## 2015-2016

# HOUSE JUDICIARY I

**MINUTES** 

## **ATTENDANCE**

House Committee on Judiciary I

|                               |        |         | 5 - 2   |   |          |         |         | 1       |         | ,       |   |  |  |
|-------------------------------|--------|---------|---------|---|----------|---------|---------|---------|---------|---------|---|--|--|
| DATES                         | 3-4-15 | 3-18-15 | 3-25-15 |   | 21-51-15 | 4-20-15 | 4-22-16 | 4-27-15 | 4-28-15 | 4-29-15 |   |  |  |
| DAUGHTRY, LEO (Chair)         | /      | W       | V       | V | N        | 1       | 1       | V       | V       | V       | , |  |  |
| BURR, JUSTIN (Vice-Chair)     | V      | 1       | V       | N | 1        | V       | /       | V       | N       | V       |   |  |  |
| JACKSON, DARREN (Vice-Chair)  |        |         | V       | V | -        | /       |         | /       | ·V      | /       | / |  |  |
| ARP, DEAN                     | /      | /       | V       |   | V        | ~       | /       | V       | V       | 1       |   |  |  |
| HALL, LARRY                   | 1      |         |         | / | 11       | V       | V       | V       | V       |         |   |  |  |
| HARDISTER, JON                | V      | 1       | V       | V | 1        |         | 1       | V       | v       | 4       |   |  |  |
| HOWARD, JULIA                 | V      | 1       | V       | / | ~        | ~       | /       |         | V       | V       | 1 |  |  |
| MARTIN, GRIER                 | V      | 1       | V       | / | N        | V       | /       | V       | N       | y       | / |  |  |
| MCNEILL, ALLEN                | V      | 1       | /       | Y | N        | V       | /       | V       | 4       | 1       |   |  |  |
| ROBINSON, GEORGE              | V      | 1       | V       | N | 1        | V       | /       | V       | V       |         | / |  |  |
| STEINBURG, BOB                | V      |         | /       | V |          |         | 1       | 8V      | V       | 1       |   |  |  |
| Johnson, Linda<br>Stoka, John |        |         |         |   |          |         | 80      |         | V       |         |   |  |  |
| Stoka John                    |        |         |         |   |          | V       | 1/      |         | /       | 1/      |   |  |  |
| ,                             |        |         |         |   |          |         |         |         |         |         |   |  |  |
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## **ATTENDANCE**

Judiciary I (2015-2016

|           | (Name of Committee)   |
|-----------|---|
| DATES     | 5-13-15<br>5-37-15<br>6-10-15<br>6-17-15<br>7-22-15<br>8-5-15<br>8-5-15 |
| DAUGHTRY  |   |
| BURR      |   |
| JACKSON   |   |
| ARP       |   |
| HALL      |   |
| HARDISTER |   |
| HOWARD    |   |
| MARTIN    |   |
| MCNEILL   |   |
| ROBINSON  | V V V V V V V V V V V V V V V V V V V                                   |
| STEINBURG |   |
| SZOKA     |   |
| JOHNSON   | sict /  |
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#### House Committee on Judiciary I Wednesday, March 4, 2015, 12:30 PM 415 Legislative Office Building

#### **AGENDA**

**Welcome and Opening Remarks** 

**Introduction of Pages** 

**Bills** 

**BILL NO. SHORT TITLE** 

SB 2

Magistrates Recusal for Civil

Ceremonies.

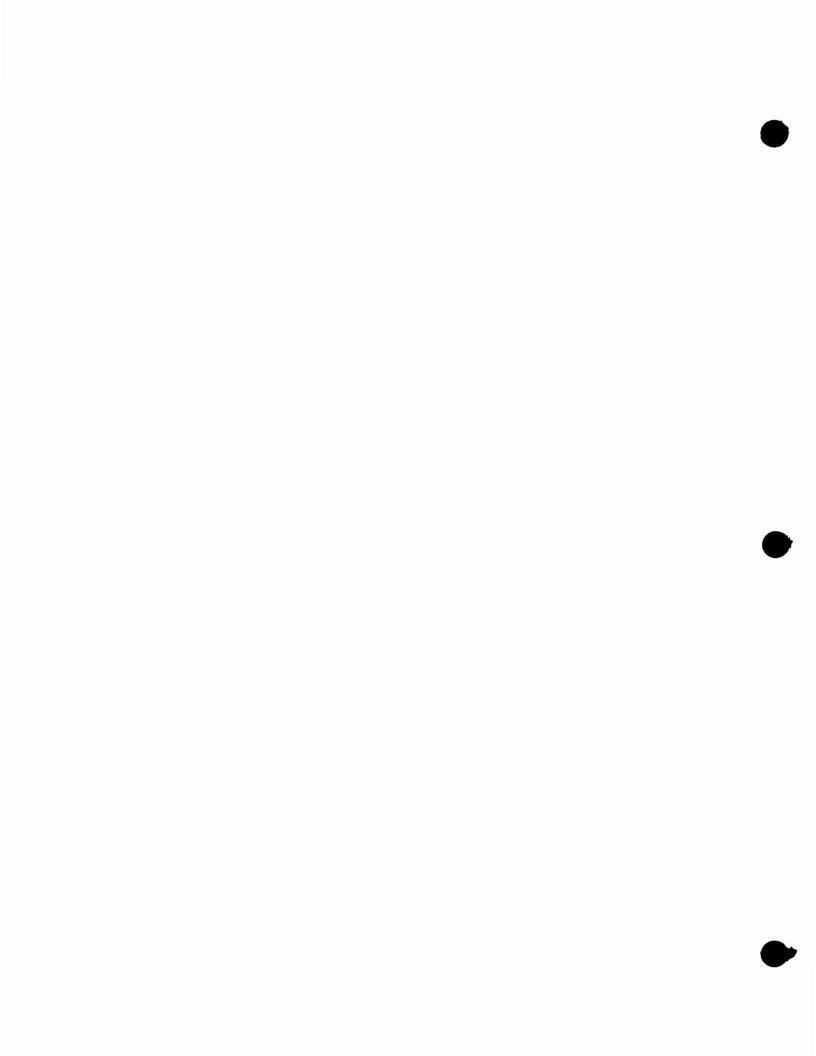
**Presentations** 

**Other Business** 

Adjournment

**SPONSOR** 

Senator Berger



#### House Committee on Judiciary I Wednesday, March 4, 2015 at 12:30 PM Room 415 of the Legislative Office Building

#### **MINUTES**

The House Committee on Judiciary I met at 12:30 PM on March 4, 2015 in Room 415 of the Legislative Office Building. Representatives Daughtry, Burr, Arp, Hall, Hardister, Howard, Martin, McNeill, Robinson and Steinburg attended.

Representative Leo Daughtry, presided.

Representative Daughtry welcomed everyone and introduced Senator Buck Newton.

Senator Newton introduces and spoke on behalf of Senate Bill 2.

Representatives Hall, McNeill and Martin all asked questions of the bill sponsor regarding the intent of the bill.

The meeting was open to public comment by Representative Daughtry. The following members of the public were given 3 minutes each to give their opinion on the bill.

- Reverend Lorrain Ljunggren (against)
- Sarah Preston, ACLU (against)
- Reverend Terrence Leathers (against)
- Chris Sgro, Equality NC (against)
- Jeff Thigpen, Guilford Reg. of Deeds (concerned about staffing issues)
- Reverend Mark Creech, Christian Action League (for)
- Tony Cope, Small Business Owner (against, sighting hostile work environment)
- John Rustin, NC Family Policy Council (for)
- Wayne Rash, Caldwell County Register of Deeds (concerned about staffing issues)

The following bills were considered but NOT voted on:

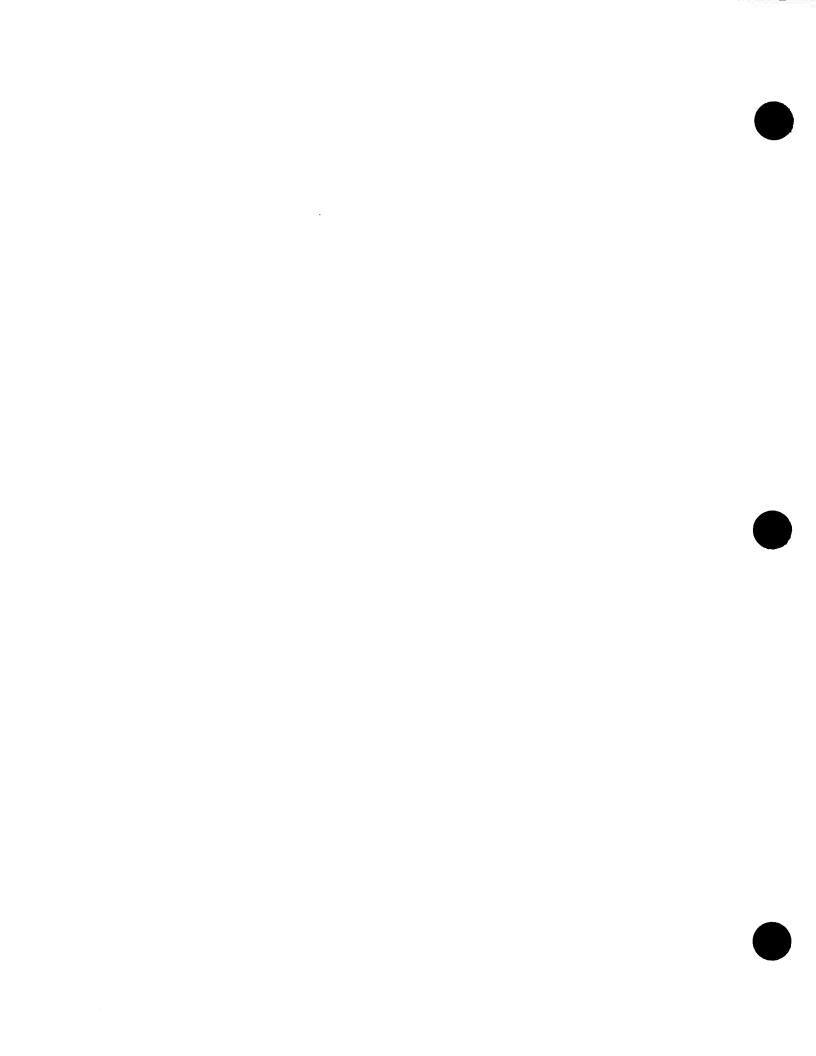
SB 2 Magistrates Recusal for Civil Ceremonies. (Senator Berger)

The meeting adjourned at 1:20 p.m.

Select or Type Name of Presiding Chair

Presiding

Jan Copeland, Committee Clerk





# **SENATE BILL 2: Magistrates Recusal for Civil Ceremonies**

2015-2016 General Assembly

Committee: House Judiciary I Introduced by: Sen. Berger

Analysis of: Second Edition

**Date:** March 3, 2015

Prepared by: R. Erika Churchill

Committee Counsel

SUMMARY: Senate Bill 2 would establish procedures by which magistrates can be recused from performing all lawful marriages and assistant and deputy registers of deeds can be recused from issuing all lawful marriage licenses, based upon a sincerely held religious objection. The recusal would be for a minimum of six months and would continue until the recusal is rescinded in writing. Officials so recusing themselves would not be subject to prosecution for failing to perform the duties imposed upon them by law.

Each register of deeds would be required to ensure that all qualified applicants for marriage licenses are issued a license, and each chief district court judge would be required to ensure that marriages performed by a magistrate are available to be performed during at least ten hours per week over at least three business days.

The bill would also provide protection against loss of employment and retirement benefits for magistrates who resigned or were terminated from their position between October 6, 2014 and the effective date of this act, and who are subsequently reappointed to the position of magistrate within 90 days after the act's effective date.

**CURRENT LAW:** G.S. 51-8 requires all registers of deeds to issue marriage licenses to persons authorized to be married under the laws of this State. Magistrates are authorized to perform marriage ceremonies pursuant to G.S. 51-1 and G.S. 7A-292. Magistrates (G.S. 14-230) and registers of deeds (G.S. 161-27) are also subject to prosecution for a Class 1 misdemeanor for willfully omitting, neglecting or refusing to discharge any of the duties of his or her office, and are also subject to being discharged from office.

#### **BILL ANALYSIS:**

**Section 1** would enact a new G.S. 51-5.5 granting each magistrate the right to be recused from performing all lawful marriages upon the basis of a sincerely held religious belief, and granting each assistant and deputy register of deeds the right to be recused from issuing all marriage licenses.

The period of recusal would be a minimum of six months, beginning with the date on which the magistrate provides notice to the chief district court judge, or the date on which the assistant or deputy register of deeds provides notice to the register of deeds. Until the recusal is rescinded in writing, a recused magistrate would not be permitted to perform any marriage ceremonies and a recused assistant or deputy register of deeds would not be permitted to issue any marriage licenses.

Each register of deeds would be required to ensure that marriage licenses are issued to all qualified persons applying for them, and each chief district court judge would be required to ensure that all persons issued a marriage license and wishing to be married by a magistrate are able to do so. Magistrates, assistant registers of deeds, and deputy registers of deeds who recuse themselves would not be subject to prosecution for willful failure to carry out the duties of their office, nor would they be subject to a disciplinary action for a good-faith recusal.



#### Senate Bill 2

Page 2

In the event of recusals by all of the magistrates in a jurisdiction, then upon notification of that fact by the chief district court judge, the Administrative Office of the Courts (AOC) would be required to ensure the availability of a magistrate in that jurisdiction for performance of marriages for at least ten hours each week over at least three business days per week. During any period of time between notification and the AOC's provision of a magistrate, the chief district court judge, or another district court judge designated by the chief district court judge, would be deemed a magistrate for the purposes of performing marriages.

Sections 2 and 3 of the bill would amend current statutes making it a Class 1 misdemeanor for magistrates and registers of deeds to willfully fail to discharge any duty of their office, to provide immunity from such prosecution for those recusing themselves under new G.S. 51-1.1.

**Section 4** of the bill would amend G.S. 7A-292 by adding a new subsection (b) to provide that the magistrates' statutory authority to perform marriages is a collective grant of responsibility to all magistrates and is not a duty imposed upon individual magistrates. This new subsection would also require each chief district court judge to ensure that marriages before a magistrate are available to be performed each week for at least 10 total hours over three business days.

Section 5 of the bill addresses magistrates who resigned or were terminated from their office between October 6, 2014, and the effective date of this act, and would allow those individuals to apply for any vacant position of magistrate. Any such magistrate who is reappointed within 90 days after the effective date of this act would be credited with the time between their resignation and their resumption of service for purposes of determining employment benefits dependent upon time of service, including calculation of benefits due under the Teachers' and State Employees' Retirement System. The Judicial Department would be required to pay both the employee and employer contributions for such reappointed magistrates to the Retirement Systems Division for the period of the break in service.

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

**BACKGROUND:** On October 6, 2014, the United States Supreme Court declined to hear an appeal from a decision by the Fourth Circuit Court of Appeals striking down Virginia's ban on same-sex marriage. On October 14, 2014, a federal district court judge issued a ruling declaring unconstitutional the State constitution's ban on same-sex marriage approved by voters in 2012. Following these rulings, a number of State magistrates resigned from their positions on the basis of their religious objection to same-sex marriage.

Bill Patterson substantially contributed to this summary.

<sup>&</sup>lt;sup>1</sup> Rainey v. Bostic, 135 S. Ct. 286, 190 L. Ed. 2d 140 (2014)

<sup>&</sup>lt;sup>2</sup> Fisher–Borne v. Smith, 14 F.Supp.3d 695 (M.D.N.C.2014).



# **SENATE BILL 2: Magistrates Recusal for Civil Ceremonies**

2015-2016 General Assembly

Committee: House Judiciary I
Introduced by: Sen. Berger
Analysis of: Second Edition

Date: Prepared by:

March 3, 2015 R. Erika Churchill

Committee Counsel

SUMMARY: Senate Bill 2 would establish procedures by which magistrates can be recused from performing all lawful marriages and assistant and deputy registers of deeds can be recused from issuing all lawful marriage licenses, based upon a sincerely held religious objection. The recusal would be for a minimum of six months and would continue until the recusal is rescinded in writing. Officials so recusing themselves would not be subject to prosecution for failing to perform the duties imposed upon them by law.

Each register of deeds would be required to ensure that all qualified applicants for marriage licenses are issued a license, and each chief district court judge would be required to ensure that marriages performed by a magistrate are available to be performed during at least ten hours per week over at least three business days.

The bill would also provide protection against loss of employment and retirement benefits for magistrates who resigned or were terminated from their position between October 6, 2014 and the effective date of this act, and who are subsequently reappointed to the position of magistrate within 90 days after the act's effective date.

**CURRENT LAW:** G.S. 51-8 requires all registers of deeds to issue marriage licenses to persons authorized to be married under the laws of this State. Magistrates are authorized to perform marriage ceremonies pursuant to G.S. 51-1 and G.S. 7A-292. Magistrates (G.S. 14-230) and registers of deeds (G.S. 161-27) are also subject to prosecution for a Class 1 misdemeanor for willfully omitting, neglecting or refusing to discharge any of the duties of his or her office, and are also subject to being discharged from office.

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The period of recusal would be a minimum of six months, beginning with the date on which the magistrate provides notice to the chief district court judge, or the date on which the assistant or deputy register of deeds provides notice to the register of deeds. Until the recusal is rescinded in writing, a recused magistrate would not be permitted to perform any marriage ceremonies and a recused assistant or deputy register of deeds would not be permitted to issue any marriage licenses.

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#### Senate Bill 2

Page 2

In the event of recusals by all of the magistrates in a jurisdiction, then upon notification of that fact by the chief district court judge, the Administrative Office of the Courts (AOC) would be required to ensure the availability of a magistrate in that jurisdiction for performance of marriages for at least ten hours each week over at least three business days per week. During any period of time between notification and the AOC's provision of a magistrate, the chief district court judge, or another district court judge designated by the chief district court judge, would be deemed a magistrate for the purposes of performing marriages.

Sections 2 and 3 of the bill would amend current statutes making it a Class 1 misdemeanor for magistrates and registers of deeds to willfully fail to discharge any duty of their office, to provide immunity from such prosecution for those recusing themselves under new G.S. 51-1.1.

**Section 4** of the bill would amend G.S. 7A-292 by adding a new subsection (b) to provide that the magistrates' statutory authority to perform marriages is a collective grant of responsibility to all magistrates and is not a duty imposed upon individual magistrates. This new subsection would also require each chief district court judge to ensure that marriages before a magistrate are available to be performed each week for at least 10 total hours over three business days.

**Section 5** of the bill addresses magistrates who resigned or were terminated from their office between October 6, 2014, and the effective date of this act, and would allow those individuals to apply for any vacant position of magistrate. Any such magistrate who is reappointed within 90 days after the effective date of this act would be credited with the time between their resignation and their resumption of service for purposes of determining employment benefits dependent upon time of service, including calculation of benefits due under the Teachers' and State Employees' Retirement System. The Judicial Department would be required to pay both the employee and employer contributions for such reappointed magistrates to the Retirement Systems Division for the period of the break in service.

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

**BACKGROUND:** On October 6, 2014, the United States Supreme Court declined to hear an appeal from a decision by the Fourth Circuit Court of Appeals striking down Virginia's ban on same-sex marriage. On October 14, 2014, a federal district court judge issued a ruling declaring unconstitutional the State constitution's ban on same-sex marriage approved by voters in 2012. Following these rulings, a number of State magistrates resigned from their positions on the basis of their religious objection to same-sex marriage.

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<sup>&</sup>lt;sup>2</sup> Fisher-Borne v. Smith, 14 F.Supp.3d 695 (M.D.N.C.2014).

#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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## SENATE BILL 2 Judiciary II Committee Substitute Adopted 2/24/15

| Short Title: | Magistrates Recusal for Civil Ceremonies. | (Public) |
|--------------|---|----------|
| Sponsors:    |   |          |
| Referred to: |   |          |

#### February 2, 2015

A BILL TO BE ENTITLED

AN ACT TO ALLOW MAGISTRATES, ASSISTANT REGISTERS OF DEEDS, AND DEPUTY REGISTERS OF DEEDS TO RECUSE THEMSELVES FROM PERFORMING DUTIES RELATED TO MARRIAGE CEREMONIES DUE TO SINCERELY HELD RELIGIOUS OBJECTION.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 1 of Chapter 51 of the General Statutes is amended by adding a new section to read:

"§ 51-5.5. Recusal of certain public officials.

- (a) Every magistrate has the right to recuse from performing all lawful marriages under this Chapter based upon any sincerely held religious objection. Such recusal shall be upon notice to the chief district court judge and is in effect for at least six months from the time delivered to the chief district court judge. The recusing magistrate may not perform any marriage under this Chapter until the recusal is rescinded in writing. The chief district court judge shall ensure that all individuals issued a marriage license seeking to be married before a magistrate may marry.
- (b) Every assistant register of deeds and deputy register of deeds has the right to recuse from issuing all lawful marriage licenses under this Chapter based upon any sincerely held religious objection. Such recusal shall be upon notice to the register of deeds and is in effect for at least six months from the time delivered to the register of deeds. The recusing assistant or deputy register may not issue any marriage license until the recusal is rescinded in writing. The register of deeds shall ensure for all applicants for marriage licenses to be issued a license upon satisfaction of the requirements as set forth in Article 2 of this Chapter.
- (c) If, and only if, all magistrates in a jurisdiction have recused under subsection (a) of this section, the chief district court judge shall notify the Administrative Office of the Courts. The Administrative Office of the Courts shall ensure that a magistrate is available in that jurisdiction for performance of marriages for the times required under G.S. 7A-292(b). Only for the duration of the time the Administrative Office of the Courts has not designated a magistrate to perform marriages in that jurisdiction, the chief district court judge or such other district court judge as may be designated by the chief district court judge shall be deemed a magistrate for the purposes of performing marriages under this Chapter.
- (d) No magistrate, assistant register of deeds, or deputy register of deeds may be charged or convicted under G.S. 14-230 or G.S. 161-27, or subjected to a disciplinary action, due to a good-faith recusal under this section."

SECTION 2. G.S. 14-230 reads as rewritten:

"§ 14-230. Willfully failing to discharge duties.



- (a) If any clerk of any court of record, sheriff, magistrate, school board member, county commissioner, county surveyor, coroner, treasurer, or official of any of the State institutions, or of any county, city or town, shall willfully omit, neglect or refuse to discharge any of the duties of his office, for default whereof it is not elsewhere provided that he shall be indicted, he shall be guilty of a Class I misdemeanor. If it shall be proved that such officer, after his qualification, willfully and corruptly omitted, neglected or refused to discharge any of the duties of his office, or willfully and corruptly violated his oath of office according to the true intent and meaning thereof, such officer shall be guilty of misbehavior in office, and shall be punished by removal therefrom under the sentence of the court as a part of the punishment for the offense.
- (b) No magistrate recusing in accordance with G.S. 51-5.5 may be charged under this section for recusal to perform marriages in accordance with Chapter 51 of the General Statutes."

#### **SECTION 3.** G.S. 161-27 reads as rewritten:

#### "§ 161-27. Register of deeds failing to discharge duties; penalty.

- (a) If any register of deeds fails to perform any of the duties imposed or authorized by law, he shall be guilty of a Class 1 misdemeanor, and he shall be removed from office.
- (b) No assistant register of deeds or deputy register of deeds recusing in accordance with G.S. 51-5.5 may be charged under this section for recusal to issue marriage licenses in accordance with Chapter 51 of the General Statutes."

#### **SECTION 4.** G.S. 7A-292 reads as rewritten:

#### "§ 7A-292. Additional powers of magistrates.

- (a) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:
  - (1) To administer oaths.
  - (2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina.
  - (3) When authorized by the chief district judge, to take depositions and examinations before trial.
  - (4) To issue subpoenas and capiases valid throughout the county.
  - (5) To take affidavits for the verification of pleadings.
  - (6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41.
  - (7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General Statutes.
  - (8) To take acknowledgments of instruments, as provided in G.S. 47-1.
  - (9) To perform the marriage ceremony, as provided in G.S. 51-1.
  - (10) To take acknowledgment of a written contract or separation agreement between husband and wife.
  - (11) Repealed by Session Laws 1973, c. 503, s. 9.
  - (12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.
  - (13) Repealed by Session Laws 1973, c. 503, s. 9.
  - (14) To accept the filing of complaints and to issue summons pursuant to Article 4 of Chapter 42A of the General Statutes in expedited eviction proceedings when the office of the clerk of superior court is closed.
  - (15) When authorized by the chief district judge, as permitted in G.S. 7A-146(11), to provide for appointment of counsel pursuant to Article 36 of this Chapter.
  - (16) To appoint an umpire to determine motor vehicle liability policy diminution in value, as provided in G.S. 20-279.21(d1).

Page 2 S2 [Edition 2]

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(b) The authority granted to magistrates under G.S. 51-1 and subdivision (a)(9) of this section is a responsibility given collectively to the magistrates in a county and is not a duty imposed upon each individual magistrate. The chief district court judge shall ensure that marriages before a magistrate are available to be performed at least a total of 10 hours per week, over at least three business days per week."

SECTION 5. Any magistrate who resigned, or was terminated from, his or her office between October 6, 2014, and the effective date of this act may apply to fill any vacant position of magistrate. Notwithstanding any other provision of law, with respect to any magistrate who resigned his or her office between October 6, 2014, and the effective date of this act, and who is subsequently reappointed as a magistrate within 90 days after the effective date of this act:

- (1) For the period of time between that magistrate's resignation and his or her resumption of service upon reappointment, the magistrate shall not receive salary or other compensation and shall not earn leave. However, the magistrate shall be considered to have been serving as a magistrate during that period for purposes of determining continuous service, length of aggregate service, anniversary date, longevity pay rate, and the accrual of vacation and sick leave.
- (2) For purposes of the Teachers' and State Employees' Retirement System and the calculation of benefits under that System, (i) the magistrate shall be considered to have been an employee under G.S. 135-1(10) during the break in service, (ii) the period of the break in service shall be counted as membership service under G.S. 135-1(14), and (iii) the magistrate shall be deemed to have earned compensation under G.S. 135-1(7a) during the break in service at the rate of compensation that would have applied had there been no break in service.
- (3) The Judicial Department shall pay and submit both the employee and employer contributions to the Retirement Systems Division on behalf of the magistrate as though that magistrate had been in active service during the period in question. Those contributions shall be submitted within 90 days of the magistrate's resumption of service and shall not be subject to penalties or interest if submitted within that 90-day period.

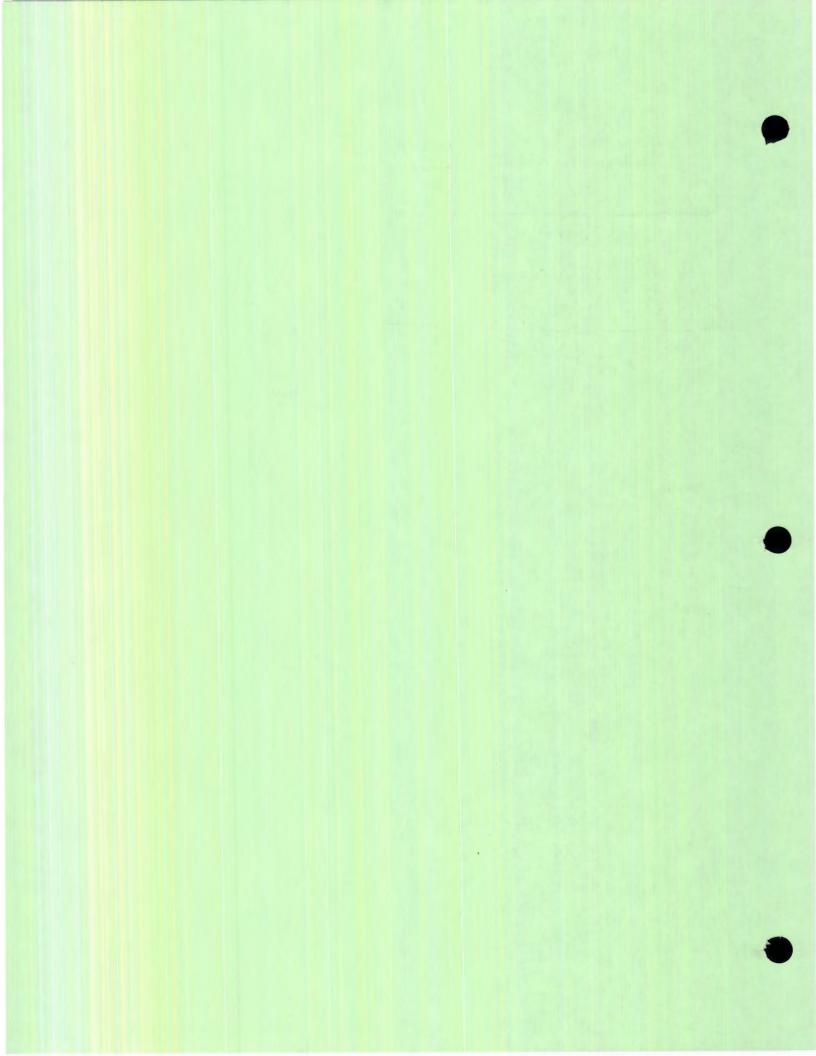
**SECTION 6.** This act is effective when it becomes law.

S2 [Edition 2] Page 3



#### HOUSE PAGES

| NAME OF COMMITTEE Judicary T DATE March 4, 2015 |
|---|
| (1) Name: Vordon Trivette                       |
| County: Bades                                   |
| Sponsor: William D. Brisson                     |
| (2. Name: Justus Hargett)                       |
| County: Joves                                   |
| Sponsor: Pat McElraft                           |
| 3. Name:  |
| County:   |
| Sponsor:  |
| 4. Name:  |
| County:   |
| Sponsor:  |
| 5. Name:  |
| County:   |
| Sponsor:  |
|   |
| SGT-AT-ARM                                      |
| 1. Name: BARRY MOORE                            |
| 2. Name: BH POWELL                              |
| 3. Name: CHRIS MCCRACKEN                        |
| 4. Name:  |



3-4-15 J-1 SPEAKERS LIST 1- LORRAINE LJUNGEREN ProNounce of ( Young Reen ) 2 - Sarah Preston ACLU-NC 3- Reverend Terence Leathers 4- Chris Sgro 5- Jeff Thigpen 6- REN MARIC CREECH - Tony Cope 8- JOHN RUSTIN

#### VISITOR REGISTRATION SHEET

| Name of Committee       | Date                                  |
|-------------------------|---------------------------------------|
| VISITORS: PLEASE SIGN I | N BELOW AND RETURN TO COMMITTEE CLERK |
| NAME                    | FIRM OR AGENCY AND ADDRESS            |
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#### VISITOR REGISTRATION SHEET

Judiciary I

3-4-15 Date

Name of Committee

#### VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| N | A | M | E |
|---|---|---|---|
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#### FIRM OR AGENCY AND ADDRESS

| The Rev.<br>LORRAINE LOUNGGREN | Episcopal Church   |
|--------------------------------|--------------------|
| Sarah Preston                  | ACW-NC             |
| Chris Sgro                     | Equality XC        |
| Mike Mesto                     | ACW-NC             |
| John Del Grorpo                | Bretako1+ASCOC.    |
| Blake Tedker                   | sele               |
| Leah Smith                     | NCSEG              |
| Chavi Koneru                   | NC Dorstice Center |
| Annalies polph                 | Volph Law          |
| Mildred Spearmen               | NCAOC              |
| Cry Bons                       | N 80               |
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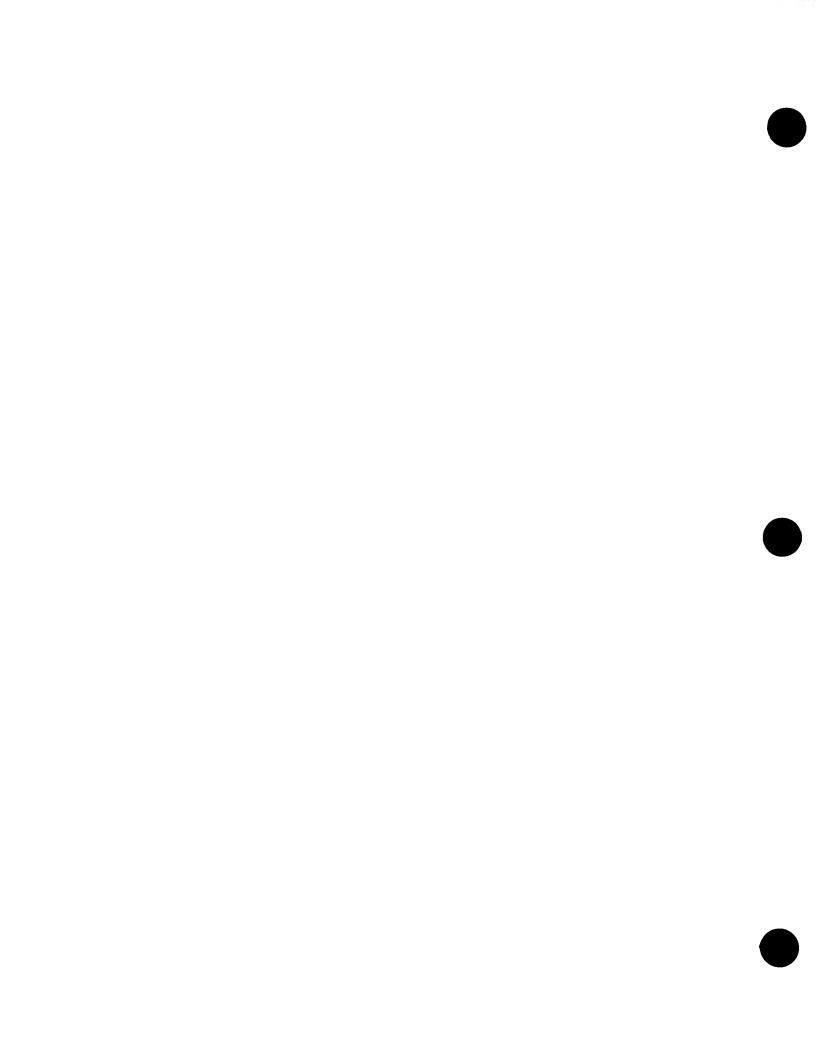
### VISITOR REGISTRATION SHEET

| Name of Committee                 | Date                                |
|-----------------------------------|-------------------------------------|
|                                   |                                     |
| VISITORS: PLEASE SIGN             | IN BELOW AND RETURN TO COMMITTEE CL |
|                                   |                                     |
| NAME                              | FIRM OR AGENCY AND ADDRESS          |
| NAME                              | FIRM OR AGENCT AND ADDRESS          |
|                                   |                                     |
| Janie Sohn                        |                                     |
| ANTIE 3                           |                                     |
| Jamie Sohn<br>Danie Toynes Pierce |                                     |
| marie voyace y core               |                                     |
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# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

You are hereby notified that the House Committee on Judiciary I will meet as follows:

| DAY & DAY TIME: LOCATION | TE: Wednesday, March 18, 2015<br>12:30 PM<br>N: 415 LOB    |   |
|--------------------------|--|---|
| The followir             | ng bills will be considered:                               |   |
| BILL NO.                 | SHORT TITLE  | SPONSOR   |
| HB 130                   | Davie County/Food for Detention Facilities.                | Representative Howard                               |
| HB 146                   | Amend Advance Health Care                                  | Representative Lambeth                              |
|                          | Directives Laws.   | Representative Jones                                |
|                          |  | Representative Conrad                               |
|                          |  | Representative Ross                                 |
|                          | Resp   | ectfully,   |
|                          | Repr   | esentative N. Leo Daughtry, Chair                   |
| •                        | ify this notice was filed by the committee March 11, 2015. | ee assistant at the following offices at 9:54 AM on |
|                          | Principal Clerk Reading Clerk – House Chamber              |   |
| Jan Copelan              | d (Committee Assistant)                                    |   |



#### House Committee on Judiciary I Wednesday, March 18, 2015, 12:30 PM 415 Legislative Office Building

#### **AGENDA**

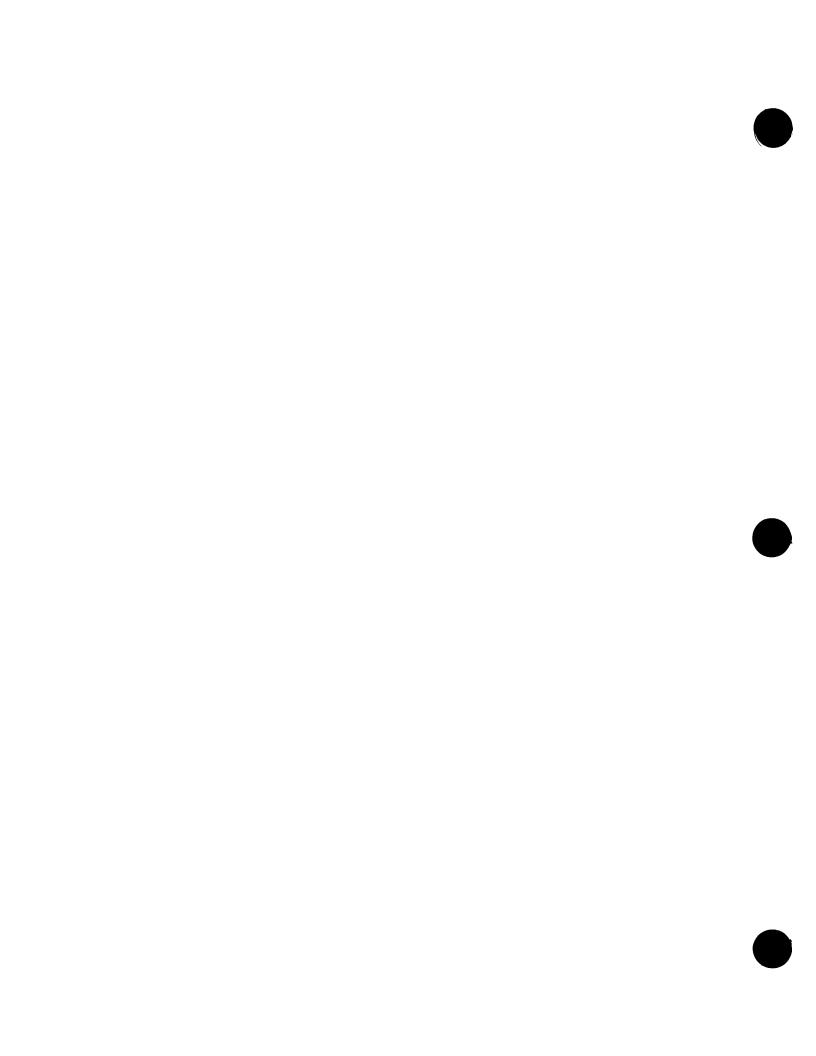
#### Welcome and Opening Remarks

#### **Introduction of Pages**

#### **Bills**

| BILL NO. | SHORT TITLE                     | SPONSOR                |
|----------|---------------------------------|------------------------|
| HB 130   | Davie County/Food for Detention | Representative Howard  |
|          | Facilities.                     |                        |
| HB 146   | Amend Advance Health Care       | Representative Lambeth |
|          | Directives Laws.                | Representative Jones   |
|          |                                 | Representative Conrad  |
|          |                                 | Representative Ross    |

#### Adjournment



#### House Committee on Judiciary I Wednesday, March 18, 2015 at 12:30 PM Room 415 of the Legislative Office Building

#### **MINUTES**

The House Committee on Judiciary I met at 12:30 PM on March 18, 2015 in Room 415 of the Legislative Office Building. Representatives Arp, Burr, Daughtry, Howard, McNeill, and Robinson attended.

Representative N. Leo Daughtry, Chair, presided. Rep. Daughtry introduced the pages and the Sgt. At Arms.

The following bills were considered:

HB 130 Davie County/Food for Detention Facilities. (Representative Howard)
Representative Arp motioned a PCS before the committee [H130-CSST-6 [v.1]]
Representative Howard explained the bill and the proposed committee substitute.
Representative Howard motioned for: unfovorable to original bill, favorable to the proposed committee substitute. The motion passed.

HB 146 Amend Advance Health Care Directives Laws. (Representatives Lambeth, Jones, Conrad, Ross)

Representative Arp motioned a PCS before the committee [H146-CSST-7 [v.2]] Representative Lambeth explained the bill. There was discussion on the bill including members from the audience.

- 1. Charmaine Fuller Cooper / AARP expressed fraud concerns
- 2. Lambeth responded research in other states has found no instance of fraud
- 3. Deborah Love / NC Patnership for Compassionate Care spoke in favor of the bill
- **4.** Rep. McNeill asked if the requirements for a qualified witness have changed.

The PCS passed.

Representative Daughtry adjourned the meeting at 1:06 p.m..

Representative N. Leo Daughtry, Chair

Presiding

Jan Copeland, Committee Clerk

|  |  | _ |
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|  |  |   |

#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H HOUSE BILL 130

| Short Title: | Davie County/Food for Detention Facilities. (Local                                      |  |  |
|--------------|---|--|--|
| Sponsors:    | Representative Howard (Primary Sponsor).  |  |  |
|              | For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site. |  |  |
| Referred to: | Local Government, if favorable, Regulatory Reform.                                      |  |  |

March 4, 2015

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE DAVIE COUNTY SHERIFF'S OFFICE TO CONTRACT WITH THE DAVIE COUNTY BOARD OF EDUCATION FOR THE PROVISION OF MEALS TO INMATES IN THE DAVIE COUNTY DETENTION FACILITY.

The General Assembly of North Carolina enacts:

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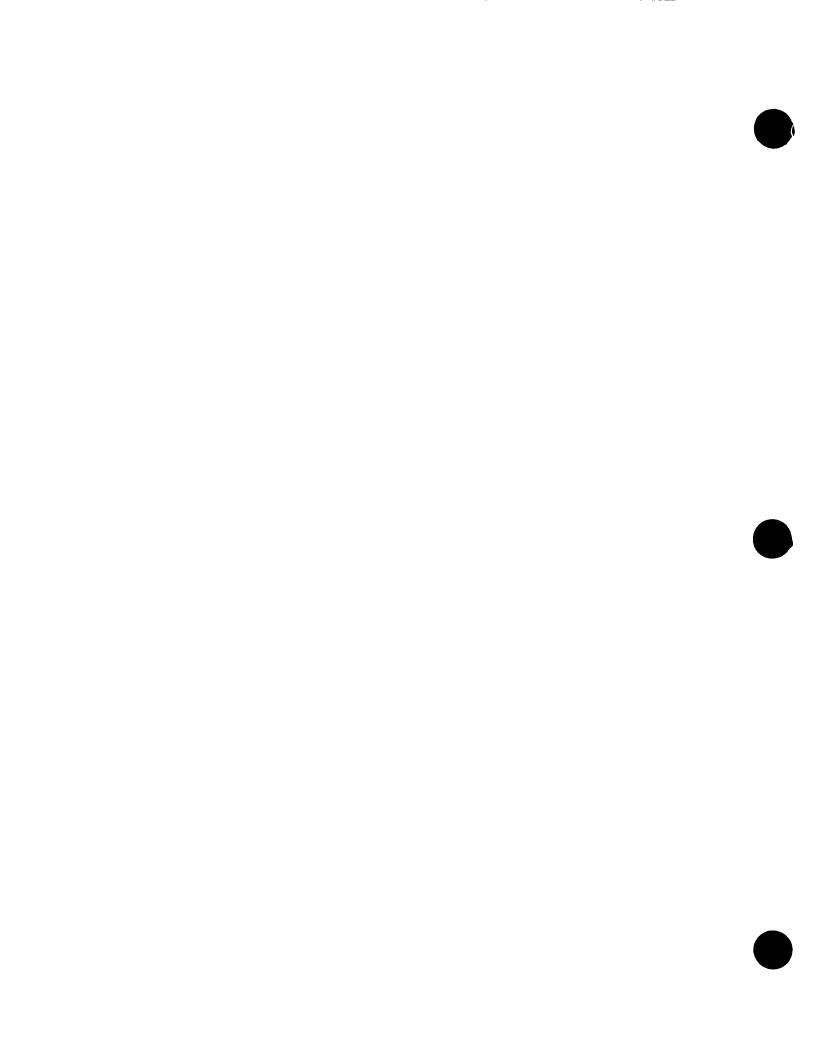
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SECTION 1. Notwithstanding G.S. 66-58 or any other provision of law, the Davie County Sheriff's Office may enter into a contract with the Davie County Board of Education that permits the school cafeteria of one or more public schools in Davie County to provide meals for inmates in the County's detention facility. Meals provided under the contract shall meet the minimum standards established by the Secretary of Health and Human Services as provided in G.S. 153A-22I and Subchapter 14J of Title 10A of the North Carolina Administrative Code. Any contract authorized under this section shall not be subject to the provisions of Article 8 of Chapter 143 of the General Statutes. State funds shall not be used to purchase food or any other items for the preparation or provision of food under the contract.

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







# **HOUSE BILL 130: Davie County/Food for Detention Facilities**

2015-2016 General Assembly

Committee: Ho Introduced by: Re

House Judiciary I Rep. Howard

Analysis of:

PCS to First Edition

H130-CSST-6

Date:

March 17, 2015

Prepared by: R. Erika Churchill

Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 58 would allow the Davie County Board of Commissioners and the Davie County Sheriff to contract with the Davie County Boardo f Education to provide food for the Davie County Detention facility.

CURRENT LAW: Article 8 of Chapter 143, Public Contracting, sets out the general law for public contracts. That Article generally requires formal bidding of contracts for the purchase of apparatus, supplies, materials, or equipment with an estimated expenditure of \$90,000 or more in public funds. G.S. 143-129. Contracts with an estimated expenditure between \$30,000 and \$90,000 are to be put to informal bid, G.S. 143-131.

A public school is not required to comply with the requirement to purchase all supplies under Article 8 of Chapter 143 when purchasing supplies and food for school food services. G.S. 115C-264(c).

BILL ANALYSIS: The pcs would allow the Davie County Commissioners and Sheriff to contract with the local school board to provide food services for the Davie County detention facility. Meals provided under the contract between the Sheriff and the Board of Education must meet the minimum standards established by the Secretary of Health and Human Services. The contract would be exempt from the provisions of Article 8 of Chapter 143.

**EFFECTIVE DATE:** Effective when it becomes law.



# GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H D

# HOUSE BILL 130 PROPOSED COMMITTEE SUBSTITUTE H130-CSST-6 [v.1]

3/17/2015 9:08:53 AM

| Short Title: | Davie County/Food for Detention Facilities. | (Local) |
|--------------|---|---------|
| Sponsors:    |   |         |
| Referred to: |   |         |

## March 4, 2015

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE DAVIE COUNTY TO CONTRACT WITH THE LOCAL BOARD OF EDUCATION FOR THE PROVISION OF MEALS TO INMATES IN THE COUNTY DETENTION FACILITY.

The General Assembly of North Carolina enacts:

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**SECTION 1.** Notwithstanding G.S. 66-58 or any other provision of law, the County and the Sheriff may enter into a contract with the local board of education to provide meals for inmates in the County's detention facility. Meals provided under the contract shall meet the minimum standards established by the Secretary of Health and Human Services as provided in G.S. 153A-221 and Subchapter 14J of Title 10A of the North Carolina Administrative Code. Any contract authorized under this section shall not be subject to the provisions of Article 8 of Chapter 143 of the General Statutes.

**SECTION 2.** This act applies to Davie County only.

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





# HOUSE BILL 130: **Davie County/Food for Detention Facilities**

2015-2016 General Assembly

Committee: House Judiciary I Introduced by: Rep. Howard Analysis of:

PCS to First Edition

H130-CSST-6

March 17, 2015 Date:

**Prepared by:** R. Erika Churchill

Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 58 would allow the Davie County Board of Commissioners and the Davie County Sheriff to contract with the Davie County Boardo f Education to provide food for the Davie County Detention facility.

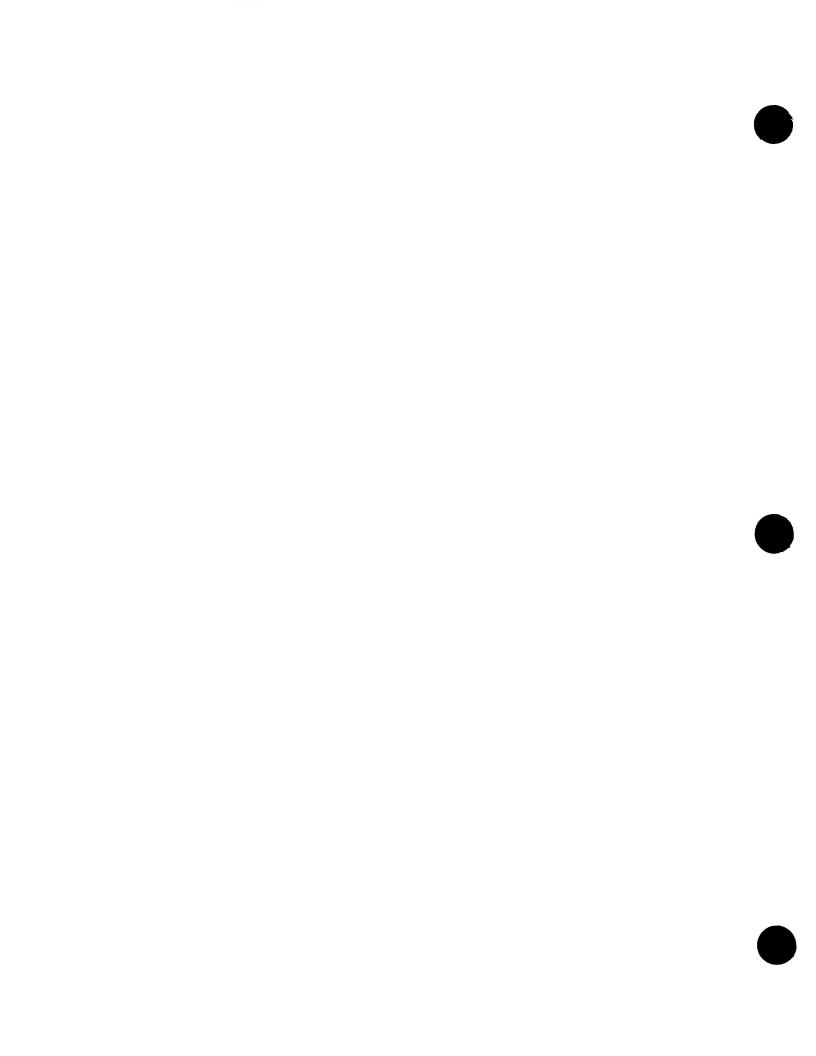
CURRENT LAW: Article 8 of Chapter 143, Public Contracting, sets out the general law for public contracts. That Article generally requires formal bidding of contracts for the purchase of apparatus, supplies, materials, or equipment with an estimated expenditure of \$90,000 or more in public funds. G.S. 143-129. Contracts with an estimated expenditure between \$30,000 and \$90,000 are to be put to informal bid, G.S. 143-131.

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**EFFECTIVE DATE:** Effective when it becomes law.





# GENERAL ASSEMBLY OF NORTH CAROLINA **SESSION 2015**

H

#### **HOUSE BILL 146**

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(Public) Short Title: Amend Advance Health Care Directives Laws. Representatives Lambeth, Jones, Conrad, and Ross (Primary Sponsors). Sponsors: For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site. Referred to: Judiciary I.

#### March 4, 2015

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29 30 A BILL TO BE ENTITLED

AN ACT ELIMINATING THE NEED TO HAVE ADVANCE HEALTH CARE DIRECTIVES AND HEALTH CARE POWERS OF ATTORNEY SIGNED IN THE PRESENCE OF TWO WITNESSES AND ACKNOWLEDGED BEFORE A NOTARY PUBLIC, AND INSTEAD ALLOWING FOR EXECUTION BY EITHER SIGNATURE IN THE PRESENCE OF TWO WITNESSES OR ACKNOWLEDGMENT BEFORE A NOTARY PUBLIC.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 32A-16(3) reads as rewritten:

Health care power of attorney. - A written instrument that substantially meets the requirements of this Article, that is signed in the presence of two qualified witnesses, and witnesses, or acknowledged before a notary public, pursuant to which an attorney-in-fact or agent is appointed to act for the principal in matters relating to the health care of the principal. The-If notarized, the notary who takes the acknowledgement may but is not required to be a paid employee of the attending physician or mental health treatment provider, a paid employee of a health facility in which the principal is a patient, or a paid employee of a nursing home or any adult care home in which the principal resides."

**SECTION 2.** G.S. 32A-25.1(a) reads as rewritten:

The use of the following form in the creation of a health care power of attorney is lawful and, when used, it shall meet the requirements of and be construed in accordance with the provisions of this Article:

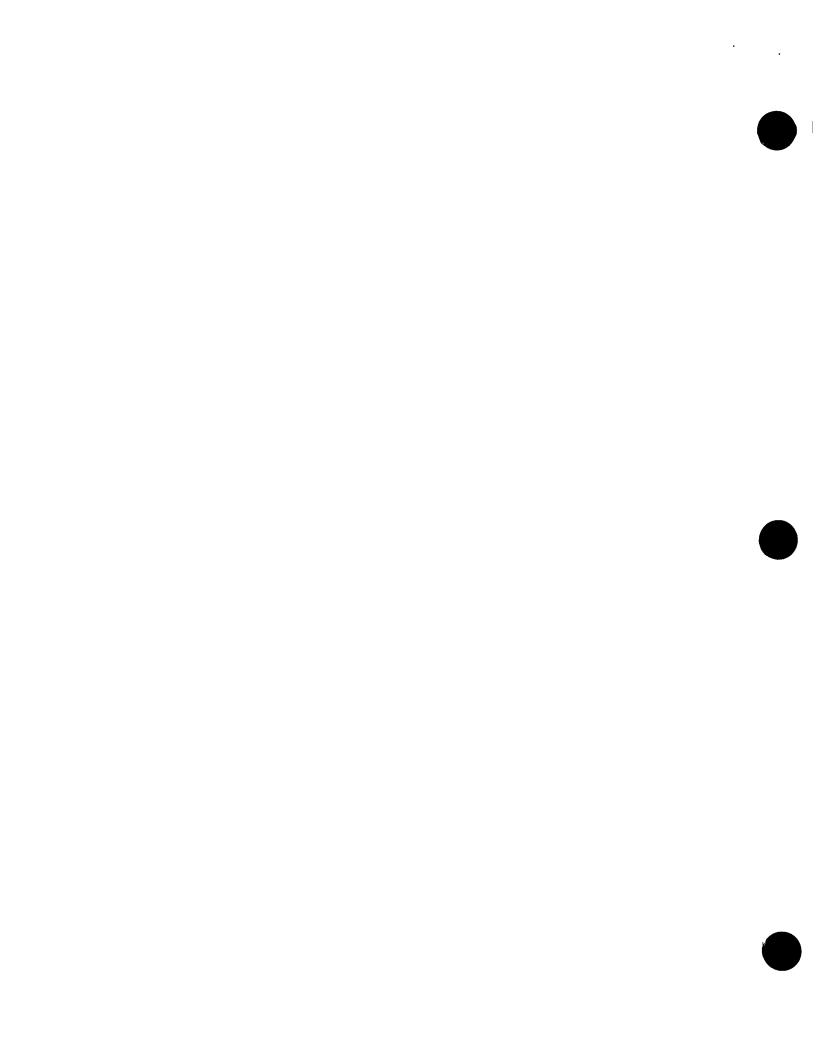
#### **HEALTH CARE POWER OF ATTORNEY**

NOTE: YOU SHOULD USE THIS DOCUMENT TO NAME A PERSON AS YOUR HEALTH CARE AGENT IF YOU ARE COMFORTABLE GIVING THAT PERSON BROAD AND SWEEPING POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A HEALTH CARE POWER OF ATTORNEY.

EXPLANATION: You have the right to name someone to make health care decisions for you when you cannot make or communicate those decisions. This form may be used to create a health care power of attorney, and meets the requirements of North Carolina law. However,



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you are not required to use this form, and North Carolina law allows the use of other forms that meet certain requirements. If you prepare your own health care power of attorney, you should be very careful to make sure it is consistent with North Carolina law.

This document gives the person you designate as your health care agent broad powers to make health care decisions for you when you cannot make the decision yourself or cannot communicate your decision to other people. You should discuss your wishes concerning life-prolonging measures, mental health treatment, and other health care decisions with your health care agent. Except to the extent that you express specific limitations or restrictions in this form, your health care agent may make any health care decision you could make yourself.

This form does not impose a duty on your health care agent to exercise granted powers, but when a power is exercised, your health care agent will be obligated to use due care to act in your best interests and in accordance with this document.

This Health Care Power of Attorney form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

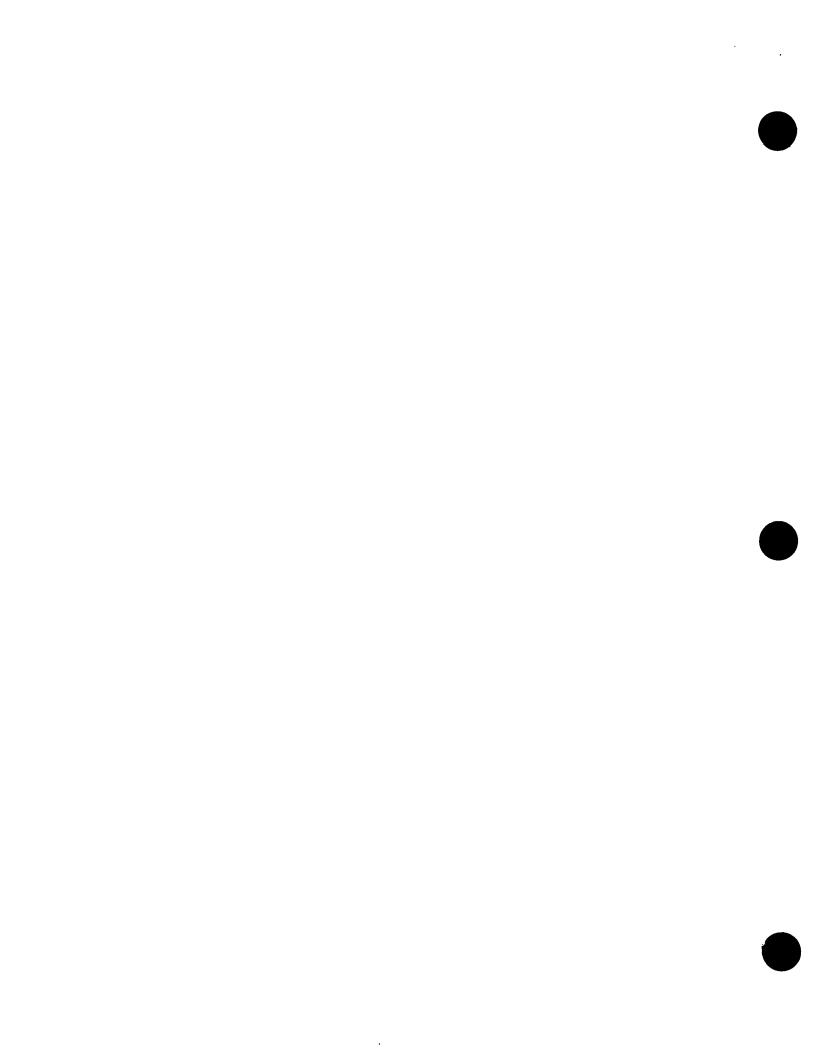
If you want to use this form, you must complete it, sign it, and have your signature witnessed by two qualified witnesses and or proved by a notary public. Follow the instructions about which choices you can initial very carefully. Do not sign this form until two witnesses and or a notary public are present to watch you sign it. You then should give a copy to your health care agent and to any alternates you name. You should consider filing it with the Advance Health Care Directive Registry maintained by the North Carolina Secretary of State: http://www.nclifelinks.org/ahcdr/

# 1. Designation of Health Care Agent.

| 29       |   |  |
|----------|---|--|
| 30       | I,, being of so                         | ound mind, hereby appoint the following person(s) to serve |
| 31       | as my health care agent(s) to act for   | me and in my name (in any way I could act in person) to    |
| 32       | make health care decisions for me a     | as authorized in this document. My designated health care  |
| 33       | agent(s) shall serve alone, in the orde | er named.  |
| 34       |   |  |
| 35       | A. Name:                                | Home Telephone:  |
| 36       | Home Address:                           | Work Telephone:  |
| 37       |   | Cellular Telephone:  |
| 38       |   |  |
| 39       | B. Name:                                | Home Telephone:  |
| 40       | Home Address:                           | Work Telephone:  |
| 41       |   | Cellular Telephone:  |
| 42<br>43 | C. Name:                                | Home Telephone:  |
| 44       | Home Address:                           | Work Telephone:  |
| 45       | Tiome riddiess.                         | Cellular Telephone:  |
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Any successor health care agent designated shall be vested with the same power and duties as if originally named as my health care agent, and shall serve any time his or her predecessor is not reasonably available or is unwilling or unable to serve in that capacity.

2. Effectiveness of Appointment.



My designation of a health care agent expires only when I revoke it. Absent revocation, the authority granted in this document shall become effective when and if one of the physician(s) listed below determines that I lack capacity to make or communicate decisions relating to my health care, and will continue in effect during that incapacity, or until my death, except if I authorize my health care agent to exercise my rights with respect to anatomical gifts, autopsy, or disposition of my remains, this authority will continue after my death to the extent necessary to exercise that authority.

If I have not designated a physician, or no physician(s) named above is reasonably available, the determination that I lack capacity to make or communicate decisions relating to my health care shall be made by my attending physician.

#### 3. Revocation.

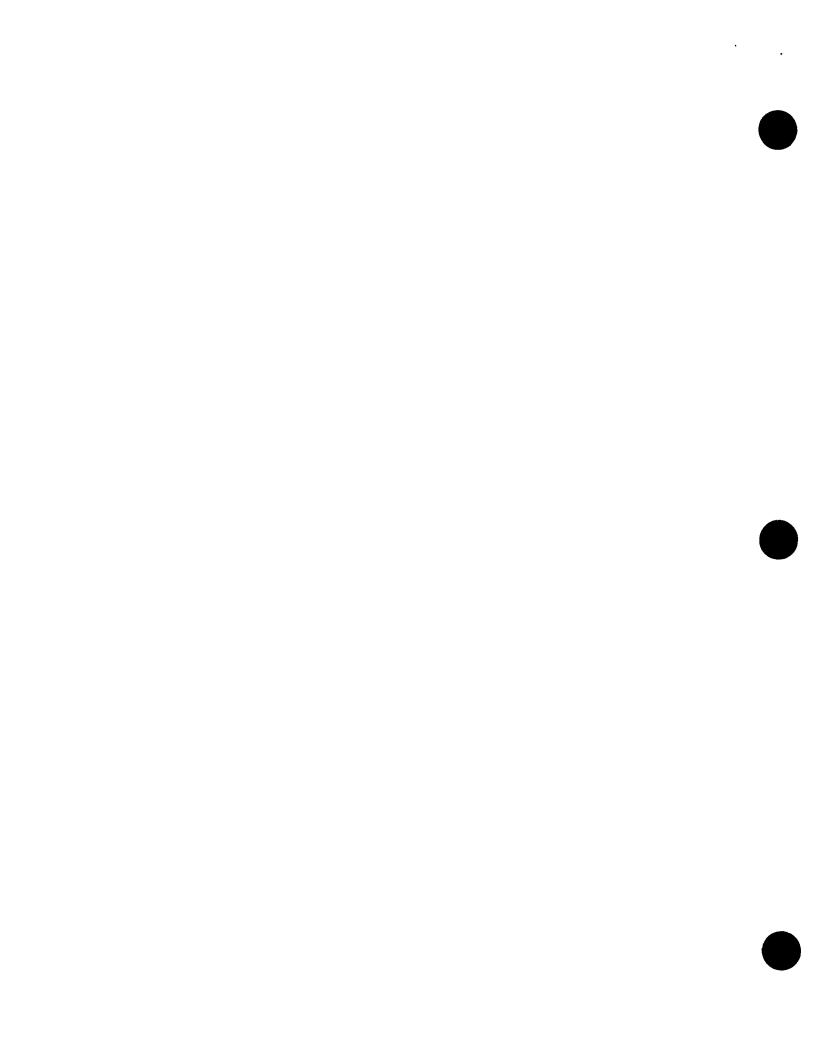
Any time while I am competent, I may revoke this power of attorney in a writing I sign or by communicating my intent to revoke, in any clear and consistent manner, to my health care agent or my health care provider.

## 4. General Statement of Authority Granted.

Subject to any restrictions set forth in Section 5 below, I grant to my health care agent full power and authority to make and carry out all health care decisions for me. These decisions include, but are not limited to:

- A. Requesting, reviewing, and receiving any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records, and to consent to the disclosure of this information.
- B. Employing or discharging my health care providers.
- C. Consenting to and authorizing my admission to and discharge from a hospital, nursing or convalescent home, hospice, long-term care facility, or other health care facility.
- D. Consenting to and authorizing my admission to and retention in a facility for the care or treatment of mental illness.
- E. Consenting to and authorizing the administration of medications for mental health treatment and electroconvulsive treatment (ECT) commonly referred to as "shock treatment."
- F. Giving consent for, withdrawing consent for, or withholding consent for, X-ray, anesthesia, medication, surgery, and all other diagnostic and treatment procedures ordered by or under the authorization of a licensed physician, dentist, podiatrist, or other health care provider. This

H146 [Edition 1]



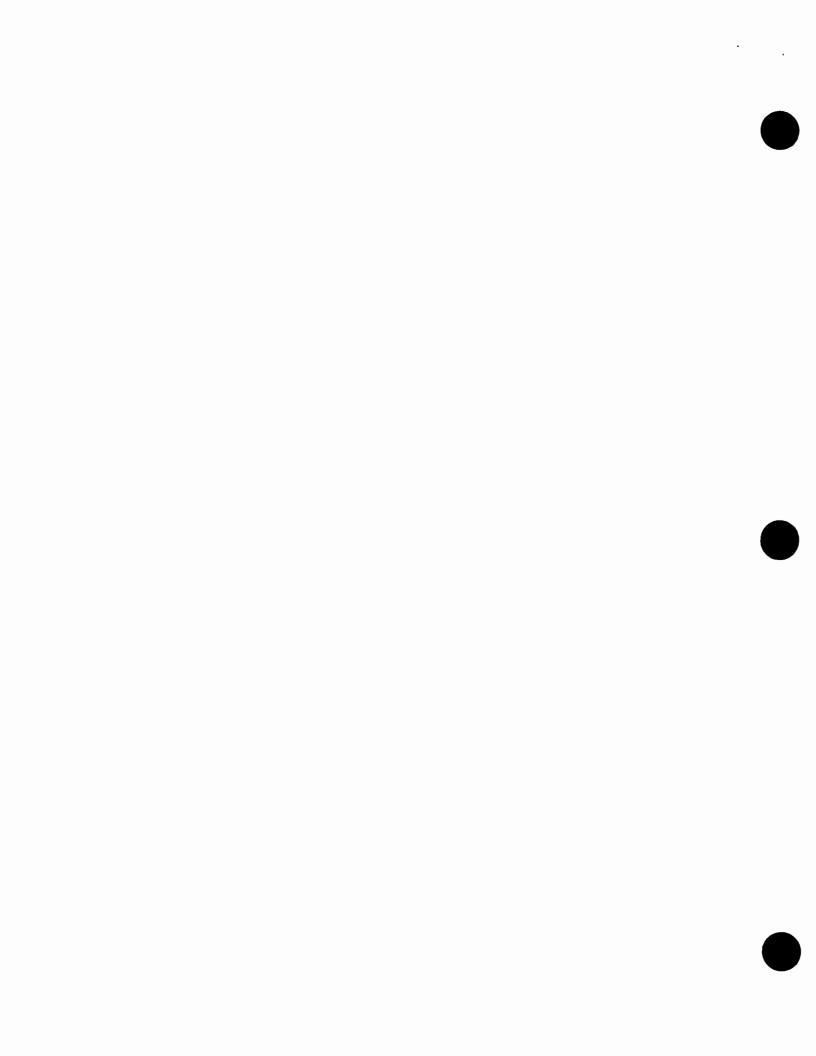
authorization specifically includes the power to consent to measures for relief of pain.

- G. Authorizing the withholding or withdrawal of life-prolonging measures.
- H. Providing my medical information at the request of any individual acting as my attorney-in-fact under a durable power of attorney or as a Trustee or successor Trustee under any Trust Agreement of which I am a Grantor or Trustee, or at the request of any other individual whom my health care agent believes should have such information. I desire that such information be provided whenever it would expedite the prompt and proper handling of my affairs or the affairs of any person or entity for which I have some responsibility. In addition, I authorize my health care agent to take any and all legal steps necessary to ensure compliance with my instructions providing access to my protected health information. Such steps shall include resorting to any and all legal procedures in and out of courts as may be necessary to enforce my rights under the law and shall include attempting to recover attorneys' fees against anyone who does not comply with this health care power of attorney.
- I. To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, exercising any right I may have to authorize an autopsy or direct the disposition of my remains.
- J. Taking any lawful actions that may be necessary to carry out these decisions, including, but not limited to: (i) signing, executing, delivering, and acknowledging any agreement, release, authorization, or other document that may be necessary, desirable, convenient, or proper in order to exercise and carry out any of these powers; (ii) granting releases of liability to medical providers or others; and (iii) incurring reasonable costs on my behalf related to exercising these powers, provided that this health care power of attorney shall not give my health care agent general authority over my property or financial affairs.

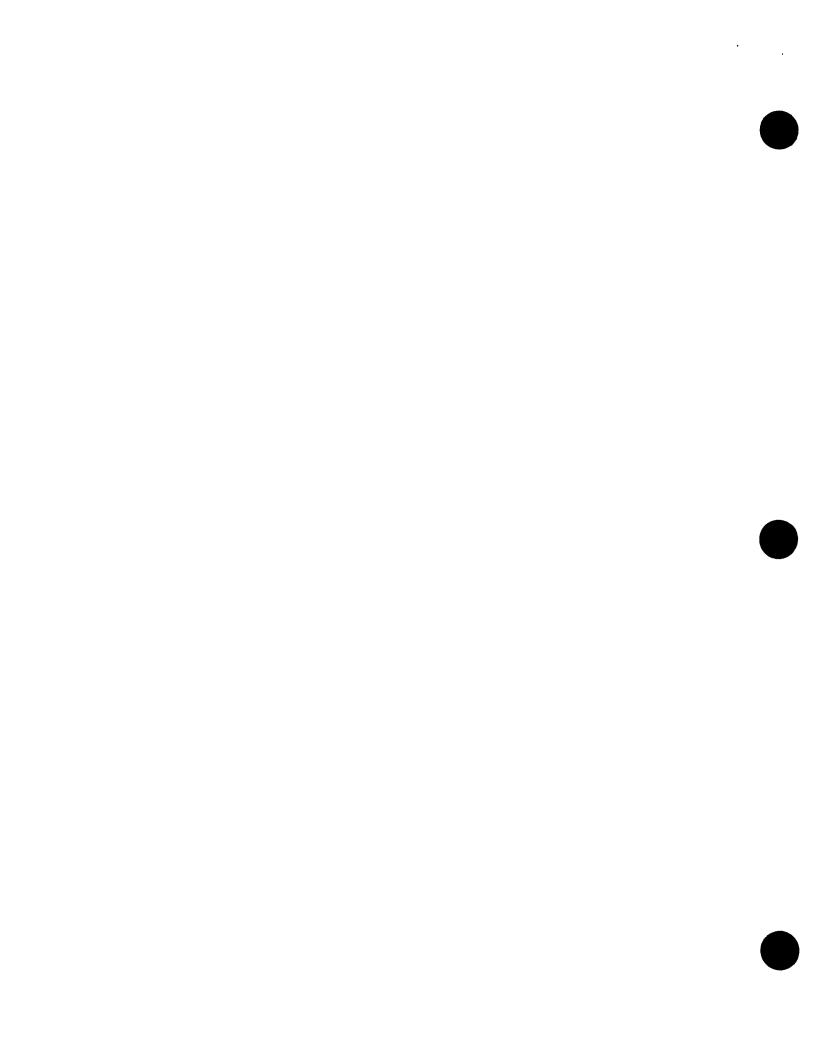
# 5. Special Provisions and Limitations.

(Notice: The authority granted in this document is intended to be as broad as possible so that your health care agent will have authority to make any decisions you could make to obtain or terminate any type of health care treatment or service. If you wish to limit the scope of your health care agent's powers, you may do so in this section. If none of the following are initialed, there will be no special limitations on your agent's authority.)

|           | A. | Limitations about Artificial Nutrition or Hydration: In exercising the authority to make health care decisions on my behalf, my health care agent:                             |
|-----------|----|--|
| (Initial) |    | shall NOT have the authority to withhold artificial nutrition (such as through tubes) OR may exercise that authority only in accordance with the following special provisions: |



| General Assembl | y of North Carolina Session 201  |
|-----------------|--|
| (Initial)       | shall NOT have the authority to withhold artificial hydration (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:   |
|                 | NOTE: If you initial either block but do not insert any special provisions, your health care agent shall have NO AUTHORITY to withhold artificial nutrition or hydration.  |
|                 | B. Limitations Concerning Health Care Decisions. In exercising   |
| (Initial)       | the authority to make health care decisions on my behalf, the  |
|                 | authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: your own definition of when life-prolonging measures should be withheld of discontinued, or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs, of are unacceptable to you for any other reason.)  |
|                 | NOTE: DO NOT initial unless you insert a limitation.   |
|                 | 1101L. DO 1101 Intelli uness you insert a minute.  |
| (T T)           | C. Limitations Concerning Mental Health Decisions. In  |
| (Initial)       | exercising the authority to make mental health decisions of my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: limiting the grant of authority to make only mental health treatment decisions, your own instructions regarding the administration or withholding of psychotropic medications and electroconvulsive treatment (ECT), instructions regarding your admission to and retention in a health care facility for mental health treatment, or instructions to refuse any specific types of treatment that are unacceptable to you.) |
|                 |  |
|                 | NOTE: DO NOT initial unless you insert a limitation.   |
|                 |  |
| (Initial)       | D. Advance Instruction for Mental Health Treatment. (Notice This health care power of attorney may incorporate or be   |
| (Initial)       | combined with an advance instruction for mental health   |
|                 | treatment, executed in accordance with Part 2 of Article 3 o   |
|                 | Chapter 122C of the General Statutes, which you may use to   |
|                 | state your instructions regarding mental health treatment in<br>the event you lack capacity to make or communicate menta   |
|                 | health treatment decisions. Because your health care agent's   |
|                 | decisions must be consistent with any statements you have  |
|                 | expressed in an advance instruction, you should indicate here  |
|                 | whether you have executed an advance instruction for menta health treatment):  |
|                 | nealin treatment):   |



General Assembly of North Carolina

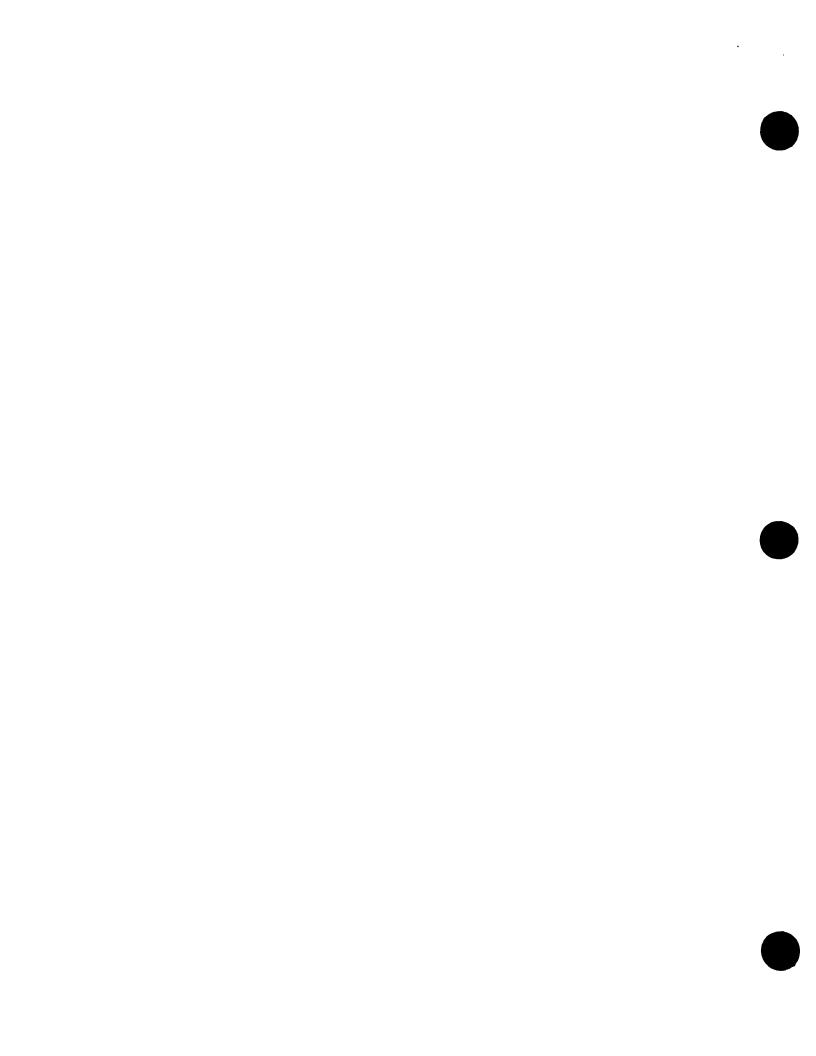
Page 6

8. Reliance of Third Parties on Health Care Agent.

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H146 [Edition 1]

Session 2015



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No person who relies in good faith upon the authority of or any A. representations by my health care agent shall be liable to me, my estate, my heirs, successors, assigns, or personal representatives, for actions or omissions in reliance on that authority or those representations.

B. The powers conferred on my health care agent by this document may be exercised by my health care agent alone, and my health care agent's signature or action taken under the authority granted in this document may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. All acts performed in good faith by my health care agent pursuant to this power of attorney are done with my consent and shall have the same validity and effect as if I were present and exercised the powers myself, and shall inure to the benefit of and bind me, my estate, my heirs, successors, assigns, and personal representatives. The authority of my health care agent pursuant to this power of attorney shall be superior to and binding upon my family, relatives, friends, and others.

#### Miscellaneous Provisions.

- Revocation of Prior Powers of Attorney. I revoke any prior health care A. power of attorney. The preceding sentence is not intended to revoke any general powers of attorney, some of the provisions of which may relate to health care; however, this power of attorney shall take precedence over any health care provisions in any valid general power of attorney I have not revoked.
- Jurisdiction, Severability, and Durability. This Health Care Power of B. Attorney is intended to be valid in any jurisdiction in which it is presented. The powers delegated under this power of attorney are severable, so that the invalidity of one or more powers shall not affect any others. This power of attorney shall not be affected or revoked by my incapacity or mental incompetence.
- C. Health Care Agent Not Liable. My health care agent and my health care agent's estate, heirs, successors, and assigns are hereby released and forever discharged by me, my estate, my heirs, successors, assigns, and personal representatives from all liability and from all claims or demands of all kinds arising out of my health care agent's acts or omissions, except for my health care agent's willful misconduct or gross negligence.
- D. No Civil or Criminal Liability. No act or omission of my health care agent, or of any other person, entity, institution, or facility acting in good faith in reliance on the authority of my health care agent pursuant to this Health Care Power of Attorney shall be considered suicide, nor the cause of my death for any civil or criminal purposes, nor shall it be considered unprofessional conduct or as lack of professional competence. Any person, entity, institution, or facility against whom criminal or civil liability is asserted because of conduct authorized by this Health Care Power of Attorney may interpose this document as a defense.

| General Assen     | ably of North Carolina                                | Session 2015  |
|-------------------|---|---|
| E.                |   | alth care agent shall be entitled to reimbursement for<br>incurred as a result of carrying out any provision of |
|                   |   | tally alert and competent, fully informed as to the<br>the full import of this grant of powers to my health     |
| This the          | day of, 20  | <u> </u>  |
|                   |   | (SEAL)  |
| 10. Signature.    |   |   |
|                   | be witnessed by two quality on A or Section B, below. | fied witnesses or proved by a notary public. Please   |
| zompiete Sectio   | II A of Section B, below.                             |   |
| <u>A.</u>         | Witnesses   |   |
| hereby state the  | nat the principal,                                    | , being of sound mind, signed (or directed  |
|                   |   | the foregoing health care power of attorney in my<br>principal by blood or marriage, and I would not be         |
|                   |   | principal under any existing will or codicil of the   |
|                   |   | Succession Act, if the principal died on this date  |
|                   |   | principal's attending physician, nor a licensed health  |
|                   |   | provider who is (1) an employee of the principal's  |
|                   |   | nent provider, (2) an employee of the health facility   |
| ~                 |   | employee of a nursing home or any adult care home   |
|                   |   | hat I do not have any claim against the principal of  |
| the estate of the |   |   |
|                   |   |   |
| Date:             |   | Witness:  |
| Date:             |   | Witness:  |
|                   | COUNTY,   | STATE   |
| Sworn to (c       | or affirmed) and subs                                 | eribed before meSubscribed this day by  |
|                   |   | (type/print name of signer)   |
|                   |   |   |
|                   |   | (type/print name of witness)  |
|                   |   | (type/print name of witness)  |
|                   |   |   |
| <u>B.</u>         | Notarization  |   |
|                   |   |   |
| Date:             | cial Seal)  | Signature of Notary Public  |

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"(d1) The following form is specifically determined to meet the requirements of subsection (c) of this section:

# ADVANCE DIRECTIVE FOR A NATURAL DEATH ("LIVING WILL")

NOTE: YOU SHOULD USE THIS DOCUMENT TO GIVE YOUR HEALTH CARE **PROVIDERS** INSTRUCTIONS WITHHOLD OR WITHDRAW TO LIFE-PROLONGING MEASURES IN CERTAIN SITUATIONS. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A LIVING WILL.

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GENERAL INSTRUCTIONS: You can use this Advance Directive ("Living Will") form to give instructions for the future if you want your health care providers to withhold or withdraw life-prolonging measures in certain situations. You should talk to your doctor about what these terms mean. The Living Will states what choices you would have made for yourself if you were able to communicate. Talk to your family members, friends, and others you trust about your choices. Also, it is a good idea to talk with professionals such as your doctors, clergypersons, and lawyers before you complete and sign this Living Will.

18

You do not have to use this form to give those instructions, but if you create your own Advance Directive you need to be very careful to ensure that it is consistent with North Carolina law.

21 22

This Living Will form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

24 25

If you want to use this form, you must complete it, sign it, and have your signature witnessed by two qualified witnesses and or proved by a notary public. Follow the instructions about which choices you can initial very carefully. Do not sign this form until two witnesses and or a notary public are present to watch you sign it. You then should consider giving a copy to your primary physician and/or a trusted relative, and should consider filing it with the Advanced Health Care Directive Registry maintained by the North Carolina Secretary of State: http://www.nclifelinks.org/ahcdr/

32

### My Desire for a Natural Death

34 35

, being of sound mind, desire that, as specified below, my life not be prolonged by life-prolonging measures:

37 38

#### 1. When My Directives Apply

(Initial)

(Initial)

40 41

My directions about prolonging my life shall apply IF my attending physician determines that I lack capacity to make or communicate health care decisions and:

42 43

# NOTE: YOU MAY INITIAL ANY AND ALL OF THESE CHOICES.

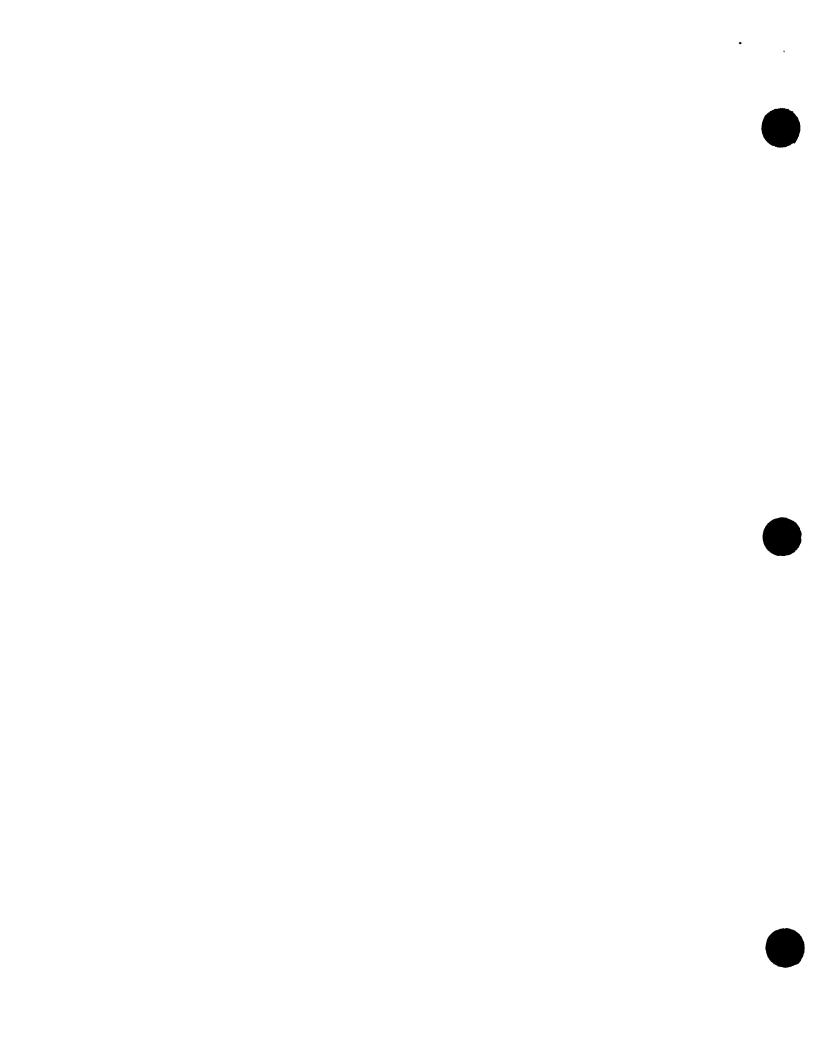
44 45 46

I have an incurable or irreversible condition that will result in my death within a relatively short period of time.

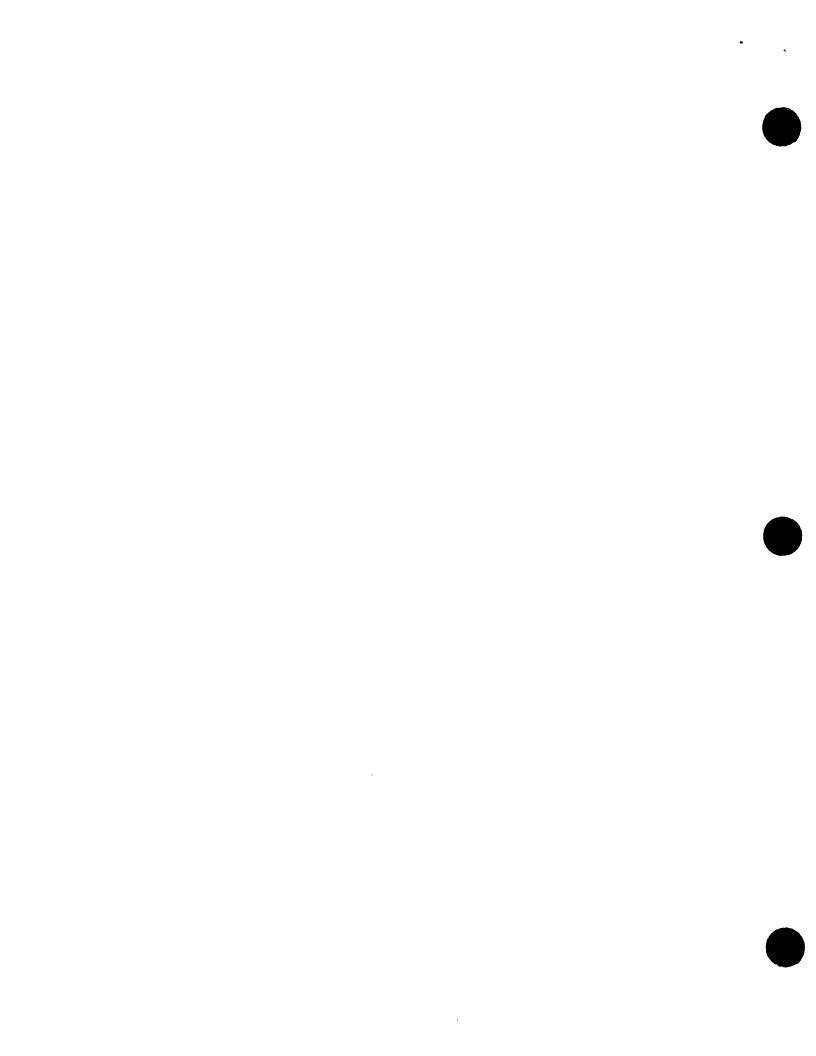
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I become unconscious and my health care providers determine that, to a high degree of medical certainty, I will never regain my consciousness.

48 49 50



H146 [Edition 1]



1 I am aware and understand that this document directs certain life-prolonging measures 2 to be withheld or discontinued in accordance with my advance instructions. 3 4 6. If I have an Available Health Care Agent 5 6 If I have appointed a health care agent by executing a health care power of attorney or 7 similar instrument, and that health care agent is acting and available and gives 8 instructions that differ from this Advance Directive, then I direct that: 9 This Advance Directive will 10 Follow Advance Directive: (Initial) 11 override instructions my health care agent gives about 12 prolonging my life. 13 14 My health care agent has Follow Health Care Agent: 15 (Initial) authority to override this Advance Directive. 16 17 NOTE: DO NOT INITIAL BOTH BLOCKS. IF YOU DO NOT INITIAL EITHER 18 BOX, THEN YOUR HEALTH CARE PROVIDERS WILL FOLLOW THIS ADVANCE DIRECTIVE AND IGNORE THE INSTRUCTIONS OF YOUR 19 20 HEALTH CARE AGENT ABOUT PROLONGING YOUR LIFE. 21 22 7. My Health Care Providers May Rely on this Directive 23 24 My health care providers shall not be liable to me or to my family, my estate, my heirs, 25 or my personal representative for following the instructions I give in this instrument. 26 Following my directions shall not be considered suicide, or the cause of my death, or 27 malpractice or unprofessional conduct. If I have revoked this instrument but my health 28 care providers do not know that I have done so, and they follow the instructions in this 29 instrument in good faith, they shall be entitled to the same protections to which they 30 would have been entitled if the instrument had not been revoked. 31 32 8. I Want this Directive to be Effective Anywhere 33 34 I intend that this Advance Directive be followed by any health care provider in any 35 place. 36 37 9. I have the Right to Revoke this Advance Directive 38 39 I understand that at any time I may revoke this Advance Directive in a writing I sign or 40 by communicating in any clear and consistent manner my intent to revoke it to my 41 attending physician. I understand that if I revoke this instrument I should try to destroy 42 all copies of it. 43 This the \_\_\_\_\_ day of \_\_\_\_\_, 44 45 46 Print Name 47 48

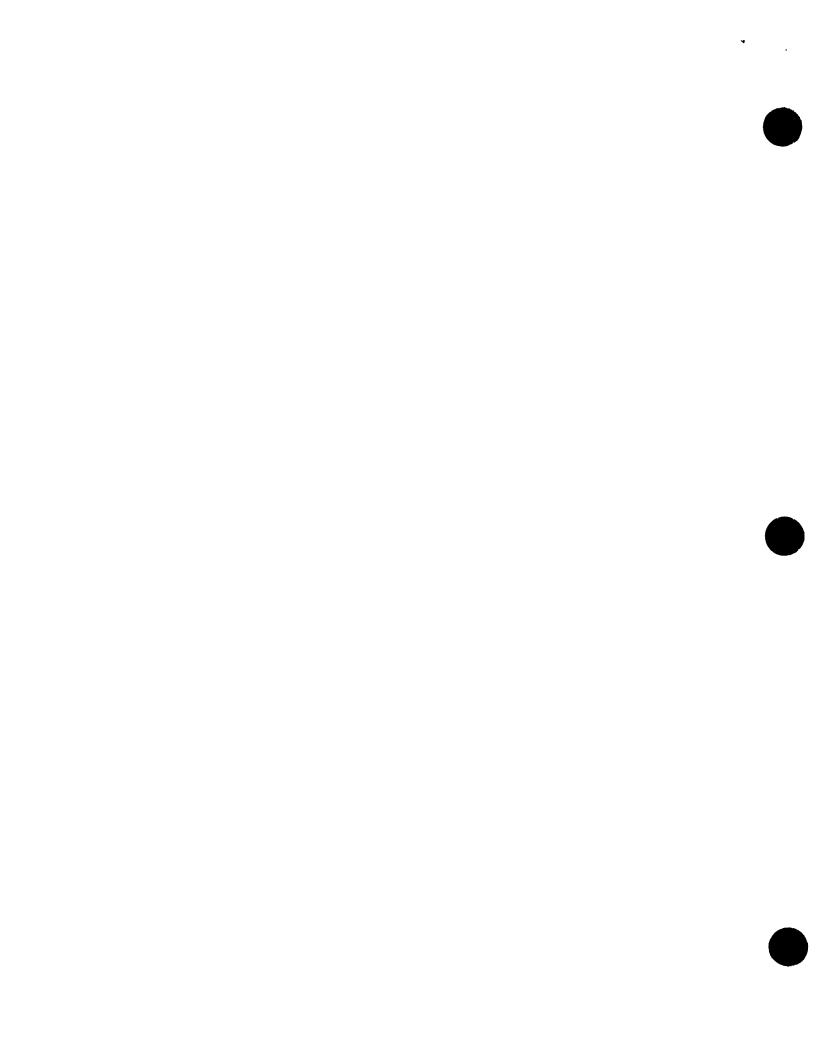
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Signature.

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| General As   | sembly of North Carolina         | Session 2  |
|--------------|----------------------------------|--|
|              |                                  | alified witnesses or proved by a notary public. Ple  |
| complete Se  | ection A or Section B, below     |  |
| <u> </u>     | A. Witnesses                     |  |
| I hereby sta | te that the declarant            | , being of sound mind, signed  |
| directed and | other to sign on declarant's     | behalf) the foregoing Advance Directive for a Nati   |
|              |                                  | t related to the declarant by blood or marriage, ar  |
|              |                                  | the estate of the declarant under any existing wil   |
|              |                                  | er the Intestate Succession Act, if the declarant died   |
|              |                                  | at 1 am not the declarant's attending physician, no<br>an employee of the declarant's attending physician, |
|              |                                  | which the declarant is a patient, or (3) an employee   |
| -            |                                  | where the declarant resides. I further state that I do   |
|              | im against the declarant or the  |  |
|              |                                  |  |
| Date:        |                                  | Witness:   |
| Date:        |                                  | Witness:   |
|              | COUNTY,                          |  |
|              |                                  |  |
| Sworn to     | <del>(or affirmed) and sul</del> | oscribed before me <u>Subscribed</u> this day  |
|              |                                  | (type/print name of declarant)   |
|              |                                  | (type/print name of witness)   |
|              |                                  | (type/print name of witness)   |
|              |                                  | (type/print name of witness)   |
| <u>B</u>     | . Notarization                   |  |
| Data         |                                  |  |
| Date         | Official Seal)                   | Signature of Notary Public   |
|              |                                  | , Notary Public  |
|              |                                  | Printed or typed name  |
|              |                                  | My commission expires:   |
|              |                                  | es effective October 1, 2015   |





# **HOUSE BILL 146: Amend Advance Health Care Directives Laws**

2015-2016 General Assembly

Committee:

House Judiciary I

Introduced by: Reps. Lambeth, Jones, Conrad, Ross

Analysis of:

PCS to First Edition

H146-CSST-7

Date:

March 17, 2015

Prepared by: R. Erika Churchill

Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 146 would amend the requirements for executing a valid health care power of attorney and advance health care directive to provide that the document must be notarized or witnessed by two qualified witnesses, rather than both.

#### **CURRENT LAW:**

The General Statutes provide optional mechanisms for an individual to make advance directives as to health care, mental health care, organ donation, and life-prolonging medical care. Three of the main mechanisms (health care powers of attorney, mental health directives and "living wills") require signature of the maker, two qualified witnesses, and notarization to be considered valid. Advance directives on organ donation require signature of the maker and two witnesses.

#### **Health Care Powers of Attorney**

Article 3 of Chapter 32A authorizes health care powers of attorney and was enacted in 1991. Any person having understanding and capacity to make and communicate health care decisions (the principal) who is at least 18 years old, may execute a health care power of attorney. Any competent person who is not engaged in providing health care to the principal for remuneration and who is at least 18 years old may act as a health care agent. Health care is any "care, treatment, service, or procedure to maintain, diagnose, treat, or provide for the principal's physical or mental health or personal care and comfort including life-prolonging measures."

The principal may grant to the health care agent full power and authority to make health care decisions to the same extent that the principal could make those decisions for himself or herself if he or she had capacity to make and communicate health care decisions. This includes the power to authorize withholding or discontinuing life-prolonging measures and the power to authorize the giving or withholding of mental health treatment. A health care power of attorney may contain, and the authority of the health care agent is subject to, any specific limitations or restrictions the principal deems appropriate.

To be valid a health care power of attorney must be signed in the presence of two qualified witnesses and notarized. A qualified witness is must be present for the execution of the document by the principal and must meet all of the following criteria:

- 1. Believe the principal to be of sound mind.
- 2. States that the witness:
  - Is not related within the third degree to the principal or the principal's spouse.

O. Walker Reagan
Director



Research Division (919) 733-2578

# House Bill 146

#### Page 2

- > Does not know nor have a reasonable expectation that he or she would be entitled to any portion of the estate of the principal upon the principal's death under any existing will or codicil.
- > Is not the attending physician or mental health treatment provider of the principal.
- Is not a licensed health care provider who is a paid employee of the attending physician or mental health treatment provider.
- > Is not a paid employee of a health facility in which the principal is a patient.
- > Is not a paid employee of a nursing home or any adult care home in which the principal resides.
- Does not have a claim against any portion of the estate of the principal at the time of the principal's execution of the health care power of attorney.

The notary who takes the acknowledgement may be, but is not required to be, any of the following:

- 1. A paid employee of the attending physician or mental health treatment provider.
- 2. A paid employee of a health facility in which the principal is a patient.
- 3. A paid employee of a nursing home or any adult care home in which the principal resides.

A health care power of attorney may be revoked by the principal at any time, so long as the principal is capable of making and communicating health care decisions.

#### **Advance Health Care Directives**

Article 23 of Chapter 90 authorizes "Living Wills" and was enacted in 1979. An individual may express, through a declaration, a desire that the person's life not be prolonged by life-prolonging measures. The declaration must be signed by the declarant in the presence of two witnesses who meet all of the following criteria:

- 1. Believe the declarant to be of sound mind.
- 2. State that the witness:
  - Is not related within the third degree to the declarant or to the declarant's spouse.
  - Does not know or have a reasonable expectation that they would be entitled to any portion of the estate of the declarant upon the declarant's death under any will of the declarant or codicil.
  - Is not the attending physician.
  - > Is not a licensed health care provider who is a paid employee of the attending physician.
  - Is not a paid employee of a health facility in which the declarant is a patient.
  - Is not a paid employee of a nursing home or any adult care home in which the declarant resides.
  - Does not have a claim against any portion of the estate of the declarant at the time of the declaration.

The declaration must also be proved before a clerk or assistant clerk of superior court, or a notary public. The notary who takes the acknowledgement may be, but is not required to be, any of the following:

- 1. A paid employee of the attending physician.
- 2. A paid employee of a health facility in which the declarant is a patient.
- 3. A paid employee of a nursing home or any adult care home in which the declarant resides.

# House Bill 146

Page 3

A declaration may be revoked by the declarant, in writing or in any manner by which the declarant is able to communicate the declarant's intent to revoke in a clear and consistent manner, without regard to the declarant's mental or physical condition.

When a person has executed both a Health Care Power of Attorney and a Living Will, the terms of the Living Will control over the health care agent designation in most instances. A health care agent may not revoke a declaration unless the health care power of attorney explicitly authorizes that revocation. A court appointed guardian may not revoke a declaration.

#### Advance Instruction for Mental Health Treatment.

Part 2 of Article 3 of Chapter 122C authorizes an instruction for mental health treatment and was enacted in 1997. An individual, of sound mind and not under duress, may make an "advance instruction for mental health treatment" or "advance instruction," where the individual (the principal) makes a declaration of instructions, information, and preferences regarding the principal's mental health treatment and states that the principal is aware that the advance instruction authorizes a mental health treatment provider to act according to the instruction. The principal may also state instructions as to consent to or refusal of mental health treatment when the principal is incapable.

The advance must be signed in the presence of two qualified witnesses who believe the principal to be of sound mind at the time of the signing, and acknowledged before a notary public. The qualified witnesses are to:

- 1. Affirm that the principal is personally known to the witness.
- 2. That the principal signed or acknowledged the principal's signature on the advance instruction in the presence of the witness.
- 3. That the witness believes the principal to be of sound mind and not to be under duress, fraud, or undue influence.
- 4. That the witness is not any of the following:
  - Related within the third degree to the principal or to the principal's spouse.
  - The attending physician or mental health service provider or an employee of the physician or mental health treatment provider.
  - An owner, operator, or employee of an owner or operator of a health care facility in which the principal is a patient or resident.

**BILL ANALYSIS:** The pcs would change the validation needed for a health care power of attorney and advance directive/"living will" from two qualified witnesses and a notary to two qualified witnesses OR a notary.

The pcs would not impact the validation needed for an advance directive on mental health treatment under Part 2 of Article 3 of Chapter 122C or organ donation. However, as a health care power of attorney may address mental health treatment, it would be possible for an individual to execute a health care power of attorney to address those wishes.

**EFFECTIVE DATE:** October 1, 2015, and applies to directives executed on or after that date.

## GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H

D

## HOUSE BILL 146 PROPOSED COMMITTEE SUBSTITUTE H146-CSST-7 [v.2]

3/17/2015 3:39:46 PM

Short Title: Amend Advance Health Care Directives Laws. (Public)

Sponsors:

Referred to:

March 4, 2015

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### A BILL TO BE ENTITLED

AN ACT ELIMINATING THE NEED TO HAVE ADVANCE HEALTH CARE DIRECTIVES AND HEALTH CARE POWERS OF ATTORNEY SIGNED IN THE PRESENCE OF TWO WITNESSES AND ACKNOWLEDGED BEFORE A NOTARY PUBLIC, AND INSTEAD ALLOWING FOR EXECUTION BY EITHER SIGNATURE IN THE PRESENCE OF TWO WITNESSES OR ACKNOWLEDGMENT BEFORE A NOTARY PUBLIC.

The General Assembly of North Carolina enacts:

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## SECTION 1. G.S. 32A-16(3) reads as rewritten:

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"(3) Health care power of attorney. – A written instrument that substantially meets the requirements of this Article, that is signed in the presence of two qualified witnesses, and witnesses, or acknowledged before a notary public, pursuant to which an attorney-in-fact or agent is appointed to act for the principal in matters relating to the health care of the principal. The—If notarized, the notary who takes the acknowledgement may but is not required to be a paid employee of the attending physician or mental health treatment provider, a paid employee of a health facility in which the principal is a patient, or a paid employee of a nursing home or any adult care home in which the principal resides."

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## **SECTION 2.** G.S. 32A-25.1(a) reads as rewritten:

202122

"(a) The use of the following form in the creation of a health care power of attorney is lawful and, when used, it shall meet the requirements of and be construed in accordance with the provisions of this Article:

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#### **HEALTH CARE POWER OF ATTORNEY**

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29 30 NOTE: YOU SHOULD USE THIS DOCUMENT TO NAME A PERSON AS YOUR HEALTH CARE AGENT IF YOU ARE COMFORTABLE GIVING THAT PERSON BROAD AND SWEEPING POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A HEALTH CARE POWER OF ATTORNEY.

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**EXPLANATION:** You have the right to name someone to make health care decisions for you when you cannot make or communicate those decisions. This form may be used to create a health care power of attorney, and meets the requirements of North Carolina law. However, you are not required to use this form, and North Carolina law allows the use of other forms



#### **General Assembly of North Carolina**

Session 2015

that meet certain requirements. If you prepare your own health care power of attorney, you should be very careful to make sure it is consistent with North Carolina law.

This document gives the person you designate as your health care agent broad powers to make health care decisions for you when you cannot make the decision yourself or cannot communicate your decision to other people. You should discuss your wishes concerning life-prolonging measures, mental health treatment, and other health care decisions with your health care agent. Except to the extent that you express specific limitations or restrictions in this form, your health care agent may make any health care decision you could make yourself.

This form does not impose a duty on your health care agent to exercise granted powers, but when a power is exercised, your health care agent will be obligated to use due care to act in your best interests and in accordance with this document.

This Health Care Power of Attorney form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

If you want to use this form, you must complete it, sign it, and have your signature witnessed by two qualified witnesses and or proved by a notary public. Follow the instructions about which choices you can initial very carefully. **Do not sign this form until** two witnesses and or a notary public are present to watch you sign it. You then should give a copy to your health care agent and to any alternates you name. You should consider filing it with the Advance Health Care Directive Registry maintained by the North Carolina Secretary of State: http://www.nclifelinks.org/ahcdr/

| ſ,    | , being of sound mind, hereby appoint the following person(s) to serve                  |
|-------|---|
| as my | health care agent(s) to act for me and in my name (in any way I could act in person) to |
| make  | health care decisions for me as authorized in this document. My designated health care  |
| agent | (s) shall serve alone, in the order named.  |

| A. Name: Home Address: | Home Telephone: Work Telephone: Cellular Telephone: |
|------------------------|---|
| B. Name:Home Address:  | Home Telephone: Work Telephone: Cellular Telephone: |
| C. Name:               | Home Telephone: Work Telephone: Cellular Telephone: |

Any successor health care agent designated shall be vested with the same power and duties as if originally named as my health care agent, and shall serve any time his or her predecessor is not reasonably available or is unwilling or unable to serve in that capacity.

2. Effectiveness of Appointment.

1. Designation of Health Care Agent.

|                                      | General Assembly of North Car   | olina Session 2015   |
|--------------------------------------|---|--|
| 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8 | authority granted in this document so<br>listed below determines that I lack of<br>health care, and will continue in eff<br>authorize my health care agent to ex- | ent expires only when I revoke it. Absent revocation, the hall become effective when and if one of the physician(s) capacity to make or communicate decisions relating to my fect during that incapacity, or until my death, except if I tercise my rights with respect to anatomical gifts, autopsy, thority will continue after my death to the extent necessary |
| 9                                    | 1.  | (Physician)  |
| 0                                    |   |  |
| 1                                    | 2   | (Physician)  |
| 3 4 5                                |   | , or no physician(s) named above is reasonably available, y to make or communicate decisions relating to my health physician.  |
| 6                                    | 3. Revocation.  |  |
| 9<br>20<br>21<br>22<br>23<br>24      | *   | nay revoke this power of attorney in a writing I sign or by e, in any clear and consistent manner, to my health care y Granted.  |
| 25<br>26<br>27<br>28                 |   | in Section 5 below, I grant to my health care agent full arry out all health care decisions for me. These decisions  |
| 19<br>19<br>10<br>11<br>12           | regarding my ph   | wing, and receiving any information, verbal or written, ysical or mental health, including, but not limited to, pital records, and to consent to the disclosure of this  |
| 54<br>55                             | B. Employing or disc  | charging my health care providers.   |
| 56<br>57<br>58<br>59                 | _   | nd authorizing my admission to and discharge from a convalescent home, hospice, long-term care facility, or acility.   |
| 10                                   | •   | authorizing my admission to and retention in a facility for<br>ent of mental illness.  |
| 3<br> 4<br> 5                        | _   | I authorizing the administration of medications for mental nd electroconvulsive treatment (ECT) commonly referred nent."   |

H146-CSST-7 [v.2] House Bill 146 Page 3

Giving consent for, withdrawing consent for, or withholding consent for,

X-ray, anesthesia, medication, surgery, and all other diagnostic and

treatment procedures ordered by or under the authorization of a licensed

physician, dentist, podiatrist, or other health care provider. This

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relief of pain.

authorization specifically includes the power to consent to measures for

 G. Authorizing the withholding or withdrawal of life-prolonging measures.

H. Providing my medical information at the request of any individual acting as my attorney-in-fact under a durable power of attorney or as a Trustee or successor Trustee under any Trust Agreement of which I am a Grantor or Trustee, or at the request of any other individual whom my health care agent believes should have such information. I desire that such information be provided whenever it would expedite the prompt and proper handling of my affairs or the affairs of any person or entity for which I have some responsibility. In addition, I authorize my health care agent to take any and all legal steps necessary to ensure compliance with my instructions providing access to my protected health information. Such steps shall include resorting to any and all legal procedures in and out of courts as may be necessary to enforce my rights under the law and shall include attempting to recover attorneys' fees against anyone who does not comply with this health care power of attorney.

I. To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, exercising any right I may have to authorize an autopsy or direct the disposition of my remains.

 J. Taking any lawful actions that may be necessary to carry out these decisions, including, but not limited to: (i) signing, executing, delivering, and acknowledging any agreement, release, authorization, or other document that may be necessary, desirable, convenient, or proper in order to exercise and carry out any of these powers; (ii) granting releases of liability to medical providers or others; and (iii) incurring reasonable costs on my behalf related to exercising these powers, provided that this health care power of attorney shall not give my health care agent general authority over my property or financial affairs.

## 5. Special Provisions and Limitations.

(Notice: The authority granted in this document is intended to be as broad as possible so that your health care agent will have authority to make any decisions you could make to obtain or terminate any type of health care treatment or service. If you wish to limit the scope of your health care agent's powers, you may do so in this section. If none of the following are initialed, there will be no special limitations on your agent's authority.)

|           | A. |  |
|-----------|----|--|
|           |    | the authority to make health care decisions on my behalf, my health  |
|           |    | care agent:  |
|           |    | shall NOT have the authority to withhold artificial nutrition  |
| (Initial) |    | (such as through tubes) OR may exercise that authority only in accordance with the following special provisions: |
|           |    |  |

|    | shall NOT have the authority to withhold artificial hydratic (such as through tubes) OR may exercise that authority on in accordance with the following special provisions:  |
|----|--|
|    | NOTE: If you initial either block but do not insert any special provisions, your health care agent shall have NO AUTHORIT to withhold artificial nutrition or hydration.   |
| В. | Limitations Concerning Health Care Decisions. In exercising the authority to make health care decisions on my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: your own definition of when life-prolonging measures should be withheld discontinued, or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs, or are unacceptable to you for any other reason.)   |
|    | NOTE: DO NOT initial unless you insert a limitation.   |
| C. | Limitations Concerning Mental Health Decisions. It exercising the authority to make mental health decisions of my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include an specific provisions you deem appropriate such as: limiting the grant of authority to make only mental health treatment decisions, your own instructions regarding the administration or withholding of psychotropic medications and electroconvulsive treatment (ECT), instructions regarding your admission to and retention in a health care facility for mental health treatment, or instructions to refuse any specific types of treatment that are unacceptable to you.) |
|    | NOTE: DO NOT initial unless you insert a limitation.   |
| D. | Advance Instruction for Mental Health Treatment. (Notice This health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment, executed in accordance with Part 2 of Article 3 of Chapter 122C of the General Statutes, which you may use the state your instructions regarding mental health treatment in the event you lack capacity to make or communicate mental health treatment decisions. Because your health care agent decisions must be consistent with any statements you have expressed in an advance instruction, you should indicate her whether you have executed an advance instruction for mental health treatment):                             |
|    | C.   |

|                      | NOTE: DO NOT initial unless you insert a limitation.   |
|----------------------|--|
| (Initial)            | E. Autopsy and Disposition of Remains. In exercising to authority to make decisions regarding autopsy and disposition of remains on my behalf, the authority of my health care age is subject to the following special provisions and limitation (Here you may include any specific limitations you decappropriate such as: limiting the grant of authority and to scope of authority, or instructions regarding burial cremation):  |
|                      | NOTE: DO NOT initial unless you insert a limitation.   |
|                      | 101E. DO 101 initial unless you insert a limitation.   |
| 6. Organ Donatio     | n.   |
| To the extent I have | e not already made valid and enforceable arrangements during my lifeting   |
|                      | e not already made valid and emorceable arrangements during my lifeth evoked, my health care agent may exercise any right I may have to:   |
|                      | donote any needed are are an existence.  |
| (Initial)            | donate any needed organs or parts; or  |
| (IIIIIIII)           | donate only the following organs or parts:   |
| (Initial)            | The state of the s |
|                      | NOTE: DO NOT INITIAL BOTH BLOCKS ABOVE.  |
|                      | donate my body for anatomical study if needed.   |
| (Initial)            | donate my body for anatomical study if needed.   |
|                      | In exercising the authority to make donations, my health ca  |
| (Initial)            | agent is subject to the following special provisions a limitations: (Here you may include any specific limitation you deem appropriate such as: limiting the grant of author and the scope of authority, or instructions regarding gifts   |
|                      | the body or body parts.)   |
|                      |  |
|                      | the body or body parts.)   |
|                      | the body or body parts.)   |
| NOTE                 | NOTE: DO NOT initial unless you insert a limitation.   |
|                      | NOTE: DO NOT initial unless you insert a limitation.   |
|                      | NOTE: DO NOT initial unless you insert a limitation.  NO AUTHORITY FOR ORGAN DONATION IS GRANTED INSTRUMENT WITHOUT YOUR INITIALS.   |
| THIS l               | NOTE: DO NOT initial unless you insert a limitation.  NO AUTHORITY FOR ORGAN DONATION IS GRANTED INSTRUMENT WITHOUT YOUR INITIALS.   |

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8. Reliance of Third Parties on Health Care Agent.

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- A. No person who relies in good faith upon the authority of or any representations by my health care agent shall be liable to me, my estate, my heirs, successors, assigns, or personal representatives, for actions or omissions in reliance on that authority or those representations.
- B. The powers conferred on my health care agent by this document may be exercised by my health care agent alone, and my health care agent's signature or action taken under the authority granted in this document may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. All acts performed in good faith by my health care agent pursuant to this power of attorney are done with my consent and shall have the same validity and effect as if I were present and exercised the powers myself, and shall inure to the benefit of and bind me, my estate, my heirs, successors, assigns, and personal representatives. The authority of my health care agent pursuant to this power of attorney shall be superior to and binding upon my family, relatives, friends, and others.

#### 9. Miscellaneous Provisions.

- A. Revocation of Prior Powers of Attorney. I revoke any prior health care power of attorney. The preceding sentence is not intended to revoke any general powers of attorney, some of the provisions of which may relate to health care; however, this power of attorney shall take precedence over any health care provisions in any valid general power of attorney I have not revoked.
- B. Jurisdiction, Severability, and Durability. This Health Care Power of Attorney is intended to be valid in any jurisdiction in which it is presented. The powers delegated under this power of attorney are severable, so that the invalidity of one or more powers shall not affect any others. This power of attorney shall not be affected or revoked by my incapacity or mental incompetence.
- C. Health Care Agent Not Liable. My health care agent and my health care agent's estate, heirs, successors, and assigns are hereby released and forever discharged by me, my estate, my heirs, successors, assigns, and personal representatives from all liability and from all claims or demands of all kinds arising out of my health care agent's acts or omissions, except for my health care agent's willful misconduct or gross negligence.
- D. No Civil or Criminal Liability. No act or omission of my health care agent, or of any other person, entity, institution, or facility acting in good faith in reliance on the authority of my health care agent pursuant to this Health Care Power of Attorney shall be considered suicide, nor the cause of my death for any civil or criminal purposes, nor shall it be considered unprofessional conduct or as lack of professional competence. Any person, entity, institution, or facility against whom criminal or civil liability is asserted because of conduct authorized by this Health Care Power of Attorney may interpose this document as a defense.

| General As  | sembly of North Carolina   | Session 201   |
|---|--|---|
| E.  | Reimbursement. My health care agent shall be e all reasonable expenses incurred as a result of c this directive. |   |
|   | nere. I indicate that I am mentally alert and competent is document, and understand the full import of this g    |   |
| This the  | day of, 20   |   |
|   |  | (SEAL)  |
| 10. Signatur  | <u>'e.</u>   |   |
|   | ast be witnessed by two qualified witnesses or provedtion A or Section B, below.                                 | d by a notary public. Please  |
| I hereby state another to sign presence, and entitled to are principal or a without a will care provider attending phy in where the principal the estate of the estate of the estate. | Witness:   | are power of attorney in my narriage, and I would not be sisting will or codicil of the principal died on this date ysician, nor a licensed health employee of the principal's aployee of the health facility nome or any adult care home laim against the principal or |
| Date:   | Witness:   |   |
|   | COUNTY, STATE  |   |
|   | (or affirmed) and subscribed before meS  | ubscribed this day by   |
|   | (t)  | vpe/print name of signer)   |
|   | $\overline{(ty)}$  | pe/print name of witness)   |
|   | (ty  | pe/print name of witness)   |
| <u>B</u> .  |  |   |
|   | Notarization   |   |
| Sworn to (or  | Notarization affirmed) and subscribed before me this day by (name  | of principal).  |

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| Date:                |        |                                 |   |
|----------------------|--------|---------------------------------|---|
|                      | (Offic | ial Seal)                       | Signature of Notary Public  |
|                      |        |                                 | , Notary Public   |
|                      |        |                                 | Printed or typed name   |
|                      |        |                                 | My commission expires:"   |
|                      |        | TON 3. G.S. 90-321(c) reads a   |   |
| "(c)<br>section, a d |        |                                 | subject to subsections (b), (e), and (k) of this  |
|                      | (1)    |                                 | declarant that life-prolonging measures not be  |
|                      | ( )    | used to prolong the declarant's | s life if, as specified in the declaration as to any  |
|                      |        | or all of the following:        |   |
|                      |        | result in the declarant's       | incurable or irreversible condition that will<br>s death within a relatively short period of time |
|                      |        | b. The declarant becomes        | s unconscious and, to a high degree of medica   |
|                      |        | certainty, will never re        |   |
|                      |        |                                 | rom advanced dementia or any other condition  |
|                      |        | _                               | ntial loss of cognitive ability and that loss, to a   |
|                      | (2)    |                                 | l certainty, is not reversible.  It is aware that the declaration authorizes a                    |
|                      | (2)    |                                 | ntinue the life-prolonging measures; and  |
|                      | (3)    |                                 | neets either of the following requirements:   |
|                      |        |                                 | he declarant in the presence of two witnesses   |
|                      |        |                                 | rant to be of sound mind and who state that   |
|                      |        |                                 | I within the third degree to the declarant or to  |
|                      |        | •                               | e, (ii) do not know or have a reasonable would be entitled to any portion of the estate or        |
|                      |        | -                               | he declarant's death under any will of the  |
|                      |        | -                               | thereto then existing or under the Intestate  |
|                      |        | Succession Act as it            | then provides, (iii) are not the attending  |
|                      |        |                                 | alth care providers who are paid employees of   |
|                      |        |                                 | n, paid employees of a health facility in which   |
|                      |        | *                               | nt, or paid employees of a nursing home or any ich the declarant resides, and (iv) do not have a  |
|                      |        |                                 | ion of the estate of the declarant at the time of   |
|                      |        | the declaration; and            |   |
|                      |        | b. Has been proved before       | e a clerk or assistant clerk of superior court, or  |
|                      |        | •                               | certifies substantially as set out in subsection  |
|                      |        |                                 | notary who takes the acknowledgement may  |
|                      |        |                                 | e a paid employee of the attending physician, a alth facility in which the declarant is a patient |
|                      |        |                                 | f a nursing home or any adult care home in  |
|                      |        | which the declarant res         |   |
|                      | (4)    |                                 | a clerk or assistant clerk of superior court, or a  |
|                      |        |                                 | bstantially as set out in subsection (d1) of this   |
|                      |        | •                               | ne acknowledgement may but is not required to   |
|                      |        |                                 | ending physician, a paid employee of a health   |
|                      |        |                                 | t is a patient, or a paid employee of a nursing<br>n which the declarant resides."                |
|                      |        | nome or any addit care nome i   | n which the decidrant resides.  |

**SECTION 4.** G.S. 90-321(d1) reads as rewritten:

"(d1) The following form is specifically determined to meet the requirements of subsection (c) of this section:

4 5

## ADVANCE DIRECTIVE FOR A NATURAL DEATH ("LIVING WILL")

NOTE: YOU SHOULD USE THIS DOCUMENT TO GIVE YOUR HEALTH CARE PROVIDERS INSTRUCTIONS TO WITHHOLD OR WITHDRAW LIFE-PROLONGING MEASURES IN CERTAIN SITUATIONS. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A LIVING WILL.

GENERAL INSTRUCTIONS: You can use this Advance Directive ("Living Will") form to give instructions for the future if you want your health care providers to withhold or withdraw life-prolonging measures in certain situations. You should talk to your doctor about what these terms mean. The Living Will states what choices you would have made for yourself if you were able to communicate. Talk to your family members, friends, and others you trust about your choices. Also, it is a good idea to talk with professionals such as your doctors, clergypersons, and lawyers before you complete and sign this Living Will.

You do not have to use this form to give those instructions, but if you create your own Advance Directive you need to be very careful to ensure that it is consistent with North Carolina law.

This Living Will form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

If you want to use this form, you must complete it, sign it, and have your signature witnessed by two qualified witnesses and or proved by a notary public. Follow the instructions about which choices you can initial very carefully. **Do not sign this form until** two witnesses and or a notary public are present to watch you sign it. You then should consider giving a copy to your primary physician and/or a trusted relative, and should consider filing it with the Advanced Health Care Directive Registry maintained by the North Carolina Secretary of State: http://www.nclifelinks.org/ahcdr/

## My Desire for a Natural Death

I, \_\_\_\_\_\_, being of sound mind, desire that, as specified below, my life not be prolonged by life-prolonging measures:

## 1. When My Directives Apply

My directions about prolonging my life shall apply *IF* my attending physician determines that I lack capacity to make or communicate health care decisions and:

#### NOTE: YOU MAY INITIAL ANY AND ALL OF THESE CHOICES.

(Initial) I have an incurable or irreversible condition that will result in my death within a relatively short period of time.

[Initial] I become unconscious and my health care providers determine that, to a high degree of medical certainty, I will never regain my consciousness.

| Gen     | eral Assembly of                       | North Carolina   | Session 2015                                |
|---------|--|--|---|
|         | (Initial)                              | I suffer from advanced dementia or<br>which results in the substantial loss of<br>and my health care providers determined<br>degree of medical certainty, this loss is not | my cognitive ability<br>ine that, to a high |
| 2.      | These are My Di                        | rectives about Prolonging My Life:   |   |
|         | In those situations                    | s I have initialed in Section 1, I direct that my hea  | lth care providers:                         |
|         | NOTE: INITIAI                          | L ONLY IN ONE PLACE.   |   |
|         | (Initial)                              | may withhold or withdraw life-prolonging   | measures.                                   |
|         | (Initial)                              | shall withhold or withdraw life-prolonging   | measures.                                   |
| 3.      | Exceptions – "A                        | rtificial Nutrition or Hydration"  |   |
|         |  | L ONLY IF YOU WANT TO MAKE EXCEI<br>S IN PARAGRAPH 2.  | PTIONS TO YOUR                              |
| C = =4: | EVEN THOUGH                            | I do not want my life prolonged in those situation   | ons I have initialed in                     |
| Section | (Initial)                              | I DO want to receive BOTH artific artificial nutrition (for example, throusituations.  |   |
|         |  | NOTE: DO NOT INITIAL THIS BL<br>THE BLOCKS BELOW IS INITIALEI  |   |
|         | —————————————————————————————————————— | I DO want to receive ONLY artifer example, through tubes) in   | icial hydration (for those situations.      |
|         |  | NOTE: DO NOT INITIAL THE BL<br>BELOW IF THIS BLOCK IS INITIAL  |   |
|         | (Initial)                              | I DO want to receive ONLY artiferexample, through tubes) in those situations   | ,   |
|         |  | NOTE: DO NOT INITIAL EITHE<br>BLOCKS ABOVE IF THIS BLOCK IS  |   |
| 4.      | I Wish to be Mad                       | de as Comfortable as Possible  |   |
|         |  | health care providers take reasonable steps to<br>free of pain as possible so that my dignity is mai<br>ten my death.  |   |
|         |  |  |   |

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10.

Signature.

1 2 I am aware and understand that this document directs certain life-prolonging measures 3 to be withheld or discontinued in accordance with my advance instructions. 4 5 6. If I have an Available Health Care Agent 6 7 If I have appointed a health care agent by executing a health care power of attorney or similar instrument, and that health care agent is acting and available and gives 8 instructions that differ from this Advance Directive, then I direct that: 9 10 11 Follow Advance Directive: This Advance Directive will 12 (Initial) override instructions my health care agent gives about 13 prolonging my life. 14 15 Follow Health Care Agent: My health care agent has authority to override this Advance Directive. 16 (Initial) 17 18 NOTE: DO NOT INITIAL BOTH BLOCKS. IF YOU DO NOT INITIAL EITHER BOX, THEN YOUR HEALTH CARE PROVIDERS WILL FOLLOW THIS 19 ADVANCE DIRECTIVE AND IGNORE THE INSTRUCTIONS OF YOUR 20 HEALTH CARE AGENT ABOUT PROLONGING YOUR LIFE. 21 22 23 7. My Health Care Providers May Rely on this Directive 24 25 My health care providers shall not be liable to me or to my family, my estate, my heirs, or my personal representative for following the instructions I give in this instrument. 26 27 Following my directions shall not be considered suicide, or the cause of my death, or 28 malpractice or unprofessional conduct. If I have revoked this instrument but my health 29 care providers do not know that I have done so, and they follow the instructions in this 30 instrument in good faith, they shall be entitled to the same protections to which they would have been entitled if the instrument had not been revoked. 31 32 33 8. I Want this Directive to be Effective Anywhere 34 35 I intend that this Advance Directive be followed by any health care provider in any 36 place. 37 38 I have the Right to Revoke this Advance Directive 9. 39 40 I understand that at any time I may revoke this Advance Directive in a writing I sign or by communicating in any clear and consistent manner my intent to revoke it to my 41 attending physician. I understand that if I revoke this instrument I should try to destroy 42 43 all copies of it. 44 This the day of \_\_\_\_\_\_, \_\_\_\_\_. 45 46 47

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Print Name

| General Assembly of North Carolina  | Session 20  |
|---|---|
| Signature must be witnessed by two qualified witnesses complete Section A or Section B, below.  | or proved by a notary public. Ple   |
|   |   |
| A. Witnesses  |   |
| I hereby state that the declarant,  | , being of sound mind, signed   |
| I hereby state that the declarant, directed another to sign on declarant's behalf) the forego   |   |
| Death in my presence, and that I am not related to the  |   |
| would not be entitled to any portion of the estate of the   |   |
| codicil of the declarant or as an heir under the Intestate S  | · · · · · · · · · · · · · · · · · · ·   |
| this date without a will. I also state that I am not the  | 01.   |
| licensed health care provider who is (1) an employee of t<br>nor an employee of the health facility in which the declar                             | -1.   |
| a nursing home or any adult care home where the declara   |   |
| have any claim against the declarant or the estate of the de  |   |
|   |   |
| Date: Witness:  |   |
|   |   |
| Date: Witness:  |   |
| COUNTY,STA  | -   |
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|   |   |
| Sworn to (or affirmed) and subscribed before  |   |
|   | e me Subscribed this day  |
|   | e me Subscribed this day  (type/print name of declarant   |
|   | c me Subscribed this day  (type/print name of declarant  (type/print name of witness)   |
|   | e me Subscribed this day  (type/print name of declarant   |
| Sworn to (or affirmed) and subscribed before  | c me Subscribed this day  (type/print name of declarant  (type/print name of witness)   |
|   | c me Subscribed this day  (type/print name of declarant  (type/print name of witness)   |
| Sworn to (or affirmed) and subscribed before  B. Notarization   | (type/print name of witness)  (type/print name of witness)  |
| Sworn to (or affirmed) and subscribed before  | (type/print name of witness)  (type/print name of witness)  |
| B. Notarization  Sworn to (or affirmed) and subscribed before me this day  Date   | (type/print name of declarant  (type/print name of witness)  (type/print name of witness)  (type/print name of witness)   |
| B. Notarization  Sworn to (or affirmed) and subscribed before me this day  Date   | (type/print name of witness)  (type/print name of witness)  |
| B. Notarization  Sworn to (or affirmed) and subscribed before me this day  Date   | (type/print name of declarant)  (type/print name of witness)  (type/print name of witness)  (type/print name of witness)  by (name of principal).   |
| B. Notarization  Sworn to (or affirmed) and subscribed before  Sworn to (or affirmed) and subscribed before me this day  Date  (Official Seal)  Sig | (type/print name of declarant)  (type/print name of witness)  (type/print name of witness)  (type/print name of witness)  by (name of principal).  nature of Notary Public  , Notary Public |
| B. Notarization  Sworn to (or affirmed) and subscribed before  Sworn to (or affirmed) and subscribed before me this day  Date  (Official Seal)  Sig | (type/print name of declarant)  (type/print name of witness)  (type/print name of witness)  (type/print name of witness)  by (name of principal).   |
| B. Notarization  Sworn to (or affirmed) and subscribed before me this day  Date   | (type/print name of declarant)  (type/print name of witness)  (type/print name of witness)  (type/print name of witness)  by (name of principal).  nature of Notary Public  , Notary Public |

executed on or after that date.

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# **HOUSE BILL 146: Amend Advance Health Care Directives Laws**

2015-2016 General Assembly

Committee:

House Judiciary I

Introduced by: Reps. Lambeth, Jones, Conrad, Ross

Analysis of:

H146-CSST-7

PCS to First Edition

Date:

March 17, 2015 Prepared by: R. Erika Churchill

Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 146 would amend the requirements for executing a valid health care power of attorney and advance health care directive to provide that the document must be notarized or witnessed by two qualified witnesses, rather than both.

#### **CURRENT LAW:**

The General Statutes provide optional mechanisms for an individual to make advance directives as to health care, mental health care, organ donation, and life-prolonging medical care. Three of the main mechanisms (health care powers of attorney, mental health directives and "living wills") require signature of the maker, two qualified witnesses, and notarization to be considered valid. Advance directives on organ donation require signature of the maker and two witnesses.

#### **Health Care Powers of Attorney**

Article 3 of Chapter 32A authorizes health care powers of attorney and was enacted in 1991. Any person having understanding and capacity to make and communicate health care decisions (the principal) who is at least 18 years old, may execute a health care power of attorney. Any competent person who is not engaged in providing health care to the principal for remuneration and who is at least 18 years old may act as a health care agent. Health care is any "care, treatment, service, or procedure to maintain, diagnose, treat, or provide for the principal's physical or mental health or personal care and comfort including life-prolonging measures."

The principal may grant to the health care agent full power and authority to make health care decisions to the same extent that the principal could make those decisions for himself or herself if he or she had capacity to make and communicate health care decisions. This includes the power to authorize withholding or discontinuing life-prolonging measures and the power to authorize the giving or withholding of mental health treatment. A health care power of attorney may contain, and the authority of the health care agent is subject to, any specific limitations or restrictions the principal deems appropriate.

To be valid a health care power of attorney must be signed in the presence of two qualified witnesses and notarized. A qualified witness is must be present for the execution of the document by the principal and must meet all of the following criteria:

- 1. Believe the principal to be of sound mind.
- 2. States that the witness:
  - Is not related within the third degree to the principal or the principal's spouse.

O. Walker Reagan Director



Research Division (919) 733-2578

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- Does not know nor have a reasonable expectation that he or she would be entitled to any portion of the estate of the principal upon the principal's death under any existing will or codicil.
- > Is not the attending physician or mental health treatment provider of the principal.
- Is not a licensed health care provider who is a paid employee of the attending physician or mental health treatment provider.
- Is not a paid employee of a health facility in which the principal is a patient.
- Is not a paid employee of a nursing home or any adult care home in which the principal resides.
- > Does not have a claim against any portion of the estate of the principal at the time of the principal's execution of the health care power of attorney.

The notary who takes the acknowledgement may be, but is not required to be, any of the following:

- 1. A paid employee of the attending physician or mental health treatment provider.
- 2. A paid employee of a health facility in which the principal is a patient.
- 3. A paid employee of a nursing home or any adult care home in which the principal resides.

A health care power of attorney may be revoked by the principal at any time, so long as the principal is capable of making and communicating health care decisions.

#### **Advance Health Care Directives**

Article 23 of Chapter 90 authorizes "Living Wills" and was enacted in 1979. An individual may express, through a declaration, a desire that the person's life not be prolonged by life-prolonging measures. The declaration must be signed by the declarant in the presence of two witnesses who meet all of the following criteria:

- 1. Believe the declarant to be of sound mind.
- 2. State that the witness:
  - > Is not related within the third degree to the declarant or to the declarant's spouse.
  - Does not know or have a reasonable expectation that they would be entitled to any portion of the estate of the declarant upon the declarant's death under any will of the declarant or codicil.
  - Is not the attending physician.
  - Is not a licensed health care provider who is a paid employee of the attending physician.
  - Is not a paid employee of a health facility in which the declarant is a patient.
  - Is not a paid employee of a nursing home or any adult care home in which the declarant resides.
  - Does not have a claim against any portion of the estate of the declarant at the time of the declaration.

The declaration must also be proved before a clerk or assistant clerk of superior court, or a notary public. The notary who takes the acknowledgement may be, but is not required to be, any of the following:

- 1. A paid employee of the attending physician.
- 2. A paid employee of a health facility in which the declarant is a patient.
- 3. A paid employee of a nursing home or any adult care home in which the declarant resides.

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A declaration may be revoked by the declarant, in writing or in any manner by which the declarant is able to communicate the declarant's intent to revoke in a clear and consistent manner, without regard to the declarant's mental or physical condition.

When a person has executed both a Health Care Power of Attorney and a Living Will, the terms of the Living Will control over the health care agent designation in most instances. A health care agent may not revoke a declaration unless the health care power of attorney explicitly authorizes that revocation. A court appointed guardian may not revoke a declaration.

#### Advance Instruction for Mental Health Treatment.

Part 2 of Article 3 of Chapter 122C authorizes an instruction for mental health treatment and was enacted in 1997. An individual, of sound mind and not under duress, may make an "advance instruction for mental health treatment" or "advance instruction," where the individual (the principal) makes a declaration of instructions, information, and preferences regarding the principal's mental health treatment and states that the principal is aware that the advance instruction authorizes a mental health treatment provider to act according to the instruction. The principal may also state instructions as to consent to or refusal of mental health treatment when the principal is incapable.

The advance must be signed in the presence of two qualified witnesses who believe the principal to be of sound mind at the time of the signing, and acknowledged before a notary public. The qualified witnesses are to:

- 1. Affirm that the principal is personally known to the witness.
- 2. That the principal signed or acknowledged the principal's signature on the advance instruction in the presence of the witness.
- 3. That the witness believes the principal to be of sound mind and not to be under duress, fraud, or undue influence.
- 4. That the witness is not any of the following:
  - Related within the third degree to the principal or to the principal's spouse.
  - > The attending physician or mental health service provider or an employee of the physician or mental health treatment provider.
  - An owner, operator, or employee of an owner or operator of a health care facility in which the principal is a patient or resident.

**BILL ANALYSIS:** The pcs would change the validation needed for a health care power of attorney and advance directive/"living will" from two qualified witnesses and a notary to two qualified witnesses OR a notary.

The pcs would not impact the validation needed for an advance directive on mental health treatment under Part 2 of Article 3 of Chapter 122C or organ donation. However, as a health care power of attorney may address mental health treatment, it would be possible for an individual to execute a health care power of attorney to address those wishes.

**EFFECTIVE DATE:** October 1, 2015, and applies to directives executed on or after that date.

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|   | Date: 3-18-15                            |
|---|--|
| Bill Number <u>H13</u> 0                                    |  |
| PCS H130 - CSST   | - 6 [V. 1]                               |
| PCS $H130 - CSST$<br>Motion to be before the committee by _ | arp                                      |
|   | explained the bill.                      |
| Discussion on the Bill YES or NO                            | )  |
| Rep_Hward   | motioned for:                            |
| Favorable Report  | Adoption                                 |
| Unfavorable Report  | Unfavorable to original bill, fav to PCS |
| No vote   |  |
| Amendments: :   |  |
|   |  |
| Serial referral to:   |  |
|   |  |
| Speakers:   |  |
|   |  |
| Handouts:   |  |

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| Date: 3-18-15   |
|---|
| Bill Number <u>H146</u><br>PCS <u>H146</u> - CSST - 7 [V, 2]  |
| Motion to be before the committee by  |
| Rep Lambeth explained the bill.  Discussion on the Bill YES or NO McWell - does not charge what a qualified |
| Rep_Carboal Howard motioned for:  |
| Favorable Report Adoption   |
| Unfavorable ReportUnfavorable to original bill, fav to PCS  |
| No vote   |
| Amendments: :   |
| Serial referral to:   |
| Speakers: Charmains Juller Cooper - AARP  Concerns  Handouts: Complaints or hand and  abruse to elders.     |
| (2) Tambeth - no insterce of parage   |
| 3 Deborah Love - Novant Heatel  support  Allel  |

# NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

## JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

#### FAVORABLE COM SUB, UNFAVORABLE ORIGINAL BILL

HB 130 Davie County/Food for Detention Facilities.

Draft Number: H130-PCS20106-ST-6

Serial Referral: None
Recommended Referral: None
Long Title Amended: Yes
Floor Manager: Howard

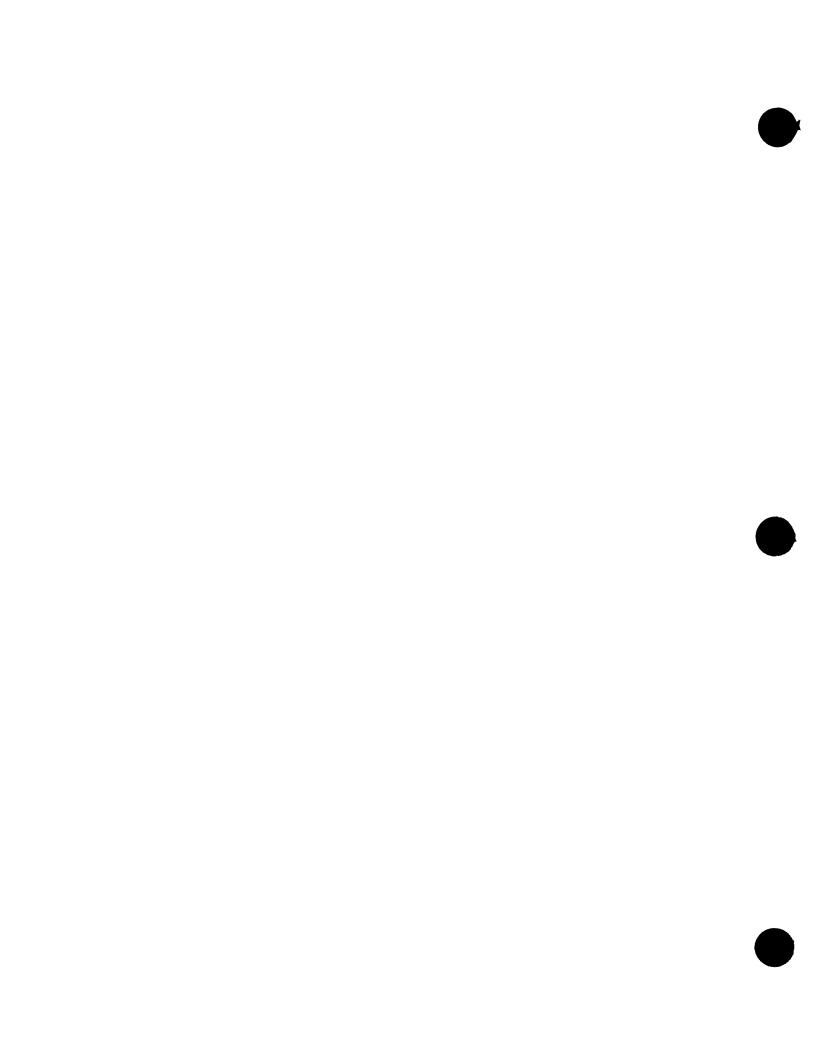
HB 146 Amend Advance Health Care Directives Laws.

Draft Number: H146-PCS20107-ST-7

Serial Referral: None
Recommended Referral: None
Long Title Amended: No
Floor Manager: Lambeth

**TOTAL REPORTED: 2** 





Wednesday, March 18 JUDICIARY I **Room** 415

Time 12:30 pm

Name County Sponsor

Bryson Hill Bruswick Frank Iler

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| •                  | Committee Sergeants at Arms                   |
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|                    | Indicately I                                  |
|                    | House Committee on Appropriations; Subcommitt |
| NAME OF COMMITT    | TEE on Justice and Public Safety              |
| DATE: 3/18         | Room: LOB 415                                 |
|                    | House Sgt-At Arms:                            |
| 1. Name: Barry Mo  | oore  |
| 2. Name: BH Powell |   |
| Name: David Li     | nthicum                                       |
| f. Name:           |   |
| 5. Name:           | •   |
|                    | Pages<br>Services                             |
| Name: Bryson       | Hill- Brunswick Counti                        |
| Name:              |   |
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## VISITOR REGISTRATION SHEET

House J-1

18 March 2015

House Committee on Children, Youth, and Families
Name of Committee

-12 March 2015

Date

# VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME                   | FIRM OR AGENCY AND ADDRESS   |  |  |
|------------------------|--|--|--|
| PAUL BONEY             | LS3P 2528 INDEPONDENCE BLVD.<br>WILMINGTON NC 28412  |  |  |
| Lennika Carpain        | NCMS   |  |  |
| Chy BSSA               | NCM5   |  |  |
| Sleborah Love          | novant Health 2085 Prontis Plaza Blvd, Winston. Salam<br>nc Partnership for Compassionate Care 27103 |  |  |
| Joanna Spinill         | . NCAFP  |  |  |
| JEFF GARNHART          | Mwc  |  |  |
| Mulhor 5               | US   |  |  |
| Marsha Vantecke        | The Cayalinas Clarker for Hospice & EOL Care 1203 SE Maynard, Cary 27511                             |  |  |
| Mary Bether            | AARP NC  |  |  |
| harmaine Fuller Cooper | AARP NC  |  |  |
| Gully seconome         | NCALA  |  |  |

• • House 5-1

## VISITOR REGISTRATION SHEET

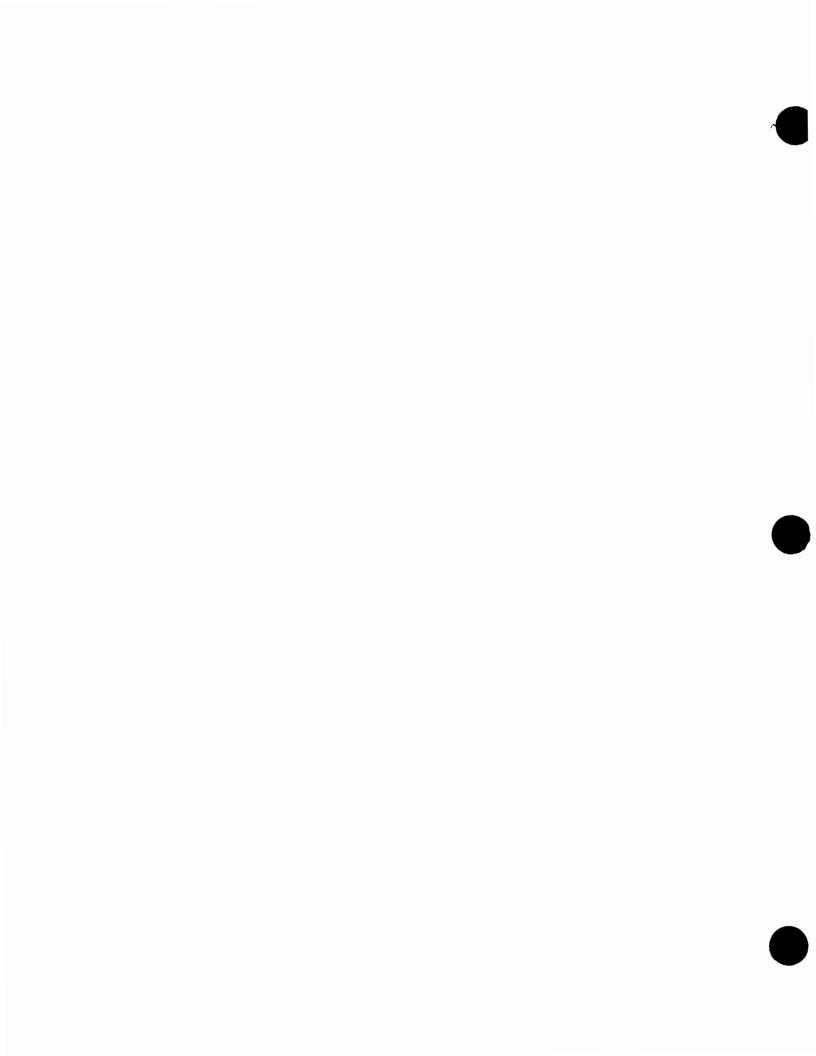
18 March 2015 12 March 2015

House Committee on Children, Youth, and Families
Name of Committee

Date

## VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME       | FIRM OR AGENCY AND ADDRESS |  |  |
|------------|----------------------------|--|--|
| Lori Kroll | Novant Health              | raso vinanti vina, pobleco vinanti pai obili |  |
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## Jan Copeland (Rep. Leo Daughtry)

Jan Copeland (Rep. Leo Daughtry) rom:

Monday, March 23, 2015 10:20 AM nt:

Rep. Becky Carney; Rep. Pricey Harrison; Rep. Kelly M. Alexander; Rep. Carla To:

Cunningham

Beth LeGrande (Rep. Becky Carney); Sue Osborne (Rep. Pricey Harrison); Marjorie H. Cc:

Conner (Rep. Kelly Alexander); Sherrie Burnette (Rep. Carla Cunningham)

Subject: < NCGA > House Judiciary I Committee Meeting Notice for Wednesday, March 25, 2015

at 12:30 PM - CORRECTED #1

Add Meeting to Calendar\_LINC\_.ics Attachments:

Corrected #1: Date Change

## NORTH CAROLINA HOUSE OF REPRESENTATIVES **COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION** 2015-2016 SESSION

ou are hereby notified that the House Committee on Judiciary I will meet as follows:

DAY & DATE: Wednesday, March 25, 2015

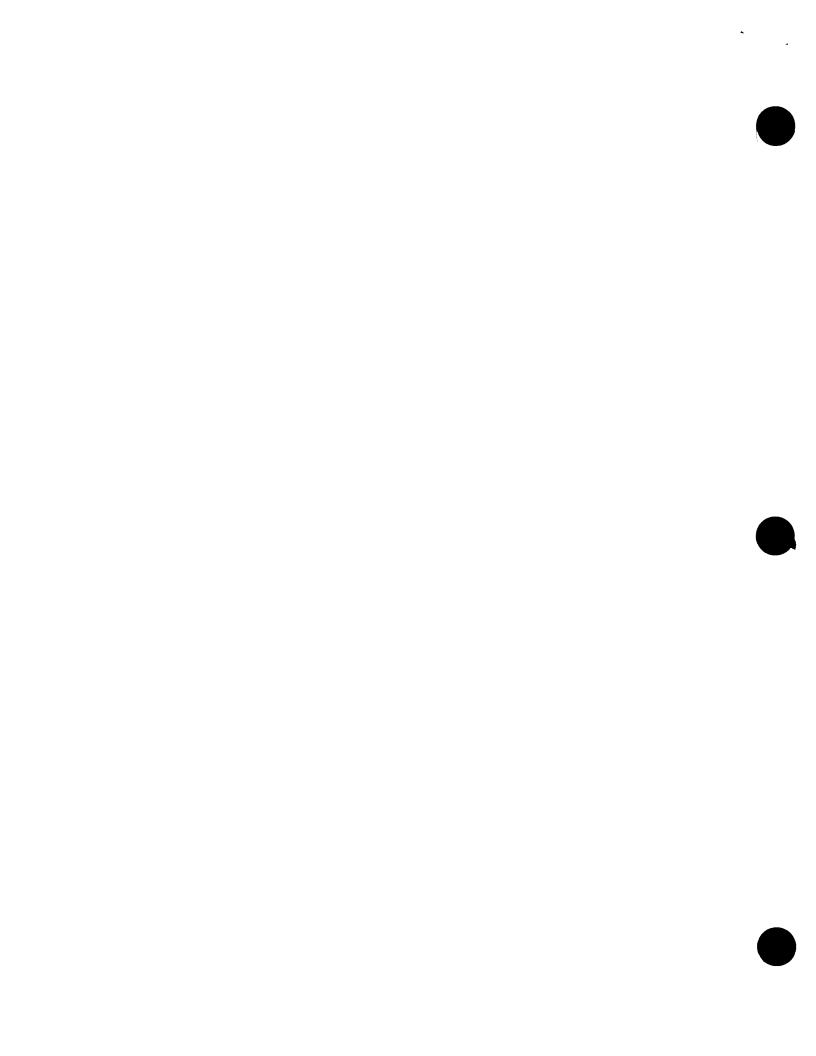
TIME: 12:30 PM LOCATION: **415 LOB** 

The following bills will be considered:

BILL NO. **SHORT TITLE SPONSOR** 

**HB 78** Enact Medical Cannabis Act. Representative Alexander Representative Carney

> Representative Harrison Representative Cunningham



Respectfully,

Representative N. Leo Daughtry, Chair

| hereby certify this notice was filed by the committee assistant at the following offices at 10:18 AM Monday, March 23, 2015. | l on |
|--|------|
| Principal Clerk Reading Clerk – House Chamber  |      |
| (an Copeland (Committee Assistant)   |      |

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# House Committee on Judiciary I Wednesday, March 25, 2015, 12:30 PM 415 Legislative Office Building

### **AGENDA**

Welcome and Opening Remarks

**Introduction of Pages** 

**Bills** 

**BILL NO. SHORT TITLE** 

HB 78 Enact Medical Cannabis Act.

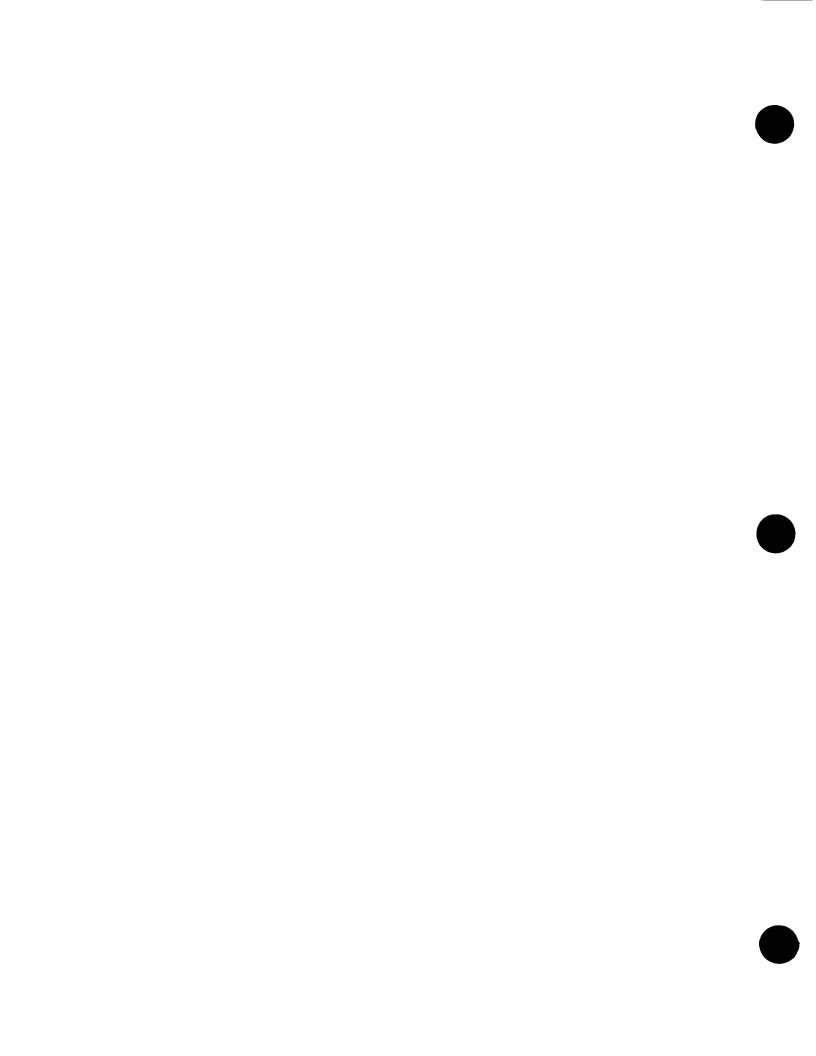
**SPONSOR** 

Representative Alexander Representative Carney Representative Harrison Representative Cunningham

**Presentations** 

**Other Business** 

Adjournment



### House Committee on Judiciary I Wednesday, March 25, 2015 at 12:30 p.m. Room 415 LOB

#### **MINUTES**

The House Committee on Judiciary I met at 12:30 p.m. on March 25, 2015 in Room 415. Representatives Arp, Burr, Daughtry, Hardister, Howard, Jackson, Martin, McNeill, Robinson, and Steinburg attended.

Representative Daughtry presided. Representative Daughtry called the meeting to order @ 12:31 p.m.

Erika Churchill explained the H78 (Enact Medical Cannabis).

HB 78 (Enact Medical Cannabis Act) was heard.

The bill was discussed for 50 minutes, hearing advocates for and against.

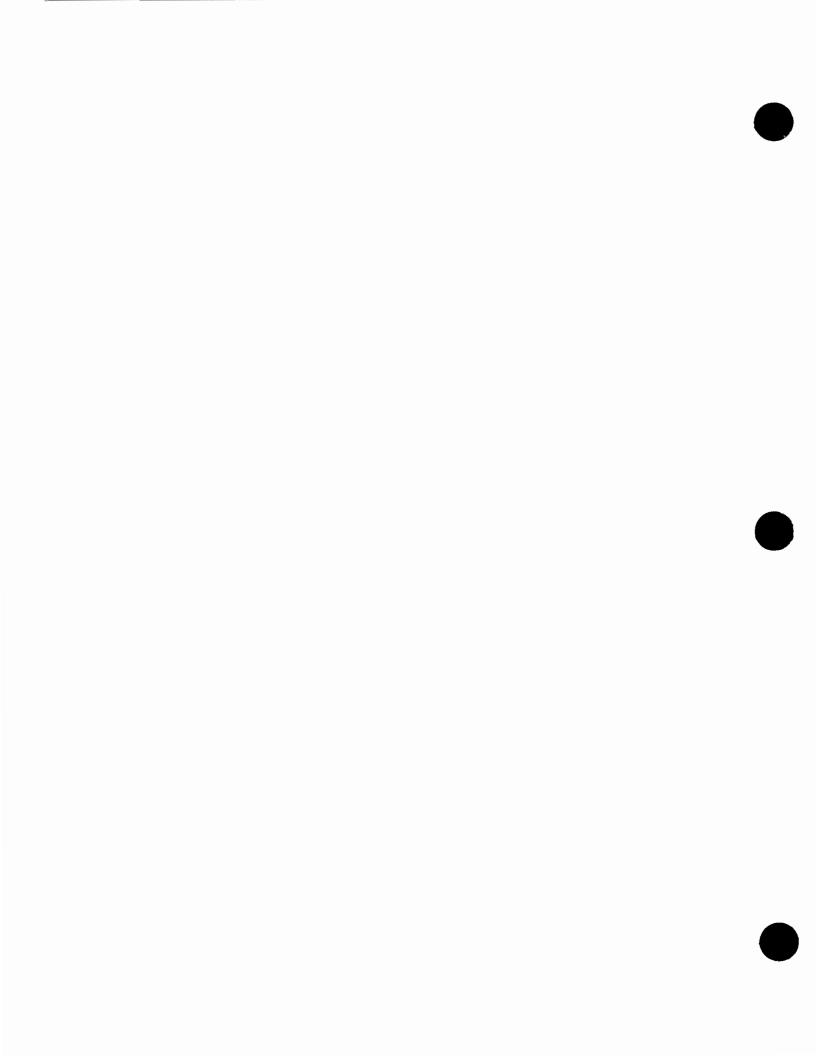
The bill was voted unfavorable.

The meeting adjourned at 1:32 p.m..

Rep. Leo Daughtry

Presiding

Jan Copeland, Committee Clerk



## GENERAL ASSEMBLY OF NORTH CAROLINA **SESSION 2015**

**HOUSE BILL 78** 

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(Public) Short Title: Enact Medical Cannabis Act. Representatives Alexander, Carney, Harrison, and Cunningham (Primary Sponsors: Sponsors). For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site. Referred to: Judiciary I, if favorable, Health, if favorable, Regulatory Reform.

|    | February 16, 2015  |
|----|--|
| 1  | A BILL TO BE ENTITLED  |
| 2  | AN ACT TO ENACT THE NORTH CAROLINA MEDICAL CANNABIS ACT.                             |
| 3  | The General Assembly of North Carolina enacts:                                       |
| 4  | SECTION 1. Chapter 90 of the General Statutes is amended by adding a new             |
| 5  | Article to read:   |
| 6  | "Article 43.   |
| 7  | "North Carolina Medical Cannabis Act.  |
| 8  | "§ 90-730. Short title.  |
| 9  | This Article shall be known and may be cited as the "North Carolina Medical Cannabis |
| 10 | Act."  |
| 11 | "§ 90-730.1. Legislative findings and purpose.                                       |
| 12 | The General Assembly makes the following findings:                                   |
| 13 | (1) Modern medical research has discovered beneficial uses for cannabis in           |

- (1)
  - treating or alleviating pain, nausea, and other symptoms associated with certain debilitating medical conditions, as found by the National Academy of Sciences' Institute of Medicine in March 1999.
  - According to the United States Sentencing Commission and the Federal **(2)** Bureau of Investigation, 99 out of every 100 cannabis arrests in the United States are made under State law, rather than under federal law. Consequently, changing State law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use cannabis.
  - (3)The United States Department of Health and Human Services, through the Compassionate Investigational New Drug (IND) program, provides cannabis by prescription to a number of individuals for their use as medicine. The cannabis is grown at the federal cannabis research garden at the University of Mississippi and is processed and distributed by the Research Triangle Institute in Research Triangle Park, North Carolina. The patients receive the cannabis monthly in canisters of approximately 300 prerolled cigarettes. The dosage for patients in the IND program ranges from seven to nine grams per day. Since the inception of the program in 1978, individual patients in the IND program have received and consumed approximately 6.5 pounds of cannabis per year, thereby establishing a safe and effective dosage for a



The following definitions apply in this Article:

"Adequate supply" has the following meanings: (1)

> An amount of usable cannabis derived solely from an intrastate <u>a.</u> source that is possessed by a qualified patient, or collectively possessed by a qualified patient and the qualified patient's designated caregiver, in an amount that does not exceed what is reasonably necessary to assure the uninterrupted availability of cannabis for a period of three months, in any form recommended by the qualified patient's physician for the purpose of alleviating the symptoms or effects of the qualified patient's debilitating medical condition.

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b. For a qualified patient for whom a delivery method of inhalation of cannabis vapor or smoking is recommended by the qualified patient's physician, "adequate supply" means not more than 24 ounces of cannabis in a form usable for that purpose. The term also includes a garden cultivated by the qualified patient or the qualified patient's designated caregiver of not more than 250 feet of total garden canopy of mature female cannabis plants, measured by the combined vegetative growth area, excluding any garden space devoted to cannabis plants that are not mature and female but which are cultivated for the purpose of maintaining the largest and most productive canopy of mature female cannabis plants allowed by this Article.

c. For a qualified patient for whom a delivery method other than inhalation of cannabis vapor or smoking has been recommended by the patient's physician, "adequate supply" means a garden of cannabis cultivated by the qualified patient or the qualified patient's designated caregiver of a size reasonably necessary to assure the uninterrupted availability of cannabis for a period of three months, in a form recommended by the qualified patient's physician, for the purpose of alleviating the symptoms or effects of the qualified patient's debilitating medical condition.

"Bona fide physician-patient relationship" means a physician and a patient have a treatment or counseling relationship in which the physician has completed a full assessment of the patient's medical history and current medical condition, including an appropriate physical examination; and the physician is available or offers to provide follow-up care and treatment to the patient, including patient examinations, to determine the efficacy of the use of medical cannabis as a treatment for the patient's medical condition.

(3) "Cannabis" means marijuana as defined in G.S. 90-87(16).

(4) "Cannabis-infused product" means a product infused with cannabis that is intended for use or consumption other than by inhalation, smoking, or otherwise. The term includes edible products, ointments, and tinctures.

(5) "Canopy" means the foliage of growing plants.

(6) "Canopy cover" means the area shaded by the foliage of growing plants.

(7) "Debilitating medical condition" means any of the following:

a. Cancer, gliomas, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), hepatitis C, porphyria, amyotrophic lateral sclerosis (Lou Gehrig's disease or ALS), Alzheimer's disease, nail-patella syndrome, fibromyalgia, severe migraines, multiple sclerosis, celiac disease, Crohn's disease, diabetes mellitus, dystonia, gastrointestinal disorders, hypertension, incontinence, injury or disease to the spinal cord, spinal column, or vertebra, methicillin-resistant Staphylococcus aureus (MRSA), myelomalacia, osteoporosis, pruritus, rheumatoid arthritis, sleep apnea, Tourette's syndrome, or the treatment of such conditions.

b. A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe pain; severe nausea; anorexia; seizures, including those characteristic of epilepsy; or severe and persistent muscle spasms, including those characteristic of multiple sclerosis (MS).

physician-patient relationship indicating that, in the physician's professional opinion, the patient has a debilitating medical condition and the potential health benefits of the medical use of cannabis would likely outweigh the health risks for the patient.

"§ 90-730.3. Protections for the medical use of cannabis.

- (a) A qualified patient shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the possession or purchase of cannabis for medical use by the qualified patient if the quantity of usable cannabis possessed or purchased does not exceed an adequate supply, as determined by the qualified patient's physician.
- (b) A designated caregiver shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including imposition of a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the possession or purchase of cannabis for medical use by the qualified patient if the quantity of cannabis possessed or purchased does not exceed an adequate supply for the qualified patient, as determined by the qualified patient's physician.
- (c) If usable cannabis is infused or added as an ingredient to food, salve, tincture, or any other preparation to be consumed or used by a qualified patient, the weight of the other ingredients that are not usable cannabis shall not be included for the purpose of determining whether a qualified patient is in possession of an amount of cannabis that exceeds the qualified patient's adequate supply.
- (d) Subsection (a) of this section does not apply to a qualified patient under 18 years of age, unless all of the following criteria are met:
  - (1) The qualified patient's physician has explained the potential risks and benefits of the medical use of cannabis to the qualified patient and to a parent, guardian, or person having legal custody of the qualified patient.
  - A parent, guardian, or person having legal custody of the qualified patient consents in writing to (i) allow the qualified patient's medical use of cannabis, (ii) serve as the qualified patient's designated caregiver, and (iii) control the dosage and frequency of the medical use of cannabis by the qualified patient.
- (e) A qualified patient or a designated caregiver shall be granted the full legal protections provided in this section as long as the qualified patient or designated caregiver is in possession of a registry identification card. If the qualified patient or designated caregiver is not in possession of a registry identification card, the individual shall be given an opportunity to produce the registry identification card before the initiation of any arrest, criminal charges, or other penalties.
- (f) A qualified patient or a designated caregiver is presumed to be engaged in the medical use of cannabis if the qualified patient or designated caregiver is in possession of a registry identification card and an amount of cannabis that does not exceed the qualified patient's adequate supply. This presumption may be rebutted only by evidence that the qualified patient or designated caregiver engaged in conduct related to cannabis for a purpose other than alleviating the qualified patient's debilitating medical condition or symptoms associated with the debilitating medical condition.
- (g) A designated caregiver may receive reimbursement for costs associated with assisting a qualified patient in the medical use of cannabis. Reimbursement for these costs does not constitute the sale of a controlled substance under Article 5 of Chapter 90 of the General Statutes.
- (h) A school, employer, or landlord shall not refuse to enroll, employ, lease, or otherwise penalize a qualified patient or a designated caregiver solely because of (i) the

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individual's status as a qualified patient or a designated caregiver or (ii) the presence of cannabis metabolites in the individual's bodily fluids.

- (i) For the purposes of medical care, including organ transplants, a qualified patient's authorized use of cannabis in accordance with this Article shall be treated in the same manner as the authorized use of any other medication used at the direction of a physician and shall not constitute the use of an illegal substance.
- (j) A licensed producer of medical cannabis shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, or subject to disciplinary action by a business or occupational or professional licensing board or bureau for producing, possessing, distributing, or dispensing cannabis in a manner consistent with this Article.
- (k) A physician shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, or subject to increased monitoring or disciplinary action by the North Carolina Medical Board or any other business or occupational or professional licensing board or bureau for either of the following:
  - (1) Advising a patient about the risks and benefits of the medical use of cannabis or that the patient may benefit from the medical use of cannabis if, in the physician's medical judgment, the potential benefits of the medical use of cannabis would likely outweigh the health risks for that particular patient.
  - Providing a patient with valid documentation, based upon the physician's assessment of the patient's medical history and current medical condition, that the potential benefits of the medical use of cannabis would likely outweigh the health risks for that particular patient.
- (l) A physician shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, or subject to disciplinary action by a business or occupational or professional licensing board or bureau for discussing with a patient the benefits or health risks of the medical use of cannabis or the interaction of cannabis with other substances.
- State and local law enforcement officers shall not harm, neglect, injure, or destroy (m) an individual's interest in or right to property that is possessed, owned, or used in connection with the medical use of cannabis, or acts incidental to the medical use of cannabis, while the property is in the possession of State or local law enforcement officials as a result of a seizure of the property in connection with the claimed medical use of cannabis. A person does not forfeit any right or interest in property seized in connection with the medical use of cannabis under any provision of State law providing for the forfeiture of property, unless the forfeiture is part of a sentence imposed upon the person as a result of a conviction of a criminal violation of this Article or entry of a plea of guilty to such violation. Cannabis, paraphernalia, or other property seized from a qualified patient, designated caregiver, or licensed producer of medical cannabis in connection with the claimed medical use or production for medical use of cannabis shall be returned immediately upon the determination by a court, prosecutor, or law enforcement officer that the qualified patient, designated caregiver, or licensed producer of medical cannabis is entitled to the protections of this Article. In making this determination, the court, a prosecutor, or a law enforcement officer shall consider as evidence the failure of law enforcement officers to actively investigate the case, a decision not to prosecute, the dismissal of charges, or acquittal.
- (n) A person shall not be denied custody of, or visitation or parenting time with, a minor for conduct allowed under this Article.
- (o) There is no presumption of neglect or child endangerment for conduct allowed under this Article.
- (p) No person shall be subject to arrest or prosecution for constructive possession, conspiracy, aiding and abetting, being an accessory, or any other offense, for simply being in the presence or vicinity of the medical use of cannabis as permitted under this Article or for assisting a qualified patient with using or administering cannabis.

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Possession of or application for a registry identification card shall not alone constitute probable cause to search the person or the property of the person possessing or applying for a registry identification card or otherwise subject the person or the person's property to inspection by any government agency.

If an individual being investigated by a law enforcement officer employed by a State-funded or locally funded law enforcement agency credibly asserts during the course of the investigation that the individual is a qualified patient or designated caregiver, neither the law enforcement officer nor the law enforcement agency shall provide any information, except as required by federal law or the United States Constitution, from any cannabis-related investigation of the individual to any law enforcement authority that does not recognize the protections of this Article. Any prosecution of the individual for a violation of this Article shall be conducted pursuant to the laws of this State.

Cannabis produced and possessed under this Article is exempt from the Unauthorized Substances Tax set forth in Article 2D of Chapter 105 of the General Statutes, and no tax under that Article may be levied against any qualified patient, designated caregiver, licensed medical cannabis center, licensed producer of medical cannabis, or licensed producer of cannabis-infused products operating in accordance with this Article.

Nothing in this Article shall be construed to extend the protections of this Article to any person, including a qualified patient, designated caregiver, or producer, to allow that person to acquire, possess, manufacture, produce, use, sell, distribute, dispense, or transport cannabis in a manner that is not consistent with this Article.

"
§ 90-730.4. Prohibitions, restrictions, and limitations on medical use of cannabis.

This Article does not permit any person to do any of the following: (a)

- Operate, navigate, or be in actual physical control of any motor vehicle, (1)aircraft, or motorboat while impaired by cannabis. However, a qualified patient shall not be considered impaired solely due to the presence of cannabis metabolites in the individual's system.
- Undertake any task under the influence of cannabis, when doing so would (2) constitute negligence or professional malpractice.
- Smoke cannabis in a school bus or other form of public transportation, on (3)any school grounds, in any correctional facility, or in any public place in this State.
- A person who commits an act prohibited by subsection (a) of this section is subject to all penalties provided by law.

Nothing in this Article shall be construed to require any of the following: (c)

- A government-sponsored medical assistance program or private health (1)insurer to reimburse a person for costs associated with the medical use of cannabis.
- An employer to accommodate the medical use of cannabis in any workplace.
- Fraudulent representation to a law enforcement official of any fact or circumstance (d) relating to the medical use of cannabis to avoid arrest or prosecution is a Class 2 misdemeanor punishable by a fine of five hundred dollars (\$500.00) in addition to any other applicable penalties for making a false statement about the medical use of cannabis.
- A licensed producer of medical cannabis that sells, distributes, dispenses, or transfers cannabis to an individual other than a registry identification cardholder or to a person other than a person licensed pursuant to G.S. 90-730.6, or obtains or transports cannabis outside of North Carolina in violation of federal law, is subject to arrest, prosecution, and civil or criminal penalties pursuant to State law.
- Nothing in this Article shall be construed as a waiver of sovereign immunity by the (f)
- "
  § 90-730.5. Registry identification cards for qualified patients and designated caregivers.

- (a) As used in this section, "Department" means the North Carolina Department of Health and Human Services.
- (b) The Department shall issue a registry identification card to any qualified patient or designated caregiver who meets the requirements of this section.
- (c) The Department shall not issue or renew a registry identification card to a qualified patient under 18 years of age unless each of the following criteria is met:
  - (1) The qualified patient's physician has explained the potential risks and benefits of the medical use of cannabis to the qualified patient and to a parent, guardian, or person having legal custody of the qualified patient.
  - A parent, guardian, or person having legal custody of the qualified patient consents in writing to (i) allow the qualified patient's medical use of cannabis, (ii) serve as one of the qualified patient's designated caregivers, and (iii) control the acquisition of the cannabis, the dosage, and the frequency of the medical use of cannabis by the qualified patient.
- (d) The Department shall verify the information contained in a registry identification card application or renewal application submitted pursuant to this section and shall approve or deny an application or renewal application within 45 days after receipt. The Department may deny a registry identification card application or renewal application only if the applicant fails to provide the information required pursuant to this section or if the Department determines that the application or renewal application contains false information. If the Department fails to approve or deny a registration application or renewal application submitted pursuant to this section within 45 days after receipt, the application or renewal application shall be deemed approved, and a copy of the application or renewal application together with proof of receipt by the Department at least 45 days prior to the date this information is presented in lieu of a registry identification card shall be deemed a valid registry identification card.
- (e) The Department may issue a registry identification card to a maximum of two designated caregivers named in a qualified patient's approved application.
- (f) The Department shall issue a registry identification card to an applicant within five days after approving an application or renewal. The application or renewal expires two years after the date of issuance.
- (g) Each registry identification card shall contain at least all of the following information:
  - (1) The date of issuance.
  - (2) The date of expiration.
  - (3) A random registry identification number.
  - (4) A photograph of the registry identification cardholder.
  - (h) Persons issued registry identification cards shall be subject to the following:
    - A qualified patient who has been issued a registry identification card shall notify the Department of any change in the qualified patient's name, address, or designated caregiver and submit a ten-dollar (\$10.00) fee to the Department within 15 days after the change occurs. A qualified patient who fails to notify the Department of any of these changes within the specified time frame commits an infraction and is subject to a fine not to exceed more than one hundred fifty dollars (\$150.00).
    - A designated caregiver shall notify the Department of any change in name or address and submit a ten-dollar (\$10.00) fee to the Department within 15 days after the change occurs. A designated caregiver who fails to notify the Department of any of these changes within the specified time frame commits an infraction and is subject to a fine not to exceed one hundred fifty dollars (\$150.00).

- When a qualified patient or designated caregiver notifies the Department of any change, as required by this subsection, the Department shall issue the qualified patient and each designated caregiver a new registry identification card within 10 days after receiving the updated information and the ten-dollar (\$10.00) fee.
- When a qualified patient who possesses a registry identification card notifies the Department of a change in designated caregiver, the Department shall notify the designated caregiver of record of the change within 15 days after receiving notification of the change. The protections afforded under this Article to the designated caregiver of record shall expire 30 days after the designated caregiver of record is notified by the Department of the change in designated caregiver.
- (5) If a qualified patient or a designated caregiver loses a registry identification card, the cardholder shall notify the Department within 15 days after losing the card. The notification shall include a ten-dollar (\$10.00) replacement fee for a new card. Within five days after receiving notification of a lost registry identification card, the Department shall issue the cardholder a new registry identification card with a new random identification number.
- (i) If the Department determines that a qualified patient or designated caregiver has willfully violated any provision of this Article, the Department may suspend or revoke the qualified patient's or designated caregiver's registry identification card.
- (j) Applications and supporting information submitted by qualified patients, including information regarding their designated caregivers and physicians, are confidential and protected under the federal Health Insurance Portability and Accountability Act of 1996.
- (k) The Department shall maintain a confidential list of the persons to whom the Department has issued registry identification cards. Individual names and other identifying information on the list shall be confidential, exempt from the provisions of Chapter 132 of the General Statutes, and not subject to disclosure, except to authorized employees of the Department as necessary to perform official duties of the Department.
- (I) The Department shall verify to law enforcement personnel whether a registry identification card is valid solely by confirming the validity of the random registry identification number and the name of the person to whom the Department has assigned the random registry identification number.
- (m) Any person, including an employee or official of the Department or another State agency or local government, who breaches the confidentiality of information obtained pursuant to this section is guilty of a Class 1 misdemeanor; however, any fine imposed for a violation under this subsection shall not exceed one thousand dollars (\$1,000).
- (n) Nothing in this section shall be construed to prevent Department employees from notifying law enforcement officers about falsified or fraudulent information submitted to the Department by any individual in support of an application for a registry identification card.
- (o) Article 4 of Chapter 150B of the General Statutes governs judicial review of an administrative decision made under this section.

### "§ 90-730.6. Regulated medical cannabis supply system.

- (a) As used in this section, "Department" means the North Carolina Department of Agriculture and Consumer Services.
- (b) Not later than 120 days after the effective date of this act, the Department shall establish a medical cannabis supply system that (i) provides a safe, regulated supply of quality medical cannabis for use by qualified patients who hold valid registry identification cards and (ii) generates sufficient revenue for the Department to maintain and operate the system. The Department shall not use any appropriations from the General Fund to establish or operate the system. The system shall be funded by the fees authorized in this section.

| 1        | (c) | Medi       | cal Cannabis Center License. –  |
|----------|-----|------------|---|
| 2        |     | (1)        | No person shall establish or operate a medical cannabis center without first  |
| 3        |     | _          | applying for a license to the Department and submitting the required  |
| 4        |     |            | information on application forms provided by the Department. The  |
| 5        |     |            | application form shall require at least all of the following:   |
| 6        |     |            | a. The applicant's name and any name the applicant will use in the  |
| 7        |     |            | operation of a medical cannabis center.   |
| 8        |     |            | b. The address of any property the applicant will use to possess, deliver,  |
| 9        |     |            | transport, dispense, or distribute cannabis.  |
| 10       |     |            | c. The name, address, and date of birth of each principal officer and   |
| 11       |     |            | board member of the medical cannabis center.  |
| 12       |     |            | d. The name, address, and date of birth of each employee of the medical   |
| 13       |     |            | cannabis center.  |
| 14       |     |            | e. For first-year licensees, a nonrefundable license fee in the amount of   |
| 15       |     |            | five thousand dollars (\$5,000).  |
| 16       |     |            | f. For licensees seeking license renewal, a nonrefundable renewal fee in  |
| 17       |     |            | an amount not less than five thousand dollars (\$5,000), as specified   |
| 18       |     |            | in rules adopted pursuant to subsection (s) of this section.  |
| 19       |     |            | g. Proof of North Carolina residency for each principal officer, board  |
| 20       |     |            | member, and employee of the medical cannabis center.  |
| 21       |     |            | <u>h.</u> Any other information the Department considers necessary to ensure  |
| 22       |     |            | compliance with the terms of this Article.  |
| 23       |     | (2)        | Unless suspended or revoked, a medical cannabis center license is valid for a   |
| 24       |     |            | period not to exceed 12 months from the date of issuance.   |
| 25       |     | (3)        | A licensee shall apply for renewal, as necessary, at least 30 days prior to the   |
| 26       |     |            | expiration of a current license.  |
| 27       |     | <u>(4)</u> | No later than 30 days after issuing or renewing a license under this  |
| 28       |     |            | subsection, the Department shall issue a medical cannabis center registry   |
| 29       |     |            | identification card to each director and employee listed on the application or  |
| 30       |     | (5)        | renewal form upon receipt of a ten-dollar (\$10.00) fee per cardholder.   |
| 31       |     | <u>(5)</u> | A licensee shall notify the Department of any change in the information   |
| 32       |     |            | submitted on the license application or renewal form within 30 days after the   |
| 33<br>34 |     | (6)        | <u>change.</u> A medical cannabis center licensee may do all of the following:  |
| 35       |     | <u>(6)</u> |   |
| 36       |     |            | a. Sell cannabis, cannabis-infused products, cannabis plants, cannabis seeds, cultivation equipment, and related supplies and educational |
| 37       |     |            | materials only to registry identification cardholders.  |
| 38       |     |            | b. Contract with a producer to sell live plants on the premises of the  |
| 39       |     |            | medical cannabis center to registry identification cardholders.   |
| 40       |     |            | c. Assist registry identification cardholders with other products and   |
| 41       |     |            | services, including equipment, supplies, and educational materials.   |
| 42       |     | (7)        | A medical cannabis center licensee shall not cultivate cannabis unless  |
| 43       |     | Accounts   | separately licensed as a producer of medical cannabis under subsection (c) of   |
| 44       |     |            | this section.   |
| 45       |     | (8)        | A medical cannabis center licensee and its directors, agents, and employees   |
| 46       |     |            | are exempt from the criminal laws of this State for possession, production,   |
| 47       |     |            | delivery, or transportation of cannabis, or aiding and abetting another in the  |
| 48       |     |            | possession, production, delivery, or transportation of cannabis, or any other   |
| 49       |     |            | criminal offense in which possession, production, delivery, or transportation   |
| 50       |     |            | of cannabis is an element if the medical cannabis center and the directors,   |
| 51       |     |            | agents, and employees of the medical cannabis center are in substantial   |

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| 1        |            |            | compliance with this section and the applicable rules adopted by the   |
|----------|------------|------------|--|
| 2        |            |            | Department for regulating medical cannabis centers.  |
| 3        |            | (9)        | The records of a licensed medical cannabis center are subject to the same  |
| 4        |            |            | restrictions imposed on pharmacy records pursuant to G.S. 90-85.36   |
| 5        |            |            | G.S. 90-85.36 shall apply to each medical cannabis center as if it were a  |
| 6        |            |            | pharmacy regulated under Article 4A of Chapter 90 of the General Statutes.   |
| 7        | (d)        | Produ      | ucer of Medical Cannabis License. –  |
| 8        |            | (1)        | No person shall cultivate cannabis for sale to a licensed medical cannabis   |
| 9        |            |            | center without first applying for a license to the Department and submitting   |
| 10       |            |            | the required information on application forms provided by the Department   |
| 11       |            |            | The application form shall require at least all of the following:  |
| 12       |            |            | a. The name of the person responsible for the medical cannabis   |
| 13       |            |            | production site and the name of each individual employed by that   |
| 14       |            |            | person.  |
| 15       |            |            | b. The address of each property, location, or premises used or proposed  |
| 16       |            |            | for use by the producer to produce cannabis.   |
| 17       |            |            | c. The name, address, and date of birth of each principal officer and  |
| 18       |            |            | board member of the producer.  |
| 19       |            |            | d. The name, address, and date of birth of each employee of the  |
| 20       |            |            | producer.  |
| 21       |            |            | e. For first-year licensees, a nonrefundable license fee in the amount of  |
| 22       |            |            | five thousand dollars (\$5,000).   |
| 23       |            |            | f. For licensees seeking license renewal, a nonrefundable renewal fee in   |
| 24       |            |            | an amount not less than five thousand dollars (\$5,000), as specified  |
| 25       |            |            | in the rules adopted pursuant to subsection (s) of this section.   |
| 26       |            |            | g. Proof of North Carolina residency for each producer of medica   |
| 27<br>28 |            |            | <ul><li>cannabis and each employee of the producer.</li><li>h. Proof that the producer of medical cannabis and each of the</li></ul> |
| 29       |            |            | h. Proof that the producer of medical cannabis and each of the producer's employees has attained the age of 21 years.                |
| 30       |            |            | <ul> <li>i. Any other information the Department considers necessary to ensure</li> </ul>  |
| 31       |            |            | compliance with this Article.  |
| 32       |            | <u>(2)</u> | Unless suspended or revoked, a producer of medical cannabis license is valid   |
| 33       |            | (2)        | for a period not to exceed 12 months from the date of issuance.  |
| 34       |            | (3)        | A licensee shall notify the Department of any change in the information  |
| 35       |            | 121        | submitted on the application form within 30 days after the change.   |
| 36       |            | <u>(4)</u> | A licensee shall apply for renewal, as necessary, at least 30 days prior to the  |
| 37       |            | 1.17       | expiration of a current license.   |
| 38       |            | (5)        | Not later than 30 days after issuing or renewing a producer of medica  |
| 39       |            | Summer     | cannabis license, the Department shall issue a producer of medical cannabi   |
| 40       |            |            | registry identification card to the producer and to each of the producer'  |
| 41       |            |            | employees upon payment of a fee of ten dollars (\$10.00) per cardholder.   |
| 42       |            | <u>(6)</u> | The Department shall issue a medical cannabis production site card to each   |
| 43       |            |            | licensed producer of medical cannabis for each property, location, o   |
| 44       |            |            | premises approved for cannabis production under this section. The card shall   |
| 45       |            |            | be posted conspicuously at the medical cannabis production site.   |
| 46       | <u>(e)</u> | Prod       | ucer of Cannabis-Infused Products License. –   |
| 47       |            | (1)        | No person shall establish or operate a business to produce cannabis-infused  |
| 48       |            |            | products without first applying for a license to the Department and  |
| 49       |            |            | submitting the required information on application forms provided by the   |
| 50       |            |            | Department. The application form shall require at least all of the following:  |
|          |            |            |  |

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producer of medical cannabis, or producer of cannabis-infused products is in substantial compliance with this section and any rules adopted under this section.

Loss of Exemption From Criminal Laws. – A person who is not a qualified patient or licensed caregiver but who is otherwise authorized to possess, produce, deliver, or transport cannabis for medical use pursuant to this Article ceases to be exempt as provided in subsection (g) of this section upon committing any of the following acts:

Driving while impaired by cannabis, provided that the person shall not be (1) considered to be impaired solely for having cannabis metabolites in his or her system.

Delivering cannabis to any individual who the person knows is not a registry (2) identification cardholder or qualified patient.

Manufacturing or distributing cannabis at an address not registered with the (3) Department.

(4) Failing to report transfer of cannabis authorized under this section to the Department.

(i) Monthly Fees and Reporting. -

> Each medical cannabis center, producer of medical cannabis, and producer (1)of cannabis-infused products licensed under this section shall submit quarterly reports to the Department on all financial transactions, including, but not limited to, sales and purchases of cannabis and cannabis-infused products, and transfers of cannabis and cannabis-infused products for no consideration.

> (2)Each medical cannabis center licensed and operating under this section shall pay to the Department monthly fees equal to ten percent (10%) of the medical cannabis center's gross revenue derived from the sale of cannabis and cannabis-infused products.

> Each producer of medical cannabis or cannabis-infused products producer (3)licensed and operating under this section shall pay to the Department monthly fees equal to ten percent (10%) of the producer's gross revenue derived from the sale of cannabis and cannabis-infused products.

> Each person who (i) holds a medical cannabis center license and either a (4) producer of medical cannabis license or cannabis-infused products producer

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- license, or both, and (ii) operates both a retail medical cannabis center and 1 one or more production sites, shall pay to the Department monthly fees equal 2 3 to fifteen percent (15%) of that person's gross revenue derived from retail 4 sales of cannabis and cannabis-infused products produced by that person. 5 Nothing in this subsection shall be construed to exempt persons licensed (5)under this section from the reporting or remittance of sales tax for any 6 7 transaction upon which a sales tax may be levied. 8 The Department shall use system revenues from license fees and monthly gross (i) 9 revenue fees to fund, in the following order of priority: Costs associated with establishing and operating the regulated medical 10 (1)11 cannabis supply system established under this section. The registry system established under G.S. 90-730.5. 12 (2)The medical cannabis research program established under G.S. 90-730.9. 13 (3) 14 (4) Other Department programs. Disqualifications for Licensure. - The Department shall not issue a license 15 (k) authorized by this section to any of the following persons: 16 A person who has not paid the appropriate license or license renewal fee. 17 (1)18 An individual who is less than 21 years of age. (2)A person who has served a sentence for any of the following felonies in the 19 (3) 20 five years immediately preceding the date of license application: any Class 21 A through E felony; any felony that includes assault as an essential element of the offense; any felony under Article 14 (Burglary and Housebreakings) 22 of Chapter 14 of the General Statutes; any felony under Article 16 23 (Larceny), Article 16A (Organized Retail Theft), Article 17 (Robbery). 24 Article 18 (Embezzlement), Article 19 (False Pretenses and Cheats), Article 25 26 19A (Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means), Article 19B (Financial Transaction Card Crime 27 Act), or Article 19C (Identity Theft) of Chapter 14 of the General Statutes. 28 In order to ensure compliance with this subdivision, the Department shall 29 conduct a criminal history record check of any person whose name is 30 submitted on an application as the director or an employee of the medical 31 32 cannabis center, or as a producer or employee of a producer. A person who at any time has been convicted of a felony violation for 33 (4) manufacturing, selling, delivering, or possessing with intent to manufacture, 34 sell, deliver, or possess a Schedule I or II controlled substance, in violation 35 of G.S. 90-95(b)(1). In order to ensure compliance with this subdivision, the 36 Department shall conduct a criminal history record check of any person 37 whose name is submitted on an application as the director or an employee of 38 the medical cannabis center or as a producer or employee of a producer. 39 40 (5)Except as otherwise provided in this subdivision, a person who has not been a resident of North Carolina for at least two years prior to the date of the 41 license application. A person who submits an application for licensure 42 pursuant to this section within 180 days after the effective date of this 43 Article is not subject to this residency requirement if the person was a 44 resident of North Carolina for at least 180 days prior to the effective date of 45 this Article. 46 47 Inspection. - The Department may inspect the premises of any person seeking or
  - (m) <u>License Suspension or Revocation.</u> The Department may suspend or revoke a license issued pursuant to this section if the Department determines that the licensee is not in

holding licensure as a medical cannabis center or a licensed producer of medical cannabis,

solely to determine compliance with this Article.

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substantial compliance with this section or the rules adopted by the North Carolina Medical Care Commission under subsection (r) of this section. The Department shall notify a licensee at least 14 days in advance of a proposed suspension or revocation, including the reasons for the suspension or revocation and any possible remedial options available to the licensee. The Department shall not suspend or revoke a license without conducting an investigation and providing the licensee an opportunity for a public hearing, at which the licensee shall be afforded an opportunity to be heard. The Department has the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to conduct a suspension or revocation hearing.

- The Department shall maintain a confidential list of the persons to whom the Department has issued a license pursuant to subsection (b), (c), or (d) of this section. Individual names and other identifying information on the list shall be confidential, exempt from the provisions of Chapter 132 of the General Statutes, and not subject to disclosure, except to authorized employees of the Department as necessary to perform official duties of the Department.
- The Department shall verify to law enforcement personnel whether a license is valid (o) solely by confirming the validity of the license number and the name of the person to whom the Department has issued the license number.
- Any person, including an employee or official of the Department or another State (p) agency or local government, who breaches the confidentiality of information obtained pursuant to subsection (c), (d), or (e) of this section is guilty of a Class 1 misdemeanor; however, any fine imposed for a violation under this subsection shall not exceed one thousand dollars (\$1,000).
- (q) Nothing in this section shall be construed to prevent Department employees from notifying law enforcement officers about falsified or fraudulent information submitted to the Department by any person in support of an application for a license authorized by subsection (c), (d), or (e) of this section.
- A person licensed under subsection (c), (d), or (e) of this section shall be granted the full legal protections provided in this section as long as the person is in possession of a valid license. If the person is not in possession of a valid license, the person shall be given a reasonable period of time to produce the license before the initiation of any arrest, criminal charges, or other penalties.
- Rules. Not later than 120 days after the effective date of this act, the North Carolina Medical Care Commission shall adopt rules to implement the provisions of this section. The rules shall do all of the following:
  - Establish requirements for the issuance of registry identification cards to (1) qualified patients and designated caregivers, which shall include at least all of the following:
    - Written certification, as defined in G.S. 90-730.1. <u>a.</u>
    - An application or renewal fee. <u>b.</u>
    - The name, address, and date of birth of the qualified patient, except C. that if a qualified patient is homeless, no address is required.
    - The name, address, and telephone number of the qualified patient's d. physician.
    - The name, address, and date of birth of each of the qualified patient's <u>e.</u> designated caregivers, if any.
  - (2) Establish qualifications and requirements for licensure of medical cannabis centers, producers of medical cannabis, and producers of cannabis-infused products.
  - Establish civil penalties for minor violations of the provisions of this section. (3)

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- General Assembly of North Carolina Article 4 of Chapter 150B of the General Statutes governs judicial review of an 1 2 administrative decision made under this section. "§ 90-730.7. Affirmative defenses. 3 Except as otherwise provided in this section and G.S. 90-730.4, either of the 4 affirmative defenses set out in subdivisions (1) and (2) of this subsection may be used by a 5 person charged with a criminal offense of possession, delivery, or production of cannabis, or 6 7 any other criminal offense in which possession, delivery, or production of cannabis is an 8 element. The affirmative defenses are as follows: 9 The person satisfies all of the following criteria: (1)Has been diagnosed with a chronic or debilitating medical condition 10 and has been advised by the person's attending physician that the 11 medical use of cannabis may mitigate the symptoms or effects of that 12 13 chronic or debilitating medical condition. 14 Is engaged in the medical use of cannabis. <u>b.</u> Possesses, delivers, or produces cannabis only in the amount 15 <u>c.</u> described in this Article as an adequate supply, or in an amount 16
  - attending physician. The person satisfies all of the following criteria: (2)
    - Is assisting a person described in sub-subdivision (1)a, of this a. subsection in the medical use of cannabis.

exceeding an adequate supply if the person proves by a

preponderance of the evidence that the greater amount is medically

necessary to mitigate the symptoms or effects of the person's chronic or debilitating medical condition, as determined by the person's

- Possesses, delivers, or produces cannabis only in the amount b. described herein as an adequate supply or in excess of that amount if the person proves by a preponderance of the evidence that the greater amount is medically necessary as determined by the assisted person's attending physician to mitigate the symptoms or effects of the assisted person's chronic or debilitating medical condition.
- A person does not need to be a registry identification cardholder in order to assert an affirmative defense described in this section.
- A qualified patient or designated caregiver who has not received a registry identification card may present evidence supporting the need for the medical use of cannabis. Such evidence may constitute a defense to a charge of cannabis possession or cultivation and is admissible in the courts of the State of North Carolina if such evidence otherwise properly qualifies as admissible under the rules of evidence.
- Except as otherwise provided in this section and in addition to the affirmative defenses described in subsection (a) of this section, a person engaged or assisting in the medical use of cannabis who is charged with a crime pertaining to the medical use of cannabis is not precluded from doing either of the following:
  - Asserting a full defense of medical necessity. (1)
  - Presenting evidence supporting the medical necessity of using cannabis for (2)treatment of a specific disease or medical condition if (i) the amount of cannabis at issue is not greater than the amount described in this Article as an adequate supply and (ii) the person has taken steps to substantially comply with the provisions of this Article.
- A person may assert the need for the medical use of cannabis in a motion to dismiss, and the court shall dismiss charges following an evidentiary hearing where the defendant shows that the elements listed in subsection (a) of this section existed at any time prior or subsequent to the charges being filed.

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(f) Any interest in or right to property that was possessed, owned, or used in connection with a person's use of cannabis for medical purposes shall not be forfeited, nor shall the person be subject to disciplinary action by a business or occupational or professional licensing board or bureau if the person or the person's designated caregiver demonstrates the person's medical purpose for using cannabis pursuant to this section.

"§ 90-730.8. Immunity for physicians.

A physician shall not be subject to arrest or prosecution, penalized in any manner, or denied any right or privilege for recommending the medical use of cannabis or providing written certification for the medical use of cannabis pursuant to this Article.

"§ 90-730.9. North Carolina Cannabis Research Program.

- (a) It is the intent of the General Assembly that The University of North Carolina System undertake objective scientific research regarding the efficacy and safety of administering cannabis as part of medical treatment. If the Board of Governors of The University of North Carolina, by appropriate resolution, accepts this responsibility, The University of North Carolina shall create a program to be known as the North Carolina Cannabis Research Program.
- (b) The purpose of the program is to develop and conduct studies designed to ascertain the general safety and efficacy of using cannabis for medical treatment. If the studies conclude that cannabis is safe and effective for medical treatment, the program shall develop medical guidelines for the appropriate administration and use of cannabis to assist physicians and patients in evaluating the risks and benefits of using cannabis for medical treatment and to provide a scientific basis for future policies.
- (c) The research conducted under this section may involve the development of quality control, purity, and labeling standards for medical cannabis dispensed through the system; sound advice and recommendations on the best practices for the safe and efficient cultivation of cannabis; and analysis of genetic and healing properties of the many varied strains of cannabis to determine which strains may be best suited for a particular condition or treatment.

"§ 90-730.10. Severability.

The provisions of this Article are severable. If any provision of this Article is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of this Article which can be given effect without the invalid provision."

**SECTION 2.** During the period between the effective date of this act and 30 days after the effective date of rules adopted under G.S. 90-730.6(s), the following provisions apply:

- (1) The Department of Agriculture and Consumer Services shall issue a temporary certificate for participation in the regulated medical supply system established under G.S. 90-730.6 to any individual who would be eligible to participate in the system as a qualified patient but for the adoption of rules to fully implement the system, upon presentation of a written certification for the medical use of cannabis from the individual's treating physician. The certificate shall specify the amount of cannabis the certificate holder may possess for the medical use of cannabis. The Department of Agriculture and Consumer Services shall maintain a list of all temporary certificates issued pursuant to this section.
- (2) An individual in possession of a temporary certificate issued pursuant to subdivision (1) of this section and that individual's designated caregiver are not subject to arrest, prosecution, civil or criminal penalty, or denial of any right or privilege for possessing cannabis if the amount of usable cannabis possessed collectively is not more than the amount specified on the temporary certificate issued by the Department of Agriculture and Consumer Services.

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**SECTION 5.** G.S. 105-164.4(a) is amended by adding a new subdivision to read:

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37 38 The rate of five percent (5%) applies to the gross receipts derived from sales of cannabis, cannabis-infused products as defined in G.S. 99-730.1, cannabis plants, cannabis seeds, cannabis cultivation equipment, and related cannabis supplies. A person who sells cannabis, cannabis-infused products as defined in G.S. 90-730.1, cannabis plants, cannabis seeds, cannabis cultivation equipment, and related cannabis supplies is considered a retailer under this Article. For the purpose of this subdivision, cannabis has the same meaning as marijuana under G.S. 90-87(16)."

**SECTION 6.** This act is effective when it becomes law and applies to acts committed on and after that date.

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## GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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**HOUSE BILL 78** 

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# PROPOSED COMMITTEE SUBSTITUTE H78-CSSTxf-12 [v.1]

3/24/2015 4:01:58 PM

Short Title: Enact Medical Cannabis Act. (Public)

Sponsors:

Referred to:

February 16, 2015

A BILL TO BE ENTITLED 1 2 AN ACT TO ENACT THE NORTH CAROLINA MEDICAL CANNABIS ACT. The General Assembly of North Carolina enacts: 3 4 **SECTION 1.** Chapter 90 of the General Statutes is amended by adding a new 5 Article to read: 6 "Article 43. 7 "North Carolina Medical Cannabis Act. 8 "§ 90-730. Short title. 9 This Article shall be known and may be cited as the "North Carolina Medical Cannabis 10 Act."

## "§ 90-730.1. Legislative findings and purpose.

The General Assembly makes the following findings:

- (1) Modern medical research has discovered beneficial uses for cannabis in treating or alleviating pain, nausea, and other symptoms associated with certain debilitating medical conditions, as found by the National Academy of Sciences' Institute of Medicine in March 1999.
- According to the United States Sentencing Commission and the Federal Bureau of Investigation, 99 out of every 100 cannabis arrests in the United States are made under State law, rather than under federal law. Consequently, changing State law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use cannabis.
- The United States Department of Health and Human Services, through the Compassionate Investigational New Drug (IND) program, provides cannabis by prescription to a number of individuals for their use as medicine. The cannabis is grown at the federal cannabis research garden at the University of Mississippi and is processed and distributed by the Research Triangle Institute in Research Triangle Park, North Carolina. The patients receive the cannabis monthly in canisters of approximately 300 prerolled cigarettes. The dosage for patients in the IND program ranges from seven to nine grams per day. Since the inception of the program in 1978, individual patients in the IND program have received and consumed approximately 6.5 pounds of cannabis per year, thereby establishing a safe and effective dosage for a chronic daily-use patient to possess and consume. The IND program was closed to new applicants in 1991.



| General Asser   | mbly of North Carolina Session 2015  |
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| (4)             | In 1992, the United States Drug Enforcement Administration (DEA)                   |
| <del></del>     | published research in a report entitled "Cannabis Yields" stating that canopy      |
|                 | cover, rather than the number of plants, is the most accurate indicator of a       |
|                 | garden's yield. According to the DEA report, 250 square feet of mature             |
|                 | garden canopy will typically yield six pounds of processed cannabis per            |
|                 | year, a common amount for patients who use cannabis daily, and less than           |
|                 | the amount prescribed and delivered to the IND patients by the federal             |
|                 | government.  |
| (5)             | Although federal law currently prohibits any use of cannabis outside of the        |
| (3)             | IND program, the laws of Alaska, Arizona, California, Colorado,                    |
|                 | Connecticut, District of Columbia, Delaware, Hawaii, Illinois, Maine,              |
|                 | Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New                 |
|                 | Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island,                 |
|                 | Vermont, and Washington permit the medical use and cultivation of                  |
|                 | cannabis. North Carolina joins in this effort for the health and welfare of its    |
|                 | citizens.  |
| (6)             | States are not required to enforce federal law or prosecute people for             |
| (0)             | engaging in activities prohibited by federal law. Therefore, compliance with       |
|                 | this Article does not put the State of North Carolina in violation of federal      |
|                 | law.   |
| (7)             | Compassion dictates that State law should make a distinction between the           |
| 1//             | medical and nonmedical use of cannabis. Hence, the purpose of this Article         |
|                 | is to protect patients with debilitating medical conditions, and their             |
|                 | physicians and caregivers, from arrest and prosecution, criminal and other         |
|                 | penalties, and property forfeiture by allowing the beneficial use of medical       |
|                 | cannabis in a regulated system for alleviating symptoms caused by                  |
|                 | debilitating medical conditions and their medical treatments.                      |
| (8)             | This Article is intended to make only those changes to existing North              |
| 101             | Carolina laws that are necessary to protect patients and their doctors from        |
|                 | criminal and civil penalties and is not intended to change current civil and       |
|                 | criminal laws governing the use of cannabis for nonmedical purposes.               |
| (9)             | Based on data gathered from other states where medical cannabis has been           |
|                 | regulated, this Article will result in approximately two hundred fifty million     |
|                 | dollars (\$250,000,000) per year in revenues for the State within four years of    |
|                 | implementation.  |
| (10)            |  |
| <del>****</del> | enact legislation for the protection of the health of its citizens, as reserved to |
|                 | the State in the Tenth Amendment of the United States Constitution.                |
| "§ 90-730.2. D  |  |
| The followi     | ng definitions apply in this Article:  |
| (1)             | "Adequate supply" has the following meanings:                                      |
|                 | a. An amount of usable cannabis derived solely from an intrastate                  |
|                 | source that is possessed by a qualified patient, or collectively                   |
|                 | possessed by a qualified patient and the qualified patient's designated            |
|                 | caregiver, in an amount that does not exceed what is reasonably                    |
|                 | necessary to assure the uninterrupted availability of cannabis for a               |
|                 | period of three months, in any form recommended by the qualified                   |
|                 | patient's physician for the purpose of alleviating the symptoms or                 |
|                 | effects of the qualified patient's debilitating medical condition.                 |
|                 | b. For a qualified patient for whom a delivery method of inhalation of             |
|                 | cannabis vapor or smoking is recommended by the qualified patient's                |

health benefits of the medical use of cannabis would likely outweigh the health risks for the patient.

"§ 90-730.3. Protections for the medical use of cannabis.

(a) A qualified patient shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the possession or purchase of cannabis for medical use by the qualified patient if the quantity of usable cannabis possessed or purchased does not exceed an adequate supply, as determined by the qualified patient's physician.

(b) A designated caregiver shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including imposition of a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the possession or purchase of cannabis for medical use by the qualified patient if the quantity of cannabis possessed or purchased does not exceed an adequate supply for the qualified patient, as determined by the qualified patient's physician.

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- (c) If usable cannabis is infused or added as an ingredient to food, salve, tincture, or any other preparation to be consumed or used by a qualified patient, the weight of the other ingredients that are not usable cannabis shall not be included for the purpose of determining whether a qualified patient is in possession of an amount of cannabis that exceeds the qualified patient's adequate supply.
- (d) Subsection (a) of this section does not apply to a qualified patient under 18 years of age, unless all of the following criteria are met:
  - (1) The qualified patient's physician has explained the potential risks and benefits of the medical use of cannabis to the qualified patient and to a parent, guardian, or person having legal custody of the qualified patient.
  - A parent, guardian, or person having legal custody of the qualified patient consents in writing to (i) allow the qualified patient's medical use of cannabis, (ii) serve as the qualified patient's designated caregiver, and (iii) control the dosage and frequency of the medical use of cannabis by the qualified patient.
- (e) A qualified patient or a designated caregiver shall be granted the full legal protections provided in this section as long as the qualified patient or designated caregiver is in possession of a registry identification card. If the qualified patient or designated caregiver is not in possession of a registry identification card, the individual shall be given an opportunity to produce the registry identification card before the initiation of any arrest, criminal charges, or other penalties.
- (f) A qualified patient or a designated caregiver is presumed to be engaged in the medical use of cannabis if the qualified patient or designated caregiver is in possession of a registry identification card and an amount of cannabis that does not exceed the qualified patient's adequate supply. This presumption may be rebutted only by evidence that the qualified patient or designated caregiver engaged in conduct related to cannabis for a purpose other than alleviating the qualified patient's debilitating medical condition or symptoms associated with the debilitating medical condition.
- (g) A designated caregiver may receive reimbursement for costs associated with assisting a qualified patient in the medical use of cannabis. Reimbursement for these costs does not constitute the sale of a controlled substance under Article 5 of Chapter 90 of the General Statutes.
- (h) A school, employer, or landlord shall not refuse to enroll, employ, lease, or otherwise penalize a qualified patient or a designated caregiver solely because of (i) the individual's status as a qualified patient or a designated caregiver or (ii) the presence of cannabis metabolites resulting from medical use of cannabis in the individual's bodily fluids.
- (i) For the purposes of medical care, including organ transplants, a qualified patient's authorized use of cannabis in accordance with this Article shall be treated in the same manner as the authorized use of any other medication used at the direction of a physician and shall not constitute the use of an illegal substance.
- (j) A licensed producer of medical cannabis shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, or subject to disciplinary action by a business or occupational or professional licensing board or bureau for producing, possessing, distributing, or dispensing cannabis in a manner consistent with this Article.
- (k) A physician shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, or subject to increased monitoring or disciplinary action by the North Carolina Medical Board or any other business or occupational or professional licensing board or bureau for either of the following:
  - (1) Advising a patient about the risks and benefits of the medical use of cannabis or that the patient may benefit from the medical use of cannabis if,

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- in the physician's medical judgment, the potential benefits of the medical use of cannabis would likely outweigh the health risks for that particular patient.
- Providing a patient with valid documentation, based upon the physician's assessment of the patient's medical history and current medical condition, that the potential benefits of the medical use of cannabis would likely outweigh the health risks for that particular patient.
- (1) A physician shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, or subject to disciplinary action by a business or occupational or professional licensing board or bureau for discussing with a patient the benefits or health risks of the medical use of cannabis or the interaction of cannabis with other substances.
- State and local law enforcement officers shall not harm, neglect, injure, or destroy an individual's interest in or right to property that is possessed, owned, or used in connection with the medical use of cannabis, or acts incidental to the medical use of cannabis, while the property is in the possession of State or local law enforcement officials as a result of a seizure of the property in connection with the claimed medical use of cannabis. A person does not forfeit any right or interest in property seized in connection with the medical use of cannabis under any provision of State law providing for the forfeiture of property, unless the forfeiture is part of a sentence imposed upon the person as a result of a conviction of a criminal violation of this Article or entry of a plea of guilty to such violation. Cannabis, paraphernalia, or other property seized from a qualified patient, designated caregiver, or licensed producer of medical cannabis in connection with the claimed medical use or production for medical use of cannabis shall be returned immediately upon the determination by a court, prosecutor, or law enforcement officer that the qualified patient, designated caregiver, or licensed producer of medical cannabis is entitled to the protections of this Article. In making this determination, the court, a prosecutor, or a law enforcement officer shall consider as evidence the failure of law enforcement officers to actively investigate the case, a decision not to prosecute, the dismissal of charges, or acquittal.
- (n) A person shall not be denied custody of, or visitation or parenting time with, a minor for conduct allowed under this Article.
- (o) There is no presumption of neglect or child endangerment for conduct allowed under this Article.
- (p) No person shall be subject to arrest or prosecution for constructive possession, conspiracy, aiding and abetting, being an accessory, or any other offense, for simply being in the presence or vicinity of the medical use of cannabis as permitted under this Article or for assisting a qualified patient with using or administering cannabis.
- (q) Possession of or application for a registry identification card shall not alone constitute probable cause to search the person or the property of the person possessing or applying for a registry identification card or otherwise subject the person or the person's property to inspection by any government agency.
- (r) If an individual being investigated by a law enforcement officer employed by a State-funded or locally funded law enforcement agency credibly asserts during the course of the investigation that the individual is a qualified patient or designated caregiver, neither the law enforcement officer nor the law enforcement agency shall provide any information, except as required by federal law or the United States Constitution, from any cannabis-related investigation of the individual to any law enforcement authority that does not recognize the protections of this Article. Any prosecution of the individual for a violation of this Article shall be conducted pursuant to the laws of this State.
- (s) Cannabis produced and possessed under this Article is exempt from the Unauthorized Substances Tax set forth in Article 2D of Chapter 105 of the General Statutes, and no tax under that Article may be levied against any qualified patient, designated caregiver,

licensed medical cannabis center, licensed producer of medical cannabis, or licensed producer of cannabis-infused products operating in accordance with this Article.

(t) Nothing in this Article shall be construed to extend the protections of this Article to any person, including a qualified patient, designated caregiver, or producer, to allow that person to acquire, possess, manufacture, produce, use, sell, distribute, dispense, or transport cannabis in a manner that is not consistent with this Article.

### "§ 90-730.4. Prohibitions, restrictions, and limitations on medical use of cannabis.

- (a) This Article does not permit any person to do any of the following:
  - (1) Operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while impaired by cannabis. However, a qualified patient shall not be considered impaired solely due to the presence of cannabis metabolites in the individual's system.
  - (2) Undertake any task under the influence of cannabis, when doing so would constitute negligence or professional malpractice.
  - (3) Smoke cannabis in a school bus or other form of public transportation, on any school grounds, in any correctional facility, or in any public place in this State.
- (b) A person who commits an act prohibited by subsection (a) of this section is subject to all penalties provided by law.
  - (c) Nothing in this Article shall be construed to require any of the following:
    - (1) A government-sponsored medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of cannabis.
    - (2) An employer to accommodate the medical use of cannabis in any workplace.
- (d) Fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of cannabis to avoid arrest or prosecution is a Class 2 misdemeanor punishable by a fine of five hundred dollars (\$500.00) in addition to any other applicable penalties for making a false statement about the medical use of cannabis.
- (e) A licensed producer of medical cannabis that sells, distributes, dispenses, or transfers cannabis to an individual other than a registry identification cardholder or to a person other than a person licensed pursuant to G.S. 90-730.6, or obtains or transports cannabis outside of North Carolina in violation of federal law, is subject to arrest, prosecution, and civil or criminal penalties pursuant to State law.
- (f) Nothing in this Article shall be construed as a waiver of sovereign immunity by the State.

## "§ 90-730.5. Registry identification cards for qualified patients and designated caregivers.

- (a) As used in this section, "Department" means the North Carolina Department of Health and Human Services.
- (b) The Department shall issue a registry identification card to any qualified patient or designated caregiver who meets the requirements of this section.
- (c) The Department shall not issue or renew a registry identification card to a qualified patient under 18 years of age unless each of the following criteria is met:
  - (1) The qualified patient's physician has explained the potential risks and benefits of the medical use of cannabis to the qualified patient and to a parent, guardian, or person having legal custody of the qualified patient.
  - A parent, guardian, or person having legal custody of the qualified patient consents in writing to (i) allow the qualified patient's medical use of cannabis, (ii) serve as one of the qualified patient's designated caregivers, and (iii) control the acquisition of the cannabis, the dosage, and the frequency of the medical use of cannabis by the qualified patient.

- The Department shall verify the information contained in a registry identification 1 2 card application or renewal application submitted pursuant to this section and shall approve or deny an application or renewal application within 45 days after receipt. The Department may 3 deny a registry identification card application or renewal application only if the applicant fails 4 to provide the information required pursuant to this section or if the Department determines that 5 the application or renewal application contains false information. If the Department fails to 6 approve or deny a registration application or renewal application submitted pursuant to this 7 8 section within 45 days after receipt, the application or renewal application shall be deemed 9 approved, and a copy of the application or renewal application together with proof of receipt by the Department at least 45 days prior to the date this information is presented in lieu of a 10 registry identification card shall be deemed a valid registry identification card. 11 The Department may issue a registry identification card to a maximum of two 12 designated caregivers named in a qualified patient's approved application. 13 The Department shall issue a registry identification card to an applicant within five 14 (f) 15
  - days after approving an application or renewal. The application or renewal expires two years after the date of issuance.
  - (g) Each registry identification card shall contain at least all of the following information:
    - The date of issuance. (1)

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- The date of expiration. (2)
- A random registry identification number. (3)
- A photograph of the registry identification cardholder. (4)
- Persons issued registry identification cards shall be subject to the following: (h) A qualified patient who has been issued a registry identification card shall notify the Department of any change in the qualified patient's name, address, or designated caregiver and submit a ten-dollar (\$10.00) fee to the Department within 15 days after the change occurs. A qualified patient who

fails to notify the Department of any of these changes within the specified time frame commits an infraction and is subject to a fine not to exceed more than one hundred fifty dollars (\$150.00).

- A designated caregiver shall notify the Department of any change in name or (2) address and submit a ten-dollar (\$10.00) fee to the Department within 15 days after the change occurs. A designated caregiver who fails to notify the Department of any of these changes within the specified time frame commits an infraction and is subject to a fine not to exceed one hundred fifty dollars (\$150.00).
- When a qualified patient or designated caregiver notifies the Department of (3)any change, as required by this subsection, the Department shall issue the qualified patient and each designated caregiver a new registry identification card within 10 days after receiving the updated information and the ten-dollar (\$10.00) fee.
- When a qualified patient who possesses a registry identification card notifies (4)the Department of a change in designated caregiver, the Department shall notify the designated caregiver of record of the change within 15 days after receiving notification of the change. The protections afforded under this Article to the designated caregiver of record shall expire 30 days after the designated caregiver of record is notified by the Department of the change in designated caregiver.
- If a qualified patient or a designated caregiver loses a registry identification (5)card, the cardholder shall notify the Department within 15 days after losing the card. The notification shall include a ten-dollar (\$10.00) replacement fee

for a new card. Within five days after receiving notification of a lost registry identification card, the Department shall issue the cardholder a new registry identification card with a new random identification number.

- (i) If the Department determines that a qualified patient or designated caregiver has willfully violated any provision of this Article, the Department may suspend or revoke the qualified patient's or designated caregiver's registry identification card.
- (j) Applications and supporting information submitted by qualified patients, including information regarding their designated caregivers and physicians, are confidential and protected under the federal Health Insurance Portability and Accountability Act of 1996.
- (k) The Department shall maintain a confidential list of the persons to whom the Department has issued registry identification cards. Individual names and other identifying information on the list shall be confidential, exempt from the provisions of Chapter 132 of the General Statutes, and not subject to disclosure, except to authorized employees of the Department as necessary to perform official duties of the Department.
- (l) The Department shall verify to law enforcement personnel whether a registry identification card is valid solely by confirming the validity of the random registry identification number and the name of the person to whom the Department has assigned the random registry identification number.
- (m) Any person, including an employee or official of the Department or another State agency or local government, who breaches the confidentiality of information obtained pursuant to this section is guilty of a Class 1 misdemeanor; however, any fine imposed for a violation under this subsection shall not exceed one thousand dollars (\$1,000).
- (n) Nothing in this section shall be construed to prevent Department employees from notifying law enforcement officers about falsified or fraudulent information submitted to the Department by any individual in support of an application for a registry identification card.
- (o) Article 4 of Chapter 150B of the General Statutes governs judicial review of an administrative decision made under this section.

### "§ 90-730.6. Regulated medical cannabis supply system.

- (a) As used in this section, "Department" means the North Carolina Department of Agriculture and Consumer Services.
- (i) Not later than 120 days after the effective date of this act, the Department shall establish a medical cannabis supply system that (i) provides a safe, regulated supply of quality medical cannabis for use by qualified patients who hold valid registry identification cards and (ii) generates sufficient revenue for the Department to maintain and operate the system. The Department shall not use any appropriations from the General Fund to establish or operate the system. The system shall be funded by the fees authorized in this section.

#### (c) Medical Cannabis Center License. –

- (1) No person shall establish or operate a medical cannabis center without first applying for a license to the Department and submitting the required information on application forms provided by the Department. The application form shall require at least all of the following:
  - a. The applicant's name and any name the applicant will use in the operation of a medical cannabis center.
  - b. The address of any property the applicant will use to possess, deliver, transport, dispense, or distribute cannabis.
  - <u>c.</u> The name, address, and date of birth of each principal officer and board member of the medical cannabis center.
  - <u>d.</u> The name, address, and date of birth of each employee of the medical cannabis center.
  - e. For first-year licensees, a nonrefundable license fee in the amount of five thousand dollars (\$5,000).

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|  |            | f. For licensees seeking license renewal, a nor        | nrefundable renewal fee in    |
|  |            | an amount not less than five thousand dol              |                               |
|  |            | in rules adopted pursuant to subsection (s)            |                               |
|  |            | g. Proof of North Carolina residency for each          |                               |
|  |            | member, and employee of the medical cann               |                               |
|  |            | h. Any other information the Department con            |                               |
|  |            | compliance with the terms of this Article.             |                               |
|  | (2)        | Unless suspended or revoked, a medical cannabis of     | center license is valid for a |
|  | 1=1        | period not to exceed 12 months from the date of iss    |                               |
|  | (3)        | A licensee shall apply for renewal, as necessary, a    |                               |
|  | 107        | expiration of a current license.                       |                               |
|  | <u>(4)</u> | No later than 30 days after issuing or renew           | ing a license under this      |
|  | 1.7        | subsection, the Department shall issue a medica        | _                             |
|  |            | identification card to each director and employee l    |                               |
|  |            | renewal form upon receipt of a ten-dollar (\$10.00)    |                               |
|  | (5)        | A licensee shall notify the Department of any c        | -                             |
|  |            | submitted on the license application or renewal for    |                               |
|  |            | change.  |                               |
|  | (6)        | A medical cannabis center licensee may do all of the   | ne following:                 |
|  |            | a. Sell cannabis, cannabis-infused products,           |                               |
|  |            | seeds, cultivation equipment, and related              | supplies and educationa       |
|  |            | materials only to registry identification card         |                               |
|  |            | b. Contract with a producer to sell live plan          |                               |
|  |            | medical cannabis center to registry identific          |                               |
|  |            | c. Assist registry identification cardholders          |                               |
|  |            | services, including equipment, supplies, and           | -                             |
|  | (7)        | A medical cannabis center licensee shall not           | cultivate cannabis unless     |
|  |            | separately licensed as a producer of medical canna     | bis under subsection (c) o    |
|  |            | this section.  |                               |
|  | (8)        | A medical cannabis center licensee and its director    | ors, agents, and employee     |
|  |            | are exempt from the criminal laws of this State f      | or possession, production     |
|  |            | delivery, or transportation of cannabis, or aiding a   | and abetting another in the   |
|  |            | possession, production, delivery, or transportation    | of cannabis, or any othe      |
|  |            | criminal offense in which possession, production,      | delivery, or transportation   |
|  |            | of cannabis is an element if the medical cannabis      | s center and the directors    |
|  |            | agents, and employees of the medical cannabis          |                               |
|  |            | compliance with this section and the applicab          |                               |
|  |            | Department for regulating medical cannabis center      |                               |
|  | <u>(9)</u> | The records of a licensed medical cannabis center      |                               |
|  |            | restrictions imposed on pharmacy records pu            |                               |
|  |            | G.S. 90-85.36 shall apply to each medical canna        |                               |
|  |            | pharmacy regulated under Article 4A of Chapter 9       | 0 of the General Statutes.    |
| <u>(d)</u>                                 |            | icer of Medical Cannabis License. –                    |                               |
|  | <u>(1)</u> | No person shall cultivate cannabis for sale to a       |                               |
|  |            | center without first applying for a license to the I   |                               |
|  |            | the required information on application forms pro      |                               |
|  |            | The application form shall require at least all of the |                               |
|  |            | a. The name of the person responsible f                |                               |
|  |            | production site and the name of each inc               | iividual employed by tha      |
|  |            | person.  |                               |

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|-----|-----------|-----------|---------------------------------------|--|
|     |           | <u>b.</u> | The address of each property, loc     | cation, or premises used or proposed   |
|     |           |           | for use by the producer to produc     | e cannabis.  |
|     |           | c.        |                                       | birth of each principal officer and  |
|     |           |           | board member of the producer.         | -  |
|     |           | <u>d.</u> | The name, address, and date           | of birth of each employee of the   |
|     |           | _         | producer.                             |  |
|     |           | <u>e.</u> |                                       | undable license fee in the amount of   |
|     |           |           | five thousand dollars (\$5,000).      |  |
|     |           | <u>f.</u> | For licensees seeking license ren     | ewal, a nonrefundable renewal fee in   |
|     |           |           | an amount not less than five the      | ousand dollars (\$5,000), as specified   |
|     |           |           | in the rules adopted pursuant to s    | ubsection (s) of this section.   |
|     |           | g.        | Proof of North Carolina reside        | ency for each producer of medical  |
|     |           |           | cannabis and each employee of the     | ne producer.   |
|     |           | <u>h.</u> | Proof that the producer of m          | nedical cannabis and each of the   |
|     |           |           | producer's employees has attaine      | d the age of 21 years.   |
|     |           | <u>i.</u> | Any other information the Depart      | rtment considers necessary to ensure   |
|     |           |           | compliance with this Article.         |  |
|     | (2        | ) Unle    | ess suspended or revoked, a produce   | r of medical cannabis license is valid   |
|     |           |           | period not to exceed 12 months from   |  |
|     | (3        |           |                                       | t of any change in the information   |
|     |           |           | nitted on the application form withir |  |
|     | (4        | _         |                                       | ecessary, at least 30 days prior to the  |
|     |           |           | ration of a current license.          |  |
|     | <u>(5</u> |           |                                       | or renewing a producer of medical  |
|     |           |           | -                                     | ssue a producer of medical cannabis  |
|     |           |           |                                       | lucer and to each of the producer's  |
|     |           |           | loyees upon payment of a fee of ten   |  |
|     | (6        |           |                                       | annabis production site card to each   |
|     |           |           |                                       | is for each property, location, or   |
|     |           |           |                                       | ion under this section. The card shall   |
| ,   | -\ D-     | _         | osted conspicuously at the medical of |  |
| 70  |           |           | Cannabis-Infused Products License     | . = business to produce cannabis-infused   |
|     | (1        | _         |                                       | a license to the Department and  |
|     |           |           |                                       | application forms provided by the  |
|     |           |           | artment. The application form shall   |  |
|     |           |           |                                       | entity responsible for the cannabis  |
|     |           | <u>a.</u> | production site and any employe       |  |
|     |           | <u>b.</u> |                                       | cation, or premises used or proposed   |
|     |           | <u>U.</u> |                                       | nnabis-infused products to produce   |
|     |           |           | cannabis and cannabis-infused pr      |  |
|     |           | C         |                                       | f birth of each principal officer and  |
|     |           | <u>c.</u> | board member of the producer of       |  |
|     |           | <u>d.</u> | -                                     | of birth of each employee of the   |
|     |           | <u>u.</u> | producer of cannabis-infused pro      |  |
|     |           | <u>e.</u> | -                                     | fundable license fee in the amount of  |
|     |           |           | five thousand dollars (\$5,000).      | The state of the s |
|     |           | <u>f.</u> |                                       | renewal, a nonrefundable fee in an   |
|     |           | 4         |                                       | and dollars (\$5,000), as specified in   |
|     |           |           | rules adopted pursuant to subsec      |  |
|     |           |           |                                       |  |

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|-----------------|---|
|                 | g. Proof of North Carolina residency for the producer of                        |
|                 | cannabis-infused products and each of the producer's employees.                 |
|                 | h. Proof that the producer of cannabis-infused products and each of the         |
|                 | producer's employees has attained the age of 21 years.                          |
|                 | i. Any other information the Department considers necessary to ensure           |
|                 | compliance with the terms of this Article.                                      |
| (2)             | Unless suspended or revoked, a license to produce cannabis-infused products     |
| (4)             | is valid for a period not to exceed 12 months from the date of issuance.        |
| (3)             | A licensee shall notify the Department of any change in the information         |
| 127             | submitted on the application form within 30 days after the change.              |
| (4)             | A licensee shall apply for renewal, as necessary, at least 30 days prior to the |
| 111             | expiration of a current license.  |
| <u>(5)</u>      | Not later than 30 days after issuing or renewing a license to produce           |
| (5)             | cannabis-infused products, the Department shall issue a registry                |
|                 | identification card to the licensed producer of cannabis-infused products and   |
|                 | to each of the producer's employees upon payment of a fee of ten dollars        |
|                 | (\$10.00) per cardholder.   |
| (6)             | The Department shall issue a medical cannabis production site card to each      |
| 707             | producer of cannabis-infused products for each property, location, or           |
|                 | premises approved for production of cannabis-infused products under this        |
|                 | section. The card shall be conspicuously posted at the location of the          |
|                 | medical cannabis production site.   |
| (f) Perm        | nissible Sales Transactions. – All cannabis sold through the regulated medica   |
|                 | y system established under this section shall be subject to the following       |
| limitations and |   |
| (1)             | Only persons licensed as a medical cannabis center under subsection (b) or      |
|                 | this section are authorized to sell cannabis or cannabis-infused products to    |
|                 | qualified patients or designated caregivers through the system.                 |
| (2)             | Only persons licensed as a producer of medical cannabis under subsection        |
| 121             | (c) of this section or a producer of cannabis-infused products under            |
|                 | subsection (d) of this section are authorized to produce cannabis for sale to   |
|                 | licensed medical cannabis centers through the system.                           |
| (3)             | A licensed medical cannabis center shall not sell cannabis, cannabis-infused    |
| 131             | products, cannabis plants, cannabis seeds, cultivation equipment, and related   |
|                 | supplies and educational materials to any person other than a qualified         |
|                 | patient or designated caregiver.  |
| (4)             | A licensed producer of medical cannabis shall not sell cannabis, cannabi        |
| (4)             | plants, or cannabis seeds to any person other than a licensed medica            |
|                 | cannabis center or a licensed producer of cannabis-infused products             |
|                 | However, a licensed producer of medical cannabis may transfer for no            |
|                 | consideration cannabis, cannabis plants, or cannabis seeds to any qualified     |
|                 | patient or designated caregiver.  |
| (5)             | A producer of cannabis-infused products shall not sell cannabis-infused         |
| (3)             | products for resale to any person other than a licensed medical cannabi         |
|                 | center.   |
| (6)             | A medical cannabis center, producer of medical cannabis, or producer o          |
| (0)             | cannabis-infused products shall not sell to any registry identification         |
|                 | cardholder cannabis or cannabis plants in an amount that exceeds an             |
|                 | adequate supply.  |
| (=)             | Medical cannabis may be grown only in a controlled, covered environment.        |
| (7)             |   |

- (g) Exemption From Criminal Laws. A medical cannabis center, producer of medical cannabis, or producer of cannabis-infused products with a valid license for that function is exempt from the criminal laws of this State for possession, production, delivery, or transportation of cannabis, or aiding and abetting another in the possession, production, delivery, or transportation of cannabis, or any other criminal offense in which possession, production, delivery, or transportation of cannabis is an element if the medical cannabis center, producer of medical cannabis, or producer of cannabis-infused products is in substantial compliance with this section and any rules adopted under this section.
- (h) Loss of Exemption From Criminal Laws. A person who is not a qualified patient or licensed caregiver but who is otherwise authorized to possess, produce, deliver, or transport cannabis for medical use pursuant to this Article ceases to be exempt as provided in subsection (g) of this section upon committing any of the following acts:
  - (1) Driving while impaired by cannabis, provided that the person shall not be considered to be impaired solely for having cannabis metabolites in his or her system.
  - (2) Delivering cannabis to any individual who the person knows is not a registry identification cardholder or qualified patient.
  - (3) Manufacturing or distributing cannabis at an address not registered with the Department.
  - (4) Failing to report transfer of cannabis authorized under this section to the Department.
  - (i) Monthly Fees and Reporting.
    - (1) Each medical cannabis center, producer of medical cannabis, and producer of cannabis-infused products licensed under this section shall submit quarterly reports to the Department on all financial transactions, including, but not limited to, sales and purchases of cannabis and cannabis-infused products, and transfers of cannabis and cannabis-infused products for no consideration.
    - (2) Each medical cannabis center licensed and operating under this section shall pay to the Department monthly fees equal to ten percent (10%) of the medical cannabis center's gross revenue derived from the sale of cannabis and cannabis-infused products.
    - (3) Each producer of medical cannabis or cannabis-infused products producer licensed and operating under this section shall pay to the Department monthly fees equal to ten percent (10%) of the producer's gross revenue derived from the sale of cannabis and cannabis-infused products.
    - Each person who (i) holds a medical cannabis center license and either a producer of medical cannabis license or cannabis-infused products producer license, or both, and (ii) operates both a retail medical cannabis center and one or more production sites, shall pay to the Department monthly fees equal to fifteen percent (15%) of that person's gross revenue derived from retail sales of cannabis and cannabis-infused products produced by that person.
    - Nothing in this subsection shall be construed to exempt persons licensed under this section from the reporting or remittance of sales tax for any transaction upon which a sales tax may be levied.
- (j) The Department shall use system revenues from license fees and monthly gross revenue fees to fund, in the following order of priority:
  - (1) Costs associated with establishing and operating the regulated medical cannabis supply system established under this section.
  - (2) The registry system established under G.S. 90-730.5.
  - (3) The medical cannabis research program established under G.S. 90-730.9.

- (4) Other Department programs.
- (k) <u>Disqualifications for Licensure. The Department shall not issue a license</u> authorized by this section to any of the following persons:
  - (1) A person who has not paid the appropriate license or license renewal fee.
  - (2) An individual who is less than 21 years of age.
    - A person who has served a sentence for any of the following felonies in the five years immediately preceding the date of license application: any Class A through E felony; any felony that includes assault as an essential element of the offense; any felony under Article 14 (Burglary and Housebreakings) of Chapter 14 of the General Statutes; any felony under Article 16 (Larceny), Article 16A (Organized Retail Theft), Article 17 (Robbery), Article 18 (Embezzlement), Article 19 (False Pretenses and Cheats), Article 19A (Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means), Article 19B (Financial Transaction Card Crime Act), or Article 19C (Identity Theft) of Chapter 14 of the General Statutes. In order to ensure compliance with this subdivision, the Department shall conduct a criminal history record check of any person whose name is submitted on an application as the director or an employee of the medical cannabis center, or as a producer or employee of a producer.
    - (4) A person who at any time has been convicted of a felony violation for manufacturing, selling, delivering, or possessing with intent to manufacture, sell, deliver, or possess a Schedule I or II controlled substance, in violation of G.S. 90-95(b)(1). In order to ensure compliance with this subdivision, the Department shall conduct a criminal history record check of any person whose name is submitted on an application as the director or an employee of the medical cannabis center or as a producer or employee of a producer.
  - Except as otherwise provided in this subdivision, a person who has not been a resident of North Carolina for at least two years prior to the date of the license application. A person who submits an application for licensure pursuant to this section within 180 days after the effective date of this Article is not subject to this residency requirement if the person was a resident of North Carolina for at least 180 days prior to the effective date of this Article.
- (1) <u>Inspection. The Department may inspect the premises of any person seeking or holding licensure as a medical cannabis center or a licensed producer of medical cannabis, solely to determine compliance with this Article.</u>
- (m) License Suspension or Revocation. The Department may suspend or revoke a license issued pursuant to this section if the Department determines that the licensee is not in substantial compliance with this section or the rules adopted by the North Carolina Medical Care Commission under subsection (r) of this section. The Department shall notify a licensee at least 14 days in advance of a proposed suspension or revocation, including the reasons for the suspension or revocation and any possible remedial options available to the licensee. The Department shall not suspend or revoke a license without conducting an investigation and providing the licensee an opportunity for a public hearing, at which the licensee shall be afforded an opportunity to be heard. The Department has the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to conduct a suspension or revocation hearing.
- (n) The Department shall maintain a confidential list of the persons to whom the Department has issued a license pursuant to subsection (b), (c), or (d) of this section. Individual names and other identifying information on the list shall be confidential, exempt from the provisions of Chapter 132 of the General Statutes, and not subject to disclosure, except to

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affirmative defenses set out in subdivisions (1) and (2) of this subsection may be used by a person charged with a criminal offense of possession, delivery, or production of cannabis, or any other criminal offense in which possession, delivery, or production of cannabis is an element. The affirmative defenses are as follows:

The person satisfies all of the following criteria: (1)

Has been diagnosed with a chronic or debilitating medical condition <u>a.</u> and has been advised by the person's attending physician that the medical use of cannabis may mitigate the symptoms or effects of that chronic or debilitating medical condition.

Is engaged in the medical use of cannabis. <u>b.</u>

(a) It is the intent of the General Assembly that The University of North Carolina System undertake objective scientific research regarding the efficacy and safety of administering cannabis as part of medical treatment. If the Board of Governors of The University of North Carolina, by appropriate resolution, accepts this responsibility, The

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18 19 University of North Carolina shall create a program to be known as the North Carolina Cannabis Research Program.

(b) The purpose of the program is to develop and conduct studies designed to ascertain the general safety and efficacy of using cannabis for medical treatment. If the studies conclude that cannabis is safe and effective for medical treatment, the program shall develop medical guidelines for the appropriate administration and use of cannabis to assist physicians and patients in evaluating the risks and benefits of using cannabis for medical treatment and to provide a scientific basis for future policies.

(c) The research conducted under this section may involve the development of quality control, purity, and labeling standards for medical cannabis dispensed through the system; sound advice and recommendations on the best practices for the safe and efficient cultivation of cannabis; and analysis of genetic and healing properties of the many varied strains of cannabis to determine which strains may be best suited for a particular condition or treatment.

"§ 90-730.10. Severability.

The provisions of this Article are severable. If any provision of this Article is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of this Article which can be given effect without the invalid provision."

**SECTION 2.** During the period between the effective date of this act and 30 days after the effective date of rules adopted under G.S. 90-730.6(s), the following provisions apply:

- (1) The Department of Agriculture and Consumer Services shall issue a temporary certificate for participation in the regulated medical supply system established under G.S. 90-730.6 to any individual who would be eligible to participate in the system as a qualified patient but for the adoption of rules to fully implement the system, upon presentation of a written certification for the medical use of cannabis from the individual's treating physician. The certificate shall specify the amount of cannabis the certificate holder may possess for the medical use of cannabis. The Department of Agriculture and Consumer Services shall maintain a list of all temporary certificates issued pursuant to this section.
- (2) An individual in possession of a temporary certificate issued pursuant to subdivision (1) of this section and that individual's designated caregiver are not subject to arrest, prosecution, civil or criminal penalty, or denial of any right or privilege for possessing cannabis if the amount of usable cannabis possessed collectively is not more than the amount specified on the temporary certificate issued by the Department of Agriculture and Consumer Services.
- (3) A physician shall not be subject to arrest or prosecution, penalized in any manner, or denied any right or privilege for recommending the medical use of cannabis or providing written certification for the medical use of cannabis pursuant to this Article.

#### SECTION 3. G.S. 106-121(6) reads as rewritten:

- "(6) The term "drug" means
  - a. Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and
  - b. Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; animals, except for cannabis-infused products, as defined in G.S. 90-730.1, that are manufactured or sold by a licensed medical cannabis center or a licensed producer of cannabis-infused products; and

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|------------------|--------------------------|--|---------------------------|
| 1                | c.                       | Articles (other than food) intended to at function of the body of man or other anima | -                         |
| 3                | d.                       | Articles intended for use as a component   |                           |
| 4                | u.                       | paragraphs a, b or c; but does not   | •                         |
| 5                |                          | components, parts, or accessories."  |                           |
| 6                | SECTION 4                | G.S. 106-121(8) reads as rewritten:  |                           |
| 7                |                          | erm "food" means   |                           |
| 8                | a.                       | Articles used for food or drink for man or   | other animals, except for |
| 9                |                          | cannabis-infused products, as defined in   | G.S. 90-730.1, that are   |
| 0                |                          | manufactured or sold by a licensed med   | ical cannabis center or a |
| 1                |                          | licensed producer of cannabis-infused prod   | ucts,                     |
| 2                | b.                       | Chewing gum, and   |                           |
| 3                | c.                       | Articles used for components of any such a   | rticle."                  |
| 4                | SECTION 5                | . G.S. 105-164.4(a) is amended by adding a   | new subdivision to read:  |
| 5                |                          | ate of five percent (5%) applies to the gross in                                     |                           |
| 6                |                          | mabis, cannabis-infused products as defined  |                           |
| 7                |                          | , cannabis seeds, cannabis cultivation equipi  |                           |
| 8                |                          | es. A person who sells cannabis, cannabis-in   | •                         |
| 9                |                          | S. 90-730.1, cannabis plants, cannabis se  |                           |
| 0                |                          | ment, and related cannabis supplies is consi   |                           |
| 1                |                          | e. For the purpose of this subdivision, canna  | ibis has the same meaning |
| 0<br>1<br>2<br>3 |                          | rijuana under G.S. 90-87(16)."   |                           |
|                  |                          | 5. This act is effective when it becomes   | law and applies to acts   |
| 4                | committed on and after t | hat date.  |                           |

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### **HOUSE BILL 78: Enact Medical Cannabis Act**

#### 2015-2016 General Assembly

Committee: House Serial Referral To Appropriations

Added

Introduced by: Reps. Alexander, Carney, Harrison,

Cunningham

**Analysis of:** PCS to First Edition

H78-CSSTxf-12

**Date:** March 24, 2015

**Prepared by:** R. Erika Churchill and

Jennifer Bedford, Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 78 would permit the sale and possession of marijuana in North Carolina for medical use to qualified patients possessing a registry identification issued by the Department of Health and Human Services, would direct the Department of Agriculture to establish a marijuana supply system regulated under rules promulgated by the N.C. Medical Care Commission, and would protect persons from criminal, civil, or professional licensure penalties for their authorized use, or assistance in the use, of marijuana for medical purposes.

CURRENT LAW: Marijuana is currently classified as a Schedule VI controlled substance under the North Carolina Controlled Substances Act. Its manufacture, sale, delivery, or possession are prohibited, with no exceptions. G.S.90-95. The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services established under Part 4 of Article 3 of Chapter 143B of the General Statutes finds that marijuana has no currently accepted medical use in the United States, or a relatively low potential for abuse in terms of risk to public health and potential to produce dependence liability based upon present medical knowledge, or a need for further and continuing study to develop scientific evidence of its pharmacological effects. G.S. 90-94.

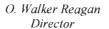
Under federal law, the Comprehensive Drug Abuse prevention and Control Act of 1979 categorizes marijuana as a Schedule I controlled substance. Federal law prohibits growing, distributing, and possessing marijuana except as part of a strictly controlled research project registered with the Drug Enforcement Agency and approved by the FDA.

#### **BILL ANALYSIS:**

The pcs would enact a new Article 43 to Chapter 90 of the General Statutes to establish a statutory scheme to (i) register qualified patients and up to 2 designated caregivers per qualified patient to use marijuana for medical purposes, (ii) establish licensure for producing and selling medical marijuana, (iii) collect fees and sales taxes for licensure and sales, (iv) provide immunity and defenses for use of medical marijuana, and (v) further study, as further detailed below:

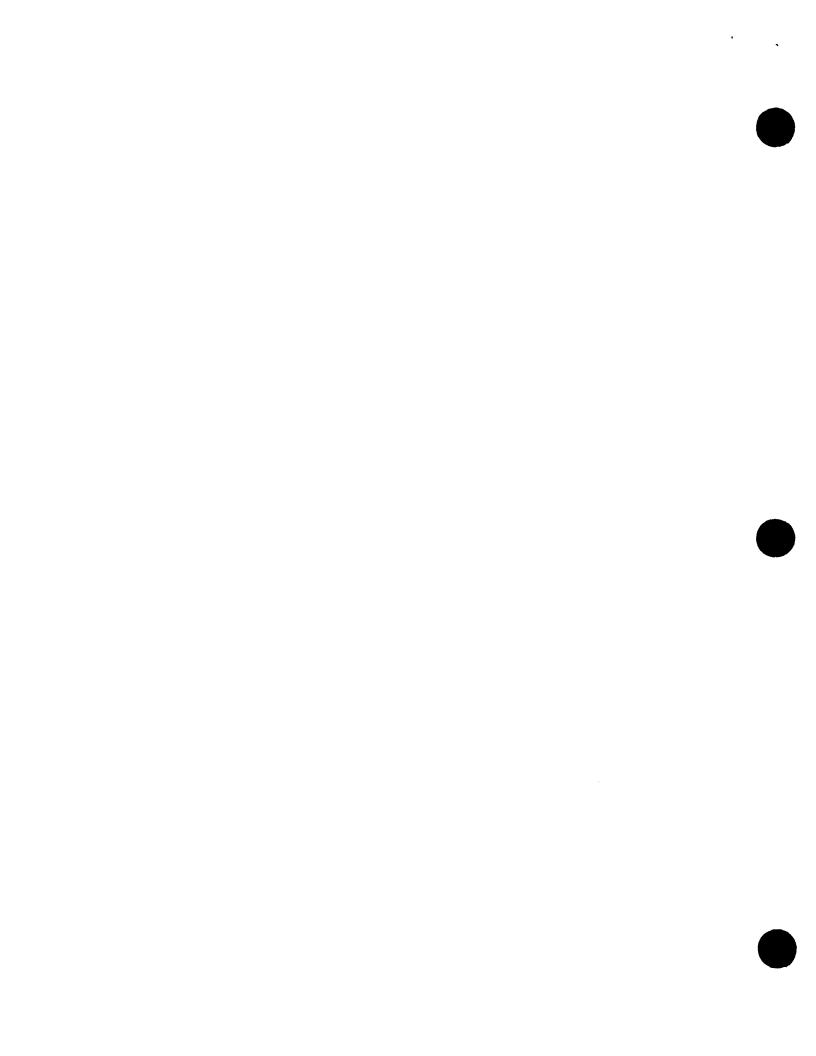
#### Registration of Qualified Patients

- Allows qualified patients (persons diagnosed by a physician as having a debilitating medical condition see below for definition) and designated caregivers (a person at least 21 years old who has agreed to assist with a qualified patient's use of marijuana) to register with the Department of Health and Human Services (DHHS). G.S. 90-730.5
- "Debilitating medical condition" is defined as any of the following:





Research Division (919) 733-2578



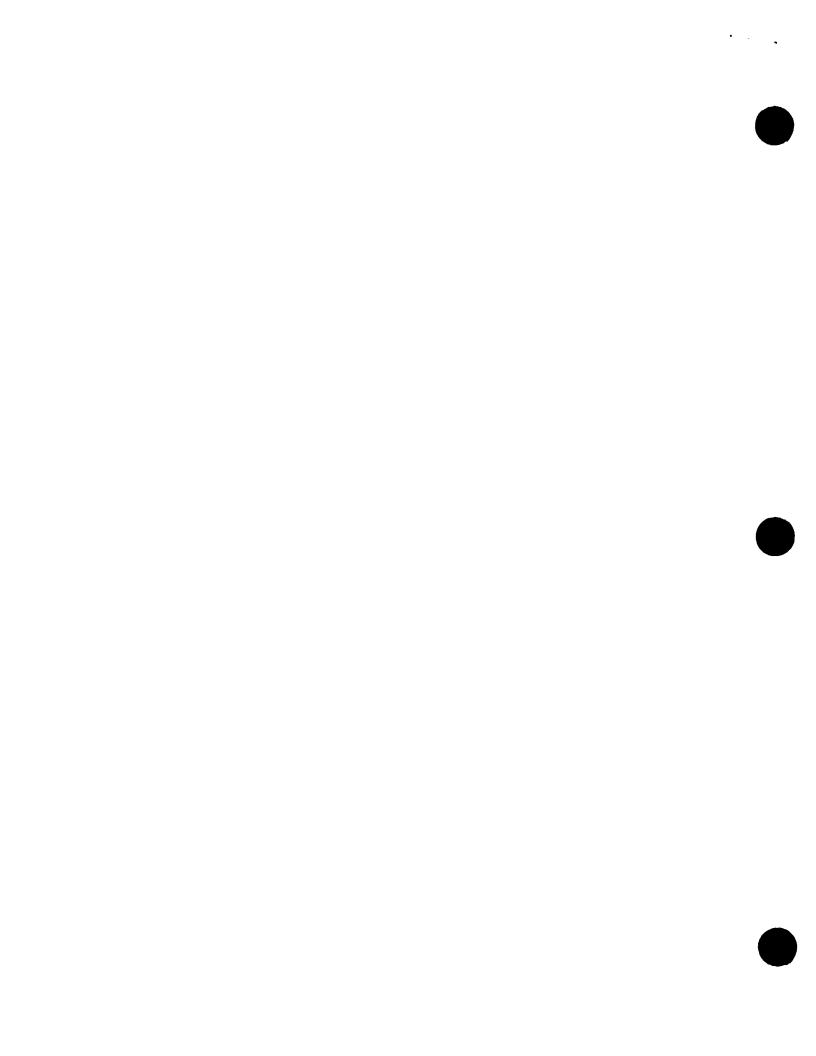
- Cancer, gliomas, glaucoma, positive status HIV, AIDS, hepatitis C, porphyria, ALS, Alzheimer's disease, nail-patella syndrome, fibromyalgia, severe migraines, multiple sclerosis, celiac disease, Crohn's disease, diabetes mellitus, dystonia, gastrointestinal disorders, hypertension, incontinence, injury or disease to the spinal cord, spinal column, or vertebra, MRSA, myelomalacia, osteoporosis, pruritus, rheumatoid arthritis, sleep apnea, Tourette's syndrome, or the treatment of such conditions.
- A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe pain; severe nausea; anorexia; seizures, including those characteristic of epilepsy; or severe and persistent muscle spasms, including those characteristic of MS, ALS, or Crohn's disease.
- Any other serious medical or mental condition or its treatment approved by a physician or other practitioner authorized to prescribe or recommend a controlled substance.
- Registration process is left to DHHS to develop, as the requirements to obtain a registry identification card are not set forth in the pcs.
- The registry identification card is to contain at least the date of issuance, date of expiration, registry number, and a photograph of the cardholder.
- The registry identification card is valid for two years.

#### Licensure for Production and Sales

- Directs the Department of Agriculture and Consumer Services to establish a medical cannabis supply system requiring licensure of all medical marijuana supply centers and producers, and cannabis infused-products producers, to be funded solely by authorized fees. If there are leftover funds from the fees, the Department of Agriculture is to use those funds for other Department needs.
- The Department of Agriculture's licensure program is to be governed by rules adopted by the NC Medical Care Commission.
- License applicants must provide certain information, including the names and dates of birth of all employees. Licenses are not to be issued to individuals who have been convicted of certain felonies. However, there is no mechanism for criminal background checks performed by the Department of Public Safety in conjunction with the applications.
- Licenses are valid for one year, and must be renewed annually thereafter.
- Directs the Department of Agriculture to issue temporary certificates for participation in the medical marijuana supply system during the first 30 days after the effective date of this act.

#### **Collection of Fees and Sales Tax**

- **Registry Identification Card.** Fee of \$10 to make a change of information, with a fine of up to \$150 for failure to notify DHHS of changes.
- Medical Cannabis Center License. Fee of \$5,000 for the first license, and \$5,000 each year thereafter to renew the license. Fee of \$10 per cardholder for each employee of the medical cannabis center.



- **Producer of Medical Cannabis License.** Fee of \$5,000 for the first license, and \$5,000 each year thereafter to renew the license. Fee of \$10 per cardholder for each employee of the producer of medical cannabis.
- Producer of Cannabis-Infused Products License. Fee of \$5,000 for the first license, and \$5,000 each year thereafter to renew the license. Fee of \$10 per cardholder for each employee of the producer of cannabis-infused products.
- Retail sales tax collection. The medical cannabis center is to collect 5% sales tax on gross receipts. It is unclear if the sales tax applies to the sale of the cannabis between the producer and the center.

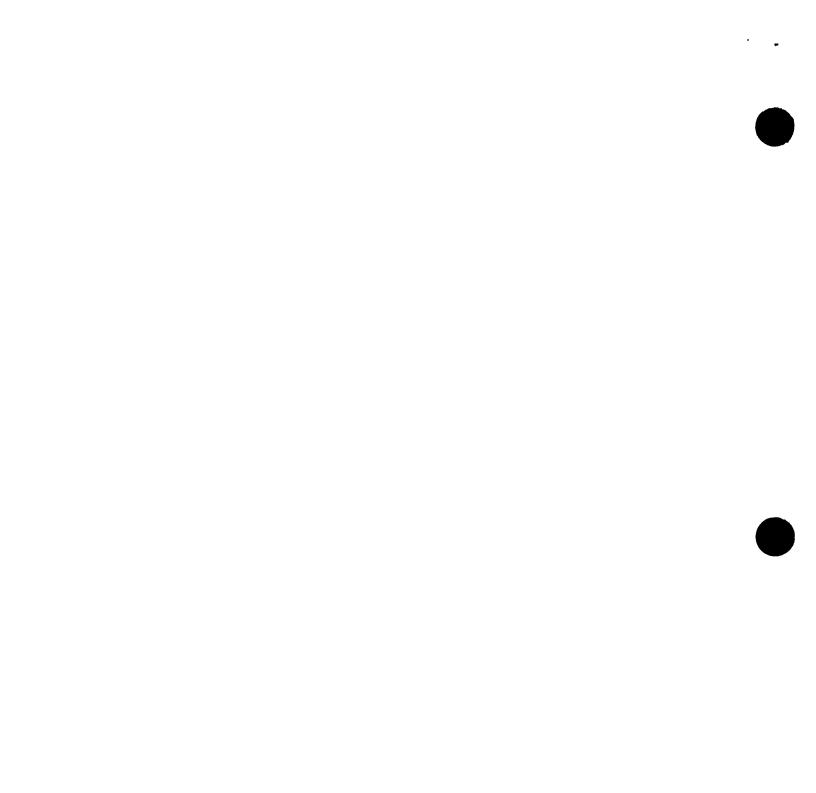
#### Immunity and Defenses for Medical Marijuana Use

- Provides "qualified patients" and "designated caregivers" with immunity from civil or criminal liability for the sale or possession of an "adequate supply" (generally, a three month supply) of marijuana for medical use. G.S. 90-730.3(a)
- Prohibits schools, employers and landlords from denying qualified patients or designated caregivers school enrollment, employment opportunities, or the opportunity to enter into a lease based on their status under the Act or their use of medical marijuana. G.S. 90-730.3(h)
- Provides physicians with immunity from criminal or professional disciplinary penalty for discussing the benefits or risks of medical marijuana use (G.S. 90-730.3(k)-(l)) or for providing written certification for the medical use of marijuana pursuant to Article 43. G.S. 90-730.8
- Prohibits denial of custody rights or any presumption of neglect or child endangerment for conduct allowed under new Article 43. G.S. 90-730.3(n),(o)
- Prohibits destruction of or damage to property owned in connection with medical marijuana use seized by law enforcement officials unless convicted of a criminal violation of new Article 43. G.S. 90-730.3(m)
- Prohibits operating a motor vehicle, aircraft or motorboat while impaired by marijuana, doing anything while under the influence of marijuana that would constitute negligence or professional malpractice, or smoking marijuana on a school bus or any form of public transportation, on any school grounds, in any correctional facility, or in any public place in this State. However, a qualified patient is not to be considered impaired solely due to the presence of cannabis metabolites in their system. G.S. 90-730.4(a)
- Makes it a Class 2 misdemeanor to make a fraudulent representation to a law enforcement officer about medical marijuana use to avoid arrest or prosecution. G.S. 90-730.4(d)
- Establishes affirmative defenses to criminal charges of possession, delivery or production of marijuana that may be asserted by any defendant, without requiring proof of registration or licensure. G.S. 90-730.7

#### **Further Study**

• Directs the UNC system to research the safety and efficacy of medical marijuana use and, upon approval by the Board of Governors, to create the North Carolina Cannabis Research Program to conduct this research. G.S. 90-730.9

**EFFECTIVE DATE:** This act is effective when it becomes law and applies to acts committed on and after that date.



#### NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

#### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

#### **UNFAVORABLE**

HB **78** 

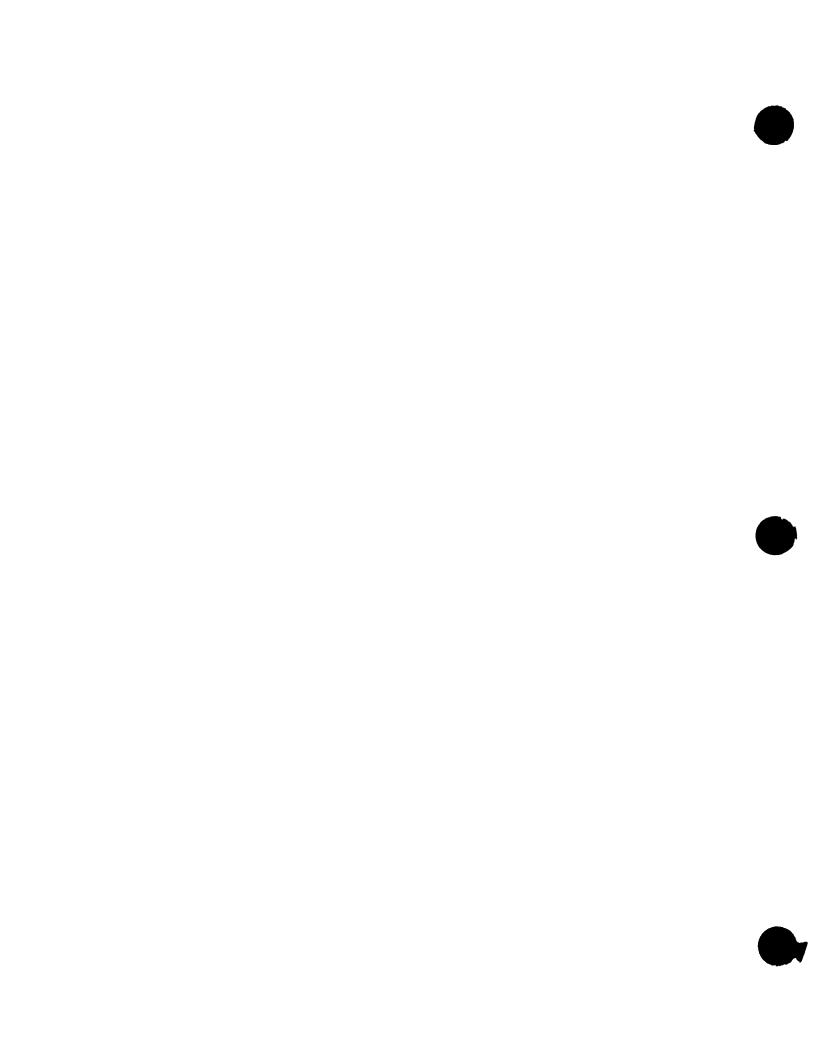
Enact Medical Cannabis Act.

Draft Number: None
Serial Referral: Health
Recommended Referral: None
Long Title Amended: No

Floor Manager: Alexander

TOTAL REPORTED: 1





#### HOUSE PAGES

| NAME OF    | COMMITTEE Judiciary 1 DATE 25 MAR | 15 |
|------------|-----------------------------------|----|
| 1. Name:   | AMANDA CONE                       |    |
| County:    | NASH                              |    |
| Sponsor:   | Jeff Collins                      |    |
| 2. Name:   | AMY CLEMMONS                      |    |
| County:    | WAKE                              |    |
| Sponsor:   | PAUL STAM                         |    |
| 3. Name:   | NIA JUDKINS                       |    |
| County:    | WAKE                              |    |
| Sponsor:   | YVONNE HOLLEY                     |    |
| 4. Name:   |                                   |    |
| County:    |                                   |    |
| Sponsor:   |                                   |    |
| 5. Name:   |                                   |    |
| County: _  |                                   |    |
| Sponsor:   |                                   |    |
|            |                                   |    |
|            | SGT-AT-ARM  A D D V V V V D C     |    |
| 1. Name:   | DAKKS                             |    |
| 2. Name:   | B. H. Fowell                      |    |
| 3. Name:   |                                   |    |
| 4. Name: _ | (LYNN-THA-COME)                   | )  |

# Speaker's List VISITOR REGISTRATION SHEET



Judiciary I

Name of Committee

March 25, 2015

Date

#### VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME             | FIRM OR AGENCY AND ADDRESS   |
|------------------|--|
| Ocw4 Perry Parks | North Carolina Cannabis Patients work                              |
| Hargilet Jamie   | Ramp   |
| Baceon Kristian  | Ramp   |
| Wowsner Diana    | Ramp   |
| McDaniel, Pamela | Private Citizen  |
| Dana Benevery    | Private Citizan  |
| JERE ANALL       | NORTH CAROLINA FAMILY POLICY COUNCIL                               |
| Pashondha James  | Private Citizen,   |
| Rebecta for best | Carolina Cannabis Coalition 50 C3<br>Harnett City. Trivate Cotizer |
| Helen Monroe     | Private Citizen  |
| Jenna Brooke     | Private Cirizen  |
|                  |  |

Speaker's List

## SPEAKERS LIST



#### VISITOR REGISTRATION SHEET

| Judici |
|--------|
| Na     |

iary I

me of Committee

March 25, 2015

Date

#### VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME                              | FIRM OR AGENCY AND ADDRESS       |  |  |
|-----------------------------------|----------------------------------|--|--|
| Ras Tafari                        | Representative of Triangle NORML |  |  |
| Joseph Malinovski                 |                                  |  |  |
| REV. MANK CREECH                  | CAL                              |  |  |
| (will go last)<br>Jami Fitzgerald | No Values Coalction              |  |  |
| Paul Brooks                       | NEEPN                            |  |  |
| Eachard HORN                      | NC Aug-                          |  |  |
| Scott Lewis                       | NA                               |  |  |
| Jere Proyall                      | No Family Policy Council         |  |  |
| Howard Toller                     | NCCPN                            |  |  |
| Susan Farris                      |                                  |  |  |
|                                   |                                  |  |  |
|                                   |                                  |  |  |

# SPEAKERS LIST

#### VISITOR REGISTRATION SHEET

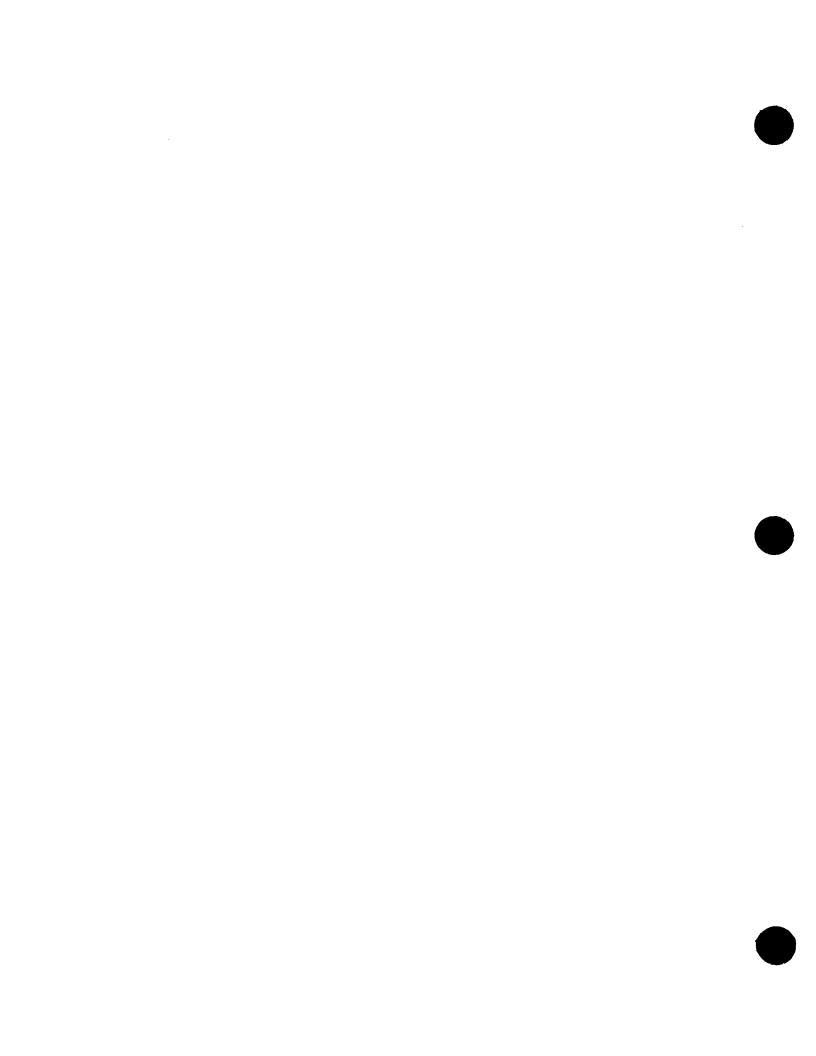
## HOUSE Judiciary 1 25 MAR 2015 Name of Committee Date

#### VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

#### FIRM OR AGENCY AND ADDRESS

| Alexandrawillard    | NC State USW Student<br>NASWNC |
|---------------------|--------------------------------|
| Petrina Williams    | NC Values Coalition            |
| Tami Fitzgerald     | NC Values Coalition            |
| DEW. MAKE CREECE    | EAC "                          |
| Scott LEWS          | NA                             |
| Anna Braver Gravely | NC Family Action               |
| Travis Plyler       | MA                             |
| Andrew Jackson      | NC Cannabis Patients Network   |
| Joanna Sprull:      | NCAFP.                         |
| Cho by              | 16 cm 5                        |
| Joseph Happemann    | Sub the entran                 |



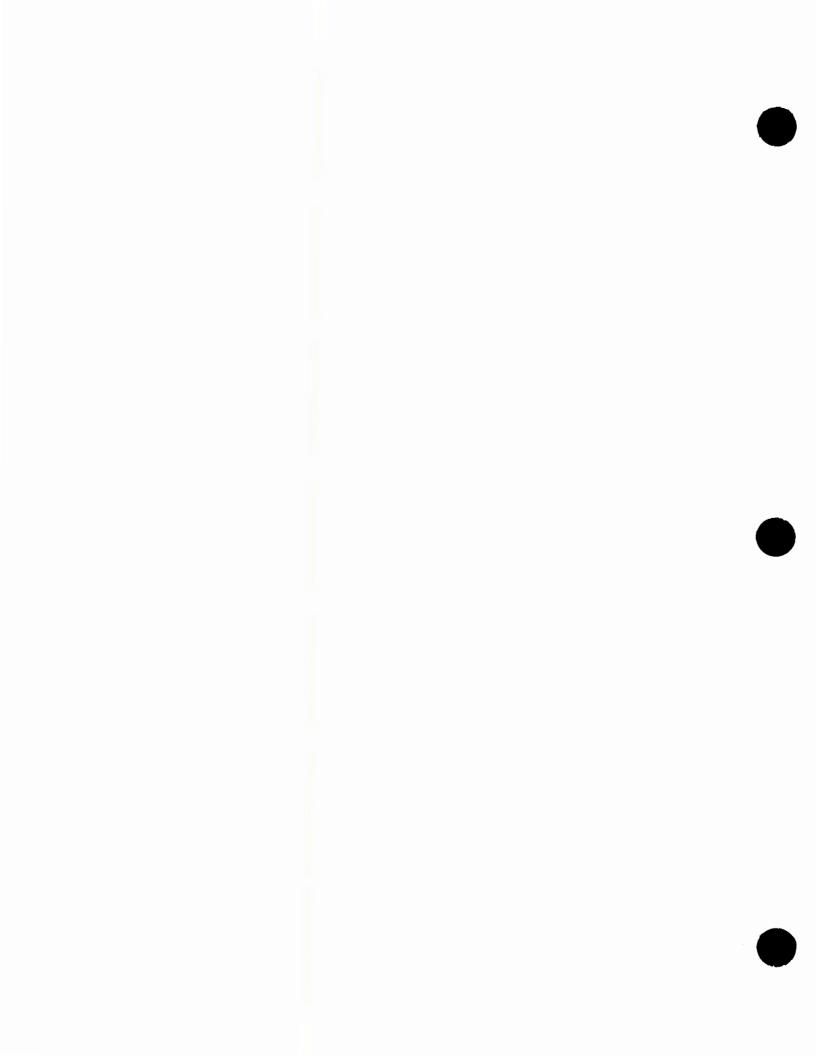
#### VISITOR REGISTRATION SHEET

Name of Committee

Date

#### VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME            | FIRM OR AGENCY AND ADDRESS        |
|-----------------|-----------------------------------|
| Mark Ezzell     | APNC                              |
| Susanfariss     | NC Norm!                          |
| Zaflorg Harn    | NC AG.                            |
| Loerauns Bo wu  | NOSW                              |
| L. Elliat       | NC medical Cannahis Petien        |
| Paul Brooks     | NCCPN                             |
| gin Royall      | NOFFC.                            |
| Beth Looper     | NA .                              |
| Charles Bezarth | Carolina Carnabia Coalition       |
| Rebelea Folbes  | Carolina Cannabis Coalition       |
| Ras Tafari      | Representative for Triangle NORML |



# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

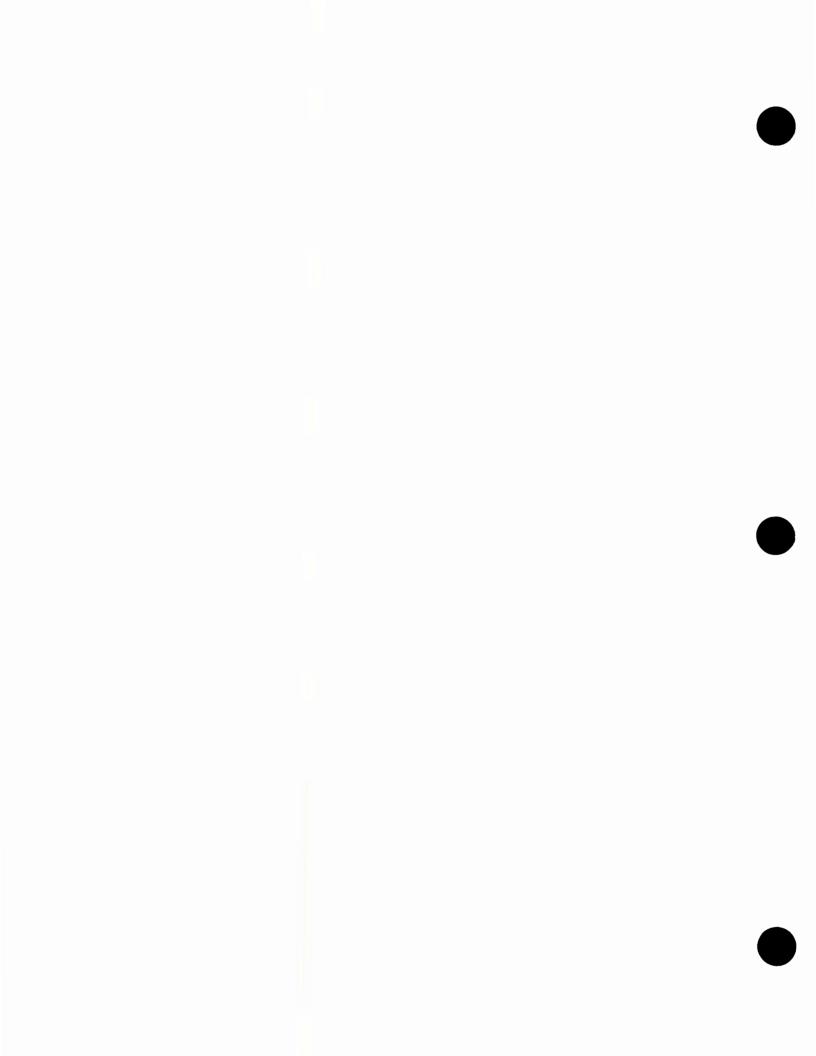
You are hereby notified that the House Committee on Judiciary I will meet as follows:

**DAY & DATE:** Wednesday, April 1, 2015

12:30 PM

TIME:

| LOCATIO             | N: 415 LOB   |  |
|---------------------|--|--|
| The following       | ng bills will be considered:                                 |  |
| BILL NO.<br>HJR 132 | SHORT TITLE Rescind Constitutional Convention                | SPONSOR Representative Jordan  |
|                     | Calls.   | Representative Schaffer Representative Glazier Representative Elmore                       |
| HB 321              | Convention of States.  | Representative Jones Representative Millis Representative Riddell Representative Pendleton |
| SB 78               | Off-Duty Correctional Officers/Conceal Carry.                | Senator Randleman<br>Senator Daniel<br>Senator Newton                                      |
|                     | Respectf   | ully,  |
|                     | Represer   | ntative N. Leo Daughtry, Chair   |
|                     | tify this notice was filed by the committee a arch 30, 2015. | ssistant at the following offices at 4:57 PM on  |
|                     | Principal Clerk Reading Clerk – House Chamber                |  |
| Jan Copelan         | d (Committee Assistant)                                      |  |



#### House Committee on Judiciary I Wednesday, April 1, 2015, 12:30 PM 415 Legislative Office Building

#### **AGENDA**

#### Welcome and Opening Remarks

#### **Introduction of Pages**

#### **Bills**

| BILL NO.<br>HJR 132 | SHORT TITLE Rescind Constitutional Convention Calls. | SPONSOR Representative Jordan Representative Schaffer Representative Glazier                     |
|---------------------|--|--|
| (3) HB 321          | Convention of States.                                | Representative Elmore<br>Representative Jones<br>Representative Millis<br>Representative Riddell |
| \$B 78              | Off-Duty Correctional Officers/Conceal Carry.        | Representative Ridden Representative Pendleton Senator Randleman Senator Daniel Senator Newton   |

**Presentations** 

**Other Business** 

Adjournment

| · | * |  |
|---|---|--|
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#### House Committee on Judiciary I Wednesday, April 1, 2015 at 12:30 p.m. Room 415 LOB

#### **MINUTES**

The House Committee on Judiciary I met at 12:30 p.m. on April 1, 2015 in Room 415 LOB. Representatives Burr, Daughtry, Hardister, Howard, Jackson, Martin, McNeill, Robinson, and Steinburg attended.

Representative Daughtry presided.

Representative Daughtry called the meeting to order @ 12:31 p.m. and introduced the pages and Sgt. at Arms. Senator Randleman introduced SB 78 (Off-Duty Correctional Officers/Conceal Carry). Representative Grier Martin asked the number of hours required for training and annual renewal. S78 voted: favorable report.

Representative Daughtry asked Representative Jordan to introduce HJR132. The HJR was discussed but not voted on.

Representative Daughtry asked Representative Jones to introduce HB321. The HB was discussed but not voted on.

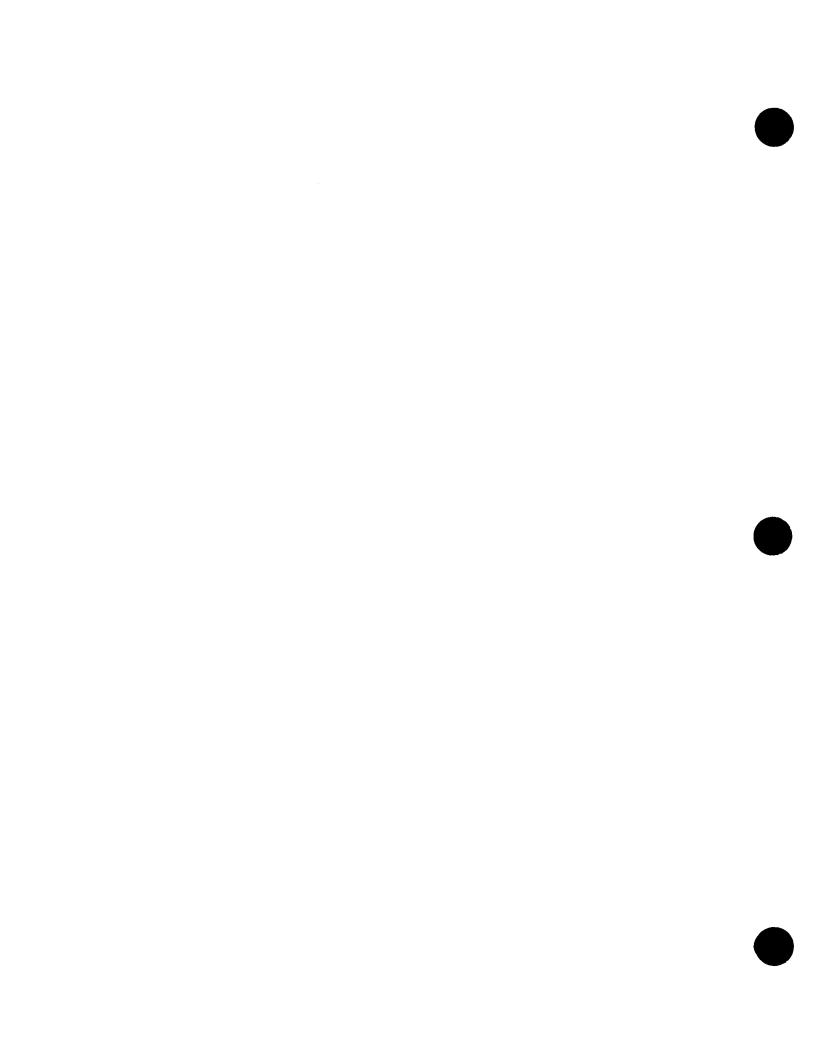
Members of the public were invited to speak on behalf of and against HJR132 and HB321.

The meeting adjourned at 1:25 p.m.

