C, D or E felony offense and it is found that the conditions regarding the use of a firearm or deadly weapon requirement were met. New subdivision (2) creates a new sentence enhancement of 36 months for Class F or G felony offenses when it is found that the conditions regarding the use of a firearm or deadly weapon requirement were met. New subdivision (3) creates a new sentence enhancement of 12 months for Class H or I felony offenses when it is found that the conditions regarding the use of a firearm or deadly weapon requirement were met.

Section 11 of the bill narrows the scope of the existing Class H felony, by amending G.S. 14-415.3, Possession of a firearm or weapon of mass destruction by persons acquitted of certain crimes by reason of insanity or persons determined to be incapable to proceed prohibited. Currently, G.S. 14-415.3 provides that it shall be a Class H felony for a person who has been acquitted by reason of insanity of certain crimes or who has been determined to lack capacity to proceed for certain crimes to purchase, own, possess, or have in his custody, care, or control, any firearm or any weapon of mass death and destruction. The addition of subsection (c) to G.S. 14-415.3 would narrow the scope of the Class H felony by exempting from violation of G.S. 14-415.3 a person whose rights have been restored pursuant to G.S. 122C-54.1, Restoration process to remove mental commitment bar.

Sections 1 through 6 have an effective date of October 1, 2013, and apply to offenses committed on or after that date. The remainder of this bill becomes effective on October 1, 2013.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision (PRS). The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. All F-I felons are now subject to nine months of PRS, and PRS for all B1-E felonies has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Judicial Branch

The Administrative Office of the Courts 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.

Sections 1 through 3 of the bill narrow the scope of existing criminal penalties. AOC is not able to determine how many of the charges under existing law would no longer be violations under the changes proposed in these sections. For each of these current charges that are no longer violations, AOC will see a savings of the average cost to dispose of the case. The average cost for each offense is as follows:

Charge Class	Cost per Disposition
Class 2 misdemeanor	$88
Class 1 misdemeanor	$165
Class I felony	$365
Class F Felony	$912

Section 4 expands the scope of an existing Class 2 misdemeanor offense for violating existing provisions of G.S. 14-316(a). AOC is not able to determine how many additional charges of this offense may occur due to the broadening of the scope of the violation. For every additional person charged with this offense, AOC estimates the cost to the course would be $88.

Section 5 amends existing G.S. 15A-1340.16A, and raises the minimum term of imprisonment in an existing sentence enhancement and creates two new sentence enhancements. The possibility for an increased length of active sentence punishment could result in a more vigorous defense and therefore a more lengthy trial/sentencing hearing. AOC does not have data on the number of cases that these increased and new sentence enhancements would apply to, and thus, cannot estimate any increase in court workload from the changes proposed in this section.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. This bill would not have a direct and quantifiable impact on IDS. By expanding the coverage of an existing offense, Section 4 of the bill may increase the number of indigent cases in which IDS has to provide appointed counsel. In addition, by increasing the seriousness of a criminal penalty and sentence in Section 5, the private appointed counsel (PAC) attorneys may have to spend more time on cases. IDS's data does not provide any way to quantify impact.

Department of Public Safety –Prison Section

Since the bill makes changes to several existing offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the changes made in this bill.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,[1] and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). The cost to add one additional inmate to the prison system is $11.23 per day, which includes the cost of food, clothing, and health care.

[1] Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

Population Projections and Bed Capacity Five Year Impact					
	June 30 2013	**June 30 2014**	**June 30 2015**	**June 30 2016**	**June 30 2017**
1. Inmates[2]	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
4. Additional Inmates Due to this Bill[3]	**No estimate available**				
5. Additional Beds Required					

Department of Public Safety – Community Correction Section

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. For felony offense classes E through I, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.[4] General supervision of intermediate and community offenders by a probation officer costs $3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Section 1 narrows the scope of an existing Class 2 misdemeanor offense because it is not known how many fewer convictions may result from this. As a result, the impact cannot be determined. Section 4 expands the scope of an existing Class 2 misdemeanor. It is not currently known how many additional convictions may result from the proposed broadening of the current statute. In FY 2011-12, 29% of offenders convicted of a Class 2 misdemeanor were sentenced to active sentences for an average length of 39 days; 1% received intermediate sentences; and 70% received community punishments. Only felony offenses result in Post Release Supervision (PRS), therefore there is no additional cost for a misdemeanant sentenced to an active sentence. The average length of intermediate and community punishment imposed for this offense class was 16 and 13 months, respectively. The average cost to community corrections for any individual convicted of a Class 2 misdemeanor who receives an intermediate sentence is $1,742 (480 days times $3.63 per day). The average cost to community corrections for any individual convicted of a Class 2 misdemeanor who receives community supervision is $1,416 (390 days times $3.63 per day).

[2] The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2013.

[3] Criminal penalty bills effective December 1, 2013 should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

[4] CCS incurs costs of $1.29 per day for each offender sentenced to the Community Service Work Program.

Section 1 and Section 2 narrows the scope of existing Class I felonies because it is not known how many fewer convictions may result from this. As a result, the impact cannot be determined. In FY 2011-12, 18% of Class I felony offenders received active sentences; 33% received intermediate sentences; and 49% received community punishments. All active sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[5] The average length of intermediate and community punishment imposed for this offense class was 26 and 22 months, respectively. The average cost to community corrections for any individual convicted of a Class I felony who receives an intermediate sentence is $2,831 (780 days times $3.63 per day). The average cost to community corrections for any individual convicted of a Class I felony who receives a supervised community sentence is $2,396 (660 days times $3.63 per day). It is not known how many offenders might be convicted and sentenced to intermediate or supervised community sentences under the proposed bill.

Section 2 and Section 3 narrows the scope of existing Class 1 misdemeanors because it is not known how many fewer convictions may result from this. As a result, the impact cannot be determined. In FY 2011-12, 26% of offenders convicted of a Class 1 misdemeanor were sentenced to active sentences for an average length of 39 days; 2% received intermediate sentences; and 72% received community punishments. Only felony offenses result in Post Release Supervision (PRS), therefore there is no additional cost for a misdemeanant sentenced to an active sentence. The average length of intermediate and community punishment imposed for this offense class was 18 and 15 months, respectively. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives an intermediate sentence is $1,960 (540 days times $3.63 per day). Of those convicted to a community sentence, around 40% received supervised sentences. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives community supervision is $1,634 (450 days times $3.63 per day).

Section 2 narrows the scope of existing Class F felonies because it is not known how many fewer convictions may result from the proposed narrowing of the current statute. As a result, the impact cannot be determined. In FY 2011-12, 53% of Class F felony offenders received active sentences; 47% received intermediate sentences. All active Class F sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[5] The average length of intermediate punishment imposed for this offense class was 33 months. The average cost to community corrections for any individual convicted of a Class F felony who receives an intermediate sentence is $3,594 (990 days times $3.63 per day).

Section 5 amends an existing sentencing enhancement for certain Class A through E felony offenses and creates two new sentencing enhancements for certain Class F and G felony offenses and certain Class H and I felony offenses. The proposed change of the minimum sentence enhancement for the Class A through Class E firearm/deadly weapon enhancement from 60 to 72 months would result in long-term impact. However, the impact would depend on its usage. Over the past ten fiscal years, this firearm/deadly weapon enhancement has been applied to only one conviction. In FY 2011-12 the firearm/deadly weapon enhancement was applied to a Class B2 second degree murder conviction. It is not known whether the usage of the enhancement would increase with the proposed change in the length of the minimum sentence enhancement.

[5] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

The creation of a new firearm/deadly weapon enhancement of 36 months for Class F or G felony offenses would also result in long-term impact, while the 12-month enhancement for Class H or I felony offenses would result in short-term impact. The impact would depend on its usage. Since the proposed bill creates new enhancements, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might receive these enhancements.

Section 11 narrows the scope of the existing Class H felony because it is not known how many fewer convictions may result from this. As a result, the impact cannot be determined. In FY 2011-12, 35% of Class H felony offenders received active sentences; 42% received intermediate sentences; and 23% received community punishments. All active sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[5] The average length of intermediate and community punishment imposed for this offense class was 29 and 26 months, respectively. The average cost to community corrections for any individual convicted of a Class H felony who receives an intermediate sentence is $3,158 (870 days times $3.63 per day). The average cost to community corrections for any individual convicted of a Class H felony who receives a supervised community sentence is $2,831 (780 days times $3.63 per day). It is not known how many offenders might be convicted and sentenced under the proposed bill.

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Maggie Morrissey
Kristine Leggett

APPROVED BY: Mark Trogdon, Director
Fiscal Research Division

DATE: May 3, 2013



Signed Copy Located in the NCGA Principal Clerk's Offices

JUD I **VISITOR REGISTRATION SHEET** 6-11-13

Senate ~~Finance~~ Committee — ~~February 27, 2013~~

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Robert Youngblood	GRNC Chair Randolph Tea
Jeff Rau	Grass Roots NC
Paul Valone	GRNC
Ben Miles	GRNC
Michael Helms	GRNC
Brian Reese	GRNC
Dean Bostic	GRNC
Debbie Hughes	KLG
Glenn Newell	NC A&T State University
Jamie Herring	UNCG Police
Deb Cheesebro	UNCSA Police

JUD I **VISITOR REGISTRATION SHEET** 6-11-13

Senate ~~Finance~~ Committee
Name of Committee

~~February 27, 2013~~
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Amil Henry	Winston Salem State Univ. PD.
~~Robert~~ Hassell	Fayetteville State Univ. P.D.
David Dandelen	UNC Wilmington Police Dept.
Jack Moorman	NC State University Police
Stephanie Hawco	WPTF
Hax Williams	NCAE
[illegible]	NCICG
Jeff McCracken	UNC-CH
Gail Neely	NCGV
Jackie Kaufman	NCGV
Tommy Williams	Fayetteville State Univ.

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Senate ~~Finance~~ Committee — ~~February 27, 2013~~
Name of Committee — **Date**

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Drew Moretz	UNCGA
Mike Tarrant	UNCG
Adam Pridemore	NCMSA
Wendell Phillips	NCAFT SU
Butch Gunnells	NC Bev
Jennifer Willis	UNC-CH
Kevin Howell	NCSU
Frank Gray	NCRCA
Chris Kardish	AP
Sheyenne Rodriguez	ABC11
Anthony Roulette	NRA

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Senate ~~Finance~~ Committee
Name of Committee

~~February 27, 2013~~
Date

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Whitney Christensen	NCPLA
Mike Smallwood	SOL
Moen Davis	GSK
CORNELIUS GRAVES	WSSU
Jim DeCristo	UNCW
[illegible]	[illegible]
Hubban Robinson	NCPLA
ERIC BOUCE	UNC Asheville
David Rainer	NC State
Dave Hom	S.A.
Julia White	NC DOJ

JUD I

VISITOR REGISTRATION SHEET 6-11-13

Senate ~~Finance~~ Committee
Name of Committee

~~February 27, 2013~~
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

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Saka Perdue	NC Sen. Comm.
Paul Meyer	NCUM
Joe McClees	McClees Consulting
Barry Wilkins	N.C. ~~Assoc~~ Food & ~~Food~~ Grocery Marketers
[illegible]	RECA
Philip Ruby	[illegible]
Todd Barlow	NC Advocates for Justice
Mark Lanier	UNCW
Nathan Babcock	NC Chamber
J Goodman	"
Sara	UNC

JUD I **VISITOR REGISTRATION SHEET** 6-11-13

Senate ~~Finance~~ Committee — ~~February 27, 2013~~
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DoANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Greg Stahl	NC Sheriffs Assn
Wes Wilson	NCPPA
John Madler	NC Sentencing Commission
Beth Dosker	UNC Charlotte
Chief Jeff BAKER	UNC Charlotte
Dennis Allen	NCRPA
Andrew Cagle	NC Sheriffs Assn.

Senate Committee on Judiciary I
Thursday, June 13, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 543	Guardianship Roles of MHDDSA Providers.	Representative Jones Representative Avila Representative Glazier Representative Turner
HB 982	Modify Medicaid Subrogation Statute.	Representative Burr Representative Avila
HB 122	Amend Interlocutory Appeals/Family Law.	Representative Glazier Representative Stevens
HB 147	Amend Adoption Laws.	Representative Jordan Representative Stevens Representative Glazier

Presentations

Other Business

Adjournment

Senate Committee on Judiciary I
Thursday, June 13, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on June 13, 2013 in Room 1027/1128 of the Legislative Building. Thirteen members were present.

Senator E. S. (Buck) Newton, Chair, presided.

Senator Harry Brown moved to take up a Proposed Committee Substitute for House Bill 147. Representative Jonathan Jordan was recognized to explain the PCS. Susan Sitze from the Research Division was recognized next to explain changes in the PCS.

Senator Earline Parmon moved for a favorable report to the PCS, unfavorable to the original bill, and it passed by a voice vote.

Senator Shirley Randleman was recognized to explain House Bill 543. Senator Jerry Tillman was recognized for a question and Sen. Newton asked if anyone in the audience could respond. Adam Schulman, legislative liaison for the Department of Health and Human Services, responded to Sen. Tillman's question and spoke in favor of the bill.

Julia Adams, assistant director of government affairs at ARC of North Carolina spoke in support of the bill. Susan Sitze from the Research Division was recognized to clarify committee discussion. Sen. Tillman was recognized for a comment and Sen. Newton responded. Senator Tamara Barringer commented and Sen. Tillman made a motion for a favorable report to the bill. The motion passed by a voice vote.

Sen. Tillman moved to take up a PCS for House Bill 982. Mr. Patterson from the Research Division was recognized to explain the bill to the committee. Senator Trudy Wade was recognized for a question and Sen. Newton responded. Mr. Patterson was recognized to make clarifying comments for the committee. Sen. Newton asked Mr. Patterson a question and Mr. Patterson responded. Sen. Wade asked a question and Mr. Patterson responded.

Senator Dan Blue was recognized for a question and Mr. Patterson responded. Sen. Newton commented on the discussion and Sen. Tillman moved for a favorable report to the PCS, unfavorable to the original bill. Senator Kathy Harrington asked a question and Mr. Patterson responded.

Phillip Isley from the North Carolina Advocates for Justice was recognized to speak in opposition to the bill. Mr. Patterson made clarifying comments for the committee. Senator Harry Brown asked a question and Sen. Newton responded. Sen. Tillman withdrew his motion for a favorable report to the PCS. Sen. Newton said the committee would not vote on the bill because the bill sponsors were not present to express support or opposition to the PCS.

Sen. Tillman moved to take up a PCS for House Bill 122. Sen. Newton explained the bill to the committee. Senator Clark Jenkins moved for a favorable report to the PCS, unfavorable to the original bill. The motion passed by a voice vote.

The meeting adjourned at 10:46 a.m.

Senator E. S. (Buck) Newton, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Thursday, June 13, 2013

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

HB **147** **(CS#1)** Amend Adoption Laws.

Draft Number:	H147-PCS70459-SA-54
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

HB **122** **(SCS#1)** Amend Interlocutory Appeals/Family Law.

Draft Number:	H122-PCS30572-SA-55
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Tamara Barringer will handle HB 147
Senator Peter Brunstetter will handle HB 122



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Thursday, June 13, 2013

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

FAVORABLE

HB **543** **(SCS#1)** Guardianship Roles of MHDDSA Providers.

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Shirley Randleman will handle HB 543



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 122
Committee Substitute Favorable 2/28/13
Senate Judiciary I Committee Substitute Adopted 6/6/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H122-CSSA-55 [v.1]
6/12/2013 4:36:24 PM

Short Title: Amend Interlocutory Appeals/Family Law. (Public)

Sponsors:

Referred to:

February 20, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS PERTAINING TO INTERLOCUTORY APPEALS AS RELATED TO FAMILY LAW AND TO MODIFY THE LAW REGARDING DISCIPLINE FOR JUDGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-27 reads as rewritten:

"**§ 7A-27. Appeals of right from the courts of the trial divisions.**

(a) Appeal lies of right directly to the Supreme Court in all cases in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of death.

(b) Appeal lies of right directly to the Court of Appeals in any of the following cases:

(1) From any final judgment of a superior court, other than the one described in subsection (a) of this section, or one based on a plea of guilty or nolo contendere, including any final judgment entered upon review of a decision of an administrative agency, except for a final judgment entered upon review of a court martial under G.S. 127A-62.

(2) From any final judgment of a district court in a civil action.

(3) From any interlocutory order or judgment of a superior court or district court in a civil action or proceeding which does any of the following:

a. Affects a substantial right.

b. In effect determines the action and prevents a judgment from which an appeal might be taken.

c. Discontinues the action.

d. Grants or refuses a new trial.

e. Determines a claim prosecuted under G.S. 50-19.1.

(4) From any other order or judgment of the superior court from which an appeal is authorized by statute.

~~(b) From any final judgment of a superior court, other than the one described in subsection (a) of this section, or one based on a plea of guilty or nolo contendere, including any final judgment entered upon review of a decision of an administrative agency, except for a final judgment entered upon review of a court martial under G.S. 127A-62, appeal lies of right to the Court of Appeals.~~

~~(c) From any final judgment of a district court in a civil action appeal lies of right directly to the Court of Appeals.~~

~~(d) From any interlocutory order or judgment of a superior court or district court in a civil action or proceeding which~~

~~(1) Affects a substantial right, or~~

~~(2) In effect determines the action and prevents a judgment from which appeal might be taken, or~~

~~(3) Discontinues the action, or~~

~~(4) Grants or refuses a new trial, appeal lies of right directly to the Court of Appeals.~~

~~(e) From any other order or judgment of the superior court from which an appeal is authorized by statute, appeal lies of right directly to the Court of Appeals.~~"

SECTION 2. Article 1 of Chapter 50 of the General Statutes is amended by adding the following new section to read:

"**§ 50-19.1. Maintenance of certain appeals allowed.**

Notwithstanding any other pending claims filed in the same action, a party may appeal from an order or judgment adjudicating a claim for absolute divorce, divorce from bed and board, child custody, child support, alimony, or equitable distribution if the order or judgment would otherwise be a final order or judgment within the meaning of G.S. 1A-1, Rule 54(b), but for the other pending claims in the same action. A party does not forfeit the right to appeal under this section if the party fails to immediately appeal from an order or judgment described in this section. An appeal from an order or judgment under this section shall not deprive the trial court of jurisdiction over any other claims pending in the same action."

SECTION 3. G.S. 7A-374.2 reads as rewritten:

"**§ 7A-374.2. Definitions.**

Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this Article:

(1) "Censure" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge has willfully engaged in misconduct prejudicial to the administration of justice that brings the judicial office into disrepute, but which does not warrant the suspension of the judge from the judge's judicial duties or the removal of the judge from judicial office. A censure may require that the judge follow a corrective course of action. Unless otherwise ordered by the Supreme Court, the judge shall personally appear in the Supreme Court to receive a censure.

(2) "Commission" means the North Carolina Judicial Standards Commission.

(3) "Incapacity" means any physical, mental, or emotional condition that seriously interferes with the ability of a judge to perform the duties of judicial office.

(4) "Investigation" means the gathering of information with respect to alleged misconduct or disability.

(5) "Judge" means any justice or judge of the General Court of Justice of North Carolina, including any retired justice or judge who is recalled for service as an emergency judge of any division of the General Court of Justice.

(6) "Letter of caution" means a written action of the Commission that cautions a judge not to engage in certain conduct that violates the Code of Judicial Conduct as adopted by the Supreme Court.

(7) "Public reprimand" means a ~~written action of the Commission issued upon a finding~~finding by the Supreme Court, based upon a written recommendation by the Commission that a judge has violated the Code of Judicial Conduct and has engaged in conduct prejudicial to the administration of justice, but that misconduct is ~~minor and does not warrant a recommendation by the Commission that the judge be disciplined by the Supreme Court.~~minor. A

public reprimand may require that the judge follow a corrective course of action.

(8) "Remove" or "removal" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge should be relieved of all duties of the judge's office and disqualified from holding further judicial office.

(9) "Suspend" or "suspension" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge should be relieved of the duties of the judge's office for a period of time, and upon conditions, including those regarding treatment and compensation, as may be specified by the Supreme Court."

SECTION 4. G.S. 7A-376 reads as rewritten:

"**§ 7A-376. Grounds for discipline by Commission; public reprimand, censure, suspension, or removal by the Supreme Court.**

(a) The Commission, upon a determination that any judge has engaged in conduct that violates the North Carolina Code of Judicial Conduct as adopted by the Supreme Court but that is not of such a nature as would warrant a recommendation of public reprimand, censure, suspension, or removal, may issue to the judge a private letter of ~~caution or may issue to the judge a public reprimand.~~caution.

(b) Upon recommendation of the Commission, the Supreme Court may issue a public reprimand, censure, suspend, or remove any judge for willful misconduct in office, willful and persistent failure to perform the judge's duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. A judge who is suspended for any of the foregoing reasons shall receive no compensation during the period of that suspension. A judge who is removed for any of the foregoing reasons shall receive no retirement compensation and is disqualified from holding further judicial office.

(c) Upon recommendation of the Commission, the Supreme Court may suspend, for a period of time the Supreme Court deems necessary, any judge for temporary physical or mental incapacity interfering with the performance of the judge's duties, and may remove any judge for physical or mental incapacity interfering with the performance of the judge's duties which is, or is likely to become, permanent. A judge who is suspended for temporary incapacity shall continue to receive compensation during the period of the suspension. A judge removed for mental or physical incapacity is entitled to retirement compensation if the judge has accumulated the years of creditable service required for incapacity or disability retirement under any provision of State law, but he shall not sit as an emergency justice or judge."

SECTION 5. G.S. 7A-377 reads as rewritten:

"**§ 7A-377. Procedures.**

(a) Any citizen of the State may file a written complaint with the Commission concerning the qualifications or conduct of any justice or judge of the General Court of Justice, and thereupon the Commission shall make such investigation as it deems necessary. The Commission may also make an investigation on its own motion. The Commission may issue process to compel the attendance of witnesses and the production of evidence, to administer oaths, and to punish for contempt. No justice or judge shall be recommended for public reprimand, censure, suspension, or removal unless he has been given a hearing affording due process of law.

(a1) Unless otherwise waived by the justice or judge involved, all papers filed with and proceedings before the Commission, including any investigation that the Commission may make, are confidential, and no person shall disclose information obtained from Commission proceedings or papers filed with or by the Commission, except as provided herein. Those papers are not subject to disclosure under Chapter 132 of the General Statutes.

(a2) Information submitted to the Commission or its staff, and testimony given in any proceeding before the Commission, shall be absolutely privileged, and no civil action predicated upon that information or testimony may be instituted against any complainant, witness, or his or her counsel.

(a3) If, after an investigation is completed, the Commission concludes that a letter of caution is appropriate, it shall issue to the judge a letter of caution in lieu of any further proceeding in the matter. The issuance of a letter of caution is confidential in accordance with subsection (a1) of this section.

~~(a4) If, after an investigation is completed, the Commission concludes that a public reprimand is appropriate, the judge shall be served with a copy of the proposed reprimand and shall be allowed 20 days within which to accept the reprimand or to reject it and demand, in writing, that disciplinary proceedings be instituted in accordance with subsection (a5) of this section. A public reprimand, when issued by the Commission and accepted by the respondent judge, is not confidential.~~

(a5) If, after an investigation is completed, the Commission concludes that disciplinary proceedings should be instituted, the notice and statement of charges filed by the Commission, along with the answer and all other pleadings, ~~are not~~remain confidential. Disciplinary hearings ordered by the Commission are ~~not~~ confidential, and recommendations of the Commission to the Supreme Court, along with the record filed in support of such recommendations are ~~not~~ confidential. Testimony and other evidence presented to the Commission is privileged in any action for defamation. At least five members of the Commission must concur in any recommendation to issue a public reprimand, censure, suspend, or remove any judge. A respondent who is recommended for public reprimand, censure, suspension, or removal is entitled to a copy of the proposed record to be filed with the Supreme Court, and if the respondent has objections to it, to have the record settled by the Commission's chair. The respondent is also entitled to present a brief and to argue the respondent's case, in person and through counsel, to the Supreme Court. A majority of the members of the Supreme Court voting must concur in any order of public reprimand, censure, suspension, or removal. The Supreme Court may approve the recommendation, remand for further proceedings, or reject the recommendation. A justice of the Supreme Court or a member of the Commission who is a judge is disqualified from acting in any case in which he is a respondent.

(a6) Upon issuance of a public reprimand, censure, suspension, or removal by the Supreme Court, the notice and statement of charges filed by the Commission, along with the answer and all other pleadings, and recommendations of the Commission to the Supreme Court, along with the record filed in support of such recommendations, are no longer confidential.

(b) Repealed by Session Laws 2006-187, s. 11, effective January 1, 2007.

(c) The Commission may issue advisory opinions to judges, in accordance with rules and procedures adopted by the Commission.

(d) The Commission has the same power as a trial court of the General Court of Justice to punish for contempt, or for refusal to obey lawful orders or process issued by the Commission."

SECTION 6. G.S. 7A-378 is repealed.

SECTION 7. This act is effective when it becomes law.

HOUSE BILL 122:
Amend Interlocutory Appeals/Family Law

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 13, 2013
Introduced by:	Reps. Glazier, Stevens	**Prepared by:**	Susan Sitze
Analysis of:	PCS to Third Edition H122-CSSA-55		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 122 would amend the laws pertaining to interlocutory appeals as related to family law and modify the law regarding discipline for judges.***

This PCS deletes the three judge panel created by the previous PCS to determine whether Commission recommendations regarding discipline for Supreme Court justices should be referred to the Supreme Court for determination. The PCS provides that Commission recommendations for discipline of a Supreme Court justice will be handled in the same manner as recommendations for all other judges.

BILL ANALYSIS:

Sections 1 and 2 would create a new G.S. 50-19.1 allowing appeals from an order or judgment that arise from claims for absolute divorce, divorce from bed and board, child custody, child support, alimony, or equitable distribution, when the order or judgment otherwise would be final under Rule 54(b) of the Rules of Civil Procedure were it not for other pending claims in the same action. A party's right to appeal is not forfeited if not made immediately, and an appeal does not deprive the court of jurisdiction of other claims pending in the same action. The PCS would also add a provision to G.S. 7A-27(d) to provide for an appeal of right directly to the Court of Appeals in actions or proceedings described in the new G.S. 50-19.1.

Sections 3 through 5 would amend the procedure for disciplining judges in the following ways:

- Would remove the power of the Judicial Standards Commission to issue a public reprimand to a judge and place that authority with the Supreme Court.
- Would make all records, investigations, recommendations, and hearings of the Judicial Standards Commission, and hearings by the Supreme Court confidential until the Supreme Court issues a public reprimand, censure, suspension, or removal.

Section 6 would repeal G.S. 7A-378 which requires the Court of Appeals to make determinations on discipline of Supreme Court justices. Repeal of this statute would place the discipline of Supreme Court justices under the same process used for all other judges.

EFFECTIVE DATE: This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 147
Committee Substitute Favorable 3/6/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H147-CSSA-54 [v.1]
6/12/2013 12:48:27 PM

Short Title: Amend Adoption Laws. (Public)

Sponsors:

Referred to:

February 25, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS LAWS PERTAINING TO ADOPTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-909 reads as rewritten:

"**§ 7B-909. Review of agency's plan for placement.**

(a) The director of social services or the director of the licensed private child-placing agency shall promptly notify the clerk to calendar the case for review of the department's or agency's plan for the juvenile at a session of court scheduled for the hearing of juvenile matters if the juvenile is in the custody of the department or agency and has not become the subject of a decree of adoption within six months following relinquishment of the juvenile for adoption by a parent, guardian, or guardian ad litem under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes. ~~in any case where:~~

~~(1) One parent has surrendered a juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes and the termination of parental rights proceedings have not been instituted against the nonsurrendering parent within six months of the surrender by the other parent, or~~

~~(2) Both parents have surrendered a juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes and that juvenile has not been placed for adoption within six months from the date of the more recent parental surrender.~~

(b) Repealed by 2007-276, s. 6, effective October 1, 2007.

(b1) If the court finds on motion of a department of social services or licensed child-placing agency that a consent or relinquishment for adoption necessary for the juvenile to be adopted cannot be obtained, and that no further steps are being taken to terminate the parental rights of the parent from whom consent or relinquishment has not been obtained, the court may order, upon finding that it is in the juvenile's best interest, that any relinquishment for adoption signed by a parent who has surrendered the child for adoption shall be voided pursuant to G.S. 48-3-707(a)(4). Before voiding any relinquishment under this subsection, the court shall require the county department of social services or licensed child-placing agency to give at least 15 days' notice to the relinquishing parent whose rights will be restored. The relinquishing parent shall have the right to be heard on (i) whether the relinquishment should be voided and (ii) the parent's plan to provide for the juvenile if the relinquishment is voided. If after due diligence the relinquishing parent cannot be located, the notice of hearing shall be deposited in the United States mail, return receipt requested, and sent to the address of the

parent given in the relinquishment. The date of receipt of the notice is deemed the date of delivery or last attempted delivery.

(c) Notification of the court under this section shall be by a petition for review or motion for review, if the court is exercising jurisdiction over the juvenile. ~~The petition shall set forth the circumstances necessitating the review under subsection (a) of this section.~~ The review shall be conducted within 30 days following the filing of the petition for review unless the court shall otherwise direct. The court shall conduct reviews every six months until the juvenile is the subject of a decree of adoption. However, further reviews are not required after the voiding of a relinquishment under subsection (b1) of this section. The initial review and all subsequent ~~reviews~~ reviews, except a review hearing under subsection (b1) of this section, shall be conducted pursuant to G.S. 7B-908. Any individual whose parental rights have been terminated or who has relinquished the juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes shall not be considered a party to the review unless an appeal of the order terminating parental rights is pending, and a court has stayed the order pending the appeal."

SECTION 2. G.S. 48-2-204 reads as rewritten:

"**§ 48-2-204. Death of a joint petitioner or stepparent pending final decree.**

(a) When spouses have petitioned jointly to adopt and one spouse dies before entry of a final decree, the adoption may ~~nevertheless~~ proceed in the names of both spouses. ~~The~~ Upon completion of the adoption, the name of the deceased spouse shall be entered as one of the adoptive parents on the new birth certificate prepared pursuant to Article 9 of this ~~Chapter, and for~~Chapter. For purposes of inheritance, testate or intestate, the adoptee shall be treated as a child of the ~~deceased.~~deceased spouse.

(b) When a stepparent who has petitioned to adopt dies before entry of a final decree, the adoption may proceed in the name of the petitioning stepparent if the court causes to be mailed to any individual who executed a consent to adoption a notice advising that the petitioning stepparent has died and the individual may, within 15 days from the date the individual receives notice, request a hearing on the adoption. Notice is complete when mailed to the individual at the address given in the consent. Upon completion of the adoption, the name of the petitioning stepparent shall be entered as one of the adoptee's parents on the new birth certificate prepared in accordance with Article 9 of this Chapter. For purposes of inheritance, testate or intestate, the adoptee shall be treated as a child of the deceased stepparent."

SECTION 3. G.S. 48-2-207(a) reads as rewritten:

"(a) If any individual who is described in G.S. 48-3-601 or entitled to notice under G.S. 48-2-401(c)(3) is served with notice of the filing of the petition in accordance with G.S. 48-2-402 and fails to respond within the time specified in the notice, the court, upon motion by the petitioner, shall enter an order under G.S. 48-3-603(a)(7) that the individual's consent is not required for the adoption."

SECTION 4. G.S. 48-2-302 reads as rewritten:

"**§ 48-2-302. ~~Time for filing petition.~~Concurrent petitions to adopt and terminate parental rights.**

~~(a)~~ Repealed by Session Laws 2012-16, s. 1, effective October 1, 2012.

~~(b) If a petition is not filed in accordance with subsection (a) of this section, any person may notify the county department of social services for appropriate action.~~

~~(c)~~ A petition for adoption may be filed concurrently with a petition to terminate parental rights."

SECTION 5. G.S. 48-2-305 reads as rewritten:

"**§ 48-2-305. Petition for adoption; additional documents.**

~~At the time the petition is filed, the~~The petitioner shall file or cause to be filed the following documents:

(1) Any required affidavit of parentage executed under G.S. 48-3-206.
(2) Any required consent or relinquishment that has been executed.
(3) A certified copy of any court order terminating the rights and duties of a parent or a guardian of the adoptee.
(4) A certified copy of any court order or pleading in a pending proceeding concerning custody of or visitation with the adoptee.
(5) A copy of any required preplacement assessment certified by the agency that prepared ~~it and any certificate of service required by G.S. 48-3-307~~the assessment or an affidavit from the petitioner stating why the assessment is not available.
(6) A copy of any document containing the information required under G.S. 48-3-205 concerning the health, social, educational, and genetic history of the adoptee and the adoptee's original family which the petitioner received before the placement or at any later time, certified by the person who prepared it, or if this document is not available, an affidavit stating the reason why it is not available.
(7) Any signed copy of the form required by the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, authorizing a minor to come into this State, or any statement required by G.S. 48-2-304(c) describing the circumstances of any noncompliance.
(8) A writing that states the name of any individual whose consent is or may be required, but who has not executed a consent or a relinquishment or whose parental rights have not been legally terminated, and any fact or circumstance that may excuse the lack of consent or relinquishment.
(9) In an adoption pursuant to Article 4 of this Chapter, a copy of any agreement to release past-due child support payments.
(10) Any consent to an agency by a placing parent and adopting parents to release identifying information under G.S. 48-9-109.
(11) A certificate as required by G.S. 48-3-307(c), if the person who placed the minor executes a consent before receiving a copy of the preplacement assessment.
(12) A certified copy of any judgment of conviction of a crime specified under G.S. 48-3-603(a)(9) establishing that an individual's consent to adoption is not required.

Any document required under this section that is available to the petitioner when the petition is filed shall be filed with the petition. Any document required under this section that is not available when the petition is filed shall be filed as the document becomes available. The petitioner may also file any other document necessary or helpful to the court's determination."

SECTION 6. G.S. 48-2-401(c)(3) reads as rewritten:

"(c) In the adoption of a minor, the petitioner shall also serve notice of the filing on each of the following:

...

(3) A man who to the actual knowledge of the petitioner claims to be or is named as the biological or possible biological father of the minor, and any biological or possible biological fathers who are unknown or whose whereabouts are unknown, but notice need not be served upon a man who has executed a consent, a relinquishment, or a notarized statement denying paternity or disclaiming any interest in the minor, a man whose parental rights have been legally terminated or who has been judicially determined not to be the minor's ~~parent,~~parent, a man whose consent to the adoption is not required under G.S. 48-3-603(a)(9) due to his conviction of a specified

crime, or, provided the petition is filed within three months of the birth of the minor, a man whose consent to the adoption has been determined not to be required under G.S. 48-2-206.

...."

SECTION 7. G.S. 48-3-603(a) reads as rewritten:

"**§ 48-3-603. Persons whose consent is not required.**

(a) Consent to an adoption of a minor is not required of a person or entity whose consent is not required under G.S. 48-3-601, ~~or:~~or any of the following:

(1) An individual whose parental rights and duties have been terminated under Article 11 of Chapter 7B of the General Statutes or by a court of competent jurisdiction in another ~~state;~~state.

(2) A man described in G.S. 48-3-601(2), other than an adoptive father, if (i) the man has been judicially determined not to be the father of the minor to be adopted, or (ii) another man has been judicially determined to be the father of the minor to be ~~adopted;~~adopted.

(3) Repealed by Session Laws 1997-215, s. 11(a).

(4) An individual who has relinquished parental rights or guardianship powers, including the right to consent to adoption, to an agency pursuant to Part 7 of this ~~Article;~~Article.

(5) A man who is not married to the minor's birth mother and who, after the conception of the minor, has executed a notarized statement denying paternity or disclaiming any interest in the ~~minor;~~minor.

(6) A deceased parent or the personal representative of a deceased parent's ~~estate; or~~estate.

(7) An individual listed in G.S. 48-3-601 who has not executed a consent or a relinquishment and who fails to respond to a notice of the adoption proceeding within 30 days after the service of the notice.

(8) An individual notified under G.S. 48-2-206 who does not respond in a timely manner or whose consent is not required as determined by the court.

(9) An individual whose actions resulted in a conviction under ~~G.S. 14-27.2~~G.S. 14-27.2, G.S. 14-27.2A, or G.S. 14-27.3 and the conception of the minor to be adopted.

(b) The court may issue an order dispensing with the consent ~~of:~~of the following:

(1) A guardian or an agency that placed the minor upon a finding that the consent is being withheld contrary to the best interest of the ~~minor; or~~minor.

(2) A minor 12 or more years of age upon a finding that it is not in the best interest of the minor to require the consent."

SECTION 8. G.S. 48-3-605(c) reads as rewritten:

"(c) An individual before whom a consent is signed and acknowledged under subsection (a) of this section shall certify in writing that to the best of the individual's knowledge or belief, the parent, guardian, or minor to be adopted executing the ~~consent:~~consent has met each of the following:

(1) Read, or had read to him or her, and understood the ~~consent;~~consent.

(2) Signed the consent ~~voluntarily;~~voluntarily.

(3) ~~Received or was offered a copy of the consent; and~~Been given an original or a copy of his or her fully executed consent.

(4) ~~Was~~ Been advised that ~~counselling~~ counseling services may be available through county departments of social services or licensed child-placing agencies."

SECTION 9. G.S. 48-3-606 reads as rewritten:

"**§ 48-3-606. Content of consent; mandatory provisions.**

A consent required from a minor to be adopted, a parent, or a guardian under G.S. 48-3-601 must be in writing and ~~state:~~state each of the following:

(1) The date and place of the execution of the ~~consent;~~consent.

(2) The name, date of birth, and permanent address of the individual executing the ~~consent;~~consent.

(3) The date of birth or the expected delivery date, the sex, and the name of the minor to be adopted, if ~~known;~~known.

(4) That the individual executing the document is voluntarily consenting to the transfer of legal and physical custody to, and the adoption of the minor to be adopted by, the identified prospective adoptive ~~parent;~~parent.

(5) The name of a person and an address where any notice of revocation may be ~~sent;~~sent.

(6) That the individual executing the document understands that after the consent is signed and acknowledged in accord with the procedures set forth in G.S. 48-3-605, it may be revoked in accord with G.S. 48-3-608, but that it is otherwise final and irrevocable and may not be withdrawn or set aside except under a circumstance set forth in ~~G.S. 48-3-609;~~G.S. 48-3-609.

(7) That the consent shall be valid and binding and is not affected by any oral or separate written agreement between the individual executing the consent and the adoptive ~~parent;~~parent.

(8) That the individual executing the consent has not received or been promised any money or anything of value for the consent, and has not received or been promised any money or anything of value in relation to the adoption of the child except for lawful payments that are itemized on a schedule attached to the ~~consent;~~consent.

(9) That the individual executing the consent understands that when the adoption is final, all rights and obligations of the adoptee's former parents or guardian with respect to the adoptee will be extinguished, and every aspect of the legal relationship between the adoptee and the former parent or guardian will be ~~terminated;~~terminated.

(10) The name and address of the court, if known, in which the petition for adoption has been or will be ~~filed;~~filed.

(11) That the individual executing the consent waives notice of any proceeding for ~~adoption;~~adoption.

(12) If the individual executing the document is the minor to be adopted or the person placing the minor for adoption, a statement that the adoption shall be by a specific named adoptive ~~parent;~~parent.

(13) If the individual executing the document is the person placing the minor for adoption, that the individual executing the consent has provided the prospective adoptive parent, or the prospective adoptive parent's attorney, with the written document required by ~~G.S. 48-3-205; and~~G.S. 48-3-205.

(14) That the person executing the consent has:

~~a. Received or been offered an unsigned copy of the consent;~~

b. Been advised that ~~counselling~~ counseling services may be available through county departments of social services or licensed child-placing agencies; and

c. Been advised of the right to employ independent legal counsel."

SECTION 10. G.S. 48-3-702 reads as rewritten:

"**§ 48-3-702. Procedures for relinquishment.**

(a) A relinquishment executed by a parent or guardian must conform substantially to the requirements in this Part and must be signed and acknowledged under oath before an individual authorized to administer oaths or take acknowledgments.

(b) The provisions of G.S. 48-3-605(b), ~~(c),~~ (e), and (f), also apply to a relinquishment executed under this Part.

(b1) An individual before whom a relinquishment is signed and acknowledged under subsection (a) of this section shall certify in writing that to the best of the individual's knowledge or belief, the parent, guardian, or minor to be adopted executing the relinquishment has met each of the following:

(1) Read, or had read to him or her, and understood the relinquishment.

(2) Signed the relinquishment voluntarily.

(3) Been given an original or copy of his or her fully executed relinquishment.

(4) Been advised that counseling services are available through the agency to which the relinquishment is given.

(c) An agency that accepts a relinquishment shall furnish each parent or guardian who signs the relinquishment a letter or other writing indicating the agency's willingness to accept that person's relinquishment."

SECTION 11. G.S. 48-3-703 reads as rewritten:

"**§ 48-3-703. Content of relinquishment; mandatory provisions.**

~~(a)~~ A relinquishment executed by a parent or guardian under G.S. 48-3-701 must be in writing and ~~state:~~state the following:

(1) The date and place of the execution of the ~~relinquishment;~~relinquishment.

(2) The name, date of birth, and permanent address of the individual executing the ~~relinquishment;~~relinquishment.

(3) The date of birth or the expected delivery date, the sex, and the name of the minor, if ~~known;~~known.

(4) The name and address of the agency to ~~whom~~ which the minor is being ~~relinquished;~~relinquished.

(5) That the individual voluntarily consents to the permanent transfer of legal and physical custody of the minor to the agency for the purposes of adoption, and

a. The placement of the minor for adoption with a prospective adoptive parent selected by the agency; or

b. The placement of the minor for adoption with a prospective adoptive parent selected by the agency and agreed upon by the individual executing the ~~relinquishment;~~relinquishment.

(6) That the individual executing the relinquishment understands that after the relinquishment is signed and acknowledged in the manner provided in G.S. 48-3-702, it may be revoked in accord with G.S. 48-3-706 but that it is otherwise final and irrevocable except under the circumstances set forth in ~~G.S. 48-3-707;~~G.S. 48-3-707.

(7) That the relinquishment shall be valid and binding and shall not be affected by any oral or separate written agreement between the individual executing the consent and the ~~agency;~~agency.

(8) That the individual executing the relinquishment understands that when the adoption is final, all rights and duties of the individual executing the relinquishment with respect to the minor will be extinguished and all other aspects of the legal relationship between the minor child and the parent will be ~~terminated;~~terminated.

(9) That the individual executing the relinquishment has not received or been promised any money or anything of value for the relinquishment of the

minor, and has not received or been promised any money or anything of value in relation to the relinquishment or the adoption of the minor except for lawful payments that are itemized on a schedule attached to the ~~relinquishment;~~relinquishment.

(10) That the individual executing the relinquishment waives notice of any proceeding for ~~adoption;~~adoption.

(11) That the individual executing the relinquishment has provided the agency with the written document required by G.S. 48-3-205, or that the individual has provided the agency with signed releases that will permit the agency to compile the information required by ~~G.S. 48-3-205; and~~G.S. 48-3-205.

(12) That the individual executing the relinquishment has:

~~a. Received or been offered an unsigned copy of the relinquishment;~~

b. Been advised that counseling services are available through the agency to which the relinquishment is given; and

c. Been advised of the right to employ independent legal counsel."

SECTION 12. G.S. 48-3-707(a) reads as rewritten:

"(a) A relinquishment shall become void if any of the following occur:

(1) Before the entry of the adoption decree, the individual who executed the relinquishment establishes by clear and convincing evidence that it was obtained by fraud or duress.

(2) Before placement with a prospective adoptive parent occurs, the agency and the person relinquishing the minor agree to rescind the relinquishment.

(3) After placement with a prospective adoptive parent occurs, but before the entry of the adoption decree, the agency, the person relinquishing the minor, and the prospective adoptive parent agree to rescind the relinquishment.

(4) Upon motion of a county department of social services or licensed child-placing agency under G.S. 7B-909, the court orders that the relinquishment shall be voided based on a finding that another consent or relinquishment necessary for an adoption cannot be obtained and that no further steps are being taken to terminate the parental rights of the parent from whom the consent or relinquishment has not been obtained."

SECTION 13. G.S. 50-13.1(a) reads as rewritten:

"(a) Any parent, relative, or other person, agency, organization or institution claiming the right to custody of a minor child may institute an action or proceeding for the custody of such child, as hereinafter provided. Any person whose actions resulted in a conviction under ~~G.S. 14-27.2~~G.S. 14-27.2, G.S. 14-27.2A, or G.S. 14-27.3 and the conception of the minor child may not claim the right to custody of that minor child. Unless a contrary intent is clear, the word "custody" shall be deemed to include custody or visitation or both."

SECTION 14. This act is effective when it becomes law.

HOUSE BILL 147:
Amend Adoption Laws

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 13, 2013
Introduced by:	Reps. Jordan, Stevens, Glazier	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to Second Edition H147-CSSA-54		

SUMMARY: House Bill 147 would amend various laws pertaining to adoption.

BILL ANALYSIS:

Section 1 provides that the director of social services or the director of the licensed private child-placing agency must notify the clerk to calendar the case for review of the plan for the juvenile at a session of court if the juvenile is in the custody of the department or agency and has not become the subject of a decree of adoption within 6 months following relinquishment of the juvenile for adoption.

Section 1 also provides that if a court finds that a consent or relinquishment for adoption cannot be obtained and no further steps are being taken to terminate the parental rights of the parent, the court may order that any relinquishment for adoption signed by a parent who has surrendered the child for adoption shall be voided. The court must find that this is in the juvenile's best interests. Before voiding any relinquishment, the county department of social services or licensed child placing agency must give at least 15 days' notice to the relinquishing parent whose rights will be restored. The relinquishing parent has the right to be heard on (1) whether the relinquishment should be voided and (ii) the parent's plan to provide for the juvenile if the relinquishment is voided. The notice of the hearing is sent by US mail, return receipt requested, to the address of the parent.

Section 2 provides guidelines regarding the death of a stepparent seeking to adopt a juvenile prior to the entry of a final decree. In this instance, the adoption may proceed in the name of the petitioning stepparent if the court mails to any individual who executed a consent to adoption a notice advising that the petitioning stepparent has died and the individual may, within 15 days from the date the individual receives notice, request a hearing on the adoption. Notice is complete when mailed to the individual. Upon completion of the adoption, the name of the petitioning stepparent is entered as one of the adoptee's parents on the new birth certificate. For purposes of inheritance, the adoptee shall be treated as a child of the deceased stepparent.

Section 3 provides that if a person whose consent to adoption is required under G.S. 48-3-601 is served with notice of the filing of the petition and fails to respond within the time specified in the notice, then the court shall enter an order that the individual's consent is not required for the adoption.

Section 4 makes technical and conforming changes.

Section 5 provides that the petitioner for adoption must file the following:

- A certificate of service, as required by G.S. 48-3-307(c), if the person who placed the minor executes a consent before receiving a copy of the preplacement assessment.
- A certified copy of any judgment of conviction of first-degree rape, rape of a child, or second-degree rape establishing that an individual's consent to adoption is not required.

This section also provides that any document that must be filed with a petition for adoption that is available to the petitioner when the petition is filed shall be filed with the petition. Any required document that is not available when the petition is filed shall be filed as the document becomes available. (Current law requires all documents to be filed at the time the petition is filed.)

Section 6 provides that in the adoption of a minor, notice does not need to be served to a man whose consent is not required due to his conviction of first-degree rape, rape of a child, or second-degree rape.

Section 7 provides that consent to an adoption of a minor is not required of any person convicted of rape of a child and whose actions resulted in the conception of the child to be adopted.

Section 8 provides that a person executing a consent document must be given an original or a copy of his or her fully executed consent (was "[r]eceived or was offered a copy of the consent"). This section also makes technical changes.

Section 9 makes technical and conforming changes.

Section 10 adds provisions to the statutes governing relinquishment. It provides that the person before whom a relinquishment is signed and acknowledged (i.e. an individual who is authorized to administer oaths or take acknowledgements) must certify that to the best of his or her belief, the parent, guardian, or minor executing the relinquishment has met each of the following:

- Read, or had read to him or her, and understood the relinquishment.
- Signed the relinquishment voluntarily.
- Been given an original or copy of his or her fully executed relinquishment.
- Been advised that counseling services may be available through county departments of social services or licensed child-placing agencies.

Section 11 makes technical and conforming changes.

Section 12 provides that a relinquishment shall be voided based on a court order finding that another consent or relinquishment necessary for an adoption cannot be obtained and that no further steps are being taken to terminate the parental rights of the parent from whom the consent or relinquishment has not been obtained. A county department of social services or licensed child-placing agency must make this motion to the court.

Section 13 provides that any person who is convicted of rape of a child and whose actions resulted in the conception of a child cannot claim the right of custody of that minor child.

EFFECTIVE DATE: This act is effective when it becomes law.

**Brad Krehely, Staff Attorney, contributed substantially to this summary.*

HOUSE BILL 543
Committee Substitute Favorable 4/24/13
Senate Health Care Committee Substitute Adopted 6/5/13

Short Title: Guardianship Roles of MHDDSA Providers. (Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

AN ACT ADDRESSING PERMISSIBLE GUARDIANSHIP ROLES FOR CORPORATIONS AND INDIVIDUALS THAT PROVIDE MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, OR SUBSTANCE ABUSE SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 35A-1213(c) reads as rewritten:

"(c) A corporation may be appointed as guardian only if it is authorized by its charter to serve as a guardian or in similar fiduciary capacities. A corporation shall meet the requirements outlined in Chapters 55 and 55D of the General Statutes. A corporation will provide a written copy of its charter to the clerk of superior court. A corporation contracting with a public agency to serve as guardian is required to attend guardianship training and provide verification of attendance to the contracting agency. A corporation shall not be appointed as guardian for any individual to whom it provides mental health, developmental disabilities, or substance abuse services for compensation as part of a contractual or other arrangement with a local management entity (LME), including an LME that has been approved to operate the 1915(b)/(c) Medicaid Waiver."

SECTION 2. G.S. 35A-1213(f) reads as rewritten:

"(f) An individual who contracts with or is employed by an entity that contracts with a local management entity (LME) for the delivery of mental health, developmental disabilities, and substance abuse services may not serve as a guardian for a ward for whom the individual or entity is providing these services, unless the individual is ~~a~~ one of the following:

(1) A parent of that ward. ~~The prohibition provided in this subsection shall not apply to a~~

(2) A member of the ward's immediate ~~family~~family, a licensed family foster care provider, or a licensed therapeutic foster care provider who is under contract with a local management entity (LME) for the delivery of mental health, developmental disabilities, and substance abuse services and is serving as a guardian as of January 1, 2013. For the purposes of this subsection, the term "immediate family" is defined as a spouse, child, sibling, parent, grandparent, or grandchild. The term also includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(3) A biologically unrelated individual who was serving on March 1, 2013, as a guardian without compensation for guardianship services."

SECTION 3. The Joint Legislative Oversight Committee on Health and Human Services shall appoint a subcommittee to examine the impact of the 1915(b)/(c) Medicaid

Waiver and other mental health system reforms on public guardianship services, including guardianship roles, responsibilities, and procedures and the effect on existing relationships between guardians and wards. The subcommittee shall report its findings and recommendations to the Joint Legislative Oversight Committee on Health and Human Services on or before May 9, 2014, at which time it shall terminate.

SECTION 4. This act is effective when it becomes law.

HOUSE BILL 543:
Guardianship Roles of MHDDSA Providers

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 10, 2013
Introduced by:	Reps. Jones, Avila, Glazier, Turner	**Prepared by:**	Bill Patterson
Analysis of:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 543 amends the qualifications for corporations or individuals appointed as guardians and requires the Joint Legislative Oversight Committee on Health and Human Services to appoint a subcommittee to study the impact of the 1915(b)/(c) Medicaid Waiver and other mental health system reforms on public guardianship services.***

CURRENT LAW: **Chapter 35A, Article 5,** provides for the *appointment* of a guardian for an incompetent person. G.S. 35A-1210 specifies that any individual, corporation, or disinterested public agent may file with the clerk an application for the appointment of a guardian for an incompetent person. The application must provide the following:

(1) Name, age, address, and county of residence of the ward or respondent;
(2) Name, address, and county of residence of the applicant, relationship if any to the respondent or ward, and interest in the proceeding;
(3) Name, address, and county of residence of the respondent's next of kin and other persons known to have an interest in the proceeding;
(4) General statement of the ward's or respondent's assets and liabilities with an estimate of the value of any property, including any income and receivables to which he [or she] is entitled; and
(5) Whether the applicant seeks the appointment of a guardian of the person, a guardian of the estate, or a general guardian, and whom the applicant recommends or seeks to have appointed as such guardian or guardians.

G.S. 35A-1213 establishes the *qualifications* of guardians. G.S. 35A-1213(a) provides that the clerk may appoint as guardian an adult individual, a corporation, or a disinterested public agency. Subsection (b) provides requirements for appointment of a nonresident guardian. Subsection (c) provides requirements of a corporation appointed as a guardian. S.L. 2012-151 amended Subsection (c) to require that a corporation must meet the requirements outlined in Chapters 55 and 55D, provide a written copy of its charter to the Clerk of superior court, and if contracting with a public agency to serve as a guardian must attend and verify attendance at guardianship training. Subsection (d) pertains to disinterested public agents appointed by the clerk to serve a guardians and potential conflicts of interest. Subsection (e) generally prohibits an employee of a treatment facility from serving as a guardian for a ward who in an inpatient in or resident of a facility where the employee works. S.L. 2012-151 added subsection (f) which prohibits an individual who contracts with or is employed by an entity that contracts with an LME for the delivery of mental health, developmental disabilities, and substance abuse services, from serving as a guardian for a ward for whom the individual or entity is providing services, unless they are a member of the ward's immediate family under contract with the LME and serving as a guardian as of January 1, 2013.

Chapter 55 is the North Carolina Business Corporation Act. §55-1-40(4) establishes that a **"Corporation" or "domestic corporation"** means a corporation for profit or a corporation having capital stock that is incorporated under or subject to the provisions of this Chapter and that is not a

foreign corporation, except that in G.S. 55-9-01 and G.S. 55-15-21, "corporation" includes domestic and foreign corporations. **Chapter 55D** pertains to Filings, Names, and Registered Agents for Corporations, Nonprofit Corporations and Partnerships. §55D-1(1) provides that "Corporation" or "domestic corporation" is defined in G.S. 55-1-40(4).

BILL ANALYSIS:

Section 1 of HB 543 amends G.S. 35A-1213(c) to prohibit a corporation from being appointed as a guardian for any individual to whom it provides mental health, developmental disabilities, or substance abuse services for compensation as part of a contract or other arrangement with a local management entity (LME). The term "LME" includes an LME approved to operate the 1915(b)/(c) Medicaid Waiver.

Section 2 of the bill amends G.S. 35A-1213(f), which prohibits individuals who contract with, or are employed by an entity that contracts with, an LME for the delivery of mental health, developmental disabilities and substance abuse (MH/DD/SA) services, from serving as a guardian for a ward for whom the individual or entity is providing these services, unless the individual is a parent of the ward or a member of the ward's immediate family. Section 2 would permit the following additional individuals to serve as guardian:

- The individual is a licensed family foster care provider, or a licensed therapeutic foster care provider who is under contract with a LME for the delivery of MH/DD/SA services and is serving as a guardian as of January 1, 2013.
- The individual is biologically unrelated and was serving on March 1, 2013, as a guardian without compensation for guardianship services.

Section 3 requires the Joint Legislative Oversight Committee on Health and Human Services to appoint a subcommittee to examine the impact of the 1915(b)/(c) Medicaid Waiver and other mental health system reforms on public guardianship services, including guardianship roles, responsibilities and procedures, and the effect on existing relationships between guardians and wards. The subcommittee is required to report its findings and recommendations to the Committee on or before May 9, 2014, at which time it will terminate.

EFFECTIVE DATE: House Bill 543 would become effective when it becomes law.

Theresa Matula, staff to the Senate Health Care Committee, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 982
Committee Substitute Favorable 5/15/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H982-CSTG-57 [v.1]
6/12/2013 3:56:51 PM

Short Title: Modify Medicaid Subrogation Statute. (Public)

Sponsors:

Referred to:

April 18, 2013

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE MEDICAID SUBROGATION STATUTE IN RESPONSE TO THE UNITED STATES SUPREME COURT DECISION IN WOS V. E.M.A.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 108A-57 reads as rewritten:

"**§ 108A-57. Subrogation rights; withholding of information a misdemeanor.**

(a) Notwithstanding any other provisions of the law, to the extent of payments under this Part, the ~~State, or the county providing medical assistance benefits,~~ State shall be subrogated to all rights of recovery, contractual or otherwise, of the beneficiary of this assistance, or of the beneficiary's personal representative, heirs, or the administrator or executor of the estate, against any person. ~~The county attorney, or an attorney retained by the county or the State or both, or an attorney retained by the beneficiary of the assistance if this attorney has actual notice of payments made under this Part shall enforce this section.~~ A personal injury or wrongful death claim brought by a medical assistance beneficiary against a third party shall include a claim for all medical assistance payments for health care items or services furnished to the medical assistance beneficiary as a result of the injury, hereinafter referred to as the "Medicaid claim." Any personal injury or wrongful death claim brought by a medical assistance beneficiary against a third party that does not state the Medicaid claim shall be deemed to include the Medicaid claim.

(a1) If the amount of the Medicaid claim does not exceed one-third of the medical assistance beneficiary's gross recovery, it is presumed that the gross recovery includes compensation for the full amount of the Medicaid claim. If the amount of the Medicaid claim exceeds one-third of the medical assistance beneficiary's gross recovery, it is presumed that one-third of the gross recovery represents compensation for the Medicaid claim.