Representative Leo Daughtry

Presiding

Jan Copeland, Committee Clerk



#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

S 3

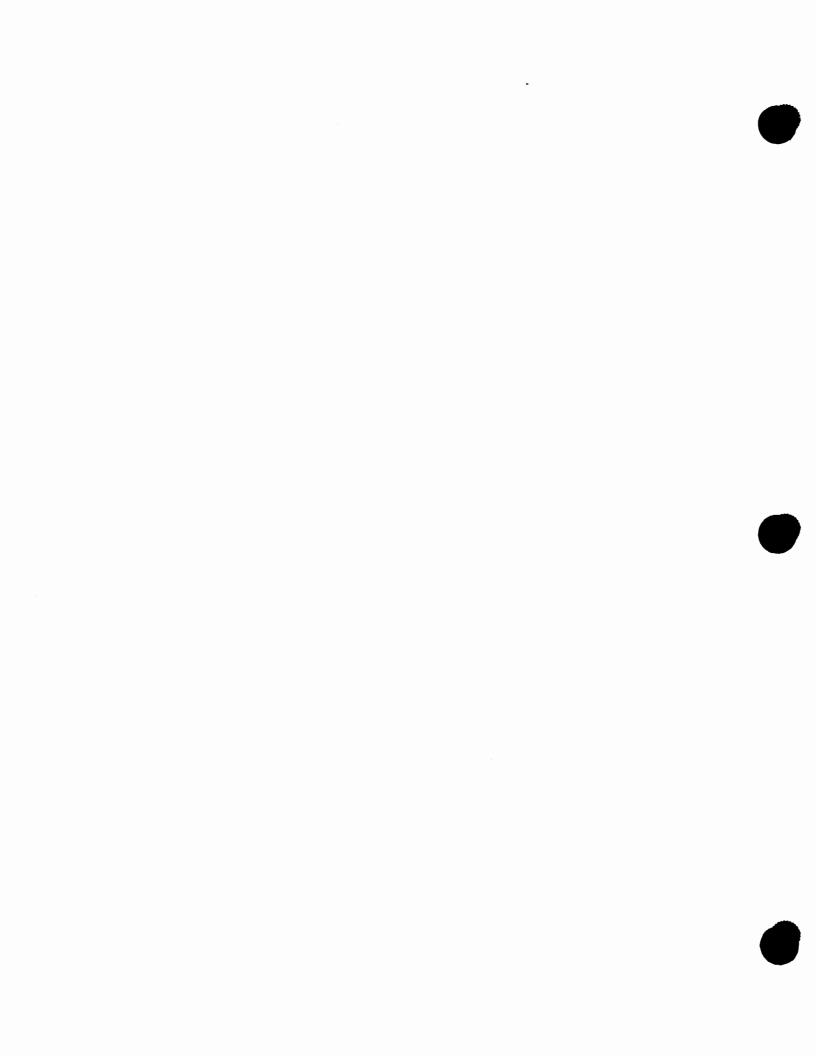
#### **SENATE BILL 78**

#### Judiciary I Committee Substitute Adopted 3/10/15 Third Edition Engrossed 3/11/15

| Short Title: | Off-Duty Correctional Officers/Conceal Carry.                                   | Public)  |
|--------------|---|----------|
| Sponsors:    |   |          |
| Referred to: |   |          |
|              | February 12, 2015   |          |
|              | A BILL TO BE ENTITLED   |          |
| AN ACT TO    | O PROVIDE THAT A STATE CORRECTIONAL OFFICER MAY CAR                             | RY A     |
| CONCE        | ALED WEAPON WHEN OFF-DUTY.  |          |
| The General  | Assembly of North Carolina enacts:  |          |
| S            | ECTION 1. G.S. 14-269(b) is amended by adding a new subdivision to read         | d:       |
| "            | (7) State correctional officers, when off-duty, provided that an officer do     | jes not  |
|              | carry a concealed weapon while consuming alcohol or an ur                       | nawful   |
|              | controlled substance or while alcohol or an unlawful controlled sub             | stance   |
|              | remains in the officer's body. If the concealed weapon is a handge              | un, the  |
|              | correctional officer must meet the firearms training standards of the D         | ivision  |
|              | of Adult Correction of the Department of Public Safety."                        |          |
| S            | ECTION 2. This act becomes effective December 1, 2015. Prosecution              | ons for  |
| offenses con | nmitted before the effective date of this act are not abated or affected by the | nis act, |
| and the sta  | tutes that would be applicable but for this act remain applicable to            | those    |

prosecutions.







### SENATE BILL 78: Off-Duty Correctional Officers/Conceal Carry

2015-2016 General Assembly

Committee: Senate Judiciary I

Introduced by: Sens. Randleman, Daniel, Newton

Analysis of: PCS to First Edition

S78-CSSA-9

Date:

March 10, 2015

Prepared by: Susan Sitze

Committee Counsel

SUMMARY: The Proposed Committee Substitute (PCS) for Senate Bill 78 would allow State correctional officers to carry a concealed weapon when off-duty.

CURRENT LAW: G.S. 14-269(b) lists several classes of persons that are exempt from the general prohibition against carrying concealed weapons. Among other persons, the list currently includes off-duty law enforcement officers and off-duty State probation and parole officers. This list of exempted persons is referenced in several other statutes to allow exemptions to other prohibited conduct such as carrying weapons on educational property and in courthouses.

**BILL ANALYSIS:** The PCS for Senate Bill 78 would allow off-duty State correctional officers to carry concealed weapons provided that they are not consuming alcohol or an unlawful controlled substance and do not have any alcohol or unlawful controlled substance in their body.

**EFFECTIVE DATE:** This act becomes effective December 1, 2015. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.



#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

#### HOUSE JOINT RESOLUTION 132

H

Sponsors: Representatives Jordan, Schaffer, Glazier, and Elmore (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary I.

March 4, 2015

A JOINT RESOLUTION (I) RESCINDING ALL EXTANT APPLICATIONS BY THE GENERAL ASSEMBLY HERETOFORE MADE DURING ANY SESSION THEREOF TO THE CONGRESS OF THE UNITED STATES OF AMERICA TO CALL A CONVENTION PURSUANT TO THE TERMS OF ARTICLE V OF THE UNITED STATES CONSTITUTION FOR PROPOSING ONE OR MORE AMENDMENTS TO THAT CONSTITUTION, (II) URGING THE LEGISLATURES OF OTHER STATES TO DO THE SAME, AND (III) DIRECTING THAT COPIES OF THIS RESOLUTION BE SENT TO SPECIFIED PERSONS.

Whereas, the General Assembly, acting with the best of intentions, has, at various times and during various sessions, previously made applications to the Congress of the United States to call one or more conventions to propose either a single amendment concerning a specific subject or to call a general convention to propose an unspecified and unlimited number of amendments to the Constitution of the United States, pursuant to the provisions of Article V of the Constitution of the United States thereof; and

Whereas, former Associate Justice of the United States Supreme Court Arthur J. Goldberg and other leading constitutional scholars agree that such a convention may propose sweeping changes to the Constitution, notwithstanding any limitations or restrictions to the contrary purportedly imposed by the states in applying for such a convention or conventions, thereby creating an imminent peril to the well-established rights of the citizens and the duties of various levels of government; and

Whereas, the Constitution of the United States has been amended many times in the history of this nation and may be amended many more times without the need to resort to a constitutional convention and has been interpreted for more than two hundred years and has been found to be a sound document which protects the lives and liberties of the citizens; and

Whereas, there is no need for, rather there is great danger in, a new constitution or in opening the Constitution to sweeping changes, the adoption of which would only create legal chaos in this nation and only begin the process of another two centuries of litigation over its meaning and interpretation; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

**SECTION 1.** The General Assembly rescinds all extant applications by the General Assembly to the Congress of the United States to call a convention to propose amendments to the Constitution of the United States, pursuant to the terms of Article V of the Constitution of the United States thereof, regardless of when or by which session of the General Assembly the applications were made and regardless of whether the applications were for a limited convention to propose one or more amendments regarding one or more specific subjects



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and purposes or for a general convention to propose an unlimited number of amendments upon an unlimited number of subjects.

5

SECTION 2. The General Assembly urges the legislatures of every state that has applied to Congress to call a convention for either a general or a limited constitutional convention to repeal and withdraw the applications.

**SECTION 3.** The Secretary of State shall send a certified copy of this resolution to the secretary of state of each state, to the presiding officers of both houses of the legislatures of each state, to the Secretary of the United States Senate, to the Clerk of the United States House of Representatives, to the members of Congress of the United States representing this State, and to the Administrator of the U.S. General Services Administration, Washington, D.C.

10 11

**SECTION 4.** This resolution is effective upon ratification.

H132 [Edition 1] Page 2



### **HOUSE JOINT RESOLUTION 132: Rescind Constitutional Convention Calls**

2015-2016 General Assembly

Committee: House Judiciary I

Introduced by: Reps. Jordan, Schaffer, Glazier, Elmore

**Analysis of:** First Edition

Date:

March 31, 2015

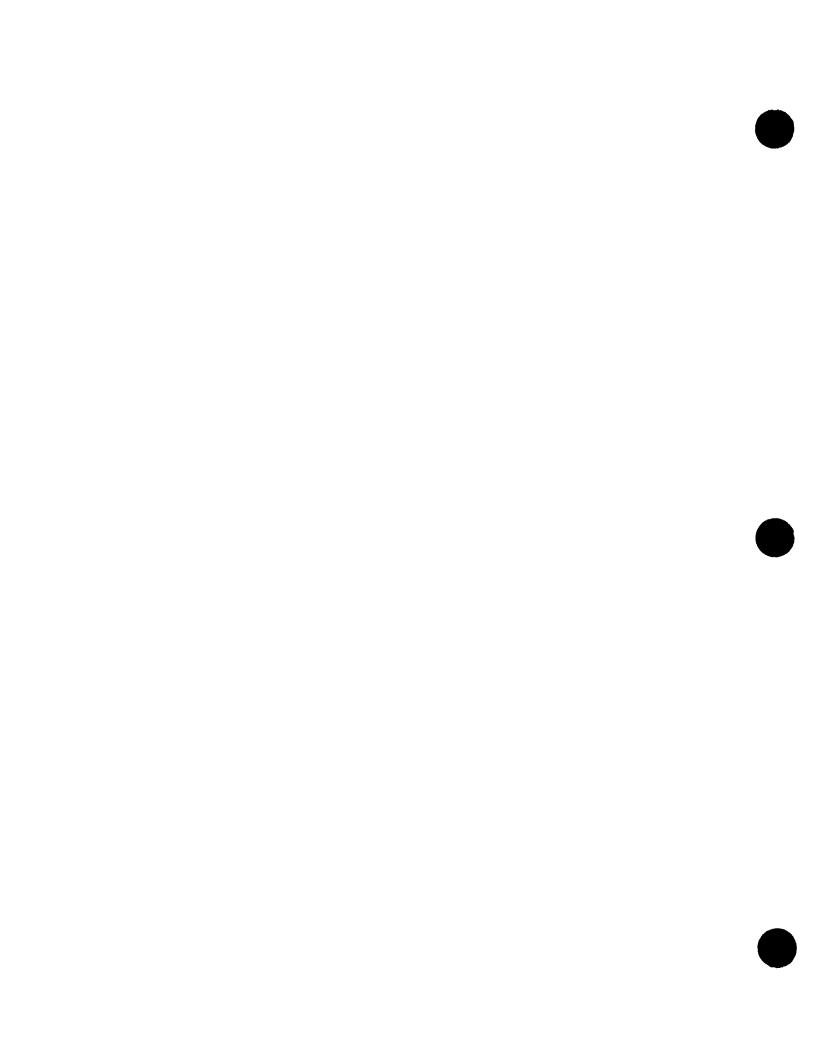
Prepared by: R. Erika Churchill

Committee Counsel

SUMMARY: House Joint Resolution 132 rescinds all applications that the General Assembly has made to Congress to call a convention to propose amendments to the United States Constitution. In the resolution, the General Assembly urges the legislatures of every State that has applied to Congress to call a convention to repeal and withdraw the applications. It requires the Secretary of State to send a certified copy of this resolution to the secretary of state of each state, to the presiding officers of the chambers of the legislatures of each state, to the Secretary of the United States Senate, to the Clerk of the United States House of Representatives, to the members of Congress representing this State, and to the Administrator of the U.S. General Services Administration.

**EFFECTIVE DATE:** Effective upon ratification







# **HOUSE BILL 321: Convention of States**

#### 2015-2016 General Assembly

Committee:

Judiciary I, if favorable, Rules, Calendar, and Date:

March 31, 2015

Operations of the House

Introduced by:

Reps. Jones, Millis, Riddell, Pendleton

Prepared by: R. Erika Churchill

Analysis of:

PCS to First Edition

Committee Counsel

H321-CSST-16

SUMMARY: House Bill 321 would authorize North Carolina to submit its application to call for a United States Constitutional convention for the specified purposes of:

- > Imposing fiscal restraints on the federal government.
- Limiting the power and jurisdiction of the federal government.
- Limit the terms of office for its officials and for members of Congress.

The proposed committee substitute would extend the time frame of the life of the application from 2015 until 2024.

[As introduced, this bill was identical to S398, as introduced by Sens. Sanderson, Krawiec, Hise, which is currently in Rules and Operations of the Senate.]

#### **CURRENT LAW:**

Article V of the Constitution of the United States provides that:

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

This provision allows for two alternative methods for proposing amendments to the United States Constitution before the legislatures of the states for ratification:

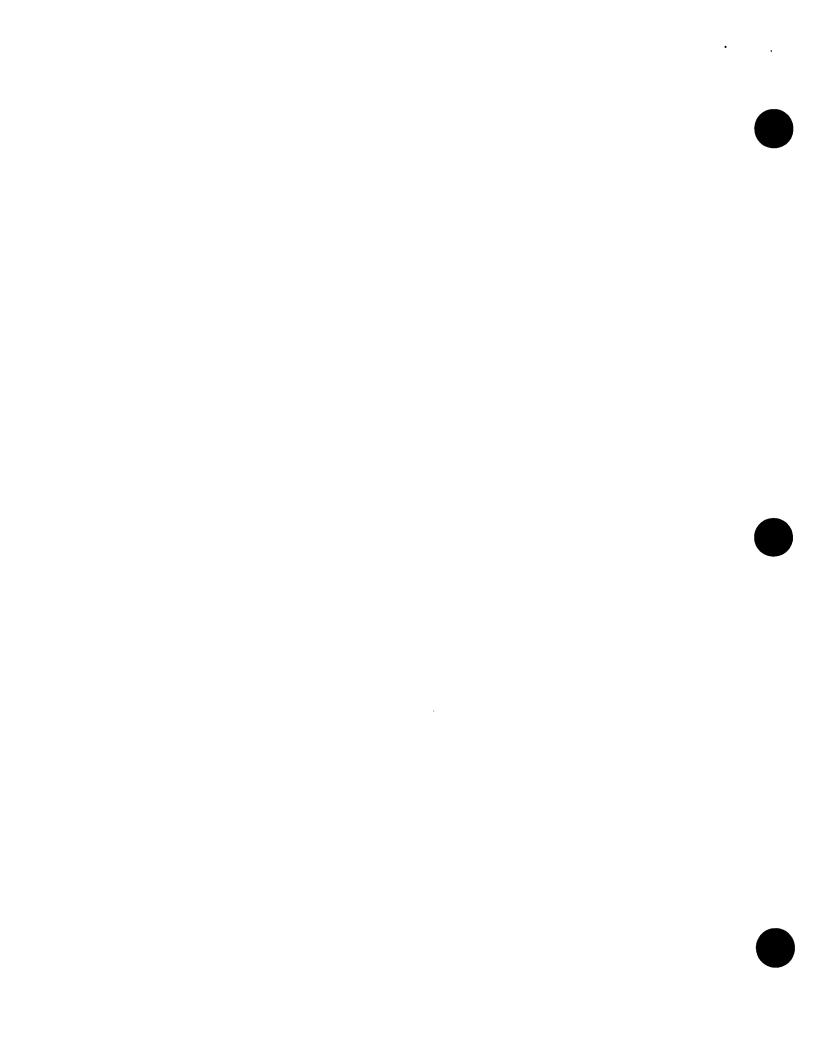
- 2/3 vote of both the U.S. Senate and the U.S. House of Representatives call for a change to be made.
- Application of the legislatures of 2/3 of the states for a national constitutional convention.

**BILL ANALYSIS:** The proposed committee substitute would apply to Congress to call a constitutional convention for considering amendments to the United Constitution on the following matters:

O. Walker Reagan Director



Research Division (919) 733-2578



# House Bill 321

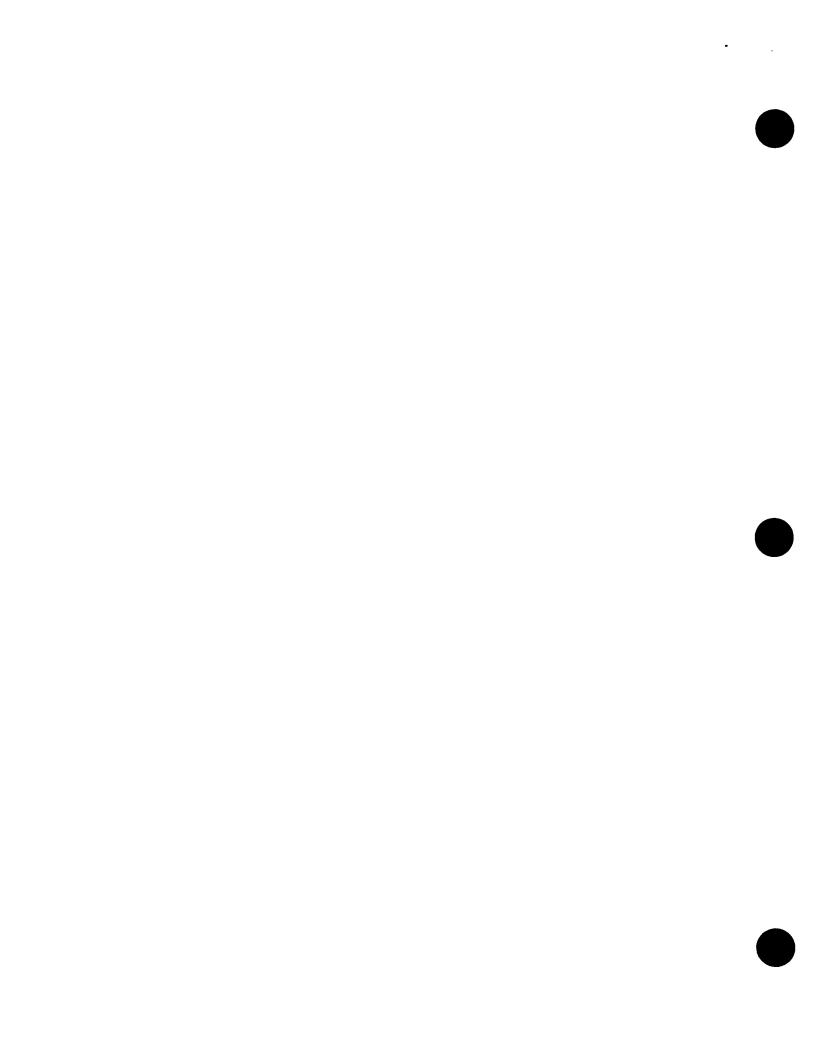
Page 2

- > Imposing fiscal restraints on the federal government.
- > Limiting the power and jurisdiction of the federal government.
- Limit the terms of office for its officials and for members of Congress.

The application would be valid until September 30, 2024, although no General Assembly may formally bind another General Assembly. The pcs also directs the Secretary of State to transmit copies of the enacted bill to all of the following individuals:

- The President and Secretary of the United States Senate
- The Speaker and Clerk of the United States House of Representatives
- Each member of the North Carolina delegation to the United States Senate and United States House of Representatives
- The presiding officers of each of the legislative houses in the several states, requesting their cooperation with the purposes of this act.

**EFFECTIVE DATE:** Effective when it becomes law.



## GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H D

## HOUSE BILL 321 PROPOSED COMMITTEE SUBSTITUTE H321-CSST-16 [v.1]

3/31/2015 5:34:52 PM

Short Title: Convention of States. (Public)

Sponsors:

Referred to:

#### March 24, 2015

A BILL TO BE ENTITLED

AN ACT APPLYING TO CONGRESS FOR AN ARTICLE V CONVENTION OF THE STATES WITH THE PURPOSE OF PROPOSING AMENDMENTS TO THE UNITED STATES CONSTITUTION.

Whereas, the Founders of the Constitution of the United States empowered State Legislators to be guardians against actual or potential abuses of power by the federal government; and

Whereas, the federal government has increasingly usurped legitimate roles of the States; and

Whereas, the federal government has created a crushing national debt through unsustainable budgeting and spending; and

Whereas, it is the solemn duty of the States to protect freedom and opportunity for our citizens, including the generations to come; and

Whereas, Article V of the United States Constitution authorizes a process to propose amendments to the Constitution of the United States through a Convention of the States to place clear restraints on these and related abuses of power; Now, therefore,

The General Assembly of North Carolina enacts:

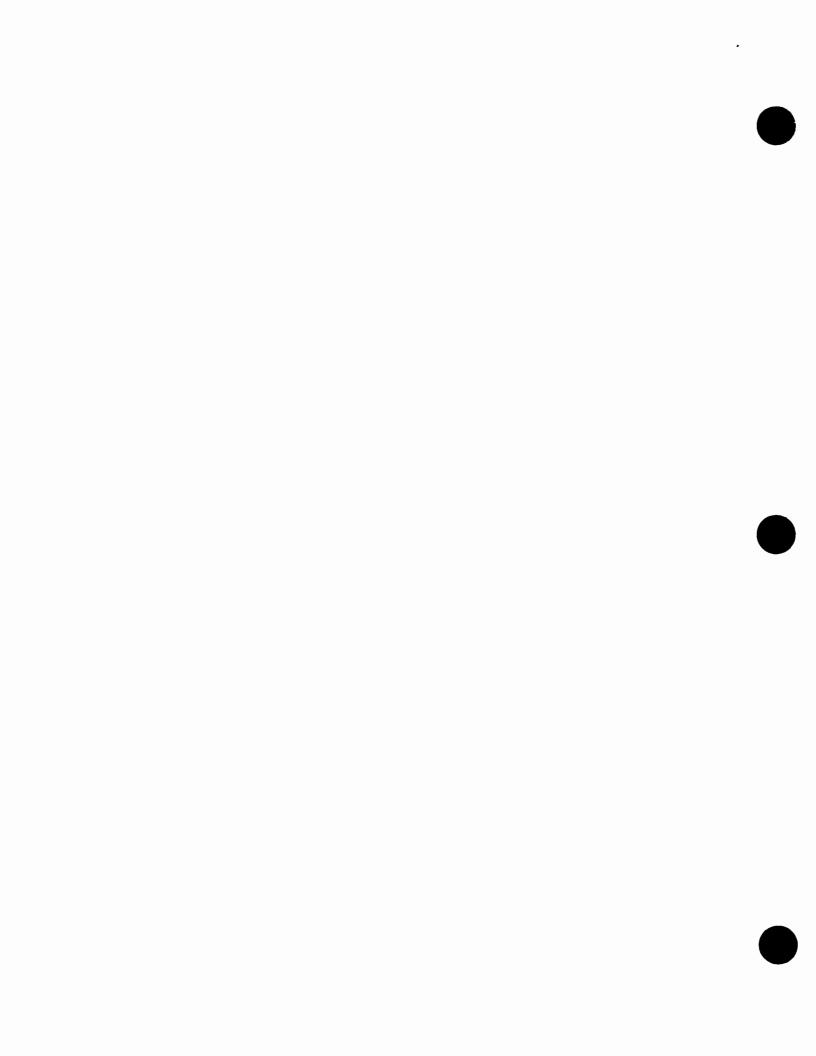
**SECTION 1.** The North Carolina General Assembly hereby applies to Congress, under the provisions of Article V of the Constitution of the United States, for the calling of a convention of the states limited to proposing amendments to the Constitution of the United States that (i) impose fiscal restraints on the federal government, (ii) limit the power and jurisdiction of the federal government, and (iii) limit the terms of office for its officials and for members of Congress.

**SECTION 2.** The application set forth in Section 1 of this act constitutes a continuing application in accordance with Article V of the Constitution of the United States until the legislatures of at least two-thirds of the several states have made identical or substantially similar applications as the one set forth in Section 1 of this act.

**SECTION 3.** The application set forth in Section 1 of this act expires September 30, 2024, if the legislatures of at least two-thirds of the several states have not made identical or substantially similar applications as the one set forth in Section 1 by that date.

SECTION 4. The Secretary of State shall transmit copies of this act to (i) the President and Secretary of the United States Senate; (ii) the Speaker and Clerk of the United States House of Representatives; (iii) each member of the North Carolina delegation to the United States Senate and United States House of Representatives; and (iv) the presiding officers of each of the legislative houses in the several states, requesting their cooperation with the purposes of this act.

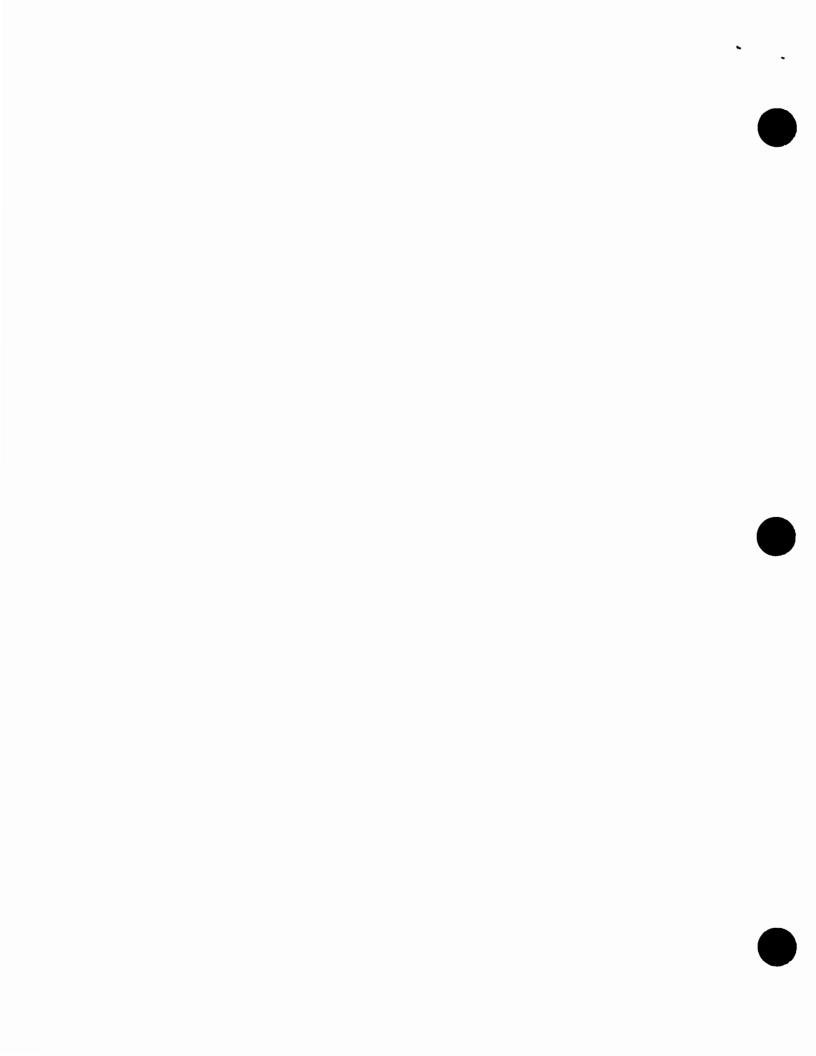




Session 2015

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

Page 2 House Bill 321 H321-CSST-16 [v.1]



## GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

HOUSE BILL 321

H

1 2

 Short Title: Convention of States. (Public)

Sponsors: Representatives Jones, Millis, Riddell, and Pendleton (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary I, if favorable, Rules, Calendar, and Operations of the House.

March 24, 2015

#### A BILL TO BE ENTITLED

AN ACT APPLYING TO CONGRESS FOR AN ARTICLE V CONVENTION OF THE STATES WITH THE PURPOSE OF PROPOSING AMENDMENTS TO THE UNITED STATES CONSTITUTION.

Whereas, the Founders of the Constitution of the United States empowered State Legislators to be guardians against actual or potential abuses of power by the federal government; and

Whereas, the federal government has increasingly usurped legitimate roles of the States; and

Whereas, the federal government has created a crushing national debt through unsustainable budgeting and spending; and

Whereas, it is the solemn duty of the States to protect freedom and opportunity for our citizens, including the generations to come; and

Whereas, Article V of the United States Constitution authorizes a process to propose amendments to the Constitution of the United States through a Convention of the States to place clear restraints on these and related abuses of power; Now, therefore,

The General Assembly of North Carolina enacts:

**SECTION 1.** The North Carolina General Assembly hereby applies to Congress, under the provisions of Article V of the Constitution of the United States, for the calling of a convention of the states limited to proposing amendments to the Constitution of the United States that (i) impose fiscal restraints on the federal government, (ii) limit the power and jurisdiction of the federal government, and (iii) limit the terms of office for its officials and for members of Congress.

**SECTION 2.** The application set forth in Section 1 of this act constitutes a continuing application in accordance with Article V of the Constitution of the United States until the legislatures of at least two-thirds of the several states have made identical or substantially similar applications as the one set forth in Section 1 of this act.

**SECTION 3.** The application set forth in Section 1 of this act expires September 30, 2015, if the legislatures of at least two-thirds of the several states have not made identical or substantially similar applications as the one set forth in Section 1 by that date.

SECTION 4. The Secretary of State shall transmit copies of this act to (i) the President and Secretary of the United States Senate; (ii) the Speaker and Clerk of the United States House of Representatives; (iii) each member of the North Carolina delegation to the United States Senate and United States House of Representatives; and (iv) the presiding



### **General Assembly of North Carolina**

3

Session 2015

- officers of each of the legislative houses in the several states, requesting their cooperation with the purposes of this act.
  - **SECTION 5.** This act is effective when it becomes law.

Page 2 H321 [Edition 1]

# NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

## JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

#### **FAVORABLE**

SB 78 (CS#1) Off-Duty Correctional Officers/Conceal Carry.

Draft Number: None
Serial Referral: None
Recommended Referral: None
Long Title Amended: No
Floor Manager: McNeill

TOTAL REPORTED: 1

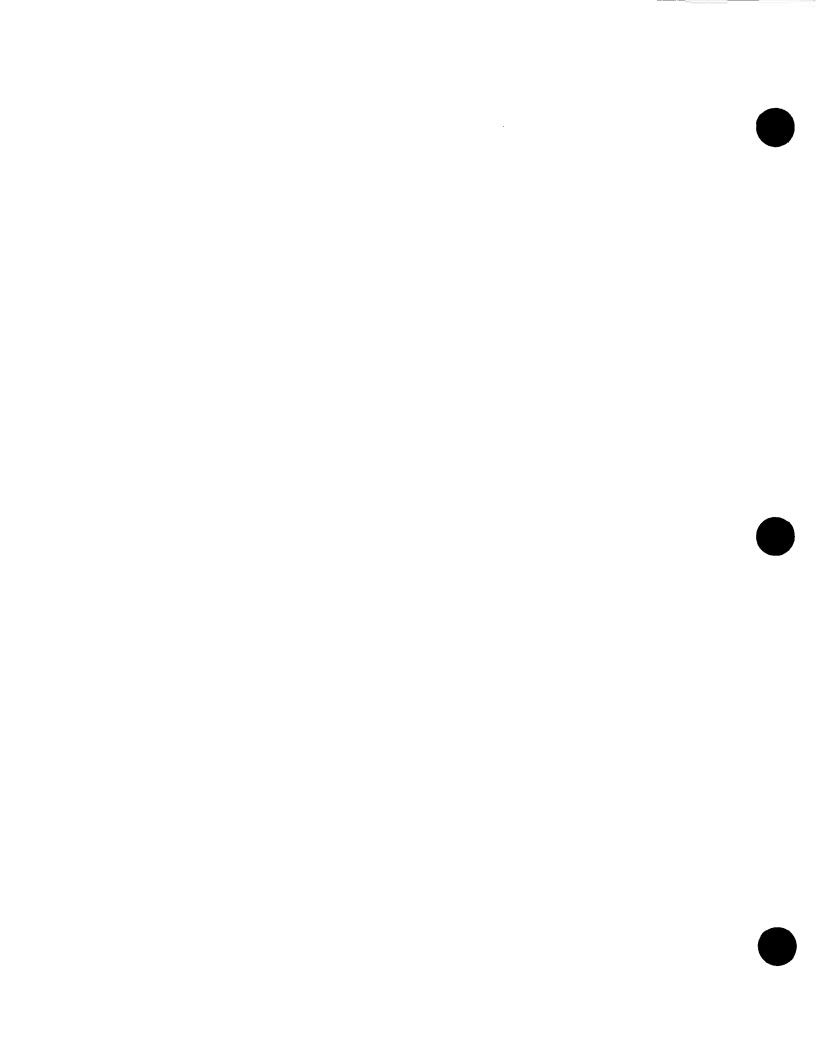


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| ) | #   | Date 4-1-15  |
|---|---|--|
|   | Bill Number <u>578</u> PCS <u>none</u> Motion to be before the committee by | mcwill   |
|   | Sen Randleman  Discussion on the Bill YES or NO                             | explained the bill.                                    |
| ) | Rep Favorable Report No vote Other: Other:                                  | AdoptionUnfavorable to original bill, favorable to PCS |
|   | Serial referral to:Speakers:  |  |
|   |   |  |

Handouts:

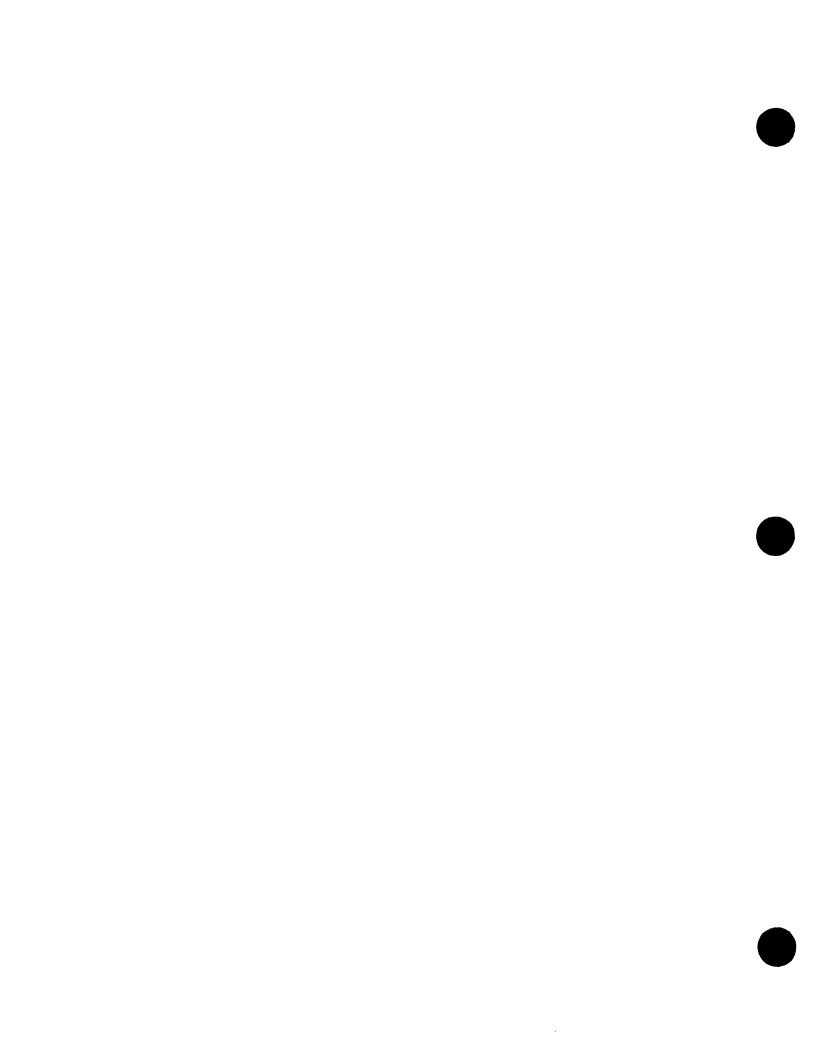
| #  | Date   |
|--|--|
| Bill Number                                  | traideires   |
| Rep. Javes  Discussion on the Bill YES or NO | explained the bill.                                    |
| Amendments:                                  |  |
| RepFavorable ReportNo voteOther:             | AdoptionUnfavorable to original bill, favorable to PCS |
| Serial referral to:                          |  |
| Speakers:                                    |  |
| Handouts:                                    |  |



| # |  |
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Handouts:

| Bill Number HJR 132                    |   |
|--|---|
| PCS                                    |   |
| Motion to be before the committee by   |   |
| Rep.  Discussion on the Bill YES or NO | explained the bill.                           |
| Discussion on the bill                 |   |
| Amendments:                            |   |
| Rep                                    | motioned for:                                 |
| Favorable Report                       | Adoption                                      |
| Unfavorable Report                     | Unfavorable to original bill, favorable to PC |
| No vote                                |   |
| Other:                                 |   |
| Serial referral to:                    |   |
| Speakers:                              |   |
|  |   |
|  |   |
|  |   |



# HOUSE PAGES

| NAME OF    | COMMITTEE H. Judiciary 1 DATE 1 APR 2015 |
|------------|--|
|            | Maddie DYSON                             |
| County:    | DAUIDSON                                 |
|            | John Faircloth                           |
| 2. Name:   | DAWSON CLaire MEHARG                     |
| County:    | WILSON                                   |
| Sponsor:   | Susan Martin                             |
| 3. Name:   |  |
| County:    |  |
|            |  |
| 4. Name:   |  |
|            |  |
|            |  |
|            |  |
|            |  |
| Sponsor:   |  |
|            |  |
|            | SGT-AT-ARM  NA COLOR                     |
|            | BARRY MOORE                              |
| 2. Name:   | B.H. Powell                              |
| 3. Name:   | DAVID LINTHICUM                          |
| 4. Name: _ | •  |

# Speaker's Sign Up VISITOR REGISTRATION SHEET

| Judiciary I       | April 1, 2015 |  |
|-------------------|---------------|--|
| Name of Committee | Date          |  |

# YISTORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME             | FIRM OR AGENCY AND ADDRESS  |
|------------------|---|
| Wynne Coleman    | No Convention of States NC Committee  |
| MARTHORITY       | HERE AS PRIVATE CIT., BUT BOURD HEUREN OF MOON<br>240 SUGAR PINE DA PINEHURST 283 |
| NEFF LEWIS       | PATRIOT COALITION   |
| IM ICHAEL FRERIS | CONVENTION OF STATES PUTCELL SILLE VA 20132                                       |
|                  |   |
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Speaker's sign up

## **VISITOR REGISTRATION SHEET**

Judiciary I

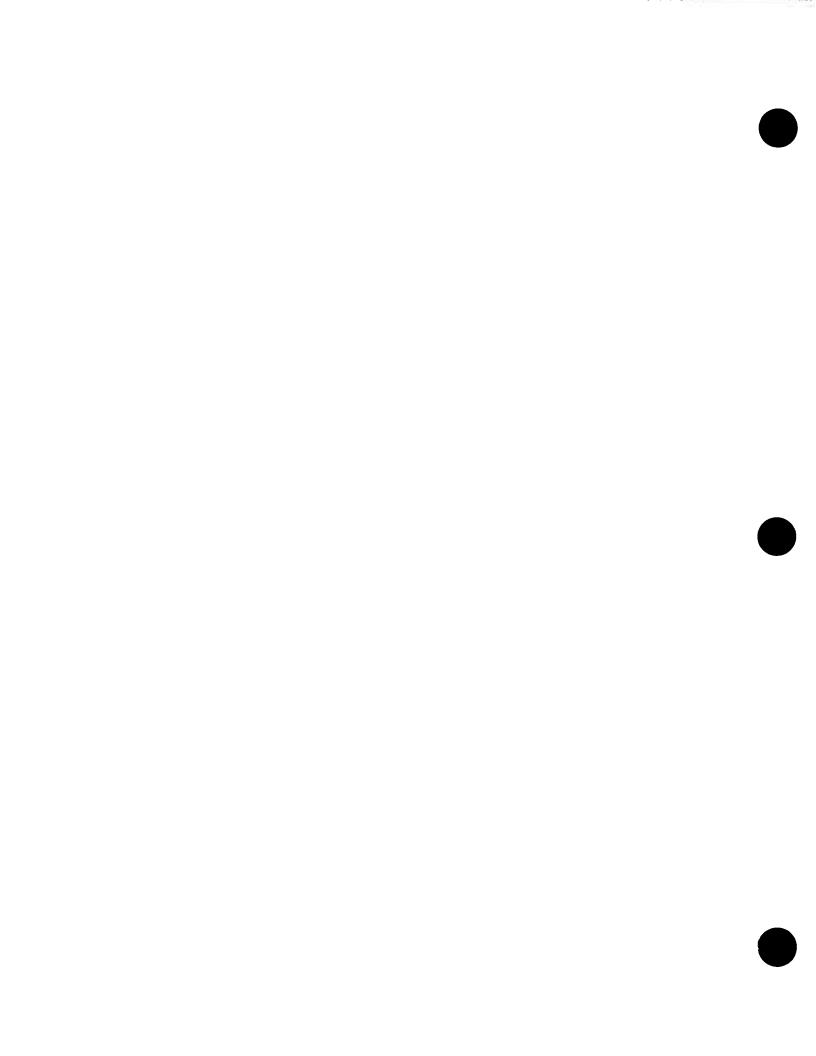
April 1, 2015

Name of Committee

Date

## VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME             | FIRM OR AGENCY AND ADDRESS |
|------------------|----------------------------|
| Ryc Mgs P        | Manuster of states         |
| Jay DeLaney      | 1/ 1/ 1/ 1/                |
| AAM & Dave Hoath | Raleigh NC                 |
| FRANK EMPIE      | RALEICH, NC                |
| Andy Chase       | KMA                        |
| MILL BUT EN      | Youngsville NC             |
| GARY KANADY      | YOUNGSUILE, NC             |
| Patrick Methyla  | W Kengol a Tar Carry       |
| Mike Westrich    | NC Convent on of States    |
| Flint Benson     | SEANC                      |
| Mat Caller       | ju Corital Correction      |



# VISITOR REGISTRATION SHEET

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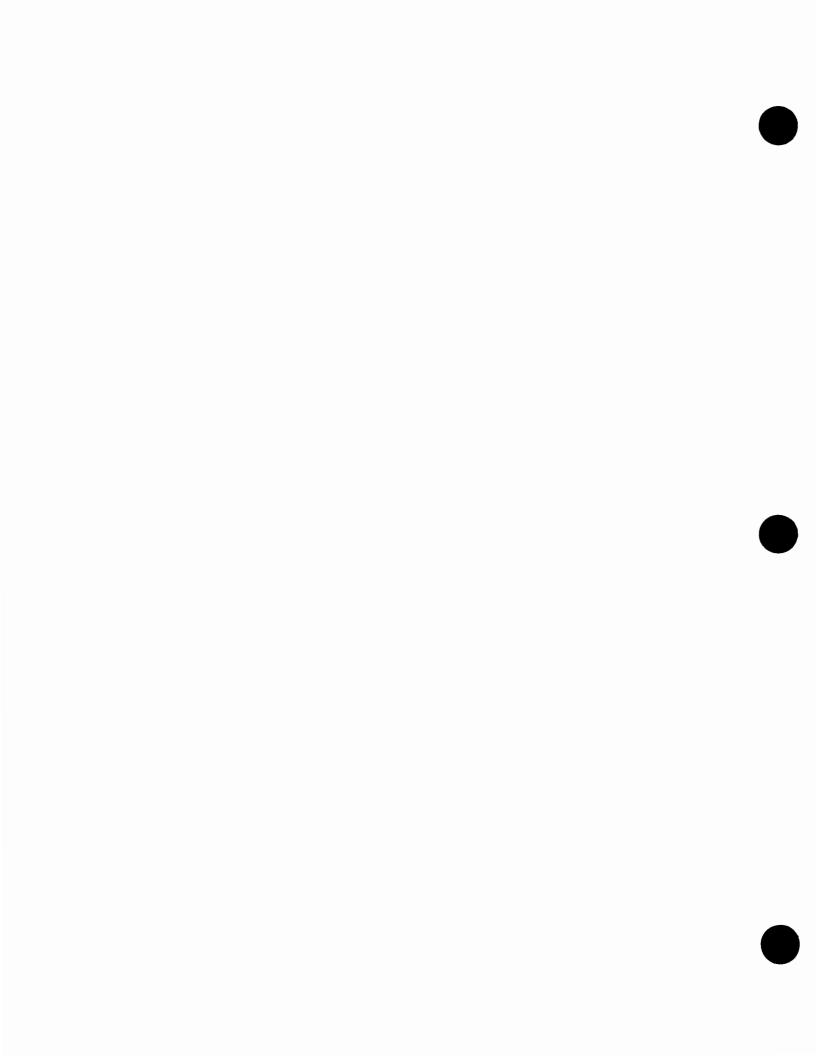
April 1, 2015

Name of Committee

Date

# VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME             | FIRM OR AGENCY AND ADDRESS        |
|------------------|-----------------------------------|
| Gunson           | Sels                              |
| Greg Hall        | self, DOBGON, NC, (COS)           |
| DANO MILLEL      | . 7                               |
| Dan Miller       | 1)                                |
| JUANF. PONCE     | 1 1                               |
| HORSLEY, MATT    | 11                                |
| FARRIS MICHAGE   | CONVENTION OF STATES              |
| Flippin, Kenneth | , . 69                            |
| Ken Falkowsk;    | self                              |
| JEFF LEWIS       | PATRIOT COALITION                 |
| Nynne Coleman    | No Convention of States NC Commit |

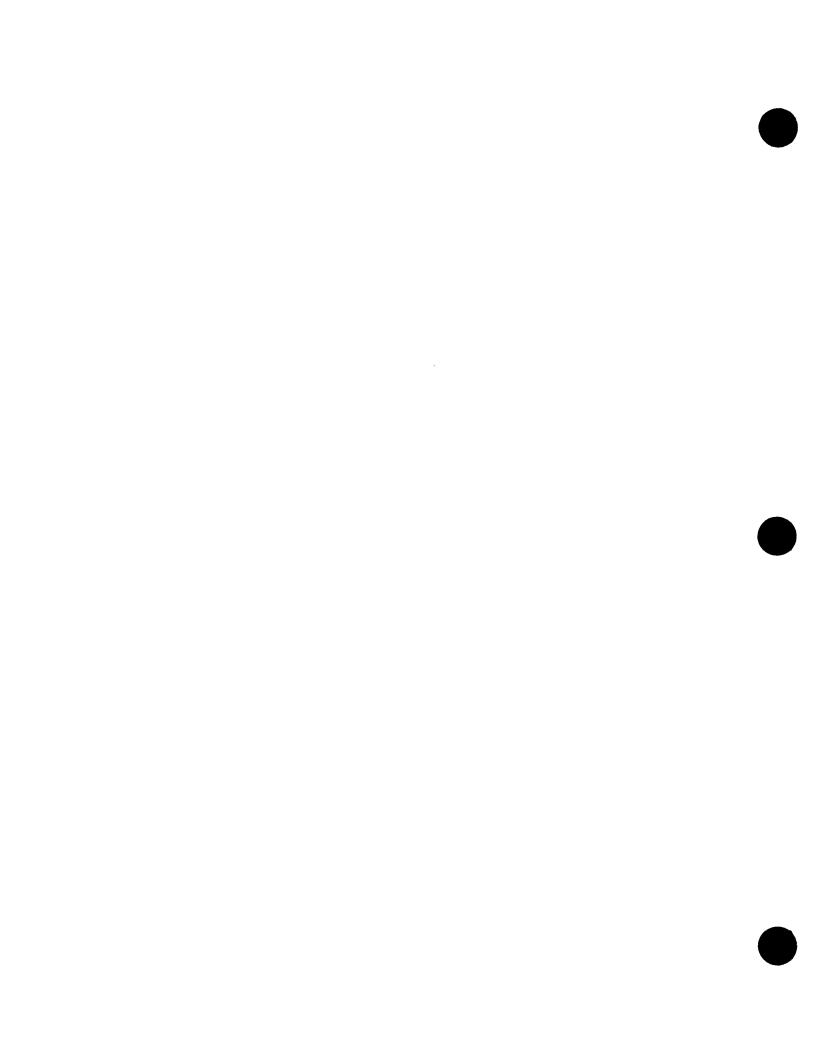


# VISITOR REGISTRATION SHEET

| Judiciary I       | April 1, 2015 |
|-------------------|---------------|
| Name of Committee | Date          |

# VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME              | FIRM OR AGENCY AND ADDRESS           |  |  |
|-------------------|--------------------------------------|--|--|
| Meg Cressionne    | No Convention of States NC Committee |  |  |
| SarahPreston      | ACLU-NC                              |  |  |
| NanoyFaith        | SEIF                                 |  |  |
| Danfaith          | Seff                                 |  |  |
| JOHN MIRGETIE     | NC PBA.                              |  |  |
| Gary Lyons        | Convention of States voluntee        |  |  |
| MICHAEL A CHURLES | COS VOLUNTERR                        |  |  |
| Mike Faultonherry | Conv. of States NC State Director    |  |  |
|                   |                                      |  |  |
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### Corrected #2: Add HB643 / Roofing Contractors/Consumer Protection

# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

You are hereby notified that the House Committee on Judiciary I will meet as follows:

DAY & DATE: Wednesday, April 15, 2015

TIME: 12:30 PM LOCATION: 415 LOB

The following bills will be considered:

| BILL NO. | SHORT TITLE                              | SPONSOR                  |
|----------|--|--------------------------|
| HB 253   | Justice Reinvestment Act ChangesAB       | Representative Faircloth |
|          |  | Representative Daughtry  |
|          |  | Representative Boles     |
|          |  | Representative Hurley    |
| HB 328   | Highway Safety/Citizens Protection       | Representative Warren    |
|          | Act.                                     | Representative B. Brown  |
|          |  | Representative Collins   |
|          |  | Representative Jordan    |
| HB 436   | Unauthorized Practice of Law Changes.    | Representative Daughtry  |
|          |  | Representative Bryan     |
|          |  | Representative Davis     |
| HB 643   | Roofing Contractors/Consumer Protection. | Representative Arp       |

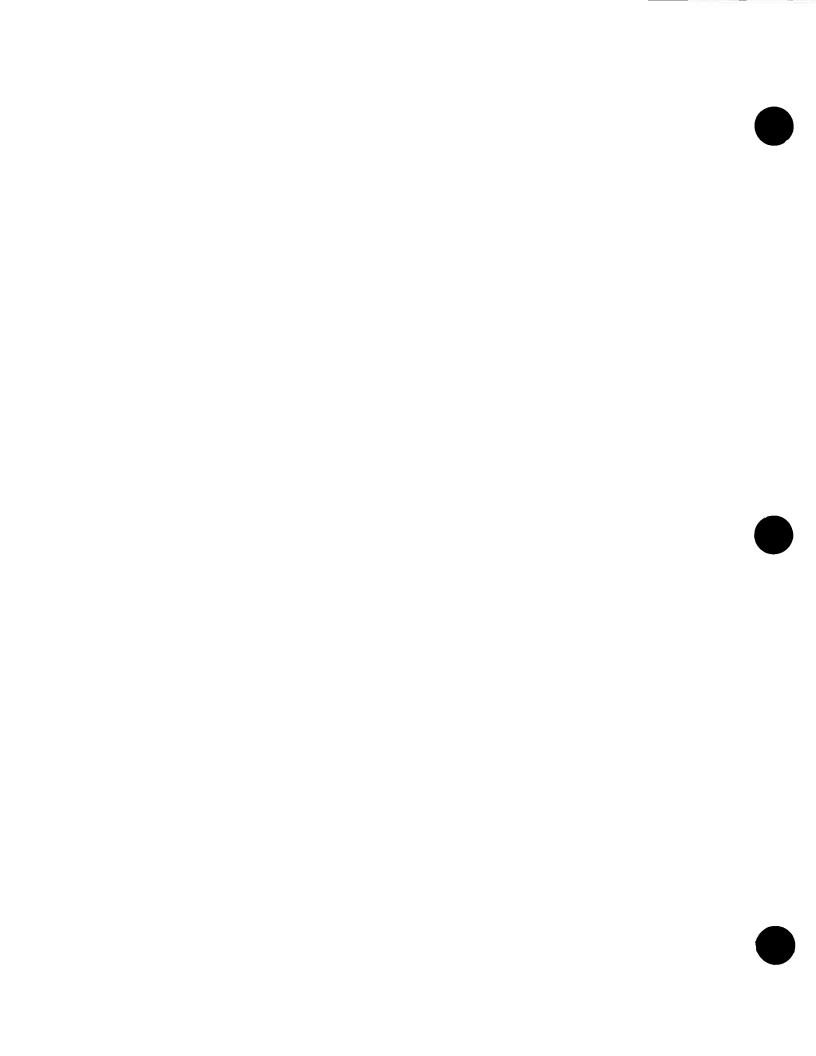
Respectfully,

Representative N. Leo Daughtry, Chair

| I hereby certify this notice was filed by the | committee assistant at | the following offices | at 9:39 AM on |
|---|------------------------|-----------------------|---------------|
| Wednesday, April 15, 2015.                    |                        | · ·                   |               |

| Principal Clerk               |
|-------------------------------|
| Reading Clerk - House Chamber |

Jan Copeland (Committee Assistant)



# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

You are hereby notified that the House Committee on Judiciary I will meet as follows:

DAY & DATE: Wednesday, April 15, 2015

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The following bills will be considered:

| BILL NO. | SHORT TITLE                           | SPONSOR                    |
|----------|---------------------------------------|----------------------------|
| HB 253   | Justice Reinvestment Act ChangesAB    | Representative Faircloth   |
|          |                                       | Representative Daughtry    |
|          |                                       | Representative Boles       |
|          |                                       | Representative Hurley      |
| HB 328   | Highway Safety/Citizens Protection    | Representative Warren      |
|          | Act.                                  | Representative B. Brown    |
|          |                                       | Representative Collins     |
|          |                                       | Representative Jordan      |
| HB 436   | Unauthorized Practice of Law Changes. | Representative Daughtry    |
|          | •                                     | Representative Bryan       |
|          |                                       | Representative Davis       |
| HB 566   | Amend Eyewitness ID/Show-Up.          | Representative Glazier     |
|          |                                       | Representative Reives      |
|          |                                       | Representative Baskerville |
|          |                                       | Representative Michaux     |

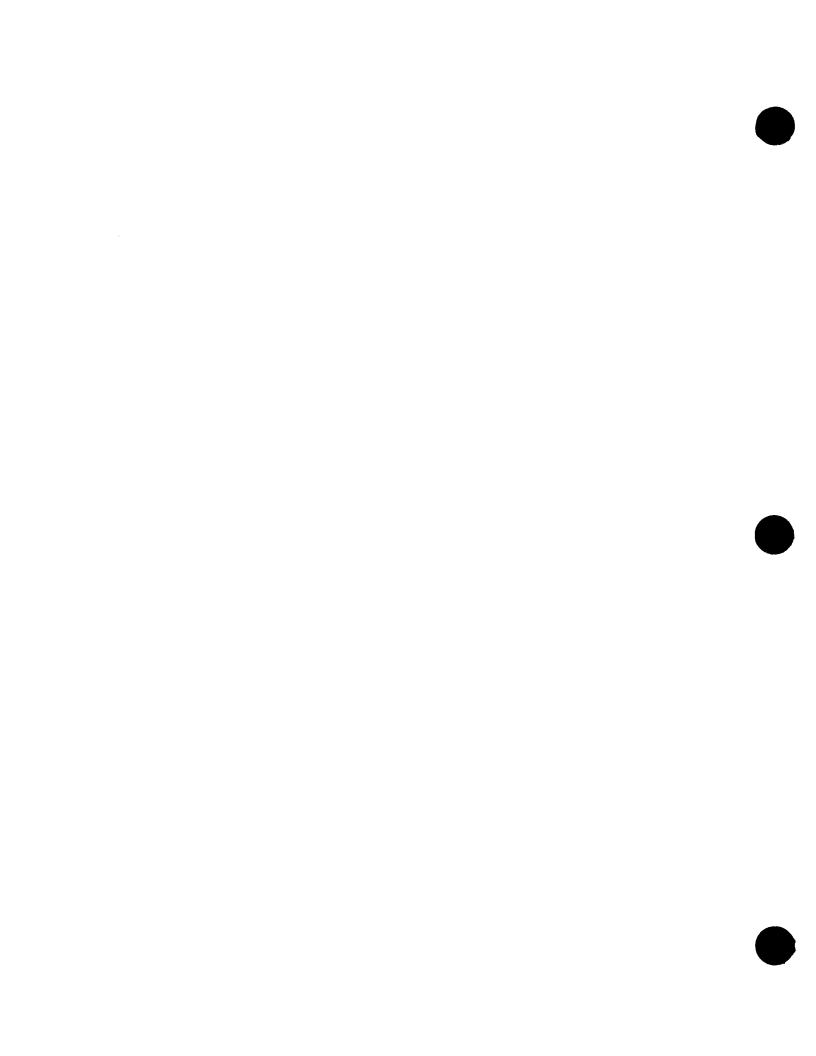
## Respectfully,

Representative N. Leo Daughtry, Chair

| I hereby | certify this | notice was | filed by the | committee | assistant a | at the foll | lowing of | ffices at | 3:40 H | PM on |
|----------|--------------|------------|--------------|-----------|-------------|-------------|-----------|-----------|--------|-------|
| Monday   | , April 13,  | 2015.      |              |           |             |             |           |           |        |       |
|          |              |            |              |           |             |             |           |           |        |       |

| Principal Clerk               |
|-------------------------------|
| Reading Clerk - House Chamber |

Jan Copeland (Committee Assistant)



# House Committee on Judiciary I Wednesday, April 15, 2015, 12:30 PM 415 Legislative Office Building

## **AGENDA**

## **Welcome and Opening Remarks**

## **Introduction of Pages**

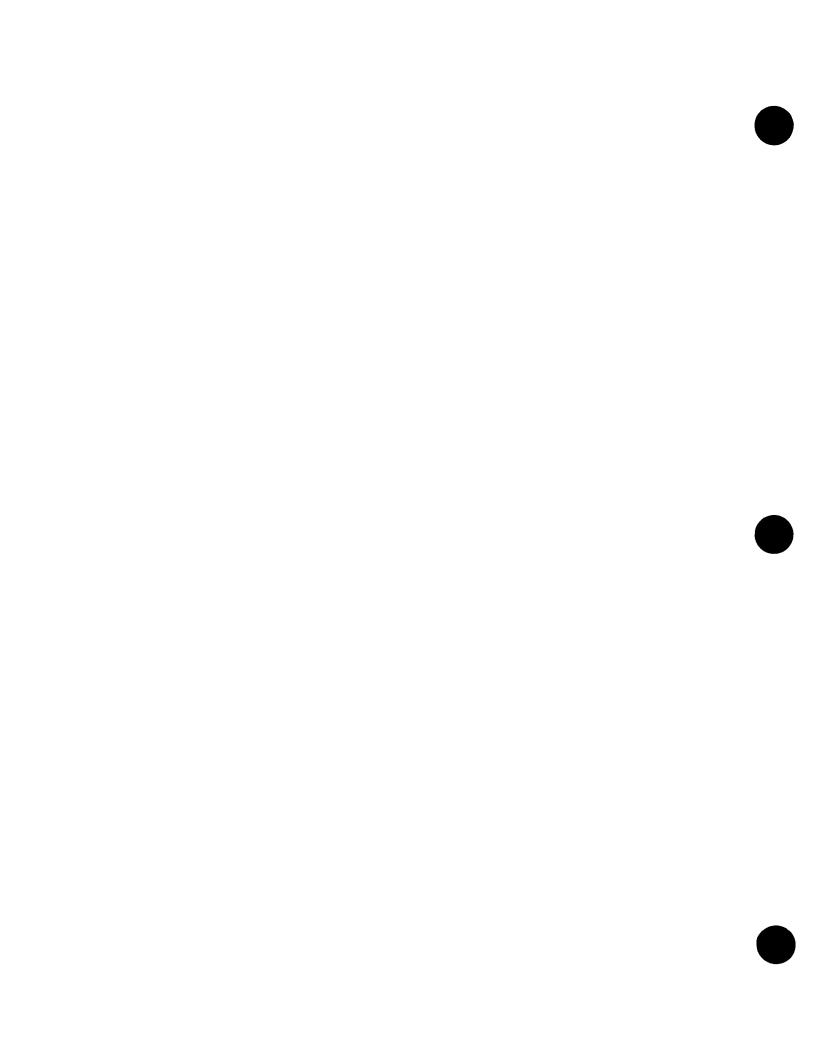
### **Bills**

| SHORT TITLE                              | SPONSOR  |
|--|--|
| Justice Reinvestment Act ChangesAB       | Representative Faircloth   |
|  | Representative Daughtry  |
|  | Representative Boles   |
|  | Representative Hurley  |
| Highway Safety/Citizens Protection       | Representative Warren  |
| Act.                                     | Representative B. Brown  |
|  | Representative Collins   |
|  | Representative Jordan  |
| Unauthorized Practice of Law Changes.    | Representative Daughtry  |
|  | Representative Bryan   |
|  | Representative Davis   |
| Roofing Contractors/Consumer Protection. | Representative Arp   |
|  | Highway Safety/Citizens Protection Act.  Unauthorized Practice of Law Changes.  Roofing Contractors/Consumer |

**Presentations** 

**Other Business** 

Adjournment



## House Committee on Judiciary I Wednesday, April 15, 2015 at 12:30 PM Room 415 of the Legislative Office Building

#### **MINUTES**

The House Committee on Judiciary I met at 12:30 PM on April 15, 2015 in Room 415 of the Legislative Office Building. Representatives Daughtry, Burr, Jackson, Arp, Hall, Hardister Howard, Martin, McNeill and Robinson attended.

Representative N. Leo Daughtry, Chair, presided. Representative Daughtry called the meeting to order, introduced the Sgt. at Arms and Pages.

The following bills were considered and discussed: (The public was invited to speak and given a 2 minute time limit.)

HB 253 Justice Reinvestment Act Changes.-AB (Representatives Faircloth, Daughtry, Boles, Hurley) – Favorable com sub, unfavorable to original bill

HB 328 Highway Safety/Citizens Protection Act. (Representatives Warren, B. Brown, Collins, Jordan) – <u>Favorable com sub, unfavoarable to original bill and re-referred to Finance</u> (Serial Referral)

HB 436 Unauthorized Practice of Law Changes. (Representatives Daughtry, Bryan, Davis)

- As amended - Favorable com sub, unfavorable to original bill

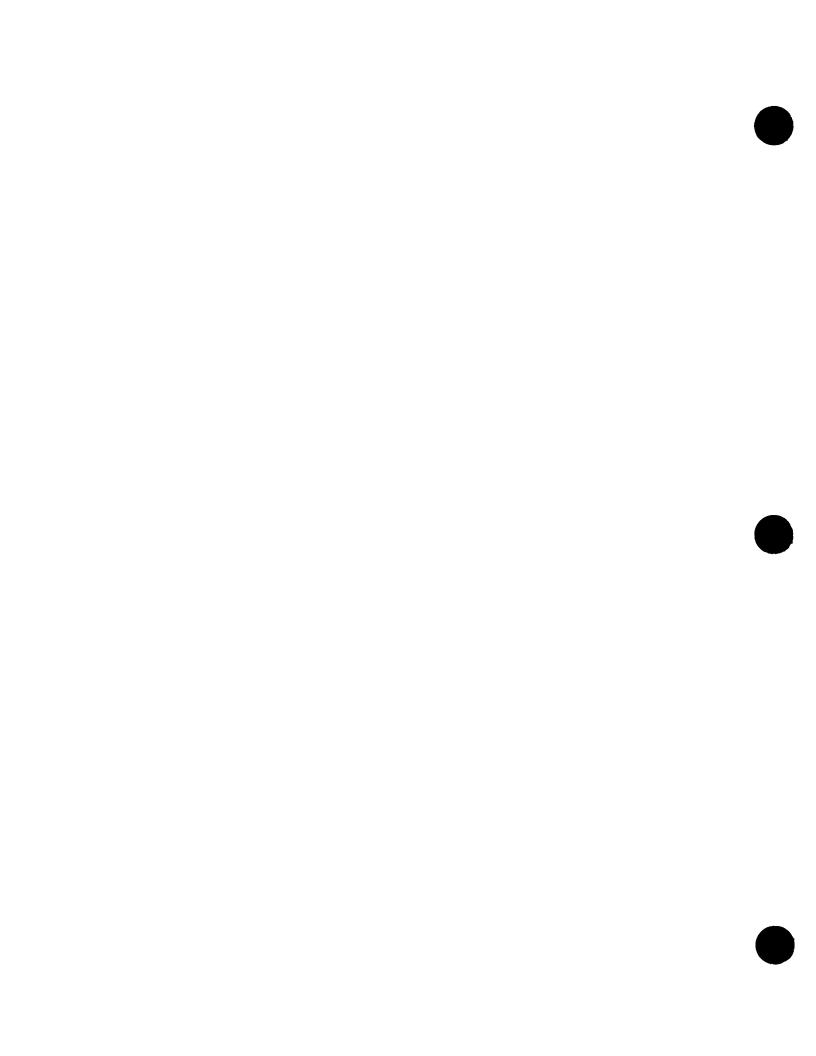
HB 643 Roofing Contractors/Consumer Protection. (Representative Arp) – <u>removed from agenda</u>

The meeting adjourned at 1:26 p.m.

Representative N Leo Daughtry, Chair

Presiding

Jan Copeland, Committee Clerk





# **HOUSE BILL 436:** Unauthorized Practice of Law Changes

2015-2016 General Assembly

Committee: House Judiciary I

Introduced by: Reps. Daughtry, Bryan, Davis

Analysis of: PCS to First Edition

H436-CSST-20

**Date:** April 14, 2015

Prepared by: R. Erika Churchill

Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 436 would exempt certain acts from the definition of the practice of law and would establish a process by which the Attorney General would review most actions to prevent the unauthorized practice of law prior to the North Carolina State Bar bringing an action.

**CURRENT LAW:** G.S. 84.4 provides that except for active members of the Bar of the State of North Carolina admitted and licensed to practice as attorneys-at-law, it is unlawful for any person, or association of persons, to engage in certain, specifically listed, behaviors that incorporate the practice of law.

The phrase "practice law" for purposes of licensure of attorneys is defined to be:

performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase "practice law" shall not be construed to limit the foregoing general definition of the term, but shall be construed to include the foregoing particular acts, as well as all other acts within the general definition.

The phrase "practice law" specifically excludes written memoranda of mediators at community mediation centers or mediators of employment-related matters for The University of North Carolina or a constituent institution, or for an agency, commission, or board of the State of North Carolina.

#### **BILL ANALYSIS:** The PCS would do both of the following:

1. Exempt from the definition of "practice law" the production, distribution, or sale of materials, provided certain criteria are met. The criteria include that the production of the production of the materials must have occurred entirely before any contact between the provider and the consumer; during and after initial contact between the provider and the consumer, the provider may not participate in any way in selecting the content of the finished materials; and the provider clearly and conspicuously communicates to the consumer that the materials are not a substitute for the advice or services of an attorney.

O. Walker Reagan Director



Research Division (919) 733-2578

### House Bill 436

Page 2

- 2. Establish a process for the Attorney General's Office to review actions brought by the State Bar to verify the State Bar is acting within it's scope of authority to demand cease and desist of actions encompassing the unauthorized, unlicensed or unlawful practice of law.
- 3. Makes technical and conforming changes.

EFFECTIVE DATE: Effective when it becomes law.

#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H

#### **HOUSE BILL 436**

Short Title: Unauthorized Practice of Law Changes. (Public)

Sponsors: Representatives Daughtry, Bryan, and Davis (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary I.

#### April 1, 2015

A BILL TO BE ENTITLED

AN ACT TO FURTHER DEFINE THE TERM "PRACTICE LAW" FOR THE PURPOSE OF PROTECTING MEMBERS OF THE PUBLIC FROM SERIOUS HARM RESULTING FROM THE UNAUTHORIZED PRACTICE OF LAW BY A PERSON WHO IS NOT A TRAINED AND LICENSED ATTORNEY AND TO ESTABLISH A PROCESS OF REVIEW BY THE ATTORNEY GENERAL PRIOR TO ANY ACTION BY THE STATE BAR TO ENJOIN THE UNAUTHORIZED PRACTICE OF LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 84-2.1 reads as rewritten:

"§ 84-2.1. "Practice law" defined.

- (a) The phrase "practice law" as used in this Chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase "practice law" shall not be construed to limit the foregoing general definition of the term, but shall be construed to include the foregoing particular acts, as well as all other acts within the general definition.
  - (b) The phrase "practice law" does not encompass any of the following:
    - (1) the The drafting or writing of memoranda of understanding or other mediation summaries by mediators at community mediation centers authorized by G.S. 7A-38.5 or by mediators of employment-related matters for The University of North Carolina or a constituent institution, or for an agency, commission, or board of the State of North Carolina.
    - (2) The production, distribution, or sale of materials, provided that all of the following are satisfied:
      - a. The production of the materials must have occurred entirely before any contact between the provider and the consumer.
      - b. During and after initial contact between the provider and the consumer, the provider's participation in creating or completing any



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| 1  |           | materials must be limited to typing, writing, or reproducing exactly    |
| 2  |           | the information provided by the consumer as dictated by the             |
| 3  |           | consumer or deleting content that is visible to the consumer at the     |
| 4  |           | instruction of the consumer.  |
| 5  | <u>c.</u> | The provider does not select or assist in the selection of the product  |
| 6  | <u> </u>  | for the consumer; provided, however, (i) operating a website that       |
| 7  |           | requires the consumer to select the product to be purchased; (ii)       |
| 8  |           | publishing descriptions of the products offered, when not done to       |
| 9  |           | address the consumer's particular legal situation and when the          |
| 10 |           | products offered and the descriptions published to every consumer       |
|    |           |   |
| 11 |           | are identical; and (iii) publishing general information about the law,  |
| 12 |           | when not done to address the consumer's particular legal situation      |
| 13 |           | and when the general information published to every consumer is         |
| 14 |           | identical, does not constitute assistance in selection of the product.  |
| 15 | <u>d.</u> | The provider does not provide any individualized legal advice to or     |
| 16 |           | exercise any legal judgment for the consumer; provided, however,        |
| 17 |           | that publishing general information about the law and describing the    |
| 18 |           | products offered, when not done to address the consumer's particular    |
| 19 |           | legal situation and when the general information published to every     |
| 20 |           | consumer is identical and does not constitute legal advice or the       |
| 21 |           | exercise of legal judgment.   |
| 22 | <u>e.</u> | During and after initial contact between the provider and the           |
| 23 |           | consumer, the provider may not participate in any way in selecting      |
| 24 |           | the content of the finished materials.                                  |
| 25 | <u>f.</u> | In the case of the sale of materials including information supplied by  |
| 26 |           | the consumer through an Internet Web site or otherwise, the             |
| 27 |           | consumer is provided a means to see the blank template or the final,    |
| 28 |           | completed product before finalizing a purchase of that product.         |
| 29 | g.        | The provider does not review the consumer's final product for errors    |
| 30 |           | other than notifying the consumer (i) of spelling errors, (ii) that a   |
| 31 |           | required field has not been completed, and (iii) that information       |
| 32 |           | entered into a form or template by the consumer is factually            |
| 33 |           | inconsistent with other information entered into the form or template   |
| 34 |           | by the consumer.  |
| 35 | <u>h.</u> | The provider clearly and conspicuously communicates to the              |
| 36 | 110       | consumer that the materials are not a substitute for the advice or      |
| 37 |           | services of an attorney.  |
| 38 | <u>i.</u> | The provider discloses its legal name and physical location and         |
| 39 | 1.        | address to the consumer.  |
| 40 | :         | The provider does not disclaim any warranties or liability and does     |
| 41 | <u>j.</u> | not limit the recovery of damages or other remedies by the consumer.    |
|    | 1-        |   |
| 42 | <u>k.</u> | The provider does not require the consumer to agree to jurisdiction or  |
| 43 |           | venue in any state other than North Carolina for the resolution of      |
| 44 | P .1      | disputes between the provider and the consumer.                         |
| 45 |           | this subsection, "production" shall mean design, creation, publication, |
| 46 |           | means of an Internet Web site; "materials" shall mean legal written     |
| 47 |           | nents, templates, forms, or computer software; and "provider" shall     |
| 48 |           | oublisher, distributor, displayer, or seller."                          |
| 40 | CECTION   | ( X X/1 3/1 roade as rowritten)   |

**SECTION 2.** G.S. 84-37 reads as rewritten:

"§ 84-37. State Bar may investigate and enjoin unauthorized activities.

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- The Council or any committee appointed by it for that purpose may inquire into and investigate any charges or complaints of (i) unauthorized unauthorized, unlicensed, or unlawful practice of law or (ii) the use of the designations, "North Carolina Certified Paralegal," "North Carolina State Bar Certified Paralegal," or "Paralegal Certified by the North Carolina State Bar Board of Paralegal Certification," by individuals who have not been certified in accordance with the rules adopted by the North Carolina State Bar. Bar, or (iii) noncompliance with G.S. 84-2.1(b)(2) by any provider of materials, as those terms are defined in G.S. 84-2.1(b)(2). The Council may issue a letter of warning or, after complying with the provisions of subsection (a1) of this section, may issue a demand to cease and desist or bring or cause to be brought and maintained in the name of the North Carolina State Bar an action or actions, upon information or upon the complaint of any person or entity actions against any person or entity that engages in rendering any legal service, service in violation of any provision of this Chapter, holds himself or herself out as a North Carolina certified paralegal by use of the designations set forth in this subsection, or makes it a practice or business to render legal services that are unauthorized or prohibited by law. No bond for cost shall be required in the proceeding.
- Prior to issuing a demand to cease and desist or bringing an action or actions as set forth in subsection (a) of this section, the Council, or any committee appointed by it for that purpose, may submit the proposed demand to cease and desist or action and an explanation of why regulatory action by the Council is needed for review by the Attorney General. The Attorney General shall review the proposed demand to cease and desist or action and any material submitted in support thereof to ensure that the Council or any committee appointed by it is acting to protect the public interest and consistent with State policy and with the Council's authority as set forth in this Chapter. The purpose of the review by the Attorney General is to ensure that the proposed demand to cease and desist or action is State action that is consistent with the authority of the Council and that would be entitled to State action immunity under the federal antitrust laws. The Attorney General shall review the substance and procedure of any decision by the Council or any committee appointed to send a demand to cease and desist or to file an action to ensure that the proposed action is consistent with State policy. The Attorney General shall have the authority to approve or disapprove the proposed sending of a demand to cease and desist or the filing of an action or to modify any demand to cease and desist or action to ensure that it accords with State policy. The Council or any committee appointed by it for that purpose may forgo review by the Attorney General when seeking injunctive relief is necessary to prevent ongoing fraud or imminent harm to consumers or when the Council or any committee appointed by it for that purpose has made a specific determination in writing that the relief sought is not likely to have a material adverse effect on competition. The Attorney General may appoint a designee to perform any duties required or authority provided under this subsection.
- In an action brought under this section, the final judgment if in favor of the plaintiff (b) North Carolina State Bar shall perpetually restrain the defendant or defendants from the commission or continuance of the unauthorized unauthorized, unlicensed, or unlawful act or acts. A temporary injunction to restrain the commission or continuance of the act or acts may be granted upon proof or by affidavit, that the defendant or defendants have violated any of the laws applicable to unauthorized unauthorized, unlicensed, or unlawful practice of law or the unauthorized use of the designations set forth in subsection (a) of this section or any other designation implying certification by the State Bar. The provisions of law relating generally to injunctions as provisional remedies in actions shall apply to a temporary injunction and the proceedings for temporary injunctions.
- (d) The plaintiff in the action-North Carolina State Bar\_shall be entitled to obtain documents and examine the adverse party and witnesses before filing complaint and before trial in the same manner as provided by law for examining parties.

| General | <b>Assembly</b> | of North | Carolina |
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Session 2015

1 (e) This section shall not repeal or limit any remedy now provided in cases of unauthorized unauthorized, unlicensed, or unlawful practice of law. Nothing contained in this section shall be construed as disabling or abridging the inherent powers of the court in these matters.

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

Page 4 H436 [Edition 1]

#### GENERAL ASSEMBLY OF NORTH CAROLINA **SESSION 2015**

H

## **HOUSE BILL 436**

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|   | PRO  | OPOSED COMMITTEE SUBSTITUTE H436-PCS3  | 0314-ST-20   |
|---|--|--|--|
| Short Tit                                     | le: U  | Jnauthorized Practice of Law Changes.  | (Public)   |
| Sponsors                                      | :  |  |  |
| Referred                                      | to:  |  |  |
|   |  | April 1, 2015  |  |
| PROTER FROM FROM FROM FROM FROM FROM FROM FRO | TECTION THE INED IEW B TO EN Eral As SEC. "Pra The vice of Illy included in the ceeding y couring by a legal of acts where the cold to income. The income The income The income The income The income Technology (Income Technology) and the income The income Technology (Income Technology) and the inco | A BILL TO BE ENTITLED URTHER DEFINE THE TERM "PRACTICE LAW" FOR MEMBERS OF THE PUBLIC FROM SERIOUS E UNAUTHORIZED PRACTICE OF LAW BY A PER AND LICENSED ATTORNEY AND TO ESTABLY THE ATTORNEY GENERAL PRIOR TO ANY ACTION THE UNAUTHORIZED PRACTICE OF LAW. Sembly of North Carolina enacts:  TION 1. G.S. 84-2.1 reads as rewritten:  Inctice law" defined.  Phrase "practice law" as used in this Chapter is defined or any other person, firm or corporation, with or ruding the preparation or aiding in the preparation of its, inventories, accounts or reports of guardians, true eparing or aiding in the preparation of any petitions or g; abstracting or passing upon titles, the preparation and t, including administrative tribunals and other judicial advice, counsel, or otherwise in any legal work; and to eights of any person, firm or corporation: Provided, that which are specifically included within the definition of the country of the following are satisfied:  The drafting or writing of memoranda of mediation summaries by mediators at communication and the complex of the University of North Carolina or a constitute agency, commission, or board of the State of North Carolina are satisfied:  The production, distribution, or sale of materials, following are satisfied:  The production of the materials must have any contact between the provider and the contact between the provider | ed to be performing any without compensation, deeds, mortgages, wills, stees, administrators or orders in any probate or nd filing of petitions for or quasi-judicial bodies, advise or give opinion at the above reference to the phrase "practice law" the term, but shall be acts within the general llowing: understanding or other nity mediation centers bloyment-related matters ent institution, or for an Carolina.  provided that all of the occurred entirely before sumer. |



consumer, the provider's participation in creating or completing any materials must be limited to typing, writing, or reproducing exactly

| 1  |                     | the information provided by the consumer as dictated by the             |
|--|---------------------|---|
| 2  |                     | consumer or deleting content that is visible to the consumer at the     |
| 3  |                     | instruction of the consumer.  |
| 4  | <u>c.</u>           | The provider does not select or assist in the selection of the product  |
| 5  | 444Amman            | for the consumer; provided, however, (i) operating a Web site that      |
| 6  |                     | requires the consumer to select the product to be purchased; (ii)       |
| 7  |                     | publishing descriptions of the products offered, when not done to       |
| 8  |                     | address the consumer's particular legal situation and when the          |
| 9  |                     | products offered and the descriptions published to every consumer       |
| 10   |                     | are identical; and (iii) publishing general information about the law,  |
|  |                     | when not done to address the consumer's particular legal situation      |
| 11   |                     | and when the general information published to every consumer is         |
| 12   |                     |   |
| 13   | 1                   | identical, does not constitute assistance in selection of the product.  |
| 14   | <u>d.</u>           | The provider does not provide any individualized legal advice to or     |
| 15   |                     | exercise any legal judgment for the consumer; provided, however,        |
| 16   |                     | that publishing general information about the law and describing the    |
| 17   |                     | products offered, when not done to address the consumer's particular    |
| 18   |                     | legal situation and when the general information published to every     |
| 19   |                     | consumer is identical and does not constitute legal advice or the       |
| 20   |                     | exercise of legal judgment.   |
| 21   | <u>e.</u>           | During and after initial contact between the provider and the           |
| 22   |                     | consumer, the provider may not participate in any way in selecting      |
| 23   |                     | the content of the finished materials.                                  |
| 21<br>22<br>23<br>24<br>25<br>26<br>27<br>28<br>29<br>30 | <u>f.</u>           | In the case of the sale of materials including information supplied by  |
| 25   |                     | the consumer through an Internet Web site or otherwise, the             |
| 26   |                     | consumer is provided a means to see the blank template or the final,    |
| 27   |                     | completed product before finalizing a purchase of that product.         |
| 28   | g.                  | The provider does not review the consumer's final product for errors    |
| 29   |                     | other than notifying the consumer (i) of spelling errors, (ii) that a   |
| 30   |                     | required field has not been completed, and (iii) that information       |
| 31   |                     | entered into a form or template by the consumer is factually            |
| 32   |                     | inconsistent with other information entered into the form or template   |
| 33   |                     | by the consumer.  |
| 34   | <u>h.</u>           | The provider clearly and conspicuously communicates to the              |
| 35   | _                   | consumer that the materials are not a substitute for the advice or      |
| 36   |                     | services of an attorney.  |
| 37   | <u>i.</u>           | The provider discloses its legal name and physical location and         |
| 38   | -                   | address to the consumer.  |
| 39   | <u>i.</u>           | The provider does not disclaim any warranties or liability and does     |
| 40   | <u> </u>            | not limit the recovery of damages or other remedies by the consumer.    |
| 41   | <u>k.</u>           | The provider does not require the consumer to agree to jurisdiction or  |
| 42   | 111                 | venue in any state other than North Carolina for the resolution of      |
| 43   |                     | disputes between the provider and the consumer.                         |
| 44   | For the nurnoses of | this subsection, "production" shall mean design, creation, publication, |
| 45<br>45   |                     | means of an Internet Web site: "materials" shall mean legal written     |

n, materials, books, documents, templates, forms, or computer software; and "provider" shall mean designer, creator, publisher, distributor, displayer, or seller.

The completion of a preprinted offer, option contract, sales contract, or lease from by a real estate broker licensed under Chapter 93A of the General Statutes, in accordance with rules adopted by the North Carolina Real Estate Commission."

SECTION 2. G.S. 84-37 reads as rewritten:

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"§ 84-37. State Bar may investigate and enjoin unauthorized activities.

- (a) The Council or any committee appointed by it for that purpose may inquire into and investigate any charges or complaints of (i) unauthorized unauthorized, unlicensed, or unlawful practice of law or (ii) the use of the designations, "North Carolina Certified Paralegal," "North Carolina State Bar Certified Paralegal," or "Paralegal Certified by the North Carolina State Bar Board of Paralegal Certification," by individuals who have not been certified in accordance with the rules adopted by the North Carolina State Bar. Bar, or (iii) noncompliance with G.S. 84-2.1(b)(2) by any provider of materials, as those terms are defined in G.S. 84-2.1(b)(2). The Council may issue a letter of warning or, after complying with the provisions of subsection (a1) of this section, may issue a demand to cease and desist or bring or cause to be brought and maintained in the name of the North Carolina State Bar an action or actions, upon information or upon the complaint of any person or entity actions against any person or entity that engages in rendering any legal service, service in violation of any provision of this Chapter, holds himself or herself out as a North Carolina certified paralegal by use of the designations set forth in this subsection, or makes it a practice or business to render legal services that are unauthorized or prohibited by law. No bond for cost shall be required in the proceeding.
- Prior to issuing a demand to cease and desist or bringing an action or actions as set forth in subsection (a) of this section, the Council, or any committee appointed by it for that purpose, shall submit the proposed demand to cease and desist or action and an explanation of why regulatory action by the Council is needed for review by the Attorney General. The Attorney General shall review the proposed demand to cease and desist or action and any material submitted in support thereof to ensure that the Council or any committee appointed by it is acting to protect the public interest and consistent with State policy and with the Council's authority as set forth in this Chapter. The purpose of the review by the Attorney General is to ensure that the proposed demand to cease and desist or action is State action that is consistent with the authority of the Council and that would be entitled to State action immunity under the federal antitrust laws. The Attorney General shall review the substance and procedure of any decision by the Council or any committee appointed to send a demand to cease and desist or to file an action to ensure that the proposed action is consistent with State policy. The Attorney General shall have the authority to approve or disapprove the proposed sending of a demand to cease and desist or the filing of an action or to modify any demand to cease and desist or action to ensure that it accords with State policy. The Council or any committee appointed by it for that purpose may forgo review by the Attorney General when seeking injunctive relief is necessary to prevent ongoing fraud or imminent harm to consumers or when the Council or any committee appointed by it for that purpose has made a specific determination in writing that the relief sought is not likely to have a material adverse effect on competition. The Attorney General may appoint a designee to perform any duties required or authority provided under this subsection.
- (b) In an action brought under this section, the final judgment if in favor of the plaintiff North Carolina State Bar shall perpetually restrain the defendant or defendants from the commission or continuance of the unauthorized unauthorized, unlicensed, or unlawful act or acts. A temporary injunction to restrain the commission or continuance of the act or acts may be granted upon proof or by affidavit, that the defendant or defendants have violated any of the laws applicable to unauthorized unauthorized, unlicensed, or unlawful practice of law or the unauthorized unauthorized, unlicensed, or unlawful use of the designations set forth in subsection (a) of this section or any other designation implying certification by the State Bar. The provisions of law relating generally to injunctions as provisional remedies in actions shall apply to a temporary injunction and the proceedings for temporary injunctions.
- (c) The venue for actions brought under this section shall be the superior court of any county in which the relevant acts are alleged to have been committed or in which there appear

reasonable grounds that they will be committed in the county where the defendants in the action reside, or in Wake County.

- (d) The plaintiff in the action North Carolina State Bar shall be entitled to obtain documents and examine the adverse party and witnesses before filing complaint and before trial in the same manner as provided by law for examining parties.
- (e) This section shall not repeal or limit any remedy now provided in cases of unauthorized unauthorized, unlicensed, or unlawful practice of law. Nothing contained in this section shall be construed as disabling or abridging the inherent powers of the court in these matters.
- (f) The Council or its duly appointed committee may issue advisory opinions in response to inquiries from members or the public regarding whether contemplated conduct would constitute the unauthorized unauthorized, unlicensed, or unlawful practice of law."

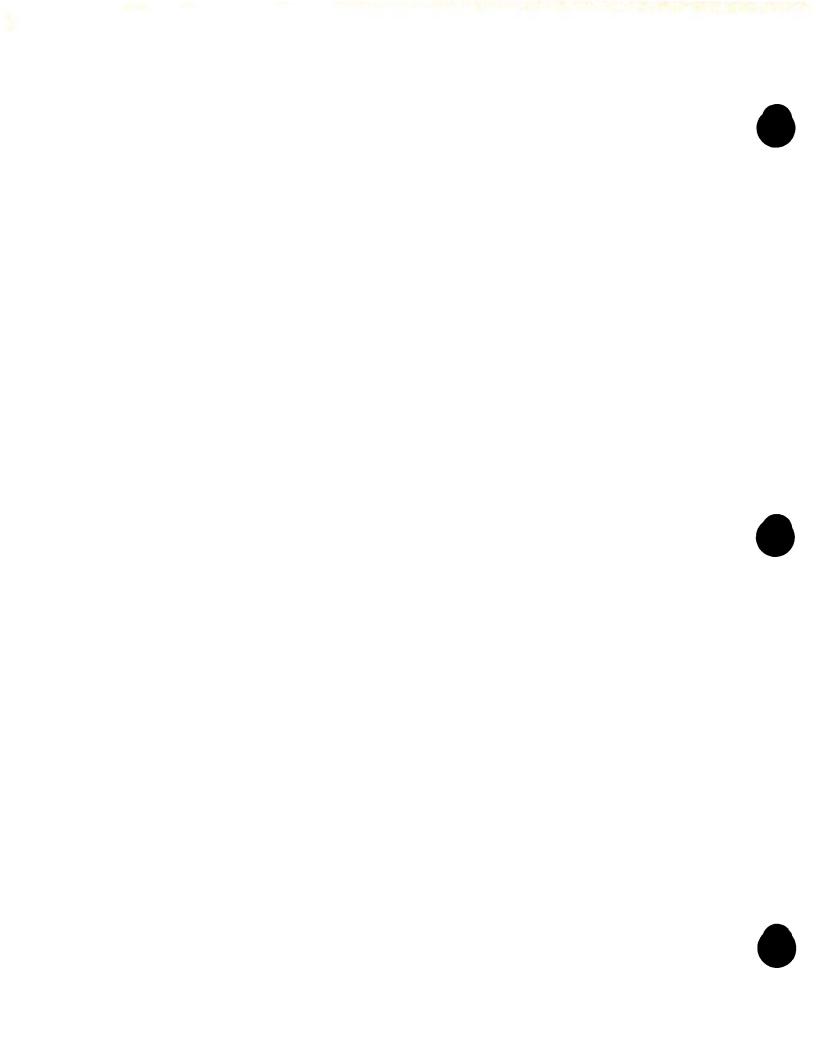
**SECTION 3.** This act is effective when it becomes law.

Page 4 House Bill 436 H436-PCS30314-ST-20

#### NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

| EDITION No   | DA                         | TE 4/15              |   |
|--|----------------------------|----------------------|---|
| S. B. No   |                            | Amendment No         | (to be filled in by<br>Principal Clerk) |
| Rep. Rep.  | Martin                     |                      |   |
| 1 moves to amend the bill on page<br>2 ( ) WHICH CHANGES THE TITLE | 2                          | , line <u>5</u>      | 48-49                                   |
| a inserting the  | e following                | between              | those lines:                            |
|  | detion of a                |                      |   |
| real estate broke  | er licensed<br>Statutes, i | under C<br>n accorda | hapter 93 A<br>nce with                 |
| 10 rules adopted by  | 1 "                        | rth Carolin          | na Real                                 |
| 13   |                            |                      |   |
| 15   |                            |                      |   |
| 16   | 4.                         |                      |   |
| 19   |                            |                      |   |
| ADOPTED  | FAILED                     | TAB                  |   |



#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

D H

#### **HOUSE BILL 253** PROPOSED COMMITTEE SUBSTITUTE H253-PCS30312-ST-18

Short Title: Justice Reinvestment Act Changes.-AB (Public) Sponsors: Referred to: March 18, 2015

1 A BILL TO BE ENTITLED 2 AN ACT TO AMEND PROVISIONS OF THE JUSTICE REINVESTMENT ACT. 3 The General Assembly of North Carolina enacts: PART I. ADD WAIVER OF EXTRADITION AS REGULAR CONDITION OF 4 PROBATION/FILE WAIVER WITH CLERK OF SUPERIOR COURT 5 **SECTION 1.** G.S. 15A-1343 reads as rewritten: 6 7 "§ 15A-1343. Conditions of probation. 8 Regular Conditions. – As regular conditions of probation, a defendant must: 9 (b) 10 Commit no criminal offense in any jurisdiction. Remain within the jurisdiction of the court unless granted written permission (2)

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- to leave by the court or his probation officer.
- Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.
- Not abscond by willfully avoiding supervision or by willfully making the (3a) defendant's whereabouts unknown to the supervising probation officer, if the defendant is placed on supervised probation.
- Satisfy child support and other family obligations as required by the court. If (4) the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).
- (5) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court.
- Pay a supervision fee as specified in subsection (c1). (6)
- Remain gainfully and suitably employed or faithfully pursue a course of (7)study or of vocational training that will equip him for suitable employment. A defendant pursuing a course of study or of vocational training shall abide by all of the rules of the institution providing the education or training, and the probation officer shall forward a copy of the probation judgment to that institution and request to be notified of any violations of institutional rules by the defendant.
- Notify the probation officer if he fails to obtain or retain satisfactory (8)employment.



General Assembly Of North Carolina

Session 2015

- (15) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him or her by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors, or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.
- (16) Supply a breath, urine, or blood specimen for analysis of the possible presence of prohibited drugs or alcohol when instructed by the defendant's probation officer for purposes directly related to the probation supervision. If the results of the analysis are positive, the probationer may be required to reimburse the Division of Adult Correction of the Department of Public Safety for the actual costs of drug or alcohol screening and testing.
- (17) Waive all rights relating to extradition proceedings if taken into custody outside of this State for failing to comply with the conditions imposed by the court.

In addition to these regular conditions of probation, a defendant required to serve an active term of imprisonment as a condition of special probation pursuant to G.S. 15A-1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and regulations of the Division of Adult Correction of the Department of Public Safety governing the conduct of inmates while imprisoned and report to a probation officer in the State of North Carolina within 72 hours of his discharge from the active term of imprisonment.

Regular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more of the conditions in open court and in the judgment of the court. It is not necessary for the presiding judge to state each regular condition of probation in open court, but the conditions must be set forth in the judgment of the court.

Defendants placed on unsupervised probation are subject to the provisions of this subsection, except that defendants placed on unsupervised probation are not subject to the regular conditions contained in subdivisions (2), (3), (6), (8), (13), (14), and (15)(15), (16), and (17) of this subsection.

(c) Statement of Conditions. – A defendant released on supervised probation must be given a written statement explicitly setting forth the conditions on which he-the defendant is being released. If any modification of the terms of that probation is subsequently made, he-the defendant must be given a written statement setting forth the modifications.

Upon entry of an order of supervised probation by the court, a defendant shall submit to the Division of Adult Correction for filing with the clerk of superior court a signed document stating that:

- (1) The defendant will comply with the conditions that have been imposed by the court.
- (2) If the defendant fails to comply with the conditions imposed by the court and is taken into custody outside of this State, the defendant waives all rights relating to extradition proceedings.

#### PART II. EXPAND DELEGATED AUTHORITY

SECTION 2.(a) G.S. 15A-1343.2 reads as rewritten:

"§ 15A-1343.2. Special probation rules for persons sentenced under Article 81B.

(e) Delegation to Probation Officer in Community Punishment. – Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Section of Community Corrections of the Division of Adult Correction of the Department of

 Public Safety may require an offender sentenced to community punishment to do any of the following:

- (1) Perform up to 20 hours of community service, and pay the fee prescribed by law for this supervision.
- (2) Report to the offender's probation officer on a frequency to be determined by the officer.
- (3) Submit to substance abuse assessment, monitoring or treatment.
- (4) Submit to house arrest with electronic monitoring.
- (5) Submit to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods. When a defendant is on probation for multiple judgments, confinement periods imposed under this subdivision shall run concurrently and may total no more than six days per month.
- (6) Submit to a curfew which requires the offender to remain in a specified place for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored electronically.
- (7) Participate in an educational or vocational skills development program, including an evidence-based program.
- (8) Obtain a specific sex offender assessment and follow all recommended treatment.
- (9) Obtain a mental health assessment and follow all recommended treatment. If the Section imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

The probation officer may exercise authority delegated to him or her by the court pursuant to subsection (e) of this section this subsection after administrative review and approval by a Chief Probation Officer. The offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. However, the offender shall have no right of review if he or she has signed a written waiver of rights as required by this subsection. The Section may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court or the offender is determined to be high risk based on the results of the risk assessment in G.S. 15A-1343.2, except that the condition at subdivision (5) of this subsection may not be imposed unless the Section determines that the offender failed to comply with one or more of the conditions imposed by the court of probation. Nothing in this section shall be construed to limit the availability of the procedures authorized under G.S. 15A-1345.

The Division shall adopt guidelines and procedures to implement the requirements of this section, which shall include a supervisor's approval prior to exercise of the delegation of authority authorized by this section. Prior to imposing confinement pursuant to subdivision (5) of this subsection, the probationer must first be presented with a violation report, with the alleged violations noted and advised of the right (i) to a hearing before the court on the alleged violation, with the right to present relevant oral and written evidence; (ii) to have counsel at the hearing, and that one will be appointed if the probationer is indigent; (iii) to request witnesses who have relevant information concerning the alleged violations; and (iv) to examine any witnesses or evidence. The probationer may be confined for the period designated on the violation report upon the execution of a waiver of rights signed by the probationer and by two officers acting as witnesses. Those two witnesses shall be the probation officer and another officer to be designated by the Chief of the Community Corrections Section in written Division policy.

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- Delegation to Probation Officer for Supervision for Conditional Discharge and Deferred Prosecution. – Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Section of Community Corrections of the Division of Adult Correction of the Department of Public Safety may require an offender placed on supervised probation for a conditional discharge or a deferred prosecution to comply with any of the conditions in G.S. 15A-1343.2(e) with the exception of subdivision (5) of that subsection. If the Section of Community Corrections imposes any of the above requirements, then it may subsequently reduce or remove those same requirements. The probation officer may exercise authority delegated to him or her by the court pursuant to this subsection after administrative review and approval by a chief probation officer. The offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Section of Community Corrections may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation or the offender is determined to be high risk based on the results of a validated instrument to assess each probationer for risk of reoffending. Nothing in this section shall be construed to limit the availability of the procedures authorized under G.S. 15A-1345.
- (f) Delegation to Probation Officer in Intermediate Punishments. Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Section of Community Corrections of the Division of Adult Correction of the Department of Public Safety may require an offender sentenced to intermediate punishment to do any of the following:
  - (1) Perform up to 50 hours of community service, and pay the fee prescribed by law for this supervision.
  - (2) Submit to a curfew which requires the offender to remain in a specified place for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored electronically.
  - (3) Submit to substance abuse assessment, monitoring or treatment, including continuous alcohol monitoring when abstinence from alcohol consumption has been specified as a term of probation.
  - (4) Participate in an educational or vocational skills development program, including an evidence-based program.
  - (5) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.40(a)(2).
  - (6) Submit to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods. When a defendant is on probation for multiple judgments, confinement periods imposed under this subdivision shall run concurrently and may total no more than six days per month.
  - (7) Submit to house arrest with electronic monitoring.
  - (8) Report to the offender's probation officer on a frequency to be determined by the officer.
  - (9) Obtain a specific sex offender assessment and follow all recommended treatment.
- (10) Obtain a mental health assessment and follow all recommended treatment. If the Section imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

The probation officer may exercise authority delegated to him or her by the court pursuant to subsection (f) of this section this subsection after administrative review and approval by a Chief Probation Officer. The offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. However, the offender shall have no right of review if he or she has signed a written waiver of rights as required by this subsection. The Section may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court or the offender is determined to be high risk based on the results of the risk assessment in G.S. 15A-1343.2, except that the condition at subdivision (6) of this subsection may not be imposed unless the Section determines that the offender failed to comply with one or more of the conditions imposed by the court of probation. Nothing in this section shall be construed to limit the availability of the procedures authorized under G.S. 15A-1345.

The Division shall adopt guidelines and procedures to implement the requirements of this section, which shall include a supervisor's approval prior to exercise of the delegation of authority authorized by this section. Prior to imposing confinement pursuant to subdivision (6) of this subsection, the probationer must first be presented with a violation report, with the alleged violations noted and advised of the right (i) to a hearing before the court on the alleged violation, with the right to present relevant oral and written evidence; (ii) to have counsel at the hearing, and that one will be appointed if the probationer is indigent; (iii) to request witnesses who have relevant information concerning the alleged violations; and (iv) to examine any witnesses or evidence. The probationer may be confined for the period designated on the violation report upon the execution of a waiver of rights signed by the probationer and by two officers acting as witnesses. Those two witnesses shall be the probation officer and another officer to be designated by the Chief of the Community Corrections Section in written Division policy.

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SECTION 2.(b) G.S. 20-179 is amended by adding a new subsection to read:

"(k5) Delegation to Probation Officer. – Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Section of Community Corrections of the Division of Adult Corrections of the Department of Public Safety may require an offender sentenced pursuant to subsections (f3), (g), (h), (i), (j), or (k) and placed on supervised probation to do any of the following:

- (1) Perform up to 20 hours of community service, and pay the fee prescribed by law for this supervision.
- (2) Report to the offender's probation officer on a frequency to be determined by the officer.
- (3) Submit to substance abuse assessment, monitoring, or treatment.
- (4) Submit to house arrest with electronic monitoring.
- Submit to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods. When a defendant is on probation for multiple judgments, confinement periods imposed under this subdivision shall run concurrently and may total no more than six days per month.
- Submit to a curfew which requires the offender to remain in a specified place for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored electronically.
- (7) Participate in an educational or vocational skills development program. including an evidence-based program.

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- (8) Obtain a specific sex offender assessment and follow all recommended treatment.
- (9) Obtain a mental health assessment and follow all recommended treatment. If the Section imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

The probation officer may exercise authority delegated to him or her by the court pursuant to this subsection after administrative review and approval by a Chief Probation Officer. The offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. However, the offender shall have no right of review if he or she has signed a written waiver of rights as required by this subsection. The Section may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation or the offender is determined to be high risk based on the results of a validated instrument to assess each probationer for risk of reoffending, except that the condition at subdivision (5) of this subsection may not be imposed unless the Section determines that the offender failed to comply with one or more of the conditions of probation. Nothing in this section shall be construed to limit the availability of the procedures authorized under G.S. 15A-1345.

The Division shall adopt guidelines and procedures to implement the requirements of this section, which shall include a supervisor's approval prior to exercise of the delegation of authority authorized by this section. Prior to imposing confinement pursuant to subdivision (5) of this subsection, the probationer must first be presented with a violation report, with the alleged violations noted and advised of the right (i) to a hearing before the court on the alleged violation, with the right to present relevant oral and written evidence; (ii) to have counsel at the hearing, and that one will be appointed if the probationer is indigent; (iii) to request witnesses who have relevant information concerning the alleged violations; and (iv) to examine any witnesses or evidence. The probationer may be confined for the period designated on the violation report upon the execution of a waiver of rights signed by the probationer and by two officers acting as witnesses. Those two witnesses shall be the probation officer and another officer to be designated by the Director of the Community Corrections Section in written Division policy.

#### PART III. ALLOW PROBATION OFFICER TO IMPOSE CONDITIONS SIMILAR TO THOSE ALREADY IMPOSED THROUGH DELEGATED AUTHORITY IN SUPERVISED PROBATION CASES

SECTION 3.(a) G.S. 15A-1368.4 is amended by adding a new subsection to read:

- Delegation to Post-Release Supervision Officer. Unless the Commission specifically finds that delegation is not appropriate, the Section of Community Corrections of the Division of Adult Corrections of the Department of Public Safety may require a supervisee to do any of the following:
  - Perform up to 50 hours of community service, and pay the fee prescribed by (1) law for this supervision.
  - (2) Submit to a curfew which requires the offender to remain in a specified place for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored electronically.
  - (3) Submit to substance abuse assessment, monitoring, or treatment
  - (4)Participate in an educational or vocational skills development program, including an evidence-based program.
  - (5) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.40(a)(2).

- (6) Submit to house arrest with electronic monitoring.
  - (7) Report to the offender's probation officer on a frequency to be determined by the officer.
  - (8) Obtain a specific sex offender assessment and follow all recommended treatment.
- (9) Obtain a mental health assessment and follow all recommended treatment.

  If the Section imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

The post-release supervision officer may exercise authority delegated to him or her by the Commission pursuant to this subsection after administrative review and approval by a Chief Probation Officer. The supervisee may request a Commission review of the action taken by the officer. The supervisee shall be given notice of the right to seek such a review. The Section may exercise any authority delegated to it under this subsection only if it first determines that the supervisee has failed to comply with one or more of the conditions of supervision or the supervisee is determined to be high risk based on a validated instrument to assess each supervisee for risk of reoffending. Nothing in this section shall be construed to limit the availability of the procedures authorized under G.S. 15A-1368.6.

The Division shall adopt guidelines and procedures to implement the requirements of this section, which shall include a supervisor's approval prior to exercise of the delegation of authority authorized by this section.

The Commission may also impose a condition of community service on a supervisee who was a Class F through I felon and who has failed to fully satisfy any order for restitution, reparation, or costs imposed against the supervisee as part of the supervisee's sentence; however, the Commission shall not impose such a condition of community service if the Commission determines, upon inquiry, that the supervisee has the financial resources to satisfy the order."

SECTION 3.(b) G.S. 15A-1374 is amended by adding a new subsection to read:

- "(e) Delegation to Parole Officer. Unless the Commission specifically finds that delegation is not appropriate, the Section of Community Corrections of the Division of Adult Corrections of the Department of Public Safety may require a parolee to do any of the following:
  - (1) Perform up to 50 hours of community service, and pay the fee prescribed by law for this supervision.
  - Submit to a curfew which requires the offender to remain in a specified place for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored electronically.
  - (3) Submit to substance abuse assessment, monitoring, or treatment.
  - (4) Participate in an educational or vocational skills development program, including an evidence-based program.
  - (5) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.40(a)(2).
  - (6) Submit to house arrest with electronic monitoring.
  - (7) Report to the offender's probation officer on a frequency to be determined by the officer.
  - (8) Obtain a specific sex offender assessment and follow all recommended treatment.
- (9) Obtain a mental health assessment and follow all recommended treatment.

  If the Section imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

 The parole officer may exercise authority delegated to him or her by the Commission pursuant to this subsection after administrative review and approval by a Chief Probation Officer. The parolee may request a Commission review of the action taken by the parole officer. The parolee shall be given notice of the right to seek such a review. The Section may exercise any authority delegated to it under this subsection only if it first determines that the parolee has failed to comply with one or more of the conditions of supervision or the parolee is determined to be high risk based on a validated instrument to assess each parolee for risk of reoffending. Nothing in this section shall be construed to limit the availability of the procedures authorized under G.S. 15A-1376.

The Division shall adopt guidelines and procedures to implement the requirements of this section, which shall include a supervisor's approval prior to exercise of the delegation of authority authorized by this section."

# PART IV. ELIMINATE CREDIT FOR TIME SPENT IN CUSTODY AS A RESULT OF POST-RELEASE SUPERVISION OR PAROLE REVOCATION PROCEEDING AGAINST A THREE-MONTH REIMPRISONMENT

SECTION 4. G.S. 15A-1368.3(c) reads as rewritten:

- "(c) Effect of Violation. If the supervisee violates a condition, described in G.S. 15A-1368.4, at any time before the termination of the supervision period, the Commission may continue the supervisee on the existing supervision, with or without modifying the conditions, or if continuation or modification is not appropriate, may revoke post-release supervision as provided in G.S. 15A-1368.6 and reimprison the supervisee for a term consistent with the following requirements:
  - (3) Pursuant to Article 19A of Chapter 15, the Division of Adult Correction of the Department of Public Safety shall award a prisoner credit against any term of reimprisonment for all time spent in custody as a result of revocation proceedings under G.S. 15A-1368.6.G.S. 15A-1368.6, unless as a result of a violation of the conditions, the supervisee is returned to prison for a three-month period. The three-month period shall not be reduced by credit for time already served. Any such credit shall be applied toward the maximum prison term.

### PART V. ELIMINATE THE COMMUNITY CORRECTIONS BOARD AND CREATE THE JUSTICE REINVESTMENT COUNCIL

**SECTION 5.(a)** G.S. 143B-1157 and G.S. 143B-1158 are repealed.

**SECTION 5.(b)** Article 13 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-1161. Justice Reinvestment Council.

- (a) The Justice Reinvestment Council is established to act as an advisory body to the Commissioner of Adult Correction with regard to this Subpart. The Council shall consist of 13 members as follows, to be appointed as provided in subsection (b) of this section:
  - (1) Two members of the Senate.
  - (2) Two members of the House of Representatives.
  - (3) A judge of the superior court.
  - (4) A judge of the district court.
  - (5) A district attorney.
  - (6) A criminal defense attorney.
  - (7) A county sheriff.
    - (8) A chief of a city police department.

duties.

The Commission may conduct the following proceedings by videoconference: (f)

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- All hearings regarding the revocation or termination violation of conditions of post-release supervision and all hearings regarding revocation, termination, or suspension violation of conditions of parole.
- All hearings regarding criminal contempt for willful refusal to accept (2)post-release supervision or comply with the terms of post-release supervision by a prisoner whose offense requiring post-release supervision is

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a reportable conviction subject to the registration requirement of Article 27A of Chapter 14 of the General Statutes.

(g) A hearing officer may conduct the following proceedings by videoconference:

(1) Preliminary hearings regarding violation of conditions of post-release supervision.

(2) Preliminary hearings regarding violation of conditions of parole."

SECTION 6.(b) G.S. 15A-1368.6 reads as rewritten:

"§ 15A-1368.6. Arrest and hearing on post-release supervision violation.

(b) When and Where Preliminary Hearing on Post-Release Supervision Violation Required. – Unless the hearing required by subsection (e) of this section is first held or a continuance is requested by the supervisee, a preliminary hearing on supervision violation shall be held reasonably near the place of the alleged violation or arrest and within seven working days of the arrest of a supervisee to determine whether there is probable cause to believe that the supervisee violated a condition of post-release supervision. The preliminary hearing for violations of post-release supervision may be conducted by videoconference. Otherwise, the supervisee shall be released seven working days after arrest to continue on supervision pending a hearing. If the supervisee is not within the State, the preliminary hearing is as prescribed by G.S. 148-65.1A.

(e) Revocation Hearing. – Before finally revoking post-release supervision, the Commission shall, unless the supervisee waived the hearing or the time limit, provide a hearing within 45 days of the supervisee's reconfinement to determine whether to revoke supervision finally. For purposes of this subsection, the 45-day period begins when the preliminary hearing required by subsection (b) of this section is held or waived, or upon the passage of seven working days after arrest, whichever is sooner. The revocation hearing for violations of post-release supervision may be conducted by videoconference. The Commission shall adopt rules governing the hearing."

**SECTION 6.(c)** G.S. 15A-1376 reads as rewritten:

"§ 15A-1376. Arrest and hearing on parole violation.

- (a) Arrest for Violation of Parole. A parolee is subject to arrest by a law-enforcement officer or a parole officer for violation of conditions of parole only upon the issuance of an order of temporary or conditional revocation of parole by the Post-Release Supervision and Parole Commission. However, a parole revocation hearing under subsection (e) may be held without first arresting the parolee.
- (b) When and Where Preliminary Hearing on Parole Violation Required. Unless the hearing required by subsection (e) is first held or a continuance is requested by the parolee, a preliminary hearing on parole violation must be held reasonably near the place of the alleged violation or arrest and within seven working days of the arrest of a parolee to determine whether there is probable cause to believe that he violated a condition of parole. The preliminary hearing for violations of parole may be conducted by videoconference. Otherwise, the parolee must be released seven working days after his arrest to continue on parole pending a hearing. If the parolee is not within the State, his preliminary hearing is as prescribed by G.S. 148-65.1A.
- (c) Officers to Conduct Hearing. The preliminary hearing on parole violation must be conducted by a judicial official, or by a hearing officer designated by the Post-Release Supervision and Parole Commission. No person employed by the Division of Adult Correction of the Department of Public Safety may serve as a hearing officer at a hearing provided in this section unless he is a member of the Post-Release Supervision and Parole Commission or is employed solely as a hearing officer.

hearing and its purpose, including a statement of the violations alleged. At the hearing, the parolee may appear and speak in his own behalf, may present relevant information, and may, on request, personally question witnesses and adverse informants, unless the hearing officer finds good cause for not allowing confrontation. If the person holding the hearing determines there is probable cause to believe the parolee violated his parole, he must summarize the reasons for his determination and the evidence he relied on. Formal rules of evidence do not apply at the hearing. If probable cause is found, the parolee may be held in the custody of the Division of Adult Correction of the Department of Public Safety to serve the appropriate term of imprisonment, subject to the outcome of a revocation hearing under subsection (e).

(e) Revocation Hearing. – Before finally revoking parole, the Post-Release Supervision and Parole Commission must upless the parolee waived the hearing or the time limit, provide a

Correction of the Department of Public Safety must give the parolee notice of the preliminary

Procedure for Preliminary Hearing on Parole Violation. - The Division of Adult

(e) Revocation Hearing. – Before finally revoking parole, the Post-Release Supervision and Parole Commission must, unless the parolee waived the hearing or the time limit, provide a hearing within 45 days of the parolee's reconfinement to determine whether to revoke parole finally. The revocation hearing may be conducted by videoconference. The Post-Release Supervision and Parole Commission must adopt rules governing the hearing."

#### PART VII. CLARIFY CONFINEMENT IN RESPONSE TO VIOLATION

**SECTION 7.** G.S. 15-196.2 reads as rewritten:

#### "§ 15-196.2. Allowance in cases of multiple sentences.

In the event time creditable under this section shall have been spent in custody as the result of more than one pending charge, resulting in imprisonment for more than one offense, credit shall be allowed as herein provided. Consecutive sentences shall be considered as one sentence for the purpose of providing credit, and the creditable time shall not be multiplied by the number of consecutive offenses for which a defendant is imprisoned. Each concurrent sentence shall be credited with so much of the time as was spent in custody due to the offense resulting in the sentence. When both concurrent and consecutive sentences are imposed, both of the above rules shall obtain to the applicable extent.

Upon revocation of two or more consecutive sentences as a result of a probation violation, credit for time served on concurrent confinements in response to violation under G.S. 15A-1344(d2) shall be credited to only one sentence."

### PART VIII. AMEND APPLICATION FOR ISSUANCE OF REQUISITION TO INCLUDE POST-RELEASE SUPERVISION

**SECTION 8.** G.S. 15A-743(b) reads as rewritten:

"(b) When the return to this State is required of a person who has been convicted of a crime in this State and has escaped from confinement or broken the terms of his bail, probation probation, post-release supervision, or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or Post-Release Supervision and Parole Commission, the Director of Prisons Prisons, the Director of Community Corrections, or sheriff of the county from which escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made."

#### PART IX. EFFECTIVE DATE

**SECTION 9.** Sections 5, 6, and 8 of this act become effective July 1, 2015. The remainder of this act becomes effective December 1, 2015, and applies to persons placed on probation or post-release supervision on or after that date.

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SECTION 6.(t) G.S. 66-254(a) reads as rewritten:

"§ 66-254. Records of source of new merchandise.

(a) Record Required. – Each peddler, itinerant merchant, and specialty market vendor must keep a written record of the source of new merchandise the merchant offers for sale. The record must be a receipt or an invoice from the person who sold the merchandise to the merchant. The receipt or invoice must specifically identify the product being sold by product name and quantity purchased and must contain the complete business name of the seller and a description of the type of business. If the seller was an individual, the receipt or invoice must contain the seller's drivers license number, number or restricted drivers permit number, its state of issuance and expiration date, and the seller's date of birth. The merchant must verify this information by comparing the seller's drivers license to the receipt or invoice and signing the receipt or invoice. A special identification card or restricted identification card issued by the Division of Motor Vehicles may be used in place of the seller's drivers license for the purposes of providing and verifying information required under this section. If the seller was a corporation, the receipt or invoice must contain the corporation's federal tax identification number, the state of incorporation, the name and address of the corporation's registered agent in this State, if any, and the corporation's principal office address."

SECTION 6.(u) G.S. 90-106.1(a) reads as rewritten:

"§ 90-106.1. Photo ID requirement for Schedule II controlled substances.

(a) Immediately prior to dispensing a Schedule II controlled substance, or any of the Schedule III controlled substances listed in subdivisions 1. through 8. of G.S. 90-91(d), each pharmacy holding a valid permit pursuant to G.S. 90-85.21 shall require the person seeking the dispensation to present one of the following valid, unexpired forms of government-issued photographic identification: (i) a drivers license, (ii) a special identification card issued under G.S. 20-37.7, (iii) a military identification card, or (iv) a passport passport, (v) a restricted identification card issued under G.S. 20-37.8A, or (vi) a restricted drivers permit. Upon presentation of the required photographic identification, the pharmacy shall document the name of the person seeking the dispensation, the type of photographic identification presented by the person seeking the dispensation, and the photographic identification number. The pharmacy shall retain this identifying information on the premises or at a central location apart from the premises as part of its business records for a period of three years following dispensation."

PART VII. AUTHORIZE IMPOUNDMENT AND SALE OF VEHICLES FOR DRIVING WHILE LICENSE REVOKED, DRIVING WITHOUT A LICENSE, AND DRIVING WHILE FAILING TO MAINTAIN FINANCIAL RESPONSIBILITY

**SECTION 7.** Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-28.10. Seizure, impoundment, forfeiture of motor vehicles for certain other offenses under this Chapter.

- (a) Authority. A vehicle driven by a person who commits any of the following offenses shall be subject to seizure, impoundment, and forfeiture:
  - (1) A violation of G.S. 20-313.
  - (2) <u>Driving without a license or restricted drivers permit under G.S. 20-7 unless</u> the person possesses an expired drivers license or an expired restricted drivers permit.
- (b) Exceptions. If any of the following conditions are satisfied, a vehicle shall not become subject to impoundment or an order of forfeiture under this section:
  - (1) The underlying violation is a violation of G.S. 20-313 and the defendant tenders proof of financial responsibility that satisfies the requirements of G.S. 20-7(c1) to the judge, regardless of whether proof of financial

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responsibility was obtained prior to or subsequent to the violation of subsection (a) of this section.

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- (2) The underlying violation is driving without a license or a restricted permit under G.S. 20-7 and the defendant presents the judge with the defendant's valid drivers license or valid restricted drivers permit.
- (c) Governing Laws and Procedures. The laws and procedures governing the seizure, impoundment, and forfeiture of vehicles under this section shall be the same as those set forth in G.S. 20-28.2 through G.S. 20-28.9. Wherever those statutes refer to a particular underlying offense, they shall, for purposes of this section, be construed to refer to the applicable violation of subsection (a) of this section. Furthermore, for purposes of this section, an innocent owner shall be a person who did not know and had no reason to know that the defendant was engaging in a violation of subsection (a) of this section."

#### PART VIII. EFFECTIVE DATE AND SEVERABILITY CLAUSE

**SECTION 8.(a)** Sections 2, 3, and 7 of this act become effective December 1, 2015, and applies to offenses committed on or after that date. Sections 6 of this act become effective October 1, 2015. The remainder of this act is effective when it becomes law.

**SECTION 8.(b)** The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, such declaration shall not affect the remainder. If any particular interpretation or application of the provisions of this act is declared invalid or unconstitutional, such declaration shall not affect other interpretations or applications.

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## **HOUSE BILL 328:** Highway Safety/Citizens Protection Act

2015-2016 General Assembly

Committee: House Judiciary I, if favorable, Finance Introduced by: Reps. Warren, B. Brown, Collins, Jordan

Analysis of: PCS to First Edition

H328-CSSTf-19

**Date:** April 14, 2015

Prepared by: R. Erika Churchill

Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 328 would increase penalties for certain offenses involving the manufacture or sale of a false or fraudulent form of identification, disallow the use of certain documents in determining a person's actual identity or residency, provide for the issuance of a restricted drivers permit or a restricted identification card to a person not lawfully present in the United States, and provide a procedure for the seizure, impoundment and forfeiture of a motor vehicle for driving while license revoked, driving without a license or without a restricted drivers permit, and driving while failing to maintain financial responsibility.

BILL ANALYSIS: Section 2(a) of the PCS would increase the penalty for the manufacture or sale of a false or fraudulent form of identification from a Class 1 misdemeanor to a Class G felony; however, simple possession of a false or fraudulent form of identification would still be punishable as a Class 1 misdemeanor as would any violation by a person under age 21 for the purpose of purchasing alcohol and any violation by a person under age 18 for the purpose of purchasing tobacco or related products. Section 2(b) would expand the law pertaining to the unauthorized possession or use of drivers licenses, learner's permits, or special identification cards to include restricted drivers permits issuable to persons not lawfully present in the US. It would be a Class G felony to sell or offer for sale a counterfeit drivers license, restricted drivers permit, learner's permit, or special identification card and any other violation involving a DMV-issued license, permit, or identification, except for offenses committed by persons under age 21 for the purpose of purchasing alcohol. (Class 1 misdemeanor) and offenses committed by a person under age 18 for the purpose of purchasing tobacco or related products (Class 2 misdemeanor).

**Section 3:** would create a rebuttable presumption against the pretrial release of any person unlawfully present in the US and reasonably believed to have committed a sex offense, a violent felony, a driving offense, a drug offense, or a gang offense. The rebuttable presumption would also apply if the US lmmigration and Customs Enforcement (ICE) has guaranteed that it will issue a detainer for the initiation of removal proceedings. A person could only be released by a judge finding reasonable assurance that the person would appear and that release would not pose an unreasonable risk of harm to the community.

**Section 4:** would codify the methods by which a person's immigration status may be verified and the uses of that verification in court.

**Section 5:** specifies that documents issued by a consulate or embassy of another country, or any other identity document not expressly authorized by the General Assembly, would not be acceptable for use by officers of the court, law enforcement, or other government officials in determining a person's actual identity or residency, including use of such documents for purposes of obtaining a drivers license, insurance, or social services.

O. Walker Reagan Director



Research Division (919) 733-2578

#### House Bill 328

Page 2

**Section 6**: would provide for the issuance of a restricted drivers permit or a restricted identification card to a person not lawfully present in the US. The applicant would be required to agree to a criminal history check that would include the taking of fingerprints. A restricted drivers permit or a restricted identification card would be valid for a period of one year, and would bear distinctive formatting and markings, including a thumbprint and a statement that the permit or card is not valid for other purposes such as voter registration or public benefits. A restricted drivers permit would be subject to revocation for operating a motor vehicle without financial responsibility.

**Section 7:** would provide a procedure for the seizure, impoundment and forfeiture of a motor vehicle for driving while license revoked, driving without a license or without a restricted drivers permit, and driving while failing to maintain financial responsibility.

**EFFECTIVE DATE:** Provisions related to the increase in criminal penalties and impoundment of vehicles would become effective December 1, 2015. Provisions related to the issuance of restricted drivers permits and restricted identification cards would become effective October 1, 2015. Remaining provisions of the bill would become effective when it becomes law

#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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#### HOUSE BILL 328 PROPOSED COMMITTEE SUBSTITUTE H328-CSSTf-19 [v.3]

4/14/2015 8:26:20 PM Short Title: Highway Safety/Citizens Protection Act.

(Public)

Sponsors:
Referred to:

March 24, 2015

#### A BILL TO BE ENTITLED

AN ACT TO REDUCE IDENTITY THEFT BY INCREASING PENALTIES FOR THE MANUFACTURE, SALE, AND POSSESSION OF COUNTERFEIT DOCUMENTS; TO CLARIFY WHICH DOCUMENTS ARE ACCEPTABLE FOR IDENTIFICATION BEFORE GOVERNMENT OFFICIALS AND AGENCIES; TO CREATE A REBUTTABLE PRESUMPTION AGAINST THE PRETRIAL RELEASE OF CERTAIN UNDOCUMENTED ALIENS; AND TO ENSURE THAT CITIZENS AND LAWFULLY PRESENT ALIENS CAN TRAVEL SAFELY ON THE ROADS OF THIS STATE BY ENSURING THAT EVERY DRIVER ON THE ROADS OF THIS STATE HAS BEEN PROPERLY LICENSED OR PERMITTED.

The General Assembly of North Carolina enacts:

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#### PART I. SHORT TITLE

**SECTION 1.** This act shall be known and may be cited as "The Highway Safety and Citizens Protection Act of 2015."

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### PART II. INCREASE PENALTIES FOR POSSESSION, MANUFACTURE, OR SALE OF FALSE IDENTIFICATION DOCUMENTS

**SECTION 2.(a)** G.S. 14-100.1 reads as rewritten:

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### "§ 14-100.1. Possession or manufacture Possession, manufacture, or sale of certain fraudulent forms of identification.

- 22 (a) Except as otherwise made unlawful by G.S. 20-30, it shall be is unlawful for any person to knowingly possess or manufacture possess, manufacture, or sell a false or fraudulent form of identification as defined in this section for the purpose of deception, fraud, or other criminal conduct.
  - criminal conduct.

    (b) Except as otherwise made unlawful by G.S. 20-30, it shall be is unlawful for any person to knowingly obtain a form of identification by the use of false, fictitious, or fraudulent information.
  - (c) Possession of a form of identification obtained in violation of subsection (b) of this section shall constitute is a violation of subsection (a) of this section.
  - (d) For purposes of this section, a "form of identification" means any of the following or any replica thereof:
    - (1) An identification card containing a picture, issued by any department, agency, or subdivision of the State of North Carolina, the federal government, or any other state.
    - (2) A military identification card containing a picture.



As used in this subpart, "economically suitable transportation" means the most cost-effective standard vehicle in the State motor fleet, unless special towing provisions are required by the agency. The Department may not assign any employee or agency a motor vehicle that is not economically suitable. The Department shall not approve requests for

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purposes of complying with this subpart.

vehicle assignment or reassignment when the purpose of that

assignment or reassignment is to provide any employee with

a newer or lower mileage vehicle because of his or her the

employee's rank, management authority, or length of service

or because of any non-job-related reason. The Department

shall not assign "special use" vehicles, such as four-wheel

drive vehicles or law enforcement vehicles, to any agency or individual except upon written justification, verified by

historical data, and accepted by the Secretary. The

Department may provide law enforcement vehicles only to

those agencies which that have statutory pursuit authority."

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**SECTION 3.(a)** G.S. 15A-533 reads as rewritten: "§ 15A-533. Right to pretrial release in capital and noncapital cases.

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50 51 PART III. CREATION OF REBUTTABLE PRESUMPTION AGAINST THE PRETRIAL RELEASE OF CERTAIN UNDOCUMENTED ALIENS

- 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.
- A defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with G.S. 15A-534.
- A judge may determine in his-the judge's discretion whether a defendant charged with a capital offense may be released before trial. If he the judge determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.
- 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:
  - There is reasonable cause to believe that the person committed an offense (1)involving trafficking in a controlled substance;
  - The drug trafficking offense was committed while the person was on pretrial (2) release for another offense; and
  - The person has been previously convicted of a Class A through E felony or (3) 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.
- 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:
  - There is reasonable cause to believe that the person committed an offense for (1) the benefit of, at the direction of, or in association with, any criminal street gang, as defined in G.S. 14-50.16;
  - The offense described in subdivision (1) of this subsection was committed (2)while the person was on pretrial release for another offense; and
  - The person has been previously convicted of an offense described in (3) 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 there is reasonable cause to believe that the person committed a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm; and the judicial official also finds any of the following:
  - (1) The offense was committed while the person was on pretrial release for another felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm.
  - (2) The person has previously been convicted of a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm and not more than five years have elapsed since the date of conviction or the person's release for the offense, whichever is later.
- (f1) 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 the person is unlawfully present in the United States and a judicial official finds either of the following:
  - (1) There is probable cause to believe that the person committed one or more of the following offenses:
    - a. A sex offense. As used in this sub-subdivision, a "sex offense" is any offense upon conviction of which the offense becomes a reportable conviction, as that term is defined in G.S. 14-208.6.
    - b. A violent felony, as that term is defined in G.S. 14-7.7(b), or any criminal offense other than a violation described in G.S. 14-33(a) that includes assault as an essential element of the offense or as an aggravating factor in sentencing.
    - c. A driving offense. As used in this sub-subdivision, the term "driving offense" means any violation that requires a mandatory drivers license revocation upon a first conviction.
    - d. A drug offense. As used in this sub-subdivision, the term "drug offense" means a violation of G.S. 90-95, other than a violation for mere possession of a controlled substance.
    - e. A gang offense. As used in this sub-subdivision, the term "gang offense" means any violation of Article 13A of Chapter 14 of the General Statutes.
  - There is probable cause to believe that the person committed an offense not listed in subdivision (f1)(1) of this section and United States Immigration and Customs Enforcement has issued a detainer for the initiation of removal proceedings against the person or has indicated that it will do so.
- (g) Persons who are considered for bond under the provisions of subsections (d), (e), and (f)(f), and (f1) 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.(b)** Article 26 of Chapter 15A of the General Statutes is amended by adding a new section to read:

#### "§ 15A-534.7. Pretrial release of certain undocumented aliens.

In all cases in which the defendant is an alien who (i) is not lawfully present in the United States and (ii) is charged with a felony or a Class A1 misdemeanor, the judicial official shall require the defendant to execute a secured appearance bond as a condition of pretrial release, as described in G.S. 15A-534(a)(4)."

#### PART IV. MISCELLANEOUS PROVISIONS

**SECTION 4.** Article 1 of Chapter 64 of the General Statutes is amended by adding the following new sections to read:

#### "§ 64-6. Permissible methods of verifying immigration status.

<u>Verification of a person's immigration status pursuant to this Chapter or any other provision of State law shall be made consistently with federal law and may be made by any of the following methods, as applicable:</u>

- (1) Pursuant to 8 U.S.C. §§ 1373(c) and 1644 or any other provision of federal law.
- (2) By a law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status.
- (3) In any other manner authorized by the federal government.

#### "§ 64-7. Admissibility of immigration status records in courts of this State.

- (a) A verification of an alien's immigration status received from the federal government pursuant to G.S. 64-6 shall constitute proof of that alien's status. A court of this State shall consider only a verification of immigration status made pursuant to G.S. 64-6 in determining whether an alien is lawfully present in the United States.
- (b) Any record that relates to the immigration status of a person is admissible in any court of this State without further foundation or testimony from a custodian of records if all of the following apply:
  - (1) The record is certified as authentic by the federal government agency that is responsible for maintaining the record.
  - (2) The State notifies the person at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the record into evidence under this section and provides a copy of the record to the person.
  - (3) The person 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 record would be used that the person objects to the introduction of the record into evidence.

If the person's attorney of record, or that person if he or she is not represented by an attorney, fails to file a written objection as provided in this subsection, then the record may be admitted into evidence without the testimony of the custodian of records. Upon filing a timely objection, the admissibility of the record shall be determined and governed by the appropriate rules of evidence.

#### "§ 64-8. Law enforcement transport of certain unlawfully present aliens.

Notwithstanding any other provision of law, a State or local law enforcement agency may securely transport an alien who is in the agency's custody and whom the agency has verified is unlawfully present in the United States to a federal facility in this State or to any other point of transfer into federal custody that is outside the jurisdiction of the law enforcement agency. A law enforcement agency shall obtain judicial or executive authorization from the Governor before securely transporting an alien who is unlawfully present in the United States to a point of transfer that is outside this State.

#### "§ 64-9. Construction and severability.

- (a) <u>Construction. This Chapter shall be construed in a manner consistent with federal law.</u>
- (b) Severability. The provisions of this Chapter are severable. If any part of this Chapter is declared invalid or unconstitutional, such declaration shall not affect the remainder. If any particular interpretation or application of the provisions of this Chapter is declared invalid or unconstitutional, such declaration shall not affect other interpretations or applications.

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detention. Possession of a restricted drivers permit issued under G.S. 20-7 or of a restricted identification card issued under G.S. 20-37.8A, standing alone, shall not be used as a basis for a criminal investigation, arrest, or detention in circumstances in which a person who possesses some other form of identification would not be criminally investigated, arrested, or detained."

#### PART V. PROHIBIT THE USE OF CERTAIN DOCUMENTS FOR IDENTIFICATION PURPOSES

SECTION 5.(a) Chapter 15A of the General Statutes is amended by adding a new Article to read:

#### " Article 18.

#### "Identification Documents.

#### "§ 15A-306. Certain documents not acceptable as identification.

- The following documents are not acceptable for use in determining a person's actual identity or residency by a justice, judge, clerk, magistrate, law enforcement officer, or other government official:
  - A matricula consular or other similar document, other than a valid passport. (1)issued by a consulate or embassy of another country.
  - An identity document issued or created by any person, organization, county, (2)city, or other local authority, except where authorized to be used for this purpose by the General Assembly.
- No local government or law enforcement agency may establish, by policy or (b) ordinance, the acceptability of any of the documents described in subsection (a) of this section, other than a valid passport, as a form of identification to be used to determine the identity or residency of any person. Any local government policy or ordinance that contradicts this section is hereby repealed."

#### **SECTION 5.(b)** G.S. 20-7(b4) reads as rewritten:

- "(b4) Examples of documents that are reasonably reliable indicators of residency include, but are not limited to, any of the following:
  - A pay stub with the payee's address. (1)
  - (2)A utility bill showing the address of the applicant-payor.
  - A contract for an apartment, house, modular unit, or manufactured home (3) with a North Carolina address signed by the applicant.
  - (4)A receipt for personal property taxes paid.
  - (5)A receipt for real property taxes paid to a North Carolina locality.
  - A current automobile insurance policy issued to the applicant and showing (6)the applicant's address.
  - A monthly or quarterly financial statement from a North Carolina regulated (7) financial institution.
  - A matricula consular or substantially similar document issued by the (8) Mexican Consulate for North Carolina.
  - A document similar to that described in subsection (8) of this section, issued (9)by the consulate or embassy of another country. This subdivision only applies if the Division has consulted with the United State Department of State and is satisfied with the reliability of such document."

#### SECTION 5.(c) G.S. 58-2-164(c) reads as rewritten:

The insurer and its agent shall also take reasonable steps to verify that the information provided by an applicant regarding the applicant's address and the place the motor vehicle is garaged is correct. The insurer may take its own reasonable steps to verify residency ]

or eligible risk status or may rely upon the agent verification of residency or eligible risk status to meet the insurer's verification obligations under this section. The agent shall retain copies of any items obtained under this section as required under the record retention rules adopted by the Commissioner and in accordance with G.S. 58-2-185. The agent may satisfy the requirements of this section by obtaining reliable proof of North Carolina residency from the applicant or the applicant's status as an eligible risk. Reliable proof of residency or eligible risk includes but is not limited to:

- (1) A pay stub with the payee's address.
- (2) A utility bill showing the address of the applicant-payor.
- (3) A lease for an apartment, house, modular unit, or manufactured home with a North Carolina address signed by the applicant.
- (4) A receipt for personal property taxes paid.
- (5) A receipt for real property taxes paid to a North Carolina locality.
- (6) A monthly or quarterly financial statement from a North Carolina regulated financial institution.
- (7) A valid unexpired North Carolina driver's license.
- (8) A matricula consular or substantially similar document issued by the Mexican Consulate for North Carolina.
- (9) A document similar to that described in subdivision (8) of this section, issued by the consulate or embassy of another country that would be accepted by the North Carolina Division of Motor Vehicles as set forth in G.S. 20-7(b4)(9).
- (10) A valid North Carolina vehicle registration.
- (11) A valid military ID.
- (12) A valid student ID for a North Carolina school or university."

**SECTION 5.(d)** G.S. 108A-55.3(b) reads as rewritten:

- "(b) An applicant may meet the requirements of subsection (a) of this section by providing at least two of the following documents:
  - (1) A valid North Carolina drivers license or other identification card issued by the North Carolina Division of Motor Vehicles.
  - (2) A current North Carolina rent or mortgage payment receipt, or current utility bill in the name of the applicant or the applicant's legal spouse showing a North Carolina address.
  - (3) A valid North Carolina motor vehicle registration in the applicant's name and showing the applicant's current address.
  - (4) A document showing that the applicant is employed in this State.
  - One or more documents proving that the applicant's domicile in the applicant's prior state of domicile has ended, such as closing of a bank account, termination of employment, or sale of a home.
  - (6) The tax records of the applicant or the applicant's legal spouse, showing a current North Carolina address.
  - (7) A document showing that the applicant has registered with a public or private employment service in this State.
  - (8) A document showing that the applicant has enrolled the applicant's children in a public or private school or child care facility located in this State.
  - (9) A document showing that the applicant is receiving public assistance or other services requiring proof of domicile, other than medical assistance, in this State.
  - (10) Records from a health department or other health care provider located in this State showing the applicant's current North Carolina address.

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- (11) A written declaration made under penalty of perjury from a person who has a social, family, or economic relationship with the applicant and who has personal knowledge of the applicant's intent to live in North Carolina permanently or for an indefinite period of time or that the applicant is residing in North Carolina to seek employment or with a job commitment.
  (12) Current North Carolina voter registration card.
- (13) A document from the U.S. Department of Veterans Affairs, U.S. Department of Defense, or the U.S. Department of Homeland Security verifying the applicant's intent to live in North Carolina permanently or for an indefinite period of time or that the applicant is residing in North Carolina to seek employment or with a job commitment.
- (14) Official North Carolina school records, signed by school officials, or diplomas issued by North Carolina schools, including secondary schools, community colleges, colleges, and universities verifying the applicant's intent to live in North Carolina permanently or for an indefinite period of time or that the applicant is residing in North Carolina to seek employment or with a job commitment.
- (15) A document issued by the Mexican consular or other foreign consulate verifying the applicant's intent to live in North Carolina permanently or for an indefinite period of time or that the applicant is residing in North Carolina to seek employment or with a job commitment."

# PART VI. AUTHORIZE UNDOCUMENTED ALIENS TO OBTAIN RESTRICTED DRIVERS PERMITS AND RESTRICTED IDENTIFICATION CARDS

**SECTION 6.(a)** G.S. 20-4.01 is amended by adding a new subdivision to read:

Criminal history. - A history of conviction of a State or federal crime, whether a misdemeanor or felony, that includes the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5. Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A. Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act. Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5, but shall not include disturbing the public peace, misdemeanor possession of marijuana, worthless checks, misdemeanor larceny, shoplifting, or public drunkenness. The term shall include a final

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|   |                             | conviction in  | another state or in a federal ju                 | risdiction of an offense which is                                  |
|   |                             | substantially  | similar to any of the offenses lis               | sted in this subdivision."   |
|   | SECT                        | TION 6.(b) G.  | S. 20-7(f)(3) reads as rewritten:                |  |
|   | "(3)                        | Duration of li | icense or permit for certain other               | er drivers. – The durations listed                                 |
|   | ` ,                         |                |  | ection are valid unless one of the                                 |
|   |                             |                | nditions is satisfied:                           |  |
|   |                             |                |  | cense of shorter duration should                                   |
|   |                             |                |  | alid documentation issued by, or                                   |
|   |                             |                | * *  | nited States government that                                       |
|   |                             |                |  | esence of limited duration in the                                  |
|   |                             |                | 11 0 1   | cense of limited duration expire                                   |
|   |                             |                |  | prization for the applicant's legal                                |
|   |                             |                | nce in the United States.                        | rization for the applicant's legal                                 |
|   |                             |                |  | rioted drivers normit should be                                    |
|   |                             |                |  | ricted drivers permit should be                                    |
|   |                             |                | -  | this section. In no event shall a                                  |
|   |                             | issuan         |  | than one year after the date of                                    |
|   | CECT                        |                |  |  |
|   |                             |                | S. 20-7(i) reads as rewritten:                   | mostulated duivage magnit is the                                   |
|   |                             |                |  | restricted drivers permit is the                                   |
|   | license is issued:          | following tabl | e multiplied by the number of                    | years in the period for which the                                  |
|   |                             | Licanca        | Fa   | e for Each Year  |
|   | Class of Regular<br>Class A | License        | re   | \$4.00   |
|   | Class A<br>Class B          |                |  | \$4.00   |
|   | Class C                     |                |  | \$4.00   |
| , |                             | orguela andors | ement is one dollar and soventy                  | -five cents (\$1.75) for each year                                 |
|   |                             | -              |  |  |
|   |                             |                |  | ry of Transportation shall set the                                 |
|   |                             |                |  | may not be lower than the actual ermit. The fee for a renewal of a |
| _ |                             |                |  |  |
|   |                             |                |  | e appropriate fee shall be paid                                    |
|   | endorsement."               | receives a reg | guiai dilvers <del>neense <u>neense, i</u></del> | restricted drivers permit, or an                                   |
|   |                             | TON 6 (d) C    | C 20.7 is smanded by adding t                    | ha fallassina navy ashaastiana ta                                  |
|   |                             | 10N 0.(a) U.   | s. 20-7 is amended by adding t                   | he following new subsections to                                    |
|   | read:                       | thatandina tha | magninum anta of subscation (b1)                 | of this section that an applicant                                  |
|   |                             |                |  | of this section that an applicant                                  |
|   |                             |                |  | a restricted drivers permit under                                  |
|   |                             |                | an applicant present in the On                   | ited States who meets all of the                                   |
|   | following require           |                | :  | Inited States  |
|   | (1)                         |                | is not lawfully present in the U                 |  |
|   | (2)                         |                |  | heck and that check shows that                                     |
|   |                             |                |  | ory. The criminal history check                                    |
|   | (2)                         |                | the taking of the applicant's fing               |  |
|   | (3)                         |                | -  | for a drivers license, including                                   |
|   |                             | B-11-          | cial responsibility.                             |  |
|   |                             |                |  | (n) of this section addressing                                     |
|   |                             |                |  | requirements of this section, a                                    |
|   |                             |                |  | ion shall do all of the following:                                 |
|   | (1)                         |                |  | that distinguishes the restricted                                  |
|   |                             |                |  | he applicant and the appropriate                                   |
|   |                             | horizontal or  | vertical format for that age.                    |  |
|   |                             |                |  |  |

- (2) Bear an identifying number for the license holder assigned by the Division, the first character of which shall be a letter that is only assigned to restricted drivers permit holders.
- (3) Bear a distinguishing mark or other designation on the face of the permit clearly denoting the limited duration of the permit and clearly distinguishing it from other forms of licenses of limited duration.
- (4) Bear a clearly legible statement that the permit (i) is not valid as a means of demonstrating eligibility for voter registration or for public benefits, (ii) does not legitimize the holder's presence in the United States or the State of North Carolina, and (iii) is not valid for any purpose other than demonstrating licensure to drive a motor vehicle in this State.
- (w) Wherever the laws of this State refer to a "drivers license," the term shall also be construed to refer to a restricted drivers permit, except when the law being construed confers a benefit, privilege, or right for which lawful presence is a prerequisite.
- (x) A State agency or official shall not use any information submitted as part of the application process for a restricted drivers permit to seek the removal from the United States of the applicant or for any purpose other than the issuance of the restricted drivers permit. Nor shall a State agency or official release information pertaining to the immigration status of an applicant for a restricted drivers permit, except where expressly required by law to do so. This section does not prohibit the use of the information in the prosecution of crimes that (i) are committed by the applicant after the issuance of the permit or (ii) are revealed by a criminal history check undertaken pursuant to subsection (u) of this section.
- (y) The Division shall work with other State and local agencies on an ongoing basis to ensure that restricted drivers permits are not used to obtain public benefits for which only citizens and lawfully present persons are eligible."

SECTION 6.(e) G.S. 20-15 reads as rewritten:

#### "§ 20-15. Authority of Division to cancel license or endorsement.

- (a) The Division shall have authority is authorized to cancel any driver's license upon determining any of the following:
  - (1) The licensee was not entitled to the issuance of the license under this Chapter.
  - (2) The licensee failed to give the required or correct information on the license application or committed fraud in making the application.
  - (3) The licensee is no longer authorized under federal law to be legally present in the United States. States, except that the Division shall not cancel a restricted drivers permit pursuant to this subdivision.
- (a1) The Division shall cancel and revoke the restricted drivers permit of a person who is convicted of violating G.S. 20-313.
- (b) Upon such cancellation, the licensee must surrender the license so cancelled to the Division.
- (c) Any person whose license is canceled under this section for failure to give the required or correct information, or for committing fraud, in an application for a commercial drivers license shall beis prohibited from reapplying for a commercial drivers license for a period of 60 days from the date of cancellation.
- (d) The Division shall have authority is authorized to revoke an H endorsement of a commercial drivers license holder if the person with the endorsement is determined by the federal Transportation Security Administration to constitute a security threat, as specified in 49 C.F.R. § 1572.5(d)(4)."
- **SECTION 6.(f)** Article 13 of Chapter 20 of the General Statutes is amended by adding a new section to read:

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"§ 20-309.3. No refund of insurance policy premiums for holders of restricted drivers permits.

When an insurer receives a request to refund any funds to an insured as a result of the cancellation of a liability insurance policy on a motor vehicle, the insurer shall first inquire with the Division of Motor Vehicles as to whether the insured currently has a valid restricted drivers permit and shall refuse to refund any funds if the Division of Motor Vehicles confirms that the person has a valid restricted drivers permit. The Division shall promptly respond to any inquiries made pursuant to this section."

**SECTION 6.(g)** Article 2B of Chapter 20 of the General Statutes, as rewritten by Section 2(c) of this act, reads as rewritten:

"Article 2B.

"Special Identification Cards <u>and Restricted Identification Cards</u> for Nonoperators. "§ 20-37.7. Special identification card.

- (a) Eligibility. A-Subject to the provisions of G.S. 20-7, a person who is a resident of this State is eligible for a special identification card.
- (b) Application. To obtain a special identification card from the Division, a person must shall complete the application form used to obtain a drivers license.
- (e) Offense. Any fraud or misrepresentation in the application for or use of a special identification card issued under this section is a Class 2 misdemeanor.

"§ 20-37.8A. Restricted identification card.

- (a) Eligibility. A person who is a resident of this State and who is not lawfully present in the United States is eligible for a restricted identification card.
- (b) Application. The Division shall issue a restricted identification card to an applicant who meets all of the following requirements:
  - (1) The applicant is not lawfully present in the United States.
  - (2) The applicant completes the application form used to obtain a drivers license.
  - (3) The applicant agrees to a criminal history check and that check shows that the applicant does not have a criminal history. The criminal history check shall include the taking of the applicant's fingerprints. An applicant for a restricted identification card who is under 16 years old shall not be required to agree to a criminal history check under this subdivision.
- (c) Format. A restricted identification card issued under this section shall do all of the following:
  - (1) Conform to the requirements of G.S. 20-7(n)(1) through (6), (9), and (10).
  - Be printed in a horizontal or vertical format that distinguishes the restricted identification card, as determined by the age of the applicant and the appropriate horizontal or vertical format for that age.
  - (3) Bear an identifying number for the license holder assigned by the Division, the first character of which shall be a letter that is only assigned to restricted identification cards.
  - (4) Bear a distinguishing mark or other designation on the face of the identification card clearly denoting the limited duration of the identification card and clearly distinguishing it from other forms of licenses of limited duration and identification cards of limited duration.
  - (5) Bear a clearly legible statement that the identification card (i) is not valid as a means of demonstrating eligibility for voter registration or for public benefits, (ii) does not legitimize the holder's presence in the United States or

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the State of North Carolina, and (iii) is not valid for any purpose other than demonstrating identity.

- (d) Expiration. A restricted identification card shall expire no later than one year after the date of issuance.
- (e) Fee. The Secretary of Transportation shall set the fee for an initial one-year restricted identification card, and the fee may not be lower than the actual cost of processing the relevant application and furnishing the card. The fee for a renewal of a restricted identification card is twenty-five dollars (\$25.00). The fee shall be paid before a person receives a restricted identification card.
- (f) Records. The Division shall maintain a record of all recipients of a restricted identification card.
- (g) No State Liability. The fact of issuance of a restricted identification card pursuant to this section shall not place upon the State of North Carolina or any agency thereof any liability for the misuse thereof and the acceptance thereof as valid identification is a matter left entirely to the discretion of any person to whom such card is presented.
- (h) Advertising. The Division may utilize the various communications media throughout the State to inform North Carolina residents of the provisions of this section.
- (i) Misuse of Information. A State agency or official shall not use any information submitted as part of the application process for a restricted identification card to seek the removal from the United States of the applicant or for any purpose other than the issuance of the restricted identification card. Nor shall a State agency or official release information pertaining to the immigration status of an applicant for a restricted identification card, except where expressly required by law to do so. This section does not prohibit the use of the information in the prosecution of crimes that (i) are committed by the applicant after the issuance of the identification card or (ii) are revealed by a criminal history check undertaken pursuant to subsection (b) of this section.
- Definition of Criminal History. For purposes of this section, the term "criminal history" means a history of conviction of a State or federal crime, whether a misdemeanor or felony, that includes the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family: Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5, but shall not include disturbing the public peace, misdemeanor possession of marijuana, worthless checks, misdemeanor larceny, shoplifting, or public drunkenness. The term shall include a final conviction in another state or in a federal jurisdiction of an offense which is substantially similar to any of the offenses listed in this subsection.

- (k) Division to Ensure That Cards Are Not Used to Obtain Public Benefits. The Division shall work with other State and local agencies on an ongoing basis to ensure that restricted identification cards are not used to obtain public benefits for which only citizens and lawfully present persons are eligible.
- "§ 20-37.9. Notice of change of address or name.
- (a) Address. A person whose address changes from the address stated on a special identification card <u>must or a restricted identification card shall</u> notify the Division of the change within 60 days after the change occurs. If the person's address changed because the person moved, the person <u>must shall</u> obtain a new special identification card <u>or restricted identification card</u> within that time limit stating the new address. A person who does not move but whose address changes due to governmental action may not be charged with violating this subsection.
- (b) Name. A person whose name changes from the name stated on a special identification card must or a restricted identification card shall notify the Division of the change within 60 days after the change occurs and obtain a new special identification card stating the new name.
- (c) Fee. G.S. 20-37.7 sets the fee for a special identification card. <u>G.S. 20-37.8A sets</u> the fee for a restricted identification card."

**SECTION 6.(h)** Subpart D of Part 4 of Article 13 of Chapter 143B of the General Statutes is amended by adding a new section to read:

# "§ 143B-966. Criminal record checks of applicants for restricted drivers permits and restricted identification cards.

- (a) The Department of Public Safety shall, upon request, provide to the Department of Transportation, Division of Motor Vehicles, the criminal history from the State and National Repositories of Criminal Histories of applicants for restricted drivers permits or applicants age 16 or older for restricted identification cards.
- (b) Along with the request, the Division of Motor Vehicles shall provide the following to the Department of Public Safety:
  - (1) The fingerprints of the person who is the subject of the record check.
  - (2) A form signed by the person who is the subject of the record check consenting to:
    - <u>a.</u> The criminal record check.
    - b. The use of fingerprints.
    - <u>Any other identifying information required by the State and National Repositories.</u>
    - d. Any additional information required by the Department of Public Safety.
- (c) 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.
- (d) The Division of Motor Vehicles shall keep all information obtained pursuant to this section confidential.
- (e) The Department of Public Safety may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information.
- (f) The Department of Public Safety may enter into a contract with a third party to conduct the criminal history record check."

SECTION 6.(i) G.S. 18B-302(d) reads as rewritten:

 $\ensuremath{^{"}}\xspace \$$  18B-302. Sale to or purchase by underage persons.

drivers licenses under Article 2C.

"§ 20-7. Issuance and renewal of drivers licenses.

licensed by the Division under this Article or Article 2C of this Chapter to drive the vehicle and

must carry the license or restricted drivers permit while driving the vehicle. The Division issues

regular drivers licenses and restricted drivers permits under this Article and issues commercial

License Required. - To drive a motor vehicle on a highway, a person must be

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"§ 20-43. Records of Division.

(b1) Application. – To obtain an-a special identification card, learners permit, or drivers license from the Division, a person shall complete an application form provided by the Division, present at least two forms of identification approved by the Commissioner, be a resident of this State, and, except for an-a special identification card, demonstrate his or her physical and mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. At least one of the forms of identification shall indicate the applicant's residence address. The Division may copy the identification presented or hold it for a brief period of time to verify its authenticity. To obtain an endorsement, a person shall demonstrate his or her physical and mental ability to drive safely the type of motor vehicle for which the endorsement is required.

The application form shall request all of the following information, and it shall contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579:

- (1) The applicant's full name.
- The applicant's mailing address and residence address. (2)
- A physical description of the applicant, including the applicant's sex, height, (3) eye color, and hair color.
- The applicant's date of birth. (4)
- (5) The applicant's valid social security number.
- (6)The applicant's signature.

The Division shall not issue an a special identification card, learners permit, or drivers license to an applicant who fails to provide the applicant's valid social security number.

Veteran Military Designation. – The Division shall develop a military designation for drivers licenses and special identification cards that may, upon request, be granted to North Carolina residents who are honorably discharged from military service in the Armed Forces of the United States. An applicant requesting this designation must produce a Form DD-214 showing the applicant has been honorably discharged from the Armed Forces of the United States. ....!1

#### **SECTION 6.(m)** G.S. 20-7.3 reads as rewritten:

#### " § 20-7.3. Availability of organ, eye, and tissue donor cards at motor vehicle offices.

The Division shall make organ, eye, and tissue donor cards available to interested individuals in each office authorized to issue drivers licenses orlicenses, restricted drivers permits, special identification eards.cards, or restricted identification cards. The Division shall obtain donor cards from qualified organ, eye, or tissue procurement organizations or tissue banks, as defined in G.S. 130A-412.4(31). The Division shall offer organ donation information and a donor card to each applicant for a drivers license. The organ donation information shall include the following:

- A statement informing the individual that federally designated organ (1)procurement organizations and eye banks have read-only access to the Department-operated Organ Donor Registry Internet site (hereafter "Donor Registry") listing those individuals who have stated to the Division of Motor Vehicles the individual's intent to be an organ donor and have an organ donation symbol on the individual's drivers license or license, special identification card.card, restricted drivers permit, or restricted identification
- The type of information that will be made available on the Donor Registry." (2)**SECTION 6.(n)** G.S. 20-43(a) reads as rewritten:

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(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 signature recorded in any format by the Division for a drivers license or a specialan 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 specialan identification card is confidential and shall not be released except for law enforcement purposes or to the Office of the State Chief Information Officer for the purposes of G.S. 143B-426.38A."

SECTION 6.(o) G.S. 20-43.2(a) reads as rewritten:

# "§ 20-43.2. Internet access to organ donation records by organ procurement organizations.

The Department of Transportation, Division of Motor Vehicles, shall establish and (a) maintain a statewide, online Organ Donor Registry Internet site (hereafter "Donor Registry"). The purpose of the Donor Registry is to enable federally designated organ procurement organizations and eye banks to have access 24 hours per day, seven days per week to obtain relevant information on the Donor Registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift through a symbol on the donor's or prospective donor's drivers license, special identification card, restricted drivers permit, restricted identification card, or other manner. The data available on the Donor Registry shall be limited to the individual's first, middle, and last name, date of birth, address, sex, county of residence, and drivers license-license, restricted drivers permit, or identification card number. The Division of Motor Vehicles shall ensure that only federally designated organ procurement organizations and eye banks operating in this State have access to the Donor Registry in read-only format. The Division of Motor Vehicles shall enable federally designated organ procurement organizations and eye banks operating in this State to have online access in read-only format to the Donor Registry through a unique identifier and password issued to the organ procurement organization or eye bank by the Division of Motor Vehicles. Employees of the Division who provide access to or disclosure of information in good-faith compliance with this section are not liable in damages for access to or disclosure of the information."

SECTION 6.(p) G.S. 20-52(a) reads as rewritten:

## "§ 20-52. Application for registration and certificate of title.

- (a) An owner of a vehicle subject to registration must apply to the Division for a certificate of title, a registration plate, and a registration card for the vehicle. To apply, an owner must complete an application provided by the Division. The application must request all of the following information and may request other information the Division considers necessary:
  - (1) The owner's name.
  - (1a) If the owner is an individual, the following information:
    - The owner's mailing address and residence address.
    - b. One of the following at the option of the applicant:
      - 1. The owner's North Carolina drivers license number ornumber, North Carolina restricted drivers permit number, North Carolina special identification card number.number, or North Carolina restricted identification card number.

SECTION 6.(q) G.S. 20-34.1 reads as rewritten:

# "§ 20-34.1. Violations for wrongful issuance of a drivers license or a special an identification card.

(a) An employee of the Division or of an agent of the Division who does any of the following commits a Class I felony:

- 1 2
- (1) Charges or accepts any money or other thing of value, except the required fee, for the issuance of a drivers license or a specialan identification card.
- (2) Knowing it is false, accepts false proof of identification submitted for a drivers license or a special an identification card.
- (3) Knowing it is false, enters false information concerning a drivers license or a special an identification card in the records of the Division.
- (b) Defenses Precluded. The fact that the Division does not issue a license or a specialan identification card after an employee or an agent of the Division charges or accepts money or another thing of value for its issuance is not a defense to a criminal action under this section. It is not a defense to a criminal action under this section to show that the person who received or was intended to receive the license or special-identification card was eligible for it.
- (c) Dismissal. An employee of the Division who violates this section shall be dismissed from employment and may not hold any public office or public employment in this State for five years after the violation. If a person who violates this section is an employee of the agent of the Division, the Division shall cancel the contract of the agent unless the agent dismisses that person. A person dismissed by an agent because of a violation of this section may not hold any public office or public employment in this State for five years after the violation."

#### **SECTION 6.(r)** G.S. 25-9-503 reads as rewritten:

#### "§ 25-9-503. Name of debtor and secured party.

- (a) Sufficiency of debtor's name. A financing statement sufficiently provides the name of the debtor:
  - .
    - (4) Subject to subsection (g) of this section, if the debtor is an individual to whom this State has issued a drivers license or license, restricted drivers permit, special identification eard card that has not expired, or restricted identification card that has not expired, only if the financing statement provides the name of the individual which is indicated on the drivers license or license, restricted drivers permit, special identification eard; card, or restricted identification card.
- - (g) Multiple Drivers Licenses or Special Identification Cards. If this State has issued to an individual more than one drivers license or special-identification card of a kind described in subdivision (a)(4) of this section, the one that was issued most recently is the one to which subdivision (a)(4) of this section refers.

## ...."

#### **SECTION 6.(s)** G.S. 66-253 reads as rewritten:

#### "§ 66-253. Display of identification upon request.

Upon the request of any customer, State or local revenue agent, or law enforcement agent, a peddler, an itinerant merchant, a specialty market operator, or a specialty market vendor must provide its name and permanent address. A peddler, itinerant merchant, specialty market operator, or specialty market vendor who is an individual must, upon the request of any customer, State or local revenue agent, or law enforcement agent, provide a valid drivers license, a special identification card issued under G.S. 20-37.7, a restricted drivers permit, a restricted identification card issued under G.S. 20-37.8A, a military identification, or a passport bearing a physical description of the person named reasonably describing the peddler, itinerant merchant, specialty market operator, or specialty market vendor. A peddler, itinerant merchant, specialty market operator, or specialty market vendor that is a corporation must, upon the request of any customer, State or local revenue agent, or law enforcement agent, give the name and registered agent of the corporation and the address of the registered office of the corporation, as filed with the Secretary of State."

Page 18 House Bill 328 H328-CSSTf-19 [v.3]

#### NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

#### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

#### FAVORABLE COM SUB, UNFAVORABLE ORIGINAL BILL

HB 436 Unauthorized Practice of Law Changes.

Draft Number:

H436-PCS30314-ST-20

Serial Referral:

None

Recommended Referral: None Long Title Amended:

No

Floor Manager:

Daughtry

#### FAVORABLE COM SUB, UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB 328

Highway Safety/Citizens Protection Act.

Draft Number:

H328-PCS20293-STf-19

Serial Referral:

**FINANCE** 

Recommended Referral: None Long Title Amended:

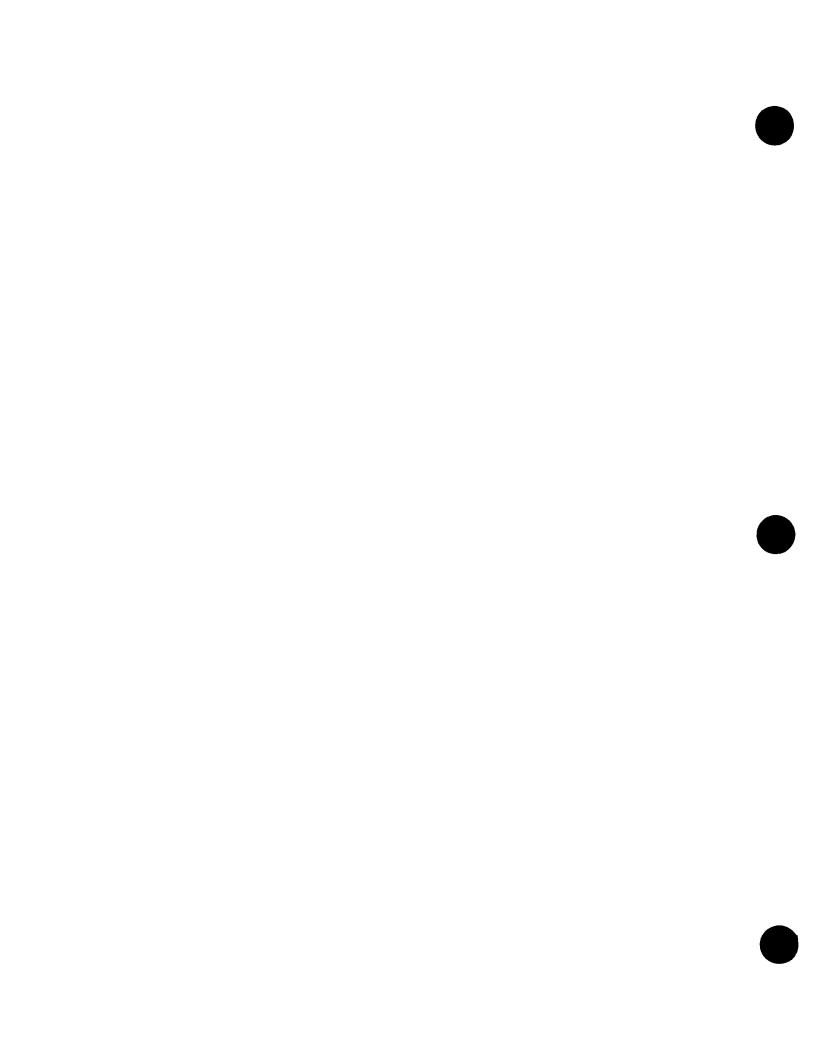
No

Floor Manager:

Warren

**TOTAL REPORTED: 2** 





# NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

#### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

#### FAVORABLE COM SUB, UNFAVORABLE ORIGINAL BILL

HB **253** 

Justice Reinvestment Act Changes.-AB

Draft Number:

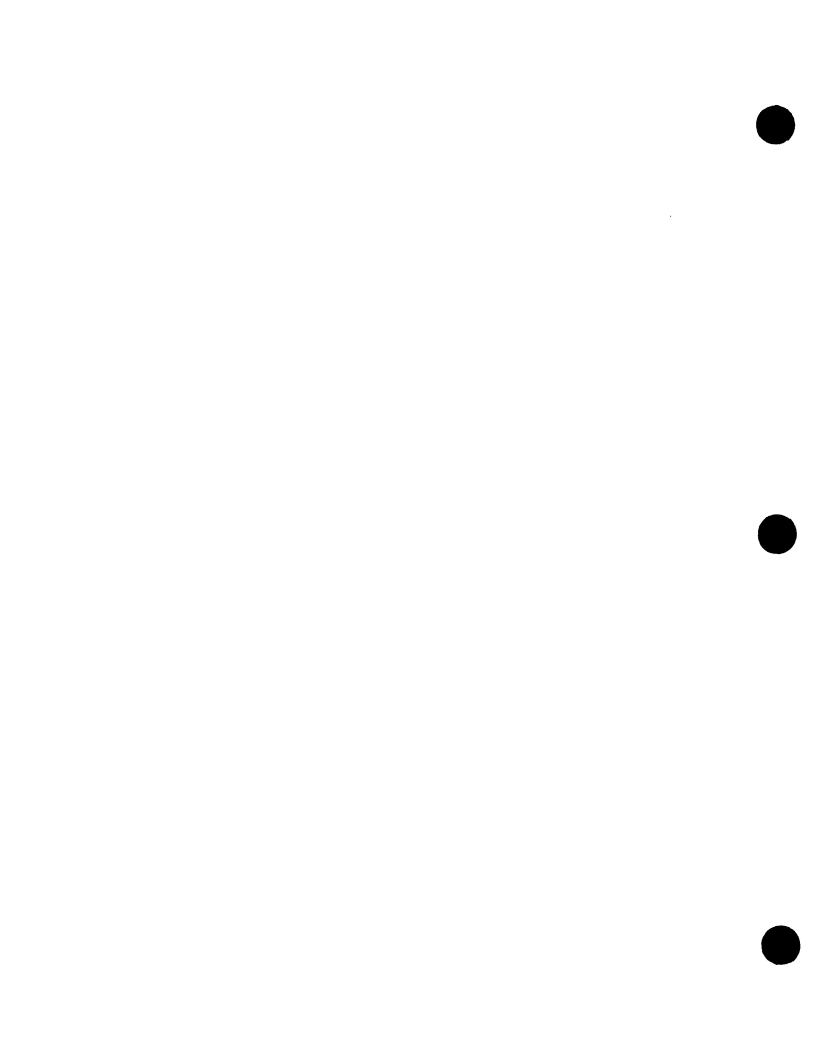
H253-PCS30312-ST-18

Serial Referral: None
Recommended Referral: None
Long Title Amended: No
Floor Manager: Faircloth

TOTAL REPORTED: 1



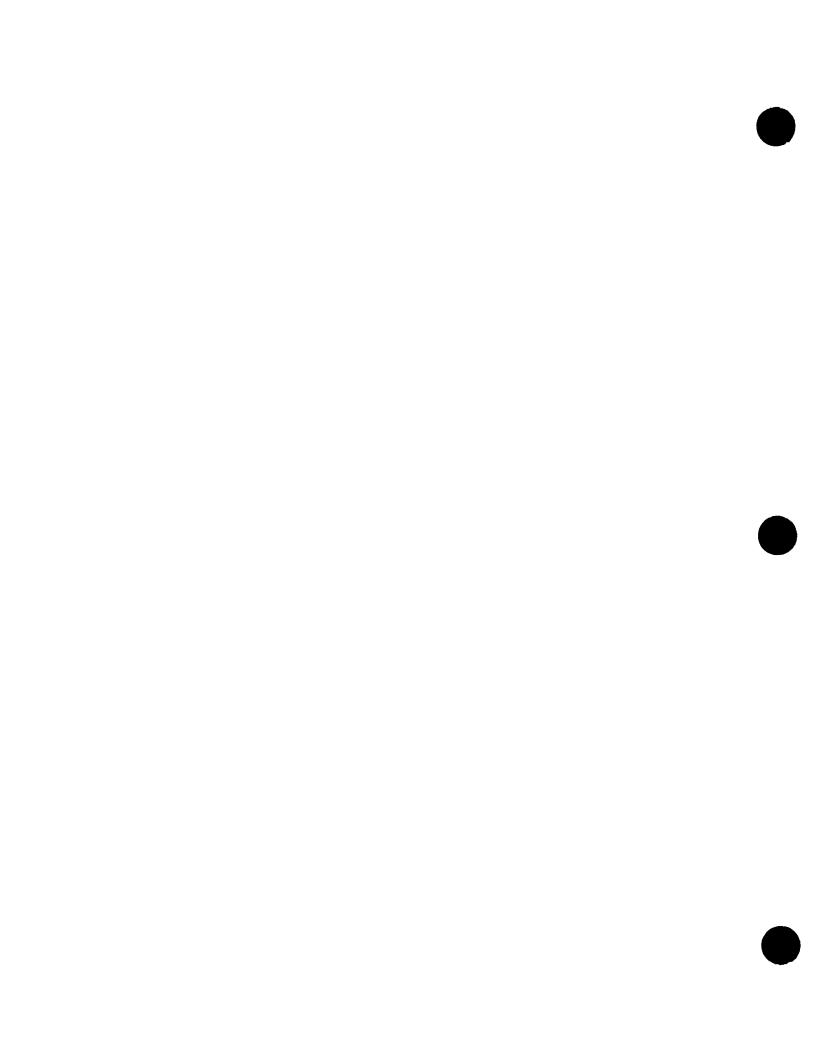
| Date: 4-15-15  |
|--|
| Bill Number HB 436   |
| PCS H 436-CSST-20  |
| Motion to be before the committee by Daughtree Arp                       |
| Rep Frie Churchill explained the bill.  Discussion on the Bill YES of NO |
| Rep motioned for: Favorable Report Adoption                              |
| Unfavorable ReportUnfavorable to original bill, fav to PCS               |
| No vote Amendments: :  |
| Serial referral to:  |
| Speakers:  |
| Handouts:  |



|                                      | Date: 4-15-15                            |
|--------------------------------------|--|
| Bill Number <u>HB 253</u>            |  |
| PCS                                  |  |
| Motion to be before the committee by | DOWN AMP                                 |
| Rep Faircloth e                      | explained the bill.                      |
| Discussion on the Bill YES or NO     |  |
| Rep Jackson r                        | motioned for:                            |
| Favorable Report                     | Adoption                                 |
| Unfavorable Report                   | Unfavorable to original bill, fav to PCS |
| No vote                              |  |
| Amendments: :                        |  |
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| Speakers:                            | •  |
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| Handouts:                            |  |
|                                      | tutes page 11                            |
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|----------------------|------------------------------|-----------------|------------------|--------------------|
| Bill Number _ #      | 328                          |                 |                  |                    |
| PCS   + 33           | 28-C55T                      | 19              | ,                |                    |
| Motion to be befo    | re the committee by          | mens            | ull              |                    |
|                      | Churchell                    |                 | PCS              |                    |
| Rep                  |                              | explained the b | oill.            |                    |
| Discussion on the    | Bill YES or NO               |                 |                  |                    |
| Rep                  | lacksen                      | motioned for:   |                  |                    |
| Favorab              | le Report                    | Add             | ption            |                    |
| Unfavora             | ble Report                   | Unfavo          | rable to origina | I bill, fav to PCS |
| No vote              |                              |                 |                  |                    |
| Amend                | ments: :                     |                 |                  |                    |
| Serial referral to:_ | Finance                      |                 |                  |                    |
| Speakers:            |                              |                 |                  |                    |
|                      | P. 6                         |                 |                  | (Auges)            |
| Handouts:            | p. 6<br>p. 7                 |                 |                  |                    |
|                      | p. 19                        |                 |                  |                    |
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|  | Date: 4-15-15                            |
|--|--|
| Bill Number # 1643 PCS NOT heard       |  |
| Motion to be before the committee by _ |  |
| Rep Discussion on the Bill YES or NO   | explained the bill.                      |
| Rep                                    | motioned for:                            |
| Favorable Report                       | Adoption                                 |
| Unfavorable Report                     | Unfavorable to original bill, fav to PCS |
| No vote                                |  |
| Amendments: :                          |  |
| Serial referral to:                    |  |
| Speakers:                              |  |
| Handouts:                              |  |

#### Corrected #2: Removal of H96 and H566

# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

You are hereby notified that the House Committee on Judiciary I will meet as follows:

DAY & DATE: Monday, April 20, 2015

TIME: 3:30 PM LOCATION: 415 LOB

The following bills will be considered:

| BILL NO. | SHORT TITLE                             | SPONSOR                    |
|----------|---|----------------------------|
| HB 523   | Drivers License Designation/American    | Representative C. Graham   |
|          | Indian.                                 | Representative Steinburg   |
|          |   | Representative Waddell     |
|          |   | Representative Pierce      |
| HB 570   | Facilitate Successful Reentry.          | Representative C. Graham   |
|          |   | Representative Pierce      |
|          |   | Representative Baskerville |
|          |   | Representative Glazier     |
| HB 643   | Roofing Contractors/Consumer            | Representative Arp         |
|          | Protection.                             |                            |
| HB 222   | Retention Elections/Appellate Division. | Representative Bryan       |
|          |   | Representative Daughtry    |
|          |   | Representative Stevens     |
|          |   |                            |

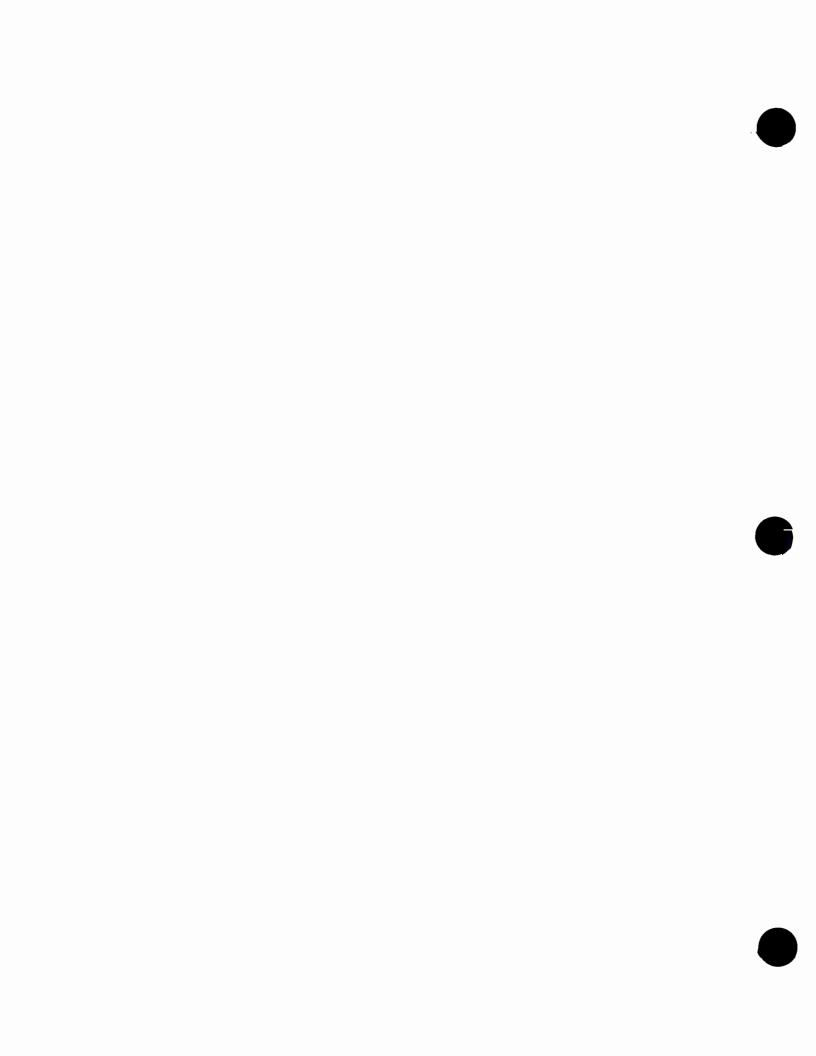
Respectfully,

Representative N. Leo Daughtry, Chair

| I hereby certify this notice w | as filed by the commit | tee assistant at the f | following offices at | 10:26 AM on |
|--------------------------------|------------------------|------------------------|----------------------|-------------|
| Monday, April 20, 2015.        |                        |                        |                      |             |

| Principal Clerk               |
|-------------------------------|
| Reading Clerk - House Chamber |

Jan Copeland (Committee Assistant)



# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

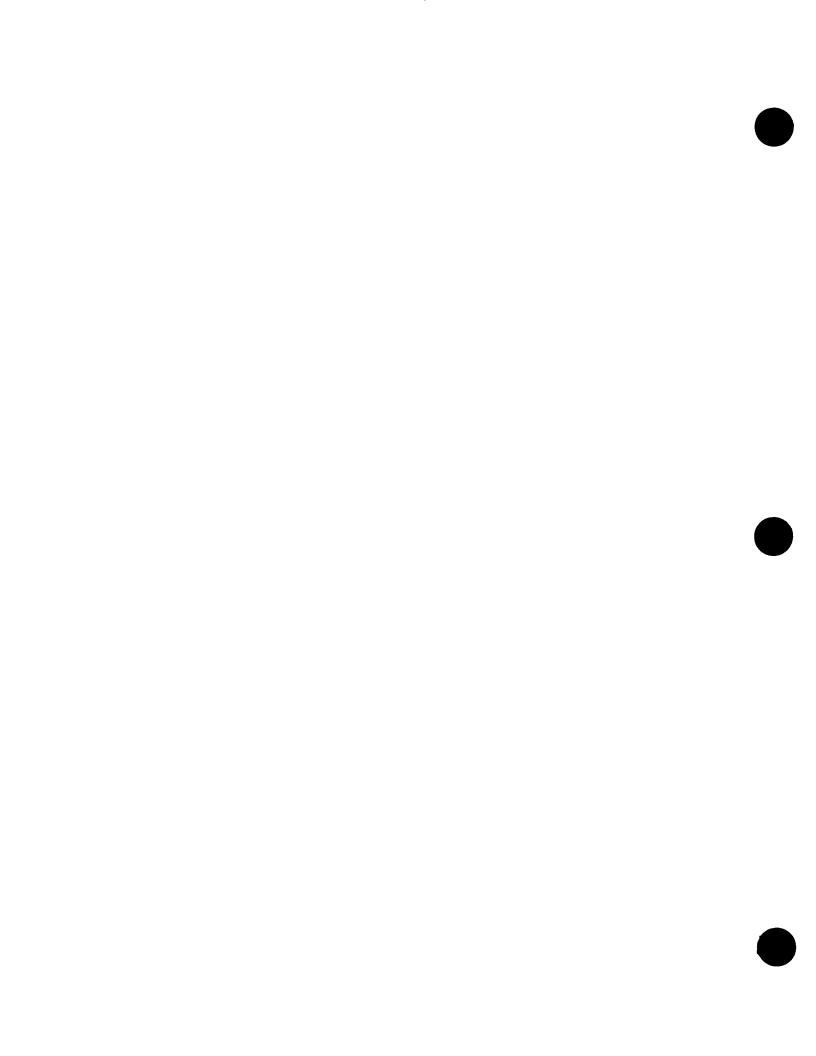
You are hereby notified that the House Committee on Judiciary I will meet as follows:

DAY & DATE: Monday, April 20, 2015

TIME: 3:30 PM LOCATION: 415 LOB

The following bills will be considered:

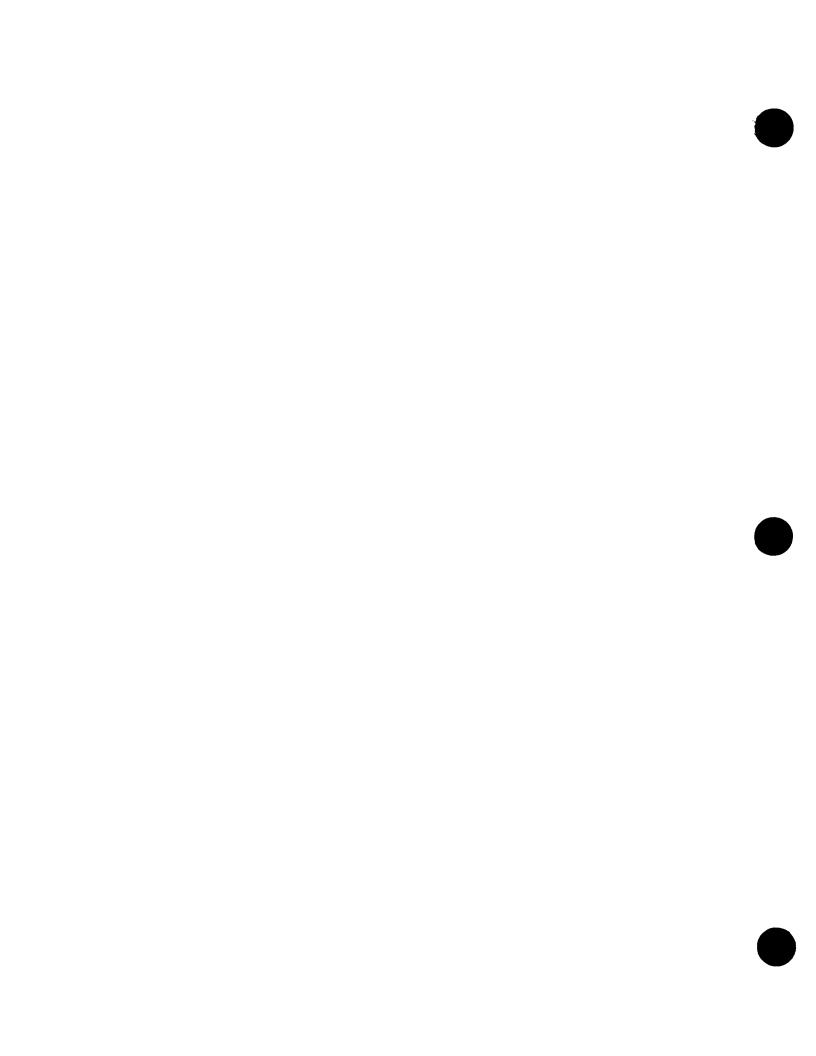
| BILL NO. | SHORT TITLE                              | SPONSOR                    |
|----------|--|----------------------------|
| HB 96    | Charter School Financial                 | Representative L. Hall     |
|          | Accountability.                          | Representative Lucas       |
| HB 523   | Drivers License Designation/American     | Representative C. Graham   |
|          | Indian.                                  | Representative Steinburg   |
|          |  | Representative Waddell     |
|          |  | Representative Pierce      |
| HB 566   | Amend Eyewitness ID/Show-Up.             | Representative Glazier     |
|          |  | Representative Reives      |
|          |  | Representative Baskerville |
|          |  | Representative Michaux     |
| HB 570   | Facilitate Successful Reentry.           | Representative C. Graham   |
|          |  | Representative Pierce      |
|          |  | Representative Baskerville |
|          |  | Representative Glazier     |
| HB 643   | Roofing Contractors/Consumer Protection. | Representative Arp         |
| HB 222   | Retention Elections/Appellate Division.  | Representative Bryan       |
|          |  | Representative Daughtry    |
|          |  | Representative Stevens     |
|          |  |                            |



## Respectfully,

# Representative N. Leo Daughtry, Chair

| I hereby certify this notice was filed by the committee assistant at the following offices at 10:01 AM on Thursday, April 16, 2015. |
|---|
| Principal Clerk Reading Clerk – House Chamber   |
| Jan Copeland (Committee Assistant)  |



## House Committee on Judiciary I Monday, April 20, 2015, 3:30 PM 415 Legislative Office Building

#### **AGENDA**

## Welcome and Opening Remarks

### **Introduction of Pages**

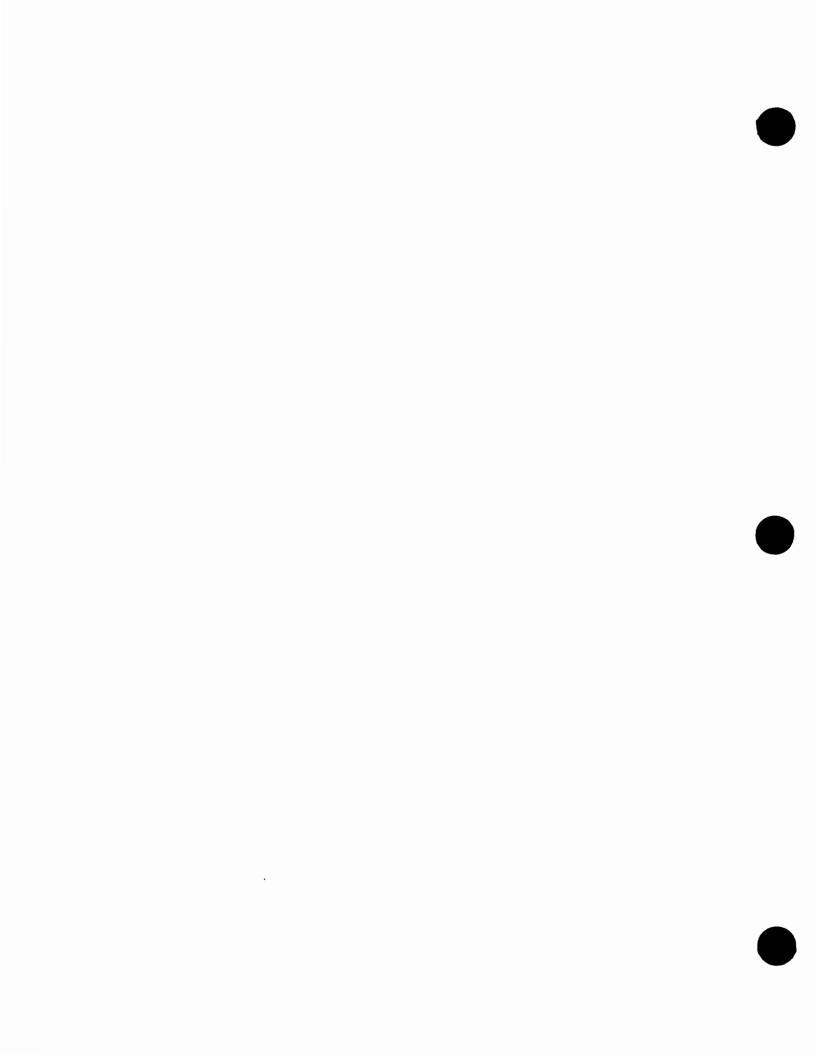
#### **Bills**

| BILL NO.<br>HB 523 | SHORT TITLE Drivers License Designation/American Indian. | SPONSOR Representative C. Graham Representative Steinburg                                   |
|--------------------|--|---|
| (B) HB 570         | Facilitate Successful Reentry.                           | Representative Waddell Representative Pierce Representative C. Graham Representative Pierce |
| HB 643             | Roofing Contractors/Consumer<br>Protection.              | Representative Baskerville<br>Representative Glazier<br>Representative Arp                  |
| НВ 222             | Retention Elections/Appellate Division.                  | Representative Bryan<br>Representative Daughtry<br>Representative Stevens                   |

**Presentations** 

**Other Business** 

Adjournment



#### House Committee on Judiciary I Monday, April 20, 2015 at 3:30 PM Room 415 of the Legislative Office Building

#### **MINUTES**

The House Committee on Judiciary I met at 3:30 PM on April 20, 2015 in Room 415 of the Legislative Office Building. Representatives Daughtry, Burr, Jackson, Arp, Hall, Howard, Martin, McNeill, Robinson and Szoka attended.

Representative N. Leo Daughtry, presided.

The following bills were considered:

HB 523 Drivers License Designation/American Indian. (Representatives C. Graham, Steinburg, Waddell, Pierce) – favorable with serial referral to Transportation

HB 570 Facilitate Successful Reentry. (Representatives C. Graham, Pierce, Baskerville, Glazier) - displaced

HB 643 Roofing Contractors/Consumer Protection. (Representative Arp) – favorable committee sub, unfavorable original bill

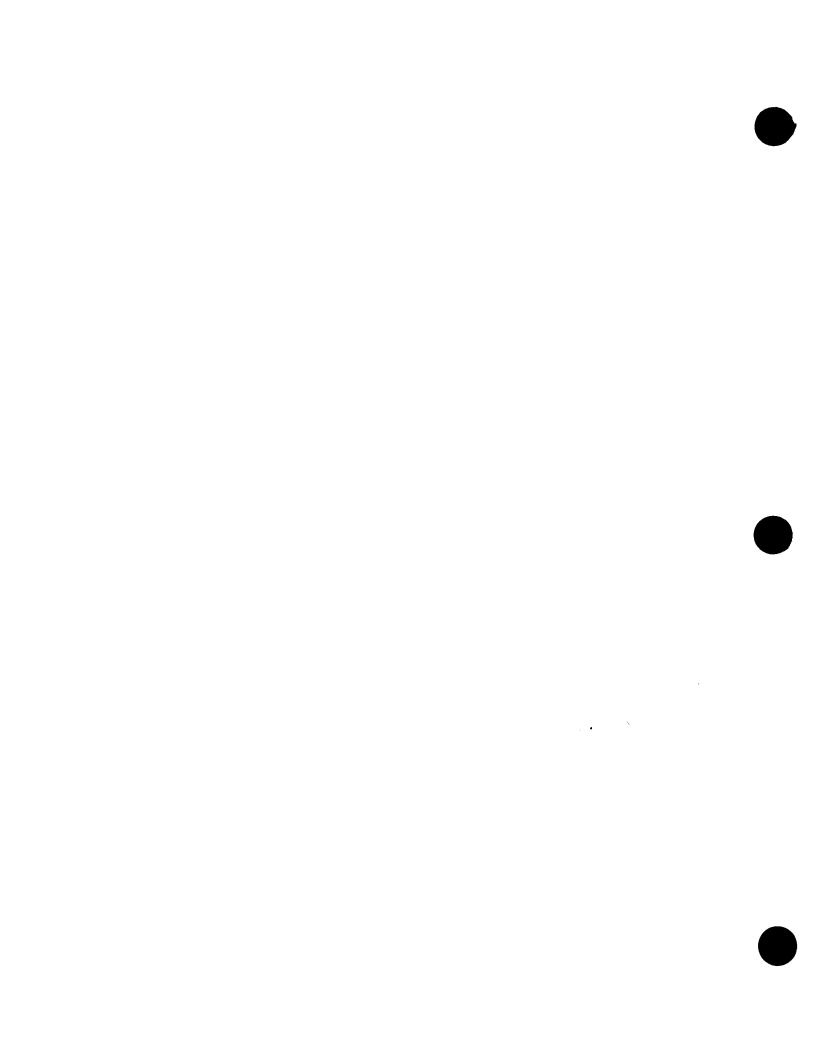
HB 222 Retention Elections/Appellate Division. (Representatives Bryan, Daughtry, Stevens) – favorable committee sub, unfavorable original bill

The meeting adjourned at 1:10 p.m.

Select or Type Rame of Presiding Chair

Presiding

Jan Copeland, Committee Clerk



### GENERAL ASSEMBLY OF NORTH CAROLINA **SESSION 2015**

H

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#### **HOUSE BILL 643** PROPOSED COMMITTEE SUBSTITUTE H643-CSST-22 [v.7]

4/19/2015 7:38:50 PM (Public) Short Title: Roofing Contractors/Consumer Protection. Sponsors: Referred to: April 14, 2015 A BILL TO BE ENTITLED 1 2 AN ACT TO PROVIDE CONSUMER PROTECTIONS RELATED TO ROOFING REPAIR 3 CONTRACTORS. 4 The General Assembly of North Carolina enacts: 5 SECTION 1. Chapter 75 of the General Statutes is amended by adding a new 6 Article to read: 7 "Article 9. 8 "Roofing Repair Contractors. "§ 75-150. Definitions. 9 10 The following definitions apply in this Article: Consumer. - The person hiring a roofing repair contractor, including the 11 property owner, person in legal possession of the property, or any agent 12 13 thereof, including the State and any of its political subdivisions. 14 Emergency services. - Any repair needed as the result of a serious, (2) unexpected or dangerous situation that requires immediate action. 15 16 (2) Roofing repair. - Repairs to an existing roofing system with an estimated cost of more than seven hundred fifty dollars (\$750.00), including a total 17 18 replacement of the existing roofing system. 19 Roofing repair contractor. - A person engaged in the business of residential (3)20 roofing services in North Carolina for a fee or who offers to engage in or 21 solicits roofing-related services, including construction, installation, 22 renovation, repair, maintenance, alteration, or waterproofing. The term shall 23 not include any of the following: 24 A licensed general contractor. 25 A person engaged in the demolition of a structure or the cleanup of b. construction waste and debris that contains roofing material. 26 A person working under the direct supervision of a roofing repair 27 <u>c.</u> contractor who is hired either as an employee, day laborer, or 28 29 contract laborer. 30 A person providing roofing related services as a subcontractor, d. 31 regardless of tier, under a licensed North Carolina general contractor. "§ 75-151. Construction of Article.

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The requirements of this Article shall be construed to be in addition to, and not in lieu of, any required licensure of persons for certain professions and trades in this State. This Article shall not be deemed to conflict with or affect the authority of any State or local agency, board, or commission whose duty and authority is to administer or enforce any law or ordinance or to



establish, administer, or enforce any policy, rule, qualification, or standard for any trade or 1 2 profession. 3 "§ 75-152. Reserved. 4 "§ 75-153. Written contract required. 5 All contracts for roofing repair shall be in writing. The written contract shall contain 6 at least all of the following: 7 (1)The name, mailing address, physical address if different from the mailing 8 address, and phone number of the roofing contractor. If the roofing contractor uses email for business purposes, the contract shall also include 9 that email address. 10 The name of the consumer. 11 (2) The physical location of the property subject to the roofing repair, and a 12 (3) 13 brief description of the structure to be repaired. 14 <u>(4)</u> Include a copy of a repair estimate that addresses all of the following 15 disclosures: 16 A precise description and location of all damage claimed on the <u>a.</u> 17 repair estimate. 18 An itemized estimate of repair costs, including the cost of raw <u>b.</u> 19 materials, hourly labor rate, and the number of hours for each item of 20 repair or a unit cost basis. 21 If any damaged areas are not included on the repair estimate, a <u>c.</u> specification of those damaged areas and all reasons for the exclusion 22 23 from the repair estimate. 24 A statement as to whether or not the property was inspected in any d. 25 manner prior to the preparation of the estimate, a description of the nature of that inspection if an inspection was done, including a 26 27 statement of whether or not the roof was physically accessed. 28 (5) Be written in the same language as that principally used in the sales 29 presentation, oral or otherwise, to the consumer. 30 Clearly indicate the date on which the consumer actually signs the contract. (6) 31 Include a statement indicating that the roofing repair contractor shall hold in (7)32 trust any payment from the consumer until the roofing repair contractor has 33 delivered roofing materials at the property site or has performed a majority 34 of the roofing work on the property, whichever occurs first. Any written contract for roofing repairs for which the consumer anticipates the 35 proceeds of any insurance policy will be used to pay, in whole or in part, to pay for 36 37 performance under the contract and the roofing repair contractor is aware of the source of the 38 funds to pay for performance under the contract, shall also include all of the following: 39 (1)A disclosure that the consumer is responsible for payment for any work 40 performed if the insurer should deny payment or coverage on any part of the 41 loss. A statement that the roofing repair contractor has made no assurances that 42 (2)43 the claimed loss will be covered by an insurance policy. 44 In immediate proximity to the space reserved for the signature of the (3) 45 consumer, in bold-face type of a minimum size of 10 points, a statement in 46 substantially the following form: 47 48 "You may cancel this contract or transaction at any time prior to midnight of 49 the third business day after you have received written notification from your 50 insurer that all or any part of the claim or contract is not a covered loss under

- policy covering the property subject to the roofing repair.
- Procedure for Cancellation. Cancellation shall be evidenced by the consumer giving written notice of cancellation to the roofing repair contractor at the mailing, physical, or email address stated in the contract. Notice of cancellation, if delivered to the mailing address provided by the roofing repair contractor, is effective upon deposit into the United States mail, postage prepaid, and properly addressed to the roofing repair contractor. Notice of cancellation need not be on the form required to be attached to the written contract under G.S. 75-153(b) or take a particular form. The notice of cancellation is sufficient if it indicates, by any form of written expression, the intention of the consumer not to be bound by the contract and provides information as to when the consumer received notice from the insurer of failure to pay.
- Refund of Payments to Consumer. Within 10 days after a contract for roofing repairs has been cancelled, the roofing repair contractor shall tender to the consumer any payments, partial payments, or deposits made by the consumer and cancel any note or other evidence of indebtedness.
- Emergency Services. If the roofing repair contractor has performed any (d) emergency services, acknowledged by the consumer in writing to be necessary to prevent further damage to the premises, the roofing repair contractor is entitled to the reasonable value of such emergency services. Any provision in a written contract for roofing repairs that in the event of cancellation requires the payment of any fee for anything except emergency services

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- General Assembly of North Carolina Session 2015 shall constitute a violation of G.S. 75-1.1 and shall not be enforceable against any consumer 1 2 who has cancelled a contract under this section. 3 "§ 75-156-159. Reserved. "§ 75-160. Prohibited conduct. 4 5 A roofing repair contractor shall not do any of the following: (a) 6 Advertise or otherwise promise or offer to pay, or pay, all or any portion of (1) 7 any insurance deductible as an inducement to the sale of any materials, 8 labor, and or services. 9 Offer, or provide, any upgraded work, material, or product, grant any (2) 10 allowance or offer any discount against the fees to be charged, or pay the consumer any form of compensation, gift, prize, bonus, coupon, credit, 11 referral fee, trade-in or trade-in payment, advertising, or other fee or 12 13 payment as an inducement to the sale of any materials, labor, or services. Offer, or provide, anything of value in exchange for permitting the roofing 14 (3) repair contractor to display a sign or any other type of advertisement at the 15 consumer's premises. 16 17 With respect to any insurance claim in connection with the repair or (4)18 replacement of roof systems, or the performance of any other exterior repair, replacement, construction, or reconstruction work, do any of the following: 19 Seek to obtain, or obtain, a power of attorney from or on behalf of a 20 <u>a.</u> 21 consumer. 22 <u>b.</u> Offer to report or adjust a claim on behalf of a consumer. 23 Represent or negotiate, obtain, or attempt to obtain, an assignment of c. 24 claims rights, benefits, or proceeds from or on behalf of a consumer. 25 Offer or advertise to represent or negotiate, obtain, or attempt to d. 26 obtain an assignment of claims rights, benefits, or proceeds. 27
  - An adjuster as defined in G.S. 58-33-10(2) or a public adjuster as defined in G.S. 58-33A-5(7) shall not act as a roofing repair contractor.

"§ 75-161-165. Reserved.

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"\$ 75-166. Violations an unfair and deceptive trade practice.

A violation of this Article shall constitute an unfair and deceptive trade practice under G.S. 75-1.1."

**SECTION 2.** This act becomes effective October 1, 2016, and applies to contracts for roofing repair entered into on or after that date.



# **HOUSE BILL 643: Roofing Contractors/Consumer Protection**

2015-2016 General Assembly

Committee:

House Judiciary I

Introduced by: Rep. Arp

Analysis of:

PCS to First Edition

H643-CSST-22

Date:

April 19, 2015

Prepared by: R. Erika Churchill

Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 643 would establish a new unfair and deceptive trade practice under Chapter 75 of the General Statutes. The PCS would do all of the following:

- Require all roofing repair contracts to be in writing.
- > Require all roofing repair contracts where proceeds to pay for performance under the contract are expected from an insurance claim to have a right of cancellation if the consumer finds out the insurance claim will not be paid, in full or in part.
- Specify certain actions that a roof repair contractor cannot take.

**CURRENT LAW:** North Carolina does not currently regulate or license individuals who perform roofing repair services, unless those services are performed as a general contractor.

G.S. 75-1.1 provides that unfair or deceptive acts or practices in or affecting commerce are unlawful. Whether an act or practice is unfair or deceptive usually depends on the facts of each case, but the general test is whether the act or practice has the capacity or tendency to deceive. Chapter 75 provides for the prosecution of such acts by the Attorney General and through private civil actions. Under suits initiated by the Attorney General, the court may impose a civil penalty of up to \$5,000 for each violation. Under private civil actions, the plaintiff may be entitled to treble damages and attorney's fees.

BILL ANALYSIS: The PCS would require that consumers (the person hiring a roofing repair contractor, including the property owner, person in legal possession of the property, or any agent thereof, including the State and any of its political subdivisions) and roofing repair contractors (any person engaged in the business of residential roofing services in North Carolina for a fee or who offers to engage in or solicits roofing-related services, including construction, installation, renovation, repair, maintenance, alteration, or waterproofing) who contract for a roofing repair (repairs to an existing roofing system with an estimated cost of more than \$750.00) to reduce that agreement to writing. The writing must contain: the name of the consumer; the name and contact information for the roofing repair contractor; the address and description of the property to be repaired; an estimate and description of the work to be done; the date of the contract; and a statement that the roofing repair contractor will hold in trust any payment from the consumer until the materials are delivered to the site or has performed a majority of the work.

If money to pay for performance on the roofing repair contract is expected to come from insurance proceeds, the contract must also allow for the consumer to cancel the contract if the insurance company does not pay, in full or in part, the insurance claim. In order to cancel, a consumer must notify the roofing repair contractor, in writing, by midnight of the third day following notification of the failure to

O. Walker Reagan
Director



Research Division (919) 733-2578

# House Bill 643

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pay, in full or in part, the insurance claim. All monies paid by the consumer to the roofing repair contractor must be returned to the consumer within 10 days upon cancellation, except for the reasonable value of any services performed by the roofing repair contractor for emergency services.

Roofing repair contractors are prohibited from doing any of the following:

- 1. Advertise or otherwise promise or offer to pay, or pay, all or any portion of any insurance deductible as an inducement to the sale of any materials, labor, and or services.
- 2. Offer, or provide, any upgraded work, material, or product, grant any allowance or offer any discount against the fees to be charged, or pay the consumer any form of compensation, gift, prize, bonus, coupon, credit, referral fee, trade-in or trade-in payment, advertising, or other fee or payment as an inducement to the sale of any materials, labor, or services.
- 3. Offer, or provide, anything of value in exchange for permitting the roofing repair contractor to display a sign or any other type of advertisement at the consumer's premises.
- 4. With respect to any insurance claim in connection with the repair or replacement of roof systems, or the performance of any other exterior repair, replacement, construction, or reconstruction work, do any of the following:
  - a. Seek to obtain, or obtain, a power of attorney from or on behalf of a consumer.
  - b. Offer to report or adjust a claim on behalf of a consumer.
  - c. Represent or negotiate, obtain, or attempt to obtain, an assignment of claims rights, benefits, or proceeds from or on behalf of a consumer.
  - d. Offer or advertise to represent or negotiate, obtain, or attempt to obtain an assignment of claims rights, benefits, or proceeds.

Violation of any of the above would be an unfair and deceptive trade practice.

This would not apply to persons engaged in the business of residential roofing services who meet any of the following descriptions:

- A licensed general contractor.
- A person engaged in the demolition of a structure or the cleanup of construction waste and debris that contains roofing material.
- A person working under the direct supervision of a roofing repair contractor who is hired either as an employee, day laborer, or contract laborer.
- A person providing roofing related services as a subcontractor under a licensed NC general contractor.

**EFFECTIVE DATE:** October 1, 2016, and applies to roofing repair contracts entered into on or after that date.

# GENERAL ASSEMBLY OF NORTH CAROLINA **SESSION 2015**

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### **HOUSE BILL 643** PROPOSED COMMITTEE SUBSTITUTE H643-PCS30333-ST-22

(Public) Short Title: Roofing Contractors/Consumer Protection. Sponsors: Referred to: April 14, 2015 A BILL TO BE ENTITLED AN ACT TO PROVIDE CONSUMER PROTECTIONS RELATED TO ROOFING REPAIR CONTRACTORS. The General Assembly of North Carolina enacts: SECTION 1. Chapter 75 of the General Statutes is amended by adding a new Article to read: "Article 9. "Roofing Repair Contractors. "§ 75-150. Definitions. The following definitions apply in this Article: Consumer. - The person hiring a roofing repair contractor, including the (1) property owner, person in legal possession of the property, or any agent thereof, including the State and any of its political subdivisions. Emergency services. - Any repair needed as the result of a serious, (2)unexpected, or dangerous situation that requires immediate action. Roofing repair. - Repairs to an existing roofing system with an estimated (3) cost of more than seven hundred fifty dollars (\$750.00), including a total replacement of the existing roofing system. Roofing repair contractor. - A person engaged in the business of residential <u>(4)</u> roofing services in North Carolina for a fee or who offers to engage in or solicits roofing-related services, including construction, installation, renovation, repair, maintenance, alteration, or waterproofing. The term shall not include any of the following: A licensed general contractor. a. A person engaged in the demolition of a structure or the cleanup of b. construction waste and debris that contains roofing material. A person working under the direct supervision of a roofing repair c. contractor who is hired either as an employee, day laborer, or contract laborer. A person providing roofing-related services as a subcontractor, d. regardless of tier, under a licensed North Carolina general contractor. "§ 75-151. Construction of Article.

The requirements of this Article shall be construed to be in addition to, and not in lieu of, any required licensure of persons for certain professions and trades in this State. This Article shall not be deemed to conflict with or affect the authority of any State or local agency, board, or commission whose duty and authority is to administer or enforce any law or ordinance or to



establish, administer, or enforce any policy, rule, qualification, or standard for any trade or 1 2 profession. 3 "§ 75-152. Reserved. "§ 75-153. Written contract required. 4 5 All contracts for roofing repair shall be in writing. The written contract shall contain 6 at least all of the following: 7 The name, mailing address, physical address if different from the mailing (1) address, and phone number of the roofing contractor. If the roofing 8 contractor uses e-mail for business purposes, the contract shall also include 9 10 that e-mail address. The name of the consumer. 11 (2)12 The physical location of the property subject to the roofing repair, and a (3) 13 brief description of the structure to be repaired. 14 Include a copy of a repair estimate that addresses all of the following (4) 15 disclosures: A precise description and location of all damage claimed on the 16 17 repair estimate. An itemized estimate of repair costs, including the cost of raw 18 b. materials, hourly labor rate, and the number of hours for each item of 19 repair or a unit cost basis. 20 21 If any damaged areas are not included on the repair estimate, a <u>c.</u> specification of those damaged areas and all reasons for the exclusion 22 23 from the repair estimate. A statement as to whether or not the property was inspected in any 24 d. 25 manner prior to the preparation of the estimate, and a description of the nature of that inspection if an inspection was done, including a 26 statement of whether or not the roof was physically accessed. 27 Be written in the same language as that principally used in the sales 28 (5)presentation, oral or otherwise, to the consumer. 29 Clearly indicate the date on which the consumer actually signs the contract. 30 (6)Include a statement indicating that the roofing repair contractor shall hold in 31 (7)32 trust any payment from the consumer until the roofing repair contractor has delivered roofing materials at the property site or has performed a majority 33 of the roofing work on the property, whichever occurs first. 34 Any written contract for roofing repairs for which the consumer anticipates the 35 (b) proceeds of any insurance policy will be used to pay, in whole or in part, to pay for 36 performance under the contract and the roofing repair contractor is aware of the source of the 37 funds to pay for performance under the contract, shall also include all of the following: 38 39 A disclosure that the consumer is responsible for payment for any work (1) performed if the insurer should deny payment or coverage on any part of the 40 41 loss. A statement that the roofing repair contractor has made no assurances that 42 (2)the claimed loss will be covered by an insurance policy. 43 In immediate proximity to the space reserved for the signature of the 44 (3) consumer, in bold-face type of a minimum size of 10 points, a statement in 45 substantially the following form: 46 47 "You may cancel this contract or transaction at any time prior to midnight of 48

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the third business day after you have received written notification from your

insurer that all or any part of the claim or contract is not a covered loss under

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41 42 (b) Procedure for Cancellation. – Cancellation shall be evidenced by the consumer giving written notice of cancellation to the roofing repair contractor at the mailing, physical, or e-mail address stated in the contract. Notice of cancellation, if delivered to the mailing address provided by the roofing repair contractor, is effective upon deposit into the United States mail, postage prepaid, and properly addressed to the roofing repair contractor. Notice of cancellation need not be on the form required to be attached to the written contract under G.S. 75-153(b) or take a particular form. The notice of cancellation is sufficient if it indicates, by any form of written expression, the intention of the consumer not to be bound by the contract and provides information as to when the consumer received notice from the insurer of failure to pay.

(c) Refund of Payments to Consumer. – Within 10 days after a contract for roofing repairs has been cancelled, the roofing repair contractor shall tender to the consumer any payments, partial payments, or deposits made by the consumer and cancel any note or other evidence of indebtedness.

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(d) Emergency Services. – If the roofing repair contractor has performed any emergency services, acknowledged by the consumer in writing to be necessary to prevent further damage to the premises, the roofing repair contractor is entitled to the reasonable value of such emergency services. Any provision in a written contract for roofing repairs that in the

General Assembly Of North Carolina Session 2015 event of cancellation requires the payment of any fee for anything except emergency services 1 shall constitute a violation of G.S. 75-1.1 and shall not be enforceable against any consumer 2 3 who has cancelled a contract under this section. "§ 75-158-159. Reserved. 4 5 "§ 75-160. Prohibited conduct. 6 A roofing repair contractor shall not do any of the following: (a) 7 Advertise or otherwise promise or offer to pay, or pay, all or any portion of any insurance deductible as an inducement to the sale of any materials, 8 9 labor, and or services. Offer, or provide, any upgraded work, material, or product, grant any 10 (2) allowance or offer any discount against the fees to be charged, or pay the 11 consumer any form of compensation, gift, prize, bonus, coupon, credit, 12 referral fee, trade-in or trade-in payment, advertising, or other fee or 13 payment as an inducement to the sale of any materials, labor, or services. 14 15 Offer, or provide, anything of value in exchange for permitting the roofing (3) repair contractor to display a sign or any other type of advertisement at the 16 17 consumer's premises. With respect to any insurance claim in connection with the repair or 18 (4)replacement of roof systems, or the performance of any other exterior repair, 19 replacement, construction, or reconstruction work, do any of the following: 20 Seek to obtain, or obtain, a power of attorney from or on behalf of a 21 a. 22 consumer. Offer to report or adjust a claim on behalf of a consumer. 23 b. 24

- c. Represent or negotiate, obtain, or attempt to obtain, an assignment of claims, rights, benefits, or proceeds from or on behalf of a consumer.
- d. Offer or advertise to represent or negotiate, obtain, or attempt to obtain an assignment of claims, rights, benefits, or proceeds.

(b) An adjuster as defined in G.S. 58-33-10(2) or a public adjuster as defined in G.S. 58-33A-5(7) shall not act as a roofing repair contractor.

"§ 75-161-165. Reserved.

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"§ 75-166. Violations an unfair and deceptive trade practice.

A violation of this Article shall constitute an unfair and deceptive trade practice under G.S. 75-1.1."

**SECTION 2.** This act becomes effective October 1, 2016, and applies to contracts for roofing repair entered into on or after that date.

# GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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### HOUSE BILL 222 PROPOSED COMMITTEE SUBSTITUTE H222-CSST-23 [v.3]

4/19/2015 7:25:28 PM

Short Title: Retention Elections/Appellate Division. (Public)

Sponsors:

Referred to:

### March 12, 2015

A BILL TO BE ENTITLED

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AN ACT ALLOWING VOTERS TO ELECT, AND THEN RETAIN, JUSTICES OF THE NORTH CAROLINA SUPREME COURT AND JUDGES OF THE COURT OF APPEALS FOR ELECTION.

5 The General Assembly of North Carolina enacts:

SECTION 1. Chapter 7A of the General Statutes is amended by adding a new Article to read:

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# "Article 1A. "Retention Elections.

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"§ 7A-4.1. Retention elections.

(a) A Chief Justice or Associate Justice of the Supreme Court or Judge of the Court of Appeals who was elected to that office by vote of the voters at the most recent election who desires to continue in office shall be subject to approval by the qualified voters of the whole State in a retention election at the general election immediately preceding the expiration of the elected term. Approval shall be by a majority of votes cast on the issue of the justice's or judge's retention in accordance with this Article.

(b) If the Chief Justice or an Associate Justice of the Supreme Court or a Judge of the Court of Appeals was appointed to fill a vacancy to that office, then the next election for that office shall be by ballot as provided by Article 25 of Chapter 163 of the General Statutes. Following that election, the justice or judge shall be eligible for retention election as provided for in this Article.

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(c) A justice or judge seeking retention shall indicate the desire to continue in office by filing a notice to that effect with the State Board of Elections no later than 12:00 noon on the first business day of July in the year prior to the general election immediately preceding the expiration of the elected term. The notice shall be on a form provided by the State Board of Elections. Notice can be withdrawn at any time prior to December 15 of that year. If no retention notice is filed, or if it is filed and timely withdrawn, then an election shall be held the next year to elect a successor in accordance with Article 25 of Chapter 163 of the General Statutes.

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(d) At the time of filing the notice under this Article justice or judge shall pay to the State Board of Elections a filing fee for the office the candidate seeks in the amount of one percent (1%) of the annual salary of the office sought.

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(e) Except as provided for in this Article, retention elections shall be conducted and canvassed in accordance with rules of the State Board of Elections in the same general manner as general elections under Chapter 163 of the General Statutes. The State Board of Elections shall certify the results.



H222-CSST-23 [v.3]

- (f) The question on the ballot shall be substantially in the following form, as appropriate:
  - (1) Justices of the Supreme Court. –

# '[ ] FOR [ ] AGAINST

The retention of [name of Justice] on the North Carolina Supreme Court for a new term of eight years.'.

(2) Judges of the Court of Appeals. –

# '[ ] FOR [ ] AGAINST

The retention of [name of Judge] on the North Carolina Court of Appeals for a new term of eight years.'

- (g) If a person who has filed a notice of intent for a retention election dies or is removed from office prior to the time that the ballots are printed, the retention election is cancelled and the vacancy shall be filled as provided by law. If a person who has filed a notice calling a retention election dies or is removed from office after the ballots are printed, the State Board of Elections may cancel the retention election if it determines that the ballots can be reprinted without significant expense. If the ballots cannot be reprinted, then the results of the retention election shall be ineffective.
- "§ 7A-4.2. Retention approval; failure to retain.
- (a) If the voters vote to approve the retention in office of a Chief Justice, an Associate Justice, or a Judge of the Appellate Division, the justice or judge shall be retained for a new eight-year term.
- (b) If the voters fail to approve the retention in office of a Chief Justice, an Associate Justice, or a Judge of the Appellate Division, the office shall become vacant at the end of the term of office, the incumbent shall not hold over, and the vacancy shall be fill as provided by law.

# SECTION 2. G.S. 7A-10(a) reads as rewritten:

"(a) The Supreme Court shall consist of a Chief Justice and six associate justices, elected by the qualified voters of the State for terms of eight years. Such election shall be under Article 25 of Chapter 163 of the General Statutes or Article 1A of this Chapter. Before entering upon the duties of his the office, each justice shall take an oath of office. Four justices shall constitute a quorum for the transaction of the business of the court. Except as otherwise provided in this subsection, sessions of the court shall be held in the city of Raleigh, and scheduled by rule of court so as to discharge expeditiously the court's business. The court may by rule hold sessions not more than twice annually in the Old Chowan County Courthouse (1767) in the Town of Edenton, which is a State-owned court facility that is designated as a National Historic Landmark by the United States Department of the Interior."

### SECTION 3. G.S. 7A-16 reads as rewritten:

### "§ 7A-16. Creation and organization.

The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.

Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme

Page 2 House Bill 222

 Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.

Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general election for members of the General Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.

Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1979. Their successors shall be elected at the general election for members of the General Assembly in November, 1978, and shall take office on January 1, 1979, to serve the remainder of the unexpired term which began on January 1, 1977.

The Court of Appeals shall consist of 12 judges, elected by the qualified voters of the State for terms of eight years. Such election shall be under Article 25 of Chapter 163 of the General Statutes or Article 1A of this Chapter. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of the office, each judge shall take an oath of office.

On or after December 15, 2000, the Governor shall appoint three additional judges to increase the number of judges to 15.

The Court of Appeals shall sit in panels of three judges each. The Chief Judge insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member. He shall preside over the panel of which he is a member, and shall designate the presiding judge of the other panel or panels.

Three judges shall constitute a quorum for the transaction of the business of the court, except as may be provided in G.S. 7A-32.

In the event the Chief Judge is unable, on account of absence or temporary incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting Chief Judge from the other judges of the Court, to temporarily discharge the duties of Chief Judge."

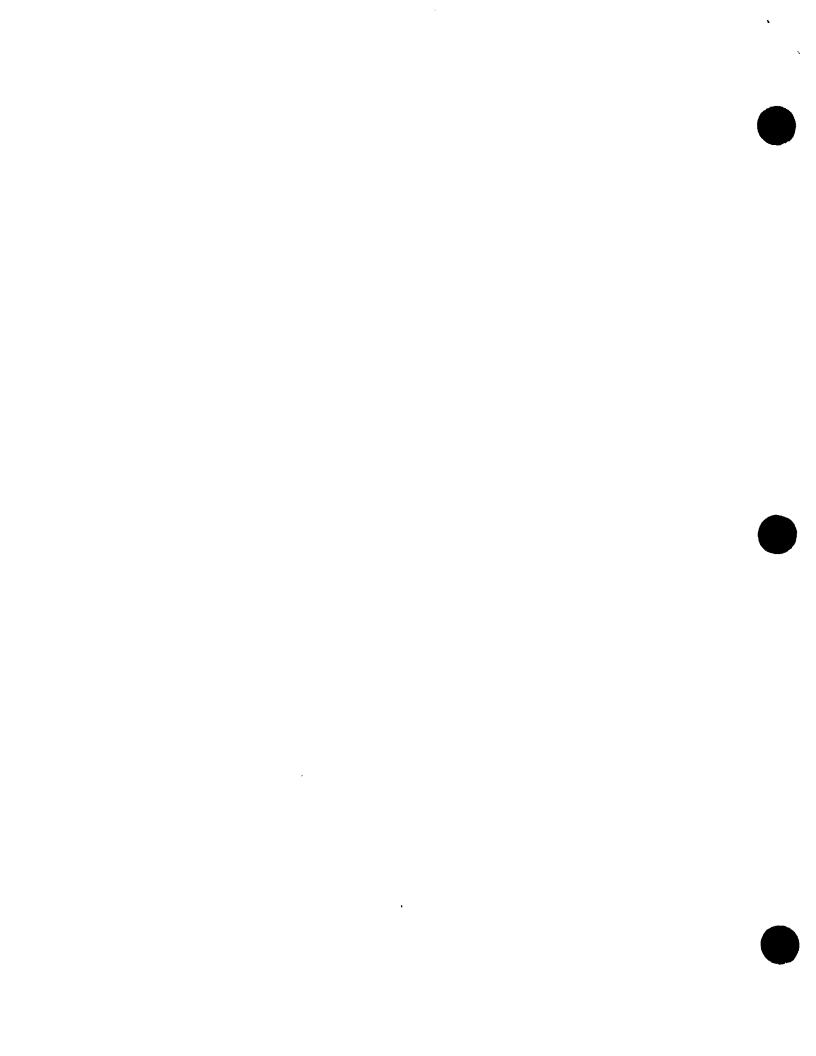
**SECTION 4.** G.S. 163-1 is amended in the table relating to entries for "Justices and State Judges of the Appellate Division" by deleting the word "At" at the beginning of the entry under the column titled "Date of Election" and substituting the phrase "Except as provided in Article 1A of Chapter 7A of the General Statutes, at".

## SECTION 5. G.S. 163-165.6(b) reads as rewritten:

- "(b) Order of Precedence for Candidate Ballot Items. The State Board of Elections shall promulgate rules prescribing the order of offices to be voted on the official ballot. Those rules shall adhere to the following guidelines:
  - (1) Federal offices shall be listed before State and local offices. Member of the United States House of Representatives shall be listed immediately after United States Senator.
  - (2) State and local offices shall be listed according to the size of the electorate.
  - (3) Partisan offices, regardless of the size of the constituency, shall be listed before nonpartisan offices.
  - (4) When offices are in the same class, they shall be listed in alphabetical order by office name, or in numerical or alphabetical order by district name. Governor and Lieutenant Governor, in that order, shall be listed before other Council of State offices. Mayor shall be listed before other citywide offices. Chair of a board, where elected separately, shall be listed before other board

| General Assembly of       | North Carolina  | Session 2015           |
|---------------------------|---|------------------------|
| seats                     | having the same electorate. Chief Justice sh          | all be listed before   |
| Asso                      | ciate Justices.                                       |                        |
| (5) Ballo                 | t items for full terms of an office shall be listed b | efore ballot items for |
|                           | al terms of the same office.                          |                        |
|                           | t items for retention elections held under Article    | e 1A of Chapter 7A     |
|                           | be grouped with like state offices, but shall be li   | -                      |
|                           | h an election is conducted under Article 25 of this   |                        |
|                           | 6. G.S. 163-182.16 reads as rewritten:                |                        |
|                           | or to issue commissions for certain offices.          |                        |
| U                         | ate shall send a notice to the Governor that a certi  | ficate of election has |
|                           | he following offices, and upon receiving the notic    |                        |
|                           | ected official a commission attesting to that person' |                        |
| etention:                 |   |                        |
|                           | bers of the United States House of Representatives    |                        |
|                           | ces, judges, and district attorneys of the General Co |                        |
|                           | 7. G.S. 163-321 reads as rewritten:                   |                        |
| § 163-321. Applicabil     |   |                        |
|                           | d election of justices of the Supreme Court, jud      | lges of the Court of   |
|                           | and district court judges of the General Court of     |                        |
|                           | e. Retention elections of Justices of the Supreme C   |                        |
|                           | be as provided in Article 1A of Chapter 7A of the C   |                        |
| SECTION 8                 | 3. G.S. 163-335 reads as rewritten:                   |                        |
| § 163-335. Other rule     | es.   |                        |
| (a) Except as pr          | rovided by this Article, the conduct of elections     | shall be governed by   |
| ubchapter VI of this C    | hapter.   |                        |
|                           | ection under this Article, a duly elected justice of  | the Supreme Court or   |
| udge of the Court of A    | ppeals may opt for a retention election under Artic   | cle 1A of Chapter 7A   |
|                           | Any such retention shall be conducted in accorda      |                        |
| except as specifically st | ated in that Article."                                |                        |
|                           | <b>9.(a)</b> G.S. 163-278.6(4) reads as rewritten:    |                        |
|                           | term "candidate" means any individual who, with       |                        |
|                           | e listed in G.S. 163-278.6(18), has taken positive a  |                        |
|                           | ringing about that individual's nomination nomi       |                        |
|                           | ion to public office. Examples of positive action in  | nclude: include any of |
| the fo                    | ollowing  |                        |
| a.                        | Filing a notice of candidacy candidacy, filing a      |                        |
|                           | or a petition requesting to be a candidate, candidate |                        |
| b.                        | Being certified as a nominee of a pol                 | litical party for a    |
|                           | vacancy, vacancy.                                     |                        |
| c.                        | Otherwise qualifying as a candidate in a m            | anner authorized by    |
|                           | <del>law,</del> law.                                  |                        |
| d.                        | Making a public announcement of a definite in         | tent to run for public |
|                           | office in a particular election, or <u>election</u> . |                        |
| e.                        | Receiving funds or making payments or give            | _                      |
|                           | anyone else to receive funds or transfer anyth        | -                      |
|                           | purpose of bringing about that individual's nom       |                        |
|                           | office. Transferring anything of value inc            | cludes incurring an    |
|                           | obligation to transfer anything of value.             |                        |
|                           | is as a candidate for the purpose of this Arti        |                        |
|                           | idual is receiving contributions to repay loans or    |                        |
| maki                      | ng expenditures to satisfy obligations from an e      | lection already held.  |

|    | General Assembly of North Carolina Session 2015                                   |
|----|---|
| 1  | Special definitions of "candidate" and "candidate campaign committee" tha         |
| 2  | apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z."         |
| 3  | SECTION 9.(b) G.S. 163-278.38Z(2) reads as rewritten:                             |
| 4  | "(2) "Candidate" means any individual who, with respect to a public office listed |
| 5  | in G.S. 163-278.6(18), has filed a notice of candidacy candidacy, notice o        |
| 6  | retention, or a petition requesting to be a candidate, or has been certified as a |
| 7  | nominee of a political party for a vacancy, or has otherwise qualified as a       |
| 8  | candidate in a manner authorized by law, or has filed a statement o               |
| 9  | organization under G.S. 163-278.7 and is required to file periodic financia       |
| 10 | disclosure statements under G.S. 163-278.9."                                      |
| 11 | SECTION 10. This act is affective when it becomes law                             |





# **HOUSE BILL 222:** Retention Elections/Appellate Division

2015-2016 General Assembly

Committee: House Judiciary I

Introduced by: Reps. Bryan, Daughtry, Stevens

Analysis of: PCS to First Edition

H222-CSST-23

**Date:** April 19, 2015

Prepared by: R. Erika Churchill

Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 222 would provide for the initial election and subsequent retention election of justices and judges of the North Carolina Appellate Courts.

**CURRENT LAW:** The North Carolina Court System is comprised of the Trial Division and the Appellate Division. The Trial Division includes the Superior and District courts. The Appellate Division consists of the Supreme Court and the Court of Appeals.

Under Section 16 of Article IV of the State Constitution, Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court are elected by the qualified voters of the State and serve 8 year terms. The Constitution does not specifically call for, or authorize, retention elections for any elected office mentioned in the Constitution. The Courts have, however, consistently held that the Constitution contains the qualifications for elected office, and the General Assembly cannot adopt additional qualifications.

The General Assembly is to set a mandatory retirement age for justices and judges (Article IV, Section 8), which has been set as the last day of the month in which the justice or judge reaches age 72 (G.S. 7A-4.20).

The Supreme Court consists of a Chief Justice and 6 Associate Justices; the General Assembly is authorized to increase the number of Associate Justices to not more than eight. Article IV, Section 6. The Court of Appeals structure, organization and composition is to be determined by the General Assembly, with no less than 5 members. Article IV, Section 7. Currently, the Court of Appeals consists of a total of 15 members, sitting in panels of 3 judges each. G.S. 7A-16.

Vacancies occurring in the offices are filled by appointment of the Governor, but the appointee serves until the next election for which members of the General Assembly are on the ballot that is held more than 60 days after the vacancy occurs, at which time an election is to be held to fill the vacancy. Section 19 of Article IV.

BILL ANALYSIS: Section 1 of the PCS would enact a new Article 1A of Chapter 7A of the General Statutes to establish a process by which a justice of the Supreme Court or a judge of Court of Appeals may opt to stand for retention election after having won an election under Article 25 of Chapter 163 of the General Statutes. The justice or judge seeking retention would have to file a notice of retention no later than July 1 of the year preceding the end of the term of office. A filing fee of 1% of the salary would have to be paid at the time of the filing, as would happen now with the filing of a notice of candidacy. The retention election would be conducted at the time of the general election the following

O. Walker Reagan Director



Research Division (919) 733-2578

# House Bill 222

Page 2

year. If the majority of the voters cast for, the justice or judge would be retained. If not, the vacancy would be filled in accordance with law.

Sections 2-9 of the PCS would make conforming changes as noted:

- Sections 2 and 3. Would amend the organizational statutes of the Supreme Court and Court of Appeals to acknowledge retention election as method to take office.
- ➤ Sections 4, 6, 7, and 8. Would amend the election administration statutes to acknowledge retention election as a method to take office.
- ➤ Section 5. Would specify ballot placement for the retention election as grouped with like races, but at the end of those races.
- ➤ Section 9. Would amend the campaign finance statutes to acknowledge retention election as a method to take office.

**EFFECTIVE DATE:** Effective when it becomes law.

# GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H

 Statutes.

## HOUSE BILL 222 PROPOSED COMMITTEE SUBSTITUTE H222-PCS20315-ST-23

| Short Title: Retention Elections/Appellate Division.                            | (Public)               |
|---|------------------------|
| Sponsors:   |                        |
| Referred to:  |                        |
| March 12, 2015  |                        |
| A BILL TO BE ENTITLED   |                        |
| AN ACT ALLOWING VOTERS TO ELECT, AND THEN RETAIN,                               | JUSTICES OF THE        |
| NORTH CAROLINA SUPREME COURT AND JUDGES OF APPEALS FOR ELECTION.                |                        |
| The General Assembly of North Carolina enacts:                                  |                        |
| SECTION 1. Chapter 7A of the General Statutes is amend                          | led by adding a new    |
| Article to read:  |                        |
| "Article 1A.  |                        |
| "Retention Elections.   |                        |
| "§ 7A-4.1. Retention elections.   |                        |
| (a) A Chief Justice or Associate Justice of the Supreme Court or J              | Judge of the Court of  |
| Appeals who was elected to that office by vote of the voters at the most        | t recent election who  |
| desires to continue in office shall be subject to approval by the qualified     |                        |
| State in a retention election at the general election immediately preceding     |                        |
| elected term. Approval shall be by a majority of votes cast on the issu         | ue of the justice's or |
| judge's retention in accordance with this Article.                              |                        |
| (b) If the Chief Justice or an Associate Justice of the Supreme Co              |                        |
| Court of Appeals was appointed to fill a vacancy to that office, then the       |                        |
| office shall be by ballot as provided by Article 25 of Chapter 163 of the       |                        |
| Following that election, the justice or judge shall be eligible for retention   | election as provided   |
| for in this Article.  |                        |
| (c) A justice or judge seeking retention shall indicate the desire to           |                        |
| filing a notice to that effect with the State Board of Elections no later that  |                        |
| first business day of July in the year prior to the general election immed      |                        |
| expiration of the elected term. The notice shall be on a form provided b        | •                      |
| Elections. Notice can be withdrawn at any time prior to December 15             |                        |
| retention notice is filed or if it is filed and timely withdrawn, then an elec- | tion shall be held the |

(d) At the time of filing the notice under this Article, the justice or judge shall pay to the State Board of Elections a filing fee for the office the candidate seeks in the amount of one percent (1%) of the annual salary of the office sought.

next year to elect a successor in accordance with Article 25 of Chapter 163 of the General

(e) Except as provided for in this Article, retention elections shall be conducted and canvassed in accordance with rules of the State Board of Elections in the same general manner as general elections under Chapter 163 of the General Statutes. The State Board of Elections shall certify the results.



D

The question on the ballot shall be substantially in the following form, as 1 (f) 2 appropriate: 3 (1)

Justices of the Supreme Court. -

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"[ ] FOR [ ] AGAINST

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The retention of [name of Justice] on the North Carolina Supreme Court for a new term of eight vears."

Judges of the Court of Appeals. -(2)

"[ ] FOR [ ] AGAINST

The retention of [name of Judge] on the North Carolina Court of Appeals for a new term of eight years."

If a person who has filed a notice of intent for a retention election dies or is removed (g) from office prior to the time that the ballots are printed, the retention election is cancelled and the vacancy shall be filled as provided by law. If a person who has filed a notice calling a retention election dies or is removed from office after the ballots are printed, the State Board of Elections may cancel the retention election if it determines that the ballots can be reprinted without significant expense. If the ballots cannot be reprinted, then the results of the retention election shall be ineffective.

"§ 7A-4.2. Retention approval; failure to retain.

- If the voters vote to approve the retention in office of a Chief Justice, an Associate Justice, or a Judge of the Appellate Division, the justice or judge shall be retained for a new eight-year term.
- If the voters fail to approve the retention in office of a Chief Justice, an Associate (b) Justice, or a Judge of the Appellate Division, the office shall become vacant at the end of the term of office, the incumbent shall not hold over, and the vacancy shall be filled as provided by law."

**SECTION 2.** G.S. 7A-10(a) reads as rewritten:

The Supreme Court shall consist of a Chief Justice and six associate justices, elected by the qualified voters of the State for terms of eight years. Such election shall be under Article 25 of Chapter 163 of the General Statutes or Article 1A of this Chapter. Before entering upon the duties of his the office, each justice shall take an oath of office. Four justices shall constitute a quorum for the transaction of the business of the court. Except as otherwise provided in this subsection, sessions of the court shall be held in the city of Raleigh, and scheduled by rule of court so as to discharge expeditiously the court's business. The court may by rule hold sessions not more than twice annually in the Old Chowan County Courthouse (1767) in the Town of Edenton, which is a State-owned court facility that is designated as a National Historic Landmark by the United States Department of the Interior."

SECTION 3. G.S. 7A-16 reads as rewritten:

"§ 7A-16. Creation and organization.

The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.

Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme

Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.

Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general election for members of the General Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.

Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1979. Their successors shall be elected at the general election for members of the General Assembly in November, 1978, and shall take office on January 1, 1979, to serve the remainder of the unexpired term which began on January 1, 1977.

On or after December 15, 2000, the Governor shall appoint three additional judges to increase the number of judges to 15.

The Court of Appeals shall consist of 15 judges, elected by the qualified voters of the State for terms of eight years. Such election shall be under Article 25 of Chapter 163 of the General Statutes or Article 1A of this Chapter. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of the office, each judge shall take an oath of office.

The Court of Appeals shall sit in panels of three judges each. The Chief Judge insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member. He shall preside over the panel of which he is a member, and shall designate the presiding judge of the other panel or panels.

Three judges shall constitute a quorum for the transaction of the business of the court, except as may be provided in G.S. 7A-32.

In the event the Chief Judge is unable, on account of absence or temporary incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting Chief Judge from the other judges of the Court, to temporarily discharge the duties of Chief Judge."

**SECTION 4.** G.S. 163-1 is amended in the table relating to entries for "Justices and State Judges of the Appellate Division" by deleting the word "At" at the beginning of the entry under the column titled "Date of Election" and substituting the phrase "Except as provided in Article 1A of Chapter 7A of the General Statutes, at".

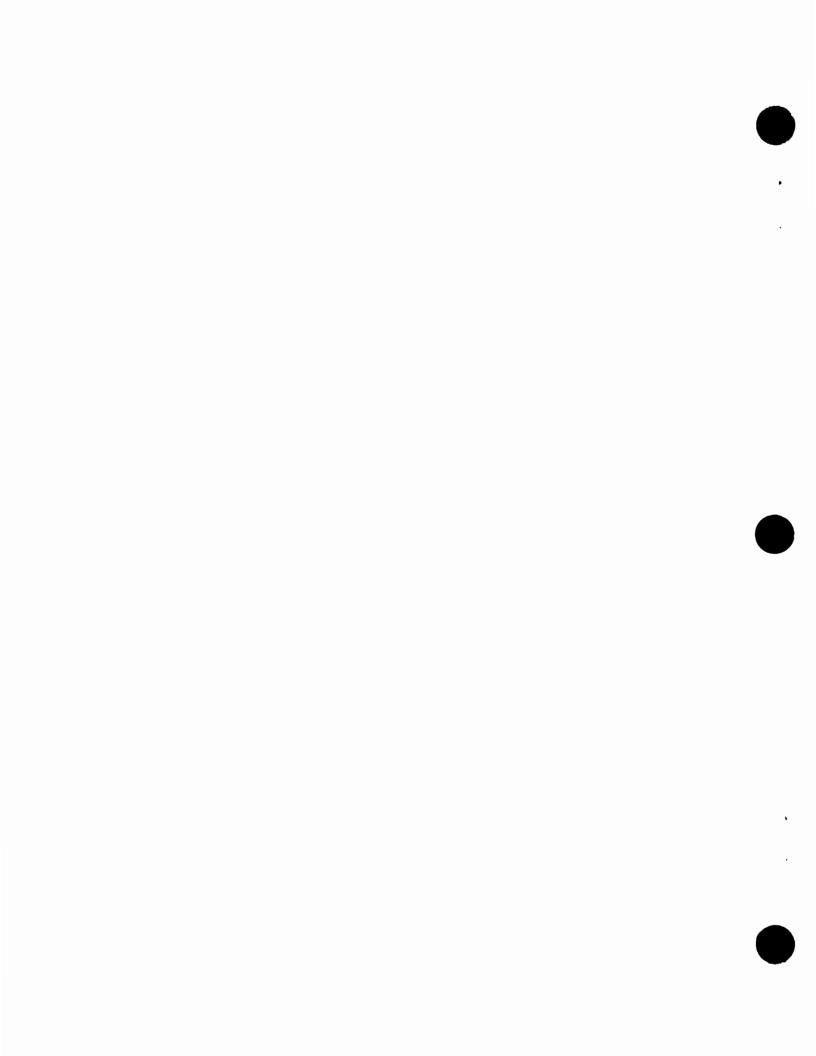
**SECTION 5.** G.S. 163-165.6(b) reads as rewritten:

- "(b) Order of Precedence for Candidate Ballot Items. The State Board of Elections shall promulgate rules prescribing the order of offices to be voted on the official ballot. Those rules shall adhere to the following guidelines:
  - (1) Federal offices shall be listed before State and local offices. Member of the United States House of Representatives shall be listed immediately after United States Senator.
  - (2) State and local offices shall be listed according to the size of the electorate.
  - (3) Partisan offices, regardless of the size of the constituency, shall be listed before nonpartisan offices.
  - (4) When offices are in the same class, they shall be listed in alphabetical order by office name, or in numerical or alphabetical order by district name. Governor and Lieutenant Governor, in that order, shall be listed before other Council of State offices. Mayor shall be listed before other citywide offices. Chair of a board, where elected separately, shall be listed before other board

General Assembly Of North Carolina

Session 2015

|    | General Assembly Of North Carolina Session 2015                                   |
|----|---|
| 1  | making expenditures to satisfy obligations from an election already held.         |
| 2  | Special definitions of "candidate" and "candidate campaign committee" that        |
| 3  | apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z."         |
| 4  | <b>SECTION 9.(b)</b> G.S. 163-278.38Z(2) reads as rewritten:                      |
| 5  | "(2) "Candidate" means any individual who, with respect to a public office listed |
| 6  | in G.S. 163-278.6(18), has filed a notice of candidacy candidacy, notice of       |
| 7  | retention, or a petition requesting to be a candidate, or has been certified as a |
| 8  | nominee of a political party for a vacancy, or has otherwise qualified as a       |
| 9  | candidate in a manner authorized by law, or has filed a statement of              |
| 10 | organization under G.S. 163-278.7 and is required to file periodic financial      |
| 11 | disclosure statements under G.S. 163-278.9."                                      |





# NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

House Bill 222

| H222-AST-39 [v.1]  | (to be fill<br>Principa   |   |
|--|---|---|
|  | тттогра   | Page 1 of 1   |
| Amends Title [NO] First Edition  | Date  | ,2015   |
| Representative   |   |   |
| moves to amend the bill on page 3, lines 15-21, b  | y rewriting those lines   | to read:  |
| "On or after December 15, 2000, the Government of his consist of 15.  The Court of Appeals shall consist of 15 judger terms of eight years. Such election shall be used to statute or Article 1A of this Chapter. The Chie one of the judges as Chief Judge to serve in such Before entering upon the duties of the office, each | ges, elected by the quander Article 25 of Chaff Justice of the Suprement capacity at the please | lified voters of the State apter 163 of the General are Court shall designate are of the Chief Justice. |
| SIGNED   |   |   |
| Amendment Sponso   | I   |   |
| SIGNED Committee Chair if Senate Commit  | tee Amendment   |   |
|  |   | BLED  |

1 2

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# **HOUSE BILL 570:** Facilitate Successful Reentry

2015-2016 General Assembly

Committee: House Judiciary I, if favorable, Judiciary II Date: April 17, 2015

Introduced by: Reps. C. Graham, Pierce, Baskerville, Glazier Prepared by: Jennifer Bedford
Committee Counsel

SUMMARY: House Bill 570 would direct the Department of Public Safety's Division of Adult Correction to use the North Carolina Warrant Repository (NCAWARE) to make each inmate aware of any outstanding criminal warrants at intake and before release and work with district attorney's offices to resolve an inmate's outstanding warrants while in custody.

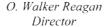
**CURRENT LAW:** G.S. 15A-301.1 provides for a statewide warrant repository to maintain and track criminal processes. Launched in 2008, NCAWARE is a web-based, automated system which provides detailed information about criminal processes such as warrants, criminal summons, orders for arrest, and appearance bonds. Authorized judicial officials and employees and all authorized law enforcement officers and agencies are given remote electronic access.

**BILL ANALYSIS:** Section 1. States the intent to facilitate successful reentry for inmates and improve judicial efficiency by directing the Division of Adult Correction to:

- Create a policy to use NCAWARE to identify outstanding warrants for inmates at intake and before release.
- Develop and implement a plan, in consultation with district attorneys, to resolve inmates' outstanding warrants while in custody whenever feasible.

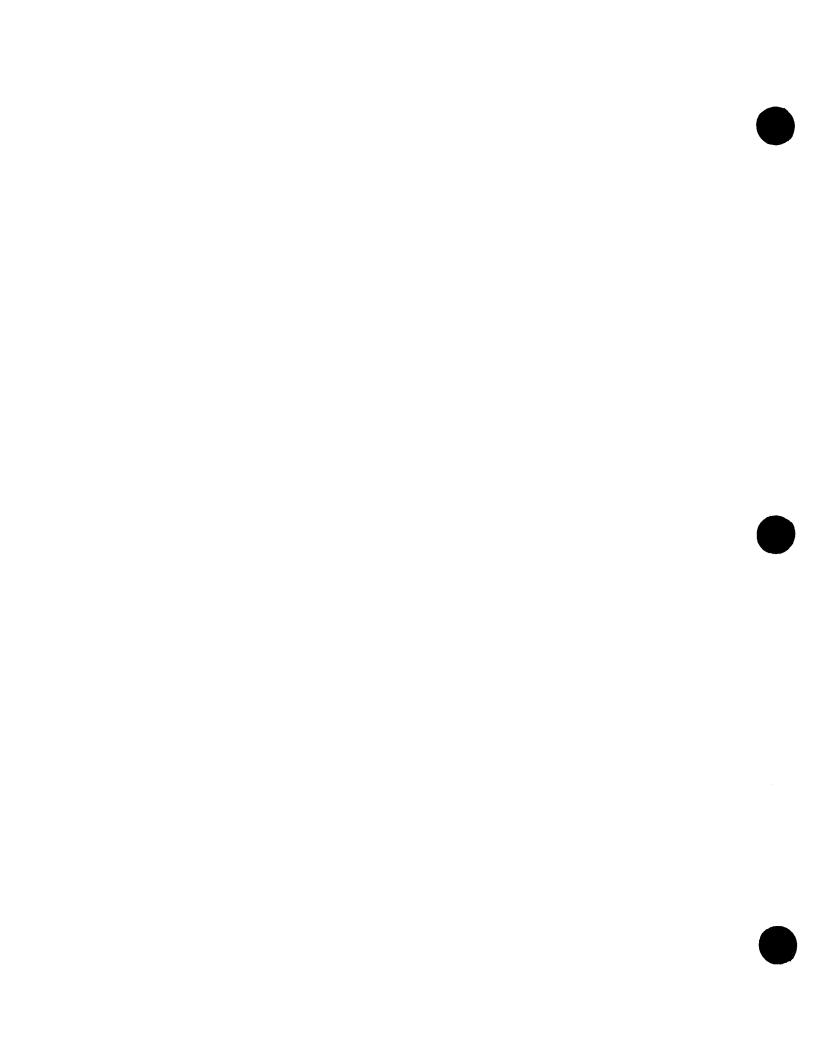
**Section 2.** Extend NCAWARE access that court employees and law enforcement agencies have to officials at the Division of Adult Correction in order to check for outstanding criminal warrants on inmates.

**EFFECTIVE DATE:** This act becomes effective October 1, 2015.





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# **HOUSE BILL 523: Drivers License Designation/American Indian**

#### 2015-2016 General Assembly

Committee: House Judiciary I, if favorable, Date:

April 17, 2015

Transportation, if favorable, Finance

Analysis of:

Introduced by: Reps. C. Graham, Steinburg, Waddell, Pierce Prepared by: Jennifer Bedford

First Edition

Committee Counsel

SUMMARY: House Bill 523 would make a change to the optional race designation on drivers licenses of American Indians.

CURRENT LAW: Designation of race is not required on North Carolina drivers licenses. The statutes do allow that at the request of an applicant, the Division of Motor Vehicles (DMV) must include the applicant's race in addition to the mandatory identifying information. Specific designations for race are not described.

BILL ANALYSIS: The bill would require DMV to use the designation "AI" for the race of American Indian on drivers license.

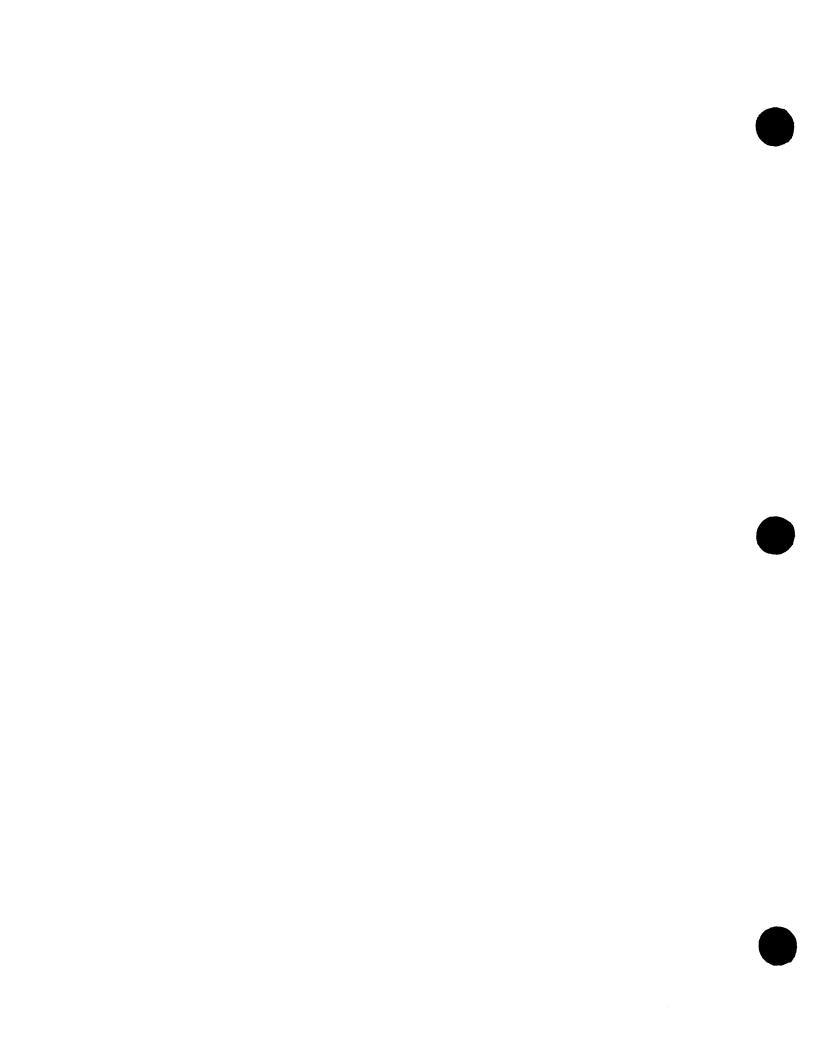
EFFECTIVE DATE: This act becomes effective January 1, 2016, and applies to drivers licenses issued or renewed on or after that date.

**BACKGROUND:** It is the policy of the North Carolina Commission of Indian Affairs to use the term American Indian. The Commission has adopted this policy because anyone born in the United States is a Native American, but this does not make them an American Indian. The United States' Census Bureau defines "American Indian" as a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

O. Walker Reagan Director



Research Division (919) 733-2578



# NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

#### **FAVORABLE AND RE-REFERRED**

HB 523 Drivers License Designation/American Indian.

Draft Number: None

Serial Referral: TRANSPORTATION

Recommended Referral: None Long Title Amended: No

Floor Manager: C. Graham

### FAVORABLE COM SUB, UNFAVORABLE ORIGINAL BILL

HB 222 Retention Elections/Appellate Division.

Draft Number: H222-PCS20315-ST-23

Serial Referral: None Recommended Referral: None Long Title Amended: Yes Floor Manager: Bryan

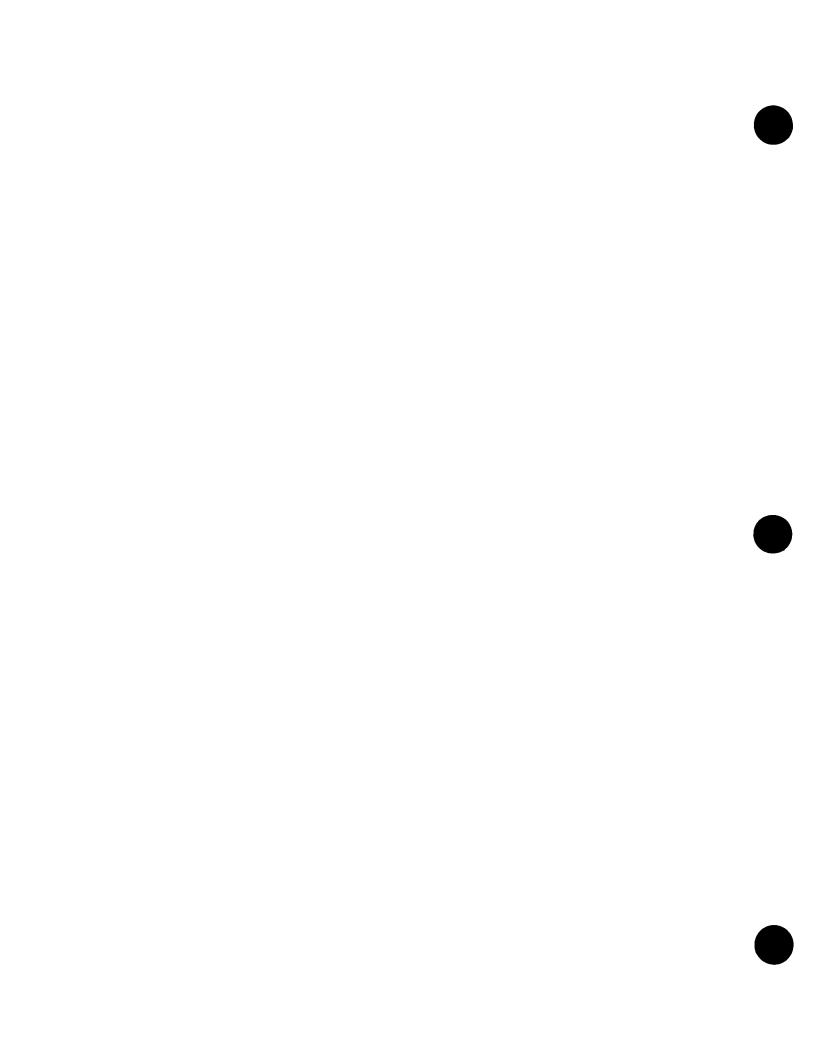
HB 643 Roofing Contractors/Consumer Protection.

Draft Number: H643-PCS30333-ST-22

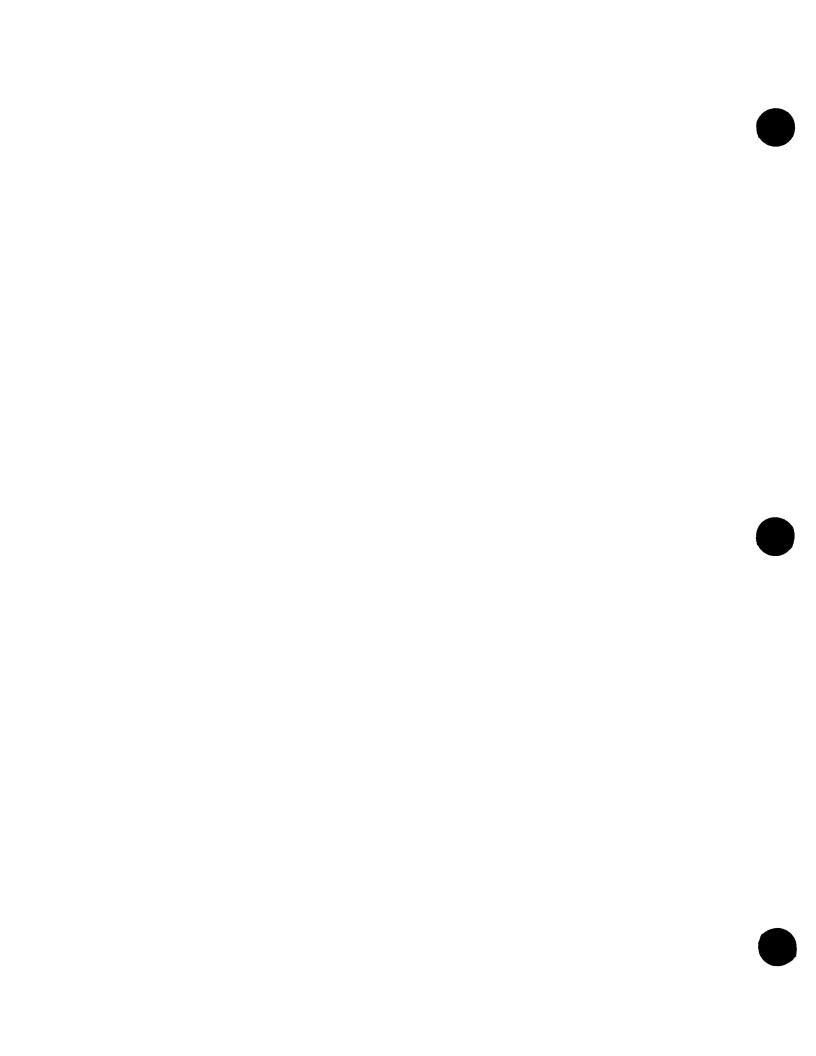
Serial Referral: None Recommended Referral: None Long Title Amended: Yes Floor Manager: Arp

**TOTAL REPORTED: 3** 

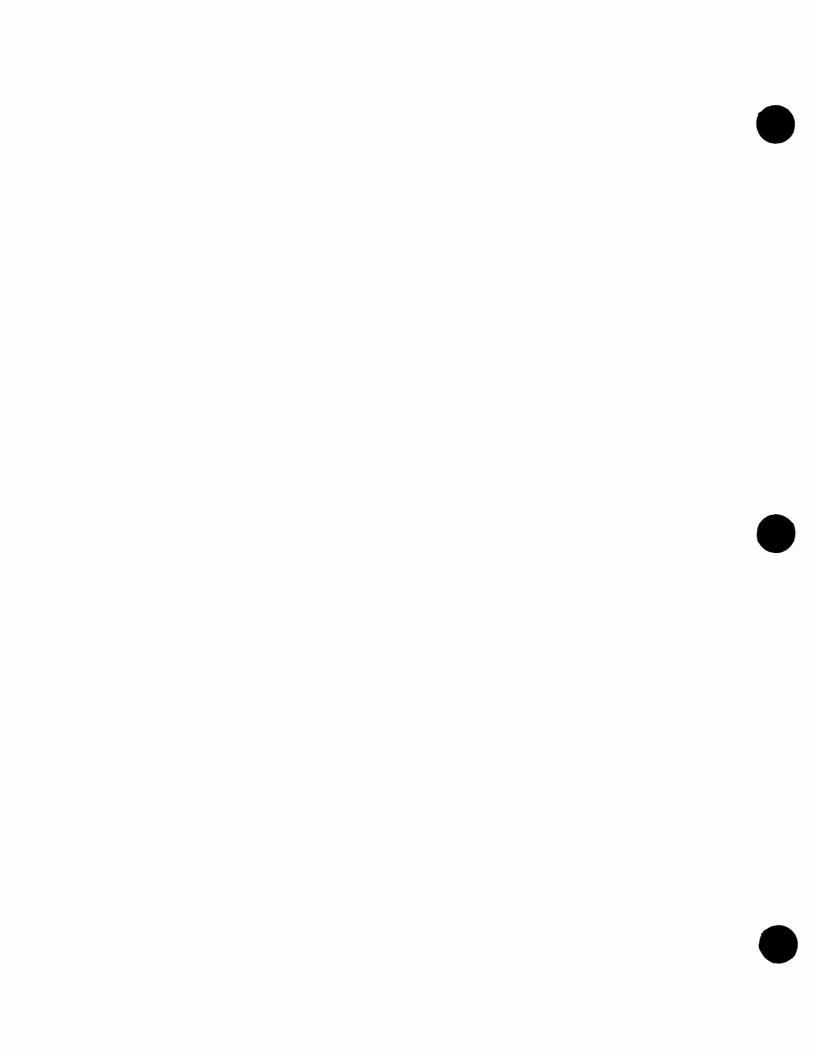




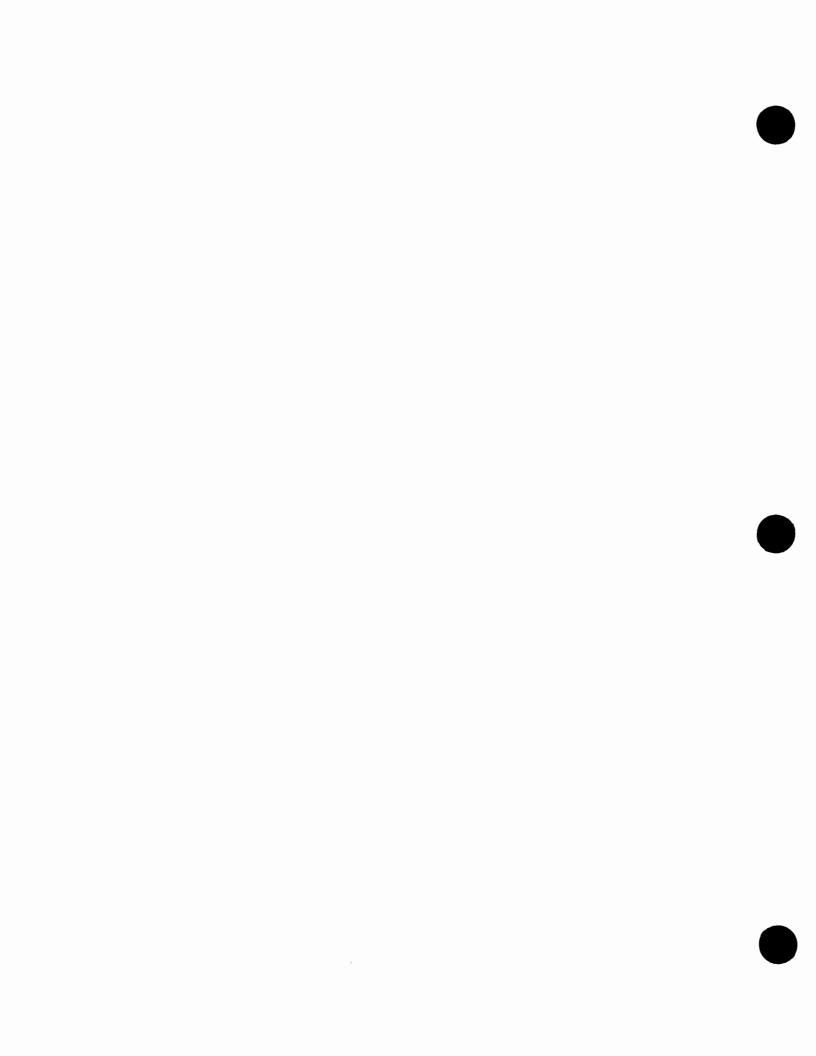
| Date: 4-20-15   |
|---|
| Bill Number $222$<br>PCS $H222-CSST-23$ (V.3] (V.4)   |
| PCS H222-CSST-23 (V.3)  |
| Motion to be before the committee by  |
| Rep Byan / Sevens Hall explained the bill.  Discussion on the Bill YES or NO  Amendment yes |
| Rep_ Howard motioned for:   |
| Favorable Report Adoption   |
| Unfavorable ReportUnfavorable to original bill, fav to PCS                                  |
| No vote   |
| Amendments: :   |
| Serial referral to:  Speakers:  |
| opeanore.   |
| Handouts:   |
| Amerdment   |
| H 222 - AST-39- [V.1]   |
| Martin - how to transition to   |



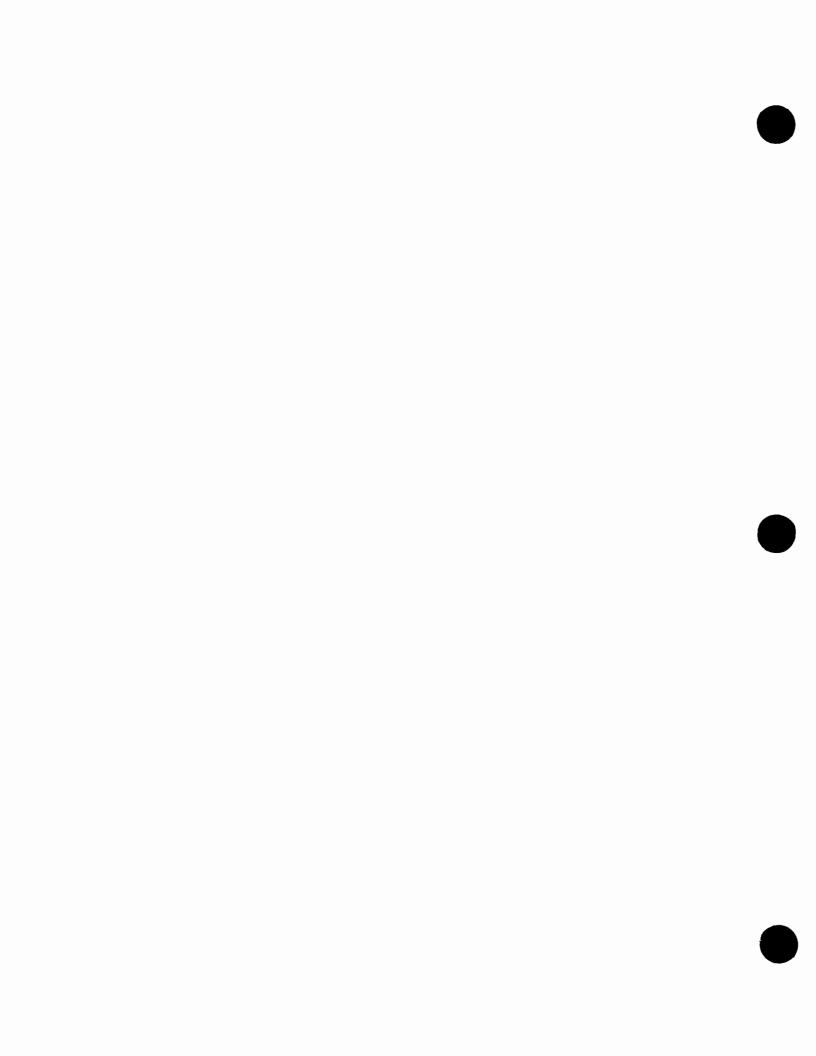
|  | Date: 4-20-15                            |
|--|--|
| Bill Number <u>HB</u> 570              |  |
| PCS                                    | displaced                                |
| Motion to be before the committee by _ |  |
|  |  |
| Rep                                    | explained the bill.                      |
| Discussion on the Bill YES or NO       |  |
|  |  |
| Rep                                    | motioned for:                            |
| Favorable Report                       | Adoption                                 |
| Unfavorable Report                     | Unfavorable to original bill, fav to PCS |
| No vote                                |  |
| Amendments: :                          |  |
|  |  |
| Serial referral to:                    |  |
|  |  |
| Speakers:                              |  |
| Handouts:                              |  |



|  | Date: 4-20-15                            |
|--|--|
| Bill Number <u>523</u>                 |  |
| PCS NOW                                | 0 0                                      |
| Motion to be before the committee by _ | mener                                    |
|  |  |
| Rep Graham                             | explained the bill.                      |
| Discussion on the Bill YES or NO       |  |
| Rep_Mculeil                            | wationed for                             |
|  |  |
| Favorable Report                       | Adoption                                 |
| Unfavorable Report                     | Unfavorable to original bill, fav to PCS |
| No vote                                |  |
| Amendments: :                          | X  |
| Serial referral to: + Transpor         | tation                                   |
| Speakers:                              |  |
| Handouts:                              |  |



| Date: 4-20-16  |
|--|
| Bill Number 643  PCS H 643 - CSST - 22 LV. 7]              |
| •  |
| Motion to be before the committee by                       |
| Don Man auntained the hill                                 |
| Rep explained the bill.                                    |
| Discussion on the Bill YES or NO                           |
| Rep motioned for:  |
| Favorable Report Adoption                                  |
| Unfavorable ReportUnfavorable to original bill, fav to PCS |
| No vote  |
| Amendments: :  |
|  |
| Serial referral to:  |
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| Speakers:  |
| Handouts:  |
| Questier McDeill!  |



VISITOR REGISTRATION SHEET

| Judiciary I | 5 |
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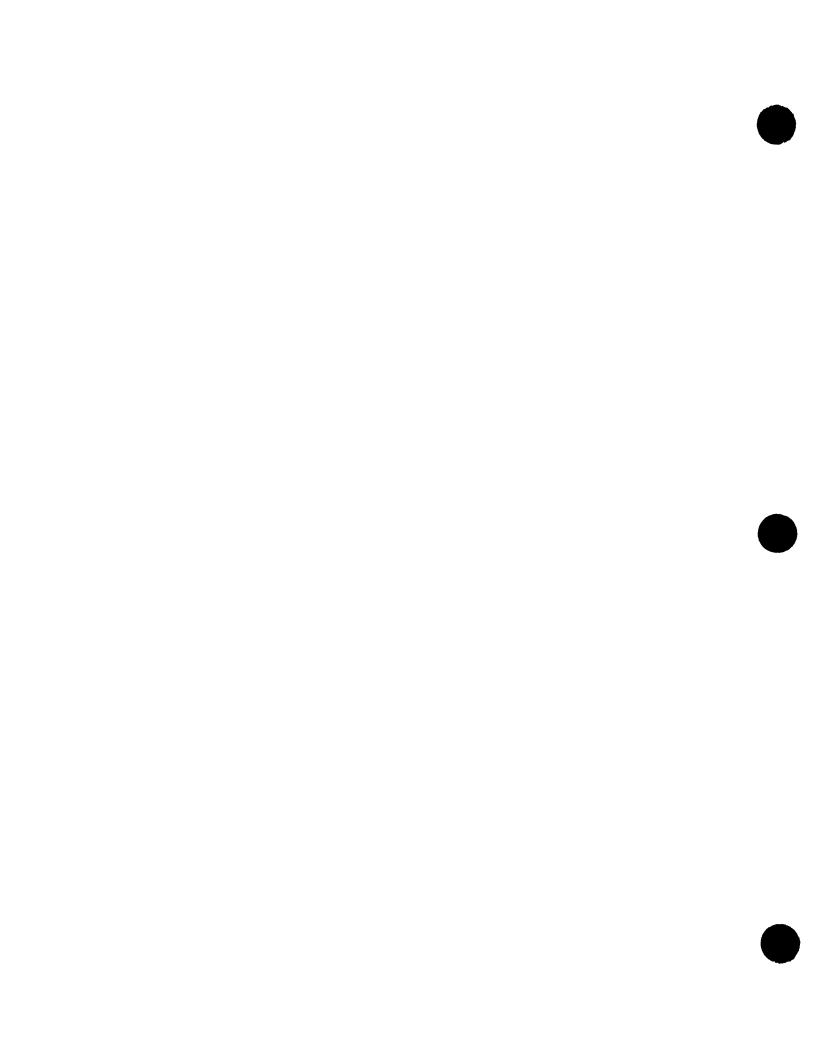
Name of Committee

April 20,2015

Date

#### VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME         | FIRM OR AGENCY AND ADDRESS                               |
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#### VISITOR REGISTRATION SHEET

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April 25, 2015

Name of Committee

Date

#### VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

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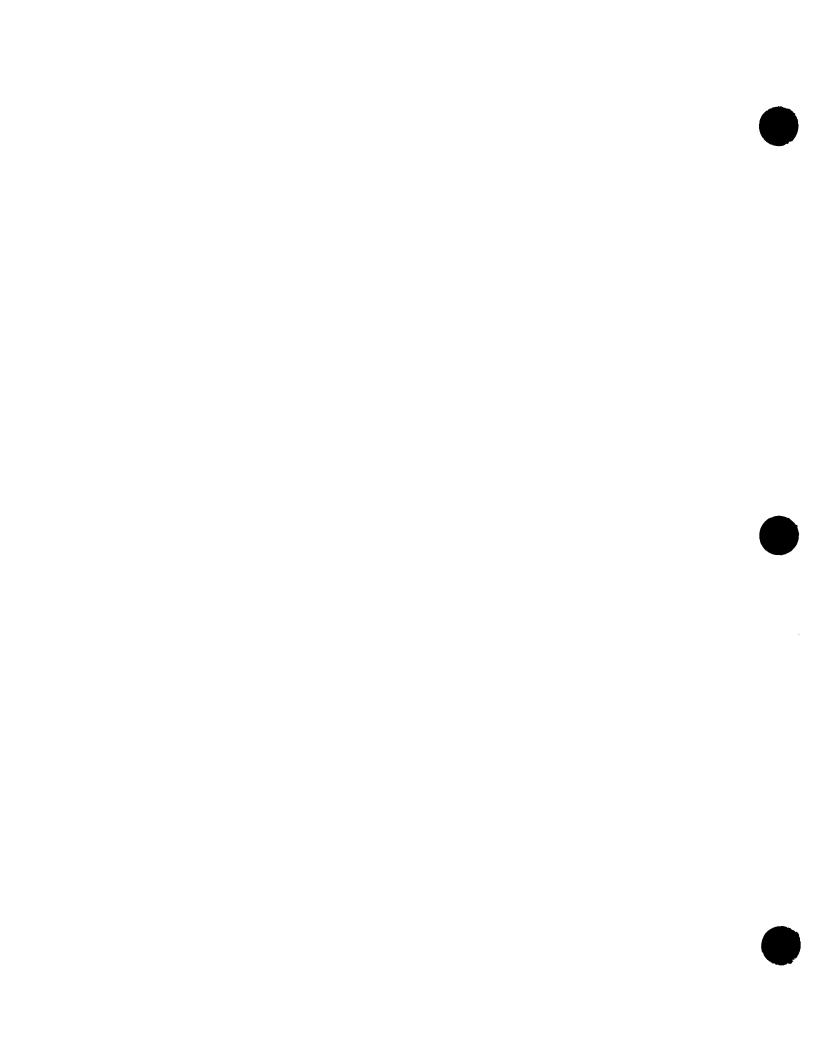
20<sup>th</sup> April 13, 2015

Name of Committee

Date

#### VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME             | FIRM OR AGENCY AND ADDRESS |
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| Midulle Hazier   | MF4S                       |
| Joh McMilla      | prof + 5                   |
| Susan Valouri    | Nationurdo                 |
| Bill Forme       | NC Justice Center          |
| Amb & Ly         | Luis                       |
| Thea & Clark     | UNC Dort Goof.             |
| Reston Jones     | NCDOT                      |
| Mildred Spearman | NICAOC                     |
| Any Elle         | Whom                       |
| heischa Lovelace |                            |
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#### Corrected #4: Removal of HB 678

# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

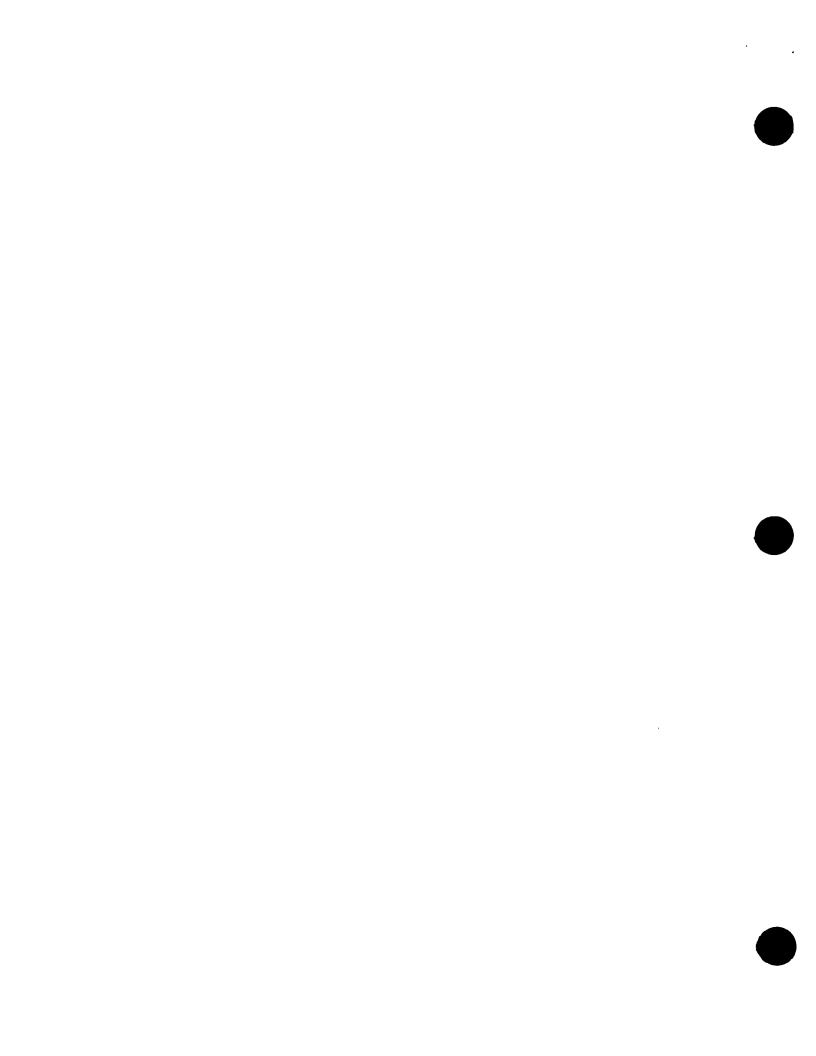
You are hereby notified that the  $House\ Committee\ on\ Judiciary\ I$  will meet as follows:

DAY & DATE: Wednesday, April 22, 2015

TIME: 12:30 PM LOCATION: 415 LOB

The following bills will be considered:

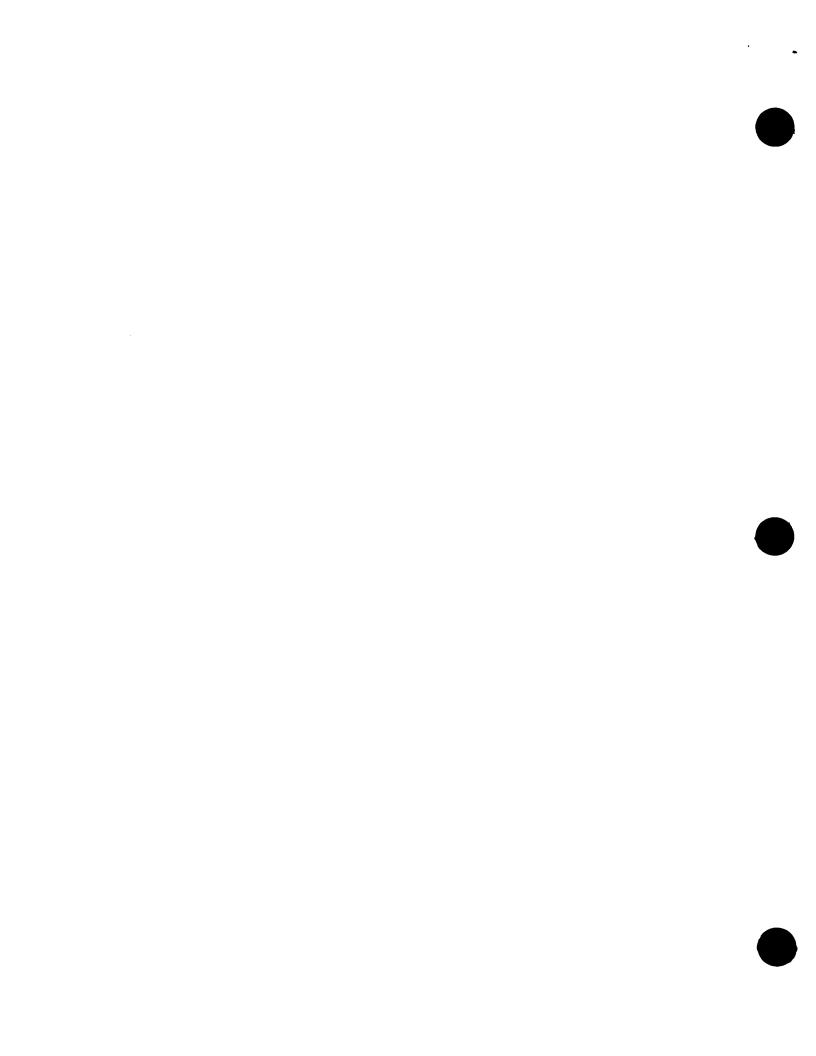
| SHORT TITLE                                   | SPONSOR  |
|---|--|
| AOC Omnibus ChangesAB                         | Representative R. Turner   |
|   | Representative Baskerville   |
| Terror Claims/Damages/Liability for           | Representative Whitmire  |
| Support.                                      | Representative Cleveland   |
|   | Representative Stevens   |
| The I. Beverly Lake, Jr., Fair Trial Act.     | Representative Daughtry  |
|   | Representative Zachary   |
|   | Representative Glazier   |
| Body & Dash Cam Recording/Public              | Representative Faircloth   |
| Access.                                       | Representative Daughtry  |
|   | Representative Boles   |
|   | Representative Hurley  |
| Restoring Proper Justice Act.                 | Representative Daughtry  |
| Eastern Band of Cherokees/Law                 | Representative West  |
| Enforcement.                                  | Representative Hager   |
|   | Representative Presnell  |
| Expunctions/Boating Violations.               | Representative Fisher  |
|   | Representative Hardister   |
|   | Representative Harrison  |
|   | Representative B. Turner   |
| Concealed Handgun Permit/Admin.<br>Law Judge. | Representative McNeill   |
|   | AOC Omnibus ChangesAB  Terror Claims/Damages/Liability for Support.  The I. Beverly Lake, Jr., Fair Trial Act.  Body & Dash Cam Recording/Public Access.  Restoring Proper Justice Act. Eastern Band of Cherokees/Law Enforcement.  Expunctions/Boating Violations.  Concealed Handgun Permit/Admin. |



Respectfully,

Representative N. Leo Daughtry, Chair

| I hereby certify this notice was filed by the committee assistant at the following offices at 9:56 AM or Wednesday, April 22, 2015. |
|---|
| Principal Clerk Reading Clerk – House Chamber   |
| Jan Copeland (Committee Assistant)  |



#### House Committee on Judiciary I Wednesday, April 22, 2015, 12:30 PM 415 Legislative Office Building

#### **AGENDA**

#### Welcome and Opening Remarks

#### **Introduction of Pages**

**Bills** 

BILL NO. HB 224

**SHORT TITLE** 

AOC Omnibus Changes.-AB

Terror Claims/Damages/Liability for

Support.