(a2) A medical assistance beneficiary may dispute the presumptions established in subsection (a1) of this section by applying to the court in which the medical assistance beneficiary's claim against the third party is pending, or if there is none, then to a court of competent jurisdiction, for a determination of the portion of the beneficiary's gross recovery that represents compensation for the Medicaid claim. An application under this subsection shall be filed with the court and served on the Department pursuant to the Rules of Civil Procedure no later than 30 days after the date that the settlement agreement is executed by all parties and, if required, approved by the court, or in cases in which judgment has been entered, no later than 30 days after the date of entry of judgment. The court shall hold an evidentiary hearing no sooner than 30 days after the date the action was filed. All of the following shall apply to the court's determination under this subsection:

(1) The medical assistance beneficiary has the burden of proving by clear and convincing evidence that the portion of the beneficiary's gross recovery that represents compensation for the Medicaid claim is less than the portion presumed under subsection (a1) of this section.

(2) The presumption under subsection (a1) of this section is not rebutted solely by the fact that the medical assistance beneficiary was not able to recover the full amount of all claims.

(3) The court may consider any factors the court deems just and reasonable in determining the portion of the recovery that represents compensation for the Medicaid claim.

(4) The court may determine based upon clear and convincing evidence that the portion of the recovery that represents compensation for the Medicaid claim is greater than the portion presumed under subsection (a1) of this section.

(a3) ~~Any~~Within 30 days of receipt of the proceeds of a settlement or judgment related to a claim described in subsection (a) of this section, the medical assistance beneficiary or any attorney retained by the beneficiary shall notify the Department of the receipt of the proceeds. The medical assistance beneficiary or any attorney retained by the beneficiary ~~of the assistance~~ shall, out of the proceeds obtained by or on behalf of the beneficiary by settlement with, judgment against, or otherwise from a third party by reason of injury or death, distribute to the Department the amount of assistance paid by the Department on behalf of or to the beneficiary, as prorated with the claims of all others having medical subrogation rights or medical liens against the amount received or recovered, but the amount paid to the Department shall not exceed ~~one-third of the gross amount obtained or recovered.~~the portion presumptively determined under subsection (a1) of this section or the portion judicially determined under subsection (a2) of this section. Unless an action has been commenced pursuant to subsection (a2) of this section, the amount shall be paid to the Department within 30 days of the beneficiary's receipt of the proceeds.

(a4) The United States and the State of North Carolina shall be entitled to shares in each net recovery by the Department under this section. Their shares shall be promptly paid under this section and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient.

(b) It is a Class 1 misdemeanor for any person seeking or having obtained assistance under this Part for himself or another to willfully fail to disclose to the county department of social services or its attorney the identity of any person or organization against whom the recipient of assistance has a right of recovery, contractual or otherwise.

(c) This section applies to the administration of and claims payments made by the Department of Health and Human Services under the NC Health Choice Program established under Part 8 of this Article.

(d) As required to ensure compliance with this section, the Department may apply to the court in which the medical assistance beneficiary's claim against the third party is pending, or if there is none, then to a court of competent jurisdiction for enforcement of this section."

SECTION 2. This act is effective when it becomes law and applies to claims brought by a medical assistance beneficiary against a third party in which either a settlement agreement is executed by all parties or a judgment is entered against the third party on or after the effective date. For claims in which the Medicaid claim has not been satisfied and as to which, prior to the effective date of this act, either (i) a settlement agreement has been executed by all parties, or (ii) judgment has been entered against the third party, the medical assistance beneficiary shall have 90 days from the effective date of this act within which to apply to the court pursuant to G.S. 108A-57(a2).

HOUSE BILL 982:
Modify Medicaid Subrogation Statute

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 12, 2013
Introduced by:	Reps. Burr, Avila	**Prepared by:**	Bill Patterson
Analysis of:	PCS to Second Edition H982-CSTG-57		Committee Counsel

SUMMARY: ***The PCS for House Bill 982 permits a medical assistance beneficiary to rebut the statutory presumption of the amount of a beneficiary's tort recovery against a third-party that is subject to the State's right of reimbursement for Medicaid payments made on behalf of the beneficiary. The beneficiary must offer clear and convincing evidence to rebut the presumption. The PCS authorizes the court hearing a beneficiary's challenge to conclude, based on clear and convincing evidence, that the portion of the gross recovery representing compensation for medical expenses is more than the amount presumed under the statute.***

CURRENT LAW: G.S. 108A-57 provides that the State is subrogated to a medical assistance beneficiary's recovery against any person to the extent of the State's payments for health care items or services. Out of the proceeds of any recovery against a third party, the attorney representing a medical assistance beneficiary is required to distribute to the Department of Health and Human Services the amount of assistance paid by the Department on behalf of or to the beneficiary, prorated with all other claims of persons having medical subrogation rights or medical liens against the amount recovered, but not more than one-third of the gross amount recovered.

Federal Medicaid statutes require states to pursue recovery of the portion of a beneficiary's tort recovery that is for medical expenses, but prohibit the states from taking any other portion of the settlement. The federal statutes do not specify how the amount of the recovery representing payment for medical care should be determined.

In Andrews ex. Rel Andrews v. Haygood,[1] the North Carolina Supreme Court held that the statutory presumption that the medical portion of a beneficiary's settlement of tort claims against third parties was the lesser of the State's medical expenditures or one-third of the total settlement amount was a reasonable method for determining the amount the State was entitled to recover.

On March 20, 2013, Andrews was abrogated by the United States Supreme Court in Wos v. E.M.A ex rel. Johnson,[2] which held that G.S. 108A-57 was preempted under federal law to the extent that it could be interpreted as creating a conclusive presumption that one-third of the beneficiary's tort recovery represents compensation for medical expenses, instead of providing a process for determining what amount of the recovery was for medical expenses.[3]

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[1] Andrews ex rel. Andrews v. Haygood, 362 N.C. 599, 669 S.E.2d 310 (2008) abrogated by Wos v. E.M.A. ex rel. Johnson, 133 S. Ct. 1391 (U.S. 2013).

[2] Wos v. E.M.A. ex rel. Johnson, 133 S. Ct. 1391 (2013).

[3] "The defect in § 108A–57 is that it sets forth no process for determining what portion of a beneficiary's tort recovery is attributable to medical expenses. Instead, North Carolina has picked an arbitrary number—one-third—and by statutory command labeled that portion of a beneficiary's tort recovery as representing payment for medical care. Pre-emption is not a

BILL ANALYSIS: The PCS to House Bill 982 would amend G.S. 108A-57 to establish a procedure by which a beneficiary can seek a judicial determination of the amount of the recovery that was for medical expenses if the beneficiary disagrees with the statutory presumption.

The PCS would require any personal injury or wrongful death claim brought by or on behalf of a medical assistance beneficiary to include a claim ("the Medicaid claim") for all medical assistance payments for health care items or services furnished to the beneficiary as a result of the injury.[4]

If the Medicaid claim for all medical assistance payments for health care items or services furnished to the beneficiary as a result of the injury does not exceed one-third of the gross recovery, it would be presumed that the recovery represents compensation for the full amount of the Medicaid claim. If the Medicaid claim is for more than one-third of the gross recovery, then the PCS would presume that the amount of the recovery representing medical expenses is one-third of the total.[5]

A beneficiary wishing to dispute the presumption would have to file an application with a court in which the claim against the third-party is pending, or if none, to a court of competent jurisdiction. The application would have to be filed and served on the Department of Health and Human Services no later than 30 days after the date of any settlement with, or entry of judgment against, the third party.[6]

The presumption could be rebutted only by clear and convincing evidence,[7] and would not be rebutted solely by evidence that the beneficiary did not recover the full amount of all claims.[8] The court could consider any factors it deemed just and reasonable in making its determination.[9] The PCS replaced language stating that the parties could agree to a compromise of the Medicaid claim amount at any time with language permitting the court to conclude, based on clear and convincing evidence, that the portion of the beneficiary's gross recovery representing the Medicaid claim was more than the amount presumed under the statute.[10]

If the beneficiary does not dispute the statutory presumption, the statutorily presumed amount must be paid to the Department within 30 days of the beneficiary's receipt of the proceeds.[11] The Department would be permitted to apply to the court for enforcement of the State's rights under this section.[12]

EFFECTIVE DATE: This act is effective when it becomes law and applies to medical assistance beneficiaries claims against a third party which either have been settled or in which judgment has been entered on or after the effective date. If a claim has been settled or a judgment entered against a third party before the effective date, and the Medicaid claim has not been satisfied, the beneficiary will have 90 days from the effective date of the act to dispute the presumption by application to the court.

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matter of semantics. A State may not evade the pre-emptive force of federal law by resorting to creative statutory interpretation or description at odds with the statute's intended operation and effect." Wos v. E.M.A. ex rel. Johnson, 133 S. Ct. 1391, 1398 (2013).

[4] G.S. 108A-57(a).
[5] G.S. 108A-57(a1).
[6] G.S. 108A-57(a2).
[7] G.S. 108A-57(a2)(1).
[8] G.S. 108A-57(a2)(2).
[9] G.S. 108A-57(a2)(3).
[10] G.S. 108A-57(a2)(4).
[11] G.S. 108A-57(a3).
[12] G.S. 108A-57(d).

VISITOR REGISTRATION SHEET

Judiciary I Committee

(Committee Name)

6-13-13

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
Thad Balla	NC Assoc for J-L
Philip Isley	self
Deb Gosda	DMA
Adam Shelar	DHHS
CS Hollis	TSS
Alissa Willett	NCACC
Julia Adams	The Arc of NC/NCARF
Sarah L. Miller	self
David Holm	NCBA
Brinton Wright	NCBA
Ellen Hanner	CRC
Andrew Cagle	NC Sheriffs' Assoc.
	Exec
	P. Lex & Assoc.
Alex Bader	CSS

VISITOR REGISTRATION SHEET

Judiciary I Committee
(Committee Name)

6-13-13
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
Parker Dozier	Disability Rights NC
Kerra Bolton	LCA
Sarah Preston	ACLU-NC
George T. Smith	NP
Kim M[illegible]	B[illegible]
Jonathan McGirt	NCBA
Kim Crouch	NCBA
[illegible]	[illegible]
Shana McGee	LINC: Valuez
Erica Nelson	NCHA
Michael Hauser	The Hauser Consulting Group
John Bode	BCS
Mildred Spearman	NCAOC
Mary Bethea	AARP NC

Senate Committee on Judiciary I
Tuesday, June 18, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 686	NC Seafood Park/Name Change.	Representative Tine Representative Stone Representative Steinburg
HB 392	Share Arrest Warrant Status/Pub. Assistance.	Representative Arp Representative Horn Representative Starnes Representative Burr

Presentations

Other Business

Adjournment

Senate Committee on Judiciary I
Tuesday, June 18, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on June 18, 2013 in Room 1027/1128 of the Legislative Building. Twelve members were present.

Senator Thom Goolsby, Chair, presided.

Representative Paul Tine was recognized to explain House Bill 686. Senator Josh Stein moved for a favorable report to the bill. Senator Jerry Tillman made a comment. Sen. Goolsby held a vote on the motion and it passed by a voice vote.

Representative Dean Arp was recognized to explain House Bill 392. Sen. Tillman commented on the bill and said he supports the bill. Sen. Goolsby asked Susan Sitze from the Research Division to explain sections of the bill to the committee.

Rep. Arp responded to the committee discussion and Ms. Sitze made more comments about the bill. Sen. Tillman moved for a favorable report to HB 392 and the motion passed by a voice vote.

The meeting adjourned at 10:13 a.m..

Senator Thom Goolsby, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Tuesday, June 18, 2013

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

FAVORABLE

HB **392** **(CS#1)** Share Arrest Warrant Status/Pub. Assistance.

Draft Number:	None
Sequential Referral:	Health Care
Recommended Referral:	None
Long Title Amended:	No

HB **686** **(CS#1)** NC Seafood Park/Name Change.

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Thomas Goolsby will handle HB 392
Senator Bill Cook will handle HB 686



HOUSE BILL 686
Committee Substitute Favorable 4/24/13

Short Title: NC Seafood Park/Name Change. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO RENAME THE NC SEAFOOD INDUSTRIAL PARK AUTHORITY TO REFLECT ITS BROADER MISSION AND TO MAKE OTHER MODIFICATIONS TO THE AUTHORITY'S ENABLING LEGISLATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 23C of Chapter 113 of the General Statutes reads as rewritten:

"Article 23C.

"North Carolina ~~Seafood~~ Marine Industrial Park Authority.

"**§ 113-315.25. Creation of Authority; membership; appointment; terms and vacancies; officers; meetings and quorum; compensation.**

(a) There is hereby created the North Carolina ~~Seafood~~ Marine Industrial Park Authority. It shall be governed by a board composed of 11 members to be appointed as follows. The Board is hereby designated as the Authority.

(b) Nine members shall be appointed by the Governor.

The initial appointments by the Governor shall be made on or after the date of ratification, four terms to expire July 1, 1981; four terms to expire July 1, 1983; and one term to expire July 1, 1985. Thereafter, at the expiration of each stipulated term of office all appointments shall be for a term of four years. The members of the Authority shall be selected as follows: one member be appointed to the Authority for a term to expire July 1, 1983, who is a resident of ~~the~~ a village or town where ~~the a Seafood~~ Marine Industrial Park is located; one member be appointed to the Authority for a term to expire July 1, 1983, who is a resident of ~~the~~ a county where ~~the a Seafood~~ Marine Industrial Park is located; two members be appointed to the Authority for terms which expire July 1, 1981, from the area of the State where ~~the a Seafood~~ Marine Industrial Park is located; five members (two terms expire July 1, 1981; two terms expire July 1, 1983; and one term expires July 1, 1985) be appointed to the Authority who are residents of the State at large and insofar as practicable shall represent all the other sections of the State. At the expiration of the terms for the representatives as stated above the Governor shall use his discretion on reappointments. However, there shall be no less than five members of the Authority from coastal counties and there should be at least one member on the Authority from each village or town in which the ~~Seafood~~ Marine Parks are located. Any vacancy occurring in the membership of the Authority shall be filled by the appointing authority for the unexpired term. The Governor shall have the authority to remove any member appointed by the Governor.

(c) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 36.

(d) The General Assembly shall appoint two persons, 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. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. The terms of the initial appointees by the General Assembly shall expire on June 30, 1983. The terms of subsequent appointees by the General Assembly shall be two years.

(e) The Governor shall annually appoint from the members of the Authority the chairman and vice-chairman of the Authority. The Secretary of Commerce or his designee shall serve as secretary of the Authority.

(f) No person shall serve on the Authority for more than two complete consecutive terms.

(g) The Authority shall meet once in each 90 days at such regular meeting time as the Authority by rule may provide and at any place within the State as the Authority may provide, and shall also meet upon the call of its chairman or a majority of its members. A majority of its members shall constitute a quorum for the transaction of business. The members of the Authority shall not be entitled to compensation for their services, but shall receive per diem and necessary travel and subsistence expense in accordance with G.S. 138-5 and 138-6.

"§ 113-315.26. Personnel.

The Secretary of Commerce shall appoint ~~such~~ any personnel as deemed necessary who shall serve at the pleasure of the Secretary of Commerce. The Secretary of Commerce shall have the power to appoint, employ and dismiss ~~such number of~~any employees ~~as he may deem~~deemed necessary to accomplish the purposes of this Article subject to the availability of funds. It is recommended that, to the fullest extent possible, the Secretary of Commerce consult with the Authority on matters of personnel.

...

"§ 113-315.28. Purposes of Authority.

Through the Authority ~~hereinbefore~~ created by this Article, the State of North Carolina may engage in promoting, developing, constructing, equipping, maintaining and operating ~~the seafood~~one or more marine industrial parks within the State, or within the jurisdiction of the State, and works of internal improvements ~~incident thereto,~~related to the purposes set forth in this section, including the acquisition or construction, maintenance and operation ~~as such seafood industrial parks~~ of watercraft and facilities ~~thereon~~ located at the parks or essential for the proper operation ~~thereof.~~ of the parks. ~~Said~~ The Authority is created as an instrumentality of the State of North Carolina for the accomplishment of the following general purposes:

(1) To develop and improve the Wanchese ~~Seafood~~ Marine Industrial Park, and such other ~~places,~~marine industrial parks, including inland ports and facilities, as may be deemed feasible for a more expeditious and efficient handling of ~~seafood~~ marine commerce from and to any place or places in the State of North Carolina and other states and foreign countries;

(2) To acquire, construct, equip, maintain, develop and improve the port facilities at ~~said~~ the parks and to maintain, develop, and improve ~~such portions of the~~ the navigability of waterways ~~thereat~~ in or adjacent to the parks ~~as are within the jurisdiction of the federal government~~ and ~~the~~ those waterways connecting the ~~Wanchese Seafood Industrial Park~~parks with the channels of commerce of the Atlantic ~~Ocean, consistent with the project designed by the United States Army Corps of Engineers pursuant to the Manteo (Shallowbag) Bay navigation project as authorized in the Rivers and Harbors Act of 1970 (P.L. 91-611);~~Ocean;

(3) To foster and stimulate the ~~shipment of seafood commerce through said ports, whether originating within or without the State of North Carolina,~~

~~including the investigation and handling of matters pertaining to all transportation rates and rate structures affecting the same;~~growth of marine-related industries in the State of North Carolina;

~~(4) To cooperate with the United States of America and any agency, department, corporation or instrumentality thereof in the maintenance, development, improvement and use of said seafood harbors and the waterways connecting the parks with the channels of commerce of the Atlantic Ocean;~~

(5) To accept funds from any ~~of said~~ counties or cities ~~wherein said ports are located~~ containing a marine industrial park and to use the same in such manner, within the purposes of said Authority, as shall be stipulated by the ~~said~~ funding county or city, and to act as agent or instrumentality of any ~~of said~~funding counties or cities in any matter coming within the general purposes of said Authority;

(5a) To encourage and develop the general maritime and marine-related industries and activities at or in the vicinity of the ~~seafood~~ marine industrial parks;

(6) And in general to do and perform any act or function which may tend to be useful toward the development and improvement of ~~seafood~~ marine industrial parks ~~of~~ in the State of North Carolina, and to increase the movement of waterborne ~~seafood~~ marine commerce, foreign and domestic, to, through, and from ~~said seafood~~ the marine industrial parks.

The enumeration of the above purposes shall not limit or circumscribe the broad objective of developing to the utmost the ~~seafood~~ marine industry possibilities of the State of North Carolina.

"§ 113-315.29. Powers of Authority.

In order to enable it to carry out the purposes of this Article, the Authority shall:

(1) Have the powers of a body corporate, including the power to sue and be sued, to make contracts, and to adopt and use a common seal and to alter the same as may be deemed expedient;

(2) Have the authority to make all necessary contracts and arrangements with other ~~seafood~~ marine industrial park or port authorities of this and other states for the interchange of business, and for such other purposes as will facilitate and increase the ~~seafood~~ marine industries;

(3) Be authorized and empowered to rent, lease, buy, own, acquire, mortgage, otherwise encumber, and dispose of such property, real or personal, as said Authority may deem proper to carry out the purposes and provisions of this Article, all or any of them;

(4) Be authorized and empowered to acquire, construct, maintain, equip and operate any wharves, docks, piers, quays, elevators, compresses, refrigeration storage plants, warehouses and other structures, and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches ~~thereto;~~to port facilities at the parks and improving the navigability of those waterways connecting the parks with the channels of commerce of the Atlantic Ocean;

(5) Be authorized and empowered to pay all necessary costs and expenses involved and incident to the formation and organization of ~~said~~ the Authority, and incident to ~~the~~ its administration and ~~operation thereof~~,operation, and to pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this Article;

(6) Be authorized and empowered to apply for and accept loans and grants of money from any federal agency or the State of North Carolina ~~or any political subdivision thereof~~ and its political subdivisions or from any public or private sources available for any and all of the purposes authorized in this Article, and to expend ~~the same~~these funds in accordance with the directions and requirements ~~attached thereto,~~of the granting or loaning authority, or imposed ~~thereon~~ on the loans and grants by any ~~such~~ federal agency, the State of North ~~Carolina, or any political subdivision thereof,~~Carolina and its political subdivisions, or any public or private lender or donor, and to give such evidences of indebtedness as shall be required, provided, however, that no indebtedness of any kind incurred or created by the Authority shall constitute an indebtedness of the State of North Carolina, or any of its political ~~subdivisions thereof,~~subdivisions, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the State of North Carolina, or any of its political ~~subdivision thereof;~~subdivisions;

(7) Be authorized and empowered to act as agent for the United States of America, or any ~~agency, department, corporation, or instrumentality thereof,~~of its agencies, departments, corporations, or instrumentalities in any matter coming within the purposes or powers of the Authority;

(8) Have power to adopt, alter or repeal bylaws and rules governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, and may provide for the appointment of ~~such committees, and the functions thereof,~~any committees as the Authority may deem necessary or expedient in facilitating its business;

(8a) Have the authority to assess and collect fees for its services or for the use of its facilities;

(9) Be authorized and empowered to do any and all other acts and things in this Article authorized or required to be done, whether or not included in the general powers in this section mentioned; and

(10) Be authorized and empowered to do any and all things necessary to accomplish the purposes of this Article.

"§ 113-315.30. Approval of acquisition and disposition of real property.

Any transactions relating to the acquisition or disposition of real property or any estate or interest in real property, by the North Carolina State ~~Seafood~~ Marine Industrial Park Authority, shall be subject to prior review by the Governor and Council of State, and shall become effective only after the same has been approved by the Governor and Council of State. Upon the acquisition of real property or other estate ~~therein,~~or interest in real property, by the Authority, the fee title or other estate shall vest in and the instrument of conveyance shall name the "~~Seafood~~ North Carolina Marine Industrial Park Authority" as grantee, lessee, or transferee. Upon the disposition of real property or any interest or estate therein, the instrument of conveyance or transfer shall be executed by the North Carolina ~~Seafood~~ Marine Industrial Park Authority. The approval of any transaction by the Governor and Council of State may be evidenced by a duly certified copy of excerpt of minutes of the meeting of the Governor and Council of State, attested by the private secretary to the Governor or the Governor, reciting such approval, affixed to the instrument of acquisition or transfer, and ~~said~~ the certificate may be recorded as a part ~~thereof,~~of the instrument of acquisition or transfer, and ~~the same~~ shall be conclusive evidence of review and approval of the subject transaction by the Governor and Council of State. The Governor, acting with the approval of the Council of State, may delegate the review and approval of such classes of lease, rental, easement, or right-of-way transactions as ~~he~~ the Governor deems advisable, and ~~he~~ the Governor may likewise delegate the review and approval of the severance of buildings and timber from the land.

"§ 113-315.31. Issuance of bonds.

(a) As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance and operation of any facility, building, structure, or any other matter or thing which the Authority is ~~herein~~ authorized to acquire, construct, equip, maintain, or ~~operate,~~operate by this Article, all or any of them, the ~~said~~ Authority is hereby authorized at one time or from time to time to issue with the approval of the Governor negotiable revenue bonds of the Authority. The principal and interest of revenue bonds shall be payable solely from the revenue to be derived from the operation of all or any part of its properties and facilities.

(b) A pledge of the net revenues derived from the operation of ~~said~~ the properties and facilities, all or any of them, shall be made to secure the payment of ~~said bonds~~the bonds issued to finance them as and when they mature.

(c) Revenue bonds issued under the provisions of this Article shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State. The issuance of such revenue bonds shall not directly or indirectly or contingently obligate the State to levy or to pledge any form of taxation whatever ~~therefor~~ or to make any appropriation for their payment.

(d) Such bonds and the income ~~thereof~~ derived from them shall be exempt from all taxation within the State.

(e) Notwithstanding any other provisions of this Article, the State Treasurer shall have the exclusive power to issue bonds and notes authorized under the act upon request of the Authority and with the approval of the Governor after receiving the advice of the Local Government Commission. The State Treasurer in his sole discretion shall determine the interest rates, maturities, and other terms and conditions of the bonds and notes authorized by this Article. The North Carolina ~~Seafood~~ Marine Industrial Park Authority shall determine when a bond issue is indicated. The Authority shall cooperate with the State Treasurer in structuring any bond issue in general, and also in soliciting proposals from financial consultants, underwriters, and bond attorneys.

"§ 113-315.32. Power of eminent domain.

For the acquiring of rights-of-way and property necessary for the construction of wharves, piers, ships, docks, quays, elevators, compresses, refrigerator storage plants, warehouses and other riparian and littoral terminals and structures and approaches thereto, including the navigation stabilization structures ~~recommended by the United States Army Corps of Engineers pursuant to the authorization in United States Public Law 91-611,~~ and transportation facilities needful for the convenient use of same, the Authority shall have the right and power to acquire the same by purchase, by negotiation, or by condemnation, and should it elect to exercise the right of eminent domain, condemnation proceedings shall be maintained by and in the name of the Authority, and it may proceed in the manner provided for the Board of Transportation by Article 9 of Chapter 136 of the General Statutes. The power of eminent domain shall not apply to property of persons, State agency or corporations already devoted to public use, other than lands subject to the power of eminent domain by the State of North Carolina in the reservation clauses of a deed recorded in the Dare County Registry at Book 79 Page 548.

"§ 113-315.33. Exchange of property; removal of buildings, etc.

The Authority may exchange any property or properties acquired under the authority of this Chapter for other property, or properties usable in carrying out the powers ~~hereby conferred,~~conferred by this Article, and also may remove from lands needed for its purposes and reconstruct on other locations, buildings, terminals, or other structures, upon the payment of just compensation, if in its judgment, it is necessary or expedient so to do in order to carry out any of its plans for ~~seafood~~ marine industrial park development, under the authorization of this Article.

"**§ 113-315.34. Jurisdiction of the Authority; application of Chapter 20; appointment and authority of special police.**

(a) The jurisdiction of the Authority in any of ~~said harbors or seaports within the State for the shipment of seafood commerce~~the parks shall extend to all properties owned by or under control of the Authority and shall also extend over the waters and shores ~~of such harbors or seaports~~within the parks and over that part of all tributary streams flowing into ~~such harbors or seaports~~the parks in which the tide ebbs and flows, and shall extend to the outer edge of the outer bar situated at ~~such harbors or seaports.~~the approach to the port of any park.

(b) All the provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are hereby made applicable to the streets, alleys and driveways on the properties owned by or under the control of the North Carolina ~~Seafood~~ Marine Industrial Park Authority. Any person violating any of the provisions of said Chapter in or on such streets, alleys or driveways shall, upon conviction thereof, be punished as therein prescribed. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, alleys and driveways on the properties of said Authority as is now vested by law in the said Authority.

(c) The Authority shall post copies of rules concerning traffic and parking at appropriate places on property of the Authority. Violation of a rule concerning traffic or parking on property of the Authority is a Class 3 misdemeanor.

(d) The Secretary of Commerce is authorized to appoint such number of employees of the Authority as he may think proper as special policemen, who, when so appointed, shall have within the jurisdiction of the Authority all the powers of policemen of incorporated towns. Special policemen may arrest persons who violate State law or a rule adopted by the Authority. Employees appointed as such special policemen shall take the general oath of office prescribed by G.S. 11-11.

"**§ 113-315.35. Audit.**

The operations of the North Carolina ~~Seafood~~ Marine Industrial Park Authority shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

"**§ 113-315.36. Building contracts.**

(a) The following general laws, to the extent provided below, do not apply to the North Carolina ~~Seafood~~ Marine Industrial Park Authority:

(1) Repealed by Session Laws 1999-368, s. 1.

(2) Except for G.S. 143-128.2, Article 8 of Chapter 143 of the General Statutes does not apply to public building contracts of the Authority that require the estimated expenditure of public money in an amount less than two hundred fifty thousand dollars ($250,000). With respect to a contract that is exempted from certain provisions of Article 8 under this subdivision, the powers and duties set out in Article 8 shall be exercised by the Authority, and the Secretary of Administration and other State officers, employees, or agencies shall have no duties or responsibilities concerning the contract.

(3) G.S. 143-341(3) does not apply to plans and specifications for construction or renovation authorized by the Authority that require the estimated expenditure of public money in an amount less than two hundred fifty thousand dollars ($250,000).

(b) Notwithstanding the other provisions of this section, the services of the Department of Administration may be made available to the Authority, when requested by the Authority, with regard to matters governed by Article 8 of Chapter 143 of the General Statutes and G.S. 143-341(3). The Authority shall report quarterly to the Joint Legislative Commission on Governmental Operations on any building contract to which this exemption is applied. The

quarterly report required by this subsection shall specifically include information regarding the Authority's compliance with the provisions of G.S. 143-128.2.

...

"§ 113-315.38. Warehouses, wharves, etc., on property abutting navigable waters.

The powers, authority and jurisdiction granted to the North Carolina ~~Seafood~~ Marine Industrial Park Authority under this Article and Chapter shall not be construed so as to prevent other persons, firms and corporations, including municipalities, from owning, constructing, leasing, managing and operating warehouses, structures and other improvements on property ~~owned, leased or under the control of such other persons, firms and corporations~~they own, lease, or control abutting upon and adjacent to navigable waters and streams in this State, nor to prevent ~~such~~ other persons, firms and corporations from constructing, owning, leasing and operating ~~in connection therewith~~ wharves, docks and ~~piers,~~piers associated with the warehouses, structures, and other improvements, nor to prevent ~~such~~ other persons, firms and corporations from encumbering, leasing, selling, conveying or otherwise dealing with and disposing of ~~such~~ the properties, facilities, lands and improvements after ~~such~~ construction.