The I. Beverly Lake, Jr., Fair Trial Act.

Body & Dash Cam Recording/Public V

Access.

ameraner HB 774 - HB 850

Restoring Proper Justice Act.

/>Eastern Band of Cherokees/Law

Enforcement.

Expunctions/Boating Violations

PCS HB 856 E + Senal referral

HB 824

Concealed Handgun Permit/Admin.

Law Judge.

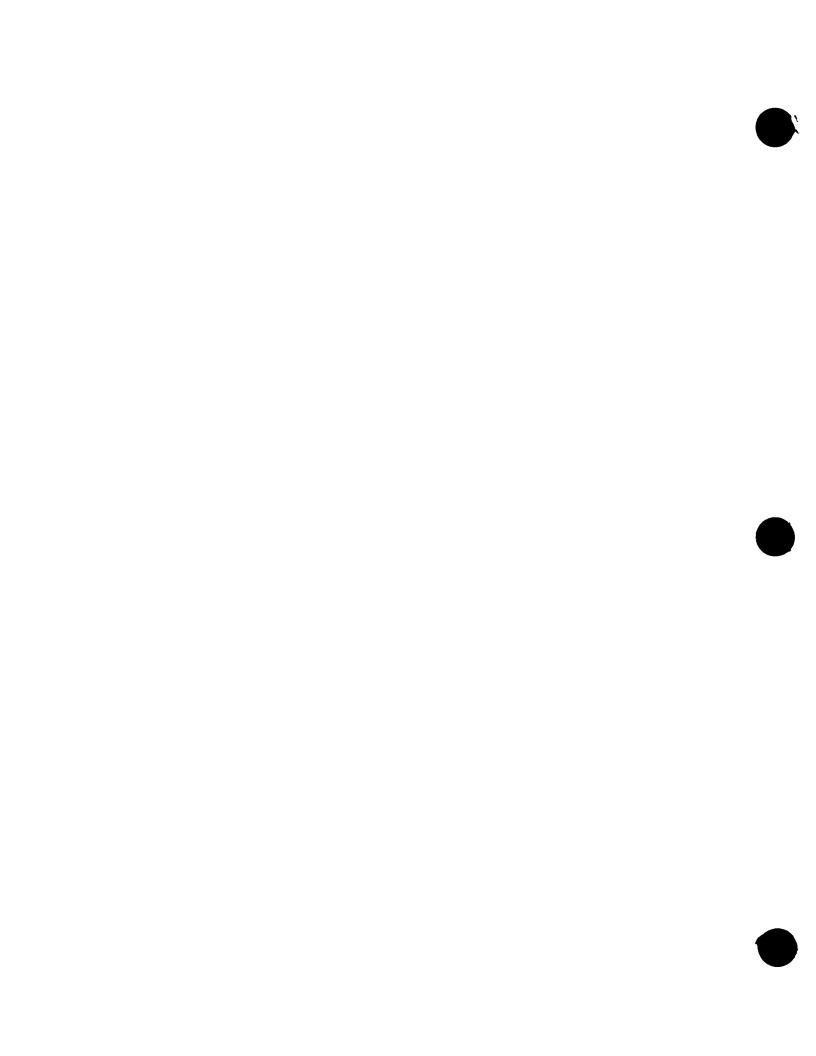
**Presentations** 

Other Business

Adjournment

#### **SPONSOR**

Representative R. Turner Representative Baskerville Representative Whitmire Representative Cleveland Representative Stevens Representative Daughtry Representative Zachary Representative Glazier Representative Faircloth Representative Daughtry Representative Boles Representative Hurley Representative Daughtry Representative West Representative Hager Representative Presnell Representative Fisher Representative Hardister Representative Harrison Representative B. Turner Representative McNeill



#### House Committee on Judiciary I Wednesday, April 22, 2015 at 12:30 PM Room 415 of the Legislative Office Building

#### **MINUTES**

The House Committee on Judiciary I met at 12:30 PM on April 22, 2015 in Room 415 of the Legislative Office Building. Representatives Daughtry, Burr, Arp, Hall, Hardister, Howard, Martin, McNeill, Robinson, Steinburg and Szoka attended.

Representative N. Leo Daughtry, presided.

The following bills were considered:

HB 224 AOC Omnibus Changes.-AB (Representatives R. Turner, Baskerville) – favorable committee substitute, unfavorable original bill

HB 371 Terror Claims/Damages/Liability for Support. (Representatives Whitmire, Cleveland, Stevens) - favorable committee substitute, unfavorable original bill

HB 700 The I. Beverly Lake, Jr., Fair Trial Act. (Representatives Daughtry, Zachary, Glazier) - favorable committee substitute, unfavorable original bill

HB 713 Body & Dash Cam Recording/Public Access. (Representatives Faircloth, Daughtry, Boles, Hurley) - favorable committee substitute, unfavorable original bill

HB 774 Restoring Proper Justice Act. (Representative Daughtry) - favorable committee substitute, unfavorable original bill

HB 850 Eastern Band of Cherokees/Law Enforcement. (Representatives West, Hager, Presnell) - favorable committee substitute, unfavorable original bill

HB 856 Expunctions Changes. (Representatives Fisher, Hardister, Harrison, B. Turner) - favorable committee substitute, unfavorable original bill

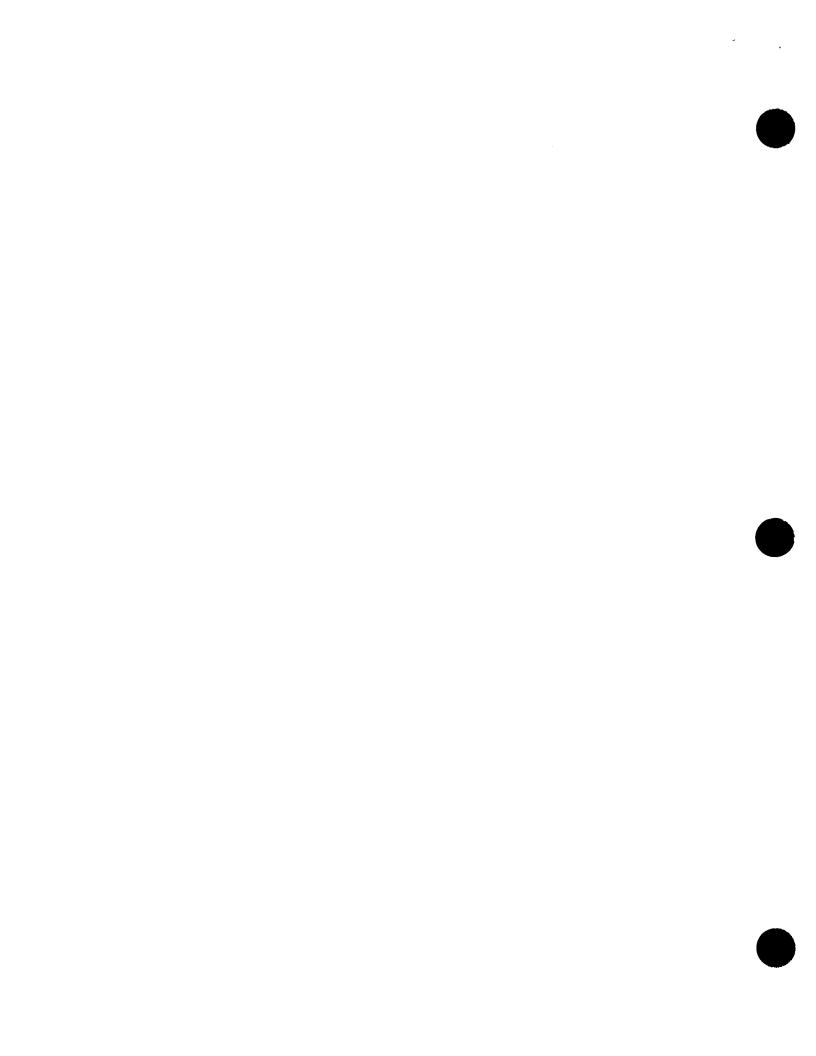
HB 824 Concealed Handgun Permit/Admin. Law Judge. (Representative McNeill) - favorable committee substitute, unfavorable original bill

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The meeting adjourned at 1:48 p.m.

Select or Type Name of Presiding Chair Presiding

Jan Copeland, Committee Clerk



#### GENERAL ASSEMBLY OF NORTH CAROLINA **SESSION 2015**

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#### **HOUSE BILL 224\*** PROPOSED COMMITTEE SUBSTITUTE H224-CSST-25 [v.2]

4/21/2015 8:29:08 PM

(Public) Short Title: AOC Omnibus Changes.-AB Sponsors: Referred to:

March 16, 2015

1 A BILL TO BE ENTITLED AN ACT TO AMEND VARIOUS LAWS AFFECTING THE ADMINISTRATIVE OFFICE 2 3 OF THE COURTS. 4

The General Assembly of North Carolina enacts:

PART I. ALLOW STATE AGENCIES AND OTHER ENTITIES TO OPT OUT OF RECEIVING COPIES OF THE APPELLATE REPORTS

SECTION 1. G.S. 7A-343.1 reads as rewritten:

"§ 7A-343.1. Distribution of copies of the appellate division reports.

- The Administrative Officer of the Courts shall, at the State's expense distribute such number of copies of the appellate division reports to federal, State departments and agencies, and to educational institutions of instruction, as follows:
- A recipient listed in subsection (a) of this section may choose not to receive its (b) copies of the appellate division reports, or choose to receive fewer than the number of copies allotted to it, by notifying the Administrative Officer of the Courts in writing. Should the recipient again wish to receive its full allotment of the appellate division reports, the recipient shall notify the Administrative Officer of the Courts in writing, and the Administrative Officer of the Courts may, in his or her discretion, resume distribution to the recipient."

#### PART II. ALLOW CUSTODIANS OF STATE PUBLICATIONS TO RELEASE UNNECESSARY PUBLICATIONS TO STATE SURPLUS

**SECTION 2.** G.S. 14-241 reads as rewritten:

"§ 14-241. Disposing of public documents or refusing to deliver them over to successor.

It shall be the duty of the clerk of the superior court of each county, and every other person to whom the acts of the General Assembly, appellate division reports or other public documents are transmitted or deposited for the use of the county or the State, to keep the same safely in their respective offices; and if any such person having the custody of such books and documents, for the uses aforesaid, shall negligently and willfully dispose of the same, by sale or otherwise, or refuse to deliver over the same to his successor in office, he shall be guilty of a Class 1 misdemeanor. If the clerk of superior court or other custodian determines that the acts of the General Assembly or the appellate division reports no longer are necessary to the effective operation of his or her office, the clerk or other custodian may transfer these materials to the proper recipient for disposition as surplus State property or as otherwise directed by the State Surplus Property Agency of the Department of Administration."



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PART III. REQUIRE THE CLERK OF SUPERIOR COURT TO REPORT CONDITIONAL DISCHARGES TO THE ADMINISTRATIVE OFFICE OF THE COURTS TO ASSIST THE COURT IN EVALUATING A DEFENDANT'S ELIGIBILITY FOR THE CONDITIONAL DISCHARGE

**SECTION 3.** 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. 14-204.
  - (6) Persons granted a dismissal upon completion of a conditional discharge under G.S. 14-50.29, 14-204, 14-313(f), 15A-1341(a4), 90-96, or 90-113.14."

## PART IV. MAKE CONFORMING CHANGES REGARDING ACCESS TO EXPUNCTION INFORMATION FOR LAW ENFORCEMENT EMPLOYMENT PURPOSES

**SECTION 4.** 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, G.S. 15A-145.4, 15A-145.5, or 15A-145.6, 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, 15A-145.5, or [15A-]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, 15A-145.5, or 15A-145.6, to the North Carolina Sheriffs' Education and Training Standards Commission for certification purposes only."

## PART V. CLARIFY THAT THE COURT MAY ORDER SUPERVISED PROBATION FOR ANY CONDITIONAL DISCHARGE OR DEFERRED PROSECUTION

**SECTION 5.** G.S. 15A-1342(a1) reads as rewritten:

"(a1) Supervision of Defendants on Deferred Prosecution or Conditional Discharge. – 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 conditional discharge or deferred prosecution agreement entered into under G.S. 15A-1341(a1), (a3), or (a4). agreement. Violations of the terms of the agreement or conditional discharge 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."

Page 2 House Bill 224\* H224-CSST-25 [v.2]

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#### REQUIREMENT **PART** VI. ALLEVIATE **DUPLICATIVE** REPORTING CURRENTLY IMPOSED UPON CLERKS OF SUPERIOR COURT

**SECTION 6.** G.S. 148-32.1(c) is repealed.

PART VII. ELIMINATE OUTDATED REQUIREMENT FOR CLERKS OF SUPERIOR COURT TO REPORT INFORMATION ON ATTORNEYS IN THE COUNTY TO THE SECRETARY OF STATE

**SECTION 7.** G.S. 7A-110 is repealed.

#### PART VIII. ELIMINATE UNNECESSARY PRINTING REPORT

**SECTION 8.** G.S. 7A-343.3 reads as rewritten:

"§ 7A-343.3. Appellate Courts Printing and Computer Operations Fund.

The Appellate Courts Printing and Computer Operations Fund is established within the Judicial Department as a nonreverting, interest-bearing special revenue account. Accordingly, interest and other investment income earned by the Fund shall be credited to it. All moneys collected through charges to litigants for the reproduction of appellate records and briefs under G.S. 7A-11 and G.S. 7A-20(b) shall be remitted to the State Treasurer and held in this Fund. Moneys in the Fund shall be used to support the print shop operations of the Supreme Court and the Court of Appeals, including personnel, maintenance, and capital costs. The Judicial Department may create and maintain receipt-supported positions for these purposes but shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety prior to creating such new positions.

The Judicial Department shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by January 1 of each year on all receipts and expenditures of the Fund."

#### PART IX. VEST RESPONSIBILITY FOR SETTING LIABILITY LIMIT ON NONECONOMIC DAMAGES WITH THE OFFICE OF STATE BUDGET AND **MANAGEMENT**

**SECTION 9.** G.S. 90-21.19(a) reads as rewritten:

Except as otherwise provided in subsection (b) of this section, in any medical malpractice action in which the plaintiff is entitled to an award of noneconomic damages, the total amount of noneconomic damages for which judgment is entered against all defendants shall not exceed five hundred thousand dollars (\$500,000). Judgment shall not be entered against any defendant for noneconomic damages in excess of five hundred thousand dollars (\$500,000) for all claims brought by all parties arising out of the same professional services. On January 1 of every third year, beginning with January 1, 2014, the Administrative Office of the Courts Office of State Budget and Management shall reset the limitation on damages for noneconomic loss set forth in this subsection to be equal to five hundred thousand dollars (\$500,000) times the ratio of the Consumer Price Index for November of the prior year to the Consumer Price Index for November 2011. The Administrative Office of the Courts Office of State Budget and Management shall inform the Revisor of Statutes of the reset limitation. The Revisor of Statutes shall publish this reset limitation as an editor's note to this section. In the event that any verdict or award of noneconomic damages stated pursuant to G.S. 90-21.19B exceeds these limits, the court shall modify the judgment as necessary to conform to the requirements of this subsection."

PART X. EFFECTIVE DATE

#### **General Assembly of North Carolina**

Session 2015

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SECTION 10. Section 3 of this act becomes effective December 1, 2015, and applies to conditional discharges granted on or after that date. The remainder of this act becomes effective July 1, 2015.



#### HOUSE BILL 224: AOC Omnibus Changes.-AB

2015-2016 General Assembly

Committee:

House Judiciary I

Introduced by:

Reps. R. Turner, Baskerville

Analysis of:

PCS to First Edition

H224-CSST-25

Date:

April 21, 2015

Prepared by: R. Erika Churchill

Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 224 would amend various law related to the Administrative Office of the Courts.

[As introduced, this bill was identical to S270, as introduced by Sen. Randleman, which is currently in Rules and Operations of the Senate.]

#### **CURRENT LAW & BILL ANALYSIS:**

**Section 1.** State statute specifies certain numbers of copies of the appellate division reports to be distributed to certain State agencies and other organizations. The pcs would allow those agencies and organizations to opt for no hard copies, or fewer hard copies.

**Section 2.** The pcs would authorize the clerk of superior court to transfer no-longer needed acts of the General Assembly or the appellate division reports to State Surplus.

**Section 3.** The pcs would require all clerks of the superior court to report the names of person granted a dismissal upon completion of a conditional discharge to the Administrative Office of the Courts. Effective December 1, 2015.

Section 4. Makes a conforming change.

**Section 5.** The pcs clarifies that Community Corrections may supervise the probation of any conditional discharge or deferred prosecution.

Section 6. Eliminates a duplicate report.

**Section 7.** Eliminates the required reporting by the clerks of superior court to the Secretary of Revenue regarding attorneys engaged in the practice of law.

**Section 8.** Eliminates the report to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety regarding the receipts and expenditures of the Appellate Courts Printing and Computer Operations Fund.

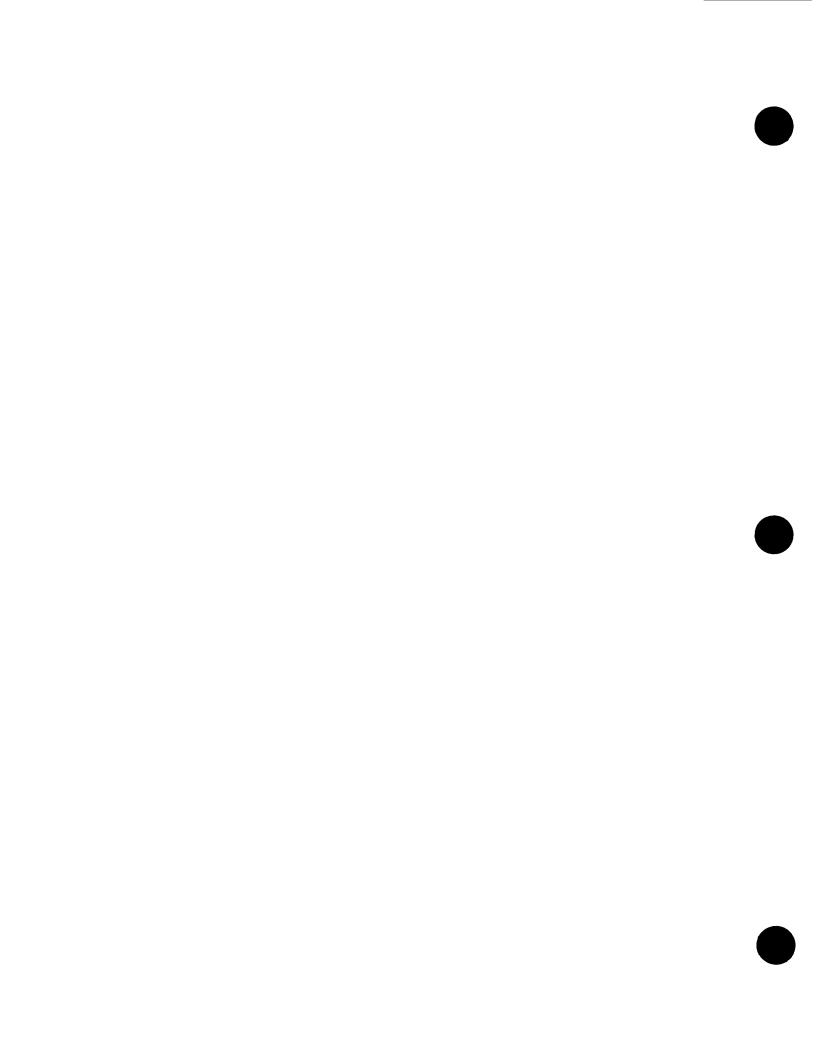
**Section 9.** Provides that the Officer of State Budget and Management has the duty to calculate the limitation on damages for non-economic losses in medical malpractice actions.

**EFFECTIVE DATE:** Except as noted, effective when it becomes law.

O. Walker Reagan
Director



Research Division (919) 733-2578



#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H

#### **HOUSE BILL 224\***

Short Title: AOC Omnibus Changes.-AB (Public)

Sponsors: Representatives R. Turner and Baskerville (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary I.

#### March 16, 2015

#### A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS LAWS AFFECTING THE ADMINISTRATIVE OFFICE OF THE COURTS.

The General Assembly of North Carolina enacts:

### PART I. ALLOW STATE AGENCIES AND OTHER ENTITIES TO OPT OUT OF RECEIVING COPIES OF THE APPELLATE REPORTS

**SECTION 1.** G.S. 7A-343.1 reads as rewritten:

"§ 7A-343.1. Distribution of copies of the appellate division reports.

- (a) The Administrative Officer of the Courts shall, at the State's expense distribute such number of copies of the appellate division reports to federal, State departments and agencies, and to educational institutions of instruction, as follows:
- (b) A recipient listed in subsection (a) of this section may choose not to receive its copies of the appellate division reports, or choose to receive fewer than the number of copies allotted to it, by notifying the Administrative Officer of the Courts in writing. Should the recipient again wish to receive its full allotment of the appellate division reports, the recipient shall notify the Administrative Officer of the Courts in writing, and the Administrative Officer of the Courts may, in his or her discretion, resume distribution to the recipient."

### PART II. ALLOW CUSTODIANS OF STATE PUBLICATIONS TO RELEASE UNNECESSARY PUBLICATIONS TO STATE SURPLUS

SECTION 2. G.S. 14-241 reads as rewritten:

"§ 14-241. Disposing of public documents or refusing to deliver them over to successor.

It shall be the duty of the clerk of the superior court of each county, and every other person to whom the acts of the General Assembly, appellate division reports or other public documents are transmitted or deposited for the use of the county or the State, to keep the same safely in their respective offices; and if any such person having the custody of such books and documents, for the uses aforesaid, shall negligently and willfully dispose of the same, by sale or otherwise, or refuse to deliver over the same to his successor in office, he shall be guilty of a Class 1 misdemeanor. If the clerk of superior court or other custodian determines that the acts of the General Assembly or the appellate division reports no longer are necessary to the effective operation of his or her office, the clerk or other custodian may transfer these materials



to the proper recipient for disposition as surplus State property or as otherwise directed by the State Surplus Property Agency of the Department of Administration."

## PART III. REQUIRE THE CLERK OF SUPERIOR COURT TO REPORT CONDITIONAL DISCHARGES TO THE ADMINISTRATIVE OFFICE OF THE COURTS TO ASSIST THE COURT IN EVALUATING A DEFENDANT'S ELIGIBILITY FOR THE CONDITIONAL DISCHARGE

**SECTION 3.** 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. 14-204.
  - (6) Persons granted a dismissal upon completion of a conditional discharge under G.S. 14-50.29, 14-204, 14-313(f), 15A-1341(a4), 90-96, or 90-113.14."

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  - (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, G.S. 15A-145.4, 15A-145.5, or 15A-145.6, 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, 15A-145.5, or [15A-]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, 15A-145.5, or 15A-145.6, to the North Carolina Sheriffs' Education and Training Standards Commission for certification purposes only."

### PART V. CLARIFY THAT THE COURT MAY ORDER SUPERVISED PROBATION FOR ANY CONDITIONAL DISCHARGE OR DEFERRED PROSECUTION

**SECTION 5.** G.S. 15A-1342(a1) reads as rewritten:

"(a1) Supervision of Defendants on Deferred Prosecution or Conditional Discharge. – 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 conditional discharge or deferred prosecution agreement entered into under

Page 2 H224 [Edition 1]

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G.S. 15A-1341(a1), (a3), or (a4). agreement. Violations of the terms of the agreement or conditional discharge 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."

PART VI. ALLEVIATE DUPLICATIVE REPORTING REQUIREMENT CURRENTLY IMPOSED UPON CLERKS OF SUPERIOR COURT SECTION 6. G.S. 148-32.1(c) is repealed.

PART VII. ELIMINATE OUTDATED REQUIREMENT FOR CLERKS OF SUPERIOR COURT TO REPORT INFORMATION ON ATTORNEYS IN THE COUNTY TO THE SECRETARY OF STATE

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"§ 7A-343.3. Appellate Courts Printing and Computer Operations Fund.

The Appellate Courts Printing and Computer Operations Fund is established within the Judicial Department as a nonreverting, interest-bearing special revenue account. Accordingly, interest and other investment income earned by the Fund shall be credited to it. All moneys collected through charges to litigants for the reproduction of appellate records and briefs under G.S. 7A-11 and G.S. 7A-20(b) shall be remitted to the State Treasurer and held in this Fund. Moneys in the Fund shall be used to support the print shop operations of the Supreme Court and the Court of Appeals, including personnel, maintenance, and capital costs. The Judicial Department may create and maintain receipt-supported positions for these purposes but shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety prior to creating such new positions.

The Judicial Department shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by January 1 of each year on all receipts and expenditures of the Fund."

### PART IX. VEST RESPONSIBILITY FOR SETTING LIABILITY LIMIT ON NONECONOMIC DAMAGES WITH GENERAL ASSEMBLY

**SECTION 9.** G.S. 90-21.19(a) reads as rewritten:

"(a) Except as otherwise provided in subsection (b) of this section, in any medical malpractice action in which the plaintiff is entitled to an award of noneconomic damages, the total amount of noneconomic damages for which judgment is entered against all defendants shall not exceed five hundred thousand dollars (\$500,000). Judgment shall not be entered against any defendant for noneconomic damages in excess of five hundred thousand dollars (\$500,000) for all claims brought by all parties arising out of the same professional services. On January 1 of every third year, beginning with January 1, 2014, the Administrative Office of the Courts—General Assembly shall reset the limitation on damages for noneconomic loss set forth in this subsection to be equal to five hundred thousand dollars (\$500,000) times the ratio of the Consumer Price Index for November of the prior year to the Consumer Price Index for November 2011. The Administrative Office of the Courts—General Assembly shall inform the Revisor of Statutes of the reset limitation. The Revisor of Statutes shall publish this reset limitation as an editor's note to this section. In the event that any verdict or award of noneconomic damages stated pursuant to G.S. 90-21.19B exceeds these limits, the court shall modify the judgment as necessary to conform to the requirements of this subsection."

#### PART X. EFFECTIVE DATE

H224 [Edition 1] Page 3

1 2 3 **SECTION 10.** Section 3 of this act becomes effective December 1, 2015, and applies to conditional discharges granted on or after that date. The remainder of this act becomes effective July 1, 2015.

Page 4 H224 [Edition 1]



## **HOUSE BILL 371:** Terror Claims/Damages/Liability for Support

2015-2016 General Assembly

Committee:

House Judiciary I

Introduced by: Reps. Whitmire, Cleveland, Stevens

Analysis of:

PCS to First Edition

H371-CSST-29

Date:

April 21, 2015

Prepared by: R. Erika Churchill

Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 371 would permit any person whose property or person is injured by a terrorist to bring a civil action and, if successful, to recover three times his or her actual damages or \$10,000, whichever is greater, together with court costs and attorney's fees.

The PCS changes only the effective date, to October 1, 2015.

**CURRENT LAW:** Under current law, a person who sustains personal injury or property damage intentionally caused by another has a cause of action for compensatory damages. The claim is subject to a three-year statute of limitations under G.S. 1-52.

A plaintiff who proves by clear and convincing evidence that the injury for which compensatory damages was awarded resulted from the defendant's willful and wanton conduct may also recover punitive damages. G.S. 1D-15. "Willful and wanton conduct" is defined as "the conscious and intentional disregard of and indifference to the rights and safety of others, which the defendant knows or should know is reasonably likely to result in injury, damage, or other harm." G.S. 1D-5(7). Punitive damages may be awarded in an amount up to three times the amount of compensatory damages or \$250,000, whichever is greater. G.S. 1D-25(b).

Under G.S. 14-10.1, a person commits the crime of "terrorism" if he or she commits an "act of violence" with the intent to do either of the following:

- (1) Intimidate the civilian population at large, or an identifiable group of the civilian population; or
- (2) Influence, through intimidation, the conduct or activities of the government of the United States, a state, or any unit of local government.

"Act of violence" as used in G.S. 14-10.1 includes homicide, manslaughter, any felony offense that includes an assault or use of force or violence against any person, any felony offense that includes a threat or use of any explosive or incendiary device, or any offense that includes a threat or use of an nuclear, biological, or chemical weapon of mass destruction.

**BILL ANALYSIS:** Section 1 of the bill would enact new G.S. 1-539.2D, under which any person whose property or person is injured by a "terrorist" would be entitled to sue for and recover damages from the terrorist.

"Terrorist" is defined as a person who commits an "act of terror" or who in support of or in conspiracy with others to commit an act of terror.

An "act of terror" is defined as an activity having all of the following characteristics:

O. Walker Reagan
Director



Research Division (919) 733-2578

#### House Bill 371

#### Page 2

- Involves violent acts or acts dangerous to human life that violate State or federal law.
- Appears intended to intimidate or coerce a civilian population, to influence government policy by intimidation or coercion, or to affect government conduct by mass destruction, assassination, or kidnapping.
- Occurs primarily within this State.

Any person prevailing in an action under this section would be entitled to recover three times the actual damages sustained or \$10,000, whichever is greater, together with court costs and attorneys' fees in the trial and appellate courts. This new cause of action would be subject to a five-year limitations period.

**Section 2** of the bill amends G.S. 14-10.1 by adding a new subsection (e) providing that any person whose property or person is injured by reason of a violation of this section may sue for and recover treble damages, costs and attorneys' fees under G.S. 1-539.2D.

**EFFECTIVE DATE:** Effective October 1, 2015, and applies to acts committed on or after that date.

Bill Patterson substantially contributed to this summary.

#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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#### **HOUSE BILL 371** PROPOSED COMMITTEE SUBSTITUTE H371-CSST-29 [v.1]

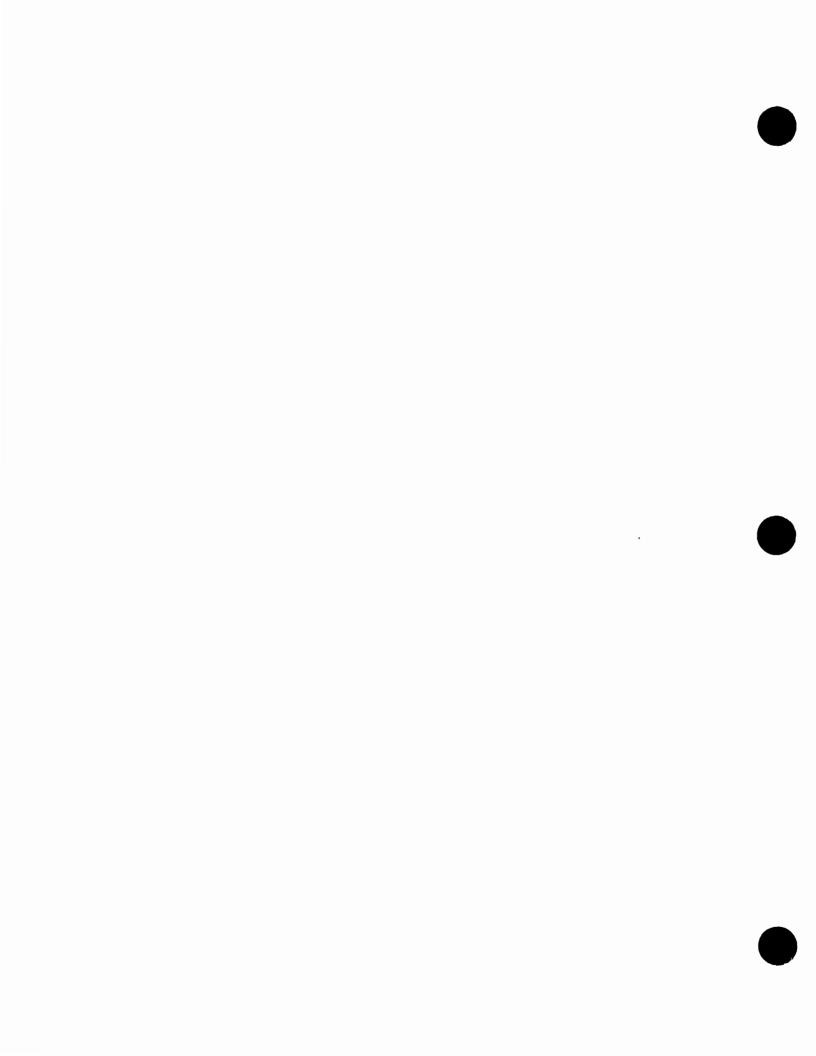
4/21/2015 7:32:28 PM

Short Title: Terror Claims/Damages/Liability for Support. (Public) Sponsors: Referred to:

March 30, 2015 1 A BILL TO BE ENTITLED 2 AN ACT CREATING A CIVIL CLAIM FOR RELIEF FOR DAMAGES SUSTAINED AS 3 THE RESULT OF TERRORIST ACTS. The General Assembly of North Carolina enacts: 4 5 **SECTION 1.** Article 43 of Chapter 1 of the General Statutes is amended by adding 6 a new section to read: 7 "§ 1-539.2D. Civil liability for acts of terror. 8 The following definitions apply in this section: Act of terror. – An activity with all of the following characteristics: 9 (1) 10 Involves violent acts or acts dangerous to human life that violate federal or State law. 11 Appears to be intended (i) to intimidate or coerce a civilian 12 <u>b.</u> population, (ii) to influence the policy of a government by 13 intimidation or coercion, or (iii) to affect the conduct of a 14 government by mass destruction, assassination, or kidnapping. 15 Occurs primarily within this State. 16 17 (2)18 19

- Terrorist. A person who commits an act of terror, including a person who acts as an accessory before or after the fact, aids or abets, solicits, or conspires to commit an act of terror or who lends material support to an act of terror.
- Any person whose property or person is injured by a terrorist may sue for and recover damages from the terrorist.
- Any person who files an action under this section is entitled to recover three times the actual damages sustained or ten thousand dollars (\$10,000), whichever is greater, as well as court costs and attorneys' fees in the trial and appellate courts if the person prevails in the claim.
- The rights and remedies provided by this section are in addition to any other rights and remedies provided by law.
- (e) The limitations period for a claim under this section is five years from the date of the injury."
  - **SECTION 2.** G.S. 14-10.1 is amended by adding a new subsection to read:
- Any person whose property or person is injured by reason of a violation of this section may sue for and recover treble damages, costs, and attorneys' fees pursuant to G.S. 1-539.2D."
- SECTION 3. This act becomes effective October 1, 2015, and applies to acts committed on or after that date.





#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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#### HOUSE BILL 700 PROPOSED COMMITTEE SUBSTITUTE H700-CSTT-7 [v.2]

D

4/22/2015 12:07:13 PM

Short Title: The I. Beverly Lake, Jr., Fair Trial Act. (Public)

Sponsors:

Referred to:

#### April 15, 2015

1 A BILL TO BE ENTITLED 2 AN ACT TO INCREASE THE RELIABILITY OF IN-CUSTODY INFORMANT 3 STATEMENTS. 4 The General Assembly of North Carolina enacts: 5 SECTION 1. Chapter 15A of the General Statutes is amended by adding a new 6 article to read: 7 "Article 54. 8 "Reliability of In-Custody Informant Statements.

"§ 15A-981. Pretrial hearing to corroborate in-custody informant statement.

- (a) Definition. As used in this section, the term "in-custody informant" means a person, other than a codefendant, percipient witness, accomplice, or co-conspirator, whose testimony is based on statements allegedly made by the defendant while both the defendant and the informant were held within a city or county jail, a State correctional institution, or otherwise confined, where statements relate to offenses that occurred outside of the confinement.
- (b) Corroboration of In-Custody Informant Testimony. A defendant shall not be convicted of an offense or receive an aggravated sentence based solely on the testimony of an in-custody informant unless the testimony is corroborated by some other evidence independently tending to connect the defendant with the offense committed. Corroboration of an in-custody informant shall not be provided by the testimony of another in-custody informant. Corroboration is not sufficient for the purpose of this Article if the corroboration only shows that the offense was committed.
- (c) Pretrial Disclosure. In any case to which this section applies, the prosecution must timely disclose, prior to trial or entry of a guilty plea, its intent to introduce the testimony of an in-custody informant.
- (d) Jury Instruction Regarding In-Custody Informant Testimony. In any case in which the judge finds the in-custody informant's testimony admissible, the judge shall instruct the jury that the in-custody informant's testimony must be scrutinized with regard to reliability and that, in considering the reliability of the in-custody informant, the jury may consider any of the following:
  - (1) Whether the witness has received, has been promised, or could have reasonably expected any inducement in exchange for testimony.
  - Whether the witness has ever recanted or otherwise changed the witness's testimony during the investigation or prosecution of the case.
  - (3) The general character of the witness, including his or her criminal history.
  - (4) The nature of the relationship between the defendant and the witness.



|    | General Assembly of North Carolina Session 201:  |
|----|--|
| 1  | (5) Whether there is any evidence that tends to independently corroborate the witness's testimony. |
| 3  | (6) Any other evidence that may attest to or diminish the reliability of the witness.              |
| 5  | (e) Policies and Procedures Governing the Recording and Use of Testimony. – Each                   |
| 6  | district attorney shall establish policies and procedures governing the recording and use o        |
| 7  | in-custody informant testimony, including maintenance of a central file preserving all records     |
| 8  | relating to contacts with in-custody informants, whether they are used as witnesses or not.        |
| 9  | (f) Recording of In-Custody Informant Interview All interviews of in-custody                       |
| 10 | informants shall be recorded using a visual recording device that provides an authentic            |
| 11 | accurate, unaltered, and uninterrupted record of the interview that clearly shows both the         |
| 12 | interviewer and the in-custody informant.  |
| 13 | (g) Destruction or Modification of Recording After Appeals Exhausted The State                     |
| 14 | shall not destroy or alter any electronic recording of an in-custody informant interview unti      |
| 15 | one year after the completion of all State and federal appeals of the conviction, including the    |
| 16 | exhaustion of any appeal of any motion for appropriate relief or habeas corpus proceedings         |
| 17 | Every electronic recording shall be clearly identified and catalogued by law enforcemen            |
| 18 | personnel."  |
| 19 | SECTION 2. This act becomes effective December 1, 2015, and applies to                             |
| 20 | offenses committed on or after that date.  |



#### HOUSE BILL 700: The I. Beverly Lake, Jr., Fair Trial Act

2015-2016 General Assembly

Committee: House Judiciary I

Introduced by: Reps. Daughtry, Zachary, Glazier

**Analysis of:** PCS to First Edition

H700-CSTT-7

Date:

April 22, 2015

Prepared by: Kelly Tornow and

Jennifer Bedford Committee Counsel

SUMMARY: The Proposed Committee Substitute for House Bill 700 would increase the reliability of incustody informant statements through the use of pretrial hearings, create a jury instruction for considering the reliability of testimony by in-custody informants, and provide a policy governing the recording and use of incustody informant testimony.

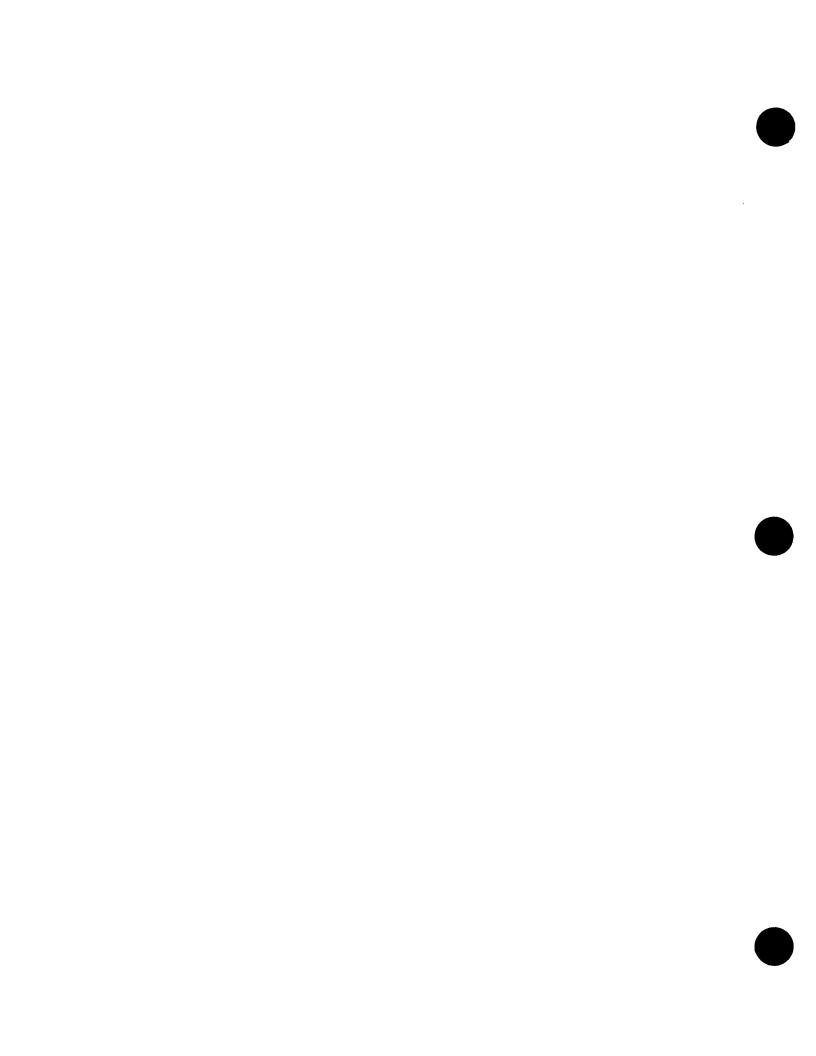
**BILL ANALYSIS:** House Bill 700 would create a new Article 54 in Chapter 15A of the General Statutes entitled "Reliability of In-Custody Informant Statements". The bill does the following:

- Defines "in-custody informant".
- Provides that a defendant cannot be convicted of an offense or receive an aggravated sentence based solely on the testimony of an in-custody informant unless the testimony is corroborated by some other evidence that independently tends to connect the defendant with the offense committed.
- Requires the prosecution to timely disclose its intent to introduce the testimony of an in-custody informant prior to trial or entry of a guilty plea.
- Sets forth jury instructions regarding in-custody informant testimony.
- Requires all interviews of in-custody informants to be recorded, and requires district attorneys to
  establish policies and procedures governing the recording and use of that testimony.
- Prohibits the State from destroying or altering any electronic recording of an in-custody informant interview until one year after the completion of all State and federal appeals of the conviction, and requires the recordings to be clearly identified and catalogued by law enforcement personnel.

**EFFECTIVE DATE:** This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.









#### HOUSE BILL 700: The I. Beverly Lake, Jr., Fair Trial Act

2015-2016 General Assembly

Committee: House Judiciary I Date: April 21, 2015
Introduced by: Reps. Daughtry, Zachary, Glazier Prepared by: Kelly Tornow

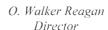
Analysis of: First Edition Staff Attorney

SUMMARY: House Bill 700 would increase the reliability of in-custody informant statements through the use of pretrial hearings that establish facts sufficient to overcome a rebuttable presumption of inadmissibility.

**BILL ANALYSIS:** House Bill 700 would create a new Article 54 in Chapter 15A of the General Statutes entitled "Reliability of In-Custody Informant Statements". The bill does the following:

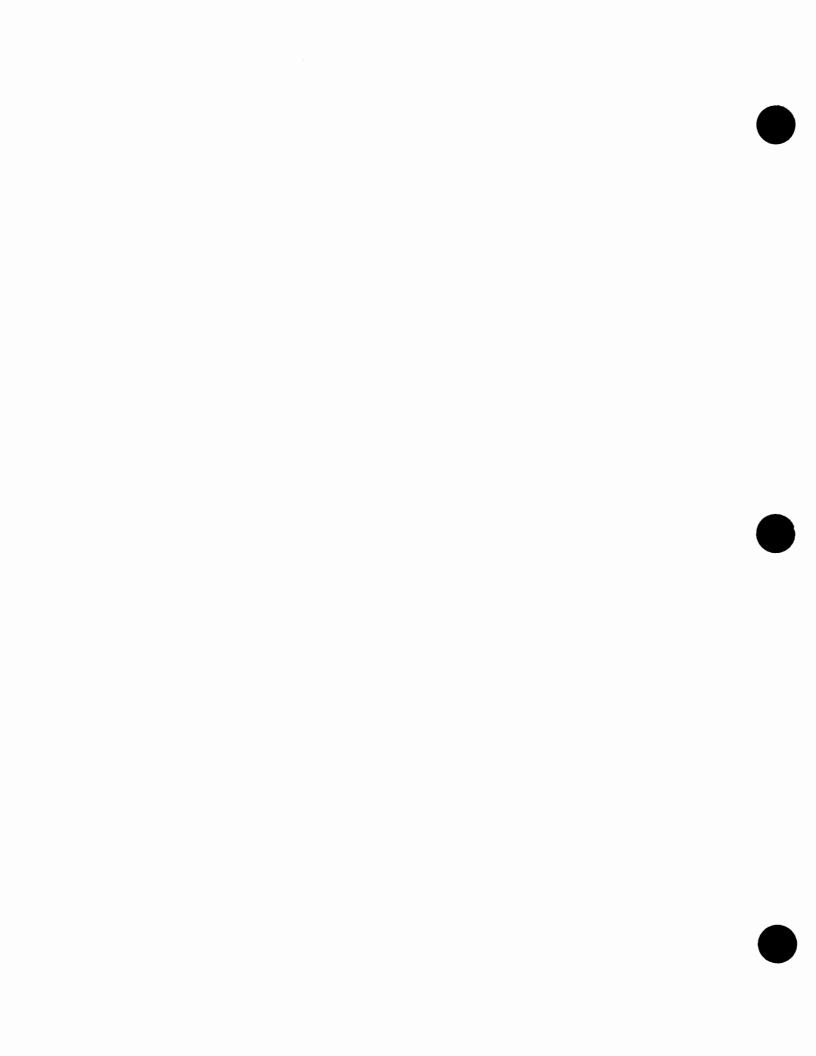
- Defines "in-custody informant".
- Provides that a defendant cannot be convicted of an offense or receive an aggravated sentence based solely on the testimony of an in-custody informant unless the testimony is corroborated by some other evidence that independently tends to connect the defendant with the offense committed.
- Requires the prosecution to timely disclose its intent to introduce the testimony of an in-custody informant prior to trial or entry of a guilty plea.
- Under certain circumstances, allows the identity of the in-custody informant to be redacted and remain undisclosed to the defense until such time as the court deems disclosure appropriate or disclosure is required by law.
- Compels the court to conduct a pretrial hearing to determine whether the reliability of the testimony
  of the in-custody informant is sufficient to overcome a rebuttable presumption of inadmissibility,
  unless the defendant waives that hearing.
- Before the defendant enters a guilty plea, requires the court to advise the defendant that an in-custody
  informant may be cross-examined at trial and that by pleading guilty, the defendant waives the right
  to cross-examine the informant.
- Provides that when a pretrial hearing is held to determine the reliability and admissibility of the
  testimony of the in-custody information, the judge must require a certificate of reliability by the
  district attorney and determine whether the prosecution has proven by a preponderance of the
  evidence that the testimony of the in-custody witness is reliable.
- Establishes relevant factors that the trial judge can consider when determining whether the informant's reliability overcomes the rebuttable presumption of inadmissibility.
- Sets forth jury instructions regarding in-custody informant testimony.
- Requires all interviews of in-custody informants to be recorded, and requires district attorneys to establish policies and procedures governing the recording and use of that testimony.
- Prohibits the State from destroying or altering any electronic recording of an in-custody informant interview until one year after the completion of all State and federal appeals of the conviction, and requires the recordings to be clearly identified and catalogued by law enforcement personnel.

**EFFECTIVE DATE:** This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.





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### HOUSE BILL 713 PROPOSED COMMITTEE SUBSTITUTE H713-CSTT-4 [v.2]

4/21/2015 8:21:55 PM
Short Title: Body & Dash Cam Recording/Public Access.

(Public)

Sponsors:
Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT AUTHORIZING LAW ENFORCEMENT AGENCIES TO RELEASE TO THE PUBLIC RECORDINGS CAPTURED BY BODY-WORN CAMERAS AND IN-CAR CAMERAS UTILIZED BY LAW ENFORCEMENT OFFICERS.

The General Assembly of North Carolina enacts:

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SECTION 1. G.S. 132-1.4(b)(1) reads as rewritten:

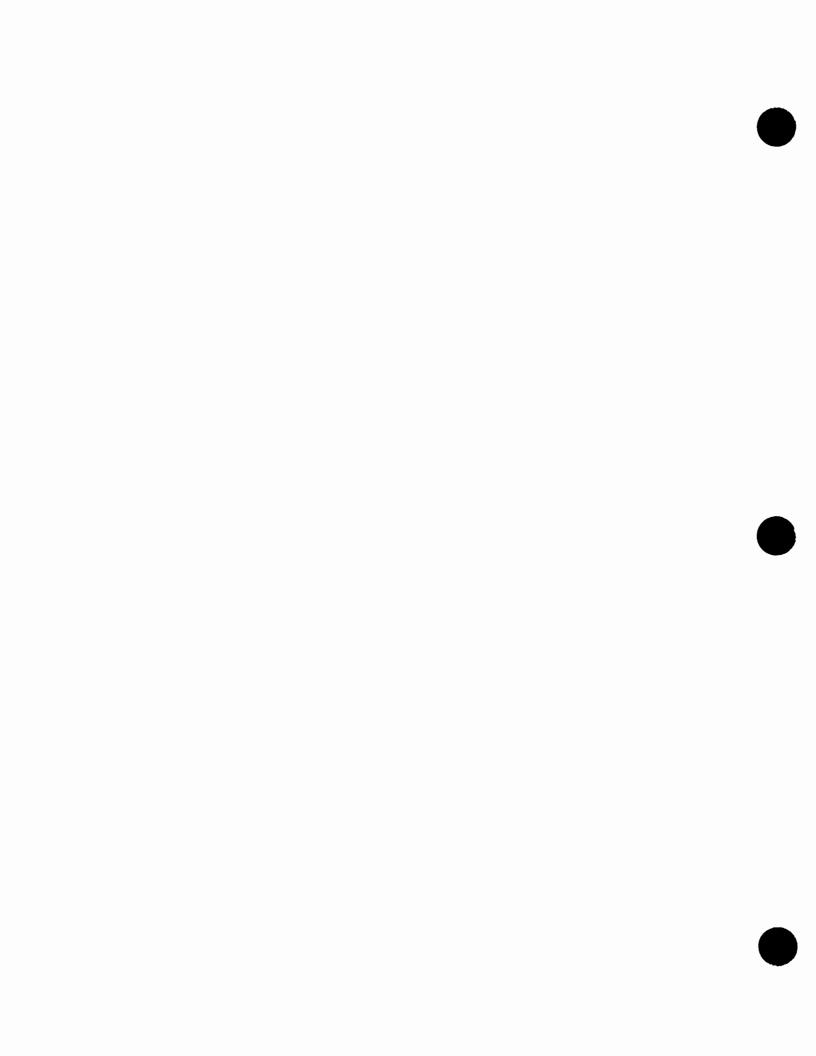
"(1) "Records of criminal investigations" means all records or any information that pertains to a person or group of persons that is compiled by public law enforcement agencies for the purpose of attempting to prevent or solve violations of the law, including information derived from witnesses, laboratory tests, surveillance, body-worn and in-car cameras, investigators, confidential informants, photographs, and measurements. The term also includes any records, worksheets, reports, or analyses prepared or conducted by the North Carolina State Crime Laboratory at the request of any public law enforcement agency in connection with a criminal investigation."

**SECTION 2.** G.S. 132-1.4 is amended by adding a new subsection to read:

"(g1) A person seeking an order under subsection (a) of this section to inspect, examine, or obtain a copy of audio, video, or audio and video recordings captured by a law enforcement officer's body-worn camera or in-car camera must state the date and approximate time of the incident or encounter captured by the body-worn camera or in-car camera or otherwise identify the incident or encounter with reasonable particularity. Notwithstanding any other provision of State law regulating or prohibiting access to employee personnel records, a law enforcement agency may release recordings captured by a law enforcement officer's body-worn camera or in-car camera without the consent of the law enforcement officer whose actions, visual or audible, are captured on the recordings. Nothing in this subsection shall be construed as (i) requiring a law enforcement agency to allow inspection, examination, or release of audio, video, or audio and video, recordings captured by a law enforcement officer's body-worn camera or in-car camera or (ii) superseding federal law that authorizes or prohibits access to recordings subject to this subsection."

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







### HOUSE BILL 713: Body & Dash Cam Recording/Public Access

2015-2016 General Assembly

Committee: House Judiciary I

Introduced by: Reps. Faircloth, Daughtry, Boles, Hurley

**Analysis of:** P

PCS to First Edition

H713-CSTT-4

Date:

April 22, 2015

Prepared by: Erika Churchill and

Jennifer Bedford Committee Counsel

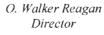
SUMMARY: Proposed Committee Substitute for House Bill 713 would specify that criminal information derived from body-worn cameras and in-car cameras of law enforcement officers is not a public record and sets out provisions for requested recordings.

**CURRENT LAW:** Records of criminal investigations conducted by law enforcement are not public record but may be released by court order. "Records of criminal investigation" mean information derived from witnesses, laboratory tests, surveillance, investigators, confidential informants, photographs, and measurements. Presently, recordings form body-worn and in-car cameras are not listed.

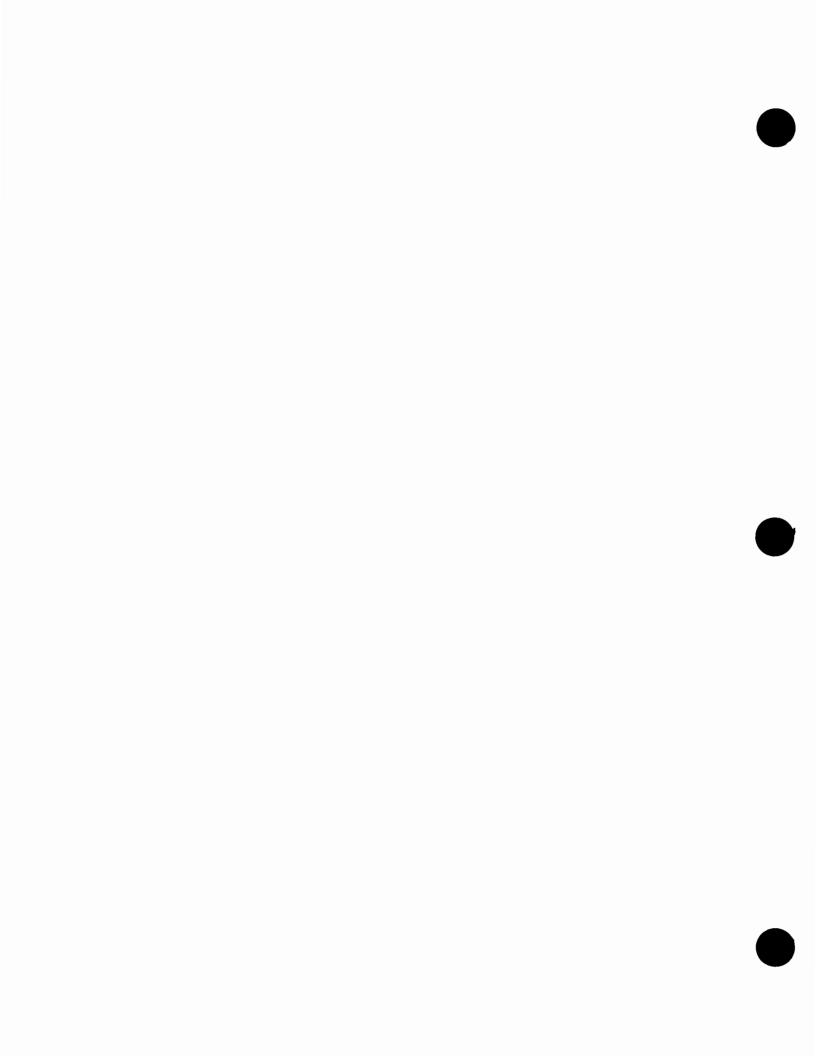
**BILL ANALYSIS:** Section 1 of the PCS adds recordings from body-worn cameras or in-car cameras of law enforcement officers to the definition of "Records of criminal investigations" which are not public records but may be released by court order.

**Section 2** would require a person seeking a court order to access to recordings of law enforcement officer's body-worn cameras and in-car cameras to specify the portion of the recording containing the requested information, including date and approximate time of the incident that was recorded. This section allows law enforcement agencies to release body-worn camera or in-car camera recordings without the consent of the officer recorded. This section clarifies that nothing in this section requires law enforcement to allow inspection, examination, or release of recordings captured by body-worn cameras or in-car cameras, nor supersedes any federal law governing access to these types of recordings.

**EFFECTIVE DATE:** Effective when it becomes law.







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## HOUSE BILL 774 PROPOSED COMMITTEE SUBSTITUTE H774-CSTT-5 [v.2]

4/21/2015 8:18:15 PM

| Short Title: Restoring Proper Justice Act. |  | (Public) |
|--|--|----------|
| Sponsors:                                  |  |          |
| Referred to:                               |  |          |

### April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REQUIRING THE PRESENCE OF A LICENSED PHYSICIAN AT THE EXECUTION OF A DEATH SENTENCE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 15-190 reads as rewritten:

"(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 a licensed physician, or a medical professional other than a physician, to monitor the injection of the required lethal substances and certify the fact of the execution. If a licensed physician is not present at the execution, then a licensed physician shall be present on the premises and available to examine the body after the execution and pronounce the person dead. 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.

For purposes of this section, a "medical professional other than a physician" means a physician assistant, nurse practitioner, registered nurse, emergency medical technician or emergency medical technician-paramedic who is licensed or credentialed by the licensing board, agency, or organization responsible for licensing or credentialing that profession."

**SECTION 2.** G.S. 15-192 reads as rewritten:

"§ 15-192. Certificate filed with clerk.

The warden, together with the surgeon or physician of the penitentiary, licensed physician who was present on the premises to pronounce death as required by G.S. 15-190, shall certify the fact of the execution of the condemned person, convict or felon to the clerk of the superior



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### **General Assembly of North Carolina**

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Session 2015

court in which such sentence was pronounced, and the clerk shall file such certificate with the papers of the case and enter the same upon the records thereof."

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

Page 2 House Bill 774 H774-CSTT-5 [v.2]



# **HOUSE BILL 774: Restoring Proper Justice Act**

2015-2016 General Assembly

Committee: House Judiciary I
Introduced by: Rep. Daughtry
Analysis of: PCS to First Edition

H774-CSTT-5

**Date:** April 22, 2015

Prepared by: Erika Churchill and

Jennifer Bedford Committee Counsel

SUMMARY: The Proposed Committee Substitute for House Bill 774 would authorize a medical professional other than a physician to monitor lethal injection for death penalty executions.

**CURRENT LAW:** G.S. 15-190 provides that a licensed physician must be present at an execution and that the warden, together with the surgeon or physician of the penitentiary, shall certify the fact of the execution. G.S. 15-188.1 also prohibits state licensing boards from disciplining any licensed health care professional who renders assistance in an execution.

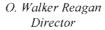
**BILL ANALYSIS:** Section 1 of the PCS amends the death penalty execution statute to allow a medical professional other than a physician to monitor the lethal injection and certify the fact of the execution. If a physician is not present at the execution, a physician must be present on the premises and available to examine the body after execution in order to pronounce the person dead.

This section defines "medical professional other than a physician" to include a licensed or credentialed physician assistant, nurse practitioner, registered nurse, emergency medical technician or emergency medical technician-paramedic.

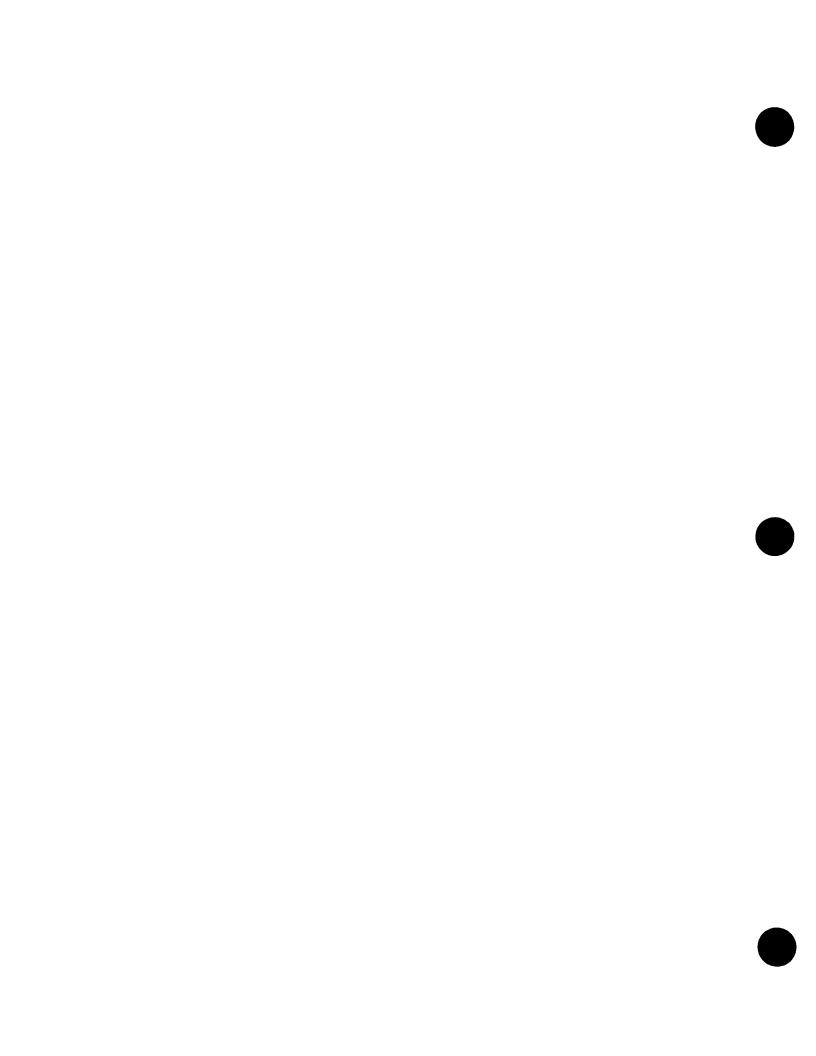
Section 2 amends the current law to provide that the licensed physician present on the premises at the time of the execution shall certify the fact of the execution to the applicable clerk of superior court.

**EFFECTIVE DATE:** Effective when it becomes law.

**BACKGROUND:** The American Medical Association Code of Medical Ethics Opinion 2.06 states that a physician should not participate in a legally authorized execution but that certifying death, provided that the condemned has been declared dead by another person, does not constitute physician participation in an execution.







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## HOUSE BILL 774 PROPOSED COMMITTEE SUBSTITUTE H774-CSTT-5 [v.2]

4/21/2015 8:18:15 PM

Short Title: Restoring Proper Justice Act. (Public)

Sponsors:

Referred to:

April 15, 2015

### A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REQUIRING THE PRESENCE OF A LICENSED PHYSICIAN AT THE EXECUTION OF A DEATH SENTENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15-190 reads as rewritten:

Some guard or guards or other reliable person or persons to be named and designated by "(a) 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 a licensed physician, or a medical professional other than a physician, to monitor the injection of the required lethal substances and certify the fact of the execution. If a licensed physician is not present at the execution, then a licensed physician shall be present on the premises and available to examine the body after the execution and pronounce the person dead. 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.

For purposes of this section, a "medical professional other than a physician" means a physician assistant, nurse practitioner, registered nurse, emergency medical technician or emergency medical technician-paramedic who is licensed or credentialed by the licensing board, agency, or organization responsible for licensing or credentialing that profession."

SECTION 2. G.S. 15-192 reads as rewritten:

### "§ 15-192. Certificate filed with clerk.

The warden, together with the surgeon or physician of the penitentiary, licensed physician who was present on the premises to pronounce death as required by G.S. 15-190, shall certify the fact of the execution of the condemned person, convict or felon to the clerk of the superior



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### **General Assembly of North Carolina**

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Session 2015

- court in which such sentence was pronounced, and the clerk shall file such certificate with the papers of the case and enter the same upon the records thereof."
  - **SECTION 3.** This act is effective when it becomes law.

Page 2 House Bill 774 H774-CSTT-5 [v.2]

H

### **HOUSE BILL 774**

Short Title:

Restoring Proper Justice Act.

(Public)

Sponsors:

Representative Daughtry (Primary Sponsor).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to:

Judiciary I.

### April 15, 2015

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### A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REQUIRING THE PRESENCE OF A LICENSED PHYSICIAN AT THE EXECUTION OF A DEATH SENTENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15-190 reads as rewritten:

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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 a licensed physician, physician, or a medical professional other than a physician as defined in this subsection, to monitor the injection of the required lethal substances and certify the fact of the execution. If a licensed physician is not present at the execution, then a licensed physician shall be present on the premises and available to examine the body after the execution and pronounce the person dead. 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.

For purposes of this Article, a "medical professional other than a physician" means a physician assistant, advanced degree nurse, registered nurse, or emergency medical technician-paramedic who is licensed, certified, or credentialed by the licensing board, agency, or organization responsible for licensing, certifying, or credentialing that profession."

**SECTION 2.** G.S. 15-192 reads as rewritten:

"§ 15-192. Certificate filed with clerk.



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| General Assembly of North Carolina | General | Assembly | of North | Carolina |
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Session 2015

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The warden, together with the surgeon or physician of the penitentiary, licensed physician who was present on the premises to pronounce death as required by G.S. 15-190, shall certify the fact of the execution of the condemned person, convict or felon to the clerk of the superior court in which such sentence was pronounced, and the clerk shall file such certificate with the papers of the case and enter the same upon the records thereof."

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

H774 [Edition 1] Page 2

### NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

| H. B. No. 774                   | _           | DATE      | 7/21/15                                 |
|---------------------------------|-------------|-----------|---|
| S. B. No                        | _           | Amend     | dment No.                               |
| COMMITTEE SUBSTITUTE            | _           |           | (to be filled in by<br>Principal Clerk) |
| Sen.)                           | htry        |           |   |
| moves to amend the bill on page |             |           | _, line5                                |
| ( ) WHICH CHANGES THE TITLE     |             |           |   |
| by                              |             |           | и и                                     |
| inserting                       | "(2)"       | between   | "65, 15-190' and                        |
| "reads";                        |             |           |   |
| ,                               |             |           |   |
| and on page                     | 7 1:        | 15 31-3   | 2 by inserting                          |
| Sile of page                    | <del></del> |           | e of many                               |
| the following                   | betwe       | en those  | lines:                                  |
|                                 | _ 1 _ 1     |           |   |
|                                 |             |           | is amended by                           |
| adding a new s                  |             |           |   |
|                                 |             |           | under this Acticle                      |
| shall be exempt                 | from        | Chapter 1 | 50B of the General                      |
| Statutes."                      |             |           |   |
|                                 |             |           |   |
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### HOUSE BILL 824 PROPOSED COMMITTEE SUBSTITUTE H824-CSST-27 [v.1]

4/21/2015 3:34:35 PM

Short Title: Concealed Handgun Permit/Admin. Law Judge. (Public) Sponsors: Referred to: April 15, 2015 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE PROHIBITIONS ON CARRYING CONCEALED HANDGUNS DO NOT APPLY TO NORTH CAROLINA ADMINISTRATIVE LAW JUDGES. The General Assembly of North Carolina enacts: **SECTION 1.** G.S. 14-269(b) is amended by adding a new subdivision to read: Any person who is an administrative law judge described in Article 60 of Chapter 7A of the General Statutes 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

SECTION 2. G.S. 14-415.27 reads as rewritten:

"§ 14-415.27. Expanded permit scope for certain persons.

the person's body."

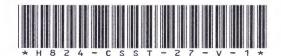
Notwithstanding G.S. 14-415.11(c), any of the following persons who has a concealed handgun permit issued pursuant to this Article or that is considered valid under G.S. 14-415.24 is not subject to the area prohibitions set out in G.S. 14-415.11(c) and may carry a concealed handgun in the areas listed in G.S. 14-415.11(c) unless otherwise prohibited by federal law:

weapon at any time while consuming alcohol or an unlawful controlled

substance or while alcohol or an unlawful controlled substance remains in

(8) A North Carolina administrative law judge."

**SECTION 3.** This act becomes effective October 1, 2015.



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### **HOUSE BILL 824:**

## Concealed Handgun Permit/Admin. Law Judge

2015-2016 General Assembly

Committee:
Introduced by:

House Judiciary I Rep. McNeill

**Analysis of:** 

PCS to First Edition

H824-CSST-27

Date:

April 21, 2015

**Prepared by:** R. Erika Churchill

Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 824 would exempt administrative law judges from the

**CURRENT LAW:** G.S. 14-269 makes it unlawful for any individual to willfully and intentionally carry concealed about their person any of the following:

- Bowie knife
- Dirk
- Dagger
- Slung shot
- Loaded cane
- Metallic knuckles
- Razor
- Shurikin
- Stun gun
- Other deadly weapon

It is also unlawful to carry concealed a pistol or gun, unless it is on the individual's property, the individual has a concealed carry permit, or is a military permittee. Violation is a misdemeanor. The prohibition does not apply to ordinary pocket knives.

The prohibitions above do not apply to any of the following individuals:

- Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties and acting under orders requiring them to carry arms and weapons.
- Civil and law enforcement officers of the United States.
- Officers and soldiers of the militia and the National Guard when called into actual service.
- Officers of the State, or of any county, city, town, or company police agency charged with the execution of the laws of the State, when acting in the discharge of their official duties.
- District attorneys, assistant district attorneys or investigators employed by the DA, under certain conditions.
- > Certain retired law-enforcement officers.
- > Detention personnel or correctional officers, under certain conditions.
- > Sworn law-enforcement officers, when off-duty, under certain conditions.
- Probation or parole certified officers, off duty, under certain conditions.
- > State correctional officers, off duty, under certain conditions.

O. Walker Reagan Director



Research Division (919) 733-2578

### House Bill 824

Page 2

For the individuals listed above that are exempt from the prohibitions, those individuals are also exempt from the following statutory provisions:

- **G.S. 14-269.2.** Weapons on campus or other education property.
- **G.S. 14-269.3.** Carrying weapons into assemblies and establishments where alcoholic beverages are sold and consumed.
- G.S. 14-277.2. Weapons at parades, etc.
- G.S. 14-288.7. Transporting dangerous weapon or substance during emergency; possessing off premises; exceptions.
- **G.S. 14-288.8.** Manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of weapon of mass death and destruction; exceptions. (exemption applies while lawfully carrying out duties of the position)
- **G.S. 14-288.21.** Unlawful manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of a nuclear, biological, or chemical weapon of mass destruction; exceptions; punishment. (exemption applies while lawfully carrying out the duties of the position)

**BILL ANALYSIS:** The PCS would exempt administrative law judges, provided they do not carry a weapon while consuming alcohol or an unlawful controlled substance, or while alcohol or unlawful controlled substances are in that person's body.

The PCS would also authorize an administrative law judge to carry the concealed weapon in certain places, such as State and federal offices, private premises posted for no handguns, and courthouses.

EFFECTIVE DATE: October 1, 2015.

H 1 **HOUSE BILL 824** 

| Short Title:   | Concealed Handgun Permit/Admin. Law Judge. | (Public) |
|--|--|----------|
| Sponsors: Representative McNeill (Primary Sponsor).  For a complete list of Sponsors, refer to the North Carolina General Assembly Web |  | b Site.  |
| Referred to:   | Judiciary I.                               |          |
|  | April 15, 2015                             |          |

A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE PROHIBITIONS ON CARRYING CONCEALED HANDGUNS DO NOT APPLY TO NORTH CAROLINA ADMINISTRATIVE LAW JUDGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-269 reads as rewritten:

"§ 14-269. Carrying concealed weapons.

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(b) This prohibition shall not apply to the following persons:

> (7)Any person who is an administrative law judge described in Article 60 of Chapter 7A of the General Statutes 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.

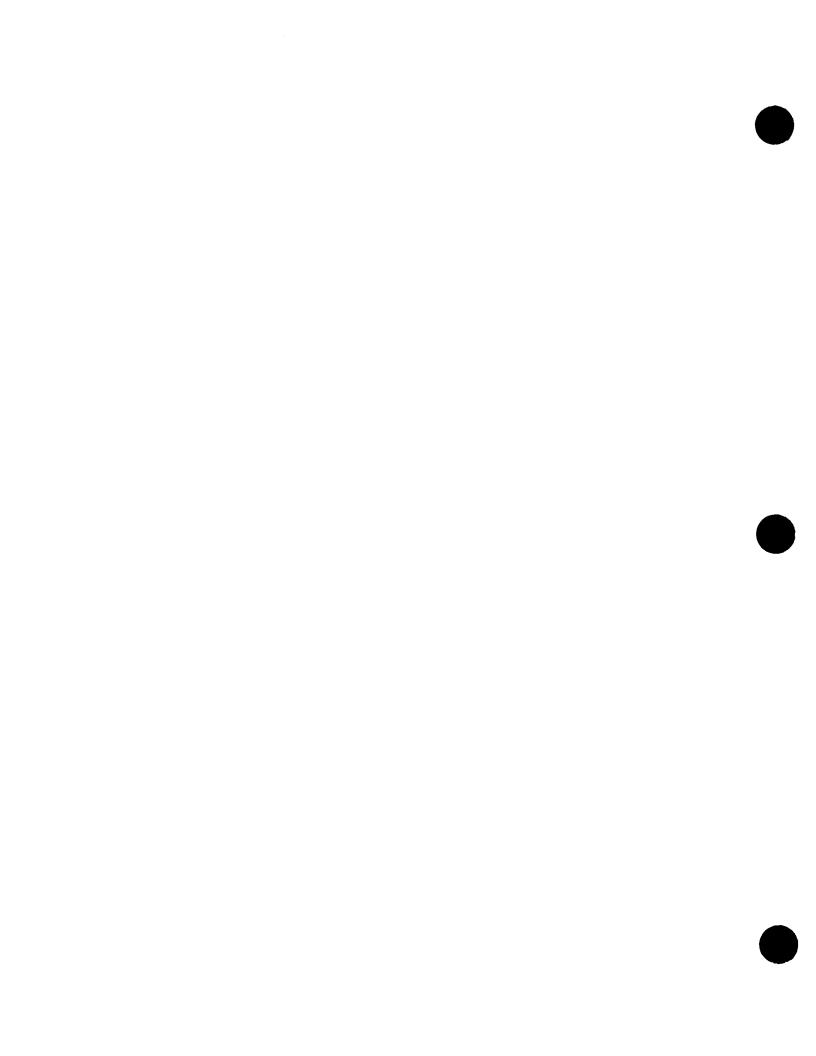
SECTION 2. G.S. 14-415.27 reads as rewritten:

"§ 14-415.27. Expanded permit scope for certain persons.

Notwithstanding G.S. 14-415.11(c), any 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:

> A North Carolina administrative law judge." **SECTION 3.** This act becomes effective October 1, 2015.







# **HOUSE BILL 850:**Eastern Band of Cherokees/Law Enforcement

#### 2015-2016 General Assembly

Committee:House Judiciary IDate:April 21, 2015Introduced by:Reps. West, Hager, PresnellPrepared by:R. Erika ChurchillAnalysis of:First EditionCommittee Counsel

SUMMARY: House Bill 850 would authorize the Eastern Band of Cherokee Indians to establish a police force, tribal alcohol enforcement, a probation and parole agency, and a natural resources enforcement agency.

**CURRENT LAW:** In 1987, the General Assembly, in uncodified language, clarified the authority of the police officers of the Eastern Band of Cherokee Indians by granting the Eastern Band of Cherokee Indians the authority granted to city police departments under Article 13 of Chapter 160A of the General Statutes. S.L. 1987-427. The chief and officers of the police department must comply with the training and standards for police officers in North Carolina.

### BILL ANALYSIS: The bill would do all of the following:

- For Grant full faith and credit to any limited driving privilege signed and issued by a Judge or Justice of the Cherokee Tribal Courts and filed with that court.
- Codifies most of the contents of S.L. 1987-427.
- > Specifically recognizes as law enforcement for the Eastern Band of Cherokee Indians all of the following:
  - Cherokee Police Department
  - Cherokee Marshals Office (probation and parole)
  - Tribal Alcohol Law Enforcement
  - Natural Resources Enforcement Agency.
- Law enforcement officers of the Eastern Band of Cherokee Indians would continue to comply with the training and standards for police officers in North Carolina.
- Authorize the Cherokee Marshals Office to have access to all probation and parole record of the North Carolina Department of Public Safety to the same extent as a probation or post-release supervision office of DPS for any individual over which the Cherokee Tribal Courts have jurisdiction to try and impose a sentence upon.
- Authorizes DPS to work with the Eastern Band of Cherokee Indians to establish ORI numbers for the law enforcement agencies established by the Band.

**EFFECTIVE DATE:** Effective when it becomes law.

O. Walker Reagan Director



Research Division (919) 733-2578

H

### HOUSE BILL 850 PROPOSED COMMITTEE SUBSTITUTE H850-PCS20325-ST-30

D

| Short Title: Eastern Band of Cherokees/Law Enforcement.                        | (Public)               |
|--|------------------------|
| Sponsors:  |                        |
| Referred to:   |                        |
| April 15, 2015   |                        |
| A BILL TO BE ENTITLED  |                        |
| AN ACT TO PROVIDE AUTHORITY FOR THE EASTERN BAND                               | D OF CHEROKEE          |
| INDIANS TO ESTABLISH A POLICE DEPARTMENT, A TRIBA                              | L ALCOHOL LAW          |
| ENFORCEMENT DIVISION, A NATURAL RESOURCES LAW                                  |                        |
| AGENCY, AND A PROBATION AND PAROLE AGENCY.                                     |                        |
| The General Assembly of North Carolina enacts:                                 |                        |
| SECTION 1. Chapter 1E of the General Statutes reads as rewri                   | itten:                 |
| "Chapter 1E.   |                        |
| "Eastern Band of Cherokee Indians.   |                        |
| "Article 1.  |                        |
| "Full Faith and Credit.  |                        |
| "§ 1E-1. Full faith and credit.  |                        |
| (a) The courts of this State shall give full faith and credit to a judgm       | nent, decree, or order |
| signed by a judicial officer of the Eastern Band of Cherokee Indians and f     | iled in the Cherokee   |
| Tribal Court Courts to the same extent as is given a judgment, decree, or or   |                        |
| subject to the provisions of subsection (b) subsections (b) and (c) of this se |                        |
| the judgments, decrees, and orders of the courts of this State are given fu    | ll faith and credit by |
| the Tribal Courts of the Eastern Band of Cherokee Indians.                     |                        |
| (b) Judgments, decrees, and orders specified in subsection (a) of              |                        |
| given full faith and credit subject to the provisions of G.S. 1C-1             |                        |
| G.S. 1C 1804, and G.S. 1C-1805 G.S. 1C-1705 and G.S. 1C-1708 and sh            | nall be considered a   |
| foreign judgment for purposes of these statutes.                               |                        |
| (c) Any limited driving privilege signed and issued by a Judg                  |                        |
| Cherokee Tribal Courts in accordance with the applicable provisions o          |                        |
| General Statutes and filed in the Cherokee Tribal Courts Clerk's Office sha    |                        |
| full faith and credit as specified in subsection (a) of this section. F        |                        |
| subsection, any reference to the issuing "judge" or "court" in the appl        |                        |
| Chapter 20 of the General Statutes shall be construed to mean the appropri     | iate Judge or Justice  |
| in the Cherokee Tribal Courts or the appropriate Cherokee Tribal Court.        |                        |
| "Article 2.  |                        |
| "Tribal Law Enforcement Authority.   |                        |
| "§ 1E-2. Tribal law enforcement.   | 1 12 CCl               |
| (a) Except for the sections listed in subsection (b) of this section, A        | _                      |
| 160A of the General Statutes is applicable to the Eastern Band of Cherokee     |                        |
| (b) The following provisions of Article 13 of Chapter 160A of                  | ine General Statutes   |
| shall not apply to the Eastern Band of Cherokee Indians:                       |                        |



(1) G.S. 160A-283.

- (2) G.S. 160A-286.
- (3) G.S. 160A-287.
- (4) G.S. 160A-289.1.

"§ 1E-3. Application and meaning of terms.

For purposes of the application of the applicable provisions of Article 13 of Chapter 160A of the General Statutes, the following terms contained in Article 13 of Chapter 160A of the General Statutes shall be construed as follows:

- (1) City. To mean the Eastern Band of Cherokee Indians.
- (2) <u>Council or governing body. To mean the Tribal Council of the Eastern</u> Band of Cherokee Indians.
- (3) <u>City clerk. To mean the clerk of the Tribal Council of the Eastern Band of the Cherokee Indians.</u>
- (4) Corporate limits of the city. To mean the boundaries of the trust lands of the Eastern Band of the Cherokee Indians wherever located within the State of North Carolina.
- (5) Law enforcement agency or local law enforcement agency. To include the Cherokee Police Department, the Cherokee Marshals Service, the Tribal Alcohol Law Enforcement Division of the Eastern Band of the Cherokee Indians, and the Natural Resources Enforcement Agency of the Eastern Band of Cherokee Indians.

"§ 1E-4. Qualification of law enforcement officers; limitations of authority.

- (a) For purposes of this section, "law enforcement officer" means any person appointed or employed as (i) Chief of Police of the Cherokee Police Department, Chief of the Cherokee Marshals Service, Chief of the Tribal Alcohol Law Enforcement Division of the Eastern Band of the Cherokee Indians, or Chief of the Natural Resources Enforcement Agency of the Eastern Band of the Cherokee Indians or (ii) a police officer, auxiliary police officer, marshal, alcohol law enforcement agent, reserve alcohol law enforcement agent, or resources officer with the Cherokee Police Department, the Cherokee Marshals Service, the Tribal Alcohol Law Enforcement Division of the Eastern Band of the Cherokee Indians, or the Natural Resources Enforcement Agency of the Eastern Band of the Cherokee Indians.
- (b) A law enforcement officer shall, prior to the exercise of the officer's authority pursuant to Article 13 of Chapter 160A of the General Statutes, comply with the provisions of Chapter 17C of the General Statutes and any rules or regulations adopted pursuant to the authority of Chapter 17C of the General Statutes. The courts of this State shall have the jurisdiction pursuant to G.S. 17C-11 to enjoin the Cherokee Police Department, the Cherokee Marshals Service, the Tribal Alcohol Law Enforcement Division of the Eastern Band of Cherokee Indians, the Natural Resources Enforcement Agency of the Eastern Band of the Cherokee Indians, or any law enforcement officer or agent employed or appointed by the department, agency, or division from exercising any or all of the authority under color of State law conferred by Article 13 of Chapter 160A of the General Statutes if any law enforcement officer or agent of the department, agency, or division fails to meet the required standards established pursuant to Chapter 17C of the General Statutes.
- (c) The jurisdiction of a law enforcement officer shall be (i) on all property owned by or leased to the Eastern Band of Cherokee Indians located within the trust lands of the Eastern Band of the Cherokee Indians and (ii) during the immediate and continuous flight of an offender in accordance with G.S. 15A-402(d).
- (d) Service as a law enforcement officer shall constitute service as (i) a "criminal justice officer" as defined in G.S. 17C-2(c) and (ii) a "law enforcement officer" for purposes of Article 12E of Chapter 143 of the General Statutes. For purposes of Article 12E of Chapter 143 of the

 General Statutes, the term "employer," as defined in G.S. 143-166.50, shall be construed to include the Eastern Band of Cherokee Indians with respect to law enforcement officers.

- (e) A law enforcement officer may be enjoined from exercising his authority under color of State law pursuant to Article 13 of Chapter 160A of the General Statutes for the reasons set forth in G.S. 128-16 and pursuant to the provisions of Article 2 of Chapter 128 of the General Statutes.
- (f) Nothing contained in this Chapter or in Article 13 of Chapter 160A of the General Statutes shall be construed as doing any of the following:
  - Limiting or revoking the authority of the Eastern Band of Cherokee Indians, the Cherokee Police Department, the Cherokee Marshals Service, the Tribal Alcohol Law Enforcement Division of the Eastern Band of the Cherokee Indians, the Natural Resources Enforcement Agency of the Eastern Band of the Cherokee Indians, or any law enforcement officers or other persons appointed or employed by those entities, in the exercise of their inherent powers of self-government, or exercise of authority conferred by federal law, regulation, or common law.
  - (2) <u>Modifying, either by way of enlargement or limitation, the jurisdiction of the Cherokee Tribal Courts.</u>

(3) Waiving any sovereign immunity that may otherwise apply.

(g) Nothing contained in this Chapter shall be construed as modifying, either by way of enlargement or limitation, the jurisdiction or authority of any federal, State, or local law enforcement agency, governmental entity, or any of their officers or employees, except the Eastern Band of Cherokee Indians, the Cherokee Police Department, the Cherokee Marshals Service, the Tribal Alcohol Law Enforcement Division of the Eastern Band of the Cherokee Indians, the Natural Resources Enforcement Agency of the Eastern Band of the Cherokee Indians, and their law enforcement officers, agents, and employees to the extent set forth in this Chapter.

## "Article 3. "Probation and Parole.

### "§ 1E-5. Cherokee Marshals Service.

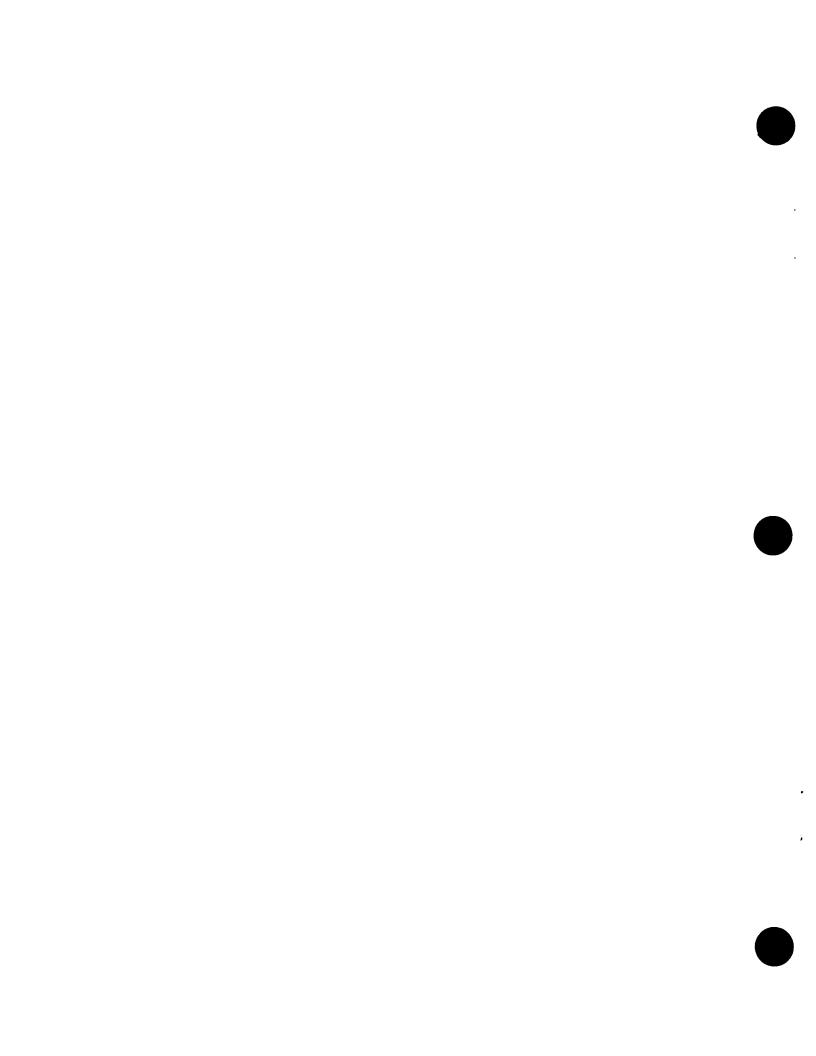
- (a) The Supreme Court of the Eastern Band of Cherokee Indians is authorized to establish a probation and parole agency known as the "Cherokee Marshals Service."
- (b) Marshals of the Cherokee Marshals Service shall (i) be required to meet the standards set forth in G.S. 1E-4 for law enforcement officers and (ii) have the same territorial jurisdiction, powers, and immunities as a law enforcement officer under G.S. 1E-4.
- (c) Notwithstanding any other provision of law, marshals of the Cherokee Marshals Service shall have access to all probation and parole records of the North Carolina Department of Public Safety to the same extent as a probation or post-release supervision officer of the Department for any person over which the Cherokee Tribal Courts have jurisdiction to proceed in a criminal case and impose a sentence, including a fine, community service, or imprisonment. The Department may enter into a memorandum of understanding addressing the specifics of transferring information to the Cherokee Tribal Courts."

**SECTION 2.** The North Carolina Department of Public Safety is authorized to work with the Eastern Band of Cherokee Indians to establish Originating Agency Identification (ORI) numbers for the law enforcement departments, agencies, and divisions authorized by this act. Each department, agency, and division shall be issued its own ORI number.

SECTION 3. Sections 1 through 9 of S.L. 1987-427 are repealed.

**SECTION 4.** This act is effective when it becomes law.

H850-PCS20325-ST-30



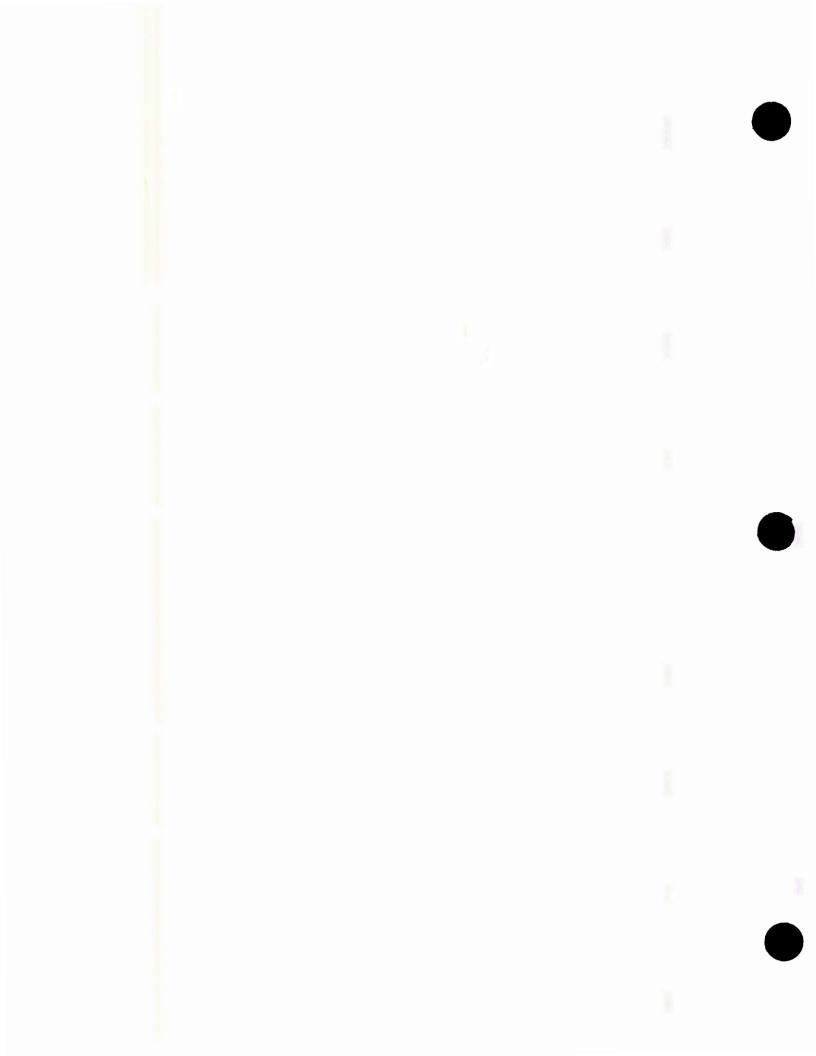


## NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

House Bill 850

| H850-AST-43 [v.1]   |                                   |            | AMENDMENT NO (to be filled in by Principal Clerk) | Page 1 of 1 |
|---|-----------------------------------|------------|---|-------------|
| Amends Title [NO] First Edition   |                                   | Date _     | 4-22  | ,2015       |
| Representative &  | BUTY                              |            |   |             |
| moves to amend the  | bill on page stine 42, by rewriti | ng that li | ne to read:                                       |             |
| "imprisonment. The Department may enter into a memorandum of understanding addressing the specifics of transferring information to the Cherokee Tribal Courts."." |                                   |            |   |             |
| SIGNED  | Amendment Sponsor                 | W          |   |             |
| SIGNED Commi  | ittee Chair if Senate Committee A | \ mendm    | ent   |             |
| ADOPTED V   | FAILED                            | Michall    | TABLED  |             |







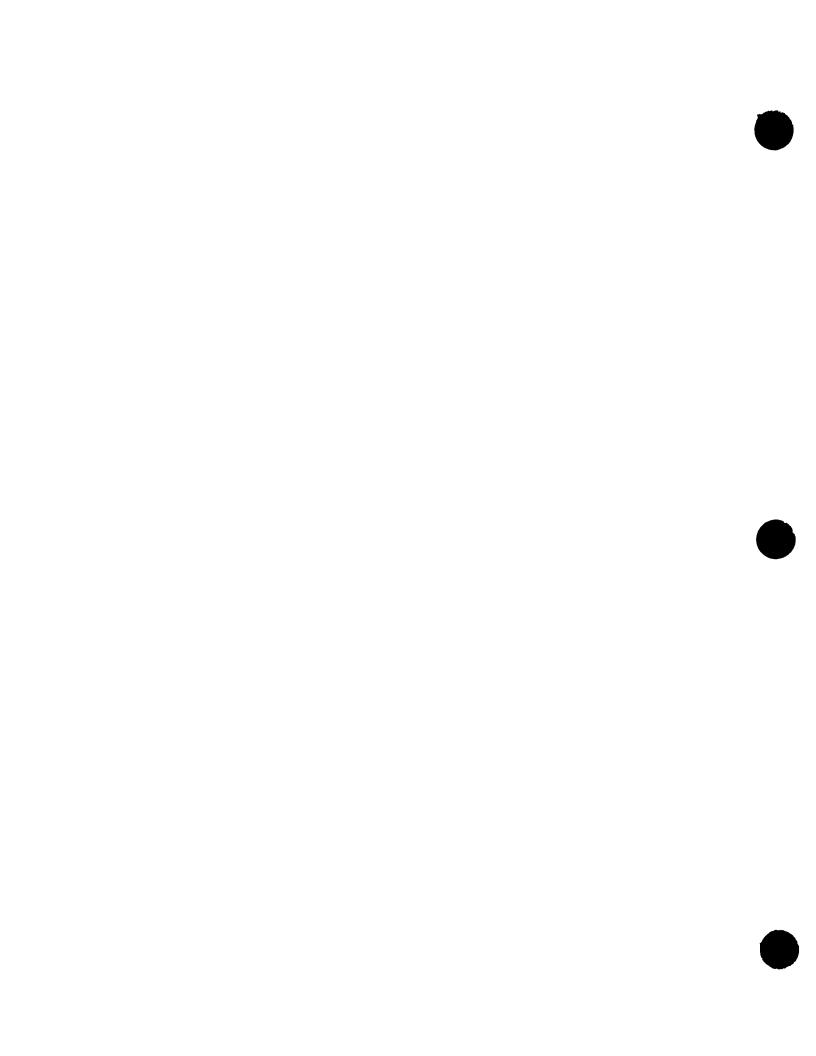
## NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

House Bill 850

|   |          | (to be filled in by | )             |
|---|----------|---------------------|---------------|
| H850-AST-43 [v.1]   |          | Principal Clerk)    |               |
|   |          |                     | Page 1 of 1   |
| Amends Title [NO] First Edition   | Date _   | 4-15-               | ,2015         |
| Representative  |          |                     |               |
| moves to amend the bill on page 3, line 42, by rewrit   | ing that | line to read:       |               |
| "imprisonment. The Department may enter into a rethe specifics of transferring information to the Chero |          |                     | ng addressing |
| SIGNED Amendment Sponsor  |          |                     |               |
| SIGNED Committee Chair if Senate Committee  | Amendm   | nent                |               |
| ADOPTED FAILED  |          | TABLED              |               |

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# **HOUSE BILL 856:** Expunctions/Boating Violations

### 2015-2016 General Assembly

Committee: Introduced by:

House Judiciary I

Date:

April 21, 2015

Analysis of:

Reps. Fisher, Hardister, Harrison, B. Turner PCS to First Edition

Prepared by: R. Erika Churchill

Committee Counsel

H856-CSST-26

#### SUMMARY:

[As introduced, this bill was identical to S570, as introduced by Sens. Bryant, McKissick, Daniel, which is currently in Unknown.]

**CURRENT LAW:** In limited circumstances, North Carolina law permits the expunction of certain offenses from a person's criminal record. Expunction is the process by which a record of criminal conviction is removed by order of the court, and a person is restored to the status the person occupied before the arrest or indictment. The terms "expunction" and "expungement" are often used interchangeably, and both appear in the statutes. There are several requirements that must be met for expunction, and a person may generally be granted only one expunction in his or her lifetime.

Several provisions of the General Statutes contain provisions authorizing a person to request an expunction if the person has no specified criminal convictions, other than a traffic violation.

**BILL ANALYSIS:** The PCS would amend the following statutes to provide that a person must not be denied an expunction under the following statutes solely because the person has a conviction for a misdemeanor boating violation:

- G.S. 15A-145.5(c) "Expunction of certain misdemeanors and felonies; no age limit."
- G.S. G.S. 15A-145 "Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors."
- G.S. 15A-145.1 "Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses."
- G.S. 15A-145.2 "Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses."
- G.S. 15A-145.3 "Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses."
- G.S. 15AS-145.4 "Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony."
- G.S. 15A-145.6(f) "Expunction for certain defendants convicted of prostitution."
- G.S. 14-50.30 "Expunction of records."

The PCS would also establish the ability of a person to expunge up to 2 youthful drug offenses, if the person has been drug free for at least 12 months prior to the petition, and the petition is filed at least 10

O. Walker Reagan
Director



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years after the date of conviction or when the active sentence, period of probation, and post-release supervision has been served, whichever is later.

**EFFECTIVE DATE:** Effective when it becomes law.

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### HOUSE BILL 856 PROPOSED COMMITTEE SUBSTITUTE H856-CSSTf-26 [v.4]

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| Sponsors:    |          |
| Referred to: |          |

### April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON SHALL NOT BE DENIED AN EXPUNCTION SOLELY BECAUSE THE PERSON HAS A CONVICTION FOR A BOATING VIOLATION, AND TO ALLOW FOR THE EXPUNCTION OF CERTAIN YOUTHFUL DRUG OFFENSES.

The General Assembly of North Carolina enacts:

### **SECTION 1.** G.S. 15A-145.5(c) reads as rewritten:

- "(c) A person may file a petition, in the court where the person was convicted, for expunction of a nonviolent misdemeanor or nonviolent felony conviction from the person's criminal record if the person has no other misdemeanor or felony convictions, other than a traffic or boating violation. The petition shall not be filed earlier than 15 years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The petition shall contain, but not be limited to, the following:
  - (1) An affidavit by the petitioner that the petitioner has been of good moral character since the date of conviction for the nonviolent misdemeanor or nonviolent felony and has not been convicted of any other felony or misdemeanor, other than a traffic or boating violation, under the laws of the United States or the laws of this State or any other state.
  - (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.
  - (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
  - (4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual, a search by the Department of Public Safety for any outstanding warrants on pending criminal cases, and 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 Public Safety 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.

Upon filing of the petition, 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. Upon good cause shown, the court may grant the district attorney an additional 30 days to file objection to the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

The presiding judge is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct since the conviction. The court shall review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers, district attorneys, and victims of crimes committed by the petitioner.

If the court, after hearing, finds that the petitioner has not previously been granted an expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or 15A-145.4; the petitioner has remained of good moral character; the petitioner has no outstanding warrants or pending criminal cases; the petitioner has no other felony or misdemeanor convictions other than a traffic violation; the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner; and the petitioner was convicted of an offense eligible for expunction under this section and was convicted of, and completed any sentence received for, the nonviolent misdemeanor or nonviolent felony at least 15 years prior to the filing of the petition, it may order that such person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information.

If the court denies the petition, the order shall include a finding as to the reason for the denial."

### **SECTION 2.** G.S. 15A-145 reads as rewritten:

# "§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.

- (a) Whenever any person who has not previously been convicted of any felony, or misdemeanor other than a traffic <u>or boating</u> violation, under the laws of the United States, the laws of this State or any other state, (i) pleads guilty to or is guilty of a misdemeanor other than a traffic <u>or boating</u> violation, and the offense was committed before the person attained the age of 18 years, or (ii) pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), and the offense was committed before the person attained the age of 21 years, he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than: (i) two years after the date of the conviction, or (ii) the completion of any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:
  - (1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic or boating violation, under the laws of the United States or the laws of this State or any other state.
  - (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

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- A statement that the petition is a motion in the cause in the case wherein the (3) petitioner was convicted.
- Repealed by Session Laws 2010-174, s. 2, effective October 1, 2010, and (4) applicable to petitions for expunctions filed on or after that date.
- An application on a form approved by the Administrative Office of the (4a) Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and 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 Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the
- An affidavit by the petitioner that no restitution orders or civil judgments (5) representing amounts ordered for restitution entered against him are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic or boating violation, for two years from the date of conviction of the misdemeanor in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and (i) petitioner was not 18 years old at the time of the offense in question, or (ii) petitioner was not 21 years old at the time of the offense of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

### **SECTION 3.** G.S. 15A-145.1 reads as rewritten:

### " § 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.

Whenever any person who has not previously been convicted of any felony or misdemeanor other than a traffic or boating violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of (i) a Class H felony under Article 13A of Chapter 14 of the General Statutes or (ii) an enhanced offense under G.S. 14-50.22, or has been discharged and had the proceedings against the person dismissed pursuant to G.S. 14-50.29, and the offense was committed before the person attained the age of 18 years, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, whichever occurs later. The petition shall contain, but not be limited to, the following:

- (1) An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony or misdemeanor other than a traffic or boating violation under the laws of the United States or the laws of this State or any other state.
- (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.
- (3) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) Repealed by Session Laws 2010-174, s. 4, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.
- (4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and 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 Public Safety 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.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.

If the court, after hearing, finds that (i) the petitioner was dismissed and the proceedings against the petitioner discharged pursuant to G.S. 14-50.29 and that the person had not yet attained 18 years of age at the time of the offense or (ii) the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic or boating violation for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner, and the petitioner had not attained the age of 18 years at the time of the offense in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information, and that the record be expunged from the records of the court. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment or information, or trial, or response to any inquiry made of the person for any purpose. The court shall also direct all law enforcement agencies, the Division of Adult Correction of the Department of Public Safety, the Division of Motor Vehicles, and any other State or local government agencies identified by the

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petitioner as bearing record of the same to expunge their records of the petitioner's criminal charge and any conviction resulting from the charge. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. . . . . ! !

#### **SECTION 4.** G.S. 15A-145.2 reads as rewritten:

#### "§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.

- Whenever a person is discharged, and the proceedings against the person dismissed, pursuant to G.S. 90-96(a) or (a1), and the person was not over 21 years of age at the time of the offense, the person may apply to the court for an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:
  - An affidavit by the petitioner that he or she has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony or misdemeanor other than a traffic or boating violation under the laws of the United States or the laws of this State or any other state;
  - Verified affidavits by two persons who are not related to the petitioner or to (2) each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he or she lives, and that the petitioner's character and reputation are good;
  - Repealed by Session Laws 2010-174, s. 5, effective October 1, 2010, and (3) applicable to petitions for expunctions filed on or after that date.
  - An application on a form approved by the Administrative Office of the (3a) Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and 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 Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him or her dismissed and that the person was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies, the Division of Adult Correction, the Division of Motor Vehicles, and any other State and local government agencies identified by the petitioner as bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

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offense under any state or federal laws; (ii) any offense under Chapter 90 of the General Statutes; or (iii) an offense under any statute of the United States or any state relating to controlled substances included in any schedule of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes, pleads guilty to or has been found guilty of a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules I through VI of Chapter 90, or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or pleads guilty to or has been found guilty of a felony under G.S. 90-95(a)(3), the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

Whenever any person who has not previously been convicted of (i) any felony

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the petitioner's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes for possessing a controlled substance included within Schedules I through VI of Article 5 of Chapter 90 of the General Statutes or for possessing drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3), that the petitioner has no disqualifying previous convictions as set forth in this subsection, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic or boating violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status the petitioner occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order all law enforcement agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local agencies identified by the petitioner as bearing records of the conviction and records relating thereto to expunge their records of the

conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

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#### **SECTION 5.** G.S. 15A-145.3 reads as rewritten:

# "§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.

- (a) Whenever a person is discharged and the proceedings against the person dismissed under G.S. 90-113.14(a) or (a1), such person, if he or she was not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:
  - An affidavit by the petitioner that the petitioner has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony or misdemeanor other than a traffic <u>or boating</u> violation under the laws of the United States or the laws of this State or any other state;
  - (2) Verified affidavits by 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 his or her character and reputation are good;
  - (3) Repealed by Session Laws 2010-174, s. 6, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.
  - (3a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and 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 Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against the person dismissed and that he or she was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-15.

(c) Whenever any person who has not previously been convicted of an offense under Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States H856-CSSTf-26 [v.4] House Bill 856 Page 7

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or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of violation of Article 5A of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by G.S. 90-113.22, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic or boating violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

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#### **SECTION 6.** G.S. 15A-145.4 reads as rewritten:

# "§ 15A-145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.

(c) Whenever any person who had not yet attained the age of 18 years at the time of the commission of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic or boating violation under the laws of the United States or the

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laws of this State or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition shall not be filed earlier than four years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain the following:

- (1) An affidavit by the petitioner that the petitioner has been of good moral character since the date of conviction of the nonviolent felony in question and has not been convicted of any other felony or any misdemeanor other than a traffic or boating violation under the laws of the United States or the laws of this State or any other state.
- (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.
- (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing (i) a State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual; (ii) a search by the Department of Public Safety 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 Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.
- (5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.
- (6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.
- (7) An affidavit by the petitioner that the petitioner possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

- (e) The court may order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:
  - (1) The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic or boating violation, for four years from the date of conviction of the nonviolent felony

- **General Assembly of North Carolina** in question or any active sentence, period of probation, or post-release 1 2 supervision has been served, whichever is later. The petitioner has not previously been convicted of any felony or 3 (2) misdemeanor other than a traffic or boating violation under the laws of the 4 United States or the laws of this State or any other state. 5 The petitioner has no outstanding warrants or pending criminal cases. (3) 6 The petitioner has no outstanding restitution orders or civil judgments 7 (4)representing amounts ordered for restitution entered against the petitioner. 8 The petitioner was less than 18 years old at the time of the commission of 9 (5) the offense in question. 10 The petitioner has performed at least 100 hours of community service since 11 (6) the time of the conviction and possesses a high school diploma, a high 12 13 school graduation equivalency certificate, or a General Education Development degree. 14 The search of the confidential records of expunctions conducted by the 15 (7) Administrative Office of the Courts shows that the petitioner has not been 16 previously granted an expunction. 17 ....!! 18 **SECTION 7.** G.S. 15A-145.6(f) reads as rewritten: 19 The court shall order that the person be restored, in the contemplation of the law, to 20 "(f) 21 the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing: 22 23 (1)24 (2) 25 26 27 (3) 28 (4) 29 30 (5)31 32 33
  - The criteria set out in subsection (b) of this section are satisfied.
  - The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic or boating violation, since the date of conviction of the prostitution offense in question.
  - The petitioner has no outstanding warrants or pending criminal cases.
  - The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.
  - 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

**SECTION 8.** Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

#### "§ 15A-145.7. Expunction of certain youth drug offenses.

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- The following definitions apply to this section: (a)
  - Drug Free. Free from drug dependency and any unlawful use of controlled (1)substances.
  - $(2)_{-}$ Youthful Drug offense. – A conviction of any violation of G.S. 90-95(a)(3) or G.S. 90-113.22 where the defendant had not yet attained the age of 25 years at the time of the commission of the offense.
- Notwithstanding any other provision of law, if the person is convicted of more than (b) one youthful drug offense in the same session of court, then the multiple youthful drug offense convictions shall be treated as one youthful drug offense conviction under this section, and the expunction order issued under this section shall provide that the multiple youthful drug offense convictions shall be expunged from the person's record in accordance with this section.
- A person may file a petition in the court where the person was convicted for (c) expunction of up to two youthful drug offense convictions from the person's criminal record if the person has no misdemeanor or felony convictions, other than a traffic or boating violation,

for a period of at least 10 years prior to the date that the petition is filed; convicted of a youthful drug offense that is eligible pursuant to subsection (a) of this section; and provides proof pursuant to subsection (d) of this section that the person is drug free and has been drug free for a period of at least one year prior to the date that the petition is filed. The petition shall not be filed earlier than (i) 10 years after the date of the conviction or (ii) when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. If the petition is to expunge two youthful drug offense convictions, the petition shall not be filed earlier than 10 years after the date of the last conviction or when any active sentence, period of probation, and post-release supervision has been served for the last conviction, whichever occurs later.

- (d) To establish that a person is drug free and has been drug free for a period of at least one year prior to the date that the petition is filed, a person shall provide proof that the person has been tested for drugs every 30 days for a period of at least one year immediately preceding the date that the petition is filed and tested drug free at each testing, and shall also provide a drug evaluation for review by the court. The Administrative Office of the Courts, in cooperation with the Department of Health and Human Services, shall determine what type of documentation must be provided to the court regarding the required drug testing and evaluation and the format in which the documentation shall be presented to the court for review.
  - (e) The petition shall contain, but not be limited to, the following:
    - An affidavit by the petitioner that the petitioner is of good moral character and has not been convicted of any felony or misdemeanor, other than a traffic or boating violation, under the laws of the United States or the laws of this State or any other state for a period of at least 10 years prior to the date that the petition is filed.
    - (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.
    - (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
    - (4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual, a search by the Department of Public Safety for any outstanding warrants on pending criminal cases, and 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 Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.
    - (5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.
    - (6) Documentation in a format approved by the Administrative Office of the Courts establishing that the petitioner is drug free and has been drug free for a period of at least one year prior to the date of the filing of the petition.

Upon filing of the petition, 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. Upon good cause shown, the court may grant the district attorney an

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additional 30 days to file objection to the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

The presiding judge may call upon a probation officer for any additional investigation or verification of the petitioner's conduct since the conviction. The court shall review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers, district attorneys, and victims of crimes committed by the petitioner.

- (f) If the court after hearing finds that the petitioner has not previously been granted an expunction under this section, the petitioner is drug free; the petitioner is of good moral character; the petitioner has no outstanding warrants or pending criminal cases; the petitioner has no felony or misdemeanor convictions other than a traffic violation, for a period of 10 years prior to the filing of the petition; the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner; the petition for expunction of a youthful drug offense conviction was filed at least 10 years after the date of conviction or, if the petition for expunction is for two youthful drug offense convictions, the petition was filed at least 10 years after the date of the later conviction; and the petitioner has completed any sentence received for the conviction, it may order that such person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information. If the court denies the petition, the order shall include a finding as to the reason for the denial.
- (g) No person as to whom an order has been entered pursuant to this section shall be held thereafter under any provision of any law 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 convictions to the certifying Commission, regardless of whether or not the 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 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 upon receipt from the petitioner of an order entered pursuant to this section. The agency shall also vacate and reconsider any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged.
- must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent."

SECTION 9. This act is effective when it becomes law.

#### NORTH CAROLINA GENERAL ASSEMBLY **HOUSE OF REPRESENTATIVES**

#### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

#### FAVORABLE COM SUB, UNFAVORABLE ORIGINAL BILL

224 HB AOC Omnibus Changes.-AB

Draft Number:

H224-PCS30346-ST-25

Serial Referral: Recommended Referral:

None None

Long Title Amended:

No

Floor Manager:

R. Turner

HB 371 Terror Claims/Damages/Liability for Support.

Draft Number:

H371-PCS10357-ST-29

Serial Referral: Recommended Referral: Long Title Amended:

None None No

Floor Manager:

Whitmire

HB 700 The I. Beverly Lake, Jr., Fair Trial Act.

Draft Number:

H700-PCS40426-TT-7

Serial Referral: Recommended Referral: None Long Title Amended:

Yes

None

Floor Manager:

Daughtry

HB 713 Body & Dash Cam Recording/Public Access.

Draft Number:

H713-PCS20326-TT-4

Serial Referral: Recommended Referral: Long Title Amended:

None No

None

Floor Manager:

Faircloth

HB 824 Concealed Handgun Permit/Admin. Law Judge.

Draft Number:

H824-PCS20324-ST-27

Serial Referral: Recommended Referral: Long Title Amended:

None No

None

Floor Manager:

McNeill

856 HB Expunctions/Boating Violations.

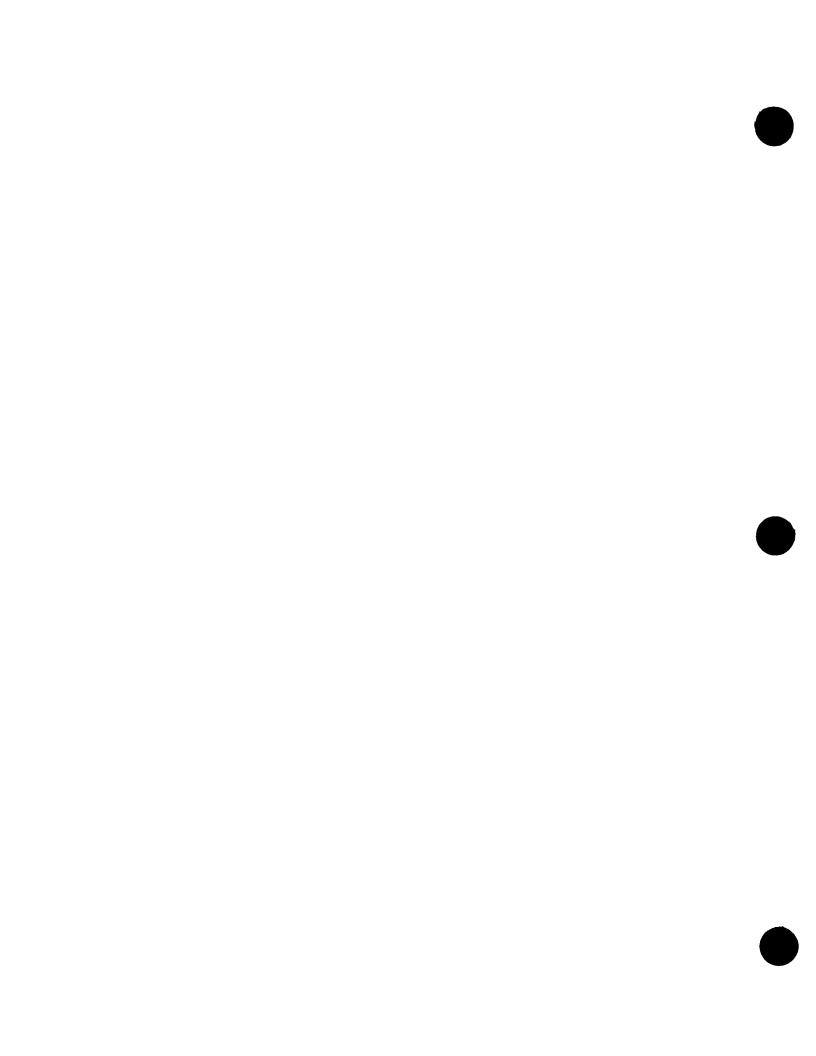
Draft Number:

H856-PCS10358-STf-26

Serial Referral: None Recommended Referral: None Long Title Amended:

Floor Manager:

Yes Fisher



## NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

#### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

#### FAVORABLE COM SUB, UNFAVORABLE ORIGINAL BILL

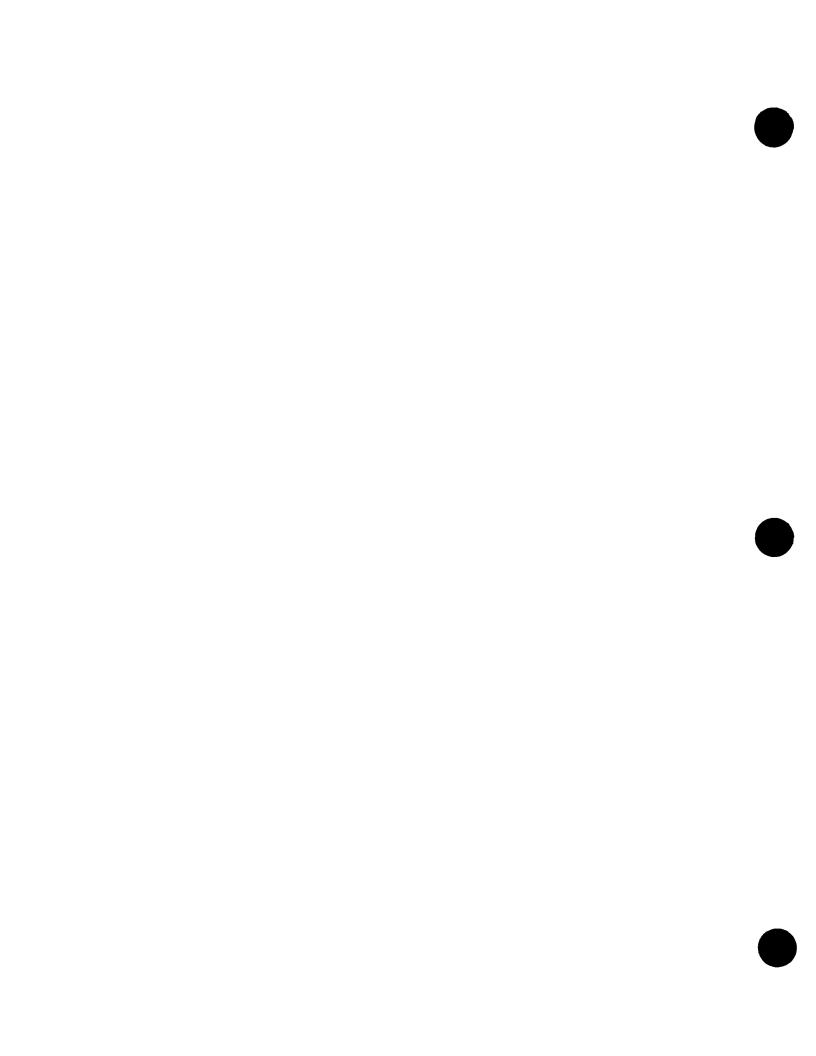
HB **850** Eastern Band of Cherokees/Law Enforcement.

Draft Number: H850-PCS20325-ST-30

Serial Referral: None Recommended Referral: None Long Title Amended: No Floor Manager: Hager

TOTAL REPORTED: 1





|  | Date:               | 1-22-15                  |      |
|--|---------------------|--------------------------|------|
| Bill Number 224  PCS H 224 - CSST - 25  Motion to be before the committee by | -V-2                | azenez                   | bill |
| Motion to be before the committee by   | Harr                | _                        |      |
|  | explained the bill. |                          |      |
| Discussion on the Bill YES or NO   |                     |                          |      |
|  | motioned for:       |                          |      |
| Favorable Report   | Adoption            |                          |      |
| Unfavorable Report   | Unfavorable to o    | riginal bill, fav to PCS |      |
| No vote  |                     |                          |      |
| Amendments: :  |                     |                          |      |
| Serial referral to:  |                     |                          |      |
| Speakers:  |                     |                          |      |
| landouts:  |                     |                          |      |
| Ton Mury A01   | <i>.</i><br>        |                          |      |
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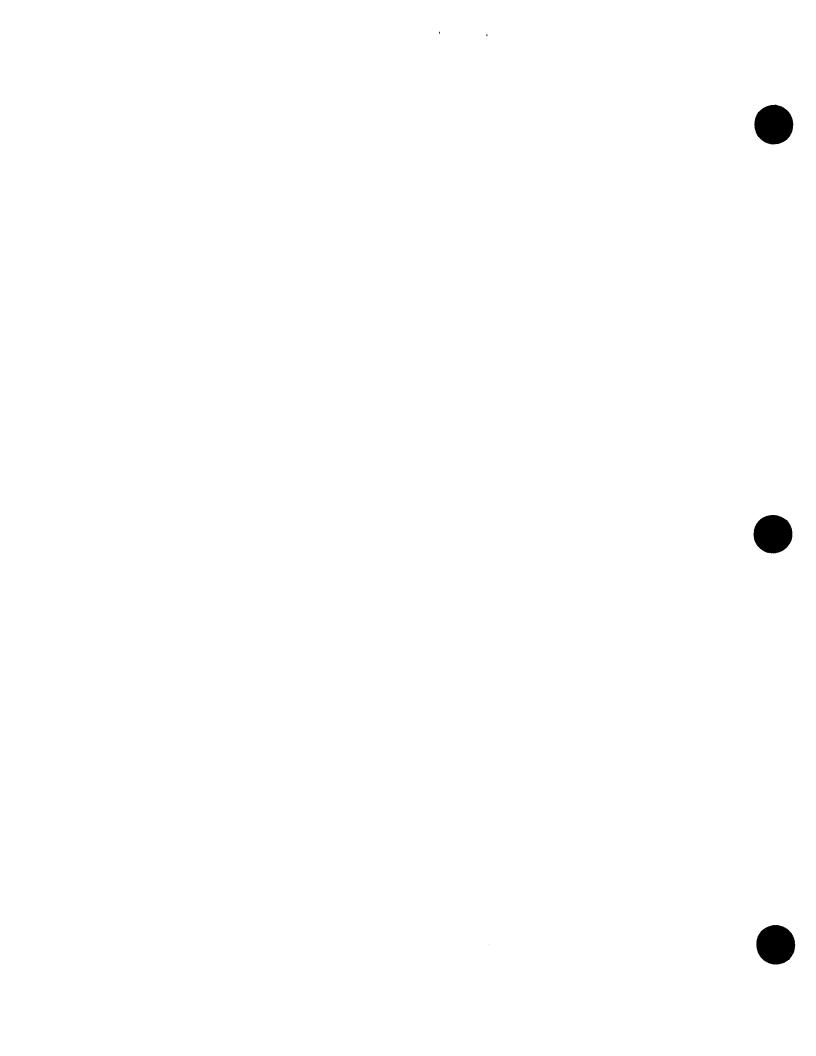
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| Date: 4-22-15  |
|--|
| Bill Number 371  |
| PCS_H371-CSST-29-V-1   |
| Motion to be before the committee by                               |
| Rep Whythaul explained the bill.  Discussion on the Bill YES or NO |
| Rep_Mcsleil motioned for:  |
| Adoption   |
| Unfavorable ReportUnfavorable to original bill, fav to PCS         |
| No vote  |
| Amendments::   |
| Serial referral to:  |
| Speakers:  |
| Handouts:  |
| Oct 1st after that date / civil claim                              |

. .

| Date: 4-22-15   |
|---|
| PCS_H_700-CSST  |
| Rep Daughtry explained the bill.  Discussion on the Bill YES or NO  |
| Rep motioned for: Favorable Report Adoption Unfavorable Report Unfavorable to original bill, fav to PCS No vote Amendments: : |
| Serial referral to:   |
| Speakers: B Chris Momma NC Center actual innocence  |
| Handouts: Kimberly Overlon - Ni Contemp<br>of DA'S  |

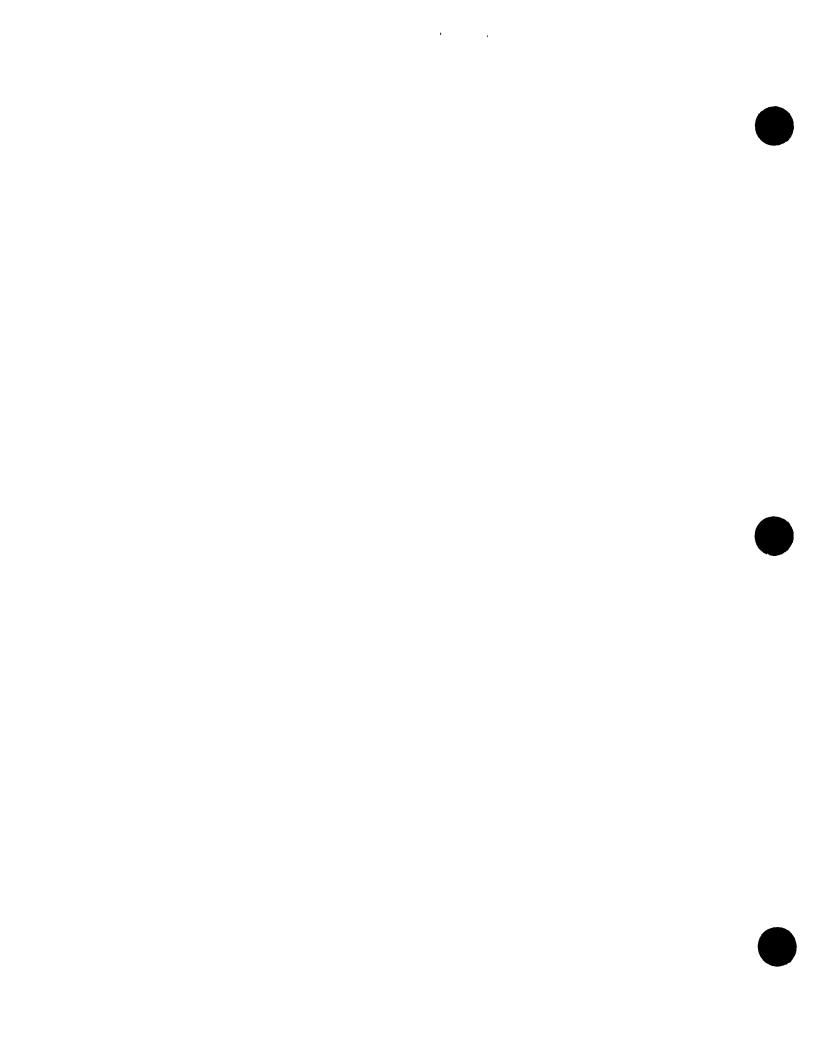
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| Date: 4-22-15   |
|---|
| Bill Number $\frac{713}{PCS}$ PCS $H - 713 - CSST - V - 2$ Motion to be before the committee by $HarduSter$ |
| Rep Far Cloth explained the bill.  Discussion on the Bill YES or NO   |
| Rep   |
| Serial referral to:   |
| Speakers:  Martin - Sect 2 PCS  Robinsen - Cost of getting a Copy  Handouts:                                |

| •  | Date: 4-22-15                            |
|--|--|
| Bill Number 774                              |  |
| PCS H-774 CSTT-                              | V-2                                      |
| Motion to be before the committee by _       |  |
| Rep Dlughty Discussion on the Bill YES or NO | explained the bill.                      |
| Rep  | motioned for:                            |
| Favorable Report                             | Adoption                                 |
| Unfavorable Report                           | Unfavorable to original bill, fav to PCS |
| Amendments: : H8                             | 50-AST-43 amendment                      |
| Serial referral to:                          |  |
| Speakers:                                    |  |
| Handouts:                                    |  |
| Ballard Evrett-<br>NC Consi<br>Beath         | erratures<br>Peralty monday              |

Hall-



|      | Date: $4-22-15$   |
|------|---|
|      | Bill Number 850   |
|      | Motion to be before the committee by                          |
|      | Rep Hay explained the bill.  Discussion on the Bill YES or NO |
|      | Rep motioned for:   |
|      | Favorable Report Adoption                                     |
|      | Unfavorable ReportUnfavorable to original bill, fav to PCS    |
|      | No vote   |
| JUYY | Amendments:: H 850- A ST - 43 [V. 1]                          |
|      | Serial referral to:   |
|      | Speakers: page 3 live 42                                      |
|      | Handouts:   |
|      | Burr explained amendment                                      |
|      | Dand Gruce dept. of public Selety                             |
|      | amount to RS  |

| Date: 4-22-15   |
|---|
| Bill Number $854$ PCS $+856$ - $CSST - 26$ $CV.4$ Motion to be before the committee by $S20/ca$ |
| Rep Fisher explained the bill. — Enka Churchill Discussion on the Bill YES or NO                |
| Rep_ Hardister motioned for: Favorable Report Adoption  |
| Unfavorable ReportUnfavorable to original bill, fav to PCS                                      |
| No vote   |
| Amendments: :   |
| Serial referral to: Finance   |
| Speakers: Enka Churchell explained Handouts: He bill.   |
| p. 10 - add another basis   |
| bi-partisan bill (Title Change  |
| Hardister   |

.

|                                      | Date: 4-22-15                            |
|--------------------------------------|--|
| Bill Number 824                      |  |
| PCS                                  |  |
| Motion to be before the committee by |  |
| Rep_ McHeill                         | explained the bill.                      |
| Discussion on the Bill YES or NO     |  |
| Rep Walad App  Favorable Report      | motioned for: Adoption                   |
| Unfavorable Report                   | Unfavorable to original bill, fav to PCS |
| No vote                              |  |
| Amendments: :                        |  |
| Serial referral to:                  |  |
| Speakers: Henry admin Judyl          | to have correlated                       |
| Handouts:                            | Canol                                    |
| Martin                               |  |

**House Staff** 

| Committee: House Judiciary 1 Date: ZZAPR ZOIS |
|---|
| Pages   |
| 1. Name Ethan Mastin                          |
| County Surry Sponsor Sarah Stevens            |
| 2. Name BYRDE WELLS, Jr                       |
| County DARE Sponsor PAUC TINE                 |
| 3. Name                                       |
| County Sponsor                                |
| 4. Name                                       |
| CountySponsor                                 |
| 5. Name                                       |
| CountySponsor                                 |
|   |
| Barry Moore BARRY MOORE                       |
|   |
| BH Powell B. H. Powell                        |
| David Linthicum DAUID LINTHICUM               |

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## **VISITOR REGISTRATION SHEET**

| House | <b>Ethics</b> | Committee |
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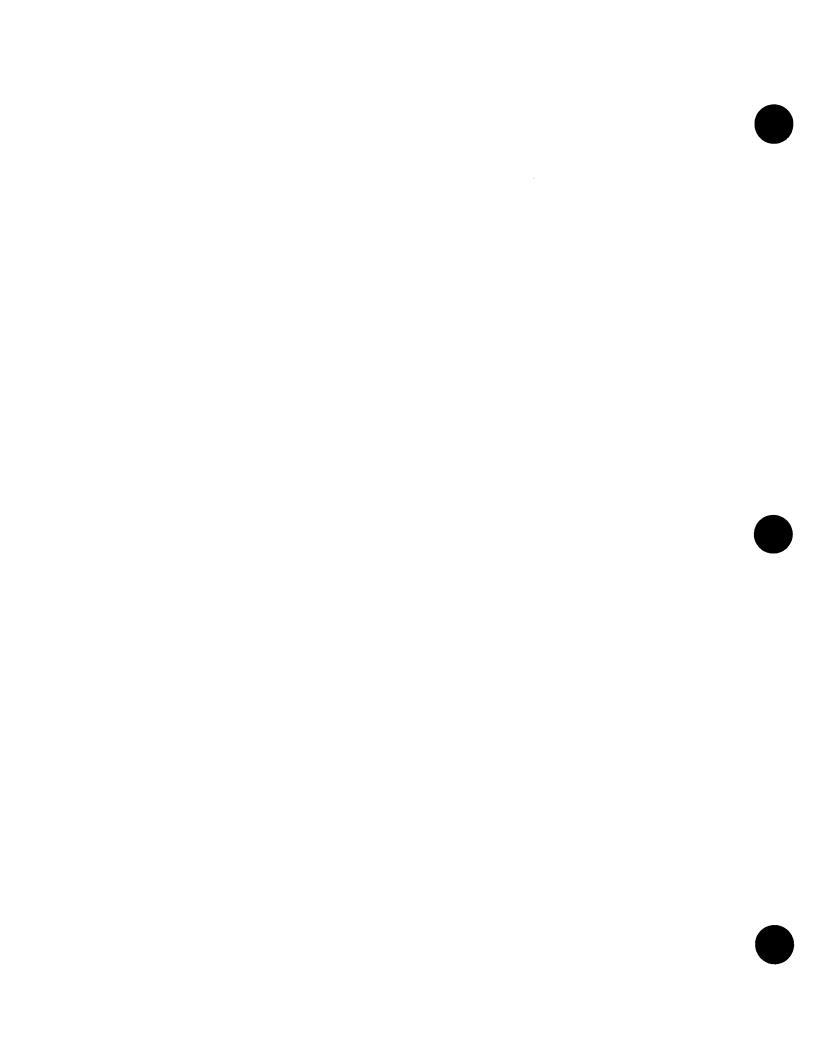
04/22/15

Name of Committee

**Date** 

## VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME            | FIRM OR AGENCY AND ADDRESS |  |
|-----------------|----------------------------|--|
| Tarvah Callaban | · NCCADP                   |  |
| LALLAND EVERETT | NECCADP                    |  |
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### **VISITOR REGISTRATION SHEET**

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04/22/15

Name of Committee

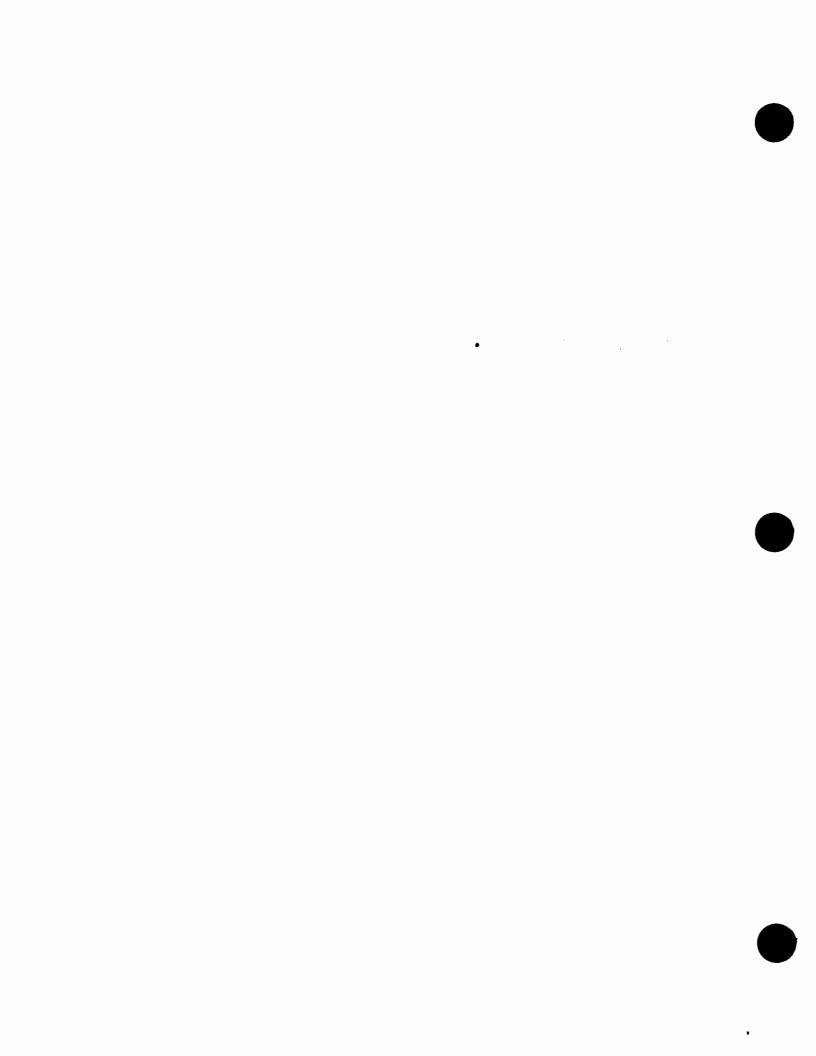
Date

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**NAME** 

#### FIRM OR AGENCY AND ADDRESS

| DEND Jenya    | DMAC, Tulego                    |
|---------------|---------------------------------|
| Tom West      | NOTOU                           |
| TRUDAY MU     |                                 |
| SCOTT SCHERR  | CITIZIEN                        |
| Untorio Hurch | Intern                          |
| erah Preston  | ACLU-NC                         |
| Thinlay Ovata | Conference of Distruct / thomas |
| LAD PENTS CAN | CAPC                            |
| Chris Mumme   | NCCAI                           |
| Susan Doyle   | District Attorney - 11B         |
| 3 m David     | District Attorney - 5           |
| Sarah Collins | NCLIM                           |



## **VISITOR REGISTRATION SHEET**

Name of Committee

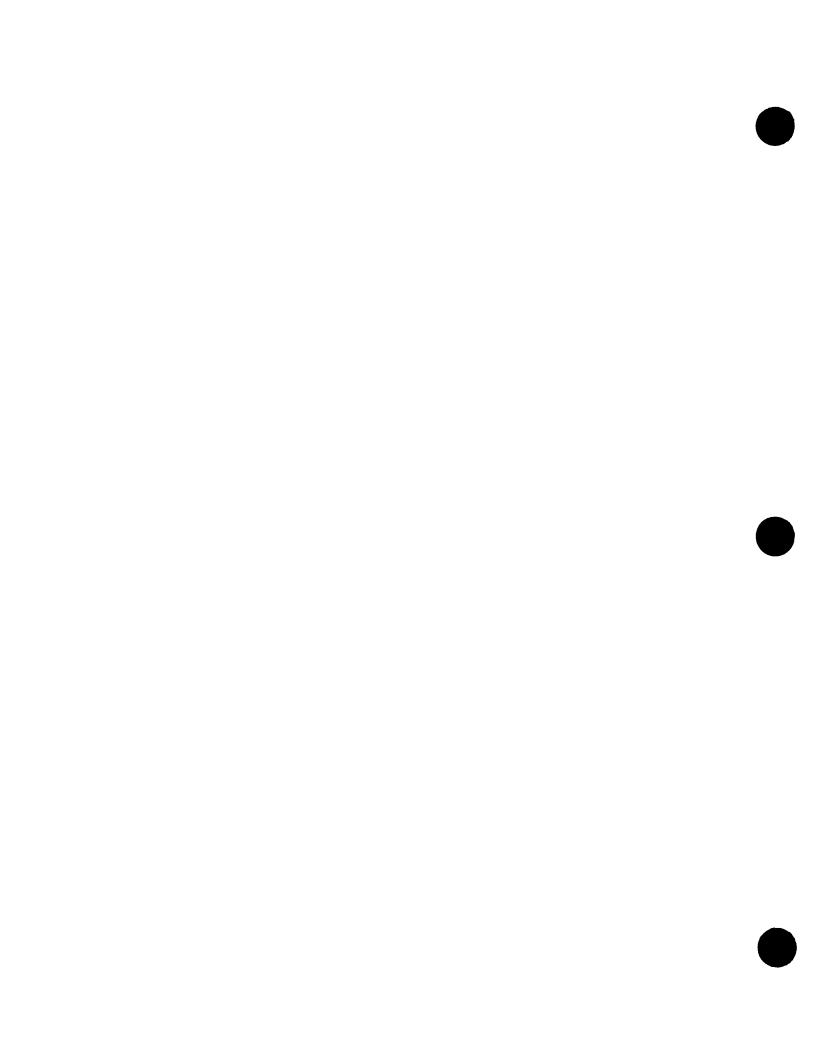
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### FIRM OR AGENCY AND ADDRESS

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| City of datate    |
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#### VISITOR REGISTRATION SHEET

4-22-15

Name of Committee

Date

## VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME                   | FIRM OR AGENCY AND ADDRESS |
|------------------------|----------------------------|
| Lauren Finn            | PPSAT                      |
| Julia Santiago         | DPSATT                     |
| Emily Caller           | PPSAT                      |
| Ryan Combs             | DPS                        |
| Anna Roberto           | PSG                        |
| INJ ON KILL            | · · ·                      |
| Chris Miles            | Al?                        |
| Elizabeth Bisu         | BP P                       |
| Sharon Sellous         | NCIC                       |
| Kendra Mongomery-Blinn | NCIIC                      |
| Lindsey Guice Snuth    | NCIIC                      |
| Milfred (WOSS          | EBCI                       |

## 

Corrected #3: Bills Added: HB676 and HB664

# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

You are hereby notified that the House Committee on Judiciary I will meet as follows:

DAY & DATE: Monday, April 27, 2015

TIME: 3:30 PM LOCATION: 415 LOB

The following bills will be considered:

| BILL NO. | SHORT TITLE                           | SPONSOR                    |
|----------|---------------------------------------|----------------------------|
| HB 566   | Amend Eyewitness ID/Show-Up.          | Representative Glazier     |
|          | •                                     | Representative Reives      |
|          |                                       | Representative Baskerville |
|          |                                       | Representative Michaux     |
| HB 678   | Amend Innocence Commission            | Representative Glazier     |
|          | Statutes.                             | Representative Daughtry    |
|          |                                       | Representative Stam        |
|          |                                       | Representative Reives      |
| HB 651   | Appraisal Bd. Recordkeeping & Bkgrd.  | Representative Hardister   |
|          | Checks.                               | Representative Szoka       |
|          |                                       | Representative B. Turner   |
| HB 774   | Restoring Proper Justice Act.         | Representative Daughtry    |
| HB 896   | Forcible Entry Into Car/Child Trapped | Representative Hanes       |
|          | Inside.                               | Representative Tine        |
|          |                                       | Representative McNeill     |
|          |                                       | Representative Reives      |
| HB 570   | Facilitate Successful Reentry.        | Representative C. Graham   |
|          |                                       | Representative Pierce      |
|          |                                       | Representative Baskerville |
|          |                                       | Representative Glazier     |
| HB 811   | Law Enforcement Body-Worn             | Representative Floyd       |
|          | Camera/Study.                         | Representative Faircloth   |
|          |                                       | Representative Brockman    |
|          |                                       | Representative McNeill     |
| HB 664   | Safer Communities.                    | Representative Brawley     |
|          |                                       | Representative McNeill     |
|          |                                       | Representative Saine       |
| HB 676   | Amend Compensation for Erroneous      | Representative Glazier     |
|          |                                       |                            |

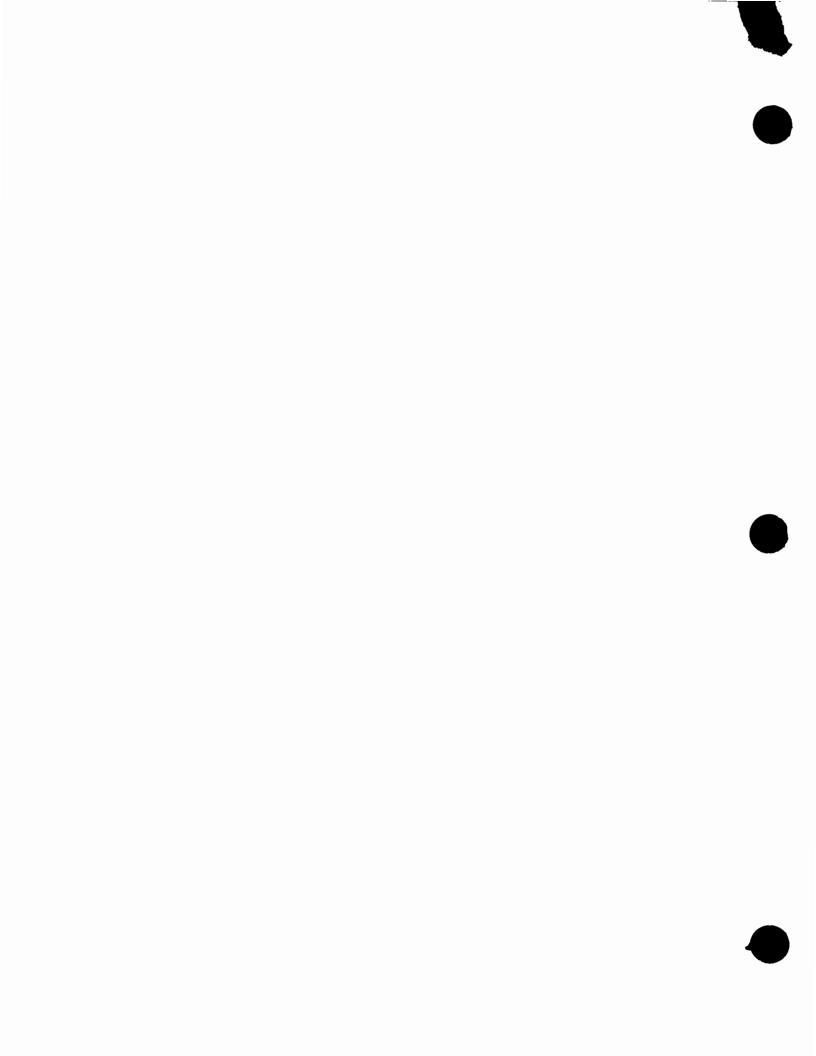
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## Representative Daughtry

Respectfully,

Representative N. Leo Daughtry, Chair

| I hereby certify this notice was filed by the committee assistant at the following offices at 9:17 AM or Monday, April 27, 2015. |
|--|
| Principal Clerk<br>Reading Clerk – House Chamber   |
| Ian Coneland (Committee Assistant)   |



## House Committee on Judiciary I Monday, April 27, 2015, 3:30 PM 415 Legislative Office Building

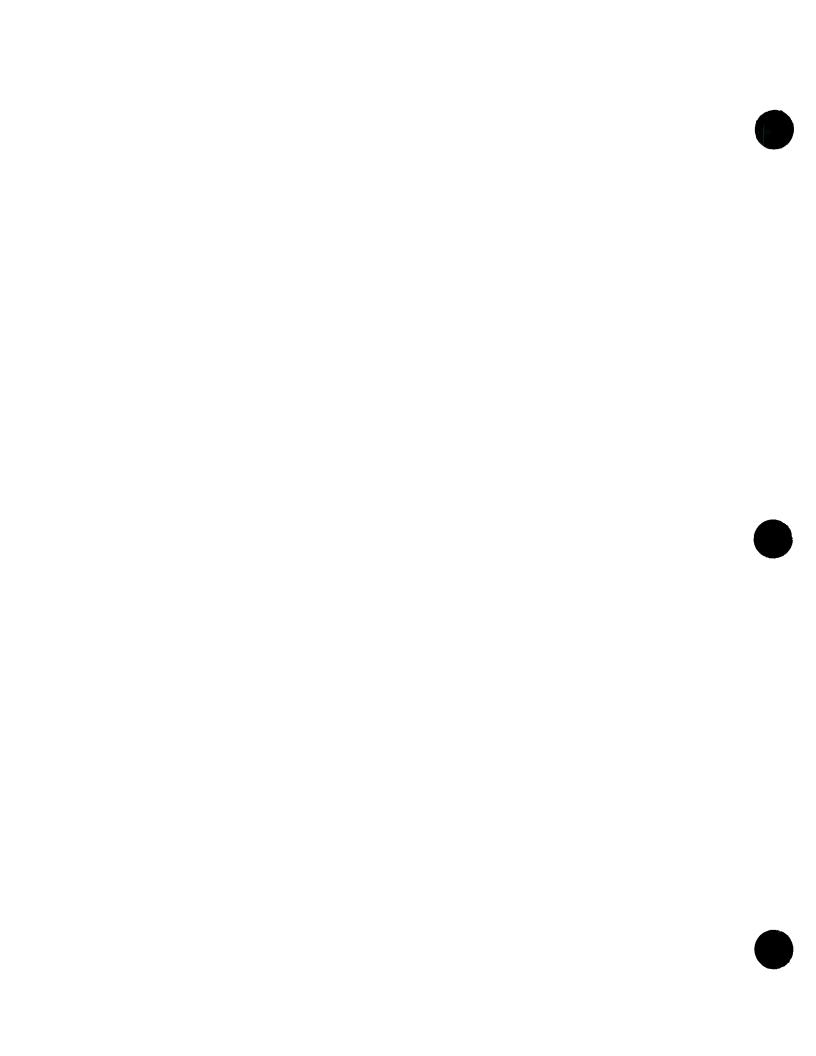
#### **AGENDA**

## Welcome and Opening Remarks

#### **Introduction of Pages**

#### **Bills**

| anall BILL I |                                       | SPONSOR Representative Glazier — money conduct            |
|--------------|---------------------------------------|---|
| Who HB 560   | Amend Eyewitness ID/Show-Up.          |   |
|              |                                       | Representative Reives                                     |
|              |                                       | Representative Baskerville                                |
| N            |                                       | Representative Michaux                                    |
| (mar HB 678  | Amend Innocence Commission            | Representative Glazier  Representative Daughtry  To PCS   |
| 00.          | Statutes.                             |   |
|              |                                       | Representative Stam                                       |
| 15th         |                                       | Representative Reives                                     |
| HB 65        | Appraisal Bd. Recordkeeping & Bkgrd.  | Representative Hardister - Leo, This Representative Szoka |
|              | Checks.                               | Representative Szoka                                      |
|              |                                       | Representative B. Turner                                  |
| HB 774       | Restoring Proper Justice Act.         | Representative Daughtry                                   |
| HB 890       | Forcible Entry Into Car/Child Trapped | Representative Hanes                                      |
|              | Inside.                               | Representative Tine                                       |
|              |                                       | Representative McNeill                                    |
|              |                                       | Representative Reives                                     |
| HB 570       | Facilitate Successful Reentry.        | Representative C. Graham                                  |
|              |                                       | Representative Pierce                                     |
| . /          |                                       | Representative Baskerville                                |
| X            |                                       | Representative Glazier                                    |
| 105 HB 81    | Law Enforcement Body-Worn             | Representative Floyd — hold till Representative Faircloth |
| 1000         | Camera/Study.                         | Representative Faircloth                                  |
|              |                                       | Representative Brockman                                   |
|              |                                       | Representative McNeill                                    |
| HB 664       | Safer Communities.                    | Representative Brawley                                    |
|              |                                       | Representative McNeill                                    |
|              |                                       | Representative Saine                                      |
| HB 670       | Amend Compensation for Erroneous      | Representative Glazier                                    |
|              | Conviction.                           | Representative Daughtry                                   |
|              |                                       |   |



#### House Committee on Judiciary I Monday, April 27, 2015 at 3:30 PM Room 415 of the Legislative Office Building

#### MINUTES

The House Committee on Judiciary I met at 3:30 PM on April 27, 2015 in Room 415 of the Legislative Office Building. Representatives Daughtry, Burr, Jackson, Arp, Hall, Hardister, Martin, McNeill, Robinson, and Steinburg attended.

Representative N. Leo Daughtry - Chair, presided.

The following bills were considered:

HB 566 Amend Eyewitness ID/Show-Up. (Representatives Glazier, Reives, Baskerville, Michaux) – Favorable committee substitute, unfavorable orginal bill and re-referred to Rules, Calendar, and Operations of the House

HB 678 Amend Innocence Commission Statutes. (Representatives Glazier, Daughtry, Stam, Reives) – not heard

HB 651 Appraisal Bd. Recordkeeping & Bkgrd. Checks. (Representatives Hardister, Szoka, B. Turner) – favorable committee substitute, unfavorable original bill

HB 774 Restoring Proper Justice Act. (Representative Daughtry) - not heard

HB 896 Forcible Entry Into Car/Child Trapped Inside. (Representatives Hanes, Tine, McNeill, Reives) - favorable

HB 570 Facilitate Successful Reentry. (Representatives C. Graham, Pierce, Baskerville, Glazier) – favorable committee substitute, unfavorable orginal bill and re-referred to Judiciary II

HB 811 Law Enforcement Body-Worn Camera/Study. (Representatives Floyd, Faircloth, Brockman, McNeill) – favorable committee substitute, unfavorable original bill

HB 664 Safer Communities. (Representatives Brawley, McNeill, Saine) - not heard

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# HB 676 Amend Compensation for Erroneous Conviction. (Representatives Glazier, Daughtry) – favorable and re-referred to Appropriations

The meeting adjourned at 4:38 p.m.

Select or Type Name of Presiding Chair

Presiding

Jan Copeland, Committee Clerk

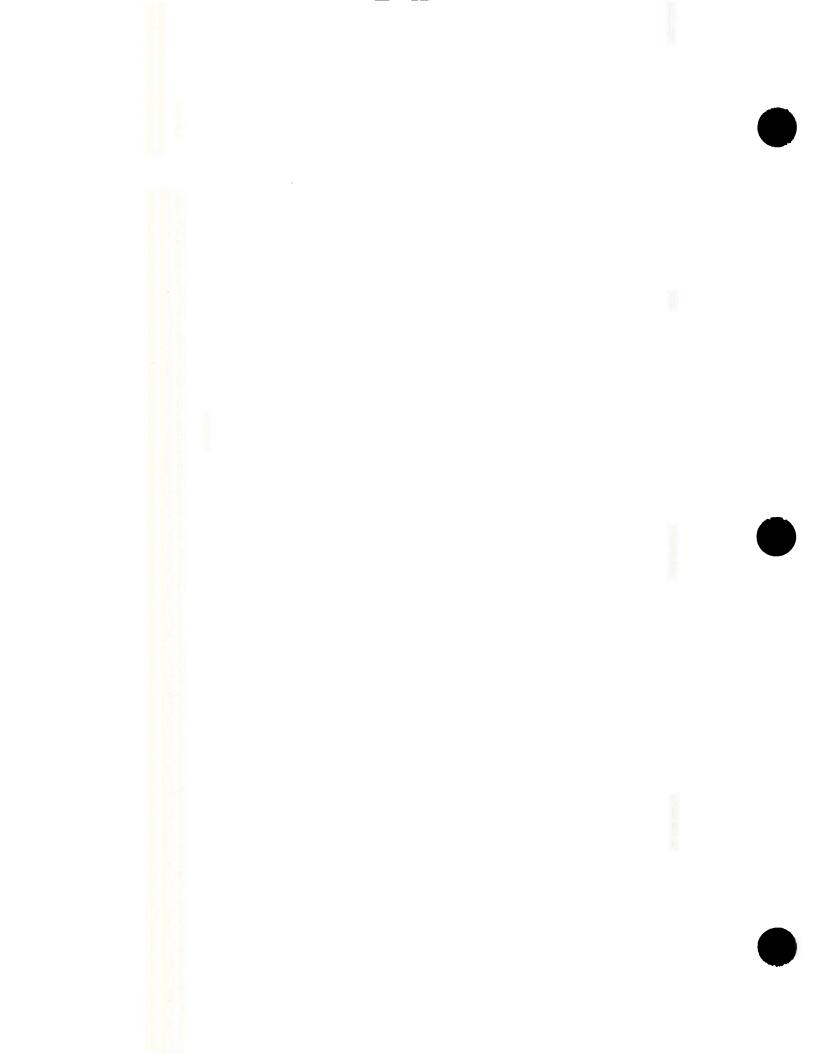
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House Bill 566

|             | H566-AST-58 [v.1]  |                        | (to be filled<br>Principal | d in by  | Page 1 of 1   |  |  |
|-------------|--|------------------------|----------------------------|----------|---------------|--|--|
|             | Amends Title [NO] First Edition  | Date                   | April                      | 27       | . ,2015       |  |  |
|             | Representative McNeill   |                        |                            |          |               |  |  |
| 1 2 3       | moves to amend the bill on page 3, line 48, by deleting "shall" and substituting "may" on that line; |                        |                            |          |               |  |  |
| 5           | and on page 3, line 50, by inserting the following after "crime," that line:                         |                        |                            |          |               |  |  |
| 6<br>7<br>8 | "or there is reasonable belief that the time to the crime,".   | e perpetrator has chan | ged his or hi              | s appear | ance in close |  |  |
|             | SIGNED Allen M   | N/Wew<br>ent Sponsor   |                            |          |               |  |  |
|             | SIGNED Committee Chair if Sena   | ate Committee Amenda   | ment                       |          |               |  |  |
|             | ADOPTED FA   | ILED                   | TAR                        | LED      |               |  |  |







House Bill 566

AMENDMENT NO.

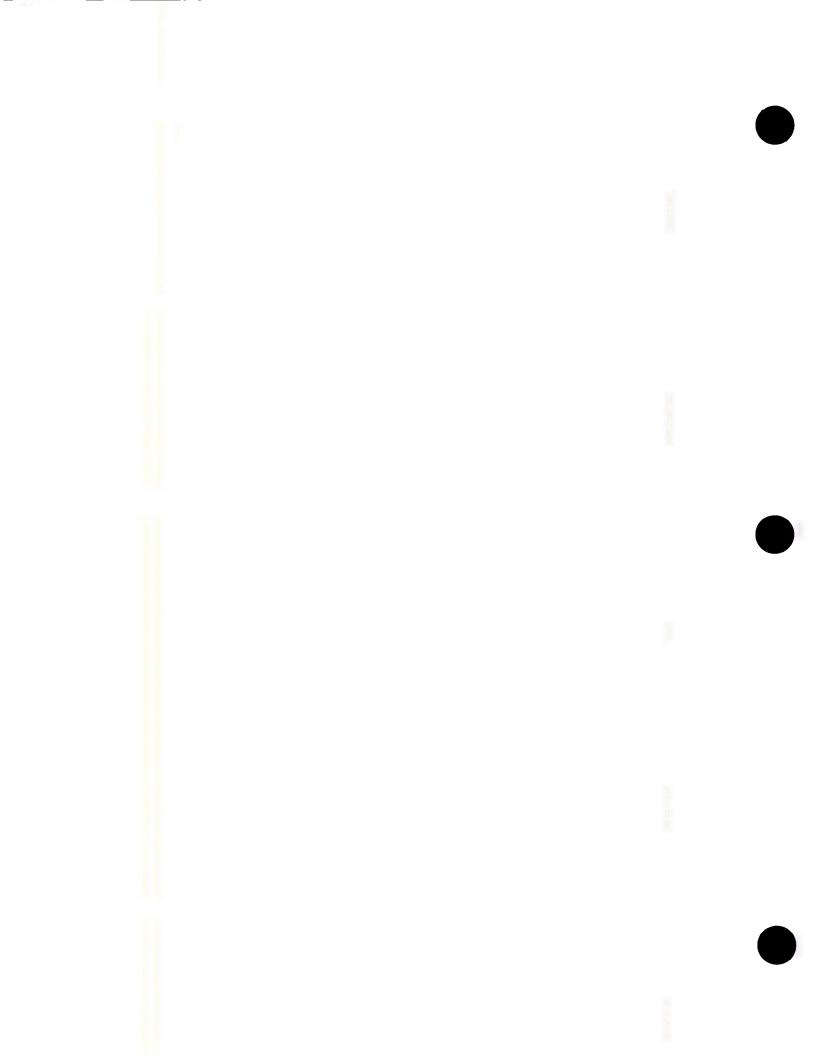
| H566-AST-56 [v.1]   |  | (to be filled in by<br>Principal Clerk) |           | e 1 of 1 |
|---|--|---|-----------|----------|
| Amends Title [NO] First Edition   | Date _   | April                                   | 27        |          |
| Representative Green Ma   | otin   |   |           |          |
| moves to amend the bill on page 4,  | lines 27-28, by inserting t                            | he following between                    | een those | lines:   |
| "(e) Nothing in this section sacting in his or her official capacite eyewitness."." | shall be construed to require to be required to partic |   |           |          |
| SIGNED Amend  | dment Sponsor  |   |           |          |
| SIGNED Committee Chair if S   | enate Committee Amendn                                 | nent                                    |           |          |
| ADOPTED   | FAILED   | TABLED                                  |           |          |

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(Please type or use ballpoint pen)

| S. B. No   | H. B. No. |                 | DATE    | 4/27/15                     |
|--|-----------|-----------------|---------|-----------------------------|
| moves to amend the bill on page 2 , line    () WHICH CHANGES THE TITLE by by deleting "access If any," and    Substituting "access". |           |                 |         | Iment No(to be filled in by |
| sen.)  moves to amend the bill on page   |           |                 |         | ,                           |
| moves to amend the bill on page  | ()        | ARP             |         |                             |
| by deleting "access, If any," and  Substituting "access".  Signed  |           | 0               |         | 1                           |
| by deleting "access, if any," and  Substituting "access".  |           |                 |         | , line                      |
| by deleting "access, If any," and  Substituting "access".  | by        |                 |         |                             |
| Substituting "access".   | by o      | deleting "acc   | less IF | any," and                   |
| Substituting "access".   |           |                 |         |                             |
| SIGNED SIGNED  | Subs      | tituting " acce | 55,     |                             |
| SIGNED A   |           | 3               |         |                             |
| SIGNED A   |           |                 |         |                             |
| SIGNED W   |           |                 |         |                             |
| SIGNED A   |           |                 |         |                             |
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|  |           |                 | SIGNED  | 4-4/                        |
|  |           |                 |         |                             |

(Please type or use ballpoint pen)

| H. B. No  S. B. No  COMMITTEE SUBSTITUTE     | Amendment No. (to be filled in by Principal Clerk) |
|--|--|
| Rep.) Sen.)  moves to amend the bill on page | , line <u>28</u>                                   |
| Through page 2- Those lines;                 | line 8, by deleting                                |
| and renumbering the                          | e remaining bill section.                          |
| 13   |  |
| 19   | SIGNED ALL   |



#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H

## HOUSE BILL 678 PROPOSED COMMITTEE SUBSTITUTE H678-CSST-35 [v.2]

D

4/25/2015 3:41:06 PM

| Short Title: | Amend Innocence Commission Statutes. | (Public |
|--------------|--------------------------------------|---------|
| Sponsors:    |                                      |         |
| Referred to: |                                      |         |

#### April 14, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS AMENDMENTS TO THE LAWS REGARDING THE INNOCENCE COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1465(a) reads as rewritten:

"(a) The Commission shall employ a Director. The Director shall be an attorney licensed to practice in North Carolina at the time of appointment and at all times during service as Director. The Director shall assist the Commission in developing rules and standards for cases accepted for review, coordinate investigation of cases accepted for review, maintain records for all case investigations, prepare reports outlining Commission investigations and recommendations to the trial court, preparing and delivering reports to the Administrative Office of the Courts as required under this Article and apply for and accept on behalf of the Commission any funds that may become available from government grants, private gifts, donations, or devises from any source."

SECTION 2. G.S. 15A-1475 reads as rewritten:

"§ 15A-1475. Reports.

- (a) The North Carolina Innocence Inquiry Commission shall report annually by February 1 of each year on its activities to the Joint Legislative Oversight Committee on Justice and Public Safety and the State Judicial Council. The report may contain recommendations of any needed legislative changes related to the activities of the Commission. The report shall recommend the funding needed by the Commission, the district attorneys, and the State Bureau of Investigation in order to meet their responsibilities under S.L. 2006-184. Recommendations concerning the district attorneys or the State Bureau of Investigation shall only be made after consultations with the North Carolina Conference of District Attorneys and the Attorney General.
- (b) The Commission shall submit to the Director of the Administrative Office of the Courts a semi-annual report containing detailed data on the operations, expenses, and needs of the Commission, and such other information as the Director of the Administrative Office of the Courts may require."

**SECTION 3.** G.S. 15A-1467 reads as rewritten:

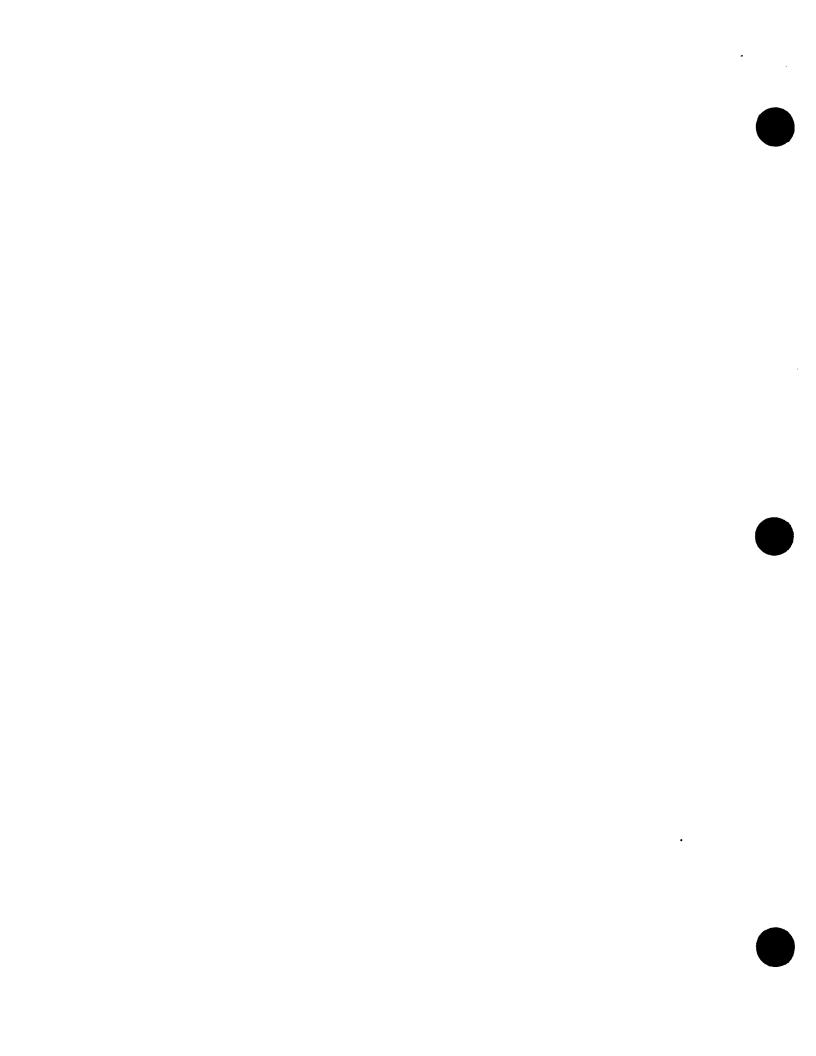
- "§ 15A-1467. Claims of innocence; waiver of convicted person's procedural safeguards and privileges; formal inquiry; notification of the crime victim.
- (c1) If formal inquiry is granted, the Director shall use all due diligence to contact all codefendants associated with the case. Each codefendant will be given an opportunity to have his or her case simultaneously investigated with the pending claim. Except for good cause





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shown to the Commission, the codefendant's case shall be barred from future investigation by the Commission if a codefendant declines the opportunity to have his or her case investigated simultaneously with the pending claim. The Commission shall have authority to adopt rules governing what constitutes good cause shown under this subsection.

(h) At least every six months, the Director shall provide a confidential case status update, which includes a summary of the actions taken since the last update, to the district attorney defense counsel, and referring counsely if any, for each case in formal inquiry."

SECTION 4. G.S. 15A-1468 reads as rewritten:

"§ 15A-1468. Commission proceedings.

- At the completion of a formal inquiry, all relevant evidence shall be presented to the full Commission. As part of its proceedings, the Commission may conduct public hearings. The determination as to whether to conduct public hearings is solely in the discretion of the Commission. Any public hearing Commission in a public hearing. Portions of the hearing may be closed to the public at the discretion of the Commission chair, although the district attorney and defense counsel shall not be excluded from those proceedings unless otherwise mandated by the Commission rules of operation. Any public hearing held in accordance with this section shall be subject to the Commission's rules of operation.
- The Commission may compel the testimony of any witness. If a witness asserts his or her privilege against self-incrimination in a proceeding under this Article, the Commission chair, in the chair's judicial capacity, may order the witness to testify or produce other information if the chair first determines that the witness's testimony will likely be material to the investigation necessary to reach a correct factual determination in the case at hand. However, the Commission chair shall not order the witness to testify or produce other information that would incriminate the witness in the prosecution of any offense other than an offense for which the witness is granted immunity under this subsection. The order shall prevent a prosecutor from using the compelled testimony, or evidence derived therefrom, to prosecute the witness for previous false statements made under oath by the witness in prior proceedings. The prosecutor has a right to be heard by the Commission chair prior to the chair issuing the order. Once granted, the immunity shall apply throughout all proceedings conducted pursuant to this Article. The limited immunity granted under this section shall not prohibit prosecution of statements made under oath that are unrelated to the Commission's formal inquiry, false statements made under oath during proceedings under this Article, or prosecution for any other crimes.
- The Innocence Inquiry Commission shall include, as part of its rules of operation, the holding of a prehearing conference to be held at least 10 days prior to any proceedings of the full Commission. Only the following persons shall be notified and authorized to attend the prehearing conference: the District Attorney, or the District Attorney's designee, of the district where the claimant was convicted of the felony upon which the claim of factual innocence is based; the claimant's counsel, if any; the Chair of the Commission; the Executive Director of the Commission; and any Commission staff designated by the Director. The District Attorney, or designee, shall be provided (i) an opportunity to inspect any evidence that may be presented to the Commission that has not previously been presented to any judicial officer or body and (ii) any information that he or she deems relevant to the proceedings. Prior At least 24 hours prior to any Commission proceedings, the District Attorney or designee is authorized to provide the Commission with a written statement, which shall be included in the record of the Commission's proceedings. Any statement included in the record shall be part of the back Commission's record of proceedings pursuant to subsection (e) of this section statement conveying his or her position on the case, which shall be part of the record.
- The Director shall use all due diligence to notify the victim at least 30 days prior to any proceedings of the full Commission held in regard to the victim's case. The Commission



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shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Article. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance of the proceedings of his or her intent to attend.

(c) After hearing the evidence, the full Commission shall vote to establish further case disposition as provided by this subsection. All eight voting members of the Commission shall participate in that vote.

Except in cases where the convicted person entered and was convicted on a plea of guilty, if five or more of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction by filing with the clerk of court the opinion of the Commission with supporting findings of fact, as well as the record in support of such opinion, with service on the convicted person or the convicted person's counsel, if any, and the district attorney in noncapital cases and or service on both the district attorney and Attorney General in capital cases. In cases where the convicted person entered and was convicted on a plea of guilty, if all of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction.

If less than five of the eight voting members of the Commission, or in cases where the convicted person entered and was convicted on a guilty plea less than all of the eight voting members of the Commission, conclude there is sufficient evidence of factual innocence to merit judicial review, the Commission shall conclude there is insufficient evidence of factual innocence to merit judicial review. The Commission shall document that opinion, along with supporting findings of fact, and file those documents and supporting materials the opinion with the clerk of superior court in the district of original jurisdiction, with a copy to the convicted person or the convicted person's counsel, if any, the district attorney and the senior resident superior court judge.

The Director of the Commission shall use all due diligence to notify immediately the victim of the Commission's conclusion in a case.

(d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed through formal inquiry or Commission proceedings shall be referred to the appropriate authority. Evidence favorable to the convicted person disclosed through formal inquiry or Commission proceedings shall be disclosed to the convicted person and the convicted person's counsel, if the convicted person has counsel.

All proceedings of the Commission shall be recorded and transcribed as part of the record. All Commission member votes shall be recorded in the record. All records and proceedings of the Commission are confidential and are exempt from public record and public meeting laws except that the The supporting records for the Commission's conclusion that there is sufficient evidence of factual innocence to merit judicial review, including all files and materials considered by the Commission and a full transcript of the hearing before the Commission, Commission shall become public record when filed with the clerk of superior court as provided in subsection (c) of this section. All files and records not presented at the proceedings are confidential and exempt from the public record. shall become public at the time of referral to the superior court. One copy of the Commission file, including a full transcript of the hearing before the Commission, but excluding all documents that are protected by a protective order, shall be disclosed to the parties immediately after completion of the formal inquiry or immediately upon becoming available in uncertified form, whichever occurs first. A protective order shall be issued only if the district attorney and the convicted person or the convicted person's counsel have been given an opportunity to be heard. Commission records for conclusions of insufficient evidence of factual innocence to merit judicial review shall remain confidential, except as provided in subsection (d) of this section."

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#### General Assembly of North Carolina

Session 2015

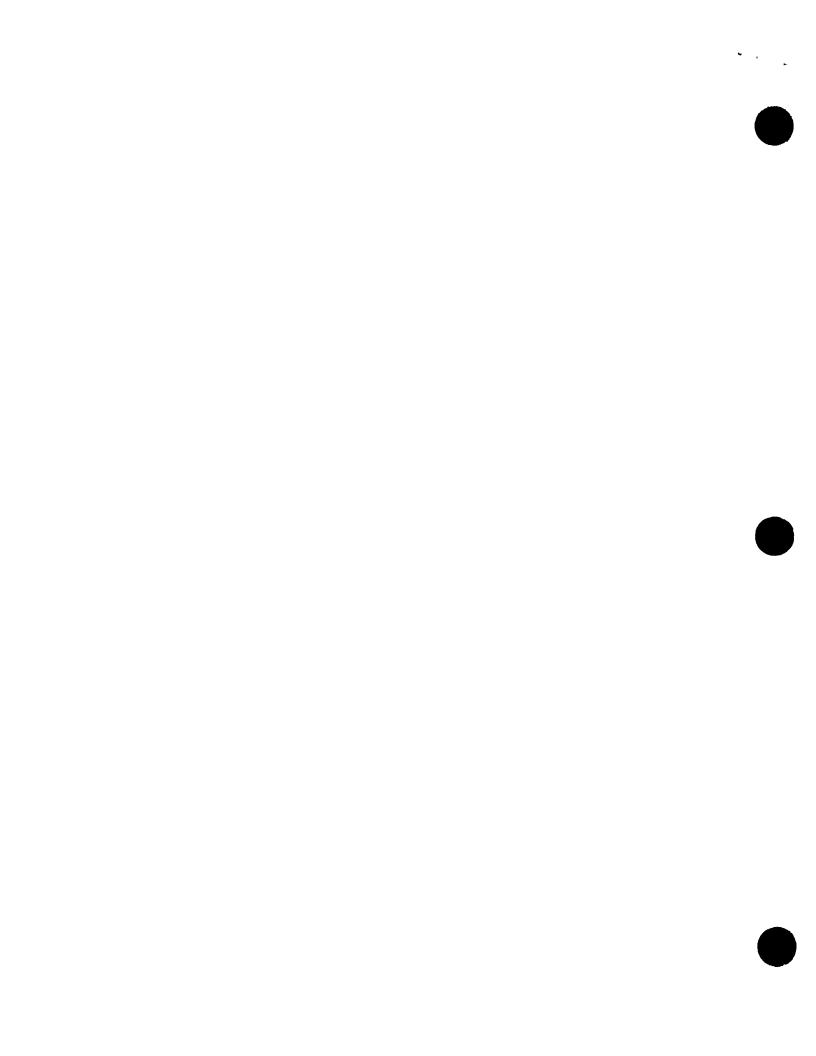
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SECTION 5. G.S. 15A-1471 is amended by adding a new subsection to read:

"(e) Upon request, the Commission shall have the authority to search any location where files or evidence are reasonably likely to be stored relating to a claim subject to the Commission's inquiry. The Commission shall provide the head of the agency to be searched, or his or her designee, with proposed search procedures in advance of the search. The Commission will make reasonable efforts to accommodate the agency without compromising the validity of the search. The agency shall permit the Commission to conduct its search within two weeks of the search procedure being provided or at a mutually agreed upon time."

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

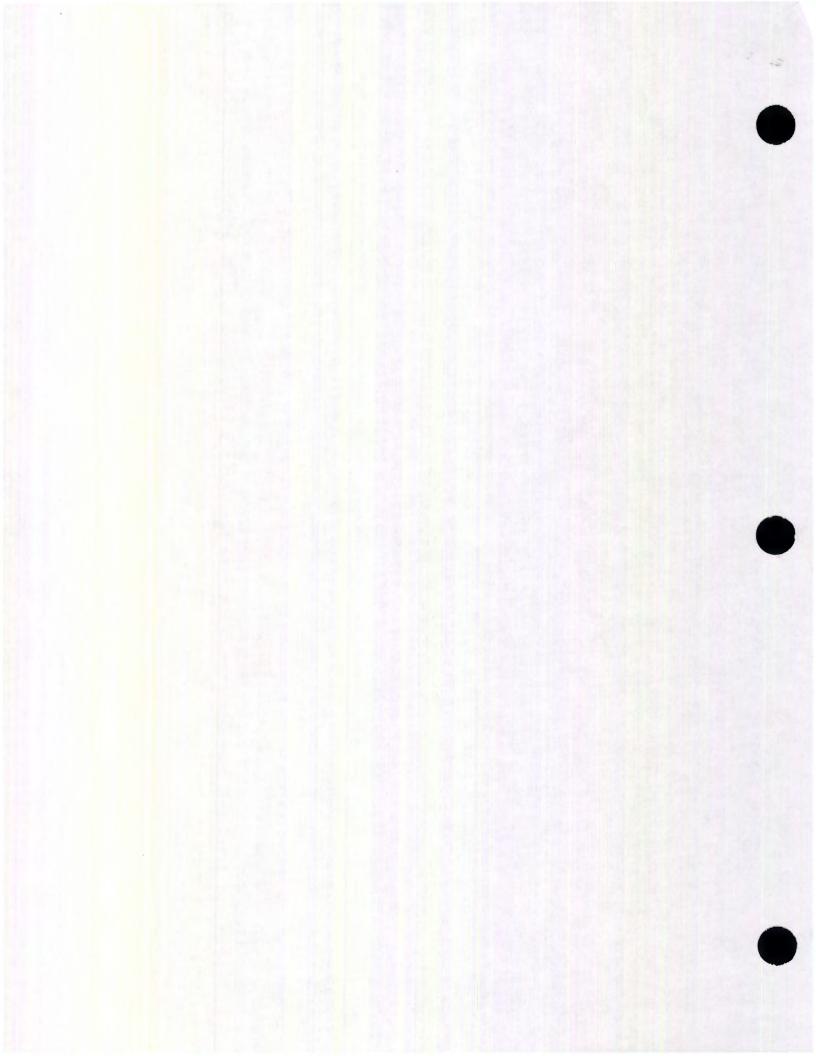




House Bill 290

|   | AMENDMENT  | O           |  |  |
|---|--|-------------|--|--|
| H290-ARI-12 [v.1]   | (to be filled in by Principal Clerk)   |             |  |  |
|   |  | Page 1 of 1 |  |  |
| Amends Title [NO] Third Edition   | Date   | ,2015       |  |  |
| Representative Daughtry   |  |             |  |  |
| moves to amend the bill on page 1, lir<br>by rewriting those lines to read: | nes 28 through 33,   |             |  |  |
| Section 3 of this act becomes effective                                     | "SECTION 4. Sections 1 and 2 of this act are effective when this act becomes land 3 of this act becomes effective May 1, 2015, and applies to suspensions issued on that date. The remainder of this act is effective when it becomes law.". |             |  |  |
| SIGNED  |  |             |  |  |
|   | ent Sponsor  |             |  |  |
| SIGNED  |  |             |  |  |
| Committee Chair if Sena   | ate Committee Amendment  |             |  |  |
| ADOPTED FA  | ILED TABLED  |             |  |  |





#### NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

#### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

#### **FAVORABLE AND RE-REFERRED**

HB 676 Amend Compensation for Erroneous Conviction.

Draft Number:

None

Serial Referral:

APPROPRIATIONS

Recommended Referral: None Long Title Amended:

No

Floor Manager:

Glazier

#### FAVORABLE COM SUB, UNFAVORABLE ORIGINAL BILL

HB 651

Appraisal Bd. Recordkeeping & Bkgrd. Checks.

Draft Number:

H651-PCS30362-ST-38

Serial Referral:

None

Recommended Referral: None Long Title Amended:

Yes

Floor Manager:

Hardister

HB 811

Law Enforcement Body-Worn Camera/Study.

Draft Number:

H811-PCS10366-ST-42

Serial Referral:

None

Recommended Referral: None Long Title Amended:

No

Floor Manager:

Floyd

#### FAVORABLE COM SUB, UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB 566

Amend Eyewitness ID/Show-Up.

Draft Number:

H566-PCS20340-ST-36

Serial Referral:

RULES, CALENDAR, AND

**OPERATIONS OF THE HOUSE** 

Recommended Referral:

None

Long Title Amended:

Yes

Floor Manager:

Glazier

HB 570

Facilitate Successful Reentry.

Draft Number:

H570-PCS20339-ST-37

Serial Referral: Recommended Referral: None

**JUDICIARY II** 

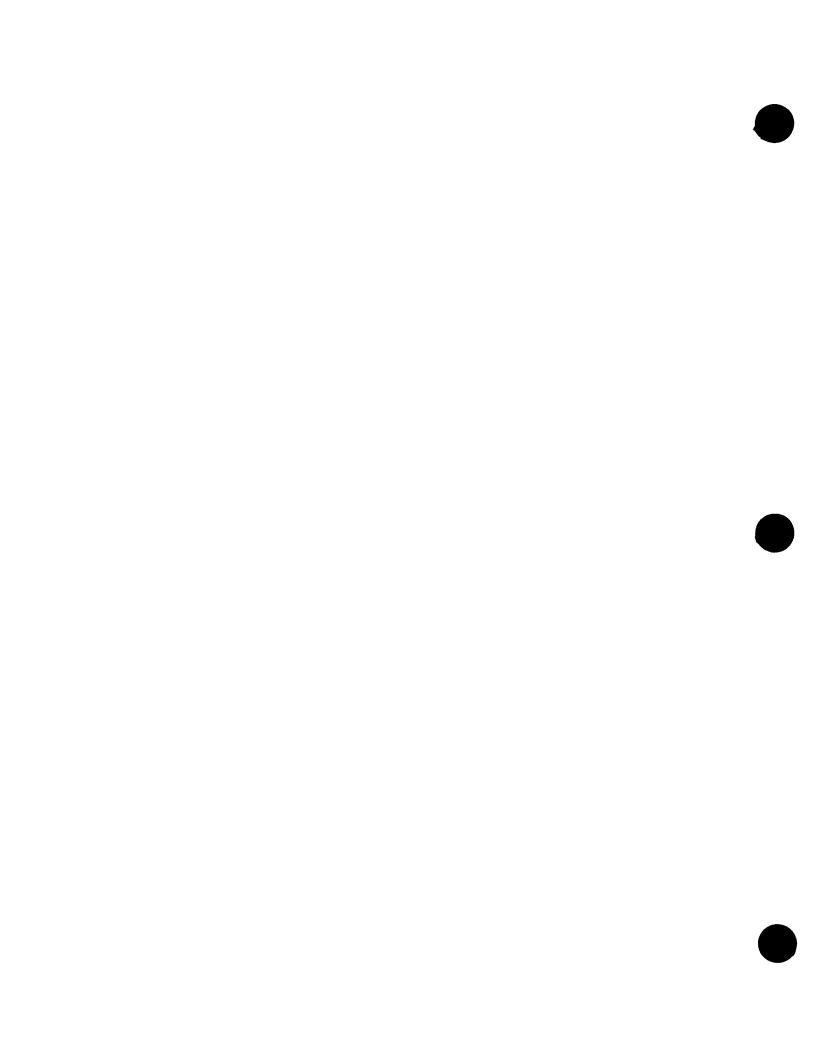
Long Title Amended:

Yes

Floor Manager:

C. Graham





#### NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

#### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

#### **FAVORABLE**

HB **896** 

Forcible Entry Into Car/Child Trapped Inside.

Draft Number:

None

Serial Referral:

None

Recommended Referral: None Long Title Amended:

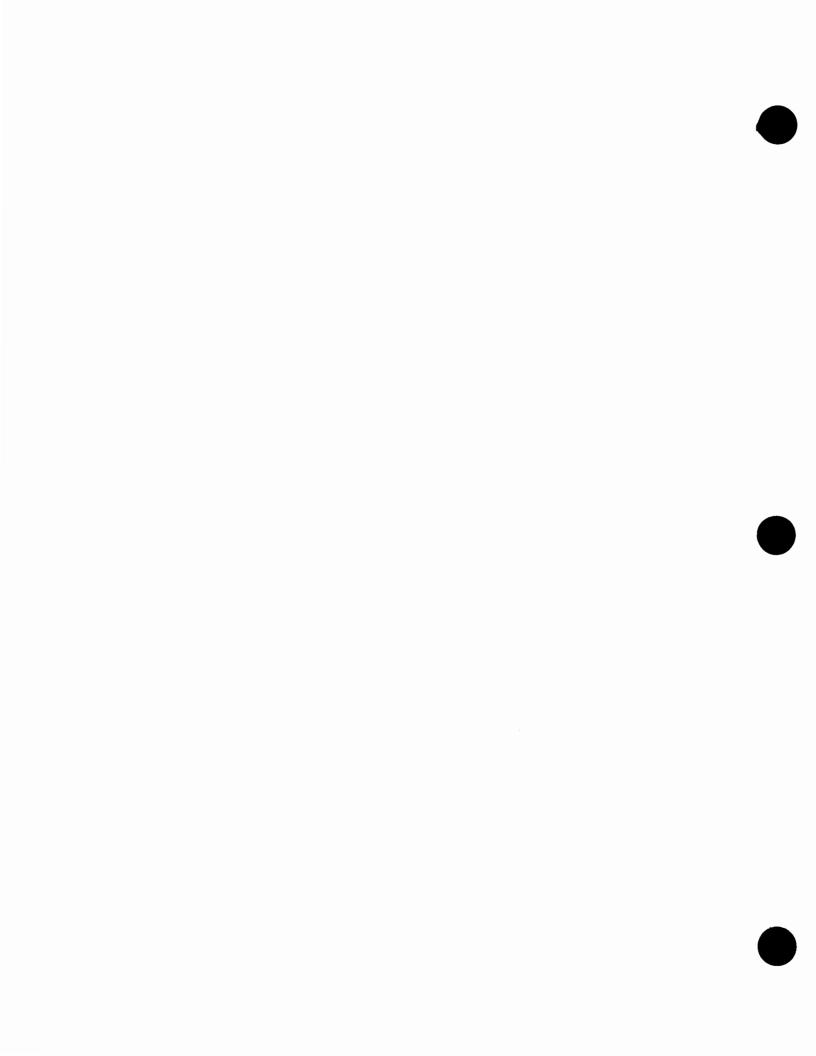
No

Floor Manager:

Hanes

**TOTAL REPORTED: 1** 



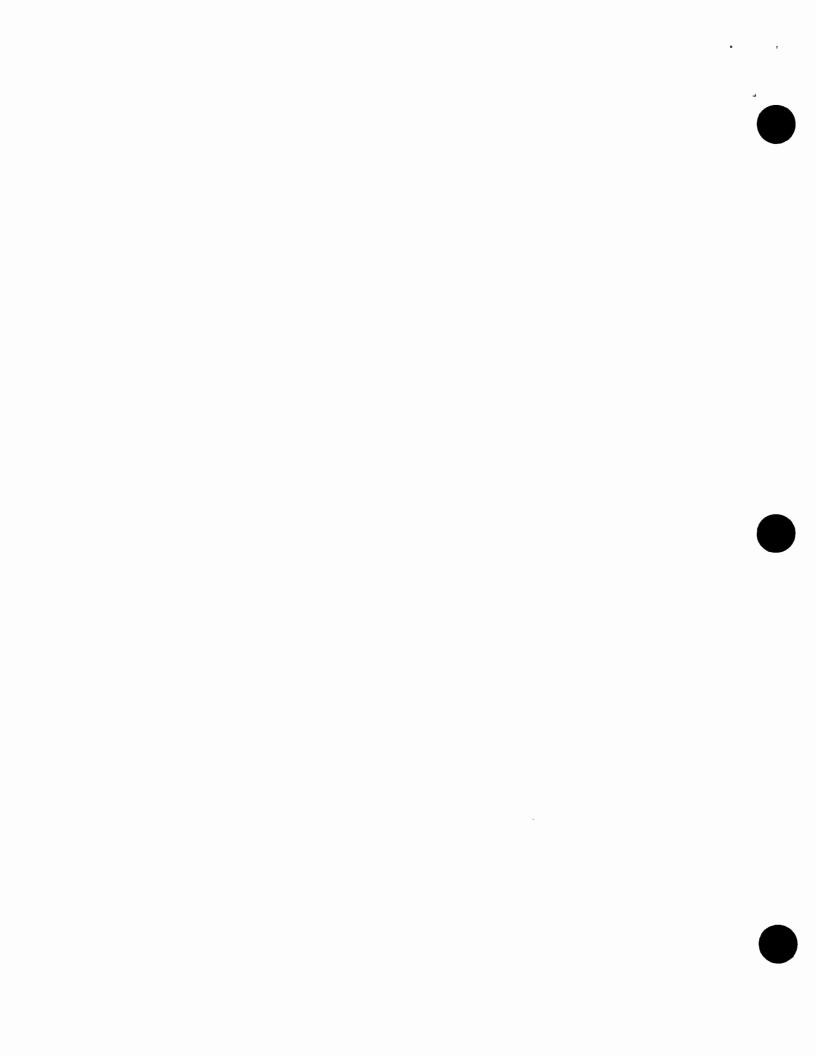


|   | Date: 1-21-15                            |
|---|--|
| Bill Number H 5666<br>PCS H 566 - CSS T - 36        | CV127                                    |
| Motion to be before the committee by _              |  |
| Rep <u>Glazier</u> Discussion on the Bill YES or NO | explained the bill.                      |
| Rep Arp   | motioned for:                            |
| Favorable Report                                    | Adoption                                 |
| Unfavorable Report                                  | Unfavorable to original bill, fav to PCS |
| No vote Amendments: :                               | passed rolled into PC                    |
| Serial referral to: Rules                           | ·  |
| Speakers:   |  |
| Handouts:   |  |
| (15t amendment                                      | Ener markin                              |
| (2nd) amendment                                     | mcNeill                                  |

Question Hall:

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|  | Date: 4-27-15                            |
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| Bill Number <u>H 67</u> 8 PCS <u>H 613</u> | 1 10000                                  |
| Motion to be before the committee by _     |  |
| Rep <u> </u>                               | explained the bill.                      |
| Rep  | motioned for:                            |
| Favorable Report                           | Adoption                                 |
| Unfavorable Report                         | Unfavorable to original bill, fav to PCS |
| No vote                                    |  |
| Amendments: :                              |  |
| Serial referral to:                        |  |
| Speakers:                                  |  |
| Handouts:                                  |  |



Date: 4-27-15 Motion to be before the committee by \_\_\_\_\_ explained the bill. motioned for: \_\_\_ Adoption Unfavorable to original bill, fav to PCS Amendments: : 44 pass

Serial referral to:

Speakers:

Rep\_

Bill Number <u>H65</u> 1

PCS r

Rep Hardister

Favorable Report

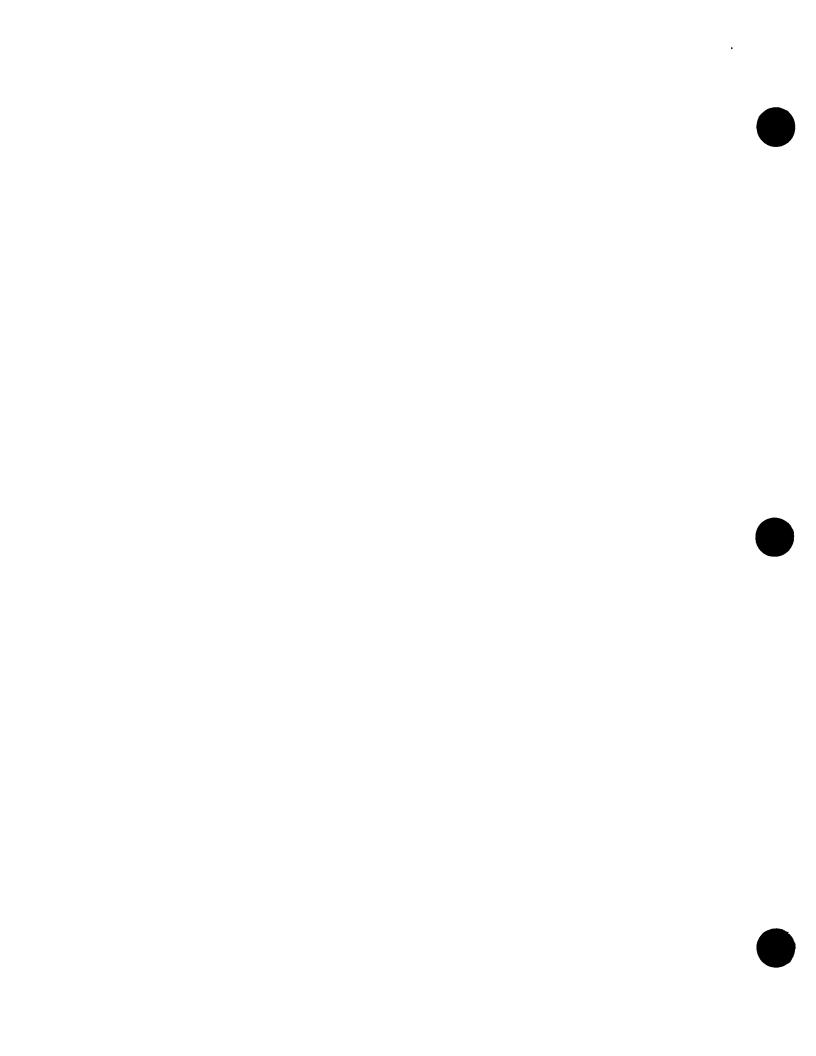
\_Unfavorable Report

Discussion on the Bill

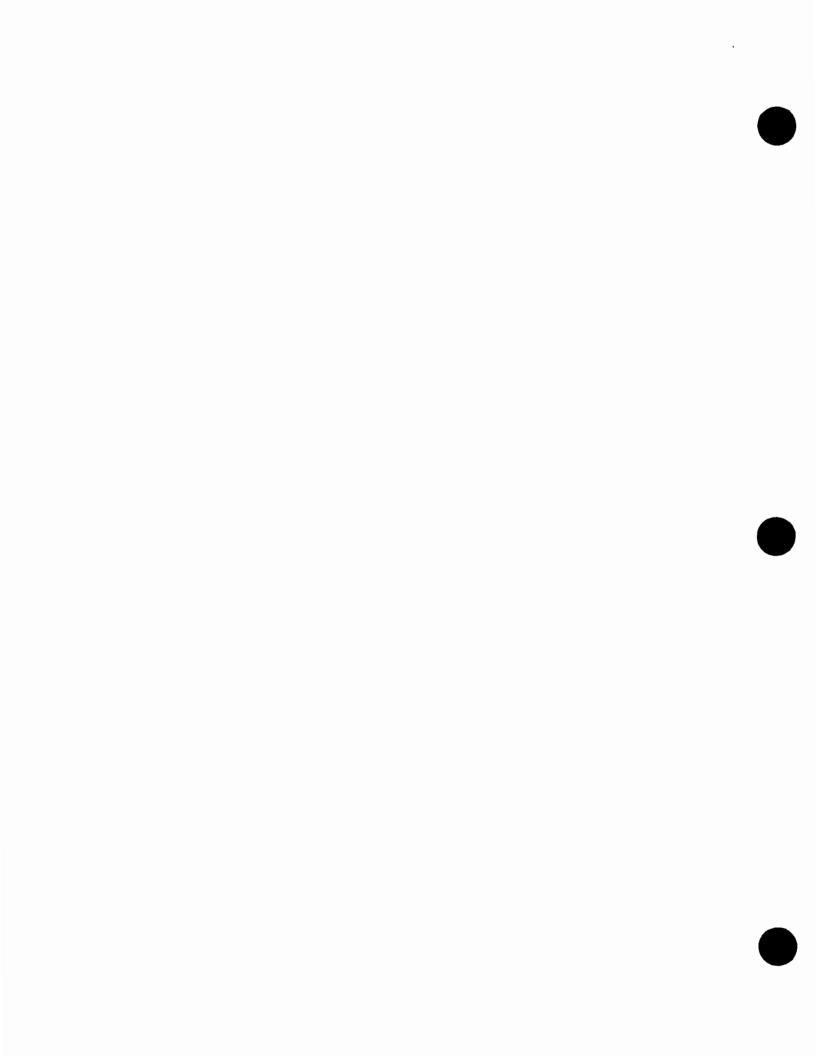
No vote

Handouts:

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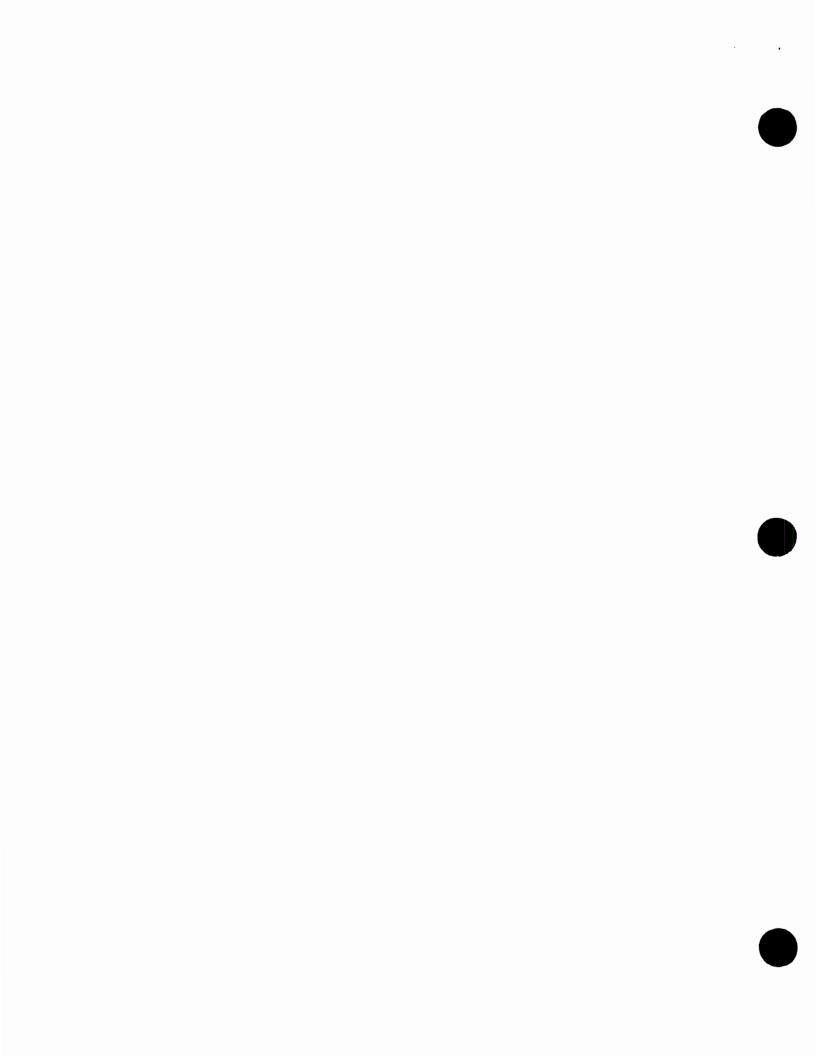
| Bill Number H 774  PCS_H774 - C 6 6 6 6 6 6 6 6 6 6 6 6 6 6 6 6 6 6 |  |
|---|--|
| Rep Daughtry Discussion on the Bill YES or NO                       | explained the bill.                      |
| Rep   | motioned for:                            |
| Favorable Report  | Adoption                                 |
| Unfavorable Report  | Unfavorable to original bill, fav to PCS |
| No vote   |  |
| Amendments::  |  |
| Serial referral to:   |  |
| Speakers:   |  |
| Handouts:   |  |



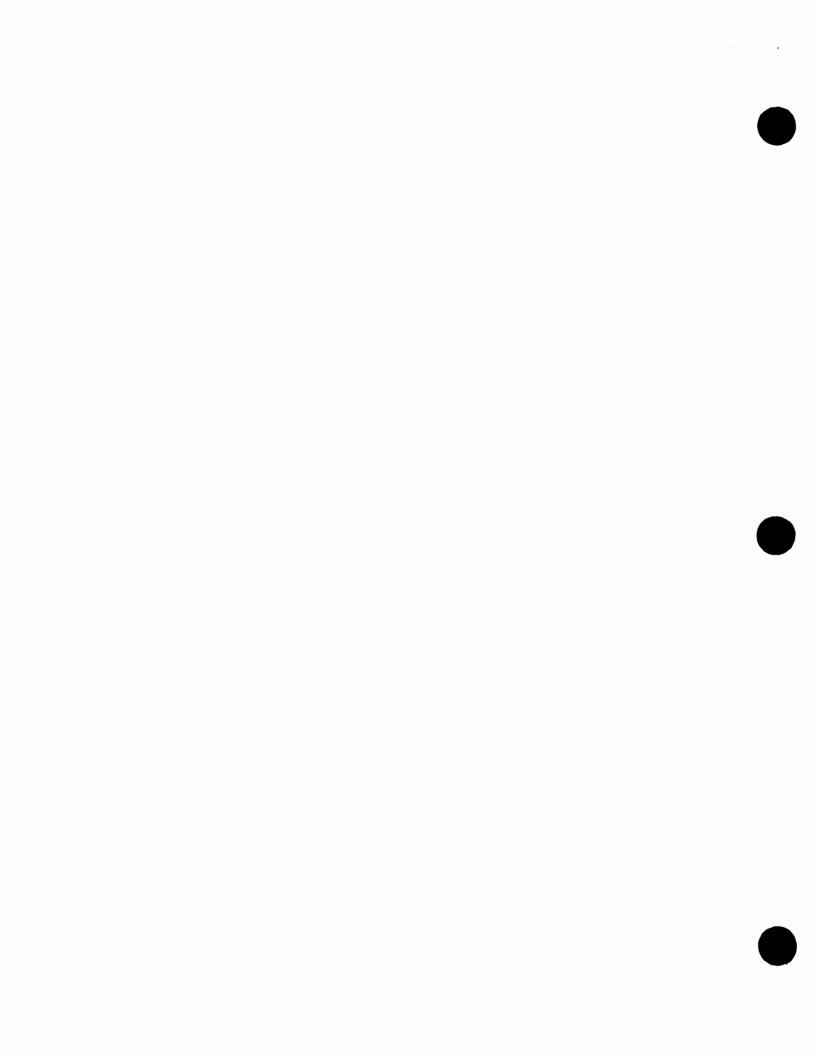
already reported

Date: 4-27-15 Bill Number H896 PCS none Rep Hanes explained the bill. (YES o) NO Discussion on the Bill motioned for: Favorable Report Adoption Unfavorable to original bill, fav to PCS \_\_\_Unfavorable Report No vote Amendments: :\_\_\_\_\_ Serial referral to: Speakers: Handouts: Minor child Robinson

Arp - 10 or 12 year old which

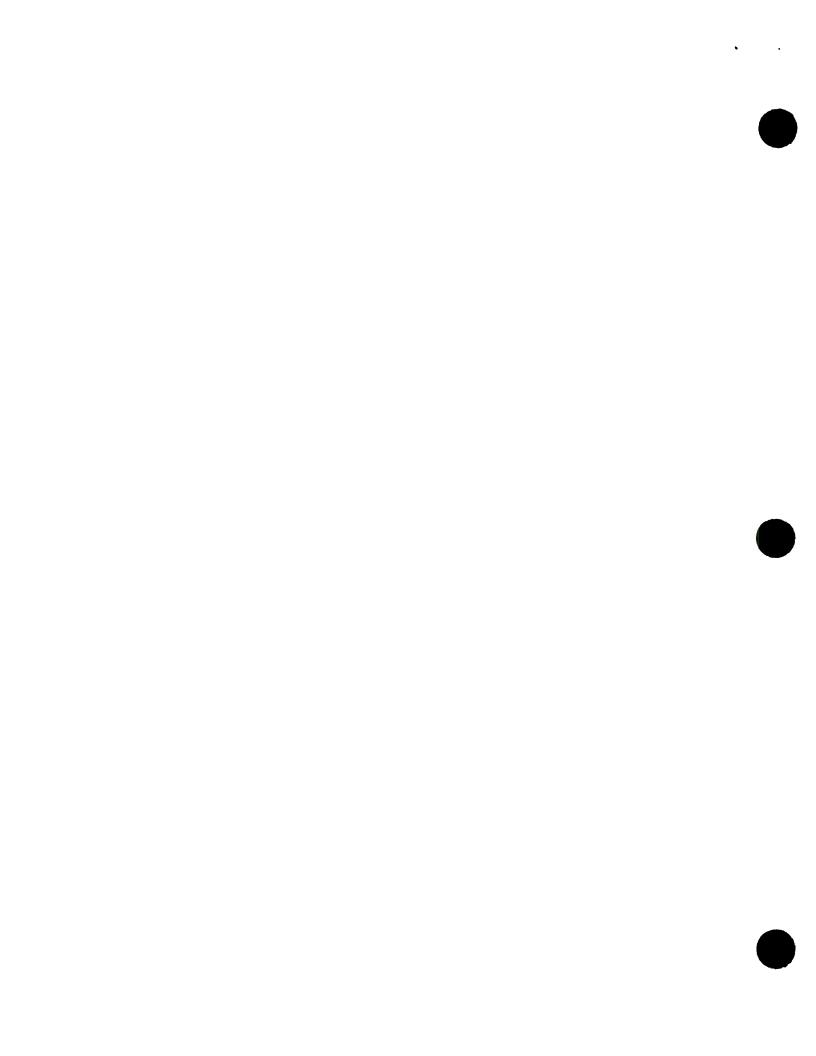


|   | Date: 4-27-15                            |
|---|--|
| Bill Number 1570  PCS + 570 - CSST - 37 [ | . 7                                      |
| PCS +570 -CSST - 37 [                     | _V.4_                                    |
| Motion to be before the committee by      | laughtry.                                |
| Rep C. Graham exp                         | lained the bill.                         |
| Discussion on the Bill YES or NO          |  |
| Rep Hardister mo                          | tioned for:                              |
| Favorable Report                          | Adoption                                 |
| Unfavorable Report                        | Unfavorable to original bill, fav to PCS |
| No vote                                   |  |
| Amendments: :                             |  |
| Seval referral to: J2                     |  |
| Speakers:                                 |  |
| Handouts:                                 |  |
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| Visa - time f                             | rame.                                    |



|                                     | Date: 4-27-15                            |
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| Bill Number <u>H811</u>             |  |
| PCSYO                               |  |
| Motion to be before the committee b |  |
| Rep Floyd F                         | aircloth<br>explained the bill.          |
| Discussion on the Bill YES or N     | 10                                       |
| Rep Aro                             | motioned for:                            |
| Favorable Report                    | Adoption                                 |
| Unfavorable Report                  | Unfavorable to original bill, fav to PCS |
| No vote                             | rolled unto com sub                      |
| Amendments: : WA                    | / Arp - pass                             |
| Serial referral to:                 |  |
| Speakers:                           |  |
| Handouts:                           |  |

|  | Date: 4-27-15  |
|--|--|
| Bill Number H664                           | Date: 4-27-15<br>Mot Local localier  |
| PCS Motion to be before the committee by _ | The second secon |
| Motion to be before the committee by _     |  |
| Rep Brawley                                | explained the bill.  |
| Discussion on the Bill YES or NO           |  |
|  |  |
| Rep  | motioned for:  |
| Favorable Report                           | Adoption   |
| Unfavorable Report                         | Unfavorable to original bill, fav to PCS   |
| No vote                                    |  |
| Amendments::                               |  |
|  |  |
| Serial referral to:                        |  |
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| Speakers:                                  |  |
| Handouts:                                  |  |



| Date: 4-21-12  |
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| Bill Number H676   |
| PCS hone   |
| Motion to be before the committee by                       |
|  |
| Rep <u> </u>   |
| Discussion on the Bill YES or NO                           |
|  |
| Rep motioned for:  |
| Favorable Report Adoption                                  |
| Unfavorable ReportUnfavorable to original bill, fav to PCS |
| No vote  |
| Amendments::   |
| Senul referral to: Approprations                           |
| Speakers:  |
| Handouts:  |
| Arp? - Cases dismissed at proof                            |
| lover level of crimo                                       |

678 H774 664

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House Staff

| Committee: House Judie | ciary 1 Date: 27 APR 2015 |
|------------------------|---------------------------|
| Pages                  | clary 1 Date: 27 APR 2015 |
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| County                 | Sponsor                   |
| 2. Name                |                           |
| County                 | Sponsor                   |
| 3. Name                |                           |
| County                 | Sponsor                   |
| 4. Name                |                           |
| County                 | Sponsor                   |
| 5. Name                |                           |
| County                 | Sponsor                   |
| Sergeant-at-Arms       |                           |
| BARRY                  | MOORE                     |
| BILLY JC               | NES                       |
| B. H. Pow              | e11                       |

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27 112 2015

BARRY DONGES BILLY DONGES B. H. POWE! Guest Speaker Signup

| Committee House Judiciary 1 Date 27 APR 2 |
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| 1. Jennifer Thompson                      |
| 2. Kendra Montgomery-Blinn                |
| 3. Christine Mumme                        |
| 4. Greg Taylor                            |
| 5. Reg Dorer                              |
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#### VISITOR REGISTRATION SHEET

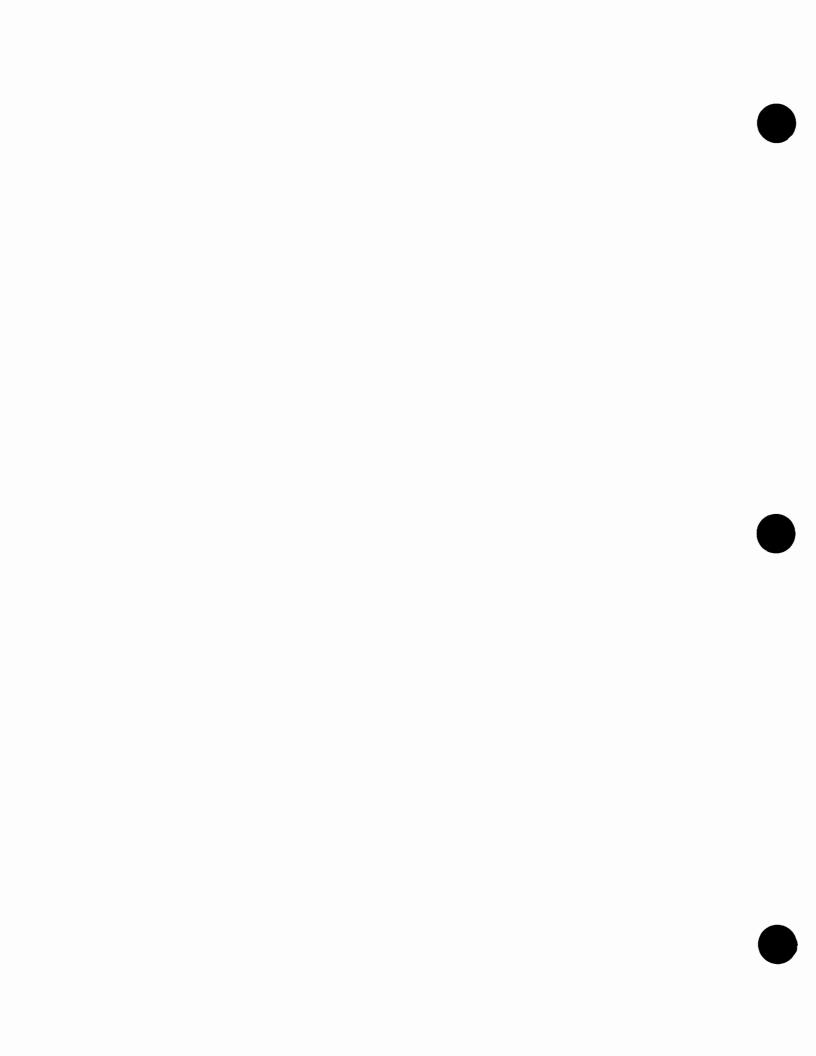
## Name of Committee

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#### FIRM OR AGENCY AND ADDRESS

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| Mike Soullwood      | 506     |
| Sarah Preston       | ACLU-NC |
| FredSchmidt         | 0mJ     |
| Lynn Dahnke         | NCREAR  |
| PETERGALLO          | NCREAT  |
| Greg Taylor         | NCCAI   |
| Chris Manne         | AKCAI   |
| Erin Jones          | TWC     |
| Lindsey Guice Smith | NCIIC   |



#### VISITOR REGISTRATION SHEET

### Judiciary 1

4-27 2015

Name of Committee

Date

#### VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME            | FIRM OR AGENCY AND ADDRESS          |
|-----------------|-------------------------------------|
| Todd Balon      | NC Achreate Ar Just                 |
| DillTayh        | Note                                |
| Tarrel Callelan | NCCADIT                             |
| LAO RUBERT      | CJPC                                |
| nikki-mcpangel  | CJPC                                |
| Peg Dorer       | Conf of DAS                         |
| Lisa Martin     | Cepital Alvantage                   |
| David Weiss     | Center for Death Renathy Litigation |
| Keith Williams  | Southeastern Company Police Chaldte |
| alicetriale     | NCDOC                               |
| Doug Miskew     | P86                                 |

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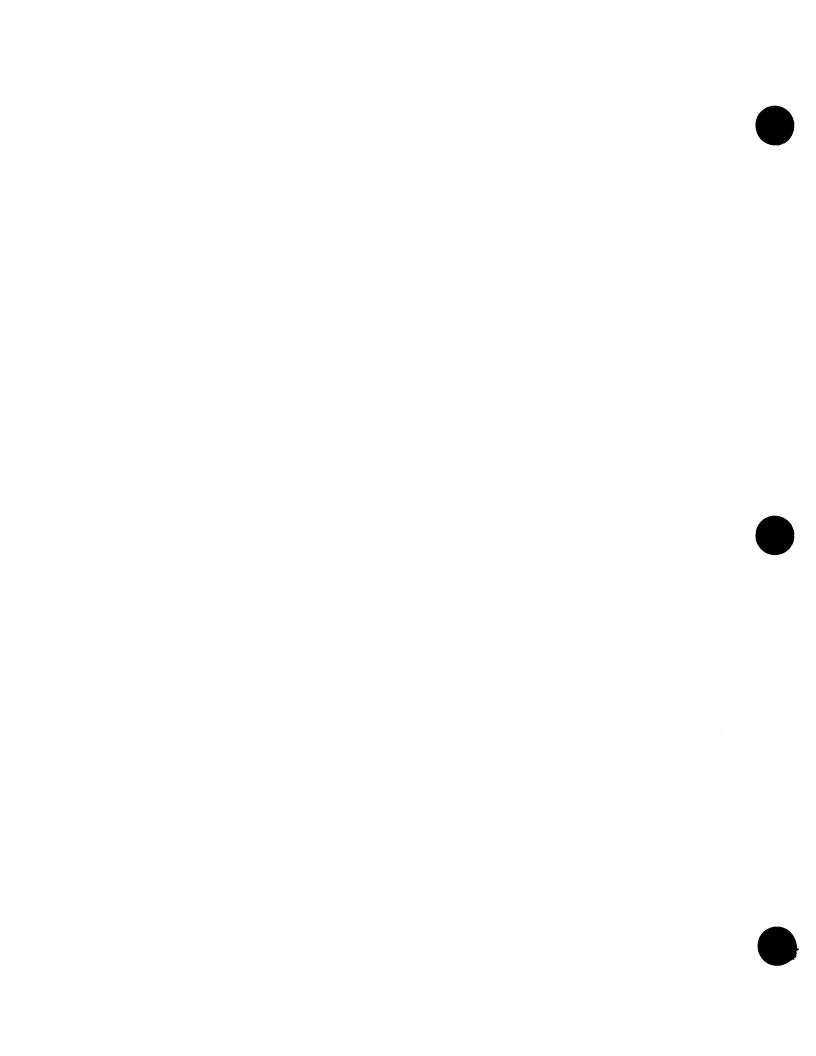
# Name of Committee

4-27 2015

Date

#### VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME              | FIRM OR AGENCY AND ADDRESS |
|-------------------|----------------------------|
| Snaron Stellato   | NCIIC                      |
| Ken la Montgomery | -Bran NCIK                 |
| Jennifer Thompson | a NCIIC                    |
| Fuld Bagge        | A NC Policy Chelle anon    |
| Tom West          | NCICU                      |
| Butch Gunnells    | MC Bev                     |
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# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

You are hereby notified that the **House Committee on Judiciary I** will meet as follows:

DAY & DATE: Tuesday, April 28, 2015

TIME: 8:30 AM LOCATION: 415 LOB

COMMENTS: Back in our original meeting location at 8:30 in 415 LOB

The following bills will be considered:

| BILL NO. | SHORT TITLE                   | SPONSOR                  |
|----------|-------------------------------|--------------------------|
| HB 562   | Amend Firearm Laws.           | Representative Schaffer  |
|          |                               | Representative Burr      |
|          |                               | Representative Cleveland |
|          |                               | Representative Faircloth |
| HB 664   | Safer Communities.            | Representative Brawley   |
|          |                               | Representative McNeill   |
|          |                               | Representative Saine     |
| HB 678   | Amend Innocence Commission    | Representative Glazier   |
|          | Statutes.                     | Representative Daughtry  |
|          |                               | Representative Stam      |
|          |                               | Representative Reives    |
| HB 774   | Restoring Proper Justice Act. | Representative Daughtry  |

Respectfully,

Representative N. Leo Daughtry, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 5:09 PM on Monday, April 27, 2015.

| Principal Clerk               |
|-------------------------------|
| Reading Clerk - House Chamber |

Jan Copeland (Committee Assistant)

#### House Committee on Judiciary I Tuesday, April 28, 2015, 8:30 AM 415 Legislative Office Building

#### **AGENDA**

#### **Welcome and Opening Remarks**

#### **Introduction of Pages**

#### Bills

| BILL NO. | SHORT TITLE                   | SPONSOR                  |
|----------|-------------------------------|--------------------------|
| HB 562   | Amend Firearm Laws.           | Representative Schaffer  |
|          |                               | Representative Burr      |
|          |                               | Representative Cleveland |
|          |                               | Representative Faircloth |
| HB 664   | Safer Communities.            | Representative Brawley   |
|          |                               | Representative McNeill   |
|          |                               | Representative Saine     |
| HB 678   | Amend Innocence Commission    | Representative Glazier   |
|          | Statutes.                     | Representative Daughtry  |
|          |                               | Representative Stam      |
|          |                               | Representative Reives    |
| HB 774   | Restoring Proper Justice Act. | Representative Daughtry  |

#### **Presentations**

**Other Business** 

Adjournment

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#### House Committee on Judiciary I Tuesday, April 28, 2015 at 8:30 AM Room 415 of the Legislative Office Building

#### **MINUTES**

The House Committee on Judiciary I met at 8:30 AM on April 28, 2015 in Room 415 of the Legislative Office Building. Representatives Daughtry, Burr, Jackson, Arp, Hall, Hardister, Howard, Martin, McNeill, Robinson, Steinburg, Johnson and Szoka attended.

Representative N. Leo Daughtry - Chair, presided.

The following bills were considered:

HB 562 Second Amendment Affirmation Act. (Representatives Schaffer, Burr, Cleveland, Faircloth) – favorable committee substitute, unfavorable original bill

HB 664 Safer Communities. (Representatives Brawley, McNeill, Saine) - unfavorable

HB 678 Amend Innocence Commission Statutes. (Representatives Glazier, Daughtry, Stam, Reives) – favorable committee substitute, unfavorable original bill and re-referred to Rules, Calendar, and Operations of the House

HB 774 Restoring Proper Justice Act. (Representative Daughtry) – favorable committee substitute, unfavorable original bill

The meeting adjourned at 9:46 a.m.

Select or Type Name of Presiding Chair

Presiding

Jan Copeland, Committee Clerk

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## **HOUSE BILL 562:** Amend Firearm Laws

2015-2016 General Assembly

Committee: House Judiciary I

Introduced by: Reps. Schaffer, Burr, Cleveland, Faircloth

Analysis of: PCS to First Edition

H562-CSSA-54

Date:

April 28, 2015

Prepared by: Susan Sitze

Staff Attorney

SUMMARY: The Proposed Committee Substitute for House Bill 562 would amend various firearms laws.

#### **BILL ANALYSIS:**

**Section 1** would amend the exemptions to carrying a concealed weapon to allow DAs and ADAs with a concealed handgun permit to carry a concealed handgun in a courtroom. This section would also add certain DPS employees (8) and Administrative Law Judges (9) who have concealed handgun permits to the list of exemptions, which would allow them to carry concealed handguns in some places the average person cannot, including courtrooms, assemblies where a fee is charged, etc.

**Section 2** would allow a person with a concealed handgun permit to carry concealed on their person within a locked vehicle on educational property and would allow a person within a locked vehicle on educational property to move a handgun from concealment on their person to a closed compartment and vice versa even if momentarily it is not concealed. This section also would clarify that no school may prohibit a concealed handgun in a locked vehicle.

**Section 3** would provide an affirmative defense to possession of handgun on educational property if the person was authorized to have a handgun in a locked vehicle and removed the handgun from the vehicle only in response to a threatening situation in which deadly force was justified to defend self or others pursuant to G.S. 14-51.3.

**Section 4** would authorize the Commissioner of Agriculture to prohibit the carrying of firearms on the State Fairgrounds during the State Fair. Law enforcement officers would be exempted, and persons with concealed handgun permits would still be authorized to have a handgun in their locked vehicle.

**Section 5** would expand the shooting range protection act to provide that shooting ranges are only subject to noise ordinances that were in effect at the time the shooting range began operation and do not have to comply ordinances adopted later if there has been no substantial change in use.

**Section 6** would modify the firearm rights restoration statute to ensure recognition of the restoration by federal law.

**Section 7** would eliminate some misdemeanors from the list of misdemeanor convictions that prohibit a person from obtaining a concealed handgun permit. This section would also make all other misdemeanor convictions, except for domestic violence offenses, only count against a person for 3 years in relation to prohibiting them from obtaining a concealed handgun permit.

O. Walker Reagan Director



Research Division (919) 733-2578

#### House Bill 562

Page 2

**Section 8** would establish sign requirements for signs prohibiting carrying of a concealed handgun on any property where such posting is authorized.

Section 9 would authorize the use of suppressors on short-barreled rifles for hunting.

**Section 10** would reduce the offense of carrying a concealed handgun on private posted property from a Class 1 misdemeanor to an infraction.

**Section 11** would make the following changes:

- Specify the information to be collected and reported to NICS for background checks and would require certain information to be transmitted to NICS by the clerk no later than 48 hours after receiving notice.
- Require pistol permit applications and concealed handgun permit applications to be provided electronically.
- Prohibit the sheriff from requesting additional information for concealed handgun permit applications unless specifically authorized by statute.
- Require arresting law enforcement agencies to fingerprint persons charged with certain misdemeanors and forward those fingerprints to NICS
- Direct AOC to use Court Technology Funds to comply with the NICS reporting requirements.

Section 12 would expand statewide uniformity of firearm regulation to specifically prohibit local governments from adopting any regulation relating to taxation, manufacture, or transportation of firearms. This section would also allow a person to bring an action for declaratory and injunctive relief against a local government that violates the section by adopting a regulation in violation of the law.

**Section 13** would prohibit health care providers from asking patients in a written questionnaire whether they have firearms and prohibit them from sharing any information provided orally by patients regarding firearms unless the patient has been adjudicated incompetent because of mental illness. Would provide a \$250 fine for a nonwillful violation and a \$500 fine for a willful violation and authorize the health care providers licensing board to consider violation grounds for disciplinary action.

**Section 14** would require the sheriff to issue or deny a concealed handgun permit application within 90 days.

**Section 15** would amend G.S. 14-415.23, which limits local government regulation of carrying concealed handguns to allow a person to bring an action for declaratory and injunctive relief against the local government for violation of the statute.

EFFECTIVE DATE: Sections 1, 2, 3, 9, and 10 of this act become effective July 1, 2015, and apply to offenses committed on or after that date. Section 8 of this act becomes effective July 1, 2015. Section 5 of this act becomes effective July 1, 2015, but shall not apply to pending litigation. Section 6 of this act is effective when it becomes law and applies to restorations granted before, on, or after that date. Section 7 of this act becomes effective July 1, 2015, and applies to permit applications submitted on or after that date. Sections 12, 13, and 15 of this act become effective December 1, 2015, and apply to violations occurring on or after that date. Section 14 becomes effective October 1, 2015, and applies to applications submitted on or after that date. Except as otherwise provided in this act, the remainder of this act is effective when it becomes law. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

#### **HOUSE BILL 562** PROPOSED COMMITTEE SUBSTITUTE H562-CSSA-54 [v.1]

D

4/27/2015 6:22:37 PM

| Short Title: | Amend Firearm Laws. | (Public) |
|--------------|---------------------|----------|
| Sponsors:    |                     |          |
| Referred to: |                     |          |

#### April 6, 2015

|   | A BILL TO BE ENTITLED   |
|---|---|
| 2 | AN ACT TO AMEND VARIOUS FIREARMS LAWS.                          |
| 3 | The General Assembly of North Carolina enacts:                  |
| 1 | SECTION 1.(a) G.S. 14-269(b) reads as rewritten:                |
| 5 | "(b) This prohibition shall not apply to the following persons: |

Any person who is a district attorney, an assistant district attorney, or an (4a) investigator employed by the office of a district attorney and who has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24; provided that the person shall not carry a concealed weapon at any time while in a courtroom or while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the person's body. The district attorney, assistant district attorney, or investigator shall secure the weapon in a locked compartment when the weapon is not on the person of the district attorney, assistant district attorney, or investigator;

(8) A person employed by the Department of Public Safety who has been designated in writing by the Secretary of the Department, who has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24, and has in the person's possession written proof of the designation by the Secretary of the Department, 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.

(9)Any person who is an administrative law judge described in Article 60 of Chapter 7A of the General Statutes 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."

**SECTION 1.(b)** G.S. 14-415.27 reads as rewritten: "§ 14-415.27. Expanded permit scope for certain persons.



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General Assembly of North Carolina Session 2015 Notwithstanding G.S. 14-415.11(c), any of the following persons who has a concealed 1 handgun permit issued pursuant to this Article or that is considered valid under G.S. 14-415.24 2 is not subject to the area prohibitions set out in G.S. 14-415.11(c) and may carry a concealed 3 handgun in the areas listed in G.S. 14-415.11(c) unless otherwise prohibited by federal law: 4 A district attorney. 5 (1) An assistant district attorney. (2) 6 An investigator employed by the office of a district attorney. 7 (3) A North Carolina district or superior court judge. 8 (4) 9 (5)A magistrate. A person who is elected and serving as a clerk of court. 10 (6) A person who is elected and serving as a register of deeds. 11 (7)A person employed by the Department of Public Safety who has been 12 (8) designated in writing by the Secretary of the Department and who has in the 13 person's possession written proof of the designation. 14 A North Carolina administrative law judge." 15 (9) 16

SECTION 2. G.S. 14-269.2(k) reads as rewritten:

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, if any of the following conditions are met:

- who The person has a handgun in a closed compartment or container within (1)the person's locked vehicle or in a locked container securely affixed to the person's vehicle. A person may unlock vehicle and only unlocks the vehicle to enter or exit the vehicle provided while the firearm remains in the closed compartment at all times and immediately locks the vehicle is locked immediately following the entrance or exit.
- The person has a handgun concealed on the person and the person remains in (2)the locked vehicle and only unlocks the vehicle to allow the entrance or exit of another person.
- The person is within a locked vehicle and removes the handgun from (3) concealment only for the amount of time reasonably necessary to do either of the following:
  - Move the handgun from concealment on the person to a closed a. compartment or container within the vehicle.
  - Move the handgun from within a closed compartment or container b. within the vehicle to concealment on the person.

Notwithstanding G.S. 14-415.11(c)(8), no school may prohibit the concealed carry of a handgun pursuant to this subsection."

**SECTION 3.** G.S. 14-269.2 is amended by adding a new subsection to read:

It is an affirmative defense to a prosecution under subsection (b) or (f) of this section that the person was authorized to have a concealed handgun in a locked vehicle pursuant to subsection (k) of this section and removed the handgun from the vehicle only in response to a threatening situation in which deadly force was justified pursuant to G.S. 14-51.3."

SECTION 4. Article 45 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"\$ 106-503.2. Regulation of firearms at State fair.

(a) Except as otherwise provided in this section, the Commissioner of Agriculture is authorized to prohibit the carrying of firearms in any manner on the State Fairgrounds during the period of time each year that the State fair is conducted. Any prohibition under this section shall be posted conspicuously in compliance with G.S. 14-415.28.

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(b) Notwithstanding subsection (a) of this section, any prohibition under this section shall not apply to the following persons:

> Any person exempted by G.S. 14-269(b)(1), (2), (3), (4), or (5). (1)

Any 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 5.(a)** G.S. 14-409.46 reads as rewritten:

# "§ 14-409.46. Sport shooting range protection.

- Notwithstanding any other provision of law, a person who owns, operates, or uses a sport shooting range in this State shall not be subject to civil liability or criminal prosecution in any matter relating to noise or noise pollution resulting from the operation or use of the range if the range was in existence at least three years prior to the effective date of this Article and the range was is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time the range began operation.
- A person who owns, operates, or uses a sport shooting range is not subject to an action for nuisance on the basis of noise or noise pollution, and a State court shall not enjoin the use or operation of a range on the basis of noise or noise pollution, if the range was in existence at least three years prior to the effective date of this Article and the range was is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time the range began operation.
- Rules adopted by any State department or agency for limiting levels of noise in terms of decibel level that may occur in the outdoor atmosphere shall not apply to a sport shooting range exempted from liability under this Article. that was in operation prior to the adoption of the rule.
- A person who acquires title to real property adversely affected by the use of property with a permanently located and improved sport shooting range constructed and initially operated prior to the time the person acquires title shall not maintain a nuisance action on the basis of noise or noise pollution against the person who owns the range to restrain, enjoin, or impede the use of the range. If there is a substantial change in use of the range after the person acquires title, the person may maintain a nuisance action if the action is brought within one year of the date of a substantial change in use. This section does not prohibit actions for negligence or recklessness in the operation of the range or by a person using the range.
- A sport shooting range that is operated and is not in violation of existing law at the time of the enactment of an ordinance and was in existence at least three years prior to the effective date of this Article, shall be permitted to continue in operation even if the operation of the sport shooting range at a later date does not conform to the new ordinance or an amendment to an existing ordinance, provided there has been no substantial change in use."

**SECTION 5.(b)** G.S. 14-409.47 reads as rewritten:

#### "§ 14-409.47. Application of Article.

Except as otherwise provided in this Article, this Article does not prohibit a local government from regulating the location and construction of a sport shooting range after the effective date of this Article. September 1, 1997."

**SECTION 6.** G.S. 14-415.4(a) reads as rewritten:

- Definitions. The following definitions apply in this section: "(a)
  - (1)Firearms rights. – The legal right in this State of a person to purchase, own, possess, or have in the person's custody, care, or control any firearm or any weapon of mass death and destruction as those terms are defined in

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(8a)

G.S. 14-415.1 and G.S. 14-288.8(c). The term does not include any weapon 1 2 defined in G.S. 14-409(a). 3 Nonviolent felony. – The term nonviolent felony does not include any felony (2) 4 that is a Class A, Class B1, or Class B2 felony. Also, the term nonviolent felony does not include any Class C through Class I felony that is one of the 5 following: 6 An offense that includes assault as an essential element of the 7 a. 8 offense. An offense that includes the possession or use of a firearm or other 9 b. deadly weapon as an essential or nonessential element of the offense, 10 or the offender was in possession of a firearm or other deadly 11 weapon at the time of the commission of the offense. 12 An offense for which the offender was armed with or used a firearm 13 c. 14 or other deadly weapon. An offense for which the offender must register under Article 27A of 15 d. Chapter 14 of the General Statutes." 16 **SECTION 7.** G.S. 14-415.12(b) reads as rewritten: 17 "(b) The sheriff shall deny a permit to an applicant who: 18 Is ineligible to own, possess, or receive a firearm under the provisions of 19 (1)20 State or federal law. 21 Is under indictment or against whom a finding of probable cause exists for a (2)22 Has been adjudicated guilty in any court of a felony, unless: (i) the felony is 23 (3) an offense that pertains to antitrust violations, unfair trade practices, or 24 25 restraints of trade, or (ii) the person's firearms rights have been restored pursuant to G.S. 14-415.4. 26 Is a fugitive from justice. 27 (4) 28 Is an unlawful user of, or addicted to marijuana, alcohol, or any depressant, (5) stimulant, or narcotic drug, or any other controlled substance as defined in 29 21 U.S.C. § 802. 30 31 (6)Is currently, or has been previously adjudicated by a court or administratively determined by a governmental agency whose decisions are 32 subject to judicial review to be, lacking mental capacity or mentally ill. 33 Receipt of previous consultative services or outpatient treatment alone shall 34 not disqualify an applicant under this subdivision. 35 Is or has been discharged from the Armed Forces of the United States under 36 (7)conditions other than honorable. 37 38 (8)Is or has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence 39 40 constituting a misdemeanor, including but not limited to, a violation of a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or a 41 violation of a misdemeanor under G.S. 14-225.2, 14-226.1, 14-258.1, 42 14-269.2, 14-269.3, 14-269.4, 14-269.6, 14-276.1, 14-277, 14-277.1, 43 14-277.2, 14-277.3A, <del>14-281.1, 14-283, 14-283</del> except for a violation 44 45 involving fireworks exempted under G.S. 14-414, 14-288.2, 14-288.4(a)(1) or (2):14-288.4(a)(1), 14-288.6, 14-288.9, former 14-288.12, former 46 47 14-288.13, former 14-288.14, 14-288.20A, 14-318.2, 14-415.21(b), 14-415.26(d), or former G.S. 14-277.3.G.S. 14-277.3 within three years prior 48 to the date on which the application is submitted. 49

Is prohibited from possessing a firearm pursuant to 18 U.S.C. § 922(g) as a

result of a conviction of a misdomeanor crime of domestic violence.

| General     | Assen      | ibly of North Carolina  | Session 201                                 |
|-------------|------------|---|---|
|             | (9)        | Has had entry of a prayer for judgment continued which would disqualify the person from obtaining                     | for a criminal offens<br>a concealed handgu |
|             | (10)       | permit.  Is free on bond or personal recognizance pending trial for a crime which would disqualify him from obtaining |   |
|             | (11)       | permit.<br>Has been convicted of an impaired driving offense<br>20-138.2, or 20-138.3 within three years prior to t   | under G.S. 20-138.                          |
|             |            | application is submitted."  FION 8.(a) Article 54B of Chapter 14 of the General 5                                     | Statutes is amended b                       |
| _           |            | ction to read:  |   |
| (a)         |            | ithstanding any other provision of this Article, an   | v requirement of a                          |
|             |            | e posting of signs prohibiting the carrying of a concea   |   |
|             |            | nly be satisfied by a sign meeting the requirements of this   |   |
| (b)         |            | igns must be posted at each entrance into a building v  |   |
| -           |            | un permit is prohibited from carrying a concealed hand  |   |
| of the foll |            |   | gair and mast more a                        |
| or the ron  | (1)        | Be clearly visible from outside the building.   |   |
|             | (2)        | Be eight inches wide by 12 inches tall in size.   |   |
|             | (3)        | Contain the words "NO CONCEALED HANDGUNS  | ALLOWED" in blac                            |
|             | (3)        | one-inch tall uppercase type at the bottom of the sign  |   |
|             |            | the lateral edges of the sign.  | did conteled betwee                         |
|             | (4)        | Contain a black silhouette of a handgun inside a  | circle seven inches i                       |
|             | 14)        | diameter with a diagonal line that runs from the lower  |   |
|             |            | at a 45-degree angle from the horizontal.   | Tert to the upper rigi                      |
|             | (5)        | Be placed not less than 40 inches and not more that   | an 60 inches from th                        |
|             | (5)        | bottom of the building's entrance door.   | in oo menes nom u                           |
| (c)         | If the     | premises where a person with a concealed handgun per  | rmit is prohibited from                     |
|             |            | aled handgun does not have doors, then the signs requir   |   |
|             |            | ollowing criteria:  |   |
| moot an c   |            | Be 36 inches wide by 48 inches tall in size.  |   |
|             | (2)        | Contain the words "NO CONCEALED HANDGUNS  | ALLOWED" in blac                            |
|             | 120        | three-inch tall uppercase type at the bottom of the sign  |   |
|             |            | the lateral edges of the sign.  |   |
|             | (3)        | Contain a black silhouette of a handgun inside a circle   | e 34 inches in diameter                     |
|             | <u> </u>   | with a two-inch wide border and a diagonal line that  |   |
|             |            | runs from the lower left to the upper right at a 45-  |   |
|             |            | horizontal.   |   |
|             | <u>(4)</u> | Be placed not less than 40 inches and not more tha  | n 96 inches above th                        |
|             |            | ground.   |   |
|             | (5)        | Be posted in sufficient quantities to be clearly visible  | from any point of ent                       |
|             | <u> </u>   | onto the premises."   |   |
|             | SEC        | TION 8.(b) G.S. 14-415.11(c) read as rewritten:   |   |
| "(c)        |            | pt as provided in G.S. 14-415.27, a permit does not auth  | orize a person to car                       |
| ` /         |            | dgun in any of the following:   | r   |
| a conce     | (1)        | Areas prohibited by G.S. 14-269.2, 14-269.3, and 14-2   | 277.2.                                      |
|             | (2)        | Areas prohibited by G.S. 14-269.4, except   |   |
|             | ( 2001 )   | G.S. 14-269.4(6).   |   |
|             | (3)        | In an area prohibited by rule adopted under G.S. 120-3  | 32.1.                                       |
|             | (4)        | In any area prohibited by 18 U.S.C. § 922 or any other  |   |

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- (5) In a law enforcement or correctional facility.(6) In a building housing only State or federal offices.
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- (7) In an office of the State or federal government that is not located in a building exclusively occupied by the State or federal government.
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- (8) On any private premises where notice that carrying a concealed handgun is prohibited by the posting of a conspicuous notice or statementsign meeting the criteria of G.S. 14-415.28 by the person in legal possession or control of the premises."

**SECTION 8.(e)** G.S. 14-269.3(b) reads as rewritten:

10 11 "(b) This section shall not apply to any of the following:

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A person carrying a handgun if the person has a valid concealed handgun (5)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 premises in accordance with handgun on the G.S. 14-415.11(c).G.S. 14-415.28."

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SECTION 8.(d) G.S. 14-277.2(d) reads as rewritten:

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"(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 subsection 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):G.S. 14-415.28."

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# **SECTION 8.(e)** G.S. 14-415.23(a) reads as rewritten:

"(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(e),G.S. 14-415.28, on local government buildings and their appurtenant premises."

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**SECTION 9.** G.S. 113-291.1(c) reads as rewritten:

39 40 "(c) It is a Class 1 misdemeanor for any person taking wildlife to have in his possession any:

41 42 (1) Repealed by Session Laws 2013-369, s. 23, effective October 1, 2013.

43 44 (2) Weapon of mass death and destruction as defined in G.S. 14-288.8, other than a suppressor or other device designed to muffle or minimize the report of a firearm or short-barreled rifle that is lawfully possessed by a person in compliance with 26 U.S.C. Chapter 53 §§ 5801-5871.

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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."

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SECTION 10. G.S. 14-415.21 reads as rewritten:

"§ 14-415.21. Violations of this Article punishable as an infraction.

A person who has been issued a valid permit who is found to be carrying a

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- 1 concealed handgun without the permit in the person's possession or who fails to disclose to any
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law enforcement officer that the person holds a valid permit and is carrying a concealed handgun, as required by G.S. 14-415.11, or who is found to be carrying a concealed handgun in violation of subdivision (c)(8) of 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. A person who has been issued a valid permit who is found to be carrying a (a1) 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. 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 11.(a)** G.S. 122C-54(d1) is repealed.

**SECTION 11.(b)** G.S. 122C-54.1 is recodified as G.S. 14-409.42.

**SECTION 11.(c)** G.S. 14-404(c1) is repealed.

**SECTION 11.(d)** Article 53B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-409.43. Reporting of certain disqualifiers to the National Instant Criminal Background Check System (NICS).

- 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 work through the Administrative Office of the Courts to cause a record of the determination or finding to be transmitted to the National Instant Criminal Background Check System (NICS):
  - A determination that an individual shall be involuntarily committed to a (1) facility for inpatient mental health treatment upon a finding that the individual is mentally ill and a danger to self or others.
  - A determination that an individual shall be involuntarily committed to a **(2)** 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.
  - A determination that an individual shall be involuntarily committed to a (3)facility for substance abuse treatment upon a finding that the individual is a substance abuser and a danger to self or others.
  - A finding that an individual is not guilty by reason of insanity. (4)
  - A finding that an individual is mentally incompetent to proceed to criminal (5)trial.
  - A finding that an individual lacks the capacity to manage the individual's (6)own affairs due to marked subnormal intelligence or mental illness, incompetency, condition, or disease.
  - A determination to grant a petition to an individual for the removal of (7)disabilities pursuant to G.S. 14-409.42 or any applicable federal law.

The 48-hour period for transmitting a record of a judicial determination or finding to the NICS under subsection (a) of this section begins upon receipt by the clerk of a copy of the judicial determination or finding. The Administrative Office of the Courts shall adopt rules to require clerks of court to transmit information to the NICS in a uniform manner.

Excluding Saturdays, Sundays, and holidays, not later than 48 hours after receiving notice of the issuance of a felony warrant, indictment, criminal summons, or order for arrest, the Administrative Office of the Courts shall transmit any unserved felony warrants,

indictments, criminal summons, or order for arrests to the NCIC (or National Instant Criminal Background Check System (NICS)).

(c) Excluding Saturdays, Sundays, and holidays, not later than 48 hours after service by the sheriff of an order issued by a judge pursuant to Chapter 50B of the General Statutes and pursuant to G.S. 50B-3(d) the sheriff shall cause a record of the order to be transmitted to the National Instant Criminal Information System."

# **SECTION 11.(e)** G.S. 122C-54(d2) reads 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 to be reported to the National Instant Criminal Background Check System (NICS) by G.S. 14-409.43 shall be accessible only by an entity having proper access to NICS the sheriff or the sheriff's designee for the purposes of conducting background checks under G.S. 14-404 and shall remain otherwise confidential as provided by this Article. 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 11.(f)** G.S. 14-404(a) reads as rewritten:

"(a) Upon application, <u>and such application must be provided by the sheriff electronically,</u> the sheriff shall issue the permit to a resident of that county, unless the purpose of the permit is for collecting, in which case a sheriff can issue a permit to a nonresident, when the sheriff has done all of the following:

# **SECTION 11.(g)** G.S. 14-415.13(a) reads as rewritten:

- "(a) A person shall apply to the sheriff of the county in which the person resides to obtain a concealed handgun permit. The applicant shall submit to the sheriff all of the following:
  - (1) An application, completed under oath, on a form provided by the sheriff.sheriff, and such application form must be provided by the sheriff electronically. The sheriff shall not request employment information, character affidavits, additional background checks, photographs, or other information unless specifically permitted by this Article.

# **SECTION 11.(h)** G.S. 15A-502 reads as rewritten:

#### "§ 15A-502. Photographs and fingerprints.

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- (a) A person charged with the commission of a felony or a misdemeanor may be photographed and his fingerprints may be taken for law-enforcement records only when he has been:
  - (1) Arrested or committed to a detention facility, or
  - (2) Committed to imprisonment upon conviction of a crime, or
  - (3) Convicted of a felony.
- (a1) It shall be the duty of the arresting law-enforcement agency to cause a person charged with the commission of a felony to be fingerprinted and to forward those fingerprints to the State Bureau of Investigation.
- (a2) It shall be the duty of the arresting law enforcement agency to cause a person charged with the commission of any of the following misdemeanors to be fingerprinted, for the purposes of reporting these offenses to the National Criminal Instant Background Check System (NICS), and to forward those fingerprints to the State Bureau of Investigation:
  - (1) G.S. 14-134.3 (Domestic criminal trespass), G.S. 15A-1382.1 (Offense that involved domestic violence), or G.S. 50B-4.1 (Violation of a valid protective order).
  - (2) G.S. 20-138.1 (Impaired driving), G.S. 20-138.2 (Impaired driving in commercial vehicle), G.S. 20-138.2A (Operating a commercial vehicle after

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consuming alcohol), and G.S. 20-138.2B (Operating various school, child care, EMS, firefighting, or law enforcement vehicles after consuming alcohol).

(3) G.S. 90-95(d) (Possession of a controlled substance).

- (a3) It shall be the duty of the arresting law enforcement agency to cause a person charged with a crime to provide to the magistrate as much of the following information as possible for the person arrested:
  - (1) Name including first, last, middle, maiden, and nickname or alias.
  - (2) Address including street, city, and state.
  - (3) Drivers license number and state of issuance.
  - (4) Date of birth.
  - (5) Gender.
  - (6) Race.
  - (7) Social Security number.
  - (8) Relationship to the alleged victim and whether it is a "personal relationship" as defined by G.S. 50B-1(b).
- (a4) It shall be the duty of the arresting law enforcement agency to cause a person who has been charged with a misdemeanor offense of assault, stalking, or communicating a threat and held under G.S. 15A-534.1, to be fingerprinted for the purposes of reporting these offenses to the National Criminal Instant Background Check System (NICS) and to forward those fingerprints to the State Bureau of Investigation.
- (a5) It shall be the duty of the magistrate to enter into the court information system all information provided by the arresting law enforcement agency on the person arrested.
- (a2)(a6) If the person cannot be identified by a valid form of identification, it shall be the duty of the arresting law-enforcement agency to cause a person charged with the commission of:
  - (1) Any offense involving impaired driving, as defined in G.S. 20-4.01(24a), or
  - (2) Driving while license revoked if the revocation is for an Impaired Driving License Revocation as defined in G.S. 20-28.2

to be fingerprinted and photographed.

- (b) This section does not authorize the taking of photographs or fingerprints when the offense charged is a Class 2 or 3 misdemeanor under Chapter 20 of the General Statutes, "Motor Vehicles." Notwithstanding the prohibition in this subsection, a photograph may be taken of a person who operates a motor vehicle on a street or highway if:
  - (1) The person is cited by a law enforcement officer for a motor vehicle moving violation, and
  - (2) The person does not produce a valid drivers license upon the request of a law enforcement officer, and
  - (3) The law enforcement officer has a reasonable suspicion concerning the true identity of the person.

As used in this subsection, the phrase "motor vehicle moving violation" does not include the offenses listed in the third paragraph of G.S. 20-16(c) for which no points are assessed, nor does it include equipment violations specified in Part 9 of Article 3 of Chapter 20 of the General Statutes.

- (b1) Any photograph authorized by subsection (b) of this section and taken by a law enforcement officer or agency:
  - (1) Shall only be taken of the operator of the motor vehicle, and only from the neck up.
  - (2) Shall be taken at either the location where the citation is issued, or at the jail if an arrest is made.

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- (3) Shall be retained by the law enforcement officer or agency until the final disposition of the case.
   (4) Shall not be used for any purpose other than to confirm the identity of the
- (4) Shall not be used for any purpose other than to confirm the identity of the alleged offender.
- (5) Shall be destroyed by the law enforcement officer or agency upon a final disposition of the charge.
- (c) This section does not authorize the taking of photographs or fingerprints of a juvenile alleged to be delinquent except under Article 21 of Chapter 7B of the General Statutes.
- (d) This section does not prevent the taking of photographs, moving pictures, video or sound recordings, fingerprints, or the like to show a condition of intoxication or for other evidentiary use.
- (e) Fingerprints or photographs taken pursuant to subsection (a), (a1), or (a2) of this section may be forwarded to the State Bureau of Investigation, the Federal Bureau of Investigation, or other law-enforcement agencies."

**SECTION 11.(i)** The Administrative Office of the Courts shall use funds available from the Court Technology Fund to comply with subsection (d) of this section and to provide all of the following historical records to the National Instant Criminal Background Check System (NICS) by May 31, 2019:

- (1) Involuntary commitments for in-patient and out-patient mental health and substance abuse treatment from all counties.
- (2) Findings of not guilty by reason of insanity or mentally incompetent to stand trial from all counties.
- (3) Findings 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 from all counties.
- (4) Convictions for misdemeanor possession of controlled substances under G.S. 90-95(d) from all counties from January 1, 2009.
- (5) Convictions for all misdemeanors as identified in G.S. 14-134.3, 15A-1382.1, or 50B-4.1 from all counties.
- (6) Convictions for all misdemeanors as identified in G.S. 20-138.1, 20-138.2, 20-138.2A, and 20-138.2B or convicted and sentenced under G.S. 20-179(f3) for more than two years from all counties.
- (7) Active and unserved felony warrants, indictments, criminal summons, and orders for arrest from all counties.

**SECTION 11.(j)** G.S. 14-404(g) reads as rewritten:

"(g) An applicant shall not be ineligible to receive a permit under subdivision (c)(4) of this section because of involuntary commitment to mental health services if the individual's rights have been restored under G.S. 122C-54.1.G.S. 14-409.42."

**SECTION 11.(k)** G.S. 14-415.3(c) reads as rewritten:

"(c) The provisions of this section shall not apply to a person whose rights have been restored pursuant to G.S. 122C-54.1.G.S. 14-409.42."

**SECTION 11.(1)** 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.G.S. 14-409.42."

**SECTION** 11.(m) G.S. 122C-54.1(a), recodified as G.S. 14-409.42(a) by subsection (b) of this section, reads as rewritten:

"(a) Any individual over the age of 18 may petition for the removal of the 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

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Background Check System by subdivisions (1) through (6) of subsection (d1) of G.S. 122C 54. of subsection (a) of G.S. 14-409.43. The individual may file the petition with a district court judge upon the expiration of any current inpatient or outpatient commitment."

#### **SECTION 11.(n)** G.S. 15A-534(a) reads as rewritten:

- "(a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:
  - (1) Release the defendant on his written promise to appear.
  - (2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.
  - (3) Place the defendant in the custody of a designated person or organization agreeing to supervise him.
  - (4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.
  - (5) House arrest with electronic monitoring.

If condition (5) is imposed, the defendant must execute a secured appearance bond under subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1) or (a2),G.S. 15A-502(a1), (a2), (a4), or (a6), or a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, and (i) the fingerprints or DNA sample have not yet been taken or (ii) the defendant has refused to provide the fingerprints or DNA sample a condition of pretrial release. The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release. The judicial official may include as a condition of pretrial release that the defendant abstain from alcohol consumption, as verified by the use of a continuous alcohol monitoring system, of a type approved by the Division of Adult Correction of the Department of Public Safety, and that any violation of this condition be reported by the monitoring provider to the district attorney."

**SECTION 11.(0)** Subsections (f) and (g) of this section become effective October 1, 2105, and apply to applications submitted on or after that date. Subsections (h) and (n) of this section become effective on October 1, 2015. Subsections (a), (d), and (m) of this section become effective on January 1, 2016. The remaining subsections of this section are effective when they become law.

#### **SECTION 12.** G.S. 14-409.40 reads as rewritten:

#### "§ 14-409.40. Statewide uniformity of local regulation.

- (a) It is declared by the General Assembly that the regulation of firearms is properly an issue of general, statewide concern, and that the entire field of regulation of firearms is preempted from regulation by local governments except as provided by this section.
- (a1) The General Assembly further declares that the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is not an unreasonably dangerous activity and does not constitute a nuisance per se and furthermore, that it is the unlawful use of firearms and ammunition, rather than their lawful design, marketing, manufacture, distribution, sale, or transfer that is the proximate cause of injuries arising from their unlawful use. This subsection applies only to causes of action brought under subsection (g) of this section.
- (b) Unless otherwise permitted by statute, no county or municipality, by ordinance, resolution, or other enactment, shall regulate in any manner the possession, ownership, storage, transfer, sale, purchase, licensing, taxation, manufacture, transportation, or registration of firearms, firearms ammunition, components of firearms, dealers in firearms, or dealers in handgun components or parts.

- (c) Notwithstanding subsection (b) of this section, a county or municipality, by zoning or other ordinance, may regulate or prohibit the sale of firearms at a location only if there is a lawful, general, similar regulation or prohibition of commercial activities at that location. Nothing in this subsection shall restrict the right of a county or municipality to adopt a general zoning plan that prohibits any commercial activity within a fixed distance of a school or other educational institution except with a special use permit issued for a commercial activity found not to pose a danger to the health, safety, or general welfare of persons attending the school or educational institution within the fixed distance.
- (d) No county or municipality, by zoning or other ordinance, shall regulate in any manner firearms shows with regulations more stringent than those applying to shows of other types of items.
- (e) A county or municipality may regulate the transport, carrying, or possession of firearms by employees of the local unit of government in the course of their employment with that local unit of government.
- (f) Nothing contained in this section prohibits municipalities or counties from application of their authority under G.S. 153A-129, 160A-189, 14-269, 14-269.2, 14-269.3, 14-269.4, 14-277.2, 14-415.11, 14-415.23, including prohibiting the possession of firearms in public-owned buildings, on the grounds or parking areas of those buildings, or in public parks or recreation areas, except nothing in this subsection shall prohibit a person from storing a firearm within a motor vehicle while the vehicle is on these grounds or areas. Nothing contained in this section prohibits municipalities or counties from exercising powers provided by law in states of emergency declared under Article 1A of Chapter 166A of the General Statutes.
- (g) The authority to bring suit and the right to recover against any firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association by or on behalf of any governmental unit, created by or pursuant to an act of the General Assembly or the Constitution, or any department, agency, or authority thereof, for damages, abatement, injunctive relief, or any other remedy resulting from or relating to the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is reserved exclusively to the State. Any action brought by the State pursuant to this section shall be brought by the Attorney General on behalf of the State. This section shall not prohibit a political subdivision or local governmental unit from bringing an action against a firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association for breach of contract or warranty for defect of materials or workmanship as to firearms or ammunition purchased by the political subdivision or local governmental unit.
- (h) A person adversely affected by any ordinance, rule, or regulation promulgated or caused to be enforced by any county or municipality in violation of this section may bring an action for declaratory and injunctive relief and for actual damages arising from the violation. The court shall award the prevailing plaintiff in an action brought under this subsection reasonable attorneys' fees and court costs as authorized by law."

**SECTION 13.** Chapter 90 of the General Statutes is amended by adding a new Article to read:

#### "Article 11.

"Preserving Firearms Privacy for Patients.

#### "§ 90-21.75. Findings and intent.

- (a) Findings. The General Assembly makes all of the following findings:
  - (1) That individuals have a right under the United States Constitution and the North Carolina Constitution to keep and bear arms, which arms include firearms and their ammunition.
  - (2) That an individual's decision to exercise this right is a private matter.

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# exception.

Confidentiality of Verbal Inquiries About Firearms and Ammunition. - A health care provider is prohibited from disclosing to any government official or agency the response of a patient, or the patient's parent, guardian, or custodian, to verbal inquiries about the patient's lawful ownership, possession, handling, storage, maintenance of, or other conduct involving, firearms and ammunition, unless the patient has been adjudicated incompetent due to mental illness.

#### "\$ 90-21.79. Fines.

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The health care provider's licensing board may impose a fine on any health care provider that violates any provision of this Article. The fine shall not exceed two hundred fifty dollars (\$250.00) for nonwillful violations and shall not exceed five hundred dollars (\$500.00) for willful violations. Each intentional and willful violation of this Article constitutes a separate violation and is subject to a separate fine.

# "§ 90-21.80. Disciplinary action.

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<u>Violation of this Article is a ground for disciplinary action against the health care provider</u> by the health care provider's licensing board or other regulatory authority."

#### **SECTION 14.** G.S. 14-415.15(a) reads as rewritten:

"(a) Except as permitted under subsection (b) of this section, within 45 days after receipt of the items listed in G.S. 14-415.13 from an applicant, and receipt of the required records concerning the mental health or capacity of the applicant, the sheriff shall either issue or deny the permit. The sheriff shall issue or deny the permit within 90 calendar days from the date on which the application was submitted regardless of the receipt of required records concerning the mental health or capacity of the applicant. Such denial shall not be issued unless the applicant is determined to be ineligible under G.S. 14-415.12.

The sheriff may conduct any investigation necessary to determine the qualification or competency of the person applying for the permit, including record checks."

#### **SECTION 15.** G.S. 14-415.23 is amended by adding a new subsection to read:

"(e) A person adversely affected by any ordinance, rule, or regulation promulgated or caused to be enforced by any unit of local government in violation of this section may bring an action for declaratory and injunctive relief and for actual damages arising from the violation. The court shall award the prevailing plaintiff in an action brought under this subsection reasonable attorneys' fees and court costs as authorized by law."

SECTION 16. Sections 1, 2, 3, 9, and 10 of this act become effective July 1, 2015, and apply to offenses committed on or after that date. Section 8 of this act becomes effective July 1, 2015. Section 5 of this act becomes effective July 1, 2015, but shall not apply to pending litigation. Section 6 of this act is effective when it becomes law and applies to restorations granted before, on, or after that date. Section 7 of this act becomes effective July 1, 2015, and applies to permit applications submitted on or after that date. Sections 12, 13, and 15 of this act become effective December 1, 2015, and apply to violations occurring on or after that date. Section 14 becomes effective October 1, 2015, and applies to applications submitted on or after that date. Except as otherwise provided in this act, the remainder of this act is effective when it becomes law. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

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# NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

| Amendment No                    |
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| Principal Clerk) , line S 36-37 |
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# GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H HOUSE BILL 562

Short Title: Amend Firearm Laws. (Public)

Sponsors: Representatives Schaffer, Burr, Cleveland, and Faircloth (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

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Referred to: Judiciary I.

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# April 6, 2015

#### A BILL TO BE ENTITLED

AN ACT TO ALLOW DISTRICT ATTORNEYS TO CARRY CONCEALED HANDGUNS IN COURTROOMS, TO PROVIDE THAT PROHIBITIONS ON CARRYING CONCEALED HANDGUNS DO NOT APPLY TO CERTAIN DEPARTMENT OF PUBLIC SAFETY EMPLOYEES, TO AMEND LAWS RELATING TO CONCEALED HANDGUNS ON EDUCATIONAL PROPERTY, TO PROHIBIT CONCEALED HANDGUNS ON RIDES AT THE STATE FAIR, TO ELIMINATE PISTOL PERMITS, REQUIRE CHIEF LAW ENFORCEMENT OFFICERS TO COMPLETE CERTIFICATIONS REQUIRED BY FEDERAL LAW, TO REQUIRE EMPLOYERS TO ALLOW EMPLOYEES TO SECURE A HANDGUN IN THEIR VEHICLE, TO AMEND THE SHOOTING RANGE PROTECTION ACT. TO ENSURE FEDERAL RECOGNITION OF STATE FIREARM RIGHT RESTORATION, TO MODIFY THE MISDEMEANOR CONVICTIONS THAT PREVENT ISSUANCE OF A CONCEALED HANDGUN PERMIT, TO IMPLEMENT SIGN REQUIREMENTS FOR PRIVATE PROPERTY OWNERS THAT CHOOSE TO PROHIBIT CONCEALED HANDGUNS, AND TO ALLOW HUNTING WITH SUPPRESSORS ON SHORT-BARRELED RIFLES.

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** G.S. 14-269(b) reads as rewritten:

- "(b) This prohibition shall not apply to the following persons:
  - ... (4a) Any person who is a district attorney, an assistant district attorney, or an
  - investigator employed by the office of a district attorney and who has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24; provided that the person shall not carry a concealed weapon at any time while in a courtroom or while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the person's body. The district attorney, assistant district attorney, or investigator shall secure the weapon in a locked compartment when the weapon is not on the person of the district attorney, assistant district attorney, or investigator;
  - (7) A person employed by the Department of Public Safety who has been designated in writing by the Secretary of the Department, who has a concealed handgun permit issued in accordance with Article 54B of this



Chapter or considered valid under G.S. 14-415.24, and has in the person's 1 possession written proof of the designation by the Secretary of the 2 Department, provided that the person shall not carry a concealed weapon at 3 4 any time while consuming alcohol or an unlawful controlled substance or 5 while alcohol or an unlawful controlled substance remains in the person's 6 body." 7 **SECTION 1.(b)** G.S. 14-415.27 reads as rewritten: 8 "§ 14-415.27. Expanded permit scope for certain persons. 9 Notwithstanding G.S. 14-415.11(c), any 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 10 is not subject to the area prohibitions set out in G.S. 14-415.11(c) and may carry a concealed 11 12 handgun in the areas listed in G.S. 14-415.11(c) unless otherwise prohibited by federal law: 13 A district attorney. (1) 14 (2) An assistant district attorney. An investigator employed by the office of a district attorney. 15 (3) 16 (4) A North Carolina district or superior court judge. 17 A magistrate. (5) 18 (6) A person who is elected and serving as a clerk of court. 19 (7) A person who is elected and serving as a register of deeds. 20 A person employed by the Department of Public Safety who has been (8) 21 designated in writing by the Secretary of the Department and who has in the person's possession written proof of the designation." 22 23 **SECTION 2.** G.S. 14-269.2(k) reads as rewritten: The provisions of this section shall not apply to a person who has a concealed 24 "(k) 25 handgun permit that is valid under Article 54B of this Chapter, or who is exempt from obtaining a permit pursuant to that Article, if any of the following conditions are met: 26 who The person has a handgun in a closed compartment or container within 27 (1) 28 the person's locked vehicle or in a locked container securely affixed to the 29 person's vehicle. A person may unlockvehicle and only unlocks the vehicle 30 to enter or exit the vehicle provided while the firearm remains in the closed 31 compartment at all times and immediately locks the vehicle is locked immediately following the entrance or exit. 32 The person has a handgun concealed on the person and the person remains in 33 (2) the locked vehicle and only unlocks the vehicle to allow the entrance or exit 34 35 of another person. The person is within a locked vehicle and removes the handgun from 36 (3) 37 concealment only for the amount of time reasonably necessary to do either of the following: 38 Move the handgun from concealment on the person to a closed 39 <u>a.</u> compartment or container within the vehicle. 40 Move the handgun from within a closed compartment or container 41 <u>b.</u> within the vehicle to concealment on the person. 42 Notwithstanding G.S. 14-415.11(c)(8), no school may prohibit the concealed carry of a 43 44 handgun pursuant to this subsection." **SECTION 3.** G.S. 14-269.2 is amended by adding a new subsection to read: 45 46

It is an affirmative defense to a prosecution under subsection (b) or (f) of this

section that the person was authorized to have a concealed handgun in a locked vehicle pursuant to subsection (k) of this section and removed the handgun from the vehicle only in response to a threatening situation in which deadly force was justified pursuant to G.S. 14-51.3."

**SECTION 4.** G.S. 14-269.3(b) reads as rewritten:

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This section shall not apply to any of the following: 1 "(b) 2 A person exempted from the provisions of G.S. 14-269. 3 The owner or lessee of the premises or business establishment. (2) A person participating in the event, if the person is carrying a gun, rifle, or 4 (3) 5 pistol with the permission of the owner, lessee, or person or organization 6 sponsoring the event. 7 (4) A person registered or hired as a security guard by the owner, lessee, or 8 person or organization sponsoring the event. 9 (5) A person carrying a handgun if the person has a valid concealed handgun 10 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 11 12 exempt from obtaining a permit pursuant to G.S. 14-415.25. that Article. This 13 subdivision shall not be construed to permit a person to carry a handgun on 14 any premises where the person in legal possession or control of the premises 15 has posted a conspicuous notice prohibiting the carrying of a concealed 16 handgun on the premises in accordance with G.S. 14-415.11(c). 17 A person carrying a handgun on the premises of the State Fairgrounds during (6) 18 the State Fair if the person has a valid concealed handgun permit issued in accordance with Article 54B of this Chapter, or is exempt from obtaining a 19 20 permit pursuant to that Article, provided the person does not ride or enter 21 any amusement device as defined by G.S. 95-111.3. Nothing in this 22 subdivision shall be construed to prohibit a person from possessing a 23 handgun in compliance with G.S. 14-269(a2) in a parking area that is owned 24 or leased by State government." 25 SECTION 5.(a) The following statutes are repealed: G.S. 14-402, 14-403, 14-404, 26 14-405, and 14-407.1. 27 **SECTION 5.(b)** G.S. 14-315(b1) reads as rewritten: 28 "(b1) Defense. – It shall be a defense to a violation of this section if all of the following 29 conditions are met: 30 The person shows that the minor produced an apparently valid permit to (1)31 receive the weapon, if such a permit would be required under G.S. 14-402 32 for transfer of the weapon to an adult. 33 (2) The person reasonably believed that the minor was not a minor. 34 (3) The person either: 35 Shows that the minor produced a drivers license, a special 36 identification card issued under G.S. 20-37.7, a military identification 37 card, or a passport, showing the minor's age to be at least the required 38 age for purchase and bearing a physical description of the person 39 named on the card reasonably describing the minor; or 40 Produces evidence of other facts that reasonably indicated at the time b. 41 of sale that the minor was at least the required age." 42 **SECTION 6.** Article 53B of Chapter 14 of the General statutes is amended by 43 adding a new section to read: 44 "§ 14-409.41. Chief law enforcement officer certification; certain firearms. 45 Definitions. – The following definitions apply in this section: (a) 46 Certification. – The participation and assent of the chief law enforcement (1)47 officer necessary under federal law for the approval of the application to 48 transfer or make a firearm. 49 Chief law enforcement officer. - Any official the United States Bureau of (2) 50 Alcohol, Tobacco, Firearms, and Explosives, or any successor agency,

identified by regulation or otherwise as eligible to provide any required certification for the transfer or making of a firearm.

(3) Firearm. – Any firearm that meets the definition of firearm in 26 U.S.C. § 5845.

(b) When a chief law enforcement officer's certification is required by federal law or regulation for the transfer or making of a firearm, the chief law enforcement officer shall, within 15 days of receipt of a request for certification, provide the certification if the applicant is not prohibited by State or federal law from receiving or possessing the firearm and is not the subject of a proceeding that could result in the applicant being prohibited by State or federal law from receiving or possessing the firearm. If the chief law enforcement officer is unable to make a certification as required by this section, the chief law enforcement officer shall provide the applicant with a written notification of the denial and the reason for the denial.

Nothing in this section shall require a chief law enforcement officer to make a certification the chief law enforcement officer knows to be untrue, but the chief law enforcement officer may not refuse to provide certification based on a generalized objection to private persons or entities making, possessing, or receiving firearms or any certain type of firearm the possession of which is not prohibited by law.

(c) An applicant whose request for certification is denied may appeal the decision of the chief law enforcement officer to the district court of the district in which the request for certification was made. The court shall make a de novo review of the chief law enforcement officer's decision to deny the certification. If the court finds that the applicant is not prohibited by State or federal law from receiving or possessing the firearm, is not the subject of a proceeding that could result in the applicant being prohibited by State or federal law from receiving or possessing the firearm, and that no substantial evidence supports the chief law enforcement officer's determination that the chief law enforcement officer cannot truthfully make the certification, the court shall order the chief law enforcement officer to issue the certification and award court costs and reasonable attorneys' fees to the applicant.

(d) Chief law enforcement officers and their employees who act in good faith are immune from liability arising from any act or omission in making a certification as required by this section."

**SECTION 7.** Article 53B of Chapter 14 of the General Statutes is amended by adding a new section to read:

 "§ 14-409.42. No prohibition regarding the transportation or storage of a firearm in locked motor vehicle by business, commercial enterprise, or employer; civil liability; enforcement.

 (a) As used in this section, the term "motor vehicle" means any automobile, truck, minivan, sport utility vehicle, motorcycle, motor scooter, and any other vehicle required to be registered under Chapter 20 of the General Statutes.

(b) A business, commercial enterprise, or employer shall not establish, maintain, or enforce a policy or rule that prohibits or has the effect of prohibiting a person from transporting or storing any firearm or ammunition when the person has a concealed handgun permit that is valid under Article 54B of this Chapter, or is exempt from obtaining a permit pursuant to that Article, is otherwise in compliance with all other applicable laws and regulations, and the firearm or ammunition is in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle. A person may unlock the vehicle to enter or exit the vehicle, provided the firearm or ammunition remain in the closed compartment at all times and the vehicle is locked immediately following the entrance or exit.

(c) Subsection (b) of this section shall not apply to the following:

(1) Vehicles owned or leased by an employer.

 Where transport or storage of a firearm is prohibited by State or federal law or regulation.

- (d) A person who is injured or incurs damages, or the survivors of a person killed, as a result of a violation of subsection (b) of this section may bring a civil action in the appropriate court against any business entity, commercial enterprise, or employer who committed or caused such violation. A person who would be entitled legally to transport or store a firearm or ammunition, but who would be denied the ability to transport or store a firearm or ammunition by a policy in violation of subsection (b) of this section, may bring a civil action in the appropriate court to enjoin any business entity, commercial enterprise, or employer from violating subsection (b) of this section.
- (e) An employee discharged by an employer, business entity, or commercial enterprise for violation of a policy or rule prohibited under subsection (b) of this section, when he or she was lawfully transporting or storing a firearm out of plain sight in a locked motor vehicle, is entitled to full recovery as specified in subdivisions (1) through (4) of this subsection, inclusive. If the demand for the recovery is denied, the employee may bring a civil action in the courts of this State against the employer, business entity, or commercial enterprise and is entitled to the following:
  - (1) Reinstatement to the same position held at the time of his or her termination from employment, or to an equivalent position.
  - (2) Reinstatement of the employee's full fringe benefits and seniority rights, as appropriate.
  - (3) Compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the termination.
  - (4) Payment of reasonable attorneys' fees and legal costs incurred.
- (f) A business, commercial enterprise, employer, or property owner that allows persons to transport or store any firearm or ammunition pursuant to subsection (b) of this section shall have complete immunity and shall not be held liable in any civil action for damages, injuries, or death resulting from or arising out of another person's actions involving a firearm or ammunition transported or stored in accordance with this section, including, but not limited to, the theft of a firearm from an employee's automobile. Nothing contained in this section shall create a new duty on the part of any business, commercial enterprise, employer, or property owner. This section shall not be construed to permit a person to possess a firearm outside of a motor vehicle while on the premises of a place of employment where the person in legal possession or control of the premises has posted a conspicuous notice prohibiting possession of a firearm on the premises.
- (g) In any action relating to the enforcement of any right or obligation under subsections (d) and (e) of this section, the reasonable, good-faith efforts of a business, commercial enterprise, employer, or property owner to comply with other applicable and irreconcilable federal or State safety laws or regulations shall be a complete defense to any liability of the business, commercial enterprise, employer, or property owner."

SECTION 8.(a) G.S. 14-409.46 reads as rewritten:

# "§ 14-409.46. Sport shooting range protection.

- (a) Notwithstanding any other provision of law, a person who owns, operates, or uses a sport shooting range in this State shall not be subject to civil liability or criminal prosecution in any matter relating to noise or noise pollution resulting from the operation or use of the range if the range was in existence at least three years prior to the effective date of this Article and the range was is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time the range began operation.
- (b) A person who owns, operates, or uses a sport shooting range is not subject to an action for nuisance on the basis of noise or noise pollution, and a State court shall not enjoin the use or operation of a range on the basis of noise or noise pollution, if the range was in existence at least three years prior to the effective date of this Article and the range was is in

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compliance with any noise control laws or ordinances that applied to the range and its operation at the time the range began operation.

- (c) Rules adopted by any State department or agency for limiting levels of noise in terms of decibel level that may occur in the outdoor atmosphere shall not apply to a sport shooting range exempted from liability under this Article. that was in operation prior to the adoption of the rule.
- (d) A person who acquires title to real property adversely affected by the use of property with a permanently located and improved sport shooting range constructed and initially operated prior to the time the person acquires title shall not maintain a nuisance action on the basis of noise or noise pollution against the person who owns the range to restrain, enjoin, or impede the use of the range. If there is a substantial change in use of the range after the person acquires title, the person may maintain a nuisance action if the action is brought within one year of the date of a substantial change in use. This section does not prohibit actions for negligence or recklessness in the operation of the range or by a person using the range.
- (e) A sport shooting range that is operated and is not in violation of existing law at the time of the enactment of an ordinance and was in existence at least three years prior to the effective date of this Article, shall be permitted to continue in operation even if the operation of the sport shooting range at a later date does not conform to the new ordinance or an amendment to an existing ordinance, provided there has been no substantial change in use."

**SECTION 8.(b)** G.S. 14-409.47 reads as rewritten:

### "§ 14-409.47. Application of Article.

Except as otherwise provided in this Article, this Article does not prohibit a local government from regulating the location and construction of a sport shooting range after the effective date of this Article. September 1, 1997."

## **SECTION 9.** G.S. 14-415.4(a) reads as rewritten:

- "(a) Definitions. The following definitions apply in this section:
  - (1) Firearms rights. The legal right in this State of a person to purchase, own, possess, or have in the person's custody, care, or control any firearm or any weapon of mass death and destruction as those terms are defined in G.S. 14-415.1 and G.S. 14-288.8(c). The term does not include any weapon defined in G.S. 14-409(a).
  - (2) Nonviolent felony. The term nonviolent felony does not include any felony that is a Class A, Class B1, or Class B2 felony. Also, the term nonviolent felony does not include any Class C through Class I felony that is one of the following:
    - a. An offense that includes assault as an essential element of the offense.
    - b. An offense that includes the possession or use of a firearm or other deadly weapon as an essential or nonessential element of the offense, or the offender was in possession of a firearm or other deadly weapon at the time of the commission of the offense.
    - c. An offense for which the offender was armed with or used a firearm or other deadly weapon.
    - d. An offense for which the offender must register under Article 27A of Chapter 14 of the General Statutes."

#### SECTION 10. G.S. 14-415.12(b) reads as rewritten:

- "(b) The sheriff shall deny a permit to an applicant who:
  - (1) Is ineligible to own, possess, or receive a firearm under the provisions of State or federal law.
  - (2) Is under indictment or against whom a finding of probable cause exists for a felony.