"§ 113-315.39. Taxation.

The property of the Authority shall not be subject to any taxes or ~~assessments thereon.~~assessments."

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

HOUSE BILL 686:
NC Seafood Park/Name Change

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 17, 2013
Introduced by:	Reps. Tine, Stone, Steinburg	**Prepared by:**	Bill Patterson
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 686 changes the name of the NC Seafood Park Authority to the NC Marine Industrial Park Authority and makes modifications to the Authority's purposes and powers in keeping with its expanded mission.

CURRENT LAW: The NC Seafood Industrial Park Authority was established in 1979. The Wanchese Seafood Industrial Park was the original park operated by the authority. It opened in 1981 and consists of 53 acres on the south end of Roanoke Island in Dare County. The Park is fully leased and is home to a number of marine businesses including boat building, commercial fishing, marina, and supply chain operations. In June 2012, the 7.5 acre Engelhard Marine Industrial Park secured its first tenant, Southern Diesel Corp. A third park, Perquimans Marine Industrial Park, a 72 acre site in Perquimans County, is currently ready for development.

BILL ANALYSIS: House Bill 686 renames the NC Seafood Industrial Park Authority as the NC Marine Industrial Authority. The bill updates and makes clarifying and conforming changes to the language in the original Article and amends the purpose and powers of the Authority consistent with the change in its name.

In particular, the bill authorizes the Authority to promote, develop, construct, equip, maintain, and operate one or more marine industrial parks and to maintain, develop, and improve the navigability of waterways in or adjacent to the parks and those connecting the parks with the channels of commerce of the Atlantic Ocean. The bill deletes the requirement that such improvements be consistent with project design by the United States Army Corps of Engineers (Corps) pursuant to the Manteo Bay navigation project. The Authority is also directed to foster the growth of marine-related industries in the State and to accept funds from cities and counties in which a marine industrial park is located.

The powers of the Authority are also amended to include the power to acquire, equip, and operate wharves, docks, elevators, and other facilities in the aid of commerce including dredging of approaches to port facilities at the parks and improving the navigability of those waterways connecting the parks to the Atlantic Ocean. The Authority's power of eminent domain is amended to remove the reference to navigation stabilization structures recommended by the Corps under the Rivers and Harbors Act of 1970.

EFFECTIVE DATE: The act is effective when it becomes law.

Barbara Riley, counsel to House Agriculture Committee, and Jennifer Mundt, staff to Senate Agriculture/Environment/Natural Resources, substantially contributed to this summary.

O. Walker Reagan
Director

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 3

HOUSE BILL 392
Committee Substitute Favorable 4/3/13
Third Edition Engrossed 4/11/13

Short Title: Share Arrest Warrant Status/Pub. Assistance. (Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

AN ACT REQUIRING A COUNTY DEPARTMENT OF SOCIAL SERVICES (DSS) TO VERIFY WHETHER AN APPLICANT FOR OR RECIPIENT OF TEMPORARY ASSISTANCE TO NEEDY FAMILY (TANF) BENEFITS OR FOOD AND NUTRITION SERVICES (FNS) BENEFITS IS A FLEEING FELON OR A PROBATION OR PAROLE VIOLATOR, TO DIRECT INTERAGENCY COOPERATION AND INFORMATION SHARING IN ORDER TO VERIFY THE ELIGIBILITY STATUS OF AN APPLICANT OR RECIPIENT, AND TO DENY TANF OR FNS BENEFITS TO AN APPLICANT OR RECIPIENT WHO IS A FLEEING FELON OR A PROBATION OR PAROLE VIOLATOR.

Whereas, federal law, specifically, 42 U.S.C. § 601, et seq., requires that states receiving funds under certain federal grant programs shall not use any part of the grant to provide assistance to any individual who is (i) fleeing to avoid prosecution, custody, or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees or (ii) violating a condition of probation or parole imposed under federal or State law; and

Whereas, states receiving these federal grant funds are authorized under federal law to establish safeguards against the use or disclosure of information about applicants or recipients for assistance under the state program funded under federal law; and

Whereas, federal law expressly authorizes the State agency administering the program to furnish a federal, State, or local law enforcement officer, upon the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the applicant or recipient under specified circumstances; and

Whereas, conducting a criminal background check on applicants for or recipients of public assistance benefits is necessary in order to ensure compliance with federal laws prohibiting a fleeing felon or probation or parole violator from receiving public assistance benefits; and

Whereas, the apprehension of individuals by law enforcement may be necessary to protect and safeguard the public; and

Whereas, State agencies administering the program may have or receive information that is necessary for a law enforcement agency to conduct the official duties of the agency, and the location or apprehension of the applicant or recipient is within a law enforcement agency's official duties; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Part 1 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"**§ 108A-26.1. Information sharing of outstanding arrest warrant of applicant for or recipient of program assistance.**

(a) A county department of social services shall notify an applicant for program assistance under Part 2 or Part 5 of this Article that release of confidential information from the applicant's records may not be protected if a warrant for arrest is issued against the applicant. A county department of social services shall notify all recipients under a program of public assistance under Part 2 or Part 5 of this Article at the time of renewal of the recipient's application for such program assistance that release of confidential information from the recipient's records may not be protected if a felony or misdemeanor arrest warrant is issued against the recipient.

(b) Notwithstanding G.S. 108A-80, and to the extent otherwise allowed by federal and State law, a county department of social services shall verify whether an applicant for or recipient of program assistance under Part 2 or Part 5 of this Article is (i) fleeing to avoid prosecution, custody, or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees or (ii) violating a condition of probation or parole imposed under federal or State law, by ensuring that the criminal history of an applicant, or of a recipient at the time of benefits renewal, is checked. A county department of social services shall conduct the criminal history check necessary to verify whether an applicant is a fleeing felon or a probation or parole violator utilizing all currently accessible databases to the extent permitted by allocated county and state resources. Counties are not required to allocate funds for this program but are authorized to do so on a voluntary basis.

(c) Nothing in this section shall be construed to authorize the disclosure of any information otherwise protected by State or federal law or regulation.

(d) This section applies to applicants for or recipients of program assistance under Part 2 or Part 5 of this Article only.

(e) The Social Services Commission shall adopt rules regarding (i) the sharing of information between county departments of social services and local law enforcement agencies, (ii) the accuracy of information shared pursuant to this section, and (iii) any other rules the Commission deems necessary to implement this section. The Secretary of the Department of Health and Human Services shall oversee implementation of these rules.

(f) The Secretary of the Department of Health and Human Services shall promote cooperation among State and local agencies to perform the functions described in this section. The Department of Health and Human Services shall cooperate and collaborate with the Office of the State Controller, the Administrative Office of the Courts, and the Department of Public Safety to develop protocols to implement this section.

(g) Annually, on April 1, each county department of social services shall report to the Department of Health and Human Services on the number of individuals who are denied benefits under this section during the preceding calendar year.

(h) Annually, on May 1, the Department of Health and Human Services shall report to the Joint Legislative Oversight Committee on Health and Human Services of the General Assembly on the number of individuals who are denied assistance under this section. The report shall include a breakdown by county."

SECTION 2. Part 1 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"**§ 108A-26.2. Fleeing felon, or parole or probation violator; eligibility for program assistance; federal approval; review by department.**

(a) Subject to subsection (b) of this section, a department of social services shall not grant public assistance under Part 2 or Part 5 of Article 2 of Chapter 108A of the General

Statutes if the department receives information described in G.S. 108A-26.1 that the applicant for or recipient of program assistance is subject to arrest under an outstanding warrant arising from a charge of violating conditions of parole or probation or from a felony charge against that applicant or recipient in any jurisdiction. This section does not affect the eligibility for assistance of other members of the applicant's or recipient's household. An applicant or recipient described in this section is eligible for program assistance, if all other eligibility criteria of the law are met, when the applicant or recipient is no longer subject to arrest under an outstanding warrant as described in this section.

(b) If federal approval is required in order to prevent the loss of federal reimbursement as a result of the application of this section to an applicant for or recipient of program assistance, the Department of Health and Human Services shall promptly take any action necessary to obtain federal approval."

SECTION 3. Part 2 of Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"**§ 114-19.33. Criminal record checks of applicants for or recipients of program assistance.**

The Department of Justice may provide to a county department of social services from the State and National Repositories of Criminal Histories the criminal history of any person who applies for program assistance under Part 2 or Part 5 of Article 2 of Chapter 108A of the General Statutes. The county department of social services shall provide to the Department of Justice, along with the request, a form signed by the applicant or recipient acknowledging receipt of the notification required by G.S. 108A-26.1(a) and any identifying information required by the State and National Repositories and any additional information required by the Department of Justice. Except as provided under G.S. 108A-26.1, the county department of social services shall keep all information obtained pursuant to this section confidential."

SECTION 4. This act becomes effective July 1, 2013.

HOUSE BILL 392:
Share Arrest Warrant Status/Pub. Assistance

2013-2014 General Assembly

Committee:	Senate Re-ref to Judiciary I. If fav, re-ref to Health Care	**Date:**	June 6, 2013
Introduced by:	Reps. Arp, Horn, Starnes, Burr	**Prepared by:**	Susan Sitze* Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***House Bill 392 would require a county department of social services (DSS) to verify whether an applicant for, or recipient of, Temporary Assistance to Needy Family (TANF) or Food and Nutrition Services (FNS) benefits is a fleeing felon or a probation or parole violator. The act would further deny TANF or FNS benefits to an applicant or recipient subject to an outstanding arrest warrant for a felony or for a probation or parole violation, but would not affect the eligibility of a member of the individual's household for those benefits.***

[As introduced, this bill was identical to S401, as introduced by Sen. Tucker, which is currently in Senate Ref to Judiciary II. If fav, re-ref to Health Care.]

BILL ANALYSIS: Section 1 of the PCS would do the following:

- Create a new G.S. 108A-26.1, requiring a county DSS to notify an applicant for, or recipient of, TANF or FNS benefits that confidential information from the individual's record may be released if a felony, misdemeanor, or felony probation or parole violation arrest warrant is issued against the individual. The notification must be given at the time the application is made or, for current public assistance recipients, at the time of application renewal.
- Require DSS to verify whether an applicant is fleeing to avoid prosecution, custody, or confinement after conviction for a felony or violating a condition of probation or parole, by ensuring that the criminal history of an applicant, or of a recipient at the time of benefits renewal, is checked.
- Direct the Social Services Commission to adopt rules relating to the sharing of information between county departments of social services and local law enforcement agencies, the accuracy of shared information, and any other rules the Commission deems necessary.
- Direct the DHHS to promote cooperation among State and local agencies to perform these functions and collaborate with the Office of the State Controller, the Administrative Office of the Courts, and the Department of Public Safety to develop protocols to implement this statute.
- The PCS requires that, annually, each county DSS report to DHHS, and that DHHS in turn report to the General Assembly, on the number of individuals denied services under these provisions.

Section 2 of the PCS would create in the chapter on social services a new section, G.S. 108A-26.2, to provide that:

- County departments of social services will not grant public assistance under Parts 2 or 5 of Article 2 of G.S. 108A (TANF and FNS benefits) if they receive information that the applicant/recipient is subject to arrest on an outstanding warrant for a parole or probation violation or for a felony charge.

- The benefits eligibility of members of the individual's household will not be affected.
- If all other eligibility criteria are met, an applicant/recipient would become eligible for program assistance when the individual is no longer subject to arrest under the outstanding warrant.

Section 3 would create a new G.S. 114-19.33, "Criminal record checks of applicants for or recipients of program assistance," authorizing the Department of Justice (DOJ) to provide to a county DSS, from the State and National Repositories of Criminal Histories, the criminal history of anyone applying for TANF or FNS assistance. In addition to a request for information, the county DSS must provide to the DOJ a form signed by the applicant/recipient acknowledging receipt of notification required by new G.S. 108A-26.1(a), any identifying information required by the State and National Repositories, and any other information required by the DOJ. Except as provided by G.S. 108A-26.1, DSS must keep all information obtained under this section confidential.

EFFECTIVE DATE: This act becomes effective July 1, 2013.

BACKGROUND: As stated in the prefatory section (the "whereas" clauses), in order to receive federal funds for certain public assistance benefits, the federal government, under 42 U.S. Code 608 et seq., specifies certain conditions under which a state must exchange information with law enforcement agencies. Federal law gives states some further discretion to determine eligibility for TANF and FNS benefits, and therefore a state may develop additional requirements if it establishes safeguards against the use or disclosure of information about applicants for or recipients of TANF or FNS assistance.

**Janice Paul, Staff Attorney, contributed substantially to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Fiscal Note

BILL NUMBER: House Bill 392 (Second Edition)

SHORT TITLE: Share Arrest Warrant Status/Pub. Assistance.

SPONSOR(S): Representatives Arp, Horn, Starnes, and Burr

FISCAL IMPACT

☑ Yes ☐ No ☐ No Estimate Available

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
State Impact					
General Fund Revenues:	144,841				
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	**$144,841**	**$0**	**$0**	**$0**	**$0**
Local Impact					
Revenues:					
Expenditures:					
NET LOCAL IMPACT	**$0**	**$0**	**$0**	**$0**	**$0**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Health and Human Services

EFFECTIVE DATE 2013

TECHNICAL CONSIDERATIONS:
Yes - See Technical Considerations Section

BILL SUMMARY: House Bill 392 would require a County Department of Social Services (DSS) to conduct a criminal history check on applicants for or recipients of Temporary Assistance to Needy Family (TANF) benefits or Food and Nutrition Services (FNS) benefits. This bill would also require DSS to share information with a local law enforcement agency regarding an applicant for or recipient of TANF or FNS benefits who has an outstanding arrest warrant. Finally, House Bill 392 would require DSS to deny TANF or FNS benefits to an applicant or recipient subject to an outstanding warrant for a felony charge or for a probation parole violation.

ASSUMPTIONS AND METHODOLOGY:

Based on information obtained from the NC Department of Health and Human Services, their determination is that the existing resources (human resources) are adequate to handle the increased number of database queries associated with the proposed policy. However, the Department in the process of transitioning to a new IT system (NC FAST) which will require reconfiguration to allow for compliance with the proposed policy change.

These changes to the NC FAST system are detailed below:

Configure NC FAST to connect with other IT systems	$14,218.75
Reconfigure NC FAST to utilize new evidence in eligibility determination	$79,528.74
Build the interface for NC FAST to retrieve data from other systems	$51,093.75
TOTAL ESTIMATED COSTS	**$144,841.24**

TECHNICAL CONSIDERATIONS:

There is a potential impact on local Counties as a function of increased coordination with the Administrative Office of the Courts and Local Law Enforcement. The requirement of Counties to act on the information obtained through currently accessible databases, would potentially require increased staffing for County Departments of Social Services. These costs are indeterminate.

It is not possible to estimate any savings achieved through the denial of benefits to applicants for the following reasons:

- no estimates are available on the number of felons or probation/parole violators currently receiving benefits;
- actionable information unavailable: 1) database often contain outdated warrants; 2) the applicable law enforcement agency may not be interested in pursuing the warrant;

SOURCES OF DATA:

The North Carolina Department of Health and Human Services and the Data Management Assistance for Child Welfare, Work First, and Food & Nutrition Services System in North Carolina.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Donnie Lewis Charleston, Jr.

APPROVED BY: Mark Trogdon, Director
Fiscal Research Division

DATE: April 9, 2013



Signed Copy Located in the NCGA Principal Clerk's Offices

VISITOR REGISTRATION SHEET

Senate Judiciary I
(Committee Name)

6/18/13
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
Lori Ann Harris	LHHA
Chris Heagarty	Judicial Standards
LARA DeVivo	WCSR
Kay Palcsay	NASW-NC
Elaine Woo	NCLM
Debbie Hughes	KCG
Sarah Preston	ACLU-NC
Joan Akalaonu	GAL intern
Andrew Cagle	NC Sheriffs' Assn.
Will Dichry	UNC Law
K Spainhour	NCCUE
Jared Rist	
Mac McCord	NCCN
Annalrese Dolph	DL
	Tax Reform
Steven Webb	NCHBA

09-22-2012

VISITOR REGISTRATION SHEET

Senate Judiciary I

(Committee Name)

6/18/13

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
McNeil Chestnut	Fr the Comm. Rts.
Chris Agner	DOJ
Mildred Spearman	NCAOC
Kay Emanuel	School of Government
Amanda Horaker	TSS
CASANDRA SKINNER	NCACC
Keith Richards	City of Charlotte
DAVID LAKLEAR	DHHS

09-22-2012

Senate Committee on Judiciary I
Tuesday, June 25, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 982	Modify Medicaid Subrogation Statute.	Representative Burr Representative Avila
HB 168	Divison of Atty's Fees in Workers' Comp.	Representative Murry

Presentations

Other Business

Adjournment

Senate Committee on Judiciary I
Tuesday, June 25, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on June 25, 2013 in Room 1027/1128 of the Legislative Building. Ten members were present.

Senator Thom Goolsby, Chair, presided.

Senator Dan Soucek motioned to take up a Proposed Committee Substitute for House Bill 982 and the motion passed by a voice vote. Representative Justin Burr was recognized to explain the PCS. Senator Kathy Harrington asked a question and Bill Patterson from the Research Division responded by reviewing the PCS.

Senator Josh Stein moved for a favorable report to the PCS, unfavorable to the original bill, and the motion passed by a voice vote.

Representative Tom Murry was recognized to explain House Bill 168. Senator Trudy Wade moved for a favorable report to the bill and the motion passed by a voice vote.

The meeting adjourned at 10:11 a.m.

Senator Thom Goolsby, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Tuesday, June 25, 2013

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

HB **982** **(CS#1)** Modify Medicaid Subrogation Statute.

Draft Number:	H982-PCS70467-TG-57
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Thomas Goolsby will handle HB 982



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Tuesday, June 25, 2013

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

FAVORABLE

HB **168** **(CS#1)** Divison of Attys Fees in Workers Comp.

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Thomas Goolsby will handle HB 168



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 3

HOUSE BILL 168*
Committee Substitute Favorable 5/13/13
Corrected Copy 5/13/13

Short Title: Division of Atty's Fees in Workers' Comp. (Public)

Sponsors:

Referred to:

February 28, 2013

A BILL TO BE ENTITLED

AN ACT GRANTING THE NORTH CAROLINA INDUSTRIAL COMMISSION JURISDICTION TO DECIDE DISPUTES BETWEEN AN EMPLOYEE'S PAST AND CURRENT ATTORNEYS REGARDING THE DIVISION OF A FEE AS APPROVED BY THE COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-90 is amended by adding a new subsection to read:

"(f) The Commission shall hear and determine any dispute between an employee's current and past attorney or attorneys regarding the division of a fee as approved by the Commission pursuant to this section. An attorney who is a party to an action under this subsection shall have the same rights of appeal as outlined in subsection (c) of this section."

SECTION 2. This act is effective when it becomes law and applies to disputes that arise on or after that date.

HOUSE BILL 168:
Division of Atty's Fees in Workers' Comp

2013-2014 General Assembly

Committee:	Rules and Operations of the Senate	**Date:**	June 24, 2013
Introduced by:	Rep. Murry	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***The Proposed Committee Substitute for House Bill 168 would amend the Workers' Compensation law to grant the Industrial Commission jurisdiction to decide disputes between an employee's current and past attorneys with regard to the splitting of fees approved by the Commission.***

[As introduced, this bill was identical to S240, (Develop Rules for Release of Path. Materials) as introduced by Sen. Goolsby, which has been enacted as S.L. 2013-43.]

CURRENT LAW: Under current law, attorney's fees in Workers' Compensation cases must be approved by the Industrial Commission. If the attorney has an agreement for fee or compensation, the agreement must be filed with the Commission, which then determines whether the agreement is reasonable or not. If the agreement is found to be unreasonable, the attorney can appeal to the full Commission for a hearing. If the full Commission finds that the agreement is unreasonable, the attorney can appeal to the senior resident judge of the superior court in the county where the case arose.

The Court of Appeals has held that the Industrial Commission does not have jurisdiction to decide disputes between attorneys regarding the division of the fee approved by the Commission in cases where two or more different attorneys have worked on the case[1].

BILL ANALYSIS: The PCS for House Bill 168 would specifically grant the Industrial Commission jurisdiction over disputes between attorney's regarding the division of fees approved by the Commission.

EFFECTIVE DATE: This act is effective when it becomes law and applies to disputes that arise on or after that date.

Karen Cochrane-Brown, counsel to House Commerce and Job Development, substantially contributed to this summary.

[1] *Eller v. J&S Truck Services, Inc.*, 397 S.E.2d 242 (1990).

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 982
Committee Substitute Favorable 5/15/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H982-CSTG-57 [v.7]
6/21/2013 4:49:35 PM

Short Title: Modify Medicaid Subrogation Statute. (Public)

Sponsors:

Referred to:

April 18, 2013

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE MEDICAID SUBROGATION STATUTE IN RESPONSE TO THE UNITED STATES SUPREME COURT DECISION IN WOS V. E.M.A.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 108A-57 reads as rewritten:

"**§ 108A-57. Subrogation rights; withholding of information a misdemeanor.**

(a) Notwithstanding any other provisions of the law, to the extent of payments under this Part, the ~~State, or the county providing medical assistance benefits,~~ State shall be subrogated to all rights of recovery, contractual or otherwise, of the beneficiary of this assistance, or of the beneficiary's personal representative, heirs, or the administrator or executor of the estate, against any person. ~~The county attorney, or an attorney retained by the county or the State or both, or an attorney retained by the beneficiary of the assistance if this attorney has actual notice of payments made under this Part shall enforce this section.~~ A personal injury or wrongful death claim brought by a medical assistance beneficiary against a third party shall include a claim for all medical assistance payments for health care items or services furnished to the medical assistance beneficiary as a result of the injury, hereinafter referred to as the "Medicaid claim." Any personal injury or wrongful death claim brought by a medical assistance beneficiary against a third party that does not state the Medicaid claim shall be deemed to include the Medicaid claim.

(a1) If the amount of the Medicaid claim does not exceed one-third of the medical assistance beneficiary's gross recovery, it is presumed that the gross recovery includes compensation for the full amount of the Medicaid claim. If the amount of the Medicaid claim exceeds one-third of the medical assistance beneficiary's gross recovery, it is presumed that one-third of the gross recovery represents compensation for the Medicaid claim.

(a2) A medical assistance beneficiary may dispute the presumptions established in subsection (a1) of this section by applying to the court in which the medical assistance beneficiary's claim against the third party is pending, or if there is none, then to a court of competent jurisdiction, for a determination of the portion of the beneficiary's gross recovery that represents compensation for the Medicaid claim. An application under this subsection shall be filed with the court and served on the Department pursuant to the Rules of Civil Procedure no later than 30 days after the date that the settlement agreement is executed by all parties and, if required, approved by the court, or in cases in which judgment has been entered, no later than 30 days after the date of entry of judgment. The court shall hold an evidentiary hearing no sooner than 30 days after the date the action was filed. All of the following shall apply to the court's determination under this subsection:

(1) The medical assistance beneficiary has the burden of proving by clear and convincing evidence that the portion of the beneficiary's gross recovery that represents compensation for the Medicaid claim is less than the portion presumed under subsection (a1) of this section.

(2) The presumption arising under subsection (a1) of this section is not rebutted solely by the fact that the medical assistance beneficiary was not able to recover the full amount of all claims.

(3) If the beneficiary meets its burden of rebutting the presumption arising under subsection (a1) of this section, then the court shall determine the portion of the recovery that represents compensation for the Medicaid claim and shall order the beneficiary to pay the amount so determined to the Department in accordance with subsection (a5) of this section. In making this determination the court may consider any factors that it deems just and reasonable.

(4) If the beneficiary fails to rebut the presumption arising under subsection (a1) of this section, then the court shall order the beneficiary to pay the amount presumed pursuant to subsection (a1) of this section to the Department in accordance with subsection (a5) of this section.

(a3) Notwithstanding the presumption arising pursuant to subsection (a1) of this section, the medical assistance beneficiary and the Department may reach an agreement on the portion of the recovery that represents compensation for the Medicaid claim. If such an agreement is reached after an application has been filed pursuant to subsection (a2) of this section, a stipulation of dismissal of the application signed by both parties shall be filed with the court.

(a4) ~~Any~~Within 30 days of receipt of the proceeds of a settlement or judgment related to a claim described in subsection (a) of this section, the medical assistance beneficiary or any attorney retained by the beneficiary shall notify the Department of the receipt of the proceeds.

(a5) The medical assistance beneficiary or any attorney retained by the beneficiary ~~of the assistance~~ shall, out of the proceeds obtained by or on behalf of the beneficiary by settlement with, judgment against, or otherwise from a third party by reason of injury or death, distribute to the Department ~~the amount of assistance paid by the Department on behalf of or to the beneficiary, as prorated with the claims of all others having medical subrogation rights or medical liens against the amount received or recovered, but the amount paid to the Department shall not exceed one-third of the gross amount obtained or recovered.~~ the amount due pursuant to this section as follows:

(1) If, upon the expiration of the time for filing an application pursuant subsection (a2), no application has been filed, then the amount presumed pursuant to subsection (a1) of this section, as prorated with the claims of all others having medical subrogation rights or medical liens against the amount received or recovered, shall be paid to the Department within 30 days of the beneficiary's receipt of the proceeds, in the absence of an agreement pursuant to subsection (a3) of this section.

(2) If an application has been filed pursuant to subsection (a2) of this section, and no agreement has been reached pursuant to subsection (a3) of this section, then the Department shall be paid as follows:

a. If the beneficiary rebuts the presumption arising under subsection (a1) of this section, then the amount determined by the court pursuant to subsection (a2) of this section, as prorated with the claims of all others having medical subrogation rights or medical liens against the amount received or recovered, shall be paid to the Department within 30 days of the entry of the court's order.

b. If the beneficiary fails to rebut the presumption arising under subsection (a1) of this section, then the amount presumed pursuant to subsection (a1), as prorated with the claims of all others having medical subrogation rights or medical liens against the amount received or recovered, shall be paid to the Department within 30 days of the entry of the court's order.

(3) If an agreement has been reached pursuant to subsection (a3) of this section, then the agreed amount, as prorated with the claims of all others having medical subrogation rights or medical liens against the amount received or recovered, shall be paid to the Department within 30 days of the execution of the agreement by the medical assistance beneficiary and the Department.

(a6) The United States and the State of North Carolina shall be entitled to shares in each net recovery by the Department under this section. Their shares shall be promptly paid under this section and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient.

(b) It is a Class 1 misdemeanor for any person seeking or having obtained assistance under this Part for himself or another to willfully fail to disclose to the county department of social services or its attorney and to the Department the identity of any person or organization against whom the recipient of assistance has a right of recovery, contractual or otherwise.

(c) This section applies to the administration of and claims payments made by the Department of Health and Human Services under the NC Health Choice Program established under Part 8 of this Article.

(d) As required to ensure compliance with this section, the Department may apply to the court in which the medical assistance beneficiary's claim against the third party is pending, or if there is none, then to a court of competent jurisdiction for enforcement of this section."

SECTION 2. This act is effective when it becomes law and applies (i) to Medicaid claims that arise on or after that date, and (ii) to Medicaid claims arising prior to that date for which the Department has not been paid in full. For Medicaid claims that arose prior to the effective date of this act for which the Department has not been paid in full, the medical assistance beneficiary shall have 90 days from the effective date of this act within which to apply to the court pursuant to G.S. 108A-57(a2).

HOUSE BILL 982:
Modify Medicaid Subrogation Statute

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 20, 2013
Introduced by:	Reps. Burr, Avila	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to Second Edition H982-CSTG-57		

SUMMARY: ***The PCS for House Bill 982 would allow a Medicaid beneficiary to challenge the amount of reimbursement that the beneficiary is statutorily presumed to owe to the State out of any recovery against a third-party responsible for causing injury or death to the beneficiary. To rebut the presumption, the beneficiary would be required to prove in superior court by clear and convincing evidence that the amount owed is less than the amount presumed under the statute.***

The PCS would permit the beneficiary and the Department of Health and Human Services to reach agreement on the amount owed at any time, and removes the provision in the previous PCS authorizing a judge to find that the beneficiary owed the State more than the statutorily presumed amount. The PCS also makes a number of technical corrections to the bill.

CURRENT LAW: To the extent of any Medicaid benefits paid by the State, G.S. 108A-57 requires a medical assistance beneficiary to pay the Department of Health and Human Services out of any recovery obtained from a third-party responsible for the beneficiary's medical expenses, an amount equal to the lesser of the State's medical expenditures or one-third of the total settlement amount.[1]

On March 20, 2013, the U.S. Supreme Court held that G.S. 108-57 was preempted to the extent that it created a conclusive presumption that one-third of the beneficiary's tort recovery represents compensation for medical expenses, without providing a way to determine this amount in cases in which a beneficiary contended that the amount should be less than the statutory presumption. Wos v. E.M.A. ex rel. Johnson, 133 S. Ct. 1391 (2013).

ANALYSIS: The PCS to House Bill 982 would amend G.S. 108A-57 to require a claim brought on behalf of a beneficiary against a third-party for personal injury or wrongful death to include a claim for all medical assistance payments for health care items or services furnished to the beneficiary as a result of the injury ("the Medicaid claim").

If the amount of Medicaid benefits paid was no more than one-third of the gross recovery, then the statute would presume that the recovery included compensation for the full amount of the Medicaid claim, and the beneficiary would be required to pay the full amount to the Department. If the amount of Medicaid benefits paid was more than one-third of the gross recovery, then the statute would presume that one-third of the recovery represented compensation for the Medicaid claim, and the beneficiary would be required to pay this amount to the Department.

The PCS would require a beneficiary who did not challenge the statutorily presumed amount to pay it to the Department within 30 days of receiving the proceeds from the third-party.

[1] The amount paid to the Department is required to be prorated with all other claims of persons having medical subrogation rights or medical liens against the amount recovered. The result is that the total paid to the Department and to other claimants having medical liens will not exceed one-third of the total recovery.

The PCS would permit a beneficiary wishing to challenge the statutory presumption to seek a judicial determination of the amount owed to the State, under the following procedure:

- The beneficiary would be required to file an application in the superior court no later than 30 days after reaching settling with or obtaining a judgment against the third-party.
- The beneficiary would be required to offer clear and convincing evidence to rebut the statutory presumption, and could not do so solely by offering evidence that he or she did not recover the full amount of all claims against the third-party.
- If the beneficiary succeeded in rebutting the statutory presumption, then the court could consider any factors it deemed just and reasonable in determining the amount of the Medicaid claim, and the beneficiary would be required to pay the amount determined by the court to the Department within 30 days after the entry of the court's order.
- If the beneficiary failed to rebut the presumption, then the court would order the beneficiary to pay the statutorily presumed amount within 30 days of the entry of the order.

The beneficiary and the Department would be free to reach an agreement on the amount of the Medicaid claim at any time, in which event the beneficiary would be required to pay the agreed amount to the Department within 30 days of the settlement. If the agreement was reached after the filing of an application challenging the statutory presumption, the parties would be required to file a stipulation of dismissal with the court.

The Department would be permitted to apply to the court for enforcement of the State's rights under this section.

EFFECTIVE DATE: This act is effective when it becomes law and applies to Medicaid claims that arise on or after that date, and to claims arising prior to that date for which the Department has not been paid in full. Beneficiaries with unreimbursed Medicaid claims that arose prior to the act's effective date will have 90 days from the effective date of the act in which to file an application challenging the statutory presumption.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee

6-25-13
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Todd Barlow	NC Advocates for Justice
Chris Nichols	lawyer Nichols Law Firm
Dick Taylor	~~NCAJ~~
Adam Stolnar	DHHS
George Smith	NP
Jason Deans	JD+A
Bob Cromley	NCRAA
Mary Bethea	AARP-NC
Patrick Buffkin	NCAEC
Stan Combs	NCS
Mary Thompson	Weyerhaeuser
PRESTON HOWARD	NCMA

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee

6-25-13
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susanna Davis	Williams Mullen
Philip Isley	BMCD
Allison Walker	Hakim Mullins
	Policy Group
Penny Huff	School of Gov.
Sarah L. Miller	Self
Elaine Woo	NCLM
Amanda Horaker	TSS
Mitch Leonard	SEANC
Brian Robinowitz	AGO for DHHS

Senate Committee on Judiciary I
Thursday, June 27, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 683	Commonsense Consumption Act.	Representative B. Brown Representative Moffitt Representative Ramsey Representative Shepard
HB 828	Update Physical Therapy Practice Act.	Representative Fulghum Representative Hollo Representative Faircloth Representative Murry

Presentations

Other Business

Adjournment

Senate Committee on Judiciary I
Thursday, June 27, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on June 27, 2013 in Room 1027/1128 of the Legislative Building. Nine members were present.

Senator E. S. (Buck) Newton, Chair, presided.

Representative Brian Brown was recognized to explain House Bill 683 to the committee. Senator Trudy Wade moved for a favorable report to the bill. Senator Tamara Barringer submitted an amendment and Bill Patterson from the Research Division explained the amendment to the committee.

Sen. Barringer moved that the committee approve the amendment and the motion passed by a voice vote. Senator Josh Stein was recognized for a question and Rep. Brown responded. Sen. Stein made a follow-up comment and said he opposed the bill. Senator Dan Soucek asked a question and Sen. Newton responded. Sen. Wade was recognized for comment and Sen. Stein was recognized for comment next. Sen. Newton responded to Sen. Stein with comments in support of the bill.

Senator Bob Rucho was recognized for comment and moved for a favorable report of the bill as amended. The motion passed by a voice vote.

Sen. Wade moved to take up a PCS for House bill 828 and the motion passed by a voice vote. Representative Jim Fulghum was recognized to explain the bill. Senator Jerry Tillman moved for a favorable report of the bill and the motion passed by a voice vote.

The meeting adjourned at 10:14 a.m.

Senator E. S. (Buck) Newton, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Thursday, June 27, 2013

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

HB **683** **(CS#1)** Commonsense Consumption Act.

Draft Number:	H683-PCS80407-TG-63
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

HB **828** **(CS#1)** Update Physical Therapy Practice Act.

Draft Number:	H828-PCS80406-SAf-58
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Tamara Barringer will handle HB 683
Senator Tamara Barringer will handle HB 828



HOUSE BILL 683
Committee Substitute Favorable 5/15/13
Third Edition Engrossed 5/15/13

Short Title: Commonsense Consumption Act. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO BAR CIVIL ACTIONS AGAINST PACKERS, DISTRIBUTORS, MANUFACTURERS, CARRIERS, HOLDERS, SELLERS, MARKETERS, OR ADVERTISERS OF FOOD PRODUCTS THAT COMPLY WITH APPLICABLE STATUTORY AND REGULATORY REQUIREMENTS BASED ON CLAIMS ARISING OUT OF WEIGHT GAIN, OBESITY, A HEALTH CONDITION ASSOCIATED WITH WEIGHT GAIN OR OBESITY, OR OTHER GENERALLY KNOWN CONDITION ALLEGEDLY CAUSED BY OR ALLEGEDLY LIKELY TO RESULT FROM LONG-TERM CONSUMPTION OF FOOD; AND TO CLARIFY THAT LOCAL GOVERNMENTS MAY NOT REGULATE THE SIZE OF SOFT DRINKS OFFERED FOR SALE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 99E of the General Statutes is amended by adding a new Article to read:

"Article 5.
"Commonsense Consumption Act.

"**§ 99E-40. Title.**

This act shall be known and may be cited as the "Commonsense Consumption Act."

"**§ 99E-41. Definitions.**

The following definitions apply in this Article:

(1) Claim. – Any claim by or on behalf of a natural person, as well as any derivative or other claim arising from a common set of facts or circumstances and asserted by or on behalf of any other person.

(2) Knowing and willful conduct. – Conduct which meets all of the following criteria:

a. The conduct was committed with any of the following:

1. The intent to deceive or injure consumers.
2. Actual knowledge that such conduct was injurious to consumers.
3. Reason to know there is a reasonable probability of injury to consumers.

b. The conduct constituting the violation was not required by regulations, orders, rules, or other pronouncement of, or any statute administered by, a federal, State, or local government agency.

(3) Other person. – Any individual, corporation, company, association, firm, partnership, society, joint-stock company, or any other entity, including any governmental entity or private attorney general.

"**§ 99E-42. Claims arising from weight gain, obesity, associated health conditions, or long-term consumption of food. – Limitation on liability.**

Except as set forth in G.S. 99E-43, a packer, distributor, manufacturer, carrier, holder, seller, marketer, or advertiser of a food, as defined in section 201(f) of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(f), or an association of one or more such entities, shall not be liable in any civil action for any claim arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or other generally known condition allegedly caused by or allegedly likely to result from long-term consumption of food. For purposes of this section, a health condition arising from a single instance of consumption shall not be considered to result from long-term consumption of food.

"**§ 99E-43. Claims arising from weight gain, obesity, associated health conditions, or long-term consumption of food. – Exceptions to limit on liability.**

G.S. 99E-42 shall not preclude liability in a civil action in which the claim of weight gain, obesity, health condition associated with weight gain or obesity, or other generally known condition allegedly caused by or allegedly likely to result from long-term consumption of food meets either of the following:

(1) The claim includes as an element of the cause of action a material violation of an adulteration or misbranding requirement prescribed by statute or rule of this State or the United States of America, and the claimed injury was proximately caused by such violation.

(2) The claim is based on knowing and willful conduct applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food, and the claimed injury was proximately caused by such violation.

"**§ 99E-44. Construction of Article.**

(a) Nothing in this Article shall be construed to create any new claim, right of action, or civil liability not previously existing under State law.

(b) Nothing in this Article shall be construed to interfere with any agency's exclusive or primary jurisdiction to find or declare violations of a food adulteration or misbranding statute or rule."

SECTION 2. Article 8 of Chapter 160A is amended by adding a new section to read:

"**§ 160A-203. Limitations on regulating soft drink sizes.**

No city ordinance may prohibit the sale of soft drinks above a particular size. This section does not prohibit any ordinance regulating the sanitation or other operational aspect of a device for the dispensing of soft drinks. For purposes of this section, "soft drink" shall have the meaning set forth in G.S. 105-164.3."

SECTION 3. Article 6 of Chapter 153A is amended by adding a new section to read:

"**§ 153A-146. Limitations on regulating soft drink sizes.**

No county ordinance may prohibit the sale of soft drinks above a particular size. This section does not prohibit any ordinance regulating the sanitation or other operational aspect of a device for the dispensing of soft drinks. For purposes of this section, "soft drink" shall have the meaning set forth in G.S. 105-164.3."

SECTION 4. Section 1 of this act becomes effective October 1, 2013, and applies to causes of action arising on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 683:
Commonsense Consumption Act

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 26, 2013
Introduced by:	Reps. B. Brown, Moffitt, Ramsey, Shepard	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***House Bill 683 would bar civil actions against individuals and companies within the food producing and food advertising industries for claims arising out of weight gain, obesity, or health conditions associated with weight gain or obesity. The bill would also prohibit local governments from limiting the size of soft drinks offered for sale.***

CURRENT LAW: No immunity is currently provided to individuals and companies within the food producing and food advertising industry for civil actions alleging that these companies caused or contributed to obesity and/or obesity related health conditions.

Under Chapters 160A and Chapter 153A, local governments have broad authority to enact ordinances to protect the health, safety, and welfare of its citizens, but are not explicitly given the ability to regulate the size of soft drinks or any other food or beverage.

BILL ANALYSIS:

Section 1: The bill would bar civil actions against packers, distributors, manufacturers, carriers, holders, sellers, marketers, or advertisers of food products for claims arising out of weight gain, obesity, or health conditions associated with weight gain or obesity allegedly caused by long-term consumption of food.[1] The bill would not bar civil actions related to a health condition arising from a single instance of food consumption.

Immunity would not apply to clams for injury caused by food that was adulterated or misbranded in violation of State or federal law,[2] or to claims based on any other material violation of State or federal law, provided that such violation is knowing and willful. Conduct would be "knowing and willful," only if: (1) it was not required under State or federal law; and (2) it was committed with any of the following:

a. The intent to injure or deceive consumers;
b. Actual knowledge that it was injurious to consumers; or
c. Reason to know that it was reasonably probable to injure consumers.

Sections 2 and 3: The bill would prohibit enactment of any city or county ordinance limiting the size of soft drinks offered for sale.

EFFECTIVE DATE: Section 1 of the act is effective October 1, 2013 and applies to causes of action arising on or after that date. The remainder of the act is effective when it becomes law.

[1] The term "food" means: (1) articles used for food or drink for man or other animals; (2) chewing gum; and (3) articles used for components of any such article. 21 U.S.C. 321(f).

[2] The Federal Food, Drug, and Cosmetic Act prohibits "[t]he introduction or delivery for introduction into interstate commerce of any food . . . that is adulterated or misbranded" 21 U.S.C. 331(a).

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 683 DATE 6/27/13

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Berringer
Sen.)

moves to amend the bill on page 2, line 25-26

( ) WHICH CHANGES THE TITLE

by deleting the following between these lines:

"in violation of ~~any~~ any other State or federal law,".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 828
Committee Substitute Favorable 5/1/13
Third Edition Engrossed 5/29/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H828-CSSA-58 [v.3]
6/26/2013 5:55:02 PM

Short Title: Update Physical Therapy Practice Act. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT UPDATING THE PHYSICAL THERAPY PRACTICE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-270.25 reads as rewritten:

"**§ 90-270.25. Board of Examiners.**

The North Carolina Board of Physical Therapy Examiners is hereby created. The Board shall consist of eight members, including one medical doctor licensed and residing in North Carolina, four physical therapists, two physical therapist assistants, and one public member. The public member shall be appointed by the Governor and shall be a person who is not licensed under Chapter 90 who shall represent the interest of the public at large. The medical doctor, physical therapists, and physical therapists assistants shall be appointed by the Governor from a list compiled by the North Carolina Physical Therapy Association, Inc., following the use of a nomination procedure made available to all physical therapists and physical therapist assistants licensed and residing in North Carolina. In soliciting nominations and compiling its list, the Association will give consideration to geographic distribution, practice setting (institution, independent, academic, etc.), and other factors that will promote representation of all aspects of physical therapy practice on the Board. The records of the operation of the nomination procedure shall be filed with the Board, to be available for a period of six months following nomination, for reasonable inspection by any licensed practitioner. Each physical therapist member of the Board shall be licensed and reside in this State; provided that the physical therapist shall have not less than three years' experience as a physical therapist immediately preceding appointment and shall be actively engaged in the practice of physical therapy in North Carolina during incumbency. Each physical therapist assistant member shall be licensed and reside in this State; provided that the physical therapist assistant shall have not less than three years' experience as a physical therapist assistant immediately preceding appointment and shall be actively engaged in practice as a physical therapist assistant in North Carolina during incumbency.

Members shall be appointed to serve three-year terms, or until their successors are appointed, to commence on January 1 in respective years. In the event that a member of the Board for any reason shall become ineligible to or cannot complete a term of office, another appointment shall be made by the Governor, in accordance with the procedure stated above, to fill the remainder of the term. No member may serve for more than two successive three-year terms.

The Board may immediately remove a member from the Board if the member is found by the remainder of the Board to have (i) ceased to meet the qualifications specified in this section, (ii) failed to attend three successive Board meetings without just cause, (iii) violated any of the provisions of this Article or rules adopted by the Board, or (iv) otherwise engaged in immoral, dishonorable, unprofessional, or unethical conduct. Before removing a board member for immoral, dishonorable, unprofessional, or unethical conduct, the Board shall further find that the relevant conduct has compromised the integrity of the Board.

The Board each year shall designate one of its physical therapist members as chairman and one member as secretary-treasurer. Each member of the Board shall receive such per diem compensation and reimbursement for travel and subsistence as shall be set for licensing boards generally."

SECTION 2. G.S. 90-270.26 reads as rewritten:

"**§ 90-270.26. Powers of the Board.**

The Board shall have the following general powers and duties:

(1) Examine and determine the qualifications and fitness of applicants for a license to practice physical therapy in this ~~State;~~State.

(2) Issue, renew, deny, suspend, or revoke licenses to practice physical therapy in this State, or reprimand or otherwise discipline licensed physical therapists and physical therapist ~~assistants;~~assistants.

(3) Conduct confidential investigations for the purpose of determining whether violations of this Article or grounds for disciplining licensed physical therapists or physical therapist assistants ~~exist;~~exist. Investigation records shall not be considered public records under Chapter 132 of the General Statutes. These records are privileged 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, except as provided in this section. However, any Board decisions rendered, hearing notices and statements of charges, and any material received and admitted into evidence at Board hearings shall be public records, regardless of whether the notices, statements, or materials are developed or compiled as a result of an investigation; provided that identifying information concerning the treatment or delivery of professional services to a patient who has not consented to its public disclosure may be deleted or redacted.

(3a) Establish mechanisms for assessing the continuing competence of licensed physical therapists or physical therapist assistants to engage in the practice of physical therapy, including approving rules requiring licensees to periodically, or in response to complaints or incident reports, submit to the Board: (i) evidence of continuing education experiences; (ii) evidence of minimum standard accomplishments; or (iii) evidence of compliance with other Board-approved measures, audits, or evaluations; and specify remedial actions if necessary or desirable to obtain license renewal or ~~reinstatement;~~reinstatement.

(4) Employ such professional, clerical or special personnel necessary to carry out the provisions of this Article, and may purchase or rent necessary office space, equipment and ~~supplies;~~supplies.

(5) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a "contested case" as defined in G.S. 150B-2(2) arises under this ~~Article;~~Article.

(6) Appoint from its own membership one or more members to act as representatives of the Board at any meeting where such representation is deemed ~~desirable;~~desirable.

(7) Establish reasonable fees for applications for examination, certificates of licensure and renewal, and other services provided by the ~~Board;~~Board.

(8) Adopt, amend, or repeal any rules or regulations necessary to carry out the purposes of this Article and the duties and responsibilities of the ~~Board.~~Board.

(9) Request the Department of Justice to provide criminal history record checks pursuant to G.S. 90-270.29A in connection with licensure.

(10) Issue subpoenas, on signature of the Board Chair or Executive Director, to compel the attendance of any witness or the production of any documents relative to investigations or Board proceedings. Upon written request, the Board shall revoke a subpoena if, upon a hearing, it finds that the evidence sought does not relate to a matter in issue, the subpoena does not describe with sufficient particularity the evidence sought, or for any other reason in law the subpoena is invalid.

(11) Establish or participate in programs for aiding in the recovery and rehabilitation of physical therapists and physical therapist assistants who experience chemical or alcohol addiction or abuse or mental health problems.

(12) Acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.

The powers and duties enumerated above are granted for the purpose of enabling the Board to safeguard the public health, safety and welfare against unqualified or incompetent practitioners of physical therapy, and are to be liberally construed to accomplish this objective. In instances where the Board makes a decision to discipline physical therapists or physical therapist assistants under powers set out by any of subsections (2) through (5) of this section, it may as part of its decision charge the reasonable costs of investigation and hearing to the person disciplined."

SECTION 3. Article 18B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-270.29A. Criminal history record checks of applicants for licensure.**

(a) All applicants for licensure shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal history record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

(b) The cost of the criminal history record check and the fingerprinting shall be borne by the applicant. The Board shall collect any fees required by the Department of Justice and shall remit the fees to the Department of Justice for expenses associated with conducting the criminal history record check.

(c) If an applicant's criminal history record reveals one or more criminal convictions, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.

(2) The date of the crime.

(3) The age of the person at the time of the conviction.

(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.

If, after reviewing the factors, the Board determines that any of the grounds set forth in the subdivisions of G.S. 90-270.36 exist, the Board may deny licensure of the applicant. The Board may disclose to the applicant information contained in the criminal history record that is relevant to the denial if disclosure of the information is permitted by applicable State and federal law. The Board shall not provide a copy of the criminal history record to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) The Board, its officers, and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure to an applicant based on information provided in the applicant's criminal history record."

SECTION 4. G.S. 90-270.30 reads as rewritten:

"**§ 90-270.30. Licensure of foreign-trained physical therapists.**

Any person who has been trained as a physical therapist or physical therapist assistant in a foreign ~~county [country]~~country and desires to be licensed under this Article and who:

(1) Is of good moral character;
(2) Holds a diploma from an educational program for physical therapists or physical therapist assistants approved by the Board:
(3) Submits documentary evidence to the Board of completion of a course of instruction substantially equivalent to that obtained by an applicant for licensure under G.S. 90-270.29; and
(4) Demonstrates satisfactory proof of proficiency in the English language;

may make application on a form furnished by the Board for examination as a foreign-trained physical ~~therapist.~~therapist or physical therapist assistant. At the time of making such application, the applicant shall pay to the secretary-treasurer of the Board the fee prescribed by the Board, no portion of which shall be returned."

SECTION 5. G.S. 90-270.34(a) is amended by adding the following new subdivisions to read:

"(a) The following persons shall be permitted to practice physical therapy or assist in the practice in this State without obtaining a license under this Article upon the terms and conditions specified herein:

...

(7) Physical therapists or physical therapist assistants who are licensed in another jurisdiction of the United States or credentialed in another country, if that person by contract or employment is providing physical therapy to individuals affiliated with or employed by established athletic teams, athletic organizations, or performing arts companies temporarily practicing, competing, or performing in this State for no more than 60 days in a calendar year;
(8) Physical therapists or physical therapist assistants licensed in another jurisdiction of the United States who enter this State to provide physical therapy during a declared local, State, or national disaster or emergency. The exemption applies no longer than the standard annual renewal time in the State. To be eligible for the exemption, the licensee shall notify the Board of the licensee's intent to practice physical therapy pursuant to this subdivision.

(9) Physical therapists or physical therapist assistants licensed in another jurisdiction of the United States who are forced to leave their residence or place of employment due to a declared local, State, or national disaster or emergency, and, due to such displacement, need to practice physical therapy. The exemption applies no longer than the standard annual renewal time but may be renewed by the Board for additional periods. To be eligible for the exemption, the licensee shall notify the Board of the licensee's intent to practice physical therapy pursuant to this subdivision."

SECTION 6. Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"**§ 114-19.33. Criminal history record checks of applicants for licensure as physical therapists or physical therapist assistants.**

The Department of Justice may provide to the North Carolina Board of Physical Therapy Examiners a criminal history record from the State and National Repositories of Criminal Histories for applicants for licensure by the Board. Along with a request for criminal history records, the Board shall provide to the Department of Justice the fingerprints of the applicant or subject, a form signed by the applicant consenting to the criminal history record check and use of the fingerprints and other identifying information required by the Repositories, and any additional information required by the Department. The fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by the Department of Justice to conduct a criminal history record check under this section, but the fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 7. This act becomes effective October 1, 2013.

HOUSE BILL 828:
Update Physical Therapy Practice Act

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 27, 2013
Introduced by:	Reps. Fulghum, Hollo, Faircloth, Murry	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to Third Edition H828-CSSA-58		

SUMMARY: ***House Bill 828 would amend the Physical Therapy Practice Act to authorize the Board to remove Board members for causes listed, to conduct confidential investigations, to request the Department of Justice provide criminal background checks in connection with licensure, to issue subpoenas, to establish programs for helping with recovery and rehabilitation of licensees who have chemical or alcohol addictions or mental health problems, and to acquire, hold, and dispose of real property subject only to the approval of the Governor and the Council of State. House Bill 828 would also authorize licensure of foreign-trained physical therapy assistants and temporarily allow the practice of physical therapy without licensure in this State during natural disasters, athletic competitions, and performing arts exhibitions.***

House Bill 828 would authorize the Department of Justice to charge the applicant a fee to offset the cost incurred to conduct a criminal history record check. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information.

The PCS makes changes to the criminal history check portions of the bill to comply with the requirements for access to the FBI criminal history database.

CURRENT LAW: The practice of physical therapy is governed by Article 18B of Chapter 90 of the General Statutes.

BILL ANALYSIS: Section 1 of the bill amends G.S. 90-270.25 which establishes the NC Board of Physical Therapy Examiners. The amendment authorizes the Board to immediately remove a member of the Board if the member is found to have:

- Ceased to meet the qualification specified for the Board.
- Failed to attend 3 consecutive Board meetings without just cause.
- Violated any provision of the physical therapy practice act or rules.
- Engaged in immoral, dishonorable, unprofessional, or unethical conduct.

Where the Board seeks to remove a person for unprofessional conduct, the Board must further find that the conduct has compromised the integrity of the Board.

Section 2 of the bill amends G.S. 90-270.26 setting out the powers of the Board. The Board is given specific authority to conduct confidential investigations. Records from such investigations are not public records, are privileged and not subject to discovery, subpoena or legal compulsion for release. Board decisions, hearing notices, statements of charges, and material admitted into evidence are public records, provided that identifying information concerning the treatment of a patient who has not consented to public disclosure may be deleted or redacted.

Section 2 also authorizes the Board to:

- Request the Department of Justice provide criminal background checks for licensure.

- Issue subpoenas.
- Establish or participate in programs for recovery and rehab of persons with drug or alcohol issues or mental health problems.
- Acquire, hold, and dispose of real property in the same manner as a private person or corporation, subject only to approval of the Governor and Council of State. Collateral that may be pledged for such property is limited to the assets, income, and revenues of the Board.

Section 3 adds new G.S. 90-270.29A, requiring all applicants for licensure to consent to a criminal history record check. Refusal to consent to the check constitutes grounds for the Board to deny licensure. All information obtained by the Board shall be kept confidential. The cost of the record check will be borne by the applicant. A conviction shall not automatically bar licensure. In making a decision, the Board shall consider the seriousness of the crime, the date, the person's age at the time of the offense, the surrounding circumstances, the nexus between the criminal conduct and the job duties of the position to be filled, and the person's prison, parole, rehabilitation, and employment record since the crime was committed.

The Board may disclose to the applicant information contained in the criminal history record if the disclosure is permitted by applicable State and federal law, but shall not provide a copy of the record itself. The applicant shall have the right to appear before the Board to appeal the decision, but an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B. The Board and employees acting in good faith are immune from civil liability for denying licensure based on information in the criminal history record.

Section 4 amends G.S. 90-270.30 that currently authorizes licensure of foreign-trained physical therapists under certain circumstances to also allow licensure of foreign-trained physical therapy assistants.

Section 5 provides for persons licensed in another jurisdiction of the US to be allowed to practice physical therapy or assist in that practice without obtaining a North Carolina license:

- If the person is, by contract or employment, providing physical therapy to individuals affiliated with or employed by established athletic teams, athletic organizations, or performing arts companies, temporarily practicing, competing, or performing in the State for no more than 60 days per calendar year. This exemption applies also to those credentialed in other countries.
- If the person is providing physical therapy during a declared local, State, or national disaster or emergency. The licensee shall notify the Board of their intent to practice in the State. The exemption extends no longer than the standard annual renewal time in the State.
- If the person has been forced to leave their residence or place of employment because of a declared local, State, or national disaster or emergency, and due to the displacement needs to practice physical therapy. The licensee shall notify the Board of their intent to practice in the State. The exemption extends no longer than the standard annual renewal time in the State but may be renewed by the Board for additional periods.

Section 6 adds a new section to Article 4 of Chapter 114 of the General Statutes authorizing the Department of Justice to provide the Board of Physical Therapy criminal history records for applicants for licensure by the Board. The Department may charge a fee to offset the cost to conduct the check. The fee shall not exceed the actual cost of obtaining the information.

EFFECTIVE DATE: This act becomes effective October 1, 2013.

Barbara Riley, counsel to House Health and Human Services, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Fiscal Note

BILL NUMBER: House Bill 828 (Second Edition)

SHORT TITLE: Update Physical Therapy Practice Act.

SPONSOR(S): Representatives Fulghum, Hollo, Faircloth, and Murry

FISCAL IMPACT
($ in millions)

☑ Yes ☐ No ☑ No Estimate Available

State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:					
General Fund Expenditures:					
State Positions:					
NET STATE IMPACT	$0.0	$0.0	$0.0	$0.0	$0.0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
NC Department of Justice

EFFECTIVE DATE: Becomes effective when law.

TECHNICAL CONSIDERATIONS:
None

BILL SUMMARY:

House Bill 828 would amend the Physical Therapy Practice Act to authorize the Board to remove Board members for causes listed, to conduct confidential investigations, to request the Department of Justice provide criminal background checks in connection with licensure or an investigation, to issue subpoenas, to establish programs for helping with recovery and rehabilitation of licensees who have chemical or alcohol addictions or mental health problems, and to acquire, hold, and dispose of real property subject only to the approval of the Governor and the Council of State. House Bill 828 would also authorize licensure of foreign-trained physical therapy assistants and temporarily allow the practice of physical therapy without licensure in this State during natural disasters, athletic competitions, and performing arts exhibitions.

House Bill 828 would authorize the Department of Justice to charge the applicant a fee to offset the cost incurred to conduct a criminal history record check. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information.
Source: Committee Counsel

ASSUMPTIONS AND METHODOLOGY:

The proposed legislation would allow the Physical Therapy Board to ask for a background check on physical therapists and physical therapy assistants; however, it would not require that a check be completed for every physical therapist or physical therapy assistant in North Carolina. Based on information the Department of Justice (DOJ) received from the Physical Therapy Board, the DOJ estimates that 2 or less background checks would be requested each month. Therefore, the DOJ does not anticipate the need to request additional staff for processing workload increases.

The Department of Justice would charge a $38.00 fee for a criminal fingerprint check of national and state criminal records that would be charged to the applicant or to the office requesting the service. This fee is similar to the one used to process checks of adult care home staff and other DHHS regulated functions. Because it is not known how many background checks will be requested by the board, no estimate is available for the amount of revenue generated by the fee.