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- (3) Has been adjudicated guilty in any court of a felony, unless: (i) the felony is an offense that pertains to antitrust violations, unfair trade practices, or restraints of trade, or (ii) the person's firearms rights have been restored pursuant to G.S. 14-415.4.
- (4) Is a fugitive from justice.
- (5) Is an unlawful user of, or addicted to marijuana, alcohol, or any depressant, stimulant, or narcotic drug, or any other controlled substance as defined in 21 U.S.C. § 802.
- (6) Is currently, or has been previously adjudicated by a court or administratively determined by a governmental agency whose decisions are subject to judicial review to be, lacking mental capacity or mentally ill. Receipt of previous consultative services or outpatient treatment alone shall not disqualify an applicant under this subdivision.
- (7) Is or has been discharged from the Armed Forces of the United States under conditions other than honorable.
- ls or has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence constituting a misdemeanor, including but not limited to, a violation of a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or a violation of a misdemeanor under G.S. 14-225.2, 14-226.1, 14-258.1, 14-269.2, 14-269.3, 14-269.4, 14-269.6, 14-276.1, 14-277, 14-277.1, 14-277.2, 14-277.3A, 14-281.1, 14-283,14-283 except for a violation involving fireworks exempted under G.S. 14-414, 14-288.2, 14-288.4(a)(1) or (2),14-288.4(a)(1), 14-288.6, 14-288.9, former 14-288.12, former 14-288.13, former 14-288.14, 14-288.20A, 14-318.2, 14-415.21(b), 14-415.26(d), or former G.S. 14-277.3.G.S. 14-277.3 within three years prior to the date on which the application is submitted.
- (8a) Is prohibited from possessing a firearm pursuant to 18 U.S.C. § 922(g) as a result of a conviction of a misdemeanor crime of domestic violence.
- (9) Has had entry of a prayer for judgment continued for a criminal offense which would disqualify the person from obtaining a concealed handgun permit.
- (10) Is free on bond or personal recognizance pending trial, appeal, or sentencing for a crime which would disqualify him from obtaining a concealed handgun permit.
- (11) Has been convicted of an impaired driving offense under G.S. 20-138.1, 20-138.2, or 20-138.3 within three years prior to the date on which the application is submitted."

**SECTION 11.(a)** Article 54B of Chapter 14 of the General Statutes is amended by adding a new section to read:

# "§ 14-415.28. Sign requirements.

- (a) Notwithstanding any other provision of this Article, any requirement of or allowance for the posting of signs prohibiting the carrying of a concealed handgun upon any premises shall only be satisfied by a sign meeting the requirements of this section.
- (b) All signs must be posted at each entrance into a building where a person with a concealed handgun permit is prohibited from carrying a concealed handgun and must meet all of the following criteria:
  - (1) Be clearly visible from outside the building.
  - (2) Be eight inches wide by 12 inches tall in size.

G.S. 14-415.11(e).G.S. 14-415.28."

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### **SECTION 11.(d)** G.S. 14-277.2(d) reads as rewritten:

"(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 subsection 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(e).G.S. 14-415.28."

#### **SECTION 11.(e)** G.S. 14-415.23(a) reads as rewritten:

"(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(e).G.S. 14-415.28, on local government buildings and their appurtenant premises."

#### **SECTION 12.** G.S. 113-291.1(c) reads as rewritten:

- It is a Class 1 misdemeanor for any person taking wildlife to have in his possession ''(c)any:
  - (1)Repealed by Session Laws 2013-369, s. 23, effective October 1, 2013.
  - (2) Weapon of mass death and destruction as defined in G.S. 14-288.8, other than a suppressor or other device designed to muffle or minimize the report of a firearm or short-barreled rifle 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 13. Sections 1, 2, 3, and 12 of this act become effective July 1, 2015, and apply to offenses committed on or after that date. Section 4 of this act is effective when it becomes law. Section 5 of this act becomes effective October 1, 2019, and applies to offenses committed on or after that date. Sections 6, 7, and 11 of this act become effective July 1, 2015. Section 8 of this act becomes effective July 1, 2015, but shall not apply to pending litigation. Section 9 of this act is effective when it becomes law and applies to restorations granted before, on, or after that date. Section 10 of this act becomes effective July 1, 2015, and applies to permit applications submitted on or after that date. The remainder of this act is effective when it becomes law.

H562 [Edition 1] Page 9

# GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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# HOUSE BILL 664

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# PROPOSED COMMITTEE SUBSTITUTE H664-CSST-43 [v.2]

4/27/2015 6:32:58 PM

Short Title: Safer Communities. (Public) Sponsors: Referred to: April 14, 2015 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR SAFER COMMUNITIES BY AUTHORIZING A PERSON OR ENTITY EMPLOYING OR CONTRACTING WITH A COMPANY POLICE AGENCY TO ENTER INTO JOINT AGREEMENTS WITH MUNICIPALITIES AND COUNTIES TO EXTEND THE LAW ENFORCEMENT AUTHORITY OF COMPANY POLICE OFFICERS. The General Assembly of North Carolina enacts: **SECTION 1.** G.S. 74E-6 is amended by adding a new subsection to read: Additional Authority. - In addition to the powers contained in subsection (c) of this section, the person or entity that employs or contracts with a company police agency may do the following: Enter into joint agreements with the governing board of any municipality to (1)extend the law enforcement authority of company police officers into any or all of the municipality's jurisdiction and to determine the circumstances in which this extension of authority may be granted. Enter into joint agreements with the governing board of any county, with the (2) consent of the sheriff, to extend the law enforcement authority of company police officers into any or all of the county's jurisdiction and to determine the circumstances in which this extension of authority may be granted."

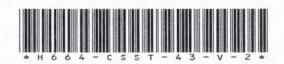
**SECTION 2.** If House Bill 873, 2015 Regular Session, becomes law, G.S. 74E-6(e1), as enacted by that act, reads as rewritten:

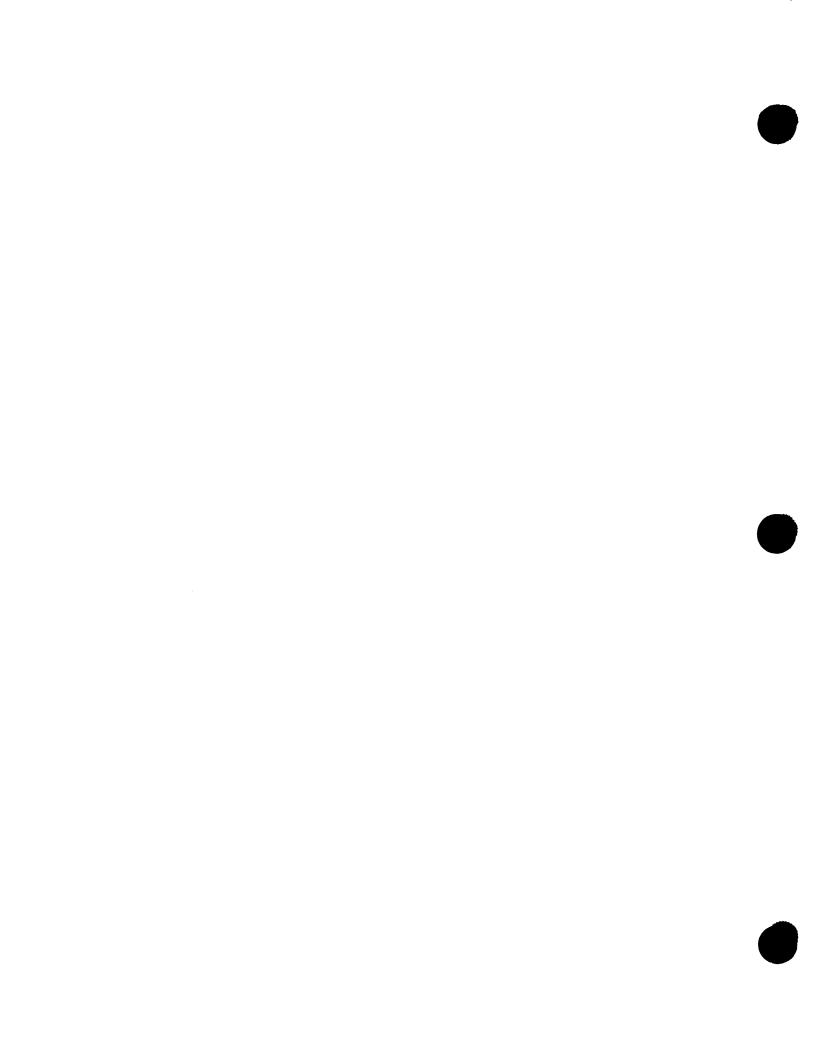
"(e1) Hospital Police. – Hospital police officers have the powers contained in subsection (c) of this section and also have the powers in that subsection upon that portion of any public road or highway passing through or immediately adjoining the property described in that subsection, wherever located. The chief executive officer of any local hospital or hospital authority that employs or contracts with hospital police officers may do the following:

Enter into joint agreements with the governing board of any municipality to extend the law enforcement authority of hospital police officers into any or all of the municipality's jurisdiction and to determine the circumstances in which this extension of authority may be granted.

(2) Enter into joint agreements with the governing board of any county, with the consent of the sheriff, to extend the law enforcement authority of hospital police officers into any or all of the county's jurisdiction and to determine the circumstances in which this extension of authority may be granted."

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







# **HOUSE BILL 664:** Safer Communities

2015-2016 General Assembly

Committee: House Judiciary I

Introduced by: Reps. Brawley, McNeill, Saine

Analysis of: PCS to First Edition

H664-CSST-43

Date:

April 27, 2015

Prepared by: R. Erika Churchill

Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 664 would authorize company police to enter into mutual aid type arrangements with municipal police forces and sheriffs.

CURRENT LAW: G.S. 74E-6(c) provides that company police officers have the authority to make arrests on real property owned or in the possession or control of their employer or of a person who has contracted with the employer to provide on-site company police services for the property. In addition, company police have the power of arrest while in hot pursuit of a person for an offense committed on the property described above.

There are currently three classifications of company police officers:

- Campus Police Officers
- Railroad Police Officers
- Special Police Officers

All company police officers, while in the performance of their duties of employment, have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on any of the following real property:

- 1. Real property owned by or in the possession and control of their employer.
- 2. Real property owned by or in the possession and control of a person who has contracted with the employer to provide on-site company police security personnel services for the property.
- 3. Any other real property while in continuous and immediate pursuit of a person for an offense committed upon property described in subdivisions (1) or (2) of this subsection.

Company police officers, if duly authorized by the superior officer in charge, have the authority to carry concealed weapons while on duty and also when off duty, provided that when off-duty the company police officer does not consume alcohol or an unlawful controlled substance, or such remains in the officer's system, while carrying the concealed weapon.

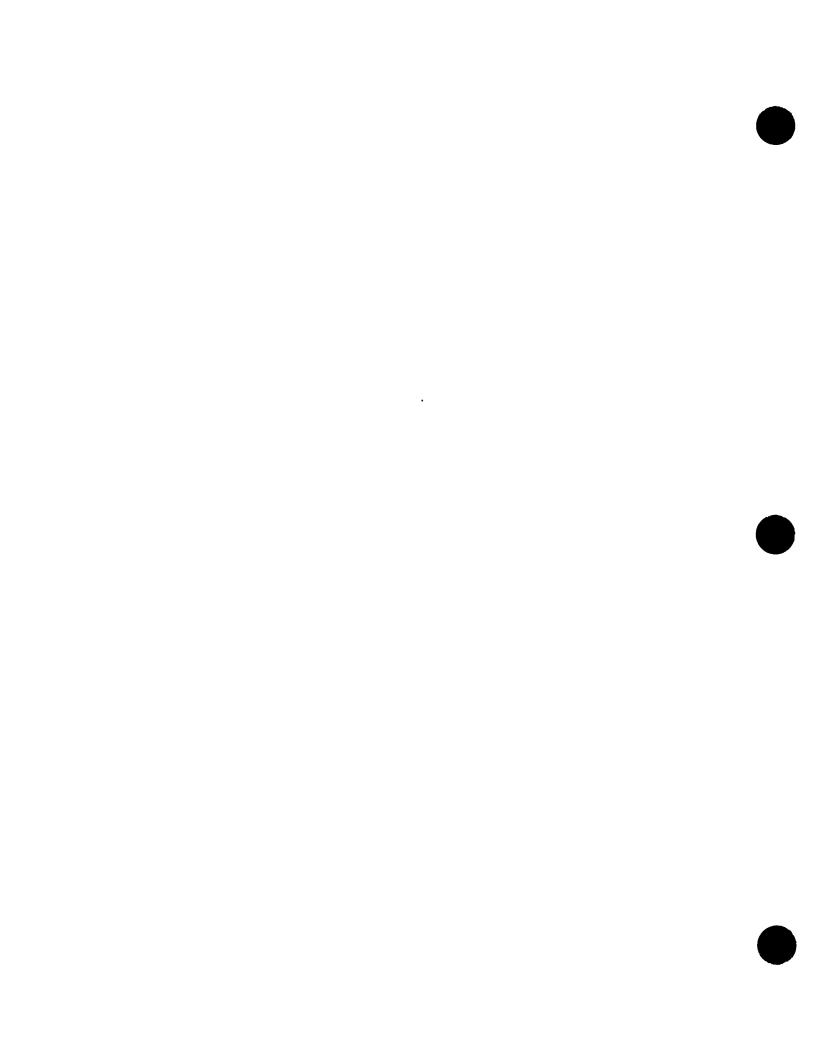
**BILL ANALYSIS:** In addition to the powers stated above, the PCS would authorize the person or entity that employs or contracts with a company police agency to enter into joint agreements with either the governing board of a municipality or county (with the consent of the Sheriff), to extend the law enforcement authority of company police officers into that governing board's jurisdiction and to determine the circumstances in which this extension of authority is granted.

**EFFECTIVE DATE:** Effective when it becomes law.

O. Walker Reagan
Director



Research Division (919) 733-2578



# GENERAL ASSEMBLY OF NORTH CAROLINA **SESSION 2015**

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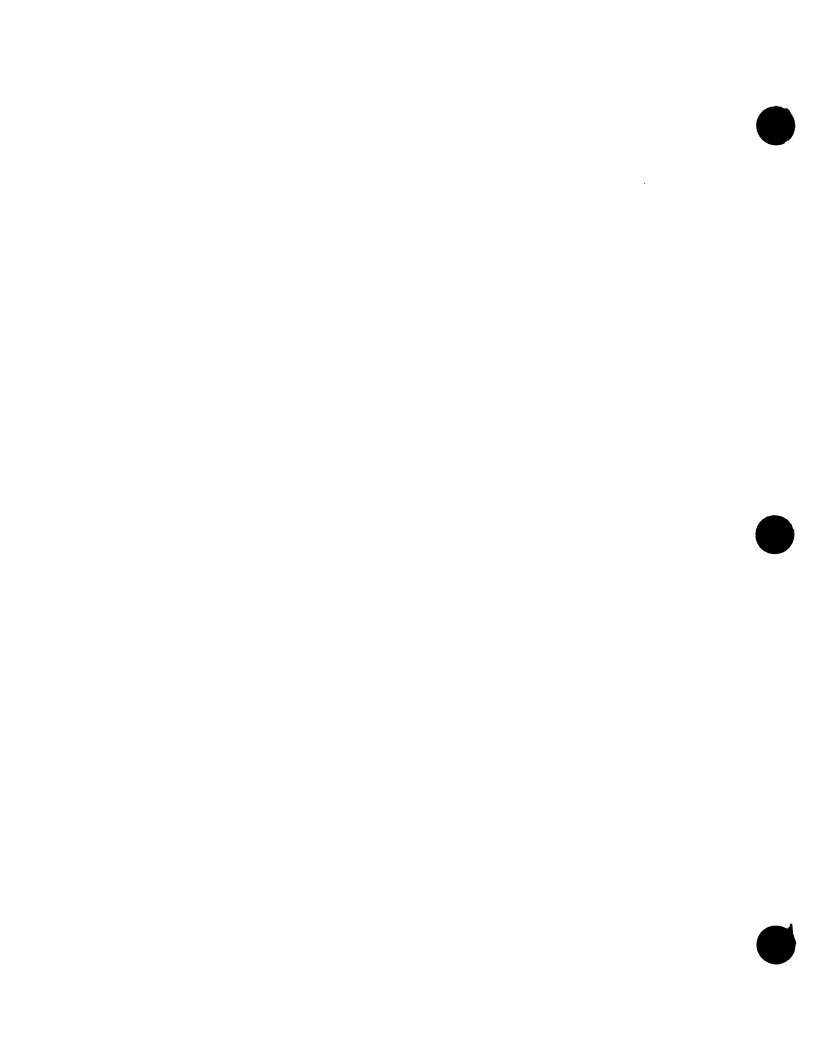
# **HOUSE BILL 664**

Short Title: Safer Communities. (Public) Sponsors: Representatives Brawley, McNeill, and Saine (Primary Sponsors). For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site. Referred to: Judiciary I.

|    |                   | April 14, 2015  |
|----|-------------------|---|
| 1  |                   | A BILL TO BE ENTITLED   |
| 2  | AN ACT TO PR      | OVIDE FOR SAFER COMMUNITIES BY AUTHORIZING A PERSON OR                        |
| 3  | ENTITY EM         | IPLOYING OR CONTRACTING WITH A COMPANY POLICE AGENCY                          |
| 4  | TO ENTER          | INTO JOINT AGREEMENTS WITH MUNICIPALITIES AND COUNTIES                        |
| 5  | TO EXTEN          | D THE LAW ENFORCEMENT AUTHORITY OF COMPANY POLICE                             |
| 6  | OFFICERS.         |   |
| 7  | The General Ass   | embly of North Carolina enacts:   |
| 8  |                   | <b>FION 1.</b> G.S. 74E-6 is amended by adding a new subsection to read:      |
| 9  | "(c1) Addit       | ional Authority In addition to the powers contained in subsection (c) of this |
| 10 | section, the pers | on or entity that employs or contracts with a company police agency may do    |
| 11 | the following:    |   |
| 12 | <u>(1)</u>        | Enter into joint agreements with the governing board of any municipality to   |
| 13 |                   | extend the law enforcement authority of company police officers into any or   |
| 14 |                   | all of the municipality's jurisdiction and to determine the circumstances in  |
| 15 |                   | which this extension of authority may be granted.                             |
| 16 | <u>(2)</u>        | Enter into joint agreements with the governing board of any county, with the  |
| 17 |                   | consent of the sheriff, to extend the law enforcement authority of company    |
| 18 |                   | police officers into any or all of the county's jurisdiction and to determine |
| 19 |                   | the circumstances in which this extension of authority may be granted."       |
| 20 | SEC               | FION 2 This act is effective when it becomes law                              |



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# GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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# HOUSE BILL 678 PROPOSED COMMITTEE SUBSTITUTE H678-CSST-35 [v.7]

4/27/2015 8:17:33 PM

| Short Title: | Amend Innocence Commission Statutes. | (Public) |  |
|--------------|--------------------------------------|----------|--|
| Sponsors:    |                                      |          |  |
| Referred to: |                                      |          |  |
|              |                                      |          |  |

#### April 14, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS AMENDMENTS TO THE LAWS REGARDING THE INNOCENCE COMMISSION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 15A-1475 reads as rewritten:

# "§ 15A-1475. Reports.

- (a) The North Carolina Innocence Inquiry Commission shall report annually by February 1 of each year on its activities to the Joint Legislative Oversight Committee on Justice and Public Safety and the State Judicial Council. The report may contain recommendations of any needed legislative changes related to the activities of the Commission. The report shall recommend the funding needed by the Commission, the district attorneys, and the State Bureau of Investigation in order to meet their responsibilities under S.L. 2006-184. Recommendations concerning the district attorneys or the State Bureau of Investigation shall only be made after consultations with the North Carolina Conference of District Attorneys and the Attorney General.
- (b) The Commission shall submit to the Director of the Administrative Office of the Courts a semi-annual report containing detailed data on the operations, expenses, and needs of the Commission, and such other information as the Director of the Administrative Office of the Courts may require."

# **SECTION 2.** G.S. 15A-1467 is amended by adding a new subsection to read:

"(h) At least every six months, the Director shall provide a confidential case status update to the district attorney and defense counsel for each case in formal inquiry. If there is no defense counsel, the update shall be provided to the referring counsel."

# SECTION 3. G.S. 15A-1468 reads as rewritten:

#### "§ 15A-1468. Commission proceedings.

- (a) At the completion of a formal inquiry, all relevant evidence shall be presented to the full Commission. Commission in a public hearing. As part of its proceedings, the Commission may conduct public hearings. The determination as to whether to conduct public hearings is solely in the discretion of the Commission. Any public hearing held in accordance with this section shall be subject to the Commission's rules of operation.
- (a1) The Commission may compel the testimony of any witness. If a witness asserts his or her privilege against self-incrimination in a proceeding under this Article, the Commission chair, in the chair's judicial capacity, may order the witness to testify or produce other information if the chair first determines that the witness's testimony will likely be material to the investigation necessary to reach a correct factual determination in the case at hand. However, the Commission chair shall not order the witness to testify or produce other



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information that would incriminate the witness in the prosecution of any offense other than an offense for which the witness is granted immunity under this subsection. The order shall prevent a prosecutor from using the compelled testimony, or evidence derived therefrom, to prosecute the witness for previous false statements made under oath by the witness in prior proceedings. The prosecutor has a right to be heard by the Commission chair prior to the chair issuing the order. Once granted, the immunity shall apply throughout all proceedings conducted pursuant to this Article. The limited immunity granted under this section shall not prohibit prosecution of statements made under oath that are unrelated to the Commission's formal inquiry, false statements made under oath during proceedings under this Article, or prosecution for any other crimes.

- (a2) The Innocence Inquiry Commission shall include, as part of its rules of operation, the holding of a prehearing conference to be held at least 10 days prior to any proceedings of the full Commission. Only the following persons shall be notified and authorized to attend the prehearing conference: the District Attorney, or the District Attorney's designee, of the district where the claimant was convicted of the felony upon which the claim of factual innocence is based; the claimant's counsel, if any; the Chair of the Commission; the Executive Director of the Commission; and any Commission staff designated by the Director. The District Attorney, or designee, shall be provided (i) an opportunity to inspect any evidence that may be presented to the Commission that has not previously been presented to any judicial officer or body and (ii) any information that he or she deems relevant to the proceedings. Prior At least 24 hours prior to any Commission proceedings, the District Attorney or designee is authorized to provide the Commission with a written statement, which shall be included in the record of the Commission's proceedings. Any statement included in the record shall be part of the Commission's record of proceedings pursuant to subsection (e) of this section statement, which shall be part of the record.
- (b) The Director shall use all due diligence to notify the victim at least 30 days prior to any proceedings of the full Commission held in regard to the victim's case. The Commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Article. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance of the proceedings of his or her intent to attend.
- (c) After hearing the evidence, the full Commission shall vote to establish further case disposition as provided by this subsection. All eight voting members of the Commission shall participate in that vote.

Except in cases where the convicted person entered and was convicted on a plea of guilty, if five or more of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction by filing with the clerk of court the opinion of the Commission with supporting findings of fact, as well as the record in support of such opinion, with service on the <u>convicted person or the convicted person's counsel.</u> If any, and the district attorney in noncapital cases where the convicted person entered and was convicted on a plea of guilty, if all of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction.

If less than five of the eight voting members of the Commission, or in cases where the convicted person entered and was convicted on a guilty plea less than all of the eight voting members of the Commission, conclude there is sufficient evidence of factual innocence to merit judicial review, the Commission shall conclude there is insufficient evidence of factual innocence to merit judicial review. The Commission shall document that opinion, along with supporting findings of fact, and file those documents and supporting materials with the clerk of

superior court in the district of original jurisdiction, with a copy to the <u>convicted person or the</u> <u>convicted person's counsel</u>, if <u>any</u>, the <u>district attorney</u> and the senior resident superior court judge.

The Director of the Commission shall use all due diligence to notify immediately the victim of the Commission's conclusion in a case.

- (d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed through formal inquiry or Commission proceedings shall be referred to the appropriate authority. Evidence favorable to the convicted person disclosed through formal inquiry or Commission proceedings shall be disclosed to the convicted person and the convicted person's counsel, if the convicted person has counsel.
- (e) All proceedings of the Commission shall be recorded and transcribed as part of the record. All Commission member votes shall be recorded in the record. All records and proceedings of the Commission are confidential and are exempt from public record and public meeting laws except that the The supporting records for the Commission's conclusion that there is sufficient evidence of factual innocence to merit judicial review, including all files and materials considered by the Commission and a full transcript of the hearing before the Commission, shall become public at the time of referral towhen filed with the superior court as required in subsection (c) of this section. Commission records for conclusions of insufficient evidence of factual innocence to merit judicial review shall remain confidential, except as provided in subsection (d) of this section.
- (f) Except as otherwise provided in this section, all files and records not filed with the clerk of superior court or presented at the hearings are confidential and exempt from the public record. Upon completion of the formal inquiry, the Commission shall make available to the district attorney and defense counsel a copy of the entire file, including a full transcript of the hearing before the Commission. That file shall remain confidential and may not be released by the district attorney or defense counsel until filed with the clerk of superior court.
- (g) With respect to the evidence presented to the three judge panel, the district attorney and defense counsel may determine which evidence, if any, will be presented to the Commission."

**SECTION 4.** G.S. 15A-1471 is amended by adding a new subsection to read:

"(e) Upon request, the Commission shall have the authority to search any location where files or evidence are reasonably likely to be stored relating to a claim subject to the Commission's inquiry. The Commission shall provide the head of the agency to be searched, or his or her designee, with proposed search procedures in advance of the search. The Commission will make reasonable efforts to accommodate the agency without compromising the validity of the search. The agency shall permit the Commission to conduct its search within two weeks of the search procedure being provided or at a mutually agreed upon time."

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



# **HOUSE BILL 678: Amend Innocence Commission Statutes**

#### 2015-2016 General Assembly

Committee:

Judiciary I, if favorable, Rules, Calendar, and Date:

April 27, 2015

Operations of the House

Introduced by: Reps. Glazier, Daughtry, Stam, Reives

Prepared by: R. Erika Churchill

Analysis of:

PCS to First Edition

Committee Counsel

H678-CSST-35

SUMMARY: The proposed committee substitute for House Bill 678 would make various changes to the operations of the Innocence Commission.

### **BILL ANALYSIS:** The PCS would do all of the following:

- > Require the Innocence Commission to submit semi-annual reports to the Director of the Administrative Office of the Courts. (Section 1)
- > Require the Director, at least every 6 months, to provide a confidential case status update to the district attorney and defense counsel for each case in formal inquiry. If there is no defense counsel, the update is to be provided to the referring counsel. (Section 2)
- > Clarifies that the district attorney must be given an opportunity to provide the Commission with a written statement before any Commission proceeding. The District Attorney may, at least 24 hours in advance of the Commission hearing, provide his or her position to the Commission, and it becomes part of the record. (Section 3)
- Requires a full copy of the Commission file, including a full transcript to be provided to the district attorney and defense counsel. That file would be confidential, and may not be released by the district attorney or defense counsel until it is filed with the clerk of superior court. (Section 3)
- > Clarifies that the district attorney and defense counsel determine what is to be presented as evidence to the three judge panel. (Section 3)
- Authorizes the Commission to conduct a search of any location where files or evidence are reasonably likely to be stored relating to a claim under inquiry. The Commission must provide advance notice of the search, and the agency must permit the search within 2 weeks or at an agreed upon time. (Section 4)

**EFFECTIVE DATE:** Effective when it becomes law.





Research Division (919) 733-2578

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# GENERAL ASSEMBLY OF NORTH CAROLINA **SESSION 2015**

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## **HOUSE BILL 678**

(Public) Short Title: Amend Innocence Commission Statutes. Representatives Glazier, Daughtry, Stam, and Reives (Primary Sponsors). Sponsors: For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site. Referred to: Judiciary I, if favorable, Rules, Calendar, and Operations of the House.

## April 14, 2015

A BILL TO BE ENTITLED 1 AN ACT TO MAKE VARIOUS AMENDMENTS TO THE LAWS REGARDING THE 2 3 INNOCENCE COMMISSION. 4 The General Assembly of North Carolina enacts: 5

SECTION 1. G.S. 15A-1465(a) reads as rewritten:

The Commission shall employ a Director. Director who shall report to the Director of the Administrative Office of the Courts. The Director shall be an attorney licensed to practice in North Carolina at the time of appointment and at all times during service as Director. The Director shall assist the Commission in developing rules and standards for cases accepted for review, coordinate investigation of cases accepted for review, maintain records for all case investigations, prepare reports outlining Commission investigations and recommendations to the trial court, and apply for and accept on behalf of the Commission any funds that may become available from government grants, private gifts, donations, or devises from any source."

SECTION 2. G.S. 15A-1466 is amended by adding a new subdivision to read:

To submit to the Director of the Administrative Office of the Courts an annual report containing detailed data on the operations, expenses, and needs of the Commission, and such other information as the Director of the Administrative Office of the Courts may require."

SECTION 3. G.S. 15A-1467 reads as rewritten:

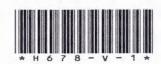
"§ 15A-1467. Claims of innocence; waiver of convicted person's procedural safeguards and privileges; formal inquiry; notification of the crime victim.

If formal inquiry is granted, the Director shall use all due diligence to contact all (c1) codefendants associated with the case. Each codefendant will be given an opportunity to have his or her case simultaneously investigated with the pending claim. If a codefendant declines the opportunity to have his or her case investigated at that time, the codefendant's case shall be barred from future investigation by the Commission.

(h) At least every six months, the Director shall provide a confidential case status update, which includes a summary of the actions taken since the last update, to the district attorney, defense counsel, and referring counsel, if any, for each case in formal inquiry."

SECTION 4. G.S. 15A-1468 reads as rewritten:

"§ 15A-1468. Commission proceedings.



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- (a) At the completion of a formal inquiry, all relevant evidence shall be presented to the full Commission. As part of its proceedings, the Commission may conduct public hearings. The determination as to whether to conduct public hearings is solely in the discretion of the Commission. Any public hearing Commission in a public hearing held in accordance with this section shall be subject to the Commission's rules of operation.
- The Commission may compel the testimony of any witness. If a witness asserts his or her privilege against self-incrimination in a proceeding under this Article, the Commission chair, in the chair's judicial capacity, may order the witness to testify or produce other information if the chair first determines that the witness's testimony will likely be material to the investigation necessary to reach a correct factual determination in the case at hand. However, the Commission chair shall not order the witness to testify or produce other information that would incriminate the witness in the prosecution of any offense other than an offense for which the witness is granted immunity under this subsection. The order shall prevent a prosecutor from using the compelled testimony, or evidence derived therefrom, to prosecute the witness for previous false statements made under oath by the witness in prior proceedings. The prosecutor has a right to be heard by the Commission chair prior to the chair issuing the order. Once granted, the immunity shall apply throughout all proceedings conducted pursuant to this Article. The limited immunity granted under this section shall not prohibit prosecution of statements made under oath that are unrelated to the Commission's formal inquiry, false statements made under oath during proceedings under this Article, or prosecution for any other crimes.
- (a2) The Innocence Inquiry Commission shall include, as part of its rules of operation, the holding of a prehearing conference to be held at least 10 days prior to any proceedings of the full Commission. Only the following persons shall be notified and authorized to attend the prehearing conference: the District Attorney, or the District Attorney's designee, of the district where the claimant was convicted of the felony upon which the claim of factual innocence is based; the claimant's counsel, if any; the Chair of the Commission; the Executive Director of the Commission; and any Commission staff designated by the Director. The District Attorney, or designee, shall be provided (i) an opportunity to inspect any evidence that may be presented to the Commission that has not previously been presented to any judicial officer or body and (ii) any information that he or she deems relevant to the proceedings. Prior At least 24 hours prior to any Commission proceedings, the District Attorney or designee is authorized to provide the Commission with a written statement, which shall be included in the record of the Commission's proceedings. Any statement included in the record shall be part of the Commission's record of proceedings pursuant to subsection (e) of this section statement conveying his or her position on the case.
- (b) The Director shall use all due diligence to notify the victim at least 30 days prior to any proceedings of the full Commission held in regard to the victim's case. The Commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Article. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance of the proceedings of his or her intent to attend.
- (c) After hearing the evidence, the full Commission shall vote to establish further case disposition as provided by this subsection. All eight voting members of the Commission shall participate in that vote.

Except in cases where the convicted person entered and was convicted on a plea of guilty, if five or more of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction by filing with the clerk of court the opinion of the Commission with supporting findings of fact, as well as the record in support of such opinion, with service on the convicted person or the convicted person's counsel,

Page 2 H678 [Edition 1]

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if any, and the district attorney in noncapital cases and or service on both the district attorney and Attorney General in capital cases. In cases where the convicted person entered and was convicted on a plea of guilty, if all of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction.

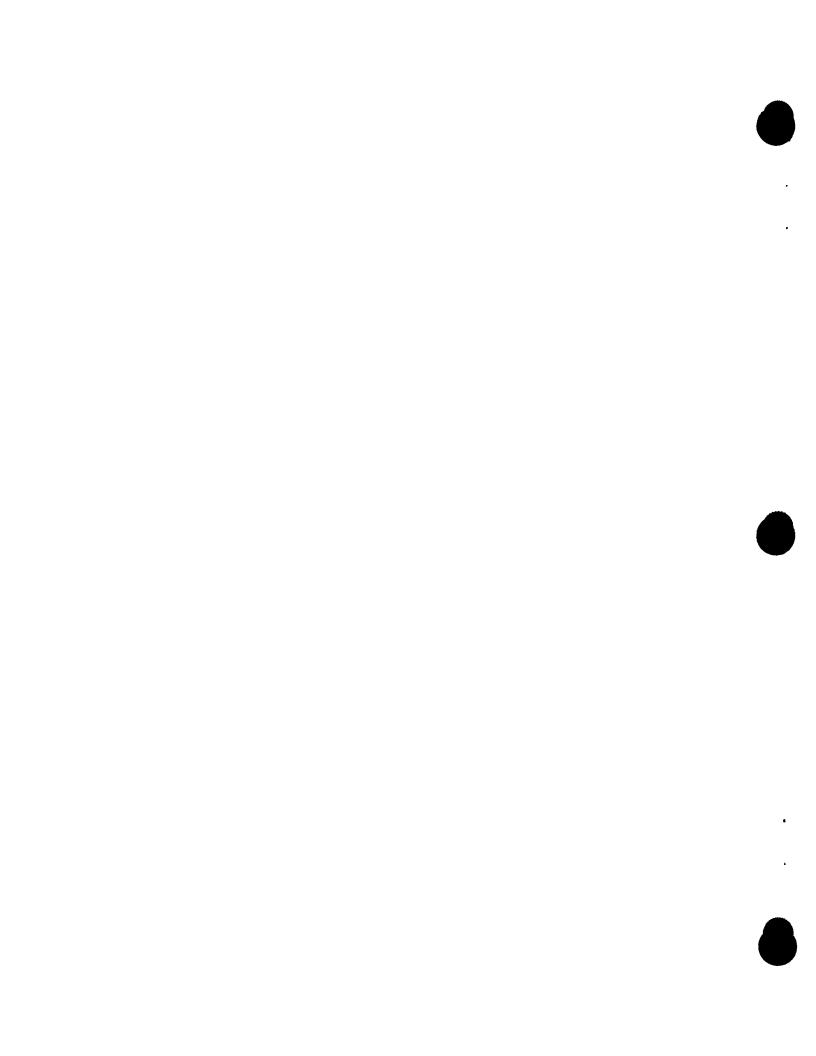
If less than five of the eight voting members of the Commission, or in cases where the convicted person entered and was convicted on a guilty plea less than all of the eight voting members of the Commission, conclude there is sufficient evidence of factual innocence to merit judicial review, the Commission shall conclude there is insufficient evidence of factual innocence to merit judicial review. The Commission shall document that opinion, along with supporting findings of fact, and file those documents and supporting materials the opinion with the clerk of superior court in the district of original jurisdiction, with a copy to the convicted person or the convicted person's counsel, if any, the district attorney and the senior resident superior court judge.

The Director of the Commission shall use all due diligence to notify immediately the victim of the Commission's conclusion in a case.

- (d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed through formal inquiry or Commission proceedings shall be referred to the appropriate authority. Evidence favorable to the convicted person disclosed through formal inquiry or Commission proceedings shall be disclosed to the convicted person and the convicted person's counsel, if the convicted person has counsel.
- All proceedings of the Commission shall be recorded and transcribed as part of the (e) record. All Commission member votes shall be recorded in the record. All records and proceedings of the Commission are confidential and are exempt from public record and public meeting laws except that the supporting records for the Commission's conclusion that there is sufficient evidence of factual innocence to merit judicial review, including all files and materials considered by the Commission and a full transcript of the hearing before the Commission. One copy of the full Commission file, including a full transcript of the hearing before the Commission, but excluding all documents that are protected through a protective order, shall be disclosed to the parties immediately after completion of formal inquiry or immediately upon becoming available in an uncertified form. A protective order shall only be issued if the district attorney and the convicted person or the convicted person's counsel have been given an opportunity to be heard. All documents shall become public record when they are entered into evidence in the superior court by either of the parties. at the time of referral to the superior court. Commission records for conclusions of insufficient evidence of factual innocence to merit judicial review shall remain confidential, except as provided in subsection (d) of this section."

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

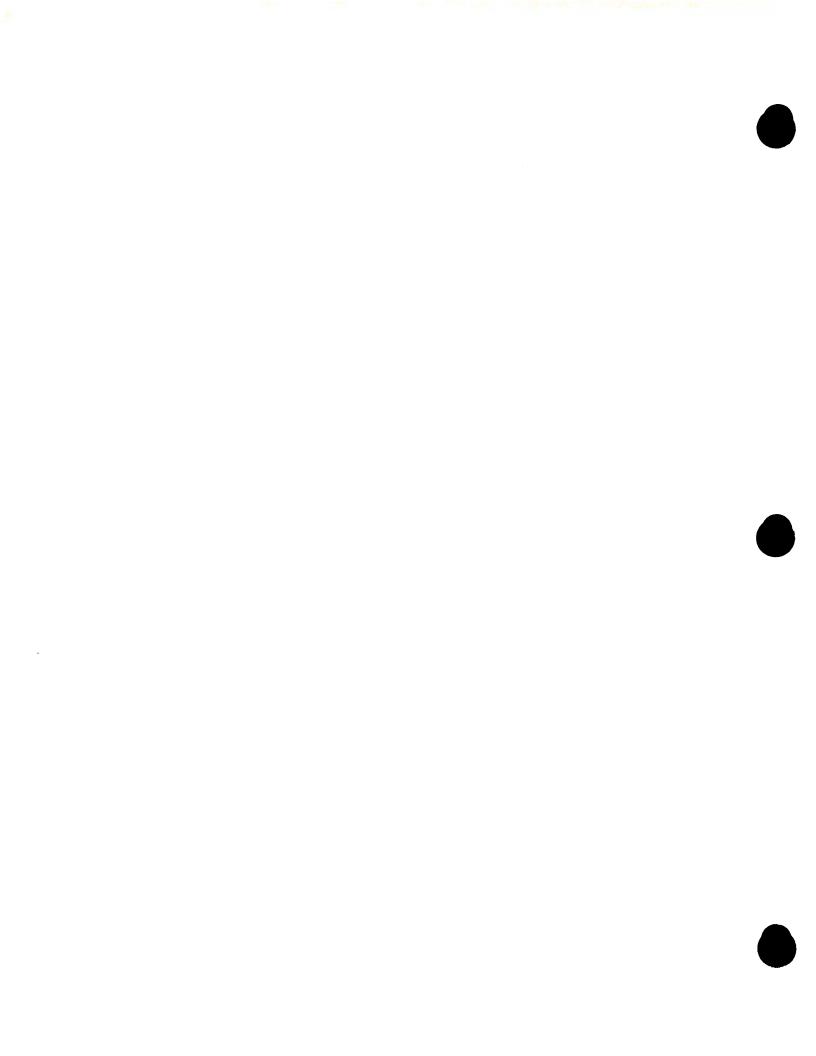
H678 [Edition 1] Page 3



# NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

| H. B. No.         | 678                                    |            | DA       | ATE    | 4        | 28 5          |   |
|-------------------|--|------------|----------|--------|----------|---------------|---|
| S. B. No.         |  |            |          | Amend  | ment No. | (to be filled | in hy                                   |
| COMMITT           | EE SUBSTITUTE                          |            |          |        |          | Principal Cl  | •                                       |
| F                 | Rep.)                                  | Burr       |          |        |          |               |   |
| S                 | ) ———————————————————————————————————— | 0011       |          |        |          |               | , |
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|                   | amend the bill on p                    |            |          |        |          |               |   |
| 2 ( ) WHI<br>3 bv | deleting                               | "formal in | na.viry" | and    | subs     | stituting     | "Commiss                                |
| a he              | aring;                                 |            |          |        |          |               |   |
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| z and             | on pa                                  | sae 3      | line     | 29     | by       | rewriting     | that                                    |
| 11                | ne to                                  | read       |          |        | ,        | )             |   |
| 9                 |  |            |          |        |          |               |   |
| 10                | " three                                | indae      | panel.   | 1, 10  |          |               |   |
|                   | 1-11-0                                 | 9          | VOIR     | -      |          |               |   |
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# GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H D

# HOUSE BILL 774 PROPOSED COMMITTEE SUBSTITUTE H774-CSST-33 [v.4]

4/27/2015 6:37:17 PM

| Short Title: Restoring Proper Justice Act. |  | (Public) |
|--|--|----------|
| Sponsors:                                  |  |          |
| Referred to:                               |  |          |

# April 15, 2015

#### A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REQUIRING THE PRESENCE OF A LICENSED PHYSICIAN AT THE EXECUTION OF A DEATH SENTENCE.

The General Assembly of North Carolina enacts:

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**SECTION 1.** G.S. 15-190 reads as rewritten:

Some guard or guards or other reliable person or persons to be named and designated by "(a) 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 a licensed physician, physician, or a medical professional other than a physician, to monitor the injection of the required lethal substances and certify the fact of the execution. If a licensed physician is not present at the execution, then a licensed physician shall be present on the premises and available to examine the body after the execution and pronounce the person dead. 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.

For purposes of this section, a "medical professional other than a physician" means a physician assistant, nurse practitioner, registered nurse, emergency medical technician or emergency medical technician-paramedic who is licensed or credentialed by the licensing board, agency, or organization responsible for licensing or credentialing that profession."

**SECTION 2.** G.S. 15-192 reads as rewritten:

## "§ 15-192. Certificate filed with clerk.

The warden, together with the surgeon or physician of the penitentiary, licensed physician who was present on the premises to pronounce death as required by G.S. 15-190, shall certify the fact of the execution of the condemned person, convict or felon to the clerk of the superior



|    | General Assembly of North Carolina Session 2015   |
|----|---|
| 1  | court in which such sentence was pronounced, and the clerk shall file such certificate with the |
| 2  | papers of the case and enter the same upon the records thereof."                                |
| 3  | SECTION 3. G.S. 150B-1(d)(6) reads as rewritten:  |
| 4  | "(6) The Division of Adult Correction of the Department of Public Safety, with                  |
| 5  | respect to matters relating to executions under Article 19 of Chapter 15 of                     |
| 6  | the General Statutes and matters relating solely to persons in its custody or                   |
| 7  | under its supervision, including prisoners, probationers, and parolees."                        |
| 8  | <b>SECTION 4.</b> G.S. 150B-1(e) is amended by adding a new subdivision to read:                |
| 9  | "(22) The Division of Adult Correction of the Department of Public Safety, with                 |
| 10 | respect to matter relating to executions under Article 19 of Chapter 15 of the                  |
| 11 | General Statutes."  |
| 12 | <b>SECTION 5.</b> This act is effective when it becomes law.                                    |

Page 2 House Bill 774 H774-CSST-33 [v.4]



# **HOUSE BILL 774: Restoring Proper Justice Act**

2015-2016 General Assembly

Committee:

House Judiciary I Introduced by: Rep. Daughtry

Analysis of:

PCS to First Edition

H774-CSST-33

Date:

April 26, 2015

Prepared by: R. Erika Churchill and

Jennifer Bedford, Committee Counsel

SUMMARY: The Proposed Committee Substitute for House Bill 774 would authorize a medical professional other than a physician to monitor lethal injection for death penalty executions and clarify that the execution is not subject to rulemaking.

CURRENT LAW: Currently, a licensed physician must be present at an execution. Together, the warden and the surgeon or physician of the penitentiary are to certify the fact of the execution. G.S. 15-190. State licensing boards of health care professionals are prohibited from disciplining any licensed health care professional who renders assistance in an execution. G.S. 15-188.1.

With respect to rulemaking, G.S. 150B-1 currently grants an exemption from all rulemaking to the Department of Public Safety for matters relating solely to persons in its custody or under its supervision, including prisoners, probationers, and parolees.

BILL ANALYSIS: The PCS would allow medical professionals, other than physicians, to monitor the execution. The PCS would specify that if a physician is not present at the execution, a physician must be present on the premises and available to examine the body after execution in order to pronounce the person dead.

"Medical professional other than a physician" would be defined to include a licensed or credentialed physician assistant, nurse practitioner, registered nurse, emergency medical technician or emergency medical technician-paramedic.

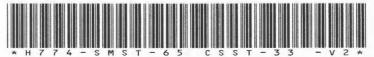
The PCS would require that the licensed physician present on the premises at the time of the execution to pronounce death certify the fact of the execution to the applicable clerk of superior court.

The PCS would further clarify that the execution process is not subject to the rulemaking process in Article 2A of Chapter 150B, and grant an exemption from the contested case process for that purpose.

EFFECTIVE DATE: Effective when it becomes law.

BACKGROUND: The American Medical Association Code of Medical Ethics Opinion 2.06 states that a physician should not participate in a legally authorized execution but that certifying death, provided that the condemned has been declared dead by another person, does not constitute physician participation in an execution.

O. Walker Reagan Director



Research Division (919) 733-2578

# GENERAL ASSEMBLY OF NORTH CAROLINA **SESSION 2015**

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## **HOUSE BILL 774**

| Short Title: | Restoring Proper Justice Act. (Public)  |  |  |
|--------------|---|--|--|
| Sponsors:    | Representative Daughtry (Primary Sponsor).  |  |  |
|              | For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site. |  |  |
| Referred to: | Judiciary I.  |  |  |

## April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REQUIRING THE PRESENCE OF A LICENSED PHYSICIAN AT THE EXECUTION OF A DEATH SENTENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15-190 reads as rewritten:

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 a licensed physician, physician, or a medical professional other than a physician as defined in this subsection, to monitor the injection of the required lethal substances and certify the fact of the execution. If a licensed physician is not present at the execution, then a licensed physician shall be present on the premises and available to examine the body after the execution and pronounce the person dead. 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.

For purposes of this Article, a "medical professional other than a physician" means a physician assistant, advanced degree nurse, registered nurse, or emergency medical technician-paramedic who is licensed, certified, or credentialed by the licensing board, agency, or organization responsible for licensing, certifying, or credentialing that profession."

SECTION 2. G.S. 15-192 reads as rewritten:

"§ 15-192. Certificate filed with clerk.



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## General Assembly of North Carolina

Session 2015

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The warden, together with the surgeon or physician of the penitentiary, licensed physician who was present on the premises to pronounce death as required by G.S. 15-190, shall certify the fact of the execution of the condemned person, convict or felon to the clerk of the superior court in which such sentence was pronounced, and the clerk shall file such certificate with the papers of the case and enter the same upon the records thereof."

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

Page 2 H774 [Edition 1]

## NORTH CAROLINA GENERAL ASSEMBLY **HOUSE OF REPRESENTATIVES**

## JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

## FAVORABLE COM SUB, UNFAVORABLE ORIGINAL BILL

HB 562 Amend Firearm Laws.

Draft Number:

H562-PCS20341-SA-54

Serial Referral:

Recommended Referral: None Long Title Amended: Yes

None

Floor Manager:

Schaffer

HB 774

Restoring Proper Justice Act.

Draft Number:

H774-PCS10368-ST-33

Serial Referral:

None

Recommended Referral: None Long Title Amended:

No

Floor Manager:

Daughtry

## FAVORABLE COM SUB, UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB 678

Amend Innocence Commission Statutes.

Draft Number:

H678-PCS40440-ST-35

Serial Referral:

RULES, CALENDAR, AND

**OPERATIONS OF THE HOUSE** 

Recommended Referral: None

No

Long Title Amended:

Floor Manager:

Glazier

**TOTAL REPORTED: 3** 



| Date: 4-28-15   |
|---|
| Bill Number <u>H562</u><br>PCS <u>H562</u> - CSSA - 54 [V, 1]                         |
| Motion to be before the committee by Harduster  |
| Rep Schaffer explained the bill. I went though the pcs                                |
| Rep_BWY motioned for:  Favorable Report Adoption                                      |
| Unfavorable ReportUnfavorable to original bill, fav to PCS rolled who com             |
| pesseller Amendments: 1 remove live 36-37 Tom West - support of Rep Martins amendment |
| Serial referral to:   |
| Speakers: Steinling - pasible amenament.  |
| Handouts:   |
| Martin p.13 times 35-39 Jackson  leveland- patient doctor                             |
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| Date: 4-28-15  |
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| Bill Number HGGY   |
| PCS_H664-CSST- 43 [V,2]  |
| Motion to be before the committee by McWeill   |
| Rep Bul Brawley explained the bill.  Discussion on the Bill YES or NO  do not  |
| Rep 570ka motioned for: pass Favorable Report Adoption   |
| Unfavorable Report Unfavorable to original bill, fav to PCS  |
| No vote  |
| Amendments: :  |
| Serial referral to:  |
| Speakers:  |
| Handouts: Valuer - Standard of training, Scope of pour office provided   |
| Roy daylor - NC Police association   |
| Martin - joint agreements<br>Fred Bagget - NC ASSOC OL<br>Chiefs of Police   |
| Fred Bagget - NC Assoc of Chiefs of Police Chiefs of Police McNull - supports identified.  Bur - repulse identified.  Hall - has there been a study. |

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| Date: 4-28-15  |
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| Bill Number <u>H678</u><br>PCS_1-1678-CSST-35 [V.7]                                  |
| Motion to be before the committee by   |
| Rep Glazier explained the bill.  |
| Discussion on the Bill YES or NO   |
| Rep_ Bullo Martin motioned for:  |
| Favorable Report Adoption  |
| Unfavorable ReportUnfavorable to original bill, fav to PCSvroued into Committee sul- |
| No vote technical  |
| passed - Amendments: 2 amendments p. 3 line 23 p. 3 line 29                          |
| Serial referral to:  |
| Speakers: Kendra montgomery Blind<br>Juniter Thompson - rape viction                 |
| Handouts:  |

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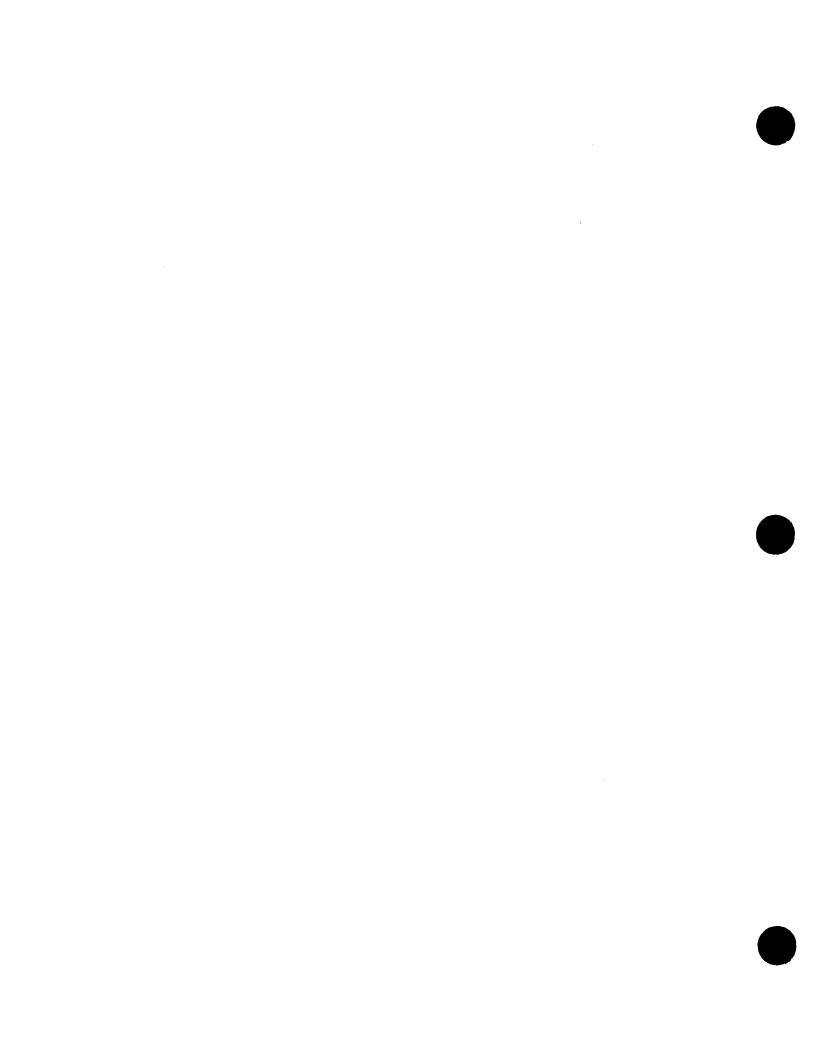
| Bill Number     | H774                      | $\mathcal{L}(\mathcal{L}_{\mathcal{A}})$ |                          |
|-----------------|---------------------------|--|--------------------------|
|                 | 74-CSST- 33               |  |                          |
| Motion to be    | before the committee by _ | Robinson                                 | _                        |
| Rep             | n the Bill YES or NO      | Daughtrus explained the bill.            | All Enka Chuichel        |
|                 | orable Report             | motioned for:  Adoption Unfavorable to o | riginal bill, fav to PCS |
| No vo           | ote                       |  |                          |
| Am              | endments::                |  |                          |
| Serial referral | to:                       |  |                          |
| Speakers:       |                           |  |                          |
| Handouts:       | Hall -<br>Steinburg       | opposed to remering a                    | Lochon                   |
|                 | Dall                      |  |                          |

Date: 4-28-15

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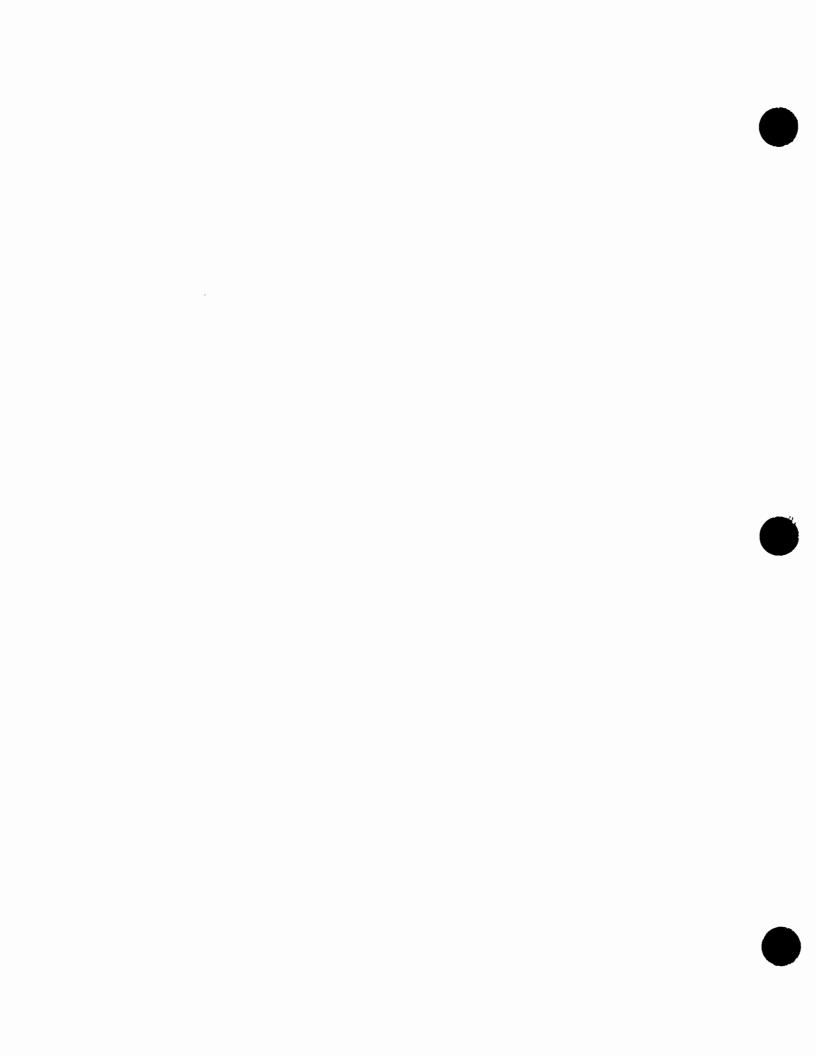
**House Staff** 

| Committee: House Judiciary 1 Date: ZBAPR15 |
|--|
| Pages                                      |
| 1. Name Cassidy Mosley                     |
| County FREDELL Sponsor John FRALEY         |
| 2. Name_JULIA WAKEMAN                      |
| county Mecklen burg sponsor John FRALEY    |
| 3. Name CAMDEN HUGHES                      |
| County CRAVEN Sponsor John BELL            |
| 4. Name                                    |
| County Sponsor                             |
| 5. Name                                    |
| County Sponsor                             |
| Sergeant-at-Arms BARRY MOORE               |
| BILLY JONES B.H. POWELL                    |



# Guest Speaker Signup

| Committee Judiciary 1      | Date   | 4/28 |
|----------------------------|--------|------|
|                            |        | /    |
| 1. Roy Taylor 664          |        |      |
| 2. Jennifer Thompson       | 1078   |      |
| 3. Becky Ceartas           | 562    |      |
| 4. Jon West                | 562    |      |
| 5. Jourshaw Keppler        | 562    |      |
| 6. Kendra Montgomery-Blinn | 678    |      |
| 7                          | AR THE | **** |
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# VISITOR REGISTRATION SHEET

Judiciae: 1
Name of Committee

Date

4/28

# VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

## FIRM OR AGENCY AND ADDRESS

| Chrishe Mann     | AKCAI              |
|------------------|--------------------|
| Jeff Ran         | GRNC               |
| Ely Portillo     | Charlotte Observer |
| Butea Gunnela    | NC Ber             |
| Paul Valora      | Gress Rosts NC     |
| Joseffe Chmiel   | GRUC               |
| ANDY STEVENS     | GRNC               |
| Paul Indonisi    | GRNE               |
| Fonothan Kappler | UNC GA             |
| Frank Brinkley   | NCSU Police Dept   |
| Dovid Kelly      | Nesu Police Dept   |
| David . Wess     | COPL               |
| Doug Miskew      | PSG<br>VB          |

# VISITOR REGISTRATION SHEET

Name of Committee

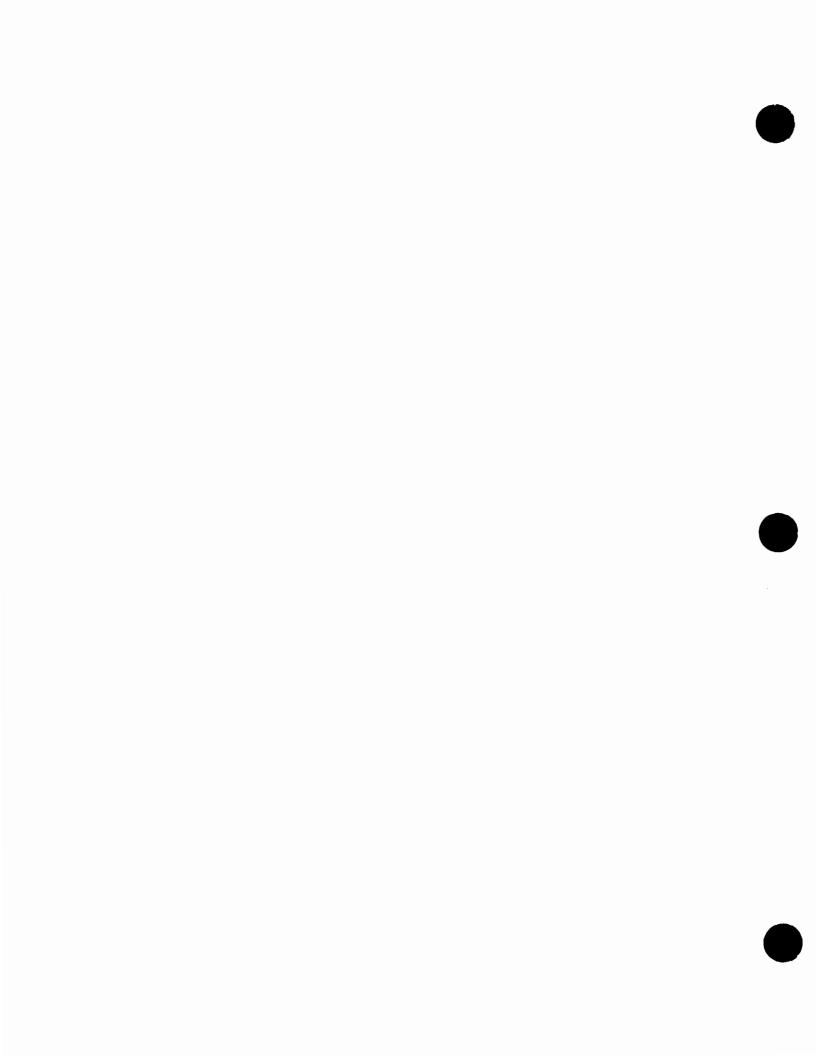
Date

# VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME   |  |  |
|--------|--|--|
| MAIVIE |  |  |

# FIRM OR AGENCY AND ADDRESS

| Jake Kornegal     | UNC CH Police                     |
|-------------------|-----------------------------------|
| Becky Ceartas     | NCGV                              |
| Jen Ferrell       | man hours Domand Action           |
| Joy Hodes         | NODAZES                           |
| Tina Habse        | NCDASCS                           |
| Laaven Halfeman   | Moms Demand Jetion for Gun Sense  |
| Peg Dorer         | Conf of DAS                       |
| Kimbaly N Overten | Can't of District Attorney        |
| Christy Agner     | D05                               |
| Vurue Contor      | Momes DEMANUP ACTION FOR GUN SENS |
|                   |                                   |



Corrected #1: Adding HB 607

# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

| You are hereby notified | that the House | Committee on J | udiciary I | will meet | as follows: |
|-------------------------|----------------|----------------|------------|-----------|-------------|
|-------------------------|----------------|----------------|------------|-----------|-------------|

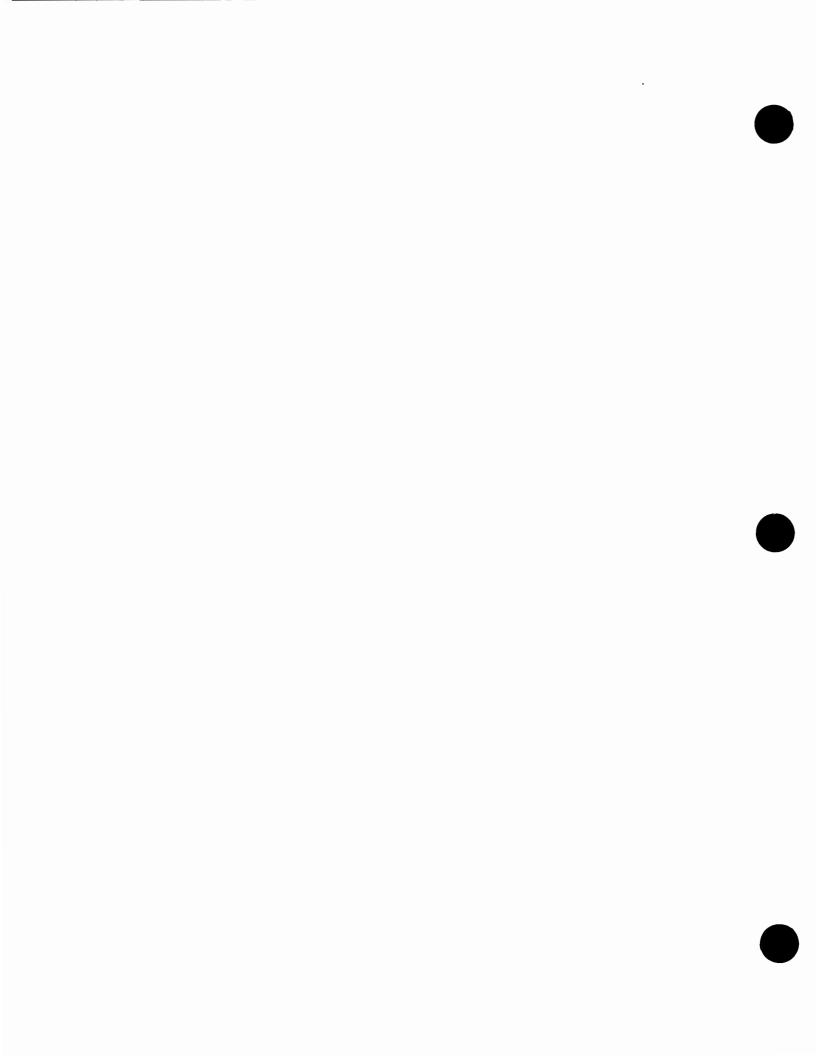
DAY & DATE: Wednesday, April 29, 2015

TIME: 12:30 PM LOCATION: 415 LOB

The following bills will be considered:

Jan Copeland (Committee Assistant)

| BILL NO.<br>HB 924  | SHORT TITLE                                   | SPONSOR Representative Burr |  |  |  |
|---|---|-----------------------------|--|--|--|
| ПВ 924  | Highway Safety/Salary Changes.                | Representative Hager        |  |  |  |
|   |   | Representative Goodman      |  |  |  |
| HB 607  | Allow Protected Consumer Security             | Representative Meyer        |  |  |  |
|   | Freezes.                                      | Representative Hardister    |  |  |  |
| Respectfully,   |   |                             |  |  |  |
| Representative N. Leo Daughtry, Chair   |   |                             |  |  |  |
| I hereby certify this notice was filed by the committee assistant at the following offices at 8:01 AM on Wednesday, April 29, 2015. |   |                             |  |  |  |
|   | Principal Clerk Reading Clerk – House Chamber |                             |  |  |  |



# House Committee on Judiciary I Wednesday, April 29, 2015, 12:30 PM 415 Legislative Office Building

# **AGENDA**

# **Welcome and Opening Remarks**

# **Introduction of Pages**

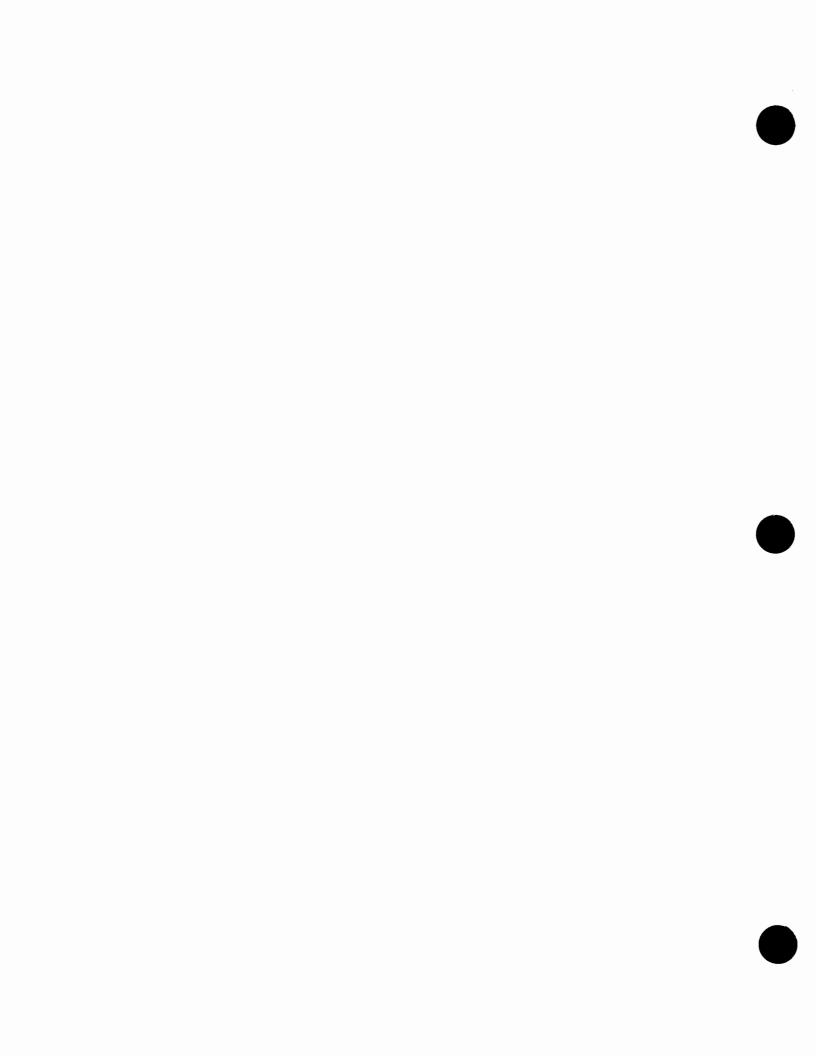
## **Bills**

| BILL NO. | SHORT TITLE                       | SPONSOR                  |
|----------|-----------------------------------|--------------------------|
| HB 924   | Highway Safety/Salary Changes.    | Representative Burr      |
|          |                                   | Representative Hager     |
|          |                                   | Representative Goodman   |
| HB 607   | Allow Protected Consumer Security | Representative Meyer     |
|          | Freezes.                          | Representative Hardister |
|          |                                   |                          |

## **Presentations**

**Other Business** 

Adjournment



# House Committee on Judiciary I Wednesday, April 29, 2015 at 12:30 PM Room 415 of the Legislative Office Building

## MINUTES

The House Committee on Judiciary I met at 12:30 PM on April 29, 2015 in Room 415 of the Legislative Office Building. Representatives Daughtry, Burr, Arp, Hardister, Howard, Martin, McNeill, Steinburg, and Szoka attended.

Representative N. Leo Daughtry - Chair, presided.

The following bills were considered:

HB 924 Highway Safety/Salary Changes. (Representatives Burr, Hager, Goodman) – favorable committee substitute, unfavorable original bill

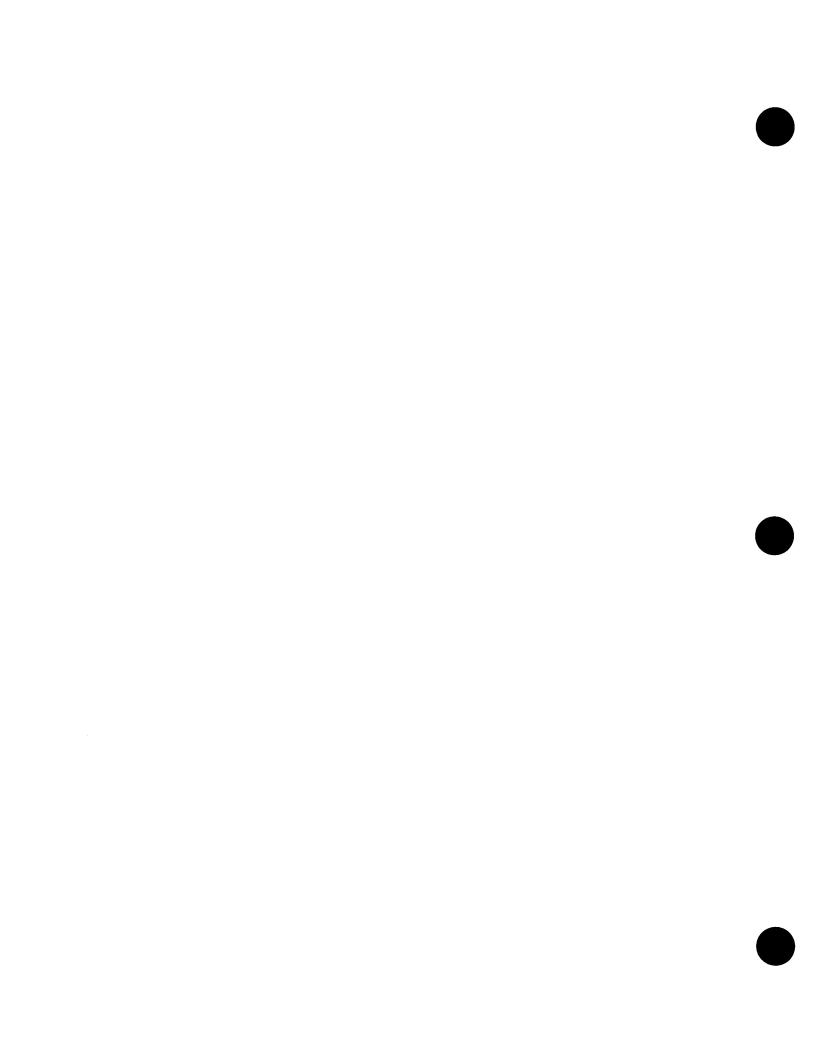
HB 607 Allow Protected Consumer Security Freezes. (Representatives Meyer, Hardister) – favorable committee substitute, unfavorable original bill

The meeting adjourned at 1:08 p.m.

Select or Type Name of Presiding Chair

Presiding

Jan Copeiand, Committee Clerk



# GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H

#### **HOUSE BILL 924**

| Short Title:                 | Highway Safety/Salary Changes. (Pub   |  |  |
|------------------------------|---|--|--|
| Sponsors:                    | Representatives Burr, Hager, and Goodman (Primary Sponsors).                            |  |  |
|                              | For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site. |  |  |
| Referred to: Appropriations. |   |  |  |

#### April 20, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY HOW THE NUMERIC RESULT OF AN ALCOHOL SCREENING TEST MAY BE USED, TO CLARIFY WHEN A LAW ENFORCEMENT OFFICER IS REQUIRED TO REQUEST A BLOOD SAMPLE WHEN CHARGING THE OFFENSE OF MISDEMEANOR DEATH BY VEHICLE, TO CLARIFY THAT MOTOR VEHICLES MUST HAVE AT LEAST ONE WORKING STOP LAMP ON EACH SIDE OF THE REAR OF THE VEHICLE, TO CLARIFY THE MEANING OF THE TERM "SALARY" FOR CERTAIN STATE LAW ENFORCEMENT OFFICERS, TO FUND SALARY INCREASES FOR MEMBERS OF THE STATE HIGHWAY PATROL FOR THE 2015-2016 FISCAL YEAR, AND TO MAKE OTHER CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-16.3(d) reads as rewritten:

- "(d) Use of Screening Test Results or Refusal by Officer. The fact that a driver showed a positive or negative numeric result on an alcohol screening test, but not the actual alcohol concentration result, test or a driver's refusal to submit may be used by a law-enforcement officer, is admissible in a court, or may also be used by an administrative agency in determining if there are reasonable grounds for believing: or probable cause to believe either of the following:
  - (1) That the The driver has committed an implied-consent offense under G.S. 20-16.2; and G.S. 20-16.2.
  - (2) That the The driver had consumed alcohol and that the driver had in his or her body previously consumed alcohol, or the driver had an alcohol concentration above 0.00, but not to prove a particular alcohol concentration.

Negative <u>or low</u> results on the alcohol screening test may be used in factually appropriate cases by the officer, a court, or an administrative agency in determining whether a person's alleged impairment is caused by an impairing substance other than alcohol."

SECTION 2. G.S. 20-139.1(b5) reads as rewritten:

"(b5) Subsequent Tests Allowed. – A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of a law enforcement officer; except that a person charged with a violation of G.S. 20-141.4 G.S. 20-141.4, at any relevant time after the driving, shall be requested to provide a blood sample in addition to or in lieu of a chemical analysis of the breath. However, if a breath sample shows an alcohol concentration of .08 or more, then requesting a blood sample shall be in the discretion of a law enforcement officer. If a subsequent chemical analysis is requested pursuant to this subsection,



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the person shall again be advised of the implied consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2. If a person willfully refuses to provide a blood sample under this subsection, and the person is charged with a violation of G.S. 20-141.4, then a law enforcement officer with probable cause to believe that the offense involved impaired driving or was an alcohol-related offense made subject to the procedures of G.S. 20-16.2 shall seek a warrant to obtain a blood sample. The failure to obtain a blood sample pursuant to this subsection shall not be grounds for the dismissal of a charge and is not an appealable issue."

**SECTION 3.** G.S. 20-129(g) reads as rewritten:

No person shall sell or operate on the highways of the State any motor vehicle, motorcycle or motor driven cycle, manufactured after December 31, 1955, 1970, unless it shall be equipped with a stop lamp on the rear of the vehicle.stop lamps, one on each side of the rear of the vehicle. No person shall sell or operate on the highways of the State any motorcycle, moped, or other motor-driven cycle, manufactured after December 31, 1970, unless it shall be equipped with a stop lamp on the rear of the motorcycle, moped, or other motor-driven cycle. The stop lamplamps shall displayemit, reflect, or display a red or amber light visible from a distance of not less than 100 feet to the rear in normal sunlight, and shall be actuated upon application of the service (foot) brake. The stop lamplamps may be incorporated into a unit with one or more other rear lamps."

SECTION 4. G.S. 20-129.1 reads as rewritten:

# "§ 20-129.1. Additional lighting equipment required on certain vehicles.

In addition to other equipment required by this Chapter, the following vehicles shall be equipped as follows:

- On every bus or truck, whatever its size, there shall be the following: (1)
  - On the rear, two reflectors, one at each side, and one stoplight.stop lamp on each side of the vertical centerline at the same height and as far apart as practicable.
- On every bus or truck 80 inches or more in overall width, in addition to the (2) requirements in subdivision (1):
  - On the front, two clearance lamps, one aton each side side of the vertical centerline to indicate overall width.
  - On the rear, two clearance lamps, one aton each sideside of the vertical centerline to indicate overall width.
  - On each side, two side marker lamps, one at or near the front and one at or near the rear the front, two side marker lamps, as far to the front as practicable. On the rear, two side marker lamps, as far to the rear as practicable.
  - On each-side, two reflectors, one at or near the front and one at or near the rear the front, two reflectors, as far to the front as practicable. On the rear, two reflectors, as far to the rear as practicable.
- On every truck tractor: (3)
  - On the front, two clearance lamps, one aton each side of the vertical centerline to indicate overall width.
  - On the rear, one stoplight stop lamp on each side of the vertical centerline at the same height and as far apart as practicable.
- On every trailer or semitrailer having a gross weight of 4,000 pounds or (4) more:
  - On the front, two clearance lamps, one at each side.
  - On each side, two side marker lamps, one at or near the front and one at or near the rear.
  - On each side, two reflectors, one at or near the front and one at or near the rear.

On the rear, two clearance lamps, one at each side, also two reflectors, one at each side, and one stoplight.stop lamp on each side of the vertical centerline at the same height and as far apart as practicable.

(5) On every pole trailer having a gross weight of 4,000 pounds or more:

On each side, one side marker lamp and one clearance lamp which may be in combination, to show to the front, side and rear.

On the rear of the pole trailer or load, two reflectors, one at each side.

- (6) On every trailer, semitrailer or pole trailer having a gross weight of less than 4,000 pounds:
  - On the rear, two reflectors, one on each side. If any trailer or semitrailer is so loaded or is of such dimensions as to obscure the stoplight on the towing vehicle, then such vehicle shall also be equipped with one stoplight.stop lamp on each side of the vertical centerline at the same height and as far apart as practicable.
- (7) Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.
- (8) Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.
- (9) Brake lights Stop lamps (and/or brake reflectors) on the rear of a motor vehicle shall have red lenses be constructed so that the light displayed emitted, reflected, or displayed is red red, except that a motor vehicle originally manufactured with amber stop lamps may emit, reflect, or display an amber light. The light illuminating the license plate shall be white. All other lights shall be white, amber, yellow, clear or red.
- (10) On every trailer and semitrailer which is 30 feet or more in length and has a gross weight of 4,000 pounds or more, one combination marker lamp showing amber and mounted on the bottom side rail at or near the center of each side of the trailer."

#### SECTION 5. G.S. 20-130.1 reads as rewritten:

#### "§ 20-130.1. Use of red or blue lights on vehicles prohibited; exceptions.

- (a) It is unlawful for any person to install or activate or operate a red light in or on any vehicle in this State. As used in this subsection, unless the context requires otherwise, "red light" means an operable red light not sealed in the manufacturer's original package which: (i) is designed for use by an emergency vehicle or is similar in appearance to a red light designed for use by an emergency vehicle; and (ii) can be operated by use of the vehicle's battery, vehicle's electrical system, or a dry cell battery. As used in this subsection, the term "red light" shall also mean any forward facing red light installed on a vehicle after initial manufacture of the vehicle.
- (c) It is unlawful for any person to possess a blue light or to install, activate, or operate a blue light in or on any vehicle in this State, except for a publicly owned vehicle used for law enforcement purposes or any other vehicle when used by law enforcement officers in the performance of their official duties. As used in this subsection, unless the context requires otherwise, "blue light" means any forward facing-blue light installed on a vehicle after initial manufacture of the vehicle; or an operable blue light which:
  - (1) Is not (i) being installed on, held in inventory for the purpose of being installed on, or held in inventory for the purpose of sale for installation on a vehicle on which it may be lawfully operated or (ii) installed on a vehicle

- which is used solely for the purpose of demonstrating the blue light for sale to law enforcement personnel;
- (1a) Is designed for use by an emergency vehicle, or is similar in appearance to a blue light designed for use by an emergency vehicle; and
- (2) Can be operated by use of the vehicle's battery, the vehicle's electrical system, or a dry cell battery.

SECTION 6. G.S. 143-166.14 reads as rewritten:

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 "§ 143-166.14. Payment of salary notwithstanding incapacity; Workers' Compensation Act applicable after two years; duration of payment.

The salary of any eligible person shall be paid as long as the person's employment in that position continues, notwithstanding the person's total or partial incapacity to perform any duties to which the person may be lawfully assigned, if that incapacity is the result of an injury or injuries proximately caused by the heightened risk and special hazards directly related to the violent nature of the eligible person's official duties, except if that incapacity continues for more than two years from its inception, the person shall, during the further continuance of that incapacity, be subject to the provisions of Chapter 97 of the General Statutes pertaining to workers' compensation. Salary paid to an eligible person pursuant to this Article shall cease upon the resumption of the person's regularly assigned duties, retirement, resignation, or death, whichever first occurs, except that temporary return to duty shall not prohibit payment of salary for a subsequent period of incapacity which can be shown to be directly related to the original injury. For purposes of this section, the term "salary" means the total base pay of a person as reflected on the person's salary statement."

**SECTION** 7. G.S. 143-166.15 reads as rewritten:

### "§ 143-166.15. Application of § 97-27; how payments made.

Notwithstanding the provisions of G.S. 143-166.14 of this Article, the persons entitled to benefits shall be subject to the provisions of G.S. 97-27 during the two-year period of payment of full salary. total base pay. All payments of salary shall be made at the same time and in the same manner as other salaries are paidpayments made to other persons in the same department."

**SECTION 8.** For the 2015-2016 fiscal year, there is appropriated from the General Fund to the Department of Public Safety an amount sufficient to fund salary increases under G.S. 20-187.3 for members of the State Highway Patrol.

**SECTION 9.** Section 1 of this act becomes effective December 1, 2015, and applies to hearings held, and administrative determinations made, on or after that date. Section 2 of this act becomes effective December 1, 2015, and applies to offenses committed on or after that date. Section 8 of this act becomes effective July 1, 2015. The remainder of this act is effective when it becomes law 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.

Page 4 H924 [Edition 1]

# GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H

# **HOUSE BILL 924**

D

# PROPOSED COMMITTEE SUBSTITUTE H924-CSST-45 [v.2]

4/28/2015 7:41:48 PM

| Short little: | Highway Safety/Salary Changes. | (Public) |
|---------------|--------------------------------|----------|
| Sponsors:     |                                |          |
| Referred to:  |                                |          |

#### April 20, 2015

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### A BILL TO BE ENTITLED

AN ACT TO CLARIFY WHEN A LAW ENFORCEMENT OFFICER IS REQUIRED TO REQUEST A BLOOD SAMPLE WHEN CHARGING THE OFFENSE OF MISDEMEANOR DEATH BY VEHICLE, TO CLARIFY THAT MOTOR VEHICLES MUST HAVE AT LEAST ONE WORKING STOP LAMP ON EACH SIDE OF THE REAR OF THE VEHICLE, TO CLARIFY THE MEANING OF THE TERM "SALARY" FOR CERTAIN STATE LAW ENFORCEMENT OFFICERS, AND TO MAKE OTHER CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-139.1(b5) reads as rewritten:

"(b5) Subsequent Tests Allowed. – A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of a law enforcement officer; except that a person charged with a violation of G.S. 20-141.4G.S. 20-141.4, at any relevant time after the driving, shall be requested to provide a blood sample in addition to or in lieu of a chemical analysis of the breath. However, if a breath sample shows an alcohol concentration of .08 or more, then requesting a blood sample shall be in the discretion of a law enforcement officer. If a subsequent chemical analysis is requested pursuant to this subsection, the person shall again be advised of the implied consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2. If a person willfully refuses to provide a blood sample under this subsection, and the person is charged with a violation of G.S. 20-141.4, then a law enforcement officer with probable cause to believe that the offense involved impaired driving or was an alcohol-related offense made subject to the procedures of G.S. 20-16.2 shall seek a warrant to obtain a blood sample. The failure to obtain a blood sample pursuant to this subsection shall not be grounds for the dismissal of a charge and is not an appealable issue."

**SECTION 2.** G.S. 20-129(g) reads as rewritten:

"(g) No person shall sell or operate on the highways of the State any motor vehicle, motorcycle or motor-driven cycle, manufactured after December 31, 1955,1970, unless it shall be equipped with a stop lamp on the rear of the vehicle.stop lamps, one on each side of the rear of the vehicle. No person shall sell or operate on the highways of the State any motorcycle, moped, or other motor-driven cycle, manufactured after December 31, 1970, unless it shall be equipped with a stop lamp on the rear of the motorcycle, moped, or other motor-driven cycle. The stop lamplamps shall displayemit, reflect, or display a red or amber light visible from a distance of not less than 100 feet to the rear in normal sunlight, and shall be actuated upon



### **General Assembly of North Carolina**

application of the service (foot)-brake. The stop lamplamps may be incorporated into a unit with one or more other rear lamps."

SECTION 3. G.S. 20-129.1 reads as rewritten:

# "§ 20-129.1. Additional lighting equipment required on certain vehicles.

In addition to other equipment required by this Chapter, the following vehicles shall be equipped as follows:

- (1) On every bus or truck, whatever its size, there shall be the following:
  - On the rear, two reflectors, one at each side, and one stoplight stop lamp on each side of the vertical centerline at the same height and as far apart as practicable.
- On every bus or truck 80 inches or more in overall width, in addition to the requirements in subdivision (1):
  - On the front, two clearance lamps, one aton each side.side of the vertical centerline to indicate overall width.
  - On the rear, two clearance lamps, one aton each sideside of the vertical centerline to indicate overall width.
  - On each side, two side marker lamps, one at or near the front and one at or near the rear: the front, two side marker lamps, as far to the front as practicable.

    On the rear, two side marker lamps, as far to the rear as practicable.
  - On each side, two reflectors, one at or near the front and one at or near the rear, the front, two reflectors, as far to the front as practicable.

    On the rear, two reflectors, as far to the rear as practicable.
- (3) On every truck tractor:
  - On the front, two clearance lamps, one aton each side.side of the vertical centerline to indicate overall width.
  - On the rear, one stoplight.stop lamp on each side of the vertical centerline at the same height and as far apart as practicable.
- (4) On every trailer or semitrailer having a gross weight of 4,000 pounds or more:
  - On the front, two clearance lamps, one at each side.
  - On each side, two side marker lamps, one at or near the front and one at or near the rear.
  - On each side, two reflectors, one at or near the front and one at or near the rear.
  - On the rear, two clearance lamps, one at each side, also two reflectors, one at each side, and one stoplight.stop lamp on each side of the vertical centerline at the same height and as far apart as practicable.
- (5) On every pole trailer having a gross weight of 4,000 pounds or more:
  - On each side, one side marker lamp and one clearance lamp which may be in combination, to show to the front, side and rear.
  - On the rear of the pole trailer or load, two reflectors, one at each side.
- (6) On every trailer, semitrailer or pole trailer having a gross weight of less than 4,000 pounds:
  - On the rear, two reflectors, one on each side. If any trailer or semitrailer is so loaded or is of such dimensions as to obscure the stoplight on the towing vehicle, then such vehicle shall also be equipped with one stoplight.stop lamp on each side of the vertical centerline at the same height and as far apart as practicable.
- (7) Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

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# "§ 143-166.14. Payment of salary notwithstanding incapacity; Workers' Compensation Act applicable after two years; duration of payment.

The salary of any eligible person shall be paid as long as the person's employment in that position continues, notwithstanding the person's total or partial incapacity to perform any duties to which the person may be lawfully assigned, if that incapacity is the result of an injury or injuries proximately caused by the heightened risk and special hazards directly related to the violent nature of the eligible person's official duties, except if that incapacity continues for more than two years from its inception, the person shall, during the further continuance of that incapacity, be subject to the provisions of Chapter 97 of the General Statutes pertaining to workers' compensation. Salary paid to an eligible person pursuant to this Article shall cease

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upon the resumption of the person's regularly assigned duties, retirement, resignation, or death, whichever first occurs, except that temporary return to duty shall not prohibit payment of salary for a subsequent period of incapacity which can be shown to be directly related to the original injury. For purposes of this section, the term "salary" means the total base pay of a person as reflected on the person's salary statement."

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**SECTION 6.** G.S. 143-166.15 reads as rewritten:

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# "§ 143-166.15. Application of § 97-27; how payments made. Notwithstanding the provisions of G.S. 143-166.14 of this Article, the persons entitled to

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benefits shall be subject to the provisions of G.S. 97-27 during the two-year period of payment of full salary.total base pay. All payments of salary shall be made at the same time and in the same manner as other salaries are paidpayments made to other persons in the same department."

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**SECTION 7.** G.S. 143B-927 reads as rewritten:

# "§ 143B-927. Personnel of the State Bureau of Investigation.

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The Director of the State Bureau of Investigation may appoint a sufficient number of assistants who shall be competent and qualified to do the work of the Bureau. The Director shall be responsible for making all hiring and personnel decisions of the Bureau. Notwithstanding the provisions of this Chapter, Chapter 143A, and Chapter 143B of the General Statutes, the Director may hire or fire personnel and transfer personnel within the Bureau. If the Director deems it appropriate to hire reserve agents, those reserve agents shall be considered employees of the State Bureau of Investigation for purposes of any workers compensation claim arising from acts occurring while the reserve agent is performing assigned duties."

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**SECTION 8.** G.S. 106-145.13 is repealed.

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**SECTION 9.** Section 1 of this act becomes effective December 1, 2015, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law 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.

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> House Bill 924 H924-CSST-45 [v.2] Page 4



# **HOUSE BILL 924:** Highway Safety/Salary Changes

2015-2016 General Assembly

Committee:

House Judiciary I

Introduced by:

Reps. Burr, Hager, Goodman

**Analysis of:** PCS to First Edition H924-CSST-45

Date:

April 28, 2015

**Prepared by:** R. Erika Churchill

Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 924 would make changes to the motor vehicle laws regarding timing of mandatory blood testing in certain criminal charges and regarding lights on vehicles, and to the salary continuation of State law enforcement officers, and to repeal certain mandatory reporting regarding pseudoephedrine products.

#### **CURRENT LAW & BILL ANALYSIS:**

Section 1. Pursuant to G.S. 20-16.2, any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an offense involving impaired driving. The test results, or the fact of the person's refusal, are admissible in evidence at trial. Procedures governing chemical analyses administered persons charged with any offense involving impaired driving are governed by G.S. 20-139.1, which provides that a person's alcohol concentration or the presence of any other impairing substance in the person's body as shown by a chemical analysis is admissible in evidence, and the results from a chemical analysis constitute sufficient evidence to prove a person's alcohol concentration. A person charged with an impaired driving offense may be requested to submit to a chemical analysis of blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of a law enforcement officer. A person is required to provide a blood sample in addition to or in lieu of a chemical analysis of the breath when charged with felony or misdemeanor death by vehicle, felony serious injury by vehicle, aggravated felony death or serious injury by vehicle, or repeat felony death by vehicle. If a person charged with one of the aforementioned offenses refuses to provide a blood sample, a law enforcement officer with probable cause to believe the offense involved impaired driving must seek a warrant to obtain a blood sample. G.S. 20-139.1 requires that a physician, registered nurse, emergency medical technician, or other qualified person withdraw blood samples and obtain urine samples.

The pcs would clarify that when a person is charged with felony or misdemeanor death by vehicle, felony serious injury by vehicle, aggravated felony death or serious injury by vehicle, or repeat felony death by vehicle and required to provide the blood sample, the sample is to be taken at any relevant time after the driving. Effective December 1, 2015.

**Sections 2-4.** Currently, G.S. 20-129 prohibits operation of a motor vehicle unless it is equipped with one operable red or amber stop lamp on the rear of the vehicle. Current G.S. 20-139.1 requires one operable red stop lamp on the rear of buses, trucks, tractor trailers, and other specified trailers. A recent State Court of Appeals case, *State v. Heien*, 714 S.E.2d 827 (2011), held that malfunction of a single brake light did not violate State law, and did not constitute a reasonable justification for a traffic stop.

The pcs would:

O. Walker Reagan
Director



Research Division (919) 733-2578

# House Bill 924

Page 2

- Amend State law to require two operable stop lamps, one on each side of the rear of motor vehicles, buses, trucks, tractor trailers, and other specified trailers; and clarifies that amber stop lamps are authorized on any motor vehicle, if they were original equipment.
- Specify the placement of certain lamps on buses, trucks, tractor trailers, trailers, semitrailers and poletrailers.
- Prohibit after installed red and blue lights on vehicles, whether forward facing or not, on non-emergency vehicles.

Section 5-6. Article 12B of Chapter 143 governs salary continuation for certain State law enforcement officers subject to the Criminal Justice Training and Standards Act, and drivers license examiners and corrections officers injured out of certain acts on the job. When an eligible person under that Article is incapacitated as the result of an injury or injuries proximately caused by the heightened risk and special hazards directly related to the violent nature of the eligible person's official duties, the eligible person is paid their full salary as long as the person's employment in that position continues during the further continuance of that incapacity. Salary paid to an eligible person ends upon the resumption of the person's regularly assigned duties, retirement, resignation, or death, whichever first occurs, except that temporary return to duty does not prohibit payment of salary for a subsequent period of incapacity which can be shown to be directly related to the original injury. If the incapacity continues for more than two years from its inception, then workers' compensation applies.

The pcs would amend the current law to provide that total base pay is the amount the eligible person is entitled to, rather than full salary.

Section 7. The pcs would clarify that when the Director of the State Bureau of Investigation(SBI) hires reserve agents, those reserve agents are eligible to receive workers compensation benefits for injuries incurred while performing that reserve agent's assigned duties.

**Section 8.** Currently, every 30 calendar days, a wholesale distributor of pseudoephedrine products is to submit an electronic report to the SBI that accounts for all transactions involving pseudoephedrine products with persons or firms located within this State for the preceding month. The wholesale distributor is to keep each monthly report for a period of two years from the date of submittal to the SBI. G.S. 106-145.13.

The pcs would repeal the required reporting and maintenance of records.

**EFFECTIVE DATE:** Except as otherwise noted, effective when it becomes law.

# GENERAL ASSEMBLY OF NORTH CAROLINA **SESSION 2015**

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### **HOUSE BILL 607** PROPOSED COMMITTEE SUBSTITUTE H607-CSMD-6 [v.2]

4/24/2015 3:37:45 PM Short Title: Allow Protected Consumer Security Freezes.

(Public)

Sponsors: Referred to:

April 13, 2015 1 A BILL TO BE ENTITLED 2 AN ACT TO AUTHORIZE THE PLACEMENT OF A PROTECTED CONSUMER 3 SECURITY FREEZE ON A PROTECTED CONSUMER'S CREDIT REPORT. 4 The General Assembly of North Carolina enacts: 5 **SECTION 1.** G.S. 75-61 reads as rewritten: 6 "§ 75-61. Definitions. 7 The following definitions apply in this Article: 8 9 (11a) "Protected Consumer". - An individual (i) who is under the age of 16 at the time a request for the placement of a security freeze is made pursuant to 10 11 G.S. 75-63.1 or (ii) who is incapacitated or for whom a guardian or guardian 12 ad litem has been appointed. 13 (11b) "Protected Consumer Security Freeze". - A security freeze placed on a 14 protected consumer's credit report or on a protected consumer's file pursuant 15 to G.S. 75-63.1. (11c) "Protected Consumer's File". - A record that (i) identifies a protected 16 consumer; (ii) is created by a consumer reporting agency solely for the 17 18 purpose of complying with the requirements of G.S. 75-63.1; and (iii) may 19 not be created or used to consider the protected consumer's credit 20 worthiness, credit standing, credit capacity, character, general reputation, 21 personal characteristics, or mode of living. 22 23 (13a) "Representative". – A person who provides to a consumer reporting agency 24 sufficient proof of authority to act on behalf of a protected consumer. 25 26 (16)"Sufficient Proof of Authority". – Either of the following: 27 A certified or official copy of the protected consumer's birth 28 certificate, if the representative is a parent of the protected consumer. 29 Documentation that shows that a representative has authority to act b. 30 on behalf of a protected consumer, including: 31 1. An order issued by a court of law. A valid power of attorney. 32 33 A written, notarized statement signed by the person that 34 expressly describes the authority of the representative to act 35 on behalf of a protected consumer.



| General Assen                           | ably of North Carolina   | Session 2015  |
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| (17)                                    | "Sufficient Proof of Identification"                           | Information or documentation that   |
|   | identifies a protected consumer or represe                     | entative, including:  |
|   | a. A Social Security number or a co                            | ppy of a Social Security card issued                                      |
|   | by the Social Security Administra                              |   |
|   |  | birth certificate issued by the entity                                    |
|   | authorized to issue the birth certif                           |   |
|   |  | identification card issued by the   |
|   |  | or any other government-issued  |
|   | identification.  |   |
|   |  | I for telephone, sewer, septic tank,                                      |
|   |  | s services, that shows a name and   |
|   | home address."   | is sorvices, that shows a name and  |
| SEC                                     | <b>FION 2.</b> Article 2A of Chapter 75 of the                 | ne General Statutes is amended by   |
| adding a new sec                        |  | To General Statutes is amended by   |
|   | urity freeze for protected consumers.                          |   |
|   | nation to Place Security Freeze. – A consu                     | imer reporting agency shall place a                                       |
|   | ner security freeze on the protected consum                    |   |
| *************************************** | in accordance with subsection (b) of this s                    |   |
|   | ions being satisfied:  | section within 30 days of all of the                                      |
| (1)                                     | The consumer reporting agency received                         | s a request under this section from                                       |
| (1)                                     | the protected consumer's representative                        |   |
|   | consumer security freeze by any of the fo                      |   |
|   |  | mowing memous.  |
|   |  |   |
|   |  | ic mail connection  |
| (2)                                     | The protected consumer's representative                        |   |
| (2)                                     | 0.1.1.1.1  |   |
|   |  | mer reporting agency at the address<br>e manner specified by the consumer |
|   | -  | e manner specified by the consumer  |
|   | reporting agency.  | orting aganay sufficient proof of   |
|   |  | orting agency sufficient proof of   |
|   |  | ed consumer and the representative.                                       |
|   |  | orting agency sufficient proof of   |
|   | authority to act on behalf of the p                            |   |
|   |  | ng agency a fee as provided in  |
| /1 \ A                                  | subsection (d) of this section.                                | 4   |
|   | on Required. – If the placement of a pro                       |   |
| *************************************** | ubsection (a) of this section, a consumer r                    | eporting agency shall do one of the                                       |
| following, as app                       |  |   |
| (1)                                     | If no consumer report exists. – If the consumer report exists. |   |
|   | have a consumer report pertaining to the                       |   |
|   | reporting agency shall create a prote                          |   |
|   | restriction in the protected consumer's f                      |   |
|   | protected consumer's file, any consumer                        |   |
|   | consumer, and any information contain                          | ned in either document except as  |
|   | provided in this section.                                      |   |
| (2)                                     | If a consumer report exists. – If the                          |   |
|   | consumer report pertaining to the pr                           |   |
|   | reporting agency shall place a restriction                     |   |
|   | release of the consumer report and any                         | information contained in the report                                       |
|   | except as provided in this section.                            |   |

- (c) <u>Duration of Freeze.</u> A protected consumer security freeze shall remain in effect until one of the following occurs, in which case the protected consumer security freeze shall be removed within 30 days:
  - (1) The protected consumer or the protected consumer's representative requests the consumer reporting agency to remove the protected consumer security freeze by doing all of the following:
    - a. Submitting a request for the removal of the protected consumer security freeze to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency.
    - b. If the request is being made by the protected consumer, providing to the consumer reporting agency (i) proof that the sufficient proof of authority for the protected consumer's representative is no longer valid and (ii) sufficient proof of identification for the protected consumer.
    - c. If the request is being made by the representative of a protected consumer, providing to the consumer reporting agency (i) sufficient proof of identification of the protected consumer and the representative and (ii) sufficient proof of authority to act on behalf of the protected consumer.
    - d. Providing to the consumer reporting agency a fee as provided in subsection (d) of this section.
  - (2) The consumer reporting agency determines that the protected consumer security freeze was placed based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.
- (d) Fees. A consumer reporting agency may charge a reasonable fee for each placement or removal of a protected consumer security freeze in accordance with the following:
  - (1) Fee Allowed in Certain Cases. Except as provided in subdivision (2) of this subsection, a consumer reporting agency may charge a fee to a consumer not to exceed five dollars (\$5.00) for placement or removal of a protected consumer security freeze.
  - (2) No Fee Allowed in Certain Cases. A fee may not be charged for the placement or removal of a protected consumer security freeze under this section if any of the following conditions are satisfied:
    - a. The protected consumer's representative has obtained a report of alleged identity theft or identity fraud against the protected consumer and provides a copy of the report to the consumer reporting agency.
    - b. A request for placement or removal of a protected consumer security freeze is for a protected consumer who is under the age of 16 at the time of the request and the consumer reporting agency has a consumer report pertaining to the protected consumer.
    - <u>c.</u> The protected consumer is over the age of 62.
  - (3) No Other Fees Allowed. No fee other than those authorized under this subsection may be charged for placement or removal of a protected consumer security freeze.
- (e) Exceptions. Notwithstanding subsection (b) of this section, the placement of a protected consumer security freeze shall not prohibit the release of a protected consumer's consumer report, protected consumer's file, or any information contained in these documents to any of the following:
  - (1) The protected consumer when the protected consumer has subscribed to a credit reporting service, as that term is defined in G.S. 75-134.

| General A  | Assem   | bly of North Carolina Session 201  |
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|            | (2)     | A representative of the protected consumer when the representative ha            |
|            |         | subscribed on behalf of the consumer to a credit reporting service, as that      |
|            |         | term is defined in G.S. 75-134.  |
|            | (3)     | A person providing the protected consumer or the protected consumer              |
|            |         | representative with a copy of the protected consumer's consumer report of        |
|            |         | protected consumer's file at the request of the protected consumer or th         |
|            |         | protected consumer's representative.   |
|            | (4)     | A person, or the person's subsidiary, affiliate, agent, subcontractor, or        |
|            |         | assignee with whom the protected consumer has, or prior to assignment had        |
|            |         | an account, contract, or debtor-creditor relationship for the purposes of        |
|            |         | reviewing the active account or collecting the financial obligation owing for    |
|            |         | the account, contract, or debt.  |
|            | (5)     | Any person acting pursuant to a court order, warrant, or subpoena.               |
|            | (6)     | A state or local agency, or its agents or assigns, which administers a program   |
|            | 3,      | for establishing and enforcing child support obligations.                        |
|            | (7)     | A state or local agency, or its agents or assigns, acting to investigate frau-   |
|            | 4       | including Medicaid fraud, or acting to investigate or collect delinquent taxe    |
|            |         | or assessments, including interest and penalties, unpaid court orders, or t      |
|            |         | fulfill any of its other statutory responsibilities.                             |
|            | (8)     | A federal, state, or local governmental entity, including law enforcement        |
|            |         | agency, court, or their agent or assigns.  |
|            | (9)     | A person for the purposes of prescreening as defined by the Fair Cred            |
|            |         | Reporting Act, 15 U.S.C. § 1681, et seq.   |
|            | (10)    | Any depository financial institution for checking, savings, and investment       |
|            |         | accounts.  |
|            | (11)    | Any property and casualty insurance company for use in setting or adjusting      |
|            |         | a rate, adjusting a claim, or underwriting for property and casualty insurance   |
|            |         | purposes.  |
|            | (12)    | A person for the purpose of furnishing or using credit reports for               |
|            |         | employment purposes pursuant to 15 U.S.C. § 1681b(b) or tenant screenir          |
|            |         | pursuant to 15 U.S.C. § 1681b(a)(3)(F).  |
|            | (13)    | A person for the purpose of criminal background record information.              |
| <u>(f)</u> | Violat  | tion. – A violation of this section is a violation of G.S. 75-1.1."              |
|            | SECT    | TION 3. G.S. 130A-101 is amended by adding a new subsection to read:             |
| "(h)       | When    | a birth occurs, the person responsible for preparing the birth certificate under |
|            |         | Il provide the mother with information about how to request a protecte           |
| consumer   | securit | y freeze for the child under G.S. 75-63.1 and the potential benefits of doing    |
| so."       |         | *  |
|            |         |  |

# GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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#### HOUSE BILL 607 PROPOSED COMMITTEE SUBSTITUTE H607-CSMD-6 [v.3]

4/29/2015 10:56:11 AM

Short Title: Allow Protected Consumer Security Freezes. (Public)

Sponsors:

Referred to:

April 13, 2015 A BILL TO BE ENTITLED 1 AN ACT TO AUTHORIZE THE PLACEMENT OF A PROTECTED CONSUMER 2 3 SECURITY FREEZE ON A PROTECTED CONSUMER'S CREDIT REPORT. 4 The General Assembly of North Carolina enacts: 5 **SECTION 1.** G.S. 75-61 reads as rewritten: 6 "§ 75-61. Definitions. 7 The following definitions apply in this Article: 8 (11a) "Protected Consumer". - An individual (i) who is under the age of 16 at the 9 time a request for the placement of a security freeze is made pursuant to 10 G.S. 75-63.1 or (ii) who is incapacitated or for whom a guardian or guardian 11 12 ad litem has been appointed. (11b) "Protected Consumer Security Freeze". - A security freeze placed on a 13 14 protected consumer's credit report or on a protected consumer's file pursuant 15 to G.S. 75-63.1. (11c) "Protected Consumer's File". - A record that (i) identifies a protected 16 consumer; (ii) is created by a consumer reporting agency solely for the 17 purpose of complying with the requirements of G.S. 75-63.1; and (iii) may 18 19 not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, 20 21 personal characteristics, or mode of living. 22 23 "Representative". – A person who provides to a consumer reporting agency (13a)24 sufficient proof of authority to act on behalf of a protected consumer. 25 26 "Sufficient Proof of Authority". – Either of the following: (16)27 A certified or official copy of the protected consumer's birth 28 certificate, if the representative is a parent of the protected consumer. 29 Documentation that shows that a representative has authority to act b. on behalf of a protected consumer, including: 30 31 An order issued by a court of law. 1. 32 A valid power of attorney. 33 A written, notarized statement signed by the person that 3.



on behalf of a protected consumer.

expressly describes the authority of the representative to act

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credit reporting service, as that term is defined in G.S. 75-134.

|   | General      | Assem   | ably of North Carolina Session 2015  |
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|   |              | (2)     | A representative of the protected consumer when the representative has           |
|   |              |         | subscribed on behalf of the consumer to a credit reporting service, as that      |
|   |              |         | term is defined in G.S. 75-134.  |
|   |              | (3)     | A person providing the protected consumer or the protected consumer's            |
|   |              |         | representative with a copy of the protected consumer's consumer report or        |
|   |              |         | protected consumer's file at the request of the protected consumer or the        |
|   |              |         | protected consumer's representative.   |
|   |              | (4)     | A person, or the person's subsidiary, affiliate, agent, subcontractor, or        |
|   |              |         | assignee with whom the protected consumer has, or prior to assignment had,       |
|   |              |         | an account, contract, or debtor-creditor relationship for the purposes of        |
|   |              |         | reviewing the active account or collecting the financial obligation owing for    |
|   |              |         | the account, contract, or debt.  |
|   |              | (5)     | Any person acting pursuant to a court order, warrant, or subpoena.               |
|   |              | (6)     | A state or local agency, or its agents or assigns, which administers a program   |
|   |              |         | for establishing and enforcing child support obligations.                        |
|   |              | (7)     | A state or local agency, or its agents or assigns, acting to investigate fraud,  |
|   |              |         | including Medicaid fraud, or acting to investigate or collect delinquent taxes   |
|   |              |         | or assessments, including interest and penalties, unpaid court orders, or to     |
|   |              |         | fulfill any of its other statutory responsibilities.                             |
|   |              | (8)     | A federal, state, or local governmental entity, including law enforcement        |
|   |              |         | agency, court, or their agent or assigns.  |
|   |              | (9)     | A person for the purposes of prescreening as defined by the Fair Credit          |
|   |              |         | Reporting Act, 15 U.S.C. § 1681, et seq.   |
|   |              | (10)    | Any depository financial institution for checking, savings, and investment       |
|   |              |         | accounts.  |
|   |              | (11)    | Any property and casualty insurance company for use in setting or adjusting      |
|   |              |         | a rate, adjusting a claim, or underwriting for property and casualty insurance   |
|   |              |         | purposes.  |
|   |              | (12)    | A person for the purpose of furnishing or using credit reports for               |
|   |              |         | employment purposes pursuant to 15 U.S.C. § 1681b(b) or tenant screening         |
|   |              |         | pursuant to 15 U.S.C. § 1681b(a)(3)(F).  |
|   |              | (13)    | A person for the purpose of criminal background record information.              |
|   | <u>(f)</u>   |         | ion. – A violation of this section is a violation of G.S. 75-1.1."               |
|   |              |         | TION 3. G.S. 130A-101 is amended by adding a new subsection to read:             |
|   | "( <u>h)</u> |         | a birth occurs, the person responsible for preparing the birth certificate under |
|   |              |         | I provide the mother with information about how to request a protected           |
| - |              | securit | y freeze for the child under G.S. 75-63.1 and the potential benefits of doing    |
| - | <u>so.</u> " | CECT    | NON 4. This are becomes effective October 1, 2015                                |
|   |              | SECI    | <b>TION 4.</b> This act becomes effective October 1, 2015.                       |

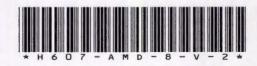


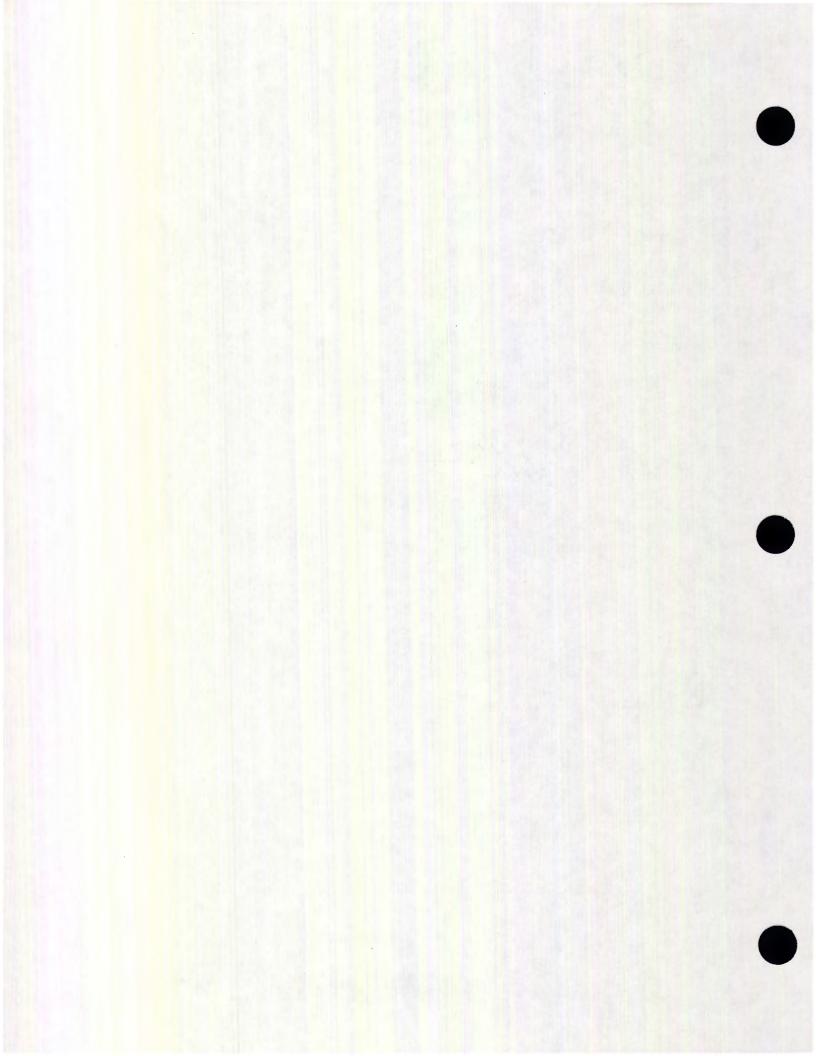
# NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

House Bill 607

AMENDMENT NO.

| H607-AMD-8 [v.2]   | (to be filled in by<br>Principal Clerk) |
|--|---|
|  | Page 1 of 1                             |
| Amends Title [NO]<br>H607-CSMD-6   | Date 4-29 ,2015                         |
| Representative Hardister   |   |
| moves to amend the PCS on page 4, line 39, by a "SECTION 4. This act becomes effer |   |
| SIGNED Amendment Sponso  | or                                      |
| SIGNED Committee Chair if Senate Commi   | ttee Amendment                          |
| ADOPTED FAILED   | TABLED                                  |





# GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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**HOUSE BILL 607** 

Short Title: Allow Protected Consumer Security Freezes. (Public) Representatives Meyer and Hardister (Primary Sponsors). Sponsors: For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site. Referred to: Banking, if favorable, Judiciary I. April 13, 2015 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE PLACEMENT OF A PROTECTED CONSUMER SECURITY FREEZE ON A PROTECTED CONSUMER'S CREDIT REPORT. The General Assembly of North Carolina enacts: SECTION 1. G.S. 75-61 reads as rewritten: "§ 75-61. Definitions. The following definitions apply in this Article: (11a) "Protected Consumer". - An individual (i) who is under the age of 16 at the time a request for the placement of a security freeze is made pursuant to G.S. 75-63.1 or (ii) who is incapacitated or for whom a guardian or guardian ad litem has been appointed. (11b) "Protected Consumer Security Freeze". - A security freeze placed on a protected consumer's credit report or on a protected consumer's file pursuant to G.S. 75-63.1. (11c) "Protected Consumer's File". - A record that (i) identifies a protected consumer; (ii) is created by a consumer reporting agency solely for the purpose of complying with the requirements of G.S. 75-63.1; and (iii) may not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. (13a) "Representative". – A person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer. "Sufficient Proof of Authority". – Either of the following: (16)A certified or official copy of the protected consumer's birth certificate, if the representative is a parent of the protected consumer. Documentation that shows that a representative has authority to act <u>b.</u> on behalf of a protected consumer, including: An order issued by a court of law. 1. 2. A valid power of attorney. 3. A written, notarized statement signed by the person that expressly describes the authority of the representative to act



on behalf of a protected consumer.

| General Assem     | bly of North Caronna Session 2013   |
|-------------------|---|
| (1)               | The protected consumer or the protected consumer's representative requests      |
|                   | the consumer reporting agency to remove the protected consumer security         |
|                   | freeze by doing all of the following:   |
|                   | a. Submitting a request for the removal of the protected consumer               |
|                   | security freeze to the consumer reporting agency at the address or              |
|                   | other point of contact and in the manner specified by the consumer              |
|                   | reporting agency.   |
|                   |   |
|                   | b. If the request is being made by the protected consumer, providing to         |
|                   | the consumer reporting agency (i) proof that the sufficient proof of            |
|                   | authority for the protected consumer's representative is no longer              |
|                   | valid and (ii) sufficient proof of identification for the protected             |
|                   | consumer.   |
|                   | c. If the request is being made by the representative of a protected            |
|                   | consumer, providing to the consumer reporting agency (i) sufficient             |
|                   | proof of identification of the protected consumer and the                       |
|                   | representative and (ii) sufficient proof of authority to act on behalf of       |
|                   | the protected consumer.   |
|                   | d. Providing to the consumer reporting agency a fee as provided in              |
|                   | subsection (d) of this section.   |
| (2)               | The consumer reporting agency determines that the protected consumer            |
|                   | security freeze was placed based on a material misrepresentation of fact by     |
|                   | the protected consumer or the protected consumer's representative.              |
| (d) Fees.         | - A consumer reporting agency may charge a reasonable fee for each              |
|                   | noval of a protected consumer security freeze in accordance with the following: |
| (1)               | Fee allowed in certain cases If a request for placement or removal of a         |
|                   | protected consumer security freeze is made by telephone or by mail, a           |
|                   | consumer reporting agency may charge a fee to a consumer not to exceed          |
|                   | three dollars (\$3.00).   |
| (2)               | No fee allowed in certain cases A fee may not be charged for the                |
|                   | placement or removal of a protected consumer security freeze under this         |
|                   | section if any of the following conditions are satisfied:                       |
|                   | a. The protected consumer's representative has obtained a report of             |
|                   | alleged identity theft or identity fraud against the protected consumer         |
|                   | and provides a copy of the report to the consumer reporting agency.             |
|                   | b. A request for placement or removal of a protected consumer security          |
|                   | freeze is for a protected consumer who is under the age of 16 at the            |
|                   | time of the request and the consumer reporting agency has a                     |
|                   | consumer report pertaining to the protected consumer.                           |
|                   |   |
|                   | c. A request for placement or removal of a protected consumer security          |
|                   | freeze is made electronically.  |
| (0)               | d. The protected consumer is over the age of 62.                                |
| <u>(3)</u>        | No other fees allowed. – No fee other than those authorized under this          |
|                   | subsection may be charged for placement or removal of a protected               |
|                   | consumer security freeze.   |
|                   | ptions Notwithstanding subsection (b) of this section, the placement of a       |
| -                 | mer security freeze shall not prohibit the release of a protected consumer's    |
|                   | , protected consumer's file, or any information contained in these documents to |
| any of the follow | ving:   |
| (1)               | The protected consumer when the protected consumer has subscribed to a          |
|                   | credit reporting service, as that term is defined in G.S. 75-134.               |
|                   |   |

|    | General As   | ssemb   | ly of North Carolina Session 2015  |
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| 1  |              | (2)     | A representative of the protected consumer when the representative has           |
| 2  |              |         | subscribed on behalf of the consumer to a credit reporting service, as that      |
| 3  |              |         | term is defined in G.S. 75-134.  |
| 4  | 9            | (3)     | A person providing the protected consumer or the protected consumer's            |
| 5  |              |         | representative with a copy of the protected consumer's consumer report or        |
| 6  |              |         | protected consumer's file at the request of the protected consumer or the        |
| 7  |              |         | protected consumer's representative.   |
| 8  | <u>(f)</u>   | Violat  | ion. – A violation of this section is a violation of G.S. 75-1.1."               |
| 9  |              | SECT    | TION 3. G.S. 130A-101 is amended by adding a new subsection to read:             |
| 10 | "(h)         | When    | a birth occurs, the person responsible for preparing the birth certificate under |
| 11 | this section | shall   | I provide the mother with information about how to request a protected           |
| 12 | consumer s   | ecurity | y freeze for the child under G.S. 75-63.1 and the potential benefits of doing    |
| 13 | so."         |         |  |
| 14 |              | SECT    | TION 4. This act becomes effective October 1, 2015.                              |

# GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H

**HOUSE BILL 562** 

# Committee Substitute Favorable 4/28/15 PROPOSED COMMITTEE SUBSTITUTE H562-CSSA-60 [v.2]

4/29/2015 12:36:52 PM

Short Title: Second Amendment Affirmation Act.

(Public)

D

Sponsors:

Referred to:

### April 6, 2015

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A BILL TO BE ENTITLED

AN ACT TO ENACT THE SECOND AMENDMENT AFFIRMATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 14-269(b) reads as rewritten:

- "(b) This prohibition shall not apply to the following persons:
  - (4a)Any person who is a district attorney, an assistant district attorney, or an investigator employed by the office of a district attorney and who has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24; provided that the person shall not carry a concealed weapon at any time while in a courtroom or while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the person's body. The district attorney, assistant district attorney, or investigator shall secure the weapon in a locked compartment when the weapon is not on the person of the district investigator; investigator. attorney. assistant district attorney, or Notwithstanding the provisions of this subsection, a district attorney may carry a concealed weapon while in a courtroom;
  - (8) A person employed by the Department of Public Safety who has been designated in writing by the Secretary of the Department, who has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24, and has in the person's possession written proof of the designation by the Secretary of the Department, 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;
  - (9) Any person who is an administrative law judge described in Article 60 of Chapter 7A of the General Statutes 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."



SECTION 1.(b) G.S. 14-415.27 reads as rewritten:

"§ 14-415.27. Expanded permit scope for certain persons.

Notwithstanding G.S. 14-415.11(c), any 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:

- (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.
- (8) A person employed by the Department of Public Safety who has been designated in writing by the Secretary of the Department and who has in the person's possession written proof of the designation.
- (9) A North Carolina administrative law judge." **SECTION 2.** G.S. 14-269.2(k) reads as rewritten:

"(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, if any of the following conditions are met:

- (1) who The person 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 unlockvehicle and only unlocks the vehicle to enter or exit the vehicle provided while the firearm remains in the closed compartment at all times and immediately locks the vehicle is locked immediately following the entrance or exit.
- The person has a handgun concealed on the person and the person remains in the locked vehicle and only unlocks the vehicle to allow the entrance or exit of another person.

The person is within a locked vehicle and removes the handgun from concealment only for the amount of time reasonably necessary to do either of the following:

- a. Move the handgun from concealment on the person to a closed compartment or container within the vehicle.
- b. Move the handgun from within a closed compartment or container within the vehicle to concealment on the person."

**SECTION 3.** G.S. 14-269.2 is amended by adding a new subsection to read:

"(I) It is an affirmative defense to a prosecution under subsection (b) or (f) of this section that the person was authorized to have a concealed handgun in a locked vehicle pursuant to subsection (k) of this section and removed the handgun from the vehicle only in response to a threatening situation in which deadly force was justified pursuant to G.S. 14-51.3."

**SECTION 4.(a)** Article 45 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"§ 106-503.2. Regulation of firearms at State Fair.

(a) Except as otherwise provided in this section, the Commissioner of Agriculture is authorized to prohibit the carrying of firearms in any manner on the State Fairgrounds during the period of time each year that the State Fair is conducted. Any prohibition under this section shall be posted conspicuously in compliance with G.S. 14-415.28.

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Notwithstanding subsection (a) of this section, any prohibition under this section shall not apply to the following persons:

Any person exempted by G.S. 14-269(b)(1), (2), (3), (4), or (5). (1)

(2) Any 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."

The Department of Agriculture, in consultation with the SECTION 4.(b) Department of Public Safety and the North Carolina Sheriffs' Association, shall study the best method to allow persons with concealed handgun permits to carry a concealed handgun on their person from a parking lot to the entrance of the State Fairgrounds, and a secure method of storage for and retrieval of those handguns at or near the entrance. The Department of Agriculture shall report to the Joint Legislative Oversight Committee on Justice and Public Safety by April 1, 2016 with recommendations, including any necessary legislation.

SECTION 5.(a) G.S. 14-409.46 reads as rewritten:

"§ 14-409.46. Sport shooting range protection.

- Notwithstanding any other provision of law, a person who owns, operates, or uses a sport shooting range in this State shall not be subject to civil liability or criminal prosecution in any matter relating to noise or noise pollution resulting from the operation or use of the range if the range was in existence at least three years prior to the effective date of this Article and the range was is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time the range began operation.
- A person who owns, operates, or uses a sport shooting range is not subject to an action for nuisance on the basis of noise or noise pollution, and a State court shall not enjoin the use or operation of a range on the basis of noise or noise pollution, if the range was in existence at least three years prior to the effective date of this Article and the range was is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time the range began operation.
- Rules adopted by any State department or agency for limiting levels of noise in terms of decibel level that may occur in the outdoor atmosphere shall not apply to a sport shooting range exempted from liability under this Article.that was in operation prior to the adoption of the rule.
- A person who acquires title to real property adversely affected by the use of property with a permanently located and improved sport shooting range constructed and initially operated prior to the time the person acquires title shall not maintain a nuisance action on the basis of noise or noise pollution against the person who owns the range to restrain, enjoin, or impede the use of the range. If there is a substantial change in use of the range after the person acquires title, the person may maintain a nuisance action if the action is brought within one year of the date of a substantial change in use. This section does not prohibit actions for negligence or recklessness in the operation of the range or by a person using the range.
- A sport shooting range that is operated and is not in violation of existing law at the time of the enactment of an ordinance and was in existence at least three years prior to the effective date of this Article, shall be permitted to continue in operation even if the operation of the sport shooting range at a later date does not conform to the new ordinance or an amendment to an existing ordinance, provided there has been no substantial change in use."

SECTION 5.(b) G.S. 14-409.47 reads as rewritten:

"§ 14-409.47. Application of Article.

Except as otherwise provided in this Article, this Article does not prohibit a local government from regulating the location and construction of a sport shooting range after the effective date of this Article. September 1, 1997."

#### **SECTION 6.** G.S. 14-415.4(a) reads as rewritten:

- "(a) Definitions. The following definitions apply in this section:
  - (1) Firearms rights. The legal right in this State of a person to purchase, own, possess, or have in the person's custody, care, or control any firearm or any weapon of mass death and destruction as those terms are defined in G.S. 14-415.1 and G.S. 14-288.8(c). The term does not include any weapon defined in G.S. 14-409(a).
  - (2) Nonviolent felony. The term nonviolent felony does not include any felony that is a Class A, Class B1, or Class B2 felony. Also, the term nonviolent felony does not include any Class C through Class I felony that is one of the following:
    - a. An offense that includes assault as an essential element of the offense.
    - b. An offense that includes the possession or use of a firearm or other deadly weapon as an essential or nonessential element of the offense, or the offender was in possession of a firearm or other deadly weapon at the time of the commission of the offense.
    - c. An offense for which the offender was armed with or used a firearm or other deadly weapon.
    - d. An offense for which the offender must register under Article 27A of Chapter 14 of the General Statutes."

# **SECTION 7.** G.S. 14-415.12(b) reads as rewritten:

- "(b) The sheriff shall deny a permit to an applicant who:
  - (1) Is ineligible to own, possess, or receive a firearm under the provisions of State or federal law.
  - (2) Is under indictment or against whom a finding of probable cause exists for a felony.
  - (3) Has been adjudicated guilty in any court of a felony, unless: (i) the felony is an offense that pertains to antitrust violations, unfair trade practices, or restraints of trade, or (ii) the person's firearms rights have been restored pursuant to G.S. 14-415.4.
  - (4) Is a fugitive from justice.
  - (5) Is an unlawful user of, or addicted to marijuana, alcohol, or any depressant, stimulant, or narcotic drug, or any other controlled substance as defined in 21 U.S.C. § 802.
  - (6) Is currently, or has been previously adjudicated by a court or administratively determined by a governmental agency whose decisions are subject to judicial review to be, lacking mental capacity or mentally ill. Receipt of previous consultative services or outpatient treatment alone shall not disqualify an applicant under this subdivision.
  - (7) Is or has been discharged from the Armed Forces of the United States under conditions other than honorable.
  - (8) Except as provided in subdivision (8b) of this section, is or has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence constituting a misdemeanor, including but not limited to, a violation of a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or a violation of a misdemeanor under G.S. 14-225.2, 14-226.1, 14-258.1, 14-269.2, 14-269.3,

It is a Class 1 misdemeanor for any person taking wildlife to have in his possession any:

> (1) Repealed by Session Laws 2013-369, s. 23, effective October 1, 2013.

(2) Weapon of mass death and destruction as defined in G.S. 14-288.8, other than a suppressor or other device designed to muffle or minimize the report of a firearm or short-barreled rifle 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 9.** G.S. 14-415.21 reads as rewritten:

#### "§ 14-415.21. Violations of this Article punishable as an infraction.

- 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. Any person who has been issued a valid permit who is found to be carrying a concealed handgun in violation of subdivision (c)(8) of G.S. 14-415.11 shall be guilty of an infraction, and may be required to pay a fine of up to five hundred dollars (\$500.00). In lieu of paying a fine the person may surrender the permit.
- 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.
- 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."

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SECTION 10.(a) The following statutes are repealed: G.S. 14-402, 14-403, 14-404, 14-405, and 14-407.1.

**SECTION 10.(b)** G.S. 14-315(b1) reads as rewritten:

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- "(b1) Defense. It shall be a defense to a violation of this section if all of the following conditions are met:

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The person shows that the minor produced an apparently valid permit to (1) receive the weapon, if such a permit would be required under G.S. 14-402 for transfer of the weapon to an adult.

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The person reasonably believed that the minor was not a minor. (2)

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The person either: 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

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> b. Produces evidence of other facts that reasonably indicated at the time of sale that the minor was at least the required age.

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**SECTION 10.(c)** G.S. 14-404(c1) reads as rewritten:

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"(c1) Excluding Saturdays, Sundays, and holidays, after receiving notice of any of the judicial findings, court orders, or other factual matters, relevant to any of the disqualifying conditions specified in subsection (c) of this section, the clerk of superior court shall determine which information can practicably be transmitted to the National Instant Criminal Background Check System (NICS) and shall transmit that information to NICS within 48 hours of that determination. The information shall include a reference to the relevant statutory provision of G.S. 14-404 that precludes the issuance of a permit. Excluding Saturdays, Sundays, and holidays, the clerk of superior court shall transmit to the National Instant Criminal Background Check System (NICS) those judicial findings and determinations entered and maintained by the clerks in the Administrative Office of the Courts record management systems that can be used to confirm a disqualifying factor as outlined in G.S. 14-404(c) within 48 hours of such entry, provided that NICS requests that such data be transmitted and that the data can be transmitted in a format acceptable by NICS."

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SECTION 10.(d) The Administrative Office of the Courts (AOC), in consultation with the State Bureau of Investigation (SBI), shall work with the National Instant Criminal Background Check System (NICS) to determine the feasibility of reporting additional information to NICS from the State's court and law enforcement records relevant to the disqualifiers for purchase or possession in G.S. 14-404(c)(1), (c)(2), (c)(3), and (c)(8). On or before March 1, 2016, the AOC and SBI shall report to the Joint Legislative Oversight Committee on Justice and Public Safety. The report shall include the following:

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(1) Any progress in providing to NICS additional information relevant to the disqualifiers referenced in this section.

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(2) Any specific barriers or roadblocks to transmitting to NICS that additional information.

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Any legislative changes necessary to facilitate enhanced reporting to NICS (3) relevant to the disqualifiers.

45 46 (4) An estimate of the funding, technology, or resource needs required to facilitate the additional reporting relevant to the disqualifiers.

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**SECTION 11.** G.S. 14-409.40 reads as rewritten: "§ 14-409.40. Statewide uniformity of local regulation.

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It is declared by the General Assembly that the regulation of firearms is properly an issue of general, statewide concern, and that the entire field of regulation of firearms is preempted from regulation by local governments except as provided by this section.

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- The General Assembly further declares that the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is not an unreasonably dangerous activity and does not constitute a nuisance per se and furthermore, that it is the unlawful use of firearms and ammunition, rather than their lawful design, marketing, manufacture, distribution, sale, or transfer that is the proximate cause of injuries arising from their unlawful use. This subsection applies only to causes of action brought under subsection (g) of this section.
- Unless otherwise permitted by statute, no county or municipality, by ordinance, resolution, or other enactment, shall regulate in any manner the possession, ownership, storage, transfer, sale, purchase, licensing, taxation, manufacture, transportation, or registration of firearms, firearms ammunition, components of firearms, dealers in firearms, or dealers in handgun components or parts.
- Notwithstanding subsection (b) of this section, a county or municipality, by zoning or other ordinance, may regulate or prohibit the sale of firearms at a location only if there is a lawful, general, similar regulation or prohibition of commercial activities at that location. Nothing in this subsection shall restrict the right of a county or municipality to adopt a general zoning plan that prohibits any commercial activity within a fixed distance of a school or other educational institution except with a special use permit issued for a commercial activity found not to pose a danger to the health, safety, or general welfare of persons attending the school or educational institution within the fixed distance.
- No county or municipality, by zoning or other ordinance, shall regulate in any manner firearms shows with regulations more stringent than those applying to shows of other types of items.
- A county or municipality may regulate the transport, carrying, or possession of (e) firearms by employees of the local unit of government in the course of their employment with that local unit of government.
- Nothing contained in this section prohibits municipalities or counties from application of their authority under G.S. 153A-129, 160A-189, 14-269, 14-269.2, 14-269.3, 14-269.4, 14-277.2, 14-415.11, 14-415.23, including prohibiting the possession of firearms in public-owned buildings, on the grounds or parking areas of those buildings, or in public parks or recreation areas, except nothing in this subsection shall prohibit a person from storing a firearm within a motor vehicle while the vehicle is on these grounds or areas. Nothing contained in this section prohibits municipalities or counties from exercising powers provided by law in states of emergency declared under Article 1A of Chapter 166A of the General Statutes.
- The authority to bring suit and the right to recover against any firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association by or on behalf of any governmental unit, created by or pursuant to an act of the General Assembly or the Constitution, or any department, agency, or authority thereof, for damages, abatement, injunctive relief, or any other remedy resulting from or relating to the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is reserved exclusively to the State. Any action brought by the State pursuant to this section shall be brought by the Attorney General on behalf of the State. This section shall not prohibit a political subdivision or local governmental unit from bringing an action against a firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association for breach of contract or warranty for defect of materials or workmanship as to firearms or ammunition purchased by the political subdivision or local governmental unit.
- A person adversely affected by any ordinance, rule, or regulation promulgated or caused to be enforced by any county or municipality in violation of this section may bring an action for declaratory and injunctive relief and for actual damages arising from the violation.

 The court shall award the prevailing party in an action brought under this subsection reasonable attorneys' fees and court costs as authorized by law."

**SECTION 12.** Article 53B of Chapter 14 of the General statutes is amended by adding a new section to read:

# "§ 14-409.41. Chief law enforcement officer certification; certain firearms.

- (a) Definitions. The following definitions apply in this section:
  - (1) Certification. The participation and assent of the chief law enforcement officer necessary under federal law for the approval of the application to transfer or make a firearm.
  - (2) Chief law enforcement officer. Any official the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives, or any successor agency, identified by regulation or otherwise as eligible to provide any required certification for the transfer or making of a firearm.
  - (3) Firearm. Any firearm that meets the definition of firearm in 26 U.S.C. § 5845.
- (b) When a chief law enforcement officer's certification is required by federal law or regulation for the transfer or making of a firearm, the chief law enforcement officer shall, within 15 days of receipt of a request for certification, provide the certification if the applicant is not prohibited by State or federal law from receiving or possessing the firearm and is not the subject of a proceeding that could result in the applicant being prohibited by State or federal law from receiving or possessing the firearm. If the chief law enforcement officer is unable to make a certification as required by this section, the chief law enforcement officer shall provide the applicant with a written notification of the denial and the reason for the denial.

Nothing in this section shall require a chief law enforcement officer to make a certification the chief law enforcement officer knows to be untrue, but the chief law enforcement officer may not refuse to provide certification based on a generalized objection to private persons or entities making, possessing, or receiving firearms or any certain type of firearm the possession of which is not prohibited by law.

- (c) An applicant whose request for certification is denied may appeal the decision of the chief law enforcement officer to the district court of the district in which the request for certification was made. The court shall make a de novo review of the chief law enforcement officer's decision to deny the certification. If the court finds that the applicant is not prohibited by State or federal law from receiving or possessing the firearm, is not the subject of a proceeding that could result in the applicant being prohibited by State or federal law from receiving or possessing the firearm, and that no substantial evidence supports the chief law enforcement officer's determination that the chief law enforcement officer cannot truthfully make the certification, the court shall order the chief law enforcement officer to issue the certification and award court costs and reasonable attorneys' fees to the applicant.
- (d) Chief law enforcement officers and their employees who act in good faith are immune from liability arising from any act or omission in making a certification as required by this section."

# SECTION 13. G.S. 14-415.15(a) reads as rewritten:

"(a) Except as permitted under subsection (b) of this section, within 45 days after receipt of the items listed in G.S. 14-415.13 from an applicant, and receipt of the required records concerning the mental health or capacity of the applicant, the sheriff shall either issue or deny the permit. The sheriff shall issue or deny the permit within 90 calendar days from the date on which the application was submitted regardless of the receipt of required records concerning the mental health or capacity of the applicant. Such denial shall not be issued unless the applicant is determined to be ineligible under G.S. 14-415.12.

The sheriff may conduct any investigation necessary to determine the qualification or competency of the person applying for the permit, including record checks."

**SECTION 14.** G.S. 14-415.23 is amended by adding a new subsection to read:

"(e) A person adversely affected by any ordinance, rule, or regulation promulgated or caused to be enforced by any unit of local government in violation of this section may bring an action for declaratory and injunctive relief and for actual damages arising from the violation. The court shall award the prevailing party in an action brought under this subsection reasonable attorneys' fees and court costs as authorized by law."

**SECTION 15.** Chapter 90 of the General Statutes is amended by adding a new Article to read:

#### "Article 1L.

#### "Preserving Firearms Privacy for Patients.

#### "§ 90-21.75. Findings and intent.

- (a) Findings. The General Assembly makes all of the following findings:
  - (1) That individuals have a right under the United States Constitution and the North Carolina Constitution to keep and bear arms, which arms include firearms and their ammunition.
  - (2) That an individual's decision to exercise this right is a private matter.
  - (3) That lawfully possessed, stored, and used firearms and ammunition are not a threat to the public health.
  - (4) That health care providers do not have any special expertise in the safe storage or use of firearms and ammunition merely by virtue of their status as health care providers. To the extent that health care providers have general advice to impart concerning firearms and ammunition, they may do so without knowing whether any particular patient actually possesses or uses these items.
  - That health care providers do not need to know whether a patient lawfully possesses or uses firearms and ammunition unless the patient (i) specifically exhibits symptoms of illness or injury that the health care provider could reasonably attribute to the possession or use of firearms and ammunition or (ii) has expressed a desire to harm self or others.
  - (6) That a patient should not be compelled to participate in a health care provider's gathering of statistical or demographic information about the use, storage, and possession of firearms and ammunition for research or other purposes not directly related to the patient's own health.
- (b) Intent. It is the intent of the General Assembly to ensure that (i) every patient may obtain health care free from discrimination based on knowledge of, or unwarranted inquiry into, constitutionally protected conduct involving firearms and ammunition and (ii) health care providers may still obtain information about patient activities with respect to firearms and ammunition when directly relevant to the patient's own health care.

# "§ 90-21.76. Definitions.

The following definitions apply in this section:

- Health care provider. Without limitation, any person who, pursuant to the provisions of Chapter 90 of the General Statutes, is licensed or is otherwise registered or certified to engage in the practice of or otherwise performs duties associated with any of the following: medicine, surgery, dentistry, pharmacy, optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing, physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis, rendering assistance to a physician, dental hygiene, psychiatry, psychology, or a hospital.
- (2) Patient. Means a person under the care of or who seeks professional services from a health care provider.

"§ 90-21.77. Prohibited questionnaires about firearms and ammunition; exception.

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A health care provider is prohibited from asking a patient or the patient's parent, guardian, or custodian to complete a questionnaire or other written form about the patient's lawful ownership, possession, handling, storage, maintenance of, or other conduct involving, firearms and ammunition, unless the patient has been adjudicated incompetent due to mental illness. "§ 90-21.78. Prohibited disclosure of verbal inquiries about firearms and ammunition;

exception. Confidentiality of Verbal Inquiries About Firearms and Ammunition. - A health care provider is prohibited from disclosing to any government official or agency the response of a patient, or the patient's parent, guardian, or custodian, to verbal inquiries about the patient's lawful ownership, possession, handling, storage, maintenance of, or other conduct involving firearms and ammunition, unless the patient has been adjudicated incompetent due to mental illness.

"§ 90-21.79. Fines.

The health care provider's licensing board may impose a fine on any health care provider that violates any provision of this Article. The fine shall not exceed two hundred fifty dollars (\$250.00) for nonwillful violations and shall not exceed five hundred dollars (\$500.00) for willful violations. Each intentional and willful violation of this Article constitutes a separate violation and is subject to a separate fine.

"§ 90-21.80. Disciplinary action.

Violation of this Article is a ground for disciplinary action against the health care provider by the health care provider's licensing board or other regulatory authority."

**SECTION 16.** Sections 1, 2, 3, 8, and 9 of this act become effective October 1, 2015, and apply to offenses committed on or after that date. Section 5 of this act becomes effective October 1, 2015, but shall not apply to pending litigation. Section 6 of this act is effective when it becomes law and applies to restorations granted before, on, or after that date. Section 7 of this act becomes effective October 1, 2015, and applies to permit applications submitted on or after that date. Subsections (a) and (b) of Section 10 of this act become effective October 1, 2018, and apply to offenses committed on or after that date. Sections 11, 14, and 15 of this act become effective October 1, 2015, and apply to violations occurring on or after that date. Section 12 of this act becomes effective October 1, 2015. Section 13 becomes effective October 1, 2015, and applies to applications submitted on or after that date. The remainder of this act is effective when it becomes law. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Email to: Jacqueline Schaffer

CC: Nelson, Burr, Cleveland & Faircloth, Jon Carr

Subject: HB 562

The questions physicians ask on RX use, tobacco, health conditions, alcohol, siblings and parents' health are needed. Owning firearms has nothing to do with your health.

My LA has gone to her physician in the past and asked to sign the bottom of HIPPA paperwork where it says, *in small print*, the information from the physician's visit can be shared with the federal government. She refused to sign. If individuals do not read the fine print, which most do not, they do not know what they are signing and that they are not required to sign the form.

Also, as an insurance agent, when we sell health disability, life and long-term care insurance, the client must sign a release form for the attending physician to furnish medical records to the insurance company who then has to share it with the Medical Information Bureau (MIB). This means **ALL** insurance companies will see that the client owns a firearm and can jeopardize them from receiving coverage if a liberal underwriter is in charge of their case.

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## NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

#### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

#### FAVORABLE COM SUB, UNFAVORABLE ORIGINAL BILL

HB 607 Allow Protected Consumer Security Freezes.

Draft Number: H607-PCS20349-MD-6

Serial Referral: None
Recommended Referral: None
Long Title Amended: No
Floor Manager: Meyer

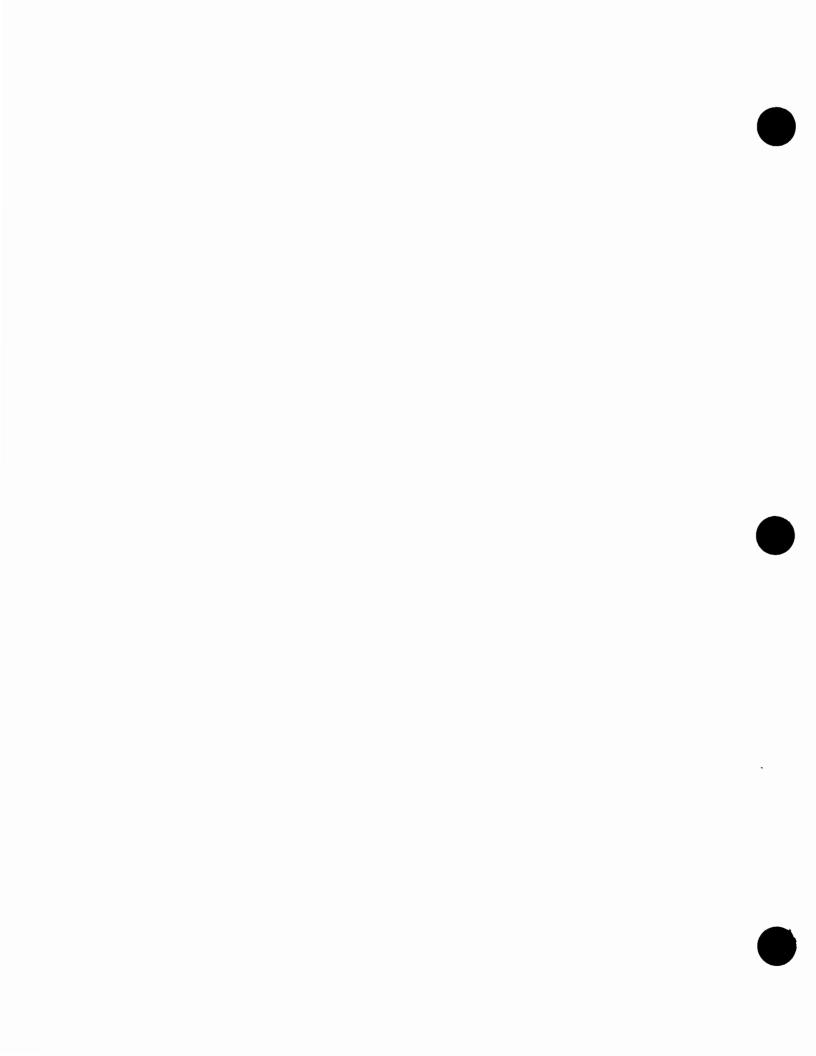
HB 924 Highway Safety/Salary Changes.

Draft Number: H924-PCS20348-ST-45

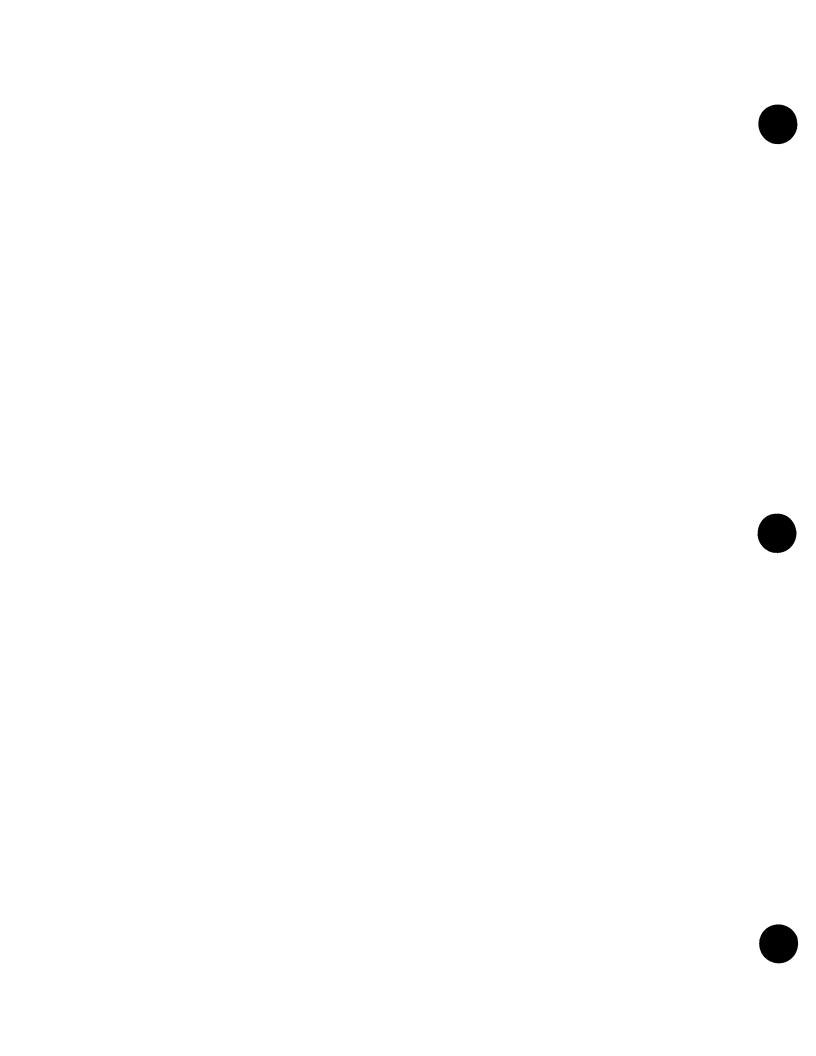
Serial Referral: None Recommended Referral: None Long Title Amended: Yes Floor Manager: Burr

**TOTAL REPORTED: 2** 

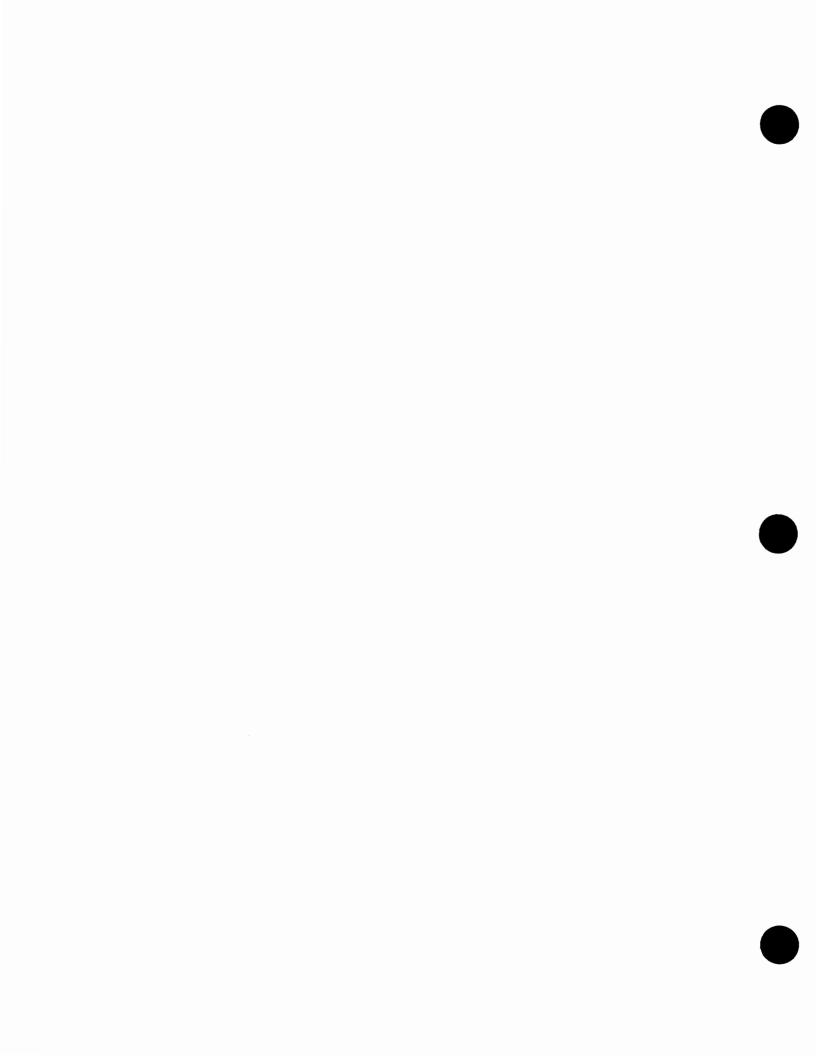




| •                                      | Date: 4-29-15        |
|--|----------------------|
| Bill Number <u>HB 6</u> 07             |                      |
| PCS +13 607 - CSMX                     | 7-6 [V.3]            |
| Motion to be before the committee by _ |                      |
| Rep_                                   | explained the bill.  |
| Discussion on the Bill YES or NO       |                      |
| Rep Hardister                          | motioned for:        |
| Favorable Report                       | Adoption             |
| Unfavorable ReportNo vote              | rolled who a new PCS |
| Pass — Amendments: : Ws -              | H607-AMD-8[V.2]      |
| Serial referral to:                    |                      |
| Speakers:                              |                      |
| Handouts:                              |                      |
| marsell                                |                      |

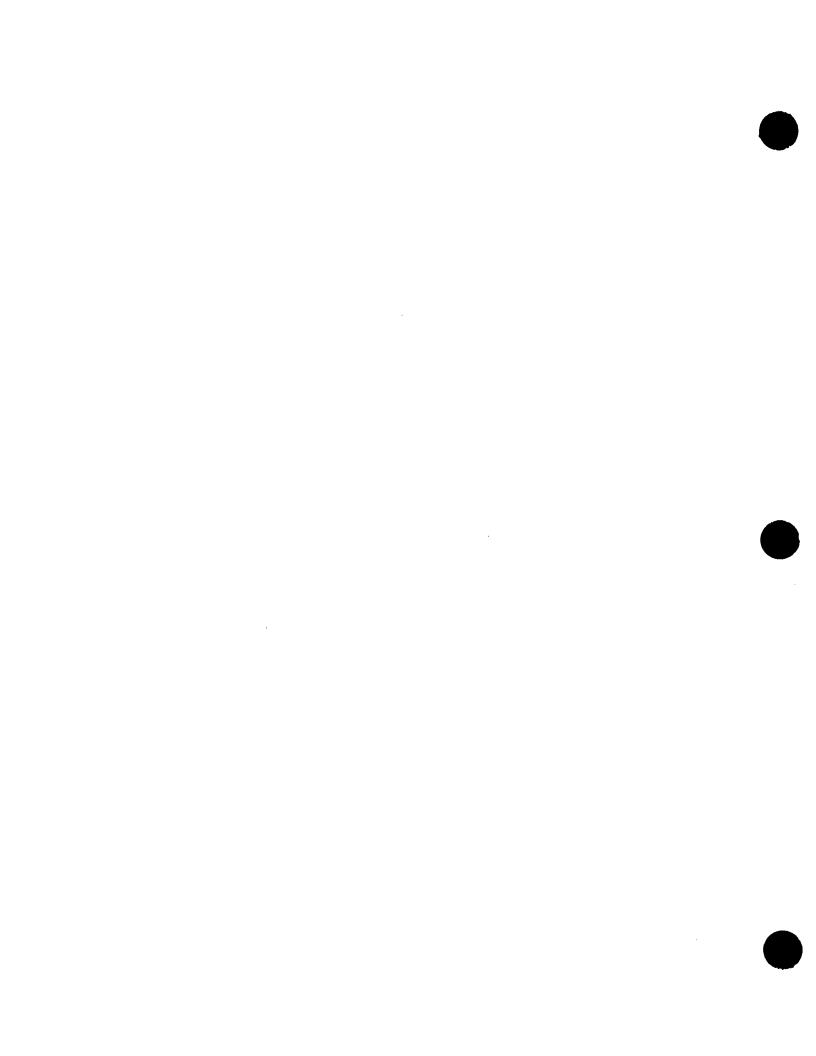


|                                      | Date: 4-29-15                            |
|--------------------------------------|--|
| Bill Number H 924                    |  |
| PCS 4924 - CSST-45 [V                | 1,2]                                     |
| Motion to be before the committee by | surd                                     |
| $\mathcal{N}_{i}$                    |  |
| Rep BUYY explaine                    | ed the bill.                             |
| Discussion on the Bill YES or NO     |  |
| Rep Howard motione                   |  |
| -                                    |  |
| Favorable Report                     | _ Adoption                               |
| Unfavorable Report                   | Unfavorable to original bill, fav to PCS |
| No vote                              |  |
| Amendments: :                        |  |
|                                      |  |
| Serial referral to:                  | ·  |
|                                      |  |
| Speakers: Ryan Combs - 8             | sharled bill sporesors                   |
| Handouts:                            | mettel                                   |
| nartin -                             | shar compraction                         |
| Martin -<br>App- reserve agent   wo  | War Chip.                                |



## **House Staff**

| 1. Name Phillip ARMENTROUT  County CRAVEN Sponsor John BEKK  2. Name KAITCIN AVERY  County PITT Sponsor SUSAN MARTIN  3. Name  County Sponsor  4. Name  County Sponsor  5. Name  County Sponsor  Sergeant-at-Arms  BARRY MOORE  B. H. POWE II | Committee: H Judiciary 1 Date: 29 APR 15 |
|---|--|
| CountySponsorSponsorSponsorSponsorSponsor  2. NameSponsorSponsorSponsor  CountySponsor  3. Name   | Pages  Ph. IID ARMENTROUT                |
| 2. Name KAITKIN AVERY  County PITT Sponsor SUSAN MARTIN  3. Name  County Sponsor  4. Name  County Sponsor  5. Name  County Sponsor  Sponsor  Sponsor  Sponsor  Sponsor  | 1. Name                                  |
| SponsorSUSAN_MARTIN  3. Name  CountySponsor  4. Name  CountySponsor  5. Name  CountySponsor  Sponsor  Sergeant-at-Arms  BARRY MOORE   |  |
| 3. NameSponsor  4. NameSponsor  CountySponsor  5. Name CountySponsor  Sergeant-at-Arms  BARRY MOORE   | 2. Name KAITLIN AVERY                    |
| CountySponsor  4. Name  CountySponsor  5. Name  CountySponsor  Sergeant-at-Arms  BARRY MOORE  | County_PITT Sponsor_SUSAN MARTIN         |
| 4. NameSponsor  5. NameSponsor  CountySponsor  Sergeant-at-Arms  BARRY MOORE  | 3. Name                                  |
| CountySponsor  5. Name  CountySponsor  Sergeant-at-Arms  BARRY MOORE  | County Sponsor                           |
| 5. Name County Sponsor  Sergeant-at-Arms  BARRY MOORE   | 4. Name                                  |
| Sponsor  Sergeant-at-Arms  BARRY MOORE  | CountySponsor                            |
| Sergeant-at-Arms  BARRY MOORE   | 5. Name                                  |
| BARRY MOORE   | County Sponsor                           |
| BARRY MOORE   |  |
|   | Sergeant-at-Arms                         |
| B. H. Powell  | BARRY MOORE                              |
|   | B. H. Powell                             |
| BILLY Jones   | BILLY Jones                              |
| CORY BRYAN  | CORY BRYAN                               |



## VISITOR REGISTRATION SHEET

H Judiciary
Name of Committee

28 APR 15 Date

## VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME                          | FIRM OR AGENCY AND ADDRESS |
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## VISITOR REGISTRATION SHEET

## H Judiciary Name of Committee

28 APR 15 Date

## VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

## **NAME**

## FIRM OR AGENCY AND ADDRESS

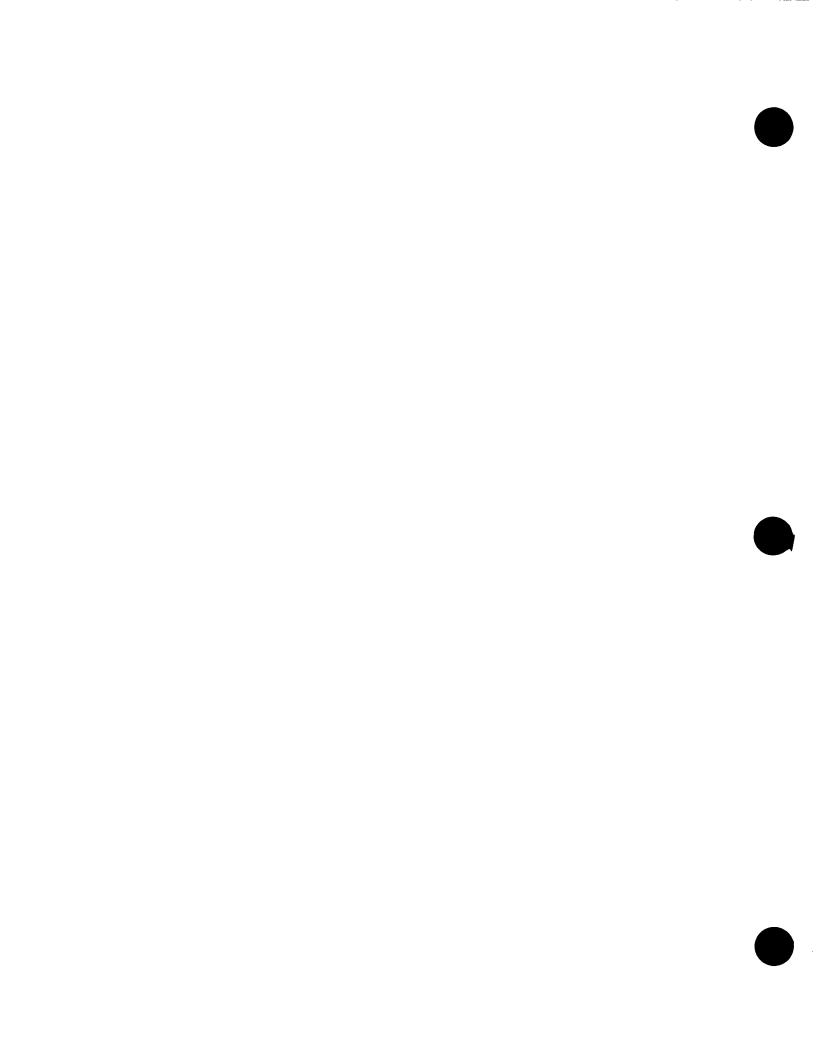
| Chris Agner     | DO    |
|-----------------|-------|
| Jose Rojale     | NCFPL |
| Palu Syr        | Zwsi  |
| DONNA CALTER    | SHP   |
| JAMES WILLIAMS  | SHP   |
| Robert West     | SHP   |
| JOSEPH CUTTON   | SHP   |
| Larry McKeithan | SHP   |
| Lee Councilmon  | SHP   |
| Ryan Combs      | OPS   |
| Jarret Burr     | DPS   |
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# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

You are hereby notified that the House Committee on Judiciary I will meet as follows:

| DAY & DAT<br>TIME:<br>LOCATION | 12:30 F                  |                                  |  |            |
|--------------------------------|--------------------------|----------------------------------|--|------------|
| The followin                   | g bills will be          | considered:                      |  |            |
| BILL NO.<br>HB 615             | SHORT TI'<br>Probation V | <b>TLE</b> iolation Court Costs. | SPONSOR Representative McNeill                 |            |
|                                |                          | Res                              | espectfully,                                   |            |
|                                |                          | Rep                              | presentative N. Leo Daughtry, Chair            |            |
| Thursday, M                    | ay 07, 2015 Principa     | l Clerk<br>Clerk – House Chambe  | ittee assistant at the following offices at 10 | ):23 AM on |
|                                |                          |                                  |  |            |



## House Committee on Judiciary I Wednesday, May 13, 2015, 12:30 PM 415 Legislative Office Building

### **AGENDA**

Welcome and Opening Remarks

**Introduction of Pages** 

**Bills** 

**BILL NO. SHORT TITLE** 

HB 615 Probation Violation Court Costs.

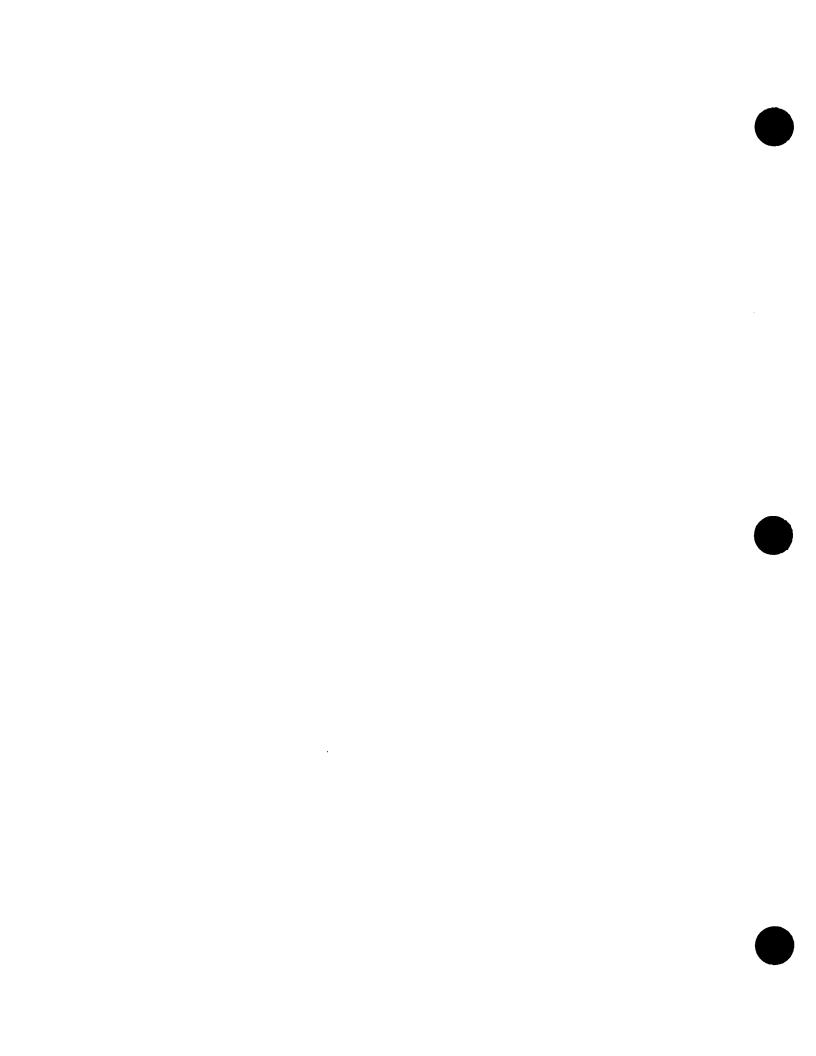
**SPONSOR** 

Representative McNeill

**Presentations** 

**Other Business** 

Adjournment



### House Committee on Judiciary I Wednesday, May 13, 2015 at 12:30 PM Room 415 of the Legislative Office Building

#### **MINUTES**

The House Committee on Judiciary I met at 12:30 PM on May 13, 2015 in Room 415 of the Legislative Office Building. Representatives Daughtry, Burr, Jackson, Howard, Martin, McNeill, Robinson, and Steinburg attended.

Representative N. Leo Daughtry - Chair, presided.

The following bills were considered:

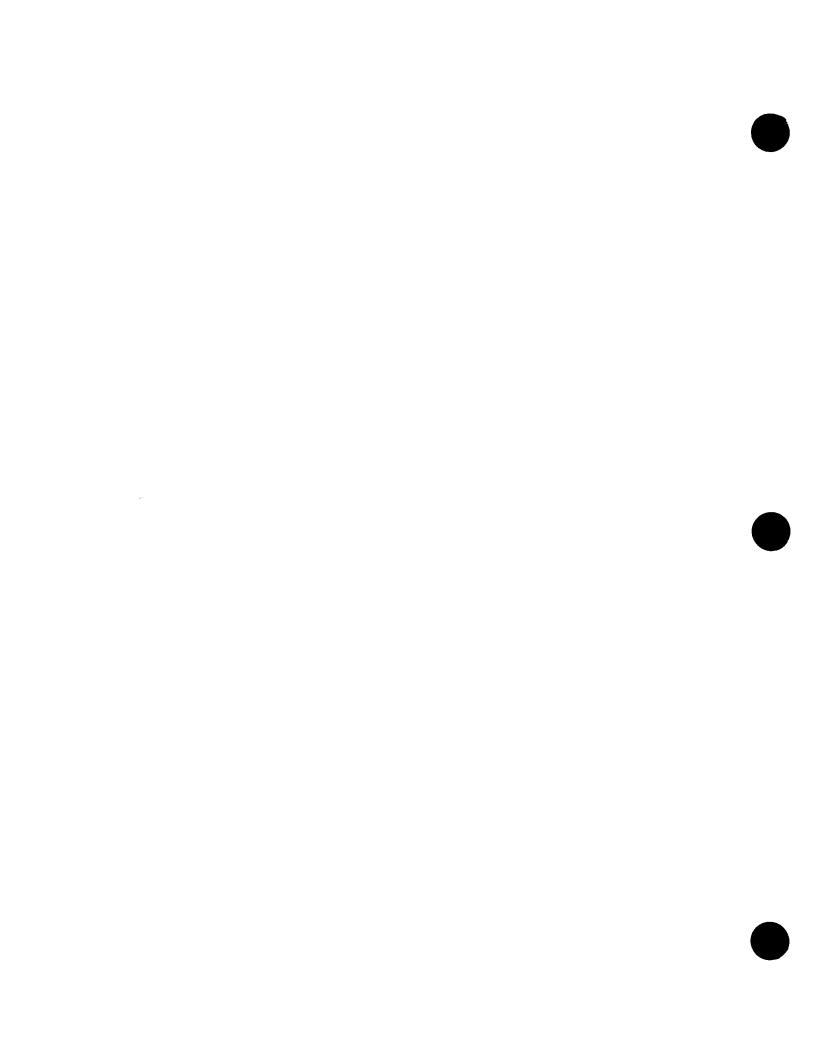
HB 615 Probation Violation Court Costs. (Representative McNeill) – favorable committee substitute, unfavorable to the original bill and re-referred to the Finance Committee

The meeting adjourned at 12:49 p.m.

Representative Leo Daughtry, Chair

Presiding

Jan/Copeland, Committee Clerk



## GENERAL ASSEMBLY OF NORTH CAROLINA **SESSION 2015**

H

## **HOUSE BILL 615**

PROPOSED COMMITTEE SUBSTITUTE H615-CSSTf-47 [v.1] 5/12/2015 3:46:43 PM

| Short Title: | Probation Violation Court Costs. | (Public) |
|--------------|----------------------------------|----------|
| Sponsors:    |                                  |          |
| Referred to: |                                  |          |

April 13, 2015

1 A BILL TO BE ENTITLED AN ACT TO ESTABLISH COURT COSTS TO BE PAID BY PROBATION VIOLATORS. 2 3 The General Assembly of North Carolina enacts: 4

SECTION 1. Article 28 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-304.1. Costs for probation violations.

Whenever a hearing is held pursuant to G.S. 15A-1344 or G.S. 15A-1345 in response to a violation of the conditions of probation, the probationer shall be assessed court costs of fifty dollars (\$50.00) if the probationer is found in violation of probation. A probationer shall not be assessed more than one fifty-dollar (\$50.00) fee for the same probation violation. The probation violation court costs assessed under this section shall be remitted to the State Treasurer for support of the General Court of Justice."

SECTION 2. G.S. 15A-1344 is amended by adding a new subsection to read:

A probationer for whom a hearing is held pursuant to this section and found in violation of probation shall be assessed the probation violation court costs provided for in G.S. 7A-304.1."

SECTION 3. G.S. 15A-1345 is amended by adding a new subsection to read:

A probationer for whom a hearing is held pursuant to this section and found in violation of probation shall be assessed the probation violation court costs provided for in G.S. 7A-304.1."

**SECTION 4.** This act becomes effective December 1, 2015, and applies to probation violations occurring on or after that date.



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## **HOUSE BILL 615: Probation Violation Court Costs**

2015-2016 General Assembly

**Committee:** House Judiciary I, if favorable, Finance

Introduced by: Rep. McNeill

Analysis of: PCS to First Edition

H615-CSSTf-47

Date:

May 12, 2015

Prepared by: R. Erika Churchill

Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 615 would establish a new \$50 court cost fee to be charged of each probation violator when a court hearing is held and that probationer is found in violation of probation.

CURRENT LAW: A defendant sentenced to probation is subject to conditions that he or she must follow as part of a sentence following a conviction of a criminal act. A willful failure to comply with those conditions is considered a violation of probation. The courts may respond to a violation of probation, ranging from reinstating probation to revoking probation and activating the defendant's suspended sentence. But before the court can take action, a probationer is entitled to notice and a hearing at which the court will determine whether a violation occurred.

The hearing on probation violation is not a criminal prosecution, nor a formal trial. However, certain procedural requirements apply as a matter of statute and constitutional due process. At the hearing, evidence against the probationer must be disclosed to him or her, and the probationer may appear, speak, and present relevant information. The defendant is entitled to a written statement from the court as to the evidence relied on and reasons for revoking probation.

To activate a suspended sentence for failure to comply with a probation condition, the State must present evidence sufficient to *reasonably satisfy* the judge that the defendant has willfully violated a valid condition of probation or has violated a condition without lawful excuse. A defendant does not plead "guilty" or "not guilty" to a probation violation; rather, he or she admits or denies the violation.

**BILL ANALYSIS:** The PCS would establish a new court cost to be charged against a probationer whenever a hearing is held pursuant to G.S. 15A-1344 or G.S. 15A-1345 and the probationer is found in violation of probation. No more than one \$50.00 fee may be assessed for the same probation violation.

The monies collected as a result of the court costs are to be remitted to the State Treasurer for support of the General Court of Justice.

**EFFECTIVE DATE:** December 1, 2015, and applies to probation violations occurring on or after that date.

James M. Markham, with the UNC School of Government and author of the May 2013 Administration of Justice Bulletin, substantially contributed to this summary.

O. Walker Reagan Director



Research Division (919) 733-2578

## GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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#### **HOUSE BILL 615**

| Short Title: | Probation Violation Court Costs.   | (Public)                                |
|--------------|--|---|
| Sponsors:    | Representative McNeill (Primary Sponsor).  For a complete list of Sponsors, refer to the North Carolina General Assembly | v Web Site                              |
| Referred to: | Judiciary I, if favorable, Finance.  | , |
|              | April 13, 2015   |   |

AN ACT TO ESTABLISH COURT COSTS TO BE PAID BY PROBATION VIOLATORS. The General Assembly of North Carolina enacts:

**SECTION 1.** Article 28 of Chapter 7A of the General Statutes is amended by adding a new section to read:

A BILL TO BE ENTITLED

#### "§ 7A-304.1. Costs for probation violations.

Whenever a hearing is held pursuant to G.S. 15A-1344 or G.S. 15A-1345 in response to a violation of the conditions of probation, the probationer shall be assessed court costs of fifty dollars (\$50.00). A probationer shall not be assessed more than one fifty-dollar (\$50.00) fee for the same probation violation. The probation violation court costs assessed under this section shall be remitted to the State Treasurer for support of the General Court of Justice."

SECTION 2. G.S. 15A-1344 is amended by adding a new subsection to read:

"(h) A probationer for whom a hearing is held pursuant to this section shall be assessed the probation violation court costs provided for in G.S. 7A-304.1."

**SECTION 3.** G.S. 15A-1345 is amended by adding a new subsection to read:

"(f) A probationer for whom a hearing is held pursuant to this section shall be assessed the probation violation court costs provided for in G.S. 7A-304.1."

**SECTION 4.** This act becomes effective July 1, 2015, and applies to probation violations occurring on or after that date.



1

#### NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

#### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

#### FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB 615

Probation Violation Court Costs.

Draft Number:

H615-PCS10382-STf-47

Serial Referral: FINANCE

Recommended Referral: None Long Title Amended:

No

Floor Manager:

McNeill

**TOTAL REPORTED: 1** 



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Unfavorable Report

No vote

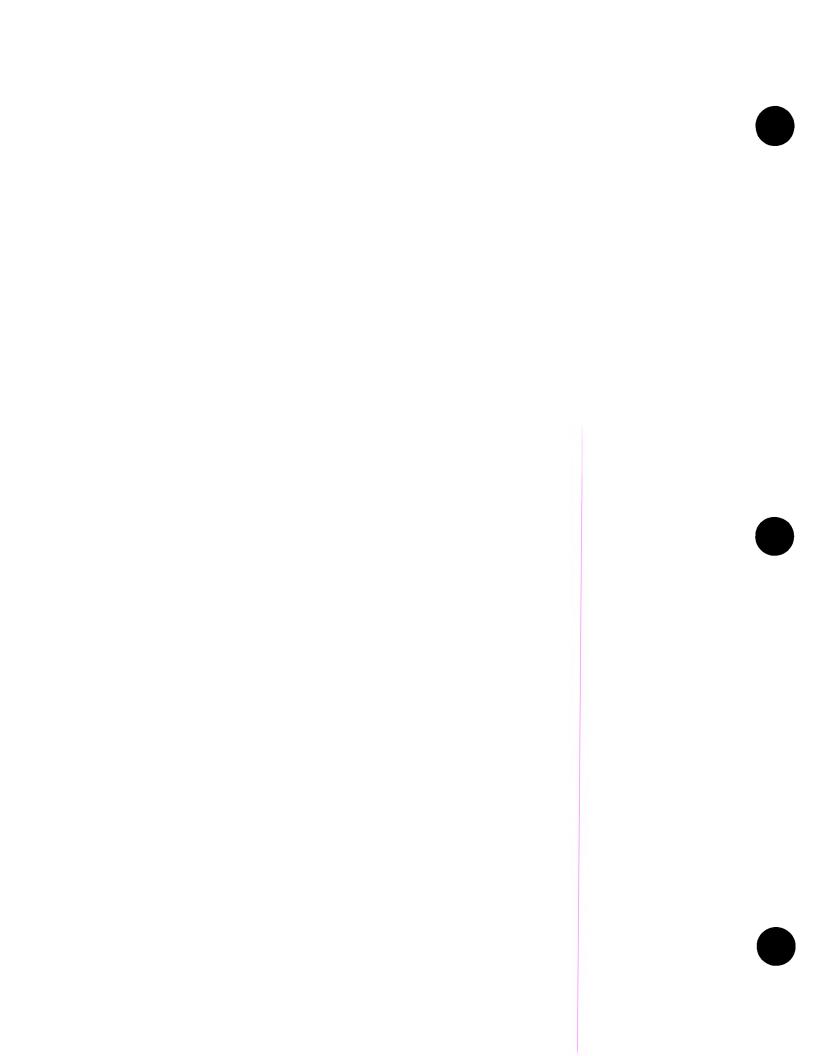
Serial referral to:\_

Speakers:

Handouts:

Other: \_

Unfavorable to original bill, favorable to PCS

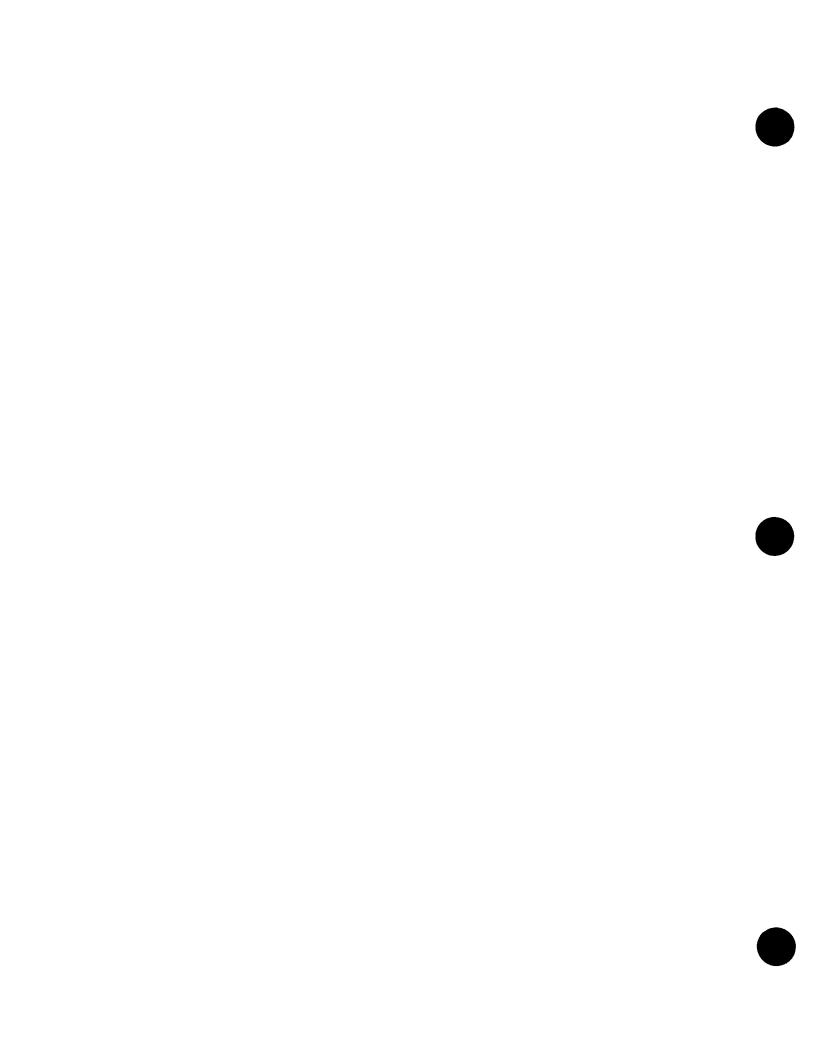




## North Carolina General Assembly - House Sergeant-at-Arms

## House Staff

| Committee: House Judgary 1 Date: 13 MAY 15  Date: 13 MAY 15   |
|---|
| Pages   |
| Name: Alyssa BAKER  |
| County: MALIFAX Sponsor: Michael WRA 9                        |
| Name: Madeline Coggins  |
| Name: Magleline Coggins  County: Randolph Sponsor: PAT WURLEY |
| Name: Kepol HOLLY   |
| County: Walle Sponsor: Chris Malone                           |
| Name:   |
| County: Sponsor:  |
| Name:   |
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| Sergeants-at-Arms   |
| BARRY MOORE   |
| B.H. Powell   |
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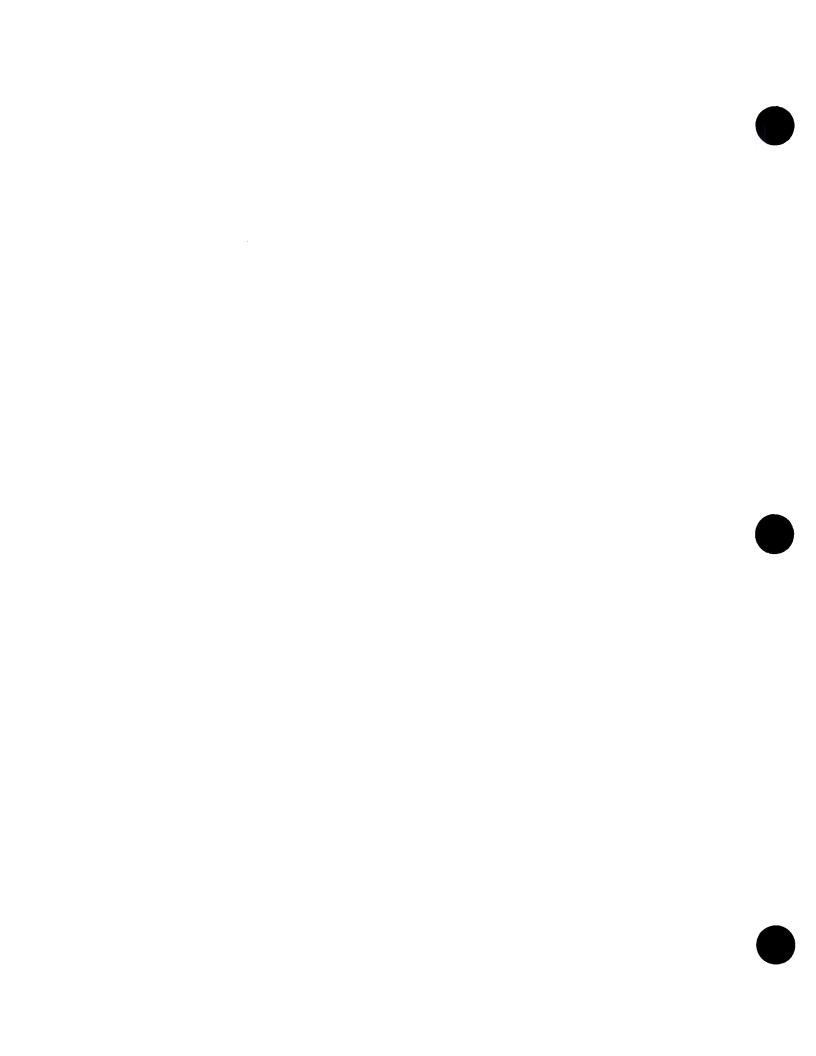




## North Carolina General Assembly - House Sergeant-at-Arms

## Visitors

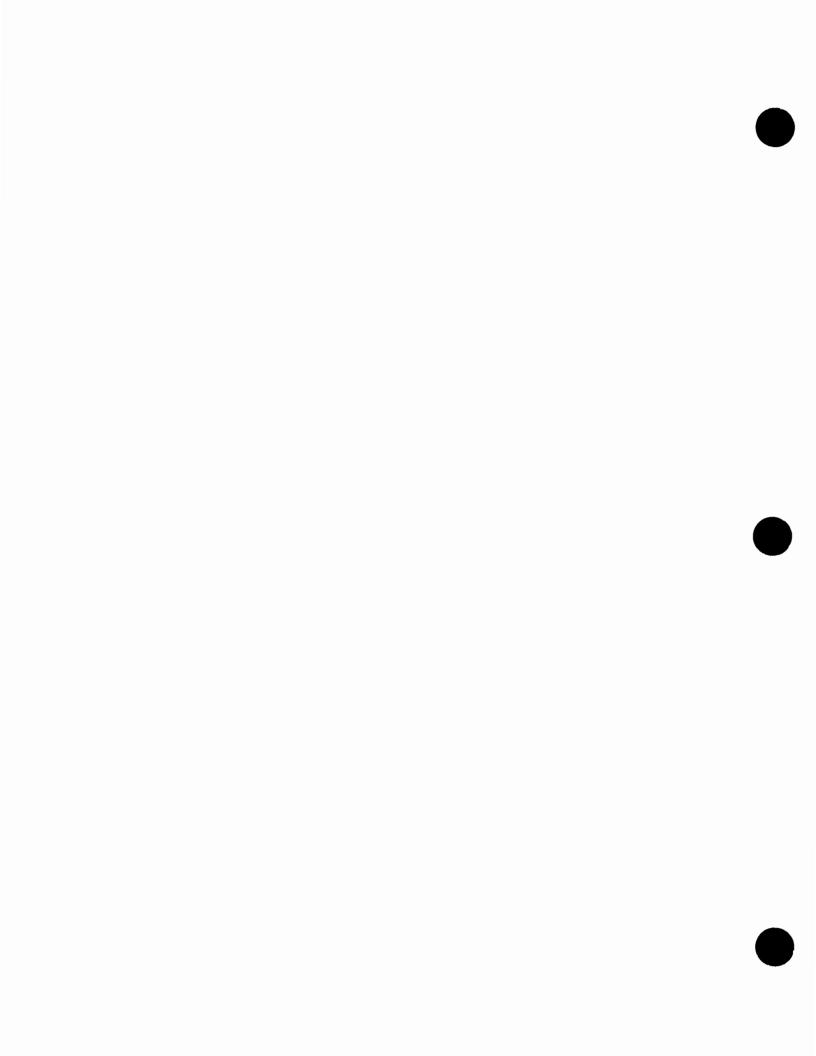
| Committee:       | Date:                     |  |  |  |
|------------------|---------------------------|--|--|--|
| Name             | Organization              |  |  |  |
| Allua Carlerano  | Intern-12-epsarah stevens |  |  |  |
| Mildred Spearman | NCKOC                     |  |  |  |
| Parry Guffin     | Shorl & bov.              |  |  |  |
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| auch Brandon     | DPS                       |  |  |  |
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| Flint BENSON     | DE ANC                    |  |  |  |
| ANOY WALSH       | SMITH ANDERSON            |  |  |  |
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# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

You are hereby notified that the  $House\ Committee\ on\ Judiciary\ I$  will meet as follows:

| DAY & DAT<br>TIME:<br>LOCATION | <ul> <li>YE: Wednesday, May 27, 2015</li> <li>12:30 PM</li> <li>415 LOB</li> </ul> |  |
|--------------------------------|--|--|
| The following                  | g bills will be considered:  |  |
|                                | SHORT TITLE Magistrates Recusal for Civil Ceremonies.                              | SPONSOR<br>Senator Berger                                |
|                                |  | Respectfully,  |
|                                |  | Representative N. Leo Daughtry, Chair                    |
| Friday, May 2                  | ·  | mmittee assistant at the following offices at 1:02 PM on |



## House Committee on Judiciary I Wednesday, May 27, 2015, 12:30 PM 415 Legislative Office Building

### **AGENDA**

Welcome and Opening Remarks

**Introduction of Pages** 

**Bills** 

**BILL NO. SHORT TITLE** 

SB 2 Ma

Magistrates Recusal for Civil

Ceremonies.

**SPONSOR** 

Senator Berger

**Presentations** 

**Other Business** 

Adjournment

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## House Committee on Judiciary I Wednesday, May 27, 2015 at 12:30 PM Room 415 of the Legislative Office Building

#### **MINUTES**

The House Committee on Judiciary I met at 12:30 PM on May 27, 2015 in Room 415 of the Legislative Office Building. Representatives Daughtry, Burr, Arp, Hall, Hardister, Howard, Martin, McNeill, Robinson, Steinburg, and Szoka attended.

Reprsentative N. Leo Daughtry - Chair, presided.

The following bills were considered:

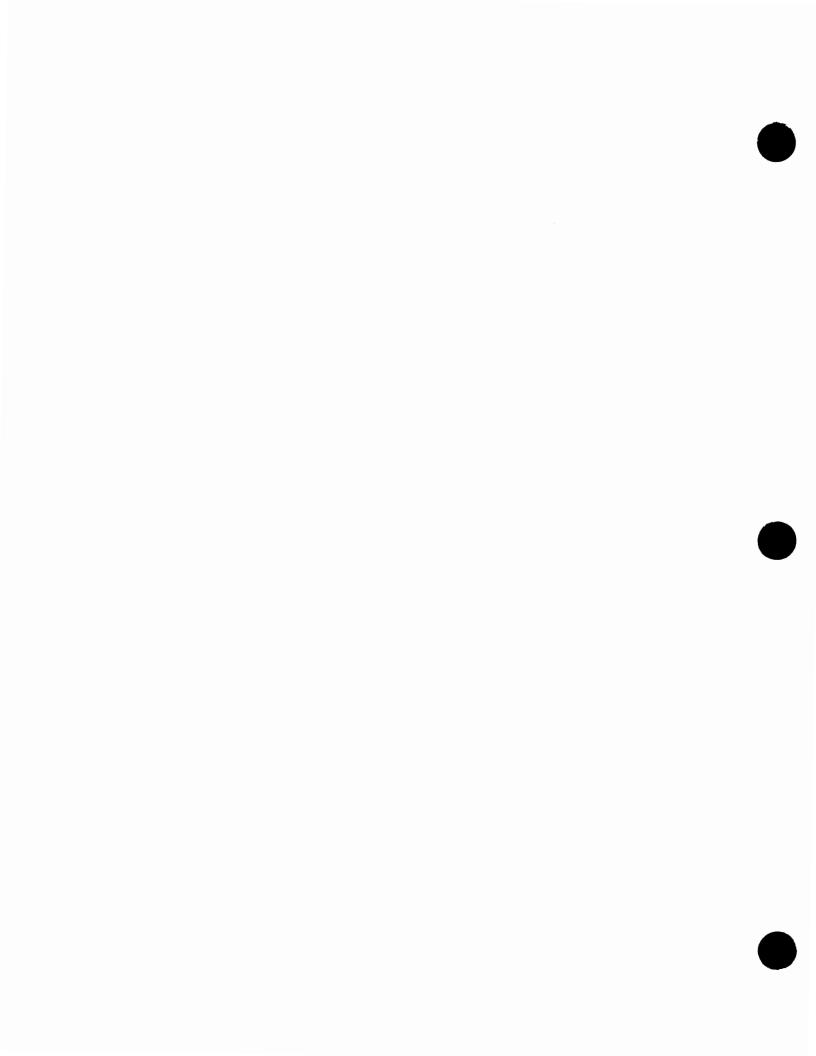
SB 2 Magistrates Recusal for Civil Ceremonies. (Senator Berger) – received a favorable report

The meeting adjourned at 1:22 p.m.

Representative N. Leo Daughtry

Presiding

Jan/Copeland, Committee Clerk





## SENATE BILL 2: **Magistrates Recusal for Civil Ceremonies**

2015-2016 General Assembly

House Judiciary I Committee: Sen. Berger Introduced by: Second Edition Analysis of:

May 26, 2015 Date: R. Erika Churchill Prepared by:

Committee Counsel

SUMMARY: Senate Bill 2 would establish procedures by which magistrates can be recused from performing all lawful marriages and assistant and deputy registers of deeds can be recused from issuing all lawful marriage licenses, based upon a sincerely held religious objection. The recusal would be for a minimum of six months and would continue until the recusal is rescinded in writing. Officials so recusing themselves would not be subject to prosecution for failing to perform the duties imposed upon them by law.

Each register of deeds would be required to ensure that all qualified applicants for marriage licenses are issued a license, and each chief district court judge would be required to ensure that marriages performed by a magistrate are available to be performed during at least ten hours per week over at least three business days.

The bill would also provide protection against loss of employment and retirement benefits for magistrates who resigned or were terminated from their position between October 6, 2014 and the effective date of this act, and who are subsequently reappointed to the position of magistrate within 90 days after the act's effective date.

CURRENT LAW: G.S. 51-8 requires all registers of deeds to issue marriage licenses to persons authorized to be married under the laws of this State. Magistrates are authorized to perform marriage ceremonies pursuant to G.S. 51-1 and G.S. 7A-292. Magistrates (G.S. 14-230) and registers of deeds (G.S. 161-27) are also subject to prosecution for a Class 1 misdemeanor for willfully omitting, neglecting or refusing to discharge any of the duties of his or her office, and are also subject to being discharged from office.

#### **BILL ANALYSIS:**

Section 1 would enact a new G.S. 51-5.5 granting each magistrate the right to be recused from performing all lawful marriages upon the basis of a sincerely held religious belief, and granting each assistant and deputy register of deeds the right to be recused from issuing all marriage licenses.

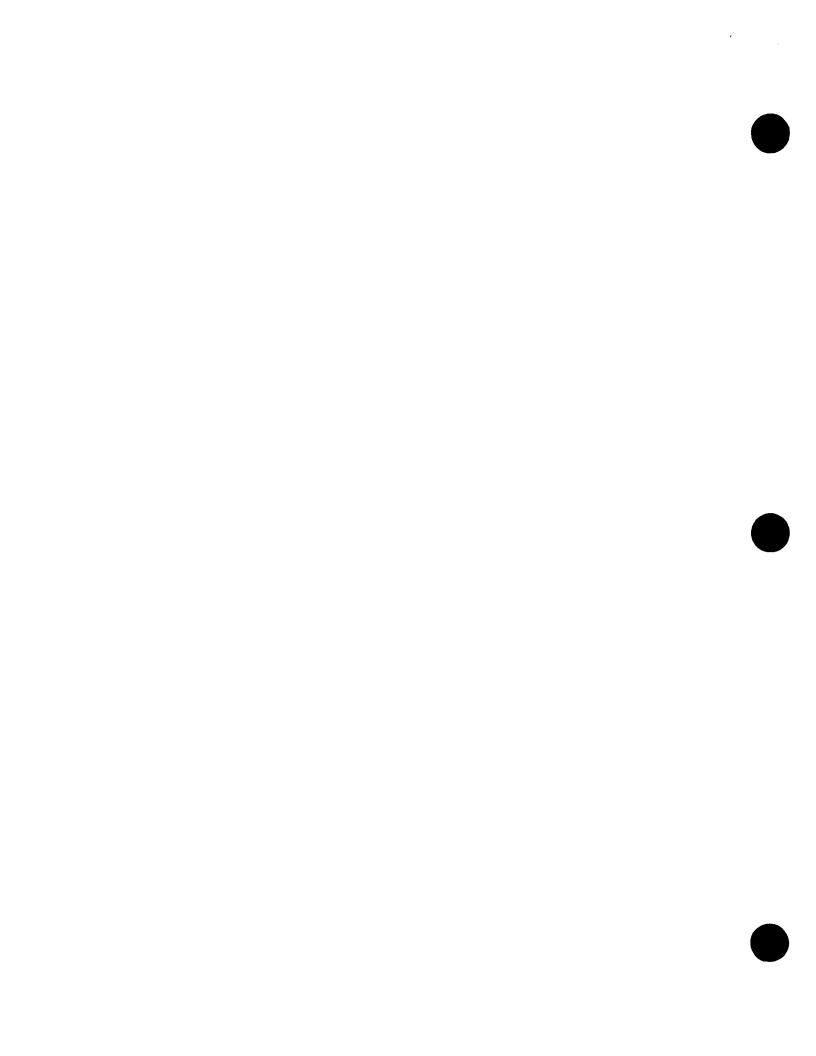
The period of recusal would be a minimum of six months, beginning with the date on which the magistrate provides notice to the chief district court judge, or the date on which the assistant or deputy register of deeds provides notice to the register of deeds. Until the recusal is rescinded in writing, a recused magistrate would not be permitted to perform any marriage ceremonies and a recused assistant or deputy register of deeds would not be permitted to issue any marriage licenses.

Each register of deeds would be required to ensure that marriage licenses are issued to all qualified persons applying for them, and each chief district court judge would be required to ensure that all persons issued a marriage license and wishing to be married by a magistrate are able to do so. Magistrates, assistant registers of deeds, and deputy registers of deeds who recuse themselves would not





O. Walker Reagan Director



## Senate Bill 2

Page 2

be subject to prosecution for willful failure to carry out the duties of their office, nor would they be subject to a disciplinary action for a good-faith recusal.

In the event of recusals by all of the magistrates in a jurisdiction, then upon notification of that fact by the chief district court judge, the Administrative Office of the Courts (AOC) would be required to ensure the availability of a magistrate in that jurisdiction for performance of marriages for at least ten hours each week over at least three business days per week. During any period of time between notification and the AOC's provision of a magistrate, the chief district court judge, or another district court judge designated by the chief district court judge, would be deemed a magistrate for the purposes of performing marriages.

Sections 2 and 3 of the bill would amend current statutes making it a Class 1 misdemeanor for magistrates and registers of deeds to willfully fail to discharge any duty of their office, to provide immunity from such prosecution for those recusing themselves under new G.S. 51-1.1.

**Section 4** of the bill would amend G.S. 7A-292 by adding a new subsection (b) to provide that the magistrates' statutory authority to perform marriages is a collective grant of responsibility to all magistrates and is not a duty imposed upon individual magistrates. This new subsection would also require each chief district court judge to ensure that marriages before a magistrate are available to be performed each week for at least 10 total hours over three business days.

Section 5 of the bill addresses magistrates who resigned or were terminated from their office between October 6, 2014, and the effective date of this act, and would allow those individuals to apply for any vacant position of magistrate. Any such magistrate who is reappointed within 90 days after the effective date of this act would be credited with the time between their resignation and their resumption of service for purposes of determining employment benefits dependent upon time of service, including calculation of benefits due under the Teachers' and State Employees' Retirement System. The Judicial Department would be required to pay both the employee and employer contributions for such reappointed magistrates to the Retirement Systems Division for the period of the break in service.

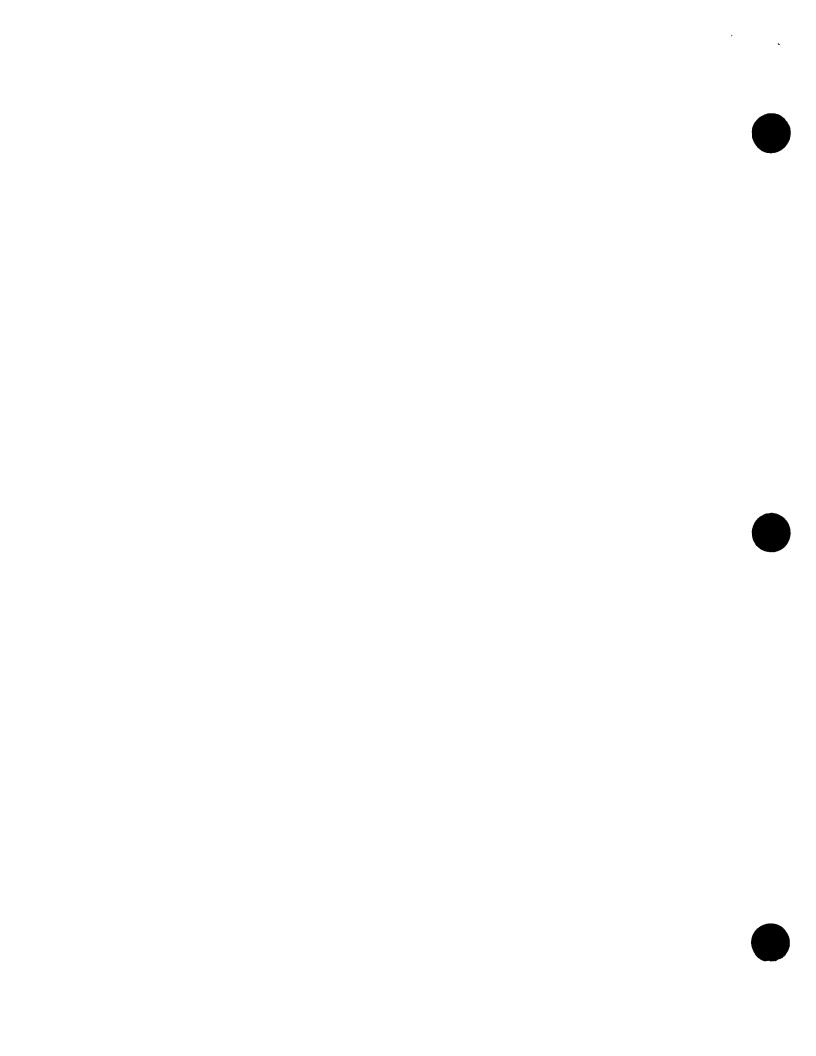
**EFFECTIVE DATE:** This act is effective when it becomes law.

**BACKGROUND:** On October 6, 2014, the United States Supreme Court declined to hear an appeal from a decision by the Fourth Circuit Court of Appeals striking down Virginia's ban on same-sex marriage. On October 14, 2014, a federal district court judge issued a ruling declaring unconstitutional the State constitution's ban on same-sex marriage approved by voters in 2012. Following these rulings, a number of State magistrates resigned from their positions on the basis of their religious objection to same-sex marriage.

Bill Patterson substantially contributed to this summary.

Rainey v. Bostic, 135 S. Ct. 286, 190 L. Ed. 2d 140 (2014)

<sup>&</sup>lt;sup>2</sup> Fisher-Borne v. Smith, 14 F.Supp.3d 695 (M.D.N.C.2014).



### House Committee on Judiciary I Wednesday, March 4, 2015 at 12:30 PM Room 415 of the Legislative Office Building

#### **MINUTES**

The House Committee on Judiciary I met at 12:30 PM on March 4, 2015 in Room 415 of the Legislative Office Building. Representatives Daughtry, Burr, Arp, Hall, Hardister, Howard, Martin, McNeill, Robinson and Steinburg attended.

Representative Leo Daughtry, presided.

Representative Daughtry welcomed everyone and introduced Senator Buck Newton.

Senator Newton introduces and spoke on behalf of Senate Bill 2.

Representatives Hall, McNeill and Martin all asked questions of the bill sponsor regarding the intent of the bill.

The meeting was open to public comment by Representative Daughtry. The following members of the public were given 3 minutes each to give their opinion on the bill.

- Reverend Lorrain Ljunggren (against)
- Sarah Preston, ACLU (against)
- Reverend Terrence Leathers (against)
- Chris Sgro, Equality NC (against)
- Jeff Thigpen, Guilford Reg. of Deeds (concerned about staffing issues)
- Reverend Mark Creech, Christian Action League (for)
- Tony Cope, Small Business Owner (against, sighting hostile work environment)
- John Rustin, NC Family Policy Council (for)
- Wayne Rash, Caldwell County Register of Deeds (concerned about staffing issues)

The following bills were considered but NOT voted on:

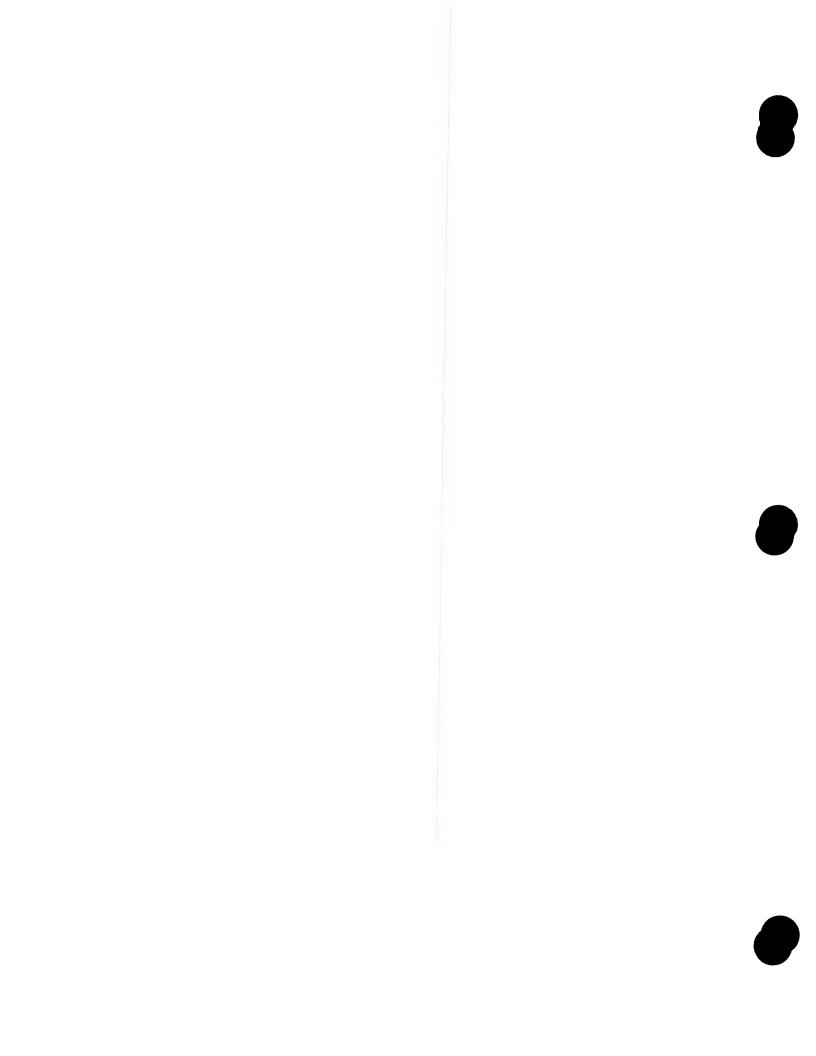
SB 2 Magistrates Recusal for Civil Ceremonies. (Senator Berger)

The meeting adjourned at 1:20 p.m.

Select or Type Name of Presiding Chair

Presiding

Jan Copeland Committee Clerk



## House Committee on Judiciary I Wednesday, May 27, 2015, 12:30 PM 415 Legislative Office Building

#### **AGENDA**

Welcome and Opening Remarks

**Introduction of Pages** 

**Bills** 

**BILL NO. SHORT TITLE** 

Magistrates Recusal for Civil

Ceremonies.

**SPONSOR** 

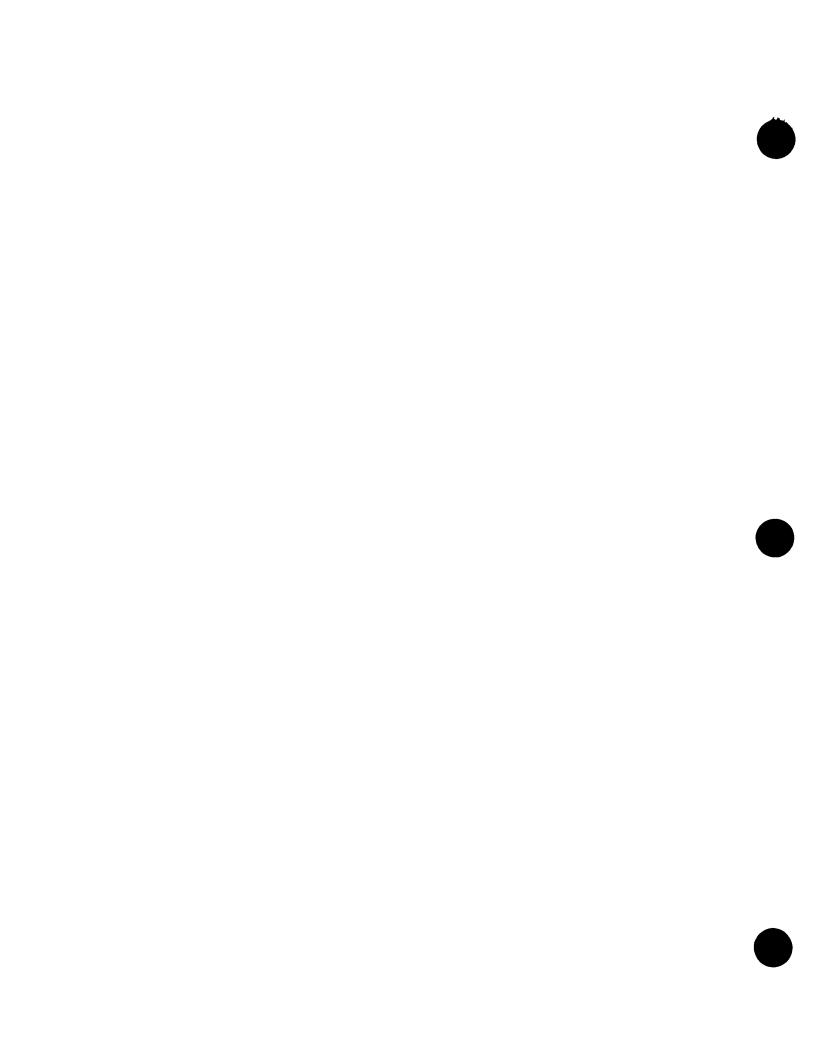
Senator Berger

**Presentations** 

SB 2

**Other Business** 

Adjournment



## GENERAL ASSEMBLY OF NORTH CAROLINA **SESSION 2015**

S

## **SENATE BILL 2** Judiciary II Committee Substitute Adopted 2/24/15

2

| Short Title: | Magistrates Recusal for Civil Ceremonies. | (Public) |
|--------------|---|----------|
| Sponsors:    |   |          |
| Referred to: |   |          |

#### February 2, 2015

A BILL TO BE ENTITLED

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AN ACT TO ALLOW MAGISTRATES, ASSISTANT REGISTERS OF DEEDS, AND DEPUTY REGISTERS OF DEEDS TO RECUSE THEMSELVES FROM PERFORMING DUTIES RELATED TO MARRIAGE CEREMONIES DUE TO SINCERELY HELD RELIGIOUS OBJECTION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 51 of the General Statutes is amended by adding a new section to read:

"§ 51-5.5. Recusal of certain public officials.

- Every magistrate has the right to recuse from performing all lawful marriages under this Chapter based upon any sincerely held religious objection. Such recusal shall be upon notice to the chief district court judge and is in effect for at least six months from the time delivered to the chief district court judge. The recusing magistrate may not perform any marriage under this Chapter until the recusal is rescinded in writing. The chief district court judge shall ensure that all individuals issued a marriage license seeking to be married before a magistrate may marry.
- Every assistant register of deeds and deputy register of deeds has the right to recuse from issuing all lawful marriage licenses under this Chapter based upon any sincerely held religious objection. Such recusal shall be upon notice to the register of deeds and is in effect for at least six months from the time delivered to the register of deeds. The recusing assistant or deputy register may not issue any marriage license until the recusal is rescinded in writing. The register of deeds shall ensure for all applicants for marriage licenses to be issued a license upon satisfaction of the requirements as set forth in Article 2 of this Chapter.
- If, and only if, all magistrates in a jurisdiction have recused under subsection (a) of this section, the chief district court judge shall notify the Administrative Office of the Courts. The Administrative Office of the Courts shall ensure that a magistrate is available in that jurisdiction for performance of marriages for the times required under G.S. 7A-292(b). Only for the duration of the time the Administrative Office of the Courts has not designated a magistrate to perform marriages in that jurisdiction, the chief district court judge or such other district court judge as may be designated by the chief district court judge shall be deemed a magistrate for the purposes of performing marriages under this Chapter.
- No magistrate, assistant register of deeds, or deputy register of deeds may be charged or convicted under G.S. 14-230 or G.S. 161-27, or subjected to a disciplinary action, due to a good-faith recusal under this section."

**SECTION 2.** G.S. 14-230 reads as rewritten:

"§ 14-230. Willfully failing to discharge duties.



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- (a) If any clerk of any court of record, sheriff, magistrate, school board member, county commissioner, county surveyor, coroner, treasurer, or official of any of the State institutions, or of any county, city or town, shall willfully omit, neglect or refuse to discharge any of the duties of his office, for default whereof it is not elsewhere provided that he shall be indicted, he shall be guilty of a Class 1 misdemeanor. If it shall be proved that such officer, after his qualification, willfully and corruptly omitted, neglected or refused to discharge any of the duties of his office, or willfully and corruptly violated his oath of office according to the true intent and meaning thereof, such officer shall be guilty of misbehavior in office, and shall be punished by removal therefrom under the sentence of the court as a part of the punishment for the offense.
- (b) No magistrate recusing in accordance with G.S. 51-5.5 may be charged under this section for recusal to perform marriages in accordance with Chapter 51 of the General Statutes."

#### **SECTION 3.** G.S. 161-27 reads as rewritten:

## "§ 161-27. Register of deeds failing to discharge duties; penalty.

- (a) If any register of deeds fails to perform any of the duties imposed or authorized by law, he shall be guilty of a Class 1 misdemeanor, and he shall be removed from office.
- (b) No assistant register of deeds or deputy register of deeds recusing in accordance with G.S. 51-5.5 may be charged under this section for recusal to issue marriage licenses in accordance with Chapter 51 of the General Statutes."

#### **SECTION 4.** G.S. 7A-292 reads as rewritten:

#### "§ 7A-292. Additional powers of magistrates.

- (a) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:
  - (1) To administer oaths.
  - (2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina.
  - (3) When authorized by the chief district judge, to take depositions and examinations before trial.
  - (4) To issue subpoenas and capiases valid throughout the county.
  - (5) To take affidavits for the verification of pleadings.
  - (6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41.
  - (7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General Statutes.
  - (8) To take acknowledgments of instruments, as provided in G.S. 47-1.
  - (9) To perform the marriage ceremony, as provided in G.S. 51-1.
  - (10) To take acknowledgment of a written contract or separation agreement between husband and wife.
  - (11) Repealed by Session Laws 1973, c. 503, s. 9.
  - (12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.
  - (13) Repealed by Session Laws 1973, c. 503, s. 9.
  - (14) To accept the filing of complaints and to issue summons pursuant to Article 4 of Chapter 42A of the General Statutes in expedited eviction proceedings when the office of the clerk of superior court is closed.
  - (15) When authorized by the chief district judge, as permitted in G.S. 7A-146(11), to provide for appointment of counsel pursuant to Article 36 of this Chapter.
  - (16) To appoint an umpire to determine motor vehicle liability policy diminution in value, as provided in G.S. 20-279.21(d1).

Page 2 S2 [Edition 2]

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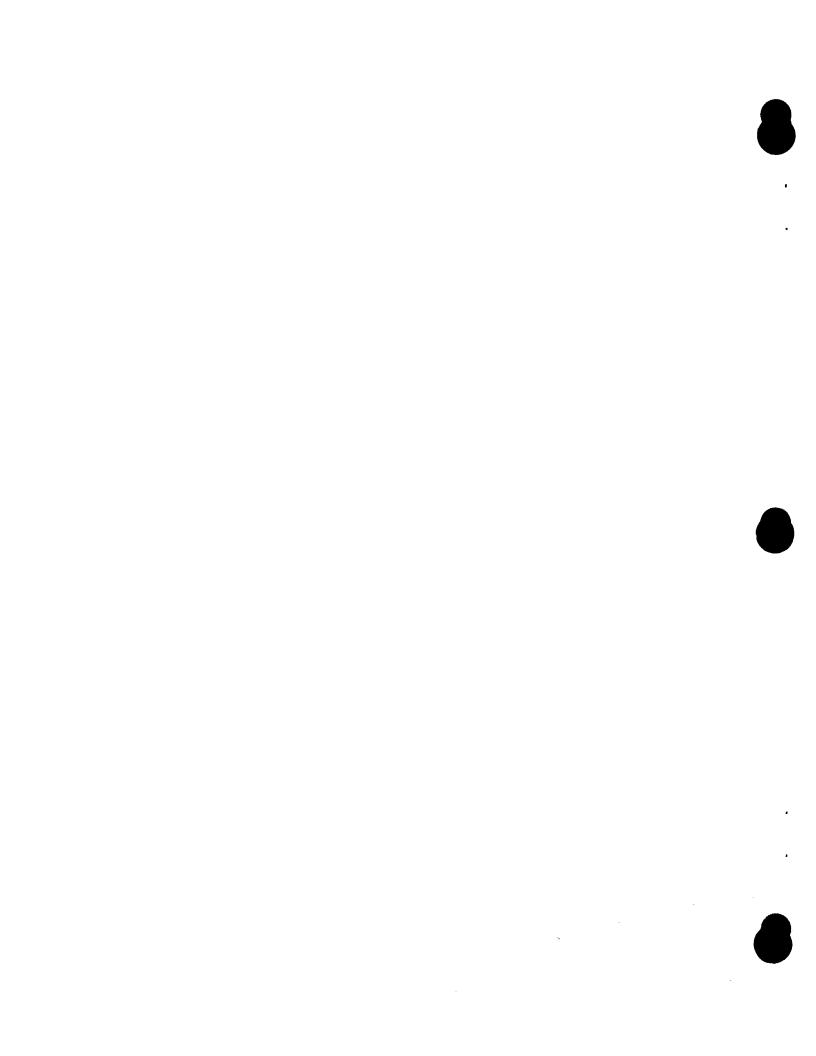
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The authority granted to magistrates under G.S. 51-1 and subdivision (a)(9) of this (b) section is a responsibility given collectively to the magistrates in a county and is not a duty imposed upon each individual magistrate. The chief district court judge shall ensure that marriages before a magistrate are available to be performed at least a total of 10 hours per week, over at least three business days per week."

SECTION 5. Any magistrate who resigned, or was terminated from, his or her office between October 6, 2014, and the effective date of this act may apply to fill any vacant position of magistrate. Notwithstanding any other provision of law, with respect to any magistrate who resigned his or her office between October 6, 2014, and the effective date of this act, and who is subsequently reappointed as a magistrate within 90 days after the effective date of this act:

- (1) For the period of time between that magistrate's resignation and his or her resumption of service upon reappointment, the magistrate shall not receive salary or other compensation and shall not earn leave. However, the magistrate shall be considered to have been serving as a magistrate during that period for purposes of determining continuous service, length of aggregate service, anniversary date, longevity pay rate, and the accrual of vacation and sick leave.
- (2) For purposes of the Teachers' and State Employees' Retirement System and the calculation of benefits under that System, (i) the magistrate shall be considered to have been an employee under G.S. 135-1(10) during the break in service, (ii) the period of the break in service shall be counted as membership service under G.S. 135-1(14), and (iii) the magistrate shall be deemed to have earned compensation under G.S. 135-1(7a) during the break in service at the rate of compensation that would have applied had there been no break in service.
- The Judicial Department shall pay and submit both the employee and (3) employer contributions to the Retirement Systems Division on behalf of the magistrate as though that magistrate had been in active service during the period in question. Those contributions shall be submitted within 90 days of the magistrate's resumption of service and shall not be subject to penalties or interest if submitted within that 90-day period.

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





# SENATE BILL 2:

## **Magistrates Recusal for Civil Ceremonies**

2015-2016 General Assembly

Committee: House Judiciary I
Introduced by: Sen. Berger
Analysis of: Second Edition

Date: May 26, 2015 Prepared by: R. Erika Churchill

Committee Counsel

SUMMARY: Senate Bill 2 would establish procedures by which magistrates can be recused from performing all lawful marriages and assistant and deputy registers of deeds can be recused from issuing all lawful marriage licenses, based upon a sincerely held religious objection. The recusal would be for a minimum of six months and would continue until the recusal is rescinded in writing. Officials so recusing themselves would not be subject to prosecution for failing to perform the duties imposed upon them by law.

Each register of deeds would be required to ensure that all qualified applicants for marriage licenses are issued a license, and each chief district court judge would be required to ensure that marriages performed by a magistrate are available to be performed during at least ten hours per week over at least three business days.

The bill would also provide protection against loss of employment and retirement benefits for magistrates who resigned or were terminated from their position between October 6, 2014 and the effective date of this act, and who are subsequently reappointed to the position of magistrate within 90 days after the act's effective date.

**CURRENT LAW:** G.S. 51-8 requires all registers of deeds to issue marriage licenses to persons authorized to be married under the laws of this State. Magistrates are authorized to perform marriage ceremonies pursuant to G.S. 51-1 and G.S. 7A-292. Magistrates (G.S. 14-230) and registers of deeds (G.S. 161-27) are also subject to prosecution for a Class 1 misdemeanor for willfully omitting, neglecting or refusing to discharge any of the duties of his or her office, and are also subject to being discharged from office.

#### **BILL ANALYSIS:**

**Section 1** would enact a new G.S. 51-5.5 granting each magistrate the right to be recused from performing all lawful marriages upon the basis of a sincerely held religious belief, and granting each assistant and deputy register of deeds the right to be recused from issuing all marriage licenses.

The period of recusal would be a minimum of six months, beginning with the date on which the magistrate provides notice to the chief district court judge, or the date on which the assistant or deputy register of deeds provides notice to the register of deeds. Until the recusal is rescinded in writing, a recused magistrate would not be permitted to perform any marriage ceremonies and a recused assistant or deputy register of deeds would not be permitted to issue any marriage licenses.

Each register of deeds would be required to ensure that marriage licenses are issued to all qualified persons applying for them, and each chief district court judge would be required to ensure that all persons issued a marriage license and wishing to be married by a magistrate are able to do so. Magistrates, assistant registers of deeds, and deputy registers of deeds who recuse themselves would not



## Senate Bill 2

Page 2

be subject to prosecution for willful failure to carry out the duties of their office, nor would they be subject to a disciplinary action for a good-faith recusal.

In the event of recusals by all of the magistrates in a jurisdiction, then upon notification of that fact by the chief district court judge, the Administrative Office of the Courts (AOC) would be required to ensure the availability of a magistrate in that jurisdiction for performance of marriages for at least ten hours each week over at least three business days per week. During any period of time between notification and the AOC's provision of a magistrate, the chief district court judge, or another district court judge designated by the chief district court judge, would be deemed a magistrate for the purposes of performing marriages.

Sections 2 and 3 of the bill would amend current statutes making it a Class 1 misdemeanor for magistrates and registers of deeds to willfully fail to discharge any duty of their office, to provide immunity from such prosecution for those recusing themselves under new G.S. 51-1.1.

**Section 4** of the bill would amend G.S. 7A-292 by adding a new subsection (b) to provide that the magistrates' statutory authority to perform marriages is a collective grant of responsibility to all magistrates and is not a duty imposed upon individual magistrates. This new subsection would also require each chief district court judge to ensure that marriages before a magistrate are available to be performed each week for at least 10 total hours over three business days.

Section 5 of the bill addresses magistrates who resigned or were terminated from their office between October 6, 2014, and the effective date of this act, and would allow those individuals to apply for any vacant position of magistrate. Any such magistrate who is reappointed within 90 days after the effective date of this act would be credited with the time between their resignation and their resumption of service for purposes of determining employment benefits dependent upon time of service, including calculation of benefits due under the Teachers' and State Employees' Retirement System. The Judicial Department would be required to pay both the employee and employer contributions for such reappointed magistrates to the Retirement Systems Division for the period of the break in service.

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

**BACKGROUND:** On October 6, 2014, the United States Supreme Court declined to hear an appeal from a decision by the Fourth Circuit Court of Appeals striking down Virginia's ban on same-sex marriage. On October 14, 2014, a federal district court judge issued a ruling declaring unconstitutional the State constitution's ban on same-sex marriage approved by voters in 2012. Following these rulings, a number of State magistrates resigned from their positions on the basis of their religious objection to same-sex marriage.

Bill Patterson substantially contributed to this summary.

<sup>&</sup>lt;sup>1</sup> Rainey v. Bostic, 135 S. Ct. 286, 190 L. Ed. 2d 140 (2014)

<sup>&</sup>lt;sup>2</sup> Fisher-Borne v. Smith, 14 F.Supp.3d 695 (M.D.N.C.2014).

# NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

#### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

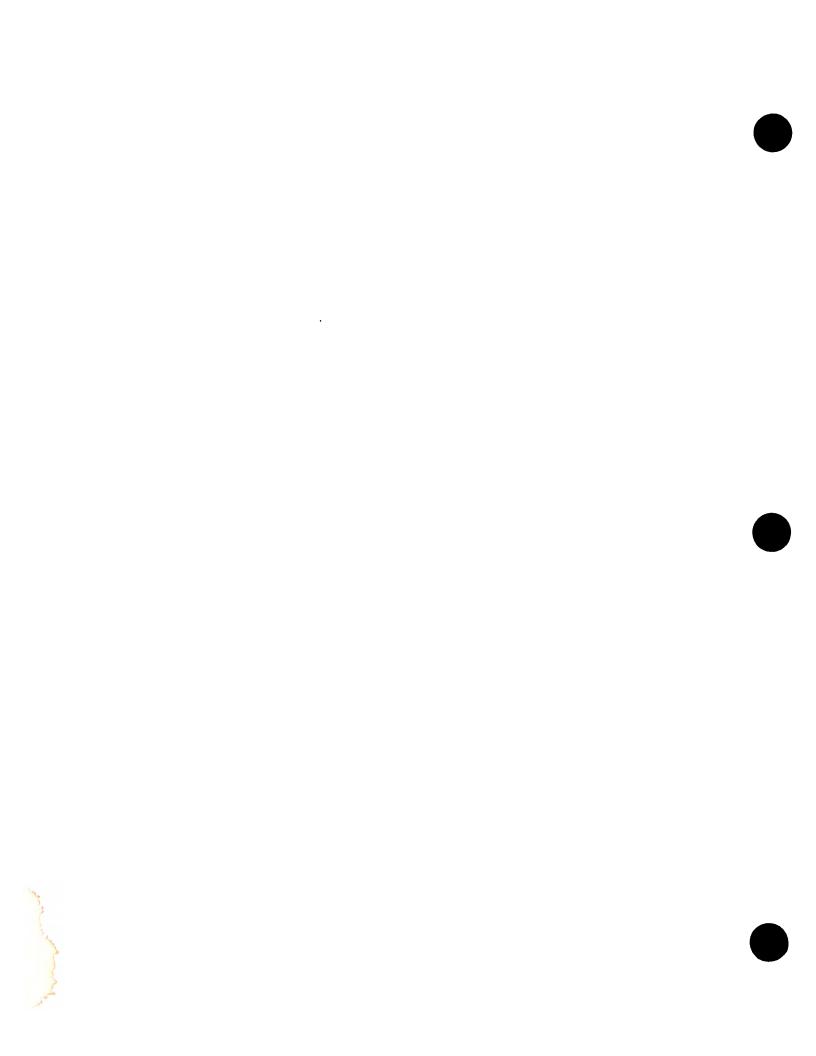
#### **FAVORABLE**

SB 2 (CS#1) Magistrates Recusal for Civil Ceremonies.

Draft Number: None
Serial Referral: None
Recommended Referral: None
Long Title Amended: No
Floor Manager: Arp

TOTAL REPORTED: 1

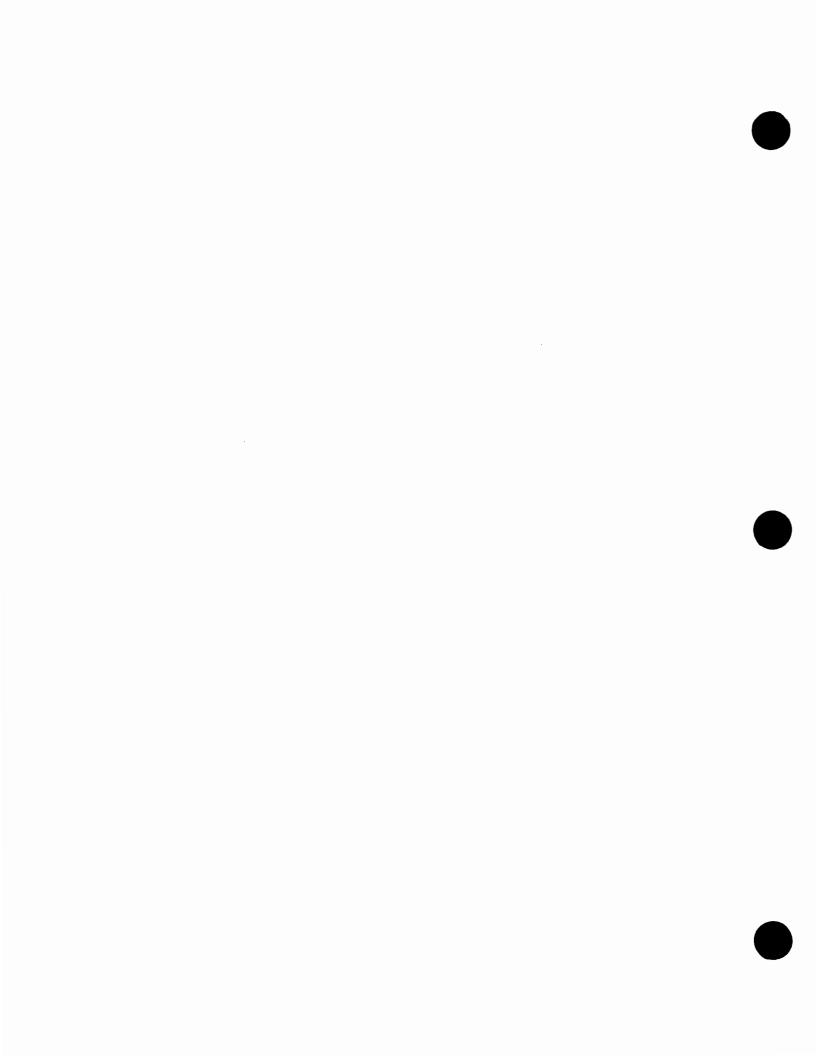




| #                                    | Date 5 - 27-1                                |
|--------------------------------------|--|
| Bill Number 582                      |  |
| PCS                                  | 10   |
| Motion to be before the committee by | Kep. Daushtry                                |
| = Staff Erika Chu                    | rchill Rop. Arp                              |
| Rep.                                 | explained the bill.                          |
| Discussion on the Bill YES or NO     |  |
|                                      |  |
| Amendments: NO                       | - on the floor                               |
|                                      |  |
| Rep. McNall                          | motioned for: favorable                      |
| Favorable Report                     | Adoption                                     |
| Unfavorable Report                   | Unfavorable to original bill, favorable to I |
| No vote                              |  |
| Other:                               |  |
|                                      |  |
| Serial referral to:                  |  |
|                                      |  |
| Speakers:                            |  |
|                                      |  |
|                                      |  |
| 24                                   |  |
| Handouts: Martin ! 3                 |  |
| Handouts: Martin - ?'s Hall?'s Szoka |  |
| STOKE                                |  |

Revised 3-30-2015

maleill



## NORTH CAROLINA HOUSE OF REPRESENTATIVES **COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION** 2015-2016 SESSION

You are hereby notified that the **House Committee on Judiciary I** will meet as follows:

DAY & DATE: Tuesday, April 28, 2015

TIME: LOCATION:

8:30 AM **415 LOB** 

COMMENTS: Back in our original meeting location at 8:30 in 415 LOB

The following bills will be considered:

| BILL NO. | SHORT TITLE                   | SPONSOR                  |
|----------|-------------------------------|--------------------------|
| HB 562   | Amend Firearm Laws.           | Representative Schaffer  |
|          |                               | Representative Burr      |
|          |                               | Representative Cleveland |
|          |                               | Representative Faircloth |
| HB 664   | Safer Communities.            | Representative Brawley   |
|          |                               | Representative McNeill   |
|          |                               | Representative Saine     |
| HB 678   | Amend Innocence Commission    | Representative Glazier   |
|          | Statutes.                     | Representative Daughtry  |
|          |                               | Representative Stam      |
|          |                               | Representative Reives    |
| HB 774   | Restoring Proper Justice Act. | Representative Daughtry  |

Respectfully,

Representative N. Leo Daughtry, Chair

| I hereby | certify this  | notice was f | filed by the | committee | assistant a | t the follow | ing offices | at 5:09 l | PM on |
|----------|---------------|--------------|--------------|-----------|-------------|--------------|-------------|-----------|-------|
| Monday   | , April 27, 2 | 2015.        |              |           |             |              |             |           |       |

| <br>Principal Clerk           |
|-------------------------------|
| Reading Clerk - House Chamber |

Jan Copeland (Committee Assistant)

•

## House Committee on Judiciary I Tuesday, April 28, 2015, 8:30 AM 415 Legislative Office Building

## **AGENDA**

## Welcome and Opening Remarks

## **Introduction of Pages**

## **Bills**

| BILL NO. | SHORT TITLE                   | SPONSOR                  |
|----------|-------------------------------|--------------------------|
| HB 562   | Amend Firearm Laws.           | Representative Schaffer  |
|          |                               | Representative Burr      |
|          |                               | Representative Cleveland |
|          |                               | Representative Faircloth |
| HB 664   | Safer Communities.            | Representative Brawley   |
|          |                               | Representative McNeill   |
|          |                               | Representative Saine     |
| HB 678   | Amend Innocence Commission    | Representative Glazier   |
|          | Statutes.                     | Representative Daughtry  |
|          |                               | Representative Stam      |
|          |                               | Representative Reives    |
| HB 774   | Restoring Proper Justice Act. | Representative Daughtry  |
|          |                               |                          |

#### **Presentations**

**Other Business** 

Adjournment

### House Committee on Judiciary I Tuesday, April 28, 2015 at 8:30 AM Room 415 of the Legislative Office Building

#### **MINUTES**

The House Committee on Judiciary I met at 8:30 AM on April 28, 2015 in Room 415 of the Legislative Office Building. Representatives Daughtry, Burr, Jackson, Arp, Hall, Hardister, Howard, Martin, McNeill, Robinson, Steinburg, Johnson and Szoka attended.

Representative N. Leo Daughtry - Chair, presided.

The following bills were considered:

HB 562 Second Amendment Affirmation Act. (Representatives Schaffer, Burr, Cleveland, Faircloth) – favorable committee substitute, unfavorable original bill

HB 664 Safer Communities. (Representatives Brawley, McNeill, Saine) - unfavorable

HB 678 Amend Innocence Commission Statutes. (Representatives Glazier, Daughtry, Stam, Reives) – favorable committee substitute, unfavorable original bill and re-referred to Rules, Calendar, and Operations of the House

HB 774 Restoring Proper Justice Act. (Representative Daughtry) – favorable committee substitute, unfavorable original bill

The meeting adjourned at 9:46 a.m.

Select or Type Name of Presiding Chair

Presiding

Jan Copeland, Committee Clerk



# **HOUSE BILL 562: Amend Firearm Laws**

2015-2016 General Assembly

Committee: House Judiciary I

Introduced by: Reps. Schaffer, Burr, Cleveland, Faircloth

Analysis of: PCS to First Edition

H562-CSSA-54

Date:

April 28, 2015

Prepared by: Susan Sitze

Staff Attorney

SUMMARY: The Proposed Committee Substitute for House Bill 562 would amend various firearms laws.

#### **BILL ANALYSIS:**

Section 1 would amend the exemptions to carrying a concealed weapon to allow DAs and ADAs with a concealed handgun permit to carry a concealed handgun in a courtroom. This section would also add certain DPS employees (8) and Administrative Law Judges (9) who have concealed handgun permits to the list of exemptions, which would allow them to carry concealed handguns in some places the average person cannot, including courtrooms, assemblies where a fee is charged, etc.

Section 2 would allow a person with a concealed handgun permit to carry concealed on their person within a locked vehicle on educational property and would allow a person within a locked vehicle on educational property to move a handgun from concealment on their person to a closed compartment and vice versa even if momentarily it is not concealed. This section also would clarify that no school may prohibit a concealed handgun in a locked vehicle.

**Section 3** would provide an affirmative defense to possession of handgun on educational property if the person was authorized to have a handgun in a locked vehicle and removed the handgun from the vehicle only in response to a threatening situation in which deadly force was justified to defend self or others pursuant to G.S. 14-51.3.

**Section 4** would authorize the Commissioner of Agriculture to prohibit the carrying of firearms on the State Fairgrounds during the State Fair. Law enforcement officers would be exempted, and persons with concealed handgun permits would still be authorized to have a handgun in their locked vehicle.

**Section 5** would expand the shooting range protection act to provide that shooting ranges are only subject to noise ordinances that were in effect at the time the shooting range began operation and do not have to comply ordinances adopted later if there has been no substantial change in use.

**Section 6** would modify the firearm rights restoration statute to ensure recognition of the restoration by federal law.

**Section 7** would eliminate some misdemeanors from the list of misdemeanor convictions that prohibit a person from obtaining a concealed handgun permit. This section would also make all other misdemeanor convictions, except for domestic violence offenses, only count against a person for 3 years in relation to prohibiting them from obtaining a concealed handgun permit.

O. Walker Reagan
Director



Research Division (919) 733-2578

### House Bill 562

Page 2

**Section 8** would establish sign requirements for signs prohibiting carrying of a concealed handgun on any property where such posting is authorized.

Section 9 would authorize the use of suppressors on short-barreled rifles for hunting.

**Section 10** would reduce the offense of carrying a concealed handgun on private posted property from a Class 1 misdemeanor to an infraction.

**Section 11** would make the following changes:

- Specify the information to be collected and reported to NICS for background checks and would require certain information to be transmitted to NICS by the clerk no later than 48 hours after receiving notice.
- Require pistol permit applications and concealed handgun permit applications to be provided electronically.
- Prohibit the sheriff from requesting additional information for concealed handgun permit applications unless specifically authorized by statute.
- Require arresting law enforcement agencies to fingerprint persons charged with certain misdemeanors and forward those fingerprints to NICS
- Direct AOC to use Court Technology Funds to comply with the NICS reporting requirements.

Section 12 would expand statewide uniformity of firearm regulation to specifically prohibit local governments from adopting any regulation relating to taxation, manufacture, or transportation of firearms. This section would also allow a person to bring an action for declaratory and injunctive relief against a local government that violates the section by adopting a regulation in violation of the law.

**Section 13** would prohibit health care providers from asking patients in a written questionnaire whether they have firearms and prohibit them from sharing any information provided orally by patients regarding firearms unless the patient has been adjudicated incompetent because of mental illness. Would provide a \$250 fine for a nonwillful violation and a \$500 fine for a willful violation and authorize the health care providers licensing board to consider violation grounds for disciplinary action.

**Section 14** would require the sheriff to issue or deny a concealed handgun permit application within 90 days.

**Section 15** would amend G.S. 14-415.23, which limits local government regulation of carrying concealed handguns to allow a person to bring an action for declaratory and injunctive relief against the local government for violation of the statute.

EFFECTIVE DATE: Sections 1, 2, 3, 9, and 10 of this act become effective July 1, 2015, and apply to offenses committed on or after that date. Section 8 of this act becomes effective July 1, 2015. Section 5 of this act becomes effective July 1, 2015, but shall not apply to pending litigation. Section 6 of this act is effective when it becomes law and applies to restorations granted before, on, or after that date. Section 7 of this act becomes effective July 1, 2015, and applies to permit applications submitted on or after that date. Sections 12, 13, and 15 of this act become effective December 1, 2015, and apply to violations occurring on or after that date. Section 14 becomes effective October 1, 2015, and applies to applications submitted on or after that date. Except as otherwise provided in this act, the remainder of this act is effective when it becomes law. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H D

## HOUSE BILL 562 PROPOSED COMMITTEE SUBSTITUTE H562-CSSA-54 [v.1]

4/27/2015 6:22:37 PM Short Title: Amend Firearm Laws.

(Public)

Sponsors:

Referred to:

#### April 6, 2015

A BILL TO BE ENTITLED
AN ACT TO AMEND VARIOUS FIREARMS LAWS.
The General Assembly of North Carolina enacts:

**SECTION 1.(a)** G.S. 14-269(b) reads as rewritten:

"(b) This prohibition shall not apply to the following persons:

.

(4a) Any person who is a district attorney, an assistant district attorney, or an investigator employed by the office of a district attorney and who has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24; provided that the person shall not carry a concealed weapon at any time while in a courtroom or while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the person's body. The district attorney, assistant district attorney, or investigator shall secure the weapon in a locked compartment when the weapon is not on the person of the district attorney, assistant district attorney, or investigator;

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21 22 A person employed by the Department of Public Safety who has been designated in writing by the Secretary of the Department, who has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24, and has in the person's possession written proof of the designation by the Secretary of the Department, 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.

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(9) Any person who is an administrative law judge described in Article 60 of Chapter 7A of the General Statutes 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."

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**SECTION 1.(b)** G.S. 14-415.27 reads as rewritten:

"§ 14-415.27. Expanded permit scope for certain persons.



#### **General Assembly of North Carolina**

Notwithstanding G.S. 14-415.11(c), any 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:

- (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.
  - (8) A person employed by the Department of Public Safety who has been designated in writing by the Secretary of the Department and who has in the person's possession written proof of the designation.
  - (9) A North Carolina administrative law judge."

#### SECTION 2. G.S. 14-269.2(k) reads as rewritten:

"(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, if any of the following conditions are met:

- (1) who The person 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 unlockvehicle and only unlocks the vehicle to enter or exit the vehicle provided while the firearm remains in the closed compartment at all times and immediately locks the vehicle is locked immediately following the entrance or exit.
- The person has a handgun concealed on the person and the person remains in the locked vehicle and only unlocks the vehicle to allow the entrance or exit of another person.
- (3) The person is within a locked vehicle and removes the handgun from concealment only for the amount of time reasonably necessary to do either of the following:
  - a. Move the handgun from concealment on the person to a closed compartment or container within the vehicle.
  - <u>b.</u> <u>Move the handgun from within a closed compartment or container within the vehicle to concealment on the person.</u>

Notwithstanding G.S. 14-415.11(c)(8), no school may prohibit the concealed carry of a handgun pursuant to this subsection."

#### SECTION 3. G.S. 14-269.2 is amended by adding a new subsection to read:

"(l) It is an affirmative defense to a prosecution under subsection (b) or (f) of this section that the person was authorized to have a concealed handgun in a locked vehicle pursuant to subsection (k) of this section and removed the handgun from the vehicle only in response to a threatening situation in which deadly force was justified pursuant to G.S. 14-51.3."

**SECTION 4.** Article 45 of Chapter 106 of the General Statutes is amended by adding a new section to read:

#### "§ 106-503.2. Regulation of firearms at State fair.

(a) Except as otherwise provided in this section, the Commissioner of Agriculture is authorized to prohibit the carrying of firearms in any manner on the State Fairgrounds during the period of time each year that the State fair is conducted. Any prohibition under this section shall be posted conspicuously in compliance with G.S. 14-415.28.

(b) Notwithstanding subsection (a) of this section, any prohibition under this section shall not apply to the following persons:

(1) Any person exempted by G.S. 14-269(b)(1), (2), (3), (4), or (5).

(2) Any 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 5.(a) G.S. 14-409.46 reads as rewritten:

## "§ 14-409.46. Sport shooting range protection.

- (a) Notwithstanding any other provision of law, a person who owns, operates, or uses a sport shooting range in this State shall not be subject to civil liability or criminal prosecution in any matter relating to noise or noise pollution resulting from the operation or use of the range if the range was in existence at least three years prior to the effective date of this Article and the range was is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time the range began operation.
- (b) A person who owns, operates, or uses a sport shooting range is not subject to an action for nuisance on the basis of noise or noise pollution, and a State court shall not enjoin the use or operation of a range on the basis of noise or noise pollution, if the range was in existence at least three years prior to the effective date of this Article and the range was is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time the range began operation.
- (c) Rules adopted by any State department or agency for limiting levels of noise in terms of decibel level that may occur in the outdoor atmosphere shall not apply to a sport shooting range exempted from liability under this Article. that was in operation prior to the adoption of the rule.
- (d) A person who acquires title to real property adversely affected by the use of property with a permanently located and improved sport shooting range constructed and initially operated prior to the time the person acquires title shall not maintain a nuisance action on the basis of noise or noise pollution against the person who owns the range to restrain, enjoin, or impede the use of the range. If there is a substantial change in use of the range after the person acquires title, the person may maintain a nuisance action if the action is brought within one year of the date of a substantial change in use. This section does not prohibit actions for negligence or recklessness in the operation of the range or by a person using the range.
- (e) A sport shooting range that is operated and is not in violation of existing law at the time of the enactment of an ordinance and was in existence at least three years prior to the effective date of this Article, shall be permitted to continue in operation even if the operation of the sport shooting range at a later date does not conform to the new ordinance or an amendment to an existing ordinance, provided there has been no substantial change in use."

SECTION 5.(b) G.S. 14-409.47 reads as rewritten:

## "§ 14-409.47. Application of Article.

Except as otherwise provided in this Article, this Article does not prohibit a local government from regulating the location and construction of a sport shooting range after the effective date of this Article. September 1, 1997."

#### **SECTION 6.** G.S. 14-415.4(a) reads as rewritten:

- "(a) Definitions. The following definitions apply in this section:
  - (1) Firearms rights. The legal right in this State of a person to purchase, own, possess, or have in the person's custody, care, or control any firearm or any weapon of mass death and destruction as those terms are defined in

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(8a)

1 G.S. 14-415.1 and G.S. 14-288.8(c). The term does not include any weapon 2 defined in G.S. 14-409(a). 3 Nonviolent felony. – The term nonviolent felony does not include any felony (2) 4 that is a Class A. Class B1, or Class B2 felony. Also, the term nonviolent felony does not include any Class C through Class I felony that is one of the 5 following: 6 7 An offense that includes assault as an essential element of the a. 8 offense. An offense that includes the possession or use of a firearm or other 9 b. deadly weapon as an essential or nonessential element of the offense, 10 or the offender was in possession of a firearm or other deadly 11 weapon at the time of the commission of the offense. 12 An offense for which the offender was armed with or used a firearm 13 c. 14 or other deadly weapon. An offense for which the offender must register under Article 27A of 15 d. Chapter 14 of the General Statutes." 16 **SECTION 7.** G.S. 14-415.12(b) reads as rewritten: 17 The sheriff shall deny a permit to an applicant who: "(b) 18 Is ineligible to own, possess, or receive a firearm under the provisions of 19 (1)State or federal law. 20 21 Is under indictment or against whom a finding of probable cause exists for a (2) 22 23 Has been adjudicated guilty in any court of a felony, unless: (i) the felony is (3) an offense that pertains to antitrust violations, unfair trade practices, or 24 restraints of trade, or (ii) the person's firearms rights have been restored 25 pursuant to G.S. 14-415.4. 26 Is a fugitive from justice. 27 (4) Is an unlawful user of, or addicted to marijuana, alcohol, or any depressant, 28 (5) 29 stimulant, or narcotic drug, or any other controlled substance as defined in 21 U.S.C. § 802. 30 31 (6)Is currently, or has been previously adjudicated by a court or administratively determined by a governmental agency whose decisions are 32 subject to judicial review to be, lacking mental capacity or mentally ill. 33 Receipt of previous consultative services or outpatient treatment alone shall 34 not disqualify an applicant under this subdivision. 35 Is or has been discharged from the Armed Forces of the United States under 36 (7)conditions other than honorable. 37 38 (8) Is or has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence 39 constituting a misdemeanor, including but not limited to, a violation of a 40 misdemeanor under Article 8 of Chapter 14 of the General Statutes, or a 41 violation of a misdemeanor under G.S. 14-225.2, 14-226.1, 14-258.1, 42 14-269.2, 14-269.3, 14-269.4, 14-269.6, <del>14-276.1, 1</del>4-277, 14-277.1, 43 14-277.2, 14-277.3A, <del>14-281.1, 14-283,14-283 except for a violation</del> 44 45 involving fireworks exempted under G.S. 14-414, 14-288.2, 14-288.4(a)(1) or (2):14-288.4(a)(1), 14-288.6, 14-288.9, former 14-288.12, former 46 14-288.13, former 14-288.14, 14-288.204, 14-318.2, 14-415.21(b), 47 14-415.26(d), or former G.S. 14-277.3. G.S. 14-277.3 within three years prior 48 to the date on which the application is submitted. 49

Is prohibited from possessing a firearm pursuant to 18 U.S.C. § 922(g) as a

result of a conviction of a misdemeanor crime of domestic violence.

| Gene   | ral Assen  | ibly of North Carolina  | Session 201                             |
|--------|------------|---|---|
|        | (9)        | Has had entry of a prayer for judgment continued for<br>which would disqualify the person from obtaining a<br>permit. | r a criminal offens<br>concealed handgu |
|        | (10)       | Is free on bond or personal recognizance pending trial, for a crime which would disqualify him from obtaining         |   |
|        | (11)       | permit. Has been convicted of an impaired driving offense of 20-138.2, or 20-138.3 within three years prior to the    |   |
|        | SEC        | application is submitted."  FION 8.(a) Article 54B of Chapter 14 of the General St                                    | atutes is amended b                     |
| -      |            | ction to read:  |   |
| "§ 14- | 415.28. S  | gn requirements.  |   |
| (a)    |            | ithstanding any other provision of this Article, any e posting of signs prohibiting the carrying of a conceale        |   |
|        |            | nly be satisfied by a sign meeting the requirements of this   |   |
| (b)    | ) All s    | igns must be posted at each entrance into a building wh   | here a person with                      |
|        |            | un permit is prohibited from carrying a concealed handg   |   |
|        | following  |   |   |
| or the | (1)        | Be clearly visible from outside the building.   |   |
|        | (2)        | Be eight inches wide by 12 inches tall in size.   |   |
|        | (3)        | Contain the words "NO CONCEALED HANDGUNS A  | ALLOWED" in blac                        |
|        | 121        | one-inch tall uppercase type at the bottom of the sign a  |   |
|        |            | the lateral edges of the sign.  | ind controlled Copyright                |
|        | <u>(4)</u> | Contain a black silhouette of a handgun inside a ci   | rcle seven inches                       |
|        | 17/        | diameter with a diagonal line that runs from the lower  |   |
|        |            | at a 45-degree angle from the horizontal.   | ier to the apper rigi                   |
|        | (5)        | Be placed not less than 40 inches and not more than   | 60 inches from th                       |
|        | (3)        | bottom of the building's entrance door.   | 1 00 menes nom u                        |
| (c)    | If the     | premises where a person with a concealed handgun pern   | nit is prohibited fro                   |
|        | ng 0 00000 | aled handgun does not have doors, then the signs required   | by this section mu                      |
|        |            |   | I by this section into                  |
| meet a |            | bllowing criteria:  |   |
|        |            | Be 36 inches wide by 48 inches tall in size.  | ALLOWED" in bloc                        |
|        | <u>(2)</u> | Contain the words "NO CONCEALED HANDGUNS A three-inch tall uppercase type at the bottom of the sign a                 |   |
|        |            |   | and centered between                    |
|        | (2)        | the lateral edges of the sign.  | 24 inches in diamet                     |
|        | (3)        | Contain a black silhouette of a handgun inside a circle   |   |
|        |            | with a two-inch wide border and a diagonal line that is   |   |
|        |            | runs from the lower left to the upper right at a 45-de  | egree angle from t                      |
|        | (4)        | horizontal.   | Of inches shows th                      |
|        | <u>(4)</u> | Be placed not less than 40 inches and not more than   | 96 Inches above th                      |
|        | (5)        | ground.   |   |
|        | <u>(5)</u> | Be posted in sufficient quantities to be clearly visible from   | om any point of ent                     |
|        | OF         | onto the premises."   |   |
| HZ     |            | <b>TION 8.(b)</b> G.S. 14-415.11(c) read as rewritten:  |   |
| ,      |            | pt as provided in G.S. 14-415.27, a permit does not autho   | rize a person to car                    |
| a cond |            | dgun in any of the following:   |   |
|        | (1)        | Areas prohibited by G.S. 14-269.2, 14-269.3, and 14-27  |   |
|        | (2)        | Areas prohibited by G.S. 14-269.4, except   | as allowed und                          |
|        |            | G.S. 14-269.4(6).   |   |
|        | (3)        | In an area prohibited by rule adopted under G.S. 120-32   |   |
|        | (4)        | In any area prohibited by 18 II S C 8 922 or any other t  | federal law                             |

- (5) In a law enforcement or correctional facility.
  - (6) In a building housing only State or federal offices.
  - (7) In an office of the State or federal government that is not located in a building exclusively occupied by the State or federal government.
  - (8) On any private premises where notice that carrying a concealed handgun is prohibited by the posting of a conspicuous notice or statementsign meeting the criteria of G.S. 14-415.28 by the person in legal possession or control of the premises."

**SECTION 8.(c)** G.S. 14-269.3(b) reads as rewritten:

"(b) This section shall not apply to any of the following:

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A person carrying a handgun if the person has a valid concealed handgun (5)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 premises in accordance with handgun on the G.S. 14-415.11(c).G.S. 14-415.28."

**SECTION 8.(d)** G.S. 14-277.2(d) reads as rewritten:

"(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 subsection 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).G.S. 14-415.28."

SECTION 8.(e) G.S. 14-415.23(a) reads as rewritten:

"(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(e), G.S. 14-415.28. on local government buildings and their appurtenant premises."

**SECTION 9.** 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) Repealed by Session Laws 2013-369, s. 23, effective October 1, 2013.
  - (2) Weapon of mass death and destruction as defined in G.S. 14-288.8, other than a suppressor or other device designed to muffle or minimize the report of a firearm or short-barreled rifle 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 10.** 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, or who is found to be carrying a concealed handgun in violation of subdivision (c)(8) of 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 11.(a)** G.S. 122C-54(d1) is repealed.

**SECTION 11.(b)** G.S. 122C-54.1 is recodified as G.S. 14-409.42.

**SECTION 11.(c)** G.S. 14-404(c1) is repealed.

**SECTION 11.(d)** Article 53B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-409.43. Reporting of certain disqualifiers to the National Instant Criminal Background Check System (NICS).

- (a) 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 work through the Administrative Office of the Courts to 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.
  - 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. 14-409.42 or any applicable federal law.

The 48-hour period for transmitting a record of a judicial determination or finding to the NICS under subsection (a) of this section begins upon receipt by the clerk of a copy of the judicial determination or finding. The Administrative Office of the Courts shall adopt rules to require clerks of court to transmit information to the NICS in a uniform manner.

(b) Excluding Saturdays, Sundays, and holidays, not later than 48 hours after receiving notice of the issuance of a felony warrant, indictment, criminal summons, or order for arrest, the Administrative Office of the Courts shall transmit any unserved felony warrants,

indictments, criminal summons, or order for arrests to the NCIC (or National Instant Criminal Background Check System (NICS)).

(c) Excluding Saturdays, Sundays, and holidays, not later than 48 hours after service by the sheriff of an order issued by a judge pursuant to Chapter 50B of the General Statutes and pursuant to G.S. 50B-3(d) the sheriff shall cause a record of the order to be transmitted to the National Instant Criminal Information System."

## SECTION 11.(e) G.S. 122C-54(d2) reads 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 to be reported to the National Instant Criminal Background Check System (NICS) by G.S. 14-409.43 shall be accessible only by an entity having proper access to NICS the sheriff or the sheriff's designee for the purposes of conducting background checks under G.S. 14-404 and shall remain otherwise confidential as provided by this Article. 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 11.(f) G.S. 14-404(a) reads as rewritten:

"(a) Upon application, <u>and such application must be provided by the sheriff electronically,</u> the sheriff shall issue the permit to a resident of that county, unless the purpose of the permit is for collecting, in which case a sheriff can issue a permit to a nonresident, when the sheriff has done all of the following:

## SECTION 11.(g) G.S. 14-415.13(a) reads as rewritten:

- "(a) A person shall apply to the sheriff of the county in which the person resides to obtain a concealed handgun permit. The applicant shall submit to the sheriff all of the following:
  - (1) An application, completed under oath, on a form provided by the sheriff.sheriff, and such application form must be provided by the sheriff electronically. The sheriff shall not request employment information, character affidavits, additional background checks, photographs, or other information unless specifically permitted by this Article.

#### SECTION 11.(h) G.S. 15A-502 reads as rewritten:

#### "§ 15A-502. Photographs and fingerprints.

. . . . . . . . . . . . .

- (a) A person charged with the commission of a felony or a misdemeanor may be photographed and his fingerprints may be taken for law-enforcement records only when he has been:
  - (1) Arrested or committed to a detention facility, or
  - (2) Committed to imprisonment upon conviction of a crime, or
  - (3) Convicted of a felony.
- (a1) It shall be the duty of the arresting law-enforcement agency to cause a person charged with the commission of a felony to be fingerprinted and to forward those fingerprints to the State Bureau of Investigation.
- (a2) It shall be the duty of the arresting law enforcement agency to cause a person charged with the commission of any of the following misdemeanors to be fingerprinted, for the purposes of reporting these offenses to the National Criminal Instant Background Check System (NICS), and to forward those fingerprints to the State Bureau of Investigation:
  - (1) G.S. 14-134.3 (Domestic criminal trespass), G.S. 15A-1382.1 (Offense that involved domestic violence), or G.S. 50B-4.1 (Violation of a valid protective order).
  - (2) G.S. 20-138.1 (Impaired driving), G.S. 20-138.2 (Impaired driving in commercial vehicle), G.S. 20-138.2A (Operating a commercial vehicle after

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General Assembly of North Carolina 1 2 3 alcohol). 4 (3) G.S. 90-95(d) (Possession of a controlled substance). 5 (a3) 6 possible for the person arrested: 7 8 (1)9 (2)Address including street, city, and state. 10 (3) Drivers license number and state of issuance. 11 Date of birth. (4) 12 (5) Gender. 13 (6)Race. 14 (7)Social Security number. 15 (8) 16 as defined by G.S. 50B-1(b). 17 18 19 20 21 fingerprints to the State Bureau of Investigation. 22 23 24 25 26 27 (1) 28 (2)29 License Revocation as defined in G.S. 20-28.2 30 to be fingerprinted and photographed. 31 32 33 34 taken of a person who operates a motor vehicle on a street or highway if: 35 36 violation, and 37

consuming alcohol), and G.S. 20-138.2B (Operating various school, child care, EMS, firefighting, or law enforcement vehicles after consuming

- It shall be the duty of the arresting law enforcement agency to cause a person charged with a crime to provide to the magistrate as much of the following information as
  - Name including first, last, middle, maiden, and nickname or alias.

- Relationship to the alleged victim and whether it is a "personal relationship"
- It shall be the duty of the arresting law enforcement agency to cause a person who has been charged with a misdemeanor offense of assault, stalking, or communicating a threat and held under G.S. 15A-534.1, to be fingerprinted for the purposes of reporting these offenses to the National Criminal Instant Background Check System (NICS) and to forward those
- It shall be the duty of the magistrate to enter into the court information system all information provided by the arresting law enforcement agency on the person arrested.
- If the person cannot be identified by a valid form of identification, it shall be the duty of the arresting law-enforcement agency to cause a person charged with the commission
  - Any offense involving impaired driving, as defined in G.S. 20-4.01(24a), or
  - Driving while license revoked if the revocation is for an Impaired Driving
- This section does not authorize the taking of photographs or fingerprints when the offense charged is a Class 2 or 3 misdemeanor under Chapter 20 of the General Statutes, "Motor Vehicles." Notwithstanding the prohibition in this subsection, a photograph may be
  - The person is cited by a law enforcement officer for a motor vehicle moving
  - The person does not produce a valid drivers license upon the request of a law (2) enforcement officer, and
  - (3)The law enforcement officer has a reasonable suspicion concerning the true identity of the person.

As used in this subsection, the phrase "motor vehicle moving violation" does not include the offenses listed in the third paragraph of G.S. 20-16(c) for which no points are assessed, nor does it include equipment violations specified in Part 9 of Article 3 of Chapter 20 of the General Statutes.

- Any photograph authorized by subsection (b) of this section and taken by a law enforcement officer or agency:
  - (1)Shall only be taken of the operator of the motor vehicle, and only from the
  - (2)Shall be taken at either the location where the citation is issued, or at the jail if an arrest is made.

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(3) Shall be retained by the law enforcement officer or agency until the final disposition of the case.

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- (4) Shall not be used for any purpose other than to confirm the identity of the alleged offender.
- (5) Shall be destroyed by the law enforcement officer or agency upon a final disposition of the charge.
- (c) This section does not authorize the taking of photographs or fingerprints of a juvenile alleged to be delinquent except under Article 21 of Chapter 7B of the General Statutes.
- (d) This section does not prevent the taking of photographs, moving pictures, video or sound recordings, fingerprints, or the like to show a condition of intoxication or for other evidentiary use.
- (e) Fingerprints or photographs taken pursuant to subsection (a), (a1), or (a2) of this section may be forwarded to the State Bureau of Investigation, the Federal Bureau of Investigation, or other law-enforcement agencies."

**SECTION 11.(i)** The Administrative Office of the Courts shall use funds available from the Court Technology Fund to comply with subsection (d) of this section and to provide all of the following historical records to the National Instant Criminal Background Check System (NICS) by May 31, 2019:

- (1) Involuntary commitments for in-patient and out-patient mental health and substance abuse treatment from all counties.
- (2) Findings of not guilty by reason of insanity or mentally incompetent to stand trial from all counties.
- (3) Findings 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 from all counties.
- (4) Convictions for misdemeanor possession of controlled substances under G.S. 90-95(d) from all counties from January 1, 2009.
- (5) Convictions for all misdemeanors as identified in G.S. 14-134.3, 15A-1382.1, or 50B-4.1 from all counties.
- (6) Convictions for all misdemeanors as identified in G.S. 20-138.1, 20-138.2, 20-138.2A, and 20-138.2B or convicted and sentenced under G.S. 20-179(f3) for more than two years from all counties.
- (7) Active and unserved felony warrants, indictments, criminal summons, and orders for arrest from all counties.

**SECTION 11.(j)** G.S. 14-404(g) reads as rewritten:

"(g) An applicant shall not be ineligible to receive a permit under subdivision (c)(4) of this section because of involuntary commitment to mental health services if the individual's rights have been restored under G.S. 122C-54.1.G.S. 14-409.42."

**SECTION 11.(k)** G.S. 14-415.3(c) reads as rewritten:

"(c) The provisions of this section shall not apply to a person whose rights have been restored pursuant to G.S. 122C-54.1.G.S. 14-409.42."

**SECTION 11.(1)** 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.G.S. 14-409.42."

**SECTION 11.(m)** G.S. 122C-54.1(a), recodified as G.S. 14-409.42(a) by subsection (b) of this section, reads as rewritten:

"(a) Any individual over the age of 18 may petition for the removal of the 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

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Background Check System by subdivisions (1) through (6) of subsection (d1) of G.S. 122C-54. of subsection (a) of G.S. 14-409.43. The individual may file the petition with a district court judge upon the expiration of any current inpatient or outpatient commitment."

SECTION 11.(n) G.S. 15A-534(a) reads as rewritten:

- "(a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:
  - (1) Release the defendant on his written promise to appear.
  - (2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.
  - (3) Place the defendant in the custody of a designated person or organization agreeing to supervise him.
  - (4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.
  - (5) House arrest with electronic monitoring.

If condition (5) is imposed, the defendant must execute a secured appearance bond under subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1) or (a2),G.S. 15A-502(a1), (a2), (a4), or (a6), or a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, and (i) the fingerprints or DNA sample have not yet been taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release. The judicial official may include as a condition of pretrial release that the defendant abstain from alcohol consumption, as verified by the use of a continuous alcohol monitoring system, of a type approved by the Division of Adult Correction of the Department of Public Safety, and that any violation of this condition be reported by the monitoring provider to the district attorney."

**SECTION 11.(o)** Subsections (f) and (g) of this section become effective October 1, 2105, and apply to applications submitted on or after that date. Subsections (h) and (n) of this section become effective on October 1, 2015. Subsections (a), (d), and (m) of this section become effective on January 1, 2016. The remaining subsections of this section are effective when they become law.

SECTION 12. G.S. 14-409.40 reads as rewritten:

#### "§ 14-409.40. Statewide uniformity of local regulation.

- (a) It is declared by the General Assembly that the regulation of firearms is properly an issue of general, statewide concern, and that the entire field of regulation of firearms is preempted from regulation by local governments except as provided by this section.
- (a1) The General Assembly further declares that the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is not an unreasonably dangerous activity and does not constitute a nuisance per se and furthermore, that it is the unlawful use of firearms and ammunition, rather than their lawful design, marketing, manufacture, distribution, sale, or transfer that is the proximate cause of injuries arising from their unlawful use. This subsection applies only to causes of action brought under subsection (g) of this section.
- (b) Unless otherwise permitted by statute, no county or municipality, by ordinance, resolution, or other enactment, shall regulate in any manner the possession, ownership, storage, transfer, sale, purchase, licensing, taxation, manufacture, transportation, or registration of firearms, firearms ammunition, components of firearms, dealers in firearms, or dealers in handgun components or parts.

- (c) Notwithstanding subsection (b) of this section, a county or municipality, by zoning or other ordinance, may regulate or prohibit the sale of firearms at a location only if there is a lawful, general, similar regulation or prohibition of commercial activities at that location. Nothing in this subsection shall restrict the right of a county or municipality to adopt a general zoning plan that prohibits any commercial activity within a fixed distance of a school or other educational institution except with a special use permit issued for a commercial activity found not to pose a danger to the health, safety, or general welfare of persons attending the school or educational institution within the fixed distance.
- (d) No county or municipality, by zoning or other ordinance, shall regulate in any manner firearms shows with regulations more stringent than those applying to shows of other types of items.
- (e) A county or municipality may regulate the transport, carrying, or possession of firearms by employees of the local unit of government in the course of their employment with that local unit of government.
- (f) Nothing contained in this section prohibits municipalities or counties from application of their authority under G.S. 153A-129, 160A-189, 14-269, 14-269.2, 14-269.3, 14-269.4, 14-277.2, 14-415.11, 14-415.23, including prohibiting the possession of firearms in public-owned buildings, on the grounds or parking areas of those buildings, or in public parks or recreation areas, except nothing in this subsection shall prohibit a person from storing a firearm within a motor vehicle while the vehicle is on these grounds or areas. Nothing contained in this section prohibits municipalities or counties from exercising powers provided by law in states of emergency declared under Article 1A of Chapter 166A of the General Statutes.
- (g) The authority to bring suit and the right to recover against any firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association by or on behalf of any governmental unit, created by or pursuant to an act of the General Assembly or the Constitution, or any department, agency, or authority thereof, for damages, abatement, injunctive relief, or any other remedy resulting from or relating to the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is reserved exclusively to the State. Any action brought by the State pursuant to this section shall be brought by the Attorney General on behalf of the State. This section shall not prohibit a political subdivision or local governmental unit from bringing an action against a firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association for breach of contract or warranty for defect of materials or workmanship as to firearms or ammunition purchased by the political subdivision or local governmental unit.
- (h) A person adversely affected by any ordinance, rule, or regulation promulgated or caused to be enforced by any county or municipality in violation of this section may bring an action for declaratory and injunctive relief and for actual damages arising from the violation. The court shalf award the prevailing plaintiff in an action brought under this subsection reasonable attorneys' fees and court costs as authorized by law."

**SECTION 13.** Chapter 90 of the General Statutes is amended by adding a new Article to read:

#### "Article 11.

"Preserving Firearms Privacy for Patients.

### "§ 90-21.75. Findings and intent.

- (a) Findings. The General Assembly makes all of the following findings:
  - (1) That individuals have a right under the United States Constitution and the North Carolina Constitution to keep and bear arms, which arms include firearms and their ammunition.
  - (2) That an individual's decision to exercise this right is a private matter.

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"§ 90-21.79. Fines.

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illness.

The health care provider's licensing board may impose a fine on any health care provider

that violates any provision of this Article. The fine shall not exceed two hundred fifty dollars

(\$250.00) for nonwillful violations and shall not exceed five hundred dollars (\$500.00) for

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willful violations. Each intentional and willful violation of this Article constitutes a separate violation and is subject to a separate fine.

## "§ 90-21.80. Disciplinary action.

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 Violation of this Article is a ground for disciplinary action against the health care provider by the health care provider's licensing board or other regulatory authority."

**SECTION 14.** G.S. 14-415.15(a) reads as rewritten:

"(a) Except as permitted under subsection (b) of this section, within 45 days after receipt of the items listed in G.S. 14-415.13 from an applicant, and receipt of the required records concerning the mental health or capacity of the applicant, the sheriff shall either issue or deny the permit. The sheriff shall issue or deny the permit within 90 calendar days from the date on which the application was submitted regardless of the receipt of required records concerning the mental health or capacity of the applicant. Such denial shall not be issued unless the applicant is determined to be ineligible under G.S. 14-415.12.

The sheriff may conduct any investigation necessary to determine the qualification or competency of the person applying for the permit, including record checks."

**SECTION 15.** G.S. 14-415.23 is amended by adding a new subsection to read:

"(e) A person adversely affected by any ordinance, rule, or regulation promulgated or caused to be enforced by any unit of local government in violation of this section may bring an action for declaratory and injunctive relief and for actual damages arising from the violation. The court shall award the prevailing plaintiff in an action brought under this subsection reasonable attorneys' fees and court costs as authorized by law."

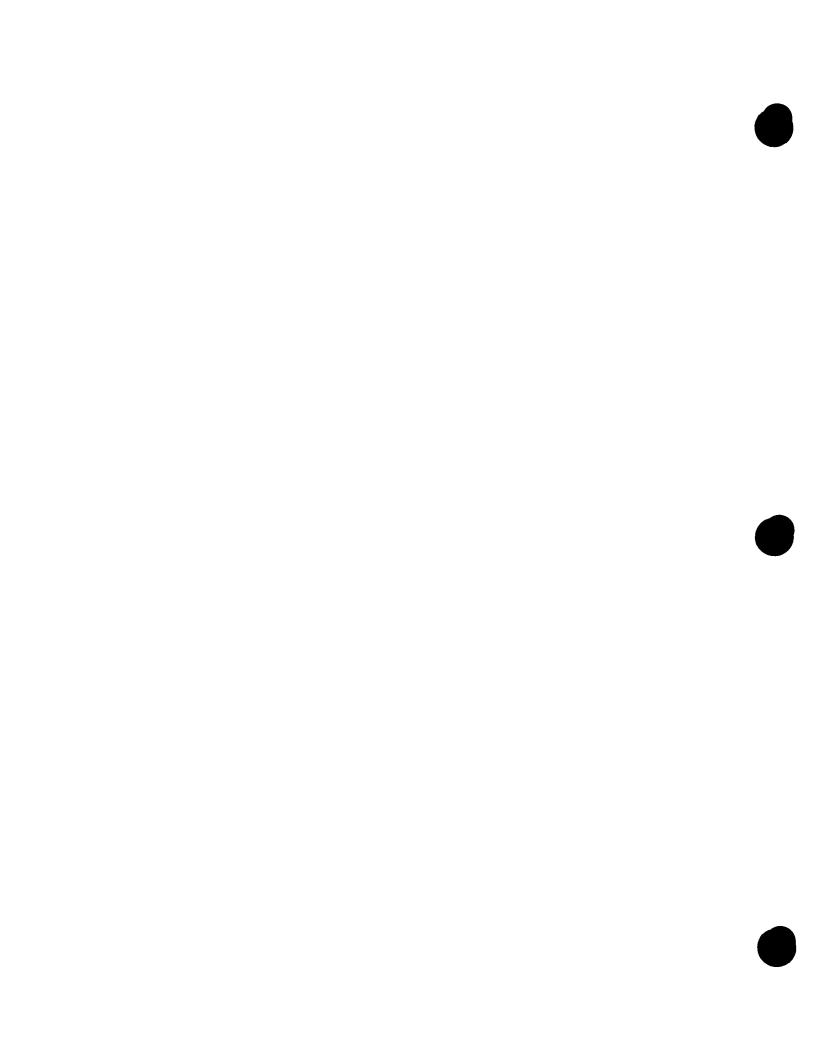
**SECTION 16.** Sections 1, 2, 3, 9, and 10 of this act become effective July 1, 2015, and apply to offenses committed on or after that date. Section 8 of this act becomes effective July 1, 2015. Section 5 of this act becomes effective July 1, 2015, but shall not apply to pending litigation. Section 6 of this act is effective when it becomes law and applies to restorations granted before, on, or after that date. Section 7 of this act becomes effective July 1, 2015, and applies to permit applications submitted on or after that date. Sections 12, 13, and 15 of this act become effective December 1, 2015, and apply to violations occurring on or after that date. Section 14 becomes effective October 1, 2015, and applies to applications submitted on or after that date. Except as otherwise provided in this act, the remainder of this act is effective when it becomes law. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

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## NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

| 1. B. No. <u>562</u>            | DATE    | 4-28-15                                 |
|---------------------------------|---------|---|
| S. B. No                        | Amenda  | nent No.                                |
| S. B. NoCSSA-5                  | 4       | (to be filled in by<br>Principal Clerk) |
| (Rep.) Martin                   |         |   |
| Sen. )                          |         |   |
| moves to amend the bill on page | 2       | , line <u>S</u> 36-37                   |
| ( ) WHICH CHANGES THE TITLE     |         | ,                                       |
| by deleting those linis.        |         |   |
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## GENERAL ASSEMBLY OF NORTH CAROLINA **SESSION 2015**

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#### **HOUSE BILL 562**

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Short Title: Amend Firearm Laws. (Public) Representatives Schaffer, Burr, Cleveland, and Faircloth (Primary Sponsors). Sponsors: For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site. Referred to: Judiciary I.