SOURCES OF DATA: NC Department of Justice

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY:

Maggie Morrissey

Rodney Bizzell

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

DATE: May 29, 2013



Signed Copy Located in the NCGA Principal Clerk's Offices

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee

6/27/13
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Heather Barnett	Ward & Smith
Susanna Davis	Williams Mullen
Butch Gunnells	NC Bev A
George Suddath	PBV
Bob Phillips	Comm Cause
Ken Cuvk	NCBA
Mindi McLaurin, PT	NC Physical Therapy Assn.
Elaine Woo	NCLM
Chris Agner	DOJ
Mike Smallwood	SOL
Laura Gunter	NCBIO
DAVID RICE	MFS
TJ Rudybee	NP

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee

6/27/13

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chuck Stone	SEANC
Caroline Wasson	American Cancer - NC
Rick Taylor	NCAA
Todd Barlow	NC Advocates for Justice
Debbie Hayes	ACA
Kathryn Traylor	NCMMC
Amy McConkey	NC Bev Assn
Hayden Robinson	NCRMA
Chris Whitmire	Horse
Andrew Bell	NCPBA
Will Grantham	NLVC
Elizabeth Zimmerman	NCBLWVE
Johanna Reese	NCACC
Evelyn Terry	NCCM

Senate Committee on Judiciary I
Tuesday, July 2, 2013, 5:30 PM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 695	Family, Faith, and Freedom Protection Act.	Representative Whitmire Representative Cleveland Representative Schaffer Representative Pittman

Presentations

Other Business

Adjournment

Senate Committee on Judiciary I
Tuesday, July 2, 2013 at 5:30 PM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 5:30 PM on July 2, 2013 in Room 1027/1128 of the Legislative Building. Thirteen members were present.

Senator E. S. (Buck) Newton, Chair, presided.

Senator Pete Brunstetter motioned to take up a Proposed Committee Substitute for House Bill 695 and the motion passed by a voice vote. Representative Jacqueline Michelle Schaffer was recognized to explain the PCS.

Senator Dan Soucek submitted an amendment and Amy Jo Johnson from the Research Division was recognized to explain the amendment. Rep. Schaffer was recognized to comment on the amendment. Senator Warren Daniel was recognized next to comment on the amendment.

Senator Dan Blue was recognized to ask a question and Rep. Schaffer responded. Sen. Blue asked a follow-up question and Sen. Daniel responded. Amy Jo Johnson was recognized to comment on the committee discussion.

Senator Josh Stein was recognized for a question and Sen. Daniel responded. Sen. Stein asked three follow-up questions and Sen. Daniel responded. Rep. Schaffer was recognized for comment and explained sections of the amendment.

Senator Norm Sanderson moved to approve the amendment and roll it into a new PCS. Senator Martin Nesbitt was recognized for a question and Bill Patterson from the Research Division responded. Rep. Schaffer was recognized to comment further on the amendment.

Senator Thom Goolsby was recognized to comment on the amendment. Sen. Nesbitt was then recognized for a question and Sen. Newton responded. Mr. Patterson also responded to Sen. Nesbitt's question.

Sen. Newton held a vote on Sen. Sanderson's motion to approve the amendment and it passed by a voice vote. Sen. Sanderson made another motion for a favorable report to the PCS as amended, unfavorable to the original bill. The motion passed by a voice vote.

The meeting adjourned at 6:02 p.m.

Senator E. S. (Buck) Newton, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Tuesday, July 02, 2013

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

HB **695** **(CS#1)** Foreign Laws/Protect Constitutional Rights.

Draft Number:	H695-PCS30592-TG-64
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Warren Daniel will handle HB 695



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 695
Committee Substitute Favorable 5/15/13
Third Edition Engrossed 5/16/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H695-CSTG-60 [v.2]
6/26/2013 7:14:00 PM

Short Title: Foreign Laws/Protect Constitutional Rights. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO PROTECT RIGHTS AND PRIVILEGES GRANTED UNDER THE UNITED STATES AND NORTH CAROLINA CONSTITUTIONS IN THE APPLICATION OF FOREIGN LAW.

The General Assembly of North Carolina enacts:

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

"Article 7A.
"Application of Foreign Law.

"**§ 1-87.2. Definitions.**

The following definitions apply in this Article:

(1) Fundamental constitutional right. – A fundamental right of a natural person guaranteed by the United States Constitution or the North Carolina Constitution.

(2) Foreign law. – A law, rule, resolution, legal code, legal system, or any component of a legal system established and used or applied in a foreign venue or forum.

(3) Foreign venue or forum. – A venue or forum operating under the authority of a government other than any of the following:

a. The United States.

b. A state, district, commonwealth, territory, or insular possession of the United States.

c. Any other government with regard to which the decision in this State as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

"**§ 1-87.3. Public policy.**

In recognition that the United States Constitution and the Constitution of North Carolina constitute the supreme law of this State, the General Assembly hereby declares it to be the public policy of this State to protect its citizens from the application of foreign law that would result in the violation of a fundamental constitutional right of a natural person. The public policies expressed in this section shall apply only to actual or foreseeable violations of a fundamental constitutional right resulting from the application of the foreign law.

"**§ 1-87.4. Nonapplication of foreign law that would violate fundamental constitutional rights.**

A court, administrative agency, arbitrator, mediator, or other entity or person acting under the authority of State law shall not apply a foreign law in any legal proceeding involving or recognize a foreign judgment involving a claim for absolute divorce, divorce from bed and board, child custody, child support, alimony, or equitable distribution, if doing so would violate a fundamental constitutional right of one or more natural persons who are parties to the proceeding.

"**§ 1-87.5. Interpretation of contracts providing for choice of foreign law.**

(a) In the interpretation or enforcement by a court, administrative agency, arbitrator, mediator, or other entity or person acting under the authority of State law of any contract or other agreement that provides for the choice of a foreign law to govern its interpretation or the resolution of any claim or dispute, the court or administrative agency shall preserve the fundamental constitutional rights of natural persons who are parties to the contract or other agreement.

(b) If enforcement of any provision in a contract or other agreement for the choice of foreign law would result in a violation of a fundamental constitutional right of one or more of the natural persons who are parties to the contract or other agreement, the agreement or contract shall be modified or amended to the extent necessary to preserve the fundamental constitutional rights of the natural persons.

"**§ 1-87.6. Interpretation of contracts providing for choice of foreign venue or forum.**

If the enforcement of any provision in a contract or other agreement providing for a choice of a foreign venue or forum would result in a violation of a fundamental constitutional right of one or more of the natural persons who are parties to the contract or other agreement, that provision shall be modified or amended to the extent necessary to preserve the fundamental constitutional rights of the natural persons.

"**§ 1-87.7. Motions to transfer proceedings to a foreign venue or forum.**

If a natural person subject to personal jurisdiction in this State seeks to maintain a litigation proceeding, arbitration proceeding, or other similarly binding proceeding in this State, and if a court of this State finds that granting a motion by another party to the proceeding to transfer the proceeding to a foreign venue or forum would likely lead to the violation of a fundamental constitutional right of the natural person who is the nonmovant in the foreign forum with respect to the matter in dispute, the motion shall be denied.

"**§ 1-87.8. Contracts not capable of modification to preserve fundamental constitutional rights void.**

Any provision in a contract or other agreement incapable of being modified or amended pursuant to this Article in order to preserve the fundamental constitutional rights of the natural persons who are parties to the contract or agreement shall be null and void.

"**§ 1-87.9. Strict construction of waivers of constitutional rights.**

Nothing in this Article shall be interpreted to limit the right of natural persons voluntarily to restrict or limit their own constitutional rights by contract or specific waiver consistent with constitutional principles; however, any ambiguity in the language of any such contract or other waiver shall be strictly construed in favor of preserving the constitutional rights of natural persons in this State.

"**§ 1-87.10. Application.**

The provisions in this act shall apply only to proceedings or matters under Chapter 50 and Chapter 50A of the General Statutes."

SECTION 2. This act becomes effective September 1, 2013, and applies to agreements and contracts entered into on or after that date.

HOUSE BILL 695:
Foreign Laws/Protect Constitutional Rights

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 26, 2013
Introduced by:	Reps. Whitmire, Cleveland, Schaffer, Pittman	**Prepared by:**	Bill Patterson
Analysis of:	PCS to Third Edition H695-CSTG-60		Committee Counsel

SUMMARY: ***In divorce, alimony and child custody actions, the PCS for House Bill 695 would prevent courts or other entities acting under authority of State law from applying foreign law if doing so would violate a natural person's fundamental constitutional right. <u>The PCS changes the effective date of the act.</u>***

CURRENT LAW:

Under common law principles of comity the law of another country may be applied to disputes heard in the courts of this State,[1] as long as to do so would not violate an established public policy of the State.[2]

"A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or by other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Chapter 8 of the General Statutes and State law. The court's determination shall be treated as a ruling on a question of law." G.S. 1A-1, Rule 44.1

The enforceability of a judgment entered in another country that either grants or denies recovery of a sum of money is governed under the North Carolina Uniform Foreign-Country Money Judgments Recognition Act, Article 20 of Chapter 1C of the General Statutes. However, this Act does not apply to a judgment for alimony, support, or maintenance in matrimonial or family matters, and as to such judgments, principles of comity would apply. G.S. 1C-1852.[3]

The Supremacy Clause of the United States Constitution provides that:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. art. VI, cl. 2. To the extent that any treaties to which the United States is a signatory require the application of foreign law in state court proceedings, the Supremacy Clause would invalidate any state laws to the contrary.

BILL ANALYSIS: House Bill 695 creates a new Article 7A in Chapter 1 of the General Statutes, entitled: "Application of Foreign Law," which declares it to be the public policy of the State "to protect its citizens

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[1] "No law has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived. The extent to which the law of one nation shall be allowed to operate within the dominion of another nation depends upon the rule of comity; and comity is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation." Howard v. Howard, 200 N.C. 574, 158 S.E. 101, 103 (1931).

[2] "It is thoroughly established as a broad general rule that foreign law or rights based thereon will not be given effect or enforced if opposed to the settled public policy of the forum." Quets v. Needham, 198 N.C. App. 241, 253, 682 S.E.2d 214, 221 (2009), quoting Davis v. Davis, 269 N.C. 120, 125, 152 S.E.2d 306, 310 (1967).

[3] The Act's standards for recognition of a foreign money judgment provide, among other things, that the judgment will not be enforced if it was rendered under a judicial system that "does not provide impartial tribunals or procedures compatible with the requirements of due process of law," or if "[t]he judgment, or the cause of action or claim for relief on which the judgment is based, is repugnant to the public policy of this State or the United States." G.S. 1C-1853(b)(1), (b)(7)..

from the application of foreign law that would result in the violation of a fundamental constitutional right of a natural person." Article 7A would apply only to actions and matters under Chapters 50 (Divorce and Alimony) and 50A (Uniform Child-Custody Jurisdiction and Enforcement Act) of the General Statutes.

The bill defines "fundamental constitutional right" as a "fundamental right of a natural person guaranteed by the United States Constitution or the North Carolina Constitution." A "foreign law" is a law that is applied in a venue or forum operating under the authority of a government other than the United States, a state, district, commonwealth, territory, or insular possession of the United States, or any other government whose laws are entitled to full faith and credit under the United States Constitution.

The bill would provide that a "court, administrative agency, arbitrator, mediator, or other entity or person acting under the authority of State law":

- Shall not apply or enforce a foreign law or judgment in any legal proceeding involving a claim for absolute divorce, divorce from bed and board, child custody, child support, alimony, or equitable distribution, if doing so would violate a fundamental constitutional right of one or more natural persons who are parties to the proceeding.
- Shall interpret choice of law contract provisions requiring the application of foreign law in a way that preserves the fundamental constitutional rights of natural persons who are parties to the agreement, and shall modify such provisions as necessary to preserve those rights.
- Shall not enforce a contract provision requiring application of foreign law or choosing a foreign venue if doing so would violate a fundamental constitutional right of a natural person, and shall modify such provision as necessary to avoid violating such right.
- Shall deny a motion to transfer a proceeding to a foreign venue if transfer is found likely to violate the constitutional rights of a natural person who is the nonmoving party.
- Shall treat as null and void any provision in a contract or other agreement incapable of being modified or amended in order to preserve the fundamental constitutional rights of the natural persons who are parties to the contract or agreement.
- Shall strictly construe any ambiguity in a contract limiting or waiving the constitutional rights of a natural person in favor preserving those constitutional rights.

EFFECTIVE DATE: This act is effective July 1, 2013, and applies to agreements entered into on or after that date.

BACKGROUND: Between 2010 and 2012, at least 32 states considered bills to restrict the circumstances in which state courts can consider foreign or religious laws in their decisions. Six states adopted various versions of this type of law. Such bills were initially directed towards preventing the use of "Sharia law." Oklahoma's law specifically banned judicial consideration of Islamic law (Sharia law), but was ruled unconstitutional in 2010 by a federal district court. In 2012, the 10th Circuit Court of Appeals affirmed the lower court's decision. Later state laws refer to "foreign" laws, instead of specifically naming Sharia law, in an effort to avoid the Oklahoma law's fate of being found to violate the Establishment Clause and Free Exercise Clause of First Amendment.

The states that have adopted laws restricting the application of "foreign" law include Arizona, Kansas, Louisiana, Oklahoma, South Dakota, and Tennessee. The laws vary from a few sentences to more lengthy provisions. Some guarantee "any right" or "a right" under the State or federal constitution [Tennessee; Louisiana]. Arizona's law is a single sentence: "A court, arbitrator, administrative agency or other adjudicative, mediation or enforcement authority shall not enforce a foreign law if doing so would violate a right guaranteed by the Constitution of this State or of the United States or conflict with the laws of the United States or this State. South Dakota's is shorter: "No court, administrative agency, or other governmental agency may enforce any provisions of any religious code." Laws such as South Dakota's are principally restatements of the constitutional ban against the establishment of a religion by a state, and don't have the reach of the other application of foreign law statutes.

Hal Pell, counsel to House Judiciary Subcommittee C, substantially contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 695

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

H695-ATG-35 [v.2]

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

Date _____,2013

Senator Soucek

moves to amend the bill on page 1, by rewriting the Short Title to read:
"Family, Faith, and Freedom Protection Act.";

and on line 1, through page 2, line 49, by rewriting those lines to read:

" A BILL TO BE ENTITLED

AN ACT TO PROTECT RIGHTS AND PRIVILEGES GRANTED UNDER THE UNITED STATES AND NORTH CAROLINA CONSTITUTIONS IN THE APPLICATION OF FOREIGN LAW, TO MODIFY CERTAIN LAWS PERTAINING TO ABORTION, TO LIMIT ABORTION COVERAGE UNDER HEALTH INSURANCE PLANS OFFERED UNDER A HEALTH BENEFIT EXCHANGE OPERATING IN NORTH CAROLINA OR OFFERED BY A COUNTY OR MUNICIPALITY, TO PROHIBIT A PERSON FROM PERFORMING OR ATTEMPTING TO PERFORM AN ABORTION WHEN THE SEX OF THE UNBORN CHILD IS A SIGNIFICANT FACTOR IN SEEKING THE ABORTION, TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO AMEND RULES PERTAINING TO CLINICS CERTIFIED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO BE SUITABLE FACILITIES FOR THE PERFORMANCE OF ABORTIONS, AND TO AMEND THE WOMEN'S RIGHT TO KNOW ACT.

The General Assembly of North Carolina enacts:

PART I. SHORT TITLE

SECTION 1. This act may be known and cited as the Family, Faith, and Freedom Protection Act of 2013.

PART II. APPLICATION OF FOREIGN LAW

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

"Article 7A.
"Application of Foreign Law.

"**§ 1-87.2. Definitions.**

The following definitions apply in this Article:

(1) Fundamental constitutional right. – A fundamental right of a natural person guaranteed by the United States Constitution or the North Carolina Constitution.

(2) Foreign law. – A law, rule, resolution, legal code, legal system, or any component of a legal system established and used or applied in a foreign venue or forum.

(3) Foreign venue or forum. – A venue or forum operating under the authority of a government other than any of the following:

a. The United States.

b. A state, district, commonwealth, territory, or insular possession of the United States.

c. Any other government with regard to which the decision in this State as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

"**§ 1-87.3. Public policy.**

In recognition that the United States Constitution and the Constitution of North Carolina constitute the supreme law of this State, the General Assembly hereby declares it to be the public policy of this State to protect its citizens from the application of foreign law that would result in the violation of a fundamental constitutional right of a natural person. The public policies expressed in this section shall apply only to actual or foreseeable violations of a fundamental constitutional right resulting from the application of the foreign law.

"**§ 1-87.4. Nonapplication of foreign law that would violate fundamental constitutional rights.**

A court, administrative agency, arbitrator, mediator, or other entity or person acting under the authority of State law shall not apply a foreign law in any legal proceeding involving, or recognize a foreign judgment involving, a claim for absolute divorce, divorce from bed and board, child custody, child support, alimony, or equitable distribution if doing so would violate a fundamental constitutional right of one or more natural persons who are parties to the proceeding.

"**§ 1-87.5. Interpretation of contracts providing for choice of foreign law.**

(a) In the interpretation or enforcement by a court, administrative agency, arbitrator, mediator, or other entity or person acting under the authority of State law of any contract or other agreement that provides for the choice of a foreign law to govern its interpretation or the resolution of any claim or dispute, the court or administrative agency shall preserve the fundamental constitutional rights of natural persons who are parties to the contract or other agreement.

(b) If enforcement of any provision in a contract or other agreement for the choice of foreign law would result in a violation of a fundamental constitutional right of one or more of the natural persons who are parties to the contract or other agreement, the agreement or contract shall be modified or amended to the extent necessary to preserve the fundamental constitutional rights of the natural persons.

"**§ 1-87.6. Interpretation of contracts providing for choice of foreign venue or forum.**

If the enforcement of any provision in a contract or other agreement providing for a choice of a foreign venue or forum would result in a violation of a fundamental constitutional right of one or more of the natural persons who are parties to the contract or other agreement, that provision shall be modified or amended to the extent necessary to preserve the fundamental constitutional rights of the natural persons.

"**§ 1-87.7. Motions to transfer proceedings to a foreign venue or forum.**

If a natural person subject to personal jurisdiction in this State seeks to maintain a litigation proceeding, arbitration proceeding, or other similarly binding proceeding in this State, and if a court of this State finds that granting a motion by another party to the proceeding to transfer the proceeding to a foreign venue or forum would likely lead to the violation of a fundamental constitutional right of the natural person who is the nonmovant in the foreign forum with respect to the matter in dispute, the motion shall be denied.

"**§ 1-87.8. Contracts not capable of modification to preserve fundamental constitutional rights void.**

Any provision in a contract or other agreement incapable of being modified or amended pursuant to this Article in order to preserve the fundamental constitutional rights of the natural persons who are parties to the contract or agreement shall be null and void.

"**§ 1-87.9. Strict construction of waivers of constitutional rights.**

Nothing in this Article shall be interpreted to limit the right of natural persons voluntarily to restrict or limit their own constitutional rights by contract or specific waiver consistent with constitutional principles; however, any ambiguity in the language of any such contract or other waiver shall be strictly construed in favor of preserving the constitutional rights of natural persons in this State.

"**§ 1-87.10. Application.**

The provisions in this act shall apply only to proceedings or matters under Chapter 50 and Chapter 50A of the General Statutes."

SECTION 2.(b) This section becomes effective September 1, 2013, and applies to agreements and contracts entered into on or after that date.

PART III. HEALTH CARE CONSCIENCE PROTECTION

SECTION 3.(a) G.S. 14-45.1(e) reads as rewritten:

"(e) Nothing in this section shall require a physician licensed to practice medicine in North ~~Carolina or~~ Carolina, any ~~nurse~~ nurse, or any other health care provider who shall state an objection to abortion on moral, ethical, or religious grounds, to perform or participate in medical procedures which result in an abortion. The refusal of ~~such physician~~ a physician, nurse, or health care provider to perform or participate in these medical procedures shall not be a basis for damages for ~~such~~ the refusal, or for any disciplinary or any other recriminatory action against ~~such physician.~~ the physician, nurse, or health care provider. For purposes of this section, the phrase "health care provider" shall have the same meaning as defined under G.S. 90-410(1)."

SECTION 3.(b) G.S. 14-45.1(f) reads as rewritten:

"(f) Nothing in this section shall require a ~~hospital or~~hospital, other health care ~~institution~~ institution, or other health care provider to perform an abortion or to provide abortion services."

SECTION 3.(c) This section becomes effective 30 days after it becomes law.

PART IV. LIMITS ON ABORTION FUNDING UNDER HEALTH INSURANCE PLANS OFFERED THROUGH A HEALTH INSURANCE EXCHANGE OR BY LOCAL GOVERNMENTS

SECTION 4.(a) Article 51 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-51-63. Coverage for abortions not allowed in plans offered through Exchange.**

(a) Pursuant to the authority granted to states under 42 U.S.C. § 18023(a), no qualified health plan offered through an Exchange created under Subchapter III of Chapter 157 of Title 42 of the U.S. Code and operating within this State shall include coverage for abortion services.

(b) The coverage limitation in subsection (a) of this section shall not apply to an abortion performed when the pregnancy is the result of an act of rape or incest or the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself."

SECTION 4.(b) G.S. 153A-92(d) reads as rewritten:

"(d) A county may purchase life insurance or health insurance or both for the benefit of all or any class of county officers and employees as a part of their compensation. A county may provide other fringe benefits for county officers and employees. In providing health insurance to county officers and employees, a county shall not provide abortion coverage greater than that provided by the State Health Plan for Teachers and State Employees under Article 3B of Chapter 135 of the General Statutes."

SECTION 4.(c) G.S. 160A-162(b) reads as rewritten:

"(b) The council may purchase life, health, and any other forms of insurance for the benefit of all or any class of city employees and their dependents, and may provide other fringe benefits for city employees. In providing health insurance to city employees, the council shall not provide abortion coverage greater than that provided by the State Health Plan for Teachers and State Employees under Article 3B of Chapter 135 of the General Statutes."

SECTION 4.(d) Subsections (a) and (d) of this section are effective when they become law. Subsections (b) and (c) of this section apply to insurance contracts or policies issued, renewed, or amended on or after October 1, 2013.

PART V. CLARIFY LAW/PROHIBIT SEX-SELECTIVE ABORTION

SECTION 5.(a) Chapter 90 of the General Statutes is amended by adding the following new Article to read:

"Article 1K.
"Certain Abortions Prohibited.

"**§ 90-21.120. Definitions.**

The following definitions apply in this Article:

(1) Abortion. – As defined in G.S. 90-21.81(1).

(2) Attempt to perform an abortion. – As defined in G.S. 90-21.81(2).
(3) Woman. – As defined in G.S. 90-21.81(11).

"**§ 90-21.121. Sex-selective abortion prohibited.**

(a) Notwithstanding any of the provisions of G.S. 14-45.1, no person shall perform or attempt to perform an abortion upon a woman in this State with knowledge, or an objective reason to know, that a significant factor in the woman seeking the abortion is related to the sex of the unborn child.

(b) Nothing in this section shall be construed as placing an affirmative duty on a physician to inquire as to whether the sex of the unborn child is a significant factor in the pregnant woman seeking the abortion.

"**§ 90-21.122. Civil remedies.**

(a) Any person who violates any provision of this Article shall be liable for damages, including punitive damages pursuant to Chapter 1D of the General Statutes, and may be enjoined from future acts.

(b) A claim for damages against any person who has violated a provision of this Article may be sought by (i) the woman upon whom an abortion was performed or attempted in violation of this Article, (ii) any person who is the spouse or guardian of the woman upon whom an abortion was performed or attempted in violation of this Article, or (iii) a parent of the woman upon whom an abortion was performed or attempted in violation of this Article if the woman was a minor at the time the abortion was performed or attempted.

(c) A claim for injunctive relief against any person who has violated a provision of this Article may be sought by (i) the woman upon whom an abortion was performed or attempted in violation of this Article, (ii) any person who is the spouse, guardian, or current or former licensed health care provider of the woman upon whom an abortion was performed or attempted in violation of this Article, or (iii) a parent of the woman upon whom an abortion was performed or attempted in violation of this Article if the woman was a minor at the time the abortion was performed or attempted.

(d) Any person who violates the terms of an injunction issued in accordance with this section shall be subject to civil contempt and shall be fined ten thousand dollars ($10,000) for the first violation, fifty thousand dollars ($50,000) for the second violation, and one hundred thousand dollars ($100,000) for the third violation and each subsequent violation. Each performance or attempted performance of an abortion in violation of the terms of an injunction is a separate violation. The fine shall be the exclusive penalty for civil contempt under this subsection. The fine under this subsection shall be cumulative. No fine shall be assessed against the woman upon whom an abortion is performed or attempted.

(e) The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

"**§ 90-21.123. Protection of privacy in court proceedings.**

In every proceeding or action brought under this Article, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or attempted shall be preserved from public disclosure if the woman does not give her consent to the disclosure. The court, upon motion or sua sponte, shall make the ruling and, upon determining that the woman's anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and

shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. Each order issued pursuant to this section shall be accompanied by specific written findings explaining (i) why the anonymity of the woman should be preserved from public disclosure, (ii) why the order is essential to that end, (iii) how the order is narrowly tailored to serve that interest, and (iv) why no reasonable, less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, anyone who brings an action under G.S. 90-21.122 shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant."

SECTION 5.(b) G.S. 90-21.81(2) reads as rewritten:

"**§ 90-21.81. Definitions.**

The following definitions apply in this Article:

...

(2) Attempt to perform an abortion. – An act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in violation of this ~~Article.~~Article or Article 1K of this Chapter.

...."

SECTION 5.(c) This section becomes effective October 1, 2013, and applies to violations occurring on or after that date.

PART VI. AMEND WOMEN'S RIGHT TO KNOW ACT

SECTION 6.(a) G.S. 90-21.82(1) reads as rewritten:

"**§ 90-21.82. Informed consent to abortion.**

No abortion shall be performed upon a woman in this State without her voluntary and informed consent. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if all of the following conditions are satisfied:

(1) At least 24 hours prior to the abortion, a physician or qualified professional has orally informed the woman, by telephone or in person, of all of the following:

a. The name of the physician who will perform the ~~abortion.~~abortion to ensure the safety of the procedure and prompt medical attention to any complications that may arise. The physician performing a surgical abortion shall be physically present during the performance of the entire abortion procedure. The physician prescribing, dispensing, or otherwise providing any drug or chemical for the purpose of inducing an abortion shall be physically present in the same room as the patient when the drug or chemical is administered to the patient.

...."

SECTION 6.(b) G.S. 90-21.83 is amended by adding a new subsection to read:

"(d) The Department shall cause to be available on the State Web site a list of resources the woman may contact for assistance upon receiving information from the physician performing the ultrasound that the unborn child may have a disability or serious abnormality and shall do so in a manner prescribed by subsection (b) of this section."

SECTION 6.(c) The Department of Health and Human Services (Department) shall amend its rules pertaining to clinics certified by the Department to be suitable facilities for the performance of abortions under G.S. 14-45.1. The rules shall ensure that standards for the clinics certified by the Department to be suitable facilities for the performance of abortions are similar to those for the licensure of ambulatory surgical centers. These rules shall address the on-site recovery phase of patient care at the clinic as well as the requirement for a transfer agreement between a clinic and a hospital. No later than January 1, 2014, the Department shall report to the Joint Legislative Oversight Committee on Health and Human Services on its progress in amending the rules.

SECTION 6.(d) This section becomes effective October 1, 2013.

PART VII. SEVERABILITY AND EFFECTIVE DATE

SECTION 7.(a) 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. If any provision of this act is temporarily or permanently restrained or enjoined by judicial order, this act shall be enforced as though such restrained or enjoined provisions had not been adopted, provided that whenever such temporary or permanent restraining order or injunction is stayed, dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

SECTION 7.(b) This act is effective as provided herein. Section 1 and this section are effective when they become law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 695

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

H695-ATG-35 [v.3]

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

Date _____,2013

Senator _____

moves to amend the bill on page 1, by rewriting the Short Title to read:
"Family, Faith, and Freedom Protection Act.";

and on line 1, through page 2, line 49, by rewriting those lines to read:
" A BILL TO BE ENTITLED
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The General Assembly of North Carolina enacts:

PART I. SHORT TITLE

SECTION 1. This act may be known and cited as the Family, Faith, and Freedom Protection Act of 2013.

PART II. APPLICATION OF FOREIGN LAW

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

"Article 7A.
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"**§ 1-87.2. Definitions.**

The following definitions apply in this Article:

(1) Fundamental constitutional right. – A fundamental right of a natural person guaranteed by the United States Constitution or the North Carolina Constitution.

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(3) Foreign venue or forum. – A venue or forum operating under the authority of a government other than any of the following:

a. The United States.

b. A state, district, commonwealth, territory, or insular possession of the United States.

c. Any other government with regard to which the decision in this State as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

"**§ 1-87.3. Public policy.**

In recognition that the United States Constitution and the Constitution of North Carolina constitute the supreme law of this State, the General Assembly hereby declares it to be the public policy of this State to protect its citizens from the application of foreign law that would result in the violation of a fundamental constitutional right of a natural person. The public policies expressed in this section shall apply only to actual or foreseeable violations of a fundamental constitutional right resulting from the application of the foreign law.

"**§ 1-87.4. Nonapplication of foreign law that would violate fundamental constitutional rights.**

A court, administrative agency, arbitrator, mediator, or other entity or person acting under the authority of State law shall not apply a foreign law in any legal proceeding involving, or recognize a foreign judgment involving, a claim for absolute divorce, divorce from bed and board, child custody, child support, alimony, or equitable distribution if doing so would violate a fundamental constitutional right of one or more natural persons who are parties to the proceeding.

"**§ 1-87.5. Interpretation of contracts providing for choice of foreign law.**

(a) In the interpretation or enforcement by a court, administrative agency, arbitrator, mediator, or other entity or person acting under the authority of State law of any contract or other agreement that provides for the choice of a foreign law to govern its interpretation or the resolution of any claim or dispute, the court or administrative agency shall preserve the fundamental constitutional rights of natural persons who are parties to the contract or other agreement.

(b) If enforcement of any provision in a contract or other agreement for the choice of foreign law would result in a violation of a fundamental constitutional right of one or more of the natural persons who are parties to the contract or other agreement, the agreement or contract shall be modified or amended to the extent necessary to preserve the fundamental constitutional rights of the natural persons.

"**§ 1-87.6. Interpretation of contracts providing for choice of foreign venue or forum.**

If the enforcement of any provision in a contract or other agreement providing for a choice of a foreign venue or forum would result in a violation of a fundamental constitutional right of one or more of the natural persons who are parties to the contract or other agreement, that provision shall be modified or amended to the extent necessary to preserve the fundamental constitutional rights of the natural persons.

"**§ 1-87.7. Motions to transfer proceedings to a foreign venue or forum.**

If a natural person subject to personal jurisdiction in this State seeks to maintain a litigation proceeding, arbitration proceeding, or other similarly binding proceeding in this State, and if a court of this State finds that granting a motion by another party to the proceeding to transfer the proceeding to a foreign venue or forum would likely lead to the violation of a fundamental constitutional right of the natural person who is the nonmovant in the foreign forum with respect to the matter in dispute, the motion shall be denied.

"**§ 1-87.8. Contracts not capable of modification to preserve fundamental constitutional rights void.**

Any provision in a contract or other agreement incapable of being modified or amended pursuant to this Article in order to preserve the fundamental constitutional rights of the natural persons who are parties to the contract or agreement shall be null and void.

"**§ 1-87.9. Strict construction of waivers of constitutional rights.**

Nothing in this Article shall be interpreted to limit the right of natural persons voluntarily to restrict or limit their own constitutional rights by contract or specific waiver consistent with constitutional principles; however, any ambiguity in the language of any such contract or other waiver shall be strictly construed in favor of preserving the constitutional rights of natural persons in this State.

"**§ 1-87.10. Application.**

The provisions in this act shall apply only to proceedings or matters under Chapter 50 and Chapter 50A of the General Statutes."

SECTION 2.(b) This section becomes effective September 1, 2013, and applies to agreements and contracts entered into on or after that date.

PART III. HEALTH CARE CONSCIENCE PROTECTION

SECTION 3.(a) G.S. 14-45.1(e) reads as rewritten:

"(e) Nothing in this section shall require a physician licensed to practice medicine in North ~~Carolina or~~ Carolina, any ~~nurse~~ nurse, or any other health care provider who shall state an objection to abortion on moral, ethical, or religious grounds, to perform or participate in medical procedures which result in an abortion. The refusal of ~~such physician~~ a physician, nurse, or health care provider to perform or participate in these medical procedures shall not be a basis for damages for ~~such~~ the refusal, or for any disciplinary or any other recriminatory action against ~~such physician.~~ the physician, nurse, or health care provider. For purposes of this section, the phrase "health care provider" shall have the same meaning as defined under G.S. 90-410(1)."

SECTION 3.(b) G.S. 14-45.1(f) reads as rewritten:

"(f) Nothing in this section shall require a ~~hospital or~~hospital, other health care ~~institution~~ institution, or other health care provider to perform an abortion or to provide abortion services."

SECTION 3.(c) This section becomes effective 30 days after it becomes law.

PART IV. LIMITS ON ABORTION FUNDING UNDER HEALTH INSURANCE PLANS OFFERED THROUGH A HEALTH INSURANCE EXCHANGE OR BY LOCAL GOVERNMENTS

SECTION 4.(a) Article 51 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-51-63. Coverage for abortions not allowed in plans offered through Exchange.**

(a) Pursuant to the authority granted to states under 42 U.S.C. § 18023(a), no qualified health plan offered through an Exchange created under Subchapter III of Chapter 157 of Title 42 of the U.S. Code and operating within this State shall include coverage for abortion services.

(b) The coverage limitation in subsection (a) of this section shall not apply to an abortion performed when the pregnancy is the result of an act of rape or incest or the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself."

SECTION 4.(b) G.S. 153A-92(d) reads as rewritten:

"(d) A county may purchase life insurance or health insurance or both for the benefit of all or any class of county officers and employees as a part of their compensation. A county may provide other fringe benefits for county officers and employees. In providing health insurance to county officers and employees, a county shall not provide abortion coverage greater than that provided by the State Health Plan for Teachers and State Employees under Article 3B of Chapter 135 of the General Statutes."

SECTION 4.(c) G.S. 160A-162(b) reads as rewritten:

"(b) The council may purchase life, health, and any other forms of insurance for the benefit of all or any class of city employees and their dependents, and may provide other fringe benefits for city employees. In providing health insurance to city employees, the council shall not provide abortion coverage greater than that provided by the State Health Plan for Teachers and State Employees under Article 3B of Chapter 135 of the General Statutes."

SECTION 4.(d) Subsections (a) and (d) of this section are effective when they become law. Subsections (b) and (c) of this section apply to insurance contracts or policies issued, renewed, or amended on or after October 1, 2013.

PART V. CLARIFY LAW/PROHIBIT SEX-SELECTIVE ABORTION

SECTION 5.(a) Chapter 90 of the General Statutes is amended by adding the following new Article to read:

"Article 1K.
"Certain Abortions Prohibited.

"**§ 90-21.120. Definitions.**

The following definitions apply in this Article:

(1) Abortion. – As defined in G.S. 90-21.81(1).

(2) Attempt to perform an abortion. – As defined in G.S. 90-21.81(2).
(3) Woman. – As defined in G.S. 90-21.81(11).

"**§ 90-21.121. Sex-selective abortion prohibited.**

(a) Notwithstanding any of the provisions of G.S. 14-45.1, no person shall perform or attempt to perform an abortion upon a woman in this State with knowledge, or an objective reason to know, that a significant factor in the woman seeking the abortion is related to the sex of the unborn child.

(b) Nothing in this section shall be construed as placing an affirmative duty on a physician to inquire as to whether the sex of the unborn child is a significant factor in the pregnant woman seeking the abortion.

"**§ 90-21.122. Civil remedies.**

(a) Any person who violates any provision of this Article shall be liable for damages, including punitive damages pursuant to Chapter 1D of the General Statutes, and may be enjoined from future acts.

(b) A claim for damages against any person who has violated a provision of this Article may be sought by (i) the woman upon whom an abortion was performed or attempted in violation of this Article, (ii) any person who is the spouse or guardian of the woman upon whom an abortion was performed or attempted in violation of this Article, or (iii) a parent of the woman upon whom an abortion was performed or attempted in violation of this Article if the woman was a minor at the time the abortion was performed or attempted.

(c) A claim for injunctive relief against any person who has violated a provision of this Article may be sought by (i) the woman upon whom an abortion was performed or attempted in violation of this Article, (ii) any person who is the spouse, guardian, or current or former licensed health care provider of the woman upon whom an abortion was performed or attempted in violation of this Article, or (iii) a parent of the woman upon whom an abortion was performed or attempted in violation of this Article if the woman was a minor at the time the abortion was performed or attempted.

(d) Any person who violates the terms of an injunction issued in accordance with this section shall be subject to civil contempt and shall be fined ten thousand dollars ($10,000) for the first violation, fifty thousand dollars ($50,000) for the second violation, and one hundred thousand dollars ($100,000) for the third violation and each subsequent violation. Each performance or attempted performance of an abortion in violation of the terms of an injunction is a separate violation. The fine shall be the exclusive penalty for civil contempt under this subsection. The fine under this subsection shall be cumulative. No fine shall be assessed against the woman upon whom an abortion is performed or attempted.

(e) The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

"**§ 90-21.123. Protection of privacy in court proceedings.**

In every proceeding or action brought under this Article, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or attempted shall be preserved from public disclosure if the woman does not give her consent to the disclosure. The court, upon motion or sua sponte, shall make the ruling and, upon determining that the woman's anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and

shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. Each order issued pursuant to this section shall be accompanied by specific written findings explaining (i) why the anonymity of the woman should be preserved from public disclosure, (ii) why the order is essential to that end, (iii) how the order is narrowly tailored to serve that interest, and (iv) why no reasonable, less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, anyone who brings an action under G.S. 90-21.122 shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant."

SECTION 5.(b) G.S. 90-21.81(2) reads as rewritten:

"**§ 90-21.81. Definitions.**

The following definitions apply in this Article:

...

(2) Attempt to perform an abortion. – An act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in violation of this ~~Article.~~Article or Article 1K of this Chapter.

...."

SECTION 5.(c) This section becomes effective October 1, 2013, and applies to violations occurring on or after that date.

PART VI. AMEND WOMEN'S RIGHT TO KNOW ACT

SECTION 6.(a) G.S. 90-21.82(1) reads as rewritten:

"**§ 90-21.82. Informed consent to abortion.**

No abortion shall be performed upon a woman in this State without her voluntary and informed consent. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if all of the following conditions are satisfied:

(1) At least 24 hours prior to the abortion, a physician or qualified professional has orally informed the woman, by telephone or in person, of all of the following:

a. The name of the physician who will perform the ~~abortion.~~abortion to ensure the safety of the procedure and prompt medical attention to any complications that may arise. The physician performing a surgical abortion shall be physically present during the performance of the entire abortion procedure. The physician prescribing, dispensing, or otherwise providing any drug or chemical for the purpose of inducing an abortion shall be physically present in the same room as the patient when the drug or chemical is administered to the patient.

...."

SECTION 6.(b) G.S. 90-21.83 is amended by adding a new subsection to read:

"(d) The Department shall cause to be available on the State Web site a list of resources the woman may contact for assistance upon receiving information from the physician performing the ultrasound that the unborn child may have a disability or serious abnormality and shall do so in a manner prescribed by subsection (b) of this section."

SECTION 6.(c) The Department of Health and Human Services (Department) shall amend its rules pertaining to clinics certified by the Department to be suitable facilities for the performance of abortions under G.S. 14-45.1. The rules shall ensure that standards for the clinics certified by the Department to be suitable facilities for the performance of abortions are similar to those for the licensure of ambulatory surgical centers. These rules shall address the on-site recovery phase of patient care at the clinic as well as the requirement for a transfer agreement between a clinic and a hospital. No later than January 1, 2014, the Department shall report to the Joint Legislative Oversight Committee on Health and Human Services on its progress in amending the rules.

SECTION 6.(d) This section becomes effective October 1, 2013.

PART VII. SEVERABILITY AND EFFECTIVE DATE

SECTION 7.(a) 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. If any provision of this act is temporarily or permanently restrained or enjoined by judicial order, this act shall be enforced as though such restrained or enjoined provisions had not been adopted, provided that whenever such temporary or permanent restraining order or injunction is stayed, dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

SECTION 7.(b) This act is effective as provided herein. Section 1 and this section are effective when they become law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 695
Committee Substitute Favorable 5/15/13
Third Edition Engrossed 5/16/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H695-PCS30592-TG-64

Short Title: Family, Faith, and Freedom Protection Act. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO PROTECT RIGHTS AND PRIVILEGES GRANTED UNDER THE UNITED STATES AND NORTH CAROLINA CONSTITUTIONS IN THE APPLICATION OF FOREIGN LAW, TO MODIFY CERTAIN LAWS PERTAINING TO ABORTION, TO LIMIT ABORTION COVERAGE UNDER HEALTH INSURANCE PLANS OFFERED UNDER A HEALTH BENEFIT EXCHANGE OPERATING IN NORTH CAROLINA OR OFFERED BY A COUNTY OR MUNICIPALITY, TO PROHIBIT A PERSON FROM PERFORMING OR ATTEMPTING TO PERFORM AN ABORTION WHEN THE SEX OF THE UNBORN CHILD IS A SIGNIFICANT FACTOR IN SEEKING THE ABORTION, TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO AMEND RULES PERTAINING TO CLINICS CERTIFIED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO BE SUITABLE FACILITIES FOR THE PERFORMANCE OF ABORTIONS, AND TO AMEND THE WOMEN'S RIGHT TO KNOW ACT.

The General Assembly of North Carolina enacts:

PART I. SHORT TITLE

SECTION 1. This act may be known and cited as the Family, Faith, and Freedom Protection Act of 2013.

PART II. APPLICATION OF FOREIGN LAW

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

"Article 7A.
"Application of Foreign Law.

"**§ 1-87.2. Definitions.**

The following definitions apply in this Article:

(1) Fundamental constitutional right. – A fundamental right of a natural person guaranteed by the United States Constitution or the North Carolina Constitution.

(2) Foreign law. – A law, rule, resolution, legal code, legal system, or any component of a legal system established and used or applied in a foreign venue or forum.

(3) Foreign venue or forum. – A venue or forum operating under the authority of a government other than any of the following:

a. The United States.

b. A state, district, commonwealth, territory, or insular possession of the United States.

c. Any other government with regard to which the decision in this State as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

"**§ 1-87.3. Public policy.**

In recognition that the United States Constitution and the Constitution of North Carolina constitute the supreme law of this State, the General Assembly hereby declares it to be the public policy of this State to protect its citizens from the application of foreign law that would result in the violation of a fundamental constitutional right of a natural person. The public policies expressed in this section shall apply only to actual or foreseeable violations of a fundamental constitutional right resulting from the application of the foreign law.

"**§ 1-87.4. Nonapplication of foreign law that would violate fundamental constitutional rights.**

A court, administrative agency, arbitrator, mediator, or other entity or person acting under the authority of State law shall not apply a foreign law in any legal proceeding involving, or recognize a foreign judgment involving, a claim for absolute divorce, divorce from bed and board, child custody, child support, alimony, or equitable distribution if doing so would violate a fundamental constitutional right of one or more natural persons who are parties to the proceeding.

"**§ 1-87.5. Interpretation of contracts providing for choice of foreign law.**

(a) In the interpretation or enforcement by a court, administrative agency, arbitrator, mediator, or other entity or person acting under the authority of State law of any contract or other agreement that provides for the choice of a foreign law to govern its interpretation or the resolution of any claim or dispute, the court or administrative agency shall preserve the fundamental constitutional rights of natural persons who are parties to the contract or other agreement.

(b) If enforcement of any provision in a contract or other agreement for the choice of foreign law would result in a violation of a fundamental constitutional right of one or more of the natural persons who are parties to the contract or other agreement, the agreement or contract shall be modified or amended to the extent necessary to preserve the fundamental constitutional rights of the natural persons.

"**§ 1-87.6. Interpretation of contracts providing for choice of foreign venue or forum.**

If the enforcement of any provision in a contract or other agreement providing for a choice of a foreign venue or forum would result in a violation of a fundamental constitutional right of one or more of the natural persons who are parties to the contract or other agreement, that provision shall be modified or amended to the extent necessary to preserve the fundamental constitutional rights of the natural persons.

"**§ 1-87.7. Motions to transfer proceedings to a foreign venue or forum.**

If a natural person subject to personal jurisdiction in this State seeks to maintain a litigation proceeding, arbitration proceeding, or other similarly binding proceeding in this State, and if a court of this State finds that granting a motion by another party to the proceeding to transfer the proceeding to a foreign venue or forum would likely lead to the violation of a fundamental constitutional right of the natural person who is the nonmovant in the foreign forum with respect to the matter in dispute, the motion shall be denied.

"**§ 1-87.8. Contracts not capable of modification to preserve fundamental constitutional rights void.**

Any provision in a contract or other agreement incapable of being modified or amended pursuant to this Article in order to preserve the fundamental constitutional rights of the natural persons who are parties to the contract or agreement shall be null and void.

"**§ 1-87.9. Strict construction of waivers of constitutional rights.**

Nothing in this Article shall be interpreted to limit the right of natural persons voluntarily to restrict or limit their own constitutional rights by contract or specific waiver consistent with constitutional principles; however, any ambiguity in the language of any such contract or other waiver shall be strictly construed in favor of preserving the constitutional rights of natural persons in this State.

"**§ 1-87.10. Application.**

The provisions in this act shall apply only to proceedings or matters under Chapter 50 and Chapter 50A of the General Statutes."

SECTION 2.(b) This section becomes effective September 1, 2013, and applies to agreements and contracts entered into on or after that date.

PART III. HEALTH CARE CONSCIENCE PROTECTION

SECTION 3.(a) G.S. 14-45.1(e) reads as rewritten:

"(e) Nothing in this section shall require a physician licensed to practice medicine in North ~~Carolina or~~ Carolina, any ~~nurse~~ nurse, or any other health care provider who shall state an objection to abortion on moral, ethical, or religious grounds, to perform or participate in medical procedures which result in an abortion. The refusal of ~~such physician~~ a physician, nurse, or health care provider to perform or participate in these medical procedures shall not be a basis for damages for ~~such~~ the refusal, or for any disciplinary or any other recriminatory action against ~~such physician.~~the physician, nurse, or health care provider. For purposes of this section, the phrase "health care provider" shall have the same meaning as defined under G.S. 90-410(1)."

SECTION 3.(b) G.S. 14-45.1(f) reads as rewritten:

"(f) Nothing in this section shall require a ~~hospital or~~hospital, other health care ~~institution~~ institution, or other health care provider to perform an abortion or to provide abortion services."

SECTION 3.(c) This section becomes effective 30 days after it becomes law.

PART IV. LIMITS ON ABORTION FUNDING UNDER HEALTH INSURANCE PLANS OFFERED THROUGH A HEALTH INSURANCE EXCHANGE OR BY LOCAL GOVERNMENTS

SECTION 4.(a) Article 51 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-51-63. Coverage for abortions not allowed in plans offered through Exchange.**

(a) Pursuant to the authority granted to states under 42 U.S.C. § 18023(a), no qualified health plan offered through an Exchange created under Subchapter III of Chapter 157 of Title 42 of the U.S. Code and operating within this State shall include coverage for abortion services.

(b) The coverage limitation in subsection (a) of this section shall not apply to an abortion performed when the pregnancy is the result of an act of rape or incest or the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself."

SECTION 4.(b) G.S. 153A-92(d) reads as rewritten:

"(d) A county may purchase life insurance or health insurance or both for the benefit of all or any class of county officers and employees as a part of their compensation. A county may provide other fringe benefits for county officers and employees. In providing health insurance to county officers and employees, a county shall not provide abortion coverage greater than that

provided by the State Health Plan for Teachers and State Employees under Article 3B of Chapter 135 of the General Statutes."

SECTION 4.(c) G.S. 160A-162(b) reads as rewritten:

"(b) The council may purchase life, health, and any other forms of insurance for the benefit of all or any class of city employees and their dependents, and may provide other fringe benefits for city employees. In providing health insurance to city employees, the council shall not provide abortion coverage greater than that provided by the State Health Plan for Teachers and State Employees under Article 3B of Chapter 135 of the General Statutes."

SECTION 4.(d) Subsections (a) and (d) of this section are effective when they become law. Subsections (b) and (c) of this section apply to insurance contracts or policies issued, renewed, or amended on or after October 1, 2013.

PART V. CLARIFY LAW/PROHIBIT SEX-SELECTIVE ABORTION

SECTION 5.(a) Chapter 90 of the General Statutes is amended by adding the following new Article to read:

"Article 1K.

"Certain Abortions Prohibited.

"**§ 90-21.120. Definitions.**

The following definitions apply in this Article:

(1) Abortion. – As defined in G.S. 90-21.81(1).

(2) Attempt to perform an abortion. – As defined in G.S. 90-21.81(2).

(3) Woman. – As defined in G.S. 90-21.81(11).

"**§ 90-21.121. Sex-selective abortion prohibited.**

(a) Notwithstanding any of the provisions of G.S. 14-45.1, no person shall perform or attempt to perform an abortion upon a woman in this State with knowledge, or an objective reason to know, that a significant factor in the woman seeking the abortion is related to the sex of the unborn child.

(b) Nothing in this section shall be construed as placing an affirmative duty on a physician to inquire as to whether the sex of the unborn child is a significant factor in the pregnant woman seeking the abortion.

"**§ 90-21.122. Civil remedies.**

(a) Any person who violates any provision of this Article shall be liable for damages, including punitive damages pursuant to Chapter 1D of the General Statutes, and may be enjoined from future acts.

(b) A claim for damages against any person who has violated a provision of this Article may be sought by (i) the woman upon whom an abortion was performed or attempted in violation of this Article, (ii) any person who is the spouse or guardian of the woman upon whom an abortion was performed or attempted in violation of this Article, or (iii) a parent of the woman upon whom an abortion was performed or attempted in violation of this Article if the woman was a minor at the time the abortion was performed or attempted.

(c) A claim for injunctive relief against any person who has violated a provision of this Article may be sought by (i) the woman upon whom an abortion was performed or attempted in violation of this Article, (ii) any person who is the spouse, guardian, or current or former licensed health care provider of the woman upon whom an abortion was performed or attempted in violation of this Article, or (iii) a parent of the woman upon whom an abortion was performed or attempted in violation of this Article if the woman was a minor at the time the abortion was performed or attempted.

(d) Any person who violates the terms of an injunction issued in accordance with this section shall be subject to civil contempt and shall be fined ten thousand dollars ($10,000) for the first violation, fifty thousand dollars ($50,000) for the second violation, and one hundred thousand dollars ($100,000) for the third violation and each subsequent violation. Each

performance or attempted performance of an abortion in violation of the terms of an injunction is a separate violation. The fine shall be the exclusive penalty for civil contempt under this subsection. The fine under this subsection shall be cumulative. No fine shall be assessed against the woman upon whom an abortion is performed or attempted.

(e) The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

"**§ 90-21.123. Protection of privacy in court proceedings.**

In every proceeding or action brought under this Article, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or attempted shall be preserved from public disclosure if the woman does not give her consent to the disclosure. The court, upon motion or sua sponte, shall make the ruling and, upon determining that the woman's anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. Each order issued pursuant to this section shall be accompanied by specific written findings explaining (i) why the anonymity of the woman should be preserved from public disclosure, (ii) why the order is essential to that end, (iii) how the order is narrowly tailored to serve that interest, and (iv) why no reasonable, less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, anyone who brings an action under G.S. 90-21.122 shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant."

SECTION 5.(b) G.S. 90-21.81(2) reads as rewritten:

"**§ 90-21.81. Definitions.**

The following definitions apply in this Article:

...

(2) Attempt to perform an abortion. – An act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in violation of this ~~Article.~~Article or Article 1K of this Chapter.

...."

SECTION 5.(c) This section becomes effective October 1, 2013, and applies to violations occurring on or after that date.

PART VI. AMEND WOMEN'S RIGHT TO KNOW ACT

SECTION 6.(a) G.S. 90-21.82(1) reads as rewritten:

"**§ 90-21.82. Informed consent to abortion.**

No abortion shall be performed upon a woman in this State without her voluntary and informed consent. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if all of the following conditions are satisfied:

(1) At least 24 hours prior to the abortion, a physician or qualified professional has orally informed the woman, by telephone or in person, of all of the following:

a. The name of the physician who will perform the ~~abortion.~~abortion to ensure the safety of the procedure and prompt medical attention to any complications that may arise. The physician performing a surgical abortion shall be physically present during the performance of the entire abortion procedure. The physician prescribing, dispensing, or otherwise providing any drug or chemical for the purpose of inducing an abortion shall be physically present in the

same room as the patient when the drug or chemical is administered to the patient.

...."

SECTION 6.(b) G.S. 90-21.83 is amended by adding a new subsection to read:

"(d) The Department shall cause to be available on the State Web site a list of resources the woman may contact for assistance upon receiving information from the physician performing the ultrasound that the unborn child may have a disability or serious abnormality and shall do so in a manner prescribed by subsection (b) of this section."

SECTION 6.(c) The Department of Health and Human Services (Department) shall amend its rules pertaining to clinics certified by the Department to be suitable facilities for the performance of abortions under G.S. 14-45.1. The rules shall ensure that standards for the clinics certified by the Department to be suitable facilities for the performance of abortions are similar to those for the licensure of ambulatory surgical centers. These rules shall address the on-site recovery phase of patient care at the clinic as well as the requirement for a transfer agreement between a clinic and a hospital. No later than January 1, 2014, the Department shall report to the Joint Legislative Oversight Committee on Health and Human Services on its progress in amending the rules.

SECTION 6.(d) This section becomes effective October 1, 2013.

PART VII. SEVERABILITY AND EFFECTIVE DATE

SECTION 7.(a) 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. If any provision of this act is temporarily or permanently restrained or enjoined by judicial order, this act shall be enforced as though such restrained or enjoined provisions had not been adopted, provided that whenever such temporary or permanent restraining order or injunction is stayed, dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

SECTION 7.(b) This act is effective as provided herein. Section 1 and this section are effective when they become law.

HOUSE BILL 695:
Family, Faith and Freedom Protection Act

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	July 2, 2013
Introduced by:	Reps. Whitmire, Cleveland, Schaffer, Pittman	**Prepared by:**	Bill Patterson Committee Counsel Amy Jo Johnson Staff Attorney
Analysis of:	PCS to Third Edition, as amended by H695-ATG-35 [v.2] H695-CSTG-60		

SUMMARY: ***The PCS for House Bill 695, as amended in committee by H695-ATG-35, makes a number of changes to the law relating to the application of foreign law in State courts, abortion, and insurance coverage for abortion and contraception.*** ***The PCS changed the effective date of Part II; the amendment added everything other than Part II.***

CURRENT LAW AND BILL ANALYSIS

Part I – Short Title

Part I provides that this act may be cited as the Family, Faith and Freedom Protection Act of 2013.

Part II – Application of Foreign Law

Current Law

Under common law principles of comity the law of another country may be applied to disputes heard in the courts of this State,[1] as long as to do so would not violate an established public policy of the State.[2]

"A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or by other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Chapter 8 of the General Statutes and State law. The court's determination shall be treated as a ruling on a question of law." G.S. 1A-1, Rule 44.1

The enforceability of a judgment entered in another country that either grants or denies recovery of a sum of money is governed under the North Carolina Uniform Foreign-Country Money Judgments Recognition Act, Article 20 of Chapter 1C of the General Statutes. However, this Act does not apply to a judgment for alimony, support, or maintenance in matrimonial or family matters, and as to such judgments, principles of comity would apply. G.S. 1C-1852.[3]

The Supremacy Clause of the United States Constitution provides that:

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[1] "No law has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived. The extent to which the law of one nation shall be allowed to operate within the dominion of another nation depends upon the rule of comity; and comity is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation." Howard v. Howard, 200 N.C. 574, 158 S.E. 101, 103 (1931).

[2] "It is thoroughly established as a broad general rule that foreign law or rights based thereon will not be given effect or enforced if opposed to the settled public policy of the forum." Quets v. Needham, 198 N.C. App. 241, 253, 682 S.E.2d 214, 221 (2009), quoting Davis v. Davis, 269 N.C. 120, 125, 152 S.E.2d 306, 310 (1967).

[3] The Act's standards for recognition of a foreign money judgment provide, among other things, that the judgment will not be enforced if it was rendered under a judicial system that "does not provide impartial tribunals or procedures compatible with the requirements of due process of law," or if "[t]he judgment, or the cause of action or claim for relief on which the judgment is based, is repugnant to the public policy of this State or the United States." G.S. 1C-1853(b)(1), (b)(7)..

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. art. VI, cl. 2. To the extent that any treaties to which the United States is a signatory require the application of foreign law in state court proceedings, the Supremacy Clause would invalidate any state laws to the contrary.

Analysis

Section 2 of the PCS for House Bill 695 would prevent courts or other entities acting under authority of State law from applying foreign law in divorce, alimony and child custody actions if doing so would violate a natural person's fundamental constitutional right.[4] It creates a new Article 7A in Chapter I of the General Statutes, entitled: "Application of Foreign Law," which would apply only to actions and matters arising under Chapters 50 (Divorce and Alimony) and 50A (Child-Custody) of the General Statutes.

For purposes of Article 7A, a "fundamental constitutional right" means a "fundamental right of a natural person guaranteed by the United States Constitution or the North Carolina Constitution." A "foreign law" is a law that is applied in a venue or forum operating under the authority of a government other than the United States, a state, district, commonwealth, territory, or insular possession of the United States, or any other government whose laws are entitled to full faith and credit under the United States Constitution.

Section 2 would provide that a "court, administrative agency, arbitrator, mediator, or other entity or person acting under the authority of State law":

- Shall not apply or enforce a foreign law or judgment in any legal proceeding involving a claim for absolute divorce, divorce from bed and board, child custody, child support, alimony, or equitable distribution, if doing so would violate a fundamental constitutional right of one or more natural persons who are parties to the proceeding.
- Shall interpret choice of law contract provisions requiring the application of foreign law in a way that preserves the fundamental constitutional rights of natural persons who are parties to the agreement, and shall modify such provisions as necessary to preserve those rights.