#### April 6, 2015

A BILL TO BE ENTITLED

AN ACT TO ALLOW DISTRICT ATTORNEYS TO CARRY CONCEALED HANDGUNS IN COURTROOMS, TO PROVIDE THAT PROHIBITIONS ON CARRYING CONCEALED HANDGUNS DO NOT APPLY TO CERTAIN DEPARTMENT OF PUBLIC SAFETY EMPLOYEES, TO AMEND LAWS RELATING TO CONCEALED HANDGUNS ON EDUCATIONAL PROPERTY, TO PROHIBIT CONCEALED HANDGUNS ON RIDES AT THE STATE FAIR, TO ELIMINATE PISTOL PERMITS, REQUIRE CHIEF LAW ENFORCEMENT OFFICERS TO COMPLETE CERTIFICATIONS REQUIRED BY FEDERAL LAW, TO REQUIRE EMPLOYERS TO ALLOW EMPLOYEES TO SECURE A HANDGUN IN THEIR VEHICLE, TO AMEND ACT, TO ENSURE FEDERAL THE SHOOTING RANGE PROTECTION RECOGNITION OF STATE FIREARM RIGHT RESTORATION, TO MODIFY THE MISDEMEANOR CONVICTIONS THAT PREVENT ISSUANCE OF A CONCEALED HANDGUN PERMIT, TO IMPLEMENT SIGN REQUIREMENTS FOR PRIVATE PROPERTY OWNERS THAT CHOOSE TO PROHIBIT CONCEALED HANDGUNS, AND TO ALLOW HUNTING WITH SUPPRESSORS ON SHORT-BARRELED RIFLES.

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** G.S. 14-269(b) reads as rewritten:

This prohibition shall not apply to the following persons: "(b)

(4a) Any person who is a district attorney, an assistant district attorney, or an investigator employed by the office of a district attorney and who has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24; provided that the person shall not carry a concealed weapon at any time while in a courtroom or while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the person's body. The district attorney, assistant district attorney, or investigator shall secure the weapon in a locked compartment when the weapon is not on the person of the district attorney, assistant district attorney, or investigator;

A person employed by the Department of Public Safety who has been (7)designated in writing by the Secretary of the Department, who has a concealed handgun permit issued in accordance with Article 54B of this



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1 Chapter or considered valid under G.S. 14-415.24, and has in the person's 2 possession written proof of the designation by the Secretary of the 3 Department, provided that the person shall not carry a concealed weapon at any time while consuming alcohol or an unlawful controlled substance or 4 5 while alcohol or an unlawful controlled substance remains in the person's 6 body." SECTION 1.(b) G.S. 14-415.27 reads as rewritten: 7 8 "\\$ 14-415.27. Expanded permit scope for certain persons. 9 Notwithstanding G.S. 14-415.11(c), any 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 10 is not subject to the area prohibitions set out in G.S. 14-415.11(c) and may carry a concealed 11 12 handgun in the areas listed in G.S. 14-415.11(c) unless otherwise prohibited by federal law: 13 A district attorney. (1)An assistant district attorney. 14 (2) An investigator employed by the office of a district attorney. 15 (3) 16 (4) A North Carolina district or superior court judge. 17 (5) A magistrate. (6) A person who is elected and serving as a clerk of court. 18 19 A person who is elected and serving as a register of deeds. (7)20 A person employed by the Department of Public Safety who has been (8) 21 designated in writing by the Secretary of the Department and who has in the 22 person's possession written proof of the designation." **SECTION 2.** G.S. 14-269.2(k) reads as rewritten: 23 The provisions of this section shall not apply to a person who has a concealed 24 "(k) 25 handgun permit that is valid under Article 54B of this Chapter, or who is exempt from obtaining a permit pursuant to that Article, if any of the following conditions are met: 26 27 who The person has a handgun in a closed compartment or container within (1) 28 the person's locked vehicle or in a locked container securely affixed to the 29 person's vehicle. A person may unlock vehicle and only unlocks the vehicle 30 to enter or exit the vehicle provided while the firearm remains in the closed compartment at all times and immediately locks the vehicle is locked 31 32 immediately following the entrance or exit. The person has a handgun concealed on the person and the person remains in 33 (2) the locked vehicle and only unlocks the vehicle to allow the entrance or exit 34 of another person. 35 36 The person is within a locked vehicle and removes the handgun from (3) 37 concealment only for the amount of time reasonably necessary to do either of the following: 38 39 Move the handgun from concealment on the person to a closed <u>a.</u> compartment or container within the vehicle. 40 Move the handgun from within a closed compartment or container 41 <u>b.</u> within the vehicle to concealment on the person. 42 Notwithstanding G.S. 14-415.11(c)(8), no school may prohibit the concealed carry of a 43 44

handgun pursuant to this subsection." **SECTION 3.** G.S. 14-269.2 is amended by adding a new subsection to read:

SECTION 3. G.S. 14-269.2 is amended by adding a new subsection to read:

"(I) It is an affirmative defense to a prosecution under subsection (b) or (f) of this section that the person was authorized to have a concealed handgun in a locked vehicle pursuant to subsection (k) of this section and removed the handgun from the vehicle only in response to a threatening situation in which deadly force was justified pursuant to G.S. 14-51.3."

**SECTION 4.** G.S. 14-269.3(b) reads as rewritten:

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- "(b) This section shall not apply to any of the following:
  - (1) A person exempted from the provisions of G.S. 14-269.
  - (2) The owner or lessee of the premises or business establishment.
  - (3) A person participating in the event, if the person is carrying a gun, rifle, or pistol with the permission of the owner, lessee, or person or organization sponsoring the 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.that Article. 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).
  - (6) A person carrying a handgun on the premises of the State Fairgrounds during the State Fair if the person has a valid concealed handgun permit issued in accordance with Article 54B of this Chapter, or is exempt from obtaining a permit pursuant to that Article, provided the person does not ride or enter any amusement device as defined by G.S. 95-111.3. Nothing in this subdivision shall be construed to prohibit a person from possessing a handgun in compliance with G.S. 14-269(a2) in a parking area that is owned or leased by State government."

**SECTION 5.(a)** The following statutes are repealed: G.S. 14-402, 14-403, 14-404, 14-405, and 14-407.1.

**SECTION 5.(b)** 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 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 6.** Article 53B of Chapter 14 of the General statutes is amended by adding a new section to read:

#### "§ 14-409.41. Chief law enforcement officer certification; certain firearms.

- (a) Definitions. The following definitions apply in this section:
  - (1) <u>Certification. The participation and assent of the chief law enforcement officer necessary under federal law for the approval of the application to transfer or make a firearm.</u>
  - (2) Chief law enforcement officer. Any official the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives, or any successor agency,

identified by regulation or otherwise as eligible to provide any required certification for the transfer or making of a firearm.

- (3) Firearm. Any firearm that meets the definition of firearm in 26 U.S.C. § 5845.
- (b) When a chief law enforcement officer's certification is required by federal law or regulation for the transfer or making of a firearm, the chief law enforcement officer shall, within 15 days of receipt of a request for certification, provide the certification if the applicant is not prohibited by State or federal law from receiving or possessing the firearm and is not the subject of a proceeding that could result in the applicant being prohibited by State or federal law from receiving or possessing the firearm. If the chief law enforcement officer is unable to make a certification as required by this section, the chief law enforcement officer shall provide the applicant with a written notification of the denial and the reason for the denial.

Nothing in this section shall require a chief law enforcement officer to make a certification the chief law enforcement officer knows to be untrue, but the chief law enforcement officer may not refuse to provide certification based on a generalized objection to private persons or entities making, possessing, or receiving firearms or any certain type of firearm the possession of which is not prohibited by law.

- (c) An applicant whose request for certification is denied may appeal the decision of the chief law enforcement officer to the district court of the district in which the request for certification was made. The court shall make a de novo review of the chief law enforcement officer's decision to deny the certification. If the court finds that the applicant is not prohibited by State or federal law from receiving or possessing the firearm, is not the subject of a proceeding that could result in the applicant being prohibited by State or federal law from receiving or possessing the firearm, and that no substantial evidence supports the chief law enforcement officer's determination that the chief law enforcement officer cannot truthfully make the certification, the court shall order the chief law enforcement officer to issue the certification and award court costs and reasonable attorneys' fees to the applicant.
- (d) Chief law enforcement officers and their employees who act in good faith are immune from liability arising from any act or omission in making a certification as required by this section."

**SECTION 7.** Article 53B of Chapter 14 of the General Statutes is amended by adding a new section to read:

# "§ 14-409.42. No prohibition regarding the transportation or storage of a firearm in locked motor vehicle by business, commercial enterprise, or employer; civil liability; enforcement.

- (a) As used in this section, the term "motor vehicle" means any automobile, truck, minivan, sport utility vehicle, motorcycle, motor scooter, and any other vehicle required to be registered under Chapter 20 of the General Statutes.
- (b) A business, commercial enterprise, or employer shall not establish, maintain, or enforce a policy or rule that prohibits or has the effect of prohibiting a person from transporting or storing any firearm or ammunition when the person has a concealed handgun permit that is valid under Article 54B of this Chapter, or is exempt from obtaining a permit pursuant to that Article, is otherwise in compliance with all other applicable laws and regulations, and the firearm or ammunition is in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle. A person may unlock the vehicle to enter or exit the vehicle, provided the firearm or ammunition remain in the closed compartment at all times and the vehicle is locked immediately following the entrance or exit.
  - (c) Subsection (b) of this section shall not apply to the following:
    - (1) Vehicles owned or leased by an employer.
    - Where transport or storage of a firearm is prohibited by State or federal law or regulation.

Page 4

- (d) A person who is injured or incurs damages, or the survivors of a person killed, as a result of a violation of subsection (b) of this section may bring a civil action in the appropriate court against any business entity, commercial enterprise, or employer who committed or caused such violation. A person who would be entitled legally to transport or store a firearm or ammunition, but who would be denied the ability to transport or store a firearm or ammunition by a policy in violation of subsection (b) of this section, may bring a civil action in the appropriate court to enjoin any business entity, commercial enterprise, or employer from violating subsection (b) of this section.
- (e) An employee discharged by an employer, business entity, or commercial enterprise for violation of a policy or rule prohibited under subsection (b) of this section, when he or she was lawfully transporting or storing a firearm out of plain sight in a locked motor vehicle, is entitled to full recovery as specified in subdivisions (1) through (4) of this subsection, inclusive. If the demand for the recovery is denied, the employee may bring a civil action in the courts of this State against the employer, business entity, or commercial enterprise and is entitled to the following:
  - (1) Reinstatement to the same position held at the time of his or her termination from employment, or to an equivalent position.
  - (2) Reinstatement of the employee's full fringe benefits and seniority rights, as appropriate.
  - (3) Compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the termination.
  - (4) Payment of reasonable attorneys' fees and legal costs incurred.
- (f) A business, commercial enterprise, employer, or property owner that allows persons to transport or store any firearm or ammunition pursuant to subsection (b) of this section shall have complete immunity and shall not be held liable in any civil action for damages, injuries, or death resulting from or arising out of another person's actions involving a firearm or ammunition transported or stored in accordance with this section, including, but not limited to, the theft of a firearm from an employee's automobile. Nothing contained in this section shall create a new duty on the part of any business, commercial enterprise, employer, or property owner. This section shall not be construed to permit a person to possess a firearm outside of a motor vehicle while on the premises of a place of employment where the person in legal possession or control of the premises has posted a conspicuous notice prohibiting possession of a firearm on the premises.
- (g) In any action relating to the enforcement of any right or obligation under subsections (d) and (e) of this section, the reasonable, good-faith efforts of a business, commercial enterprise, employer, or property owner to comply with other applicable and irreconcilable federal or State safety laws or regulations shall be a complete defense to any liability of the business, commercial enterprise, employer, or property owner."

SECTION 8.(a) G.S. 14-409.46 reads as rewritten:

## "§ 14-409.46. Sport shooting range protection.

- (a) Notwithstanding any other provision of law, a person who owns, operates, or uses a sport shooting range in this State shall not be subject to civil liability or criminal prosecution in any matter relating to noise or noise pollution resulting from the operation or use of the range if the range was in existence at least three years prior to the effective date of this Article and the range was is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time the range began operation.
- (b) A person who owns, operates, or uses a sport shooting range is not subject to an action for nuisance on the basis of noise or noise pollution, and a State court shall not enjoin the use or operation of a range on the basis of noise or noise pollution, if the range was in existence at least three years prior to the effective date of this Article and the range was is in

compliance with any noise control laws or ordinances that applied to the range and its operation at the time the range began operation.

- (c) Rules adopted by any State department or agency for limiting levels of noise in terms of decibel level that may occur in the outdoor atmosphere shall not apply to a sport shooting range exempted from liability under this Article. that was in operation prior to the adoption of the rule.
- (d) A person who acquires title to real property adversely affected by the use of property with a permanently located and improved sport shooting range constructed and initially operated prior to the time the person acquires title shall not maintain a nuisance action on the basis of noise or noise pollution against the person who owns the range to restrain, enjoin, or impede the use of the range. If there is a substantial change in use of the range after the person acquires title, the person may maintain a nuisance action if the action is brought within one year of the date of a substantial change in use. This section does not prohibit actions for negligence or recklessness in the operation of the range or by a person using the range.
- (e) A sport shooting range that is operated and is not in violation of existing law at the time of the enactment of an ordinance and was in existence at least three years prior to the effective date of this Article, shall be permitted to continue in operation even if the operation of the sport shooting range at a later date does not conform to the new ordinance or an amendment to an existing ordinance, provided there has been no substantial change in use."

**SECTION 8.(b)** G.S. 14-409.47 reads as rewritten:

### "§ 14-409.47. Application of Article.

Except as otherwise provided in this Article, this Article does not prohibit a local government from regulating the location and construction of a sport shooting range after the effective date of this Article. September 1, 1997."

### **SECTION 9.** G.S. 14-415.4(a) reads as rewritten:

- "(a) Definitions. The following definitions apply in this section:
  - (1) Firearms rights. The legal right in this State of a person to purchase, own, possess, or have in the person's custody, care, or control any firearm or any weapon of mass death and destruction as those terms are defined in G.S. 14-415.1 and G.S. 14-288.8(c). The term does not include any weapon defined in G.S. 14-409(a).
  - (2) Nonviolent felony. The term nonviolent felony does not include any felony that is a Class A, Class B1, or Class B2 felony. Also, the term nonviolent felony does not include any Class C through Class I felony that is one of the following:
    - a. An offense that includes assault as an essential element of the
    - b. An offense that includes the possession or use of a firearm or other deadly weapon as an essential or nonessential element of the offense, or the offender was in possession of a firearm or other deadly weapon at the time of the commission of the offense.
    - c. An offense for which the offender was armed with or used a firearm or other deadly weapon.
    - d. An offense for which the offender must register under Article 27A of Chapter 14 of the General Statutes."

#### **SECTION 10.** G.S. 14-415.12(b) reads as rewritten:

- "(b) The sheriff shall deny a permit to an applicant who:
  - (1) Is ineligible to own, possess, or receive a firearm under the provisions of State or federal law.
  - (2) Is under indictment or against whom a finding of probable cause exists for a felony.

Page 6 H562 [Edition 1]

- (3) Has been adjudicated guilty in any court of a felony, unless: (i) the felony is an offense that pertains to antitrust violations, unfair trade practices, or restraints of trade, or (ii) the person's firearms rights have been restored pursuant to G.S. 14-415.4.
- (4) Is a fugitive from justice.
- (5) Is an unlawful user of, or addicted to marijuana, alcohol, or any depressant, stimulant, or narcotic drug, or any other controlled substance as defined in 21 U.S.C. § 802.
- (6) Is currently, or has been previously adjudicated by a court or administratively determined by a governmental agency whose decisions are subject to judicial review to be, lacking mental capacity or mentally ill. Receipt of previous consultative services or outpatient treatment alone shall not disqualify an applicant under this subdivision.
- (7) Is or has been discharged from the Armed Forces of the United States under conditions other than honorable.
- Is or has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence constituting a misdemeanor, including but not limited to, a violation of a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or a violation of a misdemeanor under G.S. 14-225.2, 14-226.1, 14-258.1, 14-269.2, 14-269.3, 14-269.4, 14-269.6, 14-276.1, 14-277, 14-277.1, 14-277.2, 14-277.3A, 14-281.1, 14-283,14-283 except for a violation involving fireworks exempted under G.S. 14-414, 14-288.2, 14-288.4(a)(1) or (2),14-288.4(a)(1), 14-288.6, 14-288.9, former 14-288.12, former 14-288.13, former 14-288.14, 14-288.20A, 14-318.2, 14-415.21(b), 14-415.26(d), or former G.S. 14-277.3.G.S. 14-277.3 within three years prior to the date on which the application is submitted.
- (8a) Is prohibited from possessing a firearm pursuant to 18 U.S.C. § 922(g) as a result of a conviction of a misdemeanor crime of domestic violence.
- (9) Has had entry of a prayer for judgment continued for a criminal offense which would disqualify the person from obtaining a concealed handgun permit.
- (10) Is free on bond or personal recognizance pending trial, appeal, or sentencing for a crime which would disqualify him from obtaining a concealed handgun permit.
- (11) Has been convicted of an impaired driving offense under G.S. 20-138.1, 20-138.2, or 20-138.3 within three years prior to the date on which the application is submitted."

**SECTION 11.(a)** Article 54B of Chapter 14 of the General Statutes is amended by adding a new section to read:

## "§ 14-415.28. Sign requirements.

- (a) Notwithstanding any other provision of this Article, any requirement of or allowance for the posting of signs prohibiting the carrying of a concealed handgun upon any premises shall only be satisfied by a sign meeting the requirements of this section.
- (b) All signs must be posted at each entrance into a building where a person with a concealed handgun permit is prohibited from carrying a concealed handgun and must meet all of the following criteria:
  - (1) Be clearly visible from outside the building.
  - (2) Be eight inches wide by 12 inches tall in size.

G.S. 14-415.11(c).G.S. 14-415.28."

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**SECTION 11.(d)** G.S. 14-277.2(d) reads as rewritten:

The provisions of this section shall not apply to concealed carry of a handgun at a "(d) 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 subsection 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(e).G.S. 14-415.28."

**SECTION 11.(e)** G.S. 14-415.23(a) reads as rewritten:

It is the intent of the General Assembly to prescribe a uniform system for the "(a) 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(e).G.S. 14-415.28, on local government buildings and their appurtenant premises."

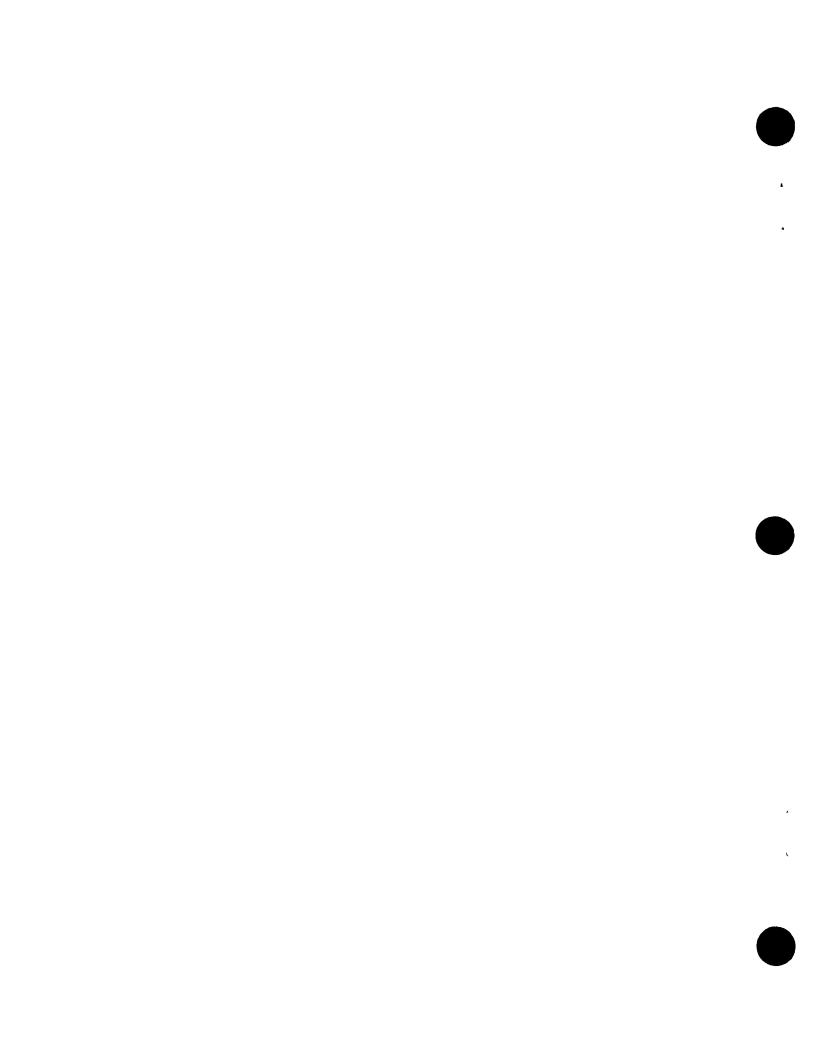
**SECTION 12.** G.S. 113-291.1(c) reads as rewritten:

- "(c) It is a Class 1 misdemeanor for any person taking wildlife to have in his possession any:
  - Repealed by Session Laws 2013-369, s. 23, effective October 1, 2013. (1)
  - (2) Weapon of mass death and destruction as defined in G.S. 14-288.8, other than a suppressor or other device designed to muffle or minimize the report of a firearm or short-barreled rifle 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 13.** Sections 1, 2, 3, and 12 of this act become effective July 1, 2015, and apply to offenses committed on or after that date. Section 4 of this act is effective when it becomes law. Section 5 of this act becomes effective October 1, 2019, and applies to offenses committed on or after that date. Sections 6, 7, and 11 of this act become effective July 1, 2015. Section 8 of this act becomes effective July 1, 2015, but shall not apply to pending litigation. Section 9 of this act is effective when it becomes law and applies to restorations granted before, on, or after that date. Section 10 of this act becomes effective July 1, 2015, and applies to permit applications submitted on or after that date. The remainder of this act is effective when it becomes law.

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## GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H D

## HOUSE BILL 664 PROPOSED COMMITTEE SUBSTITUTE H664-CSST-43 [v.2]

4/27/2015 6:32:58 PM

| Short Title: | Safer Communities. | (Public) |
|--------------|--------------------|----------|
| Sponsors:    |                    |          |
| Referred to: |                    |          |
|              | A:1 14 2015        |          |

### April 14, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR SAFER COMMUNITIES BY AUTHORIZING A PERSON OR ENTITY EMPLOYING OR CONTRACTING WITH A COMPANY POLICE AGENCY TO ENTER INTO JOINT AGREEMENTS WITH MUNICIPALITIES AND COUNTIES TO EXTEND THE LAW ENFORCEMENT AUTHORITY OF COMPANY POLICE OFFICERS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 74E-6 is amended by adding a new subsection to read:

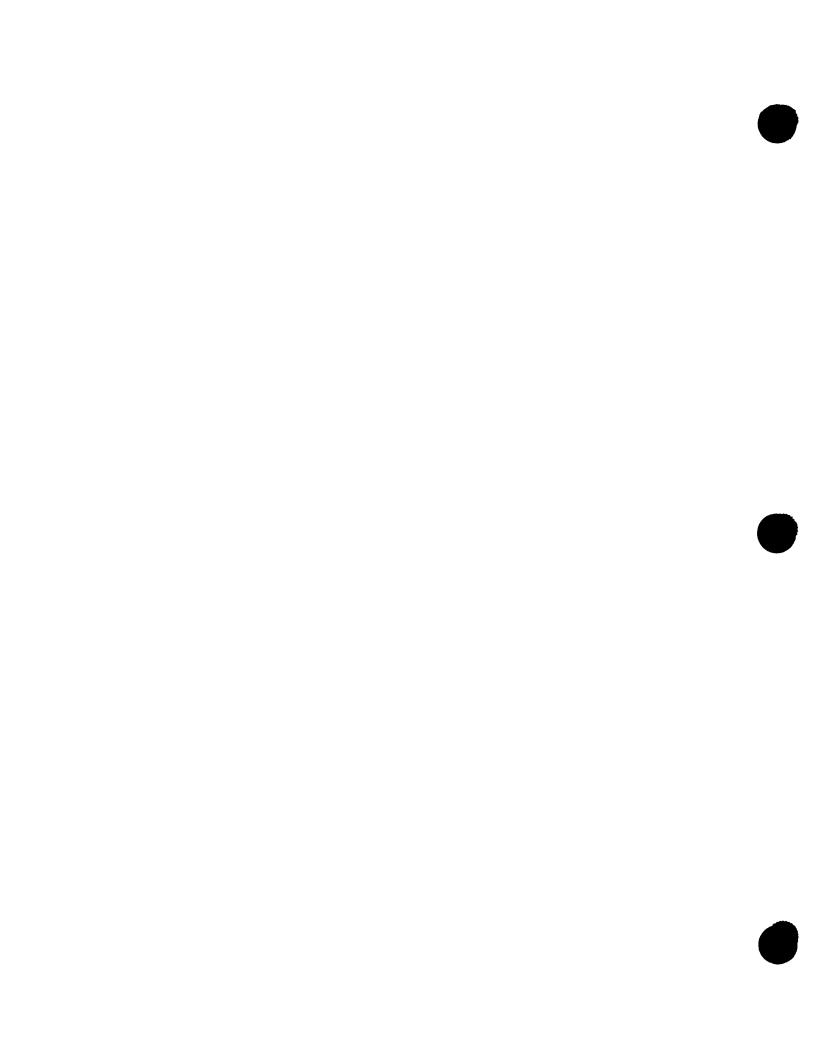
- "(c1) Additional Authority. In addition to the powers contained in subsection (c) of this section, the person or entity that employs or contracts with a company police agency may do the following:
  - (1) Enter into joint agreements with the governing board of any municipality to extend the law enforcement authority of company police criticers into any or all of the municipality's jurisdiction and to determine the circumstances in which this extension of authority may be granted.
  - (2) Enter into joint agreements with the governing board of any county, with the consent of the sheriff, to extend the law enforcement authority of company police officers into any or all of the county's jurisdiction and to determine the circumstances in which this extension of authority may be granted."

**SECTION 2.** If House Bill 873, 2015 Regular Session, becomes law, G.S. 74E-6(e1), as enacted by that act, reads as rewritten:

- "(e1) Hospital Police. Hospital police officers have the powers contained in subsection (c) of this section and also have the powers in that subsection upon that portion of any public road or highway passing through or immediately adjoining the property described in that subsection, wherever located. The chief executive officer of any local hospital or hospital authority that employs or contracts with hospital police officers may do the following:
  - (1) Enter into joint agreements with the governing board of any municipality to extend the law enforcement authority of hospital police officers into any or all of the municipality's jurisdiction and to determine the circumstances in which this extension of authority may be granted.
  - (2) Enter into joint agreements with the governing board of any county, with the consent of the sheriff, to extend the law enforcement authority of hospital police officers into any or all of the county's jurisdiction and to determine the circumstances in which this extension of authority may be granted."

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







# **HOUSE BILL 664:** Safer Communities

2015-2016 General Assembly

**Committee:** House Judiciary I

**Introduced by:** Reps. Brawley, McNeill, Saine

**Analysis of:** PCS to First Edition

H664-CSST-43

**Date:** April 27, 2015

Prepared by: R. Erika Churchill

Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 664 would authorize company police to enter into mutual aid type arrangements with municipal police forces and sheriffs.

CURRENT LAW: G.S. 74E-6(c) provides that company police officers have the authority to make arrests on real property owned or in the possession or control of their employer or of a person who has contracted with the employer to provide on-site company police services for the property. In addition, company police have the power of arrest while in hot pursuit of a person for an offense committed on the property described above.

There are currently three classifications of company police officers:

- Campus Police Officers
- Railroad Police Officers
- Special Police Officers

All company police officers, while in the performance of their duties of employment, have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on any of the following real property:

- 1. Real property owned by or in the possession and control of their employer.
- 2. Real property owned by or in the possession and control of a person who has contracted with the employer to provide on-site company police security personnel services for the property.
- 3. Any other real property while in continuous and immediate pursuit of a person for an offense committed upon property described in subdivisions (1) or (2) of this subsection.

Company police officers, if duly authorized by the superior officer in charge, have the authority to carry concealed weapons while on duty and also when off duty, provided that when off-duty the company police officer does not consume alcohol or an unlawful controlled substance, or such remains in the officer's system, while carrying the concealed weapon.

**BILL ANALYSIS:** In addition to the powers stated above, the PCS would authorize the person or entity that employs or contracts with a company police agency to enter into joint agreements with either the governing board of a municipality or county (with the consent of the Sheriff), to extend the law enforcement authority of company police officers into that governing board's jurisdiction and to determine the circumstances in which this extension of authority is granted.

**EFFECTIVE DATE:** Effective when it becomes law.

O. Walker Reagan Director



Research Division (919) 733-2578 •

# GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H

## **HOUSE BILL 664**

Short Title: Safer Communities. (Public)

Sponsors: Representatives Brawley, McNeill, and Saine (Primary Sponsors).

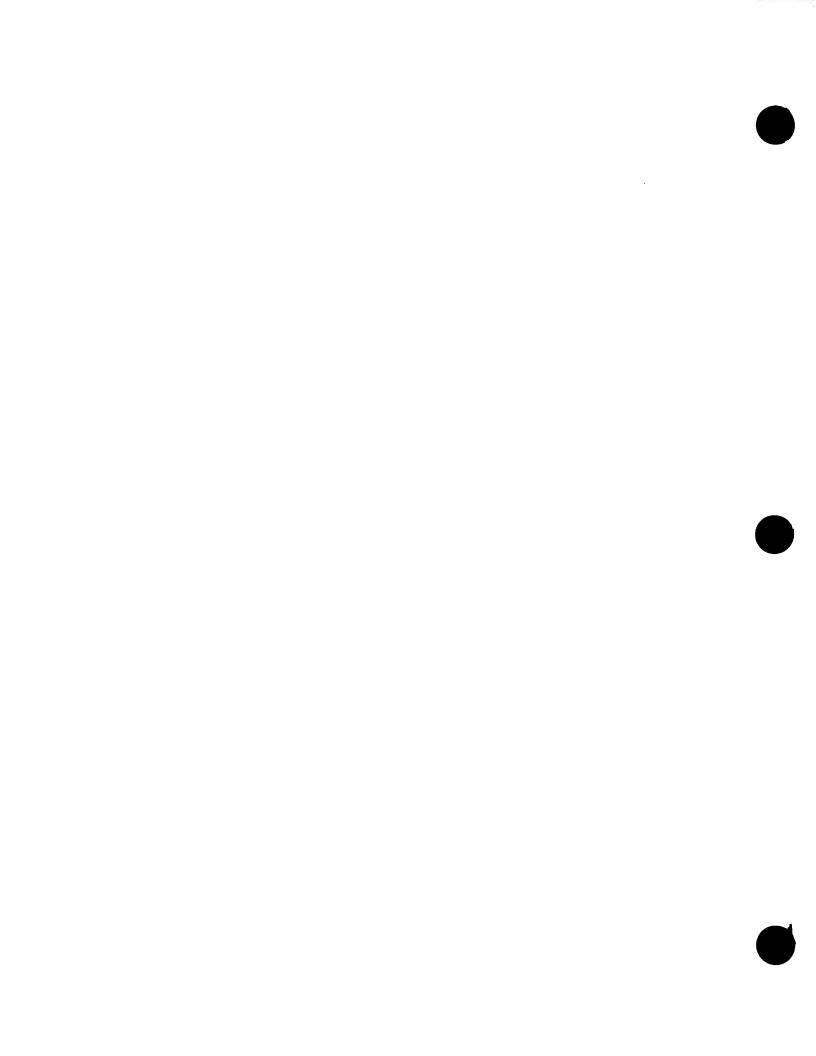
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary I.

# April 14, 2015

| 1  |                   | A BILL TO BE ENTITLED  |
|----|-------------------|--|
| 2  | AN ACT TO PR      | OVIDE FOR SAFER COMMUNITIES BY AUTHORIZING A PERSON OR                         |
| 3  | ENTITY EM         | IPLOYING OR CONTRACTING WITH A COMPANY POLICE AGENCY                           |
| 4  | TO ENTER          | INTO JOINT AGREEMENTS WITH MUNICIPALITIES AND COUNTIES                         |
| 5  | TO EXTEN          | D THE LAW ENFORCEMENT AUTHORITY OF COMPANY POLICE                              |
| 6  | OFFICERS.         |  |
| 7  | The General Ass   | embly of North Carolina enacts:  |
| 8  |                   | <b>FION 1.</b> G.S. 74E-6 is amended by adding a new subsection to read:       |
| 9  |                   | tional Authority In addition to the powers contained in subsection (c) of this |
| 10 | section, the pers | on or entity that employs or contracts with a company police agency may do     |
| 11 | the following:    |  |
| 12 | (1)               | Enter into joint agreements with the governing board of any municipality to    |
| 13 |                   | extend the law enforcement authority of company police officers into any or    |
| 14 |                   | all of the municipality's jurisdiction and to determine the circumstances in   |
| 15 |                   | which this extension of authority may be granted.                              |
| 16 | (2)               | Enter into joint agreements with the governing board of any county, with the   |
| 17 |                   | consent of the sheriff, to extend the law enforcement authority of company     |
| 18 |                   | police officers into any or all of the county's jurisdiction and to determine  |
| 19 |                   | the circumstances in which this extension of authority may be granted."        |
| 20 | SEC.              | FION 2 This act is effective when it becomes law                               |





## GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H D

## HOUSE BILL 678 PROPOSED COMMITTEE SUBSTITUTE H678-CSST-35 [v.7]

4/27/2015 8:17:33 PM

| Short Title: | Amend Innocence Commission Statutes. | ( | Public) |
|--------------|--------------------------------------|---|---------|
| Sponsors:    |                                      |   |         |
| Referred to: |                                      |   |         |
|              |                                      |   |         |

## April 14, 2015

A BILL TO BE ENTITLED
AN ACT TO MAKE VARIOUS AMENDMENTS TO THE LAWS REGARDING THE INNOCENCE COMMISSION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 15A-1475 reads as rewritten:

## "§ 15A-1475. Reports.

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- (a) The North Carolina Innocence Inquiry Commission shall report annually by February 1 of each year on its activities to the Joint Legislative Oversight Committee on Justice and Public Safety and the State Judicial Council. The report may contain recommendations of any needed legislative changes related to the activities of the Commission. The report shall recommend the funding needed by the Commission, the district attorneys, and the State Bureau of Investigation in order to meet their responsibilities under S.L. 2006-184. Recommendations concerning the district attorneys or the State Bureau of Investigation shall only be made after consultations with the North Carolina Conference of District Attorneys and the Attorney General.
- (b) The Commission shall submit to the Director of the Administrative Office of the Courts a semi-annual report containing detailed data on the operations, expenses, and needs of the Commission, and such other information as the Director of the Administrative Office of the Courts may require."

## **SECTION 2.** G.S. 15A-1467 is amended by adding a new subsection to read:

"(h) At least every six months, the Director shall provide a confidential case status update to the district attorney and defense counsel for each case in formal inquiry. If there is no defense counsel, the update shall be provided to the referring counsel."

#### SECTION 3. G.S. 15A-1468 reads as rewritten:

#### "§ 15A-1468. Commission proceedings.

- (a) At the completion of a formal inquiry, all relevant evidence shall be presented to the full Commission. Commission in a public hearing. As part of its proceedings, the Commission may conduct public hearings. The determination as to whether to conduct public hearings is solely in the discretion of the Commission. Any public hearing held in accordance with this section shall be subject to the Commission's rules of operation.
- (al) The Commission may compel the testimony of any witness. If a witness asserts his or her privilege against self-incrimination in a proceeding under this Article, the Commission chair, in the chair's judicial capacity, may order the witness to testify or produce other information if the chair first determines that the witness's testimony will likely be material to the investigation necessary to reach a correct factual determination in the case at hand. However, the Commission chair shall not order the witness to testify or produce other



information that would incriminate the witness in the prosecution of any offense other than an offense for which the witness is granted immunity under this subsection. The order shall prevent a prosecutor from using the compelled testimony, or evidence derived therefrom, to prosecute the witness for previous false statements made under oath by the witness in prior proceedings. The prosecutor has a right to be heard by the Commission chair prior to the chair issuing the order. Once granted, the immunity shall apply throughout all proceedings conducted pursuant to this Article. The limited immunity granted under this section shall not prohibit prosecution of statements made under oath that are unrelated to the Commission's formal inquiry, false statements made under oath during proceedings under this Article, or prosecution for any other crimes.

- (a2) The Innocence Inquiry Commission shall include, as part of its rules of operation, the holding of a prehearing conference to be held at least 10 days prior to any proceedings of the full Commission. Only the following persons shall be notified and authorized to attend the prehearing conference: the District Attorney, or the District Attorney's designee, of the district where the claimant was convicted of the felony upon which the claim of factual innocence is based; the claimant's counsel, if any; the Chair of the Commission; the Executive Director of the Commission; and any Commission staff designated by the Director. The District Attorney, or designee, shall be provided (i) an opportunity to inspect any evidence that may be presented to the Commission that has not previously been presented to any judicial officer or body and (ii) any information that he or she deems relevant to the proceedings. Prior At least 24 hours prior to any Commission proceedings, the District Attorney or designee is authorized to provide the Commission with a written statement, which shall be included in the record of the Commission's proceedings. Any statement included in the record shall be part of the Commission's record of proceedings pursuant to subsection (e) of this section statement, which shall be part of the record.
- (b) The Director shall use all due diligence to notify the victim at least 30 days prior to any proceedings of the full Commission held in regard to the victim's case. The Commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Article. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance of the proceedings of his or her intent to attend.
- (c) After hearing the evidence, the full Commission shall vote to establish further case disposition as provided by this subsection. All eight voting members of the Commission shall participate in that vote.

Except in cases where the convicted person entered and was convicted on a plea of guilty, if five or more of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction by filing with the clerk of court the opinion of the Commission with supporting findings of fact, as well as the record in support of such opinion, with service on the convicted person or the convicted person's counsel. If any, and the district attorney in noncapital cases and or service on both the district attorney and Attorney General in capital cases. In cases where the convicted person entered and was convicted on a plea of guilty, if all of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction.

If less than five of the eight voting members of the Commission, or in cases where the convicted person entered and was convicted on a guilty plea less than all of the eight voting members of the Commission, conclude there is sufficient evidence of factual innocence to merit judicial review, the Commission shall conclude there is insufficient evidence of factual innocence to merit judicial review. The Commission shall document that opinion, along with supporting findings of fact, and file those documents and supporting materials with the clerk of

Page 2 House Bill 678 H678-CSST-35 [v.7]

superior court in the district of original jurisdiction, with a copy to the <u>convicted person or the</u> <u>convicted person's counsel</u>, if any, the district attorney and the senior resident superior court judge.

The Director of the Commission shall use all due diligence to notify immediately the victim of the Commission's conclusion in a case.

- (d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed through formal inquiry or Commission proceedings shall be referred to the appropriate authority. Evidence favorable to the convicted person disclosed through formal inquiry or Commission proceedings shall be disclosed to the convicted person and the convicted person's counsel, if the convicted person has counsel.
- (e) All proceedings of the Commission shall be recorded and transcribed as part of the record. All Commission member votes shall be recorded in the record. All records and proceedings of the Commission are confidential and are exempt from public record and public meeting laws except that the The supporting records for the Commission's conclusion that there is sufficient evidence of factual innocence to merit judicial review, including all files and materials considered by the Commission and a full transcript of the hearing before the Commission, shall become public at the time of referral towhen filed with the superior court.court as required in subsection (c) of this section. Commission records for conclusions of insufficient evidence of factual innocence to merit judicial review shall remain confidential, except as provided in subsection (d) of this section.
- (f) Except as otherwise provided in this section, all files and records not filed with the clerk of superior court or presented at the hearings are confidential and exempt from the public record. Upon completion of the formal inquiry, the Commission shall make available to the district attorney and defense counsel a copy of the entire file, including a full transcript of the hearing before the Commission. That file shall remain confidential and may not be released by the district attorney or defense counsel until filed with the clerk of superior court.
- (g) With respect to the evidence presented to the three judge panel, the district attorney and defense counsel may determine which evidence, if any, will be presented to the Commission."

**SECTION 4.** G.S. 15A-1471 is amended by adding a new subsection to read:

"(e) Upon request, the Commission shall have the authority to search any location where files or evidence are reasonably likely to be stored relating to a claim subject to the Commission's inquiry. The Commission shall provide the head of the agency to be searched, or his or her designee, with proposed search procedures in advance of the search. The Commission will make reasonable efforts to accommodate the agency without compromising the validity of the search. The agency shall permit the Commission to conduct its search within two weeks of the search procedure being provided or at a mutually agreed upon time."

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

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# **HOUSE BILL 678: Amend Innocence Commission Statutes**

2015-2016 General Assembly

Committee:

Judiciary I, if favorable, Rules, Calendar, and Date:

April 27, 2015

Operations of the House

Introduced by:

Reps. Glazier, Daughtry, Stam, Reives

Prepared by: R. Erika Churchill

Committee Counsel

Analysis of:

PCS to First Edition

H678-CSST-35

SUMMARY: The proposed committee substitute for House Bill 678 would make various changes to the operations of the Innocence Commission.

## BILL ANALYSIS: The PCS would do all of the following:

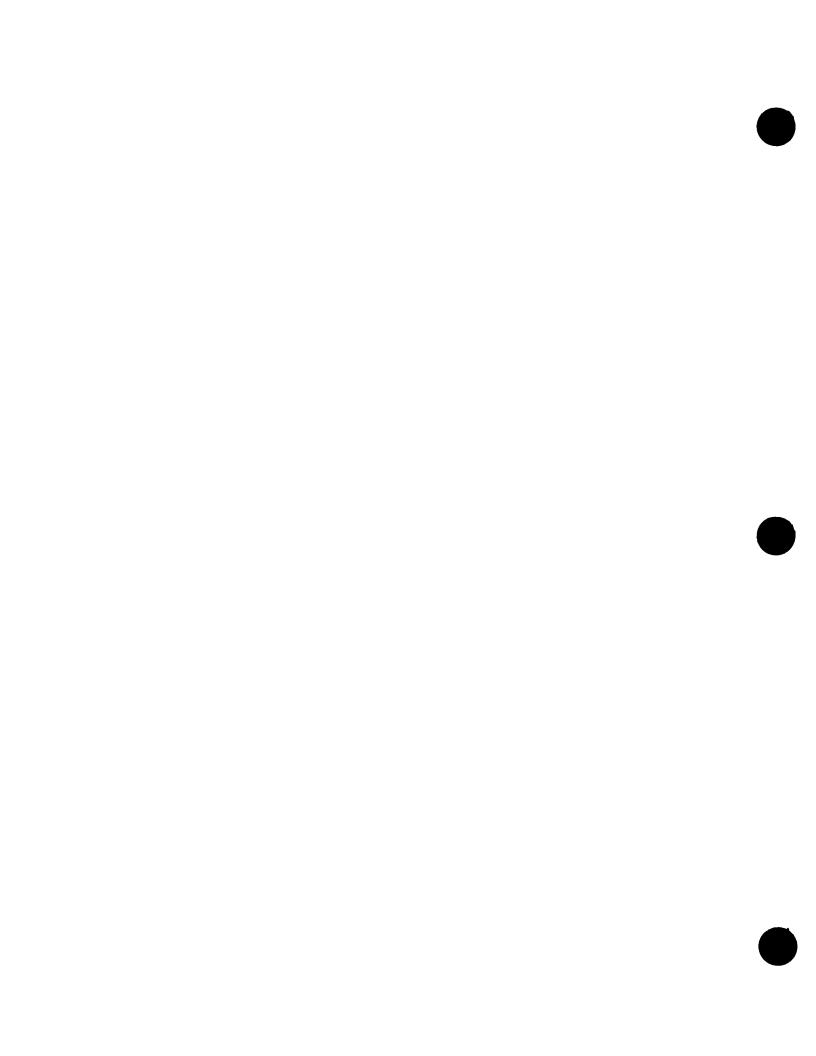
- > Require the Innocence Commission to submit semi-annual reports to the Director of the Administrative Office of the Courts. (Section 1)
- ➤ Require the Director, at least every 6 months, to provide a confidential case status update to the district attorney and defense counsel for each case in formal inquiry. If there is no defense counsel, the update is to be provided to the referring counsel. (Section 2)
- ➤ Clarifies that the district attorney must be given an opportunity to provide the Commission with a written statement before any Commission proceeding. The District Attorney may, at least 24 hours in advance of the Commission hearing, provide his or her position to the Commission, and it becomes part of the record. (Section 3)
- ➤ Requires a full copy of the Commission file, including a full transcript to be provided to the district attorney and defense counsel. That file would be confidential, and may not be released by the district attorney or defense counsel until it is filed with the clerk of superior court. (Section 3)
- ➤ Clarifies that the district attorney and defense counsel determine what is to be presented as evidence to the three judge panel. (Section 3)
- Authorizes the Commission to conduct a search of any location where files or evidence are reasonably likely to be stored relating to a claim under inquiry. The Commission must provide advance notice of the search, and the agency must permit the search within 2 weeks or at an agreed upon time. (Section 4)

EFFECTIVE DATE: Effective when it becomes law.





Research Division (919) 733-2578



## GENERAL ASSEMBLY OF NORTH CAROLINA **SESSION 2015**

H

#### **HOUSE BILL 678**

(Public)

Sponsors:

Short Title:

Representatives Glazier, Daughtry, Stam, and Reives (Primary Sponsors).

Amend Innocence Commission Statutes.

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For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to:

Judiciary I, if favorable, Rules, Calendar, and Operations of the House.

## April 14, 2015

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## A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS AMENDMENTS TO THE LAWS REGARDING THE INNOCENCE COMMISSION.

The General Assembly of North Carolina enacts:

from any source."

SECTION 1. G.S. 15A-1465(a) reads as rewritten:

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The Commission shall employ a Director. Director who shall report to the Director of the Administrative Office of the Courts. The Director shall be an attorney licensed to practice in North Carolina at the time of appointment and at all times during service as Director. The Director shall assist the Commission in developing rules and standards for cases accepted for review, coordinate investigation of cases accepted for review, maintain records for all case investigations, prepare reports outlining Commission investigations and recommendations to the trial court, and apply for and accept on behalf of the Commission any funds that may become available from government grants, private gifts, donations, or devises

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SECTION 2. G.S. 15A-1466 is amended by adding a new subdivision to read:

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To submit to the Director of the Administrative Office of the Courts an annual report containing detailed data on the operations, expenses, and needs of the Commission, and such other information as the Director of the Administrative Office of the Courts may require."

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SECTION 3. G.S. 15A-1467 reads as rewritten:

21 22 "§ 15A-1467. Claims of innocence; waiver of convicted person's procedural safeguards and privileges; formal inquiry; notification of the crime victim.

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If formal inquiry is granted, the Director shall use all due diligence to contact all (c1) codefendants associated with the case. Each codefendant will be given an opportunity to have his or her case simultaneously investigated with the pending claim. If a codefendant declines the opportunity to have his or her case investigated at that time, the codefendant's case shall be barred from future investigation by the Commission.

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At least every six months, the Director shall provide a confidential case status (h) update, which includes a summary of the actions taken since the last update, to the district attorney, defense counsel, and referring counsel, if any, for each case in formal inquiry."

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SECTION 4. G.S. 15A-1468 reads as rewritten:

"§ 15A-1468. Commission proceedings.



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- (a) At the completion of a formal inquiry, all relevant evidence shall be presented to the full Commission. As part of its proceedings, the Commission may conduct public hearings. The determination as to whether to conduct public hearings is solely in the discretion of the Commission. Any public hearing Commission in a public hearing held in accordance with this section shall be subject to the Commission's rules of operation.
- The Commission may compel the testimony of any witness. If a witness asserts his or her privilege against self-incrimination in a proceeding under this Article, the Commission chair, in the chair's judicial capacity, may order the witness to testify or produce other information if the chair first determines that the witness's testimony will likely be material to the investigation necessary to reach a correct factual determination in the case at hand. However, the Commission chair shall not order the witness to testify or produce other information that would incriminate the witness in the prosecution of any offense other than an offense for which the witness is granted immunity under this subsection. The order shall prevent a prosecutor from using the compelled testimony, or evidence derived therefrom, to prosecute the witness for previous false statements made under oath by the witness in prior proceedings. The prosecutor has a right to be heard by the Commission chair prior to the chair issuing the order. Once granted, the immunity shall apply throughout all proceedings conducted pursuant to this Article. The limited immunity granted under this section shall not prohibit prosecution of statements made under oath that are unrelated to the Commission's formal inquiry, false statements made under oath during proceedings under this Article, or prosecution for any other crimes.
- (a2) The Innocence Inquiry Commission shall include, as part of its rules of operation, the holding of a prehearing conference to be held at least 10 days prior to any proceedings of the full Commission. Only the following persons shall be notified and authorized to attend the prehearing conference: the District Attorney, or the District Attorney's designee, of the district where the claimant was convicted of the felony upon which the claim of factual innocence is based; the claimant's counsel, if any; the Chair of the Commission; the Executive Director of the Commission; and any Commission staff designated by the Director. The District Attorney, or designee, shall be provided (i) an opportunity to inspect any evidence that may be presented to the Commission that has not previously been presented to any judicial officer or body and (ii) any information that he or she deems relevant to the proceedings. Prior-At least 24 hours prior to any Commission proceedings, the District Attorney or designee is authorized to provide the Commission with a written statement, which shall be included in the record of the Commission's proceedings. Any statement included in the record shall be part of the Commission's record of proceedings pursuant to subsection (e) of this section statement conveying his or her position on the case.
- (b) The Director shall use all due diligence to notify the victim at least 30 days prior to any proceedings of the full Commission held in regard to the victim's case. The Commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Article. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance of the proceedings of his or her intent to attend.
- (c) After hearing the evidence, the full Commission shall vote to establish further case disposition as provided by this subsection. All eight voting members of the Commission shall participate in that vote.

Except in cases where the convicted person entered and was convicted on a plea of guilty, if five or more of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction by filing with the clerk of court the opinion of the Commission with supporting findings of fact, as well as the record in support of such opinion, with service on the convicted person or the convicted person's counsel,

Page 2 H678 [Edition 1]

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if any, and the district attorney in noncapital cases and or service on both the district attorney and Attorney General in capital cases. In cases where the convicted person entered and was convicted on a plea of guilty, if all of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction.

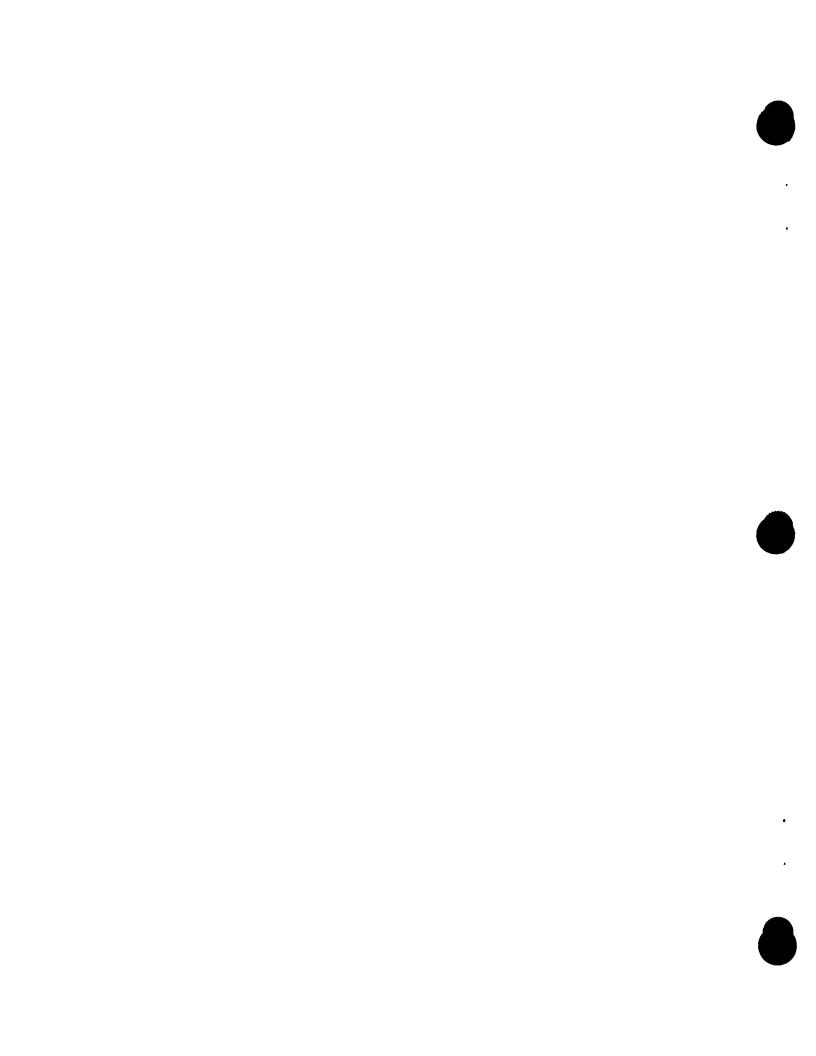
If less than five of the eight voting members of the Commission, or in cases where the convicted person entered and was convicted on a guilty plea less than all of the eight voting members of the Commission, conclude there is sufficient evidence of factual innocence to merit judicial review, the Commission shall conclude there is insufficient evidence of factual innocence to merit judicial review. The Commission shall document that opinion, along with supporting findings of fact, and file those documents and supporting materials the opinion with the clerk of superior court in the district of original jurisdiction, with a copy to the convicted person or the convicted person's counsel, if any, the district attorney and the senior resident superior court judge.

The Director of the Commission shall use all due diligence to notify immediately the victim of the Commission's conclusion in a case.

- (d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed through formal inquiry or Commission proceedings shall be referred to the appropriate authority. Evidence favorable to the convicted person disclosed through formal inquiry or Commission proceedings shall be disclosed to the convicted person and the convicted person's counsel, if the convicted person has counsel.
- All proceedings of the Commission shall be recorded and transcribed as part of the record. All Commission member votes shall be recorded in the record. All records and proceedings of the Commission are confidential and are exempt from public record and public meeting laws except that the supporting records for the Commission's conclusion that there is sufficient evidence of factual innocence to merit judicial review, including all files and materials considered by the Commission and a full transcript of the hearing before the Commission, One copy of the full Commission file, including a full transcript of the hearing before the Commission, but excluding all documents that are protected through a protective order, shall be disclosed to the parties immediately after completion of formal inquiry or immediately upon becoming available in an uncertified form. A protective order shall only be issued if the district attorney and the convicted person or the convicted person's counsel have been given an opportunity to be heard. All documents shall become public record when they are entered into evidence in the superior court by either of the parties. at the time of referral to the superior court. Commission records for conclusions of insufficient evidence of factual innocence to merit judicial review shall remain confidential, except as provided in subsection (d) of this section."

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

H678 [Edition 1]



## NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

|                                  | S. B. No                        | Amendment No.                           |
|----------------------------------|---------------------------------|---|
|                                  | COMMITTEE SUBSTITUTE            | (to be filled in by<br>Principal Clerk) |
|                                  |                                 |   |
|                                  | Rep.) Sen.)                     |   |
|                                  |                                 |   |
| 1                                | moves to amend the bill on page | , line23                                |
| 2                                | ( ) WHICH CHANGES THE TITLE     | incluse not constitution "Commiss       |
| 3                                | by deleting tormal              | inquiry" and substituting "Commiss      |
| 4                                | nearing ;                       |   |
| 5                                |                                 |   |
| 6                                |                                 |   |
| 7                                | and on page 3,                  | line 29, by rewriting that              |
|                                  | line to read                    |   |
| 9                                |                                 | , |
|                                  |                                 |   |
| 10                               | "Three judge                    | panel.                                  |
|                                  | "three judge                    | panel.                                  |
| 11                               |                                 | panel.".                                |
| 11<br>12                         |                                 | panel.                                  |
| 11<br>12<br>13                   |                                 | panel.                                  |
| 11<br>12<br>13<br>14             |                                 | panel.                                  |
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PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

D H

#### **HOUSE BILL 774** PROPOSED COMMITTEE SUBSTITUTE H774-CSST-33 [v.4]

4/27/2015 6:37:17 PM

| Short Title: | Restoring Proper Justice Act. | (Public) |
|--------------|-------------------------------|----------|
| Sponsors:    |                               |          |
| Referred to: |                               |          |

#### April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REQUIRING THE PRESENCE OF A LICENSED PHYSICIAN AT THE EXECUTION OF A DEATH SENTENCE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 15-190 reads as rewritten:

Some guard or guards or other reliable person or persons to be named and designated by "(a) 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 a licensed physician, or a medical professional other than a physician, to monitor the injection of the required lethal substances and certify the fact of the execution. If a licensed physician is not present at the execution, then a licensed physician shall be present on the premises and available to examine the body after the execution and pronounce the person dead. 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.

For purposes of this section, a "medical professional other than a physician" means a physician assistant, nurse practitioner, registered nurse, emergency medical technician or emergency medical technician-paramedic who is licensed or credentialed by the licensing board, agency, or organization responsible for licensing or credentialing that profession."

**SECTION 2.** G.S. 15-192 reads as rewritten:

"\$ 15-192. Certificate filed with clerk.

The warden, together with the surgeon or physician of the penitentiary, licensed physician who was present on the premises to pronounce death as required by G.S. 15-190, shall certify the fact of the execution of the condemned person, convict or felon to the clerk of the superior



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|    | General Assembly of North Carolina  | Session 2015        |
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| 1  | court in which such sentence was pronounced, and the clerk shall file such co | ertificate with the |
| 2  | papers of the case and enter the same upon the records thereof."              |                     |
| 3  | <b>SECTION 3.</b> G.S. 150B-1(d)(6) reads as rewritten:                       |                     |
| 4  | "(6) The Division of Adult Correction of the Department of Pu                 | ablic Safety, with  |
| 5  | respect to matters relating to executions under Article 19                    | of Chapter 15 of    |
| 6  | the General Statutes and matters relating solely to persons                   |                     |
| 7  | under its supervision, including prisoners, probationers, and                 | parolees."          |
| 8  | <b>SECTION 4.</b> G.S. 150B-1(e) is amended by adding a new subdivi           | sion to read:       |
| 9  | "(22) The Division of Adult Correction of the Department of Pu                | ublic Safety, with  |
| 10 | respect to matter relating to executions under Article 19 of                  | Chapter 15 of the   |
| 11 | General Statutes."  |                     |
| 12 | <b>SECTION 5.</b> This act is effective when it becomes law.                  |                     |

Page 2 House Bill 774 H774-CSST-33 [v.4]



## **HOUSE BILL 774: Restoring Proper Justice Act**

2015-2016 General Assembly

Committee:

House Judiciary I **Introduced by:** Rep. Daughtry

PCS to First Edition Analysis of: H774-CSST-33

April 26, 2015 Date:

Prepared by: R. Erika Churchill and

Jennifer Bedford, Committee Counsel

SUMMARY: The Proposed Committee Substitute for House Bill 774 would authorize a medical professional other than a physician to monitor lethal injection for death penalty executions and clarify that the execution is not subject to rulemaking.

CURRENT LAW: Currently, a licensed physician must be present at an execution. Together, the warden and the surgeon or physician of the penitentiary are to certify the fact of the execution. G.S. 15-190. State licensing boards of health care professionals are prohibited from disciplining any licensed health care professional who renders assistance in an execution. G.S. 15-188.1.

With respect to rulemaking, G.S. 150B-1 currently grants an exemption from all rulemaking to the Department of Public Safety for matters relating solely to persons in its custody or under its supervision. including prisoners, probationers, and parolees.

BILL ANALYSIS: The PCS would allow medical professionals, other than physicians, to monitor the execution. The PCS would specify that if a physician is not present at the execution, a physician must be present on the premises and available to examine the body after execution in order to pronounce the person dead.

"Medical professional other than a physician" would be defined to include a licensed or credentialed physician assistant, nurse practitioner, registered nurse, emergency medical technician or emergency medical technician-paramedic.

The PCS would require that the licensed physician present on the premises at the time of the execution to pronounce death certify the fact of the execution to the applicable clerk of superior court.

The PCS would further clarify that the execution process is not subject to the rulemaking process in Article 2A of Chapter 150B, and grant an exemption from the contested case process for that purpose.

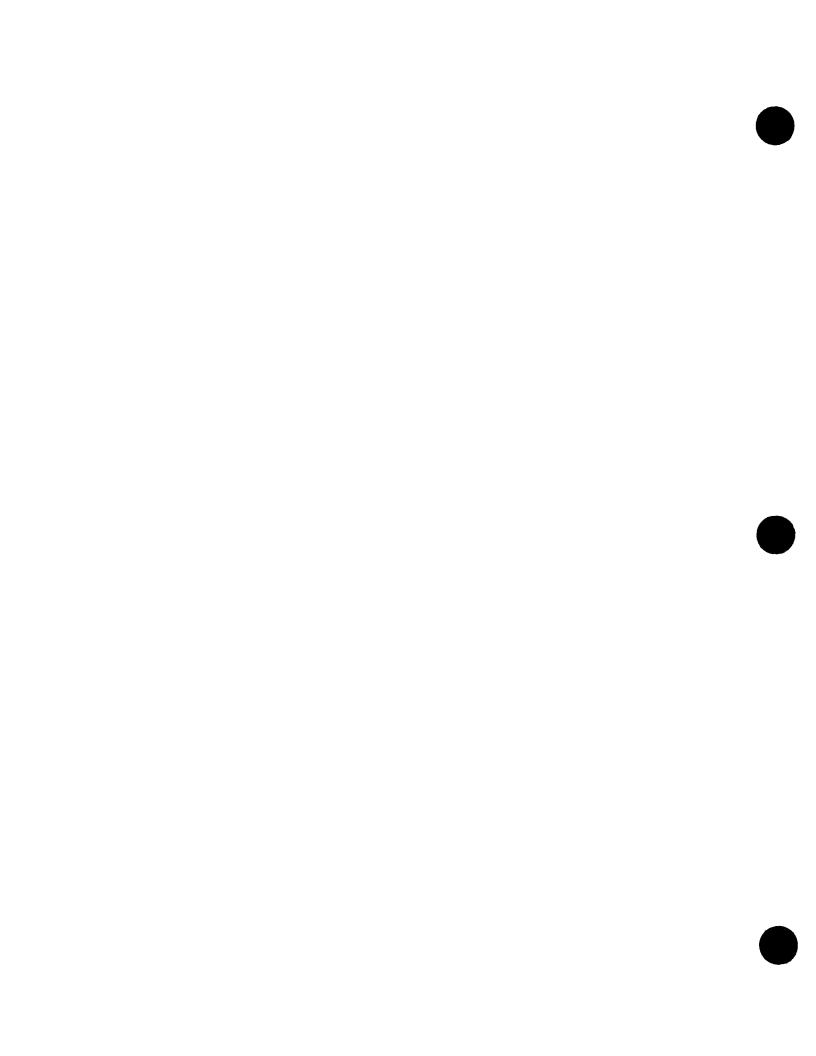
**EFFECTIVE DATE:** Effective when it becomes law.

BACKGROUND: The American Medical Association Code of Medical Ethics Opinion 2.06 states that a physician should not participate in a legally authorized execution but that certifying death, provided that the condemned has been declared dead by another person, does not constitute physician participation in an execution.

O. Walker Reagan Director



Research Division (919) 733-2578



#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H

#### **HOUSE BILL 774**

| Short Title: | Restoring Proper Justice Act. (Public)  |
|--------------|---|
| Sponsors:    | Representative Daughtry (Primary Sponsor).  |
|              | For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site. |
| Referred to: | Judiciary I.  |

#### April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REQUIRING THE PRESENCE OF A LICENSED PHYSICIAN AT THE EXECUTION OF A DEATH SENTENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15-190 reads as rewritten:

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 a licensed physician, physician, or a medical professional other than a physician as defined in this subsection, to monitor the injection of the required lethal substances and certify the fact of the execution. If a licensed physician is not present at the execution, then a licensed physician shall be present on the premises and available to examine the body after the execution and pronounce the person dead. 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.

For purposes of this Article, a "medical professional other than a physician" means a physician assistant, advanced degree nurse, registered nurse, or emergency medical technician-paramedic who is licensed, certified, or credentialed by the licensing board, agency, or organization responsible for licensing, certifying, or credentialing that profession."

SECTION 2. G.S. 15-192 reads as rewritten:

"§ 15-192. Certificate filed with clerk.



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#### General Assembly of North Carolina

Session 2015

6

The warden, together with the surgeon or physician of the penitentiary, licensed physician who was present on the premises to pronounce death as required by G.S. 15-190, shall certify the fact of the execution of the condemned person, convict or felon to the clerk of the superior court in which such sentence was pronounced, and the clerk shall file such certificate with the papers of the case and enter the same upon the records thereof."

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

Page 2 H774 [Edition 1]

#### NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

#### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

#### FAVORABLE COM SUB, UNFAVORABLE ORIGINAL BILL

HB 562 Amend Firearm Laws.

Draft Number:

H562-PCS20341-SA-54

Serial Referral:

Recommended Referral: None Long Title Amended: Yes

Floor Manager:

Schaffer

None

HB 774

Restoring Proper Justice Act.

Draft Number:

H774-PCS10368-ST-33

Serial Referral:

None

Recommended Referral: None Long Title Amended:

No

Floor Manager:

Daughtry

#### FAVORABLE COM SUB, UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB 678

Amend Innocence Commission Statutes.

Draft Number:

H678-PCS40440-ST-35

Serial Role vale

RULES, CALENDAR, AND OPERATIONS OF THE HOUS

Recommended Referral:

Long Title Amended:

Floor Manager:

No Glazier

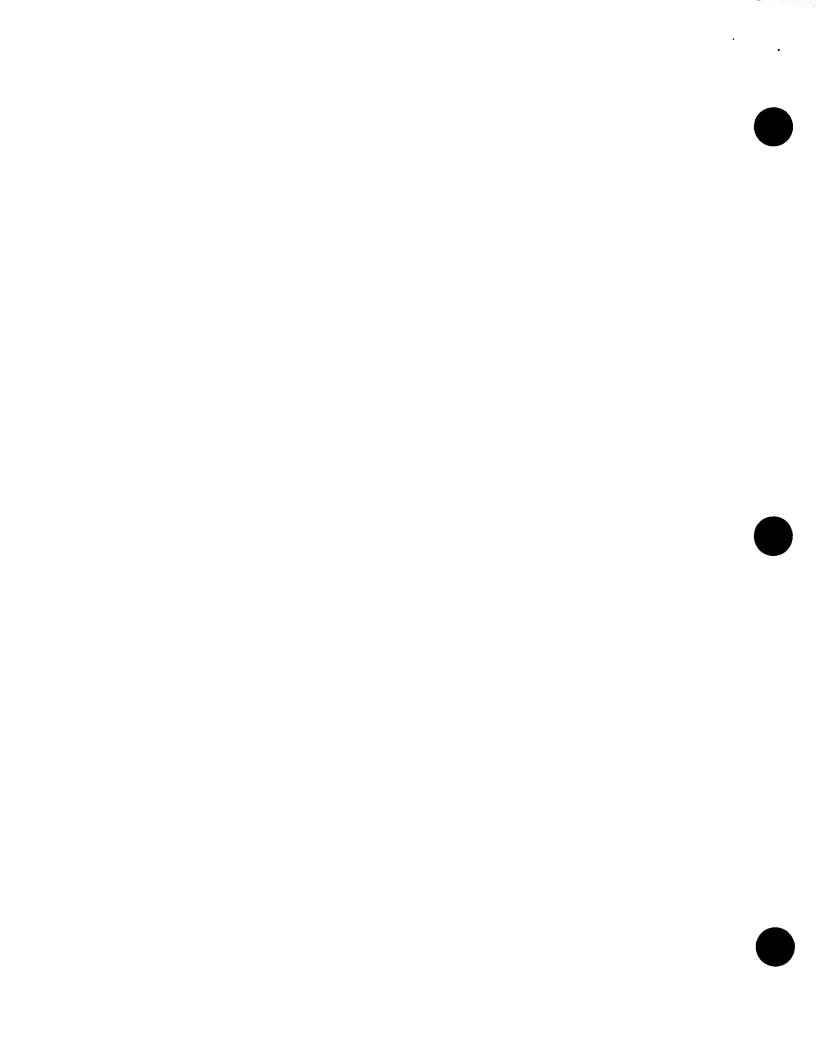
None

**TOTAL REPORTED: 3** 



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| Date: 4-28-15  |
|--|
| Bill Number $\underline{H562}$ PCS $\underline{H562}$ - CSSA - 54 [V, 1] Motion to be before the committee by $\underline{\text{Mardister}}$ |
| Rep Schaffer explained the bill. I went though the Discussion on the Bill YES or NO PCS  |
| Rep motioned for: Favorable Report Adoption  |
| Unfavorable ReportUnfavorable to original bill, fav to PCS rolled unto comNo vote page 2   |
| possell Amendments: 1 remove live 36-37  possell Tom West - support of Rep. Martins amendment  |
| Serial referral to:  |
| Speakers: Steinling - pasible amenament.   |
| Handouts:  |
| Martin p.13 times 35-39 Jackson  leveland-patient doctor   |
| leveland-patient doctor  |



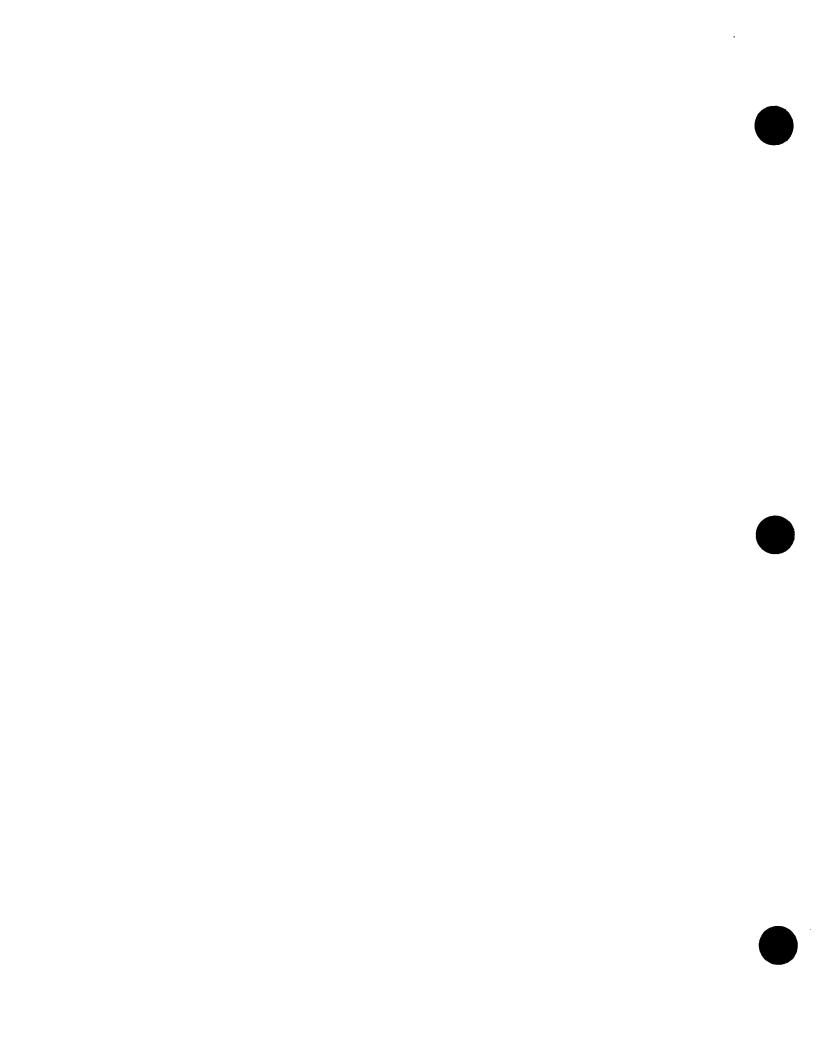
| Date: 4-28-15   |
|---|
| Bill Number + Local   |
| PCS_H6664-CSST- 43 [V,2]  |
| Motion to be before the committee by  |
| Rep Bul Brawley explained the bill.   |
| Discussion on the Bill YES or NO do not   |
| Rep_520ka motioned for: pass  |
| Favorable Report Adoption   |
| Unfavorable Report Unfavorable to original bill, fav to PCS   |
| No vote   |
| Amendments: :   |
| Serial referral to:   |
| Speakers:  Vaushur - standard of training, Scope of training, Co pour office you?   |
| Handouts: Valence - Standard of training, Scope of power of the power |
| Roy daylor - NC Police Essecration  |
| Martin - joint agreements<br>Fred Bagget - NC ASSOC OL<br>Chiefs of Police  |
| McNull - supports cheefs of Police  McNull - supports identified.  Burs - repules identified.  Hall - has there been a study.   |
| McNell - repules identified.  |
| Bur - has there been a study.   |

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|   | Date: 4-28-15   |
|---|---|
| Bill Number <u>H678</u><br>PCS 17678-CSST- 35 LV. |   |
| Motion to be before the committee by              | 1   |
| Rep Glazier explained th                          | ne bill.  |
| Discussion on the Bill YES or NO                  |   |
| Rep_Butto Martin motioned for                     | or:   |
| Favorable Report F                                | Adoption  |
| Unfavorable Report                                | avorable to original bill, fav to PCS proved into Commutter suit- |
| No vote technica                                  | 1   |
| pussed - Amendments: 2 amendments                 | ents p.3 line 29  |
| Serial referral to:                               |   |
| Speakers: Kerelia montgomery &<br>Jenniler Thomps | flerd   |
| Handouts:   | en - rape viction   |

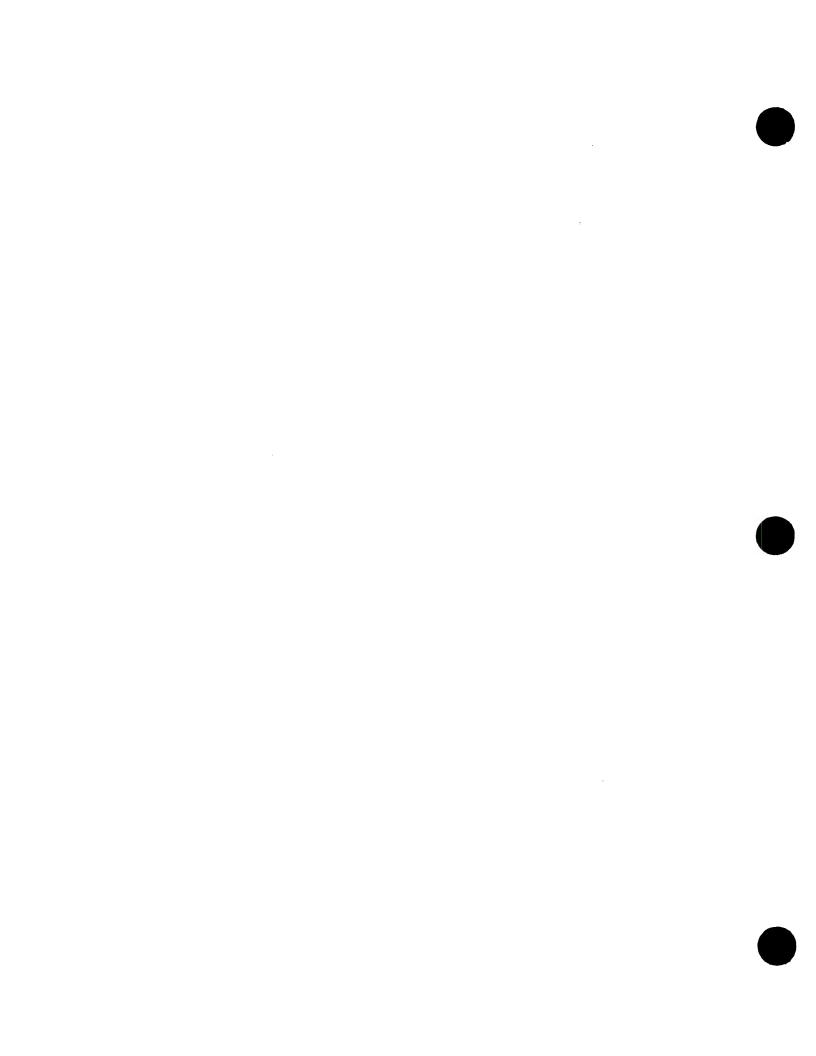
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|  | Date: 4-                      | -28-15                  |
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| Bill Number H774  PCS H774 - CSST - 33  Motion to be before the committee by | 3 [V.4]<br>Robinson           |                         |
| Rep  | Daughtruf explained the bill. | Half<br>Enka Chuichel   |
| Rep  |                               | iginal bill, fav to PCS |
| Serial referral to:  |                               |                         |
| Speakers:  |                               |                         |
| Handouts: Hall -<br>Steinburg<br>Hall  | opposed to removing o         | loctor                  |



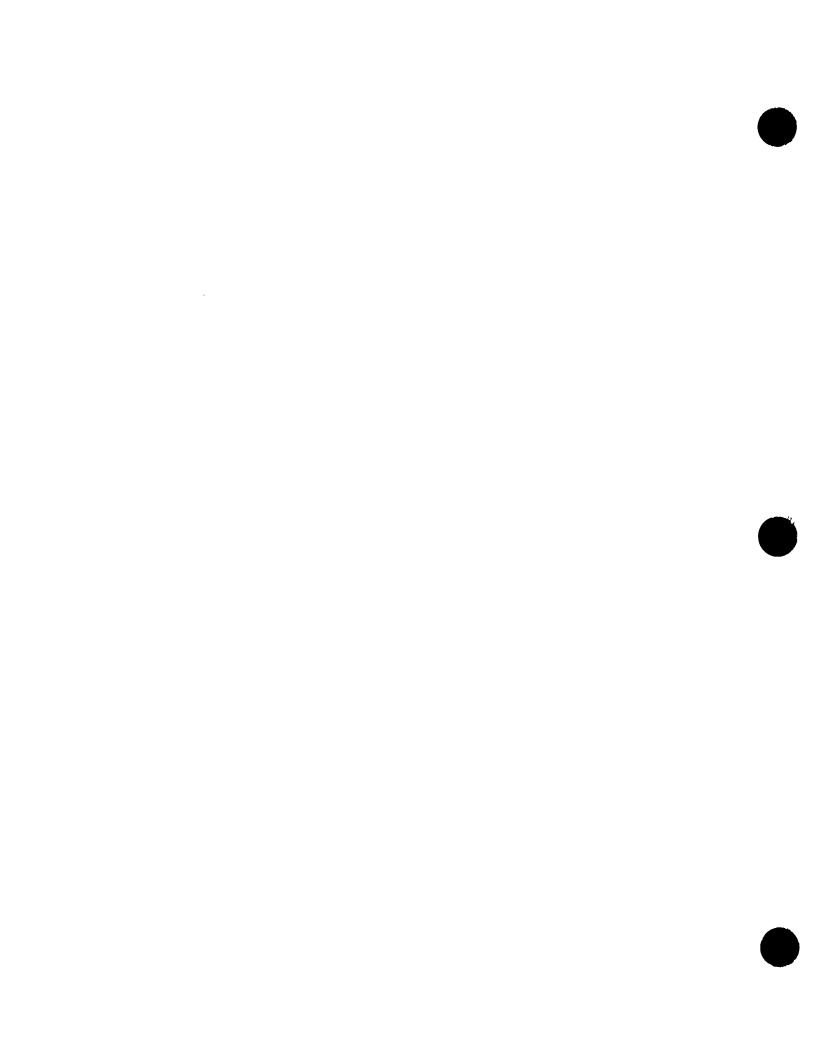
House Staff

| Committee: House Judiciary    | 1 Date: Z8 APR 1 5  |
|-------------------------------|---------------------|
| Pages                         |                     |
| 1. Name <u>Cassidy</u> Ma     | osley               |
| County IREDELL                | Sponsor John FRALEY |
| 2. Name JULIA WAK             | KEMAN               |
| County Mecklen burg           | Sponsor John FRALEY |
| 3. Name CAMDEN HUGH           | 45                  |
| County CRAVEN                 | Sponsor_John BELL   |
| 4. Name                       |                     |
| County                        | _ Sponsor           |
| 5. Name                       |                     |
| County                        | Sponsor             |
| Sergeant-at-Arms  BARR ( MOOK |                     |
| BILLY JONE!<br>B.H. POWELL    | 5                   |
|                               |                     |



## Guest Speaker Signup

| Committee Judierapy 1      | Date | 4/28 |
|----------------------------|------|------|
|                            |      |      |
| 1. Roy Taylor 664          |      |      |
| 2. Jennifer Thompson       | 1078 |      |
| 3. Becky Ceartas           | 562  |      |
| 4. Jon West                | 562  |      |
| 5. Jonathan Keppler        | 562  |      |
| 6. Kendra Montgomery-Blinn | 678  |      |
| 7                          |      |      |
| 8                          |      |      |
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#### VISITOR REGISTRATION SHEET

Judiciae, 1
Name of Committee

Date

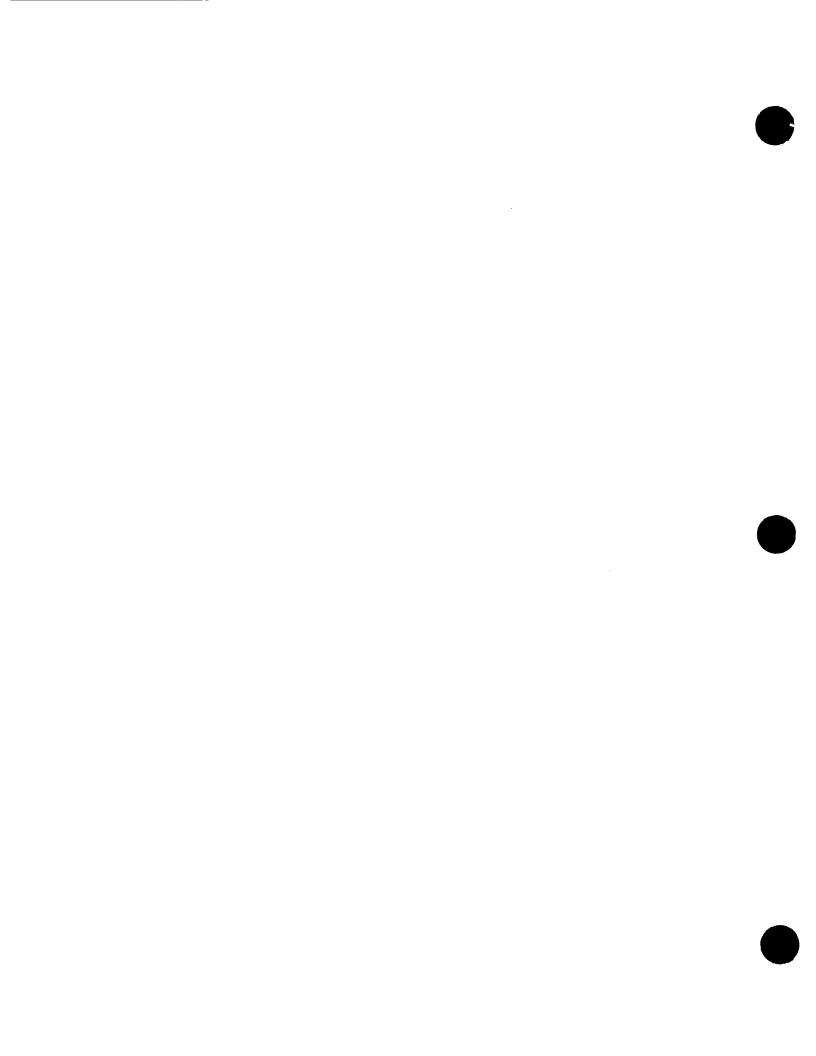
4/28

## VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

#### NAME

#### FIRM OR AGENCY AND ADDRESS

| Christa Mann     | AKCAI              |
|------------------|--------------------|
| Jeff Ran         | GRNC               |
| Ely Portillo     | charlotte observer |
| Butea Gunnela    | Nc Ber             |
| Paul Valora      | Gress Rosts NC     |
| Joseffe Chmiel   | GRUC               |
| ANON STEVENS     | GRNC               |
| Paul Indonisi    | GRNE               |
| Fronthan Kappler | anc cat            |
| Frank Brinkley   | NCSU Poliu Dept    |
| Dovid Kelly      | Nesu Police Dept   |
| David . Wiss     | CDPL               |
| Doug Miskew      | PSG                |



## VISITOR REGISTRATION SHEET

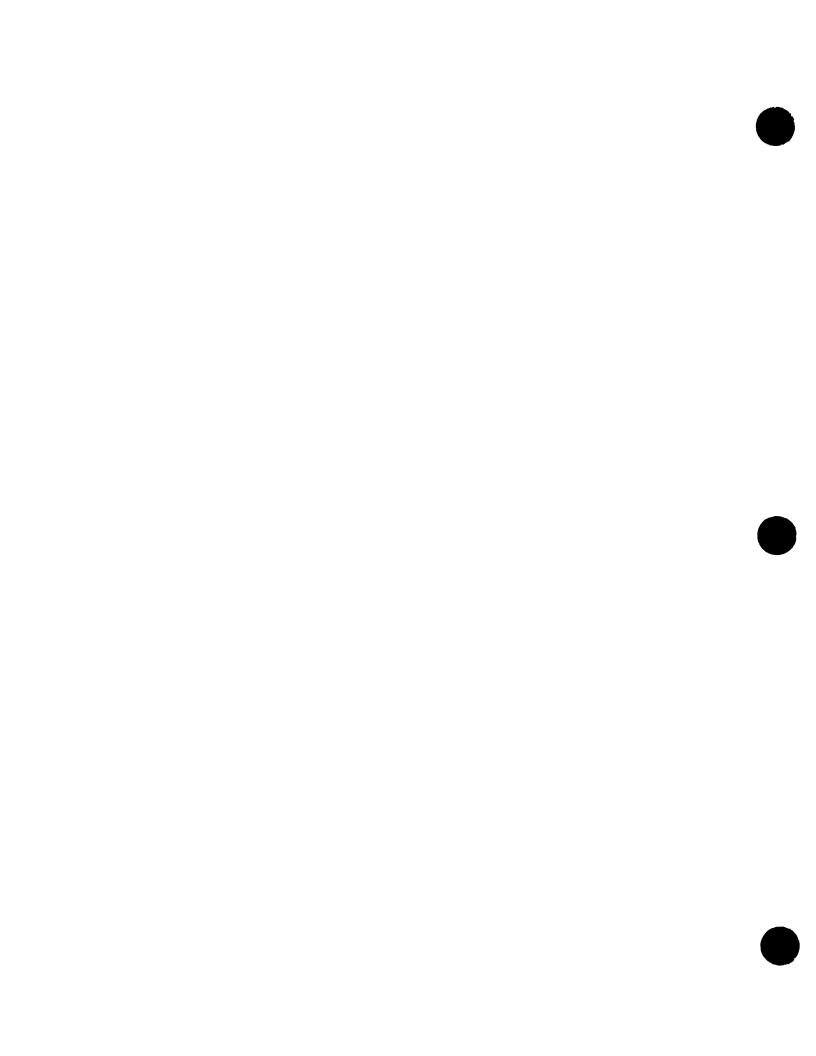
Name of Committee

Date

## VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|------|----------------------------|
|      |                            |

| Jake Kornegal     | UNC CH Police                    |
|-------------------|----------------------------------|
| Becky Cearter     | NC6V                             |
| Jen Ferrell       | mon Thoms Donal Attain           |
| Joy Hodes         | NOBALCS                          |
| Tina Hlabse       | NCDA8CS                          |
| Kaaren Halleman   | Moms Demand Jetion for Gun Sense |
| Peg Down          | Conf of DAS                      |
| Kimbaly N Overton | Conf of District Attorney        |
| Christy Agner     | D03                              |
| Vyrue Combon      | Momes DEMANUP ACTION FOR GUN SEN |
|                   |                                  |



Corrected #1: Adding HB 607

# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

| You are hereby notifie | d that the House | Committee on Judiciary | I will meet | as follows |
|------------------------|------------------|------------------------|-------------|------------|
|------------------------|------------------|------------------------|-------------|------------|

**DAY & DATE:** Wednesday, April 29, 2015

TIME: 12:30 PM LOCATION: 415 LOB

The following bills will be considered:

| BILL NO. | SHORT TITLE                       | SPONSOR                  |
|----------|-----------------------------------|--------------------------|
| HB 924   | Highway Safety/Salary Changes.    | Representative Burr      |
|          |                                   | Representative Hager     |
|          |                                   | Representative Goodman   |
| HB 607   | Allow Protected Consumer Security | Representative Meyer     |
|          | Freezes.                          | Representative Hardister |
|          |                                   | -                        |

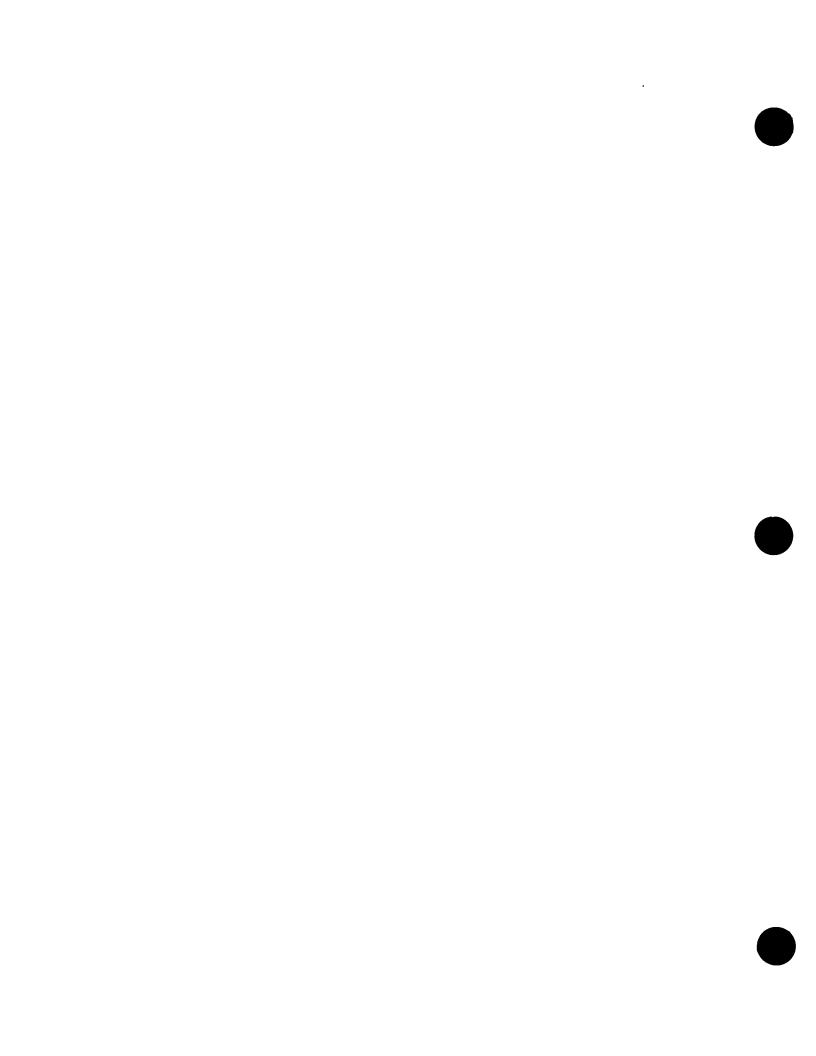
Respectfully,

Representative N. Leo Daughtry, Chair

| I hereby certify this notice was fi Wednesday, April 29, 2015. | led by the committee assistant at the following offices at 8:01 A | M on |
|--|---|------|
| Principal Clerk  |   |      |

Jan Copeland (Committee Assistant)

Reading Clerk – House Chamber



## House Committee on Judiciary I Wednesday, April 29, 2015, 12:30 PM 415 Legislative Office Building

#### **AGENDA**

#### Welcome and Opening Remarks

#### **Introduction of Pages**

#### **Bills**

| BILL NO. | SHORT TITLE                       | SPONSOR                  |
|----------|-----------------------------------|--------------------------|
| HB 924   | Highway Safety/Salary Changes.    | Representative Burr      |
|          |                                   | Representative Hager     |
|          |                                   | Representative Goodman   |
| HB 607   | Allow Protected Consumer Security | Representative Meyer     |
|          | Freezes.                          | Representative Hardister |

#### **Presentations**

**Other Business** 

Adjournment

#### House Committee on Judiciary I Wednesday, April 29, 2015 at 12:30 PM Room 415 of the Legislative Office Building

#### **MINUTES**

The House Committee on Judiciary I met at 12:30 PM on April 29, 2015 in Room 415 of the Legislative Office Building. Representatives Daughtry, Burr, Arp, Hardister, Howard, Martin, McNeill, Steinburg, and Szoka attended.

Representative N. Leo Daughtry - Chair, presided.

The following bills were considered:

HB 924 Highway Safety/Salary Changes. (Representatives Burr, Hager, Goodman) – favorable committee substitute, unfavorable original bill

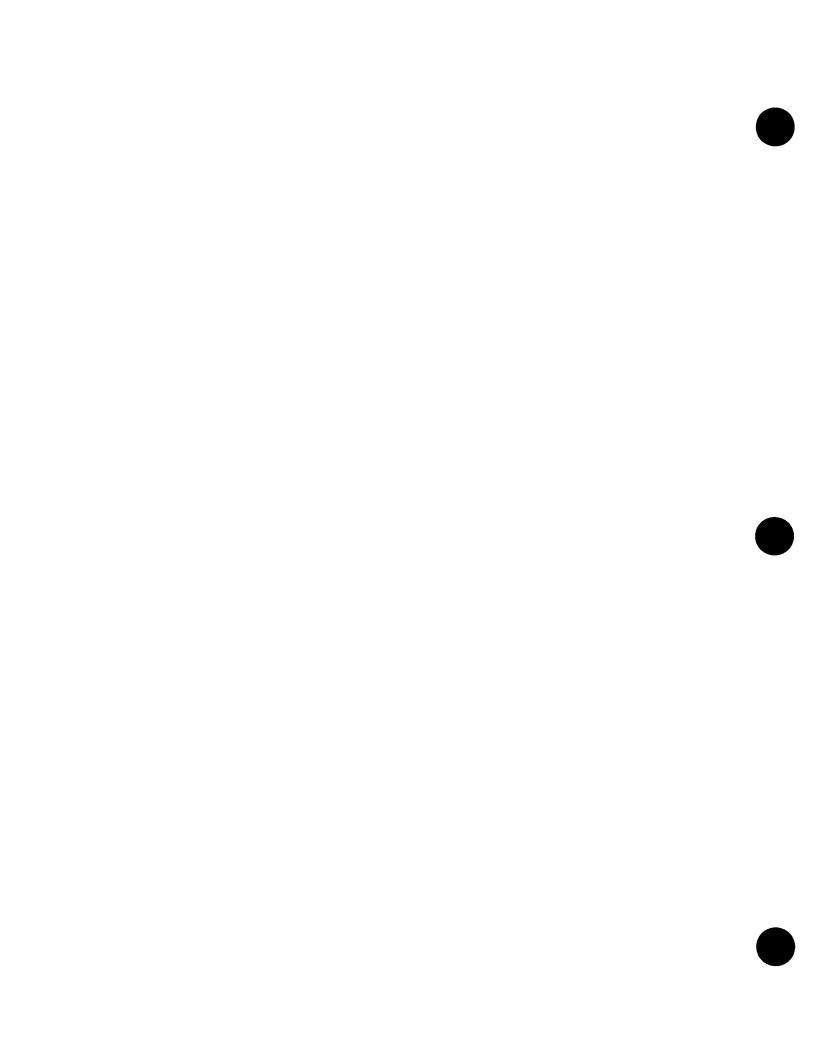
HB 607 Allow Protected Consumer Security Freezes. (Representatives Meyer, Hardister) – favorable committee substitute, unfavorable original bill

The meeting adjourned at 1:08 p.m.

Select or Type Name of Presiding Chair

Presiding

Jan Copeland, Committee Clerk



#### 

#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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#### **HOUSE BILL 924**

Short Title: Highway Safety/Salary Changes. (Public)

Sponsors: Representatives Burr, Hager, and Goodman (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Appropriations.

#### April 20, 2015

#### A BILL TO BE ENTITLED

AN ACT TO CLARIFY HOW THE NUMERIC RESULT OF AN ALCOHOL SCREENING TEST MAY BE USED, TO CLARIFY WHEN A LAW ENFORCEMENT OFFICER IS REQUIRED TO REQUEST A BLOOD SAMPLE WHEN CHARGING THE OFFENSE OF MISDEMEANOR DEATH BY VEHICLE, TO CLARIFY THAT MOTOR VEHICLES MUST HAVE AT LEAST ONE WORKING STOP LAMP ON EACH SIDE OF THE REAR OF THE VEHICLE, TO CLARIFY THE MEANING OF THE TERM "SALARY" FOR CERTAIN STATE LAW ENFORCEMENT OFFICERS, TO FUND SALARY INCREASES FOR MEMBERS OF THE STATE HIGHWAY PATROL FOR THE 2015-2016 FISCAL YEAR, AND TO MAKE OTHER CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

#### **SECTION 1.** G.S. 20-16.3(d) reads as rewritten:

- "(d) Use of Screening Test Results or Refusal by Officer. The fact that a driver showed a positive or negativenumeric result on an alcohol screening test, but not the actual alcohol concentration result, test or a driver's refusal to submit may be used by a law-enforcement officer, is admissible in a court, or may also be used by an administrative agency in determining if there are reasonable grounds for believing: or probable cause to believe either of the following:
  - (1) That the The driver has committed an implied-consent offense under G.S. 20-16.2; and G.S. 20-16.2.
  - (2) That the The driver had consumed alcohol and that the driver had in his or her body previously consumed alcohol, or the driver had an alcohol concentration above 0.00, but not to prove a particular alcohol concentration.

Negative <u>or low</u> results on the alcohol screening test may be used in factually appropriate cases by the officer, a court, or an administrative agency in determining whether a person's alleged impairment is caused by an impairing substance other than alcohol."

#### **SECTION 2.** G.S. 20-139.1(b5) reads as rewritten:

"(b5) Subsequent Tests Allowed. – A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of a law enforcement officer; except that a person charged with a violation of G.S. 20-141.4G.S. 20-141.4, at any relevant time after the driving, shall be requested to provide a blood sample in addition to or in lieu of a chemical analysis of the breath. However, if a breath sample shows an alcohol concentration of .08 or more, then requesting a blood sample shall be in the discretion of a law enforcement officer. If a subsequent chemical analysis is requested pursuant to this subsection,



the person shall again be advised of the implied consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2. If a person willfully refuses to provide a blood sample under this subsection, and the person is charged with a violation of G.S. 20-141.4, then a law enforcement officer with probable cause to believe that the offense involved impaired driving or was an alcohol-related offense made subject to the procedures of G.S. 20-16.2 shall seek a warrant to obtain a blood sample. The failure to obtain a blood sample pursuant to this subsection shall not be grounds for the dismissal of a charge and is not an appealable issue." **SECTION 3.** G.S. 20-129(g) reads as rewritten: No person shall sell or operate on the highways of the State any motor vehicle, motorcycle or motor driven cycle, manufactured after December 31, 1955, 1970, unless it shall

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be equipped with a stop lamp on the rear of the vehicle stop lamps, one on each side of the rear of the vehicle. No person shall sell or operate on the highways of the State any motorcycle, moped, or other motor-driven cycle, manufactured after December 31, 1970, unless it shall be equipped with a stop lamp on the rear of the motorcycle, moped, or other motor-driven cycle. The stop lamplamps shall displayemit, reflect, or display a red or amber light visible from a distance of not less than 100 feet to the rear in normal sunlight, and shall be actuated upon application of the service (foot) brake. The stop lamplamps may be incorporated into a unit with one or more other rear lamps."

**SECTION 4.** G.S. 20-129.1 reads as rewritten:

"§ 20-129.1. Additional lighting equipment required on certain vehicles.

In addition to other equipment required by this Chapter, the following vehicles shall be equipped as follows:

- On every bus or truck, whatever its size, there shall be the following: (1)
  - On the rear, two reflectors, one at each side, and one stoplight stop lamp on each side of the vertical centerline at the same height and as far apart as practicable.
- On every bus or truck 80 inches or more in overall width, in addition to the (2)requirements in subdivision (1):
  - On the front, two clearance lamps, one aton each side side of the vertical centerline to indicate overall width.
  - On the rear, two clearance lamps, one aton each sideside of the vertical centerline to indicate overall width.
  - On each side, two side marker lamps, one at or near the front and one at or near the rear the front, two side marker lamps, as far to the front as practicable. On the rear, two side marker lamps, as far to the rear as practicable.
  - On each side, two reflectors, one at or near the front and one at or near the rear. the front, two reflectors, as far to the front as practicable. On the rear, two reflectors, as far to the rear as practicable.
- On every truck tractor:
  - On the front, two clearance lamps, one aton each side side of the vertical centerline to indicate overall width.
  - On the rear, one stoplight.stop lamp on each side of the vertical centerline at the same height and as far apart as practicable.
- On every trailer or semitrailer having a gross weight of 4,000 pounds or (4) more:
  - On the front, two clearance lamps, one at each side.
  - On each side, two side marker lamps, one at or near the front and one at or near the rear.
  - On each side, two reflectors, one at or near the front and one at or near the rear.

- On the rear, two clearance lamps, one at each side, also two reflectors, one at each side, and one stoplight.stop lamp on each side of the vertical centerline at the same height and as far apart as practicable.
- (5) On every pole trailer having a gross weight of 4,000 pounds or more:
  - On each side, one side marker lamp and one clearance lamp which may be in combination, to show to the front, side and rear.
  - On the rear of the pole trailer or load, two reflectors, one at each side.
- (6) On every trailer, semitrailer or pole trailer having a gross weight of less than 4,000 pounds:
  - On the rear, two reflectors, one on each side. If any trailer or semitrailer is so loaded or is of such dimensions as to obscure the stoplight on the towing vehicle, then such vehicle shall also be equipped with one stoplight.stop lamp on each side of the vertical centerline at the same height and as far apart as practicable.
- (7) Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.
- (8) Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.
- (9) Brake lights Stop lamps (and/or brake reflectors) on the rear of a motor vehicle shall have red lenses be constructed so that the light displayed emitted, reflected, or displayed is red-red, except that a motor vehicle originally manufactured with amber stop lamps may emit, reflect, or display an amber light. The light illuminating the license plate shall be white. All other lights shall be white, amber, yellow, clear or red.
- (10) On every trailer and semitrailer which is 30 feet or more in length and has a gross weight of 4,000 pounds or more, one combination marker lamp showing amber and mounted on the bottom side rail at or near the center of each side of the trailer."

#### **SECTION 5.** G.S. 20-130.1 reads as rewritten:

#### "§ 20-130.1. Use of red or blue lights on vehicles prohibited; exceptions.

- (a) It is unlawful for any person to install or activate or operate a red light in or on any vehicle in this State. As used in this subsection, unless the context requires otherwise, "red light" means an operable red light not sealed in the manufacturer's original package which: (i) is designed for use by an emergency vehicle or is similar in appearance to a red light designed for use by an emergency vehicle; and (ii) can be operated by use of the vehicle's battery, vehicle's electrical system, or a dry cell battery. As used in this subsection, the term "red light" shall also mean any forward facing red light installed on a vehicle after initial manufacture of the vehicle.
- (c) It is unlawful for any person to possess a blue light or to install, activate, or operate a blue light in or on any vehicle in this State, except for a publicly owned vehicle used for law enforcement purposes or any other vehicle when used by law enforcement officers in the performance of their official duties. As used in this subsection, unless the context requires otherwise, "blue light" means any forward facing blue light installed on a vehicle after initial manufacture of the vehicle; or an operable blue light which:
  - (1) Is not (i) being installed on, held in inventory for the purpose of being installed on, or held in inventory for the purpose of sale for installation on a vehicle on which it may be lawfully operated or (ii) installed on a vehicle

- which is used solely for the purpose of demonstrating the blue light for sale to law enforcement personnel;
- (1a) Is designed for use by an emergency vehicle, or is similar in appearance to a blue light designed for use by an emergency vehicle; and
- (2) Can be operated by use of the vehicle's battery, the vehicle's electrical system, or a dry cell battery.

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**SECTION 6.** G.S. 143-166.14 reads as rewritten:

# "§ 143-166.14. Payment of salary notwithstanding incapacity; Workers' Compensation Act applicable after two years; duration of payment.

The salary of any eligible person shall be paid as long as the person's employment in that position continues, notwithstanding the person's total or partial incapacity to perform any duties to which the person may be lawfully assigned, if that incapacity is the result of an injury or injuries proximately caused by the heightened risk and special hazards directly related to the violent nature of the eligible person's official duties, except if that incapacity continues for more than two years from its inception, the person shall, during the further continuance of that incapacity, be subject to the provisions of Chapter 97 of the General Statutes pertaining to workers' compensation. Salary paid to an eligible person pursuant to this Article shall cease upon the resumption of the person's regularly assigned duties, retirement, resignation, or death, whichever first occurs, except that temporary return to duty shall not prohibit payment of salary for a subsequent period of incapacity which can be shown to be directly related to the original injury. For purposes of this section, the term "salary" means the total base pay of a person as reflected on the person's salary statement."

**SECTION 7.** G.S. 143-166.15 reads as rewritten:

#### "§ 143-166.15. Application of § 97-27; how payments made.

Notwithstanding the provisions of G.S. 143-166.14 of this Article, the persons entitled to benefits shall be subject to the provisions of G.S. 97-27 during the two-year period of payment of full salary:total base pay. All payments of salary shall be made at the same time and in the same manner as other salaries are paidpayments made to other persons in the same department."

**SECTION 8.** For the 2015-2016 fiscal year, there is appropriated from the General Fund to the Department of Public Safety an amount sufficient to fund salary increases under G.S. 20-187.3 for members of the State Highway Patrol.

**SECTION 9.** Section 1 of this act becomes effective December 1, 2015, and applies to hearings held, and administrative determinations made, on or after that date. Section 2 of this act becomes effective December 1, 2015, and applies to offenses committed on or after that date. Section 8 of this act becomes effective July 1, 2015. The remainder of this act is effective when it becomes law 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.

Page 4 H924 [Edition 1]

#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H

#### HOUSE BILL 924 PROPOSED COMMITTEE SUBSTITUTE H924-CSST-45 [v.2]

4/28/2015 7:41:48 PM

| Short Title: Highway Safety/Salary Changes. | Short Title: | Highway | Safety/Salary | Changes. |  |
|---|--------------|---------|---------------|----------|--|
|---|--------------|---------|---------------|----------|--|

(Public)

| Sponsors: | S | ponsors |  |
|-----------|---|---------|--|
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Referred to:

#### April 20, 2015

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### A BILL TO BE ENTITLED

AN ACT TO CLARIFY WHEN A LAW ENFORCEMENT OFFICER IS REQUIRED TO REQUEST A BLOOD SAMPLE WHEN CHARGING THE OFFENSE OF MISDEMEANOR DEATH BY VEHICLE, TO CLARIFY THAT MOTOR VEHICLES MUST HAVE AT LEAST ONE WORKING STOP LAMP ON EACH SIDE OF THE REAR OF THE VEHICLE, TO CLARIFY THE MEANING OF THE TERM "SALARY" FOR CERTAIN STATE LAW ENFORCEMENT OFFICERS, AND TO MAKE OTHER CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-139.1(b5) reads as rewritten:

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"(b5) Subsequent Tests Allowed. – A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of a law enforcement officer; except that a person charged with a violation of G.S. 20-141.4G.S. 20-141.4, at any relevant time after the driving, shall be requested to provide a blood sample in addition to or in lieu of a chemical analysis of the breath. However, if a breath sample shows an alcohol concentration of .08 or more, then requesting a blood sample shall be in the discretion of a law enforcement officer. If a subsequent chemical analysis is requested pursuant to this subsection, the person shall again be advised of the implied consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2. If a person willfully refuses to provide a blood sample under this subsection, and the person is charged with a violation of G.S. 20-141.4, then a law enforcement officer with probable cause to believe that the offense involved impaired driving or was an alcohol-related offense made subject to the procedures of G.S. 20-16.2 shall seek a warrant to obtain a blood sample. The failure to obtain a blood sample pursuant to this subsection shall not be grounds for the dismissal of a charge and is not an appealable issue."

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**SECTION 2.** G.S. 20-129(g) reads as rewritten:

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"(g) No person shall sell or operate on the highways of the State any motor vehicle, motorcycle or motor driven cycle, manufactured after December 31, 1955,1970, unless it shall be equipped with a stop lamp on the rear of the vehicle.stop lamps, one on each side of the rear of the vehicle. No person shall sell or operate on the highways of the State any motorcycle, moped, or other motor-driven cycle, manufactured after December 31, 1970, unless it shall be equipped with a stop lamp on the rear of the motorcycle, moped, or other motor-driven cycle. The stop lamplamps shall displayemit, reflect, or display a red or amber light visible from a distance of not less than 100 feet to the rear in normal sunlight, and shall be actuated upon

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#### **General Assembly of North Carolina**

application of the service (foot) brake. The stop <u>lamplamps</u> may be incorporated into a unit with one or more other rear lamps."

SECTION 3. G.S. 20-129.1 reads as rewritten:

#### "§ 20-129.1. Additional lighting equipment required on certain vehicles.

In addition to other equipment required by this Chapter, the following vehicles shall be equipped as follows:

- (1) On every bus or truck, whatever its size, there shall be the following:
  - On the rear, two reflectors, one at each side, and one stoplight.stop lamp on each side of the vertical centerline at the same height and as far apart as practicable.
- On every bus or truck 80 inches or more in overall width, in addition to the requirements in subdivision (1):
  - On the front, two clearance lamps, one aton each side.side of the vertical centerline to indicate overall width.
  - On the rear, two clearance lamps, one aton each sideside of the vertical centerline to indicate overall width.
  - On each side, two side marker lamps, one at or near the front and one at or near the rear the front, two side marker lamps, as far to the front as practicable.

    On the rear, two side marker lamps, as far to the rear as practicable.
  - On each side, two reflectors, one at or near the front and one at or near the rear, the front, two reflectors, as far to the front as practicable.

    On the rear, two reflectors, as far to the rear as practicable.
- (3) On every truck tractor:
  - On the front, two clearance lamps, one aton each side.side of the vertical centerline to indicate overall width.
  - On the rear, one stoplight.stop lamp on each side of the vertical centerline at the same height and as far apart as practicable.
- (4) On every trailer or semitrailer having a gross weight of 4,000 pounds or more:
  - On the front, two clearance lamps, one at each side.
  - On each side, two side marker lamps, one at or near the front and one at or near the rear.
  - On each side, two reflectors, one at or near the front and one at or near the rear.
  - On the rear, two clearance lamps, one at each side, also two reflectors, one at each side, and one stoplight.stop lamp on each side of the vertical centerline at the same height and as far apart as practicable.
- (5) On every pole trailer having a gross weight of 4,000 pounds or more:
  - On each side, one side marker lamp and one clearance lamp which may be in combination, to show to the front, side and rear.
  - On the rear of the pole trailer or load, two reflectors, one at each side.
- (6) On every trailer, semitrailer or pole trailer having a gross weight of less than 4,000 pounds:
  - On the rear, two reflectors, one on each side. If any trailer or semitrailer is so loaded or is of such dimensions as to obscure the stoplight on the towing vehicle, then such vehicle shall also be equipped with one stoplight.stop lamp on each side of the vertical centerline at the same height and as far apart as practicable.
- (7) Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

- (8) Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.
- (9) Brake lights Stop lamps (and/or brake reflectors) on the rear of a motor vehicle shall have red lenses be constructed so that the light displayed emitted, reflected, or displayed is red-red, except that a motor vehicle originally manufactured with amber stop lamps may emit, reflect, or display an amber light. The light illuminating the license plate shall be white. All other lights shall be white, amber, yellow, clear or red.
- (10) On every trailer and semitrailer which is 30 feet or more in length and has a gross weight of 4,000 pounds or more, one combination marker lamp showing amber and mounted on the bottom side rail at or near the center of each side of the trailer."

#### **SECTION 4.** G.S. 20-130.1 reads as rewritten:

#### "§ 20-130.1. Use of red or blue lights on vehicles prohibited; exceptions.

- (a) It is unlawful for any person to install or activate or operate a red light in or on any vehicle in this State. As used in this subsection, unless the context requires otherwise, "red light" means an operable red light not sealed in the manufacturer's original package which: (i) is designed for use by an emergency vehicle or is similar in appearance to a red light designed for use by an emergency vehicle; and (ii) can be operated by use of the vehicle's battery, vehicle's electrical system, or a dry cell battery. As used in this subsection, the term "red light" shall also mean any forward facing-red light installed on a vehicle after initial manufacture of the vehicle.
- (c) It is unlawful for any person to possess a blue light or to install, activate, or operate a blue light in or on any vehicle in this State, except for a publicly owned vehicle used for law enforcement purposes or any other vehicle when used by law enforcement officers in the performance of their official duties. As used in this subsection, unless the context requires otherwise, "blue light" means any forward facing blue light installed on a vehicle after initial manufacture of the vehicle; or an operable blue light which:
  - (1) Is not (i) being installed on, held in inventory for the purpose of being installed on, or held in inventory for the purpose of sale for installation on a vehicle on which it may be lawfully operated or (ii) installed on a vehicle which is used solely for the purpose of demonstrating the blue light for sale to law enforcement personnel;
  - (1a) Is designed for use by an emergency vehicle, or is similar in appearance to a blue light designed for use by an emergency vehicle; and
  - (2) Can be operated by use of the vehicle's battery, the vehicle's electrical system, or a dry cell battery.

#### **SECTION 5.** G.S. 143-166.14 reads as rewritten:

# "§ 143-166.14. Payment of salary notwithstanding incapacity; Workers' Compensation Act applicable after two years; duration of payment.

The salary of any eligible person shall be paid as long as the person's employment in that position continues, notwithstanding the person's total or partial incapacity to perform any duties to which the person may be lawfully assigned, if that incapacity is the result of an injury or injuries proximately caused by the heightened risk and special hazards directly related to the violent nature of the eligible person's official duties, except if that incapacity continues for more than two years from its inception, the person shall, during the further continuance of that incapacity, be subject to the provisions of Chapter 97 of the General Statutes pertaining to workers' compensation. Salary paid to an eligible person pursuant to this Article shall cease

upon the resumption of the person's regularly assigned duties, retirement, resignation, or death, whichever first occurs, except that temporary return to duty shall not prohibit payment of salary for a subsequent period of incapacity which can be shown to be directly related to the original injury. For purposes of this section, the term "salary" means the total base pay of a person as reflected on the person's salary statement."

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**SECTION 6.** G.S. 143-166.15 reads as rewritten:

## "§ 143-166.15. Application of § 97-27; how payments made. Notwithstanding the provisions of G.S. 143-166.14 of this Article, the persons entitled to

benefits shall be subject to the provisions of G.S. 97-27 during the two-year period of payment of full salary total base pay. All payments of salary shall be made at the same time and in the same manner as other salaries are paidpayments made to other persons in the same department."

**SECTION 7.** G.S. 143B-927 reads as rewritten:

## "§ 143B-927. Personnel of the State Bureau of Investigation.

The Director of the State Bureau of Investigation may appoint a sufficient number of assistants who shall be competent and qualified to do the work of the Bureau. The Director shall be responsible for making all hiring and personnel decisions of the Bureau. Notwithstanding the provisions of this Chapter, Chapter 143A, and Chapter 143B of the General Statutes, the Director may hire or fire personnel and transfer personnel within the Bureau. If the Director deems it appropriate to hire reserve agents, those reserve agents shall be considered employees of the State Bureau of Investigation for purposes of any workers compensation claim arising from acts occurring while the reserve agent is performing assigned duties."

**SECTION 8.** G.S. 106-145.13 is repealed.

**SECTION 9.** Section 1 of this act becomes effective December 1, 2015, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.



## HOUSE BILL 924: Highway Safety/Salary Changes

2015-2016 General Assembly

Committee: Ho

House Judiciary I

Introduced by: Reps. Burr, Hager, Goodman

Analysis of:

PCS to First Edition

H924-CSST-45

Date:

April 28, 2015

Prepared by: R. Erika Churchill

Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 924 would make changes to the motor vehicle laws regarding timing of mandatory blood testing in certain criminal charges and regarding lights on vehicles, and to the salary continuation of State law enforcement officers, and to repeal certain mandatory reporting regarding pseudoephedrine products.

#### **CURRENT LAW & BILL ANALYSIS:**

Section 1. Pursuant to G.S. 20-16.2, any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an offense involving impaired driving. The test results, or the fact of the person's refusal, are admissible in evidence at trial. Procedures governing chemical analyses administered persons charged with any offense involving impaired driving are governed by G.S. 20-139.1, which provides that a person's alcohol concentration or the presence of any other impairing substance in the person's body as shown by a chemical analysis is admissible in evidence, and the results from a chemical analysis constitute sufficient evidence to prove a person's alcohol concentration. A person charged with an impaired driving offense may be requested to submit to a chemical analysis of blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of a law enforcement officer. A person is required to provide a blood sample in addition to or in lieu of a chemical analysis of the breath when charged with felony or misdemeanor death by vehicle, felony serious injury by vehicle, aggravated felony death or serious injury by vehicle, or repeat felony death by vehicle. If a person charged with one of the aforementioned offenses refuses to provide a blood sample, a law enforcement officer with probable cause to believe the offense involved impaired driving must seek a warrant to obtain a blood sample. G.S. 20-139.1 requires that a physician, registered nurse, emergency medical technician, or other qualified person withdraw blood samples and obtain urine samples.

The pcs would clarify that when a person is charged with felony or misdemeanor death by vehicle, felony serious injury by vehicle, aggravated felony death or serious injury by vehicle, or repeat felony death by vehicle and required to provide the blood sample, the sample is to be taken at any relevant time after the driving. Effective December 1, 2015.

**Sections 2-4.** Currently, G.S. 20-129 prohibits operation of a motor vehicle unless it is equipped with one operable red or amber stop lamp on the rear of the vehicle. Current G.S. 20-139.1 requires one operable red stop lamp on the rear of buses, trucks, tractor trailers, and other specified trailers. A recent State Court of Appeals case, *State v. Heien*, 714 S.E.2d 827 (2011), held that malfunction of a single brake light did not violate State law, and did not constitute a reasonable justification for a traffic stop.

The pcs would:





Research Division (919) 733-2578

### House Bill 924

Page 2

- Amend State law to require two operable stop lamps, one on each side of the rear of motor vehicles, buses, trucks, tractor trailers, and other specified trailers; and clarifies that amber stop lamps are authorized on any motor vehicle, if they were original equipment.
- > Specify the placement of certain lamps on buses, trucks, tractor trailers, trailers, semitrailers and poletrailers.
- Prohibit after installed red and blue lights on vehicles, whether forward facing or not, on non-emergency vehicles.

Section 5-6. Article 12B of Chapter 143 governs salary continuation for certain State law enforcement officers subject to the Criminal Justice Training and Standards Act, and drivers license examiners and corrections officers injured out of certain acts on the job. When an eligible person under that Article is incapacitated as the result of an injury or injuries proximately caused by the heightened risk and special hazards directly related to the violent nature of the eligible person's official duties, the eligible person is paid their full salary as long as the person's employment in that position continues during the further continuance of that incapacity. Salary paid to an eligible person ends upon the resumption of the person's regularly assigned duties, retirement, resignation, or death, whichever first occurs, except that temporary return to duty does not prohibit payment of salary for a subsequent period of incapacity which can be shown to be directly related to the original injury. If the incapacity continues for more than two years from its inception, then workers' compensation applies.

The pcs would amend the current law to provide that total base pay is the amount the eligible person is entitled to, rather than full salary.

**Section 7.** The pcs would clarify that when the Director of the State Bureau of Investigation(SBI) hires reserve agents, those reserve agents are eligible to receive workers compensation benefits for injuries incurred while performing that reserve agent's assigned duties.

**Section 8.** Currently, every 30 calendar days, a wholesale distributor of pseudoephedrine products is to submit an electronic report to the SBI that accounts for all transactions involving pseudoephedrine products with persons or firms located within this State for the preceding month. The wholesale distributor is to keep each monthly report for a period of two years from the date of submittal to the SBI. G.S. 106-145.13.

The pcs would repeal the required reporting and maintenance of records.

**EFFECTIVE DATE:** Except as otherwise noted, effective when it becomes law.

## GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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## HOUSE BILL 607 PROPOSED COMMITTEE SUBSTITUTE H607-CSMD-6 [v.2]

4/24/2015 3:37:45 PM

Short Title: Allow Protected Consumer Security Freezes. (Public)

Sponsors:

Referred to:

|    | Sponsors.        |   |  |  |
|----|------------------|---|--|--|
|    | Referred to:     |   |  |  |
|    |                  | April 13, 2015  |  |  |
| 1  |                  | A BILL TO BE ENTITLED   |  |  |
| 2  |                  | AUTHORIZE THE PLACEMENT OF A PROTECTED CONSUMER   |  |  |
| 3  | SECURITY F       | FREEZE ON A PROTECTED CONSUMER'S CREDIT REPORT.   |  |  |
| 4  | The General Asse | embly of North Carolina enacts:   |  |  |
| 5  | SECT             | TION 1. G.S. 75-61 reads as rewritten:  |  |  |
| 6  | "§ 75-61. Defini | tions.  |  |  |
| 7  | The following    | g definitions apply in this Article:  |  |  |
| 8  | • • •            |   |  |  |
| 9  | (11a)            | "Protected Consumer" An individual (i) who is under the age of 16 at the                                      |  |  |
| 10 |                  | time a request for the placement of a security freeze is made pursuant to                                     |  |  |
| 11 |                  | G.S. 75-63.1 or (ii) who is incapacitated or for whom a guardian or guardian                                  |  |  |
| 12 |                  | ad litem has been appointed.  |  |  |
| 13 | (11b)            | "Protected Consumer Security Freeze" A security freeze placed on a  |  |  |
| 14 |                  | protected consumer's credit report or on a protected consumer's file pursuant                                 |  |  |
| 15 |                  | to G.S. 75-63.1.  |  |  |
| 16 | (11c)            |   |  |  |
| 17 |                  | consumer; (ii) is created by a consumer reporting agency solely for the                                       |  |  |
| 18 |                  | purpose of complying with the requirements of G.S. 75-63.1; and (iii) may                                     |  |  |
| 19 |                  | not be created or used to consider the protected consumer's credit  |  |  |
| 20 |                  | worthiness, credit standing, credit capacity, character, general reputation,                                  |  |  |
| 21 |                  | personal characteristics, or mode of living.  |  |  |
| 22 | •••              |   |  |  |
| 23 | <u>(13a)</u>     | "Representative" A person who provides to a consumer reporting agency   |  |  |
| 24 |                  | sufficient proof of authority to act on behalf of a protected consumer.                                       |  |  |
| 25 | •••              |   |  |  |
| 26 | (16)             | "Sufficient Proof of Authority". – Either of the following:   |  |  |
| 27 |                  | a. A certified or official copy of the protected consumer's birth   |  |  |
| 28 |                  | certificate, if the representative is a parent of the protected consumer.                                     |  |  |
| 29 |                  | <u>b.</u> <u>Documentation that shows that a representative has authority to act</u>                          |  |  |
| 30 |                  | on behalf of a protected consumer, including:   |  |  |
| 31 |                  | 1. An order issued by a court of law.   |  |  |
| 32 |                  | <ul><li>A valid power of attorney.</li><li>A written, notarized statement signed by the person that</li></ul> |  |  |
| 33 |                  | <ol><li>A written, notarized statement signed by the person that</li></ol>                                    |  |  |

A written, notarized statement signed by the person that expressly describes the authority of the representative to act on behalf of a protected consumer.



| <b>General Assem</b> | bly of North Carolina   | Session 2015                             |
|----------------------|---|--|
| (17)                 | "Sufficient Proof of Identification" Information or d         | ocumentation that                        |
|                      | identifies a protected consumer or representative, including  |  |
|                      | a. A Social Security number or a copy of a Social Se          |  |
|                      | by the Social Security Administration.                        |  |
|                      | b. A certified or official copy of a birth certificate is     | sued by the entity                       |
|                      | authorized to issue the birth certificate.                    | saca by the chitty                       |
|                      |   | and issued by the                        |
|                      |   |  |
|                      | Division of Motor Vehicles, or any other                      | government-issued                        |
|                      | identification.   |  |
|                      | d. A copy of a bill, including a bill for telephone, s        | -  |
|                      | water, electric, oil, or natural gas services, that s         | shows a name and                         |
|                      | home address."  |  |
| SEC                  | FION 2. Article 2A of Chapter 75 of the General Statut        | tes is amended by                        |
| adding a new sec     | tion to read:   |  |
| § 75-63.1. Secu      | rity freeze for protected consumers.                          |  |
| (a) Oblig            | ation to Place Security Freeze A consumer reporting ag        | ency shall place a                       |
| protected consun     | ner security freeze on the protected consumer's credit report | or on the protected                      |
|                      | n accordance with subsection (b) of this section within 30    |  |
| following condit     | ons being satisfied:  |  |
| (1)                  | The consumer reporting agency receives a request under        | this section from                        |
| كشد                  | the protected consumer's representative for the placemer      |  |
|                      | consumer security freeze by any of the following methods:     |  |
|                      | a. First-class mail.  |  |
|                      | b. Telephone call.  |  |
|                      | c. Secure Web site or secure electronic mail connection       | n  |
| (2)                  | The protected consumer's representative does all of the fol   |  |
|                      |   |  |
|                      |   |  |
|                      | or other point of contact and in the manner specifie          | d by the consumer                        |
|                      | reporting agency.   | .00-1-1-1-1-1-1-1-1-1-1-1-1-1-1-1-1-1-1- |
|                      | b. Provides to the consumer reporting agency su               |  |
|                      | identification for both the protected consumer and            |  |
|                      | c. Provides to the consumer reporting agency su               | _  |
|                      | authority to act on behalf of the protected consume           |  |
|                      | d. Pays to the consumer reporting agency a fee                | e as provided in                         |
|                      | subsection (d) of this section.                               |  |
|                      | n Required. – If the placement of a protected consumer        |  |
| required under s     | ubsection (a) of this section, a consumer reporting agency s  | shall do one of the                      |
| following, as app    |   |  |
| (1)                  | If no consumer report exists If the consumer reporting        | g agency does not                        |
| _                    | have a consumer report pertaining to the protected consu      | mer, the consumer                        |
|                      | reporting agency shall create a protected consumer's          | file and place a                         |
|                      | restriction in the protected consumer's file that prohibits   |  |
|                      | protected consumer's file, any consumer report subsequer      |  |
|                      | consumer, and any information contained in either do          |  |
|                      | provided in this section.                                     | editiont except as                       |
| (2)                  |   | ing agency has a                         |
| (2)                  | If a consumer report exists. – If the consumer report         |  |
|                      | consumer report pertaining to the protected consum            |  |
|                      | reporting agency shall place a restriction on the report      |  |
|                      | release of the consumer report and any information control    | ained in the report                      |
|                      | except as provided in this section.                           |  |

- (c) <u>Duration of Freeze.</u> A protected consumer security freeze shall remain in effect until one of the following occurs, in which case the protected consumer security freeze shall be removed within 30 days:
  - (1) The protected consumer or the protected consumer's representative requests the consumer reporting agency to remove the protected consumer security freeze by doing all of the following:
    - a. Submitting a request for the removal of the protected consumer security freeze to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency.
    - b. If the request is being made by the protected consumer, providing to the consumer reporting agency (i) proof that the sufficient proof of authority for the protected consumer's representative is no longer valid and (ii) sufficient proof of identification for the protected consumer.
    - c. If the request is being made by the representative of a protected consumer, providing to the consumer reporting agency (i) sufficient proof of identification of the protected consumer and the representative and (ii) sufficient proof of authority to act on behalf of the protected consumer.
    - d. Providing to the consumer reporting agency a fee as provided in subsection (d) of this section.
  - (2) The consumer reporting agency determines that the protected consumer security freeze was placed based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.
- (d) Fees. A consumer reporting agency may charge a reasonable fee for each placement or removal of a protected consumer security freeze in accordance with the following:
  - (1) Fee Allowed in Certain Cases. Except as provided in subdivision (2) of this subsection, a consumer reporting agency may charge a fee to a consumer not to exceed five dollars (\$5.00) for placement or removal of a protected consumer security freeze.
  - (2) No Fee Allowed in Certain Cases. A fee may not be charged for the placement or removal of a protected consumer security freeze under this section if any of the following conditions are satisfied:
    - a. The protected consumer's representative has obtained a report of alleged identity theft or identity fraud against the protected consumer and provides a copy of the report to the consumer reporting agency.
    - b. A request for placement or removal of a protected consumer security freeze is for a protected consumer who is under the age of 16 at the time of the request and the consumer reporting agency has a consumer report pertaining to the protected consumer.
    - <u>c.</u> The protected consumer is over the age of 62.
  - (3) No Other Fees Allowed. No fee other than those authorized under this subsection may be charged for placement or removal of a protected consumer security freeze.
- (e) Exceptions. Notwithstanding subsection (b) of this section, the placement of a protected consumer security freeze shall not prohibit the release of a protected consumer's consumer report, protected consumer's file, or any information contained in these documents to any of the following:
  - (1) The protected consumer when the protected consumer has subscribed to a credit reporting service, as that term is defined in G.S. 75-134.

| General A   | Assemb   | oly of North Carolina Session 2015  |  |
|---|--|---|--|
|   | (2)  | A representative of the protected consumer when the representative has          |  |
|   |  | subscribed on behalf of the consumer to a credit reporting service, as that     |  |
|   |  | term is defined in G.S. 75-134.   |  |
|   |  | A person providing the protected consumer or the protected consumer's           |  |
|   | representative with a copy of the protected consumer's consumer repo   |   |  |
|   |  | protected consumer's file at the request of the protected consumer or the       |  |
|   |  | protected consumer's representative.  |  |
|   |  | A person, or the person's subsidiary, affiliate, agent, subcontractor, o        |  |
|   |  | assignee with whom the protected consumer has, or prior to assignment had       |  |
|   |  | an account, contract, or debtor-creditor relationship for the purposes o        |  |
|   |  | reviewing the active account or collecting the financial obligation owing fo    |  |
|   |  | the account, contract, or debt.   |  |
|   | (5)  | Any person acting pursuant to a court order, warrant, or subpoena.              |  |
|   |  | A state or local agency, or its agents or assigns, which administers a program  |  |
|   |  | for establishing and enforcing child support obligations.                       |  |
|   | (7)  | A state or local agency, or its agents or assigns, acting to investigate frauc  |  |
|   | 1  | including Medicaid fraud, or acting to investigate or collect delinquent taxe   |  |
|   |  | or assessments, including interest and penalties, unpaid court orders, or to    |  |
|   |  | fulfill any of its other statutory responsibilities.                            |  |
|   | (8)  | A federal, state, or local governmental entity, including law enforcemen        |  |
|   |  | agency, court, or their agent or assigns.                                       |  |
|   |  | A person for the purposes of prescreening as defined by the Fair Credi          |  |
|   |  | Reporting Act, 15 U.S.C. § 1681, et seq.  |  |
|   | (10)   | Any depository financial institution for checking, savings, and investmen       |  |
|   |  | accounts.   |  |
|   |  | Any property and casualty insurance company for use in setting or adjusting     |  |
|   |  | a rate, adjusting a claim, or underwriting for property and casualty insurance  |  |
|   |  | purposes.   |  |
|   | (12)   | A person for the purpose of furnishing or using credit reports for              |  |
|   |  | employment purposes pursuant to 15 U.S.C. § 1681b(b) or tenant screening        |  |
|   |  | pursuant to 15 U.S.C. § 1681b(a)(3)(F).   |  |
|   | (13)   | A person for the purpose of criminal background record information.             |  |
| <u>(f)</u>  | Spinished and a second   | iolation. – A violation of this section is a violation of G.S. 75-1.1."         |  |
| 1-7   | Annual Control of the | SECTION 3. G.S. 130A-101 is amended by adding a new subsection to read:         |  |
| "(h)  |  | a birth occurs, the person responsible for preparing the birth certificate unde |  |
|   | ion shall provide the mother with information about how to request a protected   |   |  |
|   |  | freeze for the child under G.S. 75-63.1 and the potential benefits of doin      |  |
| so."  |  |   |  |
| <b>SECTION 4.</b> This act becomes effective October 1, 2015. |  |   |  |

## GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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## **HOUSE BILL 607** PROPOSED COMMITTEE SUBSTITUTE H607-CSMD-6 [v.3]

D

4/29/2015 10:56:11 AM

Short Title: Allow Protected Consumer Security Freezes. (Public) Sponsors: Referred to:

April 13, 2015 1 A BILL TO BE ENTITLED 2 AN ACT TO AUTHORIZE THE PLACEMENT OF A PROTECTED CONSUMER 3 SECURITY FREEZE ON A PROTECTED CONSUMER'S CREDIT REPORT. 4 The General Assembly of North Carolina enacts: 5 SECTION 1. G.S. 75-61 reads as rewritten: 6 "§ 75-61. Definitions. 7 The following definitions apply in this Article: 8 9 (11a) "Protected Consumer". – An individual (i) who is under the age of 16 at the 10 time a request for the placement of a security freeze is made pursuant to 11 G.S. 75-63.1 or (ii) who is incapacitated or for whom a guardian or guardian 12 ad litem has been appointed.

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- (11b) "Protected Consumer Security Freeze". A security freeze placed on a protected consumer's credit report or on a protected consumer's file pursuant to G.S. 75-63.1.
- (11c) "Protected Consumer's File". A record that (i) identifies a protected consumer; (ii) is created by a consumer reporting agency solely for the purpose of complying with the requirements of G.S. 75-63.1; and (iii) may not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.
- (13a)"Representative". – A person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.
- - A certified or official copy of the protected consumer's birth certificate, if the representative is a parent of the protected consumer.
  - Documentation that shows that a representative has authority to act <u>b.</u> on behalf of a protected consumer, including:
    - An order issued by a court of law. 1.

"Sufficient Proof of Authority". – Either of the following:

- 2. A valid power of attorney.
- A written, notarized statement signed by the person that 3. expressly describes the authority of the representative to act on behalf of a protected consumer.



| General Assen     | ably of North Carolina Session 2013   |  |  |
|-------------------|---|--|--|
| (17)              | "Sufficient Proof of Identification" Information or documentation that            |  |  |
|                   | identifies a protected consumer or representative, including:                     |  |  |
|                   | a. A Social Security number or a copy of a Social Security card issue             |  |  |
|                   | by the Social Security Administration.  |  |  |
|                   | b. A certified or official copy of a birth certificate issued by the entit        |  |  |
|                   | authorized to issue the birth certificate.  |  |  |
|                   | c. A copy of a drivers license, an identification card issued by the              |  |  |
|                   | Division of Motor Vehicles, or any other government-issue                         |  |  |
|                   | identification.   |  |  |
|                   | d. A copy of a bill, including a bill for telephone, sewer, septic tank           |  |  |
|                   | water, electric, oil, or natural gas services, that shows a name an               |  |  |
|                   | home address."  |  |  |
| SEC               | FION 2. Article 2A of Chapter 75 of the General Statutes is amended by            |  |  |
| adding a new sec  |   |  |  |
|                   | irity freeze for protected consumers.   |  |  |
|                   | ation to Place Security Freeze. – A consumer reporting agency shall place         |  |  |
|                   | ner security freeze on the protected consumer's credit report or on the protected |  |  |
| 24                | n accordance with subsection (b) of this section within 30 days of all of the     |  |  |
|                   | ions being satisfied:   |  |  |
| (1)               | The consumer reporting agency receives a request under this section from          |  |  |
| <del></del>       | the protected consumer's representative for the placement of the protecte         |  |  |
|                   | consumer security freeze by any of the following methods:                         |  |  |
|                   | a. First-class mail.  |  |  |
|                   | b. Telephone call.  |  |  |
|                   | c. Secure Web site or secure electronic mail connection.                          |  |  |
| (2)               | The protected consumer's representative does all of the following:                |  |  |
|                   | a. Submits the request to the consumer reporting agency at the address            |  |  |
|                   | or other point of contact and in the manner specified by the consume              |  |  |
|                   | reporting agency.   |  |  |
|                   | b. Provides to the consumer reporting agency sufficient proof of                  |  |  |
|                   | identification for both the protected consumer and the representative             |  |  |
|                   | c. Provides to the consumer reporting agency sufficient proof of                  |  |  |
|                   | authority to act on behalf of the protected consumer.                             |  |  |
|                   | d. Pays to the consumer reporting agency a fee as provided i                      |  |  |
|                   | subsection (d) of this section.   |  |  |
| (b) Actio         | n Required If the placement of a protected consumer security freeze               |  |  |
| required under s  | ubsection (a) of this section, a consumer reporting agency shall do one of the    |  |  |
| following, as app |   |  |  |
| <u>(1)</u>        | If no consumer report exists If the consumer reporting agency does not            |  |  |
|                   | have a consumer report pertaining to the protected consumer, the consumer         |  |  |
|                   | reporting agency shall create a protected consumer's file and place a             |  |  |
|                   | restriction in the protected consumer's file that prohibits the release of the    |  |  |
|                   | protected consumer's file, any consumer report subsequently created for the       |  |  |
|                   | consumer, and any information contained in either document except a               |  |  |
|                   | provided in this section.   |  |  |
| <u>(2)</u>        | If a consumer report exists If the consumer reporting agency has                  |  |  |
|                   | consumer report pertaining to the protected consumer, the consumer                |  |  |
|                   | reporting agency shall place a restriction on the report that prohibits the       |  |  |
|                   | release of the consumer report and any information contained in the report        |  |  |
|                   | except as provided in this section.   |  |  |

credit reporting service, as that term is defined in G.S. 75-134.

**SECTION 4.** This act becomes effective October 1, 2015.

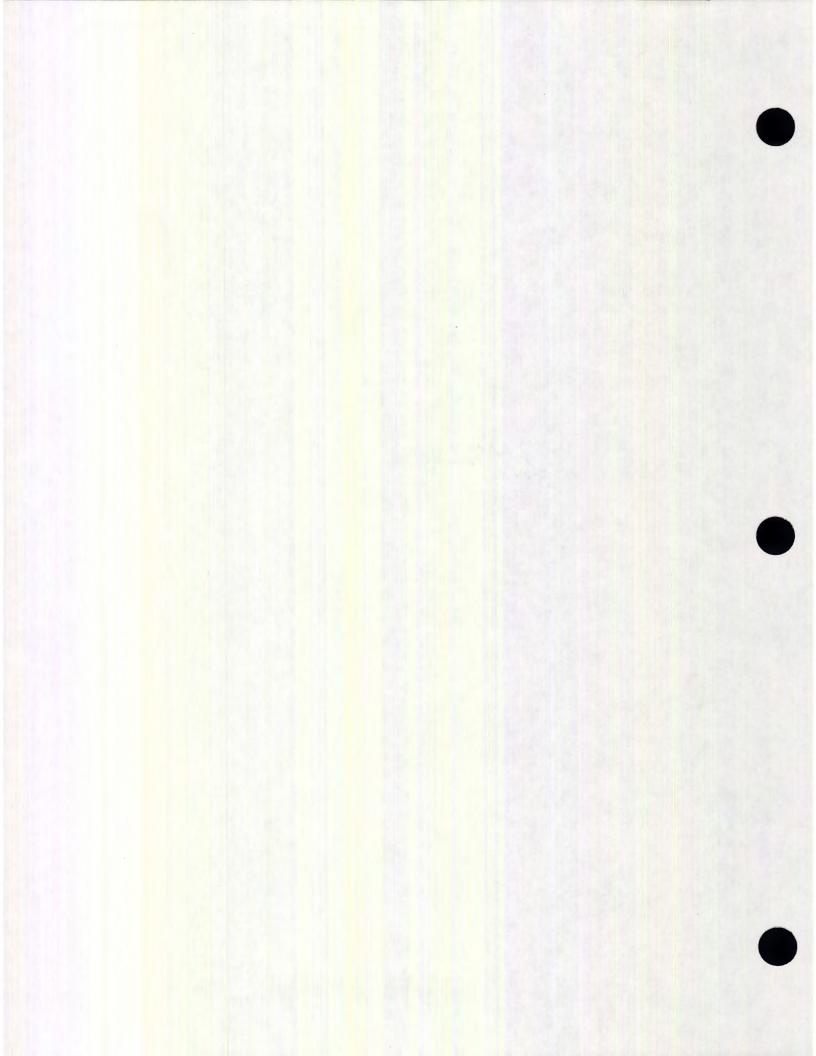


# NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

House Bill 607

|   | H607-AMD-8 [v.2]                           |        | AMENDMENT NO.<br>(to be filled in by<br>Principal Clerk) | Page 1 of 1 |
|---|--|--------|--|-------------|
|   | Amends Title [NO]<br>H607-CSMD-6           | Date   | 4-29   | ,2015       |
|   | Representative Hardister                   |        |  |             |
| 1 moves to amend the PCS on page 4, line 39, by rewriting the line to read: 2 "SECTION 4. This act becomes effective January 1, 2016.". |  |        |  |             |
|   | SIGNED Amendment Sponsor                   |        |  |             |
|   | SIGNED Committee Chair if Senate Committee | Amenda | ment   |             |
|   | ADOPTED FAILED                             |        | TABLED   |             |





## GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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**HOUSE BILL 607** 

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Short Title: Allow Protected Consumer Security Freezes. (Public) Sponsors: Representatives Meyer and Hardister (Primary Sponsors). For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site. Referred to: Banking, if favorable, Judiciary I. April 13, 2015 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE PLACEMENT OF A PROTECTED CONSUMER SECURITY FREEZE ON A PROTECTED CONSUMER'S CREDIT REPORT. The General Assembly of North Carolina enacts: **SECTION 1.** G.S. 75-61 reads as rewritten: "§ 75-61. Definitions. The following definitions apply in this Article: (11a) "Protected Consumer". – An individual (i) who is under the age of 16 at the time a request for the placement of a security freeze is made pursuant to G.S. 75-63.1 or (ii) who is incapacitated or for whom a guardian or guardian ad litem has been appointed. (11b) "Protected Consumer Security Freeze". - A security freeze placed on a protected consumer's credit report or on a protected consumer's file pursuant to G.S. 75-63.1. (11c) "Protected Consumer's File". - A record that (i) identifies a protected consumer; (ii) is created by a consumer reporting agency solely for the purpose of complying with the requirements of G.S. 75-63.1; and (iii) may not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. (13a) "Representative". – A person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer. "Sufficient Proof of Authority". – Either of the following: (16)A certified or official copy of the protected consumer's birth a. certificate, if the representative is a parent of the protected consumer. <u>b.</u> Documentation that shows that a representative has authority to act on behalf of a protected consumer, including: 1. An order issued by a court of law. A valid power of attorney. A written, notarized statement signed by the person that expressly describes the authority of the representative to act on behalf of a protected consumer.



|            | <u>(1)</u> | The protected consumer or the protected consumer's representative requests                            |
|------------|------------|---|
|            |            | the consumer reporting agency to remove the protected consumer security                               |
|            |            | freeze by doing all of the following:   |
|            |            | a. Submitting a request for the removal of the protected consumer                                     |
|            |            | security freeze to the consumer reporting agency at the address or                                    |
|            |            | other point of contact and in the manner specified by the consumer                                    |
|            |            | reporting agency.   |
|            |            | b. If the request is being made by the protected consumer, providing to                               |
|            |            | the consumer reporting agency (i) proof that the sufficient proof of                                  |
|            |            | authority for the protected consumer's representative is no longer                                    |
|            |            | valid and (ii) sufficient proof of identification for the protected                                   |
|            |            | consumer.   |
|            |            | c. If the request is being made by the representative of a protected                                  |
|            |            | consumer, providing to the consumer reporting agency (i) sufficient                                   |
|            |            | proof of identification of the protected consumer and the   |
|            |            | representative and (ii) sufficient proof of authority to act on behalf of                             |
|            |            | the protected consumer.   |
|            |            | d. Providing to the consumer reporting agency a fee as provided in                                    |
|            | (2)        | subsection (d) of this section.  The consumer reporting agency determines that the protected consumer |
|            | <u>(2)</u> | security freeze was placed based on a material misrepresentation of fact by                           |
|            |            | the protected consumer or the protected consumer's representative.                                    |
| (d)        | Fees       | - A consumer reporting agency may charge a reasonable fee for each                                    |
|            |            | noval of a protected consumer security freeze in accordance with the following:                       |
| лиссии     | (1)        | Fee allowed in certain cases. – If a request for placement or removal of a                            |
|            | 1.7        | protected consumer security freeze is made by telephone or by mail, a                                 |
|            |            | consumer reporting agency may charge a fee to a consumer not to exceed                                |
|            |            | three dollars (\$3.00).   |
|            | (2)        | No fee allowed in certain cases A fee may not be charged for the                                      |
|            |            | placement or removal of a protected consumer security freeze under this                               |
|            |            | section if any of the following conditions are satisfied:   |
|            |            | a. The protected consumer's representative has obtained a report of                                   |
|            |            | alleged identity theft or identity fraud against the protected consumer                               |
|            |            | and provides a copy of the report to the consumer reporting agency.                                   |
|            |            | <u>b.</u> A request for placement or removal of a protected consumer security                         |
|            |            | freeze is for a protected consumer who is under the age of 16 at the                                  |
|            |            | time of the request and the consumer reporting agency has a   |
|            |            | consumer report pertaining to the protected consumer.   |
|            |            | c. A request for placement or removal of a protected consumer security                                |
|            |            | freeze is made electronically.  |
|            |            | <u>d.</u> The protected consumer is over the age of 62.   |
|            | <u>(3)</u> | No other fees allowed. – No fee other than those authorized under this                                |
|            |            | subsection may be charged for placement or removal of a protected                                     |
|            |            | consumer security freeze.   |
| <u>(e)</u> | _          | otions Notwithstanding subsection (b) of this section, the placement of a                             |
|            |            | mer security freeze shall not prohibit the release of a protected consumer's                          |
|            |            | protected consumer's file, or any information contained in these documents to                         |
| iny of tl  | he follow  |   |
|            | (1)        | The protected consumer when the protected consumer has subscribed to a                                |
|            |            | credit reporting service, as that term is defined in G.S. 75-134.                                     |

| Genera   | l Assem | bly of North Carolina  | Session 2015            |
|----------|---------|--|-------------------------|
|          | (2)     | A representative of the protected consumer when the          | e representative has    |
|          |         | subscribed on behalf of the consumer to a credit repo        | rting service, as that  |
|          |         | term is defined in G.S. 75-134.                              | -                       |
|          | (3)     | A person providing the protected consumer or the             | protected consumer's    |
|          |         | representative with a copy of the protected consumer's       | s consumer report or    |
|          |         | protected consumer's file at the request of the protect      | ted consumer or the     |
|          |         | protected consumer's representative.                         |                         |
| (f)      | Viola   | ation A violation of this section is a violation of G.S. 75- | -1.1."                  |
|          | SEC     | TION 3. G.S. 130A-101 is amended by adding a new sub         | section to read:        |
| "(h)     | Whe     | n a birth occurs, the person responsible for preparing the b | oirth certificate under |
| this sec |         | all provide the mother with information about how to         |                         |
|          |         | ity freeze for the child under G.S. 75-63.1 and the potent   |                         |
| so."     |         |  |                         |
|          | CEC     | TION 4 This act becomes effective October 1 2015             |                         |

**SECTION 4.** This act becomes effective October 1, 2015.

Page 4 H607 [Edition 1]

## GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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**HOUSE BILL 562** 

## Committee Substitute Favorable 4/28/15 PROPOSED COMMITTEE SUBSTITUTE H562-CSSA-60 [v.2]

4/29/2015 12:36:52 PM

Short Title: Seco

Second Amendment Affirmation Act.

(Public)

D

Sponsors:

Referred to:

#### April 6, 2015

A BILL TO BE ENTITLED
AN ACT TO ENACT THE SECOND AMENDMENT AFFIRMATION ACT.
The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 14-269(b) reads as rewritten:

"(b) This prohibition shall not apply to the following persons:

(4a) Any person who is a district attorney, an assistant district attorney, or an investigator employed by the office of a district attorney and who has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24; provided that the person shall not carry a concealed weapon at any time while in a courtroom or while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the person's body. The district attorney, assistant district attorney, or investigator shall secure the weapon in a locked compartment when the weapon is not on the person of the district investigator; investigator. assistant district attorney, or attorney, Notwithstanding the provisions of this subsection, a district attorney may carry a concealed weapon while in a courtroom;

(8) A person employed by the Department of Public Safety who has been designated in writing by the Secretary of the Department, who has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24, and has in the person's possession written proof of the designation by the Secretary of the Department, 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;

(9) Any person who is an administrative law judge described in Article 60 of Chapter 7A of the General Statutes 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."



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SECTION 1.(b) G.S. 14-415.27 reads as rewritten:

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 "§ 14-415.27. Expanded permit scope for certain persons.

Notwithstanding G.S. 14-415.11(c), any of the following

Notwithstanding G.S. 14-415.11(c), any 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:

- (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.
- (8) A person employed by the Department of Public Safety who has been designated in writing by the Secretary of the Department and who has in the person's possession written proof of the designation.
- (9) A North Carolina administrative law judge." **SECTION 2.** G.S. 14-269.2(k) reads as rewritten:

"(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, if any of the following conditions are met:

- (1) who—The person 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 unlockvehicle and only unlocks the vehicle to enter or exit the vehicle provided—while the firearm remains in the closed compartment at all times and immediately locks the vehicle is locked immediately following the entrance or exit.
- (2) The person has a handgun concealed on the person and the person remains in the locked vehicle and only unlocks the vehicle to allow the entrance or exit of another person.

The person is within a locked vehicle and removes the handgun from concealment only for the amount of time reasonably necessary to do either of the following:

- a. Move the handgun from concealment on the person to a closed compartment or container within the vehicle.
- b. Move the handgun from within a closed compartment or container within the vehicle to concealment on the person."

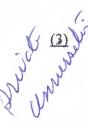
**SECTION 3.** G.S. 14-269.2 is amended by adding a new subsection to read:

"(1) It is an affirmative defense to a prosecution under subsection (b) or (f) of this section that the person was authorized to have a concealed handgun in a locked vehicle pursuant to subsection (k) of this section and removed the handgun from the vehicle only in response to a threatening situation in which deadly force was justified pursuant to G.S. 14-51.3."

**SECTION 4.(a)** Article 45 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"§ 106-503.2. Regulation of firearms at State Fair.

(a) Except as otherwise provided in this section, the Commissioner of Agriculture is authorized to prohibit the carrying of firearms in any manner on the State Fairgrounds during the period of time each year that the State Fair is conducted. Any prohibition under this section shall be posted conspicuously in compliance with G.S. 14-415.28.



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Notwithstanding subsection (a) of this section, any prohibition under this section shall not apply to the following persons:

Any person exempted by G.S. 14-269(b)(1), (2), (3), (4), or (5). (1)

Any person who has a concealed handgun permit that is valid under Article (2) 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 4.(b) The Department of Agriculture, in consultation with the Department of Public Safety and the North Carolina Sheriffs' Association, shall study the best method to allow persons with concealed handgun permits to carry a concealed handgun on their person from a parking lot to the entrance of the State Fairgrounds, and a secure method of storage for and retrieval of those handguns at or near the entrance. The Department of Agriculture shall report to the Joint Legislative Oversight Committee on Justice and Public Safety by April 1, 2016 with recommendations, including any necessary legislation.

SECTION 5.(a) G.S. 14-409.46 reads as rewritten:

"§ 14-409.46. Sport shooting range protection.

- Notwithstanding any other provision of law, a person who owns, operates, or uses a sport shooting range in this State shall not be subject to civil liability or criminal prosecution in any matter relating to noise or noise pollution resulting from the operation or use of the range if the range was in existence at least three years prior to the effective date of this Article and the range was is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time the range began operation.
- A person who owns, operates, or uses a sport shooting range is not subject to an action for nuisance on the basis of noise or noise pollution, and a State court shall not enjoin the use or operation of a range on the basis of noise or noise pollution, if the range was in existence at least three years prior to the effective date of this Article and the range was-is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time the range began operation.
- Rules adopted by any State department or agency for limiting levels of noise in terms of decibel level that may occur in the outdoor atmosphere shall not apply to a sport shooting range exempted from liability under this Article that was in operation prior to the adoption of the rule.
- A person who acquires title to real property adversely affected by the use of property with a permanently located and improved sport shooting range constructed and initially operated prior to the time the person acquires title shall not maintain a nuisance action on the basis of noise or noise pollution against the person who owns the range to restrain, enjoin, or impede the use of the range. If there is a substantial change in use of the range after the person acquires title, the person may maintain a nuisance action if the action is brought within one year of the date of a substantial change in use. This section does not prohibit actions for negligence or recklessness in the operation of the range or by a person using the range.
- A sport shooting range that is operated and is not in violation of existing law at the time of the enactment of an ordinance and was in existence at least three years prior to the effective date of this Article, shall be permitted to continue in operation even if the operation of the sport shooting range at a later date does not conform to the new ordinance or an amendment to an existing ordinance, provided there has been no substantial change in use."

**SECTION 5.(b)** G.S. 14-409.47 reads as rewritten:

"§ 14-409.47. Application of Article.

Except as otherwise provided in this Article, this Article does not prohibit a local government from regulating the location and construction of a sport shooting range after the effective date of this Article. September 1, 1997."

#### **SECTION 6.** G.S. 14-415.4(a) reads as rewritten:

- "(a) Definitions. The following definitions apply in this section:
  - (1) Firearms rights. The legal right in this State of a person to purchase, own, possess, or have in the person's custody, care, or control any firearm or any weapon of mass death and destruction as those terms are defined in G.S. 14-415.1 and G.S. 14-288.8(c). The term does not include any weapon defined in G.S. 14-409(a).
  - (2) Nonviolent felony. The term nonviolent felony does not include any felony that is a Class A, Class B1, or Class B2 felony. Also, the term nonviolent felony does not include any Class C through Class I felony that is one of the following:
    - a. An offense that includes assault as an essential element of the offense.
    - b. An offense that includes the possession or use of a firearm or other deadly weapon as an essential or nonessential element of the offense, or the offender was in possession of a firearm or other deadly weapon at the time of the commission of the offense.
    - c. An offense for which the offender was armed with or used a firearm or other deadly weapon.
    - d. An offense for which the offender must register under Article 27A of Chapter 14 of the General Statutes."

### **SECTION 7.** G.S. 14-415.12(b) reads as rewritten:

- "(b) The sheriff shall deny a permit to an applicant who:
  - (1) Is ineligible to own, possess, or receive a firearm under the provisions of State or federal law.
  - (2) Is under indictment or against whom a finding of probable cause exists for a felony.
  - (3) Has been adjudicated guilty in any court of a felony, unless: (i) the felony is an offense that pertains to antitrust violations, unfair trade practices, or restraints of trade, or (ii) the person's firearms rights have been restored pursuant to G.S. 14-415.4.
  - (4) Is a fugitive from justice.
  - (5) Is an unlawful user of, or addicted to marijuana, alcohol, or any depressant, stimulant, or narcotic drug, or any other controlled substance as defined in 21 U.S.C. § 802.
  - (6) Is currently, or has been previously adjudicated by a court or administratively determined by a governmental agency whose decisions are subject to judicial review to be, lacking mental capacity or mentally ill. Receipt of previous consultative services or outpatient treatment alone shall not disqualify an applicant under this subdivision.
  - (7) Is or has been discharged from the Armed Forces of the United States under conditions other than honorable.
  - (8) Except as provided in subdivision (8b) of this section, is sor has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence constituting a misdemeanor, including but not limited to, a violation of a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or a violation of a misdemeanor under G.S. 14-225.2, 14-226.1, 14-258.1, 14-269.2, 14-269.3,

- It is a Class 1 misdemeanor for any person taking wildlife to have in his possession
  - (1) Repealed by Session Laws 2013-369, s. 23, effective October 1, 2013.
  - (2) Weapon of mass death and destruction as defined in G.S. 14-288.8, other than a suppressor or other device designed to muffle or minimize the report of a firearm or short-barreled rifle 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 9. G.S. 14-415.21 reads as rewritten:

## "§ 14-415.21. Violations of this Article punishable as an infraction.

- 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. Any person who has been issued a valid permit who is found to be carrying a concealed handgun in violation of subdivision (c)(8) of G.S. 14-415.11 shall be guilty of an infraction, and may be required to pay a fine of up to five hundred dollars (\$500.00). In lieu of paying a fine the person may surrender the permit.
- 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.
- 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."

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**SECTION 10.(a)** The following statutes are repealed: G.S. 14-402, 14-403, 14-404, 14-405, and 14-407.1.

SECTION 10.(b) 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 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 10.(c) G.S. 14-404(c1) reads as rewritten:

"(c1) Excluding Saturdays, Sundays, and holidays, after receiving notice of any of the judicial findings, court orders, or other factual matters, relevant to any of the disqualifying conditions specified in subsection (c) of this section, the clerk of superior court shall determine which information can practicably be transmitted to the National Instant Criminal Background Check System (NICS) and shall transmit that information to NICS within 48 hours of that determination. The information shall include a reference to the relevant statutory provision of G.S. 14-404 that precludes the issuance of a permit. Excluding Saturdays, Sundays, and holidays, the clerk of superior court shall transmit to the National Instant Criminal Background Check System (NICS) those judicial findings and determinations entered and maintained by the clerks in the Administrative Office of the Courts record management systems that can be used to confirm a disqualifying factor as outlined in G.S. 14-404(c) within 48 hours of such entry, provided that NICS requests that such data be transmitted and that the data can be transmitted in a format acceptable by NICS."

**SECTION 10.(d)** The Administrative Office of the Courts (AOC), in consultation with the State Bureau of Investigation (SBI), shall work with the National Instant Criminal Background Check System (NICS) to determine the feasibility of reporting additional information to NICS from the State's court and law enforcement records relevant to the disqualifiers for purchase or possession in G.S. 14-404(c)(1), (c)(2), (c)(3), and (c)(8). On or before March 1, 2016, the AOC and SBI shall report to the Joint Legislative Oversight Committee on Justice and Public Safety. The report shall include the following:

- (1) Any progress in providing to NICS additional information relevant to the disqualifiers referenced in this section.
- (2) Any specific barriers or roadblocks to transmitting to NICS that additional information.
- (3) Any legislative changes necessary to facilitate enhanced reporting to NICS relevant to the disqualifiers.
- (4) An estimate of the funding, technology, or resource needs required to facilitate the additional reporting relevant to the disqualifiers.

SECTION 11. G.S. 14-409.40 reads as rewritten:

"§ 14-409.40. Statewide uniformity of local regulation.

(a) It is declared by the General Assembly that the regulation of firearms is properly an issue of general, statewide concern, and that the entire field of regulation of firearms is preempted from regulation by local governments except as provided by this section.

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- The General Assembly further declares that the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is not an unreasonably dangerous activity and does not constitute a nuisance per se and furthermore, that it is the unlawful use of firearms and ammunition, rather than their lawful design, marketing, manufacture, distribution, sale, or transfer that is the proximate cause of injuries arising from their unlawful use. This subsection applies only to causes of action brought under subsection (g) of this section.
- Unless otherwise permitted by statute, no county or municipality, by ordinance, resolution, or other enactment, shall regulate in any manner the possession, ownership, storage, transfer, sale, purchase, licensing, taxation, manufacture, transportation, or registration of firearms, firearms ammunition, components of firearms, dealers in firearms, or dealers in handgun components or parts.
- Notwithstanding subsection (b) of this section, a county or municipality, by zoning or other ordinance, may regulate or prohibit the sale of firearms at a location only if there is a lawful, general, similar regulation or prohibition of commercial activities at that location. Nothing in this subsection shall restrict the right of a county or municipality to adopt a general zoning plan that prohibits any commercial activity within a fixed distance of a school or other educational institution except with a special use permit issued for a commercial activity found not to pose a danger to the health, safety, or general welfare of persons attending the school or educational institution within the fixed distance.
- No county or municipality, by zoning or other ordinance, shall regulate in any manner firearms shows with regulations more stringent than those applying to shows of other types of items.
- A county or municipality may regulate the transport, carrying, or possession of firearms by employees of the local unit of government in the course of their employment with that local unit of government.
- Nothing contained in this section prohibits municipalities or counties from application of their authority under G.S. 153A-129, 160A-189, 14-269, 14-269.2, 14-269.3, 14-269.4, 14-277.2, 14-415.11, 14-415.23, including prohibiting the possession of firearms in public-owned buildings, on the grounds or parking areas of those buildings, or in public parks or recreation areas, except nothing in this subsection shall prohibit a person from storing a firearm within a motor vehicle while the vehicle is on these grounds or areas. Nothing contained in this section prohibits municipalities or counties from exercising powers provided by law in states of emergency declared under Article 1A of Chapter 166A of the General Statutes.
- The authority to bring suit and the right to recover against any firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association by or on behalf of any governmental unit, created by or pursuant to an act of the General Assembly or the Constitution, or any department, agency, or authority thereof, for damages, abatement, injunctive relief, or any other remedy resulting from or relating to the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is reserved exclusively to the State. Any action brought by the State pursuant to this section shall be brought by the Attorney General on behalf of the State. This section shall not prohibit a political subdivision or local governmental unit from bringing an action against a firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association for breach of contract or warranty for defect of materials or workmanship as to firearms or ammunition purchased by the political subdivision or local governmental unit.
- A person adversely affected by any ordinance, rule, or regulation promulgated or caused to be enforced by any county or municipality in violation of this section may bring an action for declaratory and injunctive relief and for actual damages arising from the violation.

The court shall award the prevailing party in an action brought under this subsection reasonable attorneys' fees and court costs as authorized by law."

**SECTION 12.** Article 53B of Chapter 14 of the General statutes is amended by adding a new section to read:

## "§ 14-409.41. Chief law enforcement officer certification; certain firearms.

- (a) Definitions. The following definitions apply in this section:
  - (1) Certification. The participation and assent of the chief law enforcement officer necessary under federal law for the approval of the application to transfer or make a firearm.
  - (2) Chief law enforcement officer. Any official the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives, or any successor agency, identified by regulation or otherwise as eligible to provide any required certification for the transfer or making of a firearm.
  - (3) Firearm. Any firearm that meets the definition of firearm in 26 U.S.C. § 5845.
- (b) When a chief law enforcement officer's certification is required by federal law or regulation for the transfer or making of a firearm, the chief law enforcement officer shall, within 15 days of receipt of a request for certification, provide the certification if the applicant is not prohibited by State or federal law from receiving or possessing the firearm and is not the subject of a proceeding that could result in the applicant being prohibited by State or federal law from receiving or possessing the firearm. If the chief law enforcement officer is unable to make a certification as required by this section, the chief law enforcement officer shall provide the applicant with a written notification of the denial and the reason for the denial.

Nothing in this section shall require a chief law enforcement officer to make a certification the chief law enforcement officer knows to be untrue, but the chief law enforcement officer may not refuse to provide certification based on a generalized objection to private persons or entities making, possessing, or receiving firearms or any certain type of firearm the possession of which is not prohibited by law.

- (c) An applicant whose request for certification is denied may appeal the decision of the chief law enforcement officer to the district court of the district in which the request for certification was made. The court shall make a de novo review of the chief law enforcement officer's decision to deny the certification. If the court finds that the applicant is not prohibited by State or federal law from receiving or possessing the firearm, is not the subject of a proceeding that could result in the applicant being prohibited by State or federal law from receiving or possessing the firearm, and that no substantial evidence supports the chief law enforcement officer's determination that the chief law enforcement officer cannot truthfully make the certification, the court shall order the chief law enforcement officer to issue the certification and award court costs and reasonable attorneys' fees to the applicant.
- (d) Chief law enforcement officers and their employees who act in good faith are immune from liability arising from any act or omission in making a certification as required by this section."

### SECTION 13. G.S. 14-415.15(a) reads as rewritten:

"(a) Except as permitted under subsection (b) of this section, within 45 days after receipt of the items listed in G.S. 14-415.13 from an applicant, and receipt of the required records concerning the mental health or capacity of the applicant, the sheriff shall either issue or deny the permit. The sheriff shall issue or deny the permit within 90 calendar days from the date on which the application was submitted regardless of the receipt of required records concerning the mental health or capacity of the applicant. Such denial shall not be issued unless the applicant is determined to be ineligible under G.S. 14-415.12.

The sheriff may conduct any investigation necessary to determine the qualification or competency of the person applying for the permit, including record checks."

SECTION 14. G.S. 14-415.23 is amended by adding a new subsection to read:

"(e) A person adversely affected by any ordinance, rule, or regulation promulgated or caused to be enforced by any unit of local government in violation of this section may bring an action for declaratory and injunctive relief and for actual damages arising from the violation. The court shall award the prevailing party in an action brought under this subsection reasonable attorneys' fees and court costs as authorized by law."

**SECTION 15.** Chapter 90 of the General Statutes is amended by adding a new Article to read:

#### "Article 1L.

"Preserving Firearms Privacy for Patients.

#### "§ 90-21.75. Findings and intent.

- (a) Findings. The General Assembly makes all of the following findings:
  - (1) That individuals have a right under the United States Constitution and the North Carolina Constitution to keep and bear arms, which arms include firearms and their ammunition.
  - (2) That an individual's decision to exercise this right is a private matter.
  - (3) That lawfully possessed, stored, and used firearms and ammunition are not a threat to the public health.
  - (4) That health care providers do not have any special expertise in the safe storage or use of firearms and ammunition merely by virtue of their status as health care providers. To the extent that health care providers have general advice to impart concerning firearms and ammunition, they may do so without knowing whether any particular patient actually possesses or uses these items.
  - (5) That health care providers do not need to know whether a patient lawfully possesses or uses firearms and ammunition unless the patient (i) specifically exhibits symptoms of illness or injury that the health care provider could reasonably attribute to the possession or use of firearms and ammunition or (ii) has expressed a desire to harm self or others.
  - (6) That a patient should not be compelled to participate in a health care provider's gathering of statistical or demographic information about the use, storage, and possession of firearms and ammunition for research or other purposes not directly related to the patient's own health.
- (b) Intent. It is the intent of the General Assembly to ensure that (i) every patient may obtain health care free from discrimination based on knowledge of, or unwarranted inquiry into, constitutionally protected conduct involving firearms and ammunition and (ii) health care providers may still obtain information about patient activities with respect to firearms and ammunition when directly relevant to the patient's own health care.

#### "§ 90-21.76. Definitions.

The following definitions apply in this section:

- Health care provider. Without limitation, any person who, pursuant to the provisions of Chapter 90 of the General Statutes, is licensed or is otherwise registered or certified to engage in the practice of or otherwise performs duties associated with any of the following: medicine, surgery, dentistry, pharmacy, optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing, physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis, rendering assistance to a physician, dental hygiene, psychiatry, psychology, or a hospital.
- (2) Patient. Means a person under the care of or who seeks professional services from a health care provider.

"§ 90-21.77. Prohibited questionnaires about firearms and ammunition; exception.

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A health care provider is prohibited from asking a patient or the patient's parent, guardian, or custodian to complete a questionnaire or other written form about the patient's lawful ownership, possession, handling, storage, maintenance of, or other conduct involving, firearms and ammunition, unless the patient has been adjudicated incompetent due to mental illness.

"§ 90-21.78. Prohibited disclosure of verbal inquiries about firearms and ammunition; exception.

Confidentiality of Verbal Inquiries About Firearms and Ammunition. — A health care

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provider is prohibited from disclosing to any government official or agency the response of a patient, or the patient's parent, guardian, or custodian, to verbal inquiries about the patient's lawful ownership, possession, handling, storage, maintenance of, or other conduct involving firearms and ammunition, unless the patient has been adjudicated incompetent due to mental illness

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"§ 90-21.79. Fines.

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The health care provider's licensing board may impose a fine on any health care provider that violates any provision of this Article. The fine shall not exceed two hundred fifty dollars (\$250.00) for nonwillful violations and shall not exceed five hundred dollars (\$500.00) for willful violations. Each intentional and willful violation of this Article constitutes a separate violation and is subject to a separate fine.

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"§ 90-21.80. Disciplinary action.

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<u>Violation of this Article is a ground for disciplinary action against the health care provider</u> by the health care provider's licensing board or other regulatory authority."

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SECTION 16. Sections 1, 2, 3, 8, and 9 of this act become effective October 1, 2015, and apply to offenses committed on or after that date. Section 5 of this act becomes effective October 1, 2015, but shall not apply to pending litigation. Section 6 of this act is effective when it becomes law and applies to restorations granted before, on, or after that date. Section 7 of this act becomes effective October 1, 2015, and applies to permit applications submitted on or after that date. Subsections (a) and (b) of Section 10 of this act become effective October 1, 2018, and apply to offenses committed on or after that date. Sections 11, 14, and 15 of this act become effective October 1, 2015, and apply to violations occurring on or after that date. Section 12 of this act becomes effective October 1, 2015. Section 13 becomes effective October 1, 2015, and applies to applications submitted on or after that date. The remainder of this act is effective when it becomes law. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that

would be applicable but for this act remain applicable to those prosecutions.

Email to: Jacqueline Schaffer

CC: Nelson, Burr, Cleveland & Faircloth, Jon Carr

Subject: HB 562

The questions physicians ask on RX use, tobacco, health conditions, alcohol, siblings and parents' health are needed. Owning firearms has nothing to do with your health.

My LA has gone to her physician in the past and asked to sign the bottom of HIPPA paperwork where it says, *in small print*, the information from the physician's visit can be shared with the federal government. She refused to sign. If individuals do not read the fine print, which most do not, they do not know what they are signing and that they are not required to sign the form.

Also, as an insurance agent, when we sell health disability, life and long-term care insurance, the client must sign a release form for the attending physician to furnish medical records to the insurance company who then has to share it with the Medical Information Bureau (MIB). This means **ALL** insurance companies will see that the client owns a firearm and can jeopardize them from receiving coverage if a liberal underwriter is in charge of their case.

## NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

#### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

#### FAVORABLE COM SUB, UNFAVORABLE ORIGINAL BILL

HB 607 Allow Protected Consumer Security Freezes.

Draft Number: H607-PCS20349-MD-6

Serial Referral: None Recommended Referral: None Long Title Amended: No Floor Manager: Meyer

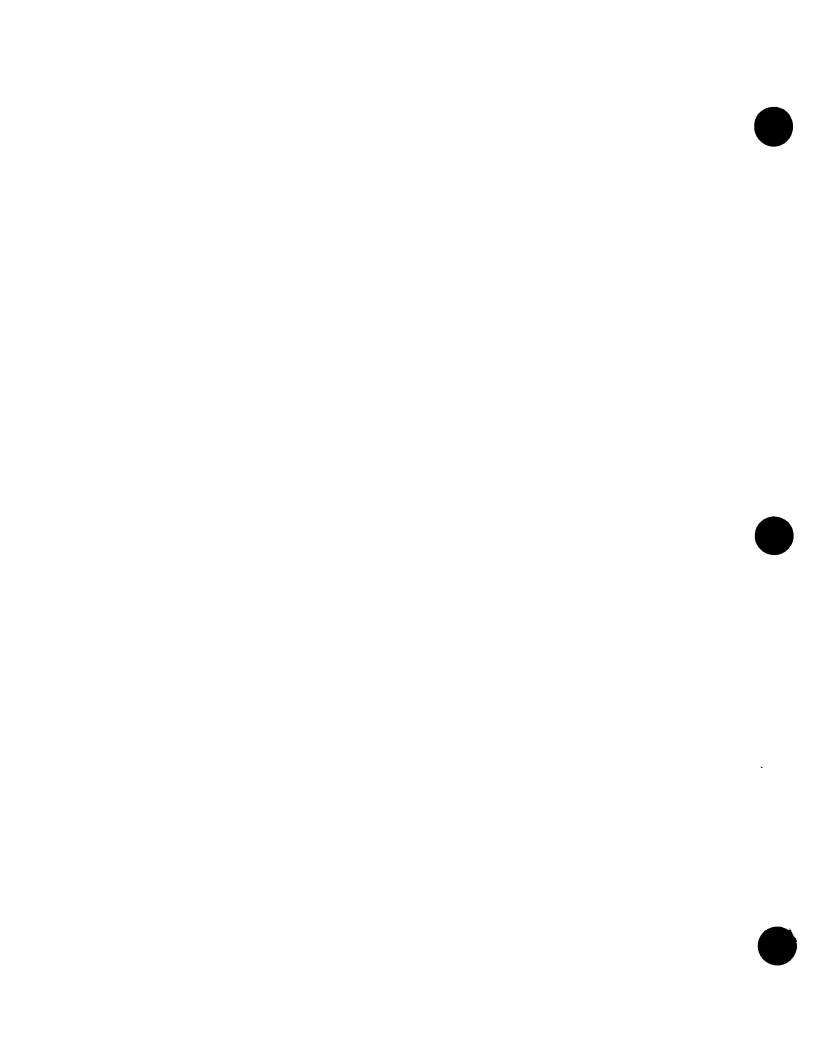
HB 924 Highway Safety/Salary Changes.

Draft Number: H924-PCS20348-ST-45

Serial Referral: None Recommended Referral: None Long Title Amended: Yes Floor Manager: Burr

**TOTAL REPORTED: 2** 

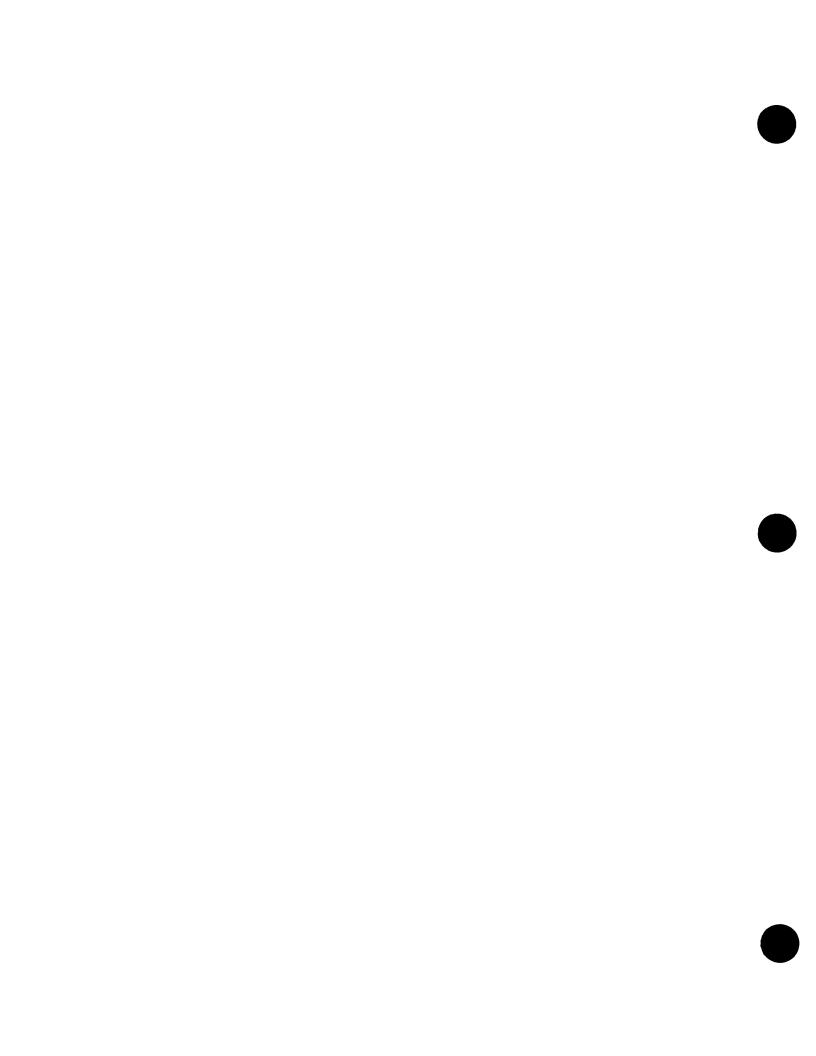




| •                                      | Date: 4-29-15        |
|--|----------------------|
| Bill Number <u>HB 6</u> 07             | 0,0137               |
| PCS HB 607 - CSM1                      | )-6 LV. 3]           |
| Motion to be before the committee by _ |                      |
| Rep_ (Rep_                             | explained the bill.  |
| Discussion on the Bill YES or NO       |                      |
| Rep_Hardister                          | motioned for:        |
| Favorable Report                       | Adoption             |
| Unfavorable Report  No vote            | rolled who a new PCS |
| Pass — Amendments: : ys -              | H607-AMD-8 [V.2]     |
| Serial referral to:                    |                      |
| Speakers:                              |                      |
| Handouts:                              |                      |
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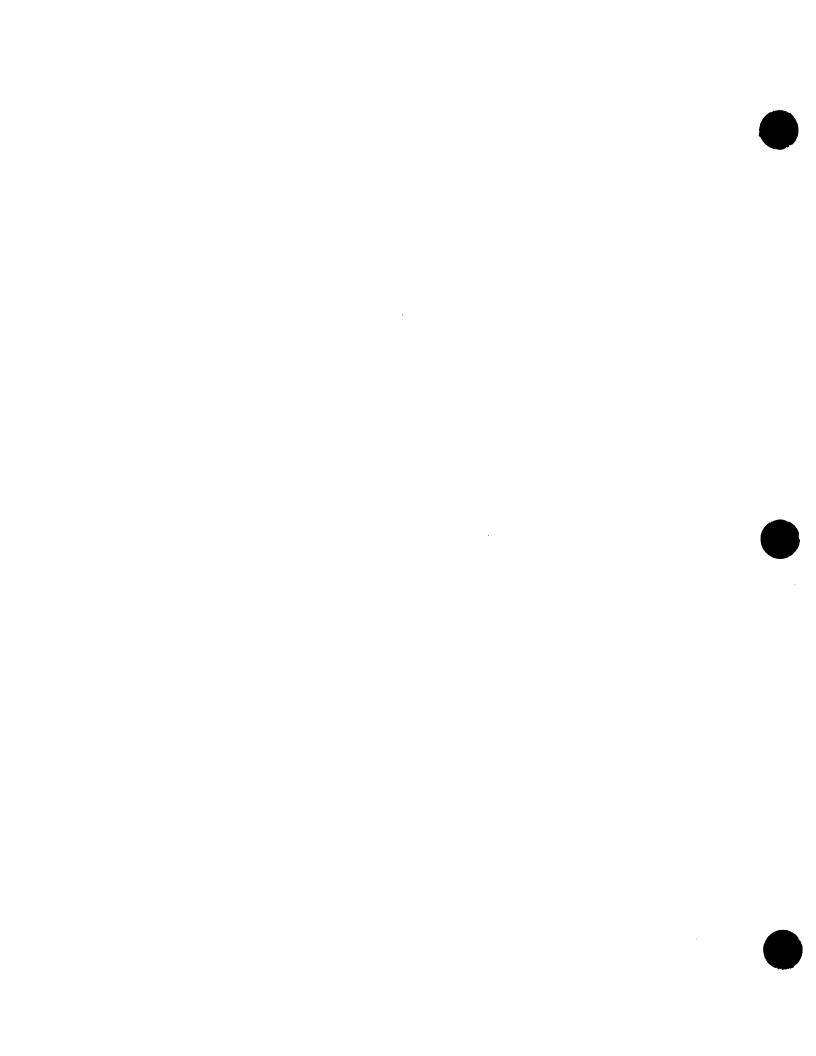
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|   | Date: 4-29-15                            |
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| Bill Number H924                          |  |
| PCS <u>H924 - CSST-45</u>                 | 5 [V, 2]                                 |
| Motion to be before the committee by _    | Howard                                   |
| Rep BUYY Discussion on the Bill YES or NO | explained the bill.                      |
| Rep_Howard                                | motioned for:                            |
| Favorable Report                          | Adoption                                 |
| Unfavorable Report                        | Unfavorable to original bill, fav to PCS |
| No vote                                   |  |
| Amendments: :                             |  |
| Serial referral to:                       |  |
|   | - Thanked bill sporesors<br>committee    |
| Handouts:                                 |  |
| nartin -                                  | Workers Compissation                     |



## **House Staff**

| Committee: H Judiciary 1 Date: 29 APR 15 |
|--|
| Pages AR AGUETA TROUT                    |
| 1. Name Phillip ARMENTROUT               |
| County CRAVEN Sponsor John BELL          |
| 2. Name KAITLIN AVERY                    |
| County_PITT Sponsor_SUSAN MARTIN         |
| 3. Name                                  |
| CountySponsor                            |
| 4. Name                                  |
| County Sponsor                           |
| 5. Name                                  |
| CountySponsor                            |
|  |
| Sergeant-at-Arms                         |
| BARRY MOORE                              |
| B. H. Powell                             |
| BILLY Jones                              |
| CORY BRYAN                               |



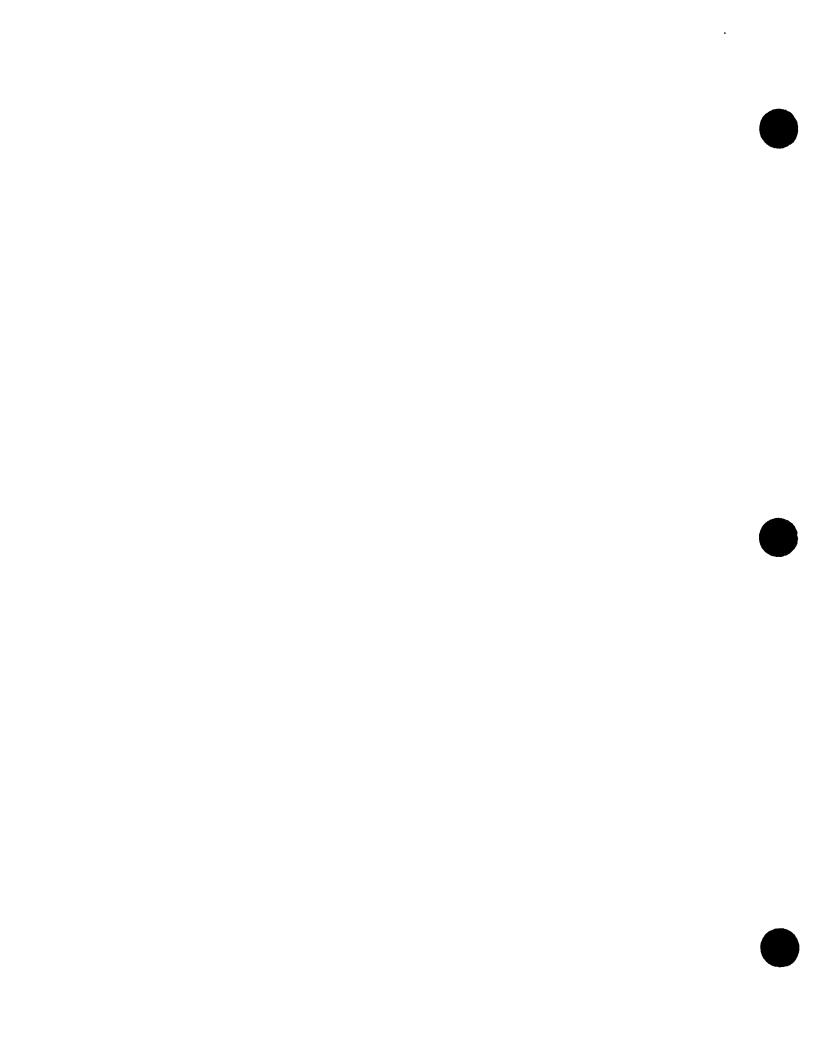
## VISITOR REGISTRATION SHEET

H Judiciary 1
Name of Committee

28 APR 15
Date

## VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME                   | FIRM OR AGENCY AND ADDRESS |
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## VISITOR REGISTRATION SHEET

## H Judiciary 1 Name of Committee

28 APR 15

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#### FIRM OR AGENCY AND ADDRESS

| Chris Agner     | DO    |
|-----------------|-------|
| Jose Rojale     | NCFPL |
| Palu Sys        | Zws1  |
| DONNA CAKTER    | SHP   |
| JAMES WILLIAMS  | SHP   |
| Robert West     | SHP   |
| JOSEPH CUTTON   | SHP   |
| Larry McKeithan | SHP   |
| Lee Councilmen  | SHP   |
| Ryan Combs      | OPS   |
| Jarret Burr     | OPS   |
|                 |       |

# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

You are hereby notified that the  $House\ Committee\ on\ Judiciary\ I$  will meet as follows:

| TIME:<br>LOCATION  | 12:30 PM<br>12:50 LOB                        |  |
|--------------------|--|--|
| The followin       | g bills will be considered:                  |  |
| BILL NO.<br>HB 615 | SHORT TITLE Probation Violation Court Costs. | SPONSOR Representative McNeill                           |
|                    | R  | espectfully,   |
|                    | R  | epresentative N. Leo Daughtry, Chair                     |
| Thursday, M        | •  | nittee assistant at the following offices at 10:23 AM on |

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## House Committee on Judiciary I Wednesday, May 13, 2015, 12:30 PM 415 Legislative Office Building

#### **AGENDA**

Welcome and Opening Remarks

**Introduction of Pages** 

**Bills** 

**BILL NO. SHORT TITLE** 

HB 615 Probation Violation Court Costs.

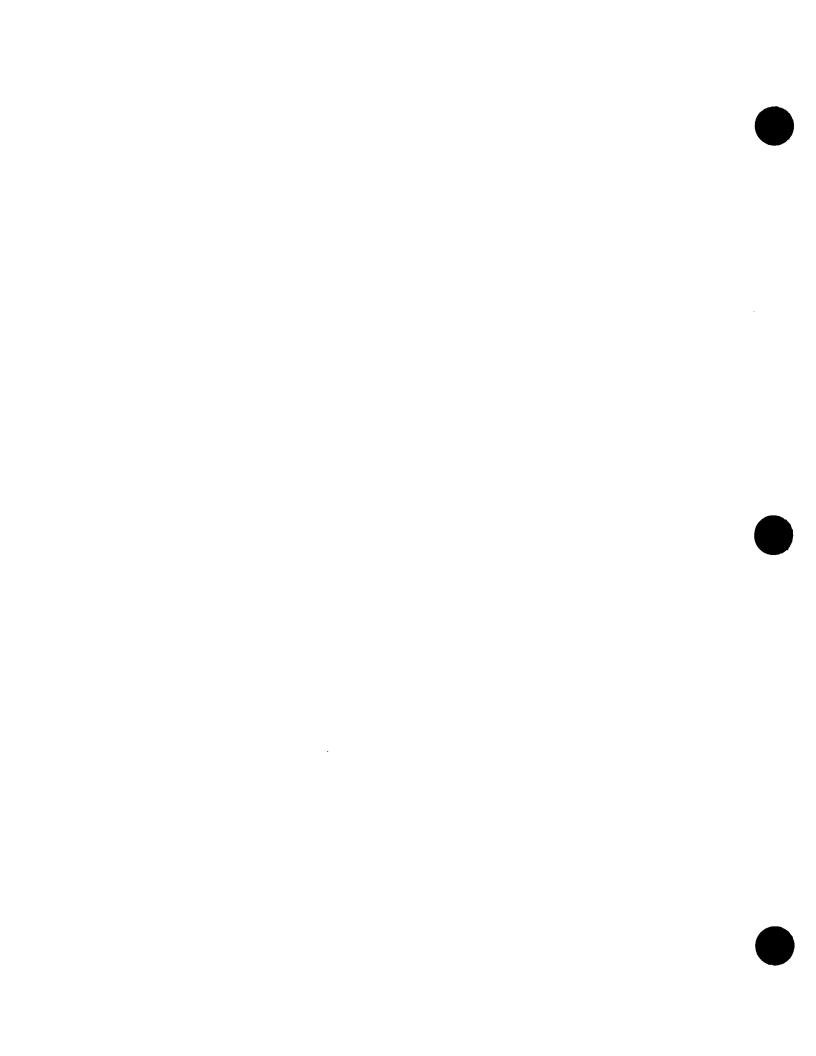
**SPONSOR** 

Representative McNeill

**Presentations** 

**Other Business** 

Adjournment



#### House Committee on Judiciary I Wednesday, May 13, 2015 at 12:30 PM Room 415 of the Legislative Office Building

#### **MINUTES**

The House Committee on Judiciary I met at 12:30 PM on May 13, 2015 in Room 415 of the Legislative Office Building. Representatives Daughtry, Burr, Jackson, Howard, Martin, McNeill, Robinson, and Steinburg attended.

Representative N. Leo Daughtry - Chair, presided.

The following bills were considered:

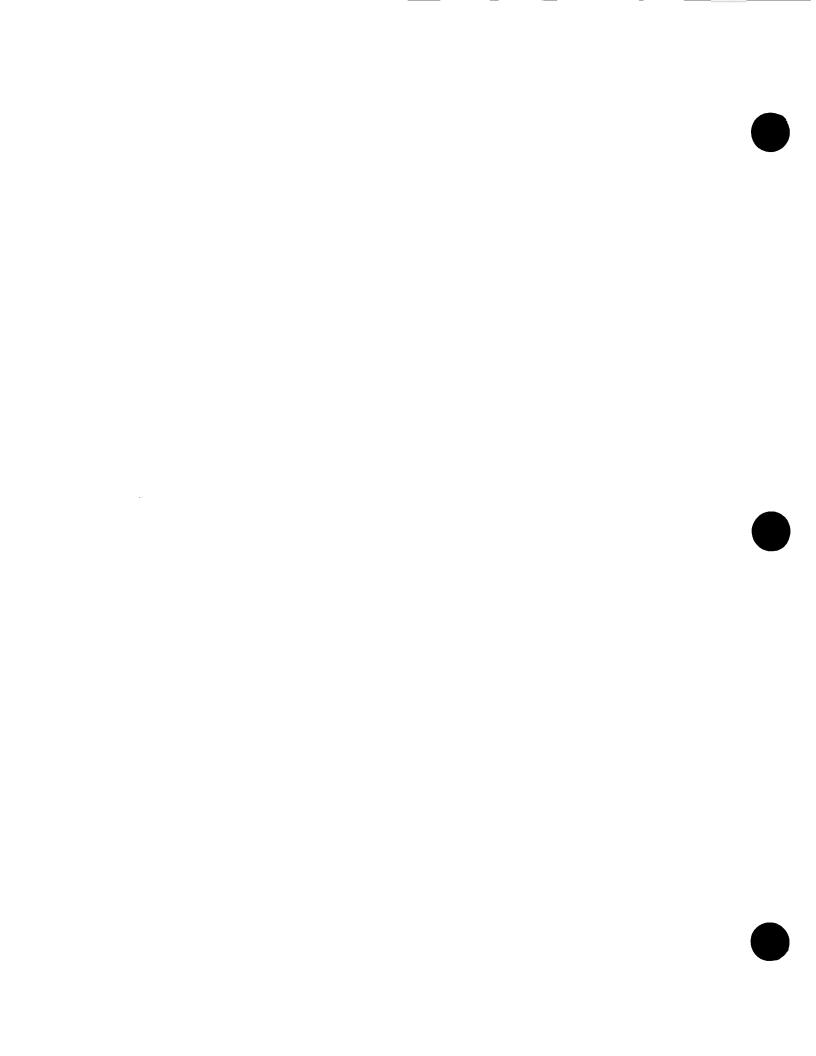
HB 615 Probation Violation Court Costs. (Representative McNeill) – favorable committee substitute, unfavorable to the original bill and re-referred to the Finance Committee

The meeting adjourned at 12:49 p.m.

Representative Leo Daughtry, Chair

Presiding

Jan Copeland, Committee Clerk



### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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HOUSE BILL 615

## PROPOSED COMMITTEE SUBSTITUTE H615-CSSTf-47 [v.1]

5/12/2015 3:46:43 PM

Short Title: Probation Violation Court Costs. (Public)

Sponsors:

Referred to:

April 13, 2015

1 A BILL TO BE ENTITLED

AN ACT TO ESTABLISH COURT COSTS TO BE PAID BY PROBATION VIOLATORS.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 28 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-304.1. Costs for probation violations.

Whenever a hearing is held pursuant to G.S. 15A-1344 or G.S. 15A-1345 in response to a violation of the conditions of probation, the probationer shall be assessed court costs of fifty dollars (\$50.00) if the probationer is found in violation of probation. A probationer shall not be assessed more than one fifty-dollar (\$50.00) fee for the same probation violation. The probation violation court costs assessed under this section shall be remitted to the State Treasurer for support of the General Court of Justice."

**SECTION 2.** G.S. 15A-1344 is amended by adding a new subsection to read:

"(h) A probationer for whom a hearing is held pursuant to this section and found in violation of probation shall be assessed the probation violation court costs provided for in G.S. 7A-304.1."

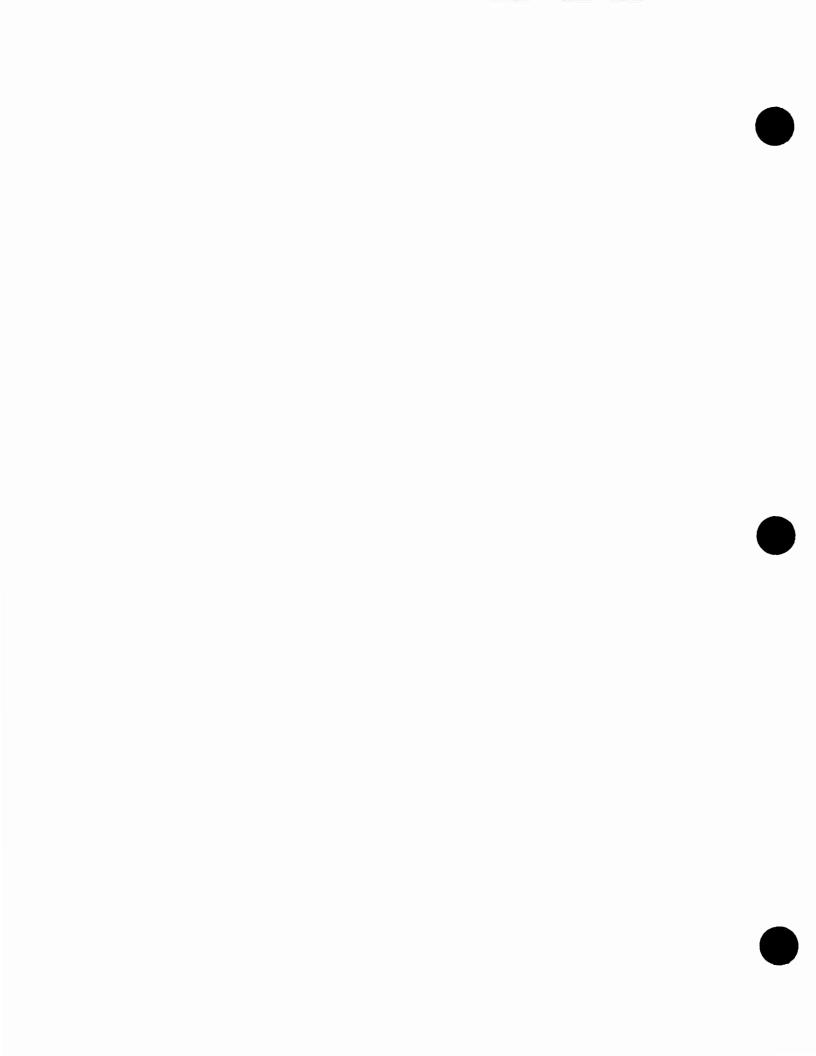
SECTION 3. G.S. 15A-1345 is amended by adding a new subsection to read:

"(f) A probationer for whom a hearing is held pursuant to this section and found in violation of probation shall be assessed the probation violation court costs provided for in G.S. 7A-304.1."

**SECTION 4.** This act becomes effective December 1, 2015, and applies to probation violations occurring on or after that date.



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## **HOUSE BILL 615: Probation Violation Court Costs**

2015-2016 General Assembly

House Judiciary I, if favorable, Finance Committee:

Rep. McNeill Introduced by:

PCS to First Edition Analysis of:

H615-CSSTf-47

Date:

May 12, 2015

Prepared by: R. Erika Churchill

Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 615 would establish a new \$50 court cost fee to be charged of each probation violator when a court hearing is held and that probationer is found in violation of probation.

CURRENT LAW: A defendant sentenced to probation is subject to conditions that he or she must follow as part of a sentence following a conviction of a criminal act. A willful failure to comply with those conditions is considered a violation of probation. The courts may respond to a violation of probation, ranging from reinstating probation to revoking probation and activating the defendant's suspended sentence. But before the court can take action, a probationer is entitled to notice and a hearing at which the court will determine whether a violation occurred.

The hearing on probation violation is not a criminal prosecution, nor a formal trial. However, certain procedural requirements apply as a matter of statute and constitutional due process. At the hearing, evidence against the probationer must be disclosed to him or her, and the probationer may appear, speak, and present relevant information. The defendant is entitled to a written statement from the court as to the evidence relied on and reasons for revoking probation.

To activate a suspended sentence for failure to comply with a probation condition, the State must present evidence sufficient to reasonably satisfy the judge that the defendant has willfully violated a valid condition of probation or has violated a condition without lawful excuse. A defendant does not plead "guilty" or "not guilty" to a probation violation; rather, he or she admits or denies the violation.

BILL ANALYSIS: The PCS would establish a new court cost to be charged against a probationer whenever a hearing is held pursuant to G.S. 15A-1344 or G.S. 15A-1345 and the probationer is found in violation of probation. No more than one \$50.00 fee may be assessed for the same probation violation.

The monies collected as a result of the court costs are to be remitted to the State Treasurer for support of the General Court of Justice.

**EFFECTIVE DATE:** December 1, 2015, and applies to probation violations occurring on or after that date.

James M. Markham, with the UNC School of Government and author of the May 2013 Administration of Justice Bulletin, substantially contributed to this summary.

O. Walker Reagan Director



Research Division (919) 733-2578

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## GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H

18 19

### **HOUSE BILL 615**

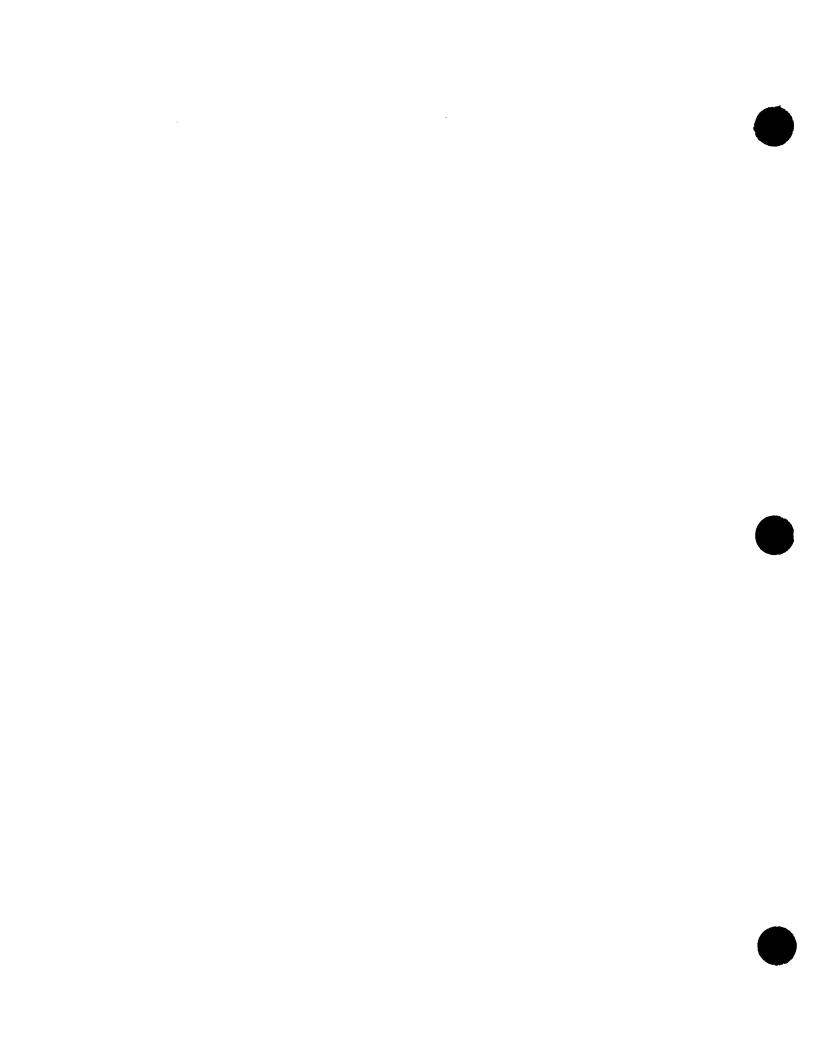
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| Short Title: | Probation Violation Court Costs. (Pr  | ublic) |
|--------------|---|--------|
| Sponsors:    | Representative McNeill (Primary Sponsor).   |        |
|              | For a complete list of Sponsors, refer to the North Carolina General Assembly Web Sit | te.    |
| Referred to: | Judiciary I, if favorable, Finance.   |        |
|              |   |        |

|    | referred to: "datelety 1, 11 tavolatile, 1 mande.   |
|----|---|
|    | April 13, 2015  |
| 1  | A BILL TO BE ENTITLED   |
| 2  | AN ACT TO ESTABLISH COURT COSTS TO BE PAID BY PROBATION VIOLATORS.                                  |
| 3  | The General Assembly of North Carolina enacts:  |
| 4  | SECTION 1. Article 28 of Chapter 7A of the General Statutes is amended by                           |
| 5  | adding a new section to read:   |
| 6  | "§ 7A-304.1. Costs for probation violations.  |
| 7  | Whenever a hearing is held pursuant to G.S. 15A-1344 or G.S. 15A-1345 in response to a              |
| 8  | violation of the conditions of probation, the probationer shall be assessed court costs of fifty    |
| 9  | dollars (\$50.00). A probationer shall not be assessed more than one fifty-dollar (\$50.00) fee for |
| 10 | the same probation violation. The probation violation court costs assessed under this section       |
| 11 | shall be remitted to the State Treasurer for support of the General Court of Justice."              |
| 12 | SECTION 2. G.S. 15A-1344 is amended by adding a new subsection to read:                             |
| 13 | "(h) A probationer for whom a hearing is held pursuant to this section shall be assessed            |
| 4  | the probation violation court costs provided for in G.S. 7A-304.1."                                 |
| 15 | SECTION 3. G.S. 15A-1345 is amended by adding a new subsection to read:                             |
| 16 | "(f) A probationer for whom a hearing is held pursuant to this section shall be assessed            |
| 17 | the probation violation court costs provided for in G.S. 7A-304.1."                                 |

**SECTION 4.** This act becomes effective July 1, 2015, and applies to probation violations occurring on or after that date.





## NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

#### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

#### FAVORABLE COM SUB, UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB 615 Probation Violation Court Costs.

Draft Number: H615-PCS10382-STf-47

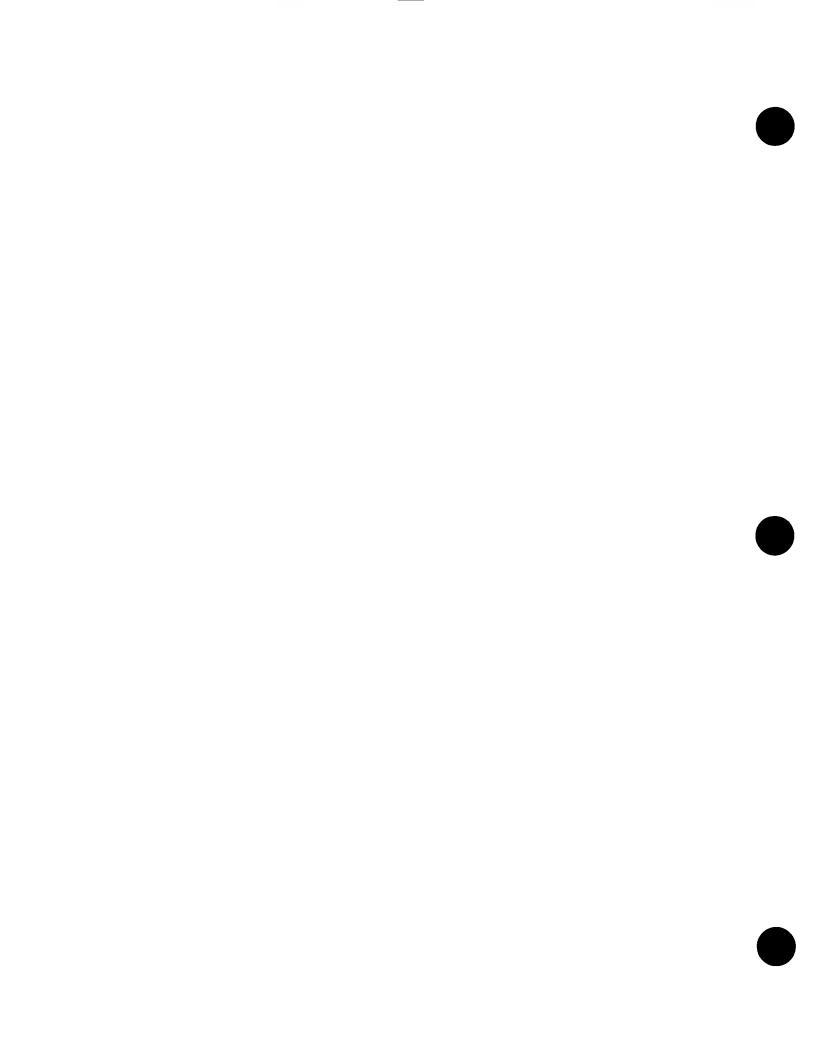
Serial Referral: FINANCE
Recommended Referral: None
Long Title Amended: No
Floor Manager: McNeill

TOTAL REPORTED: 1



| Date | 5- | 13 | -15 |
|------|----|----|-----|
|      |    | 0  |     |

| Bill Number $\underline{H615}$ PCS $\underline{H615}$ - $\underline{C55Tf}$ - $\underline{47}$ Motion to be before the committee by | [V.1]<br>Howard   |
|---|---|
| Rep. MCM-CLL  Discussion on the Bill YES or NO  | explained the bill.   |
| Amendments: _\OD_   |   |
| Rep. Jackson  Favorable Report  Unfavorable Report  No vote  Other:   | motioned for:AdoptionUnfavorable to original bill, favorable to PCS |
| Serial referral to: Finance   |   |
| Speakers:   |   |
| Handouts:   |   |





## North Carolina General Assembly - House Sergeant-at-Arms

## House Staff

| Committee: House Judiciary 1 Date: 13 MAY 15  Pages           |
|---|
| Pages   |
| Name: Alyssa BAKER  |
| County: MALIFAX Sponsor: Michael WRAY                         |
| Name: Madeline Coggins  |
| Name: Macleline Coggins  County: Randolph Sponsor: PAT HURLEY |
| Name: Repol HOLLY   |
| County: Walle Sponsor: Chris Malone                           |
| Name:   |
| County: Sponsor:  |
| Name:   |
| County: Sponsor:  |
| Sergeants-at-Arms   |
| BARRY MOORE   |
| B.H. Powell   |
|   |
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## North Carolina General Assembly - House Sergeant-at-Arms

## Visitors

| Committee:       | Date:                     |  |  |  |
|------------------|---------------------------|--|--|--|
| Name             | Organization              |  |  |  |
| Allua Carcerano  | Intern-12-epsarah stevens |  |  |  |
| Mildred Spearman | NCHOC                     |  |  |  |
| Parry Guff       | Shorl Joov.               |  |  |  |
| In Myre          | (20v - 10g 1-50'r)        |  |  |  |
|                  | DPS                       |  |  |  |
| auch Brandon     |                           |  |  |  |
| Flint BENSON     | DE NNC                    |  |  |  |
| ANOY WALSH       | SMITH ANDERSON            |  |  |  |
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# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

You are hereby notified that the House Committee on Judiciary I will meet as follows:

| TIME:<br>LOCATIO            | 12:30 PM<br>N: 415 LOB                                |   |
|-----------------------------|---|---|
| The following               | ng bills will be considered:                          |   |
| BILL NO.<br>SB 2            | SHORT TITLE Magistrates Recusal for Civil Ceremonies. | SPONSOR<br>Senator Berger                                 |
|                             |   | Respectfully,   |
|                             |   | Representative N. Leo Daughtry, Chair                     |
| I hereby cer<br>Friday, May |   | ommittee assistant at the following offices at 1:02 PM on |
|                             | Principal Clerk<br>Reading Clerk – House Cha          | amber   |
|                             | d (Committee Assistant)                               |   |

## House Committee on Judiciary I Wednesday, May 27, 2015, 12:30 PM 415 Legislative Office Building

#### **AGENDA**

**Welcome and Opening Remarks** 

**Introduction of Pages** 

**Bills** 

BILL NO. SHORT TITLE

SB 2

Magistrates Recusal for Civil

Ceremonies.

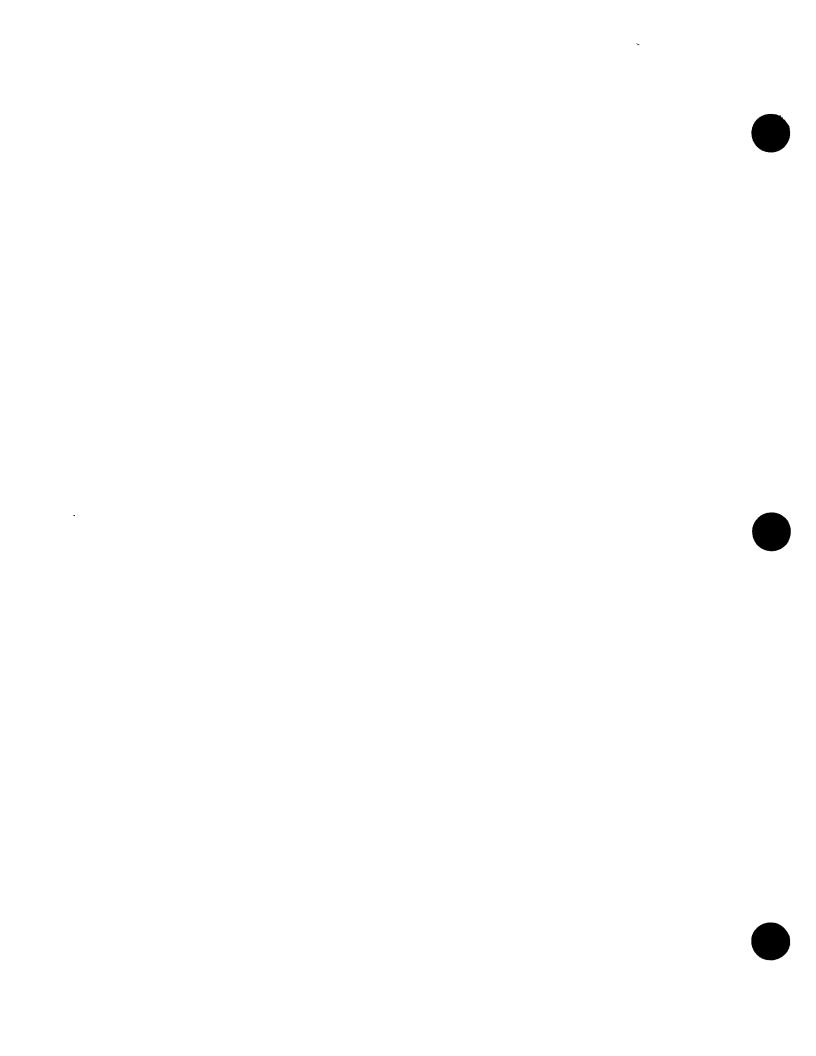
**SPONSOR** 

Senator Berger

**Presentations** 

**Other Business** 

Adjournment



#### House Committee on Judiciary I Wednesday, May 27, 2015 at 12:30 PM Room 415 of the Legislative Office Building

#### **MINUTES**

The House Committee on Judiciary I met at 12:30 PM on May 27, 2015 in Room 415 of the Legislative Office Building. Representatives Daughtry, Burr, Arp, Hall, Hardister, Howard, Martin, McNeill, Robinson, Steinburg, and Szoka attended.

Reprsentative N. Leo Daughtry - Chair, presided.

The following bills were considered:

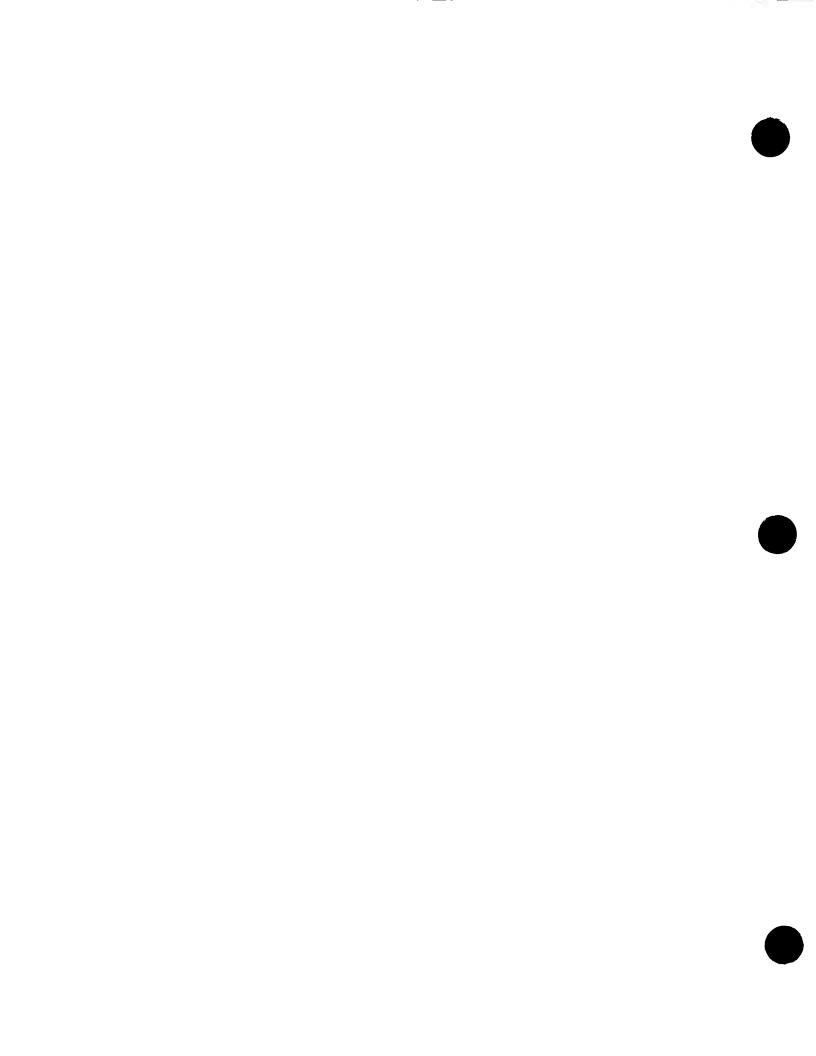
SB 2 Magistrates Recusal for Civil Ceremonies. (Senator Berger) – received a favorable report

The meeting adjourned at 1:22 p.m.

Representative N. Leo Daughtry

Presiding

Jan Copeland, Committee Clerk





## **SENATE BILL 2: Magistrates Recusal for Civil Ceremonies**

2015-2016 General Assembly

House Judiciary I Committee: Sen. Berger Introduced by: Analysis of: Second Edition

May 26, 2015 Date: Prepared by: R. Erika Churchill

Committee Counsel

SUMMARY: Senate Bill 2 would establish procedures by which magistrates can be recused from performing all lawful marriages and assistant and deputy registers of deeds can be recused from issuing all lawful marriage licenses, based upon a sincerely held religious objection. The recusal would be for a minimum of six months and would continue until the recusal is rescinded in writing. Officials so recusing themselves would not be subject to prosecution for failing to perform the duties imposed upon them by law.

Each register of deeds would be required to ensure that all qualified applicants for marriage licenses are issued a license, and each chief district court judge would be required to ensure that marriages performed by a magistrate are available to be performed during at least ten hours per week over at least three business days.

The bill would also provide protection against loss of employment and retirement benefits for magistrates who resigned or were terminated from their position between October 6, 2014 and the effective date of this act, and who are subsequently reappointed to the position of magistrate within 90 days after the act's effective date.

CURRENT LAW: G.S. 51-8 requires all registers of deeds to issue marriage licenses to persons authorized to be married under the laws of this State. Magistrates are authorized to perform marriage ceremonies pursuant to G.S. 51-1 and G.S. 7A-292. Magistrates (G.S. 14-230) and registers of deeds (G.S. 161-27) are also subject to prosecution for a Class 1 misdemeanor for willfully omitting, neglecting or refusing to discharge any of the duties of his or her office, and are also subject to being discharged from office.

#### **BILL ANALYSIS:**

Section 1 would enact a new G.S. 51-5.5 granting each magistrate the right to be recused from performing all lawful marriages upon the basis of a sincerely held religious belief, and granting each assistant and deputy register of deeds the right to be recused from issuing all marriage licenses.

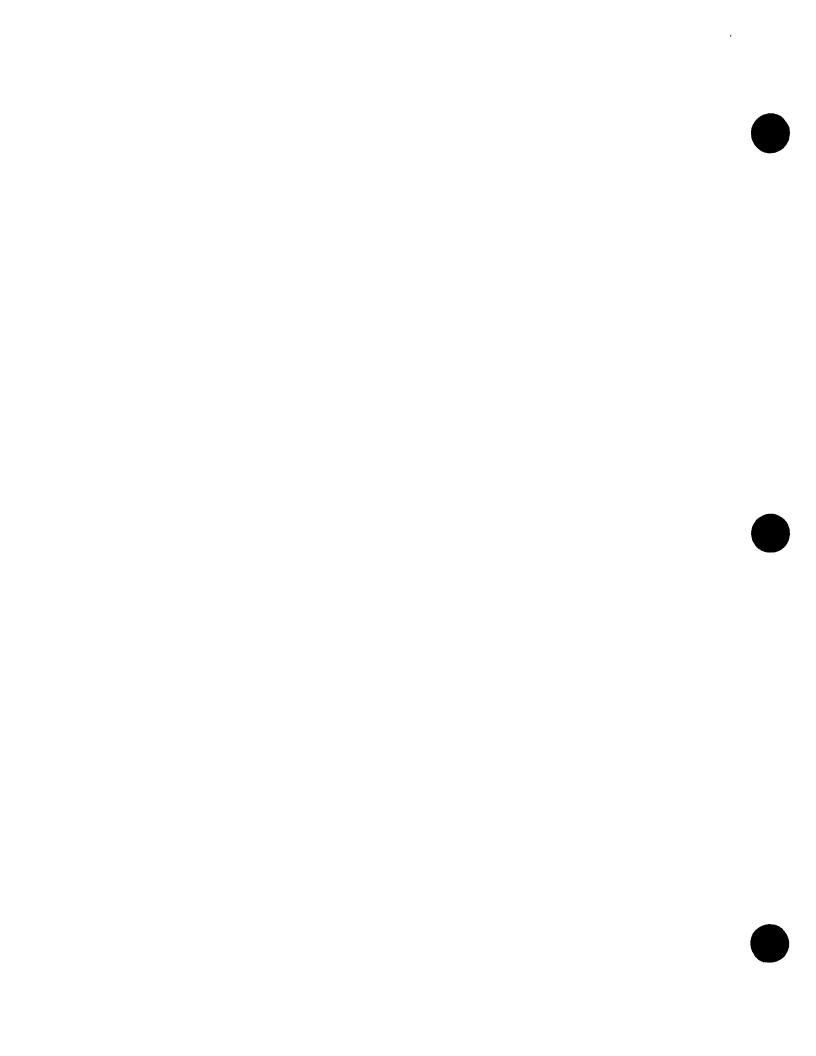
The period of recusal would be a minimum of six months, beginning with the date on which the magistrate provides notice to the chief district court judge, or the date on which the assistant or deputy register of deeds provides notice to the register of deeds. Until the recusal is rescinded in writing, a recused magistrate would not be permitted to perform any marriage ceremonies and a recused assistant or deputy register of deeds would not be permitted to issue any marriage licenses.

Each register of deeds would be required to ensure that marriage licenses are issued to all qualified persons applying for them, and each chief district court judge would be required to ensure that all persons issued a marriage license and wishing to be married by a magistrate are able to do so. Magistrates, assistant registers of deeds, and deputy registers of deeds who recuse themselves would not





O. Walker Reagan Director



## Senate Bill 2

Page 2

be subject to prosecution for willful failure to carry out the duties of their office, nor would they be subject to a disciplinary action for a good-faith recusal.

In the event of recusals by all of the magistrates in a jurisdiction, then upon notification of that fact by the chief district court judge, the Administrative Office of the Courts (AOC) would be required to ensure the availability of a magistrate in that jurisdiction for performance of marriages for at least ten hours each week over at least three business days per week. During any period of time between notification and the AOC's provision of a magistrate, the chief district court judge, or another district court judge designated by the chief district court judge, would be deemed a magistrate for the purposes of performing marriages.

Sections 2 and 3 of the bill would amend current statutes making it a Class I misdemeanor for magistrates and registers of deeds to willfully fail to discharge any duty of their office, to provide immunity from such prosecution for those recusing themselves under new G.S. 51-1.1.

**Section 4** of the bill would amend G.S. 7A-292 by adding a new subsection (b) to provide that the magistrates' statutory authority to perform marriages is a collective grant of responsibility to all magistrates and is not a duty imposed upon individual magistrates. This new subsection would also require each chief district court judge to ensure that marriages before a magistrate are available to be performed each week for at least 10 total hours over three business days.

Section 5 of the bill addresses magistrates who resigned or were terminated from their office between October 6, 2014, and the effective date of this act, and would allow those individuals to apply for any vacant position of magistrate. Any such magistrate who is reappointed within 90 days after the effective date of this act would be credited with the time between their resignation and their resumption of service for purposes of determining employment benefits dependent upon time of service, including calculation of benefits due under the Teachers' and State Employees' Retirement System. The Judicial Department would be required to pay both the employee and employer contributions for such reappointed magistrates to the Retirement Systems Division for the period of the break in service.

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

**BACKGROUND:** On October 6, 2014, the United States Supreme Court declined to hear an appeal from a decision by the Fourth Circuit Court of Appeals striking down Virginia's ban on same-sex marriage. On October 14, 2014, a federal district court judge issued a ruling declaring unconstitutional the State constitution's ban on same-sex marriage approved by voters in 2012. Following these rulings, a number of State magistrates resigned from their positions on the basis of their religious objection to same-sex marriage.

Bill Patterson substantially contributed to this summary.

<sup>&</sup>lt;sup>1</sup> Rainey v. Bostic, 135 S. Ct. 286, 190 L. Ed. 2d 140 (2014)

<sup>&</sup>lt;sup>2</sup> Fisher-Borne v. Smith, 14 F.Supp.3d 695 (M.D.N.C.2014).

#### House Committee on Judiciary I Wednesday, March 4, 2015 at 12:30 PM Room 415 of the Legislative Office Building

#### **MINUTES**

The House Committee on Judiciary I met at 12:30 PM on March 4, 2015 in Room 415 of the Legislative Office Building. Representatives Daughtry, Burr, Arp, Hall, Hardister, Howard, Martin, McNeill, Robinson and Steinburg attended.

Representative Leo Daughtry, presided.

Representative Daughtry welcomed everyone and introduced Senator Buck Newton.

Senator Newton introduces and spoke on behalf of Senate Bill 2.

Representatives Hall, McNeill and Martin all asked questions of the bill sponsor regarding the intent of the bill.

The meeting was open to public comment by Representative Daughtry. The following members of the public were given 3 minutes each to give their opinion on the bill.

- Reverend Lorrain Ljunggren (against)
- Sarah Preston, ACLU (against)
- Reverend Terrence Leathers (against)
- Chris Sgro, Equality NC (against)
- Jeff Thigpen, Guilford Reg. of Deeds (concerned about staffing issues)
- Reverend Mark Creech, Christian Action League (for)
- Tony Cope, Small Business Owner (against, sighting hostile work environment)
- John Rustin, NC Family Policy Council (for)
- Wayne Rash, Caldwell County Register of Deeds (concerned about staffing issues)

The following bills were considered but NOT voted on:

SB 2 Magistrates Recusal for Civil Ceremonies. (Senator Berger)

The meeting adjourned at 1:20 p.m.

Select or Type Name of Presiding Chair

Presiding

Jan Copeland, Committee Clerk

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#### House Committee on Judiciary I Wednesday, May 27, 2015, 12:30 PM 415 Legislative Office Building

#### **AGENDA**

Welcome and Opening Remarks

**Introduction of Pages** 

Bills

**BILL NO. SHORT TITLE** 

Magistrates Recusal for Civil

Ceremonies.

**SPONSOR** 

Senator Berger

**Presentations** 

SB 2

**Other Business** 

Adjournment

#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

S

# SENATE BILL 2 Judiciary II Committee Substitute Adopted 2/24/15

| Short Title: | Magistrates Recusal for Civil Ceremonies. | (Public) |
|--------------|---|----------|
| Sponsors:    |   |          |
| Referred to: |   |          |
|              | F.1 2 2015                                |          |

#### February 2, 2015

1 2

A BILL TO BE ENTITLED

AN ACT TO ALLOW MAGISTRATES, ASSISTANT REGISTERS OF DEEDS, AND DEPUTY REGISTERS OF DEEDS TO RECUSE THEMSELVES FROM PERFORMING DUTIES RELATED TO MARRIAGE CEREMONIES DUE TO SINCERELY HELD RELIGIOUS OBJECTION.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 1 of Chapter 51 of the General Statutes is amended by adding a new section to read:

"§ 51-5.5. Recusal of certain public officials.

(a) Every magistrate has the right to recuse from performing all lawful marriages under this Chapter based upon any sincerely held religious objection. Such recusal shall be upon notice to the chief district court judge and is in effect for at least six months from the time delivered to the chief district court judge. The recusing magistrate may not perform any marriage under this Chapter until the recusal is rescinded in writing. The chief district court judge shall ensure that all individuals issued a marriage license seeking to be married before a magistrate may marry.

(b) Every assistant register of deeds and deputy register of deeds has the right to recuse from issuing all lawful marriage licenses under this Chapter based upon any sincerely held religious objection. Such recusal shall be upon notice to the register of deeds and is in effect for at least six months from the time delivered to the register of deeds. The recusing assistant or deputy register may not issue any marriage license until the recusal is rescinded in writing. The register of deeds shall ensure for all applicants for marriage licenses to be issued a license upon satisfaction of the requirements as set forth in Article 2 of this Chapter.

(c) If, and only if, all magistrates in a jurisdiction have recused under subsection (a) of this section, the chief district court judge shall notify the Administrative Office of the Courts. The Administrative Office of the Courts shall ensure that a magistrate is available in that jurisdiction for performance of marriages for the times required under G.S. 7A-292(b). Only for the duration of the time the Administrative Office of the Courts has not designated a magistrate to perform marriages in that jurisdiction, the chief district court judge or such other district court judge as may be designated by the chief district court judge shall be deemed a magistrate for the purposes of performing marriages under this Chapter.

(d) No magistrate, assistant register of deeds, or deputy register of deeds may be charged or convicted under G.S. 14-230 or G.S. 161-27, or subjected to a disciplinary action, due to a good-faith recusal under this section."

**SECTION 2.** G.S. 14-230 reads as rewritten:

"§ 14-230. Willfully failing to discharge duties.



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| (a) If any clerk of any court of record, sheriff, magistrate, school board member, county           |
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| commissioner, county surveyor, coroner, treasurer, or official of any of the State institutions, or |
| of any county, city or town, shall willfully omit, neglect or refuse to discharge any of the duties |
| of his office, for default whereof it is not elsewhere provided that he shall be indicted, he shall |
| be guilty of a Class 1 misdemeanor. If it shall be proved that such officer, after his              |
| qualification, willfully and corruptly omitted, neglected or refused to discharge any of the        |
| duties of his office, or willfully and corruptly violated his oath of office according to the true  |
| intent and meaning thereof, such officer shall be guilty of misbehavior in office, and shall be     |
| punished by removal therefrom under the sentence of the court as a part of the punishment for       |
| the offense.  |
| 4) 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1  |

(b) No magistrate recusing in accordance with G.S. 51-5.5 may be charged under this section for recusal to perform marriages in accordance with Chapter 51 of the General Statutes."

#### **SECTION 3.** G.S. 161-27 reads as rewritten:

#### '§ 161-27. Register of deeds failing to discharge duties; penalty.

- (a) If any register of deeds fails to perform any of the duties imposed or authorized by law, he shall be guilty of a Class 1 misdemeanor, and he shall be removed from office.
- (b) No assistant register of deeds or deputy register of deeds recusing in accordance with G.S. 51-5.5 may be charged under this section for recusal to issue marriage licenses in accordance with Chapter 51 of the General Statutes."

#### **SECTION 4.** G.S. 7A-292 reads as rewritten:

#### "§ 7A-292. Additional powers of magistrates.

- (a) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:
  - (1) To administer oaths.
  - (2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina.
  - (3) When authorized by the chief district judge, to take depositions and examinations before trial.
  - (4) To issue subpoenas and capiases valid throughout the county.
  - (5) To take affidavits for the verification of pleadings.
  - (6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41.
  - (7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General Statutes.
  - (8) To take acknowledgments of instruments, as provided in G.S. 47-1.
  - (9) To perform the marriage ceremony, as provided in G.S. 51-1.
  - (10) To take acknowledgment of a written contract or separation agreement between husband and wife.
  - (11) Repealed by Session Laws 1973, c. 503, s. 9.
  - (12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.
  - (13) Repealed by Session Laws 1973, c. 503, s. 9.
  - (14) To accept the filing of complaints and to issue summons pursuant to Article 4 of Chapter 42A of the General Statutes in expedited eviction proceedings when the office of the clerk of superior court is closed.
  - (15) When authorized by the chief district judge, as permitted in G.S. 7A-146(11), to provide for appointment of counsel pursuant to Article 36 of this Chapter.
  - (16) To appoint an umpire to determine motor vehicle liability policy diminution in value, as provided in G.S. 20-279.21(d1).

Page 2 S2 [Edition 2]

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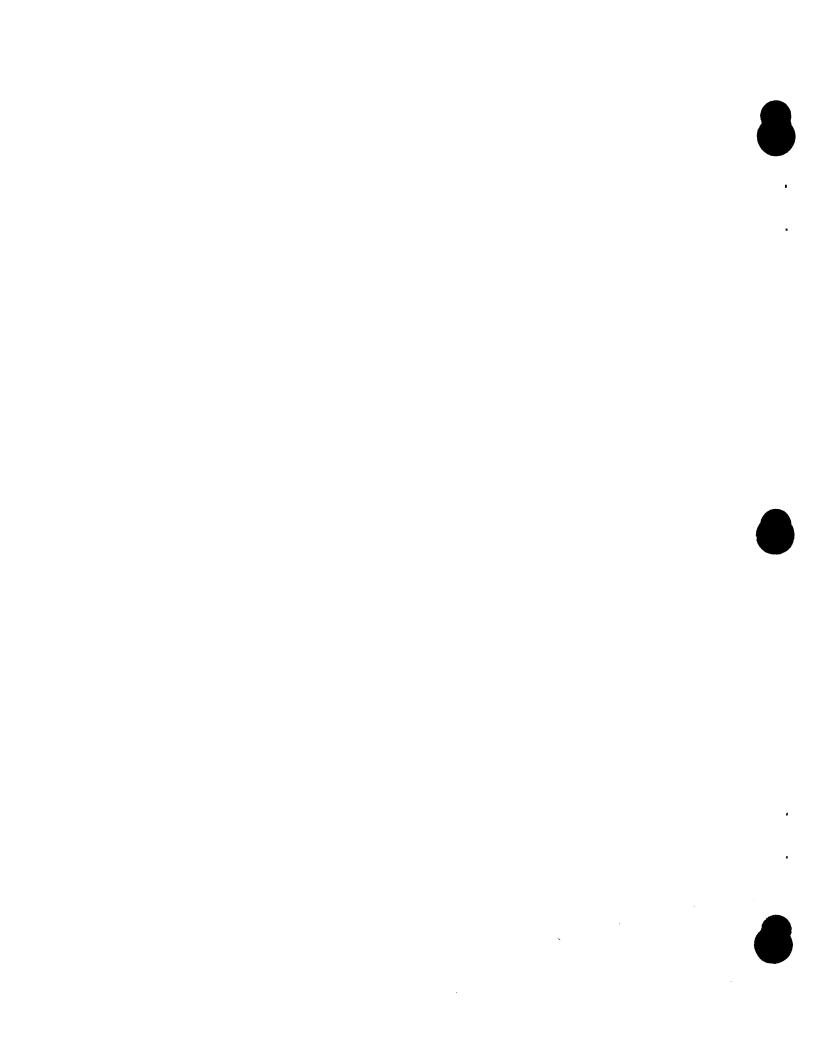
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The authority granted to magistrates under G.S. 51-1 and subdivision (a)(9) of this (b) section is a responsibility given collectively to the magistrates in a county and is not a duty imposed upon each individual magistrate. The chief district court judge shall ensure that marriages before a magistrate are available to be performed at least a total of 10 hours per week, over at least three business days per week."

SECTION 5. Any magistrate who resigned, or was terminated from, his or her office between October 6, 2014, and the effective date of this act may apply to fill any vacant position of magistrate. Notwithstanding any other provision of law, with respect to any magistrate who resigned his or her office between October 6, 2014, and the effective date of this act, and who is subsequently reappointed as a magistrate within 90 days after the effective date of this act:

- For the period of time between that magistrate's resignation and his or her (1) resumption of service upon reappointment, the magistrate shall not receive salary or other compensation and shall not earn leave. However, the magistrate shall be considered to have been serving as a magistrate during that period for purposes of determining continuous service, length of aggregate service, anniversary date, longevity pay rate, and the accrual of vacation and sick leave.
- (2) For purposes of the Teachers' and State Employees' Retirement System and the calculation of benefits under that System, (i) the magistrate shall be considered to have been an employee under G.S. 135-1(10) during the break in service, (ii) the period of the break in service shall be counted as membership service under G.S. 135-1(14), and (iii) the magistrate shall be deemed to have earned compensation under G.S. 135-1(7a) during the break in service at the rate of compensation that would have applied had there been no break in service.
- The Judicial Department shall pay and submit both the employee and (3) employer contributions to the Retirement Systems Division on behalf of the magistrate as though that magistrate had been in active service during the period in question. Those contributions shall be submitted within 90 days of the magistrate's resumption of service and shall not be subject to penalties or interest if submitted within that 90-day period.

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





# **SENATE BILL 2: Magistrates Recusal for Civil Ceremonies**

2015-2016 General Assembly

Committee:House Judiciary IDate:May 26, 2015Introduced by:Sen. BergerPrepared by:R. Erika ChurchillAnalysis of:Second EditionCommittee Counsel

SUMMARY: Senate Bill 2 would establish procedures by which magistrates can be recused from performing all lawful marriages and assistant and deputy registers of deeds can be recused from issuing all lawful marriage licenses, based upon a sincerely held religious objection. The recusal would be for a minimum of six months and would continue until the recusal is rescinded in writing. Officials so recusing themselves would not be subject to prosecution for failing to perform the duties imposed upon them by law.

Each register of deeds would be required to ensure that all qualified applicants for marriage licenses are issued a license, and each chief district court judge would be required to ensure that marriages performed by a magistrate are available to be performed during at least ten hours per week over at least three business days.

The bill would also provide protection against loss of employment and retirement benefits for magistrates who resigned or were terminated from their position between October 6, 2014 and the effective date of this act, and who are subsequently reappointed to the position of magistrate within 90 days after the act's effective date.

**CURRENT LAW:** G.S. 51-8 requires all registers of deeds to issue marriage licenses to persons authorized to be married under the laws of this State. Magistrates are authorized to perform marriage ceremonies pursuant to G.S. 51-1 and G.S. 7A-292. Magistrates (G.S. 14-230) and registers of deeds (G.S. 161-27) are also subject to prosecution for a Class 1 misdemeanor for willfully omitting, neglecting or refusing to discharge any of the duties of his or her office, and are also subject to being discharged from office.

#### **BILL ANALYSIS:**

**Section 1** would enact a new G.S. 51-5.5 granting each magistrate the right to be recused from performing all lawful marriages upon the basis of a sincerely held religious belief, and granting each assistant and deputy register of deeds the right to be recused from issuing all marriage licenses.

The period of recusal would be a minimum of six months, beginning with the date on which the magistrate provides notice to the chief district court judge, or the date on which the assistant or deputy register of deeds provides notice to the register of deeds. Until the recusal is rescinded in writing, a recused magistrate would not be permitted to perform any marriage ceremonies and a recused assistant or deputy register of deeds would not be permitted to issue any marriage licenses.

Each register of deeds would be required to ensure that marriage licenses are issued to all qualified persons applying for them, and each chief district court judge would be required to ensure that all persons issued a marriage license and wishing to be married by a magistrate are able to do so. Magistrates, assistant registers of deeds, and deputy registers of deeds who recuse themselves would not



#### Senate Bill 2

Page 2

be subject to prosecution for willful failure to carry out the duties of their office, nor would they be subject to a disciplinary action for a good-faith recusal.

In the event of recusals by all of the magistrates in a jurisdiction, then upon notification of that fact by the chief district court judge, the Administrative Office of the Courts (AOC) would be required to ensure the availability of a magistrate in that jurisdiction for performance of marriages for at least ten hours each week over at least three business days per week. During any period of time between notification and the AOC's provision of a magistrate, the chief district court judge, or another district court judge designated by the chief district court judge, would be deemed a magistrate for the purposes of performing marriages.

Sections 2 and 3 of the bill would amend current statutes making it a Class 1 misdemeanor for magistrates and registers of deeds to willfully fail to discharge any duty of their office, to provide immunity from such prosecution for those recusing themselves under new G.S. 51-1.1.

**Section 4** of the bill would amend G.S. 7A-292 by adding a new subsection (b) to provide that the magistrates' statutory authority to perform marriages is a collective grant of responsibility to all magistrates and is not a duty imposed upon individual magistrates. This new subsection would also require each chief district court judge to ensure that marriages before a magistrate are available to be performed each week for at least 10 total hours over three business days.

Section 5 of the bill addresses magistrates who resigned or were terminated from their office between October 6, 2014, and the effective date of this act, and would allow those individuals to apply for any vacant position of magistrate. Any such magistrate who is reappointed within 90 days after the effective date of this act would be credited with the time between their resignation and their resumption of service for purposes of determining employment benefits dependent upon time of service, including calculation of benefits due under the Teachers' and State Employees' Retirement System. The Judicial Department would be required to pay both the employee and employer contributions for such reappointed magistrates to the Retirement Systems Division for the period of the break in service.

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

**BACKGROUND:** On October 6, 2014, the United States Supreme Court declined to hear an appeal from a decision by the Fourth Circuit Court of Appeals striking down Virginia's ban on same-sex marriage. On October 14, 2014, a federal district court judge issued a ruling declaring unconstitutional the State constitution's ban on same-sex marriage approved by voters in 2012. Following these rulings, a number of State magistrates resigned from their positions on the basis of their religious objection to same-sex marriage.

Bill Patterson substantially contributed to this summary.

<sup>&</sup>lt;sup>1</sup> Rainey v. Bostic, 135 S. Ct. 286, 190 L. Ed. 2d 140 (2014)

<sup>&</sup>lt;sup>2</sup> Fisher-Borne v. Smith, 14 F.Supp.3d 695 (M.D.N.C.2014).

# NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

#### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

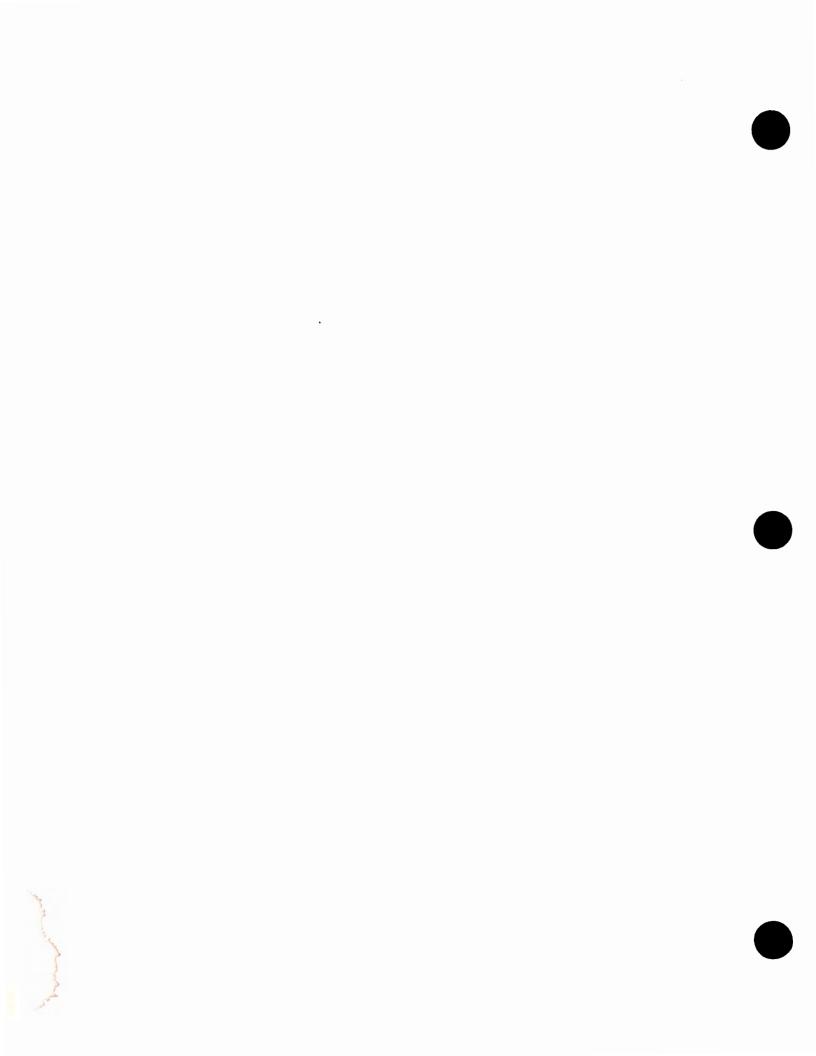
#### **FAVORABLE**

SB 2 (CS#1) Magistrates Recusal for Civil Ceremonies.

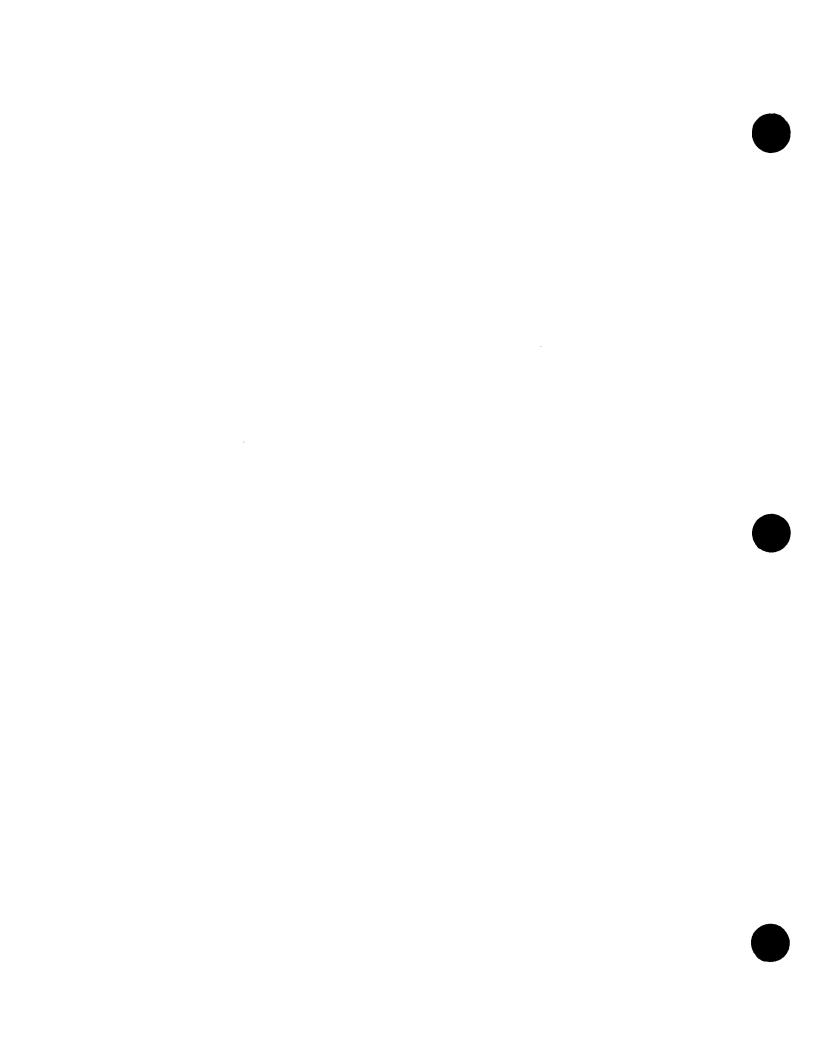
Draft Number: None
Serial Referral: None
Recommended Referral: None
Long Title Amended: No
Floor Manager: Arp

TOTAL REPORTED: 1





| #                                    | Date <u>3 - 2 1 -</u>                      |
|--------------------------------------|--|
| Bill Number 532                      |  |
| D00                                  |  |
| Motion to be before the committee by | ep. Daughtry                               |
| Wollon to be before the committee by | 1111                                       |
| Motion to be before the committee by | chill kep. Hrp                             |
| 199                                  | explained the bill.                        |
| Discussion on the Bill YES or NO     |  |
| Amandmenta: NA                       | - on the flows                             |
| Amendments: NO                       |  |
| Rep. McNall                          | motioned for: favorable                    |
| Favorable Report                     | Adoption                                   |
|                                      |  |
| Unfavorable Report                   | Unfavorable to original bill, favorable to |
| No vote                              |  |
| Other:                               |  |
| Coriol referred to                   |  |
| Serial referral to:                  |  |
|                                      |  |
| Speakers:                            |  |
|                                      |  |
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| 2'8                                  |  |
| Handouts: Martin ?                   |  |
| Handouts: Martin - ?'s               |  |
|                                      |  |
| Szoka                                |  |
| medeill                              | Revised 3-30                               |
| Monard                               |  |





### North Carolina General Assembly - House Sergeant-at-Arms

| House Staff                                |
|--|
| Committee: Judiciary 1 Date: 27 MAY 20     |
| Pages                                      |
| Name: Emily Neville                        |
| County: HARNETT Sponsor: DAVID LEWIS       |
| Name: NICK RYAN                            |
| County: Walle Sponsor: Josh Dobson         |
| Name: GRANT Swicegood                      |
| County: Mecklenburg Sponsor: Charles Jeter |
| Name:                                      |
| County: Sponsor:                           |
| Name:                                      |
| County: Sponsor:                           |
| Sergeants-at-Arms                          |
| BARRY MOORE                                |
| B. H. Powell                               |
| DAVID LINTHICUM                            |
|  |





## North Carolina General Assembly - House Sergeant-at-Arms

| HOUSE                  | Visitors                       |
|------------------------|--------------------------------|
| Committee: Judiciary 1 | Date: 27 14A 4 2015            |
| Name                   | Organization                   |
| Petrina Williams       | NC Values Coalition            |
| Tami Fitzgerald        | NC Values Coalition            |
| Say Marx is            | Governois offices              |
| John Rustin            | NC FAMILY Policionail          |
| WAYNE RASK             | NC Assoc of Registers of Deeds |
| Judy MARTIN            | NC Assic of Register of Deeds  |
| Pany John              | School 7 Hov                   |
| Michael Silverman      | State Ethres Commission        |
| fath lean Elwards      | ne te 11                       |
| LONAH HERMAIN          | EQUALITY NC                    |
| Pun togler             | Turan The.                     |
| Phoela Landen          | Bracks Piene                   |
| CASY Manas             | Four Consoline                 |
| Sarah Proston          | ACLU-NC                        |
| Stephanie Lopez        | ABCII                          |
| David Anderson         | WIVD TV 11 abc                 |
| (hrs Saro              | FRUILITY XX                    |
|                        |                                |

| Name | Organization |
|------|--------------|
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Corrected #2: Adding SB301

# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

You are hereby notified that the House Committee on Judiciary I will meet as follows:

DAY & DATE: Wednesday, June 10, 2015

TIME: 12:30 PM LOCATION: 415 LOB

The following bills will be considered:

| BILL NO. | SHORT TITLE                          | SPONSOR           |
|----------|--------------------------------------|-------------------|
| SB 199   | Funds Deposited with Clerk of Court. | Senator Randleman |
| SB 596   | Protection Against Unconst. Foreign  | Senator Krawiec   |
|          | Judgmnts.                            | Senator Newton    |
|          |                                      | Senator Wade      |
| SB 301   | DOT/Purchase of Contaminated Land    | Senator Meredith  |
|          | AB                                   |                   |
| SB 386   | Registers of Deeds/UCC Recording     | Senator Curtis    |
|          | Fees.                                |                   |

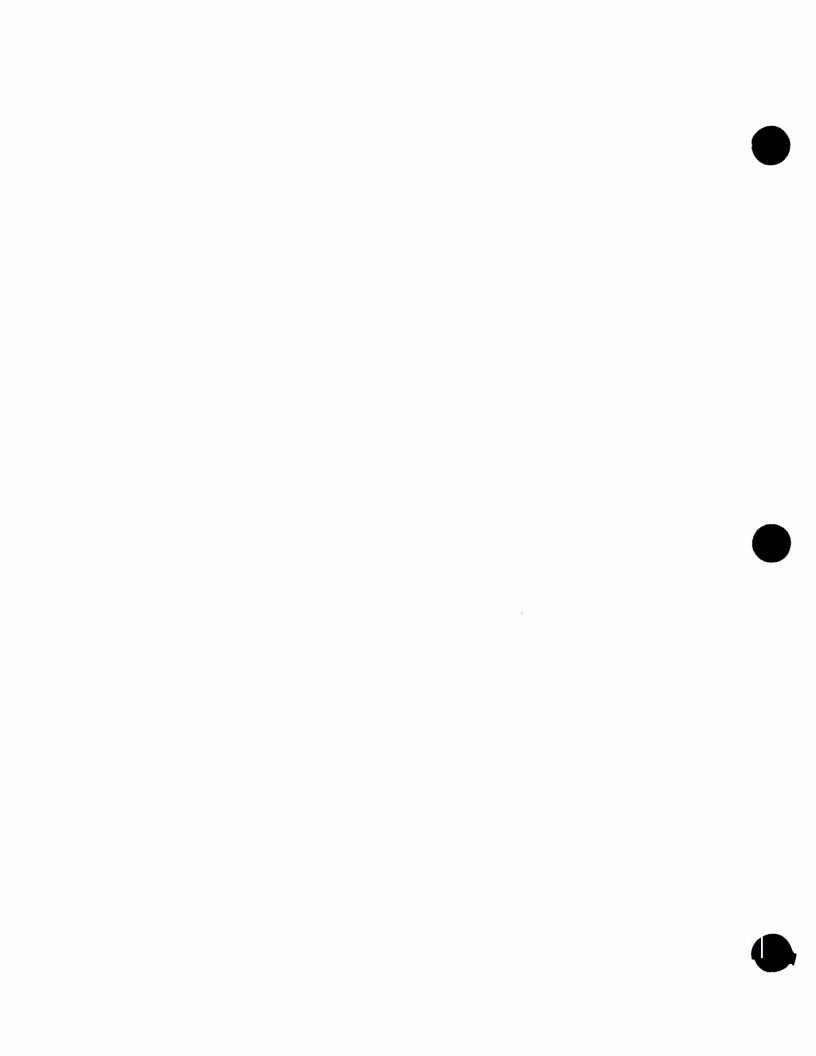
Respectfully,

Representative N. Leo Daughtry, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 1:02 PM on Wednesday, June 10, 2015.

| Principal Clerk               |
|-------------------------------|
| Reading Clerk - House Chamber |

Jan Copeland (Committee Assistant)



#### House Committee on Judiciary I Wednesday, June 10, 2015, 12:30 PM 415 Legislative Office Building

#### **AGENDA**

#### Welcome and Opening Remarks

#### **Introduction of Pages**

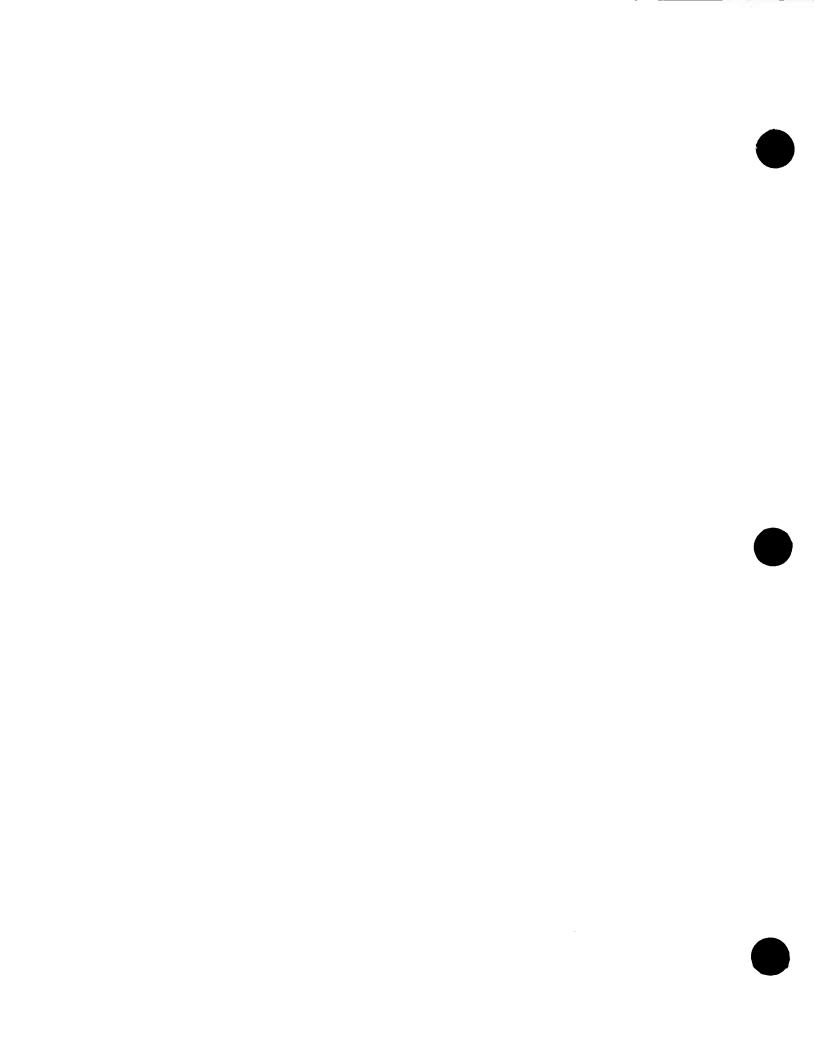
#### **Bills**

| BILL NO. | SHORT TITLE                            | SPONSOR           |
|----------|--|-------------------|
| SB 199   | Funds Deposited with Clerk of Court.   | Senator Randleman |
| SB 596   | Protection Against Unconst. Foreign    | Senator Krawiec   |
|          | Judgmnts.                              | Senator Newton    |
|          |  | Senator Wade      |
| SB 301   | DOT/Purchase of Contaminated LandAB    | Senator Meredith  |
| SB 386   | Registers of Deeds/UCC Recording Fees. | Senator Curtis    |

#### **Presentations**

**Other Business** 

Adjournment



#### House Committee on Judiciary I Wednesday, June 10, 2015 at 12:30 PM Room 415 of the Legislative Office Building

#### **MINUTES**

The House Committee on Judiciary I met at 12:30 PM on June 10, 2015 in Room 415 of the Legislative Office Building. Representatives Daughtry, Jackson, Arp, Hardister, Martin, McNeill, Robinson, Steinburg and Szoka attended.

Rep. N. Leo Daughtry, presided.

The following bills were considered:

**SB 199 Funds Deposited with Clerk of Court. (Senator Randleman)** – favorable to the House Committee Sub, unfavorable to the original bill and re-referred to finance (serial referral). The floor manager is Rep. McNeill

SB 596 Protection Against Unconst. Foreign Judgmnts. (Senators Krawiec, Newton, Wade) – Favorable. The floor manager is Rep. Daughtry.

SB 301 DOT/Purchase of Contaminated Land.-AB (Senator Meredith) – favorable to the house committee sub, unfavorable to the original bill. The floor manager was Rep. Szoka.

SB 386 Registers of Deeds/UCC Recording Fees. (Senator Curtis) – Favorable. The floor manager is Rep. Robinson.

The meeting adjourned at 1:23 p.m.

Representative N. Leo Daughtry, Chair

Presiding

Jan Copeland, Committee Clerk

ce/10/15 - Newton : Kraweic

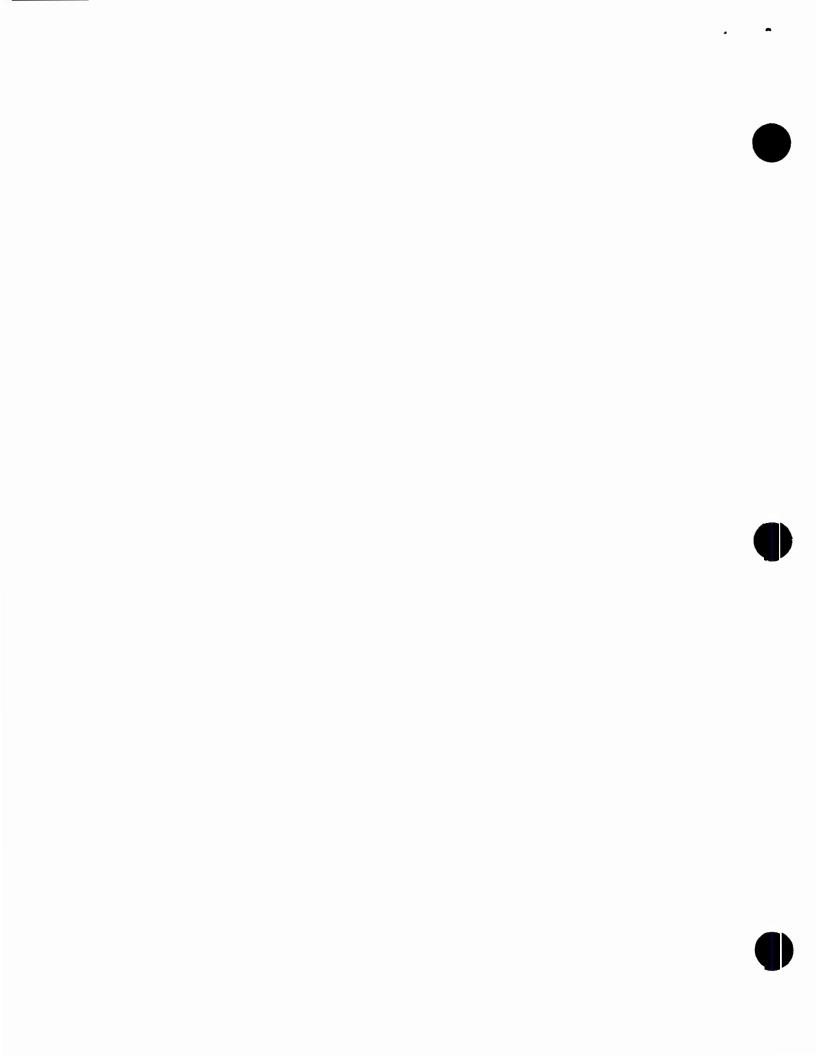
#### GENERAL ASSEMBLY OF NORTH CAROLINA **SESSION 2015**

S

#### **SENATE BILL 596** Judiciary I Committee Substitute Adopted 4/21/15

|                                 | Short Title: Pr  | rotection Against Unconst. Foreign Judgmnts.   | (Public)             |  |  |
|---------------------------------|--|--|----------------------|--|--|
|                                 | Sponsors:  |  |                      |  |  |
|                                 | Referred to:   | Referred to:   |                      |  |  |
|                                 | March 30, 2015   |  |                      |  |  |
| 1                               |  | A BILL TO BE ENTITLED  |                      |  |  |
| 2                               | AN ACT TO  | CLARIFY EXISTING LAW REGARDING THE EN  | FORCEMENT OF         |  |  |
| 3                               |  | OUNTRY JUDGMENTS.  |                      |  |  |
| 4                               | The General Ass  | embly of North Carolina enacts:  |                      |  |  |
| n 52                            | SECTION 1. G.S. 1C-1853 reads as rewritten:  |  |                      |  |  |
| 6                               |  | ndards for recognition and nonrecognition of foreign-co  | ountry judgment.     |  |  |
| t-20                            |  | ot as otherwise provided in this section, a court of this Sta                                  |                      |  |  |
| 8                               | foreign-country  | udgment to which this Article applies.   |                      |  |  |
| 9                               | (b) A cou  | art of this State shall not recognize a foreign-country judgm                                  | ent if:              |  |  |
| 10                              | (1)  | The judgment was rendered under a judicial system that   |                      |  |  |
| 11_                             | Shall  | does not provide impartial tribunals or procedures c   | ompatible with the   |  |  |
| 12                              | Stall  | requirements of due process of law;  |                      |  |  |
| 13                              | $ \begin{array}{cccc} 1 & (2) \end{array} $  | The foreign court did not have personal jurisdiction over                                      |                      |  |  |
|                                 | (3)  | The foreign court did not have jurisdiction over the subje                                     |                      |  |  |
| 15                              | (4)  | The judgment was obtained by a foreign government e  |                      |  |  |
| 16                              |  | for the expenditure of public funds for government progr                                       |                      |  |  |
| 17                              |  | court of this State finds that any of the following exis                                       |                      |  |  |
| 18                              | foreign-country judgment for which recognition is sought, recognition of the judgment shall be |  |                      |  |  |
| 19                              |  | e court determines, as a matter of law, that recognition we                                    | ould nevertheless be |  |  |
| 20                              |  | the circumstances:   |                      |  |  |
| 21                              | (1)  | The defendant in the proceeding in the foreign court did to                                    |                      |  |  |
| 22                              | MANULA (2)   | the proceeding in sufficient time to enable the defendant.                                     |                      |  |  |
| <ul><li>23</li><li>24</li></ul> | Maybe Jony   | The judgment was obtained by fraud that deprived the adequate opportunity to present its case. | losing party of an   |  |  |
| 25                              | do2-1'0-(3)  | The judgment, or the cause of action or claim for r  | elief on which the   |  |  |
| 25<br>26                        | depending (3)  | judgment is based, is repugnant to the public policy of  |                      |  |  |
|                                 | Ma   | United States.   | this batte of of the |  |  |
| 28                              | On<br>Linumstonsos   | Reserved for future codification.  |                      |  |  |
| 29                              | "irumstarios   | The proceeding in the foreign court was contrary to an   | agreement between    |  |  |
| 30                              |  | the parties under which the dispute in question was  |                      |  |  |
| 31                              |  | otherwise than by proceedings in that foreign court.   |                      |  |  |
| 32                              | (6)  | In the case of jurisdiction based only on personal service                                     | e, the foreign court |  |  |
| 33                              | . ,  | was a seriously inconvenient forum for the trial of the act                                    |                      |  |  |
| 34                              | (7)  | The judgment was rendered in circumstances that rais   | se substantial doubt |  |  |
| 35                              | ,  | about the integrity of the rendering court with respect to t                                   | the judgment.        |  |  |





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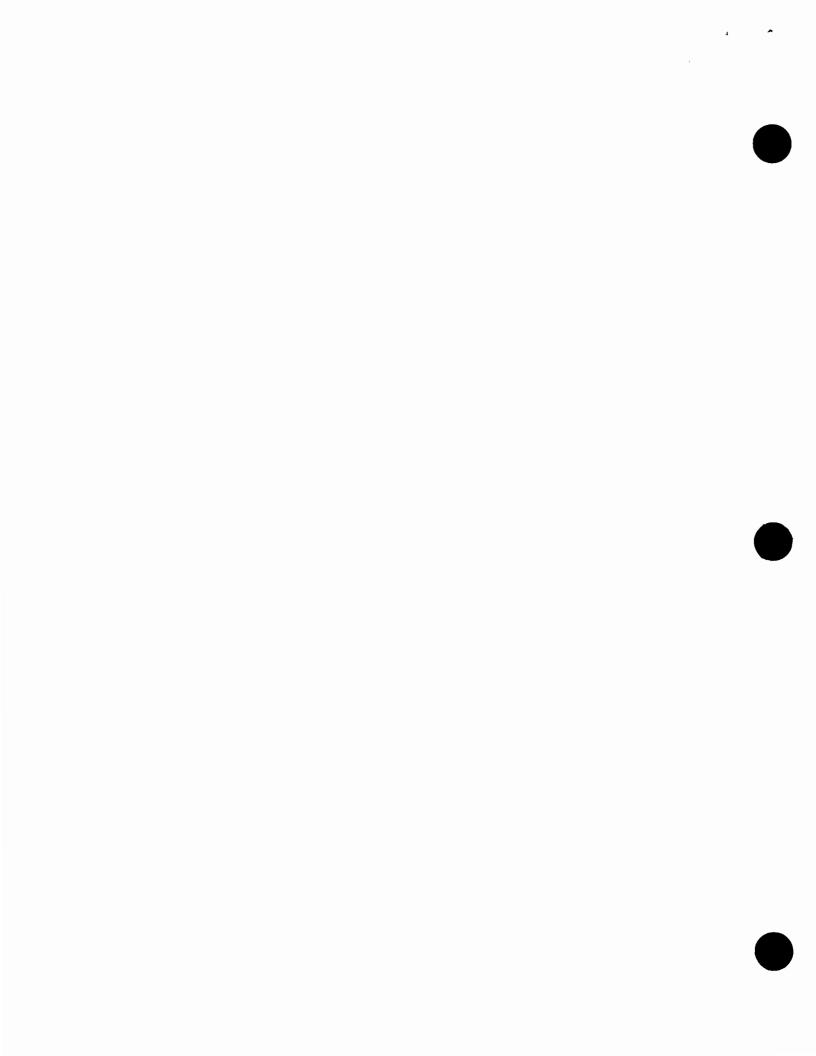
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- (8) The specific proceeding in the foreign court leading to the judgment was fundamentally unfair.
- The judgment is based on a foreign statute or rule of law which, as applied (9) by the foreign court, would have been contrary to either the United States Constitution or the North Carolina Constitution had it been applied by a court in North Carolina.
- If a foreign-country judgment for which recognition is sought is otherwise entitled to recognition under this Article but conflicts with a prior final and conclusive judgment, a court of this State shall recognize the judgment for which recognition is sought unless the court determines that nonrecognition would nevertheless be reasonable under the circumstances.
- If a foreign-country judgment for which recognition is sought is otherwise entitled to recognition under this Article but conflicts with a subsequent final and conclusive judgment, a court of this State shall deny recognition of the judgment for which recognition is sought unless the court determines that recognition would nevertheless be reasonable under the circumstances.
- A party resisting recognition of a foreign-country judgment has the burden of (f) establishing that a ground for nonrecognition stated in subsection (b) of this section exists.
- A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (c) of this section exists. The party seeking recognition of the judgment has the burden of establishing that, as a matter of law, recognition would nevertheless be reasonable under the circumstances.
- A party resisting recognition of a foreign-country judgment under subsection (d) or (e) of this section has the burden of establishing that another final and conclusive judgment exists and that the other judgment conflicts with the judgment for which recognition is sought. Under subsection (d) of this section, the party resisting recognition also has the burden of establishing that nonrecognition of the judgment for which recognition is sought would be reasonable under the circumstances. Under subsection (e) of this section, the party seeking recognition of the foreign-country judgment has the burden of establishing that recognition would be reasonable under the circumstances.
- When a court of this State rules on recognition of a foreign-country judgment, the court shall state the facts specially and state separately its conclusions of law.
- If a proceeding in a foreign court is brought by a foreign government entity based upon rules of law adopted for the benefit of the foreign government entity that are applied ex post facto to conduct of the defendant or if the action imposes liability for harms to individuals without requiring individualized proof of each element of the claim for each such individual, the court shall find that the action is fundamentally unfair and its judgment is repugnant to the public policy of this State under G.S. 1C-1853(c)(3) and (5)."
- SECTION 2. Article 20 of Chapter 1C of the General Statutes is amended by adding a new section to read:

#### "§ 1C-1860. Severability.

- The provisions of this Article are severable. If any part or application of this Article is invalid, then other parts or applications remain valid."
- **SECTION 3.** This act is effective when it becomes law and applies to recognition of foreign-country judgments on or after that date regardless of when the judgment was entered.





#### **SENATE BILL 596:**

#### **Protection Against Unconst. Foreign Judgmnts**

2015-2016 General Assembly

Committee: House Judiciary I Date: June 9, 2015
Introduced by: Sens. Krawiec, Newton, Wade
Analysis of: Second Edition Date: June 9, 2015
R. Erika Churchill
Committee Counsel

SUMMARY: Senate Bill 596 clarifies the existing law regarding the enforcement of foreign-country judgments by stating that foreign-country judgments obtained by foreign governments to compensate for the expenditure of public funds for government programs shall not be recognized in North Carolina.

#### **BILL ANALYSIS:**

**Section 1** provides that a North Carolina court must not recognize a foreign-country judgment if the judgment was obtained by a foreign government entity to compensate for the expenditure of public funds for government programs.

It also provides that the recognition of judgment that is based on a foreign statute or rule of law which, as applied by the foreign court, would have been contrary to either the United States Constitution or the North Carolina Constitution must be denied unless the recognition is reasonable under the circumstances.

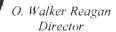
Section 1 also provides that if a proceeding in a foreign court is brought by a foreign government entity based upon rules of law adopted for the benefit of the foreign government entity that are applied ex post facto to conduct of the defendant or if the action imposes liability for harms to individuals without requiring proof of each element of the claim, the North Carolina court must find that the action is fundamentally unfair and its judgment is repugnant to the public policy of this State.

**Section 2** adds a severability clause to Article 20 of Chapter 1C, North Carolina Uniform Foreign County Money Judgments Recognition Act, providing that if any part of that Article is invalid, then other parts or applications remain valid.

**EFFECTIVE DATE:** The act is effective when it becomes law and applies to recognition of foreign-country judgments on or after that date regardless of when the judgment was entered.

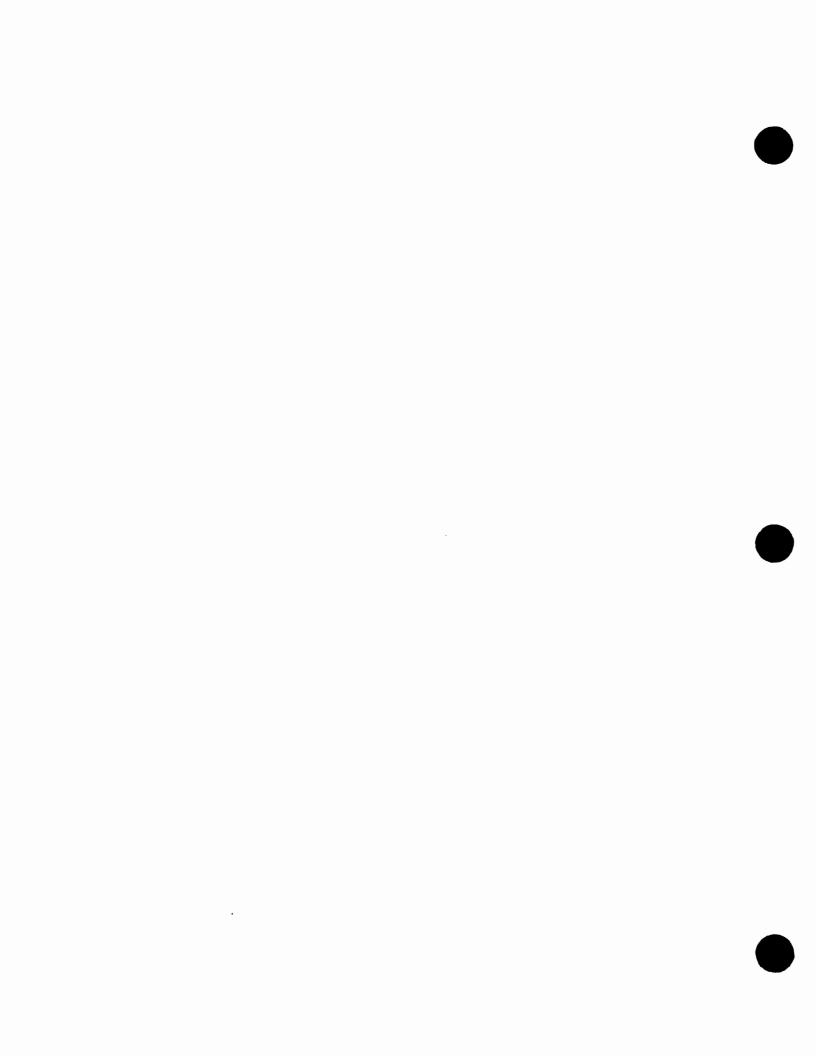
**BACKGROUND:** Article 20 of Chapter 1C of the General Statutes is the North Carolina Uniform Foreign-Country Money Judgments Recognition Act. It was adopted in 2009 and was based on the Uniform Foreign-Country Money Judgments Recognition Act as approved by the National Conference of Commissioners on Uniform State Law (S.L. 2009-325).

Brad Krehely and Bly Hall substantially contributed to this summary.