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[4] Between 2010 and 2012, at least 32 states considered bills to restrict the circumstances in which state courts can consider foreign or religious laws in their decisions. Six states adopted various versions of this type of law. Such bills were initially directed towards preventing the use of "Sharia law." Oklahoma's law specifically banned judicial consideration of Islamic law (Sharia law), but was ruled unconstitutional in 2010 by a federal district court. In 2012, the 10th Circuit Court of Appeals affirmed the lower court's decision. Later state laws refer to "foreign" laws, instead of specifically naming Sharia law, in an effort to avoid the Oklahoma law's fate of being found to violate the Establishment Clause and Free Exercise Clause of First Amendment.
States that have adopted laws restricting the application of "foreign" law include Arizona, Kansas, Louisiana, Oklahoma, South Dakota, and Tennessee. The laws vary from a few sentences to more lengthy provisions. Some guarantee "any right" or "a right" under the State or federal constitution [Tennessee; Louisiana]. Arizona's law is a single sentence: "A court, arbitrator, administrative agency or other adjudicative, mediation or enforcement authority shall not enforce a foreign law if doing so would violate a right guaranteed by the Constitution of this State or of the United States or conflict with the laws of the United States or this State. South Dakota's is shorter: "No court, administrative agency, or other governmental agency may enforce any provisions of any religious code." Laws such as South Dakota's are principally restatements of the constitutional ban against the establishment of a religion by a state, and don't have the reach of the other application of foreign law statutes.

- Shall not enforce a contract provision requiring application of foreign law or choosing a foreign venue if doing so would violate a fundamental constitutional right of a natural person, and shall modify such provision as necessary to avoid violating such right.
- Shall deny a motion to transfer a proceeding to a foreign venue if transfer is found likely to violate the constitutional rights of a natural person who is the nonmoving party.
- Shall treat as null and void any provision in a contract or other agreement incapable of being modified or amended in order to preserve the fundamental constitutional rights of the natural persons who are parties to the contract or agreement.
- Shall strictly construe any ambiguity in a contract limiting or waiving the constitutional rights of a natural person in favor preserving those constitutional rights.

Section 2 is effective September 1, 2013, and applies to agreements entered into on or after that date.

Part III – Health Care Conscience Protection

Current Law

G.S. 14-45.1(e) provides that nothing in this section requires a physician or nurse who objects to abortion on moral, ethical, or religious grounds to participate in medical procedures that result in an abortion, and shields doctors and nurses from liability for damages or from disciplinary action based on their refusal to do so. G.S. 14-45.1(f) provides that hospitals or other health care institutions are not required under this section to perform an abortion or provide abortion services.

Analysis

Section 3 of the PCS for House bill 695 would amend G.S. 14-45.1 to clarify that any "health care provider" as defined in G.S. 90-410(1)[5] who objects on moral, ethical, or religious grounds to abortion is not required to participate in abortion-related procedures and is not liable for damages or subject to disciplinary action for refusing to do so, and would expand the scope of G.S. 14-45(f) to also make it applicable to "other health care providers" in addition to hospitals and other health care institutions.

Section 3 is effective 30 days after the bill becomes law.

Part IV – Limits on Abortion Funding

Current Law

Health benefit plans offered on health benefit exchanges operated in a state pursuant to the Affordable Care Act may offer abortion coverage unless a State opts-out of allowing plans to offer this coverage. (42 USC 18023) Federal tax credits and cost-sharing reduction payments are prohibited from being used for abortion services in plans offered on an exchange. (Executive Order 13535, 42 USC 18023(b))

Counties and municipalities are authorized to purchase health insurance for their officers and employees under G.S. 153A-92(d) and G.S. 160A-162(b), respectively.

G.S. 143C-6-5.5 prohibits the use of State funds to perform abortions or supporting any governmental health plan offering abortion, except to save the mother's life or when the pregnancy resulted from rape or incest. The State Health Plan does not cover abortions for which the use of State funds is prohibited under this section, but does cover subsequent complications or related charges arising from an uncovered abortion.[6]

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[5] G.S. 90-410(1) defines "Health care provider" to mean "any person who is licensed or certified to practice a health profession or occupation under this Chapter or Chapters 90B or 90C of the General Statutes, a health care facility licensed under Chapters 131E or 122C of the General Statutes, and a representative or agent of a health care provider."
[6] G.S. 135-48.50(1).

Analysis

Section 4 of the PCS for House Bill 695 would enact a new section G.S. 58-51-63 to prohibit any health plan offered in this State through a health insurance exchange created pursuant to the Affordable Care Act from including coverage for abortion services, other than for an abortion when the mother's life is threatened by a physical disorder, illness or injury, or to terminate a pregnancy resulting from rape or incest.

Section 4 would also amend G.S. 153A-92(d) and G.S. 160A-162(b) to prohibit counties and cities from including in their employee health plans any coverage for abortion greater than that provided by the State Health Plan.

Subsections 4.(a) and 4.(d) are effective when they become law. Subsections 4.(b) and 4.(c) apply to insurance contracts or policies issued, renewed, or amended on or after October 1, 2013.

Part V – Clarify Law/Prohibit Sex-Selective Abortion

Current Law

G.S. 14-45.1 sets forth the circumstances under which an abortion may be lawfully performed. Generally, a woman may obtain an abortion in North Carolina during the first 20 weeks of pregnancy when the procedure is performed by a physician licensed to practice medicine in North Carolina in a hospital or clinic certified by the Department of Health and Human Services to be a suitable facility for the performance of abortions. After the 20th week of pregnancy, an abortion is lawful if the continuation of the pregnancy would threaten the life or gravely impair the health of the woman.

Analysis

Section 5 of the PCS for House Bill 695 states that no person shall knowingly or recklessly perform or attempt to perform an abortion upon a woman with knowledge, or an objective reason to know, that a significant factor in the woman's seeking the abortion is related to the sex of the unborn child. Any person who violates the act is liable for damages, including punitive damages and injunctive relief. A claim for damages or injunctive relief barring future acts may be brought by persons enumerated in the bill.

If a person knowingly or recklessly violates the terms of court ordered injunctive relief that person is subject to civil contempt and fined $10,000 for the first violation, $50,000 for the second violation, and $100,000 for the third violation and any subsequent violations. A fine is not assessed against the woman upon whom an abortion is performed or attempted. In any proceeding or civil action brought under the act, the court may preserve the woman's anonymity if the court makes specific findings.

Section 5 is effective October 1, 2013, and applies to violations occurring on or after that date.

Part VI – Amend Women's Right to Know Act

Current Law

G.S. 14-45.1 sets forth the circumstances under which an abortion may be lawfully performed. The Women's Right to Know Act (Article 1I of Chapter 90 of the General Statutes) outlines the requirements for informed consent to abortion.

Analysis

Section 6 of the PCS for House Bill 695 requires that the physician performing a surgical abortion be physically present during the entire abortion procedure. When a drug or chemical is given for the purposes of inducing an abortion, the physician prescribing, dispensing or otherwise providing the drug or chemical must be present when the drug or chemical is administered. Section 6 also requires the

Department of Health and Human Services to make resources available on its Web site to a woman who has received information that an unborn child may have a disability or serious abnormality.

Section 6 also requires the Department of Health and Human Services to amend its rules pertaining to clinics certified by the Department to be suitable facilities for the performance of abortions. The rules must be similar to those for ambulatory surgery centers and address the on-site recovery phase of patient care at the clinic as well as the transfer agreement between a clinic and a hospital. The Department must report to the Joint Legislative Oversight Committee on Health and Human Services no later than January 1, 2014, on its progress amending the rules.

Section 6 is effective October 1, 2013.

Part VII – Severability and Effective Date

Sections 2 through 7 of the act are effective as provided therein. The remainder of the act is effective when it becomes law.

Senate Committee on Judiciary I
Thursday, July 18, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 652	Inheritance by Illegitimate Child.	Representative Davis Representative Stam
HB 522	Master Meters/Landlord-Tenant Agreement.	Representative Avila Representative Pittman Representative Jeter Representative Speciale

Presentations

Other Business

Adjournment

Senate Committee on Judiciary I
Thursday, July 18, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Judiciary I met at 10:00 AM on July 18, 2013 in Room 1027/1128 of the Legislative Building. Eight members were present.

Senator E. S. (Buck) Newton, Chair, presided.

Senator Norm Sanderson moved to take up a Proposed Committee Substitute for House Bill 652. Senator Thom Goolsby was recognized to present the PCS. Mildred Spearman with the Administrative Office of the Courts was recognized for comment and spoke in opposition to the bill. Sen. Goolsby responded to her comments and motioned for a favorable report to the PCS, unfavorable to the original bill.

Chris Hagerty, general counsel to the Administrative Office of the Courts, spoke in opposition to the bill. Sen. Newton and Sen. Goolsby both responded to his comments.

Senator Earline Parmon commented in opposition to the bill. Sen. Newton held a vote on Sen. Goolsby's motion and it passed by a voice vote.

Sen. Goolsby became presiding chair and recognized a motion from Sen. Sanderson to take up a PCS for House Bill 522. Representative Chris Whitmire was recognized to explain the PCS. Senator Trudy Wade was recognized and spoke in opposition to the bill. Rep. Whitmire responded to Sen. Wade and Sen. Wade asked three follow-up questions. Rep. Whitmire and Sen. Goolsby responded to her comments. Sen. Wade made another follow-up comment.

Sen. Sanderson moved for a favorable report to the PCS, unfavorable to the original bill, and it passed by a voice vote.

The meeting adjourned at 10:19 a.m.

Senator E. S. (Buck) Newton, Chair
Presiding

Joseph Kyzer, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Goolsby, Co-Chair
Senator Newton, Co-Chair

Thursday, July 18, 2013

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

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

HB **652** Inheritance by Illegitimate Child.
Draft Number: H652-PCS30607-SA-59
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

HB **522** **(CS#1)** Master Meters/Landlord-Tenant Agreement.
Draft Number: H522-PCS70494-TG-66
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 2

Senator Thomas Goolsby will handle HB 652
Senator Thomas Goolsby will handle HB 522



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 522*
Committee Substitute Favorable 5/15/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H522-CSTG-66 [v.1]
7/17/2013 4:25:41 PM

Short Title: Foreign Laws/Protect Constitutional Rights. (Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO PROTECT RIGHTS AND PRIVILEGES GRANTED UNDER THE UNITED STATES AND NORTH CAROLINA CONSTITUTIONS IN THE APPLICATION OF FOREIGN LAW.

The General Assembly of North Carolina enacts:

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

"Article 7A.
"Application of Foreign Law.

"**§ 1-87.2. Definitions.**

The following definitions apply in this Article:

(1) Fundamental constitutional right. – A fundamental right of a natural person guaranteed by the United States Constitution or the North Carolina Constitution.

(2) Foreign law. – A law, rule, resolution, legal code, legal system, or any component of a legal system established and used or applied in a foreign venue or forum.

(3) Foreign venue or forum. – A venue or forum operating under the authority of a government other than any of the following:

a. The United States.

b. A state, district, commonwealth, territory, or insular possession of the United States.

c. Any other government with regard to which the decision in this State as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

"**§ 1-87.3. Public policy.**

In recognition that the United States Constitution and the Constitution of North Carolina constitute the supreme law of this State, the General Assembly hereby declares it to be the public policy of this State to protect its citizens from the application of foreign law that would result in the violation of a fundamental constitutional right of a natural person. The public policies expressed in this section shall apply only to actual or foreseeable violations of a fundamental constitutional right resulting from the application of the foreign law.

"**§ 1-87.4. Nonapplication of foreign law that would violate fundamental constitutional rights.**

A court, administrative agency, arbitrator, mediator, or other entity or person acting under the authority of State law shall not apply a foreign law in any legal proceeding involving, or recognize a foreign judgment involving, a claim for absolute divorce, divorce from bed and board, child custody, child support, alimony, or equitable distribution if doing so would violate a fundamental constitutional right of one or more natural persons who are parties to the proceeding.

"**§ 1-87.5. Interpretation of contracts providing for choice of foreign law.**

(a) In the interpretation or enforcement by a court, administrative agency, arbitrator, mediator, or other entity or person acting under the authority of State law of any contract or other agreement that provides for the choice of a foreign law to govern its interpretation or the resolution of any claim or dispute, the court or administrative agency shall preserve the fundamental constitutional rights of natural persons who are parties to the contract or other agreement.

(b) If enforcement of any provision in a contract or other agreement for the choice of foreign law would result in a violation of a fundamental constitutional right of one or more of the natural persons who are parties to the contract or other agreement, the agreement or contract shall be modified or amended to the extent necessary to preserve the fundamental constitutional rights of the natural persons.

"**§ 1-87.6. Interpretation of contracts providing for choice of foreign venue or forum.**

If the enforcement of any provision in a contract or other agreement providing for a choice of a foreign venue or forum would result in a violation of a fundamental constitutional right of one or more of the natural persons who are parties to the contract or other agreement, that provision shall be modified or amended to the extent necessary to preserve the fundamental constitutional rights of the natural persons.

"**§ 1-87.7. Motions to transfer proceedings to a foreign venue or forum.**

If a natural person subject to personal jurisdiction in this State seeks to maintain a litigation proceeding, arbitration proceeding, or other similarly binding proceeding in this State, and if a court of this State finds that granting a motion by another party to the proceeding to transfer the proceeding to a foreign venue or forum would likely lead to the violation of a fundamental constitutional right of the natural person who is the nonmovant in the foreign forum with respect to the matter in dispute, the motion shall be denied.

"**§ 1-87.8. Contracts not capable of modification to preserve fundamental constitutional rights void.**

Any provision in a contract or other agreement incapable of being modified or amended pursuant to this Article in order to preserve the fundamental constitutional rights of the natural persons who are parties to the contract or agreement shall be null and void.

"**§ 1-87.9. Strict construction of waivers of constitutional rights.**

Nothing in this Article shall be interpreted to limit the right of natural persons voluntarily to restrict or limit their own constitutional rights by contract or specific waiver consistent with constitutional principles; however, any ambiguity in the language of any such contract or other waiver shall be strictly construed in favor of preserving the constitutional rights of natural persons in this State.

"**§ 1-87.10. Application.**

The provisions in this act shall apply only to proceedings or matters under Chapter 50 and Chapter 50A of the General Statutes."

SECTION 2. This act becomes effective September 1, 2013, and applies to agreements and contracts entered into on or after that date.

HOUSE BILL 522:
Foreign Laws/Protect Constitutional Rights

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	July 17, 2013
Introduced by:	Reps. Avila, Pittman, Jeter, Speciale	**Prepared by:**	Bill Patterson
Analysis of:	PCS to Second Edition H522-CSTG-66		Committee Counsel

SUMMARY: ***In divorce, alimony and child custody actions, the PCS for House Bill 522 would prevent courts from applying foreign law if doing so would violate a natural person's fundamental constitutional right. The provisions in the PCS entirely replace those in the original bill.***

[As introduced, this bill was identical to S545, Master Meters/Landlord-Tenant Agreement, as introduced by Sen. Rabin (enacted as S.L. 2013-168).]

CURRENT LAW

There is no current statutory prohibition against the enforcement of foreign law in disputes involving divorce, alimony, or child custody. For such disputes, principles of comity would prohibit the application of foreign law in State courts if doing so would violate an established public policy of the State. To the extent that the application of foreign law in state court proceedings is required under a treaty to which the United States is a signatory, any state law to the contrary would be invalidated by the Supremacy Clause of the United States Constitution.

ANALYSIS

The PCS for House Bill 522 would create a new Article 7A in Chapter 1 of the General Statutes, which would forbid courts or any other entity or person acting under the authority of State law from applying foreign law in divorce, alimony and child custody actions if doing so would violate a natural person's fundamental constitutional right.

Specifically, under Article 7A, courts and other persons or entities acting under color of State law:

- would be prohibited from applying or enforcing a foreign law or judgment if doing so would violate a fundamental constitutional right of any party to the proceeding who is a natural person
- would be required to interpret any contract provisions requiring the application of foreign law in a way that preserves the fundamental constitutional rights of any natural person who is a party to the contract, and to modify any such provisions to the extent necessary to preserve those rights
- would be required to treat as null and void any provision in a contract that cannot be interpreted or modified in a way that will preserve the fundamental constitutional rights of any natural persons who are parties to the contract
- would be required to deny a motion to transfer a proceeding to a foreign venue if the transfer is likely to violate the constitutional rights of a natural person not seeking the transfer
- would be required to strictly construe any ambiguity in a contract limiting or waiving the constitutional rights of a natural person in favor preserving those constitutional rights

This act becomes effective September 1, 2013, and applies to agreements and contracts entered into on or after that date.

BACKGROUND

Between 2010 and 2012, at least 32 states considered bills to restrict the circumstances in which state courts can consider foreign or religious laws in their decisions. Six states adopted various versions of this type of law. Such bills were initially directed towards preventing the use of "Sharia law." Oklahoma's law specifically banned judicial consideration of Islamic law (Sharia law), but was ruled unconstitutional in 2010 by a federal district court. In 2012, the 10th Circuit Court of Appeals affirmed the lower court's decision. Later state laws refer to "foreign" laws, instead of specifically naming Sharia law, in an effort to avoid the Oklahoma law's fate of being found to violate the Establishment Clause and Free Exercise Clause of First Amendment.

The states that have adopted laws restricting the application of "foreign" law include Arizona, Kansas, Louisiana, Oklahoma, South Dakota, and Tennessee. The laws vary from a few sentences to more lengthy provisions. Some guarantee "any right" or "a right" under the State or federal constitution [Tennessee; Louisiana]. Arizona's law is a single sentence: "A court, arbitrator, administrative agency or other adjudicative, mediation or enforcement authority shall not enforce a foreign law if doing so would violate a right guaranteed by the Constitution of this State or of the United States or conflict with the laws of the United States or this State. South Dakota's is shorter: "No court, administrative agency, or other governmental agency may enforce any provisions of any religious code." Laws such as South Dakota's are principally restatements of the constitutional ban against the establishment of a religion by a state, and don't have the reach of the other application of foreign law statutes

REPRESENTATIVE CHRIS WHITMIRE
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There have been dozens of instances in which foreign law has been invoked in US courts, mostly unsuccessfully, *but not always.* Summaries for two cases follow:

- In S.D. v. M.J.R. in the state of New Jersey, a New Jersey judge saw no evidence that a Muslim committed sexual assault of his wife — not because he didn't do it, but because he was acting on his religious beliefs: "This court does not feel that, under the circumstances, that this defendant had a criminal desire to or intent to sexually assault or to sexually contact the plaintiff when he did. The court believes that he was operating under his belief that it is, as the husband, his desire to have sex when and whether he wanted to, was something that was consistent with his practices and it was something that was not prohibited." Fortunately, an appellate court overturned this atrocious decision, and a Shariah ruling by a U.S. court was not allowed to stand.
- In a Maryland case, Hosain v. Malik, 108 Md. App. 284, 671 A.2d 988 (Md.1996), a Maryland Court granted comity and enforced a Pakistani custody order turning a child brought to the US by the mother over to the father. The Maryland Court held that: the burden was on the mother to prove the Pakistani court did not apply law in "substantial conformity with Maryland law" by a preponderance of the evidence; the case was "not about whether Pakistani religion, culture, or legal system is personally offensive to us or whether we share all of the same values, mores and customs, but rather whether the Pakistani courts applied a rule of law, evidence, or procedure so contradictory to Maryland public policy as to undermine the confidence in the trial"; the best interest of the child should not be "determined based on Maryland law, i.e., American cultures and mores," but rather "by applying relevant Pakistani customs, culture and mores"; "a Pakistani court could only determine the best interest of a Pakistani child by an analysis utilizing the customs, culture, religion, and mores of ... Pakistan"; "in the Pakistani culture, the well being of the child and the child's proper development is thought to be facilitated by adherence to Islamic teachings"; the Pakistani order was not the result of "a trial by fire, trial by ordeal, or a system rooted in superstition, or witchcraft"; the "longstanding doctrine [of Hazanit1] of one of the world's oldest and largest religions practiced by hundreds of millions of people around the world and in this country, as applied as one factor in the best interest of the child test, is [not] repugnant to Maryland public policy"; and, the granting of the order by the Pakistani Court without representation for the mother was not repugnant to Maryland public policy because although she may have been arrested for adultery if she returned to Pakistan for the custody proceedings and have been subject to "public whipping or death by stoning," such punishments were "extremely unlikely."

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 652
Second Edition Engrossed 4/22/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H652-CSSA-59 [v.1]
7/17/2013 11:51:51 AM

Short Title: Modify Judicial Discipline. (Public)

Sponsors:

Referred to:

April 10, 2013

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE LAW REGARDING DISCIPLINE FOR JUDGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-374.2 reads as rewritten:

"**§ 7A-374.2. Definitions.**

Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this Article:

(1) "Censure" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge has willfully engaged in misconduct prejudicial to the administration of justice that brings the judicial office into disrepute, but which does not warrant the suspension of the judge from the judge's judicial duties or the removal of the judge from judicial office. A censure may require that the judge follow a corrective course of action. Unless otherwise ordered by the Supreme Court, the judge shall personally appear in the Supreme Court to receive a censure.

(2) "Commission" means the North Carolina Judicial Standards Commission.

(3) "Incapacity" means any physical, mental, or emotional condition that seriously interferes with the ability of a judge to perform the duties of judicial office.

(4) "Investigation" means the gathering of information with respect to alleged misconduct or disability.

(5) "Judge" means any justice or judge of the General Court of Justice of North Carolina, including any retired justice or judge who is recalled for service as an emergency judge of any division of the General Court of Justice.

(6) "Letter of caution" means a written action of the Commission that cautions a judge not to engage in certain conduct that violates the Code of Judicial Conduct as adopted by the Supreme Court.

(7) "Public reprimand" means a ~~written action of the Commission issued upon a finding~~finding by the Supreme Court, based upon a written recommendation by the Commission that a judge has violated the Code of Judicial Conduct and has engaged in conduct prejudicial to the administration of justice, but that misconduct is ~~minor and does not warrant a recommendation by the Commission that the judge be disciplined by the Supreme Court.~~minor. A public reprimand may require that the judge follow a corrective course of action.

(8) "Remove" or "removal" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge should be relieved of all duties of the judge's office and disqualified from holding further judicial office.

(9) "Suspend" or "suspension" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge should be relieved of the duties of the judge's office for a period of time, and upon conditions, including those regarding treatment and compensation, as may be specified by the Supreme Court."

SECTION 2. G.S. 7A-376 reads as rewritten:

"**§ 7A-376. Grounds for discipline by Commission; public reprimand, censure, suspension, or removal by the Supreme Court.**

(a) The Commission, upon a determination that any judge has engaged in conduct that violates the North Carolina Code of Judicial Conduct as adopted by the Supreme Court but that is not of such a nature as would warrant a recommendation of public reprimand, censure, suspension, or removal, may issue to the judge a private letter of ~~caution or may issue to the judge a public reprimand.~~caution.

(b) Upon recommendation of the Commission, the Supreme Court may issue a public reprimand, censure, suspend, or remove any judge for willful misconduct in office, willful and persistent failure to perform the judge's duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. A judge who is suspended for any of the foregoing reasons shall receive no compensation during the period of that suspension. A judge who is removed for any of the foregoing reasons shall receive no retirement compensation and is disqualified from holding further judicial office.

(c) Upon recommendation of the Commission, the Supreme Court may suspend, for a period of time the Supreme Court deems necessary, any judge for temporary physical or mental incapacity interfering with the performance of the judge's duties, and may remove any judge for physical or mental incapacity interfering with the performance of the judge's duties which is, or is likely to become, permanent. A judge who is suspended for temporary incapacity shall continue to receive compensation during the period of the suspension. A judge removed for mental or physical incapacity is entitled to retirement compensation if the judge has accumulated the years of creditable service required for incapacity or disability retirement under any provision of State law, but he shall not sit as an emergency justice or judge."

SECTION 3. G.S. 7A-377 reads as rewritten:

"**§ 7A-377. Procedures.**

(a) Any citizen of the State may file a written complaint with the Commission concerning the qualifications or conduct of any justice or judge of the General Court of Justice, and thereupon the Commission shall make such investigation as it deems necessary. The Commission may also make an investigation on its own motion. The Commission may issue process to compel the attendance of witnesses and the production of evidence, to administer oaths, and to punish for contempt. No justice or judge shall be recommended for public reprimand, censure, suspension, or removal unless he has been given a hearing affording due process of law.

(a1) Unless otherwise waived by the justice or judge involved, all papers filed with and proceedings before the Commission, including any investigation that the Commission may make, are confidential, and no person shall disclose information obtained from Commission proceedings or papers filed with or by the Commission, except as provided herein. Those papers are not subject to disclosure under Chapter 132 of the General Statutes.

(a2) Information submitted to the Commission or its staff, and testimony given in any proceeding before the Commission, shall be absolutely privileged, and no civil action

predicated upon that information or testimony may be instituted against any complainant, witness, or his or her counsel.

(a3) If, after an investigation is completed, the Commission concludes that a letter of caution is appropriate, it shall issue to the judge a letter of caution in lieu of any further proceeding in the matter. The issuance of a letter of caution is confidential in accordance with subsection (a1) of this section.

~~(a4) If, after an investigation is completed, the Commission concludes that a public reprimand is appropriate, the judge shall be served with a copy of the proposed reprimand and shall be allowed 20 days within which to accept the reprimand or to reject it and demand, in writing, that disciplinary proceedings be instituted in accordance with subsection (a5) of this section. A public reprimand, when issued by the Commission and accepted by the respondent judge, is not confidential.~~

(a5) If, after an investigation is completed, the Commission concludes that disciplinary proceedings should be instituted, the notice and statement of charges filed by the Commission, along with the answer and all other pleadings, ~~are not~~remain confidential. Disciplinary hearings ordered by the Commission are ~~not~~ confidential, and recommendations of the Commission to the Supreme Court, along with the record filed in support of such recommendations are ~~not~~ confidential. Testimony and other evidence presented to the Commission is privileged in any action for defamation. At least five members of the Commission must concur in any recommendation to issue a public reprimand, censure, suspend, or remove any judge. A respondent who is recommended for public reprimand, censure, suspension, or removal is entitled to a copy of the proposed record to be filed with the Supreme Court, and if the respondent has objections to it, to have the record settled by the Commission's chair. The respondent is also entitled to present a brief and to argue the respondent's case, in person and through counsel, to the Supreme Court. A majority of the members of the Supreme Court voting must concur in any order of public reprimand, censure, suspension, or removal. The Supreme Court may approve the recommendation, remand for further proceedings, or reject the recommendation. A justice of the Supreme Court or a member of the Commission who is a judge is disqualified from acting in any case in which he is a respondent.

(a6) Upon issuance of a public reprimand, censure, suspension, or removal by the Supreme Court, the notice and statement of charges filed by the Commission, along with the answer and all other pleadings, and recommendations of the Commission to the Supreme Court, along with the record filed in support of such recommendations, are no longer confidential.

(b) Repealed by Session Laws 2006-187, s. 11, effective January 1, 2007.

(c) The Commission may issue advisory opinions to judges, in accordance with rules and procedures adopted by the Commission.

(d) The Commission has the same power as a trial court of the General Court of Justice to punish for contempt, or for refusal to obey lawful orders or process issued by the Commission."

SECTION 4. G.S. 7A-378 is repealed.

SECTION 5. This act is effective when it becomes law.

HOUSE BILL 652:
Modify Judicial Discipline

2013-2014 General Assembly

Committee:	Senate Judiciary I	**Date:**	July 18, 2013
Introduced by:	Reps. Davis, Stam	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to Second Edition H652-CSSA-59		

SUMMARY: ***The Proposed Committee Substitute for House Bill 122 would modify the law regarding discipline for judges.***

BILL ANALYSIS:

Sections 1 through 3 would amend the procedure for disciplining judges in the following ways:

- Would remove the power of the Judicial Standards Commission to issue a public reprimand to a judge and place that authority with the Supreme Court.
- Would make all records, investigations, recommendations, and hearings of the Judicial Standards Commission, and hearings by the Supreme Court confidential until the Supreme Court issues a public reprimand, censure, suspension, or removal.

Section 4 would repeal G.S. 7A-378 which requires the Court of Appeals to make determinations on discipline of Supreme Court justices. Repeal of this statute would place the discipline of Supreme Court justices under the same process used for all other judges.

EFFECTIVE DATE: This act is effective when it becomes law.

O. Walker Reagan
Director

Research Division
(919) 733-2578

VISITOR REGISTRATION SHEET

Judiciary I

(Committee Name)

7/18/13

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

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Anne Wall	UNC SOG
Henry M Lancaster III	LCA
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Elaine Hoo	NCLM
Julie Hochstein	NCACC
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JOEL MAYNARD	GPM + ASSOC
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Mildred Spearman	NCAOC
[illegible]	[illegible]

09-22-2012

VISITOR REGISTRATION SHEET

Judiciary I

(Committee Name)

7/18/13

Date

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