Research Division (919) 733-2578



#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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# SENATE BILL 301 PROPOSED HOUSE COMMITTEE SUBSTITUTE S301-CSST-66 [v.1]

6/9/2015 11:06:50 AM

Short Title: DOT/Purchase of Contaminated Land.-AB (Public)

Sponsors:

Referred to:

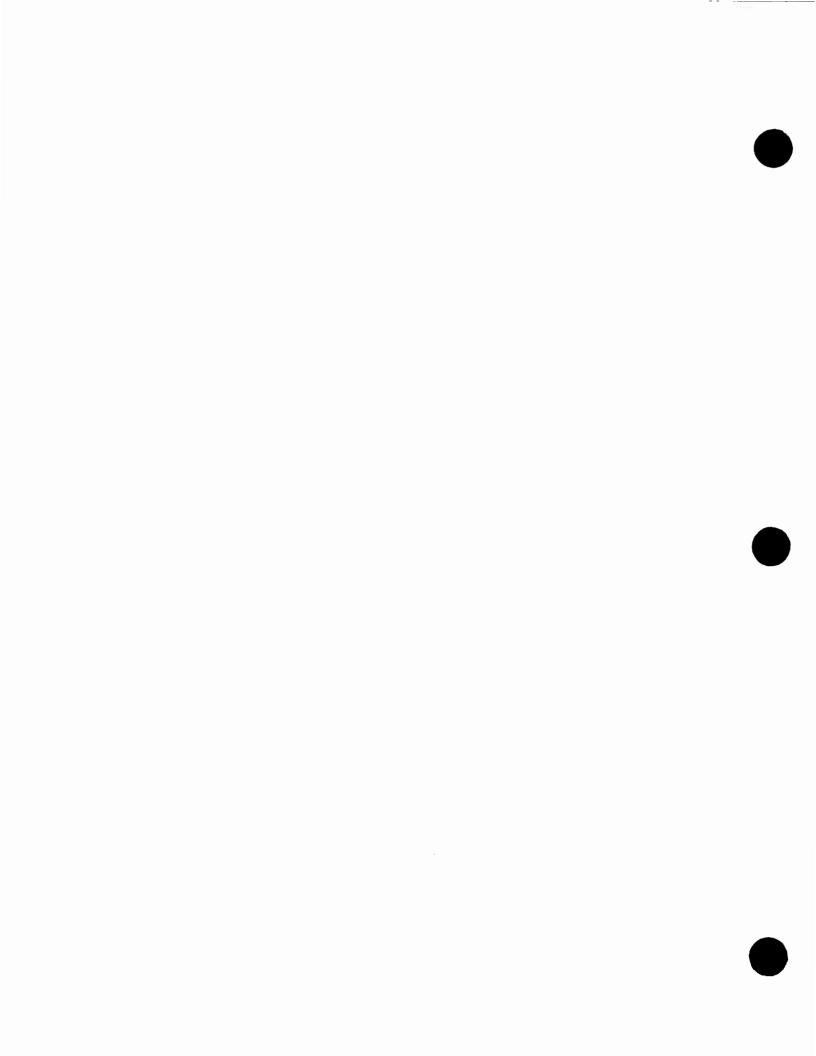
#### March 18, 2015

A BILL TO BE ENTITLED 1 AN ACT TO EXEMPT THE DEPARTMENT OF TRANSPORTATION FROM THE 2 REQUIRED APPROVAL OF THE COUNCIL OF STATE WHEN PURCHASING 3 4 CONTAMINATED PROPERTY, AS RECOMMENDED BY THE DEPARTMENT OF TRANSPORTATION. 5 6 The General Assembly of North Carolina enacts: 7 SECTION 1. G.S. 133-40(a) is rewritten to read: For purposes of this Article, the term "public entity" means the State and the 8 Community College System. System, provided, however, that the term does not include the 9 Department of Transportation in the exercise of the powers conferred by G.S. 136-19." 10

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

11







#### SENATE BILL 301: DOT/Purchase of Contaminated Land.-AB

#### 2015-2016 General Assembly

Committee: House Judiciary I
Introduced by: Sen. Meredith
Analysis of: PCS to First Edition

S301-CSST-66

**Date:** June 9, 2015

Prepared by: R. Erika Churchill

Committee Counsel

SUMMARY: The proposed committee substitute for Senate Bill 301 exempts the Department of Transportation from the State law requirement for approval by the Governor and Council of State prior to purchase of contaminated property.

**CURRENT LAW:** Under current G.S. 133-40, the State and the Community College System are prohibited from purchasing any real property with known contamination<sup>1</sup>, unless approval of the Governor and the Council of State is granted prior to the purchase.

The public entity seeking to purchase or otherwise acquire an ownership interest in such property must petition the Governor and Council of State for approval of the transaction, with sufficient information on each of the following:

- Identification the property.
- The nature and extent of the contamination present.
- A plan of paying for the project and for remediation of any contamination without the use of General Fund appropriations.

The Governor, acting with the approval of the Council of State, may delegate the review and approval of such transactions as the Governor deems advisable.

Exempted from this requirement are situations in which a public entity acquires ownership or control of real property involuntarily, such as from bankruptcy, tax delinquency, abandonment, or other circumstances in which the public entity involuntarily acquires title by virtue of its function as a sovereign.

**BILL ANALYSIS:** The PCS would exempt the Department of Transportation from the requirement for approval by the Governor and Council of State prior to purchase of contaminated property when acquiring land, gravel, gravel beds or bars, sand, sand beds or bars, rock, stone, boulders, quarries, or

As used in this Part:

(3) "Contaminant" means any substance regulated under any program listed in G.S. 130A-310.67(a).

O. Walker Reagan
Director



Research Division (919) 733-2578

<sup>&</sup>lt;sup>1</sup> "Contamination" is defined in G.S. 130A -310.65

<sup>&</sup>quot;§ 130A-310.65. Definitions.

<sup>(5) &</sup>quot;Contamination" means a contaminant released into an environmental medium that has resulted in or has the potential to result in an increase in the concentration of the contaminant in the environmental medium in excess of unrestricted use standards.

#### Senate Bill 301

Page 2

quarry beds, lime or other earth or mineral deposits or formations, and such standing timber as it may deem necessary and suitable for transportation infrastructure construction, either in by easement or in fee simple.

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

**BACKGROUND:** According to Mike Holder, Chief Engineer, Division of Highways, DOT is buying contaminated properties only when necessary for DOT construction projects.

#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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S

#### **SENATE BILL 301**

1

| Short Title: | DOT/Purchase of Contaminated LandAB | (Public) |
|--------------|-------------------------------------|----------|
| Sponsors:    | Senator Meredith (Primary Sponsor). |          |
| Referred to: | Rules and Operations of the Senate. |          |

#### March 18, 2015

A BILL TO BE ENTITLED 1 AN ACT TO EXEMPT THE DEPARTMENT OF TRANSPORTATION FROM THE 2 3 PROHIBITION ON PURCHASE OF CONTAMINATED PROPERTY BY PUBLIC ENTITIES, AS RECOMMENDED BY THE DEPARTMENT OF TRANSPORTATION. 4 The General Assembly of North Carolina enacts: 5 **SECTION 1.** G.S. 133-40(a) is rewritten to read: 6 For purposes of this Article, the term "public entity" means the State and the 7 Community College System. System, provided, however, that the term does not include the 8 Department of Transportation in the exercise of the powers conferred by G.S. 136-19." 9 **SECTION 2.** This act is effective when it becomes law. 10









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### SENATE BILL 199 PROPOSED HOUSE COMMITTEE SUBSTITUTE S199-CSST-65 [v.2]

6/9/2015 2:41:45 PM

| Short Title: Funds Deposited with Clerk of Court. |  | (Public) |
|---|--|----------|
| Sponsors:   |  |          |
| Referred to:                                      |  |          |

#### March 10, 2015

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE AMOUNT OF FUNDS IN A SINGLE ACCOUNT ON DEPOSIT WITH THE CLERK OF SUPERIOR COURT ABOVE WHICH THE EXCESS MUST BE INVESTED PURSUANT TO STATUTORY REQUIREMENTS.

The General Assembly of North Carolina enacts:

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**SECTION 1.** G.S. 7A-112 reads as rewritten:

#### "§ 7A-112. Investment of funds in clerk's hands.

- (a) The clerk of the superior court may in his or her discretion invest moneys secured by virtue or color of the clerk's office or as receiver in any of the following securities:
  - (1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;
  - (2) Obligations of the State of North Carolina;
  - (3) Obligations of North Carolina cities or counties approved by the Local Government Commission; and
  - Shares of any building and loan association organized under the laws of this (4)State, or of any federal savings and loan association having its principal office in this State, and certificates of deposit for time deposits or savings accounts in any bank or trust company authorized to do business in North Carolina, to the extent in each instance that such shares or deposits are insured by the State or federal government or any agency thereof or by any mutual deposit guaranty association authorized by the Commissioner of Banks of North Carolina to do business in North Carolina pursuant to Article 7A of Chapter 54 of the General Statutes. If the clerk desires to deposit in a bank, saving and loan, or trust company funds entrusted to the clerk by virtue or color of the clerk's office, beyond the extent that such deposits are insured by the State or federal government or an agency thereof or by any mutual deposit guaranty association authorized by the Commissioner of Banks of North Carolina to do business in North Carolina pursuant to Article 7A of Chapter 54 of the General Statutes, the clerk shall require such depository to furnish a corporate surety bond or obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States or obligations of the State of North Carolina, or of counties and municipalities of North Carolina whose obligations have been approved by the Local Government Commission.
- (b) When money in a single account in excess of two thousand dollars (\$2,000) five thousand dollars (\$5,000) is received by the clerk by virtue or color of his the clerk's office and



D

- it can reasonably be expected that the money will remain on deposit with the clerk in excess of six months from date of receipt, the money exceeding two thousand dollars (\$2,000) five thousand dollars (\$5,000) shall be invested by the clerk within 60 days of receipt in investments authorized by this section. The first two thousand dollars (\$2,000) five thousand dollars (\$5,000) of these accounts and money in a single account totaling less than two thousand dollars (\$2,000), five thousand dollars (\$5,000), received by the clerk by virtue or color of his the clerk's office, shall be invested, or administered, or invested and administered, by the clerk in accordance with regulations promulgated by the Administrative Officer of the Courts. This subsection shall not apply to cash bonds or to money received by the clerk to be disbursed to governmental units.
- (c) The State Auditor is hereby authorized and empowered to inspect the records of the clerk to insure compliance with this section, and he—shall report noncompliance with the provisions of this section to the Administrative Officer of the Courts.
- (d) It shall be unlawful for the clerk of the superior court of any county receiving any money by virtue or color of his the clerk's office to apply or invest any of it-those monies except as authorized under this section. Any clerk violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

**SECTION 2.** This act becomes effective July 1, 2015.

Page 2 Senate Bill 199 S199-CSST-65 [v.2]



# **SENATE BILL 199:** Funds Deposited with Clerk of Court

#### 2015-2016 General Assembly

**Committee:** House Judiciary I, if favorable, Finance

Introduced by: Sen. Randleman
Analysis of: PCS to First Edition

S199-CSST-65

**Date:** June 9, 2015

Prepared by: R. Erika Churchill

Committee Counsel

SUMMARY: The PCS for Senate Bill 199 would increase the amount of funds in a single account on deposit with the Clerk of Superior Court above which the excess must be invested pursuant to statutory requirements.

**CURRENT LAW:** By virtue of the office, the Clerk of Superior Court is required to receive, administer, invest and disburse certain sums of money. The Clerk is to deposit any funds received by virtue of the office, except funds invested pursuant to G.S. 7A-112, in an interest-bearing checking account or accounts in a bank, savings and loan, or trust company licensed to do business in North Carolina, at the maximum feasible interest rate available taking into consideration prevailing interest rates and the checking account services provided to the Clerk's office by the bank, savings and loan, or trust company. The funds deposited in such checking accounts shall be guaranteed to the same extent and in the same manner as funds invested pursuant to G.S. 7A-112.

G.S. 7A-112, "Investment of funds in clerk's hands," authorizes the Clerk to invest funds in certain specified securities. The specified securities are:

- Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States.
- Obligations of the State of North Carolina.
- Obligations of North Carolina cities or counties approved by the Local Government Commission.
- Shares, CDs, or savings accounts of savings and loan associations organized under the laws of this State, or of any federal savings and loan association having its principal office in this State, under certain conditions.

G.S. 7A-112(b) requires the Clerk to invest funds in excess of \$2,000 in one of the certain specified securities if it is reasonably expected that the money will remain on deposit with the Clerk for more than six months from the date of receipt. Such funds must be so invested within 60 days of receipt. G.S. 7A-112(b) further specifies that the first \$2,000 of these accounts and money in a single account totaling less than \$2,000 must be invested and administered in accordance with regulations promulgated by the Administrative Officer of the Courts. The State Auditor is authorized to inspect the records of the Clerk to insure compliance the investing. The State Auditor is to report noncompliance to the Administrative Officer of the Courts.

Any clerk violating the provisions of G.S. 7A-112 is guilty of a Class 1 misdemeanor.

**BILL ANALYSIS:** The PCS would increase the trigger of required investing in the specific securities from \$2,000 to \$5,000, and make technical changes.

**EFFECTIVE DATE:** July 1, 2015. *Jan Paul substantially contributed to this summary.* 

O. Walker Reagan Director



Research Division (919) 733-2578

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### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

SENATE BILL 199

S

Short Title: Funds Deposited with Clerk of Court. (Public) Senator Randleman (Primary Sponsor). Sponsors: Rules and Operations of the Senate. Referred to:

March 10, 2015

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE AMOUNT OF FUNDS IN A SINGLE ACCOUNT ON DEPOSIT WITH THE CLERK OF SUPERIOR COURT ABOVE WHICH THE EXCESS MUST BE INVESTED PURSUANT TO STATUTORY REQUIREMENTS.

The General Assembly of North Carolina enacts:

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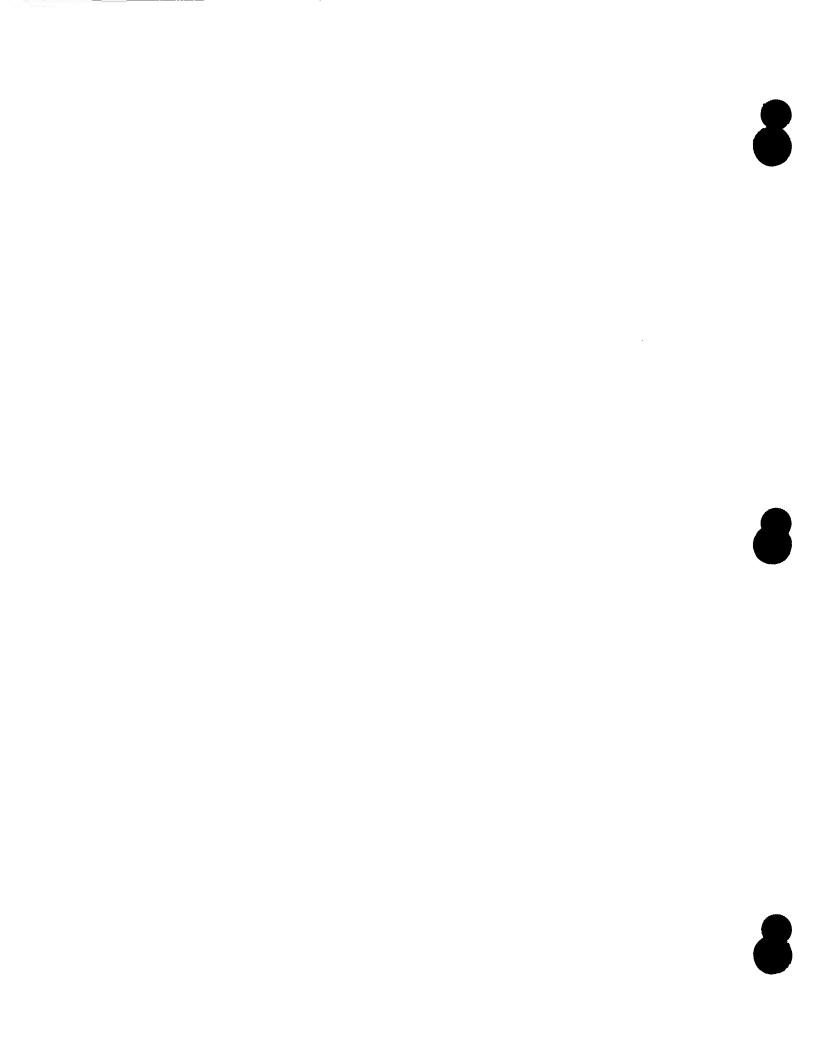
**SECTION 1.** G.S. 7A-112 reads as rewritten:

When money in a single account in excess of two thousand dollars (\$2,000) five thousand dollars (\$5,000) is received by the clerk by virtue or color of his or her office and it can reasonably be expected that the money will remain on deposit with the clerk in excess of six months from date of receipt, the money exceeding two thousand dollars (\$2,000)five thousand dollars (\$5,000) shall be invested by the clerk within 60 days of receipt in investments authorized by this section. The first two thousand dollars (\$2,000) five thousand dollars (\$5,000) of these accounts and money in a single account totaling less than two thousand dollars (\$2,000), five thousand dollars (\$5,000), received by the clerk by virtue or color of his or her office, shall be invested, or administered, or invested and administered, by the clerk in accordance with regulations promulgated by the Administrative Officer of the Courts. This subsection shall not apply to cash bonds or to money received by the clerk to be disbursed to governmental units."

**SECTION 2.** This act becomes effective July 1, 2015.



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### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

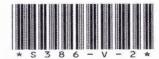
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## SENATE BILL 386 Judiciary II Committee Substitute Adopted 4/15/15

| Sponsors:  |  |   |
|--|--|---|
| Dafamad to:  |  |   |
| Referred to:   |  |   |
|  | March 25, 2015   |   |
| UNIFORM CO The General Assem SECTION  "§ 161-10. Uniform  (a) Except shall be deposited  | A BILL TO BE ENTITLED CIFY FEES FOR RECORDING INSTRUMENTS OF MMERCIAL CODE WITH REGISTERS OF DEED ably of North Carolina enacts:  ON 1. G.S. 161-10 reads as rewritten:  In fees of registers of deeds.  It is a sometime of the county general fund. While performing the county county general fund of the county general fund. While performing the county county general fund of the county general fund of | S. cted under this section duties of the office, the  |
| (13) I   | Uniform Commercial Code. — Such fees as are proventicle 9, Part 5, of the General Statutes. The folservices related to financing statements or other reacticle 9 of Chapter 25 of the General Statutes:  a. For filing and indexing financing statements fewer pages, thirty-eight dollars (\$38.00).  b. For filing and indexing financing statements   | ided for in Chapter 25,<br>lowing fees apply for<br>ecords under Part 5 of<br>or records with two or    |
| 2  | than two pages, forty-five dollars (\$45.00) for two dollars (\$2.00) for each additional page.  For responding to an information request, including with respect to requests for financing stater particular debtor, thirty-eight dollars (\$38.00). This subdivision shall not apply to either the recording deed of trust or mortgage, when such deed of trust  | uding a communication<br>ment information for a<br>ing or the satisfaction of<br>or mortgage acted as a |
| SECTION SECTIO | inture filing or financing statement covering asimber to be cut as authorized under G.S. 25-9-502(c)  ON 2. G.S. 25-9-525 reads as rewritten:  iling of initial financing statement or other-record:reate: general rule. – Except as otherwise provided in   | ecord with the office of  |

record under this <u>Part is: Part:</u>

(1) Thirty-eight dollars (\$38.00) if the record is communicated in writing and consists of one or two pages;



General Assembly Of North Carolina Session 2015

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- (2) Forty-five dollars (\$45.00) if the record is communicated in writing and consists of more than two pages, plus two dollars (\$2.00) for each page over 10 pages; and
- (3) Thirty dollars (\$30.00) if the record is communicated by another medium authorized by filing-office rule.
- (b) Filing with the register of deeds. The fees to be collected by the register of deeds for filing and indexing a record under this Part are provided under G.S. 161-10(a)(13).
- (c) Number of names. The number of names required to be indexed does not affect the amount of the fee in subsection (a) of this section.
- (d) Response to information request. The fee for responding to a request for information from the filing office, office of the Secretary of State, including for communicating whether there is on file any financing statement naming a particular debtor, is:
  - (1) Thirty-eight dollars (\$38.00) if the request is communicated in writing; and
  - (2) Thirty dollars (\$30.00) if the request is communicated by another medium authorized by filing-office rule.

Upon request the filing office of the Secretary of State shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of two dollars (\$2.00) per page. This subsection does not require that a fee be charged for remote access searching of the filing office database.

- (e) Record of mortgage. This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under G.S. 25-9-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply."
- **SECTION 3.** This act becomes effective October 1, 2015, and applies to instruments registered on or after that date.









### SENATE BILL 386: Registers of Deeds/UCC Recording Fees

2015-2016 General Assembly

Committee:House Judiciary IDate:June 9, 2015Introduced by:Sen. CurtisPrepared by:R. Erika ChurchillAnalysis of:Second EditionCommittee Counsel

SUMMARY: Senate Bill 386 would specify fees for filing instruments governed by the Uniform Commercial Code with registers of deeds.

**CURRENT LAW:** The Uniform Commercial Code, contained in Article 9 of Chapter 25 of the General Statutes, provides for the recording of security agreements in which a loan of money is secured by collateral, thereby giving the lender rights to the property, and provides a method of giving notice of a security interest in personal property to interested third parties. All UCC non-fixture filings are filed with the North Carolina Department of the Secretary of State. Fixture filings, relating to items that become a part of real estate, are filed at the local level in the Office of the Register of Deeds.

The UCC provides a fee schedule for filings. The Secretary of State's Office often provides for a smaller fee amount for instruments filed electronically. For UCC documents, the fee for responding to a request for information is \$38 if the request is communicated in writing and \$30 if the request is communicated by "another medium authorized by filing-office rule." The register of deeds does not provide differing fee amounts based upon the method used for filing.

**BILL ANALYSIS:** Section 1 of the bill would remove the cross-reference in the uniform fees for register of deeds related to instruments governed by the UCC and in its place insert the specific fee amounts as follows:

- \$38 for filing and indexing financing statements or records with two or fewer pages. This fee amount is not changing from current law.
- \$45 for filing and indexing the first 10 pages of financing statements or records with three or more pages, plus \$2 for each additional page. This fee amount is not changing from current law.
- \$38 for responding to an information request and certain other communications. This fee amount will be the fee amount regardless of how the request is communicated.

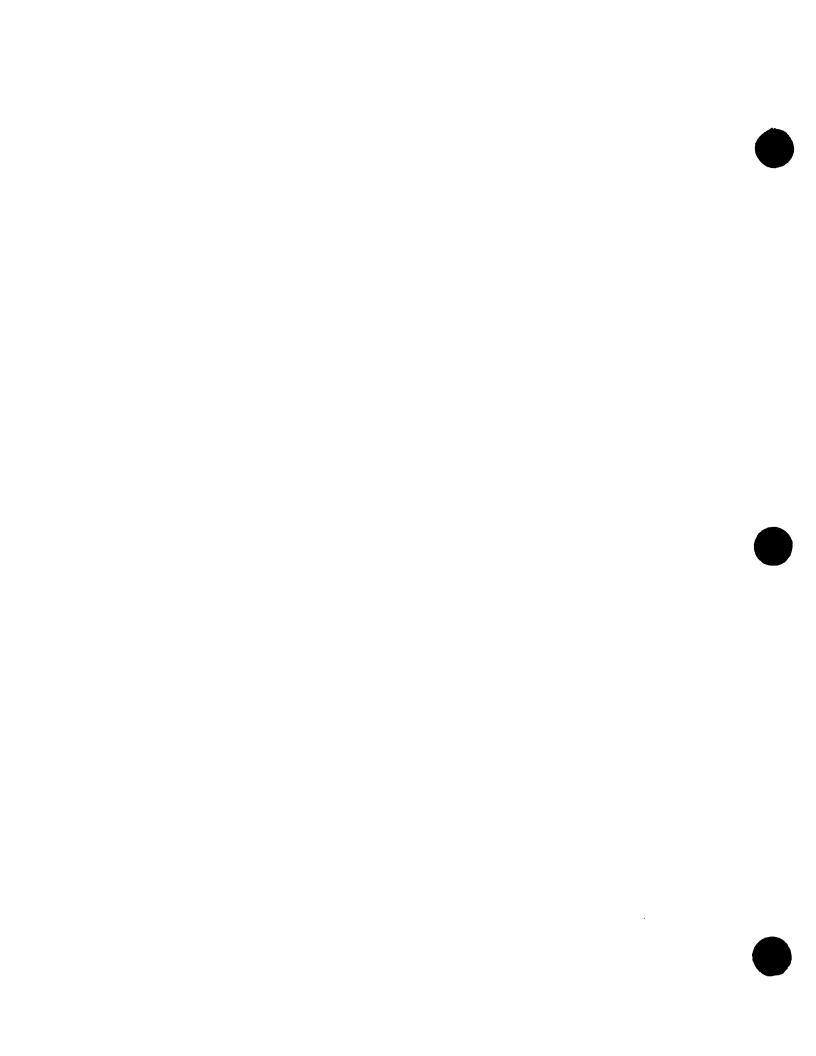
As provided under current law, the UCC filing fees would not apply either to the recording or the satisfaction of a deed of trust or mortgage, when the deed of trust or mortgage acted as a fixture filing or financing statement covering as-extracted collateral or timber to be cut. The recordings may be subject to other general register of deeds filing fees.

Section 2 makes clarifying and conforming changes in the UCC filing fees. It would specify the fees amounts applicable to records that must be filed and indexed with the register of deeds. It would specify those amounts by providing a cross-reference to G.S. 161-10, the uniform fees of registers of deeds.

**EFFECTIVE DATE:** This act becomes effective October 1, 2015, and applies to instruments registered on or after that date.

Janice Paul and Cindy Avrette substantially contributed to this summary.





### NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

#### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

#### FAVORABLE HOUSE COM SUB, UNFAVORABLE ORIGINAL BILL

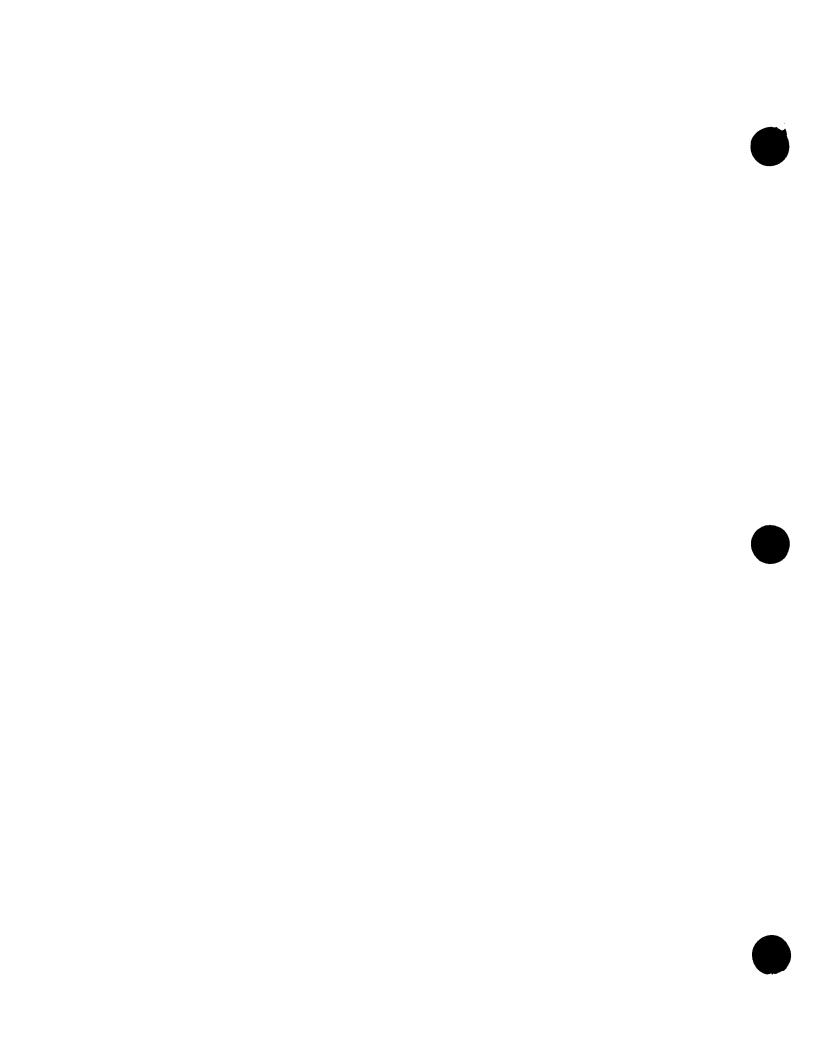
SB 301 DOT/Purchase of Contaminated Land.-AB

Draft Number: S301-PCS15256-ST-66

Serial Referral: None Recommended Referral: None Long Title Amended: Yes Floor Manager: Szoka

TOTAL REPORTED: 1





### NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

#### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

#### **FAVORABLE**

SB 386 (CS#1) Registers of Deeds/UCC Recording Fees.

Draft Number: None

Serial Referral:

Recommended Referral: None Long Title Amended: No

Floor Manager: Robinson

SB **596** (CS#1) Protection Against Unconst. Foreign Judgmnts.

Draft Number: None

Serial Referral: None Recommended Referral: None

Long Title Amended: No

FAVORABLE HOUSE COM SUB, UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

Floor Manager:

SB 199 Funds Deposited with Clerk of Court.

Draft Number: S199-PCS25271-ST-65

None

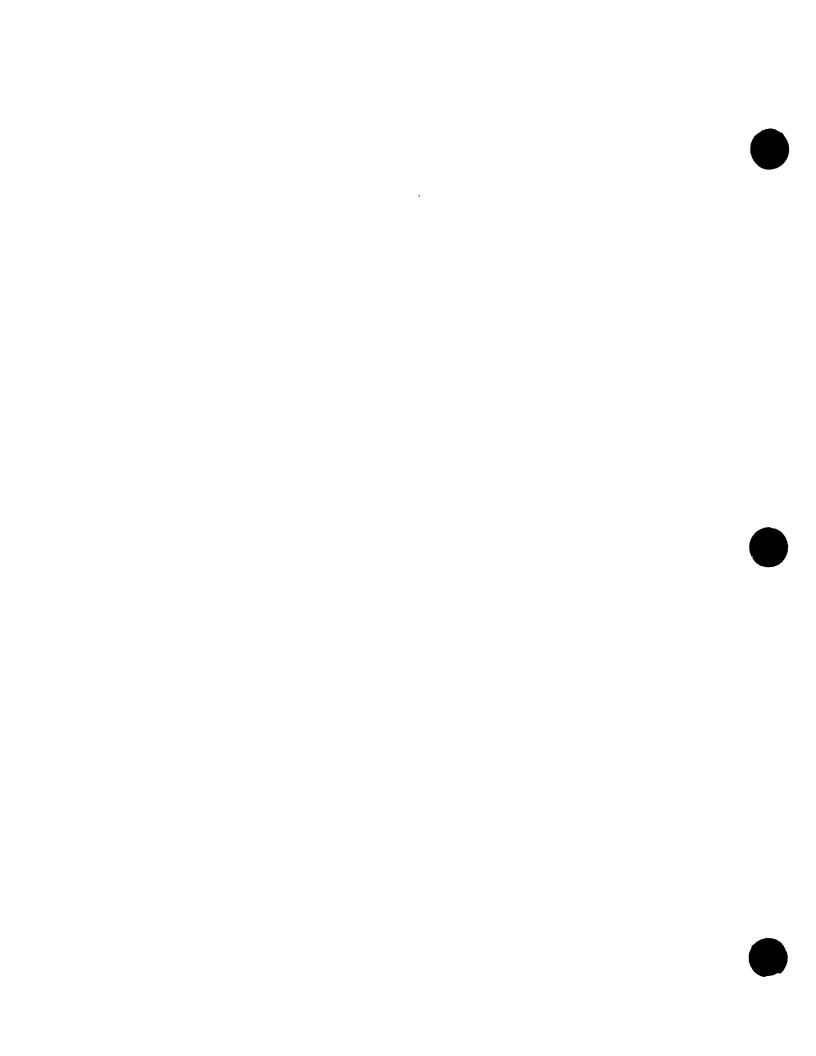
Daughtry

Serial Referral: FINANCE
Recommended Referral: None
Long Title Amended: No

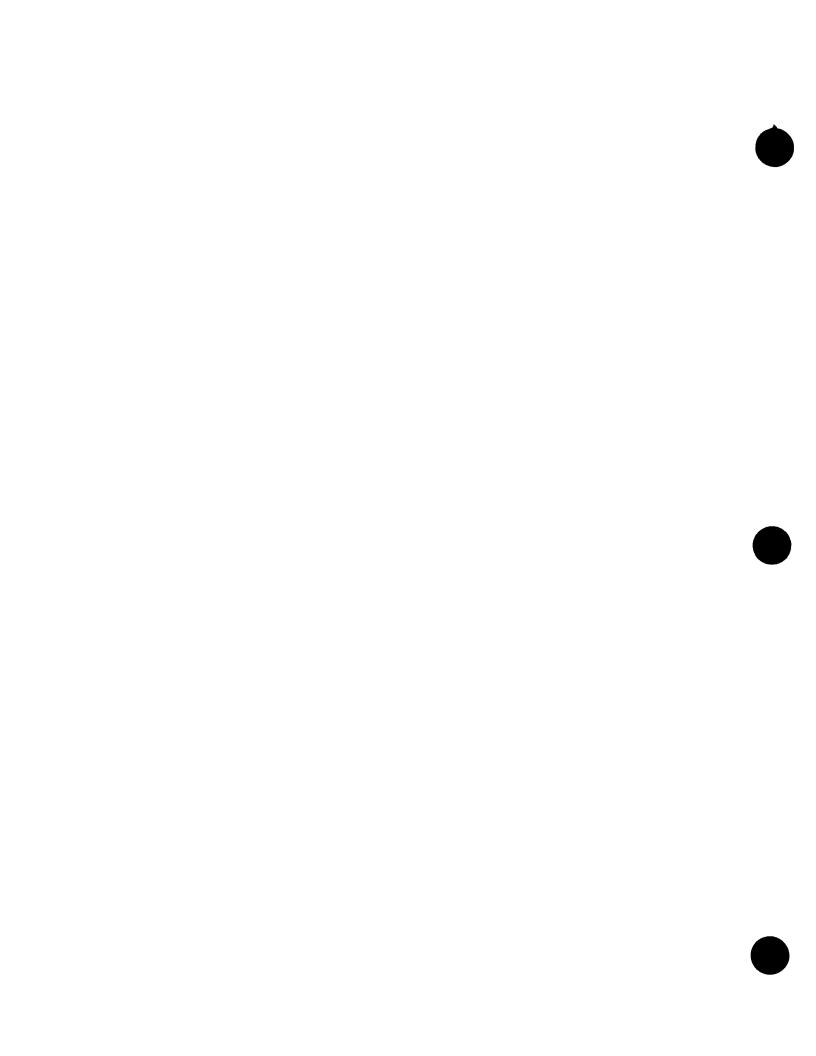
Floor Manager: McNeill

**TOTAL REPORTED: 3** 



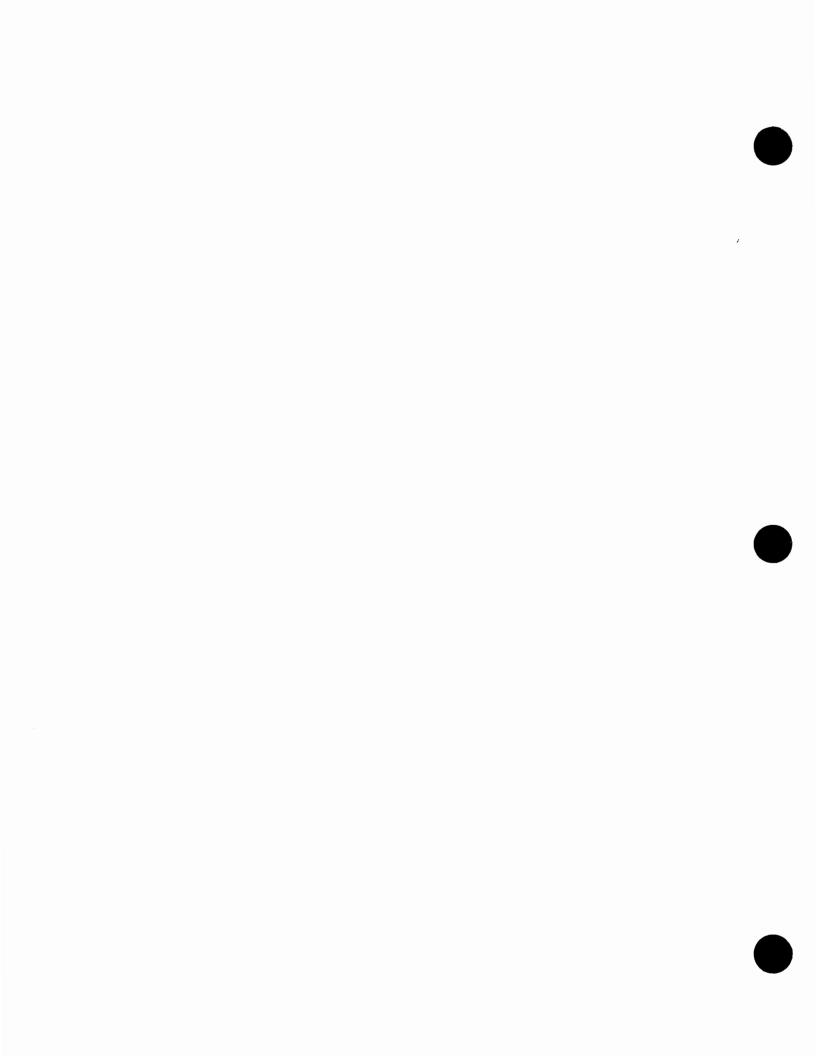


|   | Bill Number 386   |
|---|---|
|   | Motion to be before the committee by                                    |
|   | Sen Curtis explained the bill.  Discussion on the Bill YES or NO        |
|   | Amendments: NO  |
|   | Rep. Robinson motioned for:   |
| ) | Unfavorable ReportUnfavorable to original bill, favorable to PCSNo vote |
|   | Other:  |
|   | Serial referral to:   |
|   | Robinson floor manager  |
|   | Handouts:   |



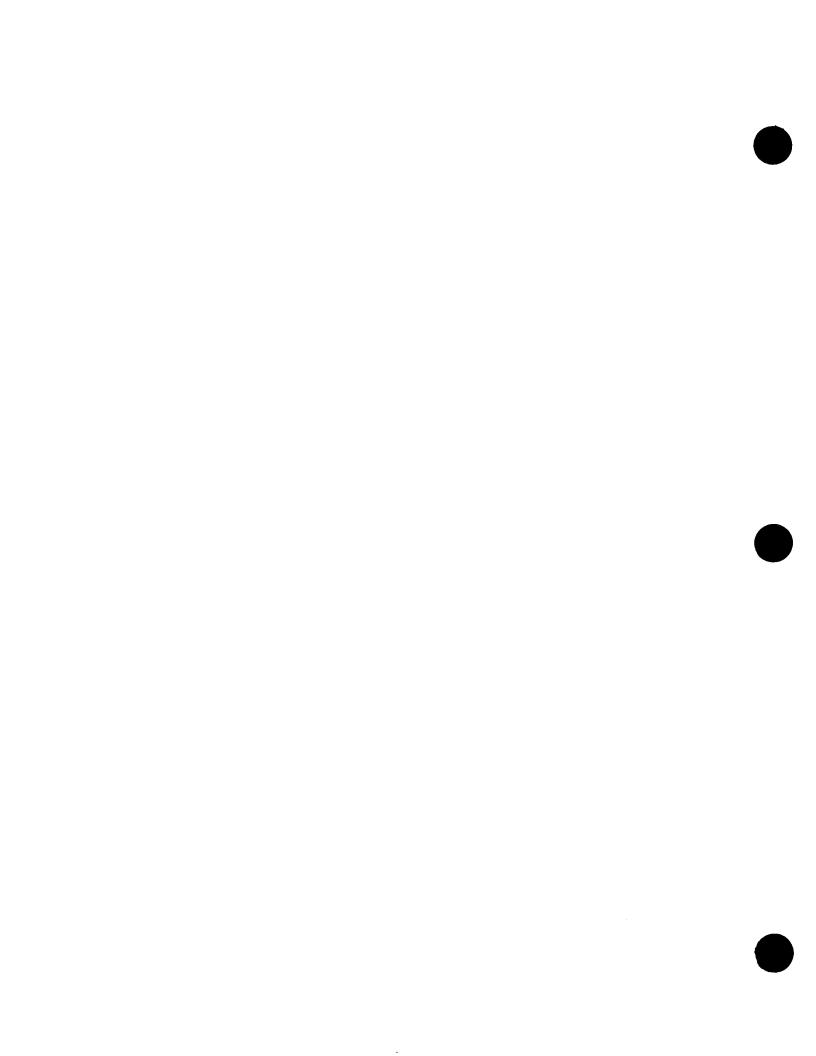
Handouts:

| Bill Number SB 199  PCS S199-CSST-65 CV, 2  Motion to be before the committee by Hardister |  |  |
|--|--|--|
| Sen Randleman explained the bill.  |  |  |
| Discussion on the Bill YES or NO   |  |  |
| Amendments:  |  |  |
| Rep. McJeil motioned for:  |  |  |
| Favorable ReportAdoption Unfavorable ReportUnfavorable to original bill, favorable to PCS  |  |  |
| No vote  |  |  |
| Other:   |  |  |
| Serial referral to:  |  |  |
| Speakers: McMeill- floor manager   |  |  |
|  |  |  |

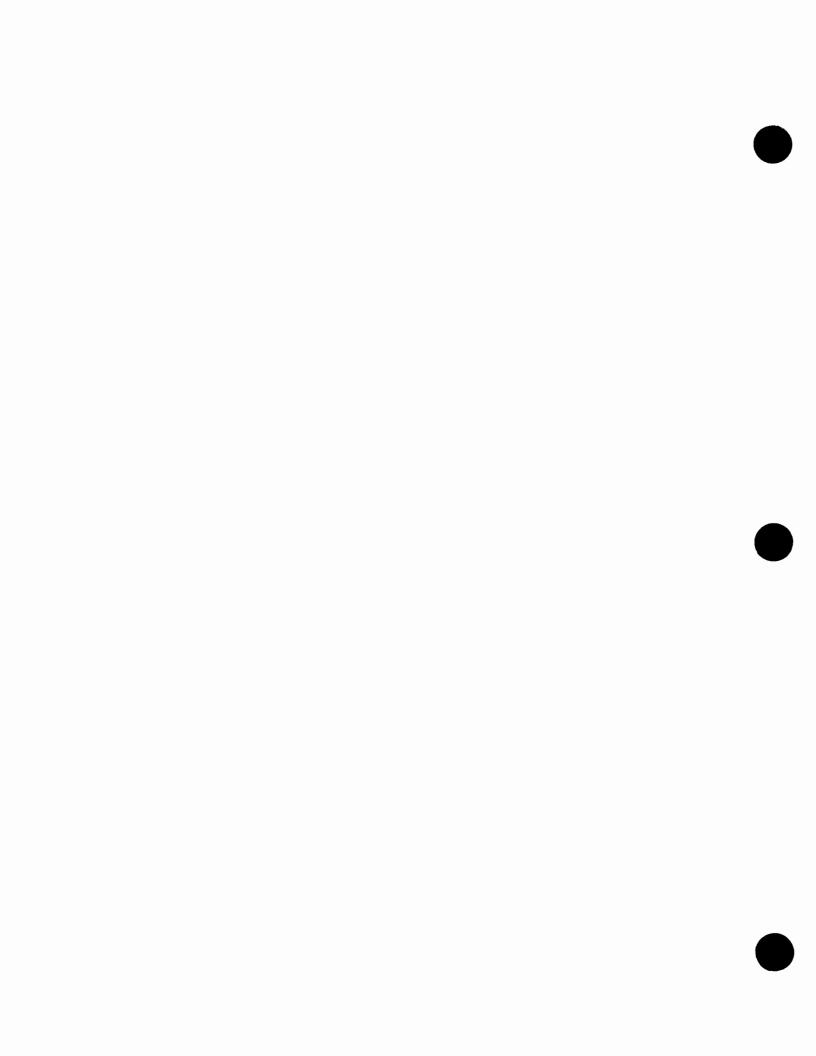


|   | Date: 10, 2013                         |
|---|--|
| Bill Number $\underline{S13}$ $\underline{301}$ PCS $\underline{5301}$ - $\underline{CSST}$ - $\underline{60}$ $\underline{CV}$ Motion to be before the committee by $\underline{CV}$ | dister                                 |
| Sen.  Rep Mered ith explained to  |  |
| Rep Hardister motioned  | for:                                   |
| Favorable Report  | Adoption                               |
| Unfavorable ReportUn  | favorable to original bill, fav to PCS |
| No vote   |  |
| Amendments: :   |  |
| Serial referral to:   |  |
| Speakers: floor manager.  | Szoka                                  |

Handouts:



|                                      | Date: June 10, 2015                      |
|--------------------------------------|--|
| Bill Number <u>535</u>               | Duto.                                    |
| PCSNO                                |  |
| Motion to be before the committee by | Craweic explained the bill. martin:      |
| Discussion on the bill 123 of 140    |  |
| Rep_Robunson                         | motioned for:                            |
| Favorable Report                     | Adoption                                 |
| Unfavorable Report                   | Unfavorable to original bill, fav to PCS |
| No vote                              |  |
| Amendments: :                        |  |
| Serial referral to:                  |  |
| Speakers:                            | Manager: Leo Daughtry                    |
| Handouts:                            |  |



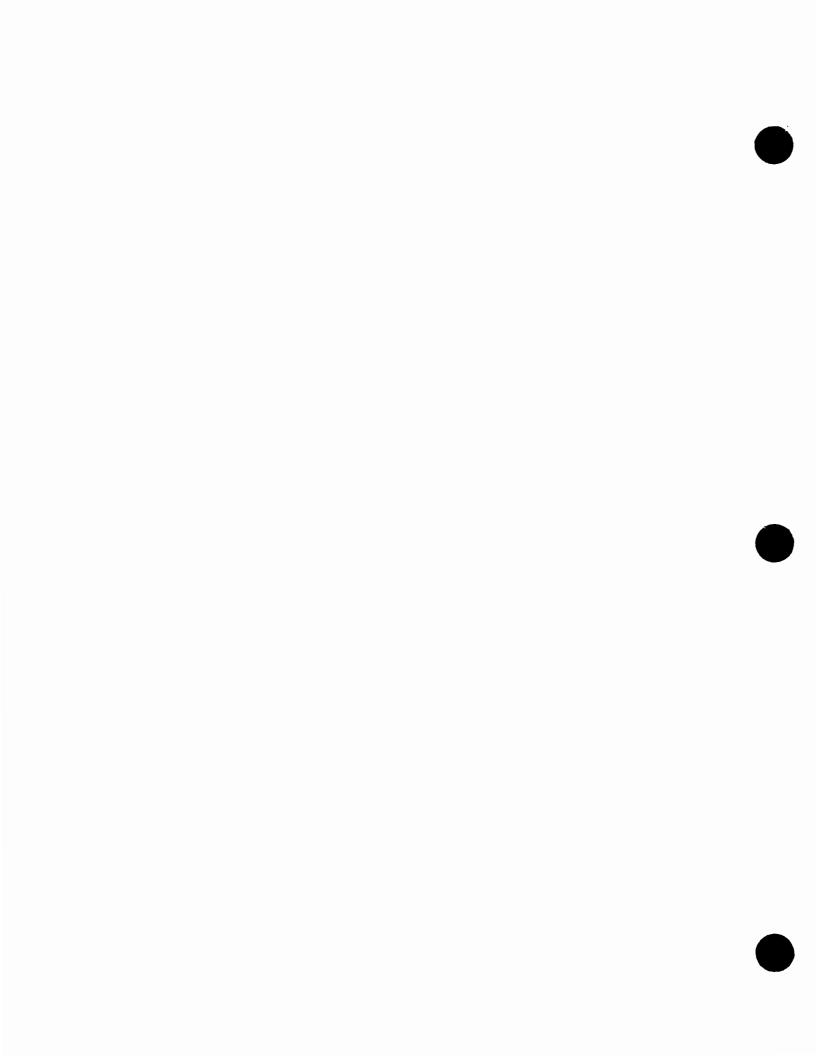
Tuesday, June 9

JUDICIARY I

**Room** 415

**Time** 12:30 pm

| Name           | County      | Sponsor         |
|----------------|-------------|-----------------|
| Marin Wolf     | Orange      | Verla Insko     |
| Ted Chaffman   | Mecklenburg | Speaker Moore   |
| Sabrina Brewer | Mecklenburg | N. Leo Daughtry |
| Jake Browne    | Forsyth     | Debra Conrad    |

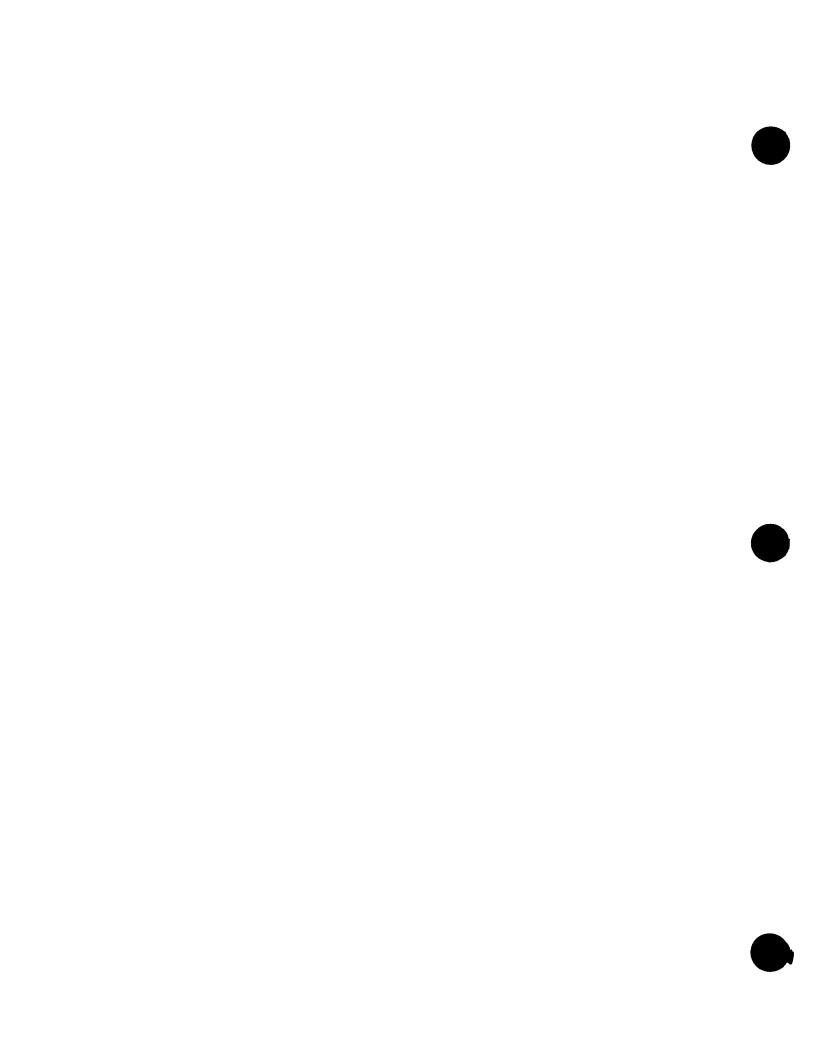




### North Carolina General Assembly - House Sergeant-at-Arms

### House Staff

| Committee: House Judiciary 1 Date: 10 June 201                 |
|--|
| Pages  |
| Name: Maria Wolf   |
| County: Orange Sponsor: MSCO                                   |
| Name: Ted Chaffman   |
| Name: Ted Chaffman  County: Mecklenburg Sponsor: Speaker Moore |
| Name: Sabirina Brewer  |
| County: Medicienburg Sponsor: Leo Daughtry                     |
| Name: Jake Browne  |
| County: Forsyth sponsor: Debra Conrad                          |
| Name:  |
| County: Sponsor:   |
| Sergeants-at-Arms  |
| BARRY MOORE  |
| BH Powell  |
| DAVID LINTHICUM  |
|  |





### North Carolina General Assembly - House Sergeant-at-Arms

### Visitors

| Committee: House Judiciary 1 | Date: 10 June 201 |
|------------------------------|-------------------|
| Name                         | Organization      |
| JudycD. MARTIN               | MARID             |
| WAYNE RASh                   | NCARD             |
| Poury Gulf                   | School 7 12 DV    |
| Mayden Bargueros             | F8P               |
| Reston Jones                 | NCDOT             |
| For teles                    | FSP               |
| Set Par                      | NCAR              |
| Steve Grimes                 | NC DOT R/W        |
| GOVE AINSUDRIH               | ASA               |
| Alex Bowen                   | CCS               |
| Rim Cara                     | WCBA              |
| Hilam Li                     | ACLU              |
| Suzann Beasley               | SEANC             |
|                              |                   |
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| Name                                    | Organization |
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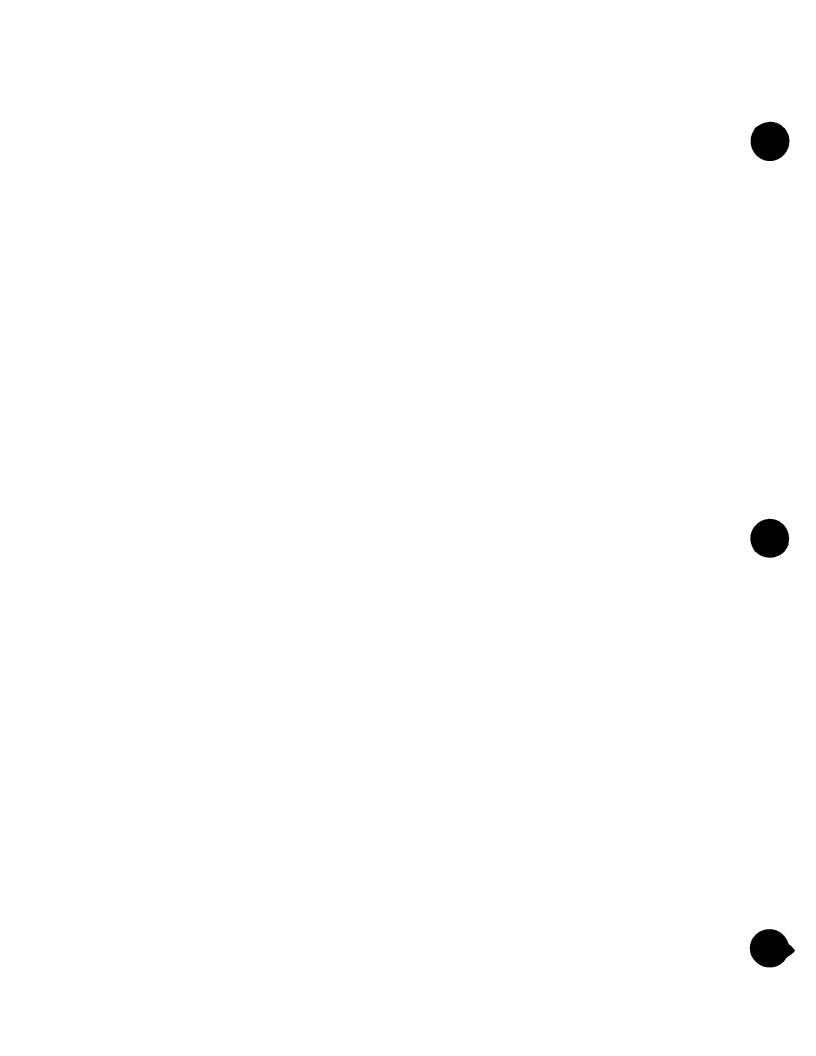
### NORTH CAROLINA HOUSE OF REPRESENTATIVES **COMMITTEE MEETING NOTICE** AND **BILL SPONSOR NOTIFICATION 2015-2016 SESSION**

You are hereby notified that the  $House\ Committee\ on\ Judiciary\ I$  will meet as follows:

**DAY & DATE:** Wednesday, June 17, 2015 12:30 PM

TIME:

| LOCATIO       | N: 415 LOB   |  |
|---------------|--|--|
| The following | ng bills will be considered:                             |  |
| BILL NO.      | SHORT TITLE  | SPONSOR  |
| SB 212        | Handgun Standards for Retired Sworn LEO.                 | Senator Tillman                                  |
| SB 570        | Expunction/Boat Violation.                               | Senator Bryant                                   |
|               |  | Senator McKissick                                |
|               |  | Senator Daniel                                   |
|               | Respect<br>Represe                                       | fully,<br>entative N. Leo Daughtry, Chair        |
| •             | tify this notice was filed by the committee ne 15, 2015. | assistant at the following offices at 3:01 PM on |
|               | Principal Clerk Reading Clerk – House Chamber            |  |
| Jan Copelan   | nd (Committee Assistant)                                 |  |
|               |  |  |
|               |  |  |



### House Committee on Judiciary I Wednesday, June 17, 2015, 12:30 PM 415 Legislative Office Building

#### **AGENDA**

### Welcome and Opening Remarks

### **Introduction of Pages**

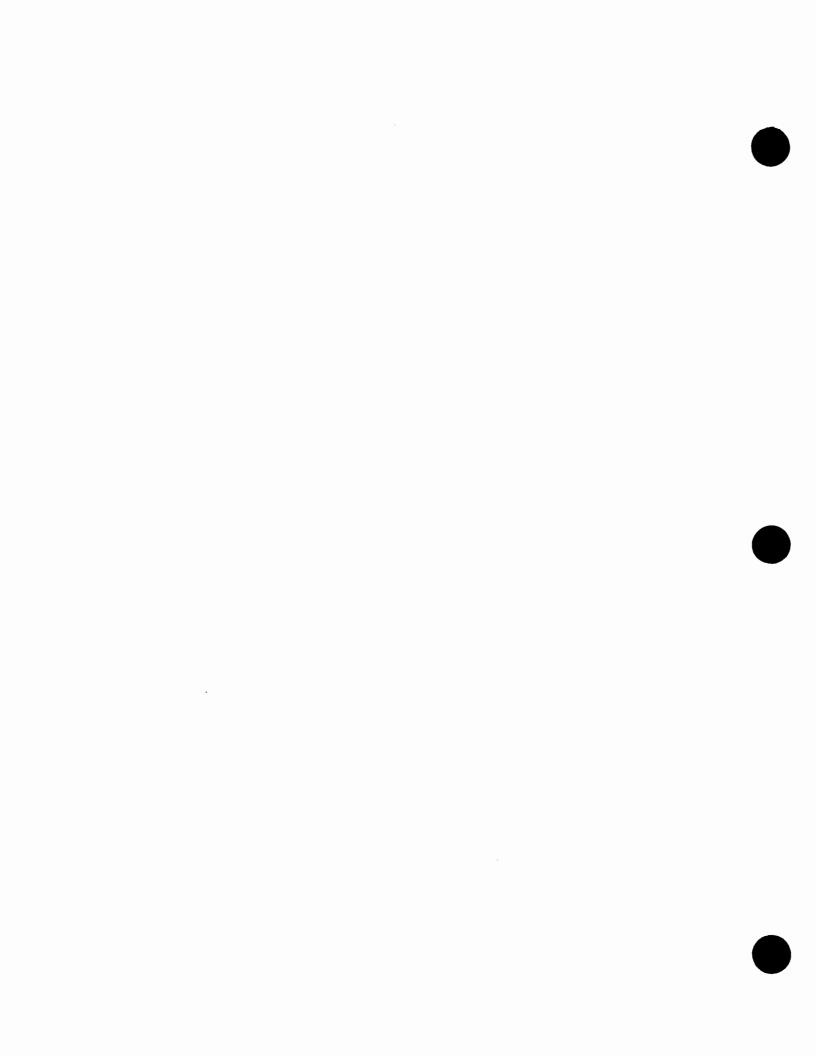
### Bills

| BILL NO. | SHORT TITLE                         | SPONSOR           |
|----------|-------------------------------------|-------------------|
| SB 212   | Handgun Standards for Retired Sworn | Senator Tillman   |
|          | LEO.                                |                   |
| SB 570   | Expunction/Boat Violation.          | Senator Bryant    |
|          |                                     | Senator McKissick |
|          |                                     | Senator Daniel    |

**Presentations** 

**Other Business** 

Adjournment



### House Committee on Judiciary I Wednesday, June 17, 2015 at 12:30 PM Room 415 of the Legislative Office Building

#### **MINUTES**

The House Committee on Judiciary I met at 12:30 PM on June 17, 2015 in Room 415 of the Legislative Office Building. Representatives Daughtry, Arp, Hall, Hardister, Howard, Martin, McNeill, Robinson, Steinburg, and Szoka attended.

Representative N. Leo Daughtry, Chair, presided.

The following bills were considered:

SB 212 Handgun Standards for Retired Sworn LEO. (Senator Tillman) – Favorable. Representative McNeill is the floor manager.

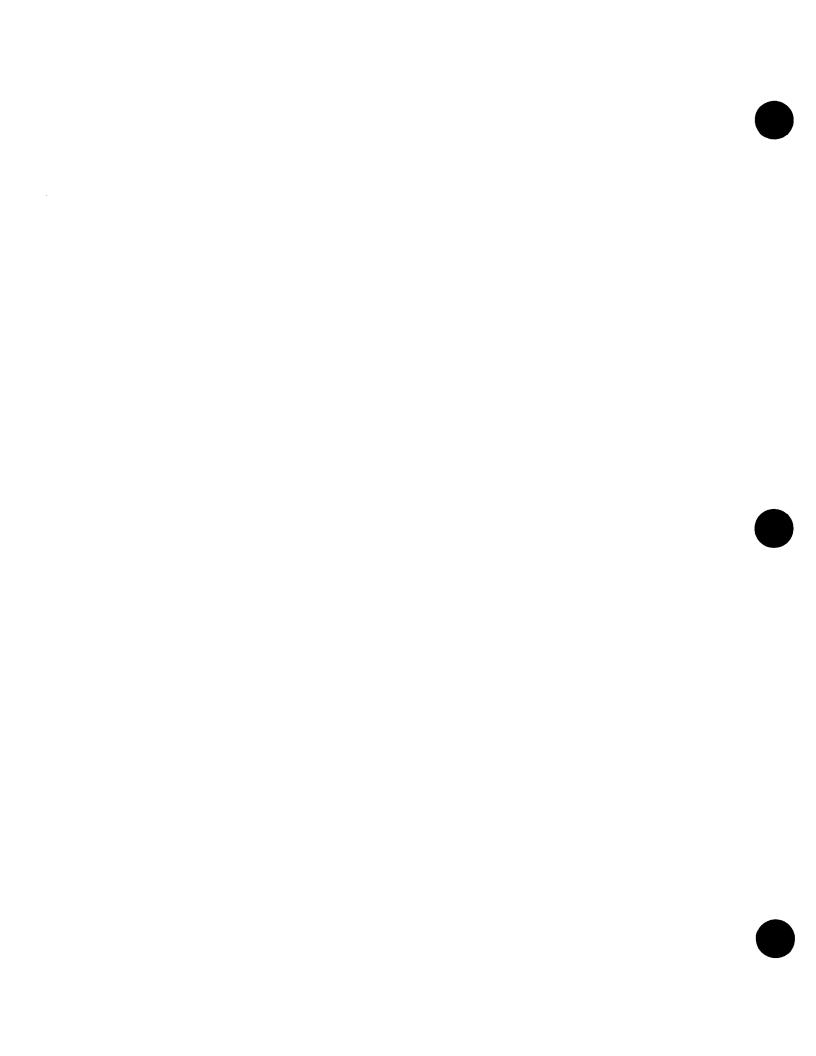
SB 570 Expunction/Boat Violation. (Senators Bryant, McKissick, Daniel) – a great deal of discussion along with two amendments which were not voted on. Bill not voted on, continued discussion at the next meeting.

The meeting adjourned at 1:37 p.m.

Representative N. Leo Daughtry, Chair

Presiding

Jan Copeland, Committee Clerk





### **SENATE BILL 212:** Handgun Standards for Retired Sworn LEO

2015-2016 General Assembly

Committee:

House Judiciary I

Introduced by: Sen. Tillman Analysis of:

Second Edition

Date:

June 17, 2015

Prepared by: Erika Churchill

Jennifer Bedford

Committee Counsel

SUMMARY: Senate Bill 212 would allow successful completion by a retired sworn law enforcement officer of the handgun qualifications for active sworn law enforcement officers to be sufficient for purposes of a concealed handgun permit.

CURRENT LAW: G.S. 14-269 makes it unlawful for any individual to willfully and intentionally carry a pistol or gun concealed about their person unless it is on the individual's property, the individual has a or is a military permittee. Violation is a misclemeanor. concealed carry permit, Additionally, G.S. 14-415.25 provides that law enforcement and qualified retired law enforcement officers (as defined in federal law) are exempt from obtaining the carry concealed permit.

A "qualified retired law enforcement officer" is a person who meets the definition of that term contained in section 926C of Title 18 of the United States Code. That definition requires that the person meet all of the following requirements:

- Be separated from service in good standing from service with a public agency as a law enforcement officer.
- Before separation, have been 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 or apprehension.
- Served as a law enforcement officer for 10 years or more or separated from service due to a service-connected disability.
- Has completed the standards for qualification in firearms training for active law enforcement officers within the past 12 months.
- Has not been found to be unqualified for reasons relating to mental health or has not entered into an agreement with the agency from which they are separated acknowledging they are not qualified for reasons relating to mental health.
- Is not prohibited by Federal law from receiving a firearm.

In order to obtain a concealed handgun permit, a person must complete an approved firearms safety and training course. G.S. 14-415.12A currently provides the following exceptions to the firearms safety and training course requirement:

- Qualified sworn law enforcement officers.
- Qualified former sworn law enforcement officers.

O. Walker Reagan Director



Research Division (919) 733-2578

### Senate Bill 212

#### Page 2

- Qualified retired correctional officers.
- Qualified retired probation or parole certified officers.
- Persons licensed as armed security guards.

**BILL ANALYSIS:** Senate Bill 212 would provide that "qualified retired law enforcement officers" are deemed to have satisfied the firearms safety and training course requirement in order to obtain a carry concealed permit.

**EFFECTIVE DATE:** This act becomes effective October 1, 2015.

\*Staff Attorney Susan Sitze contributed significantly to this document.



## SENATE BILL 570: **Expunction/Boat Violation**

2015-2016 General Assembly

Committee:

House Judiciary I

Introduced by: Sens. Bryant, McKissick, Daniel

Analysis of:

PCS to Third Edition

S570-CSSTf-61

Date:

June 15, 2015

Prepared by: R. Erika Churchill

Committee Counsel

SUMMARY: The Proposed Committee Substitute (PCS) for Senate Bill 570 would provide:

- > That a person may not be denied an expunction solely because the person has a conviction for a misdemeanor boating violation.
- > That certain convictions for driving while impaired and boating while impaired are not eligible for expunction.
- A new expunction process for certain youthful drug offenses.

[As introduced, this bill was identical to H650, as introduced by Reps. Hardister, Brockman, Faircloth, Fisher, which is currently in House Judiciary I.

CURRENT LAW: In limited circumstances, North Carolina law permits the expunction of certain offenses from a person's criminal record. Expunction is the process by which a record of criminal conviction is removed by order of the court, and a person is restored to the status the person occupied before the arrest or indictment. The terms "expunction" and "expungement" are often used interchangeably, and both appear in the statutes. There are several requirements that must be met for expunction, and a person may generally be granted only one expunction in his or her lifetime.

Several provisions of the General Statutes contain provisions authorizing a person to request an expunction if the person has no specified criminal convictions, other than a traffic violation.

BILL ANALYSIS: The PCS would amend the following statutes to provide that a person must not be denied an expunction under the following statutes solely because the person has a conviction for a misdemeanor boating violation:

- G.S. 15A-145.5(c) "Expunction of certain misdemeanors and felonies; no age limit."
- G.S. G.S. 15A-145 "Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors."
- G.S. 15A-145.1 "Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses."
- G.S. 15A-145.2 "Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses."
- G.S. 15A-145.3 "Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses."
- G.S. 15AS-145.4 "Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony."
- G.S. 15A-145.6(f) "Expunction for certain defendants convicted of prostitution."

O. Walker Reagan Director



Research Division (919) 733-2578

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• G.S. 14-50.30 – "Expunction of records."

The PCS would prohibit expunction of convictions for driving while impaired, driving a commercial vehicle and boating while impaired offenses.

The PCS would also establish the ability of a person to expunge up to 2 youthful drug offenses, if the person has no other expunctions, has been drug free for at least 12 months prior to the petition, and the petition is filed at least 10 years after the date of conviction or when the active sentence, period of probation, and post-release supervision has been served, whichever is later.

**EFFECTIVE DATE:** Effective December 1, 2015, and applies to petitions for expunction filed on or after that date.

## GENERAL ASSEMBLY OF NORTH CAROLINA **SESSION 2015**

S D

#### **SENATE BILL 570**

## **Judiciary II Committee Substitute Adopted 4/21/15 Judiciary II Committee Substitute Adopted 4/28/15**

PROPOSED HOUSE COMMITTEE SUBSTITUTE S570-CSSTf-61 [v.3]

6/16/2015 6:59:22 PM

| Short Title: | Expunction/Boat Violation. | (Public) |
|--------------|----------------------------|----------|
| Sponsors:    |                            |          |
| Referred to: |                            |          |

| Sponsors.    |   |
|--------------|---|
| Referred to: |   |
|              | March 30, 2015  |
|              | A BILL TO BE ENTITLED   |
|              | ROVIDE THAT A PERSON SHALL NOT BE DENIED AN EXPUNCTION  |
|              | ECAUSE THE PERSON HAS A CONVICTION FOR A MISDEMEANOR  |
|              | VIOLATION; TO PROVIDE THAT CERTAIN CONVICTIONS FOR  |
|              | WHILE IMPAIRED AND BOATING WHILE IMPAIRED ARE NOT   |
|              | FOR EXPUNCTION; AND TO ALLOW FOR THE EXPUNCTION OF  |
|              | OUTHFUL DRUG OFFENSES.  |
|              | embly of North Carolina enacts:   |
|              | FION 1. G.S. 15A-145.5 reads as rewritten:  |
| •            | expunction of certain misdemeanors and felonies; no age limitation.   |
| *            | ourposes of this section, the term "nonviolent misdemeanor" or "nonviolent  |
| •            | ny misdemeanor or felony except the following:  |
| (1)          | A Class A through G felony or a Class A1 misdemeanor.   |
| (2)          | An offense that includes assault as an essential element of the offense.  |
| (3)          | An offense requiring registration pursuant to Article 27A of Chapter 14 of  |
|              | the General Statutes, whether or not the person is currently required to register.  |
| (4)          |   |
| (4)          | Any of the following sex-related or stalking offenses: G.S. 14-27.7A(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3, |
|              | 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.   |
| (5)          | Any felony offense in Chapter 90 of the General Statutes where the offense  |
| (3)          | involves methamphetamines, heroin, or possession with intent to sell or   |
|              | deliver or sell and deliver cocaine.  |
| (6)          | An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for  |
| (0)          | which punishment was determined pursuant to G.S. 14-3(c).   |
| (7)          | An offense under G.S. 14-401.16.  |
| (7a)         | An offense under G.S. 14-54(a), 14-54(a1), or 14-56.  |
| (8)          | Any felony offense in which a commercial motor vehicle was used in the  |
| (0)          | This isless offense in which a commercial motor remote was used in the  |

- commission of the offense.
- Any offense that is an attempt to commit an offense described in (9) subdivisions (1) through (8) of this subsection.
- An offense under G.S. 20-138.1, 20-138.2, or 20-138.5, for driving while (10)impaired, or under G.S. 75A-10(b1) for boating while impaired.



- (b) Notwithstanding any other provision of law, if the person is convicted of more than one nonviolent felony or nonviolent misdemeanor in the same session of court and none of the nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person had already been served with criminal process for the commission of a nonviolent felony or nonviolent misdemeanor, then the multiple nonviolent felony or nonviolent misdemeanor conviction under this section, and the expunction order issued under this section shall provide that the multiple nonviolent felony convictions or nonviolent misdemeanor convictions shall be expunged from the person's record in accordance with this section.
- (c) A person may file a petition, in the court where the person was convicted, for expunction of a nonviolent misdemeanor or nonviolent felony conviction from the person's criminal record if the person has no other misdemeanor or felony convictions, other than a traffic violation. violation or a misdemeanor boating violation. The petition shall not be filed earlier than 15 years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The petition shall contain, but not be limited to, the following:
  - (1) An affidavit by the petitioner that the petitioner has been of good moral character since the date of conviction for the nonviolent misdemeanor or nonviolent felony and has not been convicted of any other felony or misdemeanor, other than a traffic violation, violation or a misdemeanor boating violation, under the laws of the United States or the laws of this State or any other state.
  - (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.
  - (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
  - (4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual, a search by the Department of Public Safety for any outstanding warrants on pending criminal cases, and 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 Public Safety 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.

Upon filing of the petition, 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. Upon good cause shown, the court may grant the district attorney an additional 30 days to file objection to the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

The presiding judge is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct since the conviction. The court shall review any other information the court deems relevant, including, but not limited to, affidavits

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or other testimony provided by law enforcement officers, district attorneys, and victims of crimes committed by the petitioner.

If the court, after hearing, finds that the petitioner has not previously been granted an expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or 15A-145.4; the petitioner has remained of good moral character; the petitioner has no outstanding warrants or pending criminal cases; the petitioner has no other felony or misdemeanor convictions other than a traffic violation; violation or a misdemeanor boating violation; the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner; and the petitioner was convicted of an offense eligible for expunction under this section and was convicted of, and completed any sentence received for, the nonviolent misdemeanor or nonviolent felony at least 15 years prior to the filing of the petition, it may order that such person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information. If the court denies the petition, the order shall include a finding as to the reason for the denial."

**SECTION 2.** G.S. 15A-145 reads as rewritten:

## "§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.

- Whenever any person who has not previously been convicted of any felony, or misdemeanor other than a traffic violation, violation or a misdemeanor boating violation, under the laws of the United States, the laws of this State or any other state, (i) pleads guilty to or is guilty of a misdemeanor other than a traffic violation, violation or a misdemeanor boating violation, and the offense was committed before the person attained the age of 18 years, or (ii) pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), and the offense was committed before the person attained the age of 21 years, he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than: (i) two years after the date of the conviction, or (ii) the completion of any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:
  - An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, violation or a misdemeanor boating violation, under the laws of the United States or the laws of this State or any other state.
  - Verified affidavits of two persons who are not related to the petitioner or to (2) each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.
  - (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
  - Repealed by Session Laws 2010-174, s. 2, effective October 1, 2010, and (4) applicable to petitions for expunctions filed on or after that date.
  - An application on a form approved by the Administrative Office of the (4a) Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and 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 Public Safety 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 him are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, violation or a misdemeanor boating violation, for two years from the date of conviction of the misdemeanor in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and (i) petitioner was not 18 years old at the time of the offense in question, or (ii) petitioner was not 21 years old at the time of the offense of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

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### **SECTION 3.** G.S. 15A-145.1 reads as rewritten:

# "§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.

- (a) Whenever any person who has not previously been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of (i) a Class H felony under Article 13A of Chapter 14 of the General Statutes or (ii) an enhanced offense under G.S. 14-50.22, or has been discharged and had the proceedings against the person dismissed pursuant to G.S. 14-50.29, and the offense was committed before the person attained the age of 18 years, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, whichever occurs later. The petition shall contain, but not be limited to, the following:
  - (1) An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state.
  - (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.
  - (3) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

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- (4) Repealed by Session Laws 2010-174, s. 4, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.
- (4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and 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 Public Safety 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.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.

If the court, after hearing, finds that (i) the petitioner was dismissed and the proceedings against the petitioner discharged pursuant to G.S. 14-50.29 and that the person had not yet attained 18 years of age at the time of the offense or (ii) the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner, and the petitioner had not attained the age of 18 years at the time of the offense in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information, and that the record be expunged from the records of the court. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment or information, or trial, or response to any inquiry made of the person for any purpose. The court shall also direct all law enforcement agencies, the Division of Adult Correction of the Department of Public Safety, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the petitioner's criminal charge and any conviction resulting from the charge. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

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#### **SECTION 4.** G.S. 15A-145.2 reads as rewritten:

# "§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.

- (a) Whenever a person is discharged, and the proceedings against the person dismissed, pursuant to G.S. 90-96(a) or (a1), and the person was not over 21 years of age at the time of the offense, the person may apply to the court for an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:
  - (1) An affidavit by the petitioner that he or she has been of good behavior during the period of probation since the decision to defer further proceedings

- on the offense in question and has not been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state;
- (2) Verified affidavits by two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he or she lives, and that the petitioner's character and reputation are good;
- (3) Repealed by Session Laws 2010-174, s. 5, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.
- (3a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and 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 Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him or her dismissed and that the person was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies, the Division of Adult Correction, the Division of Motor Vehicles, and any other State and local government agencies identified by the petitioner as bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

Whenever any person who has not previously been co

(c) Whenever any person who has not previously been convicted of (i) any felony offense under any state or federal laws; (ii) any offense under Chapter 90 of the General Statutes; or (iii) an offense under any statute of the United States or any state relating to controlled substances included in any schedule of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes, pleads guilty to or has been found guilty of a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules I through VI of Chapter 90, or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or pleads guilty to or has been found guilty of a felony under G.S. 90-95(a)(3), the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or

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subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the petitioner's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes for possessing a controlled substance included within Schedules I through VI of Article 5 of Chapter 90 of the General Statutes or for possessing drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3), that the petitioner has no disqualifying previous convictions as set forth in this subsection, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status the petitioner occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order all law enforcement agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local agencies identified by the petitioner as bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

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#### **SECTION 5.** G.S. 15A-145.3 reads as rewritten:

# "§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.

- (a) Whenever a person is discharged and the proceedings against the person dismissed under G.S. 90-113.14(a) or (a1), such person, if he or she was not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:
  - (1) An affidavit by the petitioner that the petitioner has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony or

- misdemeanor other than a traffic violation <u>or a misdemeanor boating</u> <u>violation</u> under the laws of the United States or the laws of this State or any other state;
- (2) Verified affidavits by 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 his or her character and reputation are good;
- (3) Repealed by Session Laws 2010-174, s. 6, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.
- (3a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and 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 Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against the person dismissed and that he or she was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-15.

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Whenever any person who has not previously been convicted of an offense under (c) Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of violation of Article 5A of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

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The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by G.S. 90-113.22, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

. . . . . . . . . . . . .

#### **SECTION 6.** G.S. 15A-145.4 reads as rewritten:

## "§ 15A-145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.

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- (c) Whenever any person who had not yet attained the age of 18 years at the time of the commission of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition shall not be filed earlier than four years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain the following:
  - (1) An affidavit by the petitioner that the petitioner has been of good moral character since the date of conviction of the nonviolent felony in question and has not been convicted of any other felony or any misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state.
  - (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation

- of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.
- (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing (i) a State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual; (ii) a search by the Department of Public Safety 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 Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.
- (5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.
- (6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.
- (7) An affidavit by the petitioner that the petitioner possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

. . .

- (e) The court may order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:
  - (1) The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic <u>or boating</u> violation, for four years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation, or post-release supervision has been served, whichever is later.
  - (2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating <u>violation</u> under the laws of the United States or the laws of this State or any other state.
  - (3) The petitioner has no outstanding warrants or pending criminal cases.
  - (4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.
  - (5) The petitioner was less than 18 years old at the time of the commission of the offense in question.
  - (6) The petitioner has performed at least 100 hours of community service since the time of the conviction and possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.

Senate Bill 570

S570-CSSTf-61 [v.3]

(7) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

**SECTION 7.** G.S. 15A-145.6(f) reads as rewritten:

- "(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, violation or a misdemeanor boating 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."

**SECTION 8.** G.S. 14-50.30 reads as rewritten:

"§ 14-50.30. Expunction of records.

Any person who has not previously been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state, may, if the offense was committed before the person attained the age of 18 years, be eligible to apply for expunction of certain offenses under this Article pursuant to G.S. 15A-145.1."

**SECTION 9.** Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

## "§ 15A-145.7. Expunction of certain youth drug offenses.

- (a) The following definitions apply to this section:
  - (1) Drug free. Free from drug dependency and any unlawful use of controlled substances.
  - Youthful drug offense. A conviction of any violation of G.S. 90-95(a)(3) or G.S. 90-113.22 where the defendant had not yet attained the age of 25 years at the time of the commission of the offense.
- (b) Notwithstanding any other provision of law, if the person is convicted of more than one youthful drug offense in the same session of court, then the multiple youthful drug offense convictions shall be treated as one youthful drug offense conviction under this section, and the expunction order issued under this section shall provide that the multiple youthful drug offense convictions shall be expunged from the person's record in accordance with this section.
- (c) A person may file a petition in the court where the person was convicted for expunction of up to two youthful drug offense convictions from the person's criminal record if the person has no misdemeanor or felony convictions, other than a traffic or a misdemeanor boating violation, for a period of at least 10 years prior to the date that the petition is filed; convicted of a youthful drug offense that is eligible pursuant to subsection (a) of this section; and provides proof pursuant to subsection (d) of this section that the person is drug free and has been drug free for a period of at least one year prior to the date that the petition is filed. The petition shall not be filed earlier than (i) 10 years after the date of the conviction or (ii) when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. If the petition is to expunge two youthful drug offense convictions, the

petition shall not be filed earlier than 10 years after the date of the last conviction or when any active sentence, period of probation, and post-release supervision has been served for the last conviction, whichever occurs later.

(d) To establish that a person is drug free and has been drug free for a period of at least one year prior to the date that the petition is filed, a person shall provide proof that the person has been tested for drugs every 30 days for a period of at least one year immediately preceding the date that the petition is filed and tested drug free at each testing, and shall also provide a drug evaluation for review by the court. The Administrative Office of the Courts, in cooperation with the Department of Health and Human Services, shall determine what type of documentation must be provided to the court regarding the required drug testing and evaluation and the format in which the documentation shall be presented to the court for review.

(e) The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that the petitioner is of good moral character and has not been convicted of any felony or misdemeanor, other than a traffic or boating violation, under the laws of the United States or the laws of this State or any other state for a period of at least 10 years prior to the date that the petition is filed.

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.

An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual, a search by the Department of Public Safety for any outstanding warrants on pending criminal cases, and 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 Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

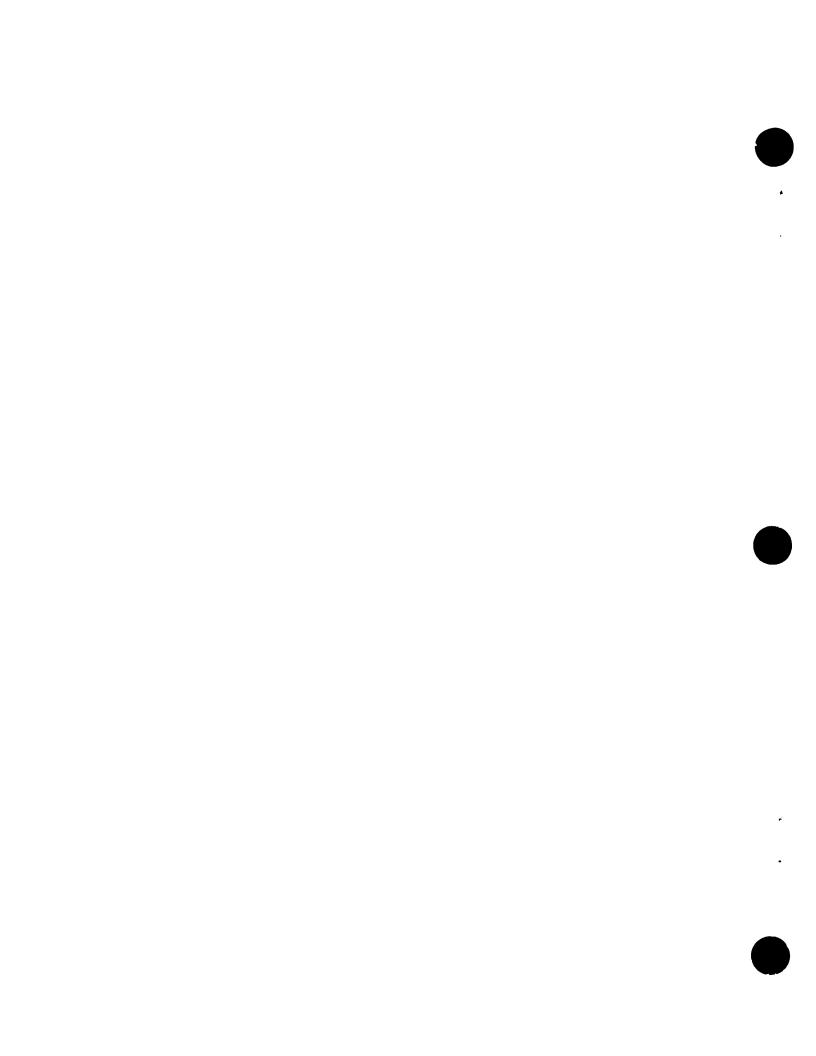
(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

(6) Documentation in a format approved by the Administrative Office of the Courts establishing that the petitioner is drug free and has been drug free for a period of at least one year prior to the date of the filing of the petition.

Upon filing of the petition, the petition shall be served upon the district attorney of the court wherein the case resulting in conviction was heard. 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. Upon good cause shown, the court may grant the district attorney an additional 30 days to file objection to the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

The presiding judge may call upon a probation officer for any additional investigation or verification of the petitioner's conduct since the conviction. The court shall review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers, district attorneys, and victims of crimes committed by the petitioner.

- (f) If the court after hearing finds that the petitioner has not previously been granted an expunction, the petitioner is drug free; the petitioner is of good moral character; the petitioner has no outstanding warrants or pending criminal cases; the petitioner has no felony or misdemeanor convictions other than a traffic violation, for a period of 10 years prior to the filing of the petition; the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner; the petition for expunction of a youthful drug offense conviction was filed at least 10 years after the date of conviction or, if the petition for expunction is for two youthful drug offense convictions, the petition was filed at least 10 years after the date of the later conviction; and the petitioner has completed any sentence received for the conviction, it may order that such person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information. If the court denies the petition, the order shall include a finding as to the reason for the denial.
- Mo person as to whom an order has been entered pursuant to this section shall be held thereafter under any provision of any law 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 convictions to the certifying Commission, regardless of whether or not the 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 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 upon receipt from the petitioner of an order entered pursuant to this section. The agency shall also vacate and reconsider any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged.
- must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent."
- **SECTION 10.** This act is effective December 1, 2015, and applies to petitions for expunction filed on or after that date.



## NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

## JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

#### **FAVORABLE**

SB 212 (CS#1)

Handgun Standards for Retired Sworn LEO.

Draft Number:
Serial Referral:
Recommended Referral:
Long Title Amended:
Floor Manager:
None
No
McNeill

TOTAL REPORTED: 1



|  | Date: 6-17-15                            |
|--|--|
| Bill Number 5 212.                     | Date: 6-17-15                            |
| PCS_ hO                                |  |
| Motion to be before the committee by _ | Daushtry                                 |
| Rep Daughtry                           | explained the bill.                      |
| Discussion on the Bill YES or NO       |  |
| Rep Hardister                          | motioned for:                            |
| Favorable Report                       | Adoption                                 |
| Unfavorable Report                     | Unfavorable to original bill, fav to PCS |
| No vote                                |  |
| Amendments: :                          |  |
| Serial referral to:                    |  |
| Speakers:                              |  |
| Handouts:                              |  |

•

|  | Date: 6-17-15                              |
|--|--|
| Bill Number <u>5570</u><br>PCS <u>5570</u> - CSSTF | -61[V.3]                                   |
| Motion to be before the committee by _             |  |
| Rep Fisher Discussion on the Bill YES or NO        | explained the bill. , Staff Enka Churchell |
| Rep Howard   | motioned for:                              |
| Favorable Report                                   | Adoption                                   |
| Unfavorable Report                                 |  |
| No vote Amendments: :                              | 5570-AST-94 [V.2]<br>S570-AST-95 [V.2]     |
| Serial referral to:                                |  |
| Speakers: Rep. Hall -                              | uplained aneignests                        |
| Handouts:  | no anerdness roted on                      |

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## North Carolina General Assembly - House Sergeant-at-Arms

## Visitors

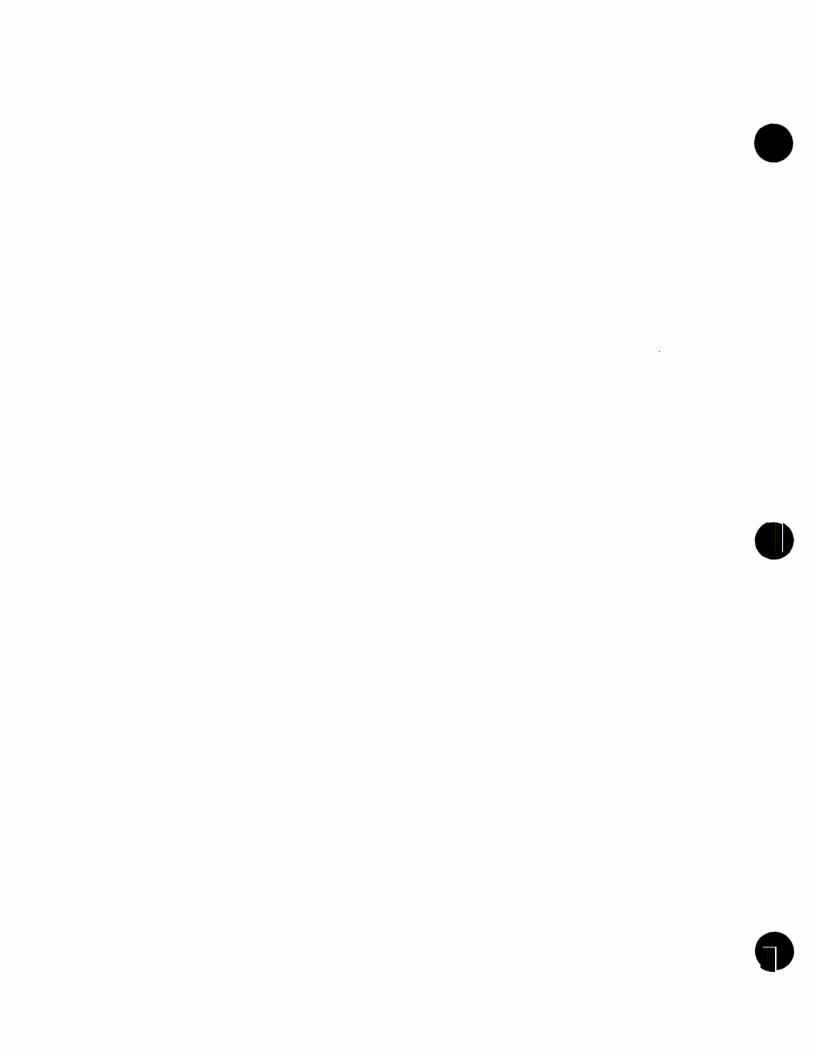
| Committee: Judiciary 1     | Date: 17 June 15                     |
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# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

You are hereby notified that the House Committee on Judiciary I will meet as follows:

| DAY & DATE:<br>TIME:<br>LOCATION:        | Wednesday, June 24, 2015<br>12:30 PM             |   |
|--|--|---|
| LOCATION:                                | 415 LOB  |   |
| The following bills will be considered:  |  |   |
|  | ORT TITLE punction/Boat Violation.               | SPONSOR Senator Bryant Senator McKissick Senator Daniel |
|  | Respec   | tfully,   |
|  | Represe  | entative N. Leo Daughtry, Chair                         |
| I hereby certify th<br>Thursday, July 16 | -  | assistant at the following offices at 1:05 PM on        |
|  | Principal Clerk<br>Reading Clerk – House Chamber |   |
| Ian Coneland (Co                         | ammittee Assistant)                              |   |



## House Committee on Judiciary I Wednesday, June 24, 2015, 12:30 PM 415 Legislative Office Building

## **AGENDA**

**Welcome and Opening Remarks** 

**Introduction of Pages** 

**Bills** 

**BILL NO. SHORT TITLE** 

SB 570 Expunction/Boat Violation.

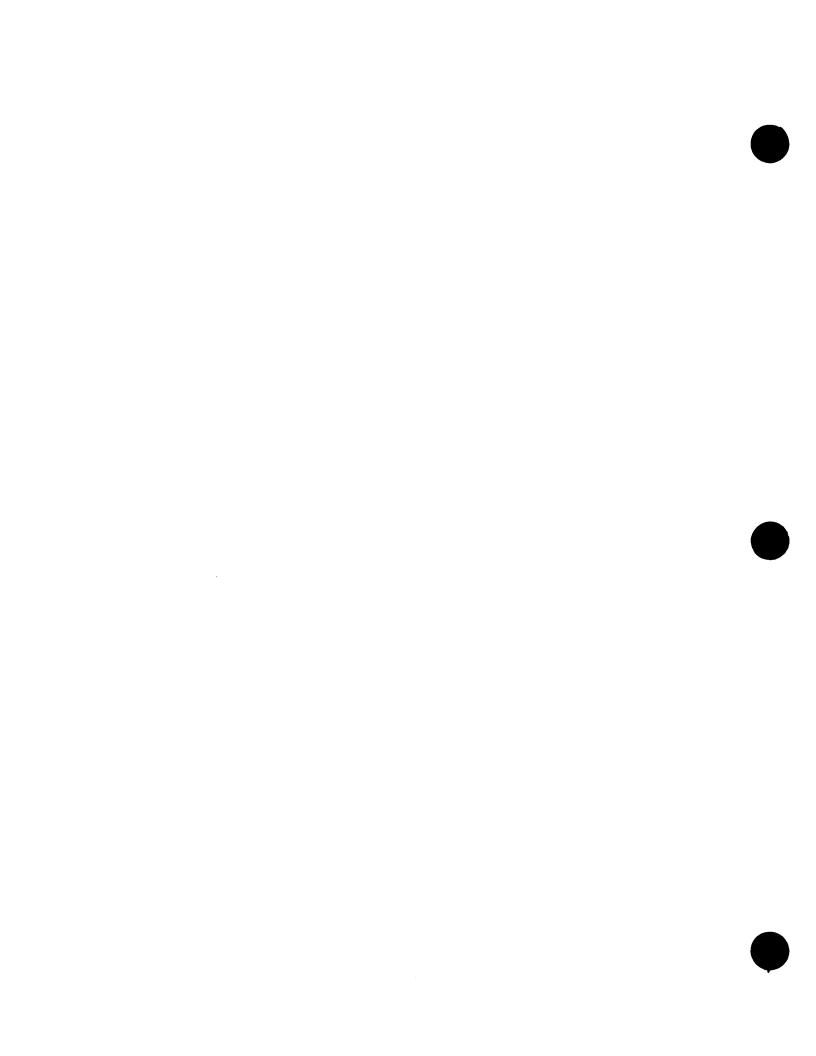
SPONSOR Senator Bryant Senator McKissick

Senator Daniel

**Presentations** 

**Other Business** 

Adjournment



## House Committee on Judiciary I Wednesday, June 24, 2015 at 12:30 PM Room 415 of the Legislative Office Building

#### **MINUTES**

The House Committee on Judiciary I met at 12:30 PM on June 24, 2015 in Room 415 of the Legislative Office Building. Representatives Daughtry, Jackson, Arp, Hall, Hardister, Howard, Martin, McNeill, Robinson, Steinburg and Szoka attended.

Representative N. Leo Daughtry, Chair, presided.

The following bills were considered:

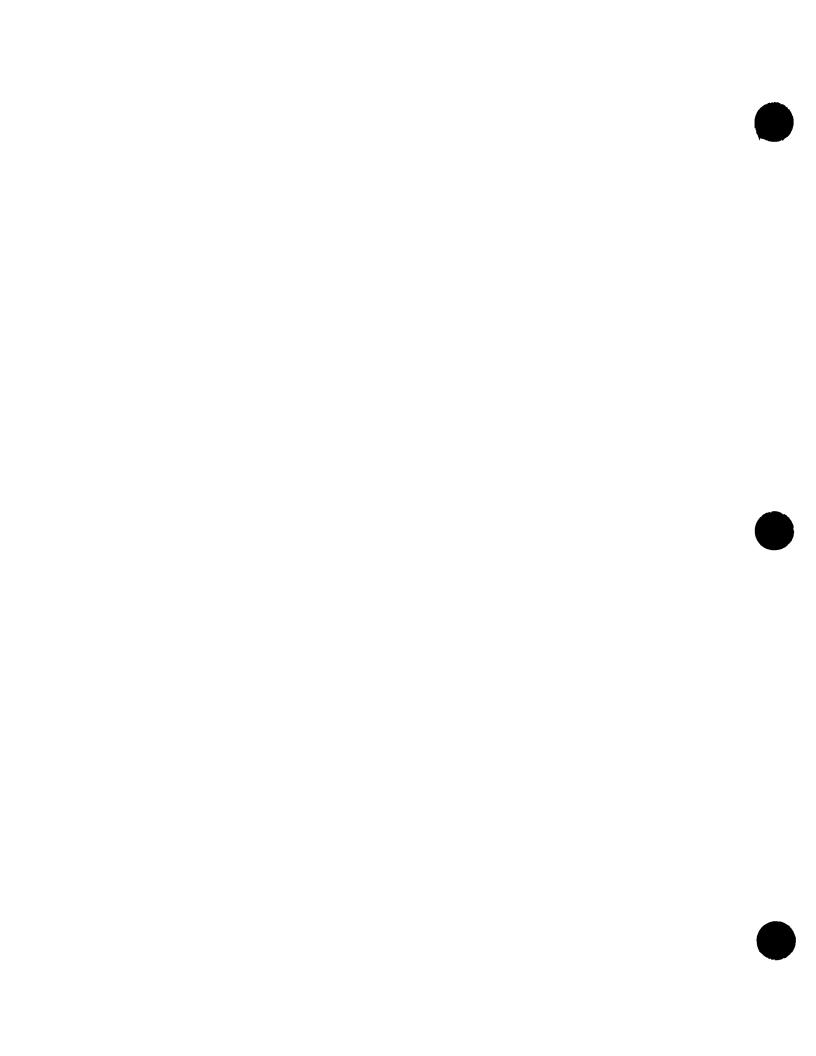
SB 570 Expunction/Boat Violation. (Senators Bryant, McKissick, Daniel) – Favorable to the House Committee substitute, unfavorable to the senate committee substitute number 2 and rereferred to finance. Fisher will serve as floor manager.

The meeting adjourned at 1:17 p.m.

Representative N Leo Daughtry, Chair

Presiding

Jan Copeland, Committee Clerk





## **SENATE BILL 570: Expunction/Boat Violation**

This Bill Analysis reflects the contents of the bill as it was presented in committee.

2015-2016 General Assembly

Committee:

House Judiciary I

Introduced by:

Sens. Bryant, McKissick, Daniel

Analysis of:

PCS to Third Edition

S570-CSSTf-61

Date:

June 15, 2015

**Prepared by:** R. Erika Churchill

Committee Counsel

## SUMMARY: The Proposed Committee Substitute (PCS) for Senate Bill 570 would provide:

- That a person may not be denied an expunction solely because the person has a conviction for a misdemeanor boating violation.
- > That certain convictions for driving while impaired and boating while impaired are not eligible for expunction.
- A new expunction process for certain youthful drug offenses.

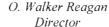
[As introduced, this bill was identical to H650, as introduced by Reps. Hardister, Brockman, Faircloth, Fisher, which is currently in House Judiciary I.]

CURRENT LAW: In limited circumstances, North Carolina law permits the expunction of certain offenses from a person's criminal record. Expunction is the process by which a record of criminal conviction is removed by order of the court, and a person is restored to the status the person occupied before the arrest or indictment. The terms "expunction" and "expungement" are often used interchangeably, and both appear in the statutes. There are several requirements that must be met for expunction, and a person may generally be granted only one expunction in his or her lifetime.

Several provisions of the General Statutes contain provisions authorizing a person to request an expunction if the person has no specified criminal convictions, other than a traffic violation.

**BILL ANALYSIS:** The PCS would amend the following statutes to provide that a person must not be denied an expunction under the following statutes solely because the person has a conviction for a misdemeanor boating violation:

- G.S. 15A-145.5(c) "Expunction of certain misdemeanors and felonies; no age limit."
- G.S. G.S. 15A-145 "Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors."
- G.S. 15A-145.1 "Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses."
- G.S. 15A-145.2 "Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses."
- G.S. 15A-145.3 "Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses."
- G.S. 15AS-145.4 "Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony."
- G.S. 15A-145.6(f) "Expunction for certain defendants convicted of prostitution."





Research Division (919) 733-2578

## Senate Bill 570

Page 2

• G.S. 14-50.30 – "Expunction of records."

The PCS would prohibit expunction of convictions for driving while impaired, driving a commercial vehicle and boating while impaired offenses.

The PCS would also establish the ability of a person to expunge up to 2 youthful drug offenses, if the person has no other expunctions, has been drug free for at least 12 months prior to the petition, and the petition is filed at least 10 years after the date of conviction or when the active sentence, period of probation, and post-release supervision has been served, whichever is later.

**EFFECTIVE DATE:** Effective December 1, 2015, and applies to petitions for expunction filed on or after that date.

## GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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33

SENATE BILL 570
Judiciary II Committee Substitute Adopted 4/21/15

# Judiciary II Committee Substitute Adopted 4/28/15 PROPOSED HOUSE COMMITTEE SUBSTITUTE S570-CSSTf-61 [v.3]

6/16/2015 6:59:22 PM

Short Title: Expunction/Boat Violation.

(Public)

D

Sponsors:
Referred to:

|          |               | March 30, 2015  |
|----------|---------------|---|
| 1        |               | A BILL TO BE ENTITLED   |
| 2        | AN ACT TO PRO | OVIDE THAT A PERSON SHALL NOT BE DENIED AN EXPUNCTION   |
| 3        |               | CAUSE THE PERSON HAS A CONVICTION FOR A MISDEMEANOR   |
| 4        | BOATING V     | VIOLATION; TO PROVIDE THAT CERTAIN CONVICTIONS FOR  |
| 5        | DRIVING W     | THILE IMPAIRED AND BOATING WHILE IMPAIRED ARE NOT   |
| 6        | ELIGIBLE F    | OR EXPUNCTION; AND TO ALLOW FOR THE EXPUNCTION OF   |
| 7        | CERTAIN YO    | OUTHFUL DRUG OFFENSES.  |
| 8        |               | mbly of North Carolina enacts:  |
| 9        |               | ION 1. G.S. 15A-145.5 reads as rewritten:   |
| 10       |               | punction of certain misdemeanors and felonies; no age limitation.   |
| 11       |               | rposes of this section, the term "nonviolent misdemeanor" or "nonviolent  |
| 12       |               | misdemeanor or felony except the following:   |
| 13       | (1)           | A Class A through G felony or a Class A1 misdemeanor.   |
| 14       | (2)           | An offense that includes assault as an essential element of the offense.  |
| 15       | (3)           | An offense requiring registration pursuant to Article 27A of Chapter 14 of                                      |
| 16       |               | the General Statutes, whether or not the person is currently required to  |
| 17       | (4)           | register.   |
| 18       | (4)           | Any of the following sex-related or stalking offenses: G.S. 14-27.7A(b),  |
| 19       |               | 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3,  |
| 20       | (5)           | 14-277.3A, 14-321.1.  |
| 21       | (5)           | Any felony offense in Chapter 90 of the General Statutes where the offense                                      |
| 22<br>23 |               | involves methamphetamines, heroin, or possession with intent to sell or<br>deliver or sell and deliver cocaine. |
| 24       | (6)           | An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for                                    |
| 25       | (0)           | which punishment was determined pursuant to G.S. 14-12.14, or any offense for                                   |
| 26       | (7)           | An offense under G.S. 14-401.16.  |
| 27       | (7a)          | An offense under G.S. 14-54(a), 14-54(a1), or 14-56.  |
| 28       | (8)           | Any felony offense in which a commercial motor vehicle was used in the  |
| 29       | (0)           | commission of the offense.  |
| 30       | (9)           | Any offense that is an attempt to commit an offense described in  |
| 31       | (2)           | subdivisions (1) through (8) of this subsection.  |
| 32       | (10)          | An offense under G.S. 20-138.1, 20-138.2, or 20-138.5, for driving while  |



impaired, or under G.S. 75A-10(b1) for boating while impaired.

- (b) Notwithstanding any other provision of law, if the person is convicted of more than one nonviolent felony or nonviolent misdemeanor in the same session of court and none of the nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person had already been served with criminal process for the commission of a nonviolent felony or nonviolent misdemeanor, then the multiple nonviolent felony or nonviolent misdemeanor convictions shall be treated as one nonviolent felony or nonviolent misdemeanor conviction under this section, and the expunction order issued under this section shall provide that the multiple nonviolent felony convictions or nonviolent misdemeanor convictions shall be expunged from the person's record in accordance with this section.
- (c) A person may file a petition, in the court where the person was convicted, for expunction of a nonviolent misdemeanor or nonviolent felony conviction from the person's criminal record if the person has no other misdemeanor or felony convictions, other than a traffic violation. violation or a misdemeanor boating violation. The petition shall not be filed earlier than 15 years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The petition shall contain, but not be limited to, the following:
  - (1) An affidavit by the petitioner that the petitioner has been of good moral character since the date of conviction for the nonviolent misdemeanor or nonviolent felony and has not been convicted of any other felony or misdemeanor, other than a traffic violation, violation or a misdemeanor boating violation, under the laws of the United States or the laws of this State or any other state.
  - (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.
  - (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
  - (4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual, a search by the Department of Public Safety for any outstanding warrants on pending criminal cases, and 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 Public Safety 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.

Upon filing of the petition, 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. Upon good cause shown, the court may grant the district attorney an additional 30 days to file objection to the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

The presiding judge is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct since the conviction. The court shall review any other information the court deems relevant, including, but not limited to, affidavits

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or other testimony provided by law enforcement officers, district attorneys, and victims of crimes committed by the petitioner.

If the court, after hearing, finds that the petitioner has not previously been granted an expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or 15A-145.4; the petitioner has remained of good moral character; the petitioner has no outstanding warrants or pending criminal cases; the petitioner has no other felony or misdemeanor convictions other than a traffic violation; violation or a misdemeanor boating violation; the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner; and the petitioner was convicted of an offense eligible for expunction under this section and was convicted of, and completed any sentence received for, the nonviolent misdemeanor or nonviolent felony at least 15 years prior to the filing of the petition, it may order that such person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information. If the court denies the petition, the order shall include a finding as to the reason for the denial."

**SECTION 2.** G.S. 15A-145 reads as rewritten:

# "§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.

- (a) Whenever any person who has not previously been convicted of any felony, or misdemeanor other than a traffic violation, violation or a misdemeanor boating violation, under the laws of the United States, the laws of this State or any other state, (i) pleads guilty to or is guilty of a misdemeanor other than a traffic violation, violation or a misdemeanor boating violation, and the offense was committed before the person attained the age of 18 years, or (ii) pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), and the offense was committed before the person attained the age of 21 years, he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than: (i) two years after the date of the conviction, or (ii) the completion of any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:
  - (1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, violation or a misdemeanor boating violation, under the laws of the United States or the laws of this State or any other state.
  - (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.
  - (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
  - (4) Repealed by Session Laws 2010-174, s. 2, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.
  - (4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and 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 Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

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(5)An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, violation or a misdemeanor boating violation, for two years from the date of conviction of the misdemeanor in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and (i) petitioner was not 18 years old at the time of the offense in question, or (ii) petitioner was not 21 years old at the time of the offense of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

## **SECTION 3.** G.S. 15A-145.1 reads as rewritten:

## "§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.

- Whenever any person who has not previously been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of (i) a Class H felony under Article 13A of Chapter 14 of the General Statutes or (ii) an enhanced offense under G.S. 14-50.22, or has been discharged and had the proceedings against the person dismissed pursuant to G.S. 14-50.29, and the offense was committed before the person attained the age of 18 years, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, whichever occurs later. The petition shall contain, but not be limited to, the following:
  - An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state.
  - Verified affidavits of two persons who are not related to the petitioner or to (2) 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.
  - If the petition is filed subsequent to conviction of the offense in question, a (3) statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

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- (4) Repealed by Session Laws 2010-174, s. 4, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.
- (4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and 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 Public Safety 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.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.

If the court, after hearing, finds that (i) the petitioner was dismissed and the proceedings against the petitioner discharged pursuant to G.S. 14-50.29 and that the person had not yet attained 18 years of age at the time of the offense or (ii) the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner, and the petitioner had not attained the age of 18 years at the time of the offense in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information, and that the record be expunged from the records of the court. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment or information, or trial, or response to any inquiry made of the person for any purpose. The court shall also direct all law enforcement agencies, the Division of Adult Correction of the Department of Public Safety, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the petitioner's criminal charge and any conviction resulting from the charge. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. . . . . \*\*

#### **SECTION 4.** G.S. 15A-145.2 reads as rewritten:

# "§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.

- (a) Whenever a person is discharged, and the proceedings against the person dismissed, pursuant to G.S. 90-96(a) or (a1), and the person was not over 21 years of age at the time of the offense, the person may apply to the court for an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:
  - (1) An affidavit by the petitioner that he or she has been of good behavior during the period of probation since the decision to defer further proceedings

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on the offense in question and has not been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any

- (2) Verified affidavits by two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he or she lives, and that the petitioner's character and reputation are good;
- Repealed by Session Laws 2010-174, s. 5, effective October 1, 2010, and (3) applicable to petitions for expunctions filed on or after that date.
- An application on a form approved by the Administrative Office of the (3a) Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and 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 Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him or her dismissed and that the person was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies, the Division of Adult Correction, the Division of Motor Vehicles, and any other State and local government agencies identified by the petitioner as bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(c) Whenever any person who has not previously been convicted of (i) any felony offense under any state or federal laws; (ii) any offense under Chapter 90 of the General Statutes; or (iii) an offense under any statute of the United States or any state relating to controlled substances included in any schedule of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes, pleads guilty to or has been found guilty of a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules I through VI of Chapter 90, or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or pleads guilty to or has been found guilty of a felony under G.S. 90-95(a)(3), the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or

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subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the petitioner's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes for possessing a controlled substance included within Schedules I through VI of Article 5 of Chapter 90 of the General Statutes or for possessing drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3), that the petitioner has no disqualifying previous convictions as set forth in this subsection, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status the petitioner occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order all law enforcement agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local agencies identified by the petitioner as bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

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### SECTION 5. G.S. 15A-145.3 reads as rewritten:

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# "§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.

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(a) Whenever a person is discharged and the proceedings against the person dismissed under G.S. 90-113.14(a) or (a1), such person, if he or she was not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the petitioner that the petitioner has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony or

other state:

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or her character and reputation are good; Repealed by Session Laws 2010-174, s. 6, effective October 1, 2010, and (3) applicable to petitions for expunctions filed on or after that date. An application on a form approved by the Administrative Office of the (3a)

(2)

the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against the person dismissed and that he or she was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

misdemeanor other than a traffic violation or a misdemeanor boating

violation under the laws of the United States or the laws of this State or any

Verified affidavits by 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 his

Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information

required by the Administrative Office of the Courts to identify the individual

and a search of the confidential record of expunctions maintained by the

Administrative Office of the Courts. The application shall be forwarded to

The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-15.

Whenever any person who has not previously been convicted of an offense under (c) Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of violation of Article 5A of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final

for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by G.S. 90-113.22, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific externating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

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#### **SECTION 6.** G.S. 15A-145.4 reads as rewritten:

# "§ 15A-145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.

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(c) Whenever any person who had not yet attained the age of 18 years at the time of the commission of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition shall not be filed earlier than four years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain the following:

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- (1) An affidavit by the petitioner that the petitioner has been of good moral character since the date of conviction of the nonviolent felony in question and has not been convicted of any other felony or any misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state.
- (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation

- misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state.
- (3) The petitioner has no outstanding warrants or pending criminal cases.
- The petitioner has no outstanding restitution orders or civil judgments (4) representing amounts ordered for restitution entered against the petitioner.
- The petitioner was less than 18 years old at the time of the commission of (5) the offense in question.
- (6) The petitioner has performed at least 100 hours of community service since the time of the conviction and possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.

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| (7)            | The search of the confidential records of Administrative Office of the Courts shows previously granted an expunction.   |   |
| "              | ECTION 7. G.S. 15A-145.6(f) reads as rewritten:   |   |
| "(f) Th        | the court shall order that the person be restored, in the person occupied before the arrest or indictment of  |   |
|                | owing after a hearing:  |   |
| (1)            |   | ection are satisfied.   |
| (2)            |   | character and has been free of<br>eanor, other than a traffic<br>and violation, since the date of |
| (3)            |   |   |
| (4)            |   | ion orders or civil judgments   |
| (5)            |   | expunctions conducted by the  |
|                | previously granted an expunction, other than  | an expunction for a prostitution  |
|                | offense."   |   |
| SE             | ECTION 8. G.S. 14-50.30 reads as rewritten:   |   |
| "§ 14-50.30. I | Expunction of records.  |   |
|                | on who has not previously been convicted of any   |   |
|                | violation or a misdemeanor boating violation und  |   |
|                | this State or any other state, may, if the offense w  |   |
| attained the a | ge of 18 years, be eligible to apply for expunctio  | n of certain offenses under this  |
| 1              | ant to G.S. 15A-145.1."   |   |
|                | ECTION 9. Article 5 of Chapter 15A of the G   | General Statutes is amended by  |
| _              | section to read:  |   |
|                | . Expunction of certain youth drug offenses.  |   |
|                | e following definitions apply to this section:  |   |
| (1)            |   | any unlawful use of controlled  |
| (8)            | substances.   | . 1   |
| (2)            |   |   |
|                | or G.S. 90-113.22 where the defendant had   |   |
|                | years at the time of the commission of the off  |   |
|                | otwithstanding any other provision of law, if the p   |   |
|                | drug offense in the same session of court, then the   |   |
|                | hall be treated as one youthful drug offense convic   |   |
|                | der issued under this section shall provide that the  |   |
|                | nall be expunged from the person's record in accord   |   |
|                | person may file a petition in the court where   |   |
|                | up to two youthful drug offense convictions from  |   |
|                | s no misdemeanor or felony convictions, other the   |   |
|                | tion, for a period of at least 10 years prior to the  |   |
|                | a youthful drug offense that is eligible pursuant to  |   |
|                | proof pursuant to subsection (d) of this section that   |   |
|                | e for a period of at least one year prior to the day  | -   |
| any active se  | not be filed earlier than (i) 10 years after the date<br>entence, period of probation, and post-release<br>curs later. If the petition is to expunge two youthfor | supervision has been served,  |
|                |   |   |

petition shall not be filed earlier than 10 years after the date of the last conviction or when any active sentence, period of probation, and post-release supervision has been served for the last conviction, whichever occurs later.

(d) To establish that a person is drug free and has been drug free for a period of at least one year prior to the date that the petition is filed, a person shall provide proof that the person has been tested for drugs every 30 days for a period of at least one year immediately preceding the date that the petition is filed and tested drug free at each testing, and shall also provide a drug evaluation for review by the court. The Administrative Office of the Courts, in cooperation with the Department of Health and Human Services, shall determine what type of documentation must be provided to the court regarding the required drug testing and evaluation and the format in which the documentation shall be presented to the court for review.

(e) The petition shall contain, but not be limited to, the following:

- An affidavit by the petitioner that the petitioner is of good moral character and has not been convicted of any felony or misdemeanor, other than a traffic or boating violation, under the laws of the United States or the laws of this State or any other state for a period of at least 10 years prior to the date that the petition is filed.
- Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

- (4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual, a search by the Department of Public Safety for any outstanding warrants on pending criminal cases, and 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 Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.
- (5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.
- (6) Documentation in a format approved by the Administrative Office of the Courts establishing that the petitioner is drug free and has been drug free for a period of at least one year prior to the date of the filing of the petition.

Upon filing of the petition, the petition shall be served upon the district attorney of the court wherein the case resulting in conviction was heard. 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. Upon good cause shown, the court may grant the district attorney an additional 30 days to file objection to the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

The presiding judge may call upon a probation officer for any additional investigation or verification of the petitioner's conduct since the conviction. The court shall review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers, district attorneys, and victims of crimes committed by the petitioner.

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- If the court after hearing finds that the petitioner has not previously been granted an expunction, the petitioner is drug free; the petitioner is of good moral character; the petitioner has no outstanding warrants or pending criminal cases; the petitioner has no felony or misdemeanor convictions other than a traffic violation, for a period of 10 years prior to the filing of the petition; the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner; the petition for expunction of a youthful drug offense conviction was filed at least 10 years after the date of conviction or, if the petition for expunction is for two youthful drug offense convictions, the petition was filed at least 10 years after the date of the later conviction; and the petitioner has completed any sentence received for the conviction, it may order that such person be restored. in the contemplation of the law, to the status the person occupied before such arrest or indictment or information. If the court denies the petition, the order shall include a finding as to the reason for the denial.
- No person as to whom an order has been entered pursuant to this section shall be (g) held thereafter under any provision of any law 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 convictions to the certifying Commission, regardless of whether or not the 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.
- The court shall also order that the conviction be expunged from the records of the (h) 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.
- 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 upon receipt from the petitioner of an order entered pursuant to this section. The agency shall also vacate and reconsider any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged.
- A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent."
- **SECTION 10.** This act is effective December 1, 2015, and applies to petitions for expunction filed on or after that date.

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## GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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#### SENATE BILL 570

## Judiciary II Committee Substitute Adopted 4/21/15 Judiciary II Committee Substitute Adopted 4/28/15

| Short Title: | Expunction/Boat Violation. | (Public) |
|--------------|----------------------------|----------|
| Sponsors:    |                            |          |
| Referred to: |                            |          |
|              |                            |          |

March 30, 2015 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A PERSON SHALL NOT BE DENIED AN EXPUNCTION SOLELY BECAUSE THE PERSON HAS A CONVICTION FOR A MISDEMEANOR BOATING VIOLATION AND TO PROVIDE THAT CERTAIN CONVICTIONS FOR DRIVING WHILE IMPAIRED AND BOATING WHILE IMPAIRED ARE NOT ELIGIBLE FOR EXPUNCTION. The General Assembly of North Carolina enacts: SECTION 1. G.S. 15A-145.5 reads as rewritten: "§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation. For purposes of this section, the term "nonviolent misdemeanor" or "nonviolent felony" means any misdemeanor or felony except the following: A Class A through G felony or a Class A1 misdemeanor. (1)An offense that includes assault as an essential element of the offense. (2)An offense requiring registration pursuant to Article 27A of Chapter 14 of (3) the General Statutes, whether or not the person is currently required to register. Any of the following sex-related or stalking offenses: G.S. 14-27.7A(b), (4)14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1. 19 Any felony offense in Chapter 90 of the General Statutes where the offense 20 (5) involves methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine. An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for (6)24 which punishment was determined pursuant to G.S. 14-3(c). 25 An offense under G.S. 14-401.16. (7)26 An offense under G.S. 14-54(a), 14-54(a1), or 14-56. (7a)Any felony offense in which a commercial motor vehicle was used in the (8)commission of the offense. 29 (9)subdivisions (1) through (8) of this subsection. 30

Any offense that is an attempt to commit an offense described in

An offense under G.S. 20-138.1, 20-138.2, or 20-138.5, for driving while (10)impaired, or under G.S. 75A-10(b1) for boating while impaired.

Notwithstanding any other provision of law, if the person is convicted of more than one nonviolent felony or nonviolent misdemeanor in the same session of court and none of the nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person



had already been served with criminal process for the commission of a nonviolent felony or nonviolent misdemeanor, then the multiple nonviolent felony or nonviolent misdemeanor convictions shall be treated as one nonviolent felony or nonviolent misdemeanor conviction under this section, and the expunction order issued under this section shall provide that the multiple nonviolent felony convictions or nonviolent misdemeanor convictions shall be expunged from the person's record in accordance with this section.

- (c) A person may file a petition, in the court where the person was convicted, for expunction of a nonviolent misdemeanor or nonviolent felony conviction from the person's criminal record if the person has no other misdemeanor or felony convictions, other than a traffic violation. violation or a misdemeanor boating violation. The petition shall not be filed earlier than 15 years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The petition shall contain, but not be limited to, the following:
  - (1) An affidavit by the petitioner that the petitioner has been of good moral character since the date of conviction for the nonviolent misdemeanor or nonviolent felony and has not been convicted of any other felony or misdemeanor, other than a traffic violation, violation or a misdemeanor boating violation, under the laws of the United States or the laws of this State or any other state.
  - (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.
  - (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
  - (4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual, a search by the Department of Public Safety for any outstanding warrants on pending criminal cases, and 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 Public Safety 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.

Upon filing of the petition, 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. Upon good cause shown, the court may grant the district attorney an additional 30 days to file objection to the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

The presiding judge is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct since the conviction. The court shall review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers, district attorneys, and victims of crimes committed by the petitioner.

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If the court, after hearing, finds that the petitioner has not previously been granted an expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or 15A-145.4; the petitioner has remained of good moral character; the petitioner has no outstanding warrants or pending criminal cases; the petitioner has no other felony or misdemeanor convictions other than a traffic violation; violation or a misdemeanor boating violation; the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner; and the petitioner was convicted of an offense eligible for expunction under this section and was convicted of, and completed any sentence received for, the nonviolent misdemeanor or nonviolent felony at least 15 years prior to the filing of the petition, it may order that such person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information. If the court denies the petition, the order shall include a finding as to the reason for the denial."

**SECTION 2.** G.S. 15A-145 reads as rewritten:

# "§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.

- (a) Whenever any person who has not previously been convicted of any felony, or misdemeanor other than a traffic violation, violation or a misdemeanor boating violation, under the laws of the United States, the laws of this State or any other state, (i) pleads guilty to or is guilty of a misdemeanor other than a traffic violation, violation or a misdemeanor boating violation, and the offense was committed before the person attained the age of 18 years, or (ii) pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), and the offense was committed before the person attained the age of 21 years, he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than: (i) two years after the date of the conviction, or (ii) the completion of any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:
  - An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, violation or a misdemeanor boating violation, under the laws of the United States or the laws of this State or any other state.
  - (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.
  - (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
  - (4) Repealed by Session Laws 2010-174, s. 2, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.
  - (4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and 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 Public Safety 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 him are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, violation or a misdemeanor boating violation, for two years from the date of conviction of the misdemeanor in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and (i) petitioner was not 18 years old at the time of the offense in question, or (ii) petitioner was not 21 years old at the time of the offense of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

...."

### **SECTION 3.** G.S. 15A-145.1 reads as rewritten:

# "§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.

- (a) Whenever any person who has not previously been convicted of any felony or misdemeanor other than a traffic violation <u>or a misdemeanor boating violation</u> under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of (i) a Class H felony under Article 13A of Chapter 14 of the General Statutes or (ii) an enhanced offense under G.S. 14-50.22, or has been discharged and had the proceedings against the person dismissed pursuant to G.S. 14-50.29, and the offense was committed before the person attained the age of 18 years, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, whichever occurs later. The petition shall contain, but not be limited to, the following:
  - (1) An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state.
  - (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.
  - (3) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
  - (4) Repealed by Session Laws 2010-174, s. 4, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.

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- (4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and 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 Public Safety 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.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.

If the court, after hearing, finds that (i) the petitioner was dismissed and the proceedings against the petitioner discharged pursuant to G.S. 14-50.29 and that the person had not yet attained 18 years of age at the time of the offense or (ii) the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner, and the petitioner had not attained the age of 18 years at the time of the offense in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information, and that the record be expunged from the records of the court. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment or information, or trial, or response to any inquiry made of the person for any purpose. The court shall also direct all law enforcement agencies, the Division of Adult Correction of the Department of Public Safety, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the petitioner's criminal charge and any conviction resulting from the charge. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

#### **SECTION 4.** G.S. 15A-145.2 reads as rewritten:

# "§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.

- (a) Whenever a person is discharged, and the proceedings against the person dismissed, pursuant to G.S. 90-96(a) or (a1), and the person was not over 21 years of age at the time of the offense, the person may apply to the court for an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:
  - (1) An affidavit by the petitioner that he or she has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating

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<u>violation</u> under the laws of the United States or the laws of this State or any other state:

- (2) Verified affidavits by two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he or she lives, and that the petitioner's character and reputation are good;

(3) Repealed by Session Laws 2010-174, s. 5, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.

(3a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and 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 Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him or her dismissed and that the person was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies, the Division of Adult Correction, the Division of Motor Vehicles, and any other State and local government agencies identified by the petitioner as bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

Whenever any person who has not previously been convicted of (i) any felony (c) offense under any state or federal laws; (ii) any offense under Chapter 90 of the General Statutes; or (iii) an offense under any statute of the United States or any state relating to controlled substances included in any schedule of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes, pleads guilty to or has been found guilty of a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules I through VI of Chapter 90, or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or pleads guilty to or has been found guilty of a felony under G.S. 90-95(a)(3), the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition

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of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the petitioner's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes for possessing a controlled substance included within Schedules I through VI of Article 5 of Chapter 90 of the General Statutes or for possessing drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3), that the petitioner has no disqualifying previous convictions as set forth in this subsection, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status the petitioner occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order all law enforcement agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local agencies identified by the petitioner as bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

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### **SECTION 5.** G.S. 15A-145.3 reads as rewritten:

# "§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.

- (a) Whenever a person is discharged and the proceedings against the person dismissed under G.S. 90-113.14(a) or (a1), such person, if he or she was not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:
  - (1) An affidavit by the petitioner that the petitioner has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating

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<u>violation</u> under the laws of the United States or the laws of this State or any other state:

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- (2) Verified affidavits by 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 his or her character and reputation are good;
- (3) Repealed by Session Laws 2010-174, s. 6, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.
- (3a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and 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 Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against the person dismissed and that he or she was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-15.

• • •

Whenever any person who has not previously been convicted of an offense under Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of violation of Article 5A of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151,

Page 8 S570 [Edition 3]

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all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by G.S. 90-113.22, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

...."

### SECTION 6. G.S. 15A-145.4 reads as rewritten:

# "§ 15A-145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.

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(c) Whenever any person who had not yet attained the age of 18 years at the time of the commission of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition shall not be filed earlier than four years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain the following:

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(1) An affidavit by the petitioner that the petitioner has been of good moral character since the date of conviction of the nonviolent felony in question and has not been convicted of any other felony or any misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.

The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic or boating violation, for four years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation, or post-release

misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state.

The petitioner has no outstanding warrants or pending criminal cases. (3)

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- The petitioner has no outstanding restitution orders or civil judgments (4) representing amounts ordered for restitution entered against the petitioner.
- The petitioner was less than 18 years old at the time of the commission of (5) the offense in question.
- The petitioner has performed at least 100 hours of community service since (6) the time of the conviction and possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.

S570 [Edition 3] Page 10

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## **General Assembly Of North Carolina**

Session 2015

The search of the confidential records of expunctions conducted by the (7) Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

**SECTION 7.** G.S. 15A-145.6(f) reads as rewritten:

- "(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.
  - The petitioner has remained of good moral character and has been free of (2)conviction of any felony or misdemeanor, other than a traffic violation, violation or a misdemeanor boating violation, since the date of conviction of the prostitution offense in question.
  - The petitioner has no outstanding warrants or pending criminal cases. (3)
  - The petitioner has no outstanding restitution orders or civil judgments (4) representing amounts ordered for restitution entered against the petitioner.
  - The search of the confidential records of expunctions conducted by the (5)Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction, other than an expunction for a prostitution offense."

**SECTION 8.** G.S. 14-50.30 reads as rewritten:

### "§ 14-50.30. Expunction of records.

Any person who has not previously been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state, may, if the offense was committed before the person attained the age of 18 years, be eligible to apply for expunction of certain offenses under this Article pursuant to G.S. 15A-145.1."

**SECTION 9.** This act is effective when it becomes law.

S570 [Edition 3] Page 11

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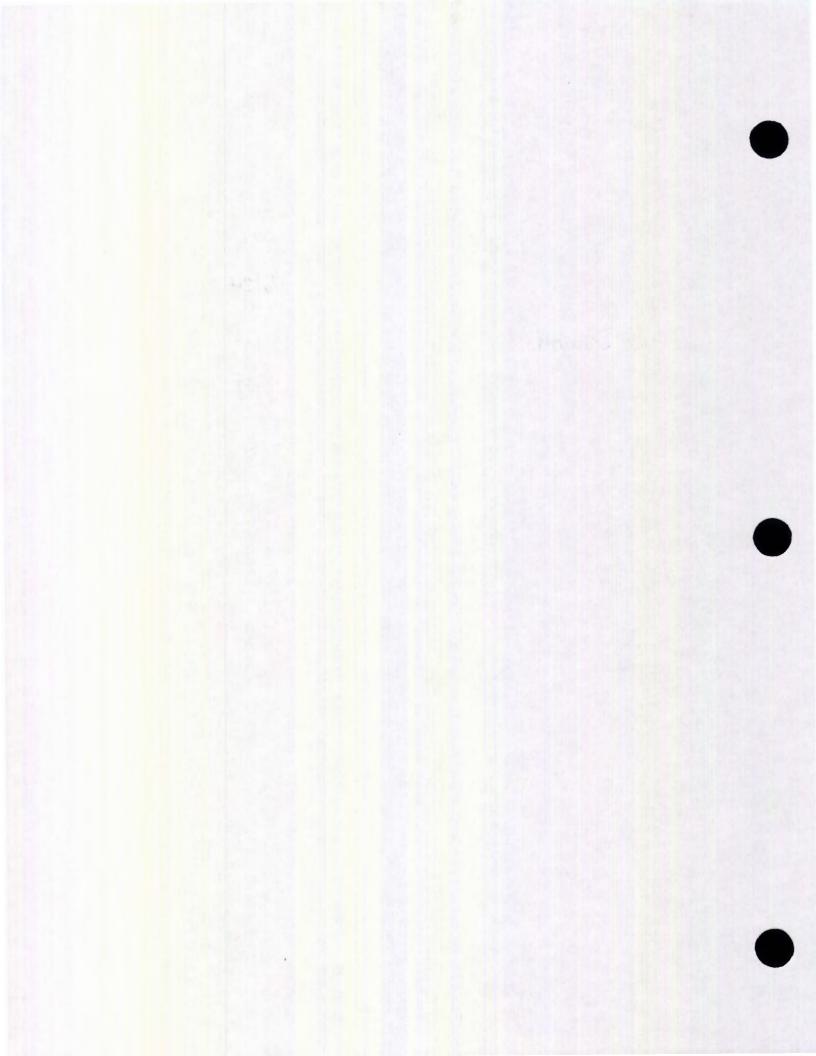


### NORTH CAROLINA GENERAL ASSEMBLY **AMENDMENT**

Senate Bill 570

|          |  | A            | MENDMENT NO         | . 4             |
|----------|--|--------------|---------------------|-----------------|
|          |  | (            | to be filled in by  |                 |
|          | S570-AST-102 [v.2]   | ,            | Principal Clerk)    |                 |
|          |  |              |                     | Page 1 of 1     |
|          | Amends Title [NO]  | Date         | 10/24               | .2015           |
|          | PCS to the Third Edition   |              |                     |                 |
|          |  |              |                     |                 |
|          | Representative Doughtry  |              |                     |                 |
| 1 2      | moves to amend the bill on page 13, lines 42-43, by  | rewriting th | nose lines to read: |                 |
| 3        | "SECTION 10. G.S. 15A-146 is amend   | ed by addin  | a a new subsection  | to read:        |
| 4        | "(a2) Notwithstanding subsection (a) of this s   |              | _                   |                 |
| 5        | granted an expunction under this section and   |              |                     |                 |
| 6        | responsible, may apply to have the subsequent findi  |              |                     |                 |
| 7        | on the application. If the court finds (i) that th   |              |                     |                 |
| 8        | expungement under this subsection, (ii) that the   |              |                     |                 |
| 9        | expungement under G.S. 15A-145, 15A-145.1,   |              |                     |                 |
| 10       | 15A-145.5, and (iii) that the person had not previou   |              |                     |                 |
| 11       | laws of the United States, this State, or any other s  |              |                     |                 |
| 12       | the finding of not guilty or not responsible. No p   |              |                     |                 |
| 13       | entered shall be held thereafter under any provision   |              |                     |                 |
| 14       | guilty of otherwise giving a false statement or resp   |              |                     |                 |
| 15       | by reason of his failure to recite or acknowledge any  | expunged     | entries concerning  | apprehension    |
| 16<br>17 | or trial."   | oombor 1 2   | 015 and applies to  | a matitions for |
| 18       | <b>SECTION 11.</b> This act is effective Decentric expunction filed on or after that date.".   | cember 1, 2  | 013, and applies it | pentions for    |
| 10       | expunction filed on of after that date.  |              |                     |                 |
|          |  |              |                     |                 |
| (        |  |              |                     |                 |
|          | SIGNED Mally-  |              |                     |                 |
|          | Amendment Sponsor  |              |                     |                 |
|          |  |              |                     |                 |
|          | SIGNED   |              |                     |                 |
|          | Committee Chair if Senate Committee  | Amendmer     | nt                  |                 |
|          | A DOMESTIC AND A DOME |              |                     |                 |
|          | ADOPTED FAILED   |              | TABLED              |                 |





### 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 Principal of the community of the commun | •       |
|    | Sen.)   |         |
| 1  | 1 moves to amend the bill on page   |         |
|    |   |         |
| 3  | 3 by rewriting those lines to read:   |         |
| 4  | 4 "(10) An offense involving impaired driving as defi   | neal    |
| 5  | 5 in G.S. 20-4.01(24a).";   |         |
| 6  | 6   |         |
| 7  | 7 and on page 9, lines 32-33  |         |
|    |   |         |
| 9  | by inserting the following between those lines: "(a) For purposes of this section, the term "non  | violent |
| 10 |   |         |
| 11 | 11  | 4       |
| 12 | 12 (10) Any Selvy offense involving impaired d  | wire    |
| 13 | as defined in G.S. 20-4.01(24a).  | // 0    |
| 4  | 14  |         |
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|    | SIGNED  |         |
|    | ADOPTEDFAILEDTABLED   |         |

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# NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

Senate Bill 570

|                                |                              | AMENDME                 | NT NO                   |
|--------------------------------|------------------------------|-------------------------|-------------------------|
|                                |                              | (to be filled           | in by                   |
| S570-AST-102 [v.2]             |                              | Principal C             | clerk)                  |
|                                |                              |                         | Page 1 of 1             |
| Amends Title [NO]              |                              | Date                    | ,2015                   |
| PCS to the Third Edition       |                              |                         |                         |
| Representative                 |                              |                         |                         |
| moves to amend the bill on     | page 13, lines 42-43, by re  | writing those lines to  | read:                   |
|                                | G.S. 15A-146 is amended      |                         |                         |
| "(a2) Notwithstanding          | subsection (a) of this sec   | ction, a person who     | has previously been     |
| granted an expunction un       | der this section and is      | subsequently found      | d not guilty or not     |
| responsible, may apply to ha   | ave the subsequent finding   | expunged. The cour      | t shall hold a hearing  |
| on the application. If the     | court finds (i) that the     | person had not pre      | eviously received an    |
| expungement under this s       | ubsection, (ii) that the     | person had not pre      | viously received an     |
| expungement under G.S.         | 15A-145, 15A-145.1,          | 5A-145.2, 15A-14        | 5.3, 15A-145.4, or      |
| 15A-145.5, and (iii) that the  |                              |                         |                         |
| laws of the United States, t   | nis State, or any other stat | te, the court shall ord | der the expunction of   |
| the finding of not guilty or   | not responsible. No per      | son as to whom suc      | ch an order has been    |
| entered shall be held therea   | fter under any provision o   | f any law to be guilt   | y of perjury, or to be  |
| guilty of otherwise giving a   |                              |                         |                         |
| by reason of his failure to re |                              |                         |                         |
| or trial."                     |                              |                         |                         |
|                                | This act is effective Dece   | mber 1, 2015, and ar    | oplies to petitions for |
| expunction filed on or after   |                              | , , , ,                 | 1                       |
|                                |                              |                         |                         |
| SIGNED                         |                              |                         |                         |
|                                | Amendment Sponsor            |                         |                         |
| SIGNED                         |                              |                         |                         |
| Committee Ch                   | air if Senate Committee A    | mendment                |                         |
| ADOPTED                        | FAILED                       | TABL                    | ED                      |



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### NORTH CAROLINA GENERAL ASSEMBLY **HOUSE OF REPRESENTATIVES**

### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

### FAVORABLE HOUSE COM SUB, UNFAVORABLE SENATE COM SUB NO. 2 AND RE-REFERRED

SB 570 (CS#2) Expunction/Boat Violation.

Draft Number:

S570-PCS45380-STf-61

Serial Referral:

None

Recommended Referral: FINANCE Long Title Amended:

Yes

Floor Manager:

Fisher

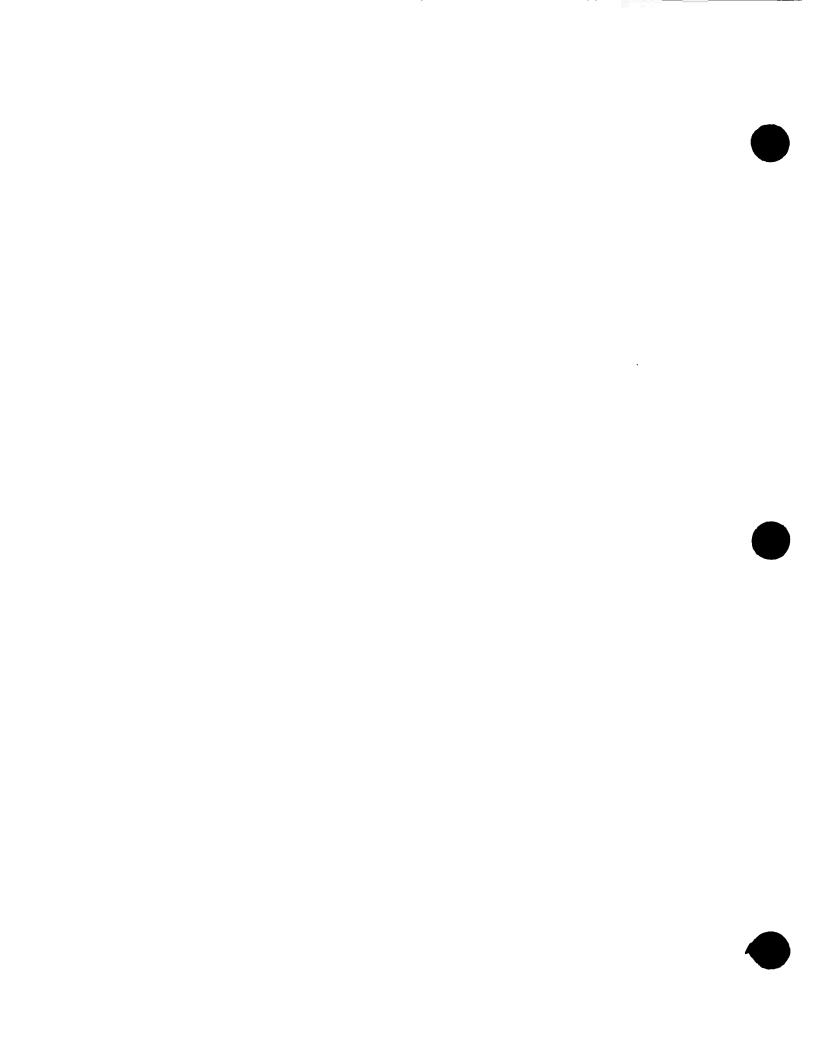
**TOTAL REPORTED: 1** 



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|   | Date: June 24, 2017                      |
|---|--|
| Bill Number 58570                                   |  |
| PCS yes   |  |
| 5   | 570-CSST-61 [V.3]                        |
| Motion to be before the committee by                |  |
| Rep Dhughy explain Discussion on the Bill YES or NO | ned the bill.                            |
|   |  |
| Repmotio  | ned for:                                 |
| Favorable Report                                    | Adoption                                 |
| Unfavorable Report                                  | Unfavorable to original bill, fav to PCS |
| No vote   | 102 [V.2]                                |
| Amendments:   | 570-AST- 102 [V.2]                       |
| Danielly  |  |
| Serial referral to:                                 | firance                                  |
|   |  |
| Speakers: Enla-                                     |  |
| Speakers: Enla- No DWI'S will be export Handouts:   | ged                                      |
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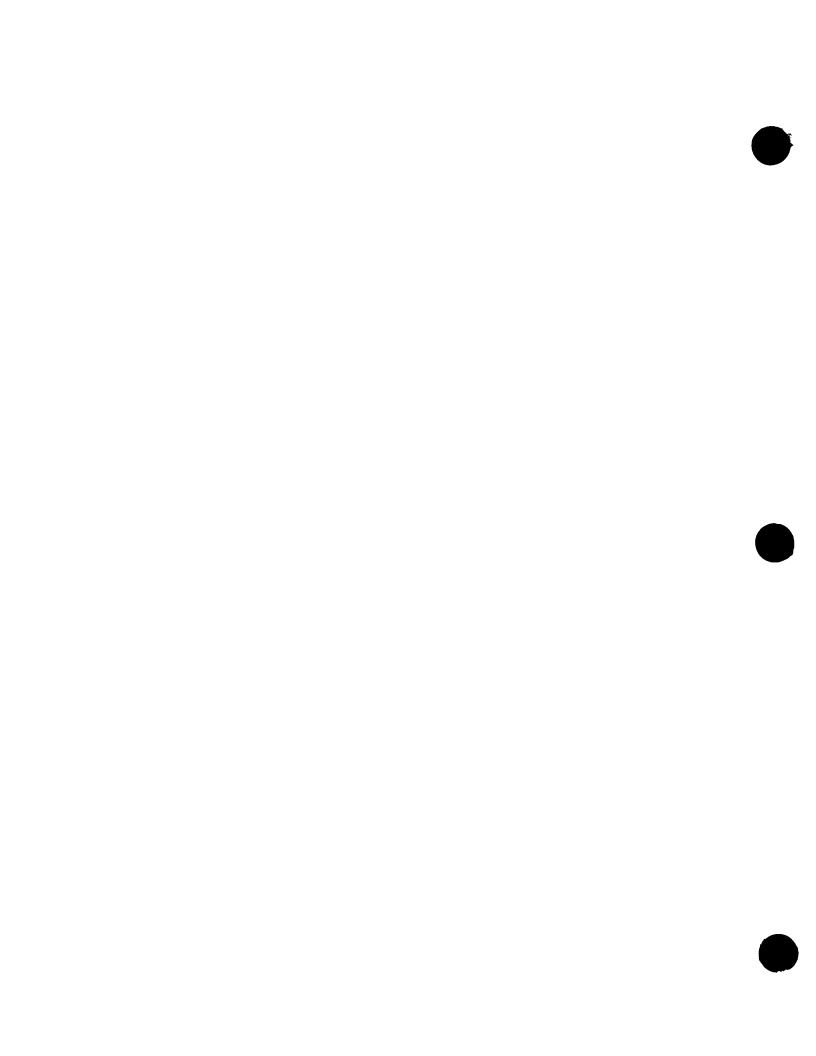




## North Carolina General Assembly - House Sergeant-at-Arms

# House Staff

| Committee: Judicary I  | Date: 6/24/15          |
|------------------------|------------------------|
| Pages                  |                        |
| Name: Constantine BOAR | edman                  |
| County: Mecklenburg    | Sponsor: Bishop        |
| Name: FLORIANA BOARdM  | ,                      |
| County: Mecklew burg   |                        |
| Name: Victoria Collins | /                      |
|                        | Sponsor: Robert Reives |
| Name: HOSAN DIS BROW   |                        |
| County: BRUNSWICK      | Sponsor: FRANK ILER    |
| Name: Will Dunn        |                        |
| County: Johnston       | Sponsor: Les Daughtry  |
| Sergeants-at-Arms      |                        |
| BARRY MOORE            |                        |
| DAVID LITHENCUM        | 7                      |
| REY Cooke              |                        |
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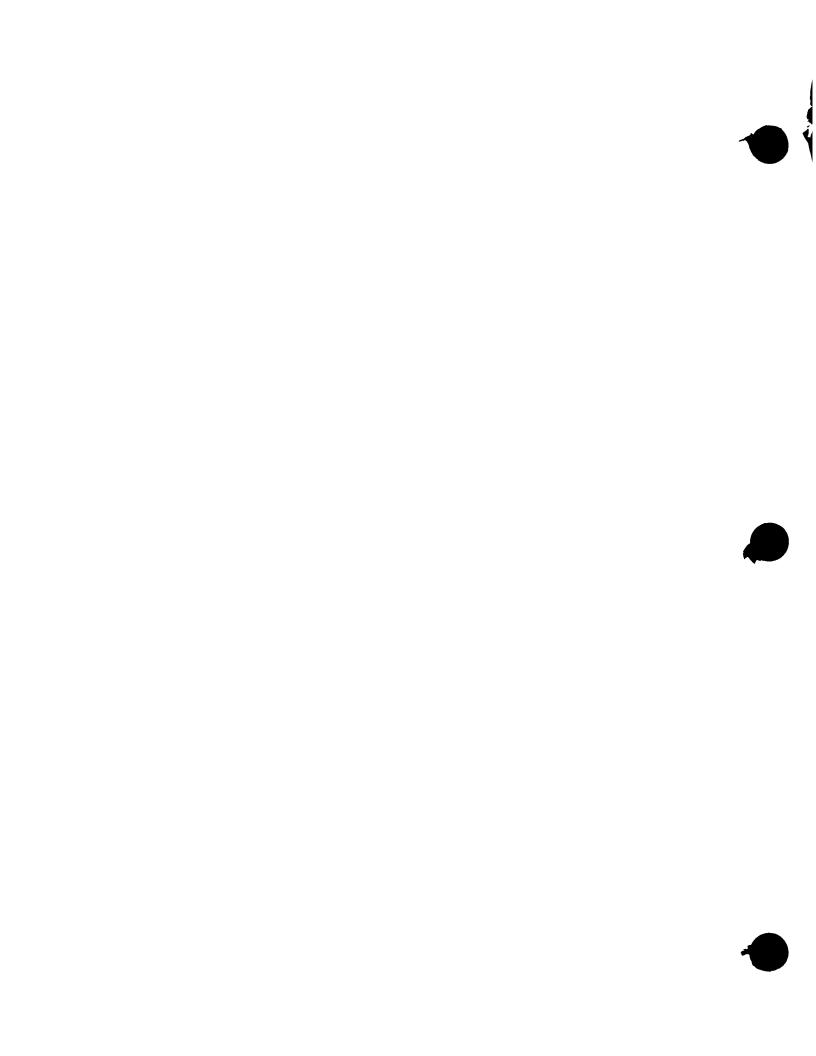




# North Carolina General Assembly - House Sergeant-at-Arms

# Visitors

| Committee: | Judiciary 1 | Date: 6-24-15  |    |
|------------|-------------|--|----|
| Name       |             | Organization   |    |
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| Rosemar    | ie Wheeler  | Daughter in Law of G. Robinson   |    |
| Pours      | Hu/h        | School ) /Jul  |    |
| Dle        | m Jamesai   | - Der alleman & NC   |    |
| Bill       | Rowe        | NC Justice Center  |    |
| Dura       | 1 Genra     | A6 office  |    |
| Chris      | Agres       | AG   |    |
| Anna       | liese polph | bL   |    |
| Amanda     | McQuade     | Ncchild  |    |
| Phoche     | Landon      | Brooks Reice   |    |
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## NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

You are hereby notified that the House Committee on Judiciary I will meet as follows:

DAY & DATE: Wednesday, July 15, 2015

TIME: 12:30 PM LOCATION: 415 LOB

The following bills will be considered:

| BILL NO. | SHORT TITLE |  |
|----------|-------------|--|

SB 678 Amend Debt Collection Statutes.

**SPONSOR** 

Senator Gunn

Senator B. Jackson

Senator D. Davis

Senator Gunn

Senator Newton

Senator D. Davis

SB 679 NC Consumer Finance Act Amendments.

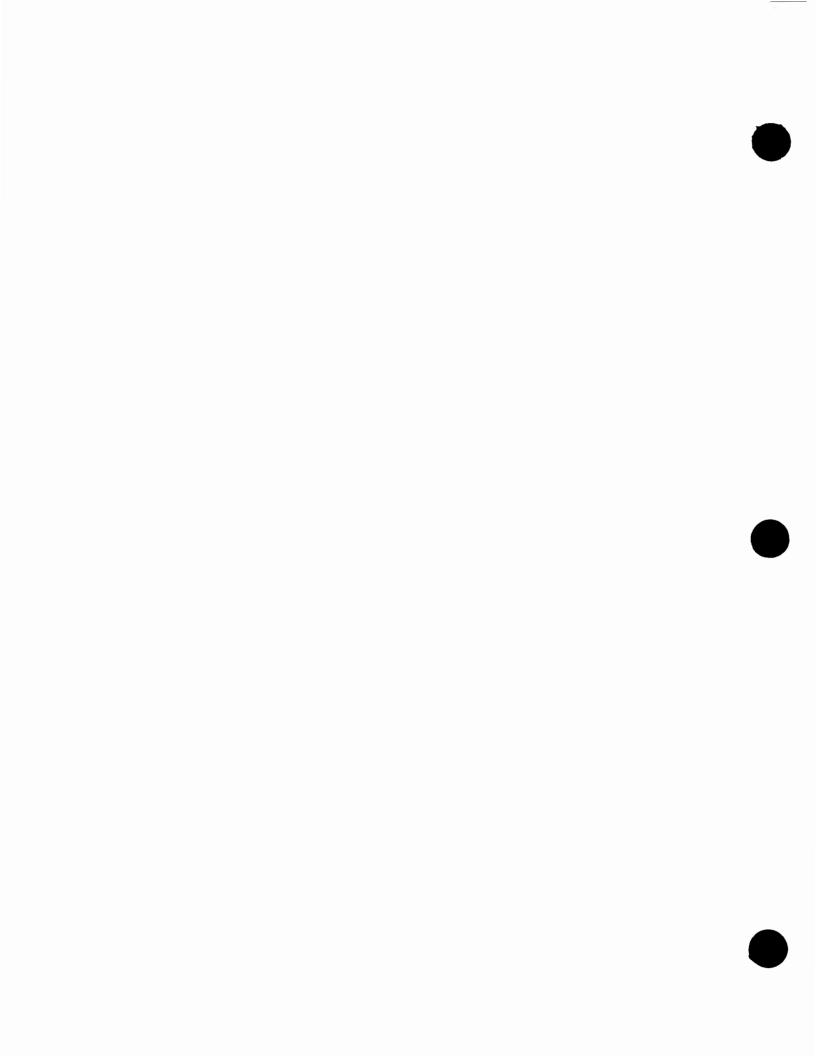
Respectfully,

Representative N. Leo Daughtry, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 12:15 PM on Thursday, July 02, 2015.

rincipal Clerk
Reading Clerk – House Chamber

Jan Copeland (Committee Assistant)



#### House Committee on Judiciary I Wednesday, July 15, 2015 at 12:30 PM Room 415 of the Legislative Office Building

#### **MINUTES**

The House Committee on Judiciary I met at 12:30 PM on July 15, 2015 in Room 415 of the Legislative Office Building. Representatives Daughtry, Burr, Jackson, Arp, Hall, Hardister, Howard, Martin, McNeill, Robinson, Steinburg, and Szoka attended.

Representative N. Leo Daughtry, presided.

The following bills were considered:

SB 678 Amend Debt Collection Statutes. (Senators Gunn, B. Jackson, D. Davis) received a favorable vote.

SB 679 NC Consumer Finance Act Amendments. (Senators Gunn, Newton, D. Davis) was voted favorable as to House committee substitute, unfavorable to Senate committee sub.

The meeting adjourned at 1:21 p.m.

Representative N. Leb Daughtry

Presiding

Jan Copeland, Committee Clerk

### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

S

#### SENATE BILL 678 Judiciary II Committee Substitute Adopted 4/28/15

| Short Title: A                              | mend ]                     | Debt Collection Statutes.   | (Public)   |
|---|----------------------------|---|--|
| Sponsors:                                   |                            |   |  |
| Referred to:                                |                            |   |  |
|   |                            | March 30, 2015  |  |
| CONFORM The General Ass SEC "§ 75-50. Defin | TO THE sembly TION itions. | A BILL TO BE ENTITLED ID THE DEBT COLLECTOR STATUTE IE FEDERAL FAIR DEBT COLLECTION I of North Carolina enacts: 1. G.S. 75-50 is amended by adding a new su ls and terms as used in this Article shall be con   | PRACTICES ACT.   |
| "§ 75-53. Unrea                             | abod<br>the c<br>TION :    | eation information" means information above, any telephone numbers used by the consumonsumer's place of employment."  2. G.S. 75-53(1) reads as rewritten:  le publication.  Shall unreasonably publicize information research.   | mer, and information about   |
| Such unreasonal (1)                         | -                          | lication includes, but is not limited to, the following communication with any person other than pt:  With the written permission of the debtor default; To third parties with the written phis attorney.   | the debtor or his attorney, or his attorney given after  |
|   | b.                         | To persons employed by the debt colleagency, to a person or business employ behalf of the creditor, or to a person who for the <u>information; information</u> .  | yed to collect the debt on<br>makes a legitimate request   |
|   | c.                         | To the spouse (or one who stands in p debtor, or to the parent or guardian of the minor and lives in the same household with debt collector has a good faith belief that this sub-subdivision applies to a particular communication shall not be a violation of For the sole purpose of locating obtaining the debtor, if no indication of indebted a collector making a communication under the confirm or correct location inform | the debtor if the debtor is a th such parent; parent. If the text the exception set forth in cular communication, that this sub-subdivision.  I location information about these is made; made. A debt this sub-subdivision shall: at he or she is attempting to |



involved would make it impractical for the debtor to defend the claim." **SECTION 5.** This act is effective when it becomes law.

by the consumer's attorney that he represents said consumer.

Bringing suit against the debtor in a county other than that in which the debt

was incurred or in which the debtor resides if the distances and amounts

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#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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#### SENATE BILL 679

## Commerce Committee Substitute Adopted 4/15/15 Third Edition Engrossed 4/20/15

#### PROPOSED HOUSE COMMITTEE SUBSTITUTE \$679-CSST-74 [v.3]

7/14/2015 2:58:29 PM

| Short Title: | NC Consumer Finance Act Amendments. | (Public) |
|--------------|-------------------------------------|----------|
| Sponsors:    |                                     |          |
| Referred to: |                                     |          |
|              |                                     |          |

#### March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE RECOVERY OF COURT COSTS AND RELATED COSTS UPON VOLUNTARY DISMISSAL AT THE REQUEST OF A BORROWER OF AN ACTION TO RECOVER A LOAN GRANTED UNDER THE NORTH CAROLINA CONSUMER FINANCE ACT OR UPON REDUCTION OF A LOAN MADE UNDER THE ACT TO JUDGMENT; TO CLARIFY THE MULTIPLE LOAN LIMITATIONS UNDER THE ACT; TO CLARIFY THE STATUTE RELATED TO WHETHER OR NOT BORROWERS ARE MEMBERS OF THE MILITARY PRIOR TO MAKING LOANS UNDER THE ACT: AND TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE ACT.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 53-177 is amended by adding a new subsection to read:

Recovery of Costs. - If a borrower requests in writing of the lender to take a voluntary dismissal of an action to recover a loan made under this Article, and both parties agree to such a dismissal, the lender shall obtain in writing from the borrower an acknowledgment that (i) the borrower will be liable for the statutory court costs, and (ii) any other reasonable and bona fide costs incurred in in the course of bringing the action, and the lender may recover the statutory court costs incurred as well as any other reasonable and bona fide costs incurred in the course of bringing the action. Nothing in this section shall be construed to authorize the collection of attorney fees otherwise prohibited by G.S. 53-180(e). Provided further, that this section shall not apply if the borrower, in writing documentation raises an affirmative defense to an action to collect a loan under this Article. Nothing in this section shall in any way affect or prohibit a magistrate, judge, or arbitrator from awarding filing fees and fees for service of process incurred by the lender in bringing the civil action if a judgment is awarded, or the other bona fide costs set forth above and the recovery of said costs and fees is expressly authorized in the event judgment is entered against the borrower."

SECTION 2. G.S. 53-178 reads as rewritten:

"§ 53-178. No further charges; no splitting contracts; certain contracts void.

No further or other charges or insurance commissions shall be directly or indirectly contracted for or received by any licensee licensee, affiliate, parent, subsidiary, or licensee under the same ownership, management, or control, whether partial or complete, except those specifically authorized by this Article or Article, by the Commissioner under G.S. 53-172. G.S. 53-172 or any other statute. No licensee shall divide into separate parts any contract made for the purpose of or with the effect of obtaining interest or charges in excess of those



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authorized by this Article. All balances due to a licensee from any person as a borrower or as an endorser, guarantor or surety for any borrower or otherwise, or due from any husband or wife, otherwise jointly or severally, shall be considered a part of any loan being made by a licensee to such person for the purpose of computing interest or charges."

**SECTION 3.** G.S. 53-179 is repealed.

**SECTION 4.** G.S. 53-180.1 reads as rewritten:

#### "§ 53-180.1. Military service members limitation.

- (a) Definition. For purposes of this section, the term "military "covered military service member" means a member of the Armed Forces who is either (i) on active duty under a call or order that does not specify a period of 30 days or fewer or (ii) on active Guard and Reserve Duty, as that term is defined in 10 U.S.C. § 101(d)(6).10 U.S.C. § 101(d)(6), with a rank of E4 or below.
- (b) Verification; Requirements for Granting Loan. Prior to making a loan under this Article, a licensee will confirm whether the borrower is a military service member and document this in the person's loan file. A licensee may not make a loan to a borrower who is a covered military service member with a rank of E4 or below ("covered member") unless the following requirements are met:
  - (1) The licensee notifies the borrower's company-level commander Commanding Officer or Executive Officer or equivalent designee of the covered member—before the loan is consummated. Notification may occur verbally, by electronic means, United States mail, or other equivalent methods of notification. The notification method and date shall be recorded in writing and included in the loan file along with the name of the company level commander or equivalent designee—Commanding Officer or Executive Officer communicated with and the date of the communication with the company level commander or equivalent designee.Commanding Officer or Executive Officer.
  - The licensee shall deposit in the United States mail a copy of the federal Truth in Lending Act, 15 U.S.C. § 1601, et seq., disclosures and the complete contract for the loan addressed to the borrower's company-level commander or equivalent designee of the covered member Commanding Officer or Executive Officer within five business days of the consummation of the loan.
  - (3) A covered military service member who has entered into a loan contract made pursuant to this Article may, within 30 days of entering into the loan contract, rescind the loan contract by returning to the licensee in cash or by certified bank check the amount advanced to or for the benefit of the covered military service member under the loan contract, and upon delivery of those funds to the licensee, the borrower shall have no further liability or obligations under the loan contract. Nothing in this provision shall be construed to restrict or eliminate any other penalties provided by State or federal law.
  - (4) The licensee shall give the covered <u>military service</u> member a separate disclosure that includes the statements and information required under G.S. 53-181(a). The licensee shall include the name and address of the North Carolina Commissioner of Banks, the Consumer Protection Division of the North Carolina Department of Justice, and the Consumer Financial Protection Bureau. The licensee may include internal compliance information on the same disclosure.
  - (5) Notwithstanding section 2 of Title 9 of the United States Code, 9 U.S.C. § 2, or any other federal or State law, rule, or regulation, no agreement to

Page 2 Senate Bill 679 S679-CSST-74 [v.3]

arbitrate any dispute involving the extension of consumer credit shall be enforceable against any covered <u>military service</u> member or dependent of such a <u>covered military service</u> member or any person who was a covered <u>military service</u> member or dependent of that <u>covered military service</u> member when the agreement was made.

- (6) A licensee shall take reasonable precaution to prevent making loans in violation of this section. In the event that a licensee does not take reasonable precautions to identify covered members prior to making a loan, such loans granted to covered members shall have the interest rate on the loan adjusted to eight percent (8%) per annum.
- Reasonable Precaution to Identify Covered Military Service Members. A licensee (b1)shall take reasonable precaution to prevent making loans in violation of this section. In the event that a licensee does not take reasonable precaution to identify covered military service members prior to making such a loan, such loans granted to covered military service members shall have the interest rate on the loan adjusted to eight percent (8%) per annum. Reasonable precaution may include obtaining a certificate from the Department of Defense Manpower Data Center (DMDC) that specifies whether the prospective borrower is or is not a member of the armed forces, a copy of the covered military service member's most recent leave and earnings statement, verification of borrower(s) income or any additional method approved by the Commissioner of Banks. In the event the DMDC system is down, the licensee shall obtain a computer screen copy of the failed request. Provided however, nothing in this section shall be construed to require covered military service member confirmation for a borrower with whom a licensee has an established customer relationship, or for a borrower who provides verification from the borrower's most recent payroll or and earnings statement, or verification of income clearly indicating that the borrower is not a covered military service member.
  - (c) Penalties and Remedies. -
    - (1) The remedies and rights provided under this section are in addition to and do not preclude any remedy otherwise available under law to the person claiming relief under this section, including any incidental, consequential, or punitive damages.
    - (2) Any credit agreement, promissory note, or other contract prohibited under this section is null and void.
    - (3) Nothing in this section may be construed to limit or otherwise affect the applicability of section 207 of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 527.
- (d) Additional Restriction. When a military servicemember has been deployed to a theater of combat, combat supporting role, an area where hostile fire and/or when Imminent Danger Pay is authorized to the servicemember, a licensee shall not contact the military servicemember or member's spouse by telephone or electronic mail for purposes of collecting on the loan upon receiving sufficient proof of the military servicemember's deployment. An official copy of the military service member's orders for deployment or written verification from the servicemember's commanding officer shall constitute sufficient proof."

SECTION 5. G.S. 53-190 reads as rewritten:

#### "§ 53-190. Loans made elsewhere.

(a) No loan contract made outside this State in the amount or of the value of ten thousand dollars (\$10,000) fifteen thousand dollars (\$15,000) or less, for which greater consideration or charges than are authorized by G.S. 53-173 and G.S. 53-176 of this Article have been charged, contracted for, or received, shall be enforced in this State. Provided, the foregoing shall not apply to loan contracts in which all contractual activities, including solicitation, discussion, negotiation, offer, acceptance, signing of documents, and delivery and receipt of funds, occur entirely outside North Carolina.

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- (b) If any lender or agent of a lender who makes loan contracts outside this State in the amount or of the value of ten thousand dollars (\$10,000) fifteen thousand dollars (\$15,000) or less, comes into this State to solicit or otherwise conduct activities in regard to such loan contracts, then such lender shall be subject to the requirements of this Article.
- (c) No lender licensed to do business under this Article may collect, or cause to be collected, any loan made by a lender in another state to a borrower, who was a legal resident of North Carolina at the time the loan was made. The purchase of a loan account shall not alter this prohibition."

**SECTION 6.** This act becomes effective September 1, 2015.

Page 4 Senate Bill 679 S679-CSST-74 [v.3]



## SENATE BILL 679: NC Consumer Finance Act Amendments

2015-2016 General Assembly

Committee:

House Judiciary I

Introduced by: Sens. Gunn, Newton, D. Davis

Analysis of:

PCS to Third Edition

S679-CSST-74

Date:

July 13, 2015

Prepared by: R. Erika Churchill

Committee Counsel

SUMMARY: The Proposed Committee Substitute for Senate Bill 679 would make the following changes to the Consumer Finance Act:

- > Allow for recovery of court costs by lenders in certain actions to recover loans.
- > Make clarifying changes to provisions pertaining to multiple loan contracts and repeal a separate statute limiting loans in multiple offices that refers to loan limits that no longer exist after the Act was amended in 2013.
- > Make clarifying changes to provisions that require additional notice and restrictions for borrowers who are military service members.
- Make a conforming change to a provision on enforcement of loans made outside of the State to match the loan amounts allowed under the Act as amended in 2013.

CURRENT LAW: Under current law, the North Carolina Consumer Finance Act, Article 15 of Chapter 53 of the General Statutes, is the only State law that specifically authorizes nonbank lenders to make small unsecured loans. This Act authorizes the Commissioner of Banks to license and to supervise loan companies that make direct consumer loans of \$15,000 or less. The Act sets out terms and interest rates and permissible fees and charges, provides limitations on agreements and practices, and provides for additional requirements and restrictions for lenders making loans to military service members. Lenders that do not charge interest rates higher than those permitted by Chapter 24 of the General Statutes are exempt from this Act. Also exempted are banks, trust companies, savings and loan associations, cooperative credit unions, agricultural credit corporations, production credit associations, pawnbrokers, and installment paper dealers.

In 2013, the General Assembly passed legislation that amended the Consumer Finance Act. S.L. 2013-162 increased the maximum loan amount authorized under the act, modified the interest rates, authorized some additional fees, placed additional requirements on lenders, and specifically provided requirements and restrictions for lenders entering into loan agreements with military service members.

BILL ANALYSIS: The PCS for Senate Bill 679 would make clarifying changes to the North Carolina Consumer Finance Act following the 2013 revision of the Act as follows:

Recovery of costs. Section 1 would allow a lender to recover court costs and other reasonable costs incurred in bringing an action to recover a loan if the borrower requests the lender to take a voluntary dismissal of the action or if the loan is reduced to a judgment.

O. Walker Reagan Director



Research Division (919) 733-2578

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## Senate Bill 679

Page 2

<u>Multiple loans.</u> Sections 2 and 3 would make clarifying changes to provisions prohibiting splitting contracts and multiple contracts and repeal a separate section, G.S. 53-179, which prohibits multiple contracts in multiple offices but references loan limits that were repealed in 2013.

<u>Limitations for military members.</u> Section 4 would make clarifying changes to protections that were put into place in 2013 specific to borrowers who are military service members. It would reorganize language to make clear the definition of "covered" member is a military service member with a rank of E4 or below, allow for notification of the borrower's Commanding Officer or Executive Officer, and give specific examples of acceptable documentation for identifying covered members.

<u>Out of state loans.</u> Section 5 would make a conforming change to the statutory provision in the Act related to enforcement of loans made out of State by raising the maximum amount for those loans to match the maximum now allowed in North Carolina under the Act.

**EFFECTIVE DATE:** The act would become effective September 1, 2015.

Wendy Graf Ray substantially contributed to this summary.

#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

SENATE BILL 679

## Commerce Committee Substitute Adopted 4/15/15 Third Edition Engrossed 4/20/15

| Short Title: | NC Consumer Finance Act Amendments. | (Public) |
|--------------|-------------------------------------|----------|
| Sponsors:    |                                     |          |
| Referred to: |                                     |          |
|              |                                     |          |

#### March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE RECOVERY OF COURT COSTS AND RELATED COSTS UPON VOLUNTARY DISMISSAL AT THE REQUEST OF A BORROWER OF AN ACTION TO RECOVER A LOAN GRANTED UNDER THE NORTH CAROLINA CONSUMER FINANCE ACT OR UPON REDUCTION OF A LOAN MADE UNDER THE ACT TO JUDGMENT; TO CLARIFY THE MULTIPLE LOAN LIMITATIONS UNDER THE ACT; TO CLARIFY THE STATUTE RELATED TO WHETHER OR NOT BORROWERS ARE MEMBERS OF THE MILITARY PRIOR TO MAKING LOANS UNDER THE ACT; AND TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE ACT.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 53-177 is amended by adding a new subsection to read:

"(e) Recovery of Costs. – If a lender agrees, upon the written request of the borrower, to take a voluntary dismissal of an action to recover a loan made under this Article or if such a loan is reduced to a judgment, the lender may recover the statutory court costs incurred as well as any other reasonable and bona fide costs incurred in the course of bringing the action. Nothing in this section shall be construed to authorize the collection of attorney fees otherwise prohibited under G.S. 53-180(e). Provided further, this section shall not apply if the debtor, in writing, raises an affirmative defense to an action to collect a loan made under this Article."

**SECTION 2.** G.S. 53-178 reads as rewritten:

"§ 53-178. No further charges; no splitting contracts; certain contracts void.

No further or other charges or insurance commissions shall be directly or indirectly contracted for or received by any licensee—licensee, affiliate, parent, subsidiary, or licensee under the same ownership, management, or control, whether partial or complete, except those specifically authorized by this Article or Article, by the Commissioner under G.S. 53-172. G.S. 53-172 or any other statute. No licensee shall divide into separate parts any contract made for the purpose of or with the effect of obtaining interest or charges in excess of those authorized by this Article. All balances due to a licensee from any person as a borrower or as an endorser, guarantor or surety for any borrower or otherwise, or due from any husband or wife, otherwise jointly or severally, shall be considered a part of any loan being made by a licensee to such person for the purpose of computing interest or charges."

SECTION 3. G.S. 53-179 is repealed.

SECTION 4. G.S. 53-180.1 reads as rewritten:

"§ 53-180.1. Military service members limitation.



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- Definition. For purposes of this section, the term "military" covered military (a) service member" means a member of the Armed Forces who is either (i) on active duty under a call or order that does not specify a period of 30 days or fewer or (ii) on active Guard and Reserve Duty, as that term is defined in 10 U.S.C. § 101(d)(6).10 U.S.C. § 101(d)(6), with a rank of E4 or below.
- (b) <del>Verification;</del> Requirements for Granting Loan. – <del>Prior to making a loan under this</del> Article, a licensee will confirm whether the borrower is a military service member and document this in the person's loan file. A licensee may not make a loan to a borrower who is a covered military service member with a rank of E4 or below ("covered member") unless the following requirements are met:
  - (1)The licensee notifies the borrower's company-level commander Commanding Officer or Executive Officer or equivalent designee of the covered member-before the loan is consummated. Notification may occur verbally, by electronic means, United States mail, or other equivalent methods of notification. The notification method and date shall be recorded in writing and included in the loan file along with the name of the eompanylevel commander or equivalent designee-Commanding Officer or Executive Officer communicated with and the date of the communication with the company-level commander Commanding Officer or Executive Officer.or equivalent designee.
  - The licensee shall deposit in the United States mail a copy of the federal (2) Truth in Lending Act, 15 U.S.C. § 1601, et seq., disclosures and the complete contract for the loan addressed to the borrower's company-level commander or equivalent designee of the covered member Commanding Officer or Executive Officer within five business days of the consummation of the loan.
  - A covered member who has entered into a loan contract made pursuant to (3) this Article may, within 30 days of entering into the loan contract, rescind the loan contract by returning to the licensee in cash or by certified bank check the amount advanced to or for the benefit of the covered member under the loan contract, and upon delivery of those funds to the licensee, the borrower shall have no further liability or obligations under the loan contract. Nothing in this provision shall be construed to restrict or eliminate any other penalties provided by State or federal law.
  - (4) The licensee shall give the covered member a separate disclosure that includes the statements and information required under G.S. 53-181(a). The licensee shall include the name and address of the North Carolina Commissioner of Banks, the Consumer Protection Division of the North Carolina Department of Justice, and the Consumer Financial Protection Bureau. The licensee may include internal compliance information on the same disclosure.
  - Notwithstanding section 2 of Title 9 of the United States Code, 9 U.S.C. § 2, (5)or any other federal or State law, rule, or regulation, no agreement to arbitrate any dispute involving the extension of consumer credit shall be enforceable against any covered member or dependent of such a member or any person who was a covered member or dependent of that member when the agreement was made.
  - A licensee shall take reasonable precaution to prevent making loans in (6)violation of this section. In the event that a licensee does not take reasonable precautions to identify covered members prior to making a loan, such loans

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48 49 granted to covered members shall have the interest rate on the loan adjusted to eight percent (8%) per annum.

Reasonable Precaution to Identify Covered Members. - A licensee shall take reasonable precaution to prevent making loans in violation of this section. In the event that a licensee does not take reasonable precaution to identify covered members prior to making a loan, such loans granted to covered members shall have the interest rate on the loan adjusted to eight percent (8%) per annum. Reasonable precaution may include obtaining a copy of a Department of Defense certificate, a copy of the covered military service member's most recent leave and earnings statement, or any additional method approved by the Commissioner of Banks. Provided however, nothing in this section shall be construed to require covered military service member confirmation for a borrower with whom a licensee has an established customer relationship, or for a borrower who provides verification from the borrower's most recent payroll or earnings statement clearly indicating that the borrower is not a covered military service member.

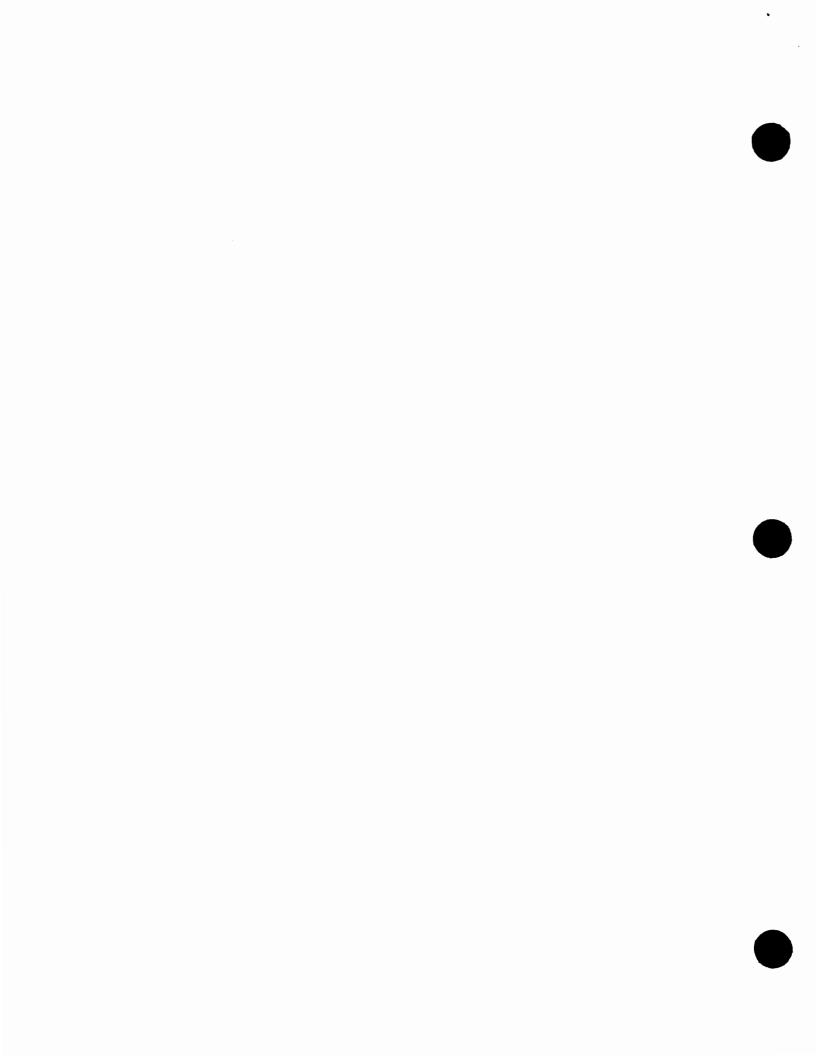
- (c) Penalties and Remedies. -
  - The remedies and rights provided under this section are in addition to and do not preclude any remedy otherwise available under law to the person claiming relief under this section, including any incidental, consequential, or punitive damages.
  - Any credit agreement, promissory note, or other contract prohibited under (2) this section is null and void.
  - Nothing in this section may be construed to limit or otherwise affect the (3) applicability of section 207 of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 527.
- Additional Restriction. When a military servicemember has been deployed to a theater of combat, combat supporting role, an area where hostile fire and/or when Imminent Danger Pay is authorized to the servicemember, a licensee shall not contact the military servicemember or member's spouse by telephone or electronic mail for purposes of collecting on the loan upon receiving sufficient proof of the military servicemember's deployment. An official copy of the military service member's orders for deployment or written verification from the servicemember's commanding officer shall constitute sufficient proof."

**SECTION 5.** G.S. 53-190 reads as rewritten:

#### "§ 53-190. Loans made elsewhere.

- No loan contract made outside this State in the amount or of the value of ten thousand dollars (\$10,000) fifteen thousand dollars (\$15,000) or less, for which greater consideration or charges than are authorized by G.S. 53-173 and G.S. 53-176 of this Article have been charged, contracted for, or received, shall be enforced in this State. Provided, the foregoing shall not apply to loan contracts in which all contractual activities, including solicitation, discussion, negotiation, offer, acceptance, signing of documents, and delivery and receipt of funds, occur entirely outside North Carolina.
- If any lender or agent of a lender who makes loan contracts outside this State in the amount or of the value of ten thousand dollars (\$10,000) fifteen thousand dollars (\$15,000) or less, comes into this State to solicit or otherwise conduct activities in regard to such loan contracts, then such lender shall be subject to the requirements of this Article.
- No lender licensed to do business under this Article may collect, or cause to be collected, any loan made by a lender in another state to a borrower, who was a legal resident of North Carolina at the time the loan was made. The purchase of a loan account shall not alter this prohibition."

**SECTION 6.** This act becomes effective July 1, 2015.



#### NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

#### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

#### **FAVORABLE**

SB 678 (CS#1) Amend Debt Collection Statutes.

Draft Number:

None

Serial Referral:

None

Recommended Referral: None Long Title Amended:

No

Floor Manager:

Szoka

#### FAVORABLE HOUSE COM SUB, UNFAVORABLE SENATE COM SUB

SB 679 (CS#1) NC Consumer Finance Act Amendments.

Draft Number:

S679-PCS45386-ST-74

Serial Referral: Recommended Referral: None

None

Long Title Amended:

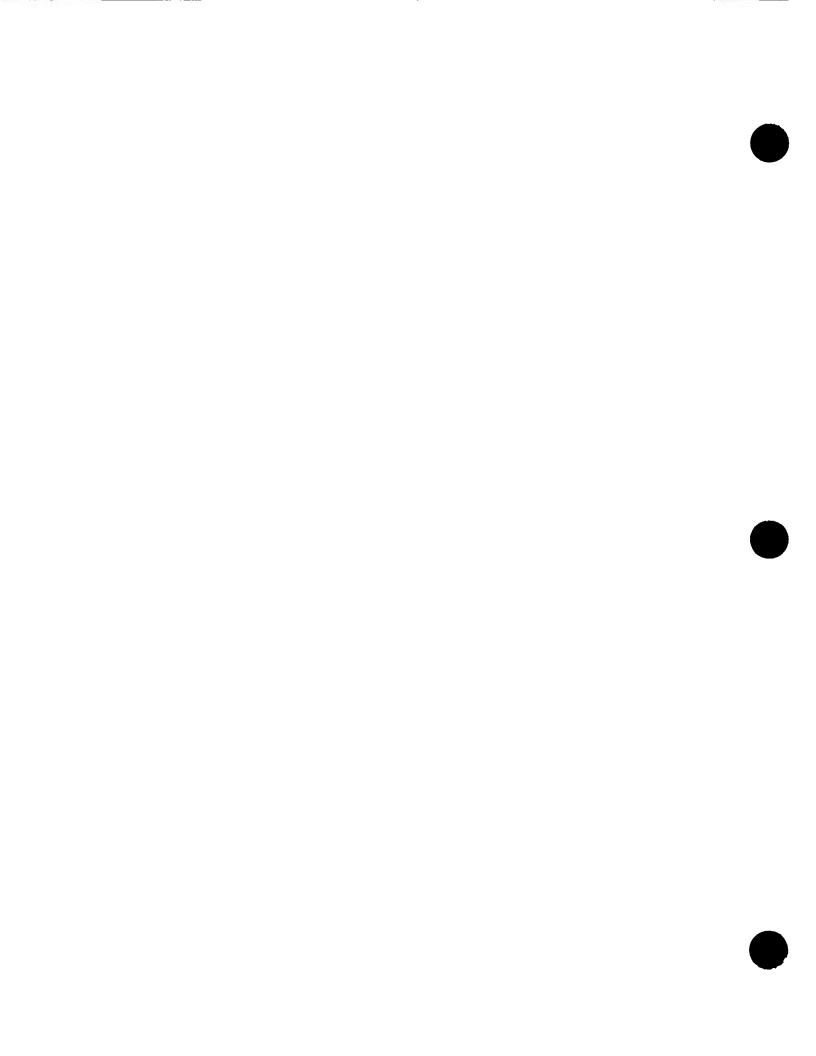
No

Floor Manager:

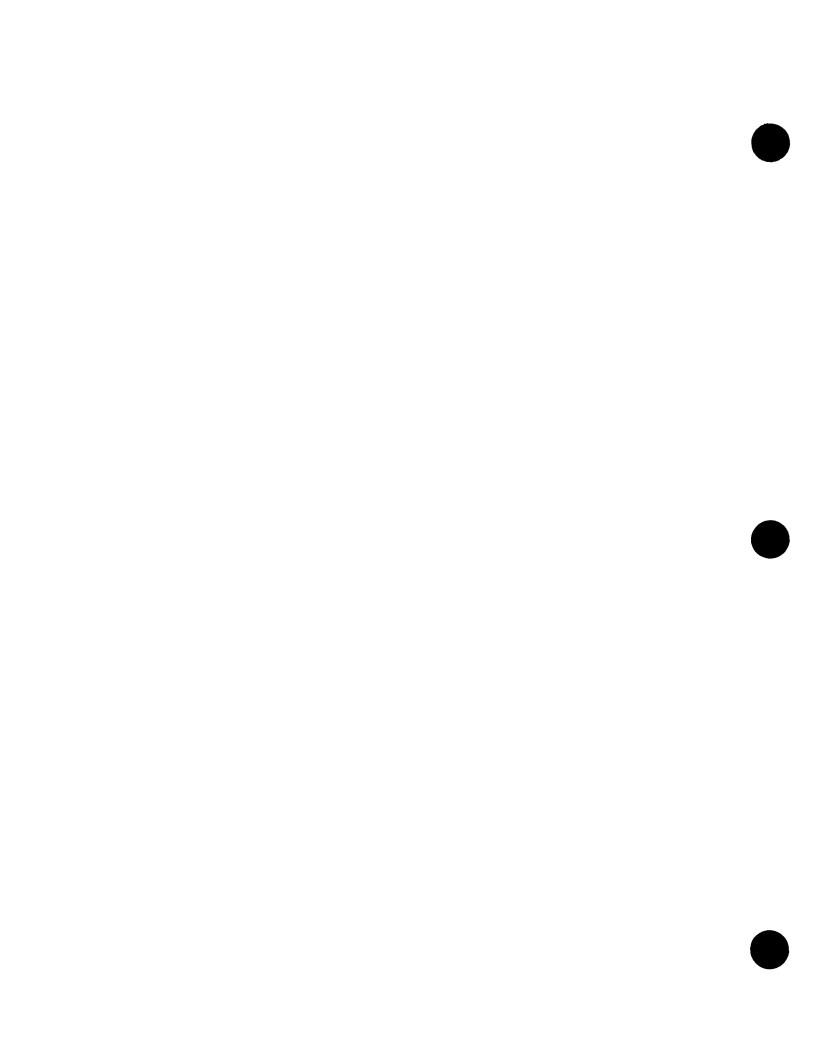
Szoka

**TOTAL REPORTED: 2** 



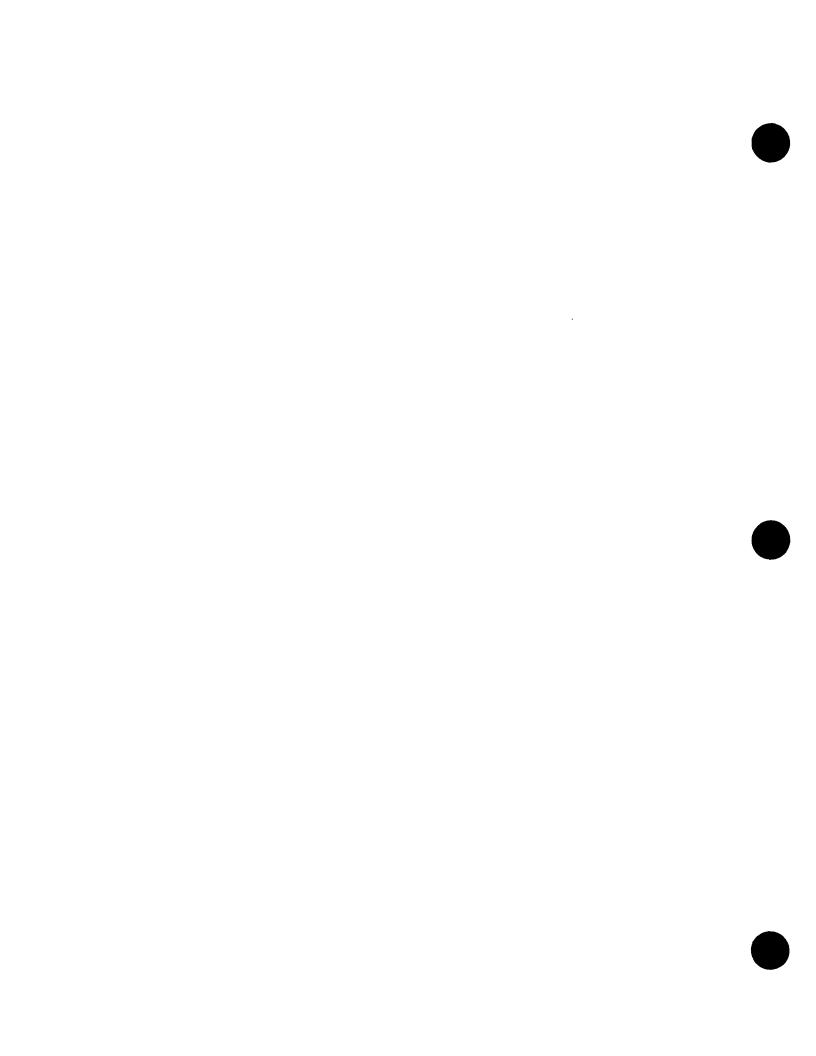


| Jav  | marager: Szoka   |
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| 7001 | Date: 7-15-15  |
|      | Bill Number <u>56619</u>                                   |
|      | PCS 5679-CSST-74[V.3]                                      |
|      | Motion to be before the committee by Hardister PCS motion  |
|      | Sex. Gww explained the bill.                               |
|      | Discussion on the Bill YES or NO                           |
|      | Rep_ Hardister motioned for:                               |
|      | Favorable Report Adoption                                  |
|      | Unfavorable ReportUnfavorable to original bill, fav to PCS |
|      | No vote  |
|      | Amendments: :  |
|      |  |
|      | Serial referral to:  |
|      | Speakers: Gree Maten                                       |
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|      | Handouts: (ma Crasner - Commusioneral ber 1)               |



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|-----|--|
|     | Date: _7-15-15   |
|     | Bill Number <u>513</u> 678   |
|     | PCS  |
|     | Motion to be before the committee bySzoka  |
|     | Sen Gww explained the bill.  |
|     | Discussion on the Bill YES or NO   |
|     | Rep motioned for:  |
|     | Favorable Report Adoption  |
|     | Unfavorable ReportUnfavorable to original bill, fav to PCS   |
|     | No vote  |
|     | Amendments: :  |
|     |  |
|     | Serial referral to:  |
|     | Speakers: Mccleill Chestnut - bill addresses location Grier markin  Handouts: Steinburg - greate minimum tender  letture lender v lender |
|     | Handouts: Sternburg grante lender v lender   |
|     | Grie Market why is section needed  |
|     | Ken Kenyon N.C. Fir Simess   |

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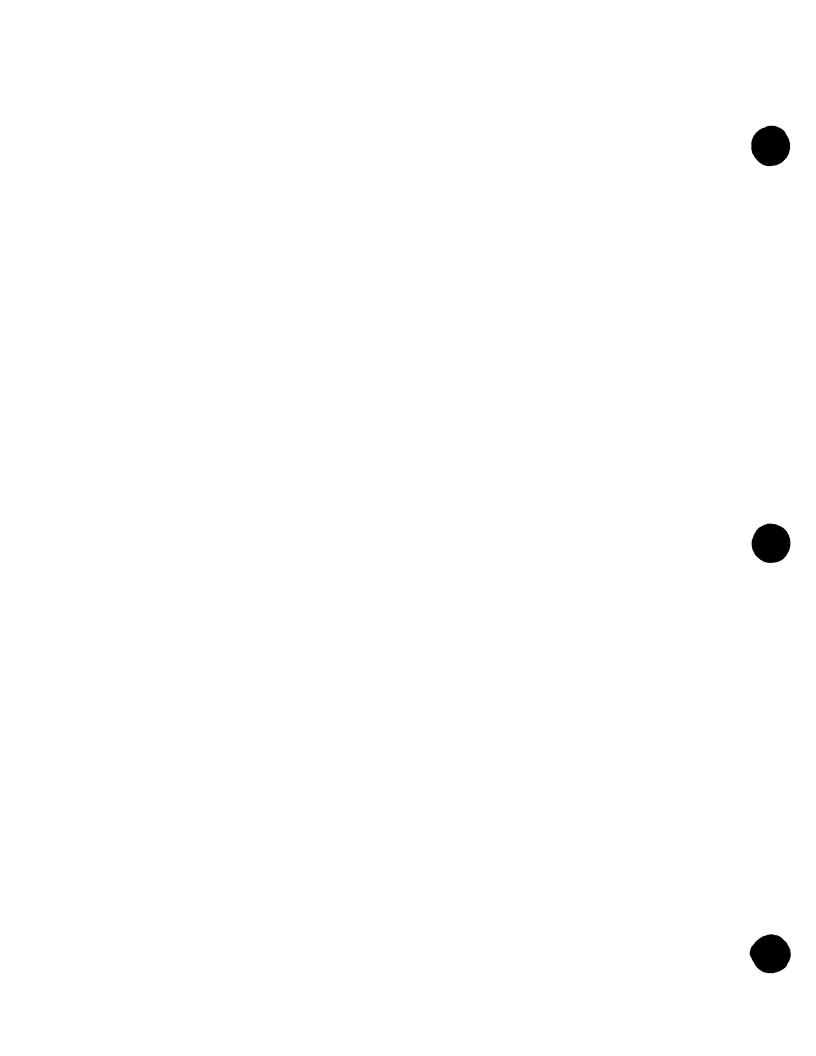
## House Staff

| Committee: H Judiciary 1 Date: 15 July 2015 |
|---|
| Pages                                       |
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| County: WARNETT Sponsor: BRAD SALMON        |
| Name: LINDSE Y BRITTON                      |
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| BARRY MOORE                                 |
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## Speaker List

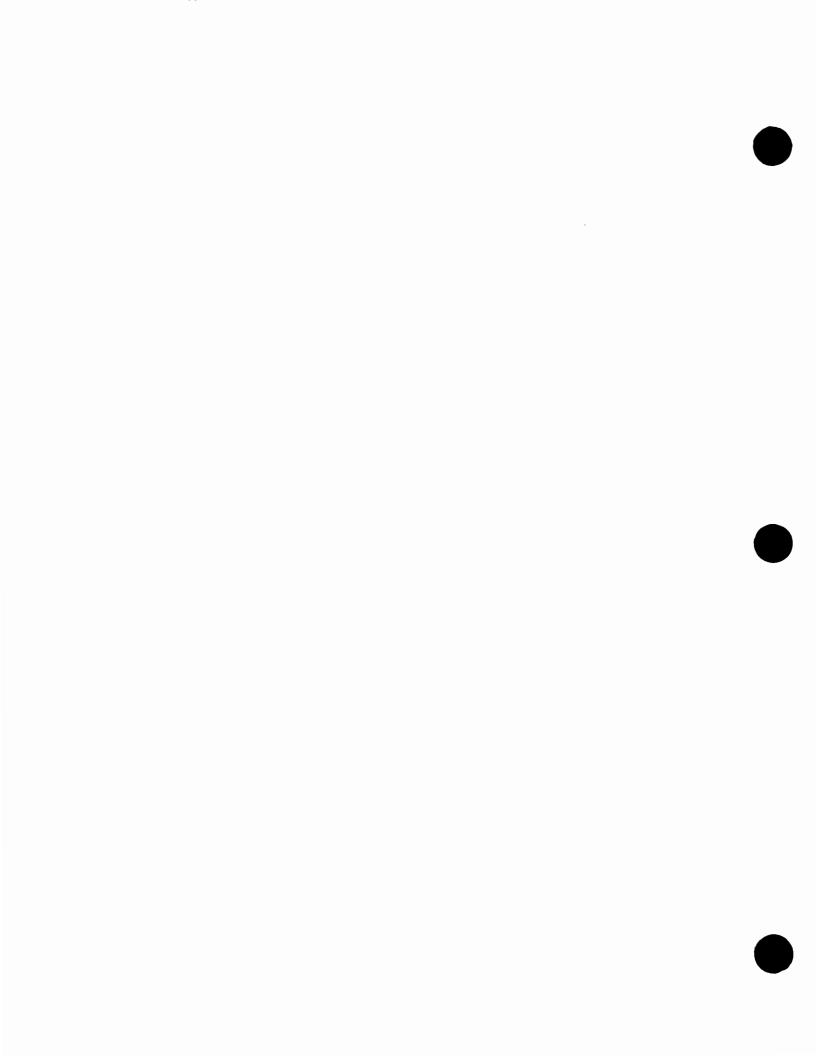
| Committee:              | Date: 7-15-15     |
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## Visitors

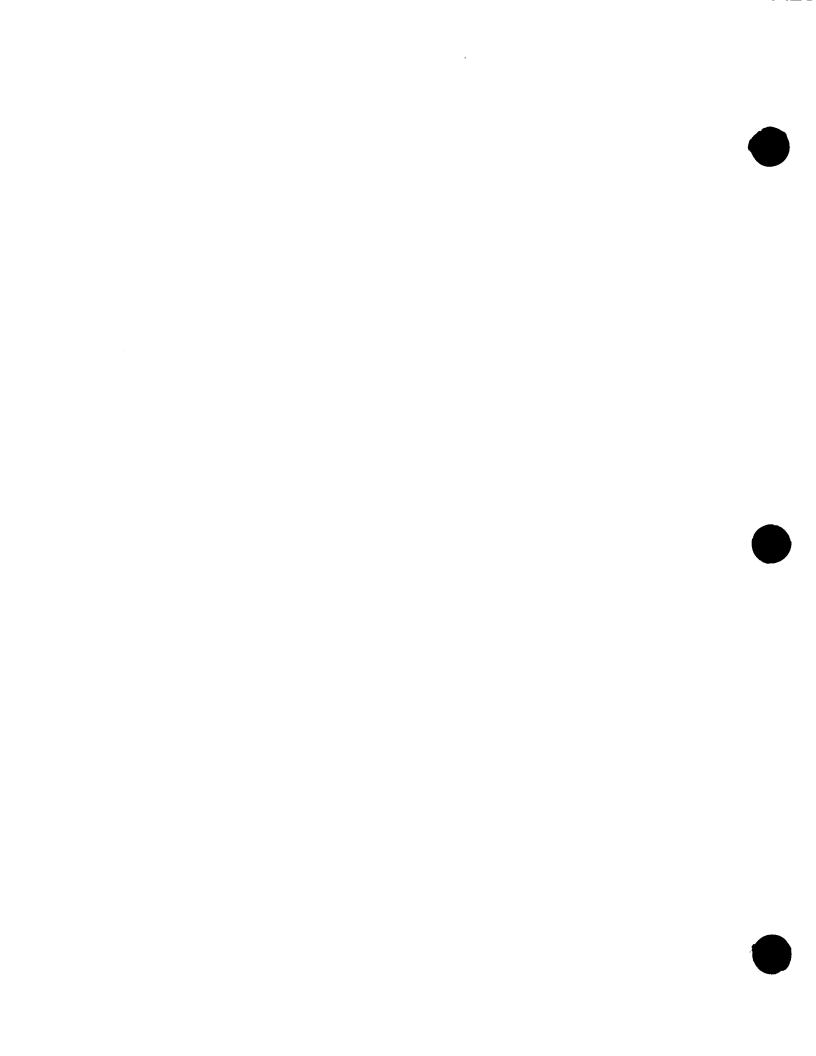
| Committee: H Judiciary | 1 Date: 15 Joly 201  |
|------------------------|----------------------|
| Name                   | Organization         |
| MKSON JANEIL           |                      |
| Natalie Hobson         | NCHTA                |
| Will Parmy - Hill      | NCHFA                |
| TERRY LAWCER           | ENCORE CAPITAL OPOUR |
| BILL SLOGGIN           | 7]                   |
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| Anor whise             | -SA                  |
| Al Roply               | WCJC                 |
| Ellen Harnick          | CRL                  |
| Nathan Batts           | NCBA                 |
| Ben Popken             | NCDOI                |
| Reberra Shigley        | NODET                |
| Kevin Angelson         | Nepo5                |
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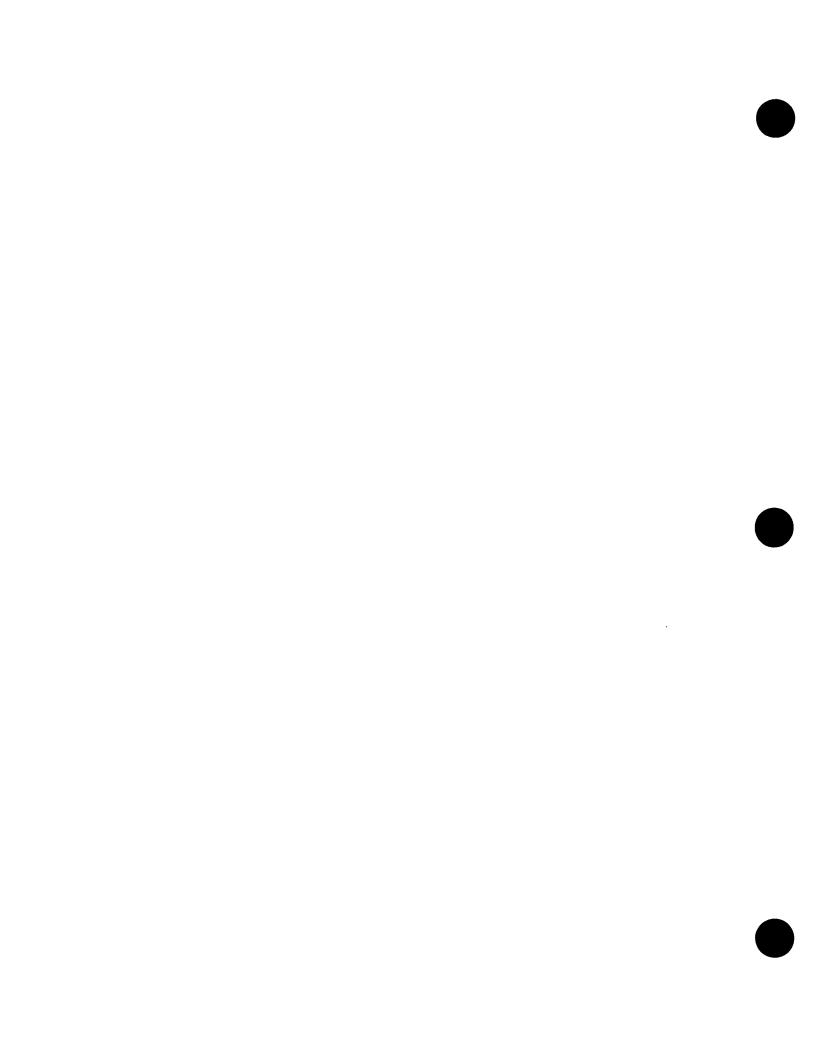
| Committee:           | Date:             |  |  |  |
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| Name<br>Torya Horton | Organization      |  |  |  |
| Carr Mclamb          | 755               |  |  |  |
| Moto Baler           | CCP               |  |  |  |
| Janton               | Smit Ank          |  |  |  |
| Ryan Minto           | Governor's Office |  |  |  |
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# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

You are hereby notified that the House Committee on Judiciary I will meet as follows:

| DAY & DA<br>TIME:<br>LOCATION         | TE: Wednesday, July 22, 2015<br>12:30 PM<br>N: 415 LOB                               |  |  |  |  |
|---------------------------------------|--|--|--|--|--|
| The following                         | ng bills will be considered:   |  |  |  |  |
| BILL NO.<br>SB 82<br>SB 89            | SHORT TITLE Vital Records Integrity Act. Disqualification Notice/Pistol Sale Permit. | SPONSOR Senator Bingham Senator Randleman          |  |  |  |
|                                       | Respe  | ectfully.  |  |  |  |
| Representative N. Leo Daughtry, Chair |  |  |  |  |  |
| I hereby cert<br>Monday, Jul          | •  | e assistant at the following offices at 2:09 PM on |  |  |  |
|                                       | Principal Clerk Reading Clerk – House Chamber  |  |  |  |  |
| Dianne Russ                           | ell (Committee Assistant)  |  |  |  |  |



### House Committee on Judiciary I Wednesday, July 22, 2015, 12:30 PM 415 Legislative Office Building

#### **AGENDA**

#### Welcome and Opening Remarks

**Introduction of Pages** 

**Bills** 

| BILL NO. | SHORT TITLE                         | <b>SPONSOR</b>    |
|----------|-------------------------------------|-------------------|
| SB 82    | Vital Records Integrity Act.        | Senator Bingham   |
| SB 89    | Disqualification Notice/Pistol Sale | Senator Randleman |
|          | Permit.                             |                   |

**Presentations** 

**Other Business** 

Adjournment

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#### House Committee on Judiciary I Wednesday, July 22, 2015 at 12:30 PM Room 415 of the Legislative Office Building

#### **MINUTES**

The House Committee on Judiciary I met at 12:30 PM on July 22, 2015 in Room 415 of the Legislative Office Building. Representatives Daughtry, Jackson, Hardister, Howard, Martin, McNeill, Robinson, Steinburg and Szoka attended.

Representative N. Leo Daughtry; Chair, presided.

The following bills were considered:

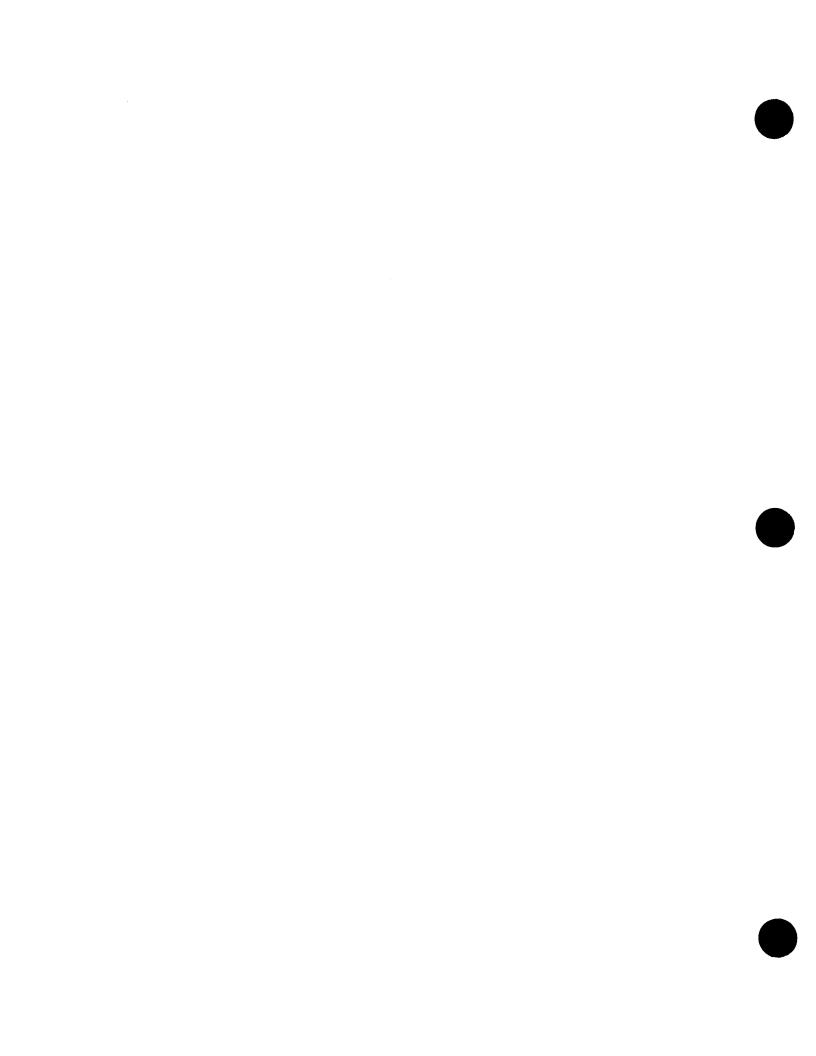
SB 82 Vital Records Integrity Act. (Senator Bingham) - received a favorable report.

SB 89 Disqualification Notice/Pistol Sale Permit. (Senator Randleman) – received a favorable report.

The meeting adjourned at 12:52 p.m..

Representative N. Leo Daughtry, Chair Presiding

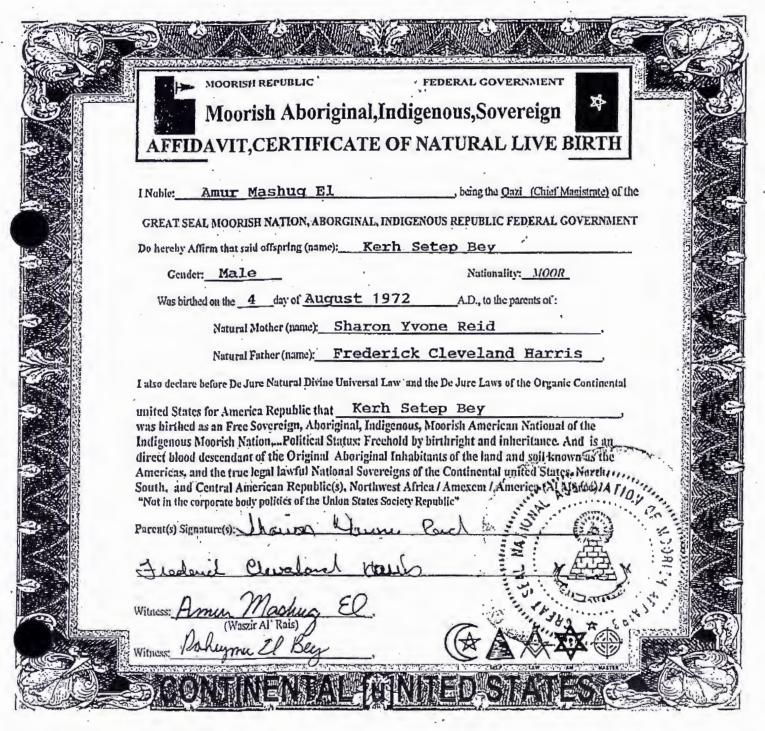
Jan Copeland, Committee Clerk



FOR REGISTRATION JUDITH A. GIBSON REGISTER OF DEEDS MECKLENBURG COUNTY, NC 2005 OCT 31 01:07 PM BK:19559 PG:267-275 FEE:533.00

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# NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

#### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

#### **FAVORABLE**

SB 82 Vital Records Integrity Act.

Draft Number: None
Serial Referral: None
Recommended Referral: None
Long Title Amended: No
Floor Manager: Watford

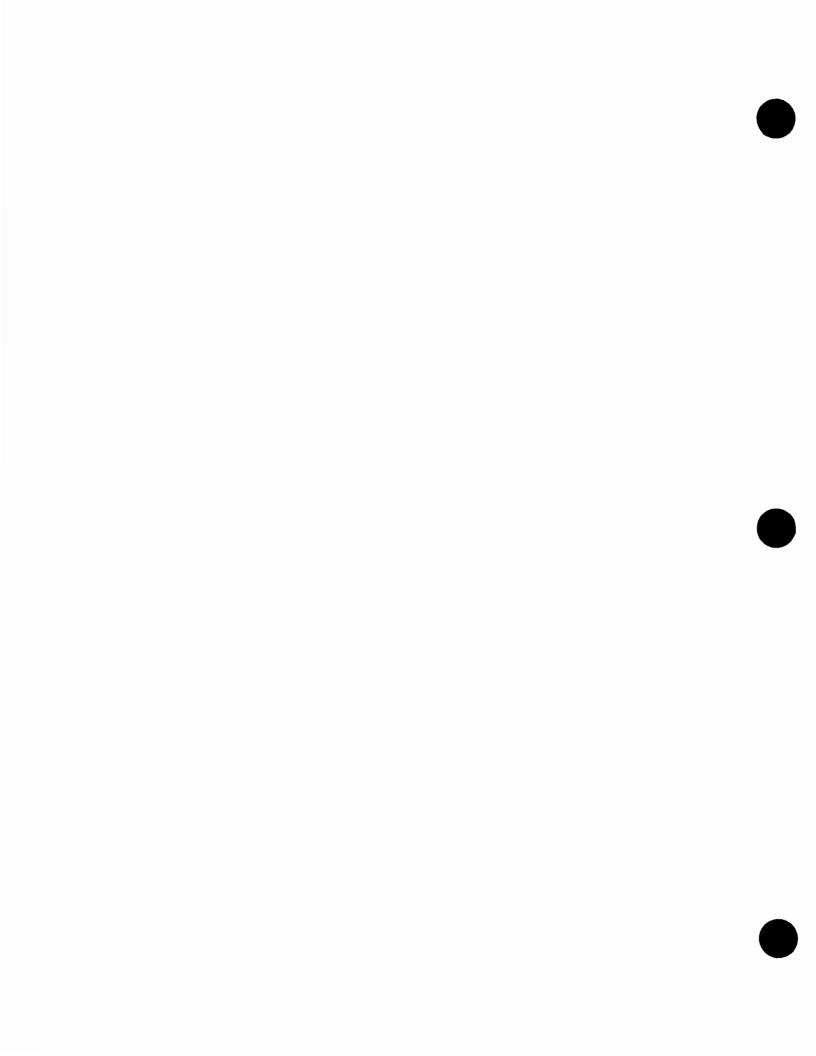
SB 89 (CS#1) Disqualification Notice/Pistol Sale Permit.

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

Floor Manager: R. Turner

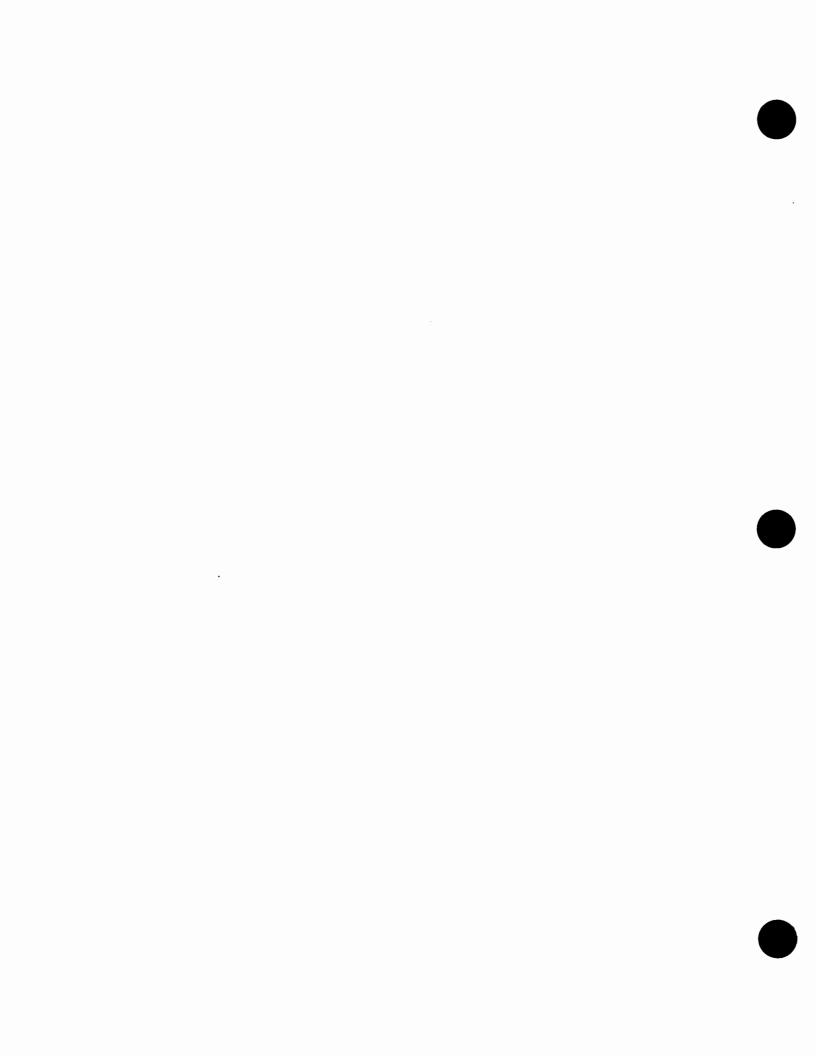
**TOTAL REPORTED: 2** 





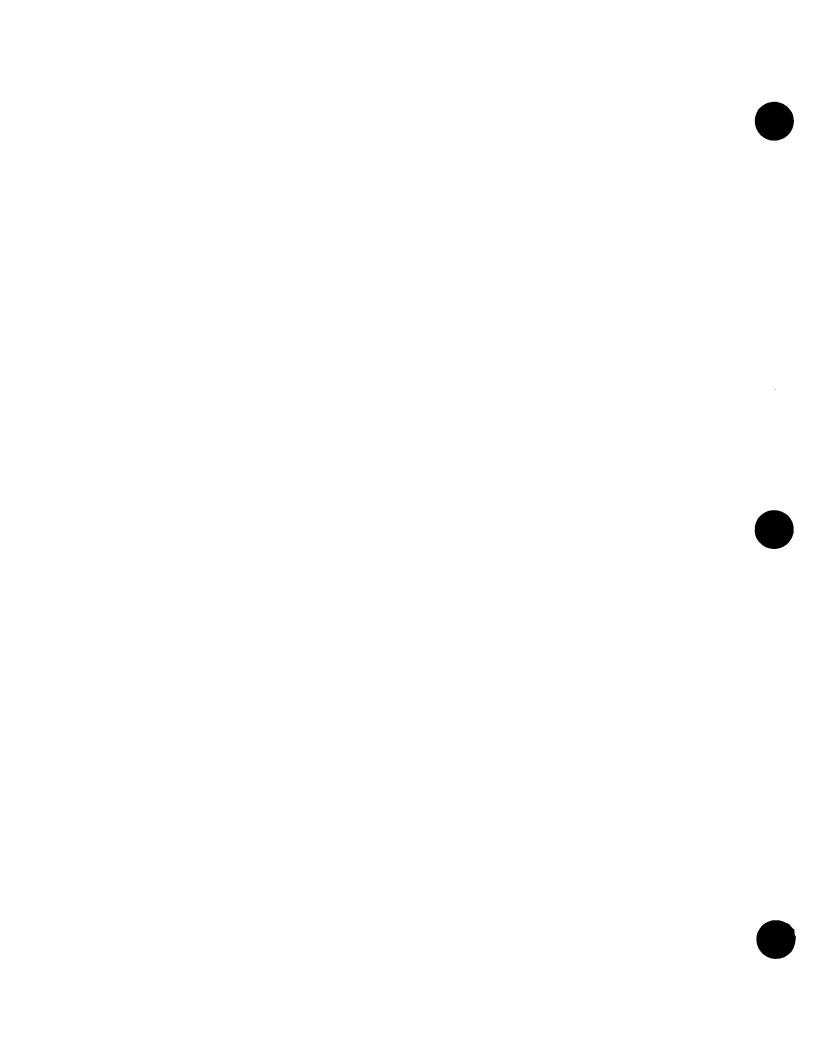
Date: July 22,2015

| Bill Number 513 89   |
|--|
| PCS_NO   |
| Motion to be before the committee by                                 |
| Sen Randbernan explained the bill.  Discussion on the Bill YES or NO |
| Rep. Robinson motioned for:  |
| Favorable Report Adoption  |
| Unfavorable ReportUnfavorable to original bill, fav to PCS           |
| No vote  |
| Amendments: :  |
| Serial referral to:  |
| Speakers:  |
|  |
| Handouts:  |
| inner Bedfad added explanation                                       |
| mesture 7  |



Tuly 22 2016

| (87  | Date: Join 22, 2018                      |
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| Bill Number 5 82                               | V  |
| PCS NO   |  |
| Motion to be before the committee by _         |  |
| Sen. Burgham  Discussion on the Bill YES or NO | explained the bill.                      |
| Rep S 70 ka                                    | motioned for:                            |
|  | Adoption                                 |
| Unfavorable Report                             | Unfavorable to original bill, fav to PCS |
| No vote  |  |
| Amendments: : NOW                              |  |
| Serial referral to:  Speakers:                 |  |
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| Szoka  |  |
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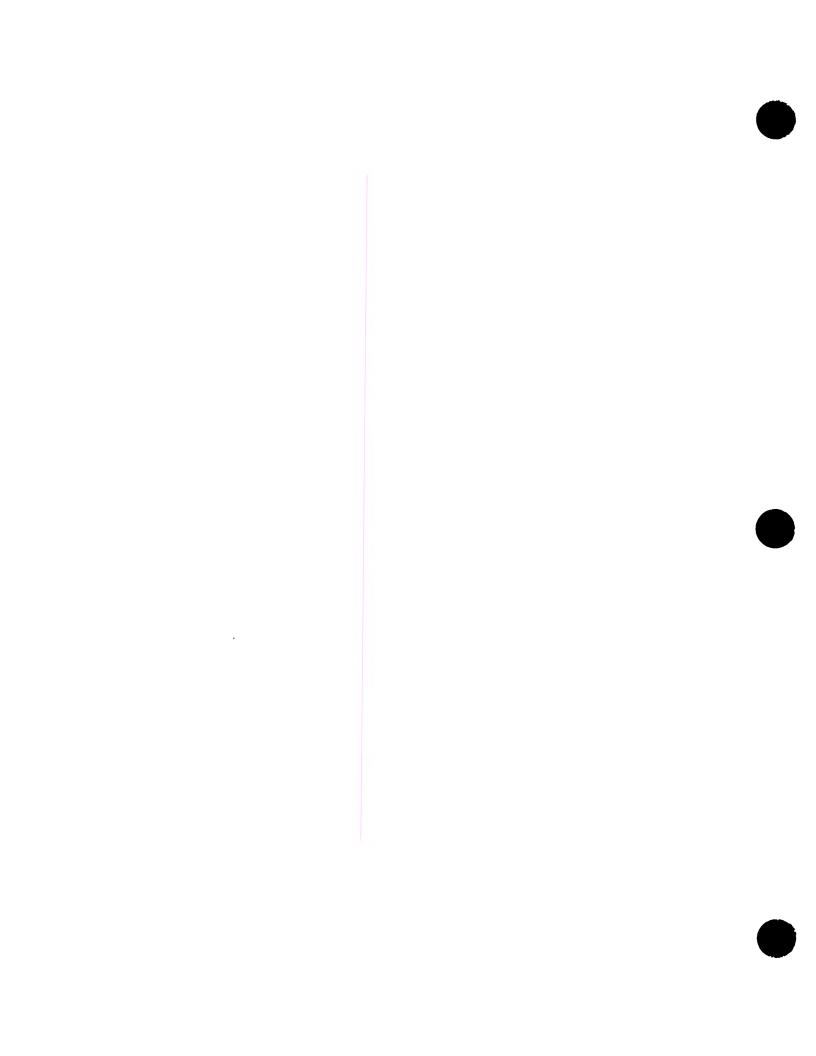




## North Carolina General Assembly - House Sergeant-at-Arms

# House Staff

| Committee: House Judiciary 4 Date: ZZ July 2013 |
|---|
| Pages   |
| Name: HALEY TALTON                              |
| County: Johnston Sponsor: John SZOKA            |
| Name: JACOB ANSPACH                             |
| County: ORANGE Sponsor: SUSAN FISHER            |
| Name: John Jackson                              |
| County: Cumberand Sponsor: MARIC BRODY          |
| Name: ISAbellA DYSON                            |
| County: MACKLENGURG Sponsor: SPEAKER MOORE      |
| Name:   |
| County: Sponsor:                                |
| Sergeants-at-Arms                               |
| BARRY MOORE                                     |
| BH Powell                                       |
| DAVID LINTHICUM                                 |
|   |





## North Carolina General Assembly - House Sergeant-at-Arms

# Visitors

| Committee: Judicary 1 | Date: 7/22/15 |
|-----------------------|---------------|
| Name                  | Organization  |
| Dauld Ferrall         | NCAOC         |
| Son Mon               | Gov Defice    |
| lynjage               | NMRS          |
| Skye David            | KLG.          |
| Alex Miller           | KLG           |
| Colleen Kochanek      | KLG           |
| Annaliese Dolph       | DL            |
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| Wayne RATA            | NCADE         |
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# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

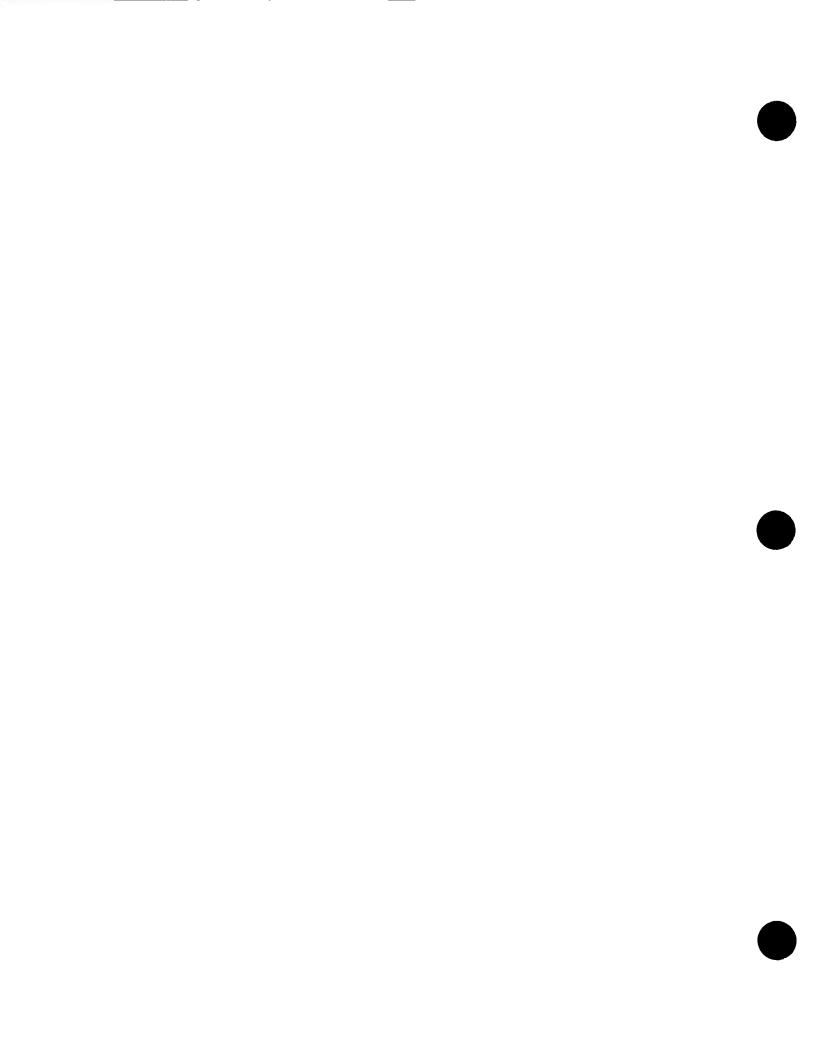
You are hereby notified that the House Committee on Judiciary I will meet as follows:

DAY & DATE: Wednesday, August 5, 2015

Reading Clerk – House Chamber

Jan Copeland (Committee Assistant)

| TIME:<br>LOCATION | 12:30 PM<br>N: 415 LOB                             |   |
|-------------------|--|---|
| The followin      | ng bills will be considered:                       |   |
| BILL NO.          | SHORT TITLE  | SPONSOR   |
| HB 366            | Compact/Balanced Budget.                           | Representative Millis                                     |
| SB 699            | Protect LEO Home Address/Othe Information.         | er Senator McKissick                                      |
| 15 m              | Page a   | Respectfully,   |
| 1 or co           | ,  | Representative N. Leo Daughtry, Chair                     |
| •                 | ify this notice was filed by the congust 04, 2015. | nmittee assistant at the following offices at 11:06 AM on |
|                   | Principal Clark                                    |   |



### House Committee on Judiciary I Wednesday, August 5, 2015, 12:30 PM 415 Legislative Office Building

#### **AGENDA**

Welcome and Opening Remarks

**Introduction of Pages** 

**Bills** 

BILL NO. **SHORT TITLE** 

HB 366 SB 699

Compact/Balanced Budget.

Protect LEO Home Address/Other

Information.

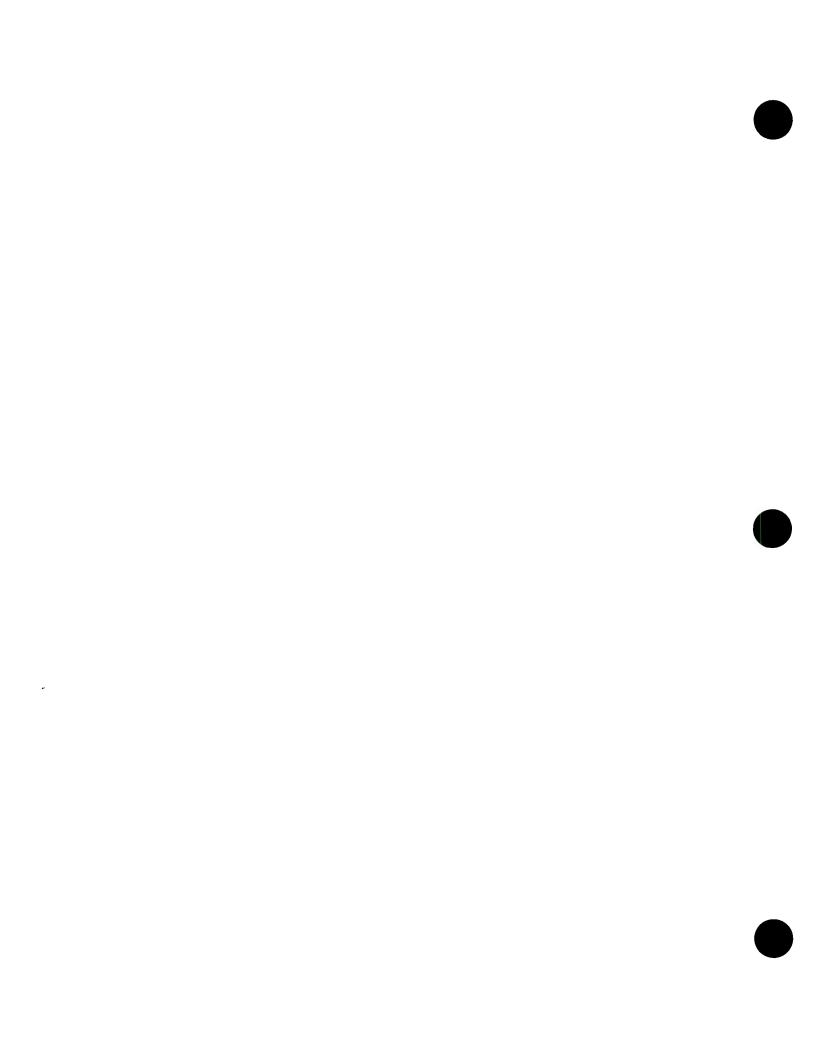
**SPONSOR** 

Representative Millis Senator McKissick

**Presentations** 

**Other Business** 

Adjournment



#### House Committee on Judiciary I Wednesday, August 5, 2015 at 12:30 PM Room 415 of the Legislative Office Building

#### **MINUTES**

The House Committee on Judiciary I met at 12:30 PM on August 5, 2015 in Room 415 of the Legislative Office Building. Representatives Daughtry, Burr, Jackson, Arp, Hardister, Howard, Martin, McNeill, Robinson, Steinburg, Szoka and Johnson attended.

Representative N. Leo Daughtry, Chair, presided.

The following bills were considered:

HB 366 Compact/Balanced Budget. (Representative Millis) – received a favorable report, and re-referred to Appropriations.

SB 699 Protect LEO Home Address/Other Information. (Senator McKissick) – received a favorable House Committee Substitute, unfavorable Senate Committee Substitute

The meeting adjourned at 1:26 p.m.

Representative N. Leo Daughtry, Chair Presiding

Jan Copeland, Committee Clerk

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# **HOUSE BILL 366:** Compact/Balanced Budget

#### 2015-2016 General Assembly

Introduced by:

Analysis of:

Committee: House Serial Referral To Appropriations Date:

August 4, 2015

Rep. Millis First Edition

**Prepared by:** R. Erika Churchill

Committee Counsel

SUMMARY: House Bill 366 would adopt the "Compact for a Balanced Budget," making North Carolina a Member State of the compact applying for a constitutional convention to adopt a balanced budget amendment to the United States Constitution.

**CURRENT LAW:** Article V of the Constitution of the United States provides that:

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

This provision allows for two alternative methods for proposing amendments to the United States Constitution before the legislatures of the states for ratification:

- 2/3 vote of both the U.S. Senate and the U.S. House of Representatives call for a change to be made.
- Application of the legislatures of 2/3 of the states for a national constitutional convention.

BILL ANALYSIS: House Bill 366 would enact a new Article 80, Compact for a Balanced Budget, within Chapter 143 of the General Statutes, calling for a constitutional convention on a balanced federal budget.

With respect to the federal constitutional amendment, the Compact for a Balanced Budget, as set out in the new Article 80, ("Compact") would do all of the following:

- > Prohibit total outlays of the U.S. government from exceeding total receipts at any point in time unless the excess of outlays over receipts is financed exclusively by debt issued in strict conformity with the Compact.
- > Prohibit outstanding debt from exceeding authorized debt, and set forth the procedure under which Congress may increase authorized debt.

O. Walker Reagan Director



Research Division (919) 733-2578

#### House Bill 366

Page 2

- Require the President to enforce the debt limit whenever the outstanding debt exceeds 98% of the debt limit, with enforcement mechanisms set forth in the Compact.
- > Prohibits a Congressional bill providing for a new or increased general revenue tax from becoming law unless approved by a two-thirds roll call vote.

The Compact would also address administrative matters, such as membership and withdrawal from the compact, establishment of a Compact Commission and Compact Administrator, and appointing delegates to the constitutional convention, and sets out constitutional convention rules.

**EFFECTIVE DATE:** Effective when it becomes law.

**BACKGROUND:** According the website 'compactforamerica.org' there are currently four Member States: Alaska, Georgia, Mississippi, and North Dakota.

#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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**HOUSE BILL 366** 

1

(Public) Short Title: Compact/Balanced Budget. Sponsors: Representative Millis (Primary Sponsor). For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site. Referred to: Appropriations. March 30, 2015 A BILL TO BE ENTITLED AN ACT TO ADOPT THE COMPACT FOR A BALANCED BUDGET. The General Assembly of North Carolina enacts: **SECTION 1.** Chapter 143 of the North Carolina General Statutes is amended by adding a new Article to read: "Article 80. "COMPACT FOR A BALANCED BUDGET. "§ 143-750. Compact entered into; form of Compact. The State of North Carolina enacts, adopts and agrees to be bound by the following compact: ARTICLE I DECLARATION OF POLICY, PURPOSE AND INTENT Whereas, every State enacting, adopting and agreeing to be bound by this Compact intends to ensure that their respective Legislature's use of the power to originate a Balanced Budget Amendment under Article V of the Constitution of the United States will be exercised conveniently and with reasonable certainty as to the consequences thereof. Now, therefore, in consideration of their expressed mutual promises and obligations, be it enacted by every State enacting, adopting and agreeing to be bound by this Compact, and resolved by each of their respective Legislatures, as the case may be, to exercise herewith all of their respective powers as set forth herein notwithstanding any law to the contrary. ARTICLE II **DEFINITIONS** Section 1. "Compact" means this "Compact for a Balanced Budget." Section 2. "Convention" means the convention for proposing amendments organized by this Compact under Article V of the Constitution of the United States and, where contextually appropriate to ensure the terms of this Compact are not evaded, any other similar gathering or body, which might be organized as a consequence of Congress receiving the application set out



in this Compact and claim authority to propose or effectuate any amendment, alteration or revision to the Constitution of the United States. This term does not encompass a convention

for proposing amendments under Article V of the Constitution of the United States that is

organized independently of this Compact based on the separate and distinct application of any
 State.

Section 3. "State" means one of the several States of the United States. Where contextually appropriate, the term "State" shall be construed to include all of its branches, departments, agencies, political subdivisions, and officers and representatives acting in their official capacity.

Section 4. "Member State" means a State that has enacted, adopted and agreed to be bound to this Compact. For any State to qualify as a Member State with respect to any other State under this Compact, each such State must have enacted, adopted and agreed to be bound by substantively identical compact legislation.

Section 5. "Compact Notice Recipients" means the Archivist of the United States, the President of the United States, the President of the United States Senate, the Office of the Secretary of the United States Senate, the Speaker of the United States House of Representatives, the Office of the Clerk of the United States House of Representatives, the chief executive officer of each State, and the presiding officer(s) of each house of the Legislatures of the several States.

Section 6. Notice. All notices required by this Compact shall be by U.S. Certified Mail, return receipt requested, or an equivalent or superior form of notice, such as personal delivery documented by evidence of actual receipt.

Section 7. "Balanced Budget Amendment" means the following:

#### "Article

Section 1. Total outlays of the government of the United States shall not exceed total receipts of the government of the United States at any point in time unless the excess of outlays over receipts is financed exclusively by debt issued in strict conformity with this article.

Section 2. Outstanding debt shall not exceed authorized debt, which initially shall be an amount equal to 105 percent of the outstanding debt on the effective date of this article. Authorized debt shall not be increased above its aforesaid initial amount unless such increase is first approved by the legislatures of the several states as provided in Section 3.

Section 3. From time to time, Congress may increase authorized debt to an amount in excess of its initial amount set by Section 2 only if it first publicly refers to the legislatures of the several states an unconditional, single subject measure proposing the amount of such increase, in such form as provided by law, and the measure is thereafter publicly and unconditionally approved by a simple majority of the legislatures of the several states, in such form as provided respectively by state law; provided that no inducement requiring an expenditure or tax levy shall be demanded, offered or accepted as a quid pro quo for such approval. If such approval is not obtained within sixty (60) calendar days after referral then the measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged.

Section 4. Whenever the outstanding debt exceeds 98 percent of the debt limit set by Section 2, the President shall enforce said limit by publicly designating specific expenditures for impoundment in an amount sufficient to ensure outstanding debt shall not exceed the authorized debt. Said impoundment shall become effective thirty (30) days thereafter, unless Congress first designates an alternate impoundment of the same or greater amount by concurrent resolution, which shall become immediately effective. The failure of the President to designate or enforce the required impoundment is an impeachable misdemeanor. Any purported issuance or incurrence of any debt in excess of the debt limit set by Section 2 is void.

Section 5. No bill that provides for a new or increased general revenue tax shall become law unless approved by a two-thirds roll call vote of the whole number of each House of Congress. However, this requirement shall not apply to any bill that provides for a new end user sales tax which would completely replace every existing income tax levied by the government of the United States; or for the reduction or elimination of an exemption, deduction, or credit allowed under an existing general revenue tax.

Page 2 H366 [Edition 1]

Section 6. For purposes of this article, "debt" means any obligation backed by the full faith and credit of the government of the United States; "outstanding debt" means all debt held in any account and by any entity at a given point in time; "authorized debt" means the maximum total amount of debt that may be lawfully issued and outstanding at any single point in time under this article; "total outlays of the government of the United States" means all expenditures of the government of the United States from any source; "total receipts of the government of the United States" means all tax receipts and other income of the government of the United States, excluding proceeds from its issuance or incurrence of debt or any type of liability; "impoundment" means a proposal not to spend all or part of a sum of money appropriated by Congress; and "general revenue tax" means any income tax, sales tax, or value-added tax levied by the government of the United States excluding imposts and duties.

Section 7. This article is immediately operative upon ratification, self-enforcing, and Congress may enact conforming legislation to facilitate enforcement."

#### ARTICLE III

#### COMPACT MEMBERSHIP AND WITHDRAWAL

Section 1. This Compact governs each Member State to the fullest extent permitted by their respective constitutions, superseding and repealing any conflicting or contrary law.

Section 2. By becoming a Member State, each such State offers, promises and agrees to perform and comply strictly in accordance with the terms and conditions of this Compact, and has made such offer, promise and agreement in anticipation and consideration of, and in substantial reliance upon, such mutual and reciprocal performance and compliance by each other current and future Member State, if any. Accordingly, in addition to having the force of law in each Member State upon its respective effective date, this Compact and each of its Articles shall also be construed as contractually binding each Member State when: (a) at least one other State has likewise become a Member State by enacting substantively identical legislation adopting and agreeing to be bound by this Compact; and (b) notice of such State's Member State status is or has been seasonably received by the Compact Administrator, if any, or otherwise by the chief executive officer of each other Member State.

Section 3. For purposes of determining Member State status under this Compact, as long as all other provisions of the Compact remain identical and operative on the same terms, legislation enacting, adopting and agreeing to be bound by this Compact shall be deemed and regarded as "substantively identical" with respect to such other legislation enacted by another State notwithstanding: (a) any difference in section 2 of Article IV with specific regard to the respectively enacting State's own method of appointing its member to the Commission; (b) any difference in section 5 of Article IV with specific regard to the respectively enacting State's own obligation to fund the Commission; (c) any difference in sections 1 and 2 of Article VI with specific regard to the number and identity of each delegate respectively appointed on behalf of the enacting State, provided that no more than three delegates may attend and participate in the Convention on behalf of any State; or (d) any difference in section 7 of Article X with specific regard to the respectively enacting State as to whether section 1 of Article V of this Compact shall survive termination of the Compact, and thereafter become a continuing resolution of the Legislature of such State applying to Congress for the calling of a convention of the states under Article V of the Constitution of the United States, under such terms and limitations as may be specified by such State.

Section 4. When fewer than three-fourths of the States are Member States, any Member State may withdraw from this Compact by enacting appropriate legislation, as determined by state law, and giving notice of such withdrawal to the Compact Administrator, if any, or otherwise to the chief executive officer of each other Member State. A withdrawal shall not affect the validity or applicability of the compact with respect to remaining Member States,

provided that there remain at least two such States. However, once at least three-fourths of the States are Member States, then no Member State may withdraw from the Compact prior to its termination absent unanimous consent of all Member States.

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#### ARTICLE IV

#### COMPACT COMMISSION AND COMPACT ADMINISTRATOR

Section 1. Nature of the Compact Commission. The Compact Commission ("Commission") is hereby established. It has the power and duty: (a) to appoint and oversee a Compact Administrator; (b) to encourage States to join the Compact and Congress to call the Convention in accordance with this Compact; (c) to coordinate the performance of obligations under the Compact; (d) to oversee the Convention's logistical operations as appropriate to ensure this Compact governs its proceedings; (e) to oversee the defense and enforcement of the Compact in appropriate legal venues; (f) to request funds and to disburse those funds to support the operations of the Commission, Compact Administrator, and Convention; and (g) to cooperate with any entity that shares a common interest with the Commission and engages in policy research, public interest litigation or lobbying in support of the purposes of the Compact. The Commission shall only have such implied powers as are essential to carrying out these express powers and duties. It shall take no action that contravenes or is inconsistent with this Compact or any law of any State that is not superseded by this Compact. It may adopt and publish corresponding bylaws and policies.

Section 2. Commission Membership. The Commission initially consists of three unpaid members. Each Member State may appoint one member to the Commission through an appointment process to be determined by their respective chief executive officer until all positions on the Commission are filled. Positions shall be assigned to appointees in the order in which their respective appointing States became Member States. The bylaws of the Commission may expand its membership to include representatives of additional Member States and to allow for modest salaries and reimbursement of expenses if adequate funding exists.

Section 3. Commission Action. Each Commission member is entitled to one vote. The Commission shall not act unless a majority of its appointed membership is present, and no action shall be binding unless approved by a majority of the Commission's appointed membership. The Commission shall meet at least once a year, and may meet more frequently.

Section 4. First Order of Business. The Commission shall at the earliest possible time elect from among its membership a Chairperson, determine a primary place of doing business, and appoint a Compact Administrator.

Section 5. Funding. The Commission and the Compact Administrator's activities shall be funded exclusively by each Member State, as determined by their respective state law, or by voluntary donations.

Section 6. Compact Administrator. The Compact Administrator has the power and duty: (a) to timely notify the States of the date, time and location of the Convention; (b) to organize and direct the logistical operations of the Convention; (c) to maintain an accurate list of all Member States, their appointed delegates, including contact information; and (d) to formulate, transmit, and maintain all official notices, records, and communications relating to this Compact. The Compact Administrator shall only have such implied powers as are essential to carrying out these express powers and duties; and shall take no action that contravenes or is inconsistent with this Compact or any law of any State that is not superseded by this Compact. The Compact Administrator serves at the pleasure of the Commission and must keep the Commission seasonably apprised of the performance or nonperformance of the terms and conditions of this Compact. Any notice sent by a Member State to the Compact Administrator concerning this Compact shall be adequate notice to each other Member State provided that a

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copy of said notice is seasonably delivered by the Compact Administrator to each other Member State's respective chief executive officer.

Section 7. Notice of Key Events. Upon the occurrence of each of the following described events, or otherwise as soon as possible, the Compact Administrator shall immediately send the following notices to all Compact Notice Recipients, together with certified conforming copies of the chaptered version of this Compact as maintained in the statutes of each Member State: (a) whenever any State becomes a Member State, notice of that fact shall be given; (b) once at least three-fourths of the States are Member States, notice of that fact shall be given together with a statement declaring that the Legislatures of at least two-thirds of the several States have applied for a convention for proposing amendments under Article V of the Constitution of the United States, petitioning Congress to call the Convention contemplated by this Compact, and further requesting cooperation in organizing the same in accordance with this Compact; (c) once Congress has called the Convention contemplated by this Compact, and whenever the date, time and location of the Convention has been determined, notice of that fact shall be given together with the date, time and location of the Convention and other essential logistical matters; (d) upon approval of the Balanced Budget Amendment by the Convention, notice of that fact shall be given together with the transmission of certified copies of such approved proposed amendment and a statement requesting Congress to refer the same for ratification by three-fourths of the Legislatures of the several States under Article V of the Constitution of the United States (however, in no event shall any proposed amendment other than the Balanced Budget Amendment be transmitted); and (e) when any Article of this Compact prospectively ratifying the Balanced Budget Amendment is effective in any Member State, notice of the same shall be given together with a statement declaring such ratification and further requesting cooperation in ensuring that the official record confirms and reflects the effective corresponding amendment to the Constitution of the United States. However, whenever any Member State enacts appropriate legislation, as determined by the laws of the respective state, withdrawing from this Compact, the Compact Administrator shall immediately send certified conforming copies of the chaptered version of such withdrawal legislation as maintained in the statutes of each such withdrawing Member State, solely to each chief executive officer of each remaining Member State, giving notice of such withdrawal.

Section 8. Cooperation. The Commission, Member States and Compact Administrator shall cooperate with each other and give each other mutual assistance in enforcing this Compact and shall give the chief law enforcement officer of each other Member State any information or documents that are reasonably necessary to facilitate the enforcement of this Compact.

Section 9. This Article does not take effect until there are at least two Member States.

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#### ARTICLE V

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#### RESOLUTION APPLYING FOR CONVENTION

Section 1. Be it resolved, as provided for in Article V of the Constitution of the United States, the Legislature of each Member State herewith applies to Congress for the calling of a convention for proposing amendments limited to the subject matter of proposing for ratification the Balanced Budget Amendment.

Section 2. Congress is further petitioned to refer the Balanced Budget Amendment to the States for ratification by three-fourths of their respective Legislatures.

Section 3. This Article does not take effect until at least three-fourths of the several States are Member States.

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#### ARTICLE VI

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#### DELEGATE APPOINTMENT, LIMITATIONS AND INSTRUCTIONS

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 Section 1. Number of Delegates. Each Member State shall be entitled to one delegate as its sole and exclusive representative at the Convention as set forth in this Article.

Section 2. Identity of Delegates. Each Member State's chief executive officer, who is serving on the enactment date of this Compact, is appointed in an individual capacity to represent his or her respective State at the Convention as its sole and exclusive delegate.

Section 3. Replacement or Recall of Delegates. A delegate appointed hereunder may be replaced or recalled by the Legislature of his or her respective State at any time for good cause, such as criminal misconduct or the violation of this Compact. If replaced or recalled, any delegate previously appointed hereunder must immediately vacate the Convention and return to their respective State's capitol.

Section 4. Oath. The power and authority of a delegate under this Article may only be exercised after the Convention is first called by Congress in accordance with this Compact and such appointment is duly accepted by such appointee publicly taking the following oath or affirmation: "I do solemnly swear (or affirm) that I accept this appointment and will act strictly in accordance with the terms and conditions of the Compact for a Balanced Budget, the Constitution of the State I represent, and the Constitution of the United States. I understand that violating this oath (or affirmation) forfeits my appointment and may subject me to other penalties as provided by law."

Section 5. Term. The term of a delegate hereunder commences upon acceptance of appointment and terminates upon the permanent adjournment of the Convention, unless shortened by recall, replacement or forfeiture under this Article. Upon expiration of such term, any person formerly serving as a delegate must immediately withdraw from and cease participation at the Convention, if any is proceeding.

Section 6. Delegate Authority. The power and authority of any delegate appointed hereunder is strictly limited: (a) to introducing, debating, voting upon, proposing and enforcing the Convention Rules specified in this Compact, as needed to ensure those rules govern the Convention; and (b) to introducing, debating, voting upon, and rejecting or proposing for ratification the Balanced Budget Amendment. All actions taken by any delegate in violation of this section are void ab initio.

Section 7. Delegate Authority. No delegate of any Member State may introduce, debate, vote upon, reject or propose for ratification any constitutional amendment at the Convention unless: (a) the Convention Rules specified in this Compact govern the Convention and their actions; and (b) the constitutional amendment is the Balanced Budget Amendment.

Section 8. Delegate Authority. The power and authority of any delegate at the Convention does not include any power or authority associated with any other public office held by the delegate. Any person appointed to serve as a delegate shall take a temporary leave of absence, or otherwise shall be deemed temporarily disabled, from any other public office held by the delegate while attending the Convention, and may not exercise any power or authority associated with any other public office held by the delegate, while attending the Convention. All actions taken by any delegate in violation of this section are void ab initio.

Section 9. Order of Business. Before introducing, debating, voting upon, rejecting or proposing for ratification any constitutional amendment at the Convention, each delegate of every Member State must first ensure the Convention Rules in this Compact govern the Convention and their actions. Every delegate and each Member State must immediately vacate the Convention and notify the Compact Administrator by the most effective and expeditious means if the Convention Rules in this Compact are not adopted to govern the Convention and their actions.

Section 10. Forfeiture of Appointment. If any Member State or delegate violates any provision of this Compact, then every delegate of that Member State immediately forfeits his or her appointment, and shall immediately cease participation at the Convention, vacate the Convention, and return to his or her respective State's capitol.

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Section 11. Expenses. A delegate appointed hereunder is entitled to reimbursement of reasonable expenses for attending the Convention from his or her respective Member State. No delegate may accept any other form of remuneration or compensation for service under this Compact.

#### ARTICLE VII

#### **CONVENTION RULES**

Section 1. Nature of the Convention. The Convention shall be organized, construed and conducted as a body exclusively representing and constituted by the several States.

Section 2. Agenda of the Convention. The agenda of the Convention shall be entirely focused upon and exclusively limited to introducing, debating, voting upon, and rejecting or proposing for ratification the Balanced Budget Amendment under the Convention Rules specified in this Article and in accordance with the Compact. It shall not be in order for the Convention to consider any matter that is outside the scope of this agenda.

Section 3. Delegate Identity and Procedure. States shall be represented at the Convention through duly appointed delegates. The number, identity and authority of delegates assigned to each State shall be determined by this Compact in the case of Member States or, in the case of States that are not Member States, by their respective state laws. However, to prevent disruption of proceedings, no more than three delegates may attend and participate in the Convention on behalf of any State. A certified chaptered conforming copy of this Compact, together with government-issued photographic proof of identification, shall suffice as credentials for delegates of Member States. Any commission for delegates of States that are not Member States shall be based on their respective state laws, but it shall furnish credentials that are at least as reliable as those required of Member States.

Section 4. Voting. Each State represented at the Convention shall have one vote, exercised by the vote of that State's delegate in the case of States represented by one delegate, or, in the case of any State that is represented by more than one delegate, by the majority vote of that State's respective delegates.

Section 5. Quorum. A majority of the several States of the United States, each present through its respective delegate in the case of any State that is represented by one delegate, or through a majority of its respective delegates, in the case of any State that is represented by more than one delegate, shall constitute a quorum for the transaction of any business on behalf of the Convention.

Section 6. Action by the Convention. The Convention shall only act as a committee of the whole, chaired by the delegate representing the first State to have become a Member State, if that State is represented by one delegate, or otherwise by the delegate chosen by the majority vote of that State's respective delegates. The transaction of any business on behalf of the Convention, including the designation of a Secretary, the adoption of parliamentary procedures and the rejection or proposal of any constitutional amendment, requires a quorum to be present and a majority affirmative vote of those States constituting the quorum.

Section 7. Emergency Suspension and Relocation of the Convention. In the event that the Chair of the Convention declares an emergency due to disorder or an imminent threat to public health and safety prior to the completion of the business on the Agenda, and a majority of the States present at the Convention do not object to such declaration, further Convention proceedings shall be temporarily suspended, and the Commission shall subsequently relocate or reschedule the Convention to resume proceedings in an orderly fashion in accordance with the terms and conditions of this Compact with prior notice given to the Compact Notice Recipients.

Section 8. Parliamentary Procedure. In adopting, applying and formulating parliamentary procedure, the Convention shall exclusively adopt, apply or appropriately adapt provisions of the most recent editions of Robert's Rules of Order and the American Institute of

Parliamentarians Standard Code of Parliamentary Procedure. In adopting, applying or adapting parliamentary procedure, the Convention shall exclusively consider analogous precedent arising within the jurisdiction of the United States. Parliamentary procedures adopted, applied or adapted pursuant to this section shall not obstruct, override or otherwise conflict with this Compact.

Section 9. Transmittal. Upon approval of the Balanced Budget Amendment by the Convention to propose for ratification, the Chair of the Convention shall immediately transmit certified copies of such approved proposed amendment to the Compact Administrator and all Compact Notice Recipients, notifying them respectively of such approval and requesting Congress to refer the same for ratification by the States under Article V of the Constitution of the United States. However, in no event shall any proposed amendment other than the Balanced Budget Amendment be transmitted as aforesaid.

Section 10. Transparency. Records of the Convention, including the identities of all attendees and detailed minutes of all proceedings, shall be kept by the Chair of the Convention or Secretary designated by the Convention. All proceedings and records of the Convention shall be open to the public upon request subject to reasonable regulations adopted by the Convention that are closely tailored to preventing disruption of proceedings under this Article.

Section 11. Adjournment of the Convention. The Convention shall permanently adjourn upon the earlier of twenty-four (24) hours after commencing proceedings under this Article or the completion of the business on its Agenda.

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#### ARTICLE VIII

#### PROHIBITION ON ULTRA VIRES CONVENTION

Section 1. Member States shall not participate in the Convention unless: (a) Congress first calls the Convention in accordance with this Compact; and (b) the Convention Rules of this Compact are adopted by the Convention as its first order of business.

Section 2. Any proposal or action of the Convention is void ab initio and issued by a body that is conducting itself in an unlawful and ultra vires fashion if that proposal or action: (a) violates or was approved in violation of the Convention Rules or the delegate instructions and limitations on delegate authority specified in this Compact; (b) purports to propose or effectuate a mode of ratification that is not specified in Article V of the Constitution of the United States; or (c) purports to propose or effectuate the formation of a new government. All Member States are prohibited from advancing or assisting in the advancement of any such proposal or action.

Section 3. Member States shall not ratify or otherwise approve any proposed amendment, alteration or revision to the Constitution of the United States, which originates from the Convention, other than the Balanced Budget Amendment.

#### ARTICLE IX

# RESOLUTION PROSPECTIVELY RATIFYING THE BALANCED BUDGET AMENDMENT

Section 1. Each Member State, by and through its respective Legislature, hereby adopts and ratifies the Balanced Budget Amendment.

Section 2. This Article does not take effect until Congress effectively refers the Balanced Budget Amendment to the States for ratification by three-fourths of the Legislatures of the several States under Article V of the Constitution of the United States.

#### ARTICLE X

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#### CONSTRUCTION, ENFORCEMENT, VENUE, AND SEVERABILITY

Section 1. To the extent that the effectiveness of this Compact or any of its Articles or provisions requires the alteration of local legislative rules, drafting policies, or procedure to be effective, the enactment of legislation enacting, adopting and agreeing to be bound by this Compact shall be deemed to waive, repeal, supersede, or otherwise amend and conform all such rules, policies or procedures to allow for the effectiveness of this Compact to the fullest extent permitted by the constitution of any affected Member State.

Section 2. Date and Location of the Convention. Unless otherwise specified by Congress in its call, the Convention shall be held in Dallas, Texas and commence proceedings at 9:00 a.m. Central Standard Time on the sixth Wednesday after the latter of the effective date of Article V of this Compact or the enactment date of the Congressional resolution calling the Convention.

Section 3. In addition to all other powers and duties conferred by state law which are consistent with the terms and conditions of this Compact, the chief law enforcement officer of each Member State is empowered to defend the Compact from any legal challenge, as well as to seek civil mandatory and prohibitory injunctive relief to enforce this Compact; and shall take such action whenever the Compact is challenged or violated.

Section 4. The exclusive venue for all actions in any way arising under this Compact shall be in the United States District Court for the Northern District of Texas or the courts of the State of Texas within the jurisdictional boundaries of the foregoing district court. Each Member State shall submit to the jurisdiction of said courts with respect to such actions. However, upon written request by the chief law enforcement officer of any Member State, the Commission may elect to waive this provision for the purpose of ensuring an action proceeds in the venue that allows for the most convenient and effective enforcement or defense of this Compact. Any such waiver shall be limited to the particular action to which it is applied and not construed or relied upon as a general waiver of this provision. The waiver decisions of the Commission under this provision shall be final and binding on each Member State.

Section 5. The effective date of this Compact and any of its Articles is the latter of: (a) the date of any event rendering the same effective according to its respective terms and conditions; or (b) the earliest date otherwise permitted by law.

Section 6. Article VIII of this Compact is hereby deemed non-severable prior to termination of the Compact. However, if any other phrase, clause, sentence or provision of this Compact, or the applicability of any other phrase, clause, sentence or provision of this Compact to any government, agency, person or circumstance, is declared in a final judgment to be contrary to the Constitution of the United States, contrary to the state constitution of any Member State, or is otherwise held invalid by a court of competent jurisdiction, such phrase, clause, sentence or provision shall be severed and held for naught, and the validity of the remainder of this Compact and the applicability of the remainder of this Compact to any government, agency, person or circumstance shall not be affected. Furthermore, if this Compact is declared in a final judgment by a court of competent jurisdiction to be entirely contrary to the state constitution of any Member State or otherwise entirely invalid as to any Member State, such Member State shall be deemed to have withdrawn from the Compact, and the Compact shall remain in full force and effect as to any remaining Member State. Finally, if this Compact is declared in a final judgment by a court of competent jurisdiction to be wholly or substantially in violation of Article I, Section 10, of the Constitution of the United States, then it shall be construed and enforced solely as reciprocal legislation enacted by the affected Member State(s).

Section 7. Termination. This Compact shall terminate and be held for naught when the Compact is fully performed and the Constitution of the United States is amended by the Balanced Budget Amendment. However, notwithstanding anything to the contrary set forth in this Compact, in the event such amendment does not occur within seven (7) years after the first State passes legislation enacting, adopting and agreeing to be bound to this Compact, the Compact shall terminate as follows: (a) the Commission shall dissolve and wind up its

| <b>General Assem</b> | bly of N | orth Carolina |
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- operations within ninety (90) days thereafter, with the Compact Administrator giving notice of 1 2 3 such dissolution and the operative effect of this section to the Compact Notice Recipients; and
  - (b) upon the completed dissolution of the Commission, this Compact shall be deemed
- 4 5 terminated, repealed, void ab initio, and held for naught."
  - **SECTION 2.** This act is effective when it becomes law.

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"The Compact for a Balanced Budget is the best vehicle for the most powerful, yet politically plausible federal Balanced Budget Amendment I have seen. I endorse it without hesitation."

#### Grover Norquist Americans for Tax Reform

"Do you believe a balanced-budget amendment is a required response to the nature of today's politics and governance, now that the courts neglect to do their duty enforcing Congress' adherence to the Constitution's enumeration of powers? If so, the Compact's amendment is remarkably resistant to evasion. It would use the Constitution's Article V to move the nation back toward the limited government the Constitution's Framers thought their document guaranteed."

George Will
Opinion Writer, Washington Post

"To stop the insanity of an out-of-control federal government fueled by limitless debt spending, States must unite behind the Compact for a Balanced Budget."

Judge Andrew Napolitano Senior Judicial Analyst, Fox News Channel

"Don't sit back and fret about runaway government. Get involved, take responsibility and help save the country. Support the Compact for America's balanced budget amendment - easily the single best vehicle to stop the sin of spending recklessly today and burdening our children and grandchildren with the tab. Your conscience demands it!"

## Lawrence Reed President, Foundation for Economic Education

"Without a limit on the federal government's borrowing capacity, nothing short of a system crash will force Washington to rethink its priorities and revisit first principles. But the character of our society has changed so much for the worse that we cannot assume that the process of rebuilding will lead to positive change. Instead, I believe we should do everything we can to stop the runaway train first. I am convinced that Compact for America's streamlined approach to ratifying a federal Balanced Budget Amerdment is our best chance."

James M. Rodney The Rodney Fund



"With the states serving as an active board of directors for our wayward federal executive and legislative 'CEOs' and the buck stopping at the President' desk, the Compact for a Balanced Budget would powerfully check and balance Washington's debt addicts."

#### Ilya Shapiro, JD Senior Fellow in Constitutional Studies and Editor-in-Chief of the Cato Supreme Court Review, Cato Institute

"The concept behind the Compact for America Initiative goes back to the days when the states were debating whether to ratify the proposed Constitution in the first place. The topic of states being able to propose particular amendments in a timely fashion was of specific importance in ratification discussions in the state of Virginia. The Compact for America Initiative is perfectly consistent with leading Virginia Federalist George Nicholas's explanation of the way the Article V amendment process would work."

# Kevin R.C. Gutzman, JD, PhD NY Times best-selling author, professor of history at Western Connecticut State University

"The Compact for a Balanced Budget is a viable approach to rein in excessive and unprioritized federal government spending that threatens the legacy of liberty we pass on to subsequent generations of Americans."

Lt. Col. Allen B. West (ret.) National Center for Policy Analysis

"The Compact for a Balanced Budget seems to be the best chance we have for avoiding default and disastrous inflation."

#### George Leef Forbes.com

"I support the tenets of the balanced budget amendment drafted by the Compact for America as well as the vehicle it has devised to initiate such an amendment – an interstate compact. It is time to rein in federal spending, and one of the most effective ways to do that would be with the adoption of a balanced budget amendment."

The Hon. John Culberson Member of Congress from the State of Texas "The balanced budget amendment proposed by the Compact for America is to the best of my scholarly judgment the best balanced-budget amendment ever proposed, not because it immediately brings about a balanced budget, but because of its dynamic properties. It will not only change for the better how Congress manages taxpayers' money, but it will also send a strong signal to global investors that the United States is now serious about solving its debt problems."

# Sven R. Larson, PhD Senior Fellow in Economics (fmr.) – Wyoming Liberty Group

"It is time to support the Compact for a Balanced Budget for the same reasons President Ronald Reagan supported Nobel Laureate Milton Friedman's effort — only the states will originate a powerful balanced budget amendment. Left to its own devices, Congress will never tie its own hands."

#### The Hon. Paulette Rakeshaw Braddock Member of the Georgia House of Representatives and Compact Commissioner for the State of Georgia

"Now it is time the federal government takes the necessary steps to address its out-of-control debt. America remains on an unsustainable spending path and we cannot rely on Congress or the president to fix this problem. A Balanced Budget Amendment will be an effective tool to rein in federal spending and not saddle future generations with our country's debt."

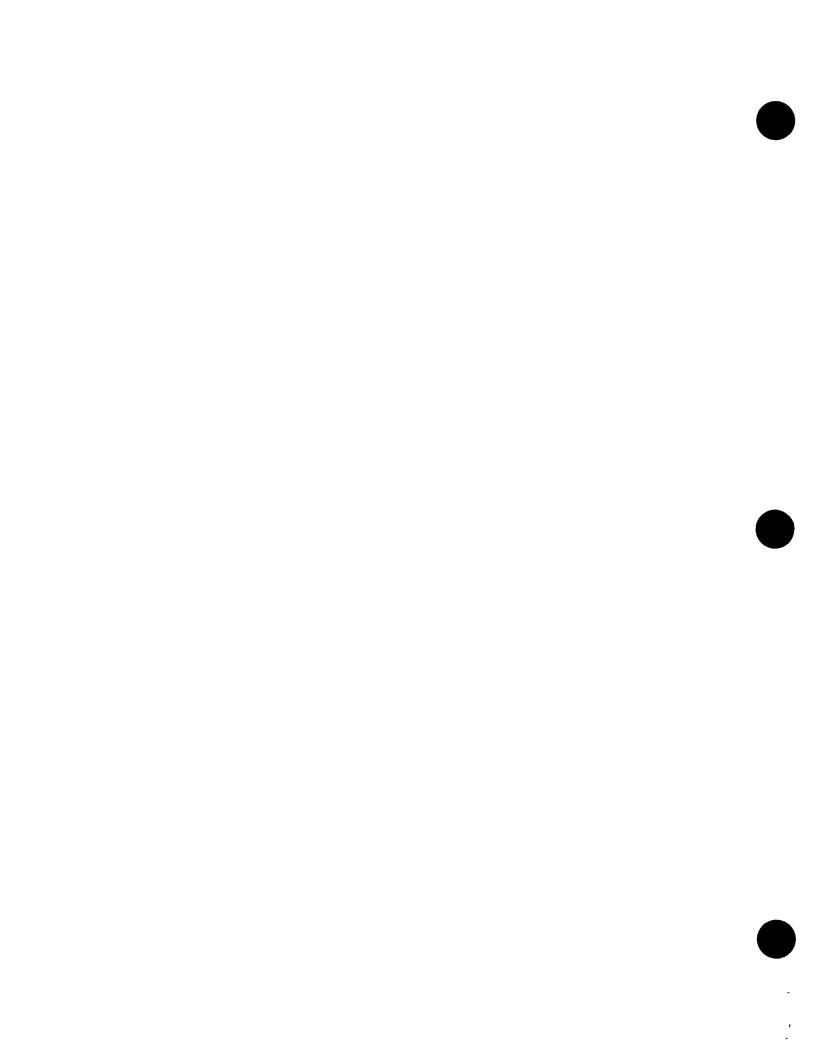
#### The Hon. Sean Parnell Governor of the State of Alaska

"The only rational plan to amend the Constitution and begin the process of balancing the Federal budget is the Compact for America's."

#### Mike Church Sirius XM Radio Personality

"I encourage the states to join the Compact for America's interstate compact without delay, and send the Compact's enabling resolution to Congress for action."

The Hon. Lamar Smith Member of Congress from the State of Texas



# Compact for America Educational Foundation, Inc. (c3)

www.CompactforAmerica.org

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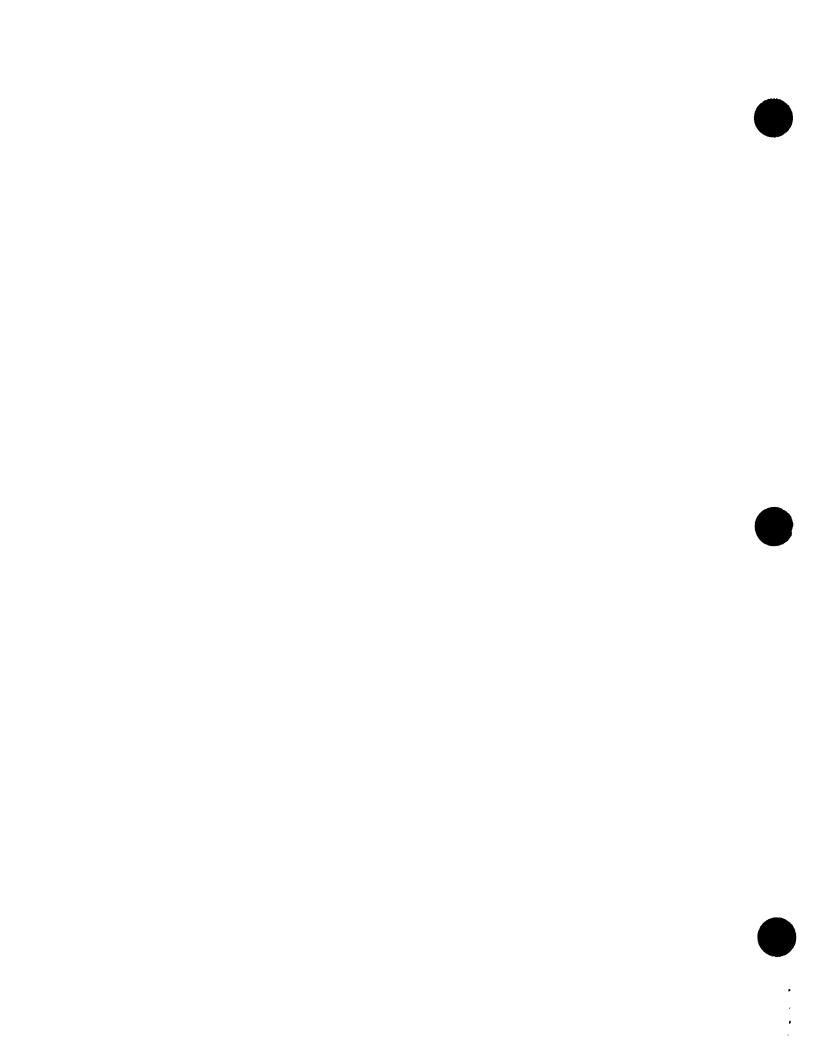
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# Citizens Against an Article V Convention judicaler@hotmail.com (530) 271-0296



# Points in opposition to HB 366

I. Compact for America's (CFA's) Balanced Budget Amendment (BBA) Does Not Control Federal Spending and Authorizes Imposition of a National VAT or Sales Tax

CFA's BBA cannot fix our debt and spending problems because it doesn't address the *cause* of the problem: Congress spends where it has no constitutional authority to spend.

CFA's BBA pretends to place a limit on total spending by Congress. However, the limit on total spending is fictitious because the spending limit can be raised whenever Congress wishes and 26 States agree.

In addition, CFA's BBA permits Congress to impose a national sales tax or VAT tax on the American People in addition to the income tax.

II. Brief Section by Section Analysis of CFA's BBA: 1

The text of the BBA proposed by CFA begins on page 2 of HB 366:

**Section 1** of the CFA's BBA says the federal government may not spend more than they take from us in taxes or *add* to the national debt.

**Section 2** accepts debt as a permanent feature of our Country – the "Authorized Debt." This is the maximum amount of debt the federal government may incur at any given point in time.

• *Initially*, when the Amendment is ratified, the "authorized debt" shall be 105% of the then existing national debt. So, if the national debt is \$20 trillion when the Amendment is ratified, the authorized debt is 105% of \$20 trillion or \$21 trillion.

<sup>&</sup>lt;sup>1</sup> "Balancing the Budget? Or Adding a National Sales Tax to the Income Tax?" by Publius Huldah, Renew America, January 30, 2014. http://www.renewamerica.com/columns/huldah/140130

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• After that *initial* addition to the national debt, the "authorized debt" may not be increased unless it is approved by State Legislatures as provided in Section 3.

**Section 3** says whenever Congress wants, it may increase the national debt if 26 of the State Legislatures agree.

**Section 4** says whenever the national debt exceeds 98% of "the debt limit set by Section 2," the President shall "impound" sufficient expenditures so that the national debt won't exceed the "authorized debt." And if the President doesn't do this, Congress may impeach him.

### However:

- No debt limit is set by Section 2! The national debt can be increased at any time if Congress gets 26 State Legislatures to agree.
- Section 6 defines "impoundment" as "a proposal not to spend all or part of a sum of money appropriated by Congress." Who believes Congress will impeach the President for failing to "impound" *an appropriation made by Congress*?!

**Section 5** says any new or increased "**general revenue tax**" must be approved by 2/3 of the members of both houses of Congress.

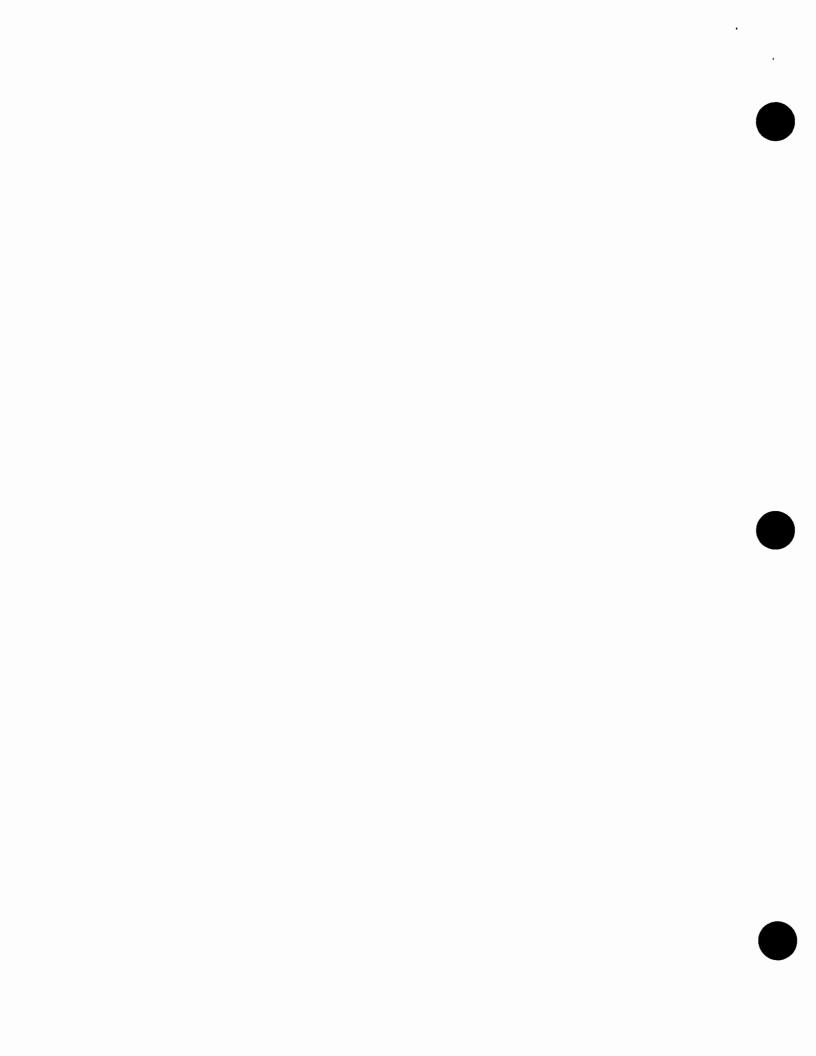
But this is a monstrous trick to be played on the American People: Section 6 defines "general revenue tax" as "any income tax, sales tax, or value-added tax" levied by the federal government excluding imports and duties.

When you read the first sentence of Section 5 with *the definition* of "general revenue tax," you see that it says:

"No bill that provides for a new or increased income tax, sales tax, or value-added tax shall become law unless approved by a two-thirds roll call vote..."

This permits Congress to impose a national sales tax or value-added tax *in addition to the income tax*, if 2/3 of both houses agree!

Section 5 then says that "this requirement" [a 2/3 vote of each House] does not apply to a "new end user sales tax" which would *replace the federal income tax. That* tax need



only be approved by a simple majority of the members of both houses. This makes most readers believe that the income tax would be replaced by a sales tax.

But the Amendment does not require Congress to introduce a "new end user sales tax" to replace the income tax. [Remember, that sales tax requires only a simple majority to get passed.]

Whereas it authorizes Congress to impose a sales tax or value-added tax in addition to the income tax! [This tax requires a 2/3 majority to get passed.]

Which option will Congress choose?

**Section 6** sets forth the definitions for the amendment. As you see, you must always read the definitions and apply them to the text.

**Section** 7 says the Amendment is "self-enforcing." But no Constitution or amendment is "self-enforcing." There is only one way to enforce our Constitution: WE THE PEOPLE, who are "the natural guardians of the Constitution" (<u>Federalist No. 16</u>, next to last paragraph), enforce it by learning it and by *throwing out* politicians who ignore it. And we must *always* be on guard against those who seek to destroy our Constitution.

III. Our Constitution already provides for control of federal spending

Our Constitution already provides a mechanism for limiting federal spending: spending is limited by the "enumerated powers" listed in the Constitution.

It has been estimated that approximately 80 percent of expenditures approved by Congress violate the U.S. Constitution.<sup>2</sup>

If an object is on the list of powers delegated to Congress or the President, Congress may lawfully appropriate funds for it. But if it isn't listed, Congress may not lawfully spend money on it.

All federal and State officials take an oath to support the federal Constitution. When people in Congress appropriate funds for objects not listed in the Constitution; and when

<sup>&</sup>lt;sup>2</sup> "How the Compact for American Threatens the Constitution" by Joe Wolverton, The New American, January 13, 2013 <a href="http://www.thenewamerican.com/usnews/constitution/item/14109-how-the-compact-for-america-threatens-the-constitution">http://www.thenewamerican.com/usnews/constitution/item/14109-how-the-compact-for-america-threatens-the-constitution</a>

State officials accept federal funds for objects not listed, they violate their oath to support the Constitution.

Power over education, agriculture, labor relations, energy, police, etc., is not delegated to the federal government; those powers were reserved by the States or the People. Congress spends on objects for which it has no constitutional authority such as bailouts of private businesses, welfare handouts, farming programs, education schemes, and grants paid to States to bribe them into implementing unconstitutional federal programs. It was the unconstitutional spending which gave us this crushing \$18 Trillion debt.

Instead of amending the Constitution, we must systematically dismantle unconstitutional federal departments and agencies and restore these functions to the States or the People. And since our Constitution was written to delegate to the federal government only the few and defined powers enumerated in the Constitution, we won't have to change the Constitution to rein in federal spending. The Constitution isn't the problem.

IV. CFA's Compact cannot circumvent the provisions of Article V of the United States Constitution.

CFA attempts to circumvent Article V of the Constitution by means of a "compact," which CFA claims can provide procedures for applying for an Article V convention; choose the convention chair; choose the delegates; specify duties of convention delegates; establish rules for the convention; limit the subject matter of the convention to ratifying the Balanced Budget Amendment; specify the mode of ratification, and more.

### But CFA may not override Article V by means of a compact or anything else!

Article V provides that when State Legislatures want a convention, they must apply to Congress for Congress to "call" it. And despite what CFA claims, the Constitution authorizes **only Congress** to set up and organize the convention.

The Constitution was meant for ordinary citizens to understand, and it is quite clear. Article I, Section 8, last clause, says:

"The Congress shall have the Power...: To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." [Boldface added]

Article V of the Constitution delegates to Congress the power to "call" a convention. The necessary and proper clause delegates to Congress the power to make **all** laws that are "necessary and proper" to carry out its power to "call" a convention. This would include laws pertaining to the time and place of the convention; determining the number and selection process for its delegates; apportionment of convention delegates among the states; how votes will be apportioned among the delegates; etc.

Furthermore, Article V provides that amendments will be proposed at the convention—the Convention is the deliberative body. Any State laws or Compact dictates which pretend to divest the convention of this deliberative function and convert it into a mere rubber stamp to approve amendments drafted by States, or agreed to by committees of States or "compacts" of States, would be void as contrary to the US Constitution. Such is the plan CFA is proposing: http://www.compactforamerica.org/#!home/c1zzr

# V. Congressional Research Service Report<sup>3</sup>

The Congressional Research Service (CRS) <u>Report issued April 11, 2014</u> confirms that Congress most likely will claim authority over the power to organize and set up an Article V convention. Because of lack of precedent and so many unknowns, the CRS Report suggests on page 27 that they'll have to call a convention to see what sort of convention they'll get: general, limited or runaway!

### VI. State Law cannot prevent a "Runaway" Convention

Those promoting an Article V convention assure us that delegates to a convention can be controlled by State laws. But that is not true. Delegates cannot even be controlled by federal laws!

It is not a matter of mere opinion that delegates to a convention have unlimited sovereign authority. They do! The second paragraph of the Declaration of Independence recognizes the sovereign right of a People to throw off their "Form of Government," and it was reinforced 11 years later in the preamble to our Constitution with "We the People..."

"To secure (our unalienable rights), Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive...it is the Right of the People to alter or abolish it, and to institute new Government..."

<sup>&</sup>lt;sup>3</sup> The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress, Thomas H. Neale, April 11, 2014.

### -Declaration of Independence, 1776, Paragraph 2.

The convention of 1787 was called by the Continental Congress "for the sole and express purpose" of revising the Articles of Confederation. But the delegates ignored their instructions and wrote an entirely new Constitution. Furthermore, they changed the mode of ratification. Whereas Article XIII of The Articles of Confederation required the Continental Congress and all of the then 13 States to approve Amendments before they became effective; the new Constitution provided at Article VII that it would require only 9 States for ratification. There is nothing that can stop delegates to a convention today from doing the same thing if they propose a new Constitution.

The only convention "for proposing amendments" is one called by Congress. And Congress has total power to organize and set it up. But once the delegates assemble, they are the sovereign representatives of the people and can do whatever they want. This includes proposing amendments on any subject or replacing the Constitution altogether and changing its mode of ratification.

### VII. Conclusion

We oppose HB 366 because it would legalize spending which is now unconstitutional as outside the scope of the enumerated powers; it would do nothing to control federal spending; and it would authorize Congress to impose a national sales tax or VAT tax on top of the existing income tax!

Furthermore, delegates to an Article V convention would have the inherent power to propose whatever changes to our Constitution they want, including abolishing our "Form of Government" and rewriting or replacing our Constitution, and changing the ratification process.

If there is an Article V convention, we run a grave risk of losing our Constitution and getting a new one imposed. Is that really what the North Carolina General Assembly wants to apply for?

Respectively Submitted,

Judi Caler

President



# SENATE BILL 699: Protect LEO Home Address/Other Information

2015-2016 General Assembly

Committee: House Judiciary I Introduced by: Sen. McKissick

**Analysis of:** PCS to Second Edition

S699-CSST-84

**Date:** August 4, 2015

Prepared by: R. Erika Churchill

Committee Counsel

SUMMARY: The proposed committee substitute for Senate Bill 699 would exempt certain personal information of sworn law enforcement officers who are employees of a county or city from disclosure.

CURRENT LAW: Current law provides that personnel files of current and former local government employees are confidential and cannot be released, except for certain items of information which must be maintained as separate public records. Generally, the items that must be released as public records are: Name; Age; Date of original employment or appointment to the county service; Terms of any contract by which the employee is employed whether written or oral, past and current, if written; Current position; Title; Current salary; Date and amount of each increase or decrease in salary; Date and type of each promotion, demotion, transfer, suspension, separation or other change in position classification; Date and general description of the reasons for each promotion; Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken; The office to which the employee is currently assigned.

Additionally, even if the information is considered part of an employee's personnel file, the following need not be disclosed to an employee or to any other person:

- > Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion, when disclosure would compromise the objectivity or the fairness of the testing or examination process.
- Investigative reports or other information concerning the investigation of possible criminal actions of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.
- Information that might identify an undercover law enforcement officer or a law enforcement informer.
- Notes, preliminary drafts and internal communications concerning an employee.

Similar statutes govern the personnel records of: local boards of education, community colleges, area mental health authorities, State employees, public health authorities, counties, cities, and water and sewer authorities. Criminal penalties apply to willfully examining, copying or removing a confidential employee file.

The collection of social security numbers by state and local agencies is prohibited except in certain situations. Except for recorded documents and court records, social security numbers are to be segregated from other public record information, and the release of social security numbers to the general public is prohibited. Clerks of court and registers of deeds are not required to purge existing databases of identifying information, but are required to redact that information when specifically requested by the person whose identifying information is contained on a public record under the control of the clerk or register of deed. If an agency of the State, or a county or city experiences a security breach of personal information, the county or city must notify the affected persons. G.S. 132-1.10.

O. Walker Reagan
Director



Research Division (919) 733-2578

# Senate Bill 699

Page 2

**BILL ANALYSIS:** The proposed committee substitute for Senate Bill 699 would add a new subsection to statutes governing disclosure of employee personnel files for counties (G.S. 153A-98) and cities (G.S. 160A-168) that would prohibit the disclosure of the following information regarding a sworn law enforcement officer:

- 1. Information that might identify the residence of a sworn law enforcement officer.
- 2. Emergency contact information.
- 3. Any of the following identifying information: social security or employer taxpayer identification numbers; drivers license, State identification card, or passport numbers; checking account numbers; savings account numbers; credit card numbers; debit card numbers; PIN codes; electronic identification numbers, electronic mail names or addresses, internet account numbers, or internet identification names; digital signatures; any other numbers or information that can be used to access a person's financial resources; biometric data; fingerprints; passwords; parent's legal surname prior to marriage.

This prohibition on disclosure would not apply to any of the following:

- Records of criminal investigations and 911 calls, as specified in G.S. 132-1.4.
- Records of the register of deeds and courts, as specified in G.S. 132-1.10.
- For the personal safety of the sworn law enforcement officer or any other residing in the same residence as the sworn law enforcement officer.

**EFFECTIVE DATE:** October 1, 2015.

# GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

S

### **SENATE BILL 699**

D

# Judiciary II Committee Substitute Adopted 4/29/15 PROPOSED HOUSE COMMITTEE SUBSTITUTE S699-CSST-84 [v.3]

8/4/2015 6:06:21 PM

| Short Title: Protect LEO Home Address/Other Information.  | (Public)  |
|---|-----------|
| Sponsors:   |           |
| Referred to:  |           |
| March 30, 2015  |           |
| A BILL TO BE ENTITLED  AN ACT TO PROTECT CERTAIN PERSONAL INFORMATION OF ENFORCEMENT OFFICERS FROM DISCLOSURE. The General Assembly of North Carolina enacts:   | F LAW     |
| SECTION 1. G.S. 153A-98 is amended by adding a new subsection to read "(c4) Even if considered part of an employee's personnel file or any other inf  | ormation  |
| maintained by the county, the following information regarding any sworn law enforcer shall not be disclosed to an employee or any other person, unless discovered and with C.S. 132, 1.4 or in accordance with C.S. 132, 1.10 or for the person | closed in |
| accordance with G.S. 132-1.4, or in accordance with G.S. 132-1.10, or for the person of that sworn law enforcement officer or any other person residing in the same residence.  |           |
| (1) <u>Information that might identify the residence of a sworn law enformation of the sworn law enforces.</u>  |           |
| (2) Emergency contact information. (3) Any identifying information as defined in G.S. 14-113.20."  SECTION 2. G.S. 160A-168(c1) is amended by adding a new subse  | ection to |
| read:(c1) reads as rewritten:   | cetion to |
| "(c4) Even if considered part of an employee's personnel file or any other inf maintained by the city, the following information regarding any sworn law enforcement  |           |
| shall not be disclosed to an employee or any other person, unless disclosed in accorda  | ance with |
| G.S. 132-1.4, or in accordance with G.S. 132-1.10, or for the personal safety of that sy  | worn law  |
| enforcement officer or any other person residing in the same residence:   | araamant  |
| (1) <u>Information that might identify the residence of a sworn law enfo<br/>officer.</u>   | orcement  |
| (2) Emergency contact information.  |           |
| (3) Any identifying information as defined in G.S. 14-113.20."  |           |



**SECTION 3.** This act becomes effective October 1, 2015.

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# GENERAL ASSEMBLY OF NORTH CAROLINA **SESSION 2015**

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# **SENATE BILL 699** Judiciary II Committee Substitute Adopted 4/29/15

2

(Public) Short Title: Protect LEO Home Address/Other Information. Sponsors: Referred to: March 30, 2015 A BILL TO BE ENTITLED AN ACT TO PROTECT CERTAIN PERSONAL INFORMATION OF LAW ENFORCEMENT OFFICERS FROM DISCLOSURE. The General Assembly of North Carolina enacts: **SECTION 1.** Chapter 132 of the North Carolina General Statutes is amended by adding a new section to read: "§ 132-12. Nondisclosure of personal information of locally employed sworn law enforcement officers. A sworn law enforcement officer employed by a unit of local government may (a) request that the officer's employer exempt from examination and inspection the officer's name, home address, Social Security number, medical, disability, and emergency contact information. The request must be in writing and must be renewed annually. For purposes of this section, the office of the sheriff is the employer of a sworn law enforcement officer employed by a county and the office of the chief of police is the employer for a sworn law enforcement officer employed by a municipality. Nothing in this section increases, decreases, or otherwise in any manner changes the application of G.S. 132-1.10 with regard to information contained on documents recorded or filed in the official records of the register of deeds, the Department of the Secretary of State, or

of the courts."

**SECTION 2.** This act becomes effective October 1, 2015.



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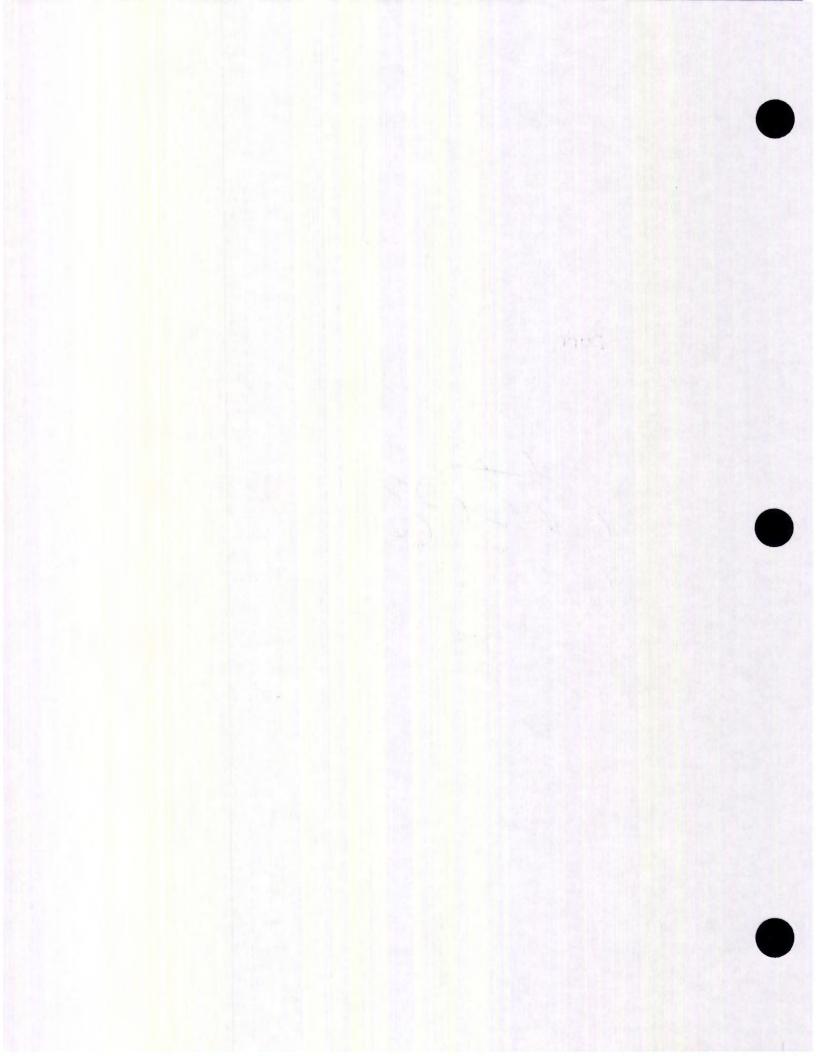


# NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

Senate Bill 699

|       | \$600 AST 124                  | 5 ( <sub>v.</sub> 17                                  | (                       | MENDMENT NOto be filled in by Principal Clerk) |
|-------|--------------------------------|---|-------------------------|--|
|       | S699-AST-125                   | 5 [V.1]   |                         | Page 1 of 1                                    |
|       | Amends Title<br>Second Edition | n   | Date                    | .2015  |
|       | Representative                 | POPT  |                         |  |
| 1 2 3 |                                | end the bill on page 1, 1 the county," and substituti |                         | "file or any other information                 |
| 4 5   | and on page 1 and substituting |   | file or any other infor | rmation maintained by the city,"               |
|       | SIGNED                         | Amendment   | Sponsor                 |  |
|       | SIGNED                         | Committee Chair if Senate                             | Committee Amendmen      | nt   |
|       | ADOPTED _                      | FAIL  | ED                      | TABLED _                                       |





# NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

# JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

### FAVORABLE AND RE-REFERRED

HB 366 Compact/Balanced Budget.

Draft Number: None

Serial Referral: APPROPRIATIONS

Recommended Referral: None Long Title Amended: No Floor Manager: Millis

## FAVORABLE HOUSE COM SUB, UNFAVORABLE SENATE COM SUB

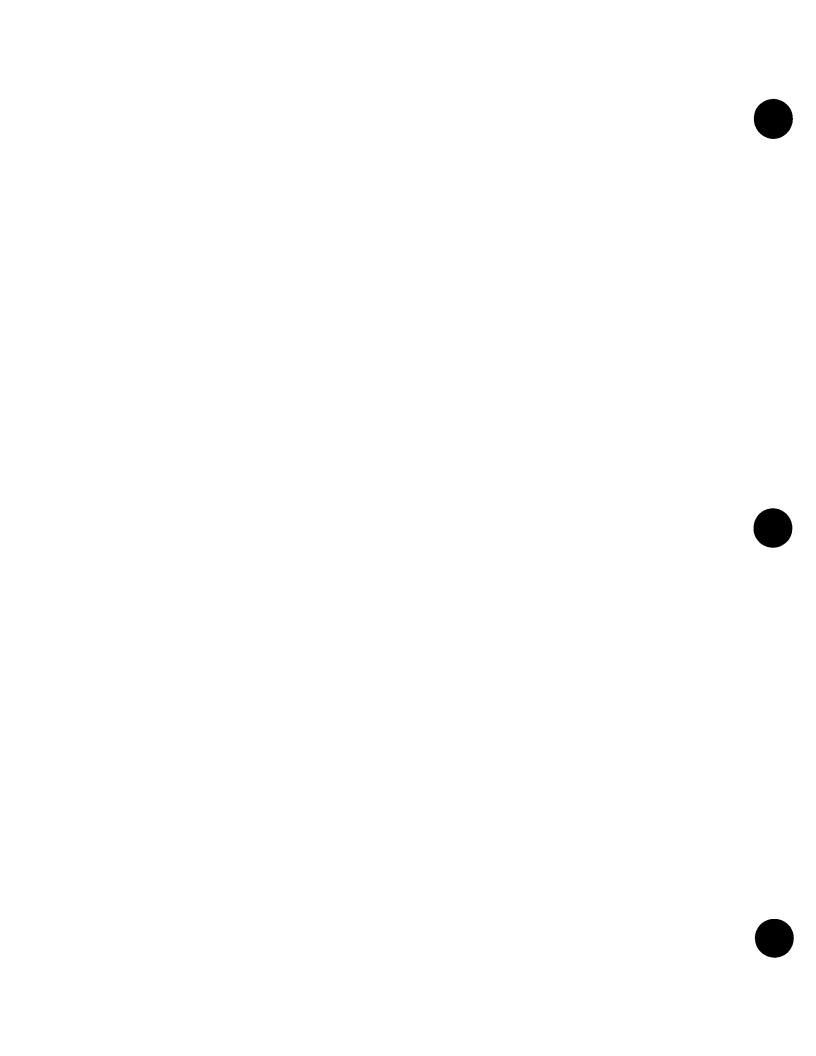
SB 699 (CS#1) Protect LEO Home Address/Other Information.

Draft Number: S699-PCS25278-ST-84

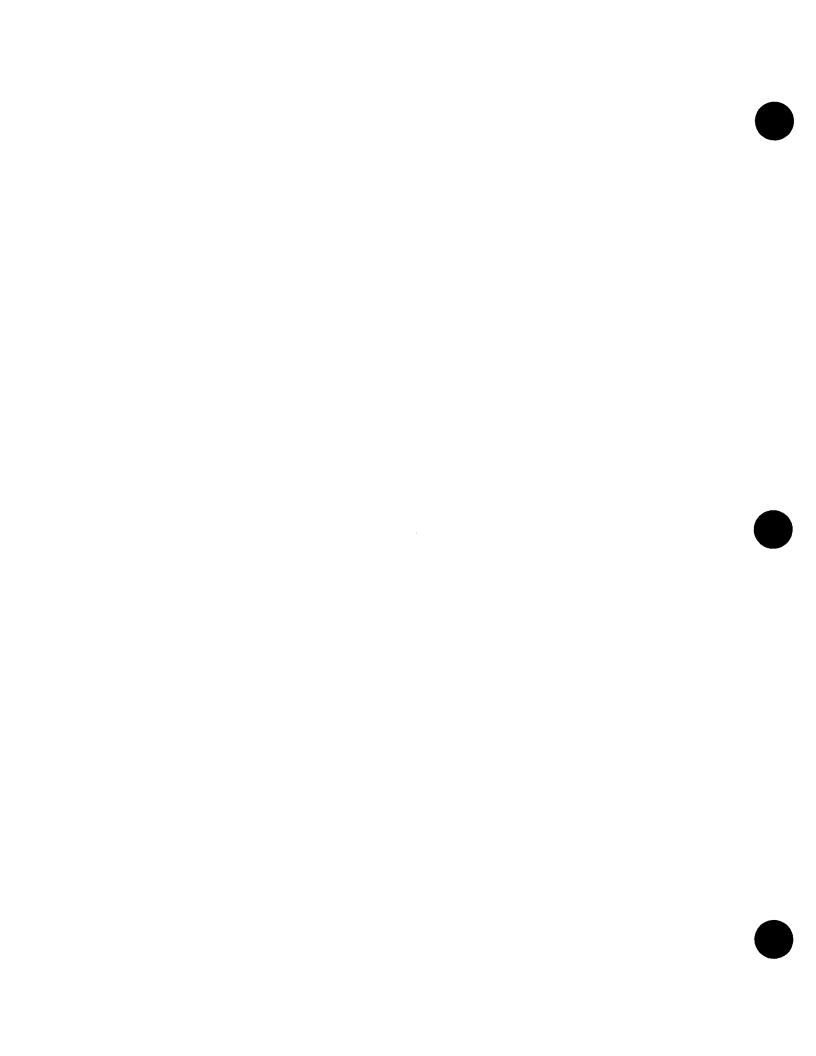
Serial Referral: None
Recommended Referral: None
Long Title Amended: No
Floor Manager: Hager

**TOTAL REPORTED: 2** 





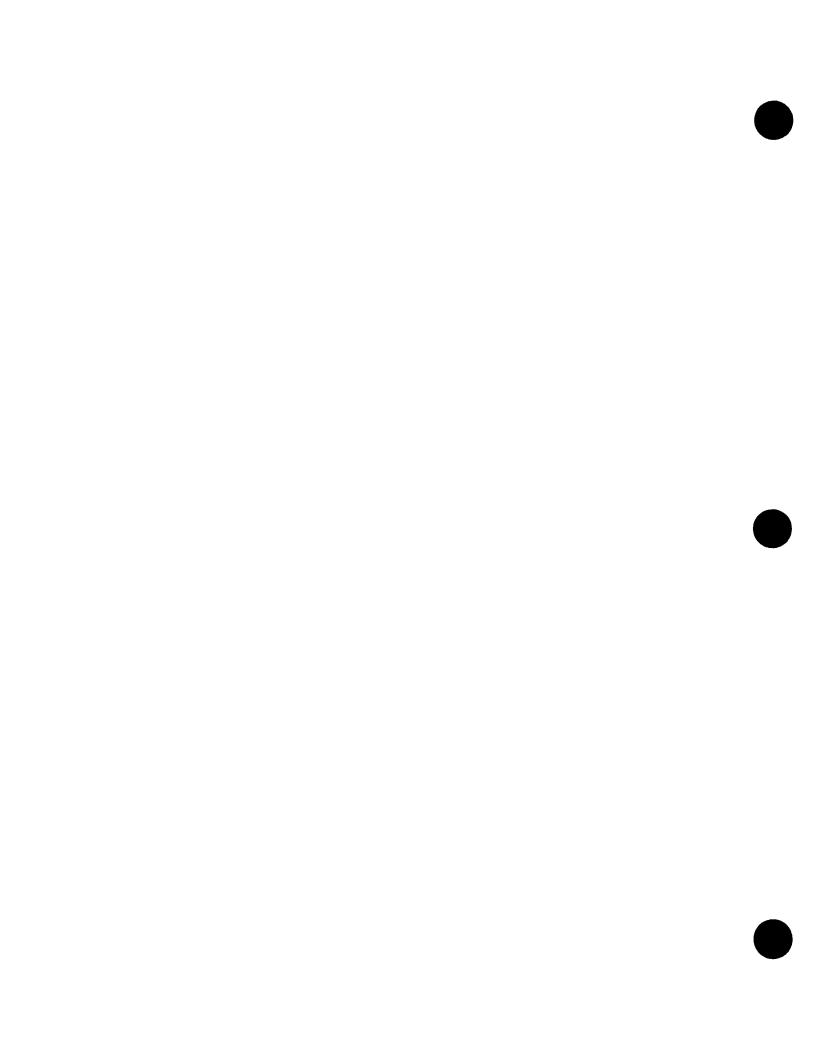
|  | Date: aug 5, 2015                        |
|--|--|
| Bill Number <u>56699</u>                         | V  |
| PCS 5699- CSST-                                  | 84 LV.3 J                                |
| Motion to be before the committee by _           | Hardister                                |
| Sen. McLissica  Discussion on the Bill YES or NO | explained the bill.                      |
| Rep Hardister                                    | motioned for:                            |
| Favorable Report                                 | Adoption                                 |
| Unfavorable Report                               | Unfavorable to original bill, fav to PCS |
| No vote  | >rolled into a PCS                       |
| Amendments: 45                                   | 9-AST-125 [V.1]                          |
| Serial referral to:                              |  |
|  |  |
| Speakers:  |  |
| Handouts:  | - Floor manager                          |



Canclus ranover Start time

Date: Aug 5, 2015

|  | Date: <u>Ulla 0, 2010</u>                |
|--|--|
| Bill Number 366                        |  |
| PCSNO                                  |  |
| Motion to be before the committee by _ |  |
| Rep                                    | explained the bill. Enka Churchill       |
| Rep Macheill                           | motioned for:                            |
| Favorable Report                       | Adoption                                 |
| Unfavorable Report                     | Unfavorable to original bill, fav to PCS |
| No vote                                |  |
| Amendments: :                          |  |
| Serial referral to: Approx             | )  |
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| Handouts: Gertin                       | 83                                       |
| Will responded                         |  |
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| Willes                                 |  |



| Wednesday, Aug 5 JUDICIARY I Name | Room 415 County | Time 12:30 pm  Sponsor |
|-----------------------------------|-----------------|------------------------|
| Carly Conway                      | Pitt            | George Graham          |
| Katherine Corsetti                | Wake            | Duane Hall             |
| Katie Danis                       | Gaston          | Dana Bumgardner        |
| Spencer Heath                     | Mecklenburg     | William Brawley        |
| Chris Riley                       | Johnston        | Charles Jester         |

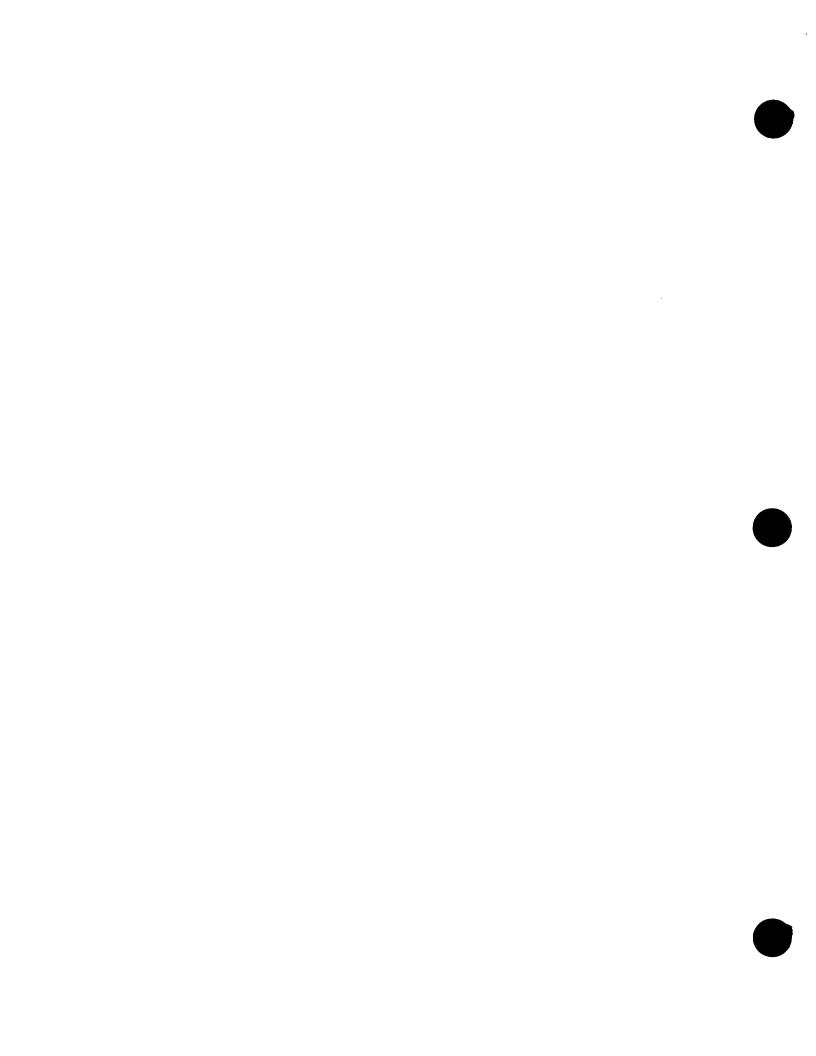
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# North Carolina General Assembly - House Sergeant-at-Arms

# House Staff

| House Staff                                   |
|---|
| Committee: House Judiciary 1 Date: 5 AUG 2015 |
| Pages   |
| Name: CARLY CONWAY                            |
| County: PITT Sponsor: Geo. GRAham             |
| Name: Katherine Corsetti                      |
| County: Walle Sponsor: Duane HALC             |
| Name: KATI-e DANIS                            |
| County: GASTON Sponsor: DANA BUMGARDNEY       |
| Name: Spercer Hearth                          |
| County: Mecklenburg Sponsor: WM BRAWley       |
| Name: Chris Riley                             |
| County: Johnston Sponsor: Chas JETER          |
| Sergeants-at-Arms                             |
| B.H. Powell                                   |
| DAVID LINTHICUM                               |
| REY COOKE                                     |
|   |





# North Carolina General Assembly - House Sergeant-at-Arms

| Speaker List   |  |
|--|--|
| Committee: Judiciary 1 Date: 5 Aug                               | 2015   |
| Name Wynne Coleman No Convention of S                            | states NC  |
| reset (Chip De Moss - Compact Administrator - Compact for a Bala | ned Budget   |
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# North Carolina General Assembly - House Sergeant-at-Arms

# Visitors

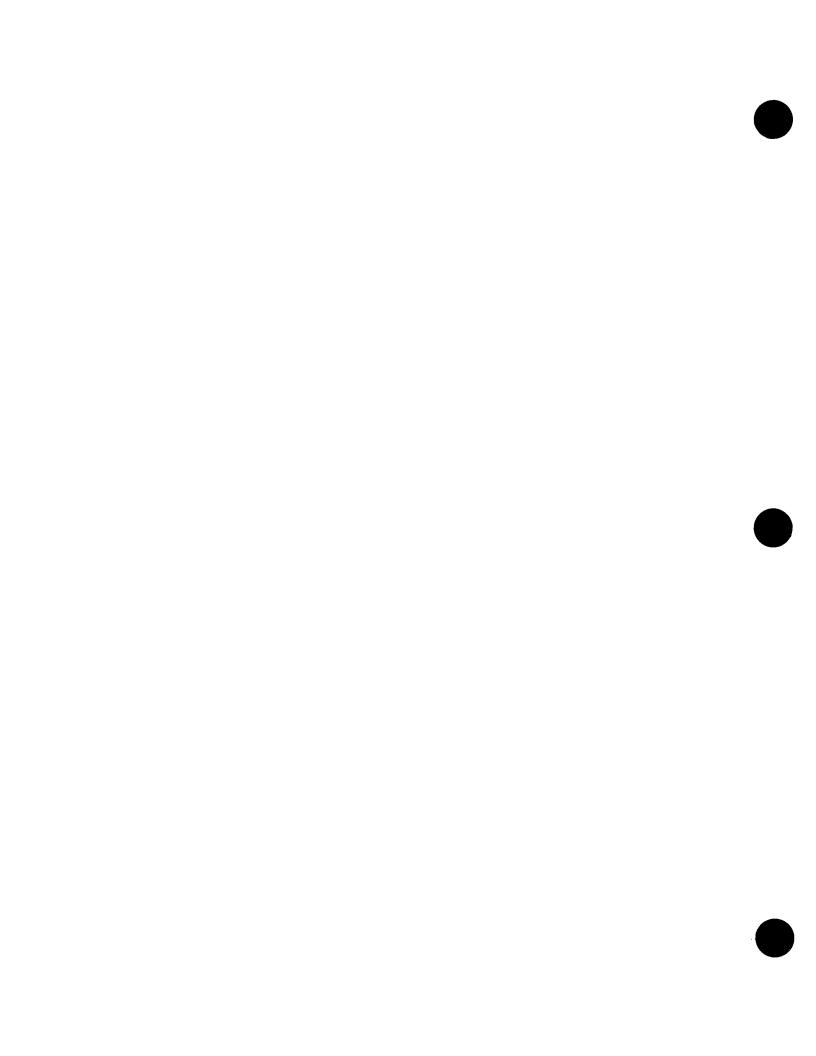
| Committee: House Judician | 4 1 Date: 5 Aug 2015             |
|---------------------------|----------------------------------|
| Chris Mcline              | Organization                     |
| Annaliese Dolph           | DC                               |
| Sarah Preston             | ACLU-DC                          |
| Andy Chase                | RMA                              |
| Trent Womble              | DHHS                             |
| Drew Ellist               | J+3                              |
| Tou Mary                  | NC AOC                           |
| David Formall             | VB                               |
| Wynne Coleman             | No Convention of States NC (NoCa |
| Gerry R. Coleman.         | 11 11 11                         |
| Jacob Yarborough          | Intern - Rep. Millis             |
| 1J Brussee                | NP                               |
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| Jud Bright                | Police Chiefs lower              |
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# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

You are hereby notified that the House Committee on Judiciary I will meet as follows:

| DAY & DATE:<br>TIME:<br>LOCATION:  | <ul><li>Wednesday, August 19, 2015</li><li>12:30 PM</li><li>415 LOB</li></ul> |   |  |  |  |
|------------------------------------|---|---|--|--|--|
| The following b                    | ills will be considered:  |   |  |  |  |
|                                    | HORT TITLE nclaimed Life Insurance Benefits.                                  | SPONSOR<br>Senator Apodaca                      |  |  |  |
| Respectfully,                      |   |   |  |  |  |
|                                    | Represer  | atative N. Leo Daughtry, Chair                  |  |  |  |
| I hereby certify<br>Thursday, Augu | -   | ssistant at the following offices at 9:54 AM on |  |  |  |
|                                    | _ Principal Clerk<br>_ Reading Clerk – House Chamber                          |   |  |  |  |
| Jan Copeland (C                    | Committee Assistant)  |   |  |  |  |



# House Committee on Judiciary I Wednesday, August 19, 2015, 12:30 PM 415 Legislative Office Building

# **AGENDA**

Welcome and Opening Remarks

**Introduction of Pages** 

**Bills** 

**BILL NO. SHORT TITLE** 

**SPONSOR** 

Unclaimed Life Insurance Benefits. SB 665 Senator Apodaca

**Presentations** 

Other Business

Adjournment

# House Committee on Judiciary I Wednesday, August 19, 2015 at 12:30 PM Room 415 of the Legislative Office Building

### **MINUTES**

The House Committee on Judiciary I met at 12:30 PM on August 19, 2015 in Room 415 of the Legislative Office Building. Representatives Daughtry, Burr, Jackson, Hall, Hardister, Howard, Martin, McNeill, Robinson, Steinburg and Szoka attended.

Representative N. Leo Daughtry, Chair, presided.

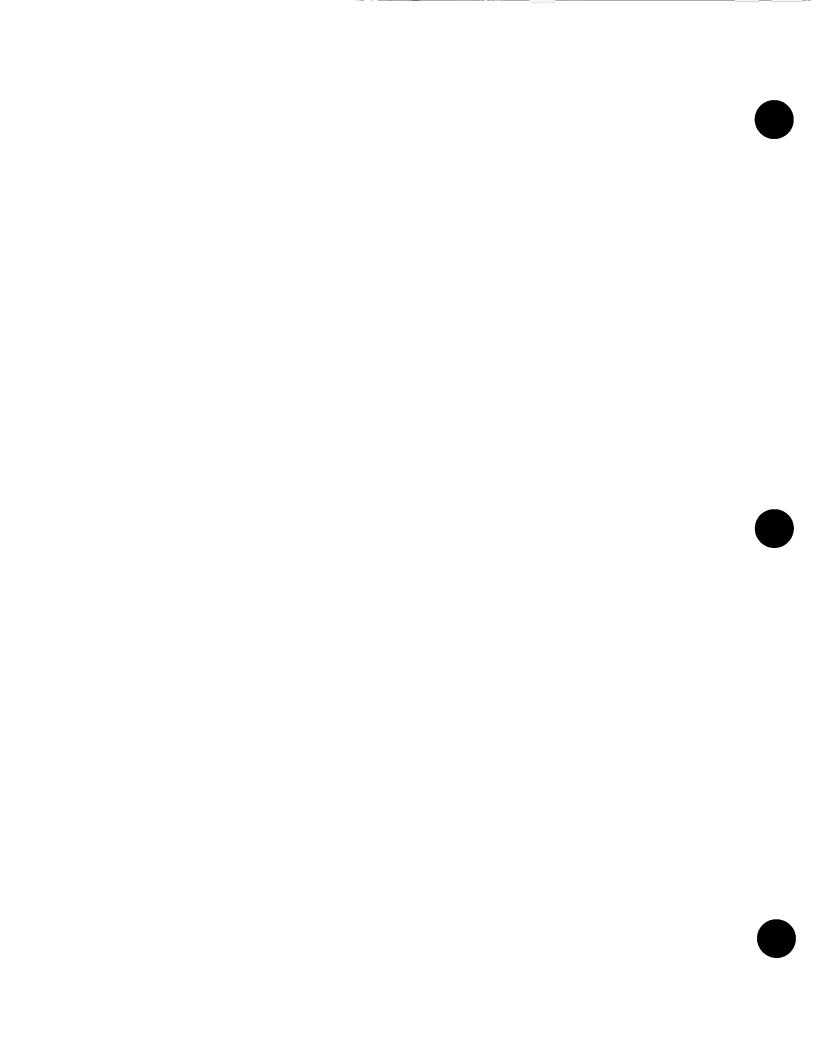
The following bills were considered:

SB 665 Unclaimed Life Insurance Benefits. (Senator Apodaca) – favorable House committee substitute, unfavorable original bill and re-referred to the Insurance Committee.

The meeting adjourned at 1:24 p.m..

Representative N. Leo Daughtry, Chair Presiding

Jan Copeland, Committee Clerk





# **SENATE BILL 665: Unclaimed Life Insurance Benefits**

2015-2016 General Assembly

Committee:

House Judiciary I, if favorable, Insurance

Date:

August 18, 2015

Introduced by:

Sen. Apodaca

Prepared by:

R. Erika Churchill

Analysis of:

PCS to Second Edition

Committee Counsel

S665-CSST-89

SUMMARY: The proposed committee substitute for Senate Bill 665 would require insurance companies authorized to transact life insurance business in North Carolina to determine, semi-annually, if that insurer's records of in-force policies, annuities, and account owners cross-match with any record in the United States Social Security Administration's death master file or a similar database, with some exceptions. Upon a match, the insurer would be required to engage in a good-faith effort to verify the death and locate any beneficiaries.

CURRENT LAW AND BACKGROUND: The North Carolina Unclaimed Property Act ("the Act") is found in Article 4 of Chapter 116B of the General Statutes. An amount due and payable under a life insurance policy is considered property under the Act. The Act addresses when property is presumed abandoned, rules for taking custody, and notification and reporting requirements. All property escheated or abandoned under the Act must be paid into the Escheat Fund, which is administered by the State Treasurer.

The North Carolina Department of Insurance has a "Lost Life Insurance and Annuity Inquiry Service" to help consumers locate benefits from life insurance policies or annuity contracts purchased in North Carolina. According to the Department's website, possible beneficiaries, as well as executors and legal representatives, may submit an inquiry form that will be forwarded to North Carolina-licensed life insurance companies, who will then contact the individual if a policy is located. \(^1\)

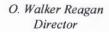
### BILL ANALYSIS: The PCS for Senate Bill 665 would do all of the following:

1. Require, with some exceptions, companies authorized to transact life insurance business in North Carolina to conduct a semi-annual comparison of its policies, annuities, and account owners with the death master file (DMF) from the U.S. Social Security Administration (or a similar database) to determine potential matches.

Exceptions to the cross matching requirement are:

- Policies or annuities for which the insurer has received active premium payment (premiums from outside the policy value, by check, bank draft, payroll deduction) within the 18 months immediately preceding the death master file comparison.
- Group life insurance policies for which the insurer does not perform record keeping services.
- o Any policies, annuities, or retained asset accounts issued or delivered prior to October 1,

http://www.ncdoi.com/consumer/Consumer\_Life\_Lost\_Policy.aspx





Research Division (919) 733-2578

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2015, if the insurer attests in a sworn statement subject to perjury, signed by an officer or director of the insurer, that upon information and belief, all of the following are true:

- The insurer has not engaged in asymmetric conduct. Asymmetric conduct is defined as an insurer's selective use of the DMF prior to October 1, 2015, to identify if persons are deceased to terminate benefits but not to pay benefits.
- The insurer has historically practiced acted in compliance with the requirements of G.S. 58-63-15(11) with respect to the investigation, handling and payment of policy proceeds.
- The insurer monitors the limiting age of each person, as stated in the policy, and performs its obligations under Chapter 116B of the General Statutes when an insured has reached limiting age.

An insurer may comply with the cross-matching requirements by using the full death master file once and thereafter using the death master file update files for future comparisons. Any insurer that is exempted from the cross-matching requirements due to not engaging in asymmetric conduct must comply with the cross-matching requirements for all policies, annuities, or retained asset accounts issued after October 1, 2015.

- 2. Within 90 days of the insurer learns of a possible death, whether through the cross-match or otherwise, the insurer would be required to complete a good-faith effort to confirm the death, determine what benefits may be due, and to locate and instruct the beneficiaries on how to submit a claim. An insurer would not be allowed to charge a beneficiary for any fees or costs associated with a DMF search or the cross-match. If beneficiaries cannot be found, the benefits would escheat to the State as unclaimed property.
- 3. A pattern of failures to meet the requirements above may constitute an unfair claims settlement practice under Chapter 58 of the General Statutes.
- 4. The Commissioner of Insurance would be authorized to adopt rules to implement the act, effect when the act becomes law.

**EFFECTIVE DATE:** Except as otherwise noted, the act is effective October 1, 2015.

Kristen Harris substantially contributed to this summary.

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#### **SENATE BILL 665**

D

### Second Edition Engrossed 4/27/15

### PROPOSED HOUSE COMMITTEE SUBSTITUTE S665-CSST-89 [v.3]

| Short Title: U          | Inclaimed Life Insurance Benefits.   | (Public)           |
|-------------------------|--|--------------------|
| Sponsors:               |  |                    |
| Referred to:            |  |                    |
|                         | March 30, 2015   |                    |
| AN ACT TO<br>BENEFITS   | A BILL TO BE ENTITLED ENACT THE NORTH CAROLINA UNCLAIMED LIFT ACT.   | E INSURANCE        |
|                         | sembly of North Carolina enacts:   |                    |
| SEC                     | TION 1. Article 58 of Chapter 58 of the General Statutes   | s is amended by    |
| adding a new Pa         |  |                    |
|                         | "Part 7. Unclaimed Life Insurance Benefits.  |                    |
| " <u>§ 58-58-360. I</u> |  |                    |
|                         | part shall be known as the "Unclaimed Life Insurance Benefits  | Act".              |
|                         | No preemption of Unclaimed Property Act.   | N 4 C P            |
| Nothing in t            | his part shall be construed to amend, modify, or supersede th  | e North Carolina   |
| Unclaimed Proj          | perty Act, Article 4 of Chapter 116B of the General Statute  | es, including the  |
|                         | North Carolina Department of State Treasurer to examine rec  |                    |
|                         | fically, nothing in this Part shall restrict the authority of the State Treasurer to request or access records of an insurer   |                    |
|                         | the insurer's records under Chapter 116B of the General Statute  |                    |
| "§ 58-58-380. I         |  | 75.                |
|                         | ng definitions apply in this Part:   |                    |
| (1)                     | Account owner The owner of a retained asset account  | int opened by a    |
| 1 <u></u> /             | resident of this State.  |                    |
| (2)                     | Active premium payment Payment of premiums for pol   | icies or annuities |
|                         | that the insurer receives from outside the policy value, b   | y check, payroll   |
|                         | deduction, or any other similar method of deliberate paymer  | nt.                |
| (3)                     | Annuity Any active annuity contract issued in this Sta   | te, other than an  |
|                         | annuity used to fund an employment-based retirement  |                    |
|                         | where (i) the insurer does not perform the record keeping  |                    |
|                         | insurer is not committed by terms of the annuity contra  |                    |
|                         | benefits to the beneficiaries of specific plan participants, o   |                    |
|                         | is used to fund a preneed funeral contract as defined in G.S.  |                    |
| <u>(4)</u>              | Asymmetric conduct. – An insurer's selective use of information of the selective use of the selective use of information of the selective use of the selecti |                    |
|                         | DMF prior to October 1, 2015, to identify whether cer  |                    |
|                         | deceased, in order to terminate benefits, but not to de  |                    |
|                         | insureds under the insurer's insurance policies in a non   | i-active premium   |



paying status are deceased for the purpose of paying benefits.

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| 1        | <u>(5)</u>        | Beneficiary An individual or other entity entitled to benefits under a                                      |
|----------|-------------------|---|
| 2        |                   | policy or annuity due to the death of the beneficiary.  |
| 3        | <u>(6)</u>        | Death master file or DMF. – Any of the following:   |
| 4        |                   | a. The death master file from the United States social security   |
| 5        |                   | administration.   |
| 6        |                   | b. Any other database or service that an insurer may determine is   |
| 7        |                   | substantially as inclusive as the death master file from the United   |
| 8        |                   | States social security administration for determining that a person has                                     |
| 9        | (=)               | reportedly died.  |
| 10       | <u>(7)</u>        | Death master file match or DMF match. – A search of a DMF that results in                                   |
| 11       | (0)               | a match of a person's social security number or name and date of birth.                                     |
| 12       | (8)               | Insurer Any insurance company authorized to transact life insurance   |
| 13       |                   | business in this State.   |
| 14       | <u>(9)</u>        | Person. – The policy insured, annuity owner, annuitant, or account owner, as                                |
| 15       |                   | applicable under the policy, annuity, or retained asset account subject to this                             |
| 16       | (4.5)             | Part.   |
| 17       | (10)              | Policy. – any policy or certificate of life insurance issued in this State, but                             |
| 18       |                   | does not include any policy or certificate of life insurance that provides a                                |
| 19       |                   | death benefit under any of the following:   |
| 20       |                   | a. An employee benefit plan subject to the Employee Retirement  |
| 21       |                   | Income Security Act of 1974, as periodically amended, compiled at   |
| 22       |                   | 29 U.S.C. § 1002 et seq.  |
| 23       |                   | b. Any federal employee benefit program.  |
| 24       |                   | c. Government plans or church plans as defined in the Employee  |
| 25       |                   | Retirement Income Security Act of 1974, as periodically amended,  |
| 26       |                   | 29 U.S.C. § 1002 et seq.  |
| 27       |                   | d. A policy or certificate of life insurance that is used to fund a preneed                                 |
| 28       |                   | funeral contract as defined in G.S. 90-210.60.  |
| 29       | (11)              | e. A policy or certificate of credit life or accident and health insurance.                                 |
| 30       | (11)              | Record keeping services. – Those circumstances under which the insurer has                                  |
| 31<br>32 |                   | agreed with a group life insurance policyholder to be responsible for                                       |
| 33       |                   | obtaining, maintaining, and administering in its own systems information                                    |
| 34       |                   | about each individual insured under the policyholder's group life insurance                                 |
| 35       |                   | contract that includes at least all of the following items:   |
| 36       |                   | a. Individual insured's social security number or name and date of birth.                                   |
| 37       |                   | b. Beneficiary designation information.   |
| 38       |                   | c. Coverage eligibility.  |
| 39       |                   | d. Benefit amount.  |
| 40       | (12)              | e. Premium payment status.  |
| 41       | (12)              | Retained asset account. – An account created when a life insurance company                                  |
| 42       |                   | pays the proceeds from a life insurance policy or annuity contract to a                                     |
| 43       |                   | beneficiary by establishing an account containing those proceeds in name of and for use by the beneficiary. |
| 44       | "8 58-58-300 D    | equirements for insurers.   |
| 45       |                   | e extent that an insurer's records of its in-force policies, annuities, and account                         |
| 46       |                   | able electronically, an insurer shall perform a comparison of such in-force                                 |
| 47       |                   | s, and account owners against a death master file, on a semi-annual basis, to                               |
| 48       |                   | death master file matches. To the extent that an insurer's records of its                                   |
| 10       | identity potentia | death master the materies. To the extent that all mouter's records of its                                   |

Page 2

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in-force policies, annuities, and account owners are not available electronically, an insurer shall

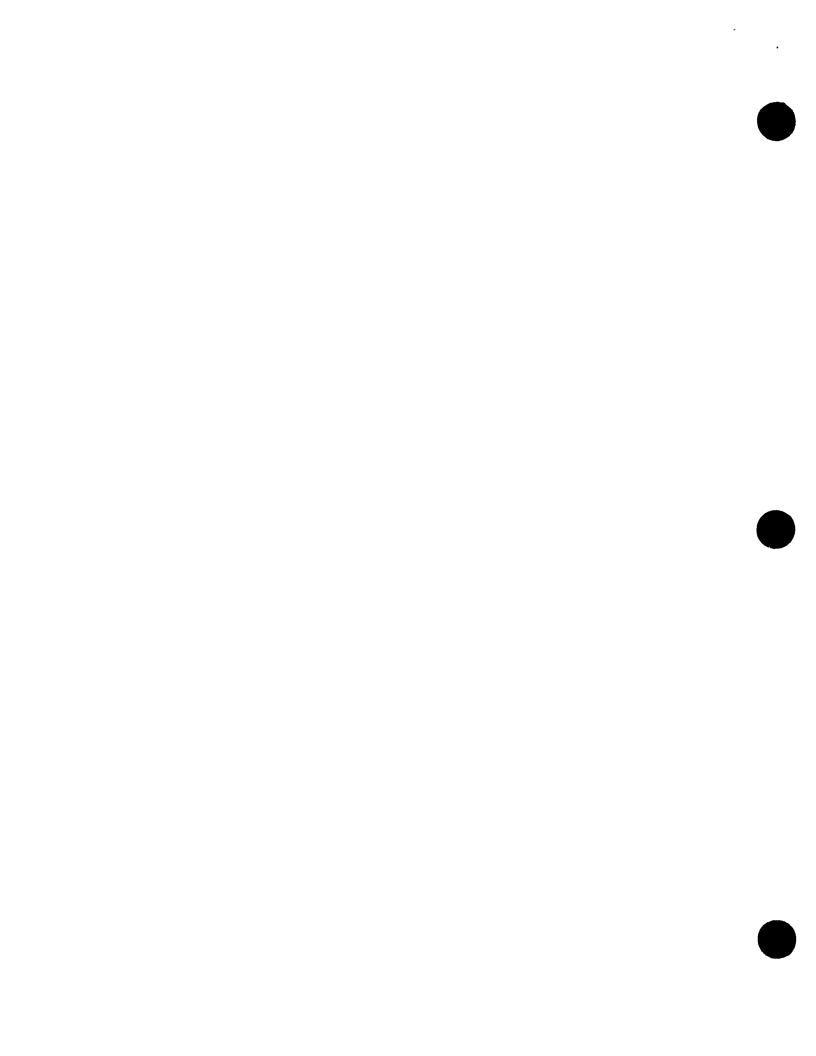
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Page 3

S665-CSST-89 [v.3]

1 master file, on a semi-annual basis, to identify potential death master file matches, using the 2 records most easily accessible by the insurer. 3 This section shall not apply to policies or annuities for which the insurer has (1)4 received premiums from outside the policy value, by check, bank draft, 5 payroll deduction, or any other similar method of active premium payment, within the 18 months immediately preceding the death master file 6 7 comparison. An insurer may comply with the requirements of this section by using the 8 (2)9 full death master file once and thereafter using the death master file update 10 files for future comparisons. An insurer shall not be required to comply with the requirements of 11 (3) 12 subsection (a) of this section, with respect to any policies, annuities, or retained asset accounts issued or delivered prior to October 1, 2015, if the 13 14 insurer attests in a sworn statement subject to perjury, signed by an officer or 15 director of the insurer, that upon information and belief, all of the following 16 are true: 17 The insurer has not engaged in asymmetric conduct; and a. 18 b. The insurer has historically practiced both of the following: 19 The insurer acts in compliance with the requirements of 1. 20 G.S. 58-63-15(11) with respect to the investigation, handling 21 and payment of policy proceeds; and, 22 The insurer monitors the limiting age of each person, as <u>2.</u> 23 stated in the policy, and performs its obligations under 24 Chapter 116B of the General Statutes when an insured has 25 reached limiting age. An insurer exempted under this subdivision shall comply with the 26 27 requirements of this section for all policies, annuities, or retained asset 28 accounts issued after October 1, 2015. 29 (4) The comparison required by this section shall not be applicable to group life insurance policies for which the insurer does not perform record keeping 30 31 services. 32 If an insurer learns of the possible death of a person, through a DMF match or (b) 33 otherwise, then the insurer shall within 90 days complete a good-faith effort, which shall be 34 documented by the insurer, do all of the following: 35 Confirm the death of such person against other available records and (1)36 information. 37 Review its records to determine whether such deceased person had <u>(2)</u> 38 purchased any other products with the insurer. 39 Determine whether benefits may be due in accordance with any applicable (3) 40 policy, annuity, or retained asset account. 41 Locate the beneficiary or beneficiaries. (4) 42 (5)Provide the appropriate claims forms or instructions to the beneficiary to 43 make a claim and notify the beneficiary of the actions necessary to submit a 44 valid claim. 45 Except as prohibited by law, an insurer may disclose only the minimum necessary 46 identifying personal information about such an insured, annuitant, account owner or beneficiary 47 to anyone who the insurer reasonably believes may be able to assist the insurer in locating the 48 beneficiary or a person otherwise entitled to payment of the claims proceeds. 49 In the event an insurer is unable to confirm the death of a person following a DMF 50 match, an insurer may determine that no further good-faith efforts, as described in subsection

Senate Bill 665



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- (b) of this section, are required of it with respect to such policy, annuity, or retained asset account.
- (e) An insurer or its service provider shall not charge any beneficiary or other person who may be entitled to benefits any fees or costs associated with a DMF search or the verification of a DMF match conducted pursuant to this section.
- (f) The benefits from life insurance policies, annuities, or retained asset accounts, and any applicable accrued contractual interest shall first be payable to the beneficiaries or account owners as provided for in such policies, annuities, or retained asset accounts. In the event the beneficiaries or account owners cannot be found, the benefits and any associated contractual interest shall escheat to the State as unclaimed property as set forth in Article 4 of Chapter 116B of the General Statutes.
- (g) Nothing in this section limits an insurer from requiring a valid death certificate as part of any claims validation process or otherwise requiring compliance with the terms and conditions of the policy or annuity relative to filing and payment of claims.

"§ 58-58-400. Noncompliance may constitute unfair claims settlement practice.

A pattern of failures to meet the requirements of this Part may constitute an unfair claims settlement practice under G.S. 58-3-100(a)(5) and G.S. 58-63-15. Nothing in this Part shall be construed to create or imply a private cause of action for a violation of this Part."

SECTION 2. The Commissioner of Insurance is authorized to adopt rules under Article 2A of Chapter 150B of the General Statutes to implement this act, provided such rules shall not impose any duty or requirements not stated in this act.

**SECTION 3.** Section 2 of this act is effective when it becomes law. The remainder of this act becomes effective October 1, 2015.

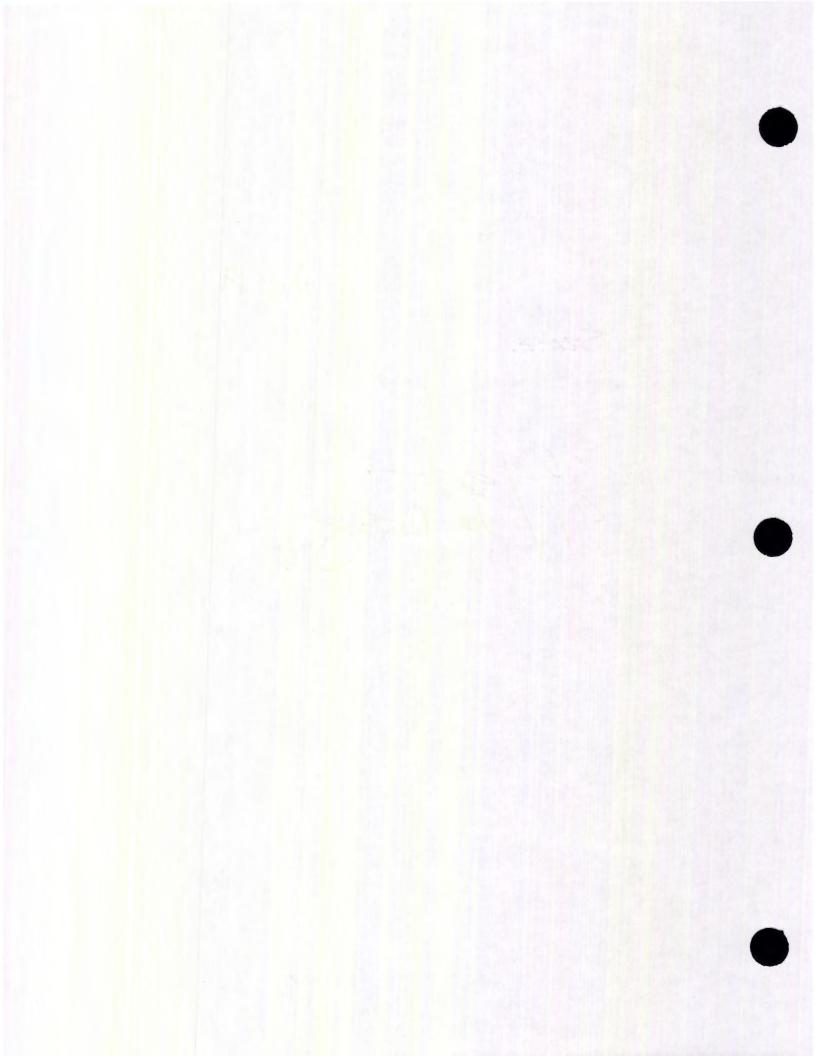


## NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

House Bill 665

| AMENDMENT NO  |
|---|
| (to be filled in by<br>Principal Clerk)                       |
| Page 1 of 1   |
| Date Aug 19 ,2015   |
|   |
| by deleting "beneficiary." and substituting "policy towner.". |
|   |
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| nmittee Amendment   |
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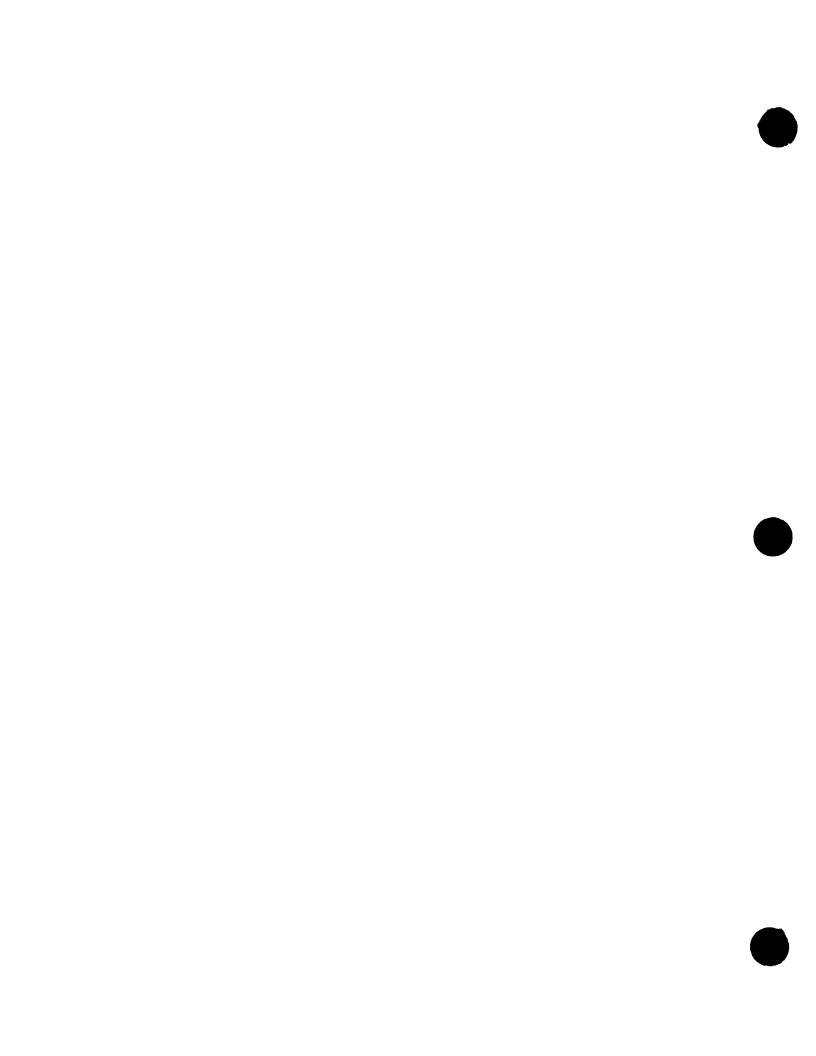


## NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

House Bill 665

|     | Н665-AST-139 [v.                  | (to   | 1ENDMENT NOo be filled in by rincipal Clerk) Page 1 of 1 |
|-----|-----------------------------------|---|--|
|     | Amends Title [NO] S665-CSST-89v.3 | Date  | August 19,2015   |
| 1 2 | moves to amend th                 | be bill on page 2, line 2, by deleting "benefic<br>oner, annuitant, or account owner.". | iary." and substituting "policy                          |
|     | SIGNED                            | Amendment Sponsor   |  |
|     | SIGNEDComm                        | nittee Chair if Senate Committee Amendment  |  |
|     | ADOPTED                           | FAILED  | TABLED   |





#### NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

#### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

### FAVORABLE HOUSE COM SUB, UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

SB 665 Unclaimed Life Insurance Benefits.

Draft Number:

S665-PCS35310-ST-89

Serial Referral: INSURANCE

Recommended Referral: None Long Title Amended:

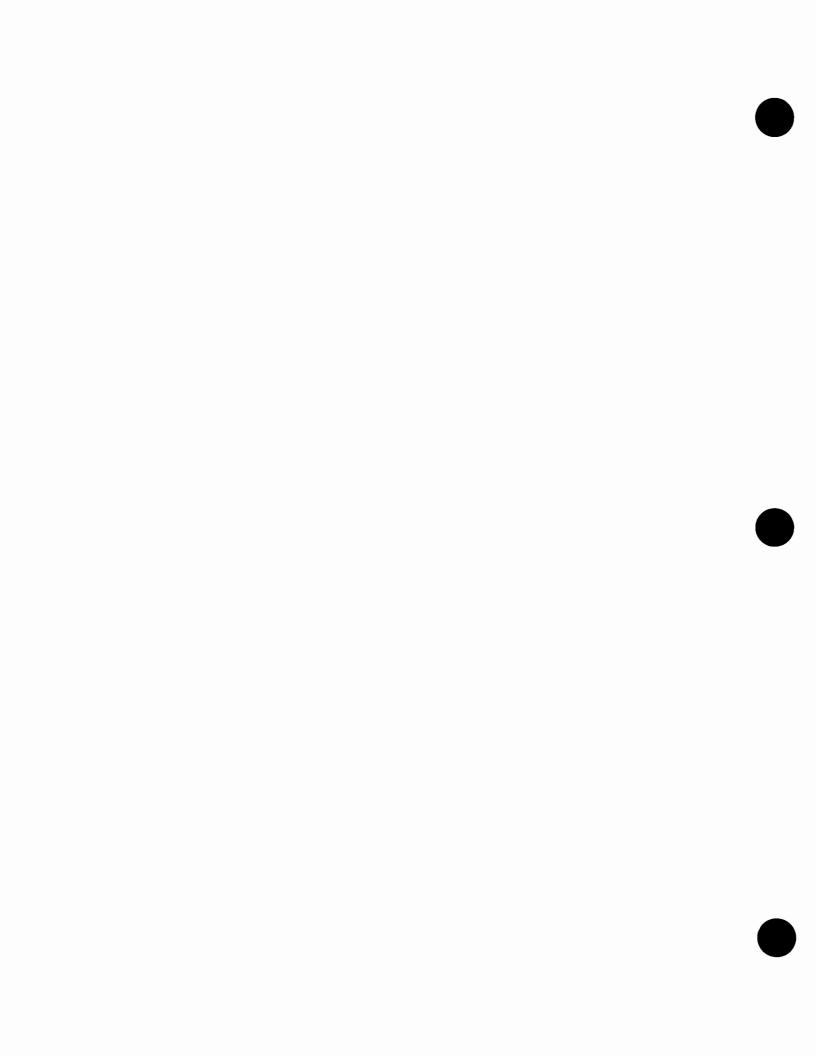
No

Floor Manager:

Burr

**TOTAL REPORTED: 1** 





| Date: 8-19-15  |
|--|
| Bill Number 5B665  |
| PCS Wes  |
| Motion to be before the committee by                                       |
| Rep Composition Enha Churchell explained the bill.                         |
| Discussion on the Bill YES or NO   |
| Rep BUVV motioned for:  Adoption  Adoption  Adoption  As amended a new pcs |
| Unfavorable ReportUnfavorable to original bill, fav to PCS                 |
| No vote  |
| Amendments: WS H6005-AST-139 LV  |
| product of concess.  |
| Serial referral to:  |
| Speakers: Toni Solari, Treas. Office<br>Ins Commissioner                   |
| The Aller  |
| Kimberty Moore - Uns. Company  |
| Kimberty Moore - Ins. Company.  Franklyn Freeman, Nath almans  Ms. Co's.   |
| Shuley Yake / Kemper   |
| referrel to more   |

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### North Carolina General Assembly - House Sergeant-at-Arms

### Visitors

| Committee: Judiciary 1  | Date: 19 August |
|-------------------------|-----------------|
| Name                    | Organization    |
| M Sillian D Tolman      | MWC UC          |
| Franklin Freeme,        | muc             |
| MIKE AGAN               | KERGPIER        |
| Melyssin Reed           | PP              |
| amandatesede            | TSS             |
| Mileren                 | NMRS            |
| Charmaine fuller Cooper | ARRP            |
| Sarah Preston           | ACLU-NC         |
| Annaliese Dolph         | DL              |
| Susanno Bird one        | ACLU NC         |
| Tole Harlo              | M7735           |
| Ben Paskin              | NCDOI           |
| Ted Hamby               | NCPOI           |
| JAKE PARKER             | NEFB            |
| John Mandier            | MF+5            |
| Mara show               | PALS 7, 1155    |
| Susan Valanni           | Nationio        |

| Michelle Frozar | Organization MF+S |
|-----------------|-------------------|
| JEFF BARNHART   | MWC               |
| Paul Sherman    | NCFB              |
| Rinan Mewal     | um                |
| Robert Wooley   | Adams and Reese   |
| Cheryl Makey    | Kemper            |
| Kimbel Move     | 12 Milia          |
| Misser Nishels  | Jordan Price      |
| Bill Remit      | NC Justice Cent   |
| Style David     | ¥ 167             |
| Tim Minder      | KK Kinc Builds    |
| Brenda williams | DST               |
| Penny Hull      | acherty /         |
| Solvater        | 65                |
| Starnes         | OST               |

### HOUSE COMMITTEE ON JUDICIARY I

| MEMBER          | <u>ASSISTANT</u>      | <b>PHONE</b> | <b>OFFICE</b> |
|-----------------|-----------------------|--------------|---------------|
| Leo Daughtry    | Jan Copeland          | 733-5605     | 2207          |
| Justin Burr     | Dina Long             | 733-5908     | <b>307A</b>   |
| Darren Jackson  | Angela McMillan       | 733-5974     | 1013          |
| Dean Arp        | Wendy Miller          | 715-3007     | 531           |
| Larry Hall      | Theresa Wright-Bryant | 733-5872     | 506           |
| Jon Hardister   | Jayne Nelson          | 733-5191     | 632           |
| Julia Howard    | Cody Honeycutt        | 733-5904     | 302           |
| Grier Martin    | Sylvia Hammons        | 733-5773     | 1023          |
| Allen McNeill   | Laura Sullivan        | 715-4946     | 418C          |
| George Robinson | Aspen Coons           | 733-5931     | 306C          |
| Bob Steinburg   | Bethany Hudson        | 733-0010     | 301B          |
| Linda Johnson   | Joanna Hogg           | 733-5861     | 301D          |
| John Szoka      | Beverly Slagle        | 733-9892     | 2223          |

Staff Attorneys: Erika Churchill, Tawanda Foster and Amy Darden – 919-733-2578

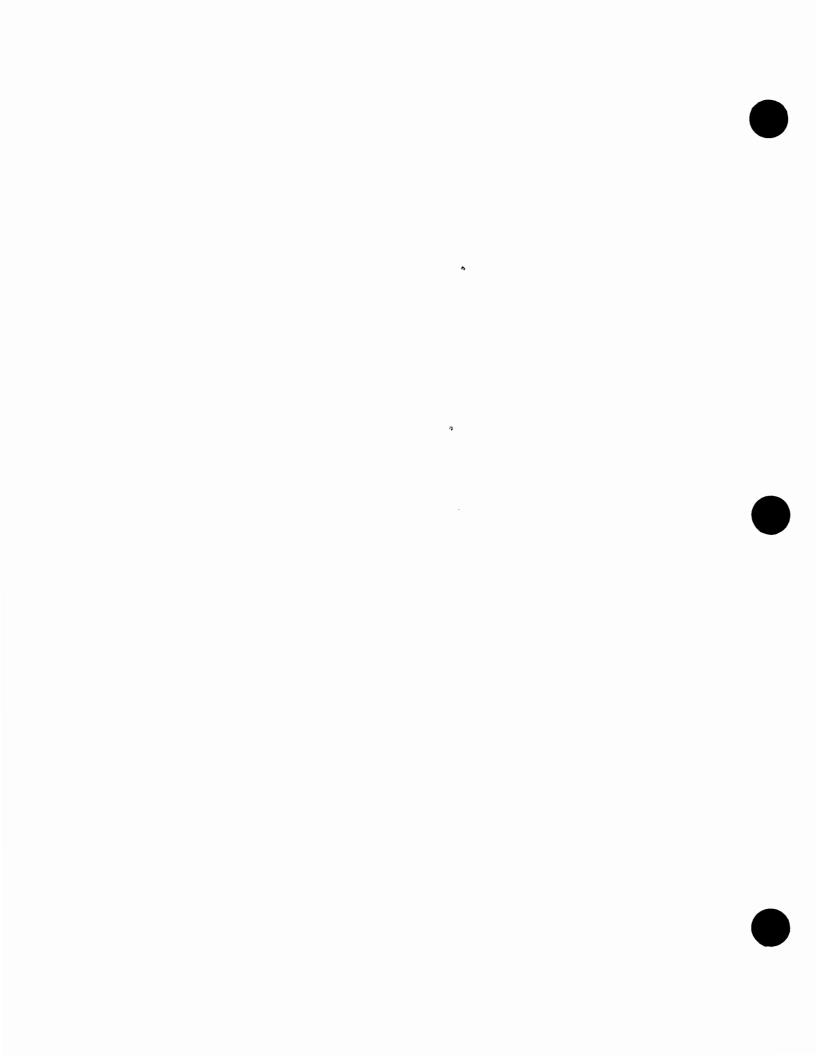
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### **ATTENDANCE**

### HOUSE COMMITTEE ON JUDICIARY I / 2016 SHORT SESSION

(Name of Committee)

|                 | (       | Name    | or Con | nmıı     | tee)          |          |   |  |  |  |  |
|-----------------|---------|---------|--------|----------|---------------|----------|---|--|--|--|--|
| DATES           | 4-27-16 | 5-11-16 | 21-1-2 | 6-3-16   | 91-51-02      | 6-22-16  |   |  |  |  |  |
| Leo Daughtry    |         | 1/~     | 1      | V        | 0             | V        |   |  |  |  |  |
| Justin Burr     |         | N       | 6)     |          | Z             |          |   |  |  |  |  |
| Darren Jackson  |         | y,      |        | /        | K             | <b>V</b> | , |  |  |  |  |
| Dean Arp        |         | VV      |        | /        | $\simeq$      | /        |   |  |  |  |  |
| Larry Hall      |         | 11      | N      |          | (X)           |          |   |  |  |  |  |
| Jon Hardister   |         | N       | KD     | /        | 1             |          |   |  |  |  |  |
| Julia Howard    |         | V       | 1/2    | 1        | $\int$        |          | / |  |  |  |  |
| Grier Martin    |         | V       | 7      | /        | N             | V        | 1 |  |  |  |  |
| Allen McNeill   |         | N       | 12     | V        | A             | /        | / |  |  |  |  |
| George Robinson |         | 1/      | 女      | <b>/</b> | $\mathcal{F}$ | /        |   |  |  |  |  |
| Bob Steinburg   |         | V V     |        | 1        | )             | /        |   |  |  |  |  |
| Linda Johnson   |         | //      | 7      |          | /             |          | / |  |  |  |  |
| John Szoka      |         | VV      |        | <b>/</b> |               | /        |   |  |  |  |  |
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### House Committee on Judiciary I Wednesday, April 27, 2016, 12:30 PM 415 Legislative Office Building

#### **AGENDA**

### Welcome and Opening Remarks

### **Introduction of Pages**

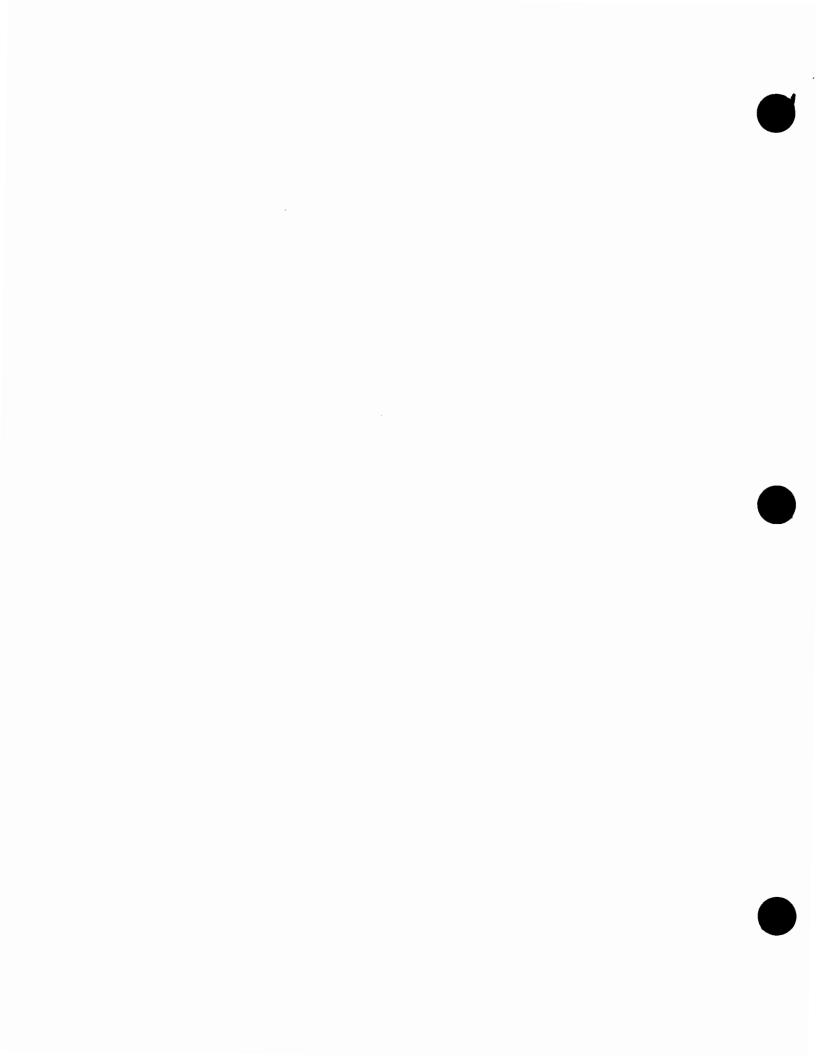
A confirmation joint resolution for Charles Visor as a Special Superior Court Judge - HJR 979

A confirmation joint resolution for Michael Robinson as a Special Superior Court Judge - HJR 981

A confirmation joint resolution for Gregory McGuire as a Special Superior Court Judge - HJR 977

**Other Business** 

Adjournment



### House Committee on Judiciary I Wednesday, April 27, 2016 at 12:30 PM Room 415 of the Legislative Office Building

#### **MINUTES**

The House Committee on Judiciary I met at 12:30 PM on April 27, 2016 in Room 415 of the Legislative Office Building. Representatives Arp, Burr, Daughtry, L. Hall, Hardister, Howard, Jackson, G. Martin, McNeill, Robinson, Steinburg, and Szoka attended.

Chairman N. Leo Daughtry, presided.

The following bills were considered:

HJR 977: to confirm Gregory McGuire / Special SC Judge. Representative Lewis introduced Mr. McGuire. The committee voted unanimously to approve his confirmation. Favorable report.

HJR 979: to confirm Charles Viser/Special SC Judge. Representative Lewis introduced Mr. Viser. The committee voted unanimously to approve his confirmation. Favorable report.

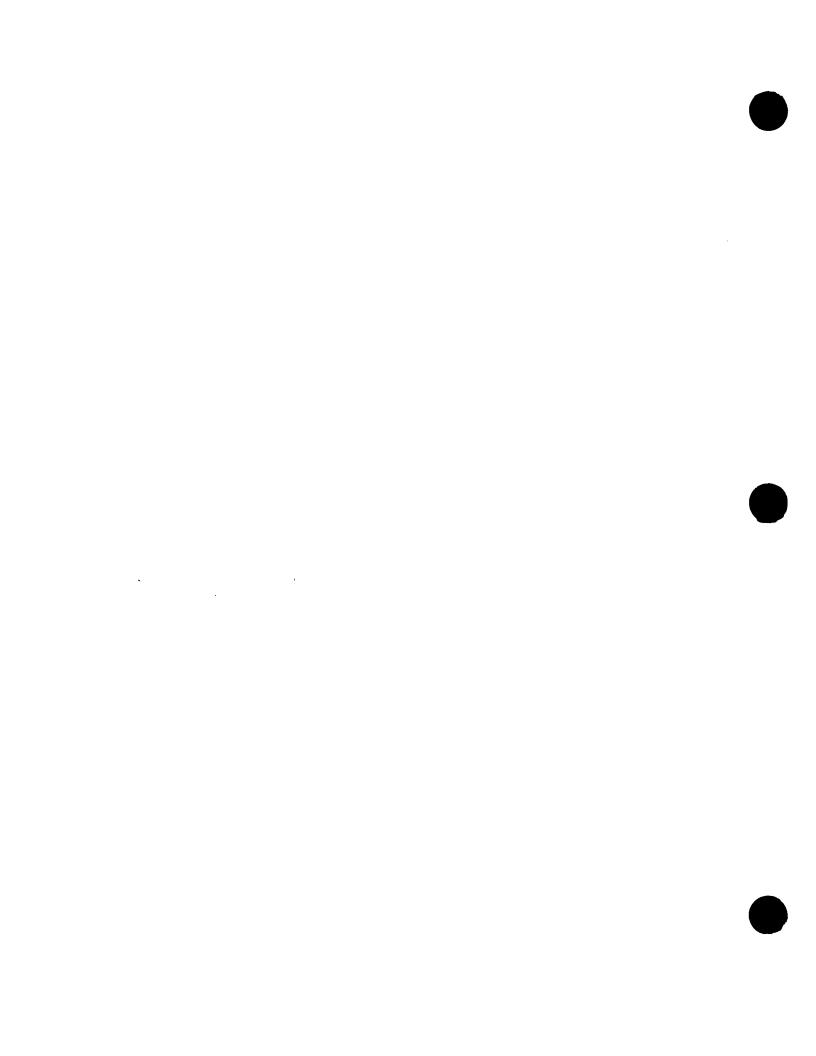
HJR 981: to confirm Mike Ropinson / Special SC Judge. Representative Lewis introduced Mr. Robinson. The committee voted unanimously to approve his confirmation. Favorable report.

The meeting adjourned at 1:10 p.m.

N. Leo Daughtry

**Presiding Chair** 

Jan Copeland, Committee Clerk



H.J.R. 979 Apr 26, 2016 HOUSE PRINCIPAL CLERK

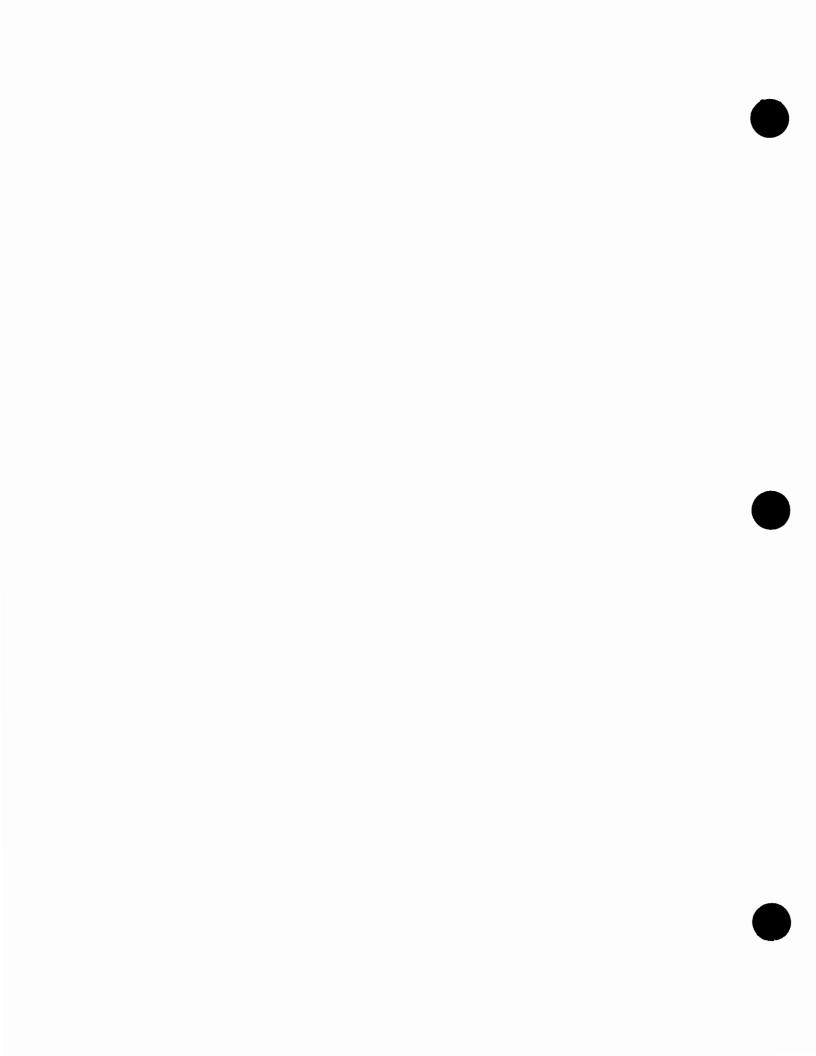
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### HOUSE JOINT RESOLUTION DRHJR10481-LG-156A (04/25)

| Sponsors: Representative Lewis.   |
|---|
| Referred to:  |
|   |
| A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF CHARLES M. VISER                             |
| AS A SPECIAL SUPERIOR COURT JUDGE.  |
| Whereas, under the provisions of G.S. 7A-45.1(a10), as special superior court                     |
| judgeships become vacant, the Governor shall submit the names of his nominees for those           |
| judgeships to the General Assembly for confirmation by ratified joint resolution; and             |
| Whereas, a vacancy has occurred due to the resignation of the Honorable Martin                    |
| McGee; and  |
| Whereas, the Governor has submitted to the presiding officers of the House of                     |
| Representatives and the Senate the name of his nominee, Charles M. Viser, for a term as a special |
| superior court judge; Now, therefore,   |
| Be it resolved by the House of Representatives, the Senate concurring:                            |
| <b>SECTION 1.</b> The General Assembly confirms the appointment of Charles M. Viser of            |
| Mecklenburg County as a special superior court judge, whose term of office shall commence on      |
| the date of the appointment by the Governor and whose term of office shall end five years from    |
| the date of appointment.  |

**SECTION 2.** This resolution is effective upon ratification.





H.J.R. 981 Apr 26, 2016 HOUSE PRINCIPAL CLERK

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### HOUSE JOINT RESOLUTION DRHJR40552-LG-156 (04/25)

| Sponsors: Representative Daughtry.  |
|---|
| Referred to:  |
|   |
| A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF MICHAEL                                      |
| ROBINSON AS A SPECIAL SUPERIOR COURT JUDGE.   |
| Whereas, under the provisions of G.S. 7A-45.1(a9) and (a10), as special superior court            |
| judgeships become vacant, the Governor shall submit the names of his nominees for those           |
| judgeships to the General Assembly for confirmation by ratified joint resolution; and             |
| Whereas, a vacancy has occurred due to the resignation of the Honorable Lucy Inman;               |
| and   |
| Whereas, the Governor has submitted to the presiding officers of the House of                     |
| Representatives and the Senate the name of his nominee, Michael Robinson, for a term as a special |
| superior court judge; Now, therefore,   |
| Be it resolved by the House of Representatives, the Senate concurring:                            |
| SECTION 1. The General Assembly confirms the appointment of Michael Robinson                      |
| of Forsyth County as a special superior court judge, whose term of office shall commence on the   |
| date of the appointment by the Governor and whose term of office shall end five years from the    |
| date of appointment.  |

**SECTION 2.** This resolution is effective upon ratification.



H.J.R. 977 Apr 26, 2016 HOUSE PRINCIPAL CLERK

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### HOUSE JOINT RESOLUTION DRHJR40551-LG-156B (04/25)

| Sponsors: Representative Lewis.  |
|--|
| Referred to:   |
|  |
| A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF GREGORY                                     |
| MCGUIRE AS A SPECIAL SUPERIOR COURT JUDGE.   |
| Whereas, under the provisions of G.S. 7A-45.1(a10), as special superior court                    |
| judgeships become vacant, the Governor shall submit the names of his nominees for those          |
| judgeships to the General Assembly for confirmation by ratified joint resolution; and            |
| Whereas, a vacancy has occurred due to the retirement of the Honorable John Jolly;               |
| and  |
| Whereas, the Governor has submitted to the presiding officers of the House of                    |
| Representatives and the Senate the name of his nominee, Gregory McGuire, for a term as a special |
| superior court judge; Now, therefore,  |
| Be it resolved by the House of Representatives, the Senate concurring:                           |
| <b>SECTION 1.</b> The General Assembly confirms the appointment of Gregory McGuire               |
| of Wake County as a special superior court judge, whose term of office shall commence on the     |
| date of the appointment by the Governor and whose term of office shall end five years from the   |
| date of appointment.   |

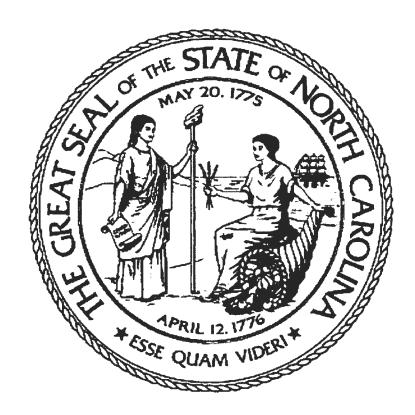
**SECTION 2.** This resolution is effective upon ratification.



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# THE GOVERNOR'S

# NOMINATIONS FOR CONFIRMATION



# PAT McCrory

**GOVERNOR** 

THE STATE OF NORTH CAROLINA

As of April 22, 2016

# BIOGRAPHIES & RÉSUMÉS OF NOMINATIONS

| JUDICIAL APPOINTMENT | MICHAEL ROBINSON | PG. 1 |
|----------------------|------------------|-------|
| JUDICIAL APPOINTMENT | CASEY VISOR      | PG. 3 |
| JUDICIAL APPOINTMENT | GREGORY MCGUIRE  | PG. 5 |

## MICHAEL LINDSAY ROBINSON

Date of Birth: September 21, 1955

#### Education:

1973 Woodberry Forest School, Woodberry Forest, Virginia

1977 Davidson College, Bachelor of Arts in Economics

Letter: Swimming and Diving

1980 University of North Carolina at Chapel Hill, Juris Doctor with Honors

Order of the Coif

Moot Court Board

#### Work History:

| 2008 - Present | Partner, Robinson & Lawing, LLP  |
|----------------|--|
| 1997 - 2007    | Partner, litigation section, Robinson & Lawing, LLP (emphasis on       |
|                | complex civil litigation, intellectual property matters, and corporate |
|                | litigation planning and loss prevention)                               |
| 1992 - 1997    | Partner, litigation section, Robinson Maready Lawing & Comerford, LLP  |
|                | (emphasis on complex civil litigation including intellectual property  |
|                | matters)   |
| 1980 - 1986    | Associate, litigation section, Petree Stockton & Robinson (and         |
|                | predecessor firms)(emphasis on civil and insurance defense litigation) |
| 1987 - 1992    | Partner, litigation section, Petree Stockton & Robinson (emphasis on   |
|                | complex civil litigation and medical malpractice defense)              |

#### Memberships and Service:

State Bar Council, Elected Member (2009 - present)

Vice-Chair, Grievance Committee (Sub-Committee II)(December 1, 2014 to Present)
Chair, Special Litigation Committee (January 1, 2014 – December 1, 2014)

Member, Executive Committee (January 1, 2013 to Present)

Member, Board of Visitors, Duke University Divinity School

President, Winston-Salem Downtown Rotary Club (July 1, 2013 - June 30, 2014)



Certified Mediator, North Carolina Dispute Resolution Commission

Legal Aid of Northwest North Carolina, volunteer attorney providing pro bono advice to Legal Aid clients.

Past Chair of Board of Directors: Hospice and Palliative CareCenter, Inc., Winston-Salem, North Carolina

Past Member, Board of Directors, DataMax Corporation and Charitable Foundation

Past Chair, Board of Directors, Arbor Acres Retirement Community of the United Methodist

Church, currently member Building and Grounds Committee

Former Chair: American Cancer Society, Forsyth County Chapter

Former Chair and Member, Committee on the Episcopacy, Advisor to the Bishop, Western North Carolina Conference of the United Methodist Church (1997 - 2004)

Centenary Methodist Church, Winston-Salem, North Carolina

Former Chair Staff Parish Relations Committee (1996 - 2000)

Former Lay Leader, Youth Department (1998 - 2000)

Former Chair: Administrative Board (2000 - 2002)

Former Chair: Board of Trustees (1994 - 1996)

Former Board Member and Newsletter Editor, North Carolina Association of Defense Attorneys Member, North Carolina Business Court Rules Committee

## **Casey Viser**

125 Altondale Avenue Charlotte, NC 28207 caseyviser@gmali.com (704) 608-2143

Judge Casey Viser is a native Charlottean, husband, and devoted father of three children at Trinity Episcopal School who is committed to serving the Bar, and the people of Mecklenburg County.

Judge Viser grew up in Foxcroft, and was a member of the first Kindergarten class at Charlotte Latin School. After graduating from Charlotte Latin School in 1990, he went on to Hampden-Sydney College, where he was a member of the soccer team, the Honor Court, the Student Senate, and Omicron Delta Kappa Honor Society, and graduated with a BA in Economics and Spanish in 1994. Judge Viser travelled to Colorado upon leaving Hampden-Sydney, fortuitously ending up in the employment of two real estate developers from Los Angeles who were developing commercial properties in the ski resort town of Aspen. They encouraged him to become active politically, and he eventually went to work for Governor Pete Wilson who, at that time, was running for the Republican nomination for President. Judge Viser returned to North Carolina to work for Richard Vinroot's first gubernatorial bid in 1996, and then travelled the country as a member of Vice-Presidential nominee Jack Kemp's staff during the Bob Dole for President campaign of 1996.

Judge Viser entered law school at Campbell University in 1997, and was elected President of the Student Bar Association in 1999. Upon graduation, he returned to his home of Charlotte and married the former Carol Biggers Dabbs. He began his legal career as an associate at James, McElroy & Diehl, PA. in 2000, and became a partner in the firm in 2005. He was elected by the Mecklenburg County Bar in May 2013 and then appointed by Governor Pat McCrory to fill the unexpired term of former Chief District Court Judge Lisa Bell. Prior to joining the bench, Judge Viser spent thirteen years practicing civil litigation and criminal law in State and Federal courts at James, McElroy & Diehl, PA. He has argued cases before the North Carolina Supreme Court, the North Carolina Court of Appeals, and the Fourth Circuit Court of Appeals. He has been named to: Charlotte Business Journal's "40 Under 40;" Business North Carolina Magazine's "Legal Elite" for Criminal Defense; Superlawyers Magazine, as a "Rising Star" in the areas of Business Litigation and Criminal Defense; and Best Lawyers in America, as "Lawyer of the Year" in 2013 for DWI Defense.

Judge Casey Viser has a diverse background and experience as both a civil litigator and criminal trial attorney, and is uniquely qualified to preside over any trial proceeding. Judge Viser knows the challenges faced by attorneys and litigants, and his background, temperament, and knowledge of not only the law and procedure, but also people, enables him to serve effectively as a District Court Judge.

#### Bar memberships:

North Carolina State Bar Mecklenburg County Bar Western, Middle, and Eastern Districts of North Carolina Fourth Circuit Court of Appeals

#### Education:

Campbell University School of Law, JD 2000 Hampden-Sydney College, BA Economics/Spanish 1994 Charlotte Latin School, 1990





# **Casey Viser**

125 Altondale Avenue Charlotte, NC 28207 <u>caseyviser@gmail.com</u> (704) 608-2143

#### **Community Involvement:**

Christ Episcopal Church -- Lector, Sunday School teacher, Stewardship Committee member

Youth Soccer, Basketball Coach

Volunteer Truancy Court Judge, Charlotte-Mecklenburg Schools

Board Member, Eastover Homeowner's Association

Member, Legal Advisory Committee, Myers Park Country Club

Founding Member, The May 20th Society

Impact Fund Member, Foundation for the Carolinas

Grants Committee Member, Arts & Science Council

Member, Professionalism Committee, Mecklenburg County Bar Association

Member, Technology and Bench-Bar Liaison Committees of the North Carolina Bar Association

Member, Civil Courts Committee for Mecklenburg County District Court



# Judge Gregory McGuire

Biographical Information

Judge McGuire was appointed a Special Superior Court Judge by Governor Pat McCrory on September 30, 2014, to fill the unexpired term of Special Superior Court Judge Lisa Bell. Judge McGuire was subsequently assigned to the North Carolina Business Court for Complex Business Cases in Raleigh, North Carolina by Chief Justice Mark Martin.

Since October 10, 2014, Judge McGuire has been responsible for all aspects of the complex business lawsuits assigned to the Raleigh location of the North Carolina Business Court, as well as managing two full time law clerks and a Trial Court Coordinator.

Prior to his appointment to the bench, Judge McGuire was a shareholder with Ogletree Deakins Nash Smoak & Stewart, one of the nation's leading workplace law firms, where he spent over 26 years as a counselor and litigator for large, medium and small companies across a wide variety of industries. He litigated in and obtained favorable jury trial verdicts in state and federal courts throughout the United States, including courts in North Carolina, South Carolina, Virginia, Florida and Michigan.

Judge McGuire was recognized by Best Lawyers in America from 2010 – 2014, and has been recognized as a North Carolina Super Lawyer.

Judge McGuire obtained his B.S. degree from Cornell University in 1984, and his Juris Doctor from the University of North Carolina, Chapel Hill, in 1987.



# BIOGRAPHIES & RÉSUMÉS OF NOMINATIONS

| SBI DIRECTOR          | ROBERT SCHURMEIER, JR. | PG. 1 |
|-----------------------|------------------------|-------|
| Industrial Commission | BILL DAUGHTRIDGE       | PG. 3 |
| Industrial Commission | CHRISTOPHER LOUTIT     | PG. 5 |
| Industrial Commission | LINDA CHEATHAM         | PG. 6 |
| UTILITIES COMMISSION  | Lyons Gray             | PG. 9 |
| BOARD OF EDUCATION    | J. TODD CHASTEEN       | PG.10 |
| BOARD OF EDUCATION    | PATRICIA HEAD          | PG.12 |
| STATE CONTROLLER      | LINDA COMBS            | PG.14 |
| COMMISSIONER OF BANKS | Ray Grace              | PG.15 |
| BOARD OF AGRICULTURE  | ANNE FAIRCLOTH         | PG.17 |
| BOARD OF AGRICULTURE  | FAYLENE WHITAKER       | PG.18 |
| BOARD OF AGRICULTURE  | DONALD LAMBETH         | PG.19 |

Robert L Schurmeier, Jr. 185 Carlton Drive Mooresville, NC 28117 704 621-1014 bschurme@bellsouth.net

Education

BA, Political Science (1975) UNC – Chapel Hill

#### Work History - Law Enforcement

1975 – 2004 Retired Deput

Retired Deputy Chief, Charlotte Police Department & Charlotte-Mecklenburg

#### Police Department

Joined the Charlotte Police Department right after college graduation. During the first four years gained street experience as a patrol officer, field training officer (with less than a year on the street), team investigator, DA's Office investigator and undercover vice officer. Became one of the youngest sergeants (just over 4 years on the job) and captains (7 years experience) with the Charlotte Police Department. Spent 7 years as captain, 2 years as major, 2 years as division commander and 11 years plus as deputy chief (second highest rank). Held senior command positions for 22 years of a 29 year career and gained experience in all four major divisions (Patrol, Investigations, Support Services and Administration). Was appointed interim police chief in 1999 for 6 months. I did not seek the position of chief and subsequently retired as one of the longest tenured deputy chiefs. Never took a sick day, never had a chargeable accident or sustained complaint in nearly 30 years of service with the City of Charlotte.

#### **Professional Training**

Over 3,000 hours of law enforcement and executive leadership training
FBI National Academy graduate (1989) 159<sup>th</sup> session
Senior Management Institute for Police (1983) 2<sup>nd</sup> class – affiliated with Harvard and PERF
Leadership Charlotte graduate
Municipal Administration Course (UNC- Chapel Hill) graduate
U.S. Secret Service Dignitary Protection School graduate
Post graduate studies at the University of Virginia and University of North Carolina at Charlotte

#### Accomplishments

Past President and former board member of the North Carolina Police Executives Association (2200 members)

Past President and former board member of the North Carolina Chapter of the FBI National Academy Associates (350 members)

First CPD executive to be awarded the Community Relations Committee (CRC) Community Policing Award

Founded and stood up the unpaid volunteer CMPD Cold Case Squad that received national recognition

#### Work History - Private Sector

2004 - Present President, U.S. ISS Agency, LLC (ISS)

Co-founded and became the first and only president of ISS, a Charlotte-area based licensed private investigative (licensed in NC and SC) and security consulting firm. Grew business from one client to dozens that include government agencies as well as Fortune 500 businesses. Approved Federal GSA Schedule contract holder that supports the Department of Homeland Security on a national security program (for almost 7 years). Have offices in Huntersville, NC and Miami, FL and are opening an office in Charleston, SC. Leadership team includes four retired CMPD deputy chiefs, three of whom were interim chiefs, a retired deputy director of the US Secret Service and a former police chief of Coconut Creek, FL. Have handled a wide variety of confidential internal investigations including some that involved issues of public trust and corruption. We provide a wider array of security related consulting services including but not limited to:

- · Internal investigations and litigation support
- Pre-employment screening
- Biometric fingerprinting
- · High volume recurrent criminal backgrounds
- Due diligence investigations and pre-employment backgrounds
- · Risk and threat assessments
- TSCM sweeps
- Forensics computer, DNA, fingerprint, serology, handwriting

Successfully moved some of our prominent clients towards an intelligence-based security model. Selected clients included the US Department of Homeland Security, Burger King Global, Anthem, Lowes, Benefitfocus, Mecklenburg County Sheriff, City of Charlotte, Columbia, SC PD, NC Medical Board, Robinson, Bradshaw & Hinson and other law firms.

#### Community Service (Current)

McLeod Drug Treatment Center Board of Directors – past president and board member since 1986 Lowe's (Mooresville) YMCA Board of Directors – finance chair and board member since 2012

#### About the Secretary:

Bill Daughtridge served as Secretary for the NC Department of Administration (DOA) and was often referred to as the "business manager" of state government. Secretary Daughtridge brought experience in both the private and public sectors to the Department of Administration.

The Department of Administration has 20 Divisions that are broadly grouped into two categories: Government Operations and Internal Services and Programs. Under its "Gov Ops" banner, DOA provides numerous services for state government agencies, such as building construction, purchasing and contracting for goods and services, maintaining facilities, managing state vehicles, acquiring and disposing of real property and operating auxiliary services such as courier mail delivery and the sale of state



Bill Daughtridge, Jr. Secretary

and federal surplus property. The board umbrella of Internal Services and Programs covers a wide range of other services and provides staff support to several councils and commission which advocate for the special needs of North Carolina's citizens.

Secretary Daughtridge served as president of Daughtridge Gas and Oil Company, the fuel oil company his grandfather began in 1929 based in Rocky Mount, N.C. Daughtridge Gas and Oil provides propane and fuel oil for customers across Eastern North Carolina and operates a transportation company, a distribution company, Patio & Hearth Shop, Dunkin' Donut's locations, retail stores in the convenience and auto care markets.

A three-term member of the North Carolina House of Representatives, Secretary Daughtridge has an impressive education and pro-business legislative record serving on Education and Education Subcommittee on Universities. He was appointed Commerce Chairman, Small Business and Entrepreneurship Vice Chair, and assignments to include Joint Select Committee UNC Board of Governors and Economic Growth Development Co-Chair. His extensive service to our state has not been limited to the General Assembly, as he has given his time and talents in service on several statewide boards and commissions. He has focused his efforts on higher education and fostering economic growth and development, serving on the Executive Committee of the NC Economic Development Board, the NC Travel and Tourism Board and the University of North Carolina Board of Governors.

Secretary Daughtridge attended UNC Chapel Hill as a Morehead Scholar where he was inducted into Phi Beta Kappa and received the IFC Outstanding Senior Award. He then received his MBA from UNC – Chapel Hill where he was Student Association Vice President of Finance.

After graduation he worked as a financial analyst and engineer for Continental Oil Company in Houston, Texas, where he also coordinated the recruitment and training of financial analysts.

Secretary Daughtridge's lifelong commitment to community service and civic leadership were values instilled as an Eagle Scout earning him the Silver Beaver and Silver Antelope and Rocky Mount area Distinguished Citizen Award. He served as President of Boy Scouts of America's NC and VA area and currently serves as Boy Scouts of America Vice President of marketing for the Southern Region. He has served as First Vice President of the UNC General Alumni Association, UNC Lineberger Cancer Center Board of Visitors, and as a member of the UNC-Chapel Hill Board of Visitors.

Secretary Daughtridge's previous civic and professional interests included; North Carolina Symphony Society – Board of Trustees and Chairman of Marketing Committee, President Rocky Mount Area United Way, President North Carolina Petroleum Marketers Association, President of National Association of Unocal 76 Marketers, and President of National Pure Oil Jobbers Co-Op.

Secretary Daughtridge is married to Partha Council Daughtridge and they have two children, Gray and Meredith.

### **CHRISTOPHER CAMERON LOUTIT**

1709 Knox Road, Raleigh, North Carolina 27608 (910) 524,9176 Louit@aol.com

#### QUALIFICATIONS SUMMARY

- · Chief Deputy Commissioner, North Carolina Industrial Commission; Substitute Commissioner for conflict cases
- · Former civil and criminal litigation attorney, representing Plaintiffs and Defendants; former Investment Banking analyst
- · Exceptional leadership, analytical, communication, and interpersonal skills

#### PROFESSIONAL EXPERIENCE

#### North Carolina Industrial Commission, Raleigh, North Carolina

June 2013 - Present

#### Chief Deputy Commissioner

January 2014 - Present

- Chief trial court judge managing ~ 5,000 annual hearings statewide and presiding over workers' compensation trials and other claims
- Supervision and management of North Carolina's 20 Deputy Commissioners across 6 regional offices with support staff totaling 34 employees
- · Reduced timeline of claims by implementing stricter internal controls, limiting continuances, and shortening deadlines for the filing of decisions
- Decreased agency costs by re-purposing legal assistants, regionalizing offices, promoting an "electronic" environment, and adopting best practices
   Substitute Commissioner for conflict cases, presiding over and authoring decisions for the Full Commission

# Administrator / Chief Operating Officer

June 2013 - December 2013

- Head of daily operations for the agency's judicial and personnel functions, overseeing 160 employees and a \$15.5 million annual budget
- · Executive administrator of the agency's budget and human resources efforts, and liaison to the General Assembly and public

#### Johnson, Lambeth & Brown, Attorneys at Law, Wilmington, North Carolina

March 2006 - June 2013

Partner

January 2009 – June 2013

- · General civil and criminal litigation practice in State Court, representing Plaintiffs, Defendants, and New Hanover County
- Assistant County Attorney, New Hanover County Child Support Enforcement Agency
- Advised, managed, and facilitated parties and witnesses in District Court totaling hundreds of cases per week
- Successfully defended 2 cases before The North Carolina Court of Appeals, including:
  - New Hanover County o/b/o Beatty v. Greenfield, No. COA11-1086 (2012)
- · Obtained "Not Guilty" verdicts on all Felony-related charges in a jury trial for client further charged with Felony Possession of a Firearm

#### Associate Attorney

March 2006 - January 2009

- · Advised and assisted clients and firm partners in all stages of civil and criminal litigation, and drafted Memorandums of Law and Briefs
- · Successfully defended and assisted partners in the following case before The North Carolina Court of Appeals:
  - New Hanover County o/h/o Dillon v. Rains, No. COA07-1286 (2008)

#### Summer Associate

Summers 2003, 2004

- Researched Statutory and Case Law and drafted corresponding Memorandums of Law and Briefs for firm partners
- · Analyzed Discovery and assisted in building trial notebooks

#### The Bank Street Group, LLC, New York, New York

August 2001 - July 2002

#### Analyst, Investment Banking

- · Built, analyzed, and managed complex financial models for clients including Budget Rent a Car, Inc. and Bath & Body Works
- · Assembled, presented, and advised on sophisticated presentations to Fortune 500 CEOs, CFOs, and senior management

#### UBS Investment Banking Division, New York, New York

July 2000 - August 2001

#### Analyst, Global Industrial Group

- Assisted global team of Investment Bankers in analyzing, advising, and presenting corporate finance opportunities to Fortune 500 clients worldwide
- Participated in deal transactions and proposals for clients including Arvin Meritor, Inc., Goodyear Tire & Rubber Co., and General Motors

#### **EDUCATION**

#### **American University**

Juris Doctor, 2005

Judge: National High School Moot Court Competition

#### **Trinity College**

Bachelor of Arts, 2000 Major: History

Alumni Class President; Senior Class Secretary; Independent Study: "Crime in Hartford"

#### The Lawrenceville School / Cape Fear Academy

Diploma, 1996 : Student Body Vice-President; Appointed Senior Prefect; Robert Ainspac Award; Squash; Tennis; Tennis Coach; House Football

# Linda Cheatham

1200 Kings Grant Drive • Raleigh, North Carolina 27614 Telephone: 919/847-6226 or 919/413-5680 (cell) lindawohlers@bellsouth.net

## Reputation

- Exceptional persuasive abilities and a reputation for motivating people in groups towards solutions
- · Combines quick and thorough grasp of complicated issues with ability to explain them to stakeholders at various levels of proficiency
- Proficient in regulatory policy, law and regulation
- Excellent analytical skills, renowned work ethic and highly organized
- Firmly linked through networks with people of governmental and corporate influence in North Carolina's regulated arena
- Understanding of executive, legislative and judicial processes

# **Educational Background**

Bachelor's Degree in Mathematics from Stetson University

# **Professional Experience**

# North Carolina Industrial Commission

July 2010 - current

- Commissioner
  - Adjudicate appeals of Workers' Compensation and Tort Claim cases
  - Draft Full Commission decisions in Workers' Compensation and Tort cases
  - Draft dissents as appropriate
  - · Lead efforts on various projects assigned by the Commission Chair including, but not limited to:
    - o Educational outreach initiatives relative to employers' responsibilities to carry workers' compensation insurance including joint agency informational mailings to businesses through the Secretary of State and the Department of Revenue, ensuring departmental participation in educational seminars to targeted employer groups sponsored by the Department of Revenue and the North Carolina Institute of Minority Economic Development, development of educational video for Commission website, etc.
    - o Development and implementation of more efficient processes to hear and resolve appeals of expedited medical motions at the Full Commission level
    - o Development and initiation of improvements to the Commission's telephone system to better serve the public

#### BellSouth Telecommunications/AT&T

1973 - 2008

Executive Director, Regulatory Group: 1993 - 2008

Raleigh, North Carolina

Retired with 35 years service in November of 2008

- Negotiated and implemented changes to the Company's Price Regulation plan – achieved \$10M in pricing flexibility in 2005 and an additional \$5M in pricing flexibility in 2007.
- Managed all North Carolina regulatory personnel, including those who interfaced with the North Carolina Utilities Commission (NCUC)
- Managed the North Carolina Customer Complaint Bureau for AT&T/BellSouth
- Prepared draft legal filings in conjunction with the development and execution of regulatory strategy for AT&T/BellSouth in North Carolina – managed all dockets involving AT&T/BellSouth and the NCUC
- Responsible for all written correspondence from the Company to customers and the NCUC
- Personally resolved particularly sensitive and challenging complaints from customers and prepared written responses
- Established and maintained strong, principled working relationships with the NCUC, Attorney General, and the NC Public Staff.
- Served as Company spokesperson for all Commission agenda items involving BellSouth/AT&T; testified in various hearings
- Served on the Boards of the Frankie Lemmon Foundation and the North Carolina Telecommunications Industry Association

Prior to 1993, I managed various groups responsible for rate and cost development both in support of Company provided services and in support of antitrust cases involving the former Bell System.

# **Significant Regional Accomplishments**

- Outside Plant Engineer Designed placements, rearrangements, and maintenance of cable facilities and conduit for Southern Bell's entire Colonial District in Orlando, Florida.
- One of four Southern Bell Outside Plant engineering personnel pulled from 9-state region to Atlanta headquarters to perform the Company's first restructured private line cost study.
- Ultimately managed a variety of groups responsible for developing regional rates and costs for central office services and features, private line services, access services, operator services, directory assistance services, Special Assemblies and Contract Services Arrangements (for large customers).

- Selected for a several month assignment in New York to develop supporting data for the AT&T cost witness in the DOJ antitrust case. Served as "back-up" witness for cost and rate design witness for all regional access charge state cases which were conducted as part of the breakup of the Bell System.
- Fulfilled special assignment to develop regional cost data to support corporate position in anti-trust cases brought against the Bell System by MCI and a Sprint predecessor. Later transferred to Bellcore to complete the studies and to provide support for the Company witness. Both cases were "wins" for AT&T.
- Assumed responsibility for all NC regulatory functions for BellSouth in 1993, which included, in part: strategy development; interface with the Attorney General's Office/Public Staff/Utilities Commission; testimony before the NCUC; and settlement negotiation with opposing parties with respect to hearings.



#### LYONS GRAY BIO

Lyons Gray, a businessman from Winston-Salem, was sworn in as Secretary of Revenue on January 5, 2013 by Governor Pat McCrory. Prior to this appointment, he spent a year as the Senior Advisor to the President of the University of North Carolina system, which comprises 17 campuses across North Carolina.

From 2005-2009, Gray served as the Chief Financial Officer of the United States Environmental Protection Agency. Nominated by President George W. Bush, and confirmed unanimously by the US Senate, he served as the principal agency representative to Congress, the Office of Management and Budget, and to the various states. His experience in Washington gave him an insider's look at the way in which Washington works (or doesn't work). Prior to his service in the Bush administration, he served as the President and CEO of the Downtown Winston-Salem Partnership. He initiated a number of projects that have revitalized the downtown core.

From 1989 to 2002, Gray served six consecutive terms in the NC General Assembly, serving as Chairman of the House Finance Committee from 1995 to 1999. He was also Vice Chairman of the House Ethics Committee. Gray was President and Owner of Salem Systems, Inc. and Triangle Campers, Inc. both of Winston-Salem, and served as Vice President of Intercontinental Consultants Corporation. Gray spent approximately 12 years working in Sales and Marketing for R.J. Reynolds Tobacco Company.

He currently serves on the board of the Lettie Pate Whitehead Foundation, Inc., has previously served on the boards of UNC-Chapel Hill's General Alumni Association, Salem Academy and College, the UNC School of the Arts Foundation, and the Piedmont Triad Partnership. Gray has also served on the boards of visitors of the Winston-Salem State University Foundation and the Bowman Gray School of Medicine at Wake Forest University. Gray has held leadership roles in multiple civic and philanthropic organizations, including AIDS Care Service of Winston-Salem, the North Carolina Nature Conservancy, Leadership Winston-Salem, the American Red Cross, and the Salvation Army Boys Club.

He and his wife, Connie, live in Winston-Salem.

#### J. Todd Chasteen - General Bio

#### Education

LL.M - Taxation, University of Florida School of Law, Gainesville, FL J.D., with honors, University of Florida School of Law, Gainesville, FL B.B.A, Accounting, magna cum laude, James Madison University, Harrisonburg, VA

#### Work Experience

<u>Samaritan's Purse</u> – Currently serve as Corporate Counsel for international disaster relief charity based in Boone, North Carolina. Served in various roles of executive management with Samaritan's Purse (SP) including as Vice President of Administration, Human Resources and General Counsel. Samaritan's Purse is an international Christian relief organization with offices in Australia, Canada, Kenya, the United Kingdom, and the United States and over \$600 million in contributions. SP ranked one in North Carolina in private contributions. Of over one million Section 501(c)(3) organizations, Samaritan's Purse ranked 39<sup>th</sup> in 2013 in private contributions as listed in *Chronicle of Philanthropy's*, *Philanthropy 400*.

[With Samaritan's Purse from 1994 to Present except for one year teaching law at Liberty University School of Law in 2007-2008]

While serving at Samaritan's Purse, he became involved in nonprofit reform initiatives on a national level participating on the Independent Sector's, Panel on the Nonprofit Sector, Advisory Committee on Self-Regulation of the Charitable Sector and the Government Oversight and Self-Regulation Work Group making recommendations to Congress. The Advisory Committee members consisted of academics from Harvard, Duke, Stanford, New York University, Northwestern and leaders from private foundations and charities. Also served on the ECFA Panel of Legal Experts for the Commission on Accountability and Policy for Religious Organizations, ECFA Ad Hoc Legislative Committee, The Faith and Giving Coalition and The Trust Coalition to educate Congress regarding nonprofit reform proposals.

#### Other Legal Roles

Prior to serving with Samaritan's Purse, worked as a Senior Attorney Advisor for the Honorable Lawrence Wright at the United States Tax Court in Washington, D.C. drafting tax court memorandum opinions and responses to motions. After leaving the tax court, he practiced nonprofit, corporate, tax and business law and taught legal seminars to banking institutions in Charlotte, North Carolina. Earlier in his career he was a Certified Public Accountant licensed in the State of Florida.

#### **Educational Experience**

While earning a Master of Laws after law school, he confirmed his passion for teaching as an Adjunct Professor at the University of Florida, Warrington College of Business, teaching business law courses. Later served as an Associate Professor of Law at Liberty University. Prior to attending law school, taught accounting and business law for two years at Lake City Community College in Lake City, Florida.

#### **Memberships**

He has held memberships in a range of professional organizations, including the Christian Leadership Association, Association of Corporate Counsel, North Carolina Corporate Counsel Section, American Bar Association, North Carolina Bar Association, The North Carolina State Bar, and the American Institute of Certified Public Accountants. Licensed to practice law in North Carolina.

# Patricia R. "Patti" Head Biographical Information

#### Education

1968 Graduate of Wake Forest University, B.S. Biology Teaching Certificate, Wake Forest University Former Teacher, Forsyth County Schools

## Experience

28 years Wake County Public School community volunteer prior to being elected to the Wake County Public School System Board of Education in 2001

#### School based:

President, Broughton PTSA
Chair, Broughton Advisory Council
Guidance Support Committee - BHS
Booster Clubs - Choral and CAPS
PTSA officer at Jeffrey's Grove, Underwood, Daniels & Martin
Citizens Advisory Committee WCPS5 Student Assignment Committee
Wake County Board of Education - 2001-2009

Chair: 2005-07

Vice-chair: 2003-2005

#### Community based:

Wake Education Partnership Board of Directors- 7 years (1998-2005)

Chair, Teacher Grants Committee

Chair, Standards and Accountability

Chair, Jewell/Jenrette Awards Committee

Board of Trustees (2005-2007)

Character Education Community Involvement Committee - 6 years

Certified CPR Instructor, American Red Cross - 1978-present

White Memorial Presbyterian Church - 1974-present

Elder, Sunday School Teacher, Choir Member, Senior High Youth Advisor and Moderator of Presbyterian Women

Board of Directors, Community in Schools 2003- present

Chair, Board Resource Development Committee 2012-2013

Board of Directors, Greater Raleigh Chamber of Commerce 2005-07

# Discipline Hearing Commission for the NC State Bar 2009- present

## Family

Husband: Allan B. Head, Executive Director, North Carolina Bar Association Children: David (BHS graduate, 1984; WFU graduate, 1988), wife Marti and daughters Carlyn, Charli, Clara and Chandler

Darryl (BHS graduate, 1990; UNC graduate, 1994), wife Karin , son Reed and daughter Hayden

Jayme (BHS graduate, 1994; WFU graduate, 1998, Graduate degree, Bush School of Government and Public Service, Texas A&M, 2000), husband Arturo Sanchez, son Arturo IV and daughter Danielle

#### Dr. Linda Morrison Combs

Dr. Linda Morrison Combs was unanimously confirmed by the General Assembly as North Carolina's State Controller in June 2014. She is the sixth State Controller and the first woman to hold this independent office.

From 2005-2007 she was Controller of the United States. As Controller, Executive Office of the President, Office of Management and Budget, she worked on the widest possible range of issues at the highest levels of government. She routinely briefed the President of the United States on the status of financial management in the Federal departments, and frequently testified before numerous Congressional oversight committees. She led Sarbanes-Oxley compliance for the entire Federal government. Dr. Combs headed the Chief Financial Officers Council for the entire Federal government and was responsible for establishing financial management policies and requirements for the Executive branch of the Federal government, totaling \$2.7 trillion in revenue.

Key selected accomplishments as Controller of the United States included:

- 1. Reduced audit completion time (from five months) to 45 days from end of fiscal year for the entire Federal Government first time in history.
- 2. Reduced improper payments by \$9 billion.
- 3. Disposed of \$4.5 billion of unneeded real property.

During her career she has worked for three U. S. Presidents and has earned five U. S. Senate confirmations. In previous positions, Combs has been the Chief Financial Officer at the Environmental Protection Agency (\$8 billion budget) where she led that agency to obtain a clean audit opinion with no material weaknesses, and received the highest honor awarded—the prestigious Crystal Eagle Award from the President. As Assistant Secretary of the Department of Transportation (\$58 billion budget), she led that agency to be the first Federal Department to install a single core financial system Department-wide, resulting in the Department of Transportation being designated a Federal Financial Center of Excellence. Dr. Combs also held Assistant Secretary or equivalent COO roles at the Departments of Treasury, Veterans Affairs, and Education.

Not only does Dr. Combs understand government on the inside, she knows first-hand its impact on the private sector. In the private sector Combs' achievement record is equally significant. She founded three successful companies and took their products to worldwide distribution. She held line management positions with significant profit and loss responsibilities at a large southeastern bank.

She has a doctor's degree from Virginia Tech, undergraduate and master's degrees from Appalachian State University, and is a graduate of the Program for Senior Managers at Harvard University.

Numerous organizations have honored Combs for her excellence in leadership, exemplary performance and outstanding service. These awards include three from the President of the United States, and nine awards from various Members of the President's Cabinet. Other recognitions include over one hundred and fifty awards, citations, and honors by non-profit, volunteer organizations, higher education institutions and corporations.

Linda was born in Caldwell County and resides in Winston-Salem, North Carolina.

#### RAY GRACE

#### **EMPLOYMENT HISTORY**

| 2012 - Present | North Carolina Acting Commissioner of Banks<br>North Carolina Office of the Commissioner of Banks<br>Raleigh, North Carolina  |  |  |
|----------------|---|--|--|
|                | Leader of the agency of North Carolina state government that supervises or regulates state-chartered banks, savings banks and savings and loan associations; mortgage bankers, mortgage brokers, mortgage servicers and mortgage loan originators; consumer finance companies, check cashers, money transmitters, reverse mortgage lenders and refund anticipation loan facilitators. |  |  |
| 2010 - 2012    | Chief Deputy Commissioner of Banks  |  |  |
| 2009 – 2010    | Deputy Commissioner of Banks  |  |  |
| 1992 – 2009    | Director of Bank Applications   |  |  |
| 1990 – 1992    | Special Supervisory Examiner (Responsible for supervision of troubled banks during a deep recession)  |  |  |
| 1985 – 1990    | Director of Bank Applications   |  |  |
| 1974 1985      | Commercial Bank Examiner (Helped establish and led the formation of an Electronic Data Processing (EDP) (later, IT) examination team and program for the state during 1978, and worked as both commercial and EDP bank examiner from 1978 to 1985.)   |  |  |

Accomplishments during terms of office include the following:

#### Banking, Mortgage and Consumer Lending Regulation

- Assets under supervision are more than \$235 billion at September 30, 2012.
- Guided state-chartered banks during worst economic crisis since the Depression.
- Implemented technology to automate certain areas of the examination processes of regulated entities to increase efficiencies in supervision.
- Issued over 340 decisions and orders in administrative actions involving the licensure of companies and individuals not meeting the NC SAFE Act's standards for character, fitness or financial responsibility.
- Helped establish 95 de novo North Carolina state banks.
- Helped form the North Carolina Bank Directors' College in 1998.

#### Other Initiatives

- Upon former Commissioner Joseph A. Smith's departure from the agency, testified before the Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws, and led the implementation of the first substantive revision and modernization of North Carolina's banking law since 1931.
- Agency is a member of the task force to increase small business lending by North Carolina banks.
- Agency is a member of the Taskforce on Fraud Against Older Adults (created by the General Assembly in 2012), the Senior Fraud Taskforce (facilitated by the NC Office of the Attorney General), and the Wake County Elder Abuse Taskforce.
- Agency is a member of the Financial Literacy Council and the NC JumpStart Coalition.

#### **EDUCATION AND MILITARY SERVICE**

Graduated from LaSalle High School, Niagara Falls, New York, 1966.

Served in the U.S. Marine Corps, 1966 to 1969 (honorable discharge, September 1969).

Service in the Republic of Viet Nam, March 1967 through April 1968.

B.S. in Commerce, Niagara University, Niagara Falls, New York, December 1973.

#### **AFFILIATIONS**

Conference of State Bank Supervisors

- Incoming Vice Chairman, CSBS District III (Southeastern Region)
- Vice Chairman, CSBS Performance Standards Committee (Establishes agency performance standards and administers agency accreditation program for state banking departments nationally)
- Incoming Chairman, CSBS Performance Standards Committee (Establishes agency performance standards for CSBS state banking department accreditation).

#### ADDITIONAL PERSONAL INFORMATION

Born April 5, 1948, in Niagara Falls, New York.

Resides in Raleigh, North Carolina with wife of over 20 years, Joan Grace. Father of two sons and a daughter; three grandchildren, all of Raleigh.

Anne B. Faircloth 207 N. Chestnutt Street Clinton, NC 28328 (910) 592-3593 beaucloth@yahoo.com

Anne Faircloth owns and manages multiple agricultural and real estate businesses in Clinton, NC including Lafayette Farms, a contract swine operation with 55,000 finishing spaces and 4000 sows; a 1000-head beef cattle farm; and various commercial properties.

Anne currently serves on the Preservation NC board and is chairman of the board of trustees of the NC Museum of Art. She is a past trustee of the Madeira School, NC Pork Council, the Sampson Community College Foundation, the United Way of Sampson County, and is a former deacon of Graves Memorial Presbyterian Church.

Anne graduated from Duke University, cum laude, in 1991. She received an MA in English and Creative Writing from Hollins University in 2000, where she served on the board of trustees from 2003-2013.

She worked as an editorial assistant at the International Herald Tribune in Paris from 1991-1994. From 1994-1999 she was a writer-reporter for Fortune Magazine in New York.

Anne is married to Frederick Beaujeu-Dufour and they have two children: Nancy (14) and Julian (11).

# Faylene Whitaker 2991 Providence Church Road Climax, NC 27233 (336) 215-2274 whitakerfarm@northstate.net

#### Professional Experience

Co-Owner of Whitaker Farms

Faylene and Richard Whitaker started Whitaker Farms in 1975. The farm consist of 250 acres of Organic tobacco, 6 acres of strawberries, 30 acres of vegetables, a greenhouse operation, two garden centers, and a landscape and waterscape division. Two sons are also part of the operation.

#### **Present Boards**

North Carolina Rules Review Commission 2011-present NC Farm Bureau State Women's Committee NC Commissioner of Agriculture circle NC Farm Bureau Horticulture Advisory committee

#### Past Boards

Farm Service Agency State Board Committee for 8 years
North Carolina Tobacco Growers Board 8 years
Chair of North Carolina Agriculture Consortium for 6 years
President of NC Greenhouse Vegetables
NC Strawberry Board Member
NC State and A&T University CARROT representative

Donald James Lambeth 332 McCall Road Ellerbe, NC 28338 Home (910) 652-5088 Mobile (910) 417-0438

Email: jimlambeth25@gmail.com

**Education:** 

Bachelor of Science in Forestry

North Carolina State University

December 1973

Experience:

Triple L Farms, Inc.

Owner and President 1974 until present

Acme Wood Company Timber Procurement

January 1974 - April 1974

Other Interests:

Ruling Elder, Norman Presbyterian Church, PCA

Commissioner's Circle

Richmond County Farm Bureau, Secretary

NC Pine Needle Association

NC Farm Bureau Fruit and Vegetable Advisory Board

Richmond County Planning Board

Founder and volunteer firefighter Derby VFD

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PAT McCrory Governor

March 23, 2015

Lieutenant Governor Dan Forest President of the Senate 301 N. Blount Street Raleigh, NC 27601

The Honorable Phil Berger President Pro Tempore of the Senate 16 West Jones Street, Room 2008 Raleigh, North Carolina 27601

The Honorable Tim Moore Speaker of the House 16 West Jones Street, Room 2304 Raleigh, North Carolina 27601

Dear Lieutenant Governor Forest, President Pro Tempore Berger and Speaker Moore:

Pursuant to N.C.G.S. § 7A-45.1(a10), I hereby nominate, and submit for confirmation as a Special Superior Court Judge, Charles M. Viser of Mecklenburg County. Mr. Viser is nominated to fill the vacancy created by the January 1, 2015 resignation of former Special Superior Court Judge Martin McGee.

Mr. Viser is well qualified for this position by his education and experience, and I am grateful for his willingness to serve the State of North Carolina in this important capacity.

Enclosed, you will find biographical information for Mr. Viser. Please feel free to contact my staff for any additional information.

Sincerely,

Pat McCrory
Governor

## **Casey Viser**

125 Altondale Avenue Charlotte, NC 28207 caseyviser@gmail.com (704) 608-2143

Judge Casey Viser is a native Charlottean, husband, and devoted father of three children at Trinity Episcopal School who is committed to serving the Bar, and the people of Mecklenburg County.

Judge Viser grew up in Foxcroft, and was a member of the first Kindergarten class at Charlotte Latin School. After graduating from Charlotte Latin School in 1990, he went on to Hampden-Sydney College, where he was a member of the soccer team, the Honor Court, the Student Senate, and Omicron Delta Kappa Honor Society, and graduated with a BA in Economics and Spanish in 1994. Judge Viser travelled to Colorado upon leaving Hampden-Sydney, fortuitously ending up in the employment of two real estate developers from Los Angeles who were developing commercial properties in the ski resort town of Aspen. They encouraged him to become active politically, and he eventually went to work for Governor Pete Wilson who, at that time, was running for the Republican nomination for President. Judge Viser returned to North Carolina to work for Richard Vinroot's first gubernatorial bid in 1996, and then travelled the country as a member of Vice-Presidential nominee Jack Kemp's staff during the Bob Dole for President campaign of 1996.

Judge Viser entered law school at Campbell University in 1997, and was elected President of the Student Bar Association in 1999. Upon graduation, he returned to his home of Charlotte and married the former Carol Biggers Dabbs. He began his legal career as an associate at James, McElroy & Diehl, PA. in 2000, and became a partner in the firm in 2005. He was elected by the Mecklenburg County Bar in May 2013 and then appointed by Governor Pat McCrory to fill the unexpired term of former Chief District Court Judge Lisa Bell. Prior to joining the bench, Judge Viser spent thirteen years practicing civil litigation and criminal law in State and Federal courts at James, McElroy & Diehl, PA. He has argued cases before the North Carolina Supreme Court, the North Carolina Court of Appeals, and the Fourth Circuit Court of Appeals. He has been named to: *Charlotte Business Journal's* "40 Under 40;" *Business North Carolina* Magazine's "Legal Elite" for Criminal Defense; *Superlawyers* Magazine, as a "Rising Star" in the areas of Business Litigation and Criminal Defense; and *Best Lawyers in America*, as "Lawyer of the Year" in 2013 for DWI Defense.

Judge Casey Viser has a diverse background and experience as both a civil litigator and criminal trial attorney, and is uniquely qualified to preside over any trial proceeding. Judge Viser knows the challenges faced by attorneys and litigants, and his background, temperament, and knowledge of not only the law and procedure, but also people, enables him to serve effectively as a District Court Judge.

#### Bar memberships:

North Carolina State Bar Mecklenburg County Bar Western, Middle, and Eastern Districts of North Carolina Fourth Circuit Court of Appeals

#### **Education:**

Campbell University School of Law, JD 2000 Hampden-Sydney College, BA Economics/Spanish 1994 Charlotte Latin School, 1990

# **Casey Viser**

125 Altondale Avenue Charlotte, NC 28207 caseyviser@gmail.com (704) 608-2143

#### **Community Involvement:**

Christ Episcopal Church -- Lector, Sunday School teacher, Stewardship Committee member

Youth Soccer, Basketball Coach

Volunteer Truancy Court Judge, Charlotte-Mecklenburg Schools

Board Member, Eastover Homeowner's Association

Member, Legal Advisory Committee, Myers Park Country Club

Founding Member, The May 20<sup>th</sup> Society

Impact Fund Member, Foundation for the Carolinas

Grants Committee Member, Arts & Science Council

Member, Professionalism Committee, Mecklenburg County Bar Association

Member, Technology and Bench-Bar Liaison Committees of the North Carolina Bar Association

Member, Civil Courts Committee for Mecklenburg County District Court



# STATE OF NORTH CAROLINA OFFICE OF THE GOVERNOR

PAT McCrory Governor

March 23, 2015

Lieutenant Governor Dan Forest President of the Senate 301 N. Blount Street Raleigh, NC 27601

The Honorable Phil Berger President Pro Tempore of the Senate 16 West Jones Street, Room 2008 Raleigh, North Carolina 27601

The Honorable Tim Moore Speaker of the House 16 West Jones Street, Room 2304 Raleigh, North Carolina 27601

Dear Lieutenant Governor Forest, President Pro Tempore Berger and Speaker Moore:

Pursuant to N.C.G.S. § 7A-45.1(a9) and (a10), I hereby nominate, and submit for confirmation as a Special Superior Court Judge, Michael L. Robinson of Forsyth County. Mr. Robinson is nominated to fill the vacancy created by the January 1, 2015 resignation of former Special Superior Court Judge Lucy Inman.

Pursuant to N.C.G.S. § 7A-45.1(a9), upon Judge Inman's resignation, a new Special Superior Court judgeship was created. The person who fills this new judgeship is eligible to be designated as a Business Court Judge. As required in (a9), I have consulted with Chief Justice Martin about Mr. Robinson's legal experience. We are convinced that his expertise and experience will make him an excellent addition to our state's Business Court. We are grateful for his willingness to serve the State of North Carolina in this important capacity.

Upon Mr. Robinson's confirmation to Judge Inman's seat, I will ask Chief Justice Martin to designate him as a Business Court Judge.

Enclosed, you will find biographical information for Mr. Robinson. Please feel free to contact my staff for any additional information.

Sincerely,

Pat McCrory Governor

cc: Denise Weeks, House Principal Clerk Sarah Lang, Senate Principal Clerk

# MICHAEL LINDSAY ROBINSON

Date of Birth: September 21, 1955

Education:

1973 Woodberry Forest School, Woodberry Forest, Virginia

1977 Davidson College, Bachelor of Arts in Economics

Letter: Swimming and Diving

1980 University of North Carolina at Chapel Hill, Juris Doctor with Honors

Order of the Coif

Moot Court Board

#### Work History:

| 2008 - Present | Partner, Robinson & Lawing, LLP  |
|----------------|--|
| 1997 - 2007    | Partner, litigation section, Robinson & Lawing, LLP (emphasis on       |
|                | complex civil litigation, intellectual property matters, and corporate |
|                | litigation planning and loss prevention)                               |
| 1992 - 1997    | Partner, litigation section, Robinson Maready Lawing & Comerford, LLP  |
|                | (emphasis on complex civil litigation including intellectual property  |
|                | matters)   |
| 1980 - 1986    | Associate, litigation section, Petree Stockton & Robinson (and         |
|                | predecessor firms)(emphasis on civil and insurance defense litigation) |
| 1987 - 1992    | Partner, litigation section, Petree Stockton & Robinson (emphasis on   |
|                | complex civil litigation and medical malpractice defense)              |
|                |  |

#### Memberships and Service:

State Bar Council, Elected Member (2009 - present)

Vice-Chair, Grievance Committee (Sub-Committee II)(December 1, 2014 to Present)

Chair, Special Litigation Committee (January 1, 2014 - December 1, 2014)

Member, Executive Committee (January 1, 2013 to Present)

Member, Board of Visitors, Duke University Divinity School

President, Winston-Salem Downtown Rotary Club (July 1, 2013 – June 30, 2014)

Certified Mediator, North Carolina Dispute Resolution Commission

Legal Aid of Northwest North Carolina, volunteer attorney providing pro bono advice to Legal Aid clients.

Past Chair of Board of Directors: Hospice and Palliative CareCenter, Inc., Winston-Salem, North Carolina

Past Member, Board of Directors, DataMax Corporation and Charitable Foundation

Past Chair, Board of Directors, Arbor Acres Retirement Community of the United Methodist Church, currently member Building and Grounds Committee

Former Chair: American Cancer Society, Forsyth County Chapter

Former Chair and Member, Committee on the Episcopacy, Advisor to the Bishop, Western

North Carolina Conference of the United Methodist Church (1997 - 2004)

Centenary Methodist Church, Winston-Salem, North Carolina

Former Chair Staff Parish Relations Committee (1996 - 2000)

Former Lay Leader, Youth Department (1998 - 2000)

Former Chair: Administrative Board (2000 – 2002)

Former Chair: Board of Trustees (1994 – 1996)

Former Board Member and Newsletter Editor, North Carolina Association of Defense Attorneys Member, North Carolina Business Court Rules Committee



PAT McCrory Governor

December 11, 2014

Lieutenant Governor Dan Forest President of the Senate 301 N. Blount Street Raleigh, NC 27601

The Honorable Phil Berger President Pro Tempore of the Senate 16 West Jones Street, Room 2008 Raleigh, North Carolina 27601

The Honorable Thom Tillis Speaker of the House 16 West Jones Street, Room 2304 Raleigh, North Carolina 27601

Dear Lieutenant Governor Forest, President Pro Tempore Berger and Speaker Tillis:

Pursuant to N.C.G.S. § 7A-45.1(a10), I hereby nominate, and submit for confirmation, Special Superior Court Judge Gregory McGuire to fill the vacancy created by the September 30, 2014 retirement of former Special Superior Court Judge John Jolly. Judge McGuire is currently a Special Superior Court Judge in Wake County, filling the unexpired term of former Special Superior Court Judge Lisa Bell.

Pursuant to N.C.G.S. § 7A-45.3, Chief Justice Martin designated Judge McGuire as a Business Court Judge on October 13, 2014. Upon Judge McGuire's confirmation to Judge Jolly's seat, I intend to ask Chief Justice Martin to continue Judge McGuire's designation as a Business Court Judge. Judge McGuire is well qualified for this position by his education and experience, and I am grateful for his willingness to serve the State of North Carolina in this important capacity.

Enclosed, you will find biographical information for Judge McGuire. Please feel free to contact my staff for any additional information.

Sincerely,

Pat McCrory Governor

cc: Denise Weeks, House Principal Clerk Sarah Lang, Senate Principal Clerk

## Judge Gregory McGuire

Biographical Information

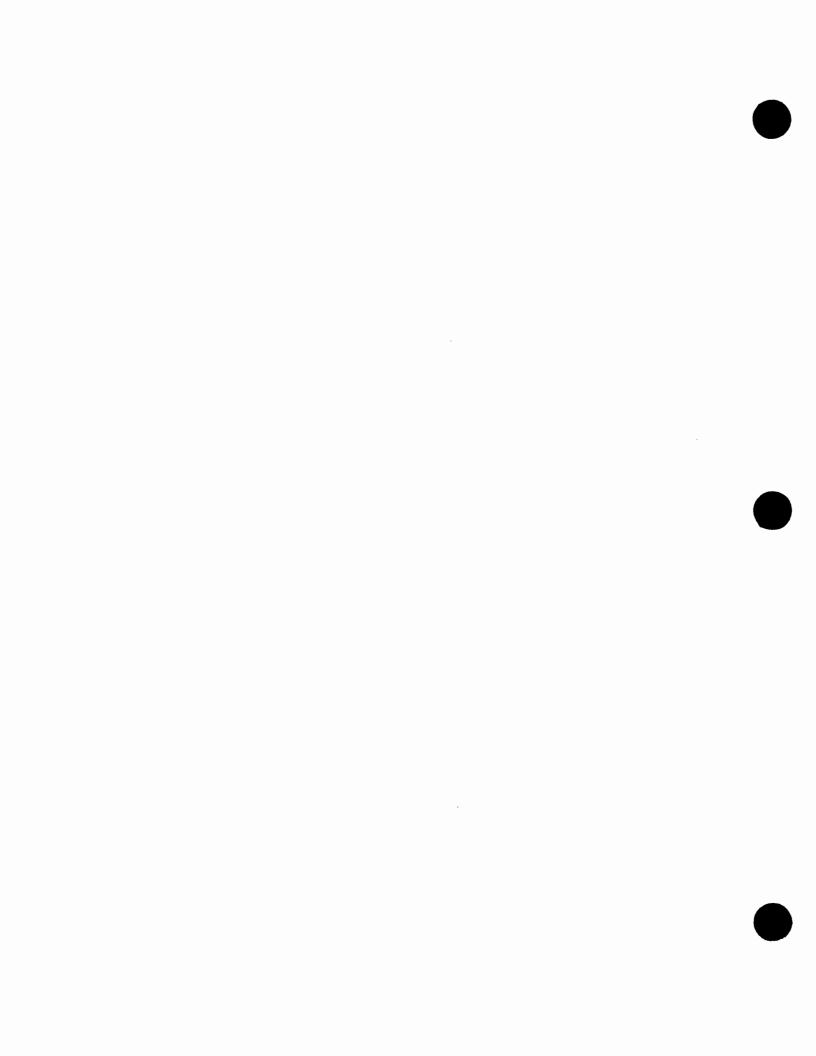
Judge McGuire was appointed a Special Superior Court Judge by Governor Pat McCrory on September 30, 2014, to fill the unexpired term of Special Superior Court Judge Lisa Bell. Judge McGuire was subsequently assigned to the North Carolina Business Court for Complex Business Cases in Raleigh, North Carolina by Chief Justice Mark Martin.

Since October 10, 2014, Judge McGuire has been responsible for all aspects of the complex business lawsuits assigned to the Raleigh location of the North Carolina Business Court, as well as managing two full time law clerks and a Trial Court Coordinator.

Prior to his appointment to the bench, Judge McGuire was a shareholder with Ogletree Deakins Nash Smoak & Stewart, one of the nation's leading workplace law firms, where he spent over 26 years as a counselor and litigator for large, medium and small companies across a wide variety of industries. He litigated in and obtained favorable jury trial verdicts in state and federal courts throughout the United States, including courts in North Carolina, South Carolina, Virginia, Florida and Michigan.

Judge McGuire was recognized by Best Lawyers in America from 2010 – 2014, and has been recognized as a North Carolina Super Lawyer.

Judge McGuire obtained his B.S. degree from Cornell University in 1984, and his Juris Doctor from the University of North Carolina, Chapel Hill, in 1987.



#### § 7A-45.1. Special judges.

- (a) Effective November 1, 1993, the Governor may appoint two special superior court judges to serve terms expiring September 30, 2000. Effective October 1, 2000, one of those positions is abolished. Successors to the special superior court judge appointed pursuant to this subsection shall be appointed to a five-year term. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district.
- (a1) Effective October 1, 1995, the Governor may appoint two special superior court judges to serve terms expiring September 30, 2000. Successors to the special superior court judges appointed pursuant to this subsection shall be appointed to five-year terms. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district.
- (a2) Effective December 15, 1996, the Governor may appoint four special superior court judges to serve terms expiring five years from the date that each judge takes office. Successors to the special superior court judges appointed pursuant to this subsection shall be appointed to five-year terms. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district.
- (a3) Effective December 15, 1998, the Governor may appoint a special superior court judge to serve a term expiring five years from the date that judge takes office. Successors to the special superior court judge appointed pursuant to this subsection shall be appointed to five-year terms. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district.
- (a4) Effective October 1, 1999, the Governor may appoint four special superior court judges to serve terms expiring five years from the date that each judge takes office. Successors to the special superior court judges appointed pursuant to this subsection shall be appointed to five-year terms. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district.
- (a5) Effective October 1, 2001, the Governor may appoint a special superior court judge to serve a term expiring five years from the date that judge takes office. Successors to the special superior court judge appointed pursuant to this subsection shall be appointed to five-year terms. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district.
- (a6) Effective December 1, 2004, the Governor may appoint a special superior court judge to serve a term expiring five years from the date that each judge takes office. Successors to the special superior court judge appointed pursuant to this subsection shall be appointed to five-year terms. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district.
- (a7) Effective January 1, 2008, the Governor may appoint two special superior court judges to serve terms expiring five years from the date that each judge takes office. Successors to the special superior court judges appointed pursuant to this subsection shall be appointed to five-year terms. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district.

G.S. 7A-45.1 Page 1

- (a8) Notwithstanding any other provision of this section, the four special superior court judgeships held as of April 1, 2014, by judges whose terms expire on April 29, 2015, October 20, 2015, and December 31, 2017, and the two special superior court judgeships held as of April 1, 2015, by judges whose terms expire January 26, 2016, are abolished when any of the following first occurs:
  - (1) Retirement of the incumbent judge.
  - (2) Resignation of the incumbent judge.
  - (3) Removal from office of the incumbent judge.
  - (4) Death of the incumbent judge.
  - (5) Expiration of the term of the incumbent judge.
- (a9) Effective upon the retirement, resignation, removal from office, death, or expiration of the term of the special superior court judge held as of April 1, 2014, by the judge whose term expires on April 29, 2015, a new special superior court judgeship shall be created and filled through the procedure for nomination and confirmation provided for in subsection (a10) of this section.

Prior to submitting a nominee for the judgeship created under this subsection to the General Assembly for confirmation, the Governor shall consult with the Chief Justice to ensure that the person nominated to fill this judgeship has the requisite expertise and experience to be designated by the Chief Justice as a business court judge under G.S. 7A-45.3, and the Chief Justice is requested to designate this judge as a business court judge.

(a10) Except for the judgeships abolished pursuant to subsection (a8) of this section, upon the retirement, resignation, removal from office, death, or expiration of the term of any special superior court judge on or after September 1, 2014, each judgeship shall be filled for a full five-year term beginning upon the judge's taking office according to the following procedure prescribed by the General Assembly pursuant to Article IV, Section 9(1) of the North Carolina Constitution. As each judgeship becomes vacant or the term expires, the Governor shall submit the name of a nominee for that judgeship to the General Assembly for confirmation by ratified joint resolution. Upon each such confirmation, the Governor shall appoint the confirmed nominee to that judgeship.

However, upon the failure of the Governor to submit the name of a nominee within 90 days of the occurrence of the vacancy or within 90 days of the expiration of the judge's term, as applicable, the President Pro Tempore of the Senate and the Speaker of the House of Representatives jointly shall submit the name of a nominee to the General Assembly. The appointment shall then be made by enactment of a bill. The bill shall state the name of the person being appointed, the office to which the appointment is being made, and the county of residence of the appointee.

The Governor may withdraw any nomination prior to it failing on any reading, and in case of such withdrawal the Governor shall submit a different nomination within 45 days of withdrawal. If a nomination shall fail any reading, the Governor shall submit a different nomination within 45 days of such failure. In either case of failure to submit a new nomination within 45 days, the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall submit the name of a nominee to the General Assembly under the procedure provided in the preceding paragraph.

No person shall occupy a special superior court judgeship authorized under this subsection in any capacity, or have any right to, claim upon, or powers of those judgeships, unless that person's nomination has been confirmed by the General Assembly by joint resolution or appointed through the enactment of a bill upon the failure of the Governor to submit a nominee. Until confirmed by the General Assembly and appointed by the Governor, or appointed by the General Assembly upon the failure of the Governor to appoint a nominee, and qualified by taking the oath of office, a nominee is neither a de jure nor a de facto officer.

G.S. 7A-45.1 Page 2

- (a11) The Chief Justice is requested, pursuant to the authority under G.S. 7A-45.3 to designate business court judges, to maintain at least five business court judgeships from among the special superior court judgeships authorized under this section.
- (b) A special judge is subject to removal from office for the same causes and in the same manner as a regular judge of the superior court, and a vacancy occurring in the office of special judge is filled by the Governor by appointment for the unexpired term.
- (c) A special judge, in any court in which he is duly appointed to hold, has the same power and authority in all matters that a regular judge holding the same court would have. A special judge, duly assigned to hold the court of a particular county, has during the session of court in that county, in open court and in chambers, the same power and authority of a regular judge in all matters arising in the district or set of districts as defined in G.S. 7A-41.1(a) in which that county is located, that could properly be heard or determined by a regular judge holding the same session of court.
- (d) A special judge is authorized to settle cases on appeal and to make all proper orders in regard thereto after the time for which he was commissioned has expired. (1987, c. 738, s. 123(a); 1987 (Reg. Sess., 1988), c. 1037, s. 5; 1993, c. 321, s. 200.5(g); 1995, c. 507, s. 21.1(f); 1996, 2nd Ex. Sess., c. 18, s. 22.6(a); 1998-212, s. 16.22(a), (b); 1999-237, s. 17.12(a); 2000-67, s. 15.8(a); 2001-424, s. 22.4(a); 2004-124, s. 14.6(a); 2007-323, s. 14.24; 2014-100, s. 18B.6; 2015-241, s. 18A.19.)

G.S. 7A-45.1 Page 3



#### NORTH CAROLINA STATE ETHICS COMMISSION

### 2016 STATEMENT OF ECONOMIC INTEREST CONTACT INFORMATION

This contact information page will not be available on the Commission's website, but it is a public document.

919-814-3600

www.ethicscommission.nc.gov

| Prefix  | First Name   | Middle Name                                       | Last Name          |       | Suffix     |  |  |
|---|--|---|--------------------|-------|------------|--|--|
| Mr.   | Charles  | Malcolm   | Viser              |       |            |  |  |
| MAILING ADI   | DRESS  |   |                    |       |            |  |  |
|   | Address  |   | City               | State | ZIP        |  |  |
| 757 Providence Road   |  | C   | Charlotte NC       |       | 28207-0000 |  |  |
| DAYTIME PHO   | ONE NUMBER   | A   | LTERNATE PHONE N   | UMBER |            |  |  |
| 704-989-8180  |  | 70  | 704-608-2143       |       |            |  |  |
| E-MAIL ADDR   | RESS   |   |                    |       |            |  |  |
|   |  |   |                    |       |            |  |  |
| viser@icloud.c  | com  |   |                    |       |            |  |  |
| HOME ADDRE PROVIDE YOU RESIDENCY R Judicial officer or appointed to | ESS:  UR HOME ADDRESS ONLY REQUIREMENT. This requires means Justice or Judge of the Cany of these positions prior to | ment does not apply to<br>General Court of Justic | Judicial Officers. |       |            |  |  |
| HOME ADDRE<br>PROVIDE YOU<br>RESIDENCY R<br>Judicial officer        | ESS:  UR HOME ADDRESS ONLY REQUIREMENT. This requires means Justice or Judge of the Cany of these positions prior to | ment does not apply to<br>General Court of Justic | Judicial Officers. |       |            |  |  |



# NORTH CAROLINA STATE ETHICS COMMISSION 2016 STATEMENT OF ECONOMIC INTEREST

919-814-3600

www.ethicscommission.nc.gov

| FILER'S NAME     | (FIRST, MIDDLE, LAST)                                    |                     |      |                          |  |
|------------------|--|---------------------|------|--------------------------|--|
| Prefix           | First Name   | Middle Na           | me   | Last Name                | Suffix   |
| Mr.              | Charles  | Malcolm             |      | Viser                    |  |
| CURRENT EMPLOYER |  | JOB TITLE           |      |                          |  |
| self             |  |                     | Atto | rney                     |  |
| NATURE OR T      | YPE OF BUSINESS  |                     |      |                          |  |
| Law Practice     |  |                     |      |                          |  |
| REASON FOR       | FILING (SELECT ALL THA                                   | T APPLY)            |      |                          |  |
| #1 · 1           | ERNMENT JOB (Please spec<br>ork or are being considered) | rify the agency for |      |                          | ease list complete name of all eserving or are being considered) |
| Judicial Employ  | ees  |                     |      |                          |  |
| ☑ JUDICIAL O     | FFICER (Please specify the o                             | ffice you hold)     | _L   | EGISLATOR (Please specif | y House or Senate)   |
| Special Judge (S | uperior Court)   |                     |      |                          |  |

| 71. Do outer immediate run  | nily members reside in yo   | ur nousenoid    | !              |                                    |           |                           |
|---|-----------------------------|-----------------|----------------|------------------------------------|-----------|---------------------------|
| ✓ Yes □ No  |                             |                 |                |                                    |           |                           |
| When used throughout this   | form, the term Immedia      | te family incl  | udes your sp   | ouse (unless legally s             | eparate   | ed). It also includes     |
| members of your extended  | family (your and your sp    | ouse's childre  | en, grandchild | lren, parents, grandpa             | arents, a | and siblings, and the     |
| spouses of each of those pe   | ersons) who reside in you   | ır household.   |                |                                    |           |                           |
| List the full name of all ac  | dults and emancinated m     | inors in your   | household      | A minor is a child un              | der 18    | vears old Minors are      |
| emancipated by marriage,  |                             | -               |                |                                    | del 10    | jours old, Millions de    |
| FULL NAME OF<br>ADULTS &<br>EMANCIPATED<br>MINORS   | RELATIONSHIP                |                 | LOYER          | JOB TITLE                          | Ξ         | NATURE OF<br>BUSINESS     |
| Carol Dabbs Viser   | wife                        | John Dabbs      | Ltd.           | Owner                              |           | Specialty Gift Shop       |
| B. List ONLY the initials emancipated by marriage, on Note: You must list the further initials for UNEMANCIPATED CHILDREN | enlistment in the US milit  | tary or court o | order for emai | ncipation.                         | e end o   |                           |
|   | son                         | student         |                | student                            |           | student                   |
| JDV   | son                         | student         |                | student                            |           | student                   |
| TCV   | daughter                    | student         |                | student                            |           | student                   |
| PROPERTY INTEREST   | S                           |                 |                |                                    |           |                           |
| 1. As of December 31, 201   |                             | or members o    | f vour immed   | liste family:                      |           |                           |
|   | nterest in North Carolina   |                 |                |                                    | rket va   | lue of \$10,000 or more?  |
| Owner of Real Estat   | e % Ownershi                | p Interest      | Loc            | eation by City                     | T         | Location by County        |
| Charles M. Viser and Caro<br>Dabbs Viser  | 100                         | 4le             | Charlotte      |                                    | Meck      | lenburg                   |
| John Dabbs Ltd.   | 25                          |                 | Charlotte      |                                    | Meck      | lenburg                   |
| ECBD Limited Partnership  | 25                          |                 | Charlotte      |                                    | Meck      | lenburg                   |
| Carol Biggers Dabbs Fami<br>Trust   | ly 25                       |                 | Charlotte      |                                    | Meck      | lenburg                   |
|   | tate or personal property t | o or from the   | State of Nort  | h Carolina with a ma               | rket va   | lue of \$10,000 or more?  |
| Name of Lessor  | Name of Lesse               | ee (Renter)     |                | Estate, Location by<br>ty & County | If Pe     | rsonal Property, Describe |
|   |                             |                 |                |                                    |           |                           |
|   |                             |                 |                |                                    |           |                           |
|   |                             |                 |                |                                    |           |                           |

| 2. At any time during 2014 or 2015, did you, you North Carolina personal property with a market va |   | family sell to or buy from the State of                        |
|--|---|--|
| Yes ☑ No   | inde of \$10,000 of more:                 | <b>一直に対しています。</b><br>・特別<br>・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・ |
| Name of Purchaser  | Name of Seller                            | Type of Property   |
|  |   |  |
| FINANCIAL INTERESTS  |   |  |
| or pension or deferred compensation plan   | ly held investment fund (including mutual | I funds, regulated investment companies,                       |
| pension or deferred compensation plan.   |   |  |
| Owner of Interest  | Full Name of Cor                          | npany (Do not use a ticker symbol)                             |
| Charles M. Viser   | Walt Disney Co.                           |  |
| Charles M. Viser   | Bolt Technology, Inc.                     |  |
| Charles M. Viser   | Hudson City Bank Corp                     | ).   |
| Carol Dabbs Viser  | Spectra Energy Corp.                      | 310 (  |
| B. Stock Options in a company or business?  ☐ Yes ☑ No   |   |  |
| Owner of Stock Option  | Full Name of Cor                          | mpany (Do not use a ticker symbol)                             |
| C. Interests in a non-publicly owned company partnerships, joint ventures, limited liability comp  |   |  |
| ☑ Yes ☐ No If "No", proceed to question 4  |   |  |
| Owner of Interest  | Name of (                                 | Company or Business Entity                                     |
| Carol Dabbs Viser  | John Dabbs Ltd.                           |  |
| Carol Dabbs Viser  | ECBD Limited Partners                     | ship   |

| please list the names of any other companies   |  |  | any") identified in question 3.C above,   |
|--|--|--|---|
|  | or business entities in                          | which the primary co   | ompany owns securities or equity interests  |
| valued at over \$10,000, if known.  Non-Publicly Owned Company or Busi Primary Company)  | iness Entity (the                                |  | s in which the Primary Company Owns<br>curity or Equity Interests                   |
| ☑ None or Not Known  |  |  |   |
|  |  |  |   |
|  |  |  |   |
|  |  |  |   |
| C (2). If you know that any company or b   |  |  |   |
| Name of Company or Business  |  |  | a brief description of that business activity.  of Business Activity with the State |
| 72 N N V   |  |  |   |
| ✓ None or Not Known  |  |  |   |
|  |  |  |   |
|  |  |  |   |
|  |  |  |   |
|  |  |  |   |
| 4. As of December 31, 2015, were you, your   | spouse, or members o                             | f your immediate fam   | ily the beneficiaries of a vested trust with a                                      |
| value of \$10,000 or more that was created, es   | tablished, or controlle                          | ed by you?   |   |
| value of \$10,000 or more that was created, es<br>Do not list assets held in blind trusts. See 201   | tablished, or controlle                          | ed by you?   |   |
| value of \$10,000 or more that was created, es  Do not list assets held in blind trusts. See 201  Yes  No  | tablished, or controlle<br>6 SEI Helpful Tips fo | ed by you?  or the definition of "V                          | ested Trust" and "Blind Trust."   |
| value of \$10,000 or more that was created, es<br>Do not list assets held in blind trusts. See 201   | tablished, or controlle<br>6 SEI Helpful Tips fo | ed by you?   |   |
| value of \$10,000 or more that was created, es  Do not list assets held in blind trusts. See 201  ☐ Yes ☑ No   | tablished, or controlle<br>6 SEI Helpful Tips fo | ed by you?  or the definition of "V                          | ested Trust" and "Blind Trust."   |
| value of \$10,000 or more that was created, es  Do not list assets held in blind trusts. See 201  ☐ Yes ☑ No   | tablished, or controlle<br>6 SEI Helpful Tips fo | ed by you?  or the definition of "V                          | ested Trust" and "Blind Trust."   |
| value of \$10,000 or more that was created, es  Do not list assets held in blind trusts. See 201  ☐ Yes ☐ No  Name and Address of Trustee  | tablished, or controlle 6 SEI Helpful Tips fo    | of the Trust   | ested Trust" and "Blind Trust."  Your Relationship to the Trust                     |
| value of \$10,000 or more that was created, escond list assets held in blind trusts. See 201  Yes ☑ No  Name and Address of Trustee  6. As of December 31, 2015, did you, your specified in the second | Description  Description                         | of the Trust  your immediate famil                           | Your Relationship to the Trust  y have liabilities of \$10,000 or more,             |
| ralue of \$10,000 or more that was created, es  Do not list assets held in blind trusts. See 201  Yes ☑ No  Name and Address of Trustee  As of December 31, 2015, did you, your specific the mortgage on your primary pers   | Description  Description                         | of the Trust  your immediate famil                           | Your Relationship to the Trust  y have liabilities of \$10,000 or more,             |
| value of \$10,000 or more that was created, escond list assets held in blind trusts. See 201  Yes No  Name and Address of Trustee  6. As of December 31, 2015, did you, your speculating the mortgage on your primary personns and intra-family debt.  | Description  Description                         | of the Trust  your immediate famil                           | Your Relationship to the Trust  y have liabilities of \$10,000 or more,             |
| value of \$10,000 or more that was created, es<br>Do not list assets held in blind trusts. See 201<br>☐ Yes ☑ No   | Description  Description  Description            | of the Trust  your immediate family apples include credit ca | Your Relationship to the Trust  y have liabilities of \$10,000 or more,             |

| _  | ed from the following sources:   |  |  |
|--|--|--|--|
| <ul><li>Capital gains</li><li>Military retirement</li></ul>  | <ul> <li>Federal government re</li> <li>Social security income</li> </ul>  |  |  |
| Recipient of Income  | Name of Source   | Type of Business/Industry  | Type of Income   |
| ☐ I had no reportable income of  | over \$5,000 in 2015.  |  |  |
| Charles M. Viser   | Law Practice   | Legal  | business   |
| Charles M. Viser   | Walt Disney Co.  | Investment   | dividend   |
| Carol Dabbs Viser  | ECBD Limited Partnership   | Investment   | Interest   |
| Carol Dabbs Viser  | John Dabbs Ltd.  | Gift Shop  | salary   |
| 7(a). During 2015, were you, y employee, independent contract  | our spouse or members of your interest of a no   | nmediate family a director, officer, opposition or organization oublic health and safety, or education | operating in the State of North  |
| 7(a). During 2015, were you, y employee, independent contract Carolina primarily for religious  ☐ Yes ☑ No If "No", pro  | cour spouse or members of your interest of your interest of a not so charitable, scientific, literary, pocceed to question 8.  | nprofit corporation or organization  | operating in the State of North all purposes?                                  |
| employee, independent contract Carolina primarily for religious  Yes No If "No", pro  Do not list State board  Do not list organization  | cour spouse or members of your interest of your interest of a not so charitable, scientific, literary, pocceed to question 8.  | ublic health and safety, or education by a political subdivision of the State                          | operating in the State of North all purposes?                                  |
| 7(a). During 2015, were you, y employee, independent contract Carolina primarily for religious   Yes ☑ No If "No", pro  Do not list State board  | cour spouse or members of your interestor, or registered lobbyist of a not so charitable, scientific, literary, poceed to question 8.  ds or entities, or entities created by the constraint of which you are a mere mem   | ublic health and safety, or education<br>by a political subdivision of the State                       | operating in the State of North all purposes?                                  |
| 7(a). During 2015, were you, y employee, independent contract Carolina primarily for religious  ☐ Yes ☑ No If "No", pro  Do not list State board  Do not list organization  Name of Person       | cour spouse or members of your interestor, or registered lobbyist of a not so, charitable, scientific, literary, pocced to question 8.  ds or entities, or entities created by one of which you are a mere mem His/Her Position  | oy a political subdivision of the State ober.  Name of Nonprofit Corporation or Organization           | Nature of Business or Purpos of Organization                                   |
| 7(a). During 2015, were you, yemployee, independent contract Carolina primarily for religious.  Yes No If "No", pro  Do not list State board  Name of Person  7(b). If the nonprofit corporation | cour spouse or members of your interestor, or registered lobbyist of a not so, charitable, scientific, literary, proceed to question 8.  ds or entities, or entities created by one of which you are a mere members of which you are a mere members of organizations listed above one or organizations listed above. | by a political subdivision of the State  | Nature of Business or Purpos of Organization  Carolina or receive State funds, |

| Name of Person  Please answer the following question as  8. During 2015, were you, your spouse, of society, organization, or advocacy group   | or members of your immer with an interest in matter of ficer - You are not requal officer or you are filing ich you are only a member of Society Advoca   | rs over which your age uired to complete this g as an appointee to the er (not serving in a lead y, Organization or ccy Group  g board/agency: (Superior Court) ediate family a director | ency or board magnestion if you ose offices.  dership role).  Leadership | are filing because you are a  Position (Director, Officer, Board Member) |
|---|---|--|--|--|
| society, organization, or advocacy group  Yes No Legislator/Judicial C legislator or a judicia  Do not list organizations of whith  Name of Person  Please answer the following question as  8. During 2015, were you, your spouse, or society, organization, or advocacy group | with an interest in matter Officer - You are not requal officer or you are filing ich you are only a member Name of Society Advocati it pertains to the following Special Judge of members of your imme | rs over which your age uired to complete this g as an appointee to the er (not serving in a lead y, Organization or ccy Group  g board/agency: (Superior Court) ediate family a director | ency or board magnestion if you ose offices.  dership role).  Leadership | are filing because you are a  Position (Director, Officer, Board Member) |
| Please answer the following question as  8. During 2015, were you, your spouse, of society, organization, or advocacy group   | officer - You are not requal officer or you are filing ich you are only a member Name of Society Advoca   | g as an appointee to the er (not serving in a lead by, Organization or ccy Group)  g board/agency: (Superior Court)  | question if you ose offices.  dership role).  Leadership                 | are filing because you are a  Position (Director, Officer, Board Member) |
| legislator or a judicia  Do not list organizations of white Name of Person  Please answer the following question as 8. During 2015, were you, your spouse, of society, organization, or advocacy group  | Name of Society Advoca  it pertains to the following Special Judge or members of your imme  | g as an appointee to the er (not serving in a lead y, Organization or ecy Group  g board/agency: (Superior Court) ediate family a director   | dership role).  Leadership   | Position (Director, Officer, Board Member)                               |
| Name of Person  Please answer the following question as  8. During 2015, were you, your spouse, of society, organization, or advocacy group   | Name of Society Advoca  it pertains to the following Special Judge of members of your imme  | g board/agency: (Superior Court) ediate family a director  | dership role).  Leadership   | Board Member)  verning board member of any                               |
| Name of Person  Please answer the following question as  8. During 2015, were you, your spouse, of society, organization, or advocacy group   | Name of Society Advoca  it pertains to the following Special Judge of members of your imme  | g board/agency: (Superior Court) ediate family a director  | dership role).  Leadership   | Board Member)  verning board member of any                               |
| Please answer the following question as  8. <u>During 2015</u> , were you, your spouse, of society, organization, or advocacy group   | Advoca  | g board/agency: (Superior Court) ediate family a director  |  | Board Member)  verning board member of any                               |
| 8. During 2015, were you, your spouse, o society, organization, or advocacy group   | Special Judge or members of your imme   | (Superior Court)   | r, officer, or go  |  |
| ☐ Yes ☐ No ☑ Legislator/Judicial C<br>legislator or a judicial  |   | uired to complete this   | question if you  |  |
| ▶ Do not list organizations of whi  | ich you are only a membe  | er (not serving in a lead  | dership role).   |  |
| Name of Person  |   | y, Organization or<br>icy Group  | Leadership   | Position (Director, Officer<br>Board Member)                             |
|   |   |  |  |  |
| 9(a). List the name of each company or b  |   |  |  |  |
|   | Relationship to Filer   | Name of Con  |  | Role of Person   |
|   |   |  |  |  |
| ☐ No Business Associations  |   |  |  |  |

| activity. Name of Compa  | ny or Business Entity  | Description  | of Business Activity with the State  |
|--|--|--|--|
| ☐ Not applicable (No entities  | listed on #9a) 🗹 No relations                                  | hip / Not known  |  |
|  |  |  |  |
| 10. Are you a practicing attorn  | ney?   |  |  |
| ☑ Yes ☐ No ☐ Judicial O  | fficer/State Attorney  | AND A CALL TACK TO THE SECOND  |  |
|  |  | h you or the law firm with w   | hich you are affiliated has earned legal   |
| of more than \$10,000 during 2   | 015.   | And the state of t | Land Control of the C |
| ☐ Administrative   | ☐ Admiralty  | ☐ Corporate  | ☑ Criminal   |
| Decedent's Estates   | ☐ Environmental  | ☐ Insurance  | □ Labor  |
| Local Government   | Real Property  | ☐ Securities   | □Tax   |
| ☑ Tort litigation (including negligence)   | Utilities Regulation   | ☐ Other category not   | listed.  |
| The state of the s | icensed professional (other than ciation for which you charged | To Balance to the  | ovide consulting services individually or  |
| Туре   | of Business  | Nat  | ture of Services Rendered  |
|  |  |  | 10.000   |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

| Please answer the following ques   | stion as it pertains to the following   | board/agency:  |  |
|--|---|--|--|
|  | Judicial E  |  |  |
| 12. Are you or your employer, yo   | our spouse or members of your imm   | nediate family, or their en  | aployer currently:   |
| • Licensed by the State board or   | employing entity with which you   | are or will be associated of   |  |
| • Regulated by the State board of  | or employing entity with which you  | are or will be associated  | or   |
| Have a business relationship was a business relation | vith the State board or employing e   | ntity with which you are o   | or will be associated?   |
| legislator or  | dicial Officer - You are not requi<br>a judicial officer ("judicial officer"<br>those offices.  |  | ion if you are filing because you are a pful Tips) or you are filing as an |
| Name of Person   | Name of Employ  | er (if applicable)   | Type of Relationship (Licensing,<br>Regulatory, Business)                  |
| 12. Are you or your employer, you  • Licensed by the State board of  • Regulated by the State board of  • Have a business relationship we legislator/Julegislator or   | Special Judge (Special Officer - You are not requial judicial officer ("judicial officer") | Superior Court) mediate family, or their en are or will be associated are or will be associated entity with which you are or ared to complete this quest | or or will be associated? ion if you are filing because you are a          |
| Name of Person   | Name of Employ  | er (if applicable)   | Type of Relationship (Licensing,<br>Regulatory, Business)                  |
|  |   |  |  |
|  | ember of your immediate family comonths preceding your filing of this   |  | obyist or lobbyist principal or were you                                   |
| registered as such within the 12 i   |   |  |  |
| registered as such within the 12 i   | months preceding your filing of thi   | s form?  |  |
| registered as such within the 12 i   | months preceding your filing of thi   | s form?  |  |

| 14. During any calendar quarter in candidate), did you   | 1 2015 (but only the time period  | after you were appointed, employ  | ved or filed or were nominated as a   |
|--|---|---|---------------------------------------|
| • receive any gift(s) exceeding \$2  | 00 per quarter from a person or   | group of persons acting together,   | and                                   |
| • when both you and those person   | n(s) were outside North Carolina  | at the time you accepted the gift(  | s), and                               |
| • the gift(s) were given under circ  | cumstances that would lead a rea  | sonable person to conclude that the   | hey were given for lobbying?          |
| □Yes ☑ No  |   |   |                                       |
| Do not report gifts that h   | * '   | amily.  you to the Department of the Sec  | cretary of State on the "Expense      |
| Report for Exempted Per  |   |   | · · · · · · · · · · · · · · · · · · · |
| Date Item Received   | Name and Address of Donor(s)  | Describe Item Received  | Estimated Market Value                |
| Please answer the following quest  15. During 2015 (but only the tim  • accepted a "scholarship" exceed  • those person(s) were outside No  • the scholarship was related to yo  conference, meeting, or similar  Yes No Judicial Office | Judicial deperiod after you were appointed ling \$200 from a person or group orth Carolina and our public position? A "scholar event, including tuition, travel | Employees  ed, employed, or filed or were nor p of persons acting together and ship" is a grant-in-aid, either d l, lodging, meals, and other simi  | irect or indirect, to attend a        |
| Report for Exempted Per Legislators are not requi  | nave previously been reported by rsons."  | you to the Department of the Sec<br>y a nonpartisan legislative organis   |                                       |
| Date of Scholarship  | Name and Address of Donor(s)  | Describe Event  | Estimated Market Value                |
|  |   |   |                                       |
|  |   |   |                                       |
|  |   |   |                                       |
|  |   | I AND THE RESERVE OF THE PARTY |                                       |
|  |   |   |                                       |

| Please answer the following question   | n as it pertains to the following b<br>Special Judge (Su             |  |  |
|--|--|--|--|
| 15. During 2015 (but only the time p   |  | The part of the second  | minated as a candidate) did you                                |
| • accepted a "scholarship" exceedin  |  | an a Tarabah Malabah kacamatan dari  |  |
| • those person(s) were outside North   |  | 19 N 1   |  |
|  |  | in?) is a group in aid aithoud   | limest on indirect to ettend a                                 |
| <ul> <li>the scholarship was related to your<br/>conference, meeting, or similar ev</li> </ul> |  |  |  |
|  |  |  |  |
| ☐ Yes ☑ No ☐ Judicial Officer a  |  | ete uns question il you are a ju   | dicial officer of you are fining as a                          |
| Report for Exempted Perso  Legislators are not required  | d to report scholarships paid by a                                   | nonpartisan legislative organ  |  |
|  | member or participant or an affil                                    |  | Estimated Market Value   |
| Date of Scholarship  | Name and Address of<br>Donor(s)                                      | Describe Event   | Estimated Market Value   |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
| Please answer the following question   |  |  |  |
| 16 W   | Judicial En  |  | Communication Council of                                       |
| 16. Were you appointed or are you b<br>State member?   | being considered for an appointm                                     | ient to a covered board by the   | Governor of another Council of                                 |
| Council of State members are:  |  |  |  |
| Governor   | • Lt. Governor   | Secretary of State   |  |
| State Auditor  | State Treasurer  | Superintendent of  | Public Instruction   |
| Attorney General   | Commissioner of Agric  |  |  |
| Commissioner of Insurance  |  |  |  |
| ☑ Yes ☐ No   |  |  |  |
|  | (NOT immediate family man)   | hows) made during 2015 with  | a cumulative total of more than                                |
| If "Yes", list all contributions you<br>\$1,000 to the Governor or other C                     |  | The state of the s | a cummanve total of more than                                  |
|  |  |  |  |
|  | in N.C.G.S. 163-278.6(6) and incomes, loan, payment, gift, pledge of |  | any advance, conveyance, deposit, ything of value whatsoever." |
| Date   | Amou   | int  | Contributed to   |
| ☑ No contribution(s) with a cumula   | tive total of more than \$1,000                                      |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

|   | Special Judge (Superior )  | Court)  |
|---|--|---|
| & Wasser and inteller on the                              |  |   |
|   | being considered for an appointment to a   | covered board by the Governor or another Council of   |
| State member?   |  |   |
| Council of State members are:                             |  |   |
| Governor  | • Lt. Governor   | Secretary of State  |
| State Auditor   | State Treasurer  | Superintendent of Public Instruction  |
| Attorney General  | Commissioner of Agriculture  | Commissioner of Labor   |
| • Commissioner of Insurance                               |  |   |
| ☑ Yes ☐ No  |  |   |
| BOX WILL WILL WILL WILL WILL WILL WILL WIL                | Olon in the first transfer of  |   |
| T VOC' HET OH CONTRIBUTIONS VA                            |  |   |
|   |  | de during 2015 with a cumulative total of more tha  |
|   | Council of State member who appointed  |   |
| \$1,000 to the Governor or other                          | Council of State member who appointed  | l you.  |
| 61,000 to the Governor or other Contributions are defined | council of State member who appointed in N.C.G.S. 163-278.6(6) and include, but        | t are not limited to, "any advance, conveyance, deposi  |
| 61,000 to the Governor or other Contributions are defined | council of State member who appointed in N.C.G.S. 163-278.6(6) and include, but        | l you.  |
| 61,000 to the Governor or other Contributions are defined | council of State member who appointed in N.C.G.S. 163-278.6(6) and include, but        | t are not limited to, "any advance, conveyance, deposi  |
| Contributions are defined distribution, transfer of fu    | in N.C.G.S. 163-278.6(6) and include, but ands, loan, payment, gift, pledge or subscri | t are not limited to, "any advance, conveyance, deposi ption of money or anything of value whatsoever." |
| Contributions are defined distribution, transfer of fu    | in N.C.G.S. 163-278.6(6) and include, but ands, loan, payment, gift, pledge or subscri | t are not limited to, "any advance, conveyance, deposi ption of money or anything of value whatsoever." |
| Contributions are defined distribution, transfer of fu    | in N.C.G.S. 163-278.6(6) and include, but ands, loan, payment, gift, pledge or subscri | t are not limited to, "any advance, conveyance, deposi ption of money or anything of value whatsoever." |
| Contributions are defined distribution, transfer of fu    | in N.C.G.S. 163-278.6(6) and include, but ands, loan, payment, gift, pledge or subscri | t are not limited to, "any advance, conveyance, deposi ption of money or anything of value whatsoever." |
| Contributions are defined distribution, transfer of fu    | in N.C.G.S. 163-278.6(6) and include, but ands, loan, payment, gift, pledge or subscri | t are not limited to, "any advance, conveyance, deposi ption of money or anything of value whatsoever." |
| Contributions are defined distribution, transfer of fu    | in N.C.G.S. 163-278.6(6) and include, but ands, loan, payment, gift, pledge or subscri | t are not limited to, "any advance, conveyance, deposi ption of money or anything of value whatsoever." |

| se answer the following question as it pertains to the following board/agency:  Judicial Employees  Are you an appointee or prospective appointee to:  |  |
|--|--|
| Are you an appointee or prospective appointee to:  a. the head of a principal state department (e.g. cabinet secretary) appointed by the Governor; or  b. a North Carolina Supreme Court Justice, Court of Appeals, Superior or District Court Judge; or  c. a member of any of the following boards:  ABC Commission  Coastal Resources Commission  State Board of Education  State Board of Elections  Division of Employment Security  Environmental Management Commission  Industrial Commission  Human Resources Commission  Rules Review Commission  Board of Transportation  UNC Board of Governors  Utilities Commission | ☑ Yes □No If "No", proceed to ques 18. |
| Wildlife Resources Commission  d. If so, were you appointed or are you being considered for appointment to that public position by a Council of State member? Council of State members are listed in question 16.  | ✓ Yes ☐ No  If "No", proceed to ques   |
| <ul> <li>e. If so, you must indicate whether during 2015 you (not immediate family members) engaged in any of the following activities with respect to or on behalf of the candidate or campaign committee of the Council of State member who appointed you to your public position:  i. Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in question 16.</li> </ul>  | □ Yes □ No                             |
| ii. Hosted a fundraiser at your residence or place of business?  | □Yes ☑ No                              |
| iii. Volunteered for campaign-related activities, which include, but are not limited to, phone banks, event assistance, mailings, canvassing, surveying, or any other activity that advances the campaign of a candidate?  | □Yes ☑ No                              |

| ungement regarding that conviction?  | Are you an appointee or prospective appointee  | 10:   |  |         |                         |
|--|--|---|--|---------|-------------------------|
| b. a North Carolina Supreme Court Justice, Court of Appeals, Superior or District Court Judge; or c. a member of any of the following boards:  ABC Commission Coastal Resources Commission State Board of Education State Board of Education State Board of Education Usian Soard of Education Industrial Commission Industrial Commission Human Resources Commission Board of Transportation UNC Board of Governors Utilities Commission Wildlife Resources Commission Wildlife Resources Commission State Board of State member? Council of State members are listed in question 16.  If so, were you appointed or are you being considered for appointment to that public position by a Council of State member? Council of State members are listed in question 16.  If so, you must indicate whether during 2015 you (not immediate family members) engaged in any of the following activities with respect to or on behalf of the candidate or campaign committee of the Council of State member who appointed you to your public position:  I. Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in question 16.  II. Hosted a fundraiser at your residence or place of business?  III. Volunteered for campaign-related activities, which include, but are not limited to, phone banks, event assistance, mailings, canvassing, surveying, or any other activity that advances the campaign of a candidate?  Have you ever been convicted of a felony for which you have not received either: (i) a pardon of innocence; or (ii) an order rangement regarding that conviction?   | a. the head of a principal state department (e.g.  | cabinet secretary) appointed                                    | by the Governor;                       | ☑ Yes   | □No                     |
| b. a North Carolina Supreme Court Justice, Court of Appeals, Superior or District Court Judge; or c. a member of any of the following boards:  • ABC Commission • Coastal Resources Commission • State Board of Education • State Board of Education • State Board of Education • Division of Employment Security • Environmental Management Commission • Industrial Commission • Human Resources Commission • Rules Review Commission • Board of Transportation • UNC Board of Governors • Utilities Commission • Wildlife Resources Commission • C. If so, were you appointed or are you being considered for appointment to that public position by a Council of State member? Council of State members are listed in question 16.  If "No", proceed to quest 18.  □ Yes □ No  If "No", proceed to quest 18.  □ Yes □ No  If "No" proceed to quest 18.  □ Yes □ No  If "No" proceed to quest 18.  □ Yes □ No  If "No" proceed to quest 18.  □ Yes □ No  If "No" proceed to quest 18.  □ Yes □ No  If No question 16.  If Hosted a fundraiser at your residence or place of business?  □ Yes □ No  If Yes □ No   | or   |   |  | If "No" | ', proceed to question  |
| c. a member of any of the following boards:  • ABC Commission • Coastal Resources Commission • State Board of Education • State Board of Education • State Board of Elections • Division of Employment Security • Environmental Management Commission • Industrial Commission • Human Resources Commission • Human Resources Commission • Board of Transportation • UNC Board of Governors • Utilities Commission • Wildlife Resources Commission • Wildlife Resources Commission • Wildlife Resources Commission • In so, were you appointed or are you being considered for appointment to that public position by a Council of State member? Council of State members are listed in question 16.  If 'No'', proceed to question any of the following activities with respect to or on behalf of the candidate or campaign committee of the Council of State member who appointed you to your public position:  i. Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in question 16.  ii. Hosted a fundraiser at your residence or place of business?  iii. Volunteered for campaign-related activities, which include, but are not limited to, phone banks, event assistance, mailings, canvassing, surveying, or any other activity that advances the campaign of a candidate?  Have you ever been convicted of a felony for which you have not received either: (i) a pardon of innocence; or (ii) an order oungement regarding that conviction?  | b. a North Carolina Supreme Court Justice, Co  | ourt of Appeals, Superior or D                                  | istrict Court Judge;                   |         | 71                      |
| ABC Commission Coastal Resources Commission State Board of Education State Board of Education Division of Employment Security Environmental Management Commission Industrial Commission Human Resources Commission Rules Review Commission Unit Coard of Governors Utilities Commission Wildlife Resources Commission Wildlife Resources Commission Wildlife Resources Commission  Industrial Commission Unit Coard of Governors Utilities Commission Wildlife Resources Commission  Industrial Commission    | or   |   |  |         |                         |
| Coastal Resources Commission State Board of Education State Board of Education Division of Employment Security Environmental Management Commission Industrial Commission Human Resources Commission Rules Review Commission Board of Transportation UNC Board of Governors Utilities Commission Wildlife Resources Commission Wildlife Resources Commission Wildlife Resources Commission  If "No", proceed to quest 18.  If so, were you appointed or are you being considered for appointment to that public position by a Council of State member? Council of State members are listed in question 16.  If "No", proceed to quest 18.  If "No" proceed to quest 18.  Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in question 16.  If Hosted a fundraiser at your residence or place of business?    Yes   No  | c. a member of any of the following boards:  |   |  |         |                         |
| State Board of Education State Board of Elections Division of Employment Security Environmental Management Commission Industrial Commission Human Resources Commission Rules Review Commission Board of Transportation UNC Board of Governors Utilities Commission Wildlife Resources Commission Wildlife Resources Commission  If so, were you appointed or are you being considered for appointment to that public position by a Council of State member? Council of State members are listed in question 16.  If "No", proceed to quest 18.  Is.  C. If so, you must indicate whether during 2015 you (not immediate family members) engaged in any of the following activities with respect to or on behalf of the candidate or campaign committee of the Council of State member who appointed you to your public position:  i. Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in question 16.  ii. Hosted a fundraiser at your residence or place of business?    Yes   No  | ABC Commission   |   |  |         |                         |
| State Board of Elections  Division of Employment Security  Environmental Management Commission  Industrial Commission  Human Resources Commission  Rules Review Commission  Board of Transportation  UNC Board of Governors  Utilities Commission  Mildlife Resources Commission  d. If so, were you appointed or are you being considered for appointment to that public position by a Council of State member? Council of State members are listed in question 16.  If "No", proceed to quest 18.  e. If so, you must indicate whether during 2015 you (not immediate family members) engaged in any of the following activities with respect to or on behalf of the candidate or campaign committee of the Council of State member who appointed you to your public position:  i. Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in question 16.  ii. Hosted a fundraiser at your residence or place of business?  □ Yes □ No  iii. Volunteered for campaign-related activities, which include, but are not limited to, phone banks, event assistance, mailings, canvassing, surveying, or any other activity that advances the campaign of a candidate?  Have you ever been convicted of a felony for which you have not received either: (i) a pardon of innocence; or (ii) an order or ungement regarding that conviction?  |  |   |  |         |                         |
| Division of Employment Security Environmental Management Commission Industrial Commission Human Resources Commission Rules Review Commission UNC Board of Transportation UNC Board of Governors Utilities Commission Wildlife Resources Commission Until ties Commission Wildlife Resources Commission Until ties Commission Wildlife Resources Commission  Until ties Commission Wildlife Resources Commission  Until ties Commission Wildlife Resources Commission  Until ties Commission Wildlife Resources Commission  Until ties Commission Wildlife Resources Commission  Until ties Commission Wildlife Resources Commission  Until ties Commission Wildlife Resources Commission  Until ties Commission Wildlife Resources Commission  Until ties Commission Wildlife Resources Commission  Until ties Commission Wildlife Resources Commission  Until ties Commission Wildlife Resources Commission  Until ties Commission Wildlife Resources Commission  Until ties Wes No  Until ties Commission  Until ties Commission  Until ties Wes No  Until ties Commission  Until ties Commission  Until ties Until ties Wester Autilities Wester Autilities Wester Autil ties Wester Autilities Wester Autilities Wester Autil ties W  |  |   |  |         |                         |
| Environmental Management Commission     Industrial Commission     Human Resources Commission     Rules Review Commission     Board of Transportation     UNC Board of Governors     Utilities Commission     Wildlife Resources Commission  d. If so, were you appointed or are you being considered for appointment to that public position by a Council of State member? Council of State members are listed in question 16.  e. If so, you must indicate whether during 2015 you (not immediate family members) engaged in any of the following activities with respect to or on behalf of the candidate or campaign committee of the Council of State member who appointed you to your public position:  i. Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in question 16.  ii. Hosted a fundraiser at your residence or place of business?  iii. Volunteered for campaign-related activities, which include, but are not limited to, phone banks, event assistance, mailings, canvassing, surveying, or any other activity that advances the campaign of a candidate?  Have you ever been convicted of a felony for which you have not received either: (i) a pardon of innocence; or (ii) an order congement regarding that conviction?   |  |   |  |         |                         |
| Industrial Commission Human Resources Commission Rules Review Commission Board of Transportation UNC Board of Governors Utilities Commission Wildlife Resources Commission  d. If so, were you appointed or are you being considered for appointment to that public position by a Council of State member? Council of State members are listed in question 16.  If "No", proceed to quest 18.  e. If so, you must indicate whether during 2015 you (not immediate family members) engaged in any of the following activities with respect to or on behalf of the candidate or campaign committee of the Council of State member who appointed you to your public position:  i. Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in question 16.  ii. Hosted a fundraiser at your residence or place of business?  □ Yes □ No  iii. Volunteered for campaign-related activities, which include, but are not limited to, phone banks, event assistance, mailings, canvassing, surveying, or any other activity that advances the campaign of a candidate?  Have you ever been convicted of a felony for which you have not received either: (i) a pardon of innocence; or (ii) an order congernent regarding that conviction?   |  |   |  |         |                         |
| Human Resources Commission Rules Review Commission Board of Transportation UNC Board of Governors Utilities Commission Wildlife Resources Commission  d. If so, were you appointed or are you being considered for appointment to that public position by a Council of State member? Council of State members are listed in question 16.  If "No", proceed to quest 18.  e. If so, you must indicate whether during 2015 you (not immediate family members) engaged in any of the following activities with respect to or on behalf of the candidate or campaign committee of the Council of State member who appointed you to your public position:  i. Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in question 16.  ii. Hosted a fundraiser at your residence or place of business?  □ Yes □ No  iii. Volunteered for campaign-related activities, which include, but are not limited to, phone banks, event assistance, mailings, canvassing, surveying, or any other activity that advances the campaign of a candidate?  Have you ever been convicted of a felony for which you have not received either: (i) a pardon of innocence; or (ii) an order congernent regarding that conviction?   |  | n   |  |         |                         |
| Rules Review Commission Board of Transportation UNC Board of Governors Utilities Commission Wildlife Resources Commission  d. If so, were you appointed or are you being considered for appointment to that public position by a Council of State member? Council of State members are listed in question 16.  If "No", proceed to quest 18.  e. If so, you must indicate whether during 2015 you (not immediate family members) engaged in any of the following activities with respect to or on behalf of the candidate or campaign committee of the Council of State member who appointed you to your public position:  i. Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in question 16.  ii. Hosted a fundraiser at your residence or place of business?  □ Yes □ No  iii. Volunteered for campaign-related activities, which include, but are not limited to, phone banks, event assistance, mailings, canvassing, surveying, or any other activity that advances the campaign of a candidate?  Have you ever been convicted of a felony for which you have not received either: (i) a pardon of innocence; or (ii) an order congement regarding that conviction?   |  |   |  |         |                         |
| Board of Transportation  UNC Board of Governors  Utilities Commission  Wildlife Resources Commission  d. If so, were you appointed or are you being considered for appointment to that public position by a Council of State member? Council of State members are listed in question 16.  If "No", proceed to quest 18.  e. If so, you must indicate whether during 2015 you (not immediate family members) engaged in any of the following activities with respect to or on behalf of the candidate or campaign committee of the Council of State member who appointed you to your public position:  i. Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in question 16.  ii. Hosted a fundraiser at your residence or place of business?    Yes   No     Yes   No     Yes   No     Yes   No     Yes   No     Wes   No     Yes   No     Have you ever been convicted of a felony for which you have not received either: (i) a pardon of innocence; or (ii) an order congement regarding that conviction?  |  |   |  |         |                         |
| UNC Board of Governors Utilities Commission Wildlife Resources Commission  d. If so, were you appointed or are you being considered for appointment to that public position by a Council of State member? Council of State members are listed in question 16.  If "No", proceed to quest 18.  e. If so, you must indicate whether during 2015 you (not immediate family members) engaged in any of the following activities with respect to or on behalf of the candidate or campaign committee of the Council of State member who appointed you to your public position:  i. Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in question 16.  ii. Hosted a fundraiser at your residence or place of business?  □ Yes □ No  iii. Volunteered for campaign-related activities, which include, but are not limited to, phone banks, event assistance, mailings, canvassing, surveying, or any other activity that advances the campaign of a candidate?  Have you ever been convicted of a felony for which you have not received either: (i) a pardon of innocence; or (ii) an order congement regarding that conviction?   |  |   |  |         |                         |
| • Utilities Commission • Wildlife Resources Commission  d. If so, were you appointed or are you being considered for appointment to that public position by a Council of State member? Council of State members are listed in question 16.  e. If so, you must indicate whether during 2015 you (not immediate family members) engaged in any of the following activities with respect to or on behalf of the candidate or campaign committee of the Council of State member who appointed you to your public position:  i. Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in question 16.  ii. Hosted a fundraiser at your residence or place of business?  □ Yes □ No  iii. Volunteered for campaign-related activities, which include, but are not limited to, phone banks, event assistance, mailings, canvassing, surveying, or any other activity that advances the campaign of a candidate?  Have you ever been convicted of a felony for which you have not received either: (i) a pardon of innocence; or (ii) an order congement regarding that conviction?   | The state of the s |   |  |         |                         |
| Wildlife Resources Commission  d. If so, were you appointed or are you being considered for appointment to that public position by a Council of State member? Council of State members are listed in question 16.  e. If so, you must indicate whether during 2015 you (not immediate family members) engaged in any of the following activities with respect to or on behalf of the candidate or campaign committee of the Council of State member who appointed you to your public position:  i. Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in question 16.  ii. Hosted a fundraiser at your residence or place of business?  □ Yes □ No  iii. Volunteered for campaign-related activities, which include, but are not limited to, phone banks, event assistance, mailings, canvassing, surveying, or any other activity that advances the campaign of a candidate?  Have you ever been convicted of a felony for which you have not received either: (i) a pardon of innocence; or (ii) an order congement regarding that conviction?  |  |   |  |         |                         |
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| e. If so, you must indicate whether during 2015 you (not immediate family members) engaged in any of the following activities with respect to or on behalf of the candidate or campaign committee of the Council of State member who appointed you to your public position:  i. Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in question 16.  ii. Hosted a fundraiser at your residence or place of business?    Yes   No   | Wildlife Resources Commission  |   |  |         |                         |
| e. If so, you must indicate whether during 2015 you (not immediate family members) engaged in any of the following activities with respect to or on behalf of the candidate or campaign committee of the Council of State member who appointed you to your public position:  i. Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in question 16.  ii. Hosted a fundraiser at your residence or place of business?    Yes   No   | d. If so, were you appointed or are you being c  | onsidered for appointment to                                    | that public                            | ☑ Yes   | □No                     |
| e. If so, you must indicate whether during 2015 you (not immediate family members) engaged in any of the following activities with respect to or on behalf of the candidate or campaign committee of the Council of State member who appointed you to your public position:  i. Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in question 16.  ii. Hosted a fundraiser at your residence or place of business?    Yes   No   | position by a Council of State member? Council of State members are listed in question 16.   |   |  |         | ', proceed to question  |
| in any of the following activities with respect to or on behalf of the candidate or campaign committee of the Council of State member who appointed you to your public position:  i. Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in question 16.  ii. Hosted a fundraiser at your residence or place of business?  I Yes No  No  No  Have you ever been convicted of a felony for which you have not received either: (i) a pardon of innocence; or (ii) an order or oungement regarding that conviction?  |  |   |  |         |                         |
| i. Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in question 16.  ii. Hosted a fundraiser at your residence or place of business?  iii. Volunteered for campaign-related activities, which include, but are not limited to, phone banks, event assistance, mailings, canvassing, surveying, or any other activity that advances the campaign of a candidate?  Have you ever been convicted of a felony for which you have not received either: (i) a pardon of innocence; or (ii) an order of the conviction?  | e. If so, you must indicate whether during 201:  | 5 you (not immediate family 1                                   | members) engaged                       | □Yes    | ☑ No                    |
| i. Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in question 16.  ii. Hosted a fundraiser at your residence or place of business?  □ Yes □ No  iii. Volunteered for campaign-related activities, which include, but are not limited to, phone banks, event assistance, mailings, canvassing, surveying, or any other activity that advances the campaign of a candidate?  Have you ever been convicted of a felony for which you have not received either: (i) a pardon of innocence; or (ii) an order of the part of the p  | in any of the following activities with respect t  | o or on behalf of the candidat                                  | e or campaign                          |         |                         |
| contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in question 16.  ii. Hosted a fundraiser at your residence or place of business?  Iii. Volunteered for campaign-related activities, which include, but are not limited to, phone banks, event assistance, mailings, canvassing, surveying, or any other activity that advances the campaign of a candidate?  Have you ever been convicted of a felony for which you have not received either: (i) a pardon of innocence; or (ii) an order of the property of the candidate of the cand | committee of the Council of State member who   | o appointed you to your publi                                   | c position:                            |         |                         |
| iii. Volunteered for campaign-related activities, which include, but are not limited to, phone banks, event assistance, mailings, canvassing, surveying, or any other activity that advances the campaign of a candidate?  Have you ever been convicted of a felony for which you have not received either: (i) a pardon of innocence; or (ii) an order of oungement regarding that conviction?  | contributions, and transferred or delivered  | those collected contributions                                   | f such multiple<br>to the candidate    |         |                         |
| phone banks, event assistance, mailings, canvassing, surveying, or any other activity that advances the campaign of a candidate?  Have you ever been convicted of a felony for which you have not received either: (i) a pardon of innocence; or (ii) an order oungement regarding that conviction?  | ii. Hosted a fundraiser at your residence o  | r place of business?  |  | □Yes    | ☑ No                    |
| oungement regarding that conviction?   | phone banks, event assistance, mailings, o   | vities, which include, but are<br>canvassing, surveying, or any | not limited to,<br>other activity that | □Yes    | ☑ No                    |
|  |  | hich you have not received e                                    | ither: (i) a pardon of                 | innocen | ce; or (ii) an order of |
| Offense Date of Conviction County of Conviction State of Convict   |  | Date of Conviction  | County of Convi                        | ction   | State of Conviction     |

| 19. Are you aware of any other information that you believe may assist   | the State Ethics Commission in advising you concerning your  |
|--|--|
| compliance with the State Government Ethics Act?   |  |
| ☐ Yes ☑ No If yes, please provide such information below.  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
| AFFIRMATION  |  |
| I affirm that the information provided in this Statement of Economic Ir  | atterest and any attachments hereto are true, complete, and  |
| accurate to the best of my knowledge and belief.   | notice and any analyments notice are not year, compress, and   |
|  |  |
| I also certify that I have not transferred, and will not transfer, any asset   | , interest, or property for the purpose of concealing it from  |
| disclosure while retaining an equitable interest.  |  |
|  |  |
| I understand that my Statement of Economic Interest and any attachme   |  |
| Confidential Form regarding Unemancipated Children) are public reco  | rd.  |
| I acknowledge that I have read and understand N.C.G.S. 138A-26 rega  | rding conceeling or failing to displace material information   |
| and N.C.G.S. 138A-27 regarding providing false information:  | rding conceaning of faming to disclose material information  |
| and N.C.G.S. 138A-27 regarding providing false information.  |  |
| § 138A-26. Concealing or failing to disclose material information  |  |
| A filing person who knowingly conceals or knowingly fails to dis<br>statement of economic interest under this Article shall be guilty of<br>action under G.S. 138A-45. | close information that is required to be disclosed on a f a Class 1 misdemeanor and shall be subject to disciplinary |
| § 138A-27. Penalty for false information.  |  |
| A filing person who provides false information on a statement of the information is false is guilty of a Class H felony and shall be s                                 | economic interest as required under this Article knowing that subject to disciplinary action under G.S. 138A-45.     |
| ☑ I Agree. It is my intention that this check box constitutes my electron  | onic signature. By checking this box I certify that the  |
| information provided in this Statement of Economic Interest and any  | y attachments hereto are true, complete, and accurate to the   |
| best of my knowledge and belief.   |  |
|  |  |
|  |  |
|  |  |
| Filed Electronically   | 4/27/2016  |
| Signature  | Date   |
|  |  |
| Charles Malcolm Viser  |  |
| Printed Name   |  |



# NORTH CAROLINA STATE ETHICS COMMISSION **2016 STATEMENT OF ECONOMIC INTEREST**

#### **CONFIRMATION**

Your SEI was successfully submitted at 4/27/2016 1:48:57 AM.

Your confirmation number is bb8b-37de1358b358.



# Confidential Form Unemancipated Children

#### 2016 Statement of Economic Interest

Confidential: Not subject to public disclosure pursuant to N.C.G.S. § 138A-24(a)(1)

| Charles                       |                              | Last Name                               | Suffix                |
|-------------------------------|------------------------------|---|-----------------------|
|                               | Malcolm                      | Viser                                   |                       |
| Position Held/Sought or Bo    | ard(s) Served                |   | #                     |
| Judicial Employees; Specia    | l Judge (Superior Court);    |   |                       |
|                               |                              |   |                       |
| Please list the full names of | those children who were iden | ified by initials on your Statement of  | of Economic Interest. |
|                               |                              | Service Professional Profession Control | j.                    |
| Initials                      | Child's Name                 |   |                       |
| CMV                           | Charles Malcolm              | Viser, Jr.                              |                       |
| JDV                           | John Lawrence D              | abbs Viser                              |                       |
|                               |                              |   |                       |
| rcv                           | Teresa Carol Vise            | er                                      |                       |
|                               |                              |   |                       |
|                               |                              |   |                       |
|                               |                              | Filed                                   | Electronically        |

This Confidential Form is NOT a public record; and the Commission will NOT make it available on the Commission's website.

4/27/2016 Date



## NORTH CAROLINA STATE ETHICS COMMISSION 2016 STATEMENT OF ECONOMIC INTEREST

FOR ETHICS COMMISSION USE ONLY Date Received:

919-814-3600

www.ethicscommission.nc.gov

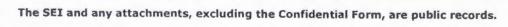
## THIS ENTIRE FORM MUST BE COMPLETED TO FULFILL YOUR SEI FILING OBLIGATION

| Checked for completion         | 4: 23  |
|--------------------------------|--------|
| ScannedDate                    |        |
| Incomplete ?s                  |        |
| Supp. Sent Date                | Ву     |
| Supp. Received Date            | _ /    |
| Entered in database <u>Ha3</u> | By HAN |

| Prefix               | efix First Name Middle Name Last Name          |  |  | Suffix  |                       |
|----------------------|--|--|--|---|-----------------------|
|                      | MICHAGE  | LINDSAY                                  | Ros  | 3/NSON  |                       |
| CURREN               | T EMPLOYER                                     |  | JOB TITLE  | Anna ya ka          |                       |
| Ro                   | BINSON + LAU                                   | W/NG 110                                 | FAM  | 2TNER   |                       |
|                      | OR TYPE OF BUSINES                             |  |  |   |                       |
|                      | LAW FIRM                                       | A  |  |   |                       |
|                      | FOR FILING (SELECT                             |  |  |   |                       |
|                      | E GOVERNMENT JOB (<br>hich you work or are b   | Please specify the age peing considered) | The state of the s | COMMISSION (Please list of ards on which you are sered) |                       |
|                      |  |  | NORTH  | CAROLINA A  | ATTE BAR              |
| וסענ [               | CIAL OFFICER (Please                           | specify the office you                   | hold) LEGISLAT   | TOR (Please specify House                               | e or Senate)          |
| Yes When us includes | No sed throughout this for members of your ext |  | ate Family includes  | your spouse (unless lega<br>iren, grandchildren, parer  |                       |
|                      |  |  |  | ehold. A minor is a child<br>ourt order for emancipatio |                       |
|                      | IAME OF ADULTS & CIPATED MINORS                | RELATIONSHIP                             | EMPLOYER   | JOB TITLE   | NATURE OF<br>BUSINESS |
| WYN                  | W TANNER                                       | Doust-                                   | SELF   | ARTIST  | ART                   |
|                      |  |  |  |   |                       |
|                      |  |  | uurkassatta kalkala kaka kata uurka uurka uurka pagaga ayyayahaya aasa ka aa aa ah ah kalkala ka aa ah aa ah a   |   |                       |

| INITIALS FOR                             | RELATI       | ONSHIP                     | EMPLOY            | ER  | JOB TITLE       | NATURE OF                     |  |
|--|--------------|----------------------------|-------------------|---|-----------------|-------------------------------|--|
| MEMANCIPATED MINORS                      |              |                            |                   |   |                 | BUSINESS                      |  |
|  |              |                            |                   |   |                 | ·                             |  |
|  |              |                            |                   |   |                 |                               |  |
|  |              |                            |                   | -   |                 |                               |  |
| ROPERTY INTERE                           | STS          |                            |                   |   |                 |                               |  |
| As of December 31.                       | 2015, did    | you, your sp               | ouse, or membe    | rs of your <u>imme</u>                    | diate family:   |                               |  |
| A. Have an owners<br>\$10,000 or more?   | hip interest | in North Ca                | rolina real estat | e (including your                         | residence) wit  | h a market value of           |  |
| Yes No                                   |              |                            |                   |   |                 |                               |  |
| Owner of Real Es                         | state        | % Owners                   | ship Interest     | Location                                  | by City         | Location by County            |  |
| Vichael L. B.                            | Linen        | 50%                        |                   | Wenton-Spinn                              |                 | FARSVEN                       |  |
| Michael L.                               | 26           | 50%                        |                   | Charal Hill                               |                 | 10pmGo                        |  |
| WYNN TANN                                | 150          | 50%                        |                   | Wintered - South                          |                 | FORNITA                       |  |
| WHATN TA                                 | WEZ          | 50%                        |                   | Che pol                                   | Hill            | BRANGE                        |  |
| B. Lease or rent re<br>\$10,000 or more? | al estate or | personal pro               | operty to or from | n the State of No                         | orth Carolina w | ith a market value of         |  |
|  |              |                            |                   |   |                 |                               |  |
| Yes No                                   |              | Nama                       | ofloores          | YA Dool Estat                             | - Landian       | Vé Pananal Bratanh            |  |
| Name of Lessor                           |              | Name of Lessee<br>(Renter) |                   | If Real Estate, Location by City & County |                 | If Personal Property Describe |  |
|  |              |                            |                   |   |                 |                               |  |
|  |              |                            |                   |   |                 |                               |  |
|  |              |                            |                   |   |                 | mily sell to or buy from th   |  |
| tate of North Carolina                   | personal p   | oroperty with              | a market value    | of \$10,000 or n                          | nore?           |                               |  |
| T Vac SZI NIa                            |              |                            |                   |   |                 |                               |  |
| Yes No                                   |              |                            |                   | Name of Seller                            |                 | Type of Property              |  |

| FINANCIAL INTERESTS   |   |
|---|---|
| 3. As of <u>December 31, 2015</u> , did you, your spouse, or memb interests valued at \$10,000 or more?   | ers of your <u>immediate</u> family own any of the following financial  |
| A. Stock in a publicly owned company?   |   |
| ¥ Yes □ No  |   |
| companies, or pension or deferred compensation plans  | stment fund (including mutual funds, regulated investment) if: (i) the fund is publicly traded or its assets are widely member are able to control the assets held in the mutual fund, on plan. |
| Owner of Interest   | Full Name of Company (Do not use a ticker symbol)   |
| Michael L. Robinson   | Lee Schedile 3. A.  |
| Aynn LANNEL   | Home Expor  |
| B. <u>Stock Options</u> in a company or business?   |   |
| ☐ Yes 🙀 No  |   |
| Owner of Stock Option   | Full Name of Company (Do not use a ticker symbol)   |
| C. <u>Interests in a non-publicly owned</u> company or busine partnerships, limited partnerships, joint ventures, lir closely held corporations)?  X Yes No - If "No," proceed to question 4. | ess entity (including interests in sole proprietorships, mited liability companies, limited liability partnerships, and   |
| Owner of Interest   | Name of Company or Business Entity  |
| Michael L. Robinson   | Lee Schedule 3. C.  |
| Win Tannez  | TANTER BEREU FROM ties UC   |
| WYNN TANNER   | TANNER BERGE PROPERTIES, LIC  |
|   | siness entity (the "primary company") identified in question ompanies or business entities in which the primary company   |
| Non-Publicly Owned Company or Business Entity (the Primary Company)   | Other Companies in which the Primary Company<br>Owns Security or Equity Interests   |
| ☐ None or Not Known   |   |
| Vot Schedule 3.0(1)   |   |
|   |   |





#### Schedule 3 A.

#### Stock Holdings in excess of \$10,000 as of 12/31/2015

2016 FED 16 FM 2: 00

Sky PLC

Teva Pharmaceutical Inds. Ltd.

**RELX PLC** 

WPP PLC New

Groupe CGI Inc.

CK Hutchison Holdgs Ltd

Roche Hldg Ltd

British American Tobacco p.l.c.

Amcor Ltd

SAP SE

Avago Technologies Ltd

Taiwan Semiconductor Mfg Ltd

WH Group Ltd

Publicis S A New

Yahoo Japan Corp

Allianz SE

Deutsche Boerse

Schneider Electric SE

Carlsberg AS

Ericsson

**UBS Group AG** 

Smith & Nephew PLC

Compass Group PLC

Syngenta AG

Japan Tob Inc.

Getinge AB

Grupo Televisa SA

Exxon Mbil Corp

General Electric Co

International Business Machs

Coca Cola Co.

Bristol Myers Squibb Co.

Norfolk Southern Corp.

Pepsio Inc.

Microsoft Corp.

Apple Inc.

Emerson Elec Co.

3M Co

McDonalds Corp

Wells Fargo & Co New

Nextera Energy Inc.

Target Corp

Monsanto Co New

**Duke Energy Corp New** 

Schlumberger Ltd

**United Technologies Corp** 

Federated Prime Cash

Verizon Communications Inc

Union Pac Corp

Motorola Solutions Inc.

CVS Health Corp

Cisco Sys Inc

Chevron Corp New

Philip Morris Intl Inc

**BP PLC** 

Honeywell Intl Inc

North Carolina Med Care Commn

Altria Group Inc

Iberdrola SA

National Grid PLC

SAP SE

Honda Motor Ltd

Koninklijke Ahold NV

Takeda Pharmaceutical Co Ltd

Glaxosmithkline PLC

ABB Ltd

Unilever PLC

Sanofi

Tokio Marine Holdings Inc

Nestle SA

Deutsche Telekom AG

2016 FEE ! 6 PH 2: 00

Novartis AG
Teliasonera AB
United Overseas Bk Ltd
ENI SPA
Zurich Ins Group Ltd
Canon Inc
Telefonica SA
Tesco PLC
KAO Corp
Singapore Telecommunications Ltd

2016 FEB 16 PM 2: 00

### SCHEDULE 3.C.

2016 FEB 16 PM 2: 00

| Owner of Interest   | Name of Company or Business Entity |
|---------------------|------------------------------------|
| Michael L. Robinson | Rolaw Holdings LLC                 |
| Michael L. Robinson | ENR Family, LLC                    |
| Michael L. Robinson | Tanner Companies, Inc.             |
| Michael L. Robinson | Robinson & Lawing, LLP             |

SCHEDULE 3.C.(1)

| Non-Publicly Owned Company or Business               | Other Companies in which the Primary      |
|--|---|
| Entity (the Primary Company)                         | Company Owns Security or Equity Interests |
| Rolaw Holdings LLC                                   | R. H. Johnson Construction Company        |
| Tanner Companies, Inc. (owned by Michael L Robinson) | Don't know                                |
| Tanner companies, Inc. (owned by Wynn Tanner)        | Don't know                                |

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| ntracts with the State of No  | tity listed in 3.C or 3.C(1) a<br>orth Carolina, or is regulate  | above has any material business ed by the State, provide a brief  |
|---|--|---|
| Business Entity   | Description of Busi  | ness Activity with the State  |
|   |  |   |
| or more that was created,   | established, or controlled <i>L</i>  | by you?   |
| ee Description  | of the Trust Yo  | our Relationship to the Trust   |
| your primary personal resid<br>mily debt.<br>se, Immediate Family   | ence? Examples include cre  Type of Creditor (Coi  | amily have liabilities of \$10,000 or edit card debts, auto loans, student mmercial Bank, Credit Union, ividual, etc.)  |
| Charan  | CREDIT COOL  |   |
|   | CHADIT C   | ARI   |
| of specific amounts) of mor 2015. Include salary, was nat income, business incomed from the following sou | ges, state/local governme<br>ne, and other types of incor<br>urces:  | ent retirement, professional fees,  |
| ▶ Social se   | curity income/SSDI   |   |
| Name of Source  | Type of<br>Business/Indus  | Type of Income  |
| er \$5,000 in 2015.<br>Luke 6   |  |   |
|   | ntracts with the State of Noness activity.  Business Entity  Pre you, your spouse, or me or more that was created, ests. See 2016 SEI Helpful  Business Entity  Pre you, your spouse, or me or more that was created, ests. See 2016 SEI Helpful  Business Entity  Description  The property of the property o | Business Entity  Description of Business Entity  Tre you, your spouse, or members of your immediate or more that was created, established, or controlled itself.  See 2016 SEI Helpful Tips for the definition of "Veryou, your spouse, or members of your immediate for your primary personal residence? Examples include cremitly debt.  Type of Creditor (Control Index)  Type of Creditor (Control Index) |



#### SCHEDULE 6.

|                     | 2016 FEB 16 PW 2: 00      |                           |                                       |  |
|---------------------|---------------------------|---------------------------|---------------------------------------|--|
| Recipient of Income | Name of Source            | Type of Business/Industry | Type of Income                        |  |
| Michael L. Robinson | Robinson & Lawing,<br>LLP | Law Firm                  | Earned income                         |  |
| Michael L. Robinson | Merrill Lynch             | Investments               | Capital gains,<br>dividends, interest |  |
| Michael L. Robinson | Oppenheimer & Co.         | Investments               | Capital gains,<br>dividends, interest |  |
| Wynn Tanner         | Oppenheimer & Co.         | Investments               | Capital gains,<br>dividends, interest |  |

mn

| momber employee independe  | your spouse or member   | s of your <u>immediate</u> family a directed lobbyist of a nonprofit corporation table, scientific, literary, public hea   | n or organization operating in   |  |
|--|---|--|--|--|
| X Yes ☐ No - If "No,"  | proceed to question 8.  |  |  |  |
| <ul> <li>Do not list State boards or ex</li> <li>Do not list organizations of ways</li> </ul>  | ntities, or entities created<br>which you are a mere me                                   | I by a political subdivision of the Stanber.   | ate.   |  |
| Name of Person   | His/Her Position  | Name of Nonprofit<br>Corporation or Organization   | Nature of Business or<br>Purpose of Organization   |  |
| Michael L. Robinson  | See Sc  | celuse 7(a)  |  |  |
| 7(b). If the nonprofit corporat State funds, please provide a treasonably be known.  Name of Nonprofit Corporation None or Not Known | orief description of the na   | ed above do business with the State sture of that business, if known or value of the Describe State Busine   | with which due diligence could   |  |
| member of any society, organize have jurisdiction?  Yes No Legisla you a   | eation, or advocacy group<br>tor/Judicial Officer - You a<br>re a legislator or a judicia | of your immediate family a director with an interest in matters over where the complete this qualified to form of the complete the complete that the complete the complete that the complete the complete that the | nich your agency or board may<br>lestion if you are filing because<br>bintee to those offices. |  |
| Name of Person   | Name of Socie   |  | Leadership Position (Director, Officer, Board Member)  |  |
|  |   |  |  |  |

#### SCHEDULE 7(a).

#### Nonprofit Corporations and Organizations

## 2016 FER 16 Fil 2: 00

| Name of Person      | His/Her Position              | Name of Nonprofit Corporation or                               | Nature of Business or<br>Purpose of Organization                       |
|---------------------|-------------------------------|--|--|
|                     | About Add Occupan             | Organization   |  |
| Michael L. Robinson | Grants Committee<br>Member    | Richard J. Reynolds III<br>and Marie M. Reynolds<br>Foundation | Grants to worthwhile charitable and governmental organizations         |
| Michael L. Robinson | Board member                  | Duke Divinity  | Religious education and training                                       |
| Michael L. Robinson | Board member                  | Parish Ministry Fund of the Duke Divinity School               | Religious education,<br>training and support of<br>ministers and laity |
| Michael L. Robinson | Executive Committee<br>Member | Forsyth County Bar<br>Association                              | Support of lawyers practicing in Forsyth County, North Carolina        |
| Michael L. Robinson | Board Member                  | Sceptor Pain<br>Foundation                                     | Investigation and treatment of chronic pain                            |
| Michael L. Robinson | Board Member                  | National Cycling Center  | Support training and education regarding bicycling                     |
|                     |                               |  |  |

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| Name of Person   | Relationship to Filer               | Name of Company  | Role of Person               |
|--|-------------------------------------|--|------------------------------|
| No Business Associations –   | If "No," proceed to question        | 10   |                              |
| WYNON TANKE  | Lange Comment                       | TAYNER BEACH   | MANAGER                      |
| Th 1 1 11  | M                                   | Projecties as  | MEMBER                       |
| Special Footien  | AJULI                               | Korgo /biernes CCC   | MANHOON                      |
| Michael L. Kulpinson   | leff'                               | KOBMON + LAWING, U   | PARTNER                      |
|  | ate of North Carolina or was        | red in 9(a) above had any material regulated by the State as of <u>Dece</u>  |                              |
| Name of Company  | or Business Entity                  | Description of Business A  | activity with the State      |
| Not applicable (No entities  | listed on #9a) No relat             | ionship / Not known  |                              |
|  |                                     |  |                              |
|  |                                     |  |                              |
|  |                                     |  |                              |
| .0. Are you a practicing attor   | ney?                                | Baddischter der vertreiten gegen im der  |                              |
|  | ial Officer/State Attorney          |  |                              |
| f "Yes", check each category<br>egal fees of more than \$10,0  |                                     | nich you or the law firm with which  | you are affiliated has earne |
|  | Admiralty                           | Corporate  | Criminal                     |
| <b>⊠</b> Adminîstratîve  |                                     |  | <b>⊠</b> Labor               |
|  | Environmental                       | k-0  |                              |
|  | ☐ Environmental  ☐ Real Property    | Securities   | Tax                          |
| ☑ Decedent's Estates ☐ Local Government  | A                                   | Securities   | Notes de colle               |
| Tort litigation (including negligence)  1. <u>During 2015</u> , were you                               | Real Property  Utilities Regulation | Securities   | provide consulting service   |
| Decedent's Estates  Local Government  Tort litigation (including negligence)  1. During 2015, were you | Real Property  Utilities Regulation | Securities  Other category not lead to the category and lead to the cat | provide consulting service   |

| 12. Are you or your emp  | oloyer, your sp  | ouse or members of your   | immediate far  | nily, or their emp   | ployer curren  | ntly:  |
|--|--|---|--|--|----------------|--|
| <ul> <li>Licensed by the St</li> </ul>   | ate board or e   | mploying entity with which  | ch you are or w  | vill be associated   | or             |  |
| • Regulated by the S   | State board or   | employing entity with wh  | nich you are or  | will be associate  | d or           | vi rivini vi   |
| • <u>Have a business re</u>  | elationship wit  | h the State board or emp  | loying entity w  | ith which you are  | e or will be a | ssociated?   |
| Y  | ou are a legisl  | cial Officer - You are not r<br>ator or a judicial officer (<br>appointee to those offices                      | "judicial officer  |  |                |  |
| Name of Pers   | son  | Name of Emp   | loyer  | Туре   | of Relation    | ship   |
|  |  | (if applicab  | le)  | (Licensing,  | Regulatory     | , Business)  |
| Michael L. Ros   | proson   |   |  | LICENSED.  | BY NCST        | the Bar  |
|  |  |   |  |  |                |  |
|  |  | r of your <u>immediate</u> famil<br>e <u>12 months preceding yo</u>   |  |  | yıst or lobbyi | st principal, or   |
| Name of Lobb   | yist   | Lobbyist's Prin   | cipal  | Date of<br>Registratio   |                | egistration<br>xpiration   |
| THE PROPERTY OF THE PROPERTY O |  | ege en det el el get agrand agrand agrand agrand agrand agrand agrand agrand en de grand agrand agrand agrand a | and the section of th |  |                |  |
|  |  |   |  |  |                | THE CONTRACTOR OF THE CONTRACT |
| OTHER DISCLOSUR  | ES   |   |  |  |                |  |
| <ol><li>During any calendar<br/>nominated as a candidat</li></ol>  |  | 015 (but only the time pe   | eriod after you  | were appointed,  | employed o     | r filed or were  |
| <ul> <li>receive any "gift(s</li> </ul>  | )" exceeding s   | 200 per quarter from a p  | erson or group   | of persons actir   | ng together,   | and  |
| *  | •  | n(s) were outside North C   |  |  |                |  |
| <ul><li>the gift(s) were gift(s) for lobbying?</li></ul>   | iven under cir   | cumstances that would le  | ead a reasonab   | le person to con   | clude that th  | ney were given   |
| ☐ Yes 凝 No   |  |   |  |  |                |  |
| ▶Do not report gifts giv   | en by membe  | rs of your extended family  | у.   |  |                |  |
| ►Do not report gifts th<br>"Expense Report for E   |  | ously been reported by ons."  | you to the De  | partment of the  | Secretary o    | f State on the   |
| Date Item Received   | Name and   | Address of Donor(s)   | Describe It  | em Received  | -              | ted Market<br>alue   |
| THE CONTRACTOR OF THE CONTRACTOR AND   | AND REPORTED AND THE EXPERIMENTAL PROPERTY OF THE PARTY O |   | AMARI (1004) 12 A AAA - AA   | The second secon |                | erikki eri ya usunda halika da marania taka mila - Lagungan gana gana gana kana kana kana kana   |
| tonique contraction of the contr |  |   |  |  |                |  |
|  |  |   |  |  |                |  |



| 15. <u>During 2015</u> (did you  | but only the time p  | eriod after you were app  | ointed, employed, or filed or we  | ere nominated as a candidate)   |
|--|--|---|---|---|
| ,  | :holarship" exceedir   | ng \$200 from a person o  | r group of persons acting toget   | her <b>and</b>  |
| <ul> <li>those perso</li> </ul>  | n(s) were outside N  | lorth Carolina and  |   |   |
|  | a conference, me   |   | 'scholarship" is a grant-in-a<br>it, including tuition, travel,                 |   |
| ☐ Yes 🔀 No   | ☐ Judicial Officer -<br>filing as a judicial c   |   | complete this question if you a   | re a judicial officer or you are  |
|  | gifts that have previort for Exempted Pe   |   | you to the Department of the S  | ecretary of State on the  |
| ► Legislators are<br>or the General  | not required to rep<br>Assembly is a mem   | ort scholarships paid by<br>ber or participant or an a                                      | a nonpartisan legislative organ<br>affiliate of that organization.              | ization of which the legislator   |
| Date of<br>Scholarship   | Name and Ad  | dress of Donor(s)   | Describe Event  | Estimated Market<br>Value   |
| Council of State r  Council of State  Govern  State  Attorne  Comm  Yes []  If 'Yes", list all | nember? members are: nor Auditor ey General issioner of Insurance No contributions you   | <ul> <li>▶ Lt. Governor</li> <li>▶ State Trea surer</li> <li>▶ Commissioner of A</li> </ul> | •   | of State  Indent of Public Instruction  Instruction  Instruction  Instruction  Instruction  Instruction  Instruction  Instruction |
|  | ion, transfer of fund  |   | clude, but are not limited to, "a<br>pledge or subscription of money<br>Contrib |   |
|  |  | ive total of more than \$   |   |   |
|  | nger age constitution of the constitution of t |   |   |   |
|  |  |   |   |   |
|  |  |   |   |   |

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| 17. Are you an appointee or prospec   | ctive appointee to:  |   | 2. 11.10.1 11.10 11.10 pp. 1.1 11.11.11.11.11.11.11.11.11.11.11.1 |
|---|--|---|---|
| a. the head of a principal state<br>Governor; or  | department (e.g. cabinet   | secretary) appointed by the   |   |
| b. a North Carolina Supreme Co<br>Court Judge; or   | ourt Justice, Court of Appe  | eals, Superior or District  |   |
| c. a member of any of the follow  | wing boards:   |   |   |
| ABC Commission  |  |   |   |
| <ul> <li>Coastal Resources Comm</li> </ul>  | ission   |   |   |
| <ul> <li>State Board of Education</li> </ul>  |  |   | Yes No  |
| <ul> <li>State Board of Elections</li> </ul>  |  |   |   |
| <ul> <li>Division of Employment S</li> </ul>  | •  |   | If "No," proceed to   |
| Environmental Managem   | ent Commission   |   | question 18.  |
| <ul> <li>Industrial Commission</li> </ul>   |  |   |   |
| Human Resources Comm  |  |   |   |
| Rules Review Commission   | n  |   | •   |
| Board of Transportation   |  |   |   |
| UNC Board of Governors     Unitible Commission  |  |   |   |
| <ul><li>Utilities Commission</li><li>Wildlife Resources Comm</li></ul>  | iccion   |   |   |
| d. If so, were you appointed or public position by a Council of in question 16.                                       | are you being considered   |   | Yes No No If "No," proceed to guestion 18.                        |
|   | The man is a second of the s   | 1988/108 MONORISMA ARA MONORISMA MONORISMA (1981)   | question to.  |
| the candidate or campaign of appointed you to your public i. Collected contributions from multiple contributions, and | of the following activities we committee of the Council of position:   | with respect to or on behalf of of State member who took possession of such those collected | ☐ Yes 📓 No  |
| ii. Hosted a fundraiser at yo   | our residence or place of b  | ousiness?   | ☐ Yes ☑ No  |
|   | n-related activities, which<br>ssistance, mailings, canvi<br>ces the campaign of a car   | assing, surveying, or any   | ☐ Yes Ø No  |
| 18. Have you ever been convicted o order of expungement regarding that  |  | ave not received either: (i) a  | pardon of innocence; or (ii) an                                   |
| Offense   | Date of Conviction   | County of Conviction  | State of Conviction   |
|   | The second secon |   |   |
| 19. Are you aware of any other info concerning your compliance with the   |  | s Act?  | mmission in advising you  |
|   | I  |   | не и при при при при при при при при при п                        |
|   |  |   |   |

The SEI and any attachments, excluding the Confidential Form, are public records.

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#### **AFFIRMATION**

I affirm that the information provided in this Statement of Economic Interest and any attachments hereto are true, complete, and accurate to the best of my knowledge and belief.

I also certify that I have not transferred, and will not transfer, any asset, interest, or property for the purpose of concealing it from disclosure while retaining an equitable interest.

I understand that my Statement of Economic Interest and any attachments or supplements thereto (with the exception of the Confidential Form regarding Unemancipated Children) are public record.

Lacknowledge that I have read and understand N.C.G.S. 138A-26 regarding concealing or failing to disclose material information and N.C.G.S. 138A-27 regarding providing false information:

§ 138A-26. Concealing or failing to disclose material information.

A filing person who knowingly conceals or knowingly fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be guilty of a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45.

§ 138A-27. Penalty for false information.

A filing person who provides false information on a statement of economic interest as required under this Article knowing that the information is false is guilty of a Class H felony and shall be subject to disciplinary action under G.S. 138A-45.

2-12-2016 Date

☑ I Agree

Signature

Drinted Name

Submit SIGNED, ORIGINAL documents only. Do not fax or email this form.

MM



#### NORTH CAROLINA STATE ETHICS COMMISSION

## 2016 STATEMENT OF ECONOMIC INTEREST NO CHANGE FORM

| FILER'S NAME     | E (FIRST, MIDDLE, LAST)                                  |                     |  |  |
|------------------|--|---------------------|--|--|
| Prefix           | First Name   | Middle Nam          | e Last Name  | Suffix   |
| Mr.              | Gregory  | Phillip             | McGuire  |  |
| REASON FOR       | FILING (SELECT ALL THA                                   | T APPLY)            |  |  |
|                  | ERNMENT JOB (Please spec<br>ork or are being considered) | cify the agency for | BOARD/COMMISSION (Please State boards on which you are | ease list complete name of all<br>e serving or are being considered) |
| ☑ JUDICIAL O     | FFICER (Please specify the o                             | ffice you hold)     | LEGISLATOR (Please speci                               | fy House or Senate)  |
| Special Judge (S | Superior Court)  |                     |  |  |

| I affirm that the information provided in this Statement of Economic Inter-<br>accurate to the best of my knowledge and belief.  | est and any attachments hereto are true, complete, and   |
|--|--|
| accurate to the best of my knowledge and benefit.  |  |
| I also certify that I have not transferred, and will not transfer, any asset, in   | terest, or property for the purpose of concealing it from  |
| disclosure while retaining an equitable interest.  |  |
| I understand that my Statement of Economic Interest and any attachments  | or supplements thereto (with the exception of the  |
| Confidential Form regarding Unemancipated Children) are public record.   |  |
| I acknowledge that I have read and understand N.C.G.S. 138A-26 regarding   | ng concealing or failing to disclose material information  |
| and N.C.G.S. 138A-27 regarding providing false information:  |  |
| § 138A-26. Concealing or failing to disclose material information.   |  |
| A filing person who knowingly conceals or knowingly fails to discloss statement of economic interest under this Article shall be guilty of a caction under G.S. 138A-45.   | e information that is required to be disclosed on a Class 1 misdemeanor and shall be subject to disciplinary |
| § 138A-27. Penalty for false information.  |  |
| A filing person who provides false information on a statement of ecothe information is false is guilty of a Class H felony and shall be subj   | nomic interest as required under this Article knowing that ect to disciplinary action under G.S. 138A-45.    |
| I hereby affirm that I have reviewed my most recently filed 2015 State<br>2015, my responses continue to be true, correct, and complete to the b   |  |
| 2015, my responses continue to be true, correct, and complete to the b   | est of my knowledge and benef.   |
| _  |  |
| I A annual Table was intention that this shock how constitutes may electronic  | cioneture. Du chechine shie hou I confir she she   |
| I Agree. It is my intention that this check box constitutes my electronic  |  |
| I Agree. It is my intention that this check box constitutes my electronic information provided in this Statement of Economic Interest and any at   |  |
| I Agree. It is my intention that this check box constitutes my electronic  |  |
| I Agree. It is my intention that this check box constitutes my electronic information provided in this Statement of Economic Interest and any at best of my knowledge and belief.                                  | eachments hereto are true, complete, and accurate to the   |
| I Agree. It is my intention that this check box constitutes my electronic information provided in this Statement of Economic Interest and any at best of my knowledge and belief.  Filed Electronically            | achments hereto are true, complete, and accurate to the  3/24/2016   |
| I Agree. It is my intention that this check box constitutes my electronic information provided in this Statement of Economic Interest and any at best of my knowledge and belief.                                  | eachments hereto are true, complete, and accurate to the   |
| I Agree. It is my intention that this check box constitutes my electronic information provided in this Statement of Economic Interest and any at best of my knowledge and belief.  Filed Electronically  Signature | achments hereto are true, complete, and accurate to the  3/24/2016   |
| information provided in this Statement of Economic Interest and any at best of my knowledge and belief.  Filed Electronically  | achments hereto are true, complete, and accurate to the  3/24/2016   |



#### NORTH CAROLINA STATE ETHICS COMMISSION

#### 2015 STATEMENT OF ECONOMIC INTEREST

FOR ETHICS COMMISSION USE ONLY

919-715-2071

www.ethicscommission.nc.gov 2015 APR 13 AM II: 36

| First Name   | Middle Na             | me   | Last Name  | Suffi  |
|--|-----------------------|--|--|--|
| Gregory  | D                     | m  | CGuire   |  |
| CURRENT EMPLOYER   |                       | JOB TITLE  |  | 1. 10.10 4., 12.33 563   |
| State of No  | 11 0 0.               |  | 15 - 1   | 171  |
|  |                       | na Specie  | Superior Con   | 17 Judge   |
| NATURE OR TYPE OF BUSINES  | 5                     |  |  | William And Addition   |
| AND THE STATE OF STATE OF STATE  |                       | AND THE PROPERTY OF THE PARTY O | To surfice 200 or o                                      | The state of the s |
| REASON FOR FILING (SELECT  |                       |  |  | 3.0 20.4 ( 5.00)   |
| STATE GOVERNMENT JOB (F<br>which you work or are being   |                       |  | rds on which you are s                                   | t complete name of all erving or are being   |
|  |                       |  |  |  |
| /  |                       |  |  |  |
| JUDICIAL OFFICER (Please s   | pecify the office you | hold) LEGISLAT   | OR (Please specify Hou                                   | ise or Senate)   |
| ✓Yes □ No<br>When used throughout this for<br>includes members of your exte  | ended family (your as | nd your spouse's childre   | en, grandchildren, pare                                  |  |
| ONLY LIST THE INITIALS OF U Confidential Form available at Minors are emancipated by ma                                | the end of this docur | the US military, or cou  | MUST submit the childr                                   | tion.  |
| ONLY LIST THE INITIALS OF U<br>Confidential Form available at  | the end of this docur | the US military, or cou  | MUST submit the childrest action for emancipal JOB TITLE | NATURE OF BUSINESS   |
| ONLY LIST THE INITIALS OF U<br>Confidential Form available at<br>Minors are emancipated by ma<br>FULL NAME OF ADULTS & | the end of this docur | the US military, or cou  | MUST submit the childrest action for emancipal JOB TITLE | tion.  |

| or møre?  |   | 41 1                               | s of your <u>immediate</u> family:<br>(including your residence) wi | th a market value of \$10,000     |
|---|---|------------------------------------|---|-----------------------------------|
| As of <u>December 31, 2014</u> ,     A. Have an ownership into or møre? |   | 41 1                               |   | th a market value of \$10,000     |
| I. As of <u>December 31, 2014</u> , A. Have an ownership into or more?  |   | 41 1                               |   | th a market value of \$10,000     |
| 1. As of <u>December 31, 2014</u> , A. Have an ownership into or more?  |   | 41 1                               |   | th a market value of \$10,000     |
| A. Have an ownership into or more?                                      |   | 41 1                               |   | th a market value of \$10,000     |
| Yes No  |   |                                    |   |                                   |
| Owner of Real Estate  | % Owners                                    | hip Interest                       | Location by City  | Location by County                |
| 106 Doeic Govet &   | 10 is                                       | 0                                  | Cary  | WaKe                              |
| B. Lease or rent real esta or more?                                     | te or personal prop                         | erty <u>to or from</u>             | the State of North Carolina w                                       | with a market value of \$10,000   |
| Name of Lessor  |   | f Lessee<br>nter)                  | If Real Estate, Location<br>by City & County                        | If Personal Property,<br>Describe |
| 2. At any time during 2013 o<br>State of North Carolina perso           | r 2014, did you, yo<br>onal property with a | our spouse, or n<br>market value o | nembers of your <u>immediate</u> fa<br>of \$10,000 or more?         | mily sell to or buy from the      |
| Name of Purchase  | er  | Name of                            | Seller  | Type of Property                  |

| FINANCIAL INTERESTS   |   |
|---|---|
| Interests valued at \$10,000 or more?  A. Stock in a publicly owned company?  ☐ Yes  ☐ No  Do not list ownership interests in a widely held in companies, or pension or deferred compensation pla   | nvestment fund (including mutual funds, regulated investment ans) if: (i) the fund is publicly traded or its assets are widely member are able to control the assets held in the mutual fundation plan. |
| Owner of Interest   | Full Name of Company (Do not use a ticker symbol)   |
|   |   |
| B. Stock Options in a company or business?  ☐ Yes ☑ No  |   |
| Owner of Stock Option   | Full Name of Company (Do not use a ticker symbol)   |
| C. Interests in a non-publicly owned company or busing partnerships, limited partnerships, joint ventures, closely held corporations)?  Yes No - If "No", proceed to question 4.  Owner of Interest | iness entity (including interests in sole proprietorships, limited liability companies, limited liability partnerships, and  Name of Company or Business Entity   |
|   |   |

| (the Primary Company  | usiness Entity                                       |  | nies in which the Primary Company   |
|---|--|--|---|
|   | )  |  | Security or Equity Interests  |
| None or Not Known   |  |  |   |
|   |  |  |   |
|   |  |  |   |
|   | ith the State of Noi                                 |  | C(1) above has any material business egulated by the State, provide a brief   |
| Name of Company or Busines  | s Entity   | Description                                  | of Business Activity with the State   |
| None or Not Known   |  |  |   |
|   |  |  |   |
|   |  |  |   |
|   |  |  |   |
| trust with a value of \$10,000 or more Do not list assets held in blind trusts. See   | that was created, e                                  | established, or cont                         |   |
| ☐ Yes ☑ No  |  |  |   |
| Name and Address of Trustee   | Description  | of the Trust                                 | Your Relationship to the Trust  |
| Name and Address of Trustee  5. As of December 31, 2014, did you, you   | our spouse, or mer                                   | nbers of your imm                            | ediate family have liabilities of \$10,000 or   |
| Name and Address of Trustee  5. As of December 31, 2014, did you, you   | our spouse, or mer                                   | nbers of your imm                            | ediate family have liabilities of \$10,000 o  |
| Name and Address of Trustee  5. As of <u>December 31, 2014</u> , did you, your more, <u>excluding</u> the mortgage on your student loans, personal loans and intra-face   | our spouse, or mer<br>primary personal<br>mily debt. | nbers of your <u>imm</u><br>residence? Examp | ediate family have liabilities of \$10,000 o  |
| Name and Address of Trustee  5. As of <u>December 31, 2014</u> , did you, your more, <u>excluding</u> the mortgage on your student loans, personal loans and intra-factory in the property of the propert | our spouse, or mer<br>primary personal<br>mily debt. | nbers of your <u>imm</u><br>residence? Examp | ediate family have liabilities of \$10,000 or les include credit card debts, auto loans tor (Commercial Bank, Credit Union, |

| Do <u>not</u> include income receive  |  |  |  |
|---|--|--|--|
| ➤ Capital gains ➤ Military retirement   | the state of the s | ernment retirement<br>ity income/SSDI  |  |
|   |  |  | T of T   |
| Recipient of Income   | Name of Source   | Type of Business/Industry  | Type of Income   |
| I had no reportable income ov   | er \$5,000 in 2014.  |  |  |
| German P. McGruise  | Onleton Law Firm   | Law Firm.  | Salary   |
| Lynn O. mcbuire   | Premier Advisor  | Investment and Advisary Services   | Hourly   |
|   |  |  |  |
| PROFESSIONAL AND CIVIC<br>7(a). <u>During 2014</u> , were you,<br>member, employee, independent<br>the State of North Carolina prin<br>purposes?  | your spouse or members of y<br>t contractor, or registered lobb<br>narily for religious, charitable,   | yist of a nonprofit corporation  | n or organization operating i  |
| 7(a). <u>During 2014</u> , were you,<br>member, employee, independen<br>the State of North Carolina prin  | your spouse or members of y<br>t contractor, or registered lobb<br>narily for religious, charitable,<br>proceed to question 8.   | oyist of a nonprofit corporation scientific, literary, public heal                                   | n or organization operating i<br>lth and safety, or educationa   |
| (a). <u>During 2014</u> , were you, member, employee, independenthe State of North Carolina print ourposes?  ☐ Yes ☐ No - If "No",  Do not list State boards or entered to the pourpose of the pour | your spouse or members of y<br>t contractor, or registered lobb<br>harily for religious, charitable,<br>proceed to question 8.<br>tities, or entities created by a p<br>nich you are a mere member.  | oyist of a nonprofit corporation scientific, literary, public heal                                   | n or organization operating in the and safety, or educational safety.  Nature of Business or   |
| 7(a). <u>During 2014</u> , were you, member, employee, independenthe State of North Carolina princurposes?  ☐ Yes ☐ No - If "No",  Do not list State boards or end  Do not list organizations of whether the policy is the princurpose of the policy in the policy in the policy is the policy in the policy  | your spouse or members of y<br>t contractor, or registered lobb<br>harily for religious, charitable,<br>proceed to question 8.<br>tities, or entities created by a p<br>nich you are a mere member.  | oyist of a nonprofit corporation scientific, literary, public heal olitical subdivision of the State | n or organization operating in the and safety, or educational safety, or educational safety.   |
| (a). <u>During 2014</u> , were you, member, employee, independenthe State of North Carolina printourposes?  ☐ Yes ☐ No - If "No",  Do not list State boards or end  Do not list organizations of whether the positions is the printour position.  | your spouse or members of y t contractor, or registered lobb harily for religious, charitable, proceed to question 8.  Lities, or entities created by a paich you are a mere member.  His/Her Position  Contract of the contra | ove do business with the State   | Nature of Business or Purpose of Organization  |
| (a). During 2014, were you, member, employee, independent he State of North Carolina print ourposes?  ☐ Yes ☐ No - If "No",  Do not list State boards or ent  Do not list organizations of when the Name of Person  7(b). If the nonprofit corporations of under the State funds, please provide a boards.  | your spouse or members of y t contractor, or registered lobb harily for religious, charitable, proceed to question 8.  Lities, or entities created by a paich you are a mere member.  His/Her Position  Contract of the contra | ove do business with the State   | n or organization operating in the and safety, or educations and safety, or educations.  Nature of Business or Purpose of Organization and safety and safety are safety as a second control of the safety and safety are safety as a second control of the safety and safety are safety as a safety and safety are safety as a safety as a safety are safety as a safety as a safety are safety as a safety are safety as a safety as a safety as a safety are safety as a safety as a safety are safety as a sa |

|   | our spouse, or members of yozation, or advocacy group with                |   |  |   |
|---|---|---|--|---|
|   | ator/Judicial Officer - You are no<br>e a legislator or a judicial office |   |  |   |
| ► Do not list organizations of w  | hich you are only a member (n   | ot serving in a lead                            | ership role).  |   |
| Name of Person  | Name of Society, O<br>or Advocacy   |   | Leadership Position<br>(Director, Officer, Board Member) |   |
|   |   |   |  |   |
| 9(a). List the name of each immediate family was an emplo                                     | company or business with who<br>oyee, director, officer, partner,         | nich you were asso<br>proprietor, or mem        | ociated where<br>ber or manage                           | you or a member of your er as of <u>December 31, 2014</u> . |
| / Name of Person  | Relationship to Filer   | Name of Co                                      | mpany  | Role of Person  |
| No Business Associations  |   |   |  |   |
| 9(b). If you know that any concontracts with the State of Nordescription of that business act | npany or business entity listed i<br>th Carolina or was regulated by      | n 9(a) above had a<br>the State as of <u>De</u> | ny material bu   | usiness dealings or business<br>014, provide a brief        |
| Name of Company of  |   | Description of                                  | of Business A  | ctivity with the State                                      |
| Not applicable (No entities li  |   | hip / Not known                                 |  |   |
|   |   |   |  |   |
| 10. Are you a practicing attorn   | ey?   |   | elegiji <sub>ne</sub> got                                |   |
| ☐ Yes ☐ No ☑ Judicia  | al Officer/State Attorney   |   |  |   |
| If "Yes", check each category legal fees of more than \$10,00                                 | of legal representation in which 0 during 2014.                           | you or the law fire                             | m with which   | you are affiliated has earned                               |
| Administrative  | Admiralty   | Corporat  | te   | Criminal  |
| Decedent's Estates  | ☐ Environmental   | ☐ Insurance                                     | ce   | Labor   |
| ☐ Local Government  | Real Property   | ☐ Securitie                                     | es   | □Tax  |
| Tort litigation (including negligence)  | Utilities Regulation  | Other ca  | tegory not list  | ted.  |

| Type of Business  |   |   | Nature of Services   | Rendered  |
|---|---|---|--|---|
| Licensed by the St     Regulated by the St     Have a business re     Yes  No V   | ate board or emp<br>state board or em<br>lationship with the<br>egislator/Judicia<br>bu are a legislato         | loying entity with which a ploying entity with which the State board or employ to officer - You are not no  | nmediate family, or their en<br>you are or will be associate<br>you are or will be associate<br>ing entity with which you a<br>equired to complete this quadicial officer" is defined in the | ed or<br>ted or<br>re or will be associated?<br>testion if you are filing be  |
| Name of Per   | son   | Name of Emplo<br>(if applicable   |  | ype of Relationship<br>ng, Regulatory, Busine   |
|   |   |   |  |   |
|   | uch within the 12   | f your <u>immediate</u> family<br>months preceding your<br>Lobbyist's Princ   |  | of Registration   |
| Were you registered as s  ☐ Yes ☑ No  Name of Lobb  OTHER DISCLOSURE  | yist  | 2 months preceding your  Lobbyist's Princ   | ipal Date (Registra  | of Registration Expiration  |
| PYES NO  Name of Lobb  Name of Lobb  OTHER DISCLOSURE  14. During any calendary and an acandidate as a candidate areceive any "gift(s) when both you and  | yist  yist  r quarter in 2014 e), did you of exceeding \$20 d those person(s)                                   | Lobbyist's Prince  (but only the time perform a personal ways outside North Care  | filing of this form?   | Registration Expiration  ted, employed or filed or ting together, and ted the gift(s), and                              |
| Pes No  Name of Lobb  No  Name of Lobb  Name of Lob | yist  yist  r quarter in 2014 e), did you )" exceeding \$20 d those person(s) ven under circum en by members on | Lobbyist's Prince  (but only the time period of your extended family. Sly been reported by your extended by | ipal Date Registra   | Registration Expiration  ted, employed or filed or ting together, and ted the gift(s), and include that they were given |

| 15. <u>During 2014</u> (did you        | but only the time period after you we  | re appointed, employed, or filed or were   | nominated as a candidate)                                   |
|--|--|--|---|
|  | nolarship" exceeding \$200 from a per  | son or group of persons acting together a  | and and   |
|  | (s) were outside North Carolina and  |  |   |
| • the scholars                         |  | on? A "scholarship" is a grant-in-aid  | to attend a conference,                                     |
|  | The state of the s |  |   |
|  | Judicial Oπicer - You are not require<br>iling as a judicial officer appointee.  | ed to complete this question if you are a  | judicial oπicer or you are                                  |
|  |  | The American State of the Control of |   |
| "Expense Repor                         | t for Exempted Persons."   | d by you to the Department of the Secret   | e dan bougayer your gray.<br>Orangens a shoet with a second |
|  | embly is a member or participant or a  |  |   |
| Date of<br>Scholarship                 | Name and Address of Donor(s  | Describe Event   | Estimated Market<br>Value                                   |
|  |  |  |   |
|  |  |  |   |
|  |  |  |   |
| 16. Were you app<br>Council of State m |  | or an appointment to a covered board by  | the <b>Governor</b> or another                              |
| Council of State                       |  |  |   |
| ▶ Governo                              | br Lt. Governor  | ▶ Secretary of St  | ate   |
| ► State A                              | ·福林斯克·罗尔·西班牙斯斯克  |  | t of Public Instruction                                     |
| ► Attorne                              |  |  |   |
|  | sioner of Insurance  |  |   |
|  |  |  |   |
| ☐ Yes ☑ N                              | 0  |  |   |
|  |  | family members) made during 2014 ncil of State member who appointed  |   |
| of more than \$1,                      | ood to the Governor or other Cou   | nch of State member who appointed  |   |
|  |  |  |   |
|  |  | nd include, but are not limited to, "any additional include, but are not limited to, "any addition of money or a   |   |
| TANK OF THE                            |  |  |   |
| Date                                   | Amount   | Contribute   | ed to   |
| ☐ No contribution                      | (s) with a cumulative total of more th   | an \$1,000   |   |
|  |  |  |   |
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| <ul> <li>a. the head of a principal st<br/>Governor; or</li> </ul>  | ate department (e.g. cabinet s   | secretary) appointed by the                               |   |
|---|--|---|---|
|   | e Court Justice, Court of Appea  | als, Superior or District Court                           |   |
| c. a member of any of the f   | ollowing hoards:   |   |   |
| ABC Commission  | onowing boards.  |   |   |
| Coastal Resources Co  | mmission   |   |   |
| State Board of Educa  |  |   | MYes No                                 |
| State Board of Election   | -18-1  |   |   |
| Division of Employme  |  |   | If "No", proceed to                     |
| Environmental Managemental |  |   | If "No", proceed to question 18.        |
| Industrial Commissio  |  |   | 44404.01.201                            |
| Human Resources Co  |  |   |   |
| Rules Review Commi  |  |   |   |
| Board of Transportat  |  |   |   |
| UNC Board of Govern   |  |   |   |
| Utilities Commission  |  |   |   |
| Wildlife Resources Co   | mmission   |   |   |
| d. If so, were you appointed  |  | for appointment to that public<br>e members are listed in | Yes No If "No", proceed to question 18. |
| you to your public positi  i. Collected contribution multiple contribution  | committee of the Council of Sta<br>on:<br>as from multiple contributors,<br>s, and transferred or delivered<br>ommittee? Contributions are o | took possession of such those collected contributions     | □ Yes MNo                               |
| ii. Hosted a fundraiser a   | at your residence or place of b  | usiness?  | ☐ Yes ☑ No                              |
| phone banks, event a  | paign-related activities, which assistance, mailings, canvassing the campaign of a candidate   |   | ☐ Yes ☑ No                              |
| B. Have you ever been convicted of expungement regarding.  Yes No   |  | nave not received either: (i) a p                         | pardon of innocence; or (ii) an         |
| Offense   | Date of Conviction   | County of Conviction                                      | State of Conviction                     |
|   |  |   |   |
|   | information that you believe not the State Government Ethics   | nay assist the State Ethics Comes Act?                    | mission in advising you                 |
|   | ease provide such information  |   |   |

#### **AFFIRMATION**

I affirm that the information provided in this Statement of Economic Interest and any attachments hereto are true, complete, and accurate to the best of my knowledge and belief.

I also certify that I have not transferred, and will not transfer, any asset, interest, or property for the purpose of concealing it from disclosure while retaining an equitable interest.

I understand that my Statement of Economic Interest and any attachments or supplements thereto (with the exception of the Confidential Form regarding Unemancipated Children) are public record.

I acknowledge that I have read and understand N.C.G.S. 138A-26 regarding concealing or failing to disclose material information and N.C.G.S. 138A-27 regarding providing false information:

§ 138A-26. Concealing or failing to disclose material information.

A filing person who knowingly conceals or knowingly fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be guilty of a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45.

§ 138A-27. Penalty for false information.

A filing person who provides false information on a statement of economic interest as required under this Article knowing that the information is false is guilty of a Class H felony and shall be subject to disciplinary action under G.S. 138A-45.

☑ I Agree

Gregory P. McGuire
Printed Name

Signature

4 9 /15 Date

Submit SIGNED, ORIGINAL documents only.

Do not fax or email this form.



#### NORTH CAROLINA STATE ETHICS COMMISSION

For Office Use Only

## SUPPLEMENT TO THE 2015 STATEMENT OF ECONOMIC INTEREST

2015 MAY 14 AM II: 00

| Name of Person Filing  | Supplement:  | regory P.  | ME COURT   |
|--|--|--|--|
| Name of Agency or B  | oard:  | secial Superior  | Court Judge  |
| Date:  |  | 5-11-15  |  |
| board member, employed organization operating in the health and safety, or education.  Yes No - If  Do not list State boards | e, independent contractor,<br>the State of North Carolina pational purposes?<br>"No", proceed to question 8<br>or entities, or entitles create | or registered lobbyist primarily for religious, char     | lly a director, officer, governing of a nonprofit corporation or itable, scientific, literary, public of the State.  |
| Name of Person   | His/Her Position   | Name of Nonprofit Corporation or Organization            | Nature of Business or<br>Purpose of Organization   |
|  |  |  |  |
|  |  |  |  |
| 7(b). If the nonprofit corpreceive State funds, please diligence could reasonably  | e provide a brief description  | ted above do business wit<br>of the nature of that busin | h the State of North Carolina or<br>less, if known or with which due   |
| Name of Nonprofit Corp   | oration or Organization  | Describe State Bu  | siness or State Funding  |
| ☐ None or Not Known  |  |  |  |
|  |  |  |  |
|  |  |  | WIND IN COLUMN TO THE COLUMN T |
|  |  |  |  |

#### **AFFIRMATION**

I affirm that the information provided in this Statement of Economic Interest and any attachments hereto are true, complete, and accurate to the best of my knowledge and belief.

I also certify that I have not transferred, and will not transfer, any asset, interest, or property for the purpose of concealing it from disclosure while retaining an equitable interest.

I understand that my Statement of Economic Interest and any attachments or supplements thereto (with the exception of the Confidential Form regarding Unemancipated Children) are public record.

I acknowledge that I have read and understand N.C.G.S. 138A-26 regarding concealing or failing to disclose material information and N.C.G.S. 138A-27 regarding providing false information:

§ 138A-26. Concealing or failing to disclose material information.

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§ 138A-27. Penalty for false information.

A filing person who provides false information on a statement of economic interest as required under this Article knowing that the information is false is guilty of a Class H felony and shall be subject to disciplinary action under G.S. 138A-45.

Gregory P. McGrire

\*\*Notarization is no longer required\*\*

Printed Name

Signature

Date

Submit SIGNED, ORIGINAL documents.

This entire document and any attachments are public record.

## NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

#### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

#### **FAVORABLE**

HJR 977 Confirm Gregory McGuire/Special SC Judge.

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

Floor Manager: Lewis

HJR 979 Confirm Charles Viser/Special SC Judge.

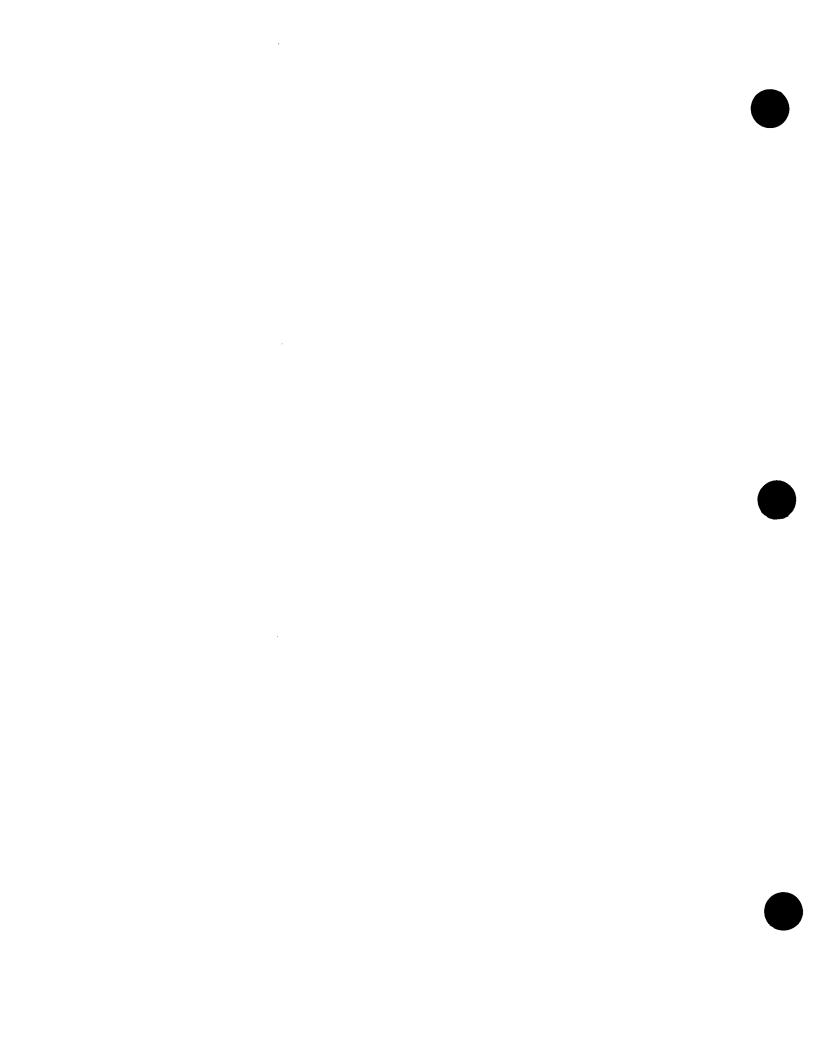
Draft Number: None
Serial Referral: None
Recommended Referral: None
Long Title Amended: No
Floor Manager: Lewis

HJR 981 Confirm Mike Robinson/Special SC Judge.

Draft Number: None
Serial Referral: None
Recommended Referral: None
Long Title Amended: No
Floor Manager: Lewis

**TOTAL REPORTED: 3** 

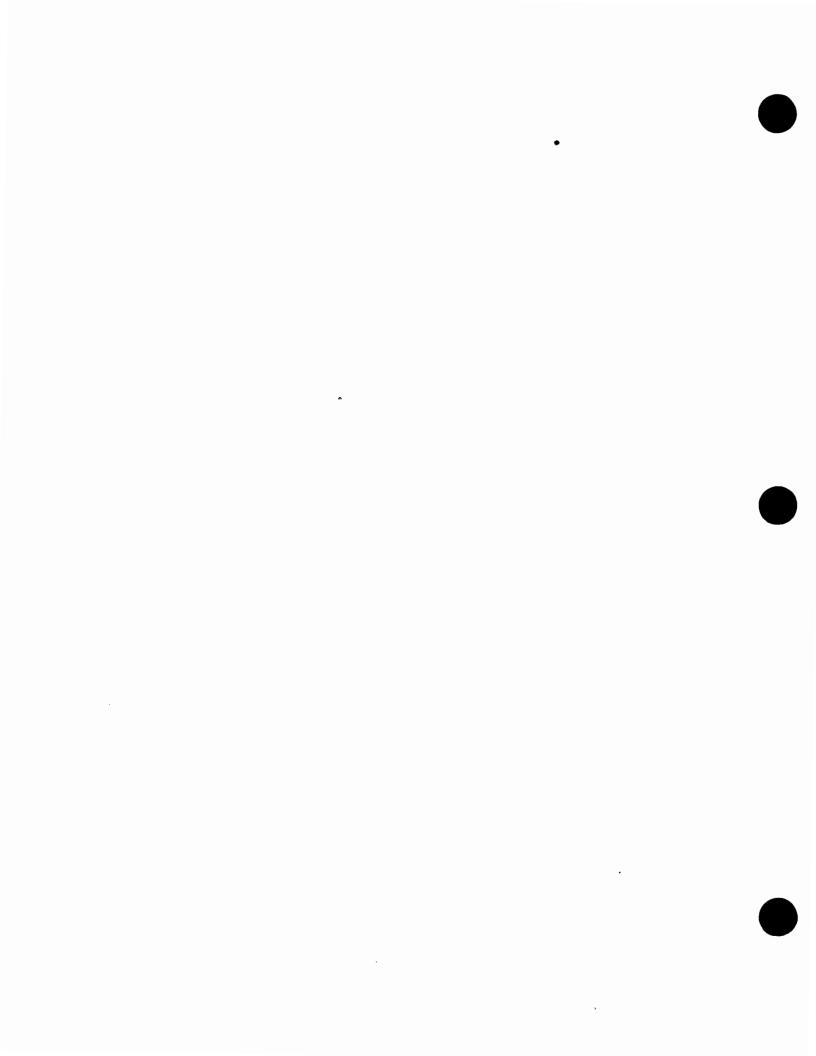




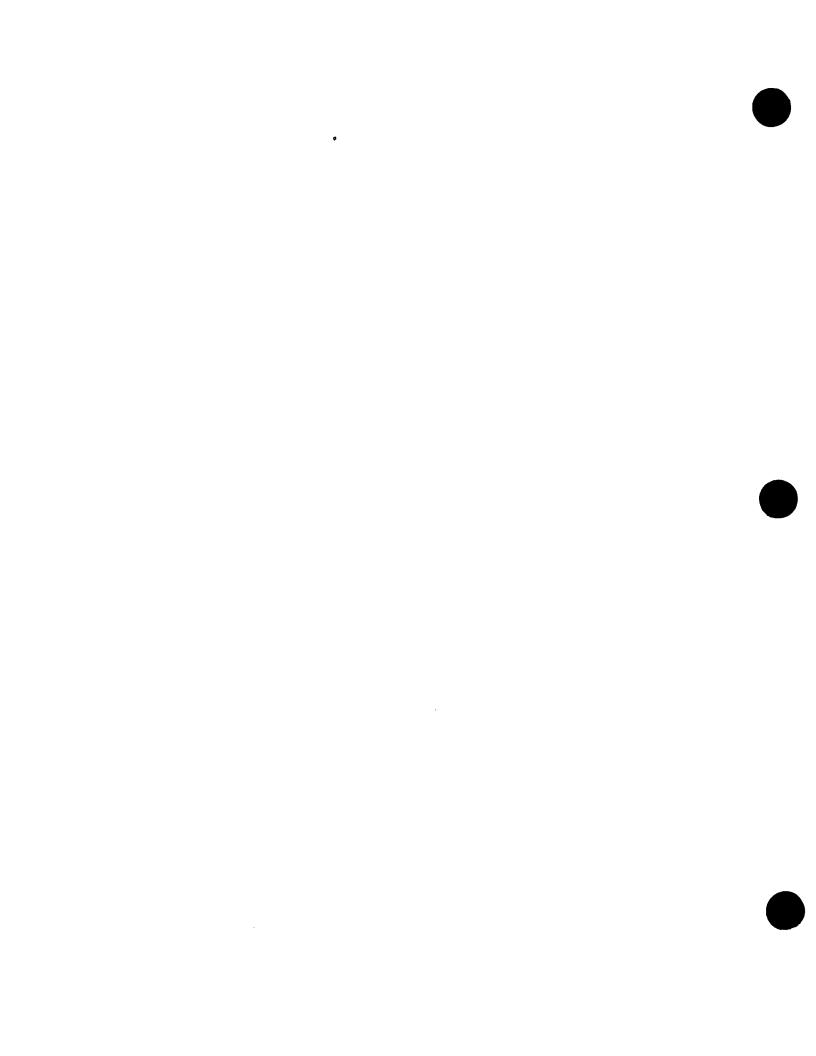
|  | Date: 4-27-20/6  |
|--|--|
| Bill NumberHJR_ 979  PCSNo  Motion to be before the committee by | Visor<br>Martin  |
| Rep_Llwis  | explained the bill.  |
| Discussion on the Bill YES or NO                                 |  |
| RepFavorable ReportUnfavorable ReportNo vote Amendments: :       | motioned for:  Adoption Unfavorable to original bill, fav to PCS |
| Serial referral to:  Speakers:                                   |  |
| Handouts:  |  |

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| Date: <u>4-27-14</u>   |
|--|
| Bill Number HJR 60000 981 Robinson                               |
| Motion to be before the committee by                             |
| Rep explained the bill.  Discussion on the Bill YES or NO        |
|  |
|  |
| Favorable Report  Adoption                                       |
| Unfavorable ReportUnfavorable to original bill, fav to PCS       |
| No vote  |
| Amendments: :  |
| A THORIGING . I  |
| Serial referral to:  |
| Speakers: Judyl Warrens Judyl Handouts:                          |
| Handouts:  |
| nestins.   |
| Mike Robinson-<br>viewell - why are you qualified<br>martin used |
| Martin impressed!  |



| Date: 4-27 - 16  |
|--|
| Bill Number HJR 9000 977 mc GULFP.                         |
| PCS  |
| Motion to be before the committee by                       |
| Repexplained the bill.                                     |
| Discussion on the Bill YES or NO                           |
| Rep motioned for:  |
| Favorable Report Adoption                                  |
| Unfavorable ReportUnfavorable to original bill, fav to PCS |
| No vote  |
| Amendments: :  |
| Serial referral to:  |
| Conditional to.  |
| Speakers: Judge Wanen                                      |
| Handouts: Steinburg - why me you qualified                 |
| McDuis   |
| Hall- communely actively                                   |



## House Committee Pages / Sergeants at Arms

| NAME OF COMMITTEE Jud I           |
|-----------------------------------|
| DATE: 4/27/16 Room: 4/15          |
| *Name: Jacob Var 9                |
| County: Surry                     |
| Sponsor: Specker Moore            |
| *Name: Mario Hehmadar             |
| County: Waynel                    |
| Sponsor: 11m MOOU                 |
| Name: Ghabiel Gonçaluer Guimaraer |
| County: Granuille                 |
| Sponsor: Tim Mage                 |
| *Name: Havon Medinger             |
| County: John ston                 |
| Sponsor: Speater Moore            |
| *Name:                            |
| County: DUYMAN)                   |
| Sponsor: SWWW TWW MWW             |
|                                   |
| House Sgt-At Arms:                |
| 1. Name: Name: NARRY MOORE        |
| . Name: Jonas Cherry 5. Name:     |
| 3. Name: Russ Salisbury 6. Name:  |

Julian Price Page

Mecklenburg

Tim Moore

Brandan buuknannon -page

Guilford

Tim moure

Cailly Howard - page - John Bell

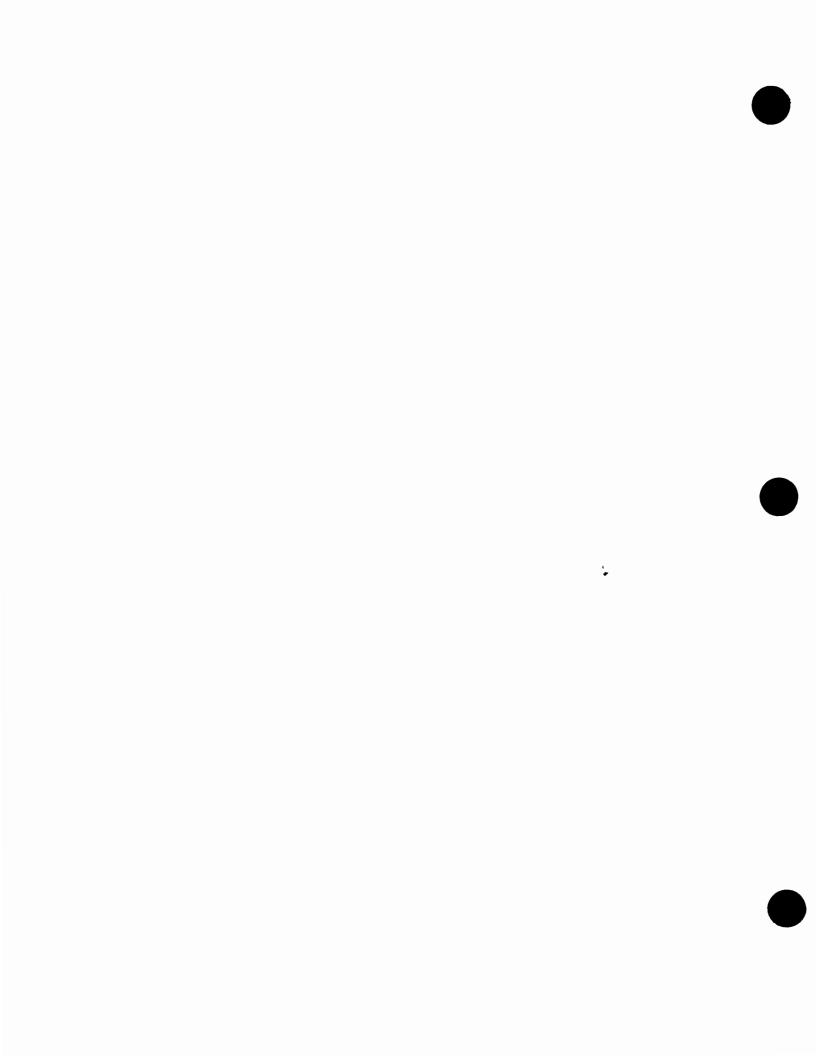
Mary Collins Page - Brisson

## VISITOR REGISTRATION SHEET

| (Committee Name) |                    |      |  |  |
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### VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

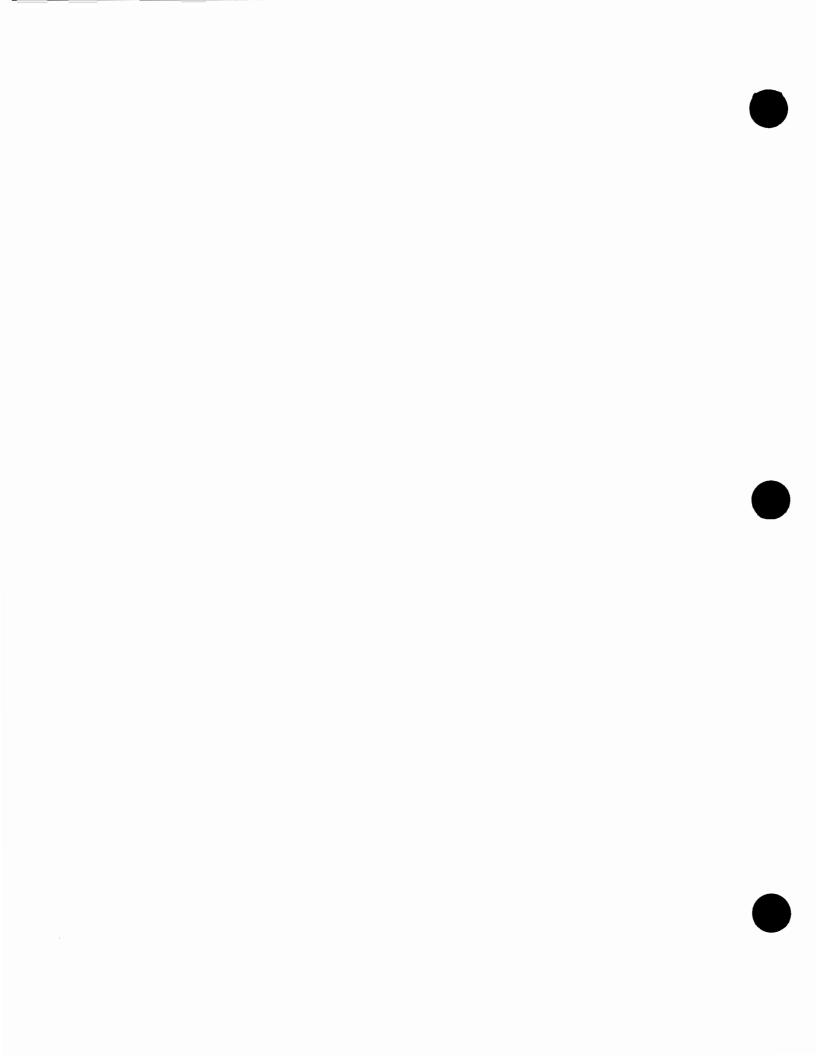
| NAME               | FIRM OR AGENCY |
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| Steven Mange       | NCRLA          |
| Peny treft         | 40/            |
| Bhilip Blog        | AMIR           |
| Peter Bolac        | NC State Bar   |
| DarlACollins       | SEAUC          |
| TJRughere          | NP             |
| lexi arnur         | NCKMA          |
| Elizabeth Robinson | DERINA         |
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| Tory Wortan        | T55            |
| Meaghan Leurs      | Ne chamble     |
| Kristin Parki      | DRNC           |
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# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

You are hereby notified that the House Committee on Judiciary I will meet as follows:

|                                       | DAY & DATTIME: LOCATION   | TE: Wednesday, May 11, 2016<br>12:30 PM<br>N: 415 LOB |   |  |  |  |
|---------------------------------------|---|---|---|--|--|--|
|                                       | The followin  |   |   |  |  |  |
|                                       | BILL NO.<br>HB 958  | SHORT TITLE Felony Death Imp. Boating/Sheyenne's Law. | SPONSOR Representative Pittman Representative Fraley Representative Ford Representative J. Bell |  |  |  |
|                                       | HB 1020   | Indigent Defense Services Amendments.                 | Representative Daughtry   |  |  |  |
|                                       | HB 1021   | Amend Innocence Commission Statutes.                  | Representative Daughtry   |  |  |  |
| Respectfully,                         |   |   |   |  |  |  |
| Representative N. Leo Daughtry, Chair |   |   |   |  |  |  |
|                                       | I hereby certify this notice was filed by the committee assistant at the following offices at 12:33 PM on Thursday, May 05, 2016. |   |   |  |  |  |
|                                       |   | Principal Clerk Reading Clerk – House Chamber         |   |  |  |  |
|                                       | Jan Copeland (Committee Assistant)  |   |   |  |  |  |
|                                       |   |   |   |  |  |  |



#### House Committee on Judiciary I Wednesday, May 11, 2016 at 12:30 PM Room 415 of the Legislative Office Building

#### MINUTES

The House Committee on Judiciary I met at 12:30 PM on May 11, 2016 in Room 415 of the Legislative Office Building. Representatives Arp, Burr, Daughtry, Hardister, Howard, Jackson, G. Martin, McNeill, Robinson, Steinburg, and Szoka attended.

Representative N. Leo Daughtry, Chair, presided.

The following bills were considered:

HB 958 Felony Death Imp. Boating/Sheyenne's Law. (Representatives Pittman, Fraley, Ford, J. Bell) The committee voted favorable.

HB 1020 Indigent Defense Service Amendments. (Representative Daughtry) The committee voted favorable.

HB 1021 Amend Innocence Commission Statutes (Representative Daughtry) The committee voted favorable to the committee substitute, unfavorable to the original bill.

The meeting adjourned at 1:35 p.m.

Representative N. Leo Daughtry, Chair

Presiding

Jan Copeland, Committee Clerk

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## HOUSE BILL 958: Felony Death Imp. Boating/Sheyenne's Law.

2016-2017 General Assembly

Committee: House Judiciary 1

Introduced by: Reps. Pittman, Fraley, Ford, J. Bell Prepared by:

Analysis of: First Edition

**Date:** May 9, 2016

Prepared by: Erika Churchill

Committee Co-Counsel

SUMMARY: House Bill 958 would create new offenses for death or serious injury resulting from impaired boating and clarify the penalty for impaired boating, as recommended by the House Select Committee on Wildlife Resources.

**CURRENT LAW:** It is a Class 2 misdemeanor, with a fine of no less than \$250, for any person to operate any vessel while underway on the waters of this State:

- (1) While under the influence of an impairing substance, or
- (2) After having consumed sufficient alcohol that the person has, at any relevant time after the boating, an alcohol concentration of 0.08 or more.

A vessel is defined as "every description of watercraft or structure, other than a seaplane on the water, used or capable of being used as a means of transportation or habitation on the water." "Waters of this State" are any waters within the territorial limits of North Carolina, and the marginal sea adjacent and the high seas when navigated as a part of a journey or ride to or from the shore of North Carolina, excluding private ponds." G.S. 75A-2.

**BILL ANALYSIS:** House Bill 958 would create new offenses for death or serious injury resulting from impaired boating. The offenses and punishments would be as follows:

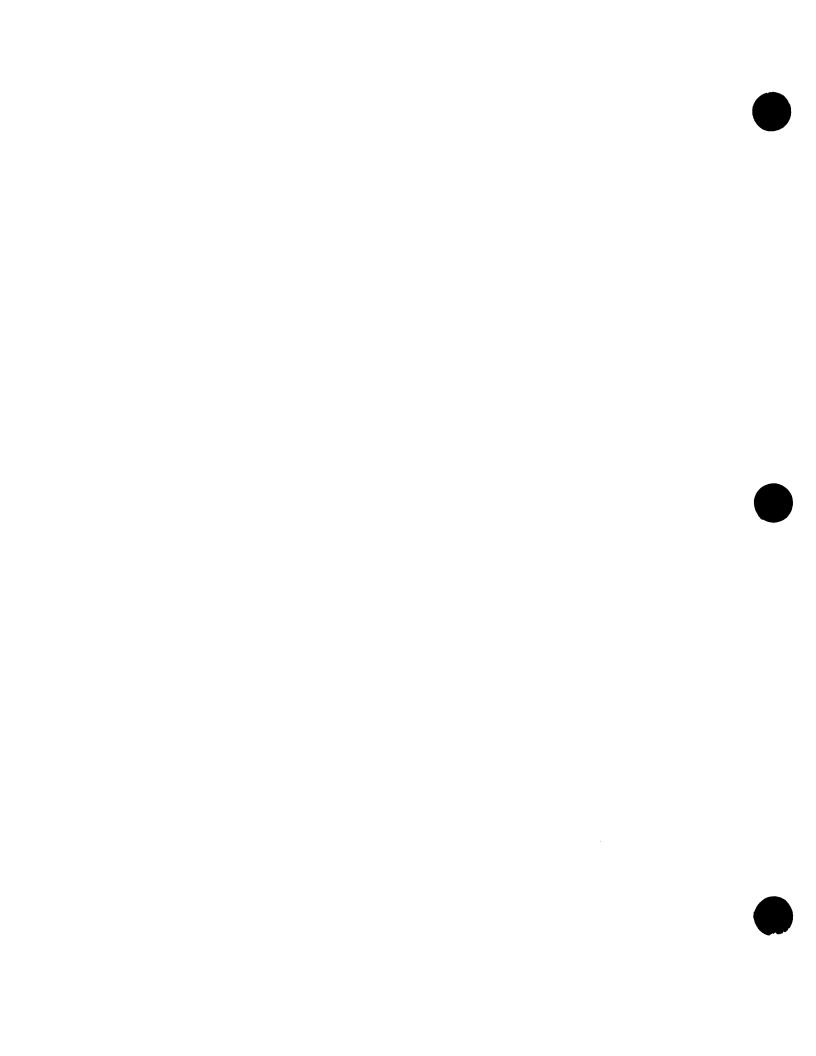
- Repeat death by impaired boating Class B2 felony.
- Aggravated death by impaired boating Class D felony, and the court must sentence the defendant in the aggravated range of the appropriate Prior Record Level.
- Death by impaired boating Class D felony, and intermediate punishment is authorized for a defendant who is a Prior Record Level I offender.
- Aggravated serious injury by impaired boating Class E felony.
- Serious injury by impaired boating Class F felony.

**EFFECTIVE DATE:** December 1, 2016, and applies to offenses committed on or after that date.

Karen Cochrane-Brown Director



Legislative Analysis Division 919-733-2578



### GENERAL ASSEMBLY OF NORTH CAROLINA

### Session 2015

### Legislative Incarceration Fiscal Note

BILL NUMBER: House Bill 958 (First Edition)

SHORT TITLE: Felony Death Imp. Boating/Sheyenne's Law.

**SPONSOR(S)**: Representatives Pittman, Fraley, Ford, and J. Bell

|   |  | FISCAL I<br>(\$ in mil |                    |                     |                   |
|---|--|------------------------|--------------------|---------------------|-------------------|
|   | ₹ Yes  | □No                    | No Estimate Av     | ailable             |                   |
| State Impact General Fund Revenues: General Fund Expenditures:        | FY 2016-17   | FY 2017-18             | FY 2018-19         | FY 2019-20          | FY 2020-21        |
| State Positions:  | THE STATE OF |                        |                    |                     |                   |
| NET STATE IMPACT  | No estimate avai   | lable. Please see A    | ssumptions & Metho | odology section for | additional detail |
| PRINCIPAL DEPAI Administrative Office o EFFECTIVE DATE TECHNICAL CONS | of the Courts; Indigen<br>: December 1, 2016   | t Defense Services;    |                    | Safety              |                   |

#### **FISCAL IMPACT SUMMARY:**

The proposed bill may have a fiscal impact to address five new chargeable offenses being enforced, adjudicated, and having penalties applied to those convicted of the new offense(s). However, given that 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 these crimes:

- Administrative Office of the Courts: \$1,088 \$10,416 per disposition
- Indigent Defense Services: \$497 \$1,395 per disposition
- Department of Public Safety (DPS) Prison Section: \$6,443 \$61,398 per active sentence
- DPS Community Corrections: \$1,260 \$4,620 per conviction

Please see the Assumptions and Methodology section for additional information.

#### **BILL SUMMARY:**

Section 1 of this bill provides a formal title ("Sheyenne's Law"). Section 2 creates new G.S. 75A-10.3, Death or serious injury by impaired boating; repeat offenses, which creates five new felony offenses: death by impaired boating, aggravated serious injury by impaired boating, aggravated death by impaired boating and repeat death by impaired boating. These new crimes are the same

as the penalties for driving while impaired. Section 3 amends existing G.S. 75-A10(b4) by restating that convictions of operating a boat while under the influence of an impairing substance or with an alcohol concentration of 0.08 or more shall result in a fine of not less than \$250, in addition to any other penalty imposed.

#### BACKGROUND:

The Wildlife Resources Commission (WRC) provided the following statistics regarding boating accidents and boating while impaired:

|                  |                      | North             | Carolina Boating S                        | Statistics                                  |  |
|------------------|----------------------|-------------------|---|---|--|
| Calendar<br>Year | Boating<br>Accidents | Boating<br>Deaths | Boating Deaths Caused by Impaired Boating | Serious Injuries Caused by Impaired Boating | Boating<br>Under the<br>Influence<br>Citations |
| 2011             | 142                  | 28                | 5   | 12  | 313  |
| 2012             | 151                  | 23                | 4   | 12  | 265  |
| 2013             | 143                  | 19                | 3   | 7   | 178  |
| 2014             | 130                  | 27                | 4   | 8   | 148  |
| 2015             | 165                  | 20                | 7   | 14  | 106  |

Fiscal Research asked WRC to provide additional information about each of the deaths caused by impaired boating. They were unable to provide data about the 2011 cases. For the remaining years (2012-2015), in the majority of these cases, the impaired operator of the boat died. In 2013, one passenger was killed when two boats collided. The operator of one of the boats was charged with involuntary manslaughter, DWI-Motor Boat/Vessel, and operating a boat in reckless manner. The operator was found guilty of operating a boat in a reckless manner. The other two charges were dismissed. In 2015, one operator was killed when an impaired operator struck his boat, and a skier was killed when an impaired operator struck the skier. In both of these cases, the operator has been charged with involuntary manslaughter, DWI-Motor Boat/Vessel, and operating a boat in reckless manner. Neither case has been resolved yet.

#### 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. 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. 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.

JRA also created the Statewide Misdemeanant Confinement Program (SMCP) for housing misdemeanants with sentences between 90 and 180 days in county jails (misdemeanants with shorter sentences were

already the responsibility of the counties). County participation in the program is voluntary. The SMCP pays participating counties for misdemeanants' housing, transportation, and medical costs. In 2014, the program was expanded to include all misdemeanants with sentences longer than 90 days. The Sentencing and Policy Advisory Commission does not track county jail capacity, so it is not possible to estimate the impact of new or increased misdemeanor penalties on county jails.

#### **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.

Section 2 of the bill creates five new felony offenses:

- Repeat death by impaired boating Class B2 felony;
- Death by impaired boating Class D felony;
- · Aggravated death by impaired boating Class D felony;
- Aggravated serious injury by impaired boating Class E felony;
- Serious injury by impaired boating Class F felony.

Because these are new offenses, AOC does not have historical data upon which to estimate the number of charges that might occur. AOC provides estimates of the average cost to the court for a charge by offense class. The following chart shows the cost per case by felony level for each of the new penalties created in this bill.

| OC Cost<br>310,416 |
|--------------------|
| 10,416             |
|                    |
| \$4,134            |
| \$1,931            |
| \$1,088            |
|                    |

Though AOC data cannot indicate how often these new charges would be brought, the NC Wildlife Resources Commission has provided Fiscal Research with data about the frequency of deaths and/or injuries caused by impaired boating. In calendar year 2015, two people were charged with involuntary manslaughter, a Class F felony. Under the proposed law, those two charges could be elevated to a Class D felony. The difference in cost to AOC between a Class F felony and a Class D felony is \$3,046 (\$4,134 Class D cost minus \$1,088 Class F cost). There was not enough data available about charges related to serious injuries to make a similar comparison for them.

The Office of Indigent Defense Services (IDS) has provided Fiscal Research with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. Fiscal Research used

this data to calculate a weighted average of IDS costs. The following table shows the percentage of defendants using IDS services and the cost to IDS by felony level in FY 2011-12:

| Per Case | ighted Average by Felony L<br>AC Attorney | evel for    |
|----------|---|-------------|
| Felony   | Percent<br>Indigent                       | IDS<br>Cost |
| B2       | 85%                                       | \$1,395     |
| D        | 89%                                       | \$789       |
| Е        | 79%                                       | \$512       |
| F        | 74%                                       | \$497       |
|          | OS and FRD                                | J47         |

These estimates assume the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, this cost may not be incurred.

The difference in cost to IDS between a Class F felony and a Class D felony is \$292 (\$789 Class D cost minus \$497 Class F cost). There was not enough data available about charges related to serious injuries to make a similar comparison for them.

#### Department of Public Safety - Prison Section

The chart below depicts the projected inmate population relative to available prison bed capacity systemwide. Capacity projections assume operation at Expanded Operating Capacity, and represent the total number of beds in operation, or authorized for construction or operation as of December 2015.

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).

Since the bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many beds may be required as a result of this bill.

<sup>&</sup>lt;sup>1</sup> 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 Five Year I |                 | pacity          |                 |                 |
|---|-------------------------|-----------------|-----------------|-----------------|-----------------|
|   | June 30<br>2017         | June 30<br>2018 | June 30<br>2019 | June 30<br>2020 | June 30<br>2021 |
| 1. Inmates <sup>2</sup>                             | 37,304                  | 37,601          | 37,367          | 37,385          | 37,642          |
| 2. Prison Beds (Expanded Capacity)                  | 38,373                  | 38,373          | 38,373          | 38,373          | 38,373          |
| 3. Beds Over/(Under) Inmate Population              | 1,069                   | 772             | 1,006           | 988             | 731             |
| 4. Additional Inmates Due to this Bill <sup>3</sup> |                         | No :            | Estimate Av     | ailable         |                 |
| 5. Additional Beds Required                         |                         |                 |                 |                 |                 |

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$12.46 per day, or \$379 per month, which includes the cost of food, clothing, and health care. The table below summarizes the percentage of active sentences, the average sentence length, and the total cost of each active sentence for each of the new offenses.

| Average          | e Cost of Sen                  | tence by Felo                                | ny Level |
|------------------|--------------------------------|--|----------|
| Offense<br>Class | Percent<br>Active<br>Sentences | Average<br>Length of<br>Sentence<br>(Months) | Cost     |
| Class B2         | 100                            | 162  | \$61,398 |
| Class D          | 100                            | 64   | \$24,256 |
| Class E          | 64                             | 27   | \$10,233 |
| Class F          | 51                             | 17   | \$6,443  |

Based on historical data from WRC, there have been no felony convictions related to boating while impaired resulting in death or serious injury in the past five years. The information available from WRC indicates that most people are convicted of operating a boat in a reckless manner, a Class 1 misdemeanor. Without more accurate data, we cannot make a comparison to the new penalty level. In FY 2014-15, 32% of Class 1 misdemeanor offenders received active sentences; 68% received probation. Active misdemeanor sentences are served in local jails and do not require any post-release supervision.

#### **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. Additionally, 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

<sup>&</sup>lt;sup>2</sup> 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 2016.

<sup>&</sup>lt;sup>3</sup> Criminal penalty bills effective December 1, 2016 should not affect prison population and bed needs until FY 2017-18 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

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.

JRA essentially eliminated the distinction between "community" and "intermediate" supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, participation in educational programs or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety.

All types of post-release supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service. Supervision by a probation officer costs \$140 per offender, per month; 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 active sentences requiring post-release supervision and supervised probations.

In FY 2014-15, 100% of Class B2 felony offenders received active sentences. All active sentences for this felony class result in 12 months of PRS. Therefore, at a minimum, one Class B2 felony conviction resulting from Section 2 of this bill will require at least 12 months of supervision. The cost of 12 months of supervision is \$1,680 per offender (\$140 per month times 12 months)<sup>4</sup>.

In FY 2014-15, 100% of Class D felony offenders received active sentences. All active sentences result in 12 months of post-release supervision (PRS). Therefore, at a minimum, one Class D felony conviction resulting from Section 2 of this bill will require at least 12 months of supervision. The cost of 12 months of supervision is \$1,680 per offender (\$140 per month times 12 months).

In FY 2014-15, 61% of Class E felony offenders received active sentences; 39% received probation. All active sentences result in 12 months of PRS. The average length of probation imposed for this offense class was 33 months. Therefore, at a minimum, one Class E felony conviction resulting from Section 2 of this bill will require at least 12 months of supervision. The cost of 12 months of supervision is \$1,680 per offender (\$140 per month times 12 months). For every offender sentenced to probation, the average cost would be \$4,620 (\$140 per month times 33 months).

In FY 2014-15, 52% of Class F felony offenders received active sentences; 48% received probation. All active sentences result in 9 months of PRS. The average length of probation imposed for this offense class was 32 months. Therefore, at a minimum, one Class F felony conviction resulting from Section 2 of this bill will require at least 9 months of supervision. The cost of 9 months of supervision is \$1,260 per offender (\$140 per month times 9 months). For every offender sentenced to probation, the average cost would be \$4,480 (\$140 per month times 32 months).

Based on historical data from WRC, there have been no felony convictions related to boating while impaired resulting in death or serious injury in the past five years. The information available from WRC indicates that most people are convicted of operating a boat in a reckless manner, a Class 1 misdemeanor. Without more accurate data, we cannot make a comparison to the new penalty level. In FY 2014-15, 32% of Class 1 misdemeanor offenders received active sentences; 68% received probation. The average length

<sup>&</sup>lt;sup>4</sup> Due to the effective date of December 1, 2016 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2016-17. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2017-18.

of probation imposed for this offense class was 15 months. The cost of 15 months of supervision is \$2,100 per offender (\$140 per month times 15 months).

**SOURCES OF DATA:** Department of Public Safety; Administrative Office of the Courts; Sentencing and Policy Advisory Commission; Office of Indigent Defense Services; NC Wildlife Resources Commission.

**TECHNICAL CONSIDERATIONS: None** 

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Kristine Leggett

**APPROVED BY:** 

Mark Trogdon, Director Fiscal Research Division

**DATE**: May 10, 2016



Signed Copy Located in the NCGA Principal Clerk's Offices

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### GENERAL ASSEMBLY OF NORTH CAROLINA **SESSION 2015**

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### **HOUSE BILL 958**

1

(Public) Short Title: Felony Death Imp. Boating/Sheyenne's Law. Representatives Pittman, Fraley, Ford, and J. Bell (Primary Sponsors). Sponsors: For a complete list of sponsors, refer to the North Carolina General Assembly web site. Referred to: Judiciary I

### April 26, 2016

|          |                 | April 20, 2010  |
|----------|-----------------|---|
| 1        | AN ACT TO       | A BILL TO BE ENTITLED   |
| 2        |                 | PROVIDE AN INCREASED PENALTY FOR IMPAIRED BOATING   |
| 3        |                 | G IN DEATH OR SERIOUS INJURY AND TO CLARIFY THE PENALTY FOR   |
| 4        |                 | BOATING, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE   |
| 5        |                 | JIFE RESOURCES.   |
| 6        |                 | sembly of North Carolina enacts:  |
| 7        |                 | TION 1. This act shall be known as Sheyenne's Law.  |
| 8        |                 | CTION 2. Article 1 of Chapter 75A of the General Statutes is amended by adding a  |
| 9        | new section to  |   |
| 10       |                 | eath or serious injury by impaired boating; repeat offenses.  |
| 11       |                 | th by Impaired Boating A person commits the offense of death by impaired  |
| 12<br>13 |                 | the following apply:  The person winterstined by payment the death of another person  |
| 14       | (1)             | The person unintentionally causes the death of another person.  The person was engaged in the offense of impaired boating under |
| 15       | <u>(2)</u>      | G.S. 75A-10(b1).  |
| 16       | (3)             | The commission of the offense in subdivision (2) of this subsection is the  |
| 17       | (2)             | proximate cause of the death.   |
| 18       | (b) Serie       | ous Injury by Impaired Boating. – A person commits the offense of serious injury  |
| 19       |                 | ating if all of the following apply:  |
| 20       | (1)             | The person unintentionally causes serious injury to another person.   |
| 21       | (2)             | The person was engaged in the offense of impaired boating under   |
| 22       | 7=1             | G.S. 75A-10(b1).  |
| 23       | (3)             | The commission of the offense in subdivision (2) of this subsection is the  |
| 24       | <del>1,,t</del> | proximate cause of the serious injury.  |
| 25       | (c) Agg         | ravated Serious Injury by Impaired Boating A person commits the offense of  |
| 26       |                 | ous injury by impaired boating if all of the following apply:   |
| 27       | (1)             | The person unintentionally causes serious injury to another person.   |
| 28       | (2)             | The person was engaged in the offense of impaired boating under   |
| 29       |                 | G.S. 75A-10(b1).  |
| 30       | <u>(3)</u>      | The commission of the offense in subdivision (2) of this subsection is the  |
| 31       |                 | proximate cause of the serious injury.  |
| 32       | <u>(4)</u>      | The person has a previous conviction of impaired boating under  |
| 33       |                 | G.S. 75A-10(b1) within seven years of the date of the offense.  |



death by impaired boating if all of the following apply:

Aggravated Death by Impaired Boating. - A person commits the offense of aggravated

| General    | Assemb     | oly Of North Carolina   | Session 2015        |
|------------|------------|---|---------------------|
|            | (1)        | The person unintentionally causes the death of another person.  |                     |
|            | (2)        | The person was engaged in the offense of impaired   | boating under       |
|            | 7.57       | G.S. 75A-10(b1).  |                     |
|            | (3)        | The commission of the offense in subdivision (2) of this s  | subsection is the   |
|            |            | proximate cause of the death.   |                     |
|            | (4)        | The person has a previous conviction of impaired  | boating under       |
|            |            | G.S. 75A-10(b1) within seven years of the date of the offense.  |                     |
| (e)        | Repea      | at Death by Impaired Boating A person commits the offense of  | of repeat death by  |
| impaired   | boating    | if all of the following apply:  |                     |
|            | (1)        | The person commits an offense under subsection (a) or subs  | ection (d) of this  |
|            |            | section.  |                     |
|            | (2)        | The person has a previous conviction under at least one of the  | following:          |
|            |            | a. Subsection (a) of this section.  |                     |
|            |            | b. Subsection (d) of this section.  |                     |
|            |            | c. G.S. 14-17 or G.S. 14-18, and the basis of the cor   | nviction was the    |
|            |            | unintentional death of another person while engaged   | in the offense of   |
|            |            | impaired boating under G.S. 75A-10(b1).   |                     |
|            |            | The pleading and proof of previous convictions shall be in acc  | cordance with the   |
|            |            | provisions of G.S. 15A-928.   |                     |
| <u>(f)</u> |            | hments Unless the conduct is covered under some other   |                     |
| providing  | g greate   | r punishment, the following classifications apply to the offense  | s set forth in this |
| section:   |            |   |                     |
|            | (1)        | Repeat death by impaired boating is a Class B2 felony.  |                     |
|            | (1a)       | Aggravated death by impaired boating is a Class D felony. No  |                     |
|            |            | provisions of G.S. 15A-1340.17, the court shall sentence the  | defendant in the    |
|            |            | aggravated range of the appropriate Prior Record Level.   |                     |
|            | <u>(2)</u> | Death by impaired boating is a Class D felony. Notwithstandi  |                     |
|            |            | of G.S. 15A-1340.17, intermediate punishment is authorized  | for a defendant     |
|            |            | who is a Prior Record Level 1 offender.   |                     |
|            | (3)        | Aggravated serious injury by impaired boating is a Class E felo   | ony.                |
|            | <u>(4)</u> | Serious injury by impaired boating is a Class F felony.   |                     |
| (g)        |            | ouble Prosecutions No person who has been placed in jeopar  |                     |
|            |            | ired boating may be prosecuted for the offense of manslaughter  | _                   |
|            |            | no person who has been placed in jeopardy upon a charge of n  | nanslaughter may    |
| be prosec  |            | r death by impaired boating arising out of the same death."   |                     |
|            |            | FION 3. G.S. 75A-10(b4) reads as rewritten:   |                     |
|            |            | erson who violates subsection (b1) of this section is guilt   |                     |
|            |            | unishable by a fine of and upon conviction, in addition to a  | ny other penalty    |
| imposed.   |            | e fined not less than two hundred fifty dollars (\$250.00)."  | 11                  |
|            | SECT       | <b>FION 4.</b> This act becomes effective December 1, 2016, and approximately 100 miles and 100 miles are 100 miles and 100 miles are 100 miles and 100 miles are | oplies to offenses  |
|            | J          | alian that data   |                     |

committed on or after that date.

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## **HOUSE BILL 1020: Indigent Defense Services Amendments**

2016-2017 General Assembly

Committee: Introduced by: Rep. Daughtry

House Judiciary 1

Analysis of:

First Edition

Date:

Prepared by:

May 11, 2016 Erika Churchill

Amy Darden

Committee Counsel

SUMMARY: House Bill 1020 would amend the appointment of the Commission on Indigent Defense Services and make various changes to Indigent Defense Services, as recommended by the Joint Legislative Oversight Committee on Justice and Public Safety.

CURRENT LAW: The Commission on Indigent Defense Services determines methods for delivering legal services to indigent persons eligible for representation under the Indigent Defense Services Act of 2000. Currently, the Director of the Administrative Office of the Courts can modify the budget and use funds appropriated to the Office of Indigent Defense services without approval of the Commission or the Office of Indigent Defense Services. An annual report on the Office of Indigent Defense Services and specific evaluations must be sent to the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety and to the Chairs of the House and Senate Committees on Justice and Public Safety by March 15 of each year.

### **BILL ANALYSIS:** House Bill 1020 would do the following:

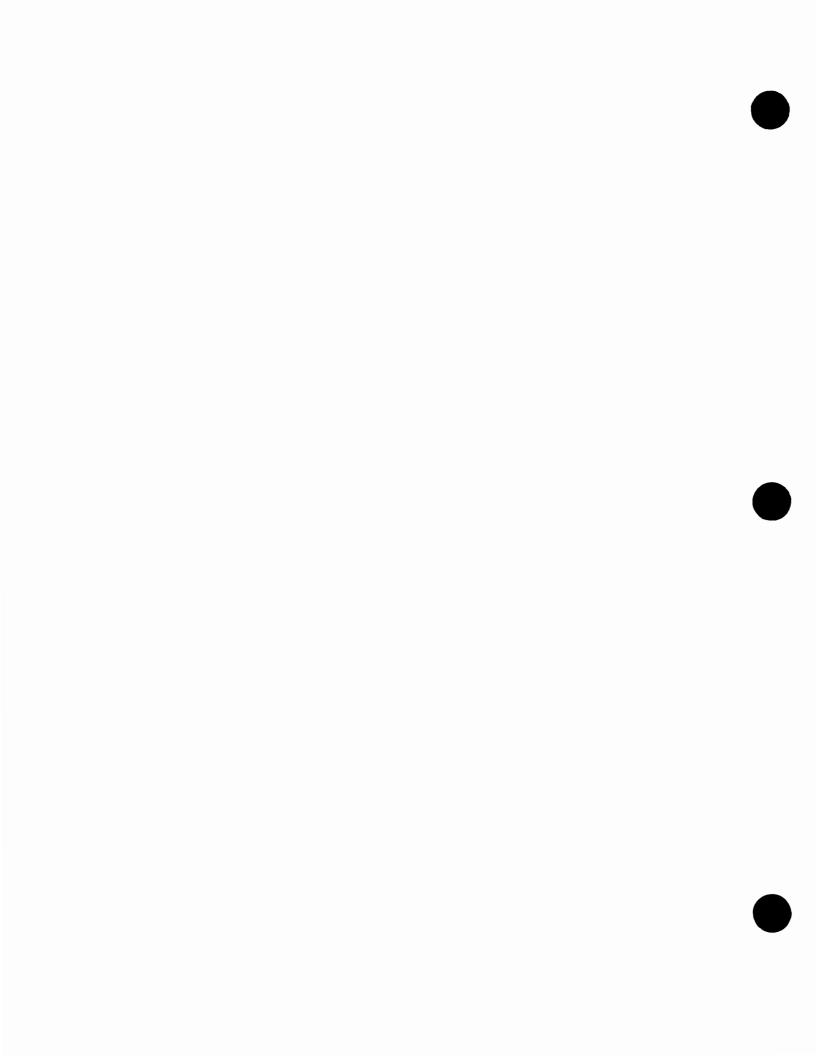
- Adds to the existing appointments made to the Commission by the Chief Justice of the North Carolina Supreme Court, the Governor and the General Assembly and removes appointments previously made by the North Carolina Academy of Trial Lawyers, the North Carolina Association of Black Lawyers, and the North Carolina Association of Women Lawyers. It also makes all member terms four years and allows only the Director of the Administrative Office of the Courts to serve more than two consecutive terms plus any initial term of less than four years. Effective January 1, 2017.
- Requires direct consultation with a quorum of the Commission before AOC may modify the budget of IDS. Effective July 1, 2016.
- Requires additional reporting by the Office of Indigent Defense Services on the following:
  - Volume and cost of cases handled in each district including specific data on total final costs and fee application information of capital and potentially capital cases
  - Specific data regarding the determination to create any new satellite offices for capital defenders.

**EFFECTIVE DATE:** Except as noted, effective when it becomes law.

Karen Cochrane-Brown Director



Legislative Analysis Division 919-733-2578



### GENERAL ASSEMBLY OF NORTH CAROLINA **SESSION 2015**

1

### **HOUSE BILL 1020**

(Public) Short Title: Indigent Defense Services Amendments. Sponsors: Representative Daughtry. For a complete list of sponsors, refer to the North Carolina General Assembly web site. Referred to: Judiciary I

### May 4, 2016

A BILL TO BE ENTITLED AN ACT TO AMEND THE APPOINTMENT OF THE COMMISSION ON INDIGENT DEFENSE SERVICES AND TO MAKE VARIOUS CHANGES TO INDIGENT DEFENSE SERVICES. AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON JUSTICE AND PUBLIC SAFETY.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 7A-498.4 reads as rewritten:

"§ 7A-498.4. Establishment of Commission on Indigent Defense Services.

- The Commission on Indigent Defense Services is created within the Office of Indigent Defense Services and shall consist of 13 members. To create an effective working group, assure continuity, and achieve staggered terms, the Commission shall be appointed as provided in this section.
  - (b) The members of the Commission shall be appointed as follows:
    - The Chief Justice of the North Carolina Supreme Court shall appoint one (1) member, who shall be an active or former member of the North Carolina judiciary.superior court judge; one member, who shall be an active or former district court judge; and shall additionally appoint the Director of the Administrative Office of the Courts as a member of the Commission. The Director of the Administrative Office of the Courts may designate an employee of the Administrative Office of the Courts to serve as his or her designee on the Commission.
    - The Governor shall appoint one member, who two members, at least one of (2) whom shall be a nonattorney.
    - The General Assembly shall appoint one member, three members, who shall be (3) an attorney, attorneys, upon the recommendation of the President Pro Tempore of the Senate. In addition, one of the three members shall be appointed based upon the recommendation of the North Carolina Public Defenders Association.
    - The General Assembly shall appoint one member, three members, who shall be (4) an attorney, attorneys, upon the recommendation of the Speaker of the House of Representatives. In addition, one of the three members shall be appointed based upon the recommendation of the North Carolina Advocates for Justice.
    - (5)The North Carolina Public Defenders Association shall appoint member, who shall be an attorney.
    - The North Carolina State Bar shall appoint one member, who shall be an (6)(5)attorney.



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- (7)(6) The North Carolina Bar Association shall appoint one member, who shall be an
- The North Carolina Academy of Trial Lawyers shall appoint one member, who shall be an attorney.
- The North Carolina Association of Black Lawyers shall appoint one member, who shall be an attorney.
- The North Carolina Association of Women Lawyers shall appoint one member, (10)who shall be an attorney.
- The Commission shall appoint three members, who shall reside in different (11)iudicial districts from one another. One appointee shall be a nonattorney, and one appointee may be an active member of the North Carolina judiciary. One appointee shall be Native American. The initial three members satisfying this subdivision shall be appointed as provided in subsection (k) of this section.
- The terms of members appointed pursuant to subsection (b) of this section shall be as (c) follows:
- The initial appointments by the Chief Justice, the Governor, and the General Assembly (1) shall be for four years.
- The initial appointments by the Public Defenders Association and State Bar, and one appointment by the Commission, shall be for three years.
- The initial appointments by the Bar Association and Trial Academy, and one appointment by the Commission, shall be for two years.
- The initial appointments by the Black Lawyers Association and Women Lawyers Association, and one appointment by the Commission, shall be for one year.

At the expiration of these initial terms, appointments shall be for four years and shall be made by the appointing authorities designated in subsection (b) of this section. No person other than the Director of the Administrative Office of the Courts shall serve more than two consecutive four-year terms plus any initial term of less than four years.

- Persons appointed to the Commission shall have significant experience in the defense of criminal or other cases subject to this Article or shall have demonstrated a strong commitment to quality representation in indigent defense matters. No active prosecutors or law enforcement officials, or active employees of such persons, may be appointed to or serve on the Commission. No active judicial officials, or active employees of such persons, may be appointed to or serve on the Commission, except as provided in subsection (b) of this section. No active public defenders, active employees of public defenders, or other active employees of the Office of Indigent Defense Services may be appointed to or serve on the Commission, except that notwithstanding this subsection, G.S. 14-234, or any other provision of law, Commission members may include part-time public defenders employed by the Office of Indigent Defense Services and may include persons, or employees of persons or organizations, who provide legal services subject to this Article as contractors or appointed attorneys.
- All members of the Commission are entitled to vote on any matters coming before the Commission unless otherwise provided by rules adopted by the Commission concerning voting on matters in which a member has, or appears to have, a financial or other personal interest.
- Each member of the Commission shall serve until a successor in office has been appointed. Vacancies shall be filled by appointment by the appointing authority for the unexpired term. Removal of Commission members shall be in accordance with policies and procedures adopted by the Commission.
- A quorum for purposes of conducting Commission business shall be a majority of the (g) members of the Commission.
- The Commission shall elect a Commission chair from the members of the Commission for a term of two years.

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- The Director of Indigent Defense Services shall attend all Commission meetings except those relating to removal or reappointment of the Director or allegations of misconduct by the Director. The Director shall not vote on any matter decided by the Commission.
- Commission members shall not receive compensation but are entitled to be paid necessary subsistence and travel expenses in accordance with G.S. 138-5 and G.S. 138-6 as applicable.
- The Commission shall hold its first meeting no later than September 15, 2000. All appointments to the Commission specified in subdivisions (1) through (10) of subsection (b) of this section shall be made by the appointing authorities by September 1, 2000. The appointee of the Chief Justice shall convene the first meeting. No later than 30 days after its first meeting, the Commission shall make the appointments specified in subdivision (11) of subsection (b) of this section and shall elect its chair."

**SECTION 1.(b)** Persons who are members of the Commission on Indigent Defense Services on the effective date of this act shall continue to serve as members until the completion of the term for which they have been appointed. Upon the expiration of a term, or a vacancy occurring prior to the completion of a term, in an appointment made by an authority no longer authorized to make appointment, the appointment shall be made as follows:

- For the member appointed by the North Carolina Association of Black Lawyers (1) whose term expires in 2017, the appointment shall be made by the General Assembly upon the recommendation of the Speaker of the House of Representatives.
- For the member appointed by the North Carolina Association of Women (2) Attorneys whose term expires in 2017, the appointment shall be made by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.
- (3) For the member appointed by the Indigent Defense Commission whose term expires in 2017, the appointment shall be made by the Chief Justice of the North Carolina Supreme Court and shall be the appointment of the Administrative Director of the Courts.
- For the member appointed by the North Carolina Advocates for Justice, (4) formerly known as the North Carolina Academy of Trial Lawyers, whose term expires in 2018, the appointment shall be made by the General Assembly upon the recommendation of the Speaker of the House of Representatives.
- For the member appointed by the Indigent Defense Commission whose term (5) expires in 2018, the appointment shall be made by the Chief Justice of the North Carolina Supreme Court.
- For the member appointed by the North Carolina Public Defenders Association (6) whose term expires in 2019, the appointment shall be made by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.
- (7) For the member appointed by the Indigent Defense Commission whose term expires in 2019, the appointment shall be made by the Governor.

**SECTION 2.** G.S. 7A-498.2(e) reads as rewritten:

The Director of the Administrative Office of the Courts may modify the budget of the Office of Indigent Defense Services and may use funds appropriated to the Office without the approval of the Commission or the Office of Indigent Defense Services only after direct consultation with a quorum of the Commission."

**SECTION 3.** G.S. 7A-498.9 reads as rewritten:

"§ 7A-498.9. Annual report on Office of Indigent Defense Services.

The Office of Indigent Defense Services shall report to the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety and to the Chairs of the House of

- taken to facilitate the appointment of local counsel in most cases.
- Consider the establishment of regional public defenders offices to assist in (3) alleviating scheduling conflicts resulting from appointed attorneys being appointed to cases in multiple jurisdictions.

The Office of Indigent Defense Services shall report on the results of these evaluations and any legislation needed to implement recommended action to the Joint Legislative Oversight Committee on Justice and Public Safety and the cochairs of the Joint Appropriations Subcommittee on Justice and Public Safety no later than March 15, 2017.

**SECTION 5.** Section 1 of this act becomes effective January 1, 2017. Section 2 of this act becomes effective July 1, 2016. The remainder of this act is effective when it becomes law.

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## **HOUSE BILL 1021:** Amend Innocence Commission Statutes.

2016-2017 General Assembly

May 10, 2016 House Judiciary 1 Date: Committee: Tawanda N Foster Rep. Daughtry Prepared by: Introduced by: First Edition Analysis of:

Committee Counsel

SUMMARY: House Bill 1021 makes various amendments to the laws regarding the Innocence Inquiry Commission, as recommended by the Joint Legislative Oversight Committee on Justice and Public Safety.

Article 92 of Chapter 15A creates the North Carolina Innocence Inquiry **CURRENT LAW:** Commission (the "Commission") and establishes the laws governing the work of the Commission. The Commission investigates and determines "claims of factual innocence" on behalf of persons convicted of a felony. A claim of factual innocence may be referred to the Commission by any court, State or local agency, claimant or claimant's counsel. Once the Commission grants a claim of factual innocence it begins the formal inquiry or investigation process for that case. Upon completion of the investigation, all relevant evidence is presented to the full eight member Commission and the members vote on whether there is sufficient evidence of factual innocence to merit judicial review of the case. If there is sufficient evidence, the Chief Justice will appoint a three judge panel to convene a special session of superior court of the district with original jurisdiction to conduct a hearing on the evidence from the Commission's investigation and recommendations. If the three judge panel rules that the convicted person has proven by clear and convincing evidence they are innocent of the charges, the panel will enter a dismissal of all or any of the charges. If the panel does not rule that the convicted person is innocent, no relief is granted.

**BILL ANALYSIS:** This bill amends the laws governing the Commission as follows:

- Clarifies the Commission Director reports to the Director of the Administrative Office of the Courts.
- Clarifies which claims of factual innocence may be filed directly by the claimant and which claims must be filed by claimant's counsel.
- Specifies that a claimant's waiver will not be construed as a waiver of a convicted person's right to be heard by the court before the court issues a protective order.
- Adds a provision that if a claim of factual innocence is granted, the Commission will notify each codefendant of the claim and if the codefendant wishes to also file a claim, they must do so within 60 days of receipt of the notice.

Karen Cochrane-Brown Director



Legislative Analysis Division 919-733-2578

A claim of factual innocence is a claim on behalf of a living person convicted of a felony in the State of North Carolina that asserts the person convicted is completely innocent of any criminal responsibility for the felony or any lesser included offenses, and that there is credible, verifiable evidence of their innocence that has not previously been presented at trial or considered at a hearing granted through postconviction relief.

## **House Bill 1021**

Page 2

- Adds a provision that if a claim of factual innocence is granted, the Director must provide a confidential case status update at least every six months that includes a summary of the actions taken since the last update to the District Attorney, the convicted person, or counsel, if any, and the referring counsel, if any.
- Adds a provision that at any time the District Attorney and convicted person may agree there is sufficient evidence of factual innocence to merit judicial review by the three judge panel and bypass the proceedings and determination by the full Commission. Also, makes conforming change to allow consideration by the three judge panel upon agreement.
- Clarifies counsel for indigent persons will be appointed by Indigent Defense Services.
- Adds provision that Commission will notify the parties involved before requesting any
  protective order regarding any portion of the investigative file

**EFFECTIVE DATE:** This act would become effective on December 1, 2016 and applies to claims of factual innocence made on or after that date.

### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H

### **HOUSE BILL 1021**

Short Title: Amend Innocence Commission Statutes. (Public)

Sponsors: Representative Daughtry.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary I

### May 4, 2016

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### A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS AMENDMENTS TO THE LAWS REGARDING THE INNOCENCE INQUIRY COMMISSION, AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON JUSTICE AND PUBLIC SAFETY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1465(a) reads as rewritten:

"(a) The Commission shall employ a Director. Director, who shall report to the Director of the Administrative Office of the Courts. The Director shall be an attorney licensed to practice in North Carolina at the time of appointent and at all times during service as Director. The Director shall assist the Commission in developing rules and standards for cases accepted for review, coordinate investigation of cases accepted for review, maintain records for all case investigations, prepare reports outlining Commission investigations and recommendations to the trial court, and apply for and accept on behalf of the Commission any funds that may become available from government grants, private gifts, donations, or devises from any source. The Director shall establish procedures for Commission staff to report administrative details to the Director of the Administrative Office of the Courts."

SECTION 2. G.S. 15A-1467 reads as rewritten:

"§ 15A-1467. Claims of innocence; waiver of convicted person's procedural safeguards and privileges; formal inquiry; notification of the crime victim.

- (a) A claim of factual innocence for any conviction may be referred to the Commission by any court, a State or local agency, a claimant, or a claimant's counsel. A claim of factual innocence for convictions of homicide pursuant to Article 6 of Chapter 14 of the General Statutes, robbery pursuant to Article 17 of Chapter 14 of the General Statutes, and any offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes may be made directly by the claimant. The Commission shall not consider a claim of factual innocence if the convicted person is deceased. A claimant who received notice pursuant to subsection (c1) of this section and did not make a claim of factual innocence shall be barred from investigation of a claim of factual innocence by the Commission absent a showing of good cause and approval of the Commission Chair. The determination of whether to grant a formal inquiry regarding any other claim of factual innocence is in the discretion of the Commission. The Commission may informally screen and dismiss a case summarily at its discretion.
- (b) No formal inquiry into a claim of innocence shall be made by the Commission unless the Director or the Director's designee first obtains a signed agreement from the convicted person in which the convicted person waives his or her procedural safeguards and privileges, agrees to cooperate with the Commission, and agrees to provide full disclosure regarding all inquiry



requirements of the Commission. The waiver under this subsection does not apply to matters unrelated to a convicted person's claim of innocence. The waiver under this subsection shall not be construed to be a waiver of the convicted person's right to be heard by the court before the court issues any protective order regarding any portion of the investigative file relating to the convicted person's claim of factual innocence. The convicted person shall have the right to advice of counsel prior to the execution of the agreement and, if a formal inquiry is granted, throughout the formal inquiry. If counsel represents the convicted person, then the convicted person's counsel must be present at the signing of the agreement. If counsel does not represent the convicted person, the Commission Chair shall determine the convicted person's indigency status and, if appropriate, enter an order for the appointment of counsel by Indigent Defense Services for the purpose of advising on the agreement. If the convicted person has requested a specific attorney with knowledge of the case, the Director shall inform Indigent Defense Services of that request for their consideration.

- (c1) If a formal inquiry regarding a claim of factual innocence is granted, the Commission shall use all due diligence to notify each codefendant of the claim, that an investigation will be conducted, and that if the codefendant wishes to also file a claim, they must do so within 60 days from receipt of the notice or their claim may be barred from future investigation by the Commission.
- (c2) If a formal inquiry regarding a claim of factual innocence is granted, the Director shall provide a confidential case status update for each case in formal inquiry to the District Attorney, the convicted person, or counsel, if any, and referring counsel, if any, at least once every six months. The case status update shall include a summary of the actions taken since the last update.

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SECTION 3. G.S. 15A-1468 is amended by adding a new subsection to read:

"(f) At any point in the formal inquiry regarding a claim of factual innocence, the District Attorney and the convicted person or the convicted person's counsel may agree that there is sufficient evidence of factual innocence to merit judicial review by the three-judge panel and bypass the eight-member panel. The Director and the Chair of the Commission shall be notified in writing of any such agreement."

**SECTION 4.** G.S. 15A-1469 reads as rewritten:

"§ 15A-1469. Postcommission three-judge panel.

(a) If the Commission concludes concludes, or the parties agree pursuant to G.S. 15A-1468(f), there is sufficient evidence of factual innocence to merit judicial review, the Chair of the Commission shall request the Chief Justice to appoint a three-judge panel, not to include any trial judge that has had substantial previous involvement in the case, and issue commissions to the members of the three-judge panel to convene a special session of the superior court of the original jurisdiction to hear evidence relevant to the Commission's recommendation. The senior judge of the panel shall preside. The Chief Justice shall appoint the three-judge panel within 20 days of the filing of the Commission's opinion finding sufficient evidence of factual innocence to merit judicial review.

(e) The senior resident superior court judge shall determine the convicted person's indigency status and, if appropriate, enter an order for the appointment of counsel. counsel by Indigent Defense Services. If the convicted person has requested a specific attorney with knowledge of the case, the Director shall inform Indigent Defense Services of that request for their consideration. The court may also enter an order relieving an indigent convicted person of all or a portion of the costs of the proceedings.

SECTION 5. G.S. 15A-1471 is amended by adding a new subsection to read:

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| General Assembly Of | North C | Carolina |
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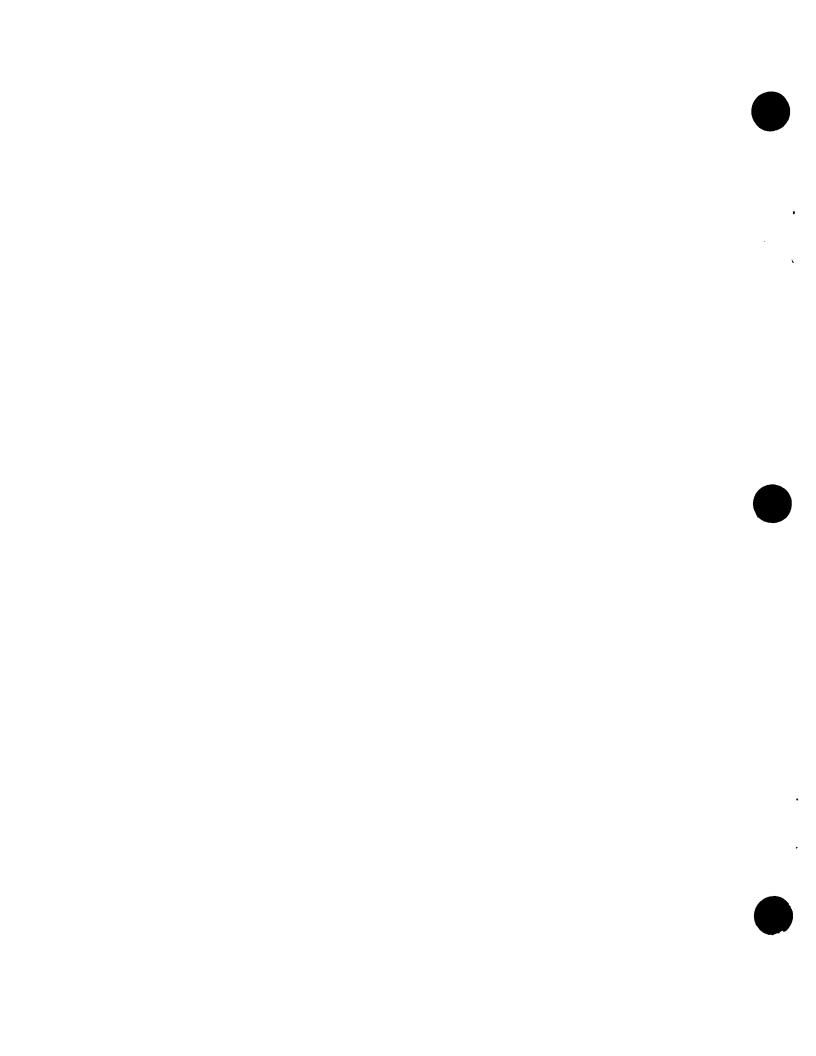
Session 2015

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"(b1) The Commission shall notify the District Attorney, or designee, and the convicted person, or counsel, before requesting any protective order regarding any portion of the investigative file relating to the convicted person's claim of factual innocence. The District Attorney, or designee, and the convicted person, or counsel, shall be given the right to be heard by the court before the court issues a protective order regarding any portion of the investigative file relating to the convicted person's claim of factual innocence."

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**SECTION 6.** This act becomes effective December 1, 2016, and applies to claims of factual innocence made on or after that date.

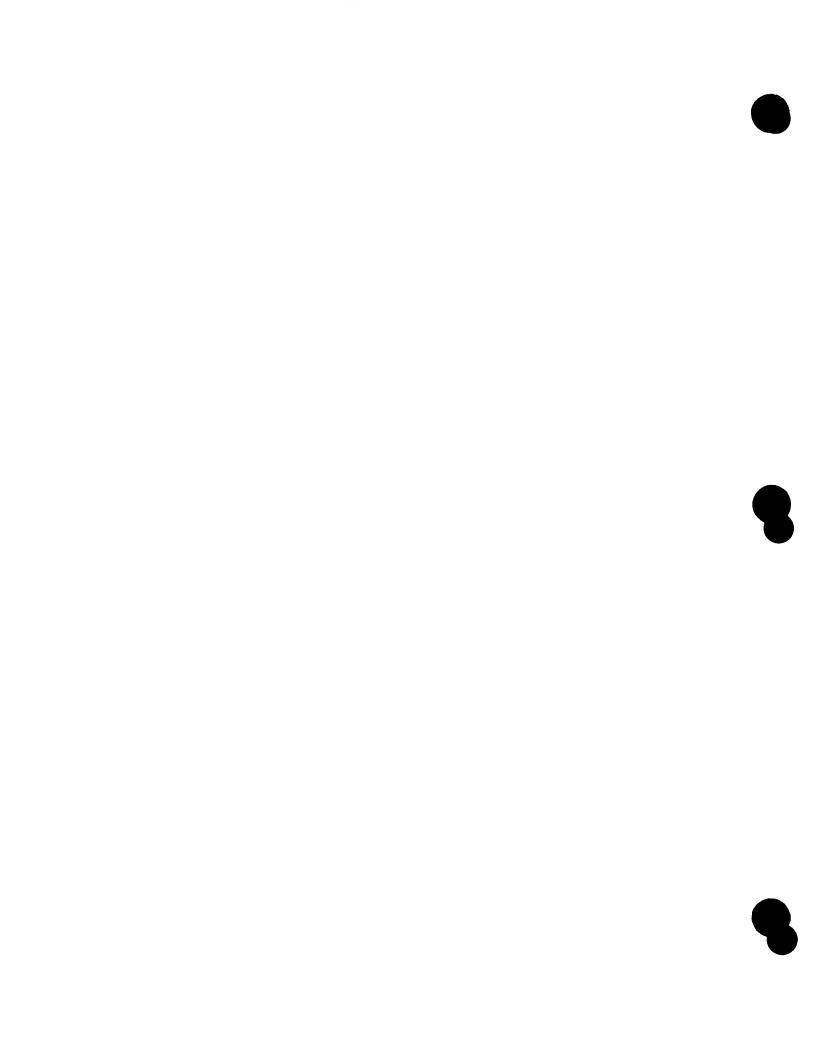


### NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

|     | EDITION No.                     | DATE 5/11/16                                 |
|-----|---------------------------------|--|
|     | H. B. No                        | DATE STITLE                                  |
|     | S. B. No                        | Amendment No(to be filled in by              |
| (   | COMMITTEE SUBSTITUTE            | Principal Clerk)                             |
|     | Sen.) Daughtry                  | Burr   |
|     | moves to amend the bill on page | , line 23                                    |
| (   | ( ) WHICH CHANGES THE TITLE     |  |
| 1   | by deleting "and";              |  |
| _   | <i>V</i>                        |  |
|     | and on page 1, line             | 24   |
| ;   | by deleting "Statutes"          | and inserting "Statutes and any come Class   |
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### NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

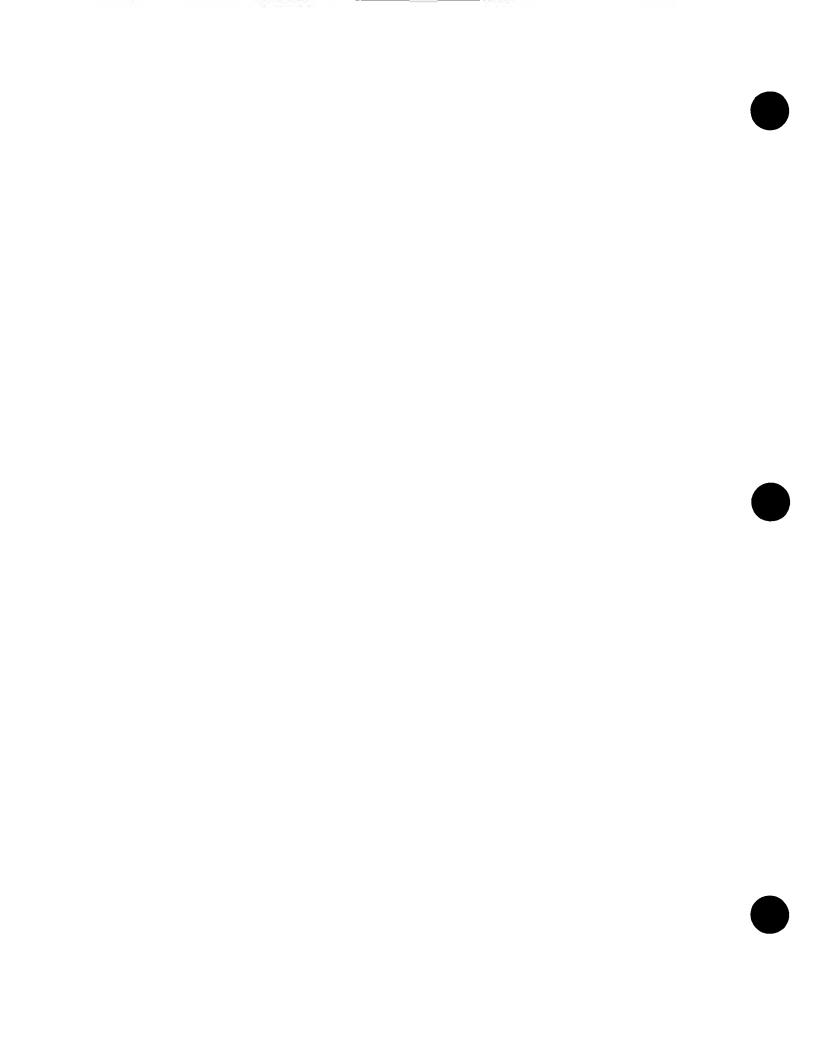
### **FAVORABLE**

HB 958

Felony Death Imp. Boating/Sheyenne's Law.
Draft Number: None Serial Referral: None Recommended Referral: None Long Title Amended: No Floor Manager: Pittman

TOTAL REPORTED: 1





# NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

### **FAVORABLE**

HB 1020 Indigent Defense Services Amendments.

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

Floor Manager: Daughtry

### FAVORABLE COM SUB, UNFAVORABLE ORIGINAL BILL

HB 1021 Amend Innocence Commission Statutes.

Draft Number: H1021-PCS40617-TV-31

Serial Referral: None Recommended Referral: None Long Title Amended: No Floor Manager: Daughtry

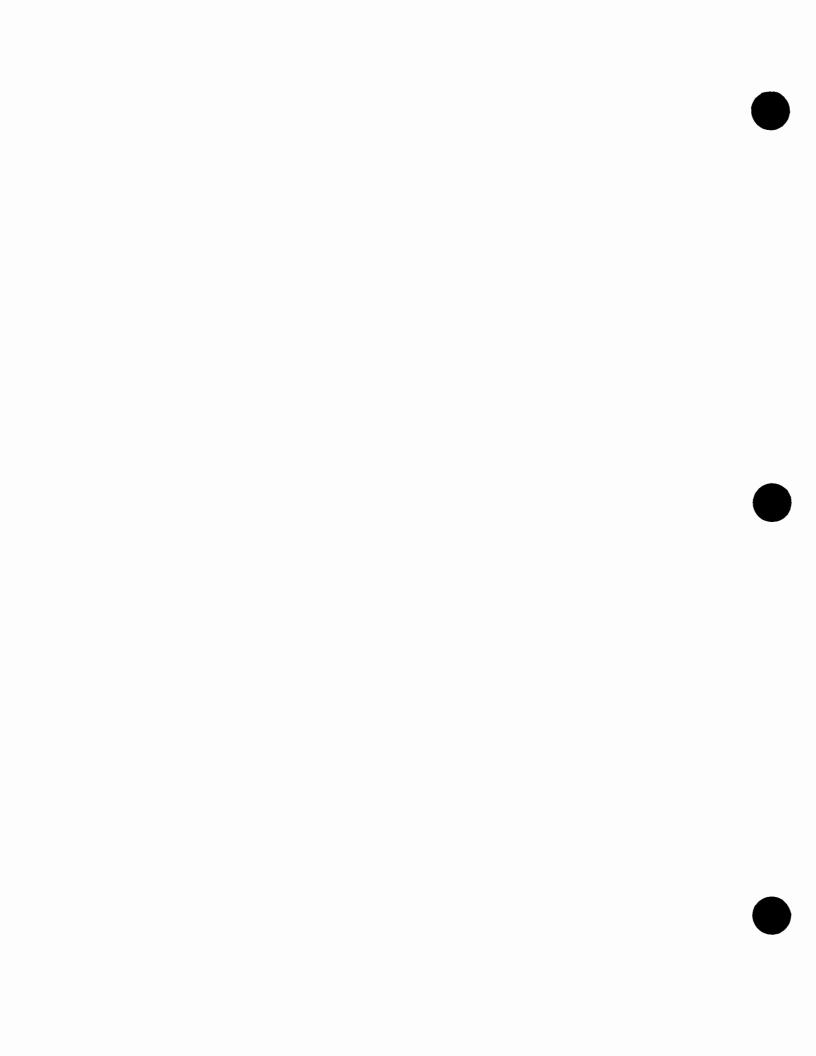
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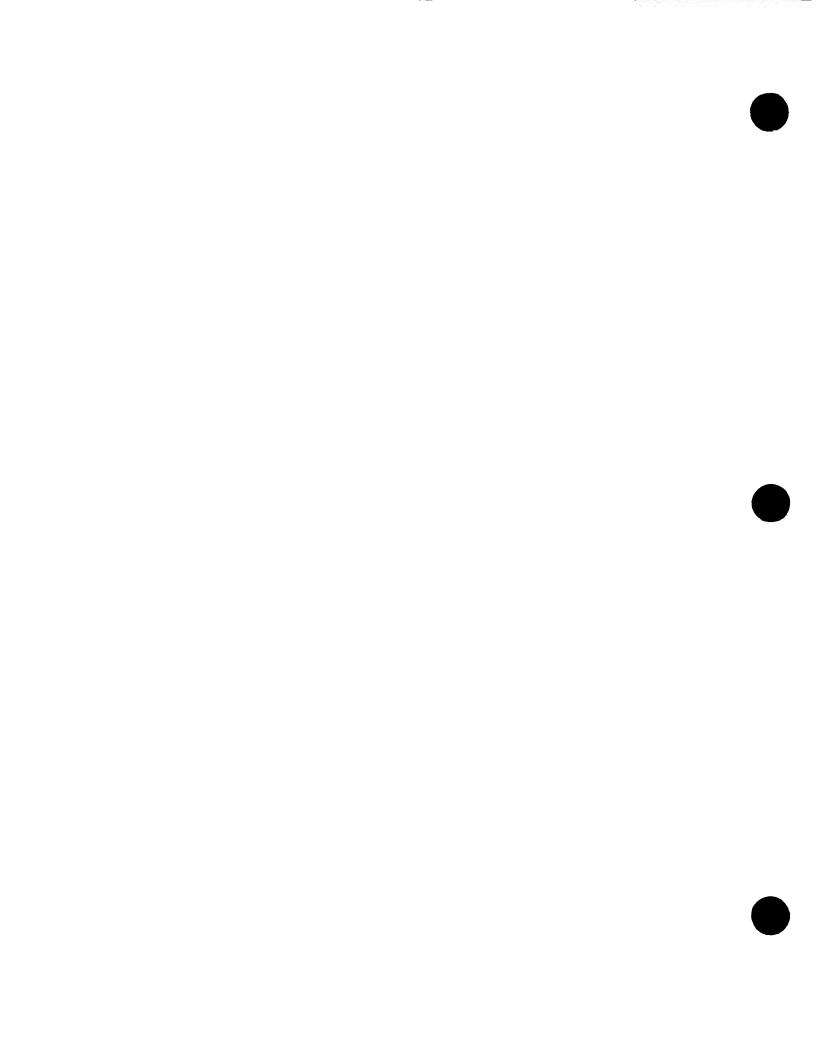
|  | Date: 5-1!-16                            |
|--|--|
| Bill Number $958$ .                    |  |
| PCS                                    |  |
| Motion to be before the committee by _ | <del></del>                              |
| Discussion on the Bill YES or NO       | explained the bill.   Rep Pitherran      |
| Rep_MCN/ULL                            | motioned for:                            |
| Favorable Report                       | Adoption                                 |
| Unfavorable Report                     | Unfavorable to original bill, fav to PCS |
| No vote                                |  |
| Amendments: :                          |  |
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| Handouts:                              |  |

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|  | Date: 5-11-16                            |
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| Bill Number 1020.  |  |
| PCS  |  |
| Motion to be before the committee by _   | ·  |
| Rep Daughtry Discussion on the Bill YES or NO  | explained the bill. + Enka Churchil      |
| Rep Steinburg  | motioned for:                            |
| Favorable Report   | Adoption                                 |
| Unfavorable Report   | Unfavorable to original bill, fav to PCS |
| No vote  |  |
| Amendments: :  |  |
|  |  |
| Serial referral to:  |  |
| Floor  |  |
| Speakers:  |  |
| Handouts:  |  |
| The state of the s | outnest process                          |
| Rep. Howard  |  |



|   | Date: 5-11-14                            |
|---|--|
| Bill Number 1021.                       |  |
| PCS                                     |  |
| Motion to be before the committee by _  |  |
|   | ms.                                      |
| Rep                                     | explained the bill. Foster               |
| Discussion on the Bill YES or NO        |  |
| . 1                                     |  |
| Rep_ Hardister                          | motioned for:                            |
| Favorable Report                        | Adoption                                 |
| Unfavorable Report                      | Unfavorable to original bill, fav to PCS |
| No vote                                 |  |
| 180                                     | rolled ento a                            |
| Zur Amendments: : USA page 1            | line 23                                  |
| Serial referral to:                     |  |
| Ochariolera to.                         |  |
| Chookara                                |  |
| Speakers:                               |  |
| Handway                                 |  |
| Handouts: Charges                       |  |
| Pan Bur                                 |  |
| Rep Borr<br>Anundments -<br>Chris Numma |  |
| Maria Maria Maria                       |  |



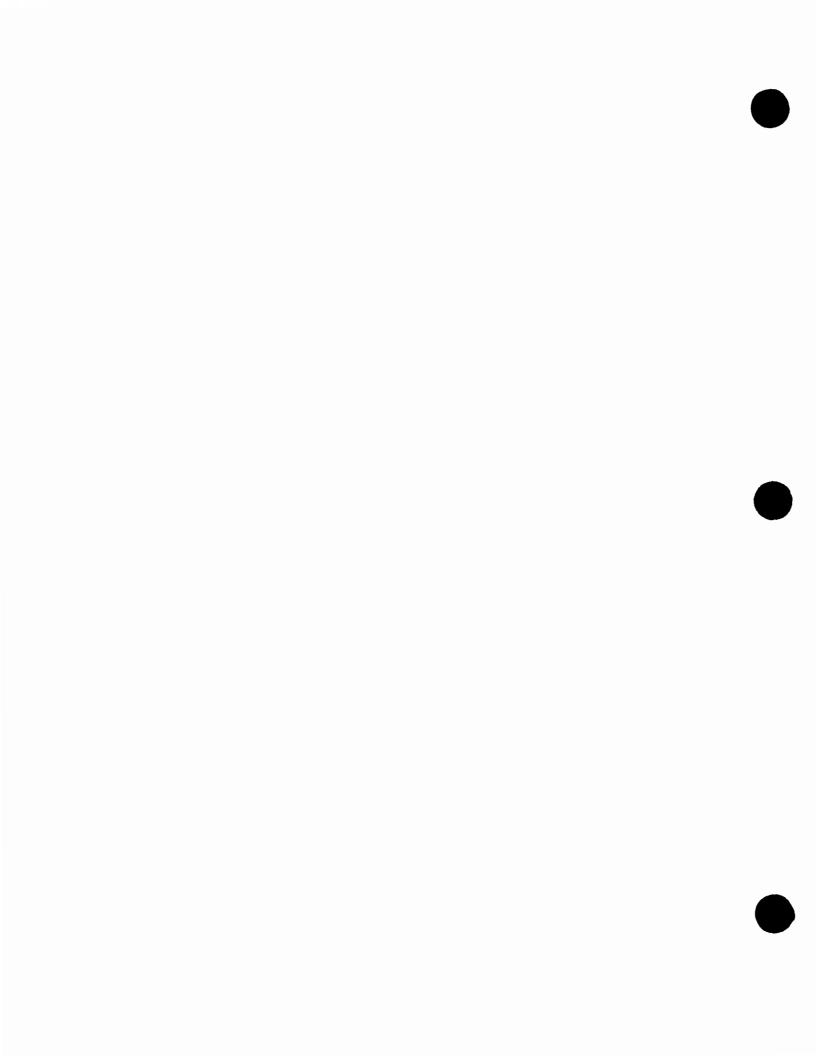
# VISITOR REGISTRATION SHEET

Name of Committee

Date

# VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| FIRM OR AGENCY AND ADDRESS |
|----------------------------|
| Trula Euroz                |
| DRNC                       |
| Randolph Cloud + Assoc.    |
| R. Chdyanor.               |
| mwe                        |
| IDS                        |
| IDS                        |
| UNC DE                     |
| Indicial Branch            |
| Intern for Kel Martin      |
|                            |
|                            |



# VISITOR REGISTRATION SHEET

Name of Committee

Date

# VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME          | FIRM OR AGENCY AND ADDRESS |
|---------------|----------------------------|
| Tim Minn      | Ne Hora Buildo Assoc       |
| Stormie Forte | State Crimelab DOJ         |
| Skye DAVID    | amen                       |
|               |                            |
|               |                            |
|               |                            |
| · .           |                            |
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# VISITOR REGISTRATION SHEET

| -1       | A   |
|----------|-----|
| JUDICARY | 1   |
| N        | :44 |

Name of Committee

|   | ,    | /   |
|---|------|-----|
| 1 | 1/11 | 11% |
| _ | 111  | 110 |

Date

# VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME                | FIRM OR AGENCY AND ADDRESS                                      |
|---------------------|---|
| Brian Miller        | NCGA  |
| PeeDour             | Cent of DAS   |
| Sharon Stellato     | NCIIC   |
| Jom Lock            | Superior Court Judge - Dist 11B<br>Innocence Inquiry Commission |
| Lindsey Grice Smith | NCIIC   |
| Johnson Both        | District Atorney Robeson Burch Dist 163                         |
| Deanna Munay        | AOC   |
| Amanda Leagu        | AOC   |
| Barbara Mare        | NCAOC.  |
| Toon Williams       | DA En Buncoule County   |
|                     | ,   |

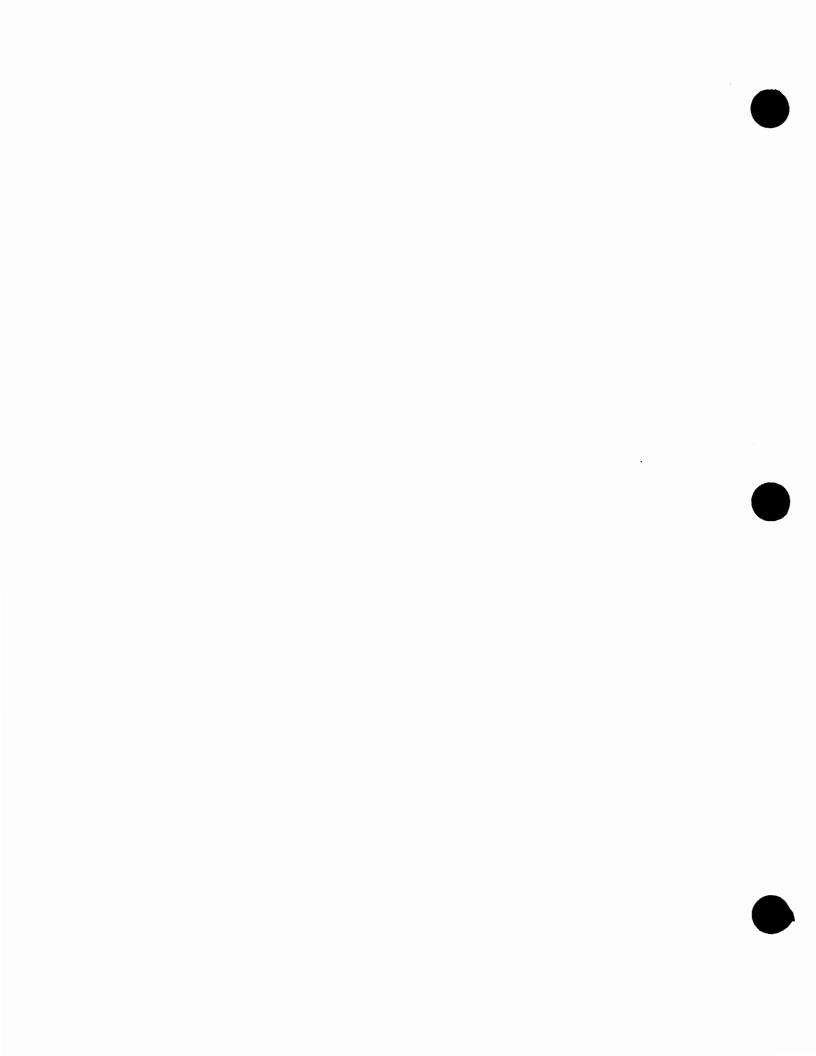
\*

# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

You are hereby notified that the House Committee on Judiciary I will meet as follows:

DAY & DATE: Wednesday, May 18, 2016

| TIME:<br>LOCATIO            | 12:30 PM<br>N: 415 LOB                                    |  |
|-----------------------------|---|--|
| The following               | ng bills will be considered:                              |  |
| <b>BILL NO.</b> HB 1104     | SHORT TITLE Vet's Posttraumatic Stress/Mitigating Factor. | SPONSOR Representative G. Martin Representative Zachary Representative Reives Representative W. Richardson |
| HB 970                      | State Controller/Criminal Record Checks.                  | Representative Cleveland Representative Riddell  |
|                             | Respe   | etfully,   |
|                             | Repres  | sentative N. Leo Daughtry, Chair   |
| I hereby cert<br>Monday, Ma | · ·   | e assistant at the following offices at 1:22 PM on   |
|                             | Principal Clerk<br>Reading Clerk – House Chamber          |  |
| Jan Copelan                 | d (Committee Assistant)                                   |  |



# House Committee on Judiciary I Wednesday, May 18, 2016, 12:30 PM 415 Legislative Office Building

# **AGENDA**

Welcome and Opening Remarks

**Introduction of Pages** 

**Bills** 

PCS

BILL NO. SHORT TITLE

HB 1104 Vet's Posttraumatic Stress/Mitigating

Factor.

HB 970 State Controller/Criminal Record

Checks.

**SPONSOR** 

Representative G. Martin Representative Zachary

Representative Reives

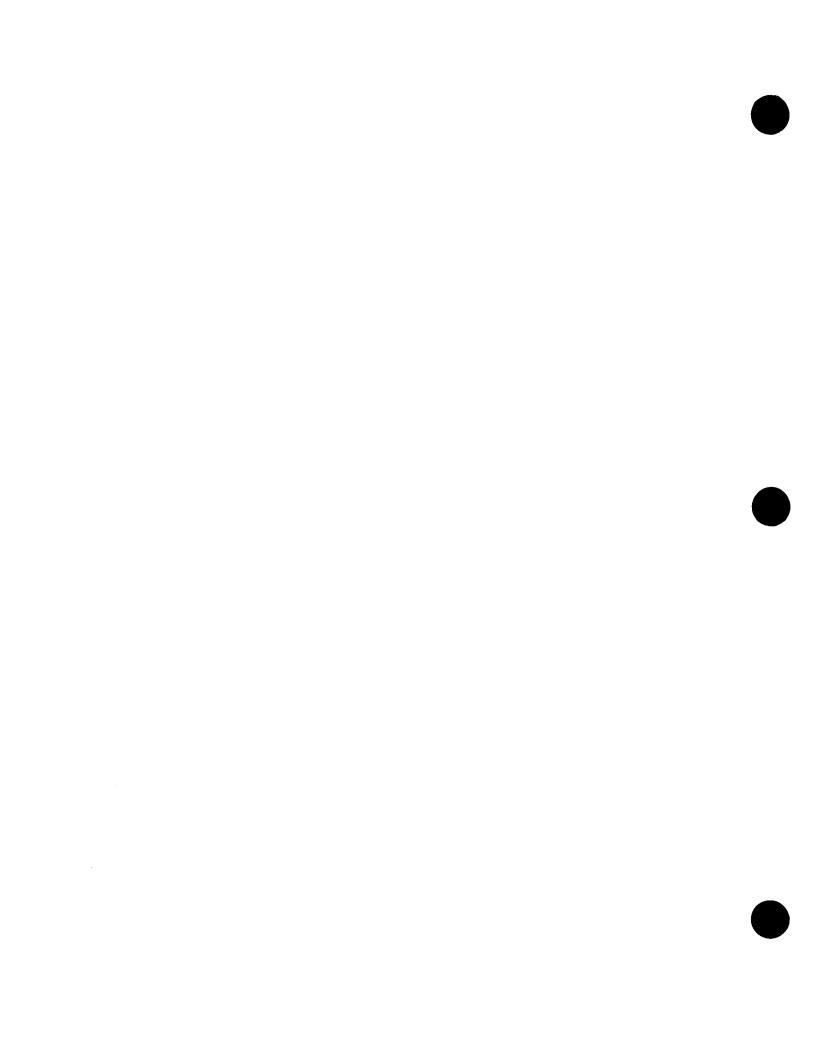
Representative W. Richardson

Representative Cleveland

Representative Riddell

**Other Business** 

Adjournment



## House Committee on Judiciary I Wednesday, May 18, 2016 at 12:30 PM Room 415 of the Legislative Office Building

#### **MINUTES**

The House Committee on Judiciary I met at 12:30 PM on May 18, 2016 in Room 415 of the Legislative Office Building. Representatives Arp. Daughtry, Hardister, Howard, G. Martin, McNeill, Robinson, Steinburg, and Szoka attended.

Representative N. Leo Daughtry, Chair, presided.

The following bills were considered:

HB 1104 Vet's Posttraumatic Stress/Mitigating Factor. (Representatives G. Martin, Zachary, Reives, W. Richardson) The committee voted favorable to the committee substitute, unfavorable to the original bill and re-referred (serial referral to appropriations)

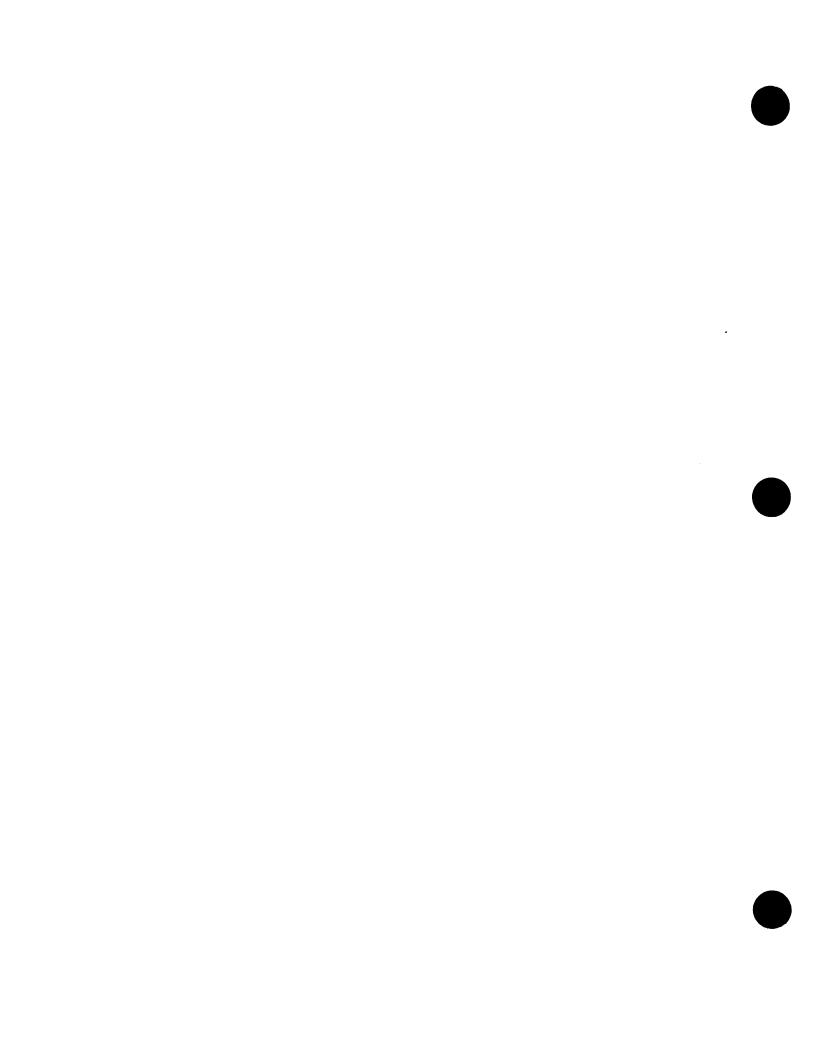
HB 970 State Controller/Criminal Record Checks. (Representatives Cleveland, Riddell) The committee gave the bill a favorable report.

The meeting adjourned at 1:12 p.m.

Representative N. Leo Daughtry, Chair

Presiding

Jan Copeland, Committee Clerk





# HOUSE BILL 970: State Controller/Criminal Record Checks.

2016-2017 General Assembly

Committee:

House Judiciary 1

Date:

May 17, 2016

Introduced by:

Reps. Cleveland, Riddell

Prepared by:

Tawanda N Foster

Analysis of:

First Edition

Committee Counsel

SUMMARY: House Bill 970 authorizes criminal record checks for any current or prospective employees, volunteers, or contractors of the Office of State Controller.

[As introduced, this bill was identical to S741, as introduced by Sen. J. Davis, which is currently in Senate Judiciary II.]

CURRENT LAW: Chapter 143B, Article 9, Part 28 of the General Statutes creates and authorizes the Office of the State Controller to maintain the State accounting system and administer the State disbursing system. The Office of the State Controller is headed by the State Controller, who is appointed by the Governor and confirmed by the General Assembly.

**BILL ANALYSIS:** House Bill 970 authorizes the State Controller to require a criminal record check for any current and prospective employees, volunteers, or contractors. The criminal record check is to be conducted by the State Bureau of Investigation (SBI).

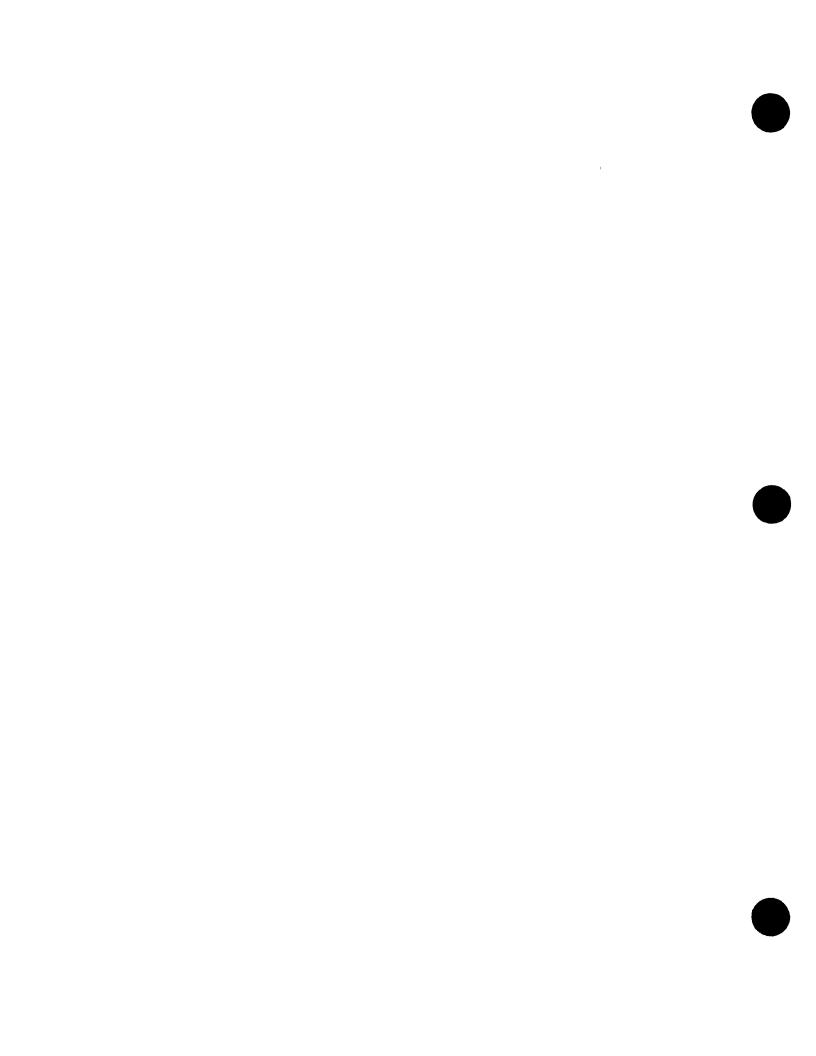
- The Office of State Controller will provide the Department of Public Safety (DPS) a criminal record check request, fingerprints, and a consent form signed by the person whose criminal record check is to be performed. DPS will forward the necessary information and fingerprints to the SBI for a search of the State's criminal record file and the SBI will forward the fingerprints to the Federal Bureau of Investigation (FBI) for a national criminal history record check.
- The criminal history report is not a public record and must be kept confidential by the Office of State Controller.
- DPS may charge a fee to offset the cost incurred to conduct a criminal record check.

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

Karen Cochrane-Brown Director



Legislative Analysis Division 919-733-2578



# GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H

**HOUSE BILL 970\*** 

Short Title: State Controller/Criminal Record Checks. (Public)

Sponsors: Representatives Cleveland and Riddell (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary I

### April 27, 2016

1 2

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CRIMINAL RECORD CHECKS OF ANY CURRENT OR

PROSPECTIVE EMPLOYEES, VOLUNTEERS, OR CONTRACTORS OF THE OFFICE OF STATE CONTROLLER, AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON GENERAL GOVERNMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-426.39 reads as rewritten:

"§ 143B-426.39. Powers and duties of the State Controller.

The State Controller shall:

(18)

(18) Require a criminal history record check of any current or prospective employee, volunteer, or contractor, which shall be conducted by the State Bureau of Investigation as provided in G.S. 143B-966. The criminal history report shall be provided to the State Controller and is not a public record under Chapter 132 of the General Statutes."

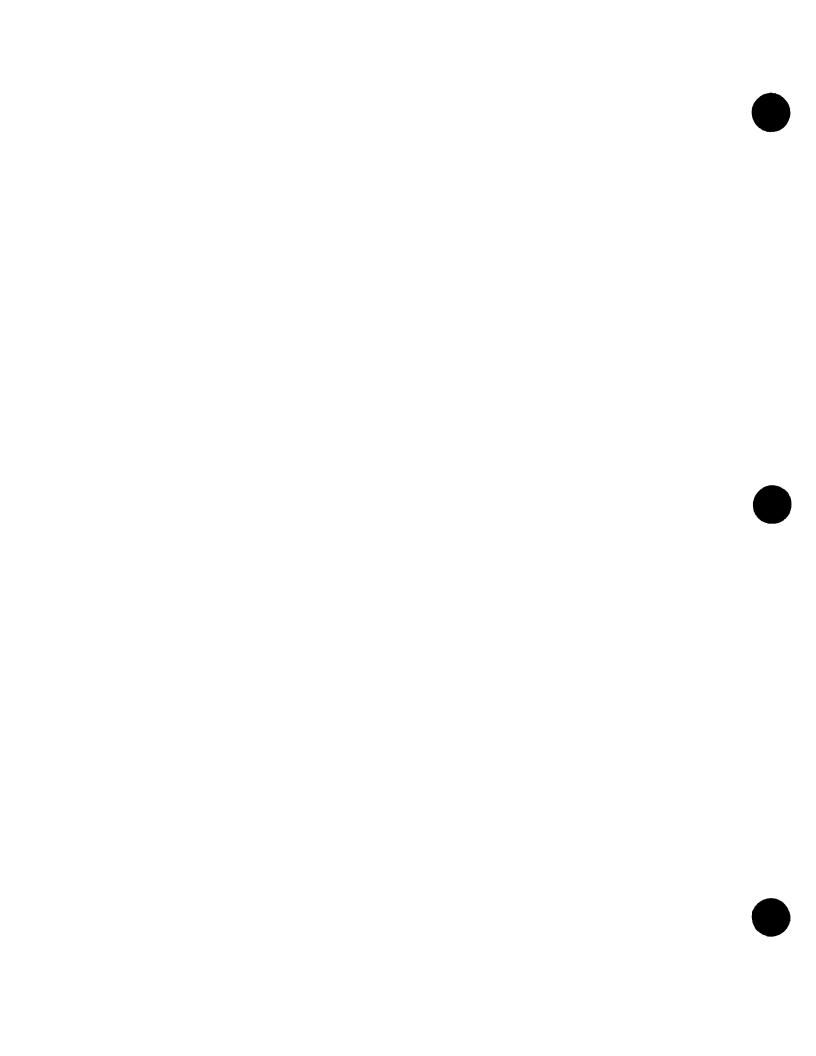
SECTION 2. Subpart D of Part 4 of Article 13 of Chapter 143B of the General Statutes is amended by adding a new section to read as follows:

# "§ 143B-966. Criminal record checks for the Office of State Controller.

The Department of Public Safety may provide to the Office of State Controller from the State and National Repositories of Criminal Histories the criminal history of any current or prospective employee, volunteer, or contractor of the Office of State Controller. The Office of State Controller shall provide to the Department of Public Safety, along with the request, the fingerprints of the current or prospective employee, volunteer, or contractor, a form signed by the current or prospective employee, volunteer, or contractor consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Public Safety. The fingerprints of the current or prospective employee, volunteer, or contractor 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 Office of State Controller shall keep all information obtained pursuant to this section confidential. The Department of Public Safety may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

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







# **Proposed Committee Substitute for HOUSE BILL 1104:**

# Vet's Posttraumatic Stress/Mitigating Factor.

Date:

House Judiciary I. If favorable, re-refer to Committee:

May 18, 2016

**Appropriations** 

Reps. G. Martin, Zachary, Reives, W. Introduced by:

Prepared by: Erika Churchill

Richardson

Amy Darden

PCS to First Edition Analysis of:

H1104-CSBB-1

Committee Counsel

SUMMARY: The Proposed Committee Substitute for House Bill 1104 creates a mitigating factor applicable to Veterans for the Court to consider when sentencing and appropriates funds to help support the State's Veterans Treatment Court.

(The PCS makes technical changes to the original bill.)

CURRENT LAW: The Court considers aggravating and mitigating factors present in a criminal offense and has the discretion to depart from the presumptive sentencing range if either type of factor is present. Some aggravating factors include an especially heinous or cruel offense, the presence or use of a deadly weapon at the time of the offense and if the victim of the crime suffered a permanent and debilitating injury. Some mitigating factors include committing the crime under duress, suffering a mental or physical condition that reduces culpability for the offense and if the defendant had been honorably discharged from the Armed Forces of the United States.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 1104 would do the following:

- Allow the Court to consider posttraumatic stress disorder resulting from military service in a combat zone as a mitigating factor in sentencing provided that:
  - The defendant is undergoing professional treatment for PTSD;
  - o The defendant provides documentation to the court of their service in a combat zone; and
  - The defendant provides evidence of their PTSD diagnosis resulting from events during that service

This section becomes effective October 1, 2016.

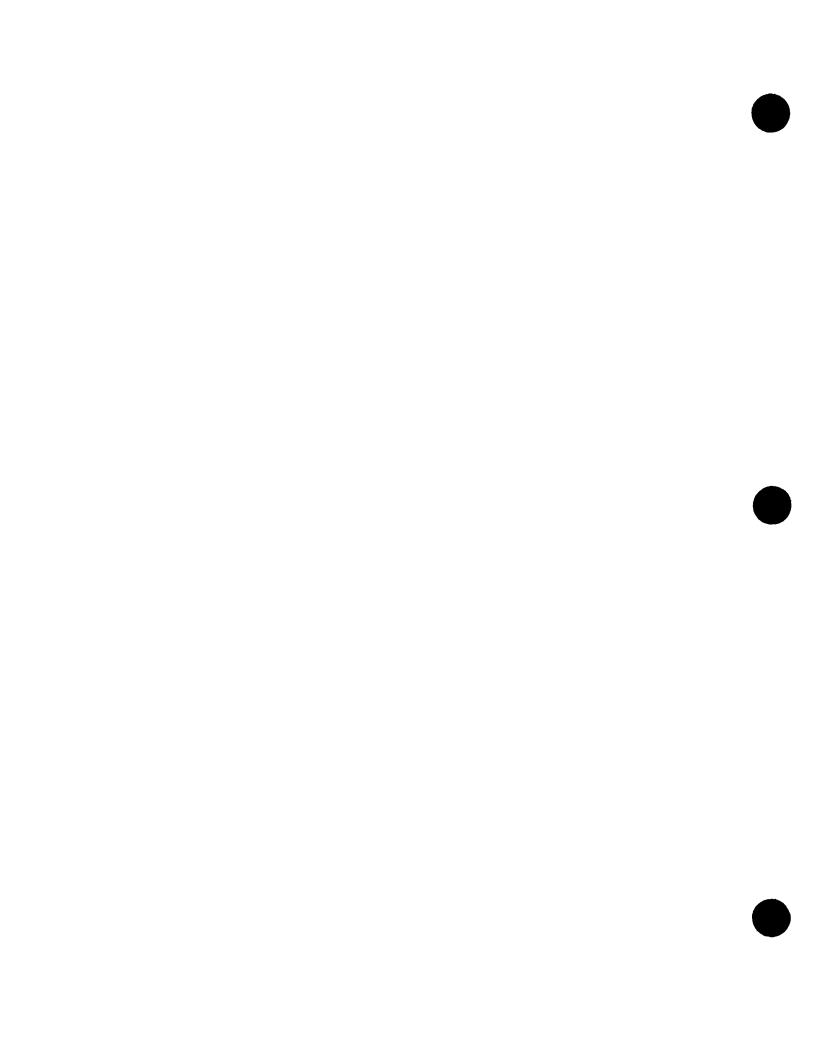
Appropriate \$25,000 to the North Carolina Military Affairs Commission to help support the State's Veterans Treatment Court. This section becomes effective July 1, 2016.

**EFFECTIVE DATE:** As noted above.

Karen Cochrane-Brown



Legislative Analysis Division 919-733-2578



# GENERAL ASSEMBLY OF NORTH CAROLINA **SESSION 2015**

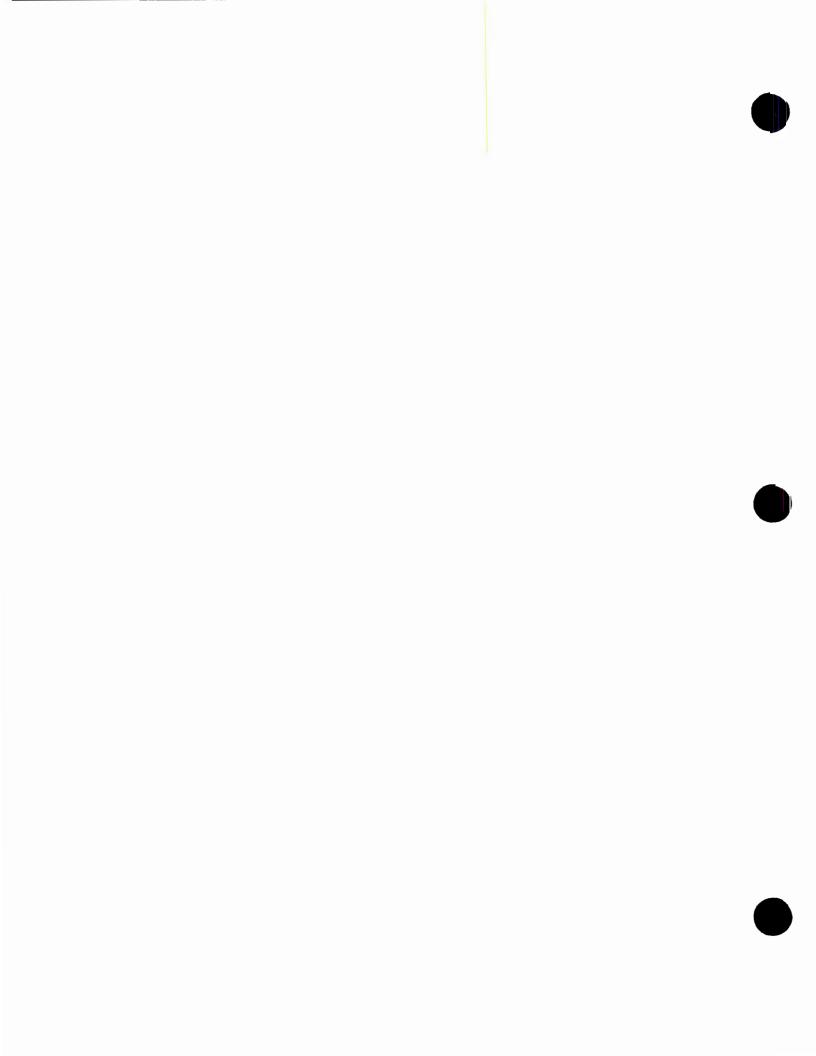
H D **HOUSE BILL 1104** PROPOSED COMMITTEE SUBSTITUTE H1104-CSBB-1 [v.2]

05/17/2016 04:32:01 PM Short Title: Vet's Posttraumatic Stress/Mitigating Factor. (Public) Sponsors: Referred to:

May 11, 2016

| 1  | A BILL TO BE ENTITLED  |
|----|--|
| 2  | AN ACT TO PROVIDE THAT A COURT MAY CONSIDER POSTTRAUMATIC STRESS                                 |
| 3  | DISORDER AS A MITIGATING FACTOR WHEN SENTENCING A PERSON WHO IS A                                |
| 4  | VETERAN AND TO APPROPRIATE FUNDS TO HELP SUPPORT THE STATE'S                                     |
| 5  | VETERANS TREATMENT COURT.  |
| 6  | The General Assembly of North Carolina enacts:   |
| 7  | <b>SECTION 1.</b> G.S. 15A-1340.16(e) is amended by adding a new subdivision to read:            |
| 8  | "(14a) The defendant has been diagnosed as suffering from posttraumatic stress                   |
| 9  | disorder resulting from his or her military service and is undergoing                            |
| 10 | professional treatment for that condition. As used in this section, "posttraumatic               |
| 11 | stress disorder" means the same as such term is defined in the Diagnostic and                    |
| 12 | Statistical Manual of Mental Disorders, DSM-5, or subsequent editions                            |
| 13 | published by the American Psychiatric Association, and occurred as a result of                   |
| 14 | events during the service of the defendant in one or more combat zones. The                      |
| 15 | defendant shall provide to the court documentary evidence that the defendant                     |
| 16 | has done all of the following:   |
| 17 | a. Served in the Armed Forces of the United States of America in a combat                        |
| 18 | zone, as defined in Section 112 of the Federal Internal Revenue Code of                          |
| 19 | 1986. Proof of such service shall consist of a certification by the                              |
| 20 | Secretary of Military and Veterans Affairs,  |
| 21 | <u>b.</u> Been diagnosed with a posttraumatic stress disorder connected to his or                |
| 22 | her service in the Armed Forces of the United States of America."                                |
| 23 | SECTION 2. There is appropriated from the General Fund to the North Carolina                     |
| 24 | Military Affairs Commission the sum of twenty-five thousand dollars (\$25,000) for the 2016-2017 |
| 25 | fiscal year to help support the State's Veterans Treatment Court.                                |
| 26 | <b>SECTION 3.</b> Section 1 of this act becomes effective October 1, 2016. The remainder         |
| 27 | of this act becomes effective July 1, 2016.  |





# GENERAL ASSEMBLY OF NORTH CAROLINA **SESSION 2015**

H

### **HOUSE BILL 1104**

|                  | Short Title:  | Vet's Posttraumatic Stress/Mitigating Factor. (Public)  |  |  |  |
|------------------|---|---|--|--|--|
|                  | Sponsors:   | Representatives G. Martin, Zachary, Reives, and W. Richardson (Primary Sponsors).   |  |  |  |
|                  |   | For a complete list of sponsors, refer to the North Carolina General Assembly web site.   |  |  |  |
|                  | Referred to:  | Judiciary I, if favorable, Appropriations   |  |  |  |
|                  |   | May 11, 2016  |  |  |  |
| 1<br>2<br>3<br>4 | DISORD<br>VETERA  | A BILL TO BE ENTITLED  D PROVIDE THAT A COURT MAY CONSIDER POSTTRAUMATIC STRESS ER AS A MITIGATING FACTOR WHEN SENTENCING A PERSON WHO IS A N AND TO APPROPRIATE FUNDS TO HELP SUPPORT THE STATE'S  |  |  |  |
| 5                |   | NS TREATMENT COURT.   |  |  |  |
| 6<br>7           |   | Assembly of North Carolina enacts:  |  |  |  |
| 8                |   | ECTION 1. G.S. 15A-1340.16(e) is amended by adding a new subdivision to read:  14a) The defendant has been diagnosed as suffering from posttraumatic stres  |  |  |  |
| 9                | 7   | disorder resulting from his or her military service and is undergoing   |  |  |  |
| 10               |   | professional treatment for that condition. As used in this section, "posttraumation of the condition of the |  |  |  |
| 11               |   | stress disorder" means the same as such term is defined in the Diagnostic and   |  |  |  |
| 12               |   | Statistical Manual of Mental Disorders, Fifth Edition (DSM-5, 2013), and  |  |  |  |
| 13               | occurred as a result of events during the service of the defendant in one or more |   |  |  |  |
| 14               | combat zones. The defendant shall provide to the court documentary evidence       |   |  |  |  |
| 15               | that the defendant has done all of the following:                                 |   |  |  |  |
| 16               |   | a. Served in the Armed Forces of the United States of America in a comba  |  |  |  |
| 17               |   | zone, as defined in Section 112 of the Federal Internal Revenue Code of   |  |  |  |
| 18               |   | 1986. Proof of such service shall consist of a certification by the   |  |  |  |
| 19               |   | Director of the Department of Veterans Affairs,   |  |  |  |
| 20               |   | <u>b.</u> Been diagnosed with a posttraumatic stress disorder connected to his o  |  |  |  |
| 21               |   | her service in the Armed Forces of the United States of America."   |  |  |  |
| 22               |   | ECTION 2. There is appropriated from the General Fund to the North Carolin  |  |  |  |
| 23               |   | irs Commission the sum of twenty-five thousand dollars (\$25,000) for the 2016-201  |  |  |  |
| 24               | -   | help support the State's Veterans Treatment Court.  |  |  |  |
| 25               |   | ECTION 3. Section 1 of this act becomes effective October 1, 2016. The remainder  |  |  |  |
| 26               | of this act bed   | comes effective July 1, 2016.   |  |  |  |



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#### NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

#### **FAVORABLE**

HB 970

State Controller/Criminal Record Checks.

Draft Number:

None

Serial Referral:

None

Recommended Referral: None Long Title Amended:

No

Floor Manager:

Cleveland

### FAVORABLE COM SUB, UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB 1104

Vet's Posttraumatic Stress/Mitigating Factor.

Draft Number:

H1104-PCS40624-BB-1

Serial Referral:

**APPROPRIATIONS** 

Recommended Referral: None Long Title Amended:

No

Floor Manager:

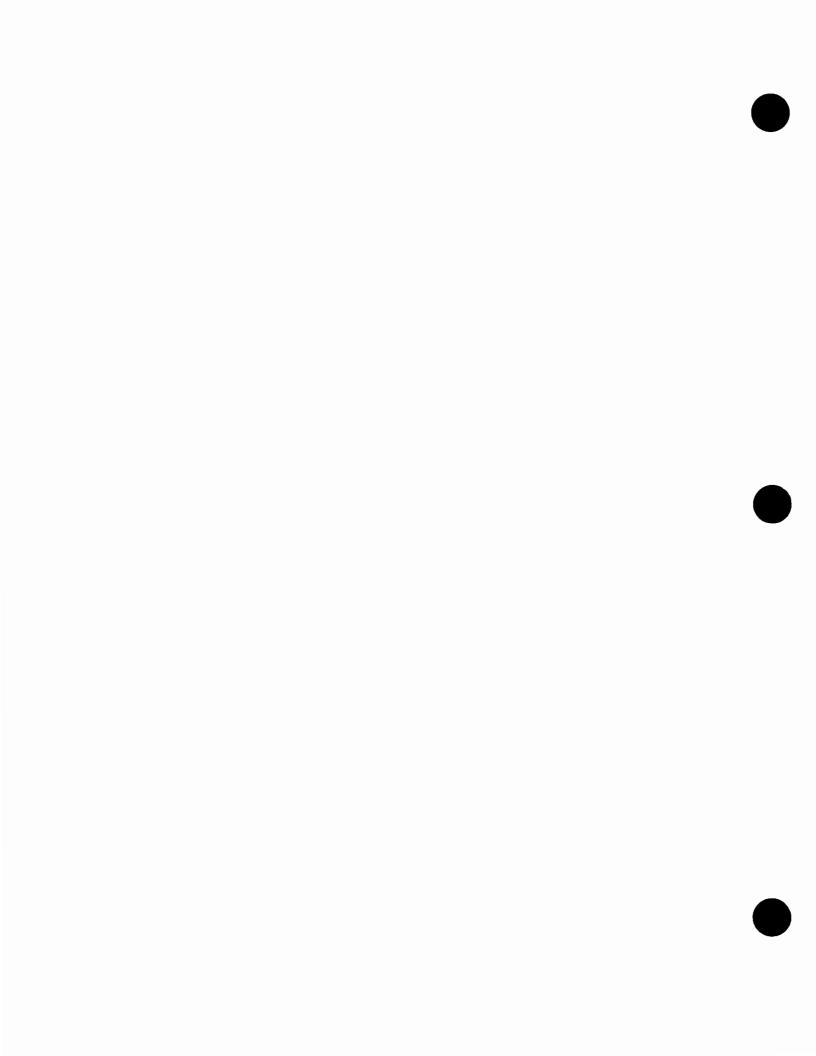
G. Martin

**TOTAL REPORTED: 2** 



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|  | Date: 5-18-16                            |
|--|--|
| Bill Number 970                        |  |
| PCSO                                   |  |
| Motion to be before the committee by _ | Daughtry                                 |
| Rep Clevelard                          | explained the bill.                      |
| Discussion on the Bill YES o NO        |  |
| Rep Hardister                          | motioned for:                            |
| Favorable Report                       | Adoption                                 |
| Unfavorable Report                     | Unfavorable to original bill, fav to PCS |
| No vote                                |  |
| Amendments: :                          |  |
| Serial referral to:                    |  |
| Speakers:                              |  |
| Handouts:                              |  |



| Date:  |
|--|
| Bill Number 1104.  PCS H1104 - CSBB-1 [V.2]                |
| Motion to be before the committee by APP                   |
| Rep Martin explained the bill. Enka Churchill              |
| Discussion on the Bill YES or NO                           |
| Rep_ Robinson motioned for:                                |
| Favorable Report Adoption                                  |
| Unfavorable ReportUnfavorable to original bill, fav to PCS |
| No vote  |
| Amendments: :  |
| Serial referral to:  |
| Speakers:  |
| Handouts:  |
| DA'S un favor of ball                                      |
| 5201a lines 19+20?   |
| Arp -  |

# Guest Speaker Signup

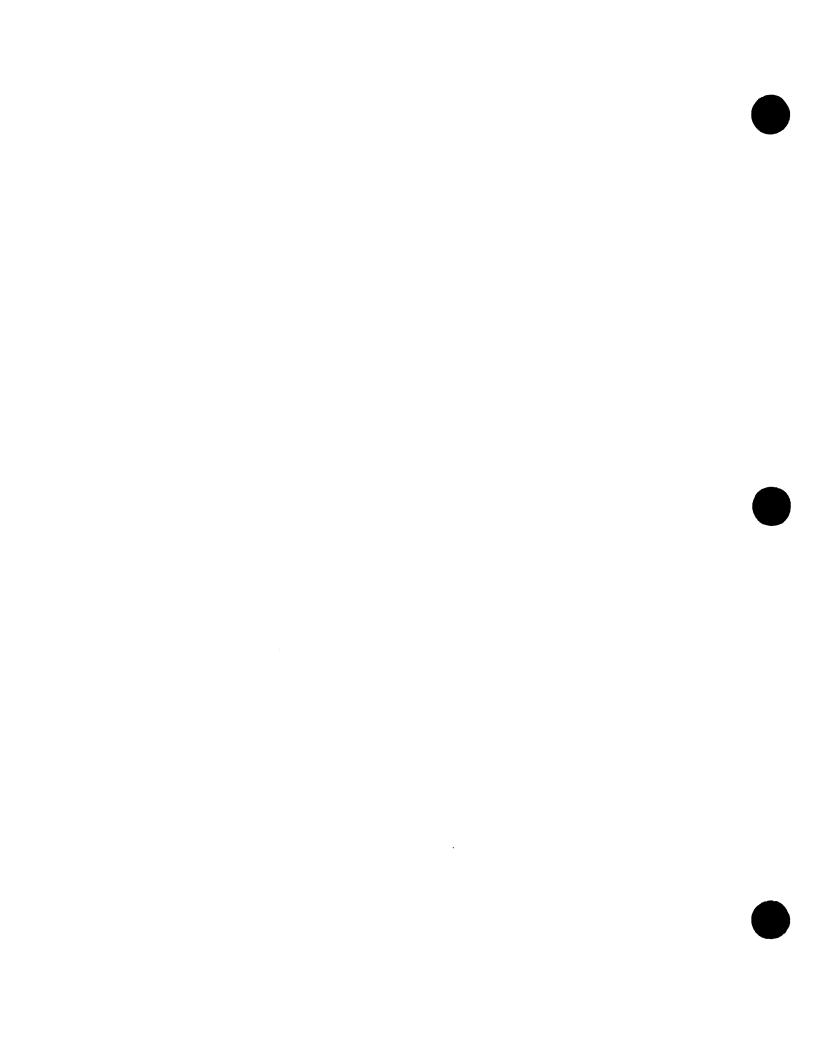
| Committee JUDICIARY I | Date 18 MAY 2016                   |
|-----------------------|------------------------------------|
|                       | •                                  |
| 1. LACY PATE Depa     | thent of Military Volerans Affairs |
| 2. Rhian Memald       | wm .                               |
| 3. Penny Bull         | 301                                |
| 4. MECHAEL ENLISS     | 8sc                                |
| 5. Wrists Parks       | DRNC                               |
| 6. Janathan Harris    | office of Consept                  |
| 7. Bob Stephens       | office of Governor                 |
| 8. GAM Solumos        | NCChrise                           |
| 9. Muschan Lyw        | Nelliamber                         |
| 10. Josep Zhy         | Anny                               |
| 11. Dun Jer           | My                                 |
| 12                    | V                                  |

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# **HOUSE PAGES** (Judiciary I)

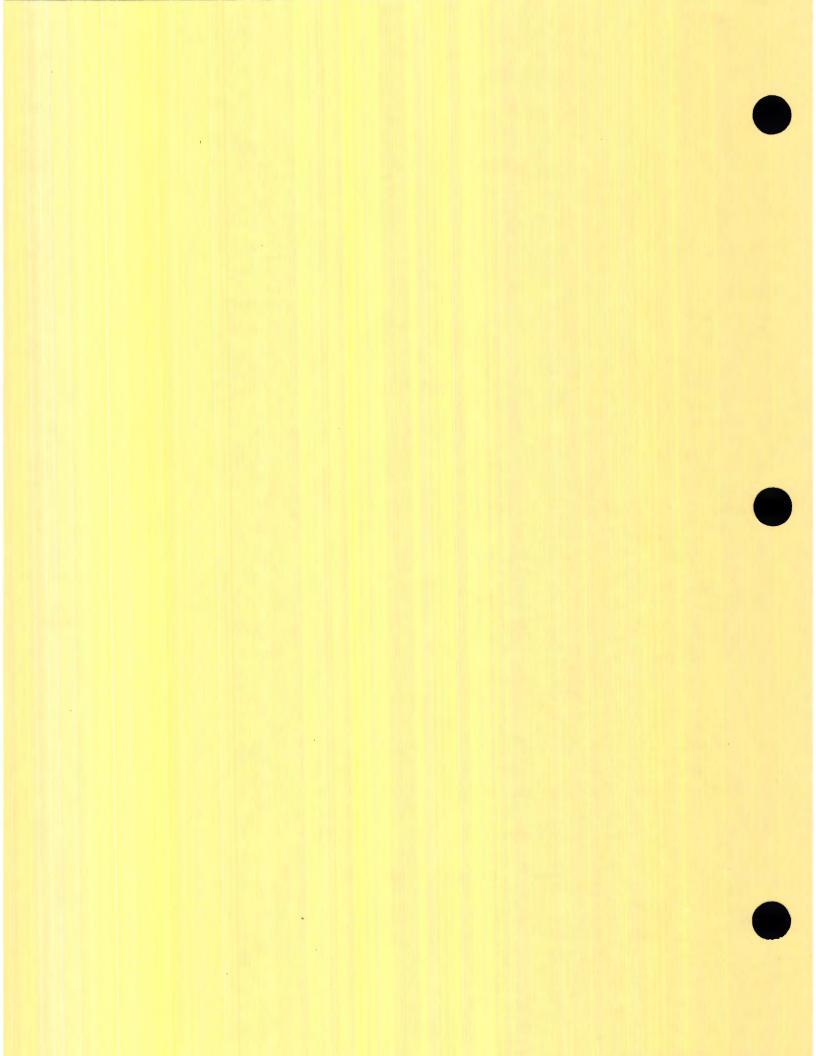
# Week of May 16-19, 2016

| Name:       | County: | Sponsor:          |
|-------------|---------|-------------------|
| DAVID COX   | WAKE    | REP. CHRIS MALONE |
| SHEENA DEAN | WAKE    | RODNEY MOORE      |
| MINSUNG KIM | ORANGE  | REP. VERLA INSKO  |
| ERIC WYLIE  | WAKE    | SPEAKER TIM MOORE |



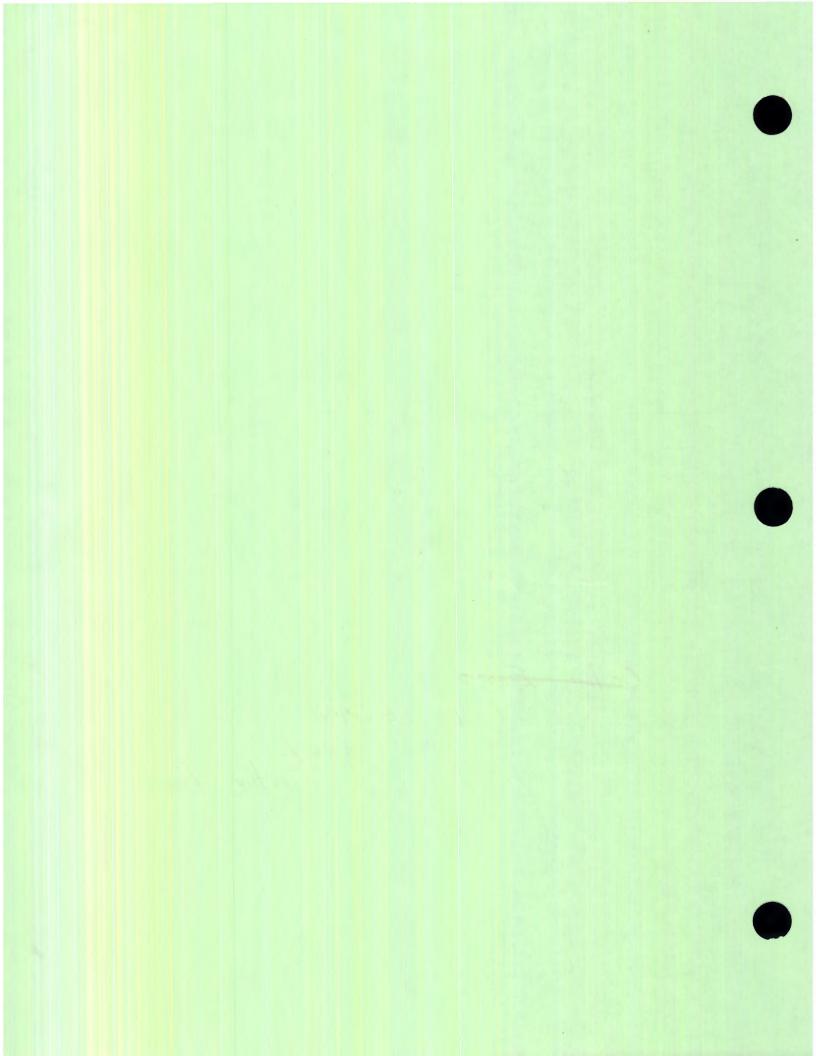
# Committee Sergeants at Arms

| NAME OF    | COMMITTEE JUSTICS THE | 1/10 |
|------------|-----------------------|------|
| DATE:      | 5/18/16 Room: 4/1     |      |
|            |                       |      |
|            | House Sgt-At Arms:    |      |
| 1. Name:   | David Lithicolm       |      |
| 2. Name: _ | JONAS Cherry          |      |
| aland.     | Bill Riley            |      |
|            | BARRY MOORG           |      |
|            |                       |      |
|            |                       |      |
|            |                       |      |
|            | Senate Sgt-At Arms:   |      |
| 1. Name:   |                       |      |
| 2. Name:   |                       |      |
| 3. Name:   |                       |      |
| 4. Name:   |                       |      |
| Name:      |                       |      |
|            |                       |      |



# House Committee Pages / Sergeants at Arms

| NAME OF COMMITTEE Judicary 1         |
|--------------------------------------|
| DATE: 5/11/16 Room: 415              |
| *Name: PAGES                         |
| County:                              |
| Sponsor:                             |
| *Name: CAMPBELL MCLAUCHLAN           |
| County: WAKE                         |
| Sponsor: PAUL STAM                   |
| Name: ELIZABETH MCDOWO 11            |
| County: UNION                        |
| Sponsor: DEAN ARP                    |
| *Name:                               |
| County:                              |
| Sponsor: Coffee Elan                 |
| *Name: Colled EGAN                   |
| County: STANLY                       |
| Sponsor: Justin BURR                 |
| House Sgt-At Arms:                   |
| 211 11                               |
|                                      |
| . Name: Jim Austin 5. Name:          |
| 3. Name: <u>BARRY MOORE</u> 6. Name: |



#### **Cancelled Notice**

#### NORTH CAROLINA HOUSE OF REPRESENTATIVES **COMMITTEE MEETING NOTICE** AND **BILL SPONSOR NOTIFICATION** 2015-2016 SESSION

You are hereby notified that the House Committee on Judiciary I will NOT meet as follows:

**DAY & DATE:** Wednesday, June 1, 2016 12:30 PM

TIME:

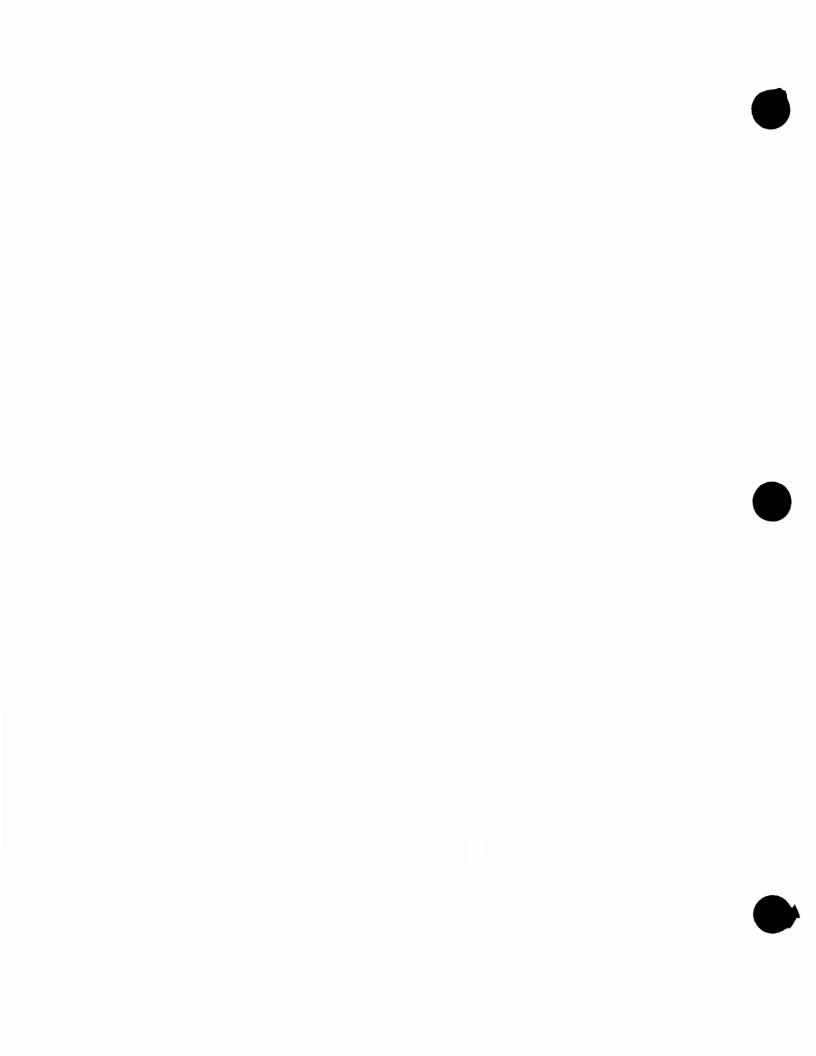
| LOCATION      | N: 415 LOB   |  |
|---------------|--|--|
| The following | ng bills will be considered:                               |  |
| BILL NO.      | SHORT TITLE  | SPONSOR  |
| SB 570        | Expunction/Boat Violation.                                 | Senator Bryant                                     |
|               |  | Senator McKissick                                  |
| CD 724        |  | Senator Daniel                                     |
| SB 734        | Statewide Standing Order/Opioid                            | Senator Pate                                       |
|               | Antagonist.  | Senator Tucker Senator Robinson                    |
|               |  | Schalor Robinson                                   |
|               | Respe  | ectfully,  |
|               | Repre  | sentative N. Leo Daughtry, Chair                   |
| •             | tify this notice was filed by the committee June 01, 2016. | e assistant at the following offices at 8:37 AM on |
|               | Principal Clerk<br>Reading Clerk – House Chamber           |  |
| Jan Copelan   | d (Committee Assistant)                                    |  |
|               |  |  |

| Section of the sectio |  |  |
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# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

You are hereby notified that the House Committee on Judiciary I will meet as follows:

|   | DAY & DATTIME: LOCATION      |        | Wednesday, June 1, 2016<br>12:30 PM<br>415 LOB   |   |
|---|------------------------------|--------|--|---|
|   | The followin                 | ıg bil | Is will be considered:                           |   |
|   | BILL NO.<br>SB 570           |        | ORT TITLE punction/Boat Violation.               | SPONSOR Senator Bryant Senator McKissick Senator Daniel |
| ) | SB 734                       |        | tewide Standing Order/Opioid agonist.            | Senator Pate Senator Tucker Senator Robinson            |
|   |                              |        | Respe  | ectfully,   |
|   |                              |        | Repre  | esentative N. Leo Daughtry, Chair                       |
|   | I hereby cert<br>Tuesday, Ma | •      | •  | ee assistant at the following offices at 10:13 AM on    |
|   |                              |        | Principal Clerk<br>Reading Clerk – House Chamber |   |
|   | Jan Copeland                 | d (Co  | ommittee Assistant)                              |   |
|   |                              |        |  |   |



#### NORTH CAROLINA HOUSE OF REPRESENTATIVES **COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION** 2015-2016 SESSION

You are hereby notified that the House Committee on Judiciary I will meet as follows:

DAY & DATE: Wednesday, June 8, 2016

12:30 PM TIME: LOCATION: **415 LOB** 

The following bills will be considered:

| BILL NO. | SHORT TITLE                          | SPONSOR                 |
|----------|--------------------------------------|-------------------------|
| SB 570   | Expunction/Boat Violation.           | Senator Bryant          |
|          | •                                    | Senator McKissick       |
|          |                                      | Senator Daniel          |
| SB 734   | Statewide Standing Order/Opioid      | Senator Pate            |
|          | Antagonist.                          | Senator Tucker          |
|          |                                      | Senator Robinson        |
| HJR 1147 | Confirm James Gale/Special SC Judge. | Representative Daughtry |
|          | Respect                              | fully                   |

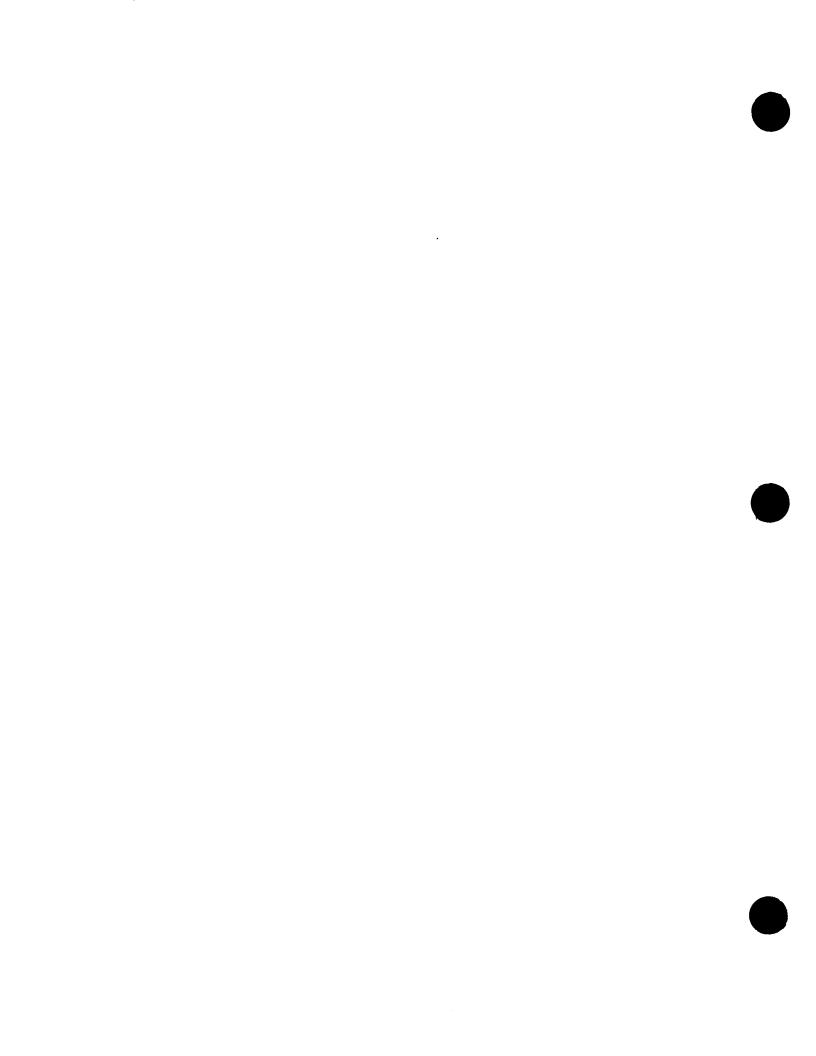
Respectfully,

Representative N. Leo Daughtry, Chair

| I hereby certify this | s notice was filed by t | he committee assista | nt at the following of | offices at 2:34 PM on |
|-----------------------|-------------------------|----------------------|------------------------|-----------------------|
| Tuesday, June 07,     | 2016.                   |                      |                        |                       |

| <br>Principal Clerk   |         |
|-----------------------|---------|
| Reading Clerk – House | Chamber |

Jan Copeland (Committee Assistant)



#### House Committee on Judiciary I Wednesday, June 8, 2016, 12:30 415 LOB

#### **AGENDA**

Welcome and Opening Remarks

**Introduction of Pages** 

**Bills:** 

HJR 1147 Confirm Judge Gale/Special Judge Daughtry

not heard

SB 734 Statewide Standing Order/Opioid Pate, Tucker, Robinson

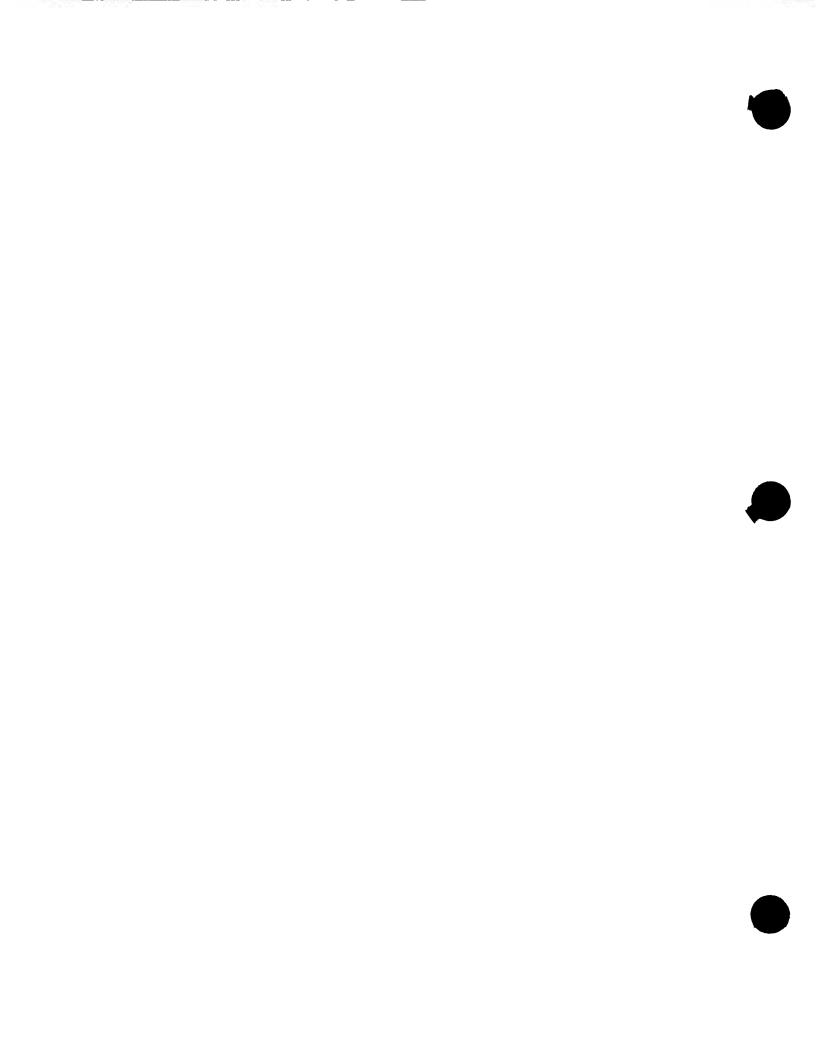
Antagonist

SB 570 Expunction/Boat Violation

Bryant, McKissick, Daniel

Other Business

Adjournment





# **HOUSE JOINT RESOLUTION 1147:** Confirm James Gale/Special SC Judge.

2016-2017 General Assembly

Committee: House Judiciary I
Introduced by: Rep. Daughtry
Analysis of: First Edition

Date: June 7, 2016
Prepared by: Tawanda N. Foster
Committee Co-Counsel

SUMMARY: House Joint Resolution 1147 provides for the confirmation of the reappointment of James L. Gale as a Special Superior Court Judge.

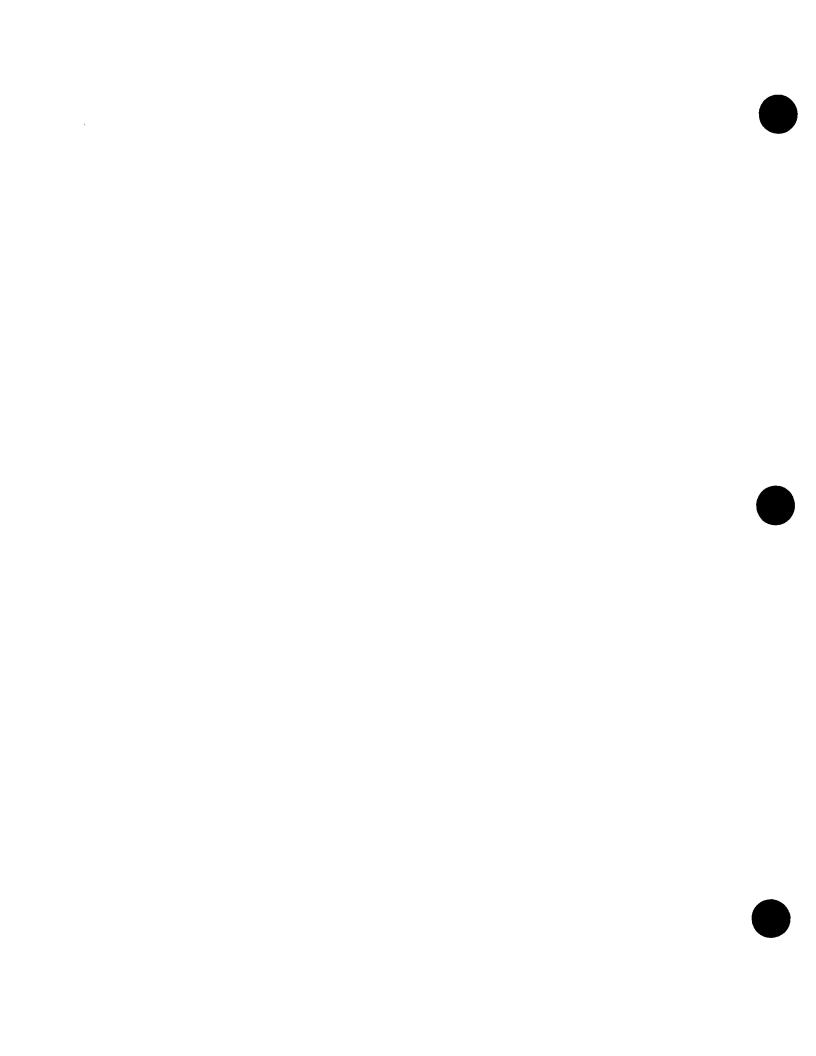
**CURRENT LAW:** G.S. 7A-45.1(a10) directs the Governor to appoint Special Superior Court Judges subject to confirmation by the General Assembly by joint resolution. The term of office for the judge is five years.

**BILL ANALYSIS:** House Joint Resolution 1147 confirms the Governor's reappointment of James L. Gale as a Special Superior Court Judge for a term of five years beginning on May 17, 2016 and expiring on May 16, 2021.

**EFFECTIVE DATE:** Effective upon ratification.

Karen Cochrane-Brown Director







#### STATE OF NORTH CAROLINA OFFICE OF THE GOVERNOR

PAT McCrory GOVERNOR

May 17, 2016

Lieutenant Governor Dan Forest President of the Senate 301 N. Blount Street Raleigh, NC 27601

The Honorable Phil Berger President Pro Tempore of the Senate 16 West Jones Street, Room 2008 Raleigh, North Carolina 27601

The Honorable Tim Moore Speaker of the House 16 West Jones Street, Room 2304 Raleigh, North Carolina 27601

Dear Lieutenant Governor Forest, President Pro Tempore Berger and Speaker Moore:

Pursuant to N.C.G.S. § 7A-45.1(a10), I hereby nominate and submit for confirmation James L. Gale for the position of Special Superior Court Judge. Chief Judge Gale is nominated to fill the vacancy created by the expiration of his term on February 27, 2016. Upon Chief Judge Gale's confirmation, I intend to ask Chief Justice Mark Martin to once again designate him as a Business Court Judge.

Chief Judge Gale, until recently, was Chief Judge of the North Carolina Business Court. I have consulted with Chief Justice Martin about Chief Judge Gale's leadership on the Court and his record of handling complex business cases. We are in agreement that we cannot afford to lose his expertise, experience, or leadership. As the Business Court's longest serving member, granting an additional term will provide continuity and stability to the Court. The Chief Justice and I are most grateful for his willingness to continue to serve the State of North Carolina in this important capacity.

In addition to the Governor and the Chief Justice's support, the North Carolina Chamber of Commerce, the North Carolina Association of Defense Attorneys, and numerous other wellrespected judges and attorneys also support Chief Judge Gale's nomination to the Business Court.

Received 5/17/16 9:12 am Denise Weeks

Read referred

b Rules

MAY 1 7 2016

Dennie Weele

Enclosed, you will find biographical information for Chief Judge Gale. Please feel free to contact my staff for any additional information.

Sincerely,

Pat McCrory Governor

cc: Denise Weeks, House Principal Clerk Sarah Lang, Senate Principal Clerk

#### JUDGE JAMES L. GALE

#### **Employment History**

March 1, 2011 - February 27, 2016

Special Superior Court Judge for Complex Business Cases, Greensboro, N.C. Chief Business Court Judge, appointed October 1, 2014

- 35% increase in new case filings
- 30% decrease in median case age
- Steady decrease in cases older than two years
- Almost 100% increase in published Business Court opinions
- · Substantially revised and modernized Business Court rules
- Updated state of the art court room technology
- Enhanced Business Court profile (American College of Business Court Judges Board of Directors, delegate - ABA Business Law Committee Judges' Initiative, speaker at numerous seminars around USA)

#### Authored 135 published opinions

- Regularly cited in annual listings of significant NC decisions
- · Multiple cases involving high-profile corporate transactions
- Reflect conservative judicial decision making

Excellent rating in NCBA Judicial Performance Evaluation Survey

#### 1976-2011

Smith Moore Leatherwood, LLP Managing partner, Raleigh, N.C. and Tampa, Florida offices

Practice concentration in complex litigation

Peer recognitions include Top 100 Lawyers Bet the Company Litigation (Corporate Counsel), Legal Elite (Business North Carolina), North Carolina "Superlawyers" (Thomson Reuters), Litigation Council of America

Admitted by examination in North Carolina, Georgia and Florida

#### 1974-1976

Law Clerk, Hon. Franklin T. Dupree, Jr., United States District Court, Eastern District of North Carolina, Raleigh, North Carolina

#### Education

1974 University of Georgia, J.D. magna cum laude

Editor, <u>Georgia Law Review</u> Phi Kappa Phi Honorary Society

1969 Florida Presbyterian College, B.A. (now named Eckerd College)

#### Memberships and Service

Civic and Religious

Greensboro Urban Ministry - member, Board of Directors
Out of the Garden Project, Greensboro - volunteer coordinator
United Way of Greater Triangle – former board member
Learning Together, Inc. - former board member
Cub Scouts of America - former Cubmaster
Westminster Prosbytorian Church, Greensboro, N.C., member

Westminster Presbyterian Church, Greensboro, N.C., member
White Memorial Presbyterian Church, Raleigh, N.C., former member
Elder, deacon, committee chair (personnel, international mission,
community outreach, youth ministry), middle school youth teacher,
middle school and senior high youth advisor, adult leader of
Disciples study, participant on multiple mission trips, advisor on
youth trip to Northern Ireland, delegate to peace mission Northern
Ireland

First Presbyterian Church, Greensboro, N.C., former member, teacher

#### **Professional**

American College of Business Court Judges – Board of Directors Elon University School of Law - adjunct professor in trial practice NC Conference of Superior Court Judges, Education Committee American Bar Association – Judicial Division North Carolina Bar Association North Carolina State Bar Frequent speaker at NC continuing legal education seminars

Formerly when in private practice

Certified mediator State Bar of Georgia and Florida State Bar North Carolina Association of Defense Attorneys DRI and ATLA (associate member)



### NORTH CAROLINA STATE ETHICS COMMISSION 2016 STATEMENT OF ECONOMIC INTEREST

919-814-3600

www.ethicscommission.nc.gov

COMPLETE THIS FORM AND MAIL SIGNED, ORIGINAL TO STATE ETHICS COMMISSION, 1324 MAIL SERVICE CENTER, RALEIGH, NC 27699-1324

| FILER'S NAME                       | E (FIRST, MIDDLE, LAST)                                   |                     |      |                              |  |
|------------------------------------|---|---------------------|------|------------------------------|--|
| Prefix                             | First Name  | Middle Na           | me   | Last Name                    | Suffix   |
| Mr.                                | James   | Luther              |      | Gale                         | Sr.  |
| CURRENT EM                         | PLOYER  |                     | JOB  | TITLE                        |  |
| Administrative (                   | Office of the Courts, Judicial I                          | Division            | Chie | ef Special Superior Court Ju | dge for Complex Business Cases                                       |
| NATURE OR T                        | YPE OF BUSINESS   |                     |      |                              |  |
| Presides over ca                   | ses assigned to the North Card                            | olina Business Cour | t    |                              |  |
| REASON FOR                         | FILING (SELECT ALL THA                                    | T APPLY)            |      |                              |  |
| 3 Mary 24 - 1 Apr 3 Mary 24 (1997) | TERNMENT JOB (Please spec<br>ork or are being considered) | ify the agency for  |      |                              | ease list complete name of all<br>e serving or are being considered) |
| ☑ JUDICIAL O                       | FFICER (Please specify the o                              | ffice you hold)     |      | EGISLATOR (Please special    | fy House or Senate)  |
| Special Judge (S                   | Superior Court)   |                     |      |                              |  |

| A. Do other immediate fa   | mily members reside in yo  | our household             | ?  |                       |             |                        |  |
|--|--|---------------------------|--|-----------------------|-------------|------------------------|--|
| ☑ Yes ☐ No   |  |                           |  |                       |             |                        |  |
| When used throughout th  | is form, the term Immedia  | ite family inc            | ludes your sp                                | oouse (unless legally | separated). | It also includes       |  |
| members of your extende  | d family (your and your sp   | ouse's childr             | en, grandchil                                | dren, parents, grandp | arents, and | siblings, and the      |  |
| spouses of each of those I   | persons) who reside in you   | ur <mark>household</mark> |  |                       |             |                        |  |
|  |  |                           |  |                       |             |                        |  |
| Trible of the second se | adults and emancipated n   |                           |  |                       | ider 18 yea | rs old. Minors are     |  |
|  | enlistment in the US mili  |                           |  |                       |             |                        |  |
| FULL NAME OF<br>ADULTS &<br>EMANCIPATED<br>MINORS  | RELATIONSHIP   | EMP                       | LOYER  | JOB TITL              | E           | NATURE OF<br>BUSINESS  |  |
| Darlene F. Gale  | Wife   | N/A                       |  | Homemaker             | N           | /A                     |  |
| emancipated by marriage  | s of all emancipated min<br>enlistment in the US mili<br>full name of each minor of  | tary or court o           | order for ema                                | ncipation.            |             |                        |  |
| INITIALS FOR<br>UNEMANCIPATED<br>CHILDREN  | RELATIONSHIP   | EMP                       | LOYER  | JOB TITL              | E           | NATURE OF<br>BUSINESS  |  |
|  |  |                           |  |                       |             |                        |  |
| PROPERTY INTERES   | THE STATE OF THE S |                           |  | 33.4.6.6.33           | 1 P         |                        |  |
| A. Have an ownership   | 15, did you, your spouse, of interest in North Carolina  |                           |  |                       | ırket value | of \$10,000 or more?   |  |
| ☑ Yes ☐ No   | T T  |                           |  | e describer de juji   | manage 11   | 9,01                   |  |
| Owner of Real Esta   | te % Ownershi  | p Interest                | Lo   | cation by City        | Lo          | cation by County       |  |
| James L. and Darlene F. (  | Gale 100   |                           | West Jefferson                               |                       | Ashe        |                        |  |
| James L. and Darlene F. 0  | Gale 100   | 100                       |  | Greensboro            |             | Guilford               |  |
| B. Lease or rent real es  ☐ Yes ☑ No   | state or personal property t   | o or from the             | State of Nor                                 | th Carolina with a ma | rket value  | of \$10,000 or more?   |  |
| Name of Lessor   | Name of Lesse  | ee (Renter)               | If Real Estate, Location by<br>City & County |                       | If Person   | nal Property, Describe |  |
|  |  |                           |  |                       |             |                        |  |
|  |  |                           |  |                       |             |                        |  |
|  |  |                           |  |                       |             |                        |  |

| Yes ☑ No  |   |   |  |  |
|---|---|---|--|--|
| Name of Purchaser   | Name of Seller  | Type of Property  |  |  |
|   |   |   |  |  |
|   |   |   |  |  |
| FINANCIAL INTERESTS   |   |   |  |  |
| 8. As of December 31, 2015, did you, your spo<br>valued at \$10,000 or more?  A. Stock in a publicly owned company?  ☐ Yes ☑ No       | use, or members of your immediate family  | y own any of the following financial interes  |  |  |
| or pension or deferred compensation   | plans) if: (i) the fund is publicly traded or<br>member are able to control the assets held | tual funds, regulated investment companies, its assets are widely diversified; and (ii) in the mutual fund, investment company, o |  |  |
| Owner of Interest   |   | Full Name of Company (Do not use a ticker symbol)   |  |  |
|   |   |   |  |  |
|   |   |   |  |  |
| B. Stock Options in a company or business?  ☐ Yes ☑ No  |   |   |  |  |
| Owner of Stock Option   | Full Name of C  | Company (Do not use a ticker symbol)  |  |  |
|   |   |   |  |  |
|   |   |   |  |  |
|   |   |   |  |  |
| C. Interests in a non-publicly owned comparartnerships, joint ventures, limited liability co  ☐ Yes ☑ No If "No", proceed to question | mpanies, limited liability partnerships, and  |   |  |  |
| Owner of Interest   |   | of Company or Business Entity   |  |  |
|   |   |   |  |  |
|   |   |   |  |  |

| C (1). For each non-publicly owned complease list the names of any other companies   |                         |   |   |  |  |
|--|-------------------------|---|---|--|--|
| valued at over \$10,000, if known.   |                         |   |   |  |  |
| Non-Publicly Owned Company or Bus<br>Primary Company)  | iness Entity (the       | Other Companies in which the Primary Company Owns<br>Security or Equity Interests |   |  |  |
| ☑ None or Not Known  |                         |   |   |  |  |
|  |                         |   |   |  |  |
| C (2). If you know that any company or   |                         |   | 2000年代,1900年第2日 - 東洋海県                                    |  |  |
| business contracts with the State of North Ca  |                         |   |   |  |  |
| Name of Company or Busines   | s Enuty                 | Description   | of Business Activity with the State                       |  |  |
| ☑ None or Not Known  |                         |   |   |  |  |
|  |                         |   |   |  |  |
|  |                         |   |   |  |  |
|  |                         |   |   |  |  |
| 4. As of December 31, 2015, were you, your value of \$10,000 or more that was created, es Do not list assets held in blind trusts. See 201 | tablished, or controlle | d by you?   |   |  |  |
| ☐ Yes ☑ No  Name and Address of Trustee  | Description             | of the Trust  | Your Relationship to the Trust                            |  |  |
| Name and Address of Trustee  | Description             | of the Trust  | Tour Relationship to the Trust                            |  |  |
|  | 5110)-                  |   |   |  |  |
|  |                         |   |   |  |  |
|  |                         |   |   |  |  |
| 5. As of December 31, 2015, did you, your sp   | ouse, or members of y   | our immediate fami  | ly have liabilities of \$10,000 or more,                  |  |  |
| excluding the mortgage on your primary pers loans and intra-family debt.  Yes No   | onal residence? Exam    | ples include credit ca  | ard debts, auto loans, student loans, personal            |  |  |
| Name of Debtor (You, Spouse, Immediate   | e Family Member)        | Type of Credi   | itor (Commercial Bank, Credit Union,<br>Individual, etc.) |  |  |
| PNC  |                         | Automobile loan   |   |  |  |

|   | 5. Include salary, wages, state/local   |   |   |
|---|---|---|---|
| dividends, rental income, busi  | ness income, and other types of inco  | ome required to be reported on you  | ir State and Tederal tax returns.   |
| Do <u>not</u> include income receive  Capital gains  Military retirement                                      | <ul> <li>red from the following sources:</li> <li>Federal government ret</li> <li>Social security income/S</li> </ul> |   |   |
| Recipient of Income   | Name of Source  | Type of Business/Industry   | Type of Income  |
| ☐ I had no reportable income  | over \$5,000 in 2015.   |   |   |
| James L. Gale   | State of North Carolina   | Court System  | Salary  |
| James L. Gale   | Elon University School of Law   | Adjunct Faculty Member  | Salary  |
| PROFESSIONAL AND CIV  | TC RELATIONSHIPS  | 1   |   |
| <ul> <li>✓ Yes □ No If "No", pro</li> <li>Do not list State boar</li> <li>Do not list organization</li> </ul> | ds or entities, or entities created by  | •   | <u> </u>  |
| Name of Person  | ons of which you are a mere memor   |   |   |
| Traine of Torbon  | His/Her Position  | Name of Nonprofit   | Nature of Business or Purpose<br>of Organization  |
|   |   | T   |   |
| James L. Gale 7(b). If the nonprofit corporati  | His/Her Position  | Name of Nonprofit Corporation or Organization Greensboro Urban Ministry  business with the State of North                                   | of Organization  Providing food, housing, and emergency assistance  Carolina or receive State funds,                                |
| James L. Gale  7(b). If the nonprofit corporati please provide a brief descript                               | His/Her Position  Board of Directors  ons or organizations listed above do  | Name of Nonprofit Corporation or Organization Greensboro Urban Ministry  business with the State of North known or with which due diligence | of Organization  Providing food, housing, and emergency assistance  Carolina or receive State funds,                                |
| James L. Gale  7(b). If the nonprofit corporati please provide a brief descript Name of Nonprofit Co          | His/Her Position  Board of Directors  ons or organizations listed above do ion of the nature of that business, if     | Name of Nonprofit Corporation or Organization Greensboro Urban Ministry  business with the State of North known or with which due diligence | of Organization  Providing food, housing, and emergency assistance  Carolina or receive State funds, see could reasonably be known. |
| James L. Gale  7(b). If the nonprofit corporati please provide a brief descript Name of Nonprofit Co          | His/Her Position  Board of Directors  ons or organizations listed above do ion of the nature of that business, if     | Name of Nonprofit Corporation or Organization Greensboro Urban Ministry  business with the State of North known or with which due diligence | of Organization  Providing food, housing, and emergency assistance  Carolina or receive State funds, see could reasonably be known. |
| James L. Gale  7(b). If the nonprofit corporati please provide a brief descript                               | His/Her Position  Board of Directors  ons or organizations listed above do ion of the nature of that business, if     | Name of Nonprofit Corporation or Organization Greensboro Urban Ministry  business with the State of North known or with which due diligence | Providing food, housing, and emergency assistance  Carolina or receive State funds, see could reasonably be known.                  |

| Please answer the following que   | estion as it pertains to the following  Special Judge (5)                                    | ; board/agency:<br>Superior Court) |                |   |
|-----------------------------------|--|------------------------------------|----------------|---|
|                                   | spouse, or members of your immed<br>cy group with an interest in matters                     | GE GEORGE                          |                |   |
|                                   | udicial Officer - You are not request a judicial officer or you are filing.                  |                                    | Tast.          | are filing because you are a                    |
| Do not list organization          | ns of which you are only a member  | (not serving in a lead             | dership role). |   |
| Name of Person                    |  | Organization or<br>ey Group        | Leadershi      | p Position (Director, Officer,<br>Board Member) |
|                                   |  |                                    |                |   |
|                                   | pany or business with which you wer, partner, proprietor, or member of Relationship to Filer |                                    | ember 31, 201  |   |
| ✓ No Business Associations        |  |                                    |                |   |
|                                   | pany or business entity listed in 9(a) or was regulated by the State as of                   |                                    |                |   |
|                                   | y or Business Entity   | Description                        | of Business A  | Activity with the State                         |
| ☑ Not applicable (No entities lis | sted on #9a) 🗹 No relationship / N   | Not known                          |                |   |
|                                   |  |                                    |                |   |
|                                   |  |                                    |                |   |

| 10. Are you a practicing attorn   |   |  |   |
|---|---|--|---|
|   | ney?  |  |   |
| ☐ Yes ☐ No ☑ Judicial C   | Officer/State Attorney  |  |   |
| If "Yes", check each category   | of legal representation in which  | h you or the law firm with wh  | nich you are affiliated has earned legal fee  |
| of more than \$10,000 during 2  | 2015.   | =  | en e  |
| ☐ Administrative  | □ Admiralty   | ☐ Corporate  | ☐ Criminal  |
| ☐ Decedent's Estates  | ☐ Environmental   | ☐ Insurance  | Labor   |
| Local Government  | ☐ Real Property   | ☐ Securities   | □Tax  |
| ☐ Tort litigation (including ☐ Utilities Regulation ☐ Other category not listed.  negligence)   |   |  | sted.   |
| The Allerton Control of the Control | licensed professional (other than   |  | vide consulting services individually or as   |
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| 12. Are you or your employer  | Special Ju, your spouse or members of your  | ndge (Superior Court) our immediate family, or their   |   |
| 12. Are you or your employer  | Special Ju  | ndge (Superior Court) our immediate family, or their   |   |
| 12. Are you or your employer  • Licensed by the State board   | Special Ju, your spouse or members of your  | our immediate family, or their ch you are or will be associate   | d or  |
| <ul> <li><u>Licensed by</u> the State board</li> <li><u>Regulated by</u> the State board</li> </ul>   | Special Ju<br>, your spouse or members of your<br>d or employing entity with which  | our immediate family, or their theyou are or will be associate ich you are or will be associate  | d or<br>red or  |
| 12. Are you or your employer  • Licensed by the State board  • Regulated by the State board  • Have a business relationshi  ☐ Yes ☐ No ☑ Legislator legislator  | Special Ju , your spouse or members of you dor employing entity with which rd or employing entity with which ip with the State board or employ r/Judicial Officer - You are no                  | our immediate family, or their ch you are or will be associate ich you are or will be associate oying entity with which you are or trequired to complete this quarter than the strength of the | d or<br>red or  |
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|   | Special Judge (St                               | uperior Court)                  |  |
| 15. During 2015 (but only the tin   | ne period after you were appointed,             | employed, or filed or were no   | ominated as a candidate) did you   |
| • accepted a "scholarship" excee  | ding \$200 from a person or group of            | of persons acting together and  | \$\frac{1}{2}\text{in \$\frac{1}\text{in \$\frac{1}{2}\text{in \$\frac{1}\text{in \$\frac{1}{2}\text{in \$\frac{1}{2}\te |
| • those person(s) were outside N  | orth Carolina and                               |                                 |  |
|   | your public position? A "scholarsh              | in? is a great in aid sither    | direct or indirect to attend a   |
|   | r event, including tuition, travel, l           |                                 |  |
|   |   |                                 |  |
| ☐ Yes ☐ No ☑ Judicial Official officia | cer - You are not required to compler appointee | ete uns question if you are a j | udicial officer or you are fifting as a  |
| <ul> <li>▶ Do not report gifts that</li> <li>Report for Exempted Pe</li> <li>▶ Legislators are not requ</li> </ul>  | have previously been reported by ye             | a nonpartisan legislative organ |  |
| Date of Scholarship   | Name and Address of                             | Describe Event                  | Estimated Market Value   |
| Dave of Seno-aromp  | Donor(s)  |                                 |  |
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| Please answer the following ques  | stion as it pertains to the following b         |                                 |  |
|   | Special Judge (St                               |                                 |  |
|   | ou being considered for an appointn             | nent to a covered board by the  | e Governor or another Council of   |
| State member? Council of State members are:   |   |                                 |  |
| • Governor  | • Lt. Governor                                  | Secretary of State              |  |
|   |   |                                 |  |
| State Auditor   | State Treasurer                                 |                                 | f Public Instruction   |
| Attorney General  | Commissioner of Agri                            | culture • Commissioner of       | f Labor  |
| Commissioner of Insurance   | e   |                                 |  |
| ☑ Yes ☐No   |   |                                 |  |
| If "Yes", list all contributions y  | ou (NOT immediate family mem                    | bers) made during 2015 wit      | h a cumulative total of more than  |
| \$1,000 to the Governor or othe   | r Council of State member who a                 | ppointed you.                   |  |
| Contributions are define  | ed in N.C.G.S. 163-278.6(6) and inc             | aluda but ara not limited to "  | ony advance conveyance denocit   |
|   | funds, loan, payment, gift, pledge of           |                                 |  |
| distribution, transfer of   | runds, roan, payment, girt, piedge o            | subscription of money of at     | lyuning of value whatsoever.   |
| Date  | Amou  | unt                             | Contributed to   |
|   |   |                                 |  |
| ☑ No contribution(s) with a cum   | ulative total of more than \$1,000              |                                 |  |
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| Are you an appointee or prospective appointee   | 10:  |                                 | 11  |                        |
|---|--|---------------------------------|---|------------------------|
| a. the head of a principal state department (e.g  | cabinet secretary) appointed by                                      | the Governor;                   | ☑ Yes If "No"                                 | □ No                   |
| b. a North Carolina Supreme Court Justice, Co   | ourt of Appeals, Superior or Distr                                   | ict Court Judge;                | 18.   |                        |
| or  |  |                                 |   |                        |
| c. a member of any of the following boards:   |  |                                 |   |                        |
| ABC Commission  |  |                                 |   |                        |
| <ul> <li>Coastal Resources Commission</li> </ul>  |  |                                 |   |                        |
| <ul> <li>State Board of Education</li> </ul>  |  |                                 |   |                        |
| <ul> <li>State Board of Elections</li> </ul>  |  |                                 |   |                        |
| <ul> <li>Division of Employment Security</li> </ul>   |  |                                 |   |                        |
| <ul> <li>Environmental Management Commission</li> </ul>   | on   |                                 |   |                        |
| <ul> <li>Industrial Commission</li> </ul>   |  |                                 |   |                        |
| <ul> <li>Human Resources Commission</li> </ul>  |  |                                 |   |                        |
| <ul> <li>Rules Review Commission</li> </ul>   |  |                                 |   |                        |
| <ul> <li>Board of Transportation</li> </ul>   |  |                                 |   |                        |
| <ul> <li>UNC Board of Governors</li> </ul>  |  | 1 7 7 1                         |   |                        |
| <ul> <li>Utilities Commission</li> </ul>  |  |                                 |   |                        |
| Wildlife Resources Commission   |  |                                 |   |                        |
| d. If so, were you appointed or are you being of position by a Council of State member? Council of State member?                                  |  | question 16.                    | <ul><li>Yes</li><li>Yes</li><li>18.</li></ul> | ', proceed to question |
| e. If so, you must indicate whether during 201  | 5 you (not immediate family men                                      | nbers) engaged                  | □Yes  | ☑ No                   |
| in any of the following activities with respect   | to or on behalf of the candidate of                                  | r campaign                      |   |                        |
| committee of the Council of State member wh   | o appointed you to your public pe                                    | osition:                        |   |                        |
| <ul> <li>i. Collected contributions from multiple contributions, and transferred or delivered or committee? Contributions are defined.</li> </ul> | I those collected contributions to                                   | ch multiple<br>the candidate    |   |                        |
| ii. Hosted a fundraiser at your residence of  | or place of business?  |                                 | □Yes  | ☑ No                   |
| iii. Volunteered for campaign-related acti<br>phone banks, event assistance, mailings,<br>advances the campaign of a candidate?                   | vities, which include, but are not canvassing, surveying, or any oth | limited to,<br>er activity that | □Yes  | ☑ No                   |
| iii. Volunteered for campaign-related acti  | vities, which include, but are not canvassing, surveying, or any oth | er activity that                | □Yes  | ☑ No                   |
| Yes ☑ No  |  |                                 |   |                        |
| Offense   | Date of Conviction C   | County of Convic                | tion  | State of Conviction    |
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|                  | are of any other information that you believe may a  | ussist the State Ethics Commission in advising you concerning your  |
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| ☐Yes ☑ No        | If yes, please provide such information below.   |   |
|                  | it yes, please provide such months access to see an  |   |
| AFFIRMATIO       | ON THE RESERVE OF THE PROPERTY |   |
|                  | e information provided in this Statement of Econon<br>best of my knowledge and belief.   | nic Interest and any attachments hereto are true, complete, and   |
|                  | at I have not transferred, and will not transfer, any e retaining an equitable interest.   | asset, interest, or property for the purpose of concealing it from  |
| I understand the | at my Statement of Economic Interest and any attac   | chments or supplements thereto (with the exception of the   |
| Confidential Fo  | orm regarding Unemancipated Children) are public   | record.   |
| I acknowledge    | that I have read and understand N.C.G.S. 138A-26   | regarding concealing or failing to disclose material information  |
| and N.C.G.S. 1   | 38A-27 regarding providing false information:  |   |
|                  | 6. Concealing or failing to disclose material information  |   |
| statement        | erson who knowingly conceals or knowingly fails to of economic interest under this Article shall be guider G.S. 138A-45.   | o disclose information that is required to be disclosed on a<br>lty of a Class 1 misdemeanor and shall be subject to disciplinary |
| 8 138A-27        | 7. Penalty for false information.  |   |
| A filing pe      | erson who provides false information on a statemer   | t of economic interest as required under this Article knowing that be subject to disciplinary action under G.S. 138A-45.          |
| ☑ I Agree. It is | s my intention that this check box constitutes my el   | ectronic signature. By checking this box I certify that the   |
| information      | provided in this Statement of Economic Interest an   | d any attachments hereto are true, complete, and accurate to the  |
| best of my k     | nowledge and belief.   |   |
|                  |  | 2/10/0216   |
|                  | Filed Electronically   | 3/10/2016   |
|                  | Signature  | Date  |
|                  | James Luther Gale, Sr.   |   |
|                  | Printed Name   |   |

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#### SENATE BILL 734: Statewide Standing Order/Opioid Antagonist.

2016-2017 General Assembly

Committee:

House Judiciary I

Introduced by:

Sens. Pate, Tucker, Robinson

Analysis of:

PCS to First Edition

S734-CSST-108

Date:

May 31, 2016

Prepared by: Erika Churchill

Committee Co-Counsel

SUMMARY: Senate Bill 734, a recommendation of the Joint Legislative Oversight Committee on Health and Human Service, amends the law on drug-related overdose treatment to authorize the State Health Director to issue a statewide standing order for an opioid antagonist allowing the overdose treatment drug to be more readily accessible.

The Proposed Committee substitute makes technical changes.

[As introduced, this bill was identical to H1000, as introduced by Reps. Avila, Dobson, Murphy, S. Martin, which is currently in House Health.]

#### **CURRENT LAW:**

G.S. 90-106.2, enacted in 2013 and amended in 2015, allows a practitioner to prescribe an opioid antagonist directly, or by standing order, to (i) a person at risk of experiencing an opiate-related overdose or to (ii) a family member, friend, or other person in a position to assist a person at risk of experiencing an opiate-related overdose. An "opioid antagonist" is defined as naloxone hydrochloride that is approved by the U.S. Food and Drug Administration for the treatment of drug overdoses.

If prescribed, a licensed pharmacist can dispense the opioid antagonist to the person at risk, or the person in a position to assist a person at risk, of experiencing an opiate related overdose. The person who receives the opioid antagonist may administer the opioid antagonist to another person if (i) the person has a good faith belief that the other person is experiencing a drug-related overdose and (ii) the person exercises reasonable care in administering the drug to the other person. Evidence of the use of reasonable care in administering the drug includes the receipt of basic instruction and information on how to administer an opioid antagonist.

Any practitioner who prescribes, pharmacist who dispenses, or person who administers an opioid antagonist is immune from any civil or criminal liability for actions authorized by the statute.

G.S. 130A-3 requires the State Health Director, appointed by the Secretary of Health and Human Services, to be a physician licensed to practice medicine in this State.

BILL ANALYSIS: The PCS for Senate Bill 734 recodifies G.S. 90-106.2 as G.S. 90-12.7, and provides that the State Health Director may issue a statewide standing order prescribing opioid antagonists to (i) a person at risk of experiencing an opiate-related overdose or to (ii) a family member, friend, or other person in a position to assist a person at risk of experiencing an opiate-related overdose.

Karen Cochrane-Brown Director



Legislative Analysis Division 919-733-2578

#### Senate PCS 734

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The PCS also makes a conforming change to specifically list the State Health Director among those individuals who are statutorily granted immunity from civil or criminal liability for actions authorized by the section.

**EFFECTIVE DATE:** Effective when it becomes law.

**BACKGROUND:** The Joint Legislative Oversight Committee on Health and Human Services heard a presentation and received handouts on April 12, 2016, regarding the need for a statewide standing order for naloxone in an effort to make the overdose treatment drug more readily accessible.

Naloxone hydrochloride is an opioid antagonist that reverses the effects of opioids (heroin and prescription drugs such as methadone, oxycodone, and hydrocodone). According to the Department of Health and Human Services (DHHS), "[b]etween 1999 and 2014, the number of unintentional medication or drug overdose deaths increased by over 330 percent in North Carolina." Under State law, a pharmacy cannot dispense naloxone without a prescription or standing order issued by a practitioner. A standing order signed by the North Carolina State Health Director would authorize any pharmacist practicing in the state of North Carolina to dispense naloxone. Routes of naloxone administration include intranasal and intramuscular (shoulder or thigh) and each person dispensed naloxone would receive education regarding use and the risk factors.

Since the enactment of <u>SL 2013-23</u> and <u>SL 2015-94</u>, entities across the State have established naloxone dispensing programs. In August 2015, local health departments received information on adopting naloxone standing orders. S.L. 2015-241, Sec 12F.15, provided funds to the Division of Mental Health, Developmental Disabilities, and Substance Abuses Services, DHHS, to purchase opioid antagonists for distribution by the NC Harm Reduction Coalition (NCHRC) and for distribution to NC law enforcement agencies. The NCHRC website provides access to <u>Overdose Rescue 101</u>, an information sheet on naloxone, and lists contacts for and locations where overdose rescue kits may be obtained. The DHHS reports that since August 2013, naloxone has been used to reverse more than 1,500 overdoses in North Carolina.

Maryland and Pennsylvania also have a statewide standing order for naloxone.

Theresa Matula substantially contributed to this summary.

#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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**SENATE BILL 734** PROPOSED HOUSE COMMITTEE SUBSTITUTE \$734-CSST-108 [v.5] D

| Short Title: | Statewide Standing Order/Opioid Antagonist. | (Public) |
|--------------|---|----------|
| Sponsors:    |   |          |
| Referred to: |   |          |
|              |   |          |

April 26, 2016 1 A BILL TO BE ENTITLED 2 AN ACT AUTHORIZING THE STATE HEALTH DIRECTOR TO PRESCRIBE OPIOID 3 ANTAGONIST BY MEANS OF A STATEWIDE STANDING ORDER, WITH IMMUNITY FROM CIVIL AND CRIMINAL LIABILITY FOR SUCH ACTION, AS RECOMMENDED 4 BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON HEALTH AND HUMAN 5 6 SERVICES. 7 The General Assembly of North Carolina enacts: **SECTION 1.** G.S. 90-106.2 is recodified as G.S. 90-12.7. 8 SECTION 2. G.S. 90-12.7, as enacted by Section 1 of this act, reads as rewritten: 9 "§ 90-12.7. Treatment of overdose with opioid antagonist; immunity. 10 As used in this section, "opioid antagonist" means naloxone hydrochloride that is 11 approved by the federal Food and Drug Administration for the treatment of a drug overdose. 12 13 The following individuals may prescribe an opioid antagonist in the manner prescribed by this subsection: 14 15 A practitioner acting in good faith and exercising reasonable care may directly (1) or by standing order prescribe an opioid antagonist to (i) a person at risk of 16 experiencing an opiate-related overdose or (ii) a family member, friend, or 17 other person in a position to assist a person at risk of experiencing an 18 opiate-related overdose. As an indicator of good faith, the practitioner, prior to 19 prescribing an opioid under this subsection, may require receipt of a written 20 21 communication that provides a factual basis for a reasonable conclusion as to 22 either of the following: 23 The person seeking the opioid antagonist is at risk of experiencing an opiate-related overdose. 24 25 The person other than the person who is at risk of experiencing an  $\frac{(2)b}{(2)}$ opiate-related overdose, and who is seeking the opioid antagonist, is in 26 relation to the person at risk of experiencing an opiate-related overdose: 27 28 A family member, friend, or other person. a.1. In the position to assist a person at risk of experiencing an 29 <del>b.</del>2. 30 opiate-related overdose. 31 (2) subdivision (1) of this subsection by means of a statewide standing order. 32

The State Health Director may prescribe an opioid antagonist pursuant to

A pharmacist may dispense an opioid antagonist to a person described in subsection (b)subsection (b)(1) of this section pursuant to a prescription issued in accordance with pursuant to subsection (b) of this section. For purposes of this section, the term "pharmacist" is as defined in G.S. 90-85.3.



- 1 2 3 4 5 6
- (c) A person who receives an opioid antagonist that was prescribed pursuant to subsection (b) of this section may administer an opioid antagonist to another person if (i) the person has a good faith belief that the other person is experiencing a drug-related overdose and (ii) the person exercises reasonable care in administering the drug to the other person. Evidence of the use of reasonable care in administering the drug shall include the receipt of basic instruction and information on how to administer the opioid antagonist.
- 7 8
- (d) All of the following individuals are immune from any civil or criminal liability for actions authorized by this section:
- 9 10
- (1) Any practitioner who prescribes an opioid antagonist pursuant to subsection (b) of this section.
- 11 12
- (1a) Any pharmacist who dispenses an opioid antagonist pursuant to subsection (b1) of this section.
- 13
- (2) Any person who administers an opioid antagonist pursuant to subsection (c) of this section.
- 14 15
- (3) The State Health Director acting pursuant to subsection (b) of this section."
- 16
- **SECTION 2.** This act is effective when it becomes law.



## **SENATE BILL 570: Expunction Process Modifications.**

2016-2017 General Assembly

Committee:

House Judiciary 1

Introduced by:

Sens. Bryant, McKissick, Daniel

Analysis of:

PCS to Fourth Edition

S570-CSST-107

Date:

June 8, 2016

Prepared by: Amy Darden

Committee Counsel

#### SUMMARY: The Proposed Committee Substitute for Senate Bill 570 would:

- Provide law enforcement and district attorneys electronic access to view a Petition for Expunction, with the exception of certain petitions, to be used in sentencing hearings of repeat offenders;
- Allow certain expunged convictions to be used to calculate prior record level during sentencing; and
- Establish a uniform procedure for filing Petitions for Expunction.

[As introduced, this bill was identical to H650, as introduced by Reps. Hardister, Brockman, Faircloth, Fisher, which is currently in House Judiciary I.]

CURRENT LAW: In limited circumstances, North Carolina law permits the expunction of certain offenses from a person's criminal record. Expunction is the process by which a record of criminal conviction is removed by order of the court, and a person is restored to the status the person occupied before the arrest or indictment. The terms "expunction" and "expungement" are often used interchangeably, and both appear in the statutes. There are several requirements that must be met for expunction, and a person may generally be granted only one expunction in his or her lifetime.

The qualified person may file a Petition for Expunction with the court where convicted. Depending on the type of conviction, the petition has various requirements under the specific statute for that conviction, generally including an application for a criminal background check, an affidavit by the petitioner of good behavior, and verified affidavits by two unrelated people of the petitioner's character and reputation. The application for a criminal background check must be on an Administrative Office of the Courts (AOC) approved form. The application is sent to the Department of Public Safety and the AOC for name-based State and national criminal record searches. The petition must also be approved by the District Attorney's office. If, after a hearing, the court determines the petition has met all the requirements, then the court orders the matter be expunged from the records of the court and all law enforcement agencies are directed to do the same.

#### **BILL ANALYSIS:** The PCS for Senate Bill 570 would do the following:

• Establish a uniform procedure for filing a Petition for Expunction requiring the application for a criminal background check to be filed with the clerk of superior court, who would then obtain the authorizing signature of the judge then presiding in the county of conviction and forward the signed application to the Department of Public Safety and the AOC.

Karen Cochrane-Brown Director



Legislative Analysis Division 919-733-2578

#### Senate PCS 570

#### Page 2

- Reduce the waiting period to expunge a first-time nonviolent felony from 15 years to 10 years and make the waiting period 5 years for a nonviolent misdemeanor.
- Eliminate the "same 12 month period of time" restriction and the "prior expungement" disqualification for charges that are dismissed or findings of not guilty, as long as the applicant has not been convicted of a felony offense.
- Require any petition for expunction to be on an AOC approved form.
- Require the AOC to add the petitions sent by the county clerks to the confidential file they currently maintain containing the names of those persons granted expunction, which may only be disclosed as provided by statute.
- Provide electronic access to all State and local law enforcement agencies and all prosecutors to the confidential AOC file for any expungement granted on or after December 1, 2016, for the following expungements:
  - o First offenders under the age of 18 at the time of conviction of misdemeanor; certain other misdemeanors, G.S. 15A-145.
  - First offenders under the age of 18 at the time of conviction of certain gang offenses. G.S. 15A-145.1.
  - First offenders not over 21 years of age at the time of the offense of certain drug offenses.
     G.S. 15A-145.2.
  - o First offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses. G.S. 15A-145.3.
  - o First offenders who are under 18 years of age at the time of the commission of a nonviolent felony. G.S. 15A-145.4.
  - o Certain misdemeanors and felonies no age limitation. G.S. 15A-145.5.
  - o Certain defendants convicted of prostitution. G.S. 15A-145.6.
  - O Dismissed charges or findings of not guilty. G.S. 15A-146(a) and (a1).

State and local enforcement and prosecutors would not have access to the record of the following expungements:

- Dismissed charges or findings of not guilty as a result of identity theft or mistaken identity. G.S. 15A-147.
- Expunction of DNA records when charges are dismissed on appeal or pardon of innocence is granted. G.S. 15A-148.
- Pardon of innocence. G.S. 15A-149.
- With the exception of expungements for dismissed charges or findings of not guilty, if available to State and local law enforcement and prosecutors, the underlying criminal conviction that was expunged may be used to calculate prior record level at sentencing.

**EFFECTIVE DATE:** Effective December 1, 2016, and applies to petitions for expunction filed on or after that date.

#### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

SENATE BILL 570

# Judiciary II Committee Substitute Adopted 4/21/15 Judiciary II Committee Substitute Adopted 4/28/15 House Committee Substitute Favorable 6/25/15

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#### PROPOSED HOUSE COMMITTEE SUBSTITUTE S570-CSST-107 [v.9] 06/07/2016 08:13:06 PM

| Short Title: | Expungement Process Modifications. | (Public) |
|--------------|------------------------------------|----------|
| Sponsors:    |                                    |          |
| Referred to: |                                    |          |

#### March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO STANDARDIZE THE FILING PROCEDURES FOR EXPUNGEMENTS, TO AUTHORIZE LAW ENFORCEMENT AND PROSECUTORS ACCESS TO CERTAIN RECORDS OF EXPUNGEMENT, TO ALLOW CERTAIN EXPUNGED CRIMINAL ACTS TO BE CONSIDERED IN CALCULATING PRIOR RECORD LEVELS DURING SENTENCING FOR SUBSEQUENT OFFENSES, AND TO MAKE OTHER MODIFICATIONS TO THE EXPUNGEMENT PROCESS.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 5 of Chapter 15A of the General Statutes reads as rewritten:

"Article 5.

"Expunction of Records.

### § 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.

- (a) Whenever any person who has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, (i) pleads guilty to or is guilty of a misdemeanor other than a traffic violation, and the offense was committed before the person attained the age of 18 years, or (ii) pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), and the offense was committed before the person attained the age of 21 years, he may file a petition in the court of the county where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than: (i) two years after the date of the conviction, or (ii) the completion of any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:
  - An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.
  - (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.



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(4) Repealed by Session Laws 2010-174, s. 2, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.

Session 2015

- (4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be <u>filed with the clerk of superior court</u>. The clerk of superior court shall obtain the authorizing signature of the <u>judge then presiding in that county and forwardedforward the signed application</u> to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the
- (5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

- (a1) Nothing in this section shall be interpreted to allow the expunction of any offense involving impaired driving as defined in G.S. 20-4.01(24a).
- (b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the misdemeanor in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and (i) petitioner was not 18 years old at the time of the offense in question, or (ii) petitioner was not 21 years old at the time of the offense of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information.
- (b1) No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.
- (c) The court shall also order that the misdemeanor conviction, or a civil revocation of a drivers license as the result of a criminal charge, be expunged from the records of the court. The court shall direct all law-enforcement agencies, the Division of Adult Correction of the Department of Public Safety, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the petitioner's conviction or a civil revocation of a drivers license as the result of a criminal charge. This subsection does not apply to civil or criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. The clerk shall forward a certified copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also expunged. The civil revocation of a drivers license shall not be

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expunged prior to a final disposition of any pending civil or criminal charge based upon the civil revocation.

- (d) The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.
  - (d1) Repealed by Session Laws 2012-191, s. 3, effective December 1, 2012.
- (e) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent.

### § 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.

- (a) Whenever any person who has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of (i) a Class H felony under Article 13A of Chapter 14 of the General Statutes or (ii) an enhanced offense under G.S. 14-50.22, or has been discharged and had the proceedings against the person dismissed pursuant to G.S. 14-50.29, and the offense was committed before the person attained the age of 18 years, the person may file a petition in the court of the county where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, whichever occurs later. The petition shall contain, but not be limited to, the following:
  - (1) An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.
  - (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.
  - (3) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
  - (4) Repealed by Session Laws 2010-174, s. 4, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.
  - (4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be <u>filed with the clerk of superior</u> court. The clerk of superior court shall obtain the authorizing signature of the

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judge then presiding in that county and forwarded forward the signed application to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the An affidavit by the petitioner that no restitution orders or civil judgments

(5) representing amounts ordered for restitution entered against the petitioner are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.

- If the court, after hearing, finds that (i) the petitioner was dismissed and the proceedings against the petitioner discharged pursuant to G.S. 14-50.29 and that the person had not yet attained 18 years of age at the time of the offense or (ii) the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic violation for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner, and the petitioner had not attained the age of 18 years at the time of the offense in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information, and that the record be expunged from the records of the court.
- No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment or information, or trial, or response to any inquiry made of the person for any purpose. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.
- The court shall also direct all law enforcement agencies, the Division of Adult Correction of the Department of Public Safety, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the petitioner's criminal charge and any conviction resulting from the charge. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.
- This section is supplemental and in addition to existing law and shall not be construed (c) so as to repeal any existing provision contained in the General Statutes of North Carolina.
- A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent.

#### § 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.

Whenever a person is discharged, and the proceedings against the person dismissed, (a) pursuant to G.S. 90-96(a) or (a1), and the person was not over 21 years of age at the time of the offense, the person may apply to the court of the county of where charged for an order to expunge

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from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application petition the following:

- An affidavit by the petitioner that he or she has been of good behavior during (1) the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state;
- Verified affidavits by two persons who are not related to the petitioner or to (2) each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he or she lives, and that the petitioner's character and reputation are good;
- Repealed by Session Laws 2010-174, s. 5, effective October 1, 2010, and (3) applicable to petitions for expunctions filed on or after that date.
- An application on a form approved by the Administrative Office of the Courts (3a)requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall filed with the clerk of superior court. The clerk of superior court shall obtain the authorizing signature of the judge then presiding in that county and forwarded forward the signed application to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him or her dismissed and that the person was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information.

- No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.
- The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies, the Division of Adult Correction, the Division of Motor Vehicles, and any other State and local government agencies identified by the petitioner as bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.
- Whenever any person is charged with a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules I through VI of Article 5 of Chapter 90 of the General Statutes or a felony under G.S. 90-95(a)(3), upon dismissal by the State of the charges against the person, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his or her arrest, indictment or information, or trial. If the court determines, after hearing, that such person was not over 21 years of age at the time the offense for which the person was charged occurred, it shall enter such order.

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The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

Whenever any person who has not previously been convicted of (i) any felony offense under any state or federal laws; (ii) any offense under Chapter 90 of the General Statutes; or (iii) an offense under any statute of the United States or any state relating to controlled substances included in any schedule of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes, pleads guilty to or has been found guilty of a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules I through VI of Chapter 90, or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or pleads guilty to or has been found guilty of a felony under G.S. 90-95(a)(3), the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of Article 5 of Chapter 90 of the General Statutes, except as provided in G.S. 15A-151.5. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the petitioner's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes for possessing a controlled substance included within Schedules I through VI of Article 5 of Chapter 90 of the General Statutes or for possessing drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3), that the petitioner has no disqualifying previous convictions as set forth in this subsection, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status the petitioner occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it

likely that the petitioner would not benefit from the program of instruction.

 The court shall also order all law enforcement agencies, the Department of Correction, Public Safety, the Division of Motor Vehicles, and any other State or local agencies identified by the petitioner as bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(d) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent.

# § 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.

- (a) Whenever a person is discharged and the proceedings against the person dismissed under G.S. 90-113.14(a) or (a1), such person, if he or she was not over 21 years of age at the time of the offense, may apply to the court of the county where charged for an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application petition the following:
  - (1) An affidavit by the petitioner that the petitioner has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state;
  - (2) Verified affidavits by 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 his or her character and reputation are good;
  - (3) Repealed by Session Laws 2010-174, s. 6, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.
  - (3a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be <u>filed with the clerk of superior court</u>. The clerk of superior court shall obtain the authorizing signature of the <u>judge then presiding in that county and forwardedforward the signed application</u> to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against the person dismissed and that he or she was not over 21 years of age at the time of the

offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

- (b) Whenever any person is charged with a misdemeanor under Article 5A of Chapter 90 of the General Statutes or possessing drug paraphernalia as prohibited by G.S. 90-113.22, upon dismissal by the State of the charges against the person or upon entry of a nolle prosequi or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to the person's arrest, indictment or information, and trial. If the court determines, after hearing that such person was not over 21 years of age at the time the offense for which the person was charged occurred, it shall enter such order. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.
- (b1) No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.
- Whenever any person who has not previously been convicted of an offense under Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of violation of Article 5A of Chapter 90 of the General Statutes except as provided in G.S. 15A-151.5. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by G.S. 90-113.22, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug

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education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(d) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent.

# § 15A-145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.

- (a) For purposes of this section, the term "nonviolent felony" means any felony except the following:
  - (1) A Class A through G felony.
  - (2) A felony that includes assault as an essential element of the offense.
  - (3) A felony that is an offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.
  - (4) Repealed by Session Laws 2012-191, s. 2, effective December 1, 2012.
  - (5) Any felony offense under the following sex-related or stalking offenses: G.S. 14-27.25(b), 14-27.30(b), 14-190.7, 14-190.8, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.
  - (6) Any felony offense in Chapter 90 of the General Statutes where the offense involves methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine; except that if a prayer for judgment continued has been entered for an offense classified as either a Class G, H, or I felony, the prayer for judgment continued shall be subject to expunction under the procedures in this section.
  - (7) A felony offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any felony offense for which punishment was determined pursuant to G.S. 14-3(c).
  - (8) A felony offense under G.S. 14-401.16.
  - (9) Any felony offense in which a commercial motor vehicle was used in the commission of the offense.
  - (10) Any felony offense involving impaired driving as defined in G.S. 20-4.01(24a).

- (b) Notwithstanding any other provision of law, if the person is convicted of more than one nonviolent felony in the same session of court and none of the nonviolent felonies are alleged to have occurred after the person had already been served with criminal process for the commission of a nonviolent felony, then the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction under this section, and the expunction order issued under this section shall provide that the multiple nonviolent felony convictions shall be expunged from the person's record in accordance with this section.
- (c) Whenever any person who had not yet attained the age of 18 years at the time of the commission of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court of the county where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition shall not be filed earlier than four years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain the following:
  - (1) An affidavit by the petitioner that the petitioner has been of good moral character since the date of conviction of the nonviolent felony in question and has not been convicted of any other felony or any misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.
  - (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.
  - (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
  - (4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing (i) a State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual; (ii) a search by the Department of Public Safety 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 filed with the clerk of superior court. The clerk of superior court shall obtain the authorizing signature of the judge then presiding in that county and forwarded forward the signed application to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.
  - (5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.
  - (6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.
  - (7) An affidavit by the petitioner that the petitioner possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.

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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.

- 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 nonviolent felony under this section:
  - Call upon a probation officer for additional investigation or verification of the (1) petitioner's conduct during the four-year period since the date of conviction of the nonviolent felony in question.
  - Review the petitioner's juvenile record, ensuring that the petitioner's juvenile (2) records remain separate from adult records and files and are withheld from public inspection as provided under Article 30 of Chapter 7B of the General Statutes.
  - Review the amount of restitution made by the petitioner to the victim of the (3) nonviolent felony to be expunged and give consideration to whether or not restitution was paid in full.
  - Review any other information the court deems relevant, including, but not (4) limited to, affidavits or other testimony provided by law enforcement officers, district attorneys, and victims of nonviolent felonies committed by the petitioner.
- The court may order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:
  - The petitioner has remained of good moral character and has been free of (1) conviction of any felony or misdemeanor, other than a traffic violation, for four years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation, or post-release supervision has been served, whichever is later.
  - The petitioner has not previously been convicted of any felony or misdemeanor (2) other than a traffic violation under the laws of the United States or the laws of this State or any other state.
  - The petitioner has no outstanding warrants or pending criminal cases. (3)
  - The petitioner has no outstanding restitution orders or civil judgments (4) representing amounts ordered for restitution entered against the petitioner.
  - The petitioner was less than 18 years old at the time of the commission of the (5) offense in question.
  - The petitioner has performed at least 100 hours of community service since the (6) time of the conviction and possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development
  - (7) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.
- No person as to whom an order has been entered pursuant to subsection (e) 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. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(f1) Persons pursuing certification under the provisions of Chapter 17C or 17E of the General Statutes, however, shall disclose any and all felony convictions to the certifying Commission regardless of whether or not the felony convictions were expunged pursuant to the provisions of this section.

Persons required by State law to obtain a criminal history record check on a prospective employee shall not be deemed to have knowledge of any convictions expunged under this section.

- (g) The court shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.
- (h) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also vacate any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. A person whose administrative action has been vacated by an occupational licensing board pursuant to an expunction under this section may then reapply for licensure and must satisfy the board's then current education and preliminary licensing requirements in order to obtain licensure. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.
- (i) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section.
- (j) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent.

## § 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.

- (a) For purposes of this section, the term "nonviolent misdemeanor" or "nonviolent felony" means any misdemeanor or felony except the following:
  - (1) A Class A through G felony or a Class A1 misdemeanor.
  - (2) An offense that includes assault as an essential element of the offense.
  - (3) An offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.
  - (4) Any of the following sex-related or stalking offenses: G.S. 14-27.25(b), 14-27.30(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.
  - (5) Any felony offense in Chapter 90 of the General Statutes where the offense involves methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine.
  - (6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for which punishment was determined pursuant to G.S. 14-3(c).
  - (7) An offense under G.S. 14-401.16.
  - (7a) An offense under G.S. 14-54(a), 14-54(a1), or 14-56.

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- (8) Any felony offense in which a commercial motor vehicle was used in the commission of the offense.
- (8a) An offense involving impaired driving as defined in G.S. 20-4.01(24a).
- (9) Any offense that is an attempt to commit an offense described in subdivisions (1) through (8a) of this subsection.
- (b) Notwithstanding any other provision of law, if the person is convicted of more than one nonviolent felony or nonviolent misdemeanor in the same session of court and none of the nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person had already been served with criminal process for the commission of a nonviolent felony or nonviolent misdemeanor, then the multiple nonviolent felony or nonviolent misdemeanor convictions shall be treated as one nonviolent felony or nonviolent misdemeanor conviction under this section, and the expunction order issued under this section shall provide that the multiple nonviolent felony convictions or nonviolent misdemeanor convictions shall be expunged from the person's record in accordance with this section.
- (c) A person may file a petition, in the court of the county where the person was convicted, for expunction of a nonviolent misdemeanor or nonviolent felony conviction from the person's criminal record if the person has no other misdemeanor or felony convictions, other than a traffic The petition shall not be filed earlier than 15–10 years after the date of the conviction for a nonviolent felony or five years for a nonviolent misdemeanor or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The petition shall contain, but not be limited to, the following:
  - (1) An affidavit by the petitioner that the petitioner has been of good moral character since the date of conviction for the nonviolent misdemeanor or nonviolent felony and has not been convicted of any other felony or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state.
  - (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.
  - (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
  - (4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual, a search by the Department of Public Safety for any outstanding warrants on pending criminal cases, and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be filed with the clerk of superior court. The clerk of superior court shall obtain the authorizing signature of the judge then presiding in that county and forwarded forward the signed application to the Department of Public Safety 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.

Upon filing of the petition, 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. Upon good cause shown, the court may grant the district attorney an

additional 30 days to file objection to the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

The presiding judge is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct since the conviction. The court shall review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers, district attorneys, and victims of crimes committed by the petitioner.

If the court, after hearing, finds that the petitioner has not previously been granted an expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or 15A-145.4; the petitioner has remained of good moral character; the petitioner has no outstanding warrants or pending criminal cases; the petitioner has no other felony or misdemeanor convictions other than a traffic violation; the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner; and the petitioner was convicted of an offense eligible for expunction under this section and was convicted of, and completed any sentence received for, the nonviolent misdemeanor orfor, a nonviolent felony at least 15-10 years prior to the filing of the petition, petition or a nonviolent misdemeanor at least five years prior to the filing of the petition, it may order that such person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information information, except as provided in G.S. 15A-151.5. If the court denies the petition, the order shall include a finding as to the reason for the denial.

- (d) No person as to whom an order has been entered pursuant to subsection (c) of this section shall be held thereafter under any provision of any law 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. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.
- (d1) Persons pursuing certification under the provisions of Chapter 17C or 17E of the General Statutes, however, shall disclose any and all convictions to the certifying Commission, regardless of whether or not the 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.

- (e) The court shall also order that the conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order, as provided in G.S. 15A-150.
- (f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section upon receipt from the petitioner of an order entered pursuant to this section. The agency shall also vacate any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. A person whose administrative action has been vacated by an occupational licensing board pursuant to an expunction under this section may then reapply for licensure and must satisfy the board's then current education and preliminary licensing requirements in order to obtain licensure. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.
- (g) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent.

## § 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 of G.S. 14-204 or (ii) engaging in prostitution in violation of G.S. 14-204(7) for an offense that occurred prior to October 1, 2013.
  - (2) Violent felony or violent misdemeanor. A Class A through G felony or a Class A1 misdemeanor 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 of the county 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:
    - 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 have 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. 14-204(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 Public Safety using any information required by the Administrative Office of the Courts to identify the individual; (ii) a search by the Department of Public Safety 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 filed with the clerk of superior court. The clerk of superior court shall obtain the authorizing signature of the judge then presiding in that county and forwardedforward the signed application to the Department of Public Safety 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. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.
- (g1) 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.

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(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.

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# § 15A-146. Expunction of records when charges are dismissed or there are findings of not guilty.

- If any person is charged with a crime, either a misdemeanor or a felony, or was charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to petition the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application petition and, upon finding that the person had not previously received an expungement under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, or 15A-145.5, and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial. If any person is charged with a crime, either a misdemeanor or a felony, or an infraction under G.S. 18B-302(i) prior to December 1, 1999, and a finding of not guilty or not responsible is entered, that person may petition to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to apprehension or trial of that crime. The court shall hold a hearing on the petition and upon finding that the person had not previously been convicted of any felony under the law of the United States, this State or any other state, the court shall order the expunction.
- Notwithstanding subsection (a) of this section, if a person is charged with multiple offenses and all the charges are dismissed, or findings of not guilty or not responsible are made, then a person may apply petition to have each of those the dismissed charges expunged if the offenses occurred within the same 12-month period of time or if the charges are dismissed or findings are made at the same term of court. Unless circumstances otherwise clearly provide, the phrase "term of court" shall mean one week for superior court and one day for district court. There is no requirement that the multiple offenses arise out of the same transaction or occurrence or that the multiple offenses were consolidated for judgment expunged. The court shall hold a hearing on the application petition. If the court finds (i) that the person had not previously received an expungement under this subsection, or that any previous expungement received under this subsection occurred prior to October 1, 2005 and was for an offense that occurred within the same 12-month period of time, or was dismissed or findings made at the same term of court, as the offenses that are the subject of the current application, (ii) that the person had not previously received an expungement under G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, or 15A-145.5, and (iii) that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction.
- (a2) If any person is charged with a crime either a misdemeanor or a felony, or an infraction under G.S. 18B-302(i) prior to December 1, 1999, and a finding of not guilty or not responsible is entered, that person may petition the court of the county where the charge was brought for an order to expunge from all official records any entries relating to apprehension or trial of that crime. The court shall hold a hearing on the petition and upon finding that the person had not previously been convicted of any felony under the law of the United States, this State or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of

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otherwise giving a false statement or response to any inquiry made for any purpose, by reason of failure to recite or acknowledge any expunged entries concerning that crime. If a person is charged with multiple offenses and finding of not guilty or not responsible are made on charges, then a person may petition to have each of the charges disposed by a finding of not guilty or not responsible expunged. The court shall hold a hearing on the petition. If the court finds that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction.

(a3) No person as to whom such an order has been entered <u>under this section</u> shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial.

- (b) The court may also order that the said entries, including civil revocations of drivers licenses as a result of the underlying charge, shall be expunged from the records of the court, and direct all law-enforcement agencies, the Division of Adult Correction of the Department of Public Safety, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the entries, including civil revocations of drivers licenses as a result of the underlying charge being expunged. This subsection does not apply to civil or criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. The clerk shall forward a certified copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also expunged. The civil revocation of a drivers license shall not be expunged prior to a final disposition of any pending civil or criminal charge based upon the civil revocation. The costs of expunging the records, as required under G.S. 15A-150, shall not be taxed against the petitioner.
- (b1) Any person entitled to expungement under this section may also apply to the court for an order expunging DNA records when the person's case has been dismissed by the trial court and the person's DNA record or profile has been included in the State DNA Database and the person's DNA sample is stored in the State DNA Databank. A copy of the application for expungement of the DNA record or DNA sample shall be served on the district attorney for the judicial district in which the felony charges were brought not less than 20 days prior to the date of the hearing on the application. If the application for expungement is granted, a certified copy of the trial court's order dismissing the charges shall be attached to an order of expungement. The order of expungement shall include the name and address of the defendant and the defendant's attorney and shall direct the North Carolina State Crime Laboratory to send a letter documenting expungement as required by subsection (b2) of this section.
- (b2) Upon receiving an order of expungement entered pursuant to subsection (b1) of this section, the North Carolina State Crime Laboratory shall purge the DNA record and all other identifying information from the State DNA Database and the DNA sample stored in the State DNA Databank covered by the order, except that the order shall not apply to other offenses committed by the individual that qualify for inclusion in the State DNA Database and the State DNA Databank. A letter documenting expungement of the DNA record and destruction of the DNA sample shall be sent by the North Carolina State Crime Laboratory to the defendant and the defendant's attorney at the address specified by the court in the order of expungement.
- (c) Any petition for expungement under this section shall be on a form approved by the Administrative Office of the Courts and be filed with the clerk of superior court. The Upon order of expungement, the clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. G.S. 15A-150 and forward the petition to the Administrative Office of the Courts.
- (d) A person charged with a crime that is dismissed pursuant to compliance with a deferred prosecution agreement or the terms of a conditional discharge and who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one

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hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent.

# § 15A-147. Expunction of records when charges are dismissed or there are findings of not guilty as a result of identity theft or mistaken identity.

- (a) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of another person using the identifying information of the named person or mistaken identity and a finding of not guilty is entered, or the conviction is set aside, the named person may apply by petition or written motion to the court where the charge was last pending on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. The court, after notice to the district attorney, shall hold a hearing on the motion or petition and, upon finding that the person's identity was used without permission and the charges were dismissed or the person was found not guilty, the court shall order the expunction.
- (a1) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of another person using the identifying information of the named person or mistaken identity, and the charge against the named person is dismissed, the prosecutor or other judicial officer who ordered the dismissal shall provide notice to the court of the dismissal, and the court shall order the expunction of all official records containing any entries relating to the person's apprehension, charge, or trial.
- (a2) Any petition for expungement under this section shall be on a form approved by the Administrative Office of the Courts and be filed with the clerk of superior court. Upon order of expungement, the clerk shall forward the petition to the Administrative Office of the Courts.
- (b) No person as to whom such an order has been entered under this section shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of the person's failure to recite or acknowledge any expunged entries concerning apprehension, charge, or trial.
- (c) The court shall also order that the said entries shall be expunged from the records of the court and direct all law enforcement agencies, the Division of Adult Correction of the Department of Public Safety, the Division of Motor Vehicles, or any other State or local government agencies identified by the petitioner, or the person eligible for automatic expungement under subsection (a1) of this section, as bearing record of the same to expunge their records of the entries. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. The costs of expunging the records, as required under G.S. 15A-150, shall not be taxed against the petitioner.
- (d) The Division of Motor Vehicles shall expunge from its records entries made as a result of the charge or conviction ordered expunged under this section. The Division of Motor Vehicles 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, including the assessment of drivers license points and drivers license suspension or revocation. Notwithstanding any other provision of this Chapter, the Division of Motor Vehicles shall provide to the person whose motor vehicle record is expunged under this section a certified corrected driver history at no cost and shall reinstate at no cost any drivers license suspended or revoked as a result of a charge or conviction expunged under this section.
- (e) The Division of Adult Correction of the Department of Public Safety and any other applicable State or local government agency shall expunge its records as provided in

- G.S. 15A-150. 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. Notwithstanding any other provision of law, the normal fee for any reinstatement of a license or privilege resulting under this section shall be waived.
- (f) Any insurance company that charged any additional premium based on insurance points assessed against a policyholder as a result of a charge or conviction that was expunged under this section shall refund those additional premiums to the policyholder upon notification of the expungement.
- (g) For purposes of this section, the term "mistaken identity" means the erroneous arrest of a person for a crime as a result of misidentification by a witness or law enforcement, confusion on the part of a witness or law enforcement as to the identity of the person who committed the crime, misinformation provided to law enforcement as to the identity of the person who committed the crime, or some other mistake on the part of a witness or law enforcement as to the identity of the person who committed the crime.

# § 15A-148. Expunction of DNA records when charges are dismissed on appeal or pardon of innocence is granted.

- (a) Upon a motion by the defendant following the issuance of a final order by an appellate court reversing and dismissing a conviction of an offense for which a DNA analysis was done in accordance with Article 13 of Chapter 15A of the General Statutes, or upon receipt of a pardon of innocence with respect to any such offense, the court shall issue an order of expungement of the DNA record and samples in accordance with subsection (b) of this section. The order of expungement shall include the name and address of the defendant and the defendant's attorney and shall direct the North Carolina State Crime Laboratory to send a letter documenting expungement as required by subsection (b) of this section.
- (b) When an order of expungement has been issued pursuant to subsection (a) of this section, the order of expungement, together with a certified copy of the final appellate court order reversing and dismissing the conviction or a certified copy of the instrument granting the pardon of innocence, shall be provided to the North Carolina State Crime Laboratory by the clerk of court. Upon receiving an order of expungement for an individual whose DNA record or profile has been included in the State DNA Database and whose DNA sample is stored in the State DNA Databank, the DNA profile shall be expunged and the DNA sample destroyed by the North Carolina State Crime Laboratory, except that the order shall not apply to other offenses committed by the individual that qualify for inclusion in the State DNA Database and the State DNA Databank. A letter documenting expungement of the DNA record and destruction of the DNA sample shall be sent by the North Carolina State Crime Laboratory to the defendant and the defendant's attorney at the address specified by the court in the order of expungement. The North Carolina State Crime Laboratory shall adopt procedures to comply with this subsection.
- (c) Any petition for expungement under this section shall be on a form approved by the Administrative Office of the Courts and be filed with the clerk of superior court. Upon order of expungement, the clerk shall forward the petition to the Administrative Office of the Courts.

## § 15A-149. Expunction of records when pardon of innocence is granted.

(a) If any person is convicted of a crime and receives a pardon of innocence, the person may apply by petition or written motion to the court in which the person was convicted on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. Upon receipt of the petition or written motion, petition, the clerk of court shall verify that an attested copy of the warrant and return granting a pardon of innocence has been filed with the court in accordance with G.S. 147-25. Upon verification by the clerk that the warrant and return have been filed, the court shall issue an order of expunction.

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- The order of expunction shall include an instruction that any entries relating to the person's apprehension, charge, or trial shall be expunged from the records of the court and direct all law enforcement agencies, the Division of Adult Correction of the Department of Public Safety, the Division of Motor Vehicles, or any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the entries. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A 150. G.S. 15A-150 and shall forward the petition to the Administrative Office of the Courts. The costs of expunging the records, as required under G.S. 15A-150, shall not be taxed against the petitioner.
- (c) No person as to whom such an order has been entered under this section shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of the person's failure to recite or acknowledge any expunged entries concerning apprehension, charge, or trial.

#### § 15A-150. Notification requirements.

- Notification to AOC. The clerk of superior court in each county in North Carolina (a) shall, as soon as practicable after each term of court, file with the Administrative Office of the Courts the petitions received under this Article, any orders of expunction, and the names of the following:
  - (1) Persons granted an expunction under this Article.
  - (3) Repealed by Session Laws 2015-40, s. 3, effective December 1, 2015, and (2),applicable to conditional discharges granted on or after that date.
  - Repealed by Session Laws 2010-174, s. 7, effective October 1, 2010. (4)
  - (5) Repealed by Session Laws 2015-40, s. 3, effective December 1, 2015, and applicable to conditional discharges granted on or after that date.
  - (6) Persons granted a dismissal upon completion of a conditional discharge under G.S. 14-50.29, 14-204, 14-313(f), 15A-1341(a4), 90-96, or 90-113.14.
- Notification to Other State and Local Agencies. Unless otherwise instructed by the Administrative Office of the Courts pursuant to an agreement entered into under subsection (e) of this section for the electronic or facsimile transmission of information, the clerk of superior court in each county in North Carolina shall send a certified copy of an order granting an expunction to a person named in subsection (a) of this section to all of the agencies listed in this subsection and the person. An agency receiving an order under this subsection shall expunge purge from its records all entries made as a result of the charge or conviction ordered expunged, except as provided in G.S. 15A-151. The list of agencies is as follows:
  - The sheriff, chief of police, or other arresting agency. (1)
  - When applicable, the Division of Motor Vehicles. (2)
  - Any State or local agency identified by the petition as bearing record of the (3) offense that has been expunged.
  - The Department of Public Safety. (4)
- Notification to FBI. The Department of Public Safety shall forward the order received under this section to the Federal Bureau of Investigation.
- Notification to Private Entities. A State agency that receives a certified copy of an order under this section shall notify any private entity with which it has a licensing agreement for bulk extracts of data from the agency criminal record database to delete the record in question. The private entity shall notify any other entity to which it subsequently provides in a bulk extract data from the agency criminal database to delete the record in question from its database.
- The Director of the Administrative Office of the Courts may enter into an agreement with any of the State agencies listed in subsection (b) of this section for electronic or facsimile transmission of any information that must be provided under this section.

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Page 22

## § 15A-151. Confidential agency files; exceptions to expunction.

- (a) The Administrative Office of the Courts shall maintain a confidential file <u>for expungements</u> containing the <u>petitions granted under this Article and 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:</u>
  - (1) To-Upon request of 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 <u>Upon request of a person requesting confirmation of the person's own discharge or expunction, as provided in G.S. 15A-152 expunction.</u>
  - (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-Upon request of State or local law enforcement, if the criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5, or 15A-145.6, to State and local law enforcement agencies 15A-145.6 for employment purposes only.
  - (5) If Upon request of the North Carolina Criminal Justice Education and Training Standards Commission, if the criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5, or [15A-]145.6, to the North Carolina Criminal Justice Education and Training Standards Commission 15A-145.6 for certification purposes only.
  - (6) If-Upon request of the North Carolina Sheriff's Standards Commission, if the criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5, or 15A-145.6, to the North Carolina Sheriffs' Education and Training Standards Commission 15A-145.6 for certification purposes only.
  - (7) To State or local law enforcement agencies or the District Attorney in accordance with G.S. 15A-151.5.
- (b) All agencies required under G.S. 15A-150 to expunge from records all entries made as a result of a charge or conviction ordered expunged who maintain a licensing agreement to provide record information to a private entity shall maintain a confidential file containing information verifying the expunction and subsequent notification to private entities as required by G.S. 15A-150(d). The information contained in the file shall be disclosed only to a person requesting confirmation of expunction of the record of the person's own discharge or expunction, as provided in G.S. 15A-152.
- (c) The Division of Motor Vehicles shall not be required to expunge a record if the expunction of the record is expressly prohibited by the federal Commercial Motor Vehicle Safety Act of 1986, the federal Motor Carrier Safety Improvement Act of 1999, or regulations adopted pursuant to either act.

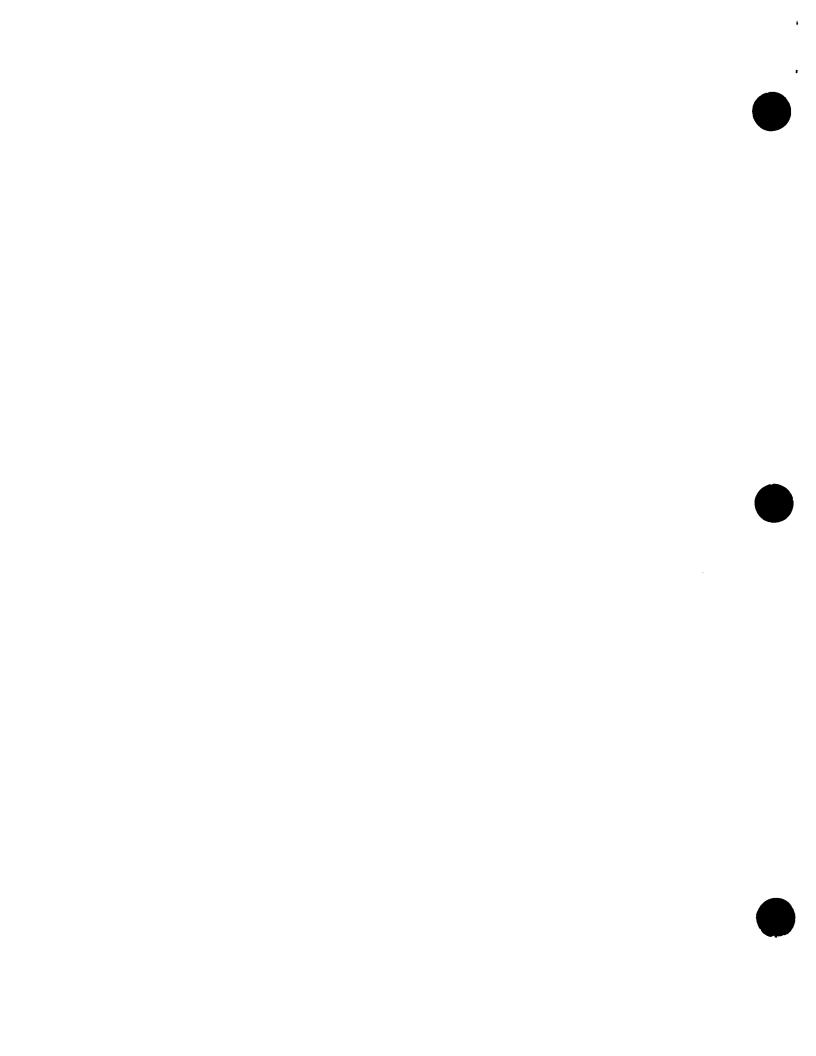
#### "§ 15A-151.5. Law enforcement and prosecutor access to expunged files.

- (a) Notwithstanding any other provision of this Article, the Administrative Office of the Courts shall make all confidential files maintained under G.S. 15A-151 electronically available to all State and local law enforcement agencies and all prosecutors of this State if the criminal record was expunged on or after December 1, 2016, under any of the following:
  - (1) G.S. 15A-145—Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.
  - (2) G.S. 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.
  - (3) G.S. 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.

|   | <b>General Assem</b> | bly Of North Carolina  | Session 2015           |
|---|----------------------|--|------------------------|
| 1 | (4)                  | G.S. 15A-145.3. Expunction of records for first offenders      | not over 21 years of   |
| 2 |                      | age at the time of the offense of certain toxic vapors offens  | es.                    |
| 3 | <u>(5)</u>           | G.S. 15A-145.4. Expunction of records for first offender       | rs who are under 18    |
|   |                      | years of age at the time of the commission of a nonviolent     | felony.                |
|   | <u>(6)</u>           | G.S. 15A-145.5. Expunction of certain misdemeanors a           | and felonies; no age   |
|   |                      | limitation.  |                        |
|   | (7)                  | G.S. 15A-145.6. Expunctions for certain defendants convic      |                        |
|   | (8)                  | G.S. 15A-146(a). Expunction of records when charges are        | re dismissed or there  |
|   |                      | are findings of not guilty.                                    |                        |
|   | <u>(9)</u>           | G.S. 15A-146(a1). Expunction of records when charges a         | re dismissed or there  |
|   |                      | are findings of not guilty.                                    |                        |
|   |                      | any expungement granted on or after December 1, 2016, the      |                        |
|   |                      | ubdivisions (a)(1) through (7) of subsection (a) of this sec   |                        |
|   |                      | ecord level if the named person is convicted of a subsequent c |                        |
|   |                      | any expungement granted on or after December 1, 20             |                        |
|   |                      | ne Administrative Office of the Courts, and made available un  |                        |
|   | •                    | all be prima facie evidence of the expunged conviction         |                        |
|   |                      | r record level of the named person and shall be admissible     | le into evidence at a  |
|   | subsequent crim      | inal sentencing hearing.                                       |                        |
|   |                      |  |                        |
|   | § 15A-152. Civ       | il liability for dissemination of certain criminal history inf | formation.             |
|   |                      |  |                        |
|   | · ·                  | ect of expunction; prohibited practices by employers, edu      | cational institutions, |
|   | agen                 | cies of State and local governments.                           |                        |
|   | <br>C 15 A 15 A 15 O | D 1 6 6 1:6  |                        |
|   | •                    | Reserved for future codification purposes.                     |                        |
|   | § 15A-160. Rej       | porting requirement.   |                        |
|   | § 15A-161–173        | Reserved for future codification purposes.                     |                        |
|   |                      | TION 2. This act becomes effective December 1, 2016, an        | d applies to petitions |
|   | C1 1 0               |  | 11                     |

filed on or after that date.

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## NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

## JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

## FAVORABLE HOUSE COM SUB, UNFAVORABLE ORIGINAL BILL

SB 734 Statewide Standing Order/Opioid Antagonist.

Draft Number: \$734-PC\$35367-\$T-108

Serial Referral: None Recommended Referral: None Long Title Amended: No

Floor Manager: Murphy and Daughtry

TOTAL REPORTED: 1



## NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

## JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

#### **FAVORABLE**

HJR 1147 Confirm James Gale/Special SC Judge.

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

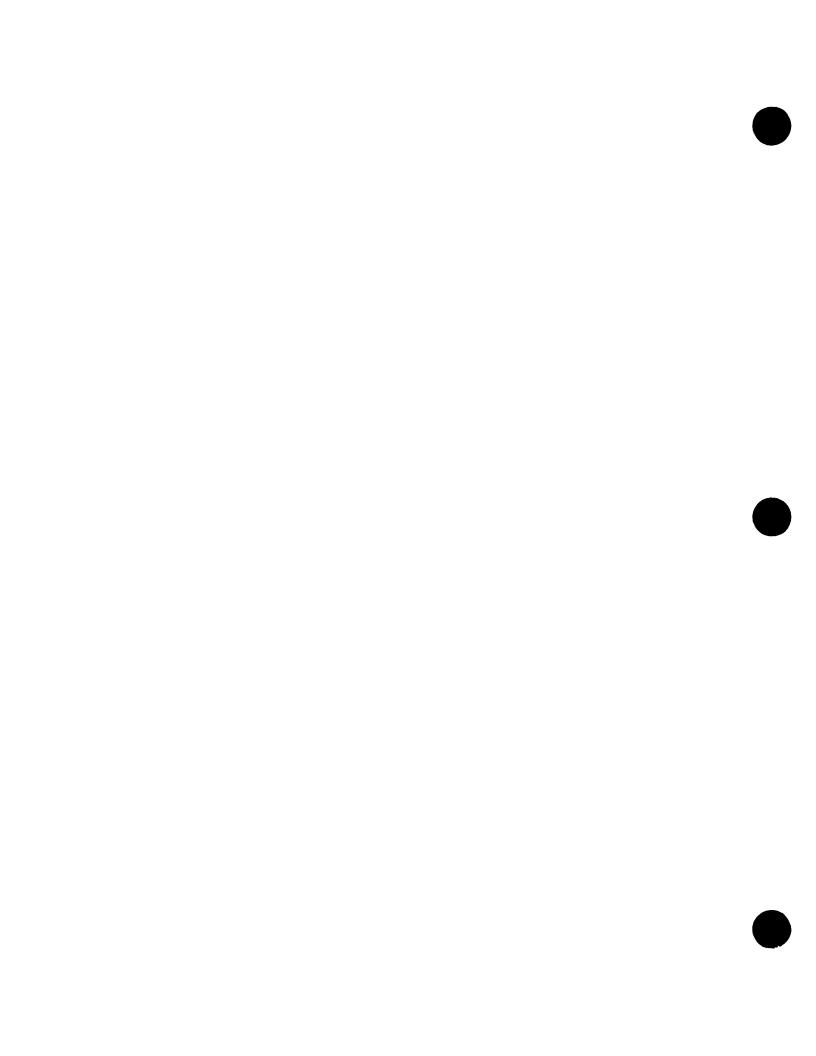
Floor Manager: Daughtry

**TOTAL REPORTED: 1** 



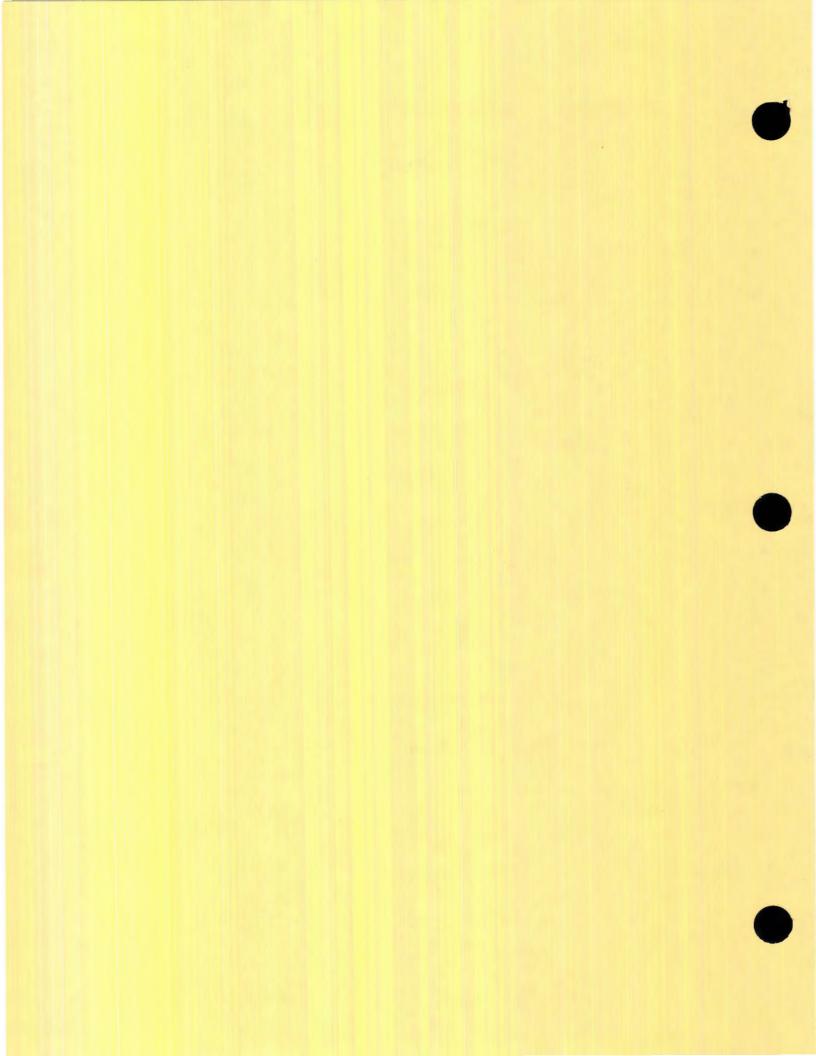
|  | Date: 6-8-16                                     |
|--|--|
| Bill Number <u>SB 734</u>              |  |
| PCS                                    | CSST-108 [V.5]                                   |
| Motion to be before the committee by _ | Robinson   |
| Sen. Tate                              | explained the bill.                              |
| Discussion on the Bill YES or NO       |  |
| RepArpFavorable Report                 |  |
| Unfavorable Report                     | AdeptionUnfavorable to original bill, fav to PCS |
| No vote                                | omavorable to original bill, lav to t            |
| Amendments: :                          |  |
|  |  |
| Serial referral to:                    | Pandall  |
| Questos marvill-                       |  |
| Speakers:                              |  |
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| Handouts:                              | meneill  |
| Randaul Williams<br>maxin? 5           | Modera   |
| martin: S                              |  |
| arp ? 's                               |  |
| Robinson                               |  |
| allen Pel                              | high   |

|  | Date: _             | 0-8-16                      |
|--|---------------------|-----------------------------|
| Bill Number HJR 1147  PCS NO  Motion to be before the committee by | PARP                |                             |
| Rep Daughtry Discussion on the Bill YES of NO                      | explained the bill. | Judge Marien<br>Warren      |
| RepFavorable ReportNo vote Amendments: :                           |                     | o original bill, fav to PCS |
| Serial referral to:  |                     |                             |
| Speakers:  |                     |                             |
| Handouts:  |                     |                             |



## Committee Sergeants at Arms

| NAME OF    | COMMITTEE   | J /             |
|------------|-------------|-----------------|
| DATE:      | 6-8-16      | Room: 4/5       |
|            |             |                 |
|            | Hou         | se Sgt-At Arms: |
| 1. Name: _ |             |                 |
| 2. Name:   | Will CROCKE | -R              |
| Name:      | BILL Rile   | <u> </u>        |
|            | /           |                 |
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|            | <u>Sena</u> | te Sgt-At Arms: |
| 1. Name:   |             |                 |
| 2. Name:   |             | •               |
| 3. Name:   |             | 91 -            |
| 4. Name:   |             |                 |
| Name:      |             |                 |



J-1 4-20-15 Visitor Sign Mp NCHOC larion Warver MFS 2. John Handi-NOAD 3. Told Bah WLJE 4. Al Riphy 5. Daniel Bowes NCJC 6. Kimbely Overton Conference of DAS Capital Area Reentry STEPUP MINISTRY 7. Barb Baranshi AURA MARTIN StepUp Ministry 9. Linda Dumallee APNL 10. Mark Ezzell 11. RANSALL WILLIAMS NC DIHHS Marma 12. Hraberh Robinstr ALP 13. NVF James NUPHA 14. Michelle tones NCRMA 12 Lexi artimir handelph Clad + Assoc 17 E. AREON PRESIEU
18. Lyon BURKE BURKE LAW MC Assies, Court

## **ROLL CALL VOTE**

| YES                                      | NO | =(TOTAL)           |     |              | HB# <u>32.8</u><br>SB# |
|--|----|--------------------|-----|--------------|------------------------|
| HOUSE STANDING COMMITTEE ON  JUDICIARY I |    |                    |     |              |                        |
|  |    |                    |     |              |                        |
| YES                                      | NO | MEMBER (last name) | YES | NO           | MEMBER (last name)     |
|  | -1 | DAUGHTRY           |     |              |                        |
|  |    | BURR               |     |              |                        |
|  |    | JACKSON            |     |              |                        |
|  |    | ARP                |     |              |                        |
|  |    | HALL               |     |              |                        |
|  |    | HARDISTER          |     |              |                        |
|  |    | HOWARD             |     |              |                        |
|  |    | MARTIN             |     |              |                        |
|  |    | MCNEILL            |     |              |                        |
|  |    | ROBINSON           |     |              |                        |
|  |    | STEINBURG          |     |              |                        |
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## **Cancelled Notice**

## NORTH CAROLINA HOUSE OF REPRESENTATIVES **COMMITTEE MEETING NOTICE** AND **BILL SPONSOR NOTIFICATION** 2015-2016 SESSION

| You are hereby notified that the House Committee on Judiciary I will NOT | meet | as follows: |
|--|------|-------------|
|--|------|-------------|

| DAY & DAT<br>TIME:<br>LOCATION | 12:30 PM                               |   |
|--------------------------------|--|---|
| The following                  | g bills will be considered:            |   |
| BILL NO.<br>SB 570             | SHORT TITLE Expunction/Boat Violation. | SPONSOR Senator Bryant Senator McKissick Senator Daniel   |
|                                |  | Respectfully,   |
|                                |  | Representative N. Leo Daughtry, Chair                     |
| I hereby certi<br>Tuesday, Jun | -                                      | nmittee assistant at the following offices at 11:33 AM on |

\_ Principal Clerk

Jan Copeland (Committee Assistant)

Reading Clerk – House Chamber

# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

Japallle Line You are hereby notified that the **House Committee on Judiciary I** will meet as follows: **DAY & DATE:** Wednesday, June 15, 2016 TIME: 12:30 PM **LOCATION:** 415 LOB The following bills will be considered: BILL NO. SHORT TITLE **SPONSOR** SB 570 Expunction/Boat Violation. Senator Bryant Senator McKissick Senator Daniel Respectfully, Representative N. Leo Daughtry, Chair I hereby certify this notice was filed by the committee assistant at the following offices at 9:41 AM on Thursday, June 09, 2016. Principal Clerk Reading Clerk – House Chamber

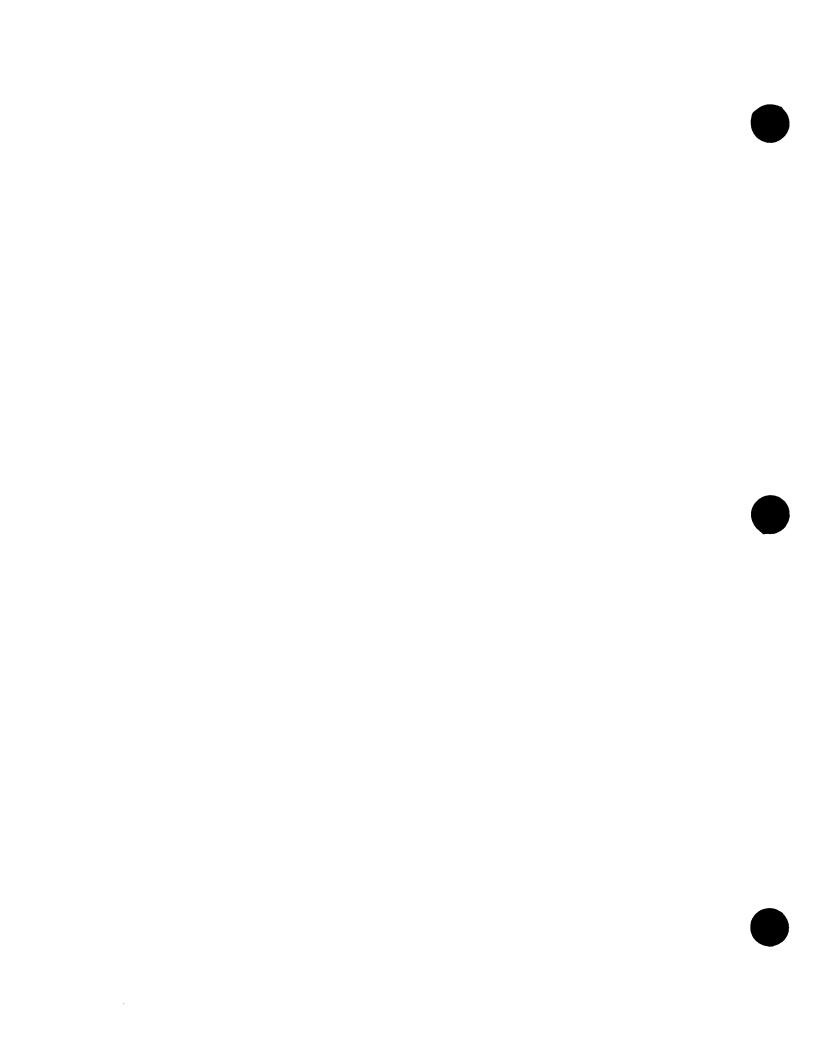
Jan Copeland (Committee Assistant)

Corrected #1: Adding SB482

# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

| You are | hereb | y notified | that the | House | Committee on | Judiciary | I will meet | as follow | vs: |
|---------|-------|------------|----------|-------|--------------|-----------|-------------|-----------|-----|
|---------|-------|------------|----------|-------|--------------|-----------|-------------|-----------|-----|

| DAY & DAT<br>TIME:<br>LOCATION:  | E: Wednesday, June 22, 2016<br>12:30 PM<br>415 LOB             |   |
|----------------------------------|--|---|
| The following                    | bills will be considered:                                      |   |
| SB 570                           | SHORT TITLE Expunction/Boat Violation.  LLC Act Clarification. | SPONSOR Senator Bryant Senator McKissick Senator Daniel Senator Barringer Senator Lee |
|                                  |  | Respectfully,   |
|                                  |  | Representative N. Leo Daughtry, Chair   |
| I hereby certif<br>Tuesday, June | -  | mmittee assistant at the following offices at 4:50 PM or                              |
| -                                | Principal Clerk<br>Reading Clerk – House Char                  | mber  |
| Jan Copeland                     | (Committee Assistant)  |   |



# NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

You are hereby notified that the House Committee on Judiciary I will meet as follows:

| DAY & DA' TIME: LOCATION     | TE: Wednesday, June 22, 20<br>12:30 PM<br>N: 415 LOB | 16   |
|------------------------------|--|--|
| The followir                 | ng bills will be considered:                         |  |
| BILL NO.<br>SB 570           | SHORT TITLE Expunction/Boat Violation.               | SPONSOR Senator Bryant Senator McKissick Senator Daniel    |
|                              |  | Respectfully,  |
|                              |  | Representative N. Leo Daughtry, Chair                      |
| I hereby cert<br>Monday, Jun |  | committee assistant at the following offices at 5:05 PM on |
|                              | Principal Clerk Reading Clerk – House Cl             | hamber   |
| Jan Copeland                 | d (Committee Assistant)                              |  |
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### House Committee on Judiciary I Wednesday, June 22, 2016 at 12:30 PM Room 415 of the Legislative Office Building

### **MINUTES**

The House Committee on Judiciary I met at 12:30 PM on June 22, 2016 in Room 415 of the Legislative Office Building. Representatives Arp, Daughtry, Jackson, G. Martin, McNeill, Robinson, Steinburg, and Szoka attended.

Representative N. Leo Daughtry, Chair, presided.

The following bills were considered:

SB 570 Expand Certificate of Relief & Expunction. (Senators Bryant, McKissick, Daniel) The committee voted favorable to House committee substitute no. 2, and unfavorable to house committee substitute number one with a recommended referral to the Finance Committee.

SB 482 LLC Clarifications & Emp. Invention Ownership. (Senators Barringer, Lee) The committee voted favorable to the house committee substitute, and unfavorable to the senate committee substitute.

The meeting adjourned at 1:07 p.m.

Representative N. Leo Daughtry, Chair

Presiding

Jan Copeland, Committee Clerk

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# SENATE BILL 482: LLC Act Clarification.

2016-2017 General Assembly

Committee:House Judiciary IDate:June 21, 2016Introduced by:Sens. Barringer, LeePrepared by:Erika ChurchillAnalysis of:Second EditionCommittee Counsel

SUMMARY: The Proposed Committee Substitute for Senate Bill 482 would make technical and clarifying changes to the Limited Liability Company Act and further define an employer's and employee's rights to inventions invented by an employee.

### **CURRENT LAW & BILL ANALYSIS:**

<u>LLC Clarifications and Changes.</u> The North Carolina Limited Liability Company Act, codified as Chapter 57D of the General Statutes, governs the creation, operation, and dissolution of limited liability companies. Operating agreements govern the internal affairs of an LLC and the rights, duties, and obligations of the following:

- 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.
- The company officials in relation to each other, the LLC, and the interest owners.

Subject to certain statutory limitations, the provisions of the operating agreement control, and the provisions of the operating agreement are severable. Each provision applies to the extent it is valid and enforceable. Operating agreements do not have to be in writing; they can be established in the same ways as any contract: written, oral, or implied assent among the parties to the contract. Oral or implied provisions in the operating agreement may not supplant, vary, disclaim, or nullify any contrary or inconsistent written provisions to the detriment of the rights of persons who are not parties to the operating agreement to the extent that they reasonably rely on those written provisions in the operating agreement.

An entity may convert to an LLC if both of the following apply:

- The law governing the organization and internal affairs of the entity permit the conversion.
- The entity complies with Part 2 of Chapter 55D of the General Statutes.

Sections 1 and 2 would make technical and clarifying changes to a provision of the Limited Liability Act concerning operating agreements.

Section 3 would clarify that a religious or charitable organization may convert to an LLC, if the sole member of the LLC of the surviving entity is a religious of charitable organization. For this purpose, a 'religious or charitable organization is any corporation that is a 501(c)(3) organization, or that is organized exclusively for one or more of the purposes specified in section 501(c)(3) and that upon dissolution must distribute its assets to a charitable or religious corporation, the United States, a state or an entity that is exempt under section 501(c)(3).

Karen Cochrane-Brown Director



Legislative Analysis Division 919-733-2578

### Senate Bill 482

Page 2

<u>Inventions Developed by Employees.</u> Article 10A of Chapter 66 of the General Statutes statutorily provides that any provision in an employment agreement stating that an employee is to assign or offer to assign any of that employee's rights in an invention to that employee's employer does not apply to an invention that the employee developed entirely on their own time without using the employer's equipment, supplies, facility or trade secret information. Exceptions to this general rule are those inventions that meet either of the following criteria:

- Relate to the employer's business or actual or demonstrably anticipated research or development.
- Result from any work performed by the employee for the employer.

An employer may not require a provision of an employment agreement contradictory to the above as a condition of employment or continued employment. An employer may require that the employee report all inventions developed by the employee, solely or jointly, during the term of employment to the employer.

Section 4 would amend Article 10A of Chapter 66 to provide that an employer's vested ownership in an employee's invention would not be subject to revocation or rescission in the event of a dispute over compensation or benefits unless there was a contrary provision in the written employment agreement, unless the employee proves that the employer acquired ownership of the invention fraudulently.

EFFECTIVE DATE: October 1, 2016.

### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

S

### **SENATE BILL 482**

D

### Judiciary I Committee Substitute Adopted 4/21/15 PROPOSED HOUSE COMMITTEE SUBSTITUTE \$482-CSST-124 [v.2] 06/21/2016 08:24:58 PM

| Short Title: | Short Title: LLC Clarifications & Emp. Invention Ownership. |  |  |
|--------------|---|--|--|
| Sponsors:    |   |  |  |
| Referred to: | •   |  |  |

March 26, 2015 A BILL TO BE ENTITLED 1 2 AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE LIMITED 3 LIABILITY COMPANY ACT AND TO FURTHER DEFINE AN EMPLOYER'S AND 4 EMPLOYEE'S RIGHTS TO INVENTIONS INVENTED BY THE EMPLOYEE. 5 The General Assembly of North Carolina enacts: 6 **SECTION 1.(a)** G.S. 57D-2-30(b)(1) is recodified as G.S. 57D-2-30(b)(1)a. 7 **SECTION 1.(b)** G.S. 57D-2-30(b)(2) is recodified as G.S. 57D-2-30(b)(1)b. **SECTION 1.(c)** G.S. 57D-2-30(b)(7) is recodified as G.S. 57D-2-30(b)(1)c. 8 SECTION 2. G.S. 57D-2-30(b), as amended by Section 1 of this act, reads as rewritten: The operating agreement may not supplant, vary, disclaim, or nullify the provisions of "(b) 12 this Chapter or their application to the extent the provisions do any of the following: Supplant, vary, disclaim, or nullify the provisions of this Chapter or their application to the extent the provisions: Concern the functions of, including the filings and payments to be 15 16

- 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 Articles 1 and 9 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) through (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, resolved, and other decisions and the manner in which decisions, of interest owners and other parties to the operating agreement, are to be made.
- Apply to persons who are not parties to or otherwise bound by the b. 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 ereditors or such persons.
- Are set forth in this section, G.S. 57D-1-01, 57D-2-01(d), 57D-2-02, c. 57D-2-03, 57D-2-20, 57D-3-23, 57D-5-01, 57D-6-01, clause (ii) of



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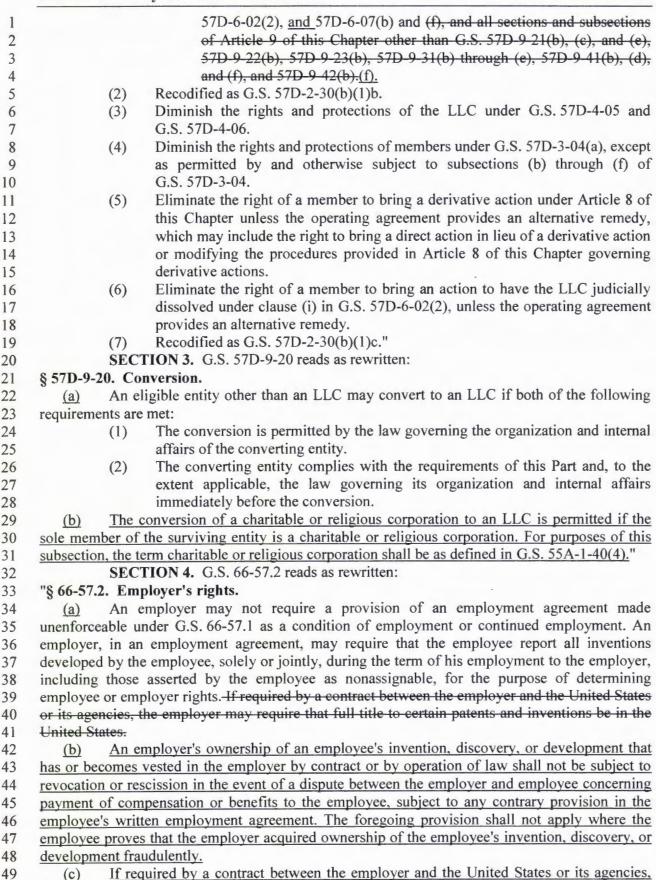
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the employer may require that full title to certain patents and inventions be in the United States."

### **General Assembly Of North Carolina**

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Session 2015

**SECTION 5.** This act becomes effective October 1, 2016. Sections 1 and 2 of this act apply to operating agreements entered into on or after that date.

S482-CSST-124 [v.2] Senate Bill 482 Page 3

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### GENERAL ASSEMBLY OF NORTH CAROLINA **SESSION 2015**

### S

### **SENATE BILL 482 Judiciary I Committee Substitute Adopted 4/21/15**

|    | Short Title: L | LC Act            | Clarification.   | (Public)    |
|----|----------------|-------------------|--|-------------|
|    | Sponsors:      |                   |  |             |
|    | Referred to:   |                   |  |             |
|    |                |                   | March 26, 2015   |             |
| 1  |                |                   | A BILL TO BE ENTITLED  |             |
| 2  | AN ACT TO N    | MAKE T            | TECHNICAL AND CLARIFYING CHANGES TO THE  | LIMITED     |
| 3  |                |                   | ANY ACT AND TO FURTHER DEFINE AN EMPLOYE ITS TO INVENTIONS INVENTED BY THE EMPLOYEE. | R'S AND     |
| 5  |                |                   | f North Carolina enacts:   |             |
| 6  |                | •                 | G.S. 57D-2-30(b) reads as rewritten:   |             |
| 7  |                |                   | g agreement may not supplant, vary, disclaim, or nullify the                         | provisions  |
| 8  |                |                   | pplication to the extent the provisions do any of the following                      |             |
| 9  | (1)            |                   | ant, vary, disclaim, or nullify the provisions of this Chapte                        |             |
| 10 | (-)            |                   | ation to the extent the provisions:  | -           |
| 11 |                | <u>a.</u>         | Concern the functions of, including the filings and payme                            | ents to be  |
| 12 |                |                   | made, and the manner in which they are to be made by                                 |             |
| 13 |                |                   | Secretary of State, the Attorney General, the courts, or                             |             |
| 14 |                |                   | governmental official, agency, or authority, including Artic                         |             |
| 15 |                |                   | 1 and 9 of this Chapter, G.S. 57D-2-21(a), 57D-2-22(a),                              |             |
| 16 |                |                   | 57D-2-24, 57D-2-40, 57D-6-02(1), 57D-6-03(a) thro                                    |             |
| 17 |                |                   | 57D-6-04, 57D-6-05, 57D-6-06, the last sent  | ence of     |
| 18 |                |                   | G.S. 57D-6-07(c), 57D-6-09, and 57D-10-01; except, the                               | operating   |
| 19 |                |                   | agreement may provide the forum in which disputes conce                              | _           |
| 20 |                |                   | LLC or the rights and duties of interest owners and other                            |             |
| 21 |                |                   | the operating agreement are to be resolved, resolved,                                |             |
| 22 |                |                   | decisions and the manner in which decisions, of interest or                          | wners and   |
| 23 |                |                   | other parties to the operating agreement, are to be made.                            |             |
| 24 |                | <del>(2)</del> b. | Apply to persons who are not parties to or otherwise bou                             |             |
| 25 |                |                   | operating agreement, including the extent to which G.S.                              |             |
| 26 |                |                   | may be applicable to such persons or for which they may be                           |             |
| 27 |                |                   | to recovery or other relief thereunder, or the extent                                |             |
| 28 |                |                   | G.S. 57D-1-02, 57D-6-08(1), 57D-6-10, 57D-6-11, 57D-                                 | 6-12, and   |
| 29 |                |                   | 57D-6-13 are applicable to <del>creditors or such persons.</del>                     |             |
| 30 |                | <u>c.</u>         | Are set forth in this section, G.S. 57D-1-01, 57D-2-01(d),                           |             |
| 31 |                |                   | 57D-2-03, 57D-2-20, 57D-3-23, 57D-5-01, 57D-6-01, clar                               | use (11) of |
| 32 | (2)            | D                 | 57D-6-02(2), and 57D-6-07(b) and (f).  | 1.05 1      |
| 33 | (3)            |                   | hish the rights and protections of the LLC under G.S. 57D                            | -4-U3 and   |
| 34 |                | G.S. 5            | 7D-4-06.   |             |



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) through (e), 57D 9 41(b), (d), and (f), and 57D 9 42(b)."

**SECTION 2.** G.S. 66-57.2 reads as rewritten:

### "§ 66-57.2. Employer's rights.

- (a) An employer may not require a provision of an employment agreement made unenforceable under G.S. 66-57.1 as a condition of employment or continued employment. An employer, in an employment agreement, may require that the employee report all inventions developed by the employee, solely or jointly, during the term of his employment to the employer, including those asserted by the employee as nonassignable, for the purpose of determining employee or employer rights. If required by a contract between the employer and the United States or its agencies, the employer may require that full title to certain patents and inventions be in the United States.
- (b) An employer's ownership of an employee's invention, discovery, or development that has or becomes vested in the employer by contract or by operation of law shall not be subject to revocation or rescission in the event of a dispute between the employer and employee concerning payment of compensation or benefits to the employee, subject to any contrary provision in the employee's written employment agreement. The foregoing provision shall not apply where the employee proves that the employer acquired ownership of the employee's invention, discovery, or development fraudulently.
- (c) If required by a contract between the employer and the United States or its agencies, the employer may require that full title to certain patents and inventions be in the United States."

**SECTION 3.** This act becomes effective October 1, 2015. Section 1 of this act applies to operating agreements entered on or after that date.

Page 2 S482 [Edition 2]



### **SENATE BILL 570: Expand Certificate of Relief.**

2016-2017 General Assembly

Committee:

House Judiciary I

Date:

June 22, 2016

Introduced by:

Sens. Bryant, McKissick, Daniel

Erika Churchill and Prepared by:

PCS to Fourth Edition Analysis of:

Amy Darden

S570-CSSTf-123

Committee Co-Counsel

SUMMARY: The Proposed Committed Substitute for Senate Bill 570 remove the contents of the 4th edition and would:

- > Change the eligibility for a Certificate of Relief and require a fee to file the petition with the clerk of superior court.
- > Allow a person to expunge more than one finding of not guilty or not responsible in a lifetime.

[As introduced, this bill was identical to H650, as introduced by Reps. Hardister, Brockman, Faircloth, Fisher, which is currently in House Judiciary I.]

#### **CURRENT LAW & BILL ANALYSIS:**

Certificate of Relief. A Certificate of Relief is a court order that allows those convicted of certain crimes to lessen the collateral sanctions and disqualifications resulting from those convictions. For the purpose of certificates of relief, collateral sanctions are defined as "a penalty, disability, or disadvantage, however denominated, imposed on an individual as a result of the individual's conviction of an offense which applies by operation of law, whether or not the penalty, disability, or disadvantage is included in the judgment or sentence. The term does not include imprisonment, probation, parole, post-release supervision, forfeiture, restitution, fine, assessment, or costs of prosecution." G.S. 15A-173.1.

The individual must petition the court, after notice to the prosecutor and victim, who will determine if all the statutory requirements are met to issue the Certificate.

Currently, an individual applying for a Certificate of Relief can only be convicted of no more than two Class G, H, or I felonies or misdemeanors in one court session and must wait until 12 months have passed and his or her sentence is completed to apply.

The PCS for Senate Bill 570 would do the following:

- Allow those convicted of criminal offense no higher than a Class G felony to petition for a Certificate of Relief in the court where the individual was convicted of the most serious crime.
- Require 12 months to pass from the completion of the sentence if the individual was convicted of five or fewer eligible offenses or require 36 months to pass and completion of the sentence if the individual was convicted of more than five eligible offenses.
- Require the applicant to pay a \$50.00 fee to the clerk of superior court at the time the petition is filed. This fee requirement would not apply to a petition filed by an indigent.





Legislative Analysis Division 919-733-2578

### Senate PCS 570

Page 2

<u>Expunctions for Findings of Not Guilty.</u> In limited circumstances, North Carolina law permits the expunction of certain offenses from a person's criminal record. Expunction is the process by which a record of criminal conviction is removed by order of the court, and a person is restored to the status the person occupied before the arrest or indictment. The terms "expunction" and "expungement" are often used interchangeably, and both appear in the statutes. There are several requirements that must be met for expunction, and a person may generally be granted only one expunction in his or her lifetime.

Currently, a person may apply to have only one dismissal or finding of not guilty or not responsible resulting from a charge of either a misdemeanor or a felony, or an infraction under G.S. 18B 302(i) prior to December 1, 1999, expunged in a lifetime, unless those charges were multiple charges in the same term of court or within the same 12 month period. G.S. 15A-146.

The PCS for Senate Bill 570 would do the following:

- Allow a person to have subsequent findings of not guilty or not responsible expunged, provided
  the person has not previously been convicted of any felony under the laws of the United States,
  this State, or any other state, and has not received an expungement under any of the following
  statutes:
  - o G.S. 15A 145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.
  - o G.S. 15A 145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.
  - o G.S. 15A 145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.
  - o G.S. 15A 145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.
  - o G.S. 15A 145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.
  - o G.S. 15A 145.5. Expunction of certain misdemeanors and felonies; no age limitation.
- The applicant would pay a \$175.00 fee to the clerk of superior court at the time the petition is filed. This fee requirement would not apply to a petition filed by an indigent.

**EFFECTIVE DATE:** Effective October 1, 2016, and applies to petitions for expunction filed on or after that date.

### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

S

### **SENATE BILL 570**

Judiciary II Committee Substitute Adopted 4/21/15
Judiciary II Committee Substitute Adopted 4/28/15
House Committee Substitute Favorable 6/25/15
D HOUSE COMMITTEE SUBSTITUTE 8570-CSST6-1

D

| PR   | House Committee Substitute Favorable 6/25/15 OPOSED HOUSE COMMITTEE SUBSTITUTE S570-CSST 06/21/2016 06:43:48 PM  | 'f-123 [v.5]  |
|--|--|---|
| Short Title:   | Expand Certificate of Relief & Expunction.   | (Public)  |
| Sponsors:  |  |   |
| Referred to:   |  |   |
|  | March 30, 2015   |   |
| OFFEND DRUG OFFEND | A BILL TO BE ENTITLED  EXPAND THE AVAILABILITY OF CERTIFICATES OF RE ERS AND TO ALLOW FOR THE EXPUNCTION OF CER FFENSES.  Assembly of North Carolina enacts:  ECTION 1. G.S. 15A-173.2 reads as rewritten:  Certificate of Relief.  In individual who is convicted of no more than two Class G, is in one session of court, and who has no other convicted other than a traffic violation, criminal offenses no higher than a court where the individual was convicted of the most serious offer in its subsection, the petition shall be heard by the senior resident suns were in superior court, or the chief district court judge if the The senior resident superior court judge and chief district court in their authority to hold hearings and issue, modify, or revoke Ceres, or magistrates in that district.  Except as otherwise provided in G.S. 15A-173.3, the court may inter reviewing the petition, the individual's criminal history, any inter G.S. 15A-173.6 or the district attorney, and any other relevant their authority to hold hearings and individual has completed in the individual has been convicted of five or few 12 months have passed since the individual has completed if the individual has been convicted of more than five of months have passed since the individual has completed his purposes of this subdivision, an individual has not consentence until the individual has served all of the active the for each offense and has also completed any period of prosupervision, and parole related to the offense that is required court order. | H, or I felonies or cons for a felony or Class G felony may ense for a Certificate Except as otherwise aperior court judge if a convictions were in judge in each district retificates of Relief to dissue a Certificate of ant evidence, it finds allowing:  Ver eligible offenses, I his or her sentence, eligible offenses, 36 or her sentence. For ompleted his or her ime, if any, imposed obation, post-release |

(2) The individual is engaged in, or seeking to engage in, a lawful occupation or activity, including employment, training, education, or rehabilitative programs, or the individual otherwise has a lawful source of support.



- The individual has complied with all requirements of the individual's sentence, including any terms of probation, that may include substance abuse treatment, anger management, and educational requirements.
  - (4) The individual is not in violation of the terms of any criminal sentence, or that any failure to comply is justified, excused, involuntary, or insubstantial.
  - (5) A criminal charge is not pending against the individual.
  - (6) Granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.
  - (c) The Certificate of Relief shall specify any restriction imposed and collateral sanction or disqualification from which relief has not been granted under G.S. 15A-173.4(a).
  - (d) A Certificate of Relief relieves all collateral sanctions, except those listed in G.S. 15A-173.3, those sanctions imposed by the North Carolina Constitution or federal law, and any others specifically excluded in the certificate. A Certificate of Relief does not automatically relieve a disqualification; however, an administrative agency, governmental official, or court in a civil proceeding may consider a Certificate of Relief favorably in determining whether a conviction should result in disqualification.
  - (e) A Certificate of Relief issued under this Article does not result in the expunction of any criminal history record information, nor does it constitute a pardon.
  - (f) A Certificate of Relief may be revoked pursuant to G.S. 15A-173.4(b) if the individual is subsequently convicted of a felony or misdemeanor other than a traffic violation or is found to have made any material misrepresentation in his or her petition.
  - (g) The denial of a petition for a Certificate of Relief shall state the reasons for the denial, and the petitioner may file a subsequent petition 12 months from the denial and shall demonstrate that the petitioner has remedied the defects in the previous petition and has complied with any conditions for reapplication set by the court pursuant to G.S. 15A-173.4(a) in order to have the petition granted.
  - (h) A person who files a petition for a certificate of relief under this section shall pay a fee of fifty dollars (\$50.00) to the clerk of superior court at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection shall not apply to a petition filed by an indigent."

**SECTION 2.** G.S. 15A-146 is amended by adding a new subsection to read:

- "(a2) Notwithstanding subsection (a) of this section, a person who has previously been granted an expunction under this section and is subsequently charged with a crime, either a misdemeanor or a felony, or was charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and a finding of not guilty or not responsible is entered may apply to have the subsequent finding expunged. The court shall hold a hearing on the application. If the court finds (i) that the person had not previously received an expungement under G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, or 15A-145.5, and (ii) that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction of the finding of not guilty or not responsible. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."
- **SECTION 3.** This act becomes effective October 1, 2016, and applies to petitions for expunction filed on or after that date.

### GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

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### **SENATE BILL 570**

Judiciary II Committee Substitute Adopted 4/21/15 Judiciary II Committee Substitute Adopted 4/28/15 House Committee Substitute Favorable 6/25/15

| Short Title: E | xpunction/Boat Violation.   | (Public)                  |
|----------------|---|---------------------------|
| Sponsors:      |   |                           |
| Referred to:   |   |                           |
|                | March 30, 2015  |                           |
|                | A BILL TO BE ENTITLED   |                           |
| AN ACT TO PE   | ROVIDE THAT A PERSON SHALL NOT BE DENII   | ED AN EXPUNCTION          |
| SOLELY BE      | ECAUSE THE PERSON HAS A CONVICTION FO   | R A MISDEMEANOR           |
| <b>BOATING</b> | VIOLATION; TO PROVIDE THAT CERTAIN  | CONVICTIONS FOR           |
|                | WHILE IMPAIRED AND BOATING WHILE IN   |                           |
| ELIGIBLE       | FOR EXPUNCTION; AND TO ALLOW FOR TH   | HE EXPUNCTION OF          |
| CERTAIN Y      | OUTHFUL DRUG OFFENSES.  |                           |
|                | embly of North Carolina enacts:   |                           |
|                | ΓΙΟΝ 1. G.S. 15A-145.5 reads as rewritten:  |                           |
|                | expunction of certain misdemeanors and felonies; no   |                           |
|                | purposes of this section, the term "nonviolent misder   | meanor" or "nonviolent    |
| •              | ny misdemeanor or felony except the following:  |                           |
| (1)            | A Class A through G felony or a Class A1 misdemea   |                           |
| (2)            | An offense that includes assault as an essential eleme  |                           |
| (3)            | An offense requiring registration pursuant to Article   |                           |
|                | the General Statutes, whether or not the person i   | s currently required to   |
| (4)            | register.   | mana, C.S. 14.27.74(b)    |
| (4)            | Any of the following sex-related or stalking offer 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A |                           |
|                | 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A  | 1, 14-200.10, 14-277.5,   |
| (5)            | Any felony offense in Chapter 90 of the General Sta   | atutes where the offense  |
| (3)            | involves methamphetamines, heroin, or possession  |                           |
|                | deliver or sell and deliver cocaine.  | with mitche to sen or     |
| (6)            | An offense under G.S. 14-12.12(b), 14-12.13, or 14-1  | 12.14, or any offense for |
| (0)            | which punishment was determined pursuant to G.S. 1  |                           |
| (7)            | An offense under G.S. 14-401.16.  |                           |
| (7a)           | An offense under G.S. 14-54(a), 14-54(a1), or 14-56.  |                           |
| (8)            | Any felony offense in which a commercial motor v  |                           |
|                | commission of the offense.  |                           |
| (9)            | Any offense that is an attempt to commit an   | offense described in      |
|                | subdivisions (1) through (8) of this subsection.  |                           |
| (01)           | An offense involving impaired driving as defined in C   | G.S. 20-4.01(24a).        |



one nonviolent felony or nonviolent misdemeanor in the same session of court and none of the

Notwithstanding any other provision of law, if the person is convicted of more than

nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person had already been served with criminal process for the commission of a nonviolent felony or nonviolent misdemeanor, then the multiple nonviolent felony or nonviolent misdemeanor convictions shall be treated as one nonviolent felony or nonviolent misdemeanor conviction under this section, and the expunction order issued under this section shall provide that the multiple nonviolent felony convictions or nonviolent misdemeanor convictions shall be expunged from the person's record in accordance with this section.

- (c) A person may file a petition, in the court where the person was convicted, for expunction of a nonviolent misdemeanor or nonviolent felony conviction from the person's criminal record if the person has no other misdemeanor or felony convictions, other than a traffic violation. violation or a misdemeanor boating violation. The petition shall not be filed earlier than 15 years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The petition shall contain, but not be limited to, the following:
  - An affidavit by the petitioner that the petitioner has been of good moral character since the date of conviction for the nonviolent misdemeanor or nonviolent felony and has not been convicted of any other felony or misdemeanor, other than a traffic violation, violation or a misdemeanor boating violation, under the laws of the United States or the laws of this State or any other state.
  - (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.
  - (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
  - (4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual, a search by the Department of Public Safety for any outstanding warrants on pending criminal cases, and 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 Public Safety 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.

Upon filing of the petition, 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. Upon good cause shown, the court may grant the district attorney an additional 30 days to file objection to the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

The presiding judge is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct since the conviction. The court shall review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers, district attorneys, and victims of crimes committed by the petitioner.

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If the court, after hearing, finds that the petitioner has not previously been granted an expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or 15A-145.4; the petitioner has remained of good moral character; the petitioner has no outstanding warrants or pending criminal cases; the petitioner has no other felony or misdemeanor convictions other than a traffic violation; violation or a misdemeanor boating violation; the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner; and the petitioner was convicted of an offense eligible for expunction under this section and was convicted of, and completed any sentence received for, the nonviolent misdemeanor or nonviolent felony at least 15 years prior to the filing of the petition, it may order that such person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information. If the court denies the petition, the order shall include a finding as to the reason for the denial.

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#### **SECTION 2.** G.S. 15A-145 reads as rewritten:

### "§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.

- (a) Whenever any person who has not previously been convicted of any felony, or misdemeanor other than a traffic violation, violation or a misdemeanor boating violation, under the laws of the United States, the laws of this State or any other state, (i) pleads guilty to or is guilty of a misdemeanor other than a traffic violation, violation or a misdemeanor boating violation, and the offense was committed before the person attained the age of 18 years, or (ii) pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), and the offense was committed before the person attained the age of 21 years, he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than: (i) two years after the date of the conviction, or (ii) the completion of any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:
  - (1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, violation or a misdemeanor boating violation, under the laws of the United States or the laws of this State or any other state.
  - (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.
  - (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
  - (4) Repealed by Session Laws 2010-174, s. 2, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.
  - (4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and 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 Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

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(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, violation or a misdemeanor boating violation, for two years from the date of conviction of the misdemeanor in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and (i) petitioner was not 18 years old at the time of the offense in question, or (ii) petitioner was not 21 years old at the time of the offense of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

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### **SECTION 3.** G.S. 15A-145.1 reads as rewritten:

# "§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.

- (a) Whenever any person who has not previously been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of (i) a Class H felony under Article 13A of Chapter 14 of the General Statutes or (ii) an enhanced offense under G.S. 14-50.22, or has been discharged and had the proceedings against the person dismissed pursuant to G.S. 14-50.29, and the offense was committed before the person attained the age of 18 years, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, whichever occurs later. The petition shall contain, but not be limited to, the following:
  - (1) An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state.
  - (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.
  - (3) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

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- (4) Repealed by Session Laws 2010-174, s. 4, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.
- (4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and 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 Public Safety 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.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.

If the court, after hearing, finds that (i) the petitioner was dismissed and the proceedings against the petitioner discharged pursuant to G.S. 14-50.29 and that the person had not yet attained 18 years of age at the time of the offense or (ii) the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner, and the petitioner had not attained the age of 18 years at the time of the offense in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information, and that the record be expunged from the records of the court. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment or information, or trial, or response to any inquiry made of the person for any purpose. The court shall also direct all law enforcement agencies, the Division of Adult Correction of the Department of Public Safety, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the petitioner's criminal charge and any conviction resulting from the charge. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

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#### **SECTION 4.** G.S. 15A-145.2 reads as rewritten:

## "§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.

- (a) Whenever a person is discharged, and the proceedings against the person dismissed, pursuant to G.S. 90-96(a) or (a1), and the person was not over 21 years of age at the time of the offense, the person may apply to the court for an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:
  - (1) An affidavit by the petitioner that he or she has been of good behavior during the period of probation since the decision to defer further proceedings

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on the offense in question and has not been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state:

- (2) Verified affidavits by two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he or she lives, and that the petitioner's character and reputation are good;
- Repealed by Session Laws 2010-174, s. 5, effective October 1, 2010, and (3) applicable to petitions for expunctions filed on or after that date.
- An application on a form approved by the Administrative Office of the (3a) Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and 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 Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him or her dismissed and that the person was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies, the Division of Adult Correction, the Division of Motor Vehicles, and any other State and local government agencies identified by the petitioner as bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(c) Whenever any person who has not previously been convicted of (i) any felony offense under any state or federal laws; (ii) any offense under Chapter 90 of the General Statutes; or (iii) an offense under any statute of the United States or any state relating to controlled substances included in any schedule of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes, pleads guilty to or has been found guilty of a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules I through VI of Chapter 90, or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or pleads guilty to or has been found guilty of a felony under G.S. 90-95(a)(3), the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or

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subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the petitioner's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes for possessing a controlled substance included within Schedules I through VI of Article 5 of Chapter 90 of the General Statutes or for possessing drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3), that the petitioner has no disqualifying previous convictions as set forth in this subsection, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status the petitioner occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order all law enforcement agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local agencies identified by the petitioner as bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

**SECTION 5.** G.S. 15A-145.3 reads as rewritten:

# "§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.

- (a) Whenever a person is discharged and the proceedings against the person dismissed under G.S. 90-113.14(a) or (a1), such person, if he or she was not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all officia records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:
  - (1) An affidavit by the petitioner that the petitioner has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony or

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misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by 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 his or her character and reputation are good;

(3) Repealed by Session Laws 2010-174, s. 6, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.

 (3a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual and 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 Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against the person dismissed and that he or she was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-15.

Whenever any person who has not previously been convicted of an offense under (c) Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of violation of Article 5A of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

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The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by G.S. 90-113.22, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

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### **SECTION 6.** G.S. 15A-145.4 reads as rewritten:

## "§ 15A-145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.

- (a) For purposes of this section, the term "nonviolent felony" means any felony except the following:
  - (1) A Class A through G felony.
  - (2) A felony that includes assault as an essential element of the offense.
  - (3) A felony that is an offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.
  - (4) Repealed by Session Laws 2012-191, s. 2, effective December 1, 2012.
  - (5) Any felony offense under the following sex-related or stalking offenses: G.S. 14-27.7A(b), 14-190.7, 14-190.8, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.
  - (6) Any felony offense in Chapter 90 of the General Statutes where the offense involves methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine; except that if a prayer for judgment continued has been entered for an offense classified as either a Class G, H, or I felony, the prayer for judgment continued shall be subject to expunction under the procedures in this section.

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(7) An affidavit by the petitioner that the petitioner possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.

An affidavit by the petitioner that the petitioner has performed at least 100

hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list

of the recipients of the services, and a detailed description of those services.

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are outstanding.

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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 may order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:
  - (1) The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic or boating violation, for four years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation, or post-release supervision has been served, whichever is later.
  - (2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic violation or <u>a misdemeanor boating violation</u> under the laws of the United States or the laws of this State or any other state.
  - (3) The petitioner has no outstanding warrants or pending criminal cases.
  - (4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.
  - (5) The petitioner was less than 18 years old at the time of the commission of the offense in question.
  - (6) The petitioner has performed at least 100 hours of community service since the time of the conviction and possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.
  - (7) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

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### **SECTION 7.** G.S. 15A-145.6(f) reads as rewritten:

- "(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, violation or a misdemeanor boating 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."

### **SECTION 8.** G.S. 14-50.30 reads as rewritten:

### "§ 14-50.30. Expunction of records.

Any person who has not previously been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States

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or the laws of this State or any other sta

or the laws of this State or any other state, may, if the offense was committed before the person attained the age of 18 years, be eligible to apply for expunction of certain offenses under this Article pursuant to G.S. 15A-145.1."

**SECTION 9.** Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

### "§ 15A-145.7. Expunction of certain youth drug offenses.

(a) The following definitions apply to this section:

- (1) Drug free. Free from drug dependency and any unlawful use of controlled substances.
- (2) Youthful drug offense. A conviction of any violation of G.S. 90-95(a)(3) or G.S. 90-113.22 where the defendant had not yet attained the age of 25 years at the time of the commission of the offense.
- (b) Notwithstanding any other provision of law, if the person is convicted of more than one youthful drug offense in the same session of court, then the multiple youthful drug offense convictions shall be treated as one youthful drug offense conviction under this section, and the expunction order issued under this section shall provide that the multiple youthful drug offense convictions shall be expunged from the person's record in accordance with this section.
- (c) A person may file a petition in the court where the person was convicted for expunction of up to two youthful drug offense convictions from the person's criminal record if the person has no misdemeanor or felony convictions, other than a traffic or a misdemeanor boating violation, for a period of at least 10 years prior to the date that the petition is filed; convicted of a youthful drug offense that is eligible pursuant to subsection (a) of this section; and provides proof pursuant to subsection (d) of this section that the person is drug free and has been drug free for a period of at least one year prior to the date that the petition is filed. The petition shall not be filed earlier than (i) 10 years after the date of the conviction or (ii) when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. If the petition is to expunge two youthful drug offense convictions, the petition shall not be filed earlier than 10 years after the date of the last conviction or when any active sentence, period of probation, and post-release supervision has been served for the last conviction, whichever occurs later.
- (d) To establish that a person is drug free and has been drug free for a period of at least one year prior to the date that the petition is filed, a person shall provide proof that the person has been tested for drugs every 30 days for a period of at least one year immediately preceding the date that the petition is filed and tested drug free at each testing, and shall also provide a drug evaluation for review by the court. The Administrative Office of the Courts, in cooperation with the Department of Health and Human Services, shall determine what type of documentation must be provided to the court regarding the required drug testing and evaluation and the format in which the documentation shall be presented to the court for review.
  - (e) The petition shall contain, but not be limited to, the following:
    - An affidavit by the petitioner that the petitioner is of good moral character and has not been convicted of any felony or misdemeanor, other than a traffic or boating violation, under the laws of the United States or the laws of this State or any other state for a period of at least 10 years prior to the date that the petition is filed.
    - 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.

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- (4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual, a search by the Department of Public Safety for any outstanding warrants on pending criminal cases, and 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 Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.
- An affidavit by the petitioner that no restitution orders or civil judgments (5) representing amounts ordered for restitution entered against the petitioner are outstanding.
- Documentation in a format approved by the Administrative Office of the **(6)** Courts establishing that the petitioner is drug free and has been drug free for a period of at least one year prior to the date of the filing of the petition.

Upon filing of the petition, the petition shall be served upon the district attorney of the court wherein the case resulting in conviction was heard. 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. Upon good cause shown, the court may grant the district attorney an additional 30 days to file objection to the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

The presiding judge may call upon a probation officer for any additional investigation or verification of the petitioner's conduct since the conviction. The court shall review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers, district attorneys, and victims of crimes committed by the petitioner.

- If the court after hearing finds that the petitioner has not previously been granted an (f) expunction, the petitioner is drug free; the petitioner is of good moral character; the petitioner has no outstanding warrants or pending criminal cases; the petitioner has no felony or misdemeanor convictions other than a traffic violation, for a period of 10 years prior to the filing of the petition; the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner; the petition for expunction of a youthful drug offense conviction was filed at least 10 years after the date of conviction or, if the petition for expunction is for two youthful drug offense convictions, the petition was filed at least 10 years after the date of the later conviction; and the petitioner has completed any sentence received for the conviction, it may order that such person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information. If the court denies the petition, the order shall include a finding as to the reason for the denial.
- No person as to whom an order has been entered pursuant to this section shall be held thereafter under any provision of any law 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 convictions to the certifying Commission, regardless of whether or not the 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.

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The court shall also order that the conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order, as provided in G.S. 15A-150.

Any other applicable State or local government agency shall expunge from its (i) records entries made as a result of the conviction ordered expunged under this section upon receipt from the petitioner of an order entered pursuant to this section. The agency shall also vacate and reconsider any administrative actions taken against a person whose record is

expunged under this section as a result of the charges or convictions expunged.

A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent."

**SECTION 10.** G.S. 15A-146 is amended by adding a new subsection to read:

"(a2) Notwithstanding subsection (a) of this section, a person who has previously been granted an expunction under this section and is subsequently found not guilty or not responsible, may apply to have the subsequent finding expunged. The court shall hold a hearing on the application. If the court finds (i) that the person had not previously received an expungement under this subsection, (ii) that the person had not previously received an expungement under G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, or 15A-145.5, and (iii) that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction of the finding of not guilty or not responsible. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

**SECTION 11.** This act becomes effective December 1, 2015, and applies to petitions for expunction filed on or after that date.

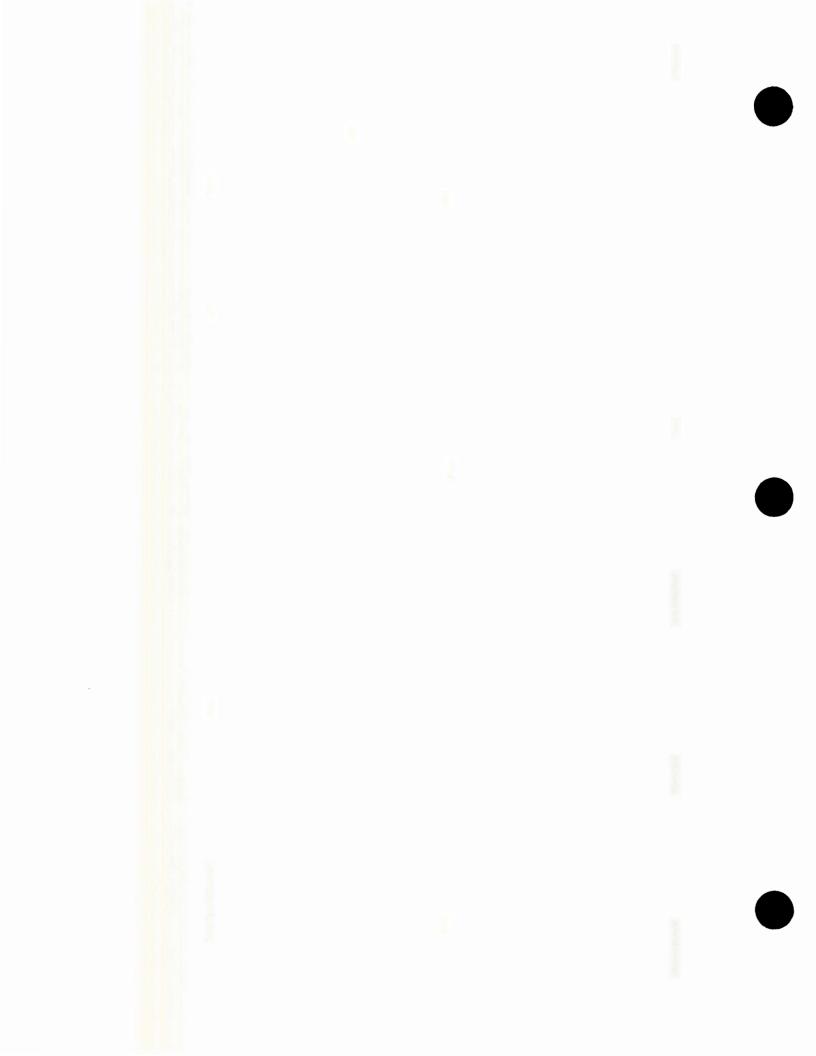
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### NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Senate Bill 570

|                | S570-AST-197 [v.3]  | (to be filled in by<br>Principal Clerk)   | 1     |  |  |  |  |
|----------------|---|---|-------|--|--|--|--|
|                | Amends Title [NO]<br>S570-CSSTf-123   | Date  | ,2016 |  |  |  |  |
|                | Representative  |   |       |  |  |  |  |
| 1              | moves to amend the bill on page 1, lin  | es 3-4 by rewriting those lines to read:  |       |  |  |  |  |
| 2 3 4 5        | "OFFENDERS AND FOR EXPUNCTIONS OF FINDINGS OF NOT GUILTY OR NOT RESPONSIBLE.";                                    |   |       |  |  |  |  |
| 6              | and on page 1, line 12, by inserting the  | e following after "Article." on that line:  |       |  |  |  |  |
| 8<br>9<br>10   |   | conviction in the same class of offense<br>re than one court, the individual shall peti |       |  |  |  |  |
| 11<br>12<br>13 | and on page 2, line 46, by inserting the following after "expunction" on that line: "and certificates of relief". |   |       |  |  |  |  |
|                | SIGNED Amendm   | ent Sponsor   |       |  |  |  |  |
|                | SIGNEDCommittee Chair if Sens   | nte Committee Amendment   |       |  |  |  |  |
|                |   |   |       |  |  |  |  |
|                |   | TADITO  |       |  |  |  |  |





### NORTH CAROLINA GENERAL ASSEMBLY **HOUSE OF REPRESENTATIVES**

### JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

### FAVORABLE HOUSE COM SUB, UNFAVORABLE SENATE COM SUB

SB 482 (CS#1) LLC Act Clarification.

Draft Number:

S482-PCS45539-ST-124

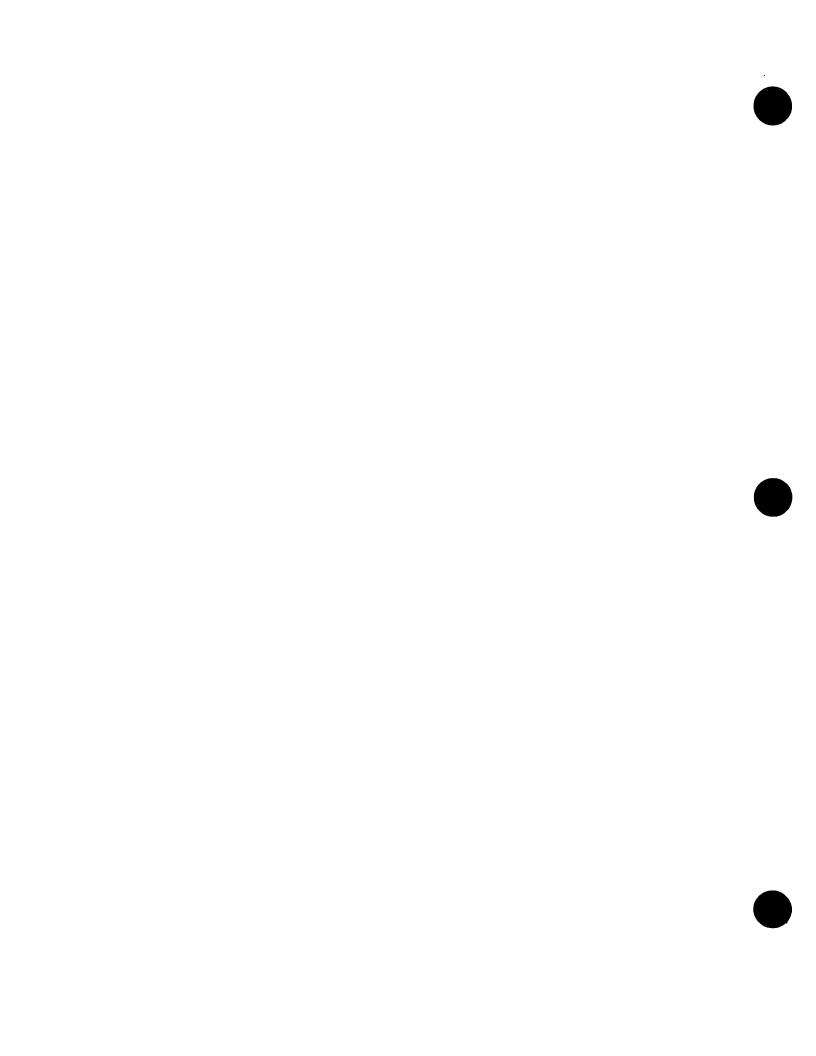
Serial Referral: None Recommended Referral: None Long Title Amended: Floor Manager:

No

Bishop

**TOTAL REPORTED: 1** 





### NORTH CAROLINA GENERAL ASSEMBLY HOUSE OF REPRESENTATIVES

## JUDICIARY I COMMITTEE REPORT Representative N. Leo Daughtry, Chair

### FAVORABLE HOUSE COM SUB NO. 2, UNFAVORABLE HOUSE COM SUB NO. 1 AND REREFERRED

SB 570 (HCS#1) Expunction/Boat Violation.

Draft Number: S570-PCS45537-STf-123

Serial Referral: None

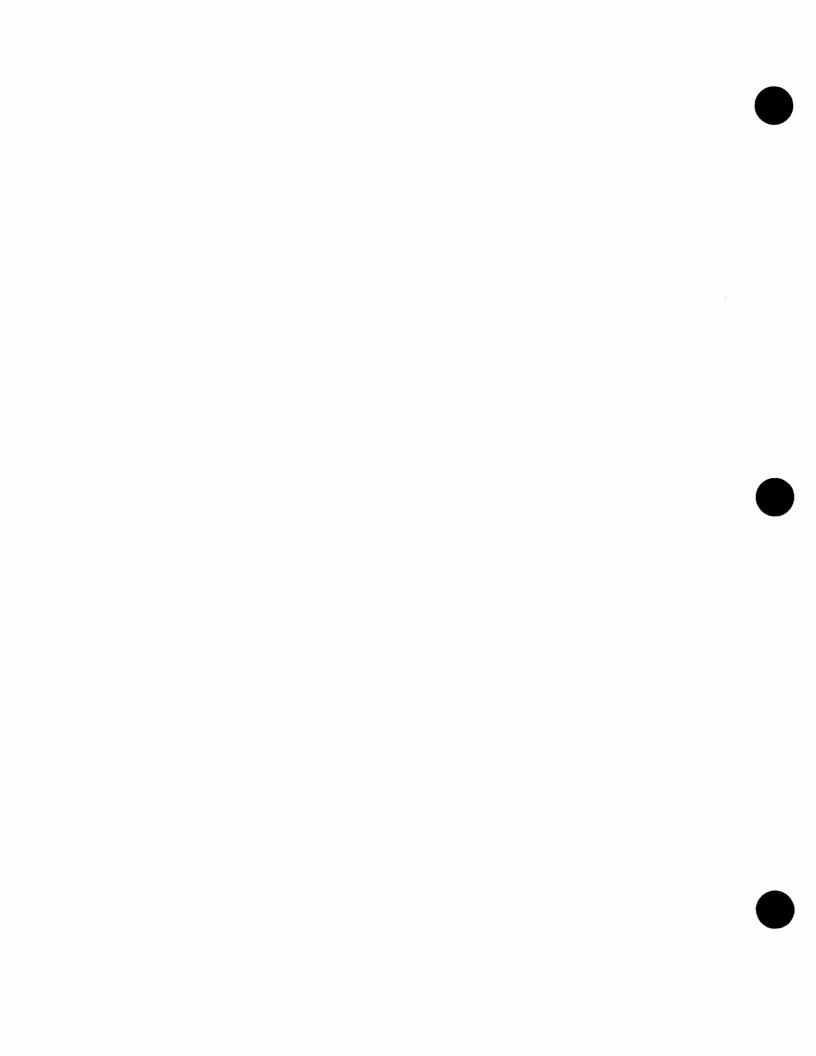
Recommended Referral: FINANCE

Lang Title Amended: Yes

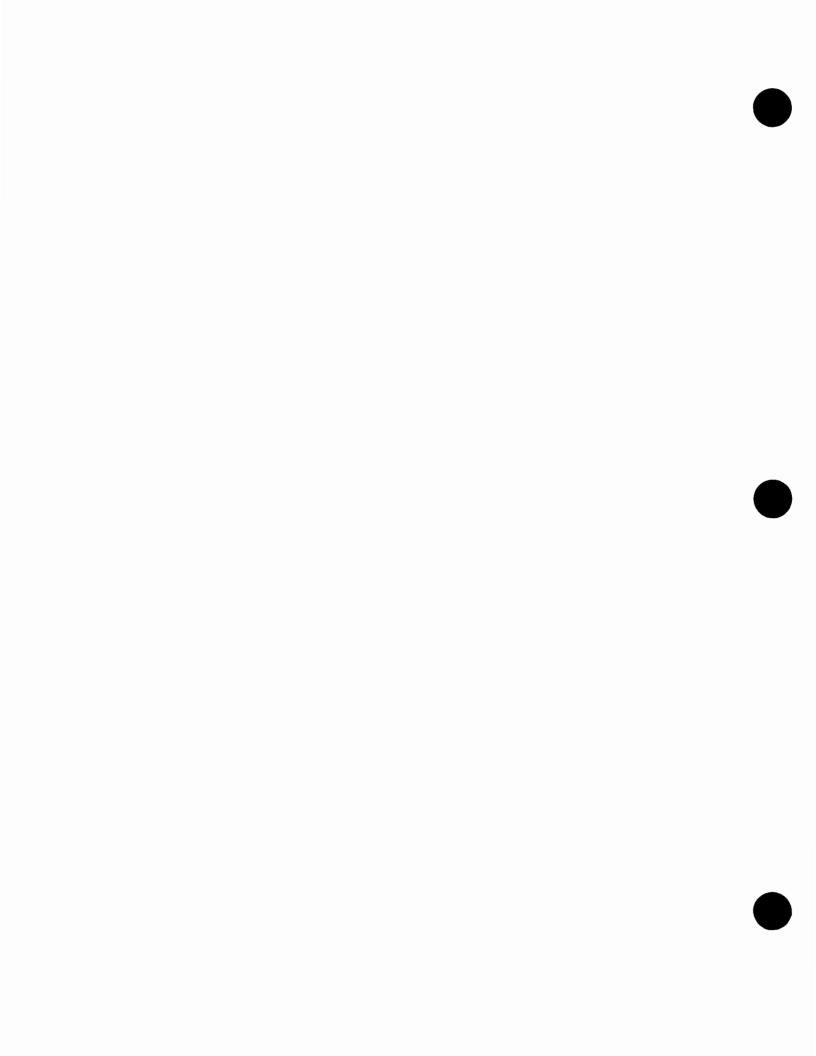
Long Title Amended: Yes Floor Manager: Faircloth

TOTAL REPORTED: 1

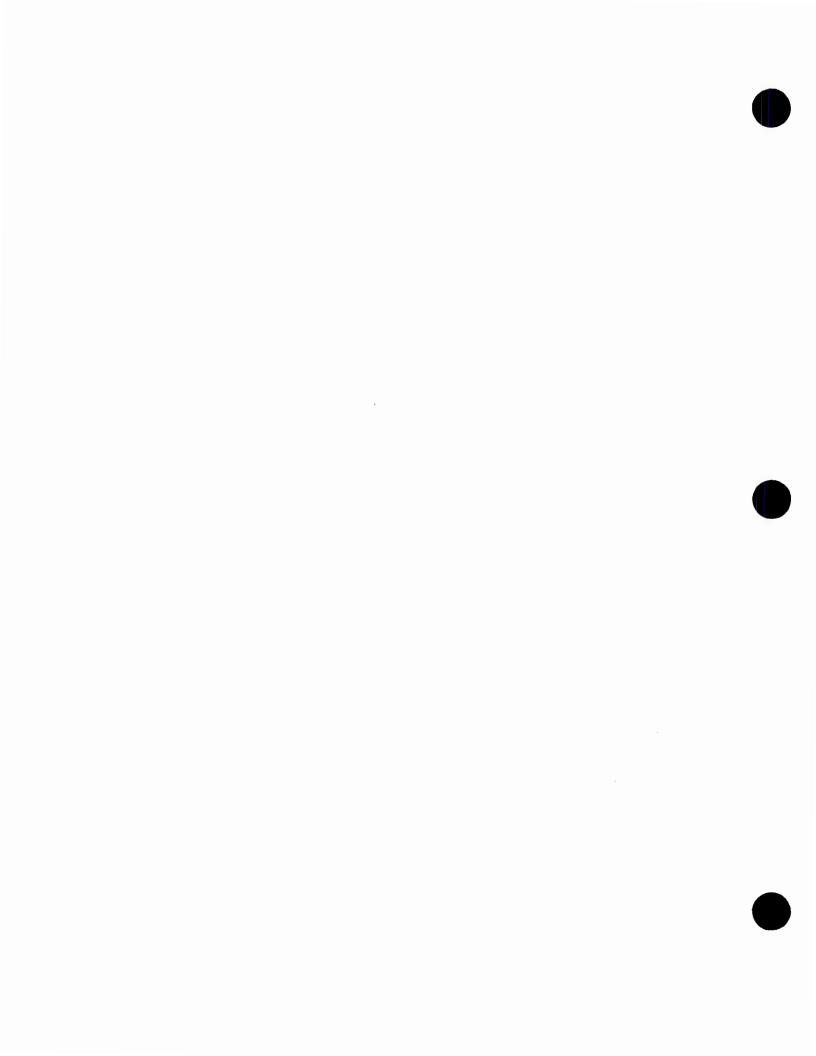




|  | Date: 6-22-16                            |
|--|--|
| Bill Number 5B 482 PCS 5482 - CSST- 124      | CV.2]                                    |
| Motion to be before the committee by _       | <u> </u>                                 |
| Rep Bishap  Discussion on the Bill YES or NO | explained the bill.                      |
| Rep_Arp                                      | motioned for: PCS                        |
| Favorable Report                             | Adoption                                 |
| Unfavorable Report                           | Unfavorable to original bill, fav to PCS |
| No vote                                      |  |
| Amendments: :                                |  |
| Serial referral to:                          |  |
| Speakers:                                    |  |
| Handouts:                                    |  |



| Date: 6-22-14  |
|--|
| Bill Number 58570  |
| PCS 5570-CSSTF - 123 [V.5]   |
| Motion to be before the committee by   |
| Rep Oaughty Fair Cloth explained the bill.  Discussion on the Bill YES or NO |
| Lacison  |
| Rep motioned for:  |
| Favorable Report Adoption  |
| Unfavorable ReportUnfavorable to original bill, fav to PCS                   |
| No vote  |
| Rep Steinburg mortished to adopt the amon                                    |
| Serial referral to:  |
| Speakers:  |
| Handouts:  |
| Daniel Bage  |
| William Durton   |
| 10-reterred to finance   |



### VISITOR REGISTRATION SHEET

House Judiciary I

June 22, 2016

Name of Committee

Date

### VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME                         | FIRM OR AGENCY AND ADDRESS |
|------------------------------|----------------------------|
| Todd Balon                   | NC Advocates & Justice     |
| Showner Mann                 | NC 002                     |
| Mildred Spearmon             | NCAOC                      |
| Pours Graffer                | School 7 1200              |
| magnair line                 | NCC                        |
| Juan Memard                  | um                         |
| Mitte Pel                    | Ams                        |
| Bill Row                     | NC Justice Center          |
| Daniel Bowe                  |                            |
| Elneson Robinson             | NCANA                      |
| Form West                    | NCICU                      |
| levis Parles                 | DRK                        |
| Caroline Miller<br>Josh Andy | UNC                        |



### VISITOR REGISTRATION SHEET

House Judiciary I

June 22, 2016

Name of Committee

Date

### VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME             | FIRM OR AGENCY AND ADDRESS |
|------------------|----------------------------|
| David Heiren     | Ne Center for Nonprolite   |
| LAD RUBERT       | CFIC                       |
| Chris Boughan    | MWC                        |
| Elizabeth Outlen | Novant Health              |
| DAVID POWERS     | UbmBLE CARLYLE             |
| Patrick Conton   | VNC                        |
| DOUL HERON       | DUKE                       |
| Wm.D. Burton     | Community Success, arg.    |
|                  |                            |
|                  |                            |
|                  |                            |